

POP-UP BOXES: **To Accompany SIJS PowerPoint Flow Chart**

Introduction

Special Immigrant Juvenile Status (SIJS) is a way for abused, abandoned, and neglected children without legal immigration status to remain in the United States lawfully. SIJS is available to children who have been declared dependent upon a juvenile court, are in need of long-term foster care, and for whom return to their country of origin is not in their best interest. A grant of SIJS makes a child eligible for lawful permanent residency status (also called a “green card”, though the card is no longer green), which in turn can lead to U.S. citizenship.

SIJS can be a legal lifeline to some of the children in long term foster care through the Office of Refugee Resettlement’s (ORR) Division of Unaccompanied Children’s Services programs (hereafter referred to as “DUCS.”) However, it can also be a complicated and confusing process. To help clarify the SIJS process for a DUCS child, we have created five (5) PowerPoint flow charts which lay out the general steps in an SIJS case for children in federal custody. The first chart provides an overview of the process, while charts two through five provide more detailed descriptions of particular steps in the process.

Chart 1: *Basic SIJS Case Flow for Children in the Custody of the Federal Government*

Chart 2: *Specific Consent for Children in the Custody of the Federal Government*

Chart 3: *Establishing Jurisdiction of Local Juvenile Court*

Chart 4: *Terminating Immigration Court (EOIR) Proceedings*

Chart 5: *Permanent Residency Application and Adjustment of Status*

We have attempted to simplify the general SIJS application process as much as possible. However, there are numerous places in which unexpected problems, delays or complications can arise. Please remember that this flowchart lays out the idealized process, but individual case variations can and will occur. With these flowcharts we endeavor to simplify a very complex process, but users of this flowchart (and the SIJS-applicant children with whom they work) must also recognize that these complexities make each individual case somewhat unpredictable. In addition, policy, practice and procedure implemented by the Office of Refugee Resettlement (ORR), the Executive Office for Immigration Review (EOIR), and the Department of Homeland Security (DHS) agencies may: change and evolve; vary from region to region; and vary from government employee to employee. As one attorney put it, it is difficult to provide certainty in an uncertain process. Nonetheless, to the extent that there are broad similarities across SIJS cases, we have tried to capture those here.

These flowcharts are intended as background information for caseworkers assisting DUCS children in ORR-funded foster care. They are not intended to provide legal advice, and should not be used as such. These were created for DUCS foster care caseworkers, but others may find them useful as well.

[NOTE: Pop-up box numbers correspond to the flow chart box with the same number. Comments are labeled as either a “Practice Note” or “Legal Note” though both types are written to aid caseworkers.]

1. **Legal Note:** Children have the right to be represented by an attorney in immigration court. The federal government does not fund or guarantee representation, however various agencies are working to improve legal representation for children, including the American Bar Association, the Catholic Legal Immigration Network, Inc. (CLINIC), the National Center for Refugee & Immigrant Children, and the Vera Institute of Justice.
2. **Legal Note:** Specific consent allows a child under federal jurisdiction to request state or county jurisdiction for the purposes of seeking dependency on the juvenile court. In essence, the child is asking the federal government for permission to get involved in a state court process.

Children requiring specific consent before pursuing SIJS are those "in the actual or constructive custody of the federal government," which includes children in federally-funded detention or shelter facilities, children in DUCS-funded foster care, and minors with a final removal order from DHS. In some cases, children in state custody for criminal matters have also been considered in constructive custody.

Children who have been released from ORR custody to relatives are not currently considered to be in constructive custody and do not have to receive specific consent before pursuing SIJS.

Specific consent should be requested by the child’s attorney, not by the child’s caseworker. While a child does not technically require an attorney in order to make the specific consent request, practically speaking, a child cannot be expected to do this alone. Typically, children coming into DUCS foster care will already have requested specific consent.

3. **Practice Note:** At present, specific consent approvals have become quite rare. Some attorneys have been working on resolving this issue.
4. **Practice Note:** Since child welfare laws and regulations are established locally, terms and procedures will vary from place to place. The court may be called family, juvenile, district, superior, probate or circuit court. The court process may be referred to as establishing dependency, court wardship, guardianship, or having a child declared in need of protective services—which in some places may be called “CHIPS” (child in need of protection and services), “CHINS” (child in need of supervision or services), or “PINS” (person in need of supervision or services). The entity responsible for initiating the dependency process may be the child’s attorney, guardian ad litem (GAL) or law guardian, foster care agency, or public child welfare entity.

Legal Note: The child’s immigration attorney may not wish to also handle the dependency proceedings, either because the immigration attorney is unfamiliar with juvenile court law and procedure, or because the involvement of an immigration attorney in the dependency

process may limit the success of an SIJS application. Field Guidance from the U.S. Citizenship and Immigration Services (USCIS) on SIJS notes that dependency court findings should not be made solely for the purpose of an immigration benefit. In some DHS districts, the involvement of an immigration attorney at the dependency court stage can cause greater skepticism and scrutiny when it comes time for the USCIS review of a child's SIJS application. Hence, the child may need a separate attorney for juvenile court dependency proceedings. Some courts in some jurisdictions may appoint an attorney to represent a child in dependency proceedings.

5. **Practice Note:** In a few cases, U.S. Immigration and Customs Enforcement (ICE) has been willing to reconsider a specific consent request, if there is new information or the child's situation has changed. However, there is no established process for this. The reconsideration goes back to the same office that made the initial denial.
6. **Legal Note:** Requesting reconsideration is likely the exception rather than the rule. There are no written regulations regarding the specific consent process, nor is there any clear formal process for requesting it or its reconsideration. However, an attorney considering taking a specific consent denial to federal court may request reconsideration in an attempt to exhaust all administrative options before taking the case to federal court.
7. **Legal Note:** Other forms of immigration relief may include asylum, T and U visas, the Violence Against Women Act (VAWA), or family-based immigration. More information on these other forms of legal relief is available in *Immigration Options for Undocumented Children*, by the Immigrant Legal Resource Center (ILRC): <http://www.ilrc.org/resources/sijs/Fact%20sheets%20immigrant%20children.pdf>
8. **Legal Note:** Some attorneys have requested federal review of the DHS denial under the Administrative Procedures Act.
9. **Practice Note:** In general, once specific consent is granted, DUCS foster care programs should follow standard practice used with other cases: that is, in places where the agency would typically initiate the dependency petition for other children, the same should be done with SIJS-applicant children; in places where another entity—such as the child welfare entity—would normally initiate this process, they may also do so in an SIJS case. In some circumstances, the public child welfare entity may not wish to initiate the dependency process, in which case the child's attorney or the foster care agency may need to play this role, if allowed by local regulations.

Legal Note: Children in DUCS foster care will typically petition the juvenile court for dependency, however some children in legal guardianship arrangements recognized by probate court, or in juvenile delinquency proceedings, may also be eligible for SIJS.

In places where the foster care agency is involved in petitioning the juvenile court for dependency, it is important to know what elements should be included in the judge's court order, as this can ultimately affect the success or failure of the child's SIJS application.

10. –

11. Practice Note: Public child welfare entities will generally make some investigation into the child's circumstances in the home country. In some places this may be called a "diligent search" for the parents. Local practice will vary, but this may involve requesting information from the foster care caseworker about the child's family background, correspondence or phone calls to the family in the country of origin, publishing information about the search in a local newspaper or broadcasting it on the radio, or attempting to make contact with the parent or guardian through a social service provider in the country of origin.

12. –

13. Practice Note: Some children may find the dependency court hearing process very stressful, especially if they must recount painful treatment at the hands of parents or guardians. Like victims of other forms of maltreatment, many children have conflicted feelings about their parents or guardians and may find it difficult to publicly accuse their parent or guardian of maltreatment. Requirements that documentation of the court proceedings be served on the parent or guardian may also cause anxiety for children. All of this may have an impact on the child's physical, mental, or emotional health, and it may cause some children to reconsider whether they wish to pursue SIJS.

14. –

15. –

16. [same as #7] Legal Note: Other forms of immigration relief may include asylum, T and U visas, the Violence Against Women Act (VAWA), or family immigration. More information on these other forms of legal relief is available in, *Immigration Options for Undocumented Children*, by the Immigrant Legal Resource Center (ILRC):
<http://www.ilrc.org/resources/sijs/Fact%20sheets%20immigrant%20children.pdf>

17. Legal Note: Dependency court orders should include the specific language required by the SIJS statute. For an example of a dependency order including the language required by the statute, see p. 12-13 of:
http://www.refugees.org/uploadedFiles/Participate/National_Center/Resource_Library/Sample_SIJS_Packet.pdf

The ILRC's "SIJS Manual" also details the dependency order requirements on pages 12-21:
<http://www.usccb.org/mrs/cs/fc/FOSTERCARE/AdditionalProceduresandResources/LegalReferralandCoordination/Resources/SIJSmanualcompleteILRC01-15-06.pdf>

According to the statute and regulations (INA § 101(a)(27)(J); 8 C.F.R. § 204.11) children must obtain a juvenile court order from a court of competent jurisdiction in the U.S., finding that:

- a. The child is dependent on the juvenile court due to abuse, abandonment or neglect;
- b. The child is eligible for long-term foster care; and
- c. It is not in the child's best interest to be returned to the country of origin.

Practice Note: Some juvenile courts may no longer use the term “long-term foster care” due to more recent requirements of the federal Adoption and Safe Families Act (ASFA) to move children to permanency rather than remaining in long-term foster care. However, DUCS children will typically be candidates for long-term foster care, rather than family reunification or adoption. The juvenile court may need to understand the SIJS requirement of this specific language, even though this language may be considered outdated by the juvenile court. Ideally, the child’s attorney would explain this to the court, however the child’s foster care caseworker may need to do so if no one else does.

18. **Practice Note:** The SIJS application process can be lengthy, depending on the child’s case circumstances and jurisdiction. Uncertainty about legal status and permanence in the U.S. can take a psychological toll on SIJS-applicant youth, while also limiting their ability to plan for the future. A successful SIJS application can be a tangible symbol of permanence for a child in foster care, while the lengthy application process—combined with the prolonged state of legal limbo—can simultaneously undermine a child’s sense of permanence. SIJS applicants may be encouraged to know that other SIJS-applicant youth have experienced similar struggles, and ultimately prevailed. For example, the Columbia Law School Child Advocacy and Immigration Clinic has created video testimonials of SIJS-recipient youth in New York City: <http://quickplace.law.columbia.edu/childimmigrant>
19. **Practice Note:** Children who are still in removal proceedings before immigration court will be involved in two types of court proceedings at the same time: local juvenile court and federal immigration court. These are two very different court systems that may not cooperate or communicate about a child’s case.
20. –
21. [21 and 27 are the same] **Legal Note:** Most SIJS applicants submit the *I-360 Petition for Special Immigrant*; the *I-485 Application for Adjustment of Status (Green Card)*; and the *I-765 Application for Employment Authorization (Work Permit)*; though only children who are no longer in removal proceedings can submit all three at the same time. For more on this topic, see “Forms and Fees.”
22. [22 & 29 are the same] **Legal Note:** To “terminate” a case means the case is finished. To “administratively close” a case means that the case could be reopened by DHS, if circumstances warrant it. The immigration judge will consider whether the trial attorney (the government attorney representing the interests of DHS) agrees with termination.

Some attorneys may ask the immigration judge to terminate proceedings after specific consent is granted, or after the I-360 is submitted. Other attorneys will wait until after the I-360 is approved. Typically after a child’s I-360 is approved, the immigration judge and trial attorney will agree to terminate a child’s removal proceedings, so that the child can pursue adjustment of status to permanent residency before USCIS. However, some attorneys may decide to keep the adjustment of status application before the immigration judge rather than seeking termination and adjustment before USCIS. Considerations in whether to terminate court proceedings and pursue adjustment of status before USCIS may include:

- ✓ Which system can adjudicate the application before the child ages-out of eligibility (reaches age 21, or exceeds the age of juvenile court jurisdiction)?
 - ✓ Which process, or adjudicator, is likely to be more child-friendly?
 - ✓ Which system will better handle any complicating factors, such as juvenile delinquency charges?
23. **Legal Note:** Some judges may insist that the child continue with court proceedings, despite the child’s pending SIJS case. This could mean that the child, if eligible, may need to apply for asylum in the immigration court, at the same time the SIJS case is proceeding with USCIS. If the child does not have a viable asylum claim, or if the child loses the asylum case in court, the immigration judge could issue a removal order against the child while the SIJS application is still pending. If the I-360 is later approved by USCIS, the child’s attorney can use that approval to “re-open” the removal proceedings in court and then apply for adjustment of status to Lawful Permanent Resident before the immigration judge, based on the approved SIJS application. In this scenario, USCIS and EOIR have separate proceedings unfolding simultaneously that may not act in concert with one another. (For an explanation of the government agencies involved in an SIJS case, see “Key Government Players.”)
24. **Legal Note:** Administrative closure allows an immigration judge to put a case on long-term hold pending the results of administrative action – it is like putting the case on a shelf, but it can be re-calendared (restarted) at any time by any party, and the child is still considered to be in removal proceedings. A continuance means the court agrees to postpone the next hearing for a certain period of time. Each immigration court has different policies and practices around continuances – some courts may grant a child a continuance of three to six months, other courts may only grant a continuance of several weeks, or may only grant a certain number of continuances per case.

In order for the immigration judge to administratively close the case, both parties (the child’s attorney and the government’s attorney) must agree. In the case of a continuance, it is always better if the trial attorney agrees to the continuance, but if he or she does not, the immigration judge can still grant the continuance.

Immigration judges function under certain “case completion goals,” or standard timelines for certain types of cases. In general, detained cases move more quickly than non-detained cases; DUCS children in ORR-funded foster care are usually treated as non-detained cases. However, EOIR has said “all juvenile cases have been exempted from case completion goals,” so that judges can give children’s cases the time they need. [Source: EOIR letter from Larry Dean, Assistant Chief immigration judge, to Robert Evans, American Bar Association, dated June 15, 2005.]

25. **Legal Note:** While children are still in removal proceedings, the immigration judge has jurisdiction over adjudication of the I-485 (also called adjustment of status), and the I-485 generally cannot be filed or adjudicated until the I-360 is first approved (however, local practice can sometimes vary). If removal proceedings are terminated, the I-360 and the I-485 can be submitted together to USCIS.

26. **Practice Note:** Caseworkers may want to discuss with the child’s attorney the practical service implications of receiving a green card (ex: eligibility for some benefits, while ending funding for others), to help the attorney determine the best course of action for a particular child. For instance, children who receive SIJS and a green card lose ORR/DUCS funding for foster care and are generally not eligible for URM care, while local child welfare entities may also resist or refuse to fund their care.
27. [21 and 27 are the same] **Legal Note:** Most SIJS applicants submit the *I-360 Petition for Special Immigrant*; the *I-485 Application for Adjustment of Status (Green Card)*; and the *I-765 Application for Employment Authorization (Work Permit)*; though only children who are no longer in removal proceedings can submit all three at the same time. For more on this topic, see “Forms and Fees.”
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29. **Legal Note:** To “terminate” a case means the case is finished. To “administratively close” a case means that the case could be reopened by DHS, if circumstances warrant it. The immigration judge will consider whether the trial attorney (the government attorney representing the interests of DHS) agrees with termination.

Some attorneys may ask the immigration judge to terminate proceedings after specific consent is granted, and/or after the I-360 is submitted. Other attorneys will wait until after the I-360 is approved. Typically after a child’s I-360 is approved, the immigration judge and trial attorney will agree to terminate a child’s removal proceedings, so that the child can pursue adjustment of status to permanent residency before USCIS. Attorney considerations in whether to terminate court proceedings and pursue adjustment of status before USCIS may include:

- ✓ Which system can adjudicate the application before the child ages-out of eligibility (reaches age 21, or exceeds the age of juvenile court jurisdiction)?
- ✓ Which process, or adjudicator, is likely to be more child-friendly?
- ✓ Which system will better handle any complicating factors, such as juvenile delinquency charges?

30. —
31. —
32. [32 & 40 are the same] **Legal Note:** There are a variety of things that can make an I-485 applicant inadmissible (ineligible to adjust status). These include, but are not limited to, criminal convictions, suspicion of criminal activity, HIV positive status, or public danger. SIJS applicants are eligible to waive (or have forgiven) some, but not all, of these grounds of inadmissibility. However, this is a very complex area of immigration law, with potentially serious consequences. Attorneys for SIJS applicants with criminal or delinquent histories should consult with an expert in criminal and immigration law.
33. —
34. —
35. **Legal Note:** Most judges will be willing to terminate, or administratively close, the removal proceedings against a child once the SIJS application has been approved by USCIS. However, judges are not required to do this.

36. **Practice Note:** For more on the I-485, see “Forms and Fees.”
37. **Legal Note:** Applying simultaneously speeds the child’s receipt of Permanent Residency. This is particularly critical in cases with older children, who may be at risk of aging out of eligibility (turning 21, or leaving court jurisdiction) before they adjust status to Permanent Residency. Aside from children still in removal proceedings (who are not permitted to apply for Permanent Residency simultaneously with their SIJS application), another situation in which the two applications might be submitted separately is for younger children who are not in danger of aging out of eligibility but who will lose their federal funding once SIJS and permanent residency are granted, particularly in places where the local child welfare entity is reluctant or unlikely to take over care of the child.
38. **Practice Note:** The child’s attorney should attend the adjustment of status interview. A social worker or “next friend” can usually attend as well. The USCIS officer may go through all or most of the questions on the I-360 and I-485 application forms, so the child should role-play responding to the questions beforehand, to reduce anxiety.
39. –
40. **[32 & 40 are the same] Legal Note:** There are a variety of things that can make an I-485 applicant inadmissible (ineligible to adjust status). These include, but are not limited to, criminal convictions, suspicion of criminal activity, HIV positive status, likelihood of becoming a public charge (or publicly dependent) or public danger. SIJS applicants are eligible to waive (or have forgiven) some, but not all, of these grounds of inadmissibility. However, this is a very complex area of immigration law, with potentially serious consequences. Attorneys for SIJS applicants with criminal or delinquent histories should consult with an expert in criminal and immigration law.
41. --
42. **Practice Note:** At some point before a child receives final approval for a green card—and thereby becomes ineligible for continued ORR-funding—DUCS foster care programs are urged to meet with their local child welfare entity to develop a care plan, or a transition of care plan, from ORR-funded care to locally-funded care. For example, the DUCS foster care program in Seattle has arranged in two SIJS cases to continue providing case management services, while the state handles juvenile court representation.

Legal Note: If adjustment of status is granted, the USCIS officer may inform the child and attorney right away during the interview, or the child may receive notice sometime later by mail.

A child whose I-485 is denied by USCIS could technically be referred back to the immigration court to restart, or continue, removal proceedings.

In a few circumstances, USCIS may revoke SIJS before the child completes final processing for permanent residency status, if the applicant:

- a. Becomes 21 years old;
- b. Marries;

- c. Is no longer under juvenile court jurisdiction;
- d. Is no longer eligible for long-term foster care;
- e. Is assessed that it is in his/her best interest to return to the country of origin.