

CLARIFYING ROLES:

Who Impacts the Special Immigrant Juvenile Status (SIJS) Case for Children in DCS¹ Foster Care?

Attorneys

○ *Child's Immigration Attorney*

- An immigration attorney counsels the child about immigration issues and forms of legal relief from removal, and represents the child's legal interests before the Executive Office for Immigration Review (EOIR, or "immigration court") or before the Department of Homeland Security (DHS).
- This attorney might be an employee of a non-profit agency, a *pro bono* volunteer from a private law firm, or in private practice. The child's SIJS immigration attorney is generally not employed by the child's family. Children have the right to be represented by an attorney in immigration court, but the federal government does not arrange or fund this representation. There are no public defenders in immigration court.
- This attorney may choose to only represent the child in his/her immigration proceedings. A separate attorney may represent the child in dependency proceedings, or in juvenile delinquency matters (if such matters arise.)
- Immigration attorneys must be members in good standing of the bar association of any U.S. state or territory. Children also may be represented in immigration matters by: law students and law graduates not yet admitted to the bar (with attorney supervision, and permission from the immigration judge); and individuals accredited by the Board of Immigration Appeals (who may be partially accredited to represent clients only before DHS, or fully accredited to represent people before EOIR and DHS).
- The conduct of legal practitioners in federal immigration matters is governed by federal regulations. In addition, licensed attorneys are governed by state rules of professional conduct.

○ *Child's Juvenile/Family Court Attorney*

- Most state court systems appoint legal counsel to represent children in dependency or delinquency proceedings. This attorney represents the child's interests. However, it is not typical for the court to appoint a lawyer for a custody determination in guardianship proceedings.
- In some places, this role may be combined with the guardian *ad litem* (GAL), in which case the child's attorney must balance what the child says she or he wants with what appears to be in the child's best interests. In other places, this attorney and the GAL will be separate, with the child's juvenile court attorney representing the child's wishes.
- Typically, this attorney is provided free of charge if the child cannot pay for his or her own representation in juvenile court.

¹ "ORR/DCS" refers to the Office of Refugee Resettlement / Division of Children's Services (formerly Division of Unaccompanied Children's Services or DUCS).

Direct Care Staff

- ***ORR/DCS Shelter Caseworker***
 - This caseworker is employed by the ORR-funded shelter facility and has day-to-day responsibility for the child's care while in the shelter.
 - This caseworker assists with gathering information from family members and pursuing family reunification options for children in the shelter. The caseworker may play a role in identifying children without family reunification options as possible foster care or SIJS-candidates.

- ***ORR/DCS Foster Care Caseworker***
 - The child's foster care caseworker holds primary responsibility for addressing the child's needs while in an ORR/DCS approved community-based placement through a national foster care network specifically designed to address the needs of foreign-born children. The caseworker has day-to-day responsibility for a child's care while in foster care.
 - The foster care caseworker should be the initial point of contact for concerns or needs arising in relation to the child, or the child's placement (such as issues with the foster family, the living situation, or service needs).
 - The caseworker's foundational approach is ensuring that a child's needs and best interests are met.
 - Related to an SIJS application, the foster care caseworker will typically be involved in coordinating with the child's attorney and foster family for the services and appointments required for the SIJS application (such as the medical exam, photos, fingerprints and other documentation).
 - ORR/DCS foster care caseworkers are bound by ORR's policies and procedures, state licensing requirements, agency policies and procedures, and the [Flores Settlement Agreement](#). Those who are professionally licensed are also bound by their individual licensure requirements and professional ethical standards.

- ***Child Welfare Caseworker***
 - This caseworker is sometimes (but not always) assigned when a child is declared dependent by the juvenile court.
 - Responsibilities will vary widely from place to place, but they typically revolve around general oversight of the child's care while dependent upon the local juvenile court.

Court Systems and Judges

- ***Executive Office for Immigration Review (EOIR)***
 - EOIR, part of the U.S. Department of Justice, oversees the immigration courts, where children in removal proceedings have their court hearings before an immigration judge. EOIR also oversees the Board of Immigration Appeals (BIA), whose Members review appeals of immigration judge decisions. An immigration judge may adjudicate the Adjustment of Status (green card) application for a child with an approved SIJS application if the child is still in removal proceedings before the immigration court.

- ***State Juvenile or Family Court***

- The structure and name of these courts will vary from state to state, but they may be called juvenile, family, district, superior or circuit court. Their judges make determinations about whether a child should be declared dependent by the court due to abuse, abandonment or neglect. In SIJS cases, these judges must also determine if it is in the child's best interests not to return to the country of origin.
- ***Probate Court***
 - Probate courts typically determine matters of legal guardianship and conservatorship for children who are cared for by non-parental relatives, but who are not under the custody of the juvenile court. In other words, the probate court legally recognizes the guardianship arrangement without taking custody of the child. Guardianship children should be eligible for SIJS.

Family

- ***Birth Family***
 - The birth family refers to the child's biological mother and father. The SIJS-applicant child's birth family may be deceased, in the country of origin, or if in the U.S., unable to care for the child. The juvenile court may attempt to contact the child's birth family to determine if it is in the child's best interests to remain in the U.S., and to determine whether the child has experienced abuse, abandonment or neglect.
 - In addition, if the child reunified with one parent but was abused, abandoned or neglected by the other parent, the child may nevertheless qualify for "one-parent" SIJS.
- ***Foster Family***
 - The foster family provides day-to-day care for the child with the oversight and support of the foster care agency. In coordination with the foster care caseworker, the foster family may take an SIJS-applicant child to appointments related to securing SIJS documentation (medical exams, photos, fingerprints, birth certificates, etc.). Foster families undergo training, home inspection, criminal background checks, licensure, and regular oversight to assume responsibility for foster children. They receive some financial assistance and social services to assist with the care of the fostered child.
- ***Legal Guardian***
 - Legal guardians are non-parental relatives or other adults who have established legal responsibility for a child through the probate court. They are permitted to make parent-like decisions for a child, but the parent-child relationship is not formally severed (as with adoption). Children in legal guardianship arrangements should be eligible for SIJS.

Federal Government Agencies

- ***Department of Homeland Security (DHS)***
 - ***U.S. Citizenship and Immigration Services (USCIS):*** USCIS Field Operations Officers adjudicate the Special Immigrant application (form I-360), as well as the Adjustment of Status application (form I-485) for children whose immigration court proceedings have

been terminated. The Administrative Appeals Office (AAO) adjudicates appeals of decisions made by USCIS officers.

- ***U.S. Immigration and Customs Enforcement (ICE):*** USICE is the enforcement branch of DHS. The office of the Principal Legal Advisor oversees the trial attorneys who represent the federal government's interests in immigration court cases.
- ***Department of Health and Human Services***
 - ***Office of Refugee Resettlement / Division of Children's Services (ORR/DCS):*** ORR/DCS holds legal custody of unaccompanied children detained for immigration violations. The Federal Field Specialists (FFS) act as the official ORR/DCS representative in their assigned region and liaises with other government entities, including ICE juvenile coordinators, immigration courts, and others. The FFS will consult with the ORR/DCS-funded shelter case worker regarding a referral for foster care services and will facilitate the foster care placement approval process.

Guardians *ad Litem* (GAL)

- ***Juvenile/Family Court GAL***
 - In some juvenile or family court settings, guardians *ad litem* may be assigned to children, to make recommendations to the court about the child's best interests, specific service needs, and to advocate for permanent placement options. The GAL determines the child's best interests, which may be different from the government's interests and the parent or guardian's interests. In some courts, an SIJS-applicant child may be assigned a GAL as part of the juvenile court dependency proceedings.

National Voluntary Agencies (VOLAGs) – Lutheran Immigration and Refugee Service (LIRS), and U.S. Conference of Catholic Bishops / Migration and Refugee Services (USCCB/MRS)

- ***Placement Staff***
 - Placement staff based at VOLAG national headquarters (LIRS in Baltimore, MD; USCCB/MRS in Washington, D.C.) consults with their national networks to determine the most appropriate foster care program to meet a particular child's service needs. Placement staff is available to foster care programs for consultation regarding issues related to preparing for the child's care prior to arrival to the program.
- ***Master's Level Child Welfare Specialists***
 - Children's Services Specialists are based at VOLAG headquarters and provide oversight, technical assistance, and desk monitoring once children have entered foster care in the network. CSS's are available to staff cases and provide consultation to the network, all the while observing and collecting trends and encouraging further capacity development.