Children’s Immigration Law Academy (CILA)

Pro Bono Representation of Unaccompanied Children in Immigration Matters

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May 10, 2023
Today’s Agenda

ABOUT CILA

WHO IS AN UNACCOMPANIED CHILD?

IMMIGRATION COURT

COMMON FORMS OF RELIEF FOR CHILDREN

HOW TO GET INVOLVED

STAY IN TOUCH!
CHILDREN’S IMMIGRATION LAW ACADEMY (CILA)

CILA IS A PROJECT OF THE AMERICAN BAR ASSOCIATION’S COMMISSION ON IMMIGRATION.

WE ARE A LEGAL RESOURCE CENTER.

WE ARE A CAPACITY BUILDING ORGANIZATION.

WE THINK EVERY CHILD SHOULD HAVE REPRESENTATION.
CILA’s Services
Nationwide & in Texas

Resources
- Technical Assistance
- Pro Bono Matters for Children Facing Deportation
- Support at Emergency Shelters

Trainings

Pro Bono Initiatives

Collaboration through Working Groups

Texas Specific
Trainings & Resources

Collaboration through Working Groups

Social Work Program

www.cilacademy.org
A project of the American Bar Association, funded by the Vera Institute of Justice.
CILA’s Resources
To Help Attorneys for Children

Written Resources
Including CILA’s Pro Bono Guide

Free Webinars
Including 101 Series

Access to Advanced Trainings
Get a more in-depth look at topics
Who is an Unaccompanied Child?
Who is an Unaccompanied Child?

- Under 18 years of age
- No lawful immigration status
- No parent or legal guardian in the U.S. available to provide care and physical custody
UNHCR – Children on the Run Report

# Migrant Children from Central America

<table>
<thead>
<tr>
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<tr>
<td>HONDURAS</td>
<td>29%</td>
<td>32%</td>
<td>25%</td>
<td>30%</td>
<td>26%</td>
<td>23%</td>
<td>21%</td>
<td>17%</td>
<td>34%</td>
<td>30%</td>
<td>27%</td>
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<tr>
<td>GUATEMALA</td>
<td>47%</td>
<td>47%</td>
<td>48%</td>
<td>45%</td>
<td>54%</td>
<td>45%</td>
<td>40%</td>
<td>45%</td>
<td>32%</td>
<td>37%</td>
<td>34%</td>
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<tr>
<td>EL SALVADOR</td>
<td>13%</td>
<td>13%</td>
<td>14%</td>
<td>18%</td>
<td>12%</td>
<td>27%</td>
<td>34%</td>
<td>29%</td>
<td>29%</td>
<td>26%</td>
<td>27%</td>
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<tr>
<td>MEXICO</td>
<td>3%</td>
<td>1%</td>
<td>6%</td>
<td>2%</td>
<td>3%</td>
<td>&lt;3%</td>
<td>3%</td>
<td>6%</td>
<td>&lt;2%</td>
<td>3%</td>
<td>8%</td>
</tr>
<tr>
<td>ALL OTHER COUNTRIES</td>
<td>8%</td>
<td>7%</td>
<td>8%</td>
<td>5%</td>
<td>&lt;5%</td>
<td>3%</td>
<td>2%</td>
<td>3%</td>
<td>&lt;3%</td>
<td>5%</td>
<td>4%</td>
</tr>
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</table>

https://www.acf.hhs.gov/orr/about/ucs/facts-and-data
By the Numbers: Unaccompanied Children

https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters
Legal Protections for Unaccompanied Children

Flores Settlement Agreement
- In response to the detention of children in the early 1980s.
- Guarantees the “least restrictive setting” for children.
- Requires state licensed facilities.

Homeland Security Act of 2002
- Transferred the care of children from INS to Health and Human Services.
- Created child advocate program.
- Defined unaccompanied child.

Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008
- Guarantees children will be placed in removal proceedings.
- Expands protection for child subject to parental mistreatment.
- Provides children an opportunity to present their asylum case in a non-adversarial setting.
Immigration Court
Agencies Involved

Department of Homeland Security (DHS)
  - Customs and Border Protection (CBP)
  - Immigration and Customs Enforcement (ICE)
  - US Citizenship & Immigration Services (USCIS)

Department of Justice (DOJ)
  - Executive Office for Immigration Review (EOIR)
    - Immigration Court

Department of Health and Human Services (HHS)
  - Office of Refugee Resettlement (ORR)

https://fas.org/sgp/crs/homesec/IN10107.pdf
While adult and child immigrants have the right to counsel in removal proceedings, counsel will **not** be provided by the government.

Many children do **not** have an attorney to help with their immigration removal proceeding.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Universe</th>
<th>Unrepresented</th>
<th>Represented</th>
<th>Total</th>
<th>Representation Rate</th>
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<tbody>
<tr>
<td>2023</td>
<td>Overall Pending²</td>
<td>1,019,532</td>
<td>848,975</td>
<td>1,868,507</td>
<td>45%</td>
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<tr>
<td></td>
<td>Pending Cases with at Least One Hearing Adjournment</td>
<td>516,910</td>
<td>786,697</td>
<td>1,303,607</td>
<td>60%</td>
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<tr>
<td></td>
<td>All Pending UAC Cases</td>
<td>36,190</td>
<td>39,822</td>
<td>76,012</td>
<td>52%</td>
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<tr>
<td></td>
<td>UAC Cases Pending More than One Year</td>
<td>26,609</td>
<td>36,898</td>
<td>63,507</td>
<td>58%</td>
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<tr>
<td></td>
<td>Pending Asylum Cases</td>
<td>164,964</td>
<td>584,169</td>
<td>749,133</td>
<td>78%</td>
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<tr>
<td></td>
<td>Completed Asylum Cases³</td>
<td>5,788</td>
<td>36,601</td>
<td>42,389</td>
<td>86%</td>
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<tr>
<td></td>
<td>All Completed Appeals</td>
<td>943</td>
<td>5,648</td>
<td>6,591</td>
<td>86%</td>
</tr>
<tr>
<td></td>
<td>All Pending Appeals</td>
<td>10,085</td>
<td>93,642</td>
<td>103,727</td>
<td>90%</td>
</tr>
<tr>
<td></td>
<td>Pending Dedicated Docket at First Merits</td>
<td>1,546</td>
<td>6,066</td>
<td>7,612</td>
<td>80%</td>
</tr>
</tbody>
</table>

Immigration Court

Article 1
Legislative Branch

Article 2
Executive Branch

Article 3
Judicial Branch
Rules in Immigration Court
Removal Proceedings

- Charging document begins removal proceedings
- Contest NTA or claim relief from removal

- Immigration judge adjudicates application for relief
- Grant relief, voluntary departure, or order of removal
Master Calendar Hearings & Individual Calendar Hearings

**Master Calendar Hearing**
- Generally, more preliminary hearings
- Typically, they run on a docket
- Pleadings, declaring relief, filings, scheduling, and other similar matters

**Individual Calendar Hearing**
- Client’s case is set for their own individual date/time
- Applications, exhibits, motions, witness list should be filed in advance
- Conducts merits hearing—admission of evidence, witnesses (direct & cross), closing, decision
Type of Proceedings

- In Person
- Video Teleconference
- Telephonic
Advocacy Tips When Working With Youth

What does EOIR say?

"should employ age-appropriate procedures"

"Immigration Judges should ask and encourage the parties to phrase questions to a juvenile witness in age-appropriate language and tone. Abusive questioning should not be tolerated under any circumstances."

"Immigration Judges make reasonable modifications for juveniles. These may include allowing juveniles to bring pillows, or toys, permitting juveniles to sit with an adult companion, and permitting juveniles to testify outside the witness stand next to a trusted adult or friend."

"consider limiting the amount of time the child is on the stand without compromising due process for the opposing party. Similarly, Immigration Judges should recognize that, for emotional and physical reasons, children may require more frequent breaks than adults."
Ethical Considerations
When Representing Children

DIMINISHED CAPACITY

STATED INTEREST VS BEST INTEREST

MANDATORY REPORTING

ABA Standards...for Legal Representation...of Unaccompanied...Children
• “The Attorney’s obligation is to represent the Child's expressed wishes..."

Texas Disciplinary Rules of Professional Conduct 1.16: "...the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."

Texas Family Code Sec. 261.101:
“PERSONS REQUIRED TO REPORT; TIME TO REPORT.
(b) If a professional has reasonable cause to believe that a child has been abused or neglected or may be abused or neglected...the professional shall make a report...
(c) The requirement to report under this section applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney..."
# Humanitarian-Based Immigration

<table>
<thead>
<tr>
<th>Eligibility Criteria</th>
<th>Special Immigrant Juvenile Status (SIJS)</th>
<th>Asylum</th>
<th>U Visa</th>
<th>T Visa</th>
<th>VAWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Unmarried, under age 21</td>
<td>- Unmarried, under age 21</td>
<td>- Past persecution and/or a well-founded fear of future persecution</td>
<td>- Must have suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;</td>
<td>- Is or has been a victim of a severe form of trafficking in person (sex trafficking or labor trafficking through the use of force, fraud, or coercion);</td>
<td>- Spouse/child of a U.S. citizen or Lawful Permanent Resident or parent of adult U.S. citizen;</td>
</tr>
<tr>
<td>- Declared dependent on a state &quot;juvenile&quot; court or legally committed to or placed under the custody of an agency or department of State, or an individual or entity appointed by a state court</td>
<td>- Declared dependent on a state &quot;juvenile&quot; court or legally committed to or placed under the custody of an agency or department of State, or an individual or entity appointed by a state court</td>
<td>- Nexus (&quot;on account of&quot;)</td>
<td>- Must possess information concerning the criminal activity;</td>
<td>- Is physically present in the U.S. on account of trafficking;</td>
<td>- Subject to battery or extreme cruelty;</td>
</tr>
<tr>
<td>- Judicial determination that reunification with one or both parents not viable due to abuse, abandonment, neglect, or a similar basis found under state law</td>
<td>- Judicial determination that reunification with one or both parents not viable due to abuse, abandonment, neglect, or a similar basis found under state law</td>
<td>- Protected ground (Race, religion, nationality, membership in a particular social group, or political opinion)</td>
<td>- Must have been helpful, currently being helpful, or is likely to be helpful in the investigation or prosecution of the criminal activity;</td>
<td>- Has complied with any reasonable request for assistance from law enforcement agencies; and</td>
<td>- Lived with the abuser;</td>
</tr>
<tr>
<td>- Failure of state to protect</td>
<td>- Failure of state to protect</td>
<td>- Special procedures for unaccompanied children seeking asylum</td>
<td>- The criminal activity must have occurred in the U.S.</td>
<td>- Would suffer extreme hardship involving unusual and severe harm upon removal.</td>
<td>- If based on marriage, must show &quot;good faith&quot; marriage; and</td>
</tr>
<tr>
<td>- Judicial determination that it would not be in the child’s best interest to be returned to their country of origin.</td>
<td>- Judicial determination that it would not be in the child’s best interest to be returned to their country of origin.</td>
<td></td>
<td></td>
<td>- Must show good moral character</td>
<td>- Must show good moral character</td>
</tr>
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</table>

**Assess eligibility criteria & obtain evidence**

**Apply for protective status**

**Apply for Lawful Permanent Residence (green card)**
Children’s Asylum Claims
Definition of Asylum

Person who is *unable or unwilling to return* to their country or avail themselves of the country’s protection because they have suffered

**Past persecution** or **Well-founded fear of future persecution**

On account of 5 protected grounds:

- Race
- Religion
- Nationality
- Political opinion
- Particular social group
Special Rules for Children Who Enter Unaccompanied

INA § 208(a)(2)(E) & (b)(3)(C)

- Exempt from one-year filing deadline
- Exempt from safe third country rule
- Opportunity for non-adversarial hearing
Initial Jurisdiction over Children’s Asylum Claims

Sometimes, the issue of who has initial jurisdiction over a child’s asylum claim does arise.

However, there is positive litigation that supports USCIS having initial jurisdiction over a child’s case, providing the child with the opportunity to present their case in a non-adversarial setting before USCIS.


Updated July 22, 2022

This fact sheet provides a brief overview of how practitioners can navigate immigration court proceedings for unaccompanied child clients pursuing initial asylum jurisdiction with U.S. Citizenship and Immigration Services (USCIS). It does not address strategies for navigating jurisdictional issues with USCIS. Practitioners who have questions about obtaining USCIS initial jurisdiction over asylum applications filed by unaccompanied children may contact the authors for further guidance.

How is an “unaccompanied alien child” (UAC)? defined?
The definition of UAC is found at 8 U.S.C. § 1225(a)(2), and comprises individuals under 18 years old without lawful immigration status who have no parent or legal guardian in the United States available to provide care and physical custody. Generally, children receive a UAC determination upon their arrival in the United States and apprehension by federal officials—typically employed by U.S. Customs and Border Protection (CBP). That initial UAC determination triggers numerous important protections, including prompt transfer into the custody of the U.S. Department of Health and Human Services (HHS). 8 U.S.C. § 1225(b)(3), placement into removal proceedings under Immigration and Nationality Act (INA) section 240 rather than being subjected to expedited removal, 8 U.S.C. § 1225(a)(5)(D), and special asylum procedures discussed below.
Common Asylum Claims for Children & Families

- Family-Based Claims
- Domestic Violence Claims
- Gender-Based Claims
- Gang-Based Claims

Particular Social Group = PSG
<table>
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<tr>
<th><strong>UNHCR</strong></th>
<th><strong>EOIR Guidance</strong></th>
<th><strong>Child Testimony &amp; Evidence</strong></th>
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<tr>
<td>UNHCR Guidance, such as UNHCR’s Views of Child Asylum Claims: Using international law to support claims from Central American children seeking protection in the US (Sept. 2022)</td>
<td>Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children (Dec. 20, 2017)</td>
<td>• Impact of age, developmental stage • Credibility • Corroboration</td>
</tr>
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</table>

**USCIS Guidance**

**Asylum Office**

RAIO Combined Training Program: Children’s Claims Training Module (Dec. 12, 2019)
TRAUMA INFORMED REPRESENTATION IN ASYLUM CASES

Asylum Interview/Asylum Merits Hearing Checklists

The following checklists are intended to help advocates representing asylum seekers prepare their cases for adjudication in a trauma-informed way. The first checklist relates to interviews before the asylum office, while the second is intended as a guide before those facing a hearing at the immigration court. Remember that offering transparency, predictability, reliability, and client control are all central to trauma-informed representation.

Realizing that you may be handling your very first case, and that the best prepare yourself and your client, we’ve included some preliminary process in the chart below. In addition, it is helpful to check with practitioners how things operate locally.

Tips for Working with Migrant Children and Trauma-Informed Lawyering

Introduction
We created this resource for new children’s immigration attorneys and pro bono attorneys working on migrant children’s cases. Remembering the obstacles and challenges that we and other legal practitioners experienced in beginning our work in migrant children’s cases. We hope that this resource will guide you as you begin your meaningful work with children’s immigration cases. This resource can also provide helpful reminders and tips for those already practicing.

What is Trauma-Informed Care?

Trauma-informed care is utilized in fields involving human-to-human interaction or human services, where individuals are working with or representing other individuals who have undergone or suffered from a history of trauma. While many definitions exist for trauma-informed care, generally, it is an approach for client interaction that recognizes trauma, creates a safe space for communication and collaboration while empowering the client, and seeks to prevent re-traumatization. Three core values to trauma-informed care are awareness, empowerment, and safety.
Special Immigrant Juvenile Status (SIJS)
Special Immigrant Juvenile Status

SIJS provides a pathway to citizenship

What is SIJS?
A form of humanitarian-based immigration relief for non-citizen children in the U.S. who have suffered parental mistreatment.

Who qualifies?
- Children in state's foster care system.
- Children in the care of the Office of Refugee Resettlement.
- Children living with a non-parent caretaker.
- Children living with one parent.

What happens after SIJS is granted?
SIJS beneficiaries can seek Lawful Permanent Residence (a "green card") once it is their turn in the queue (in other words, once a visa number becomes available). SIJS beneficiaries may also receive a discretionary, four-year grant of Deferred Action from USCIS.
SIJS Law & Rules

**INA § 101(a)(27)(J); 8 USC § 1101(a)(27)(J)**

**DEFINES A SPECIAL IMMIGRANT JUVENILE**
An immigrant present in the U.S. under the jurisdiction of a state juvenile court with a state court order that makes specific determinations regarding parental reunification and best interest.

**CONSENT REQUIREMENTS**
DHS must grant consent to SIJS. Specific consent required for children in the custody of HHS.

**NO IMMIGRATION BENEFIT TO PARENTS**
No immigration benefit can be granted to a parent of a Special Immigrant Juvenile by virtue of parentage.

**8 CFR § 204.11**
Effective April 7, 2022

**DEFINITIONS**
Defines a juvenile court as “a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.”

**ELIGIBILITY REQUIREMENTS & PROCESS**
Under 21, unmarried through adjudication of the SIJS petition, legal determinations in state court order, and state court’s continued jurisdiction.

**AUTOMATIC REVOCATION**
Upon reunification by court order, or reversal of best interest determination by court order.

**USCIS Policy Manual on SIJS**

www.cilacademy.org
A project of the American Bar Association, funded by the Vera Institute of Justice.
SIJS Eligibility Requirements

In order to qualify for SIJS

- **Physically Present in the U.S.**
  At time of filing and through adjudication of SIJS petition.

- **Unmarried Through Adjudication of Petition**
  Rather than through the adjudication of the subsequent application for adjustment of status.

- **Under 21 on Date of Filing SIJS Petition**
  At time of filing the SIJS petition only, not adjustment of status application.

- **Valid Juvenile Court Order with Findings/Determinations**
  Juvenile court order with determinations regarding parental reunification and best interest.

- **DHS Consent**
  DHS consent verifying the request is bona fide and not solely for an immigration benefit.
Three Key Phases for SIJS Cases

- Obtain State Court Order
- Petition for SIJS (I-360)
- Apply for Lawful Permanent Residence (I-485)
Five Key Elements for the State Court Order

Custody/Dependency
Judicial Determination #1

Parental Reunification
Judicial Determination #2

Best Interest
Judicial Determination #3

Valid
Valid state court order with certain determinations

Consent
Warrants USCIS consent (i.e., approval of I-360 petition)
Simultaneous Proceedings in SIJS Cases

State Court Proceedings

Obtaining the state court order

Immigration Court Proceedings

If an NTA has been filed

Case Pending with USCIS

After state court order has been obtained, filing SIJS petition with USCIS
Immigration Court (EOIR)  
Removal proceedings initiated with filing of Notice to Appear (NTA)

File I-485 with Immigration Court & follow pre-hearing instructions

Individual Merits Hearing

Lawful Permanent Residence

State Court  
Dependency/Custody Petition Filed

One or more Master Calendar Hearings (MCHs)

Prove-Up Hearing

U.S. Citizenship & Immigration Services  
I-360

Form I-360 Receipt Notice

I-360 Approval

I-485

Biometrics Appt.

I-485 Interview (may be waived)

Filed concurrently if not in removal proceedings and visa available

Order Granting Dependency/Custody & Findings

1) Is your client in removal proceedings; and 2) Is there a visa available?

Lawful Permanent Residence
How to Get Involved
CILA’s Pro Bono Platform

- Place for legal service providers to post opportunities
- Place for pro bono attorneys to find a case
- Help more children have representation

https://cilacademy.org/pro-bono/pro-bono-matters/
Organizations Posting Opportunities
on CILA’s Pro Bono Matters Platform

• ABA ProBAR (TX, NC)
• Americans for Immigrant Justice (FL)
• CAIR Coalition (MD)
• Casa Cornelia Law Center (CA)
• Catholic Charities – Archdiocese of New Orleans (LA)
• Catholic Charities Community Services, NY (NY)
• Catholic Legal Services, Archdiocese of Miami (FL)
• Esperanza Immigrant Rights Project (CA)
• Florence Immigrant and Refugee Rights Project (AZ)
• Galveston-Houston Immigrant Representation Project (TX)
• Hogar Immigrant Services (VA)
• Kids in Need of Defense - Houston (TX)
• Latino Memphis (TN)
• New Mexico Immigrant Law Center (NM)
• Rocky Mountain Immigrant Advocacy Network (CO)
• Safe Passage Project (NY)
• St. Frances Cabrini Center for Immigrant Legal Assistance (TX)
• Tahirih Justice Center (TX)
• YMCA International Services Houston (TX)

https://cilacademy.org/pro-bono/pro-bono-matters/
1. Scan/Search Case Cards

Partners
- ABA-ProBAR
- CAIR Coalition
- Catholic Charities - Archdiocese of New Orleans
- Catholic Charities Community Services, NY
- Florence Immigrant and Refugee Rights Project
- Galveston-Houston Immigrant Representation Project

Help child obtain guardianship before turning 18!
- Latino Memphis
- Case ID: Guardianship Roger
- Time Sensitive! 17-year-old reunited with her Aunt needs to obtain a guardianship in Rogers, AR, before turning 18, to allow her to file for Special Immigrant Juvenile Status.implementation.

Special Immigrant Juvenile Seeking Adjustment of Status
- Florence Immigrant and Refugee Rights Project
- Case ID: 17-00007630
- M is a 21-year-old special immigrant juvenile from Guatemala who was subjected to child labor, deprived of an education, and who faced severe maltreatment. He fled to the U.S. to escape physical abuse from his father. M's priority date has become current and he needs legal representation to file for adjustment of status. Due to the nature of the...
2. Express Interest

- Contact person at posting organization will get a notification via email of your interest
- They’ll reach out to figure out if you are a good match for the opportunity
- If not, they may inquire whether you are interested in other opportunities
3. Receive Notifications

You’ll receive notification via email whenever a new case that meets your criteria is posted.
4. Share an Opportunity!

Allows you to easily share individual case card via a URL, with anyone who might be interested in the opportunity or who can help spread the word!
Questions?
Suggested Reading & Listening

Podcast: This American Life, Episode 704: “The Out Crowd,” May 15, 2020
Regarding individual cases:

- Federal aspects of SIJS
- Trauma-informed practices
- Theory of the case & legal strategy
- Procedural & evidentiary issues

Ask a Question: Online or Email cila@abacila.org
Stay Connected with CILA

We’re here to support you!

Reach out to CILA for TA

Join CILA’s Newsletter

Check out CILA’s website to view resources
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@ABA_CILACADEMY

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