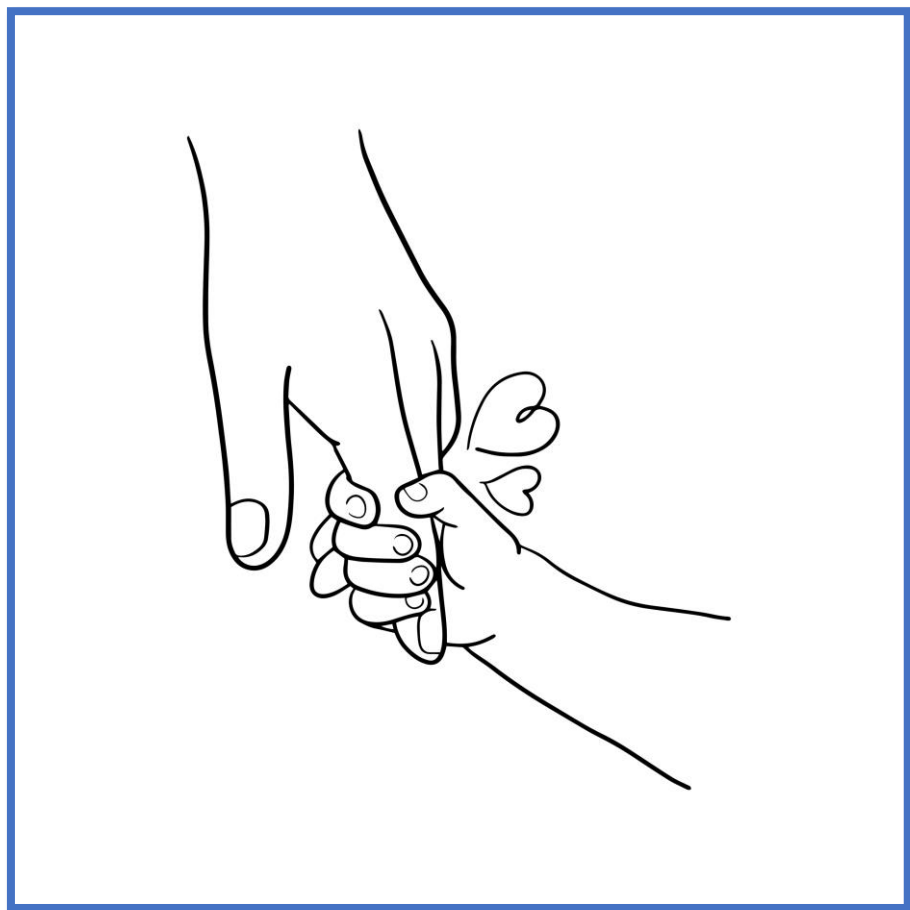


# The Intersection of Immigration and State Child Protective Services

Representing Children in Foster Care for  
Special Immigrant Juvenile Status



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**This handbook is meant to provide practical and useful information. It is not meant to act as a substitute for independent research or obtaining legal advice from an attorney. It is being made available with the understanding that neither Project Lifeline nor the author is engaged in rendering legal or ethical advice. If legal or ethical advice is required, seek the services of a competent lawyer.**



**Project Lifeline**  
Collaborating for Kids

[Project Lifeline](#) is dedicated to helping undocumented immigrant children secure legal status through innovative projects, strategic collaborations, and targeted advocacy. We aim to be a transformative force helping to educate lawyers about legal remedies for non-citizen children and expanding the cohort of lawyers engaged in this essential and rewarding work.

### THE PREDICATE ORDER PROJECT

Special Immigrant Juvenile Status (SIJS) is a humanitarian protection for non-citizen children and youth who have been abandoned, abused, neglected or had similar harsh experiences recognized by state law and for whom reunification with one or both parents is not viable due to such experiences. It is the only lifeline for tens of thousands of eligible young people already in the United States. Unlike other remedies, every child who meets the qualifications is eligible for relief no matter how long ago they arrived.

There are thousands of children who could benefit from SIJS if they had a lawyer. Advocates estimate that up to 80% of children arriving unaccompanied are eligible for SIJS or asylum.

SIJS is a hybrid process, bridging the family law expertise of the state and the immigration powers of the federal government. The process begins by obtaining a dependency order—called a predicate order—from a state “juvenile court” located where the child resides. This predicate order undergirds the request to U.S. Citizenship and Immigration Services (USCIS) seeking permanent resident status. Without a predicate order complying with certain special requirements, no matter how deserving, a child cannot receive SIJS.

An attorney must be barred in the state where the predicate order is sought. There are a scant number of attorneys who are aware of this need and are trained to do the work. Project Lifeline’s Predicate Order Project aims to increase the capacity of lawyers across bars, such as family law, domestic relations, juvenile justice, and probate, to do predicate order work so that more children have a chance at a meaningful life in the United States. It aims to identify, inspire, and educate lawyers to bring dependency actions that qualify children for SIJS.

To facilitate this goal, we created the [Predicate Order Resource Center](#). This library is a collection of curated material from diverse sources housed in a single repository. The resource center simplifies finding the law and best practices and serves as a guide to help lawyers conduct further research.

The Predicate Order Resource Center is organized into information streams each of which introduces a relevant topic and provides resources to delve into it. The library contains existing publications and web material as well as original videos and publications including this handbook.



This is me bringing it home at a Lights for Liberty demonstration in Washington, DC in 2019. I'm talking about the sick and traumatized children we found in border patrol custody in the Rio Grande Valley and El Paso.

I think big. I dream of the day when every immigrant child has the same opportunity to seek protection from harm by having a trusted lawyer guiding them through the legal system until they are living a safe and stable life full of promise.

I am humbled by the work of [Lenni Benson](#) and [Randi Mandelbaum](#), long-term advocates for immigrant children, who have developed innovative programs that greatly expand the number of children who are represented for SIJS and before the immigration courts by making sure they have lawyers.

In 2003, Lenni created [Safe Passage Project](#) which provides free legal services to immigrant children in NYC and Long Island including for SIJS. Volunteer lawyers representing children through the project receive robust training in SIJS and support while they pursue the remedy. Hundreds of lawyers working outside the project are also mentored.

In 2016, Randi created a [program](#) in partnership with the New Jersey child protection agency by which all immigrant children in agency custody are represented by an immigration lawyer for SIJS and other relief at Rutgers Law School through its clinical programs.

It is a joy working with Randi and it was a pleasure working with her clinical students on this guidance. Randi is brilliant and a great collaborator. She brings her A game to everything she does including this booklet. I am grateful for her sustained commitment to Project Lifeline and the Predicate Order Project.

It only takes one lawyer to forever change the life of a child. I hope that you will be inspired to be that lawyer. I assure you that this will be some of the most rewarding work of your career. It's been life changing for me.

Let's Save Children Together,

Hope M. Frye  
Executive Director

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## INTRODUCTION

Family relationships are at the core of both U.S. immigration laws and state child welfare laws. Non-citizen children caught at the intersection of those two legal systems are especially vulnerable. Their dependence on the state isolates them from the community and makes access to justice for relief outside the foster care system often impossible to obtain.

In many cases children are not screened for possible immigration remedies by caseworkers and children's representatives (either attorneys or guardians *ad litem*) and the courts may not be familiar with the immigration options. For example, many non-citizen children in the child welfare system may have a path to lawful permanent residence status (a "green card") but need an immigration attorney to assist. In fact, many of these children may be eligible for one or more forms of immigration relief, including, but not limited to, Special Immigrant Juvenile status (SIJS), asylum, a T visa (for victims of human trafficking), a U visa (for victims of certain crimes), or citizenship based on having been adopted by a U.S. citizen parent before the child turned 16 years of age.

Unfortunately, children with potentially approvable immigration cases can "age out" of eligibility. However, for children who are already in family court dependency proceedings, there is a ready-made opportunity to seek a predicate order that is necessary to qualify them for SIJS protection.

Representing undocumented children in the child welfare system requires knowledge of both the child welfare system and immigration law and procedure. This resource provides information to assist advocates for non-citizen children in child protection proceedings, both those representing the child in family or juvenile court and those who may be representing the child as their immigration attorney.



## I. Special Immigrant Juvenile Status Basics

Special Immigrant Juvenile Status is a form of humanitarian protection which provides a path to permanent residence for non-citizen children who have been victims of abuse, neglect, abandonment, or a similar harm and cannot be reunited with one or both parents because of it. SIJS results in a grant of permanent residence which puts the child on the path to citizenship.

**Obtaining permanent residence through SIJS is a complex, multi-step process which is beyond the scope of this guidance.** The [Predicate Order Resource Center](#) provides access to publications for an in-depth understanding of SIJS.

### A. The Process for Obtaining Permanent Residence in Brief

The process for obtaining SIJS begins with obtaining a state court dependency order which makes certain special findings. The order, known as a “predicate order,” is the subject of this guidance.

Once the predicate order is issued, a petition seeking SIJS classification for the child, Form I-360, is filed with United States Immigration and Citizenship Services. When the petition is approved, and a visa is available within the numerically restricted visa allocation system, the child files an application for an immigrant visa. Depending on the country of nationality a child may wait six years or more after the petition is approved before the application can be filed. There is then an additional waiting period for adjudication.

### B. Eligibility for SIJS

To be eligible for SIJS the child must be:

- In the U.S.
- Under 21 years old at the time of filing the petition
- Unmarried at the time the petition is filed and until it is adjudicated

- The subject of a “juvenile court” dependency order(s) that contain(s) special SIJS findings (the predicate order):
  - The child’s reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, and
  - It is not in the child’s best interest to be returned to the child’s country of nationality or last habitual residence.

See [INA §101\(a\)\(27\)\(I\)](#); [8 CFR 204.11](#); [USCIS Policy Manual Vol. 6, Part I \(SIJS\)](#).

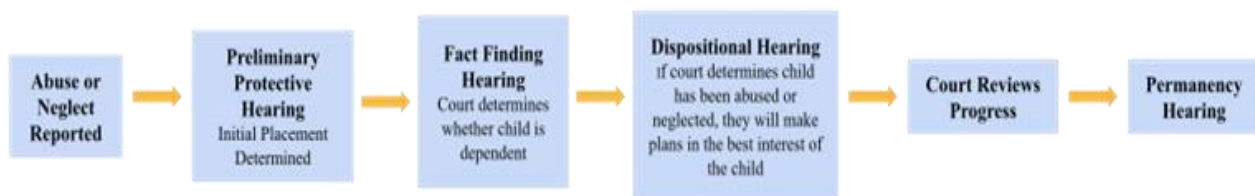
## II. Foster Care Generally

Foster care is a temporary service provided by the state for children who cannot live with their families. The goal of foster care is to provide a safe temporary home until the child can be safely returned to a parent or parents, or alternatively, to another permanent placement, either through legal guardianship, custody, or adoption.

Children enter foster care through child protection proceedings. Foster care is discussed in more detail [later](#).

## III. The Stages of a Child Protection Proceeding

Each child welfare case is unique and may require a different approach to successfully obtaining a predicate order. Immigration attorneys should become familiar with the arc of a child protection proceeding in the jurisdiction in which the child resides as this process may dictate the best time to apply for a SIJS predicate order.



## A. Abuse or Neglect Reported

A child's involvement in the child welfare system begins with a report to the child welfare agency's hotline. Any concerned person can report suspicions of child abuse or neglect and give the hotline the facts of the situation. However, most reports are made by individuals who are deemed mandatory reporters by the state. Mandatory reporters typically include social workers, teachers, principals, physicians, nurses, counselors, therapists, and law enforcement officers, among others. In some jurisdictions, everyone is considered a mandatory reporter.

## B. Initial Investigation

All calls must be investigated. Depending on state laws, the type of maltreatment, and severity of the situation, Child Protective Services (CPS) caseworkers will respond with varying degrees of urgency. During the initial investigation, any risks to the child are assessed. CPS workers may speak with parents, other people in contact with the child, including doctors and teachers, and the child. If the CPS worker believes a child is in immediate danger and at risk of imminent harm, the child may be removed from their home to a foster home or a relative's home while the investigation continues. In these instances, most states will have an emergency court proceeding.

State laws specify when a court must provide representation for the child by appointing an attorney, guardian *ad litem*, or court appointed special advocate who has received training appropriate to the role.

Many children and families receive services from child welfare agencies, but the children are not removed from the family and the case is not brought to court. For cases where the child is removed, below are some of the key hearings in a child protection proceeding, although the names may vary by state.

## C. Emergency Hearing

Every child protection proceeding begins with either the filing of a petition and/or an emergency removal. If there is imminent harm to the child and an emergency removal

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takes place without a court order, a hearing must be conducted within 24 to 72 hours after the removal to determine if the child should remain out of the home pending the next hearing. These proceedings can also address initial services for the family and visitation if the child is not returned to a parent.

### **D. Fact-Finding Hearing**

At the fact-finding hearing, also called an adjudicatory hearing, the court considers the evidence from the allegations and decides if the child has been abused or neglected based on state law. The State, in the form of the child welfare agency, has the burden of proving abuse or neglect by a preponderance of the evidence. If facts are proven and a finding of abuse or neglect is made, the jurisdiction of the family court will continue. If not, jurisdiction likely will end, and the case dismissed.

### **E. Dispositional Hearing**

If there is an abuse and/or neglect finding, a dispositional hearing takes place. Each state has its own requirement for the time in which a dispositional hearing must be held. This hearing will determine the child's ongoing custodial placement, terms of contact between child and parent if the child is not placed in the home, and services to be provided to both the parent(s) and the child(ren).

### **F. Court Reviews**

The [Adoption and Safe Families Act](#) (ASFA) requires that review hearings be held at least every six months until the child is in a permanent placement or if the child is returned home and the court is overseeing the provision of services and level of compliance. Many states hold these hearings, often called compliance review hearings, more frequently. The court reviews the child's case, makes sure the child is safe, and ensures progress is being made with respect to the parents' rehabilitation. The court can consider whether the child may be safely returned to the parent if the parent has been making progress in achieving the case plan objectives.

## **G. Permanency Hearing**

The ASFA requires that the court hold a permanency planning hearing within 12 months from the time the child entered foster care and annually as long as the child remains in foster care. In most cases, for the first year, the goal is reunification. However, after a child has been in foster care for a year, the court will determine if reunification should remain the plan or if another permanency plan should be implemented. Besides reunification, permanency plans include adoption, placement with kin, and independent living.

When a foster youth has been in an out of home placement for 12 months, a permanency hearing will be conducted, and the court will consider the following options for a child to achieve a permanent home if reunification is not possible.

## **H. Permanency Options**

### **1. Adoption**

Adoption may be a permanency plan for some youth. Adoption requires that the parents' rights be terminated. To do so, the court must determine by clear and convincing evidence that the parent is unfit and severing the parent-child relationship is in the child's best interest. Once the legal parent-child relationship has ended, a child can be adopted.

### **2. Kinship Care**

Kinship care occurs when a child is placed with a relative. Initially, kinship care can be formal or informal. In cases where a child is unable to reunify with one or both of their parents, the court can look to a more permanent kinship care arrangement through a formal custody or guardianship arrangement. If parental rights are terminated, the relative caregiver might be able to adopt the child.

### **3. Independent Living**

Independent living may be a permanency plan for youth over the age of sixteen, allowing them to transition out of foster care into adulthood. The program offers services including housing assistance; funds for food, clothing, and necessities; education resources, including financial assistance to go to college or vocational schools, assistance in getting a job, and money management.

## **IV. Foster Care Placements**

There are a variety of foster care placements depending on the circumstances of the child.

### **A. Traditional Foster Care**

In traditional foster care, foster parents, paid by the state, care for a child or sibling group who are in the state's custody for an undetermined amount of time. In traditional foster care, adults must meet certain requirements and complete a lengthy training program to become licensed as foster parents.

### **B. Kinship Care**

Formal kinship care is similar to traditional foster care. In formal kinship care, a child is in the legal custody of the state, but in the physical custody of kin. The State must exercise due diligence to notify all adult relatives that the child has been taken into the custody of the State. If a relative is willing and able to care for the child, the child welfare agency can place the child in a home with their kin, and in most places, the kinship caregiver will receive a foster care stipend.

Informal kinship care are arrangements made without any formal involvement from a child welfare agency. In this placement, kin will take in a foster youth. The legal custody of the child will depend on various circumstances. There is no foster care stipend allotted for informal kinship care.

### **C. Medically Fragile Foster Care**

[Medically fragile foster care](#) is specialized foster care designed to meet the needs of children with complicated medical conditions. While these children face serious medical issues, they are able to live in a home with support, as opposed to living at a hospital. This type of foster care has varying levels of care based on the specific medical needs of the child. Foster families undergo specialized training to learn how to care for those needs.

### **D. Regular Group Homes**

Group homes, also called congregate care, are placements that house multiple youth. The definition of group home and the requirements vary by state. [The Family First Prevention Services Act of 2018](#) places an emphasis on family foster homes and limits the use of group homes.

### **E. Therapeutic Foster Homes**

Therapeutic foster homes are placements where a child is cared for by foster parents who have specialized training to care for youth with a variety of significant emotional and/or behavioral needs. These placements have more structure and support than traditional foster care.

### **F. Therapeutic Group Homes**

Therapeutic group homes are for youth, typically older youth, who are struggling with mental health, behavioral and/or substance abuse issues. This placement is residential style and community based. These placements are not as restrictive as residential treatment facilities.

## G. Residential Treatment Facilities

Residential treatment facilities are for youth, typically older youth, who are struggling with psychological, psychiatric, behavioral and/or substance abuse issues. It is a live-in placement where trained staff work with youth whose needs require a structured environment. This type of placement is typically an institutional setting that offers an array of services including therapeutic, educational, and medical services. Residential treatment facilities should only become an option if other placements have proven ineffective.

## V. The Basics of a Predicate Order

In child protection proceedings, courts will render findings of fact if the State is able to prove that a parent has abused and/or neglected their child. A fact-finding order will not be legally sufficient to qualify as a predicate order as a predicate order must contain the [special findings](#) required by [immigration law](#). Without these, a child's petition to USCIS seeking special immigrant juvenile status will be denied.

To qualify as a predicate order, the court must make these findings:

- That the child has been declared dependent on a juvenile court or legally committed to or placed under the custody of a state agency or department or an individual or entity appointed by a state or juvenile court;
- That 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; and
- That it is not in the child's best interest to be returned to his or her country of nationality or last habitual residence.

## A. Dependency/Custody

The dependency requirement is satisfied when the court determines during the protection process that allegations of parental abuse, neglect, abandonment, or similar maltreatment are sustained by the evidence and are legally sufficient to support state

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intervention on behalf of the child. A child placed into foster care is considered under the custody of a state or local agency.

## **B. Abuse and Reunification**

The determination of what constitutes the requisite harms is a matter of state law. The factual basis for the court’s finding of abuse, neglect, abandonment, or similar harm must be detailed and linked to the statute where the definition of the abuse is found. This is an essential requirement which provides the direct connection between the court’s decisions and the relevant state laws.

The SIJS statute also allows findings under state law that are “similar” to abandonment, abuse, or neglect. If such a finding is made, the predicate order must explain how the basis is legally similar to that specified by statute. One of the more common examples of “similar basis” is the death of the parent where the outcome is similar to abandonment as that is defined under state law.

The harm required for SIJS may have occurred within the United States, but it may also have occurred in the child’s birth country or any other country. If the harm does not come from the circumstances that led to the family court’s jurisdiction, additional evidence may need to be presented.

Reunification can be a difficult issue. Reunification with one parent does not automatically disqualify a child from SIJS eligibility, as federal law only requires that a child be abandoned, abused, or neglected by one parent.

For example, if a child was placed in the foster care system due to alleged abuse by the mother, and is then reunified with her, the child may still be eligible for SIJS if abused, abandoned, or neglected by the father who may not be a respondent-parent in the child welfare proceeding. In such a case, additional evidence may be needed to support findings concerning the parent who is not before the court.

Non-viability of reunification does not mean termination of parental rights, and conversely, termination of parental rights is not required under immigration law.

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### C. No-Return Best Interest

The law requires an individualized determination that it is not in the child's best interest to be returned to the country of nationality or last residence. Courts routinely make best interest determinations. Many states have statutes with criteria for making these assessments. There is a discussion of best interest with a compendium of best interest statutes and other information in the [Predicate Order Resource Center](#).

Generally, judges balance information and may consider things like medical and mental health well-being, educational opportunities, economic opportunities, relationships and connections with family and friends, and protection and security.

It is important that the court considers the harm that will occur to the child if returned to their home country as well as the positive reasons for allowing the child to remain in the United States. Specific evidence could include safety concerns, whether there would be a fit and appropriate caretaker in the home country, whether the child speaks the language of the home country, access to medical and educational services, and the child's ties to the United States.

## VI. How and When to Move for a Predicate Order

In many instances, the child's immigration attorney will not be a party to the child protection proceeding. Accordingly, the immigration attorney will need to either intervene, if permitted, or seek to work with the child's attorney or guardian *ad litem* in the child protection proceeding, or the agency attorney to draft the proposed predicate order and to get the order before the court. Many courts require a formal motion and/or hearing seeking the SIJS determinations. Local court rules and procedures for motion practice will apply.

The timing of when to bring such a motion is an issue that must be addressed locally taking into account local procedure, judicial preference, the facts and procedural posture of the case. The fact-finding hearing often is held before the hearing on the predicate order.

## VII. Aging Out of Foster Care

### A. What Does “Aging Out” Mean?

Aging out of the foster care system generally refers to young adults who have reached the age of 18, 19, 20, or 21, depending on the state, and who have not achieved any type of permanency (adoption, reunification with one or both parents, or placement with a relative). These youth must now transition out of foster care into adulthood.

According to the [National Foster Youth Institute](#), roughly 20,000 children age out of foster care each year in the United States. Older youth in foster care are one of the most vulnerable populations in this country. When foster youth reach their state’s aging-out age, they lose access to the financial, educational, and social supports provided by the child welfare system. Additionally, children/youth may lose eligibility for support if they marry, even if they have not officially “aged out” of the system.

### B. Aging Out of the Court’s Jurisdiction vs. Aging Out of Child Protection Agency Involvement

Continuation of foster care may not mean continuation of court involvement, which is where a predicate order can be obtained. What happens is a matter of state law which varies state-to-state. It also is important to stay up to date on potential changes in state law and policy.

Some state agencies continue their involvement and provide services or programs for foster youth, but court jurisdiction terminates or may be at the court’s discretion. For example, New Jersey continues court involvement as long as the child’s case remains open with the agency. However, in Idaho, court jurisdiction ends at 18, even though child welfare services may continue to age 21. In Illinois and Virginia, whether court oversight continues is at the discretion of the court.

In some states, a youth choosing to leave the foster care system prior to the maximum age can re-enter the foster care system. Re-entry allows the youth to utilize the system’s

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resources. This does not, however, automatically mean that the court case will be reopened. Most likely, if jurisdiction has ended, the court will not reopen the case. This means that there is no longer the possibility to obtain a predicate order through this modality. You can check re-entry as well as court jurisdiction state-by-state [here](#).

Below is a table that outlines the age at which a child ages out of the court’s jurisdiction and the age when the child ages out of agency services.

This [Extended Foster Care Tool](#) provides additional information.

State-by-State	End of Court Jurisdiction	End of Agency Involvement
<b>District of Columbia</b>	21 <a href="#">D.C. Code § 16-2303</a>	21
<b>Alabama</b>	21 <a href="#">Ala. Code § 12-15-117(a)</a>	21
<b>Alaska</b>	21 <a href="#">Alaska Stat. § 47.10.100(a), (c)</a>	21
<b>Arizona</b>	18 The juvenile court has jurisdiction to make the initial determination prescribed in section <a href="#">8-829</a> whether the voluntary participation of a qualified young adult in an extended foster care program pursuant to section <a href="#">8-521.02</a> is in the young adult's best interests. <a href="#">8-202</a>	21
<b>Arkansas</b>	21 <a href="#">Ark. Code § 9-27-306(a)(1)(B)</a>	21

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State-by-State	End of Court Jurisdiction	End of Agency Involvement
<b>California</b>	21 <a href="#">Cal. Welf. &amp; Inst. Code § 303(a)</a>	21
<b>Colorado</b>	18 and a half <a href="#">Colo. Rev. Stat. § 19-3-205(1)</a>	21
<b>Connecticut</b>	Department shall file a motion within 120 days after youth's 18th birthday to determine whether continuation in care is in youth's best interest and, if so, whether an appropriate permanency plan is in place. The court, in its discretion, may hold a hearing on said motion. <a href="#">Conn. Gen. Stat. § 46b-129(j)(5)</a> .	21
<b>Delaware</b>	21 The court may supervise provision of aftercare services at the youth's request. The request must be filed within 30 days prior to the child's 18th birthday and 6 months prior to the child's 21st birthday. <a href="#">10 Del. C. § 929</a>	21
<b>Florida</b>	21 or 22 if child has disabilities <a href="#">Fla. Stat. § 39.013(2)</a>	22
<b>Georgia</b>	The juvenile court retains jurisdiction over a child who is "receiving extended care youth services; provided, however, that such jurisdiction shall be for the purpose of reviewing the status of the case, determining that extended care youth services are in the best interests of such child, adopting a transition plan for such child, ensuring the provision of developmentally appropriate services and supports consistent with such plans, and	21

State-by-State	End of Court Jurisdiction	End of Agency Involvement
	determining whether reasonable efforts are being made to transition such child to independent living or another planned permanent adult living arrangement." <a href="#">Ga. Code § 15-11-10(1)(F)</a>	
<b>Hawaii</b>	The family court retains exclusive jurisdiction over the young adult voluntary foster care program. <a href="#">Haw. Rev. Stat. § 346-394</a> . The court must find that exercising jurisdiction is in the young adult's best interest. <a href="#">Haw. Rev. Stat. § 346-395</a>	21
<b>Idaho</b>	18  <a href="#">Idaho Code § 16-1604(1)</a>	21
<b>Illinois</b>	21  <a href="#">705 Ill. Comp. Stat. 405/2-31(1)</a>	21
<b>Indiana</b>	21  <a href="#">Ind. Code § 31-30-2-1</a>  A court that approves a collaborative care agreement shall retain jurisdiction and conduct periodic reviews of the agreement at least once every 6 months until the agreement is terminated. <a href="#">Ind. Code § 31-28-5.8-7 (a), (f)</a>	21
<b>Iowa</b>	18	21
<b>Kansas</b>	21  <a href="#">Kan. Stat. § 38-2203(c)</a>	21
<b>Kentucky</b>	21	21

State-by-State	End of Court Jurisdiction	End of Agency Involvement
	<a href="#">Ky. Rev. Stat. §§ 610.110(6), 620.140(1)(d)-(e)</a>	
<b>Louisiana</b>	<p style="text-align: center;">18</p> <p>A court exercising juvenile jurisdiction shall have exclusive original jurisdiction over extended foster care proceedings as provided for by <a href="#">R.S. 46:288.1 et seq.</a>, to review the written report and make a determination whether it is in the youth's best interest to continue in extended foster care in a voluntary placement.</p> <p style="text-align: center;"><a href="#">La. Child. Code art. 303(12)</a></p>	21
<b>Maine</b>	<p style="text-align: center;">22</p> <p>The District Court shall hold a judicial review for each person who qualifies for care and support under this section at least once every 12 months. The court shall hear evidence and shall consider the original reason for the extended care and support of the person and the agreement of extended care and support between the department and the person.</p> <p style="text-align: center;"><a href="#">22 M.R.S. § 4037-A</a></p>	22
<b>Maryland</b>	<p style="text-align: center;">21</p> <p style="text-align: center;"><a href="#">Md. Code, Cts. &amp; Jud. Proc. § 3-804(b)</a></p>	21
<b>Massachusetts</b>	<p>The committing court shall continue to hold annual permanency hearings as described for young adults who remain in care. <a href="#">Mass. Gen. Laws, ch. 119, § 29B(b)</a></p>	22
<b>Michigan</b>	<p>Within 150 days after the voluntary foster care agreement is signed, the department shall file with the court a</p>	21

State-by-State	End of Court Jurisdiction	End of Agency Involvement
	<p>written report that contains, inter alia, a statement of facts that supports the voluntary foster care agreement and a copy of the agreement. <a href="#">Mich. Comp. Laws § 400.655</a></p> <p>Not later than 21 days after the date the report was filed with the court, the court shall make a determination whether continuing in voluntary care is in the youth’s best interest. <a href="#">Mich. Comp. Laws § 400.657</a></p> <p>The court shall close the case following this determination. <a href="#">Mich. Comp. Laws § 400.659</a></p>	
<b>Minnesota</b>	<p style="text-align: center;">21</p> <p>The court shall conduct reviews at least annually to ensure the responsible social services agency is making reasonable efforts to finalize the permanency plan for the child.</p> <p style="text-align: center;"><a href="#">Minn. Stat. § 260C.451(6), (9)(a)</a></p>	21
<b>Mississippi</b>	<p style="text-align: center;">20</p> <p style="text-align: center;"><a href="#">Miss. Code § 43-21-151(2)</a></p>	21
<b>Missouri</b>	<p style="text-align: center;">21</p> <p style="text-align: center;"><a href="#">Mo. Stat. § 211.041</a></p>	21
<b>Montana</b>	<p style="text-align: center;">18</p> <p>“Child” or “youth” means any person under 18 years of age.</p> <p style="text-align: center;"><a href="#">Mont. Code Ann., § 41-3-102(6)</a></p>	<p style="text-align: center;">18</p> <p>But a youth over the age of 18 may remain in</p>



State-by-State	End of Court Jurisdiction	End of Agency Involvement
	<p>In all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over: (a) a youth who is within the state of Montana for any purpose; (b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.</p> <p><a href="#">Mont. Code Ann., § 41-3-103</a></p>	<p>foster care if still in secondary school. Mont. Admin. R. 37.51.102.</p>
<b>Nebraska</b>	<p>21</p> <p>The court has jurisdiction to review the voluntary services and support agreement between the youth and the Department and shall conduct a permanency hearing at least once per year. <a href="#">Neb. Rev. Stat. § 43-4508</a></p>	21
<b>Nevada</b>	<p>21</p> <p><a href="#">NRS 432B.594</a></p>	21
<b>New Hampshire</b>	<p>21</p> <p><a href="#">N.H. Rev. Stat. § 169-C:4(II)</a></p>	21
<b>New Jersey</b>	<p>The Family Part of the Chancery Division of the Superior Court has continuing jurisdiction over the placement of a child. <a href="#">N.J. Stat. § 30:4C-53</a></p>	21
<b>New Mexico</b>	<p>Court may extend jurisdiction for a period not to exceed one year after young adult's 18th birthday if it determines that the department has not made reasonable efforts to</p>	21

State-by-State	End of Court Jurisdiction	End of Agency Involvement
	<p>provide the child with certain identification documents and written information about the child’s family, medical, and education history, assist the child in obtaining Medicaid, or refer an eligible child for guardianship or limited guardianship and that termination of jurisdiction would be harmful to the young adult. <a href="#">N.M. Stat. § 32A-4-25.3</a></p>	
New York	<p>21</p> <p><a href="#">N.Y. Fam. Ct. Act § 1055(b)(i)(E)</a></p>	21
North Carolina	<p>18</p> <p><a href="#">N.C. Gen. Stat. § 7B-201</a></p> <p>The court shall review the placement of youth in extended care. <a href="#">N.C. Gen. Stat. § 7B-910.1(a)</a></p>	21
North Dakota	<p>21</p> <p><a href="#">N.D. Cent. Code § 27-20-30.1</a></p>	21
Ohio	<p>18</p> <p>The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section <a href="#">2151.414</a> or <a href="#">2151.415</a> of the Revised Code until the child attains the age of eighteen years if the child does not have a developmental disability or physical impairment, the child attains the age of twenty-one years if the child has a developmental disability or physical impairment, or the child is adopted and a final decree of adoption is issued,</p>	21

State-by-State	End of Court Jurisdiction	End of Agency Involvement
	<p>except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under section <a href="#">2151.414</a> or <a href="#">2151.415</a> of the Revised Code for a specified period of time to enable the child to graduate from high school or vocational school.</p> <p><a href="#">Ohio Rev. Code § 2151.353(F)(1)</a></p>	
<b>Oklahoma</b>	<p>18</p> <p><a href="#">10A OK Stat § 10A-1-4-101</a></p>	18
<b>Oregon</b>	<p>21</p> <p><a href="#">ORS § 419B.328(2)</a></p>	21
<b>Pennsylvania</b>	<p>21</p> <p><a href="#">42 Pa. C.S. § 6302</a></p> <p><a href="#">Pa. R. Juv. Ct. Pro. §§ 1610, 1611</a></p>	21
<b>Rhode Island</b>	<p>21</p> <p><a href="#">14 R.I. Gen. Law § 14-1-6(c)</a></p>	21
<b>South Carolina</b>	<p>22</p> <p><a href="#">S.C. Code § 63-3-510</a></p>	21
<b>South Dakota</b>	<p>21</p> <p>S.D. Codified Laws §§ <a href="#">26-7A-1(6)</a>, <a href="#">26-7A-102</a>, <a href="#">26-8A-29</a></p>	21
<b>Tennessee</b>	<p>A person over the age of 18 shall be allowed to remain under the continuing jurisdiction of the juvenile court for</p>	21

State-by-State	End of Court Jurisdiction	End of Agency Involvement
	purposes of the voluntary extension of services pursuant to § 37-2-417. <a href="#">Tenn. Code § 37-1-102(b)(5)(G)</a>	
<b>Texas</b>	Jurisdiction ends at 21 if the young adult reenters extended foster care.  <a href="#">Tex. Fam. Code § 263.602</a> <a href="#">Tex. Fam. Code § 263.6021</a>	21
<b>Utah</b>	21  Youth remain in care and under court jurisdiction until age 21 unless they opt out.  <a href="#">Utah Code § 78A-6-120(1)(a)</a>	21
<b>Vermont</b>	18  <a href="#">Vt. Stat. tit. 33, § 5103(c)(2)(C)</a>	22
<b>Virginia</b>	Upon appeal to the circuit court of any case involving a child placed in foster care and in any appeal to the Court of Appeals or Supreme Court of Virginia, the juvenile court shall retain jurisdiction to continue to hear petitions filed pursuant to §§ <a href="#">16.1-282</a> and <a href="#">16.1-282.1</a> . Orders of the juvenile court in such cases shall continue to be reviewed and enforced by the juvenile court until the circuit court, Court of Appeals or Supreme Court rules otherwise. <a href="#">Va. Code § 16.1-242.1</a>	21
<b>Washington</b>	“In order to facilitate the delivery of extended foster care services, the court, upon the agreement of the youth to participate in the extended foster care program, shall maintain the dependency proceeding for any youth who	21

State-by-State	End of Court Jurisdiction	End of Agency Involvement
	is dependent in foster care at the age of eighteen years and who, at the time of his or her eighteenth birthday," meets eligibility criteria for extended care. <a href="#">RCW § 13.34.267(1)</a>	
<b>West Virginia</b>	The court shall continue to hold status review hearings every three months until permanency is achieved (only if in foster care). <a href="#">W. Va. Code § 49-4-110(b)</a>	21
<b>Wisconsin</b>	Court retains jurisdiction during extended placement. <a href="#">Wis. Stat. § 48.44</a>	21
<b>Wyoming</b>	21 <a href="#">Wyo. Stat. § 14-3-431</a>	21

### C. Leaving Foster Care May Not End the Ability to Obtain a Predicate Order

Even if a child’s protection proceedings terminate, the youth may not be precluded from accessing state court and may be eligible for a dependency order on another basis. States differ in how and in which courts SIJS predicate orders may be sought. And, importantly, seeking a court order outside the child welfare system subjects the individual to the state’s regular age-out provisions. Accordingly, a youth leaving state care may be too old to seek a predicate order and therefore precluded from seeking SIJS.

A youth not in the foster care system must be deemed a “child” as that term is defined by the State in order to access state court jurisdiction to seek a predicate order. This means, for example, that a person in Utah who could receive a predicate order up to 21 because they are in the state foster care system and still under the jurisdiction of the

court, would age out at 18 – the age at which a juvenile court outside the CPS system loses jurisdiction. This is discussed in the Predicate Order Resource Center [State-by-State Age-Out Database](#).

## VIII. Pointers for Attorneys and Child Welfare Agencies

### A. Child Welfare Agencies Should Make Active Efforts to Determine if a Child is Not a U.S. Citizen

The earlier a child is identified as not being a U.S. citizen the better. If a child does not have a Social Security number or has a foreign passport or birth certificate, that child may be undocumented. As a part of child welfare agencies' responsibility to serve children's best interests and achieve permanency, agencies have an obligation to determine a child's immigration status and, if undocumented, take appropriate steps to stabilize the child's immigration status.

When so doing, agencies must have strict policies in place so that this information is not shared with Immigrations and Customs Enforcement ("[ICE](#)") (which is a federal law enforcement agency under the Department of Homeland Security that focuses on immigration enforcement, detention, terrorism prevention, and combating illegal movement of people and goods) or any other law enforcement agency.

### B. Seek Appropriate Legal Representation for the Child in Immigration Proceedings

If the goal of the child welfare system is to assist children in achieving permanency, safety, and stability, that goal simply cannot be met for immigrant children without taking affirmative steps to connect them with immigration counsel, evaluate their options for immigration status, and ensure they have a meaningful opportunity to pursue any such options, if they so choose. Agencies that fail to take these critical steps will inevitably leave youth in legal limbo and without stability of placement.

### **C. Be Conscious of the Time-Sensitive Nature of the SIJS Process**

As discussed at the beginning of this guidance, there are several points in the SIJS process, including when it begins, that are time sensitive. Any delay by the agency can compromise the child’s chances for success and, perhaps, eliminate eligibility for the immigration remedy altogether. Because of this, agency action must begin as soon as the noncitizen child is placed in care.

The goal of assisting children to achieving permanency—safety and stability—cannot be met for noncitizen children without promptly evaluating their options for immigration status, and ensuring they have a meaningful opportunity to pursue immigration relief by connecting them with immigration counsel. Agencies that fail to take these critical steps will inevitably leave youth in legal limbo and without stability of placement.

## **IX. How ORR Custody is Different from Foster Care**

### **A. What Does It Mean When a Child is Identified as an Unaccompanied Minor?**

An [unaccompanied minor](#) is a child who is under the age of 18, who has no lawful immigration status in the United States, and who is not accompanied by a parent or legal guardian when they arrive in the United States. Unaccompanied minors are afforded some extra procedural protections under immigration law.

### **B. What is the Office of Refugee Resettlement?**

When an unaccompanied minor is apprehended by border officials, the child is supposed to be transferred, within 72 hours, into the custody of the Office of Refugee Resettlement (“[ORR](#)”), which is part of the U.S. Department of Health and Human Services.

Federal law requires that children in ORR custody receive shelter, food, and medical care until the child is released to a sponsor. Once a child is in ORR care, case workers employed by ORR facilities are charged with finding and vetting sponsors (parents, guardians, relatives, or family friends) with whom the child can live.

Unlike state ordered foster care where relative caregivers may receive stipends, ORR sponsors do not receive any financial support and minimal, if any, [supportive services](#). Once a sponsor assumes care of the unaccompanied child, ORR's custodial obligations end and the child typically no longer receives support from ORR.

The placement of the child with a sponsor also does not give the sponsor any legal authority over the child, meaning children are routinely released to the community to live with a caregiver who cannot act as a legal guardian. This creates problems accessing medical care and enrolling in school, among others.

If ORR officials are unable to find a parent, guardian, or relative of the child, the child will remain in the custody of ORR. Only a small fraction of these children are transferred to ORR's long term foster care program or placed in the [Unaccompanied Refugee Minor program](#).

### **X. State Programs for Non-Citizen Children in Child Welfare Proceedings**

A few states or localities have created programs designed to assist noncitizen children by helping them access an immigration attorney or, at a minimum, helping them obtain SIJS. The examples highlighted below differ in design and services but share a common goal of facilitating a path for these children to attain lawful permanent resident status and/or citizenship.

The examples reflect a commitment to ensuring the well-being of children in care and represent a broader trend towards recognizing and addressing the unique challenges faced by non-citizen children in the realm of child welfare.



**Importantly, while the focus for immigrant kids in foster care is often on pursuing SIJS, best practice is for each noncitizen child to receive a full legal screening to assess all possible options for immigration relief, as other pathways to a green card may be more advantageous.**

## **A. Child Welfare Agency Partners with One External Organization**

### **1. New Jersey**

The New Jersey Department of Children and Families has a unique partnership with Rutgers Law School to provide immigration services to all children in the custody of the New Jersey Division of Child Protection and Permanency (DCP&P) or who are aging out of DCP&P custody. Through this partnership, DCP&P funds Rutgers to hire full-time attorneys and a paralegal to represent clients in immigration proceedings under the supervision of two full-time clinical faculty members who are experts in family and immigration law. When DCP&P believes a child may be undocumented or may need an immigration attorney, it refers the child to Rutgers. Attorneys are based on one of Rutgers Law School's two campuses in either the Child Advocacy Clinic in Newark or the Immigrant Justice Clinic in Camden. Rutgers attorneys then review the case, gather preliminary facts, determine all options for stabilizing the child's immigration status, and represent the child in their immigration case to completion. SIJS is the most common form of relief for clients referred to Rutgers. However, other forms of relief, such as asylum, T visas, and U visas are also common. This collaboration has been in effect since May 2016. For more information, contact Professor Randi Mandelbaum at [randi.mandelbaum@rutgers.edu](mailto:randi.mandelbaum@rutgers.edu).

## **B. Child Welfare Agency with Internal Immigration Teams**

### **1. New Mexico**

In [New Mexico](#), the state's Youth & Families Department Immigration Affairs Unit provides all necessary immigration legal services to children and families who come in contact with the state's child welfare and juvenile justice system. The Unit includes an

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immigration attorney and immigration specialists. The state's child welfare agency screens all children in its care for their immigration status, and when a child is undocumented, they are referred to the Unit for immigration legal services.

### 2. Arkansas

In [Arkansas](#), the Department for Children and Family Services (DCFS) provides limited immigration legal services for undocumented children in care through DCFS's Office of Chief Counsel (OCC). If a child in care is believed to be undocumented, the child's DCFS worker, county supervisor, and Area Director will review the case and refer it to the Special Assistant to the Director of DCFS. From there, the Special Assistant to the DCFS Director works directly with a designated attorney in the DCFS OCC to evaluate the case to determine if it is eligible for SIJS. If it is, the OCC will prepare and submit a SIJS petition.

### 3. Illinois

In Illinois, the Department for Children and Family Services (DCFS) provides immigration legal services for undocumented children in care who qualify for SIJS through its Immigration Services Unit (ISU). If a DCFS caseworker believes a case may qualify for SIJS, ISU is alerted. ISU evaluates the child for SIJS. If the child is determined eligible, ISU works with the DCFS Office of Legal Services or guardian *ad litem* to obtain a SIJS predicate order. ISU and the caseworker are responsible for preparing and filing the necessary forms and supporting documents with USCIS. For more information, contact the ISU at (312) 814-8600.

## C. Child Welfare Agency Referring to Outside Legal Services

### 1. New York City

The New York City Administration for Children's Services (ACS) created the Immigration Services for Youth in Care (ISYC) program to ensure that children in the child welfare system receive legal services. All undocumented youth in care must be

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identified and referred to immigration legal services at one of several external organizations with whom ACS contracts. The ISYC oversees private foster care agencies' efforts to assist with immigrant children in care and provides individual case assistance. Children who are referred to immigration legal service providers are then represented by attorneys at those legal services providers who advocate for them in immigration court, communicate with immigration authorities, complete and file immigration documentation, and collaborate with ISYC to provide additional services if required. Additionally, ACS requires each of its private foster care agencies to have a dedicated immigration liaison who is the point person for ISYC and immigration legal services providers regarding undocumented children in their care and who serve as an in-house resource and coordinator for foster agencies on immigration issues. For more information, contact [sijs@acs.nyc.gov](mailto:sijs@acs.nyc.gov).

## 2. Minnesota

In [Minnesota](#), child welfare caseworkers are responsible for actively identifying children in their case who may qualify for SIJS. If it appears a child may qualify, the case is referred to an outside immigration attorney who coordinates with the county attorney assigned to the juvenile court to obtain a SIJS predicate order and completes the case.

## RESOURCES

[Adoption and Safe Families Act of 1997](#)

[The Center on Immigration and Child Welfare – The New Mexico Children Youth & Families Department Immigration Unit: A Model for Child Welfare & Juvenile Justice Systems Serving Immigrant Children and Their Families](#)

[Juvenile Law Center – Extended Foster Care Tool](#)

[Family First Prevention Services Act of 2018](#)

[Juvenile Law Center – Foster Care](#)

[A Pathway to Permanency: Collaborating for the Futures of Children who are Immigrants in the Child Welfare System](#)

[An Examination of Child Welfare Agency Models that Serve Immigrant Children and Families](#)

[Release to Sponsor Approved, Now What?](#)

[This is What Happens to Child Migrants Found Alone at the Border, From the Moment they Cross Into the US Until Age 18](#)

[Why Does the Federal Government Get a Pass? Applying Best Practices in Child Protection to the Circumstances of Migrant Children and Families](#)

[The Center on Immigration and Child Welfare – Resources](#)

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Randi Mandelbaum is a Professor of Law, the Annamay Sheppard Scholar, and the Director of the Child Advocacy Clinic at Rutgers Law School in Newark, New Jersey. Professor Mandelbaum has devoted her career to working with children and families. As the Founding Director of the Child Advocacy Clinic, she spearheads a unique clinical

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Professor Mandelbaum is a member of the Advisory Board for Project Lifeline's Predicate Order Project.

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