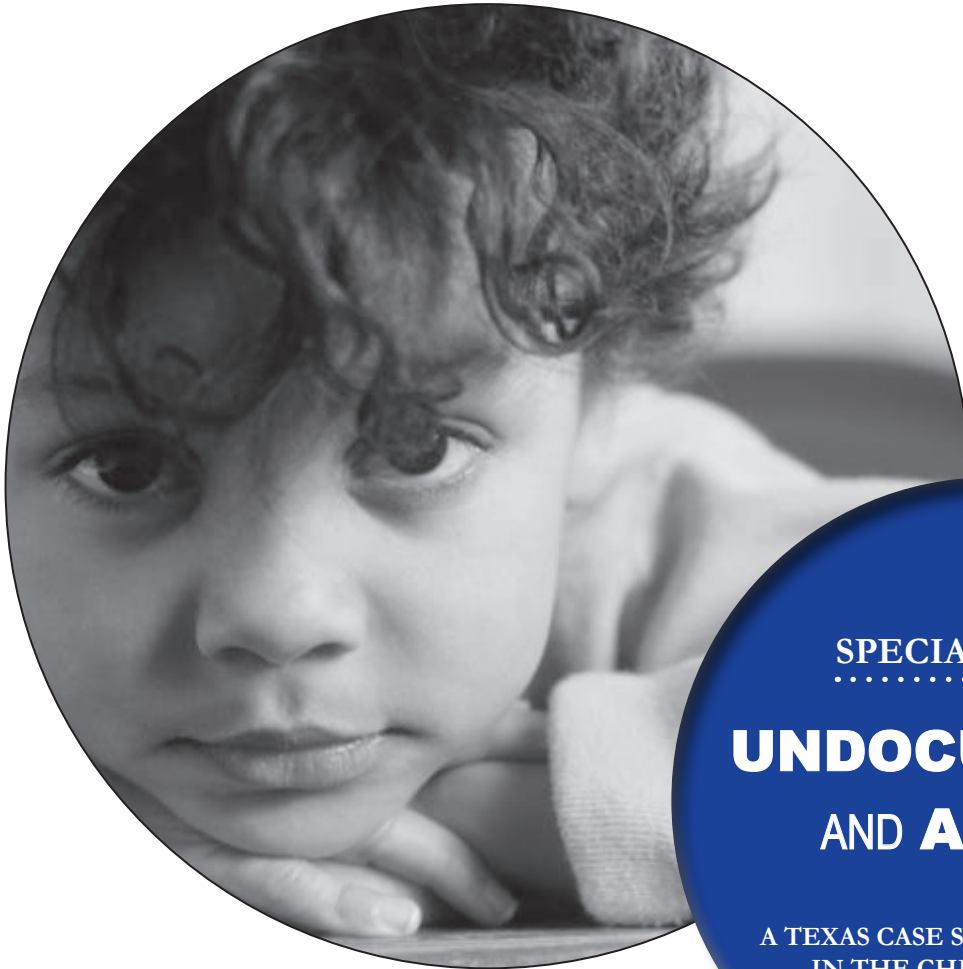




CENTER *for* PUBLIC POLICY PRIORITIES



SPECIAL REPORT  
.....  
**UNDOCUMENTED  
AND ABUSED**

A TEXAS CASE STUDY OF CHILDREN  
IN THE CHILD PROTECTIVE  
SERVICES SYSTEM

.....  
**SEPTEMBER 2010**

.....  
PUBLICATION OF THE CENTER  
FOR PUBLIC POLICY PRIORITIES



## CPPP

For 25 years, the center has been a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans.

The center pursues this mission through independent research, policy analysis and development, public education, advocacy, coalition-building, and technical assistance.

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## PART 1—Overview

How to best regulate immigration and treat immigrants—both those lawfully and unlawfully here—are hotly debated questions. To promote responsible action, the center recently proposed a common-sense set of principles to secure our borders and reform our immigration system.<sup>1</sup> Now we turn our attention to a much smaller issue, perhaps one on which consensus may be more readily reached: How should the United States deal with undocumented children who are here through no fault of their own and have suffered abuse or neglect? Using Texas as a case study, this paper looks at who these children are and discusses why a blanket policy to send them home will not work. It also discusses how to improve the process through which these children can obtain legal residency. Finally, this paper explains how federal immigration and child welfare law should be aligned to ensure our country acts responsibly and that the federal government provides the necessary financial support to the states to care for this vulnerable population.

### Only a Small Number of Children in State Care Are Undocumented

Less than one percent of those in state care in Texas during 2009, or about 400 children, were undocumented at some point during that year. For federal funding reasons, Texas and other states do ascertain the immigration status of the children brought into care, making this number reasonably reliable.

Texas is a large border state and so is likely to have a higher undocumented population as compared to most other states. As a result, with such a small number of undocumented children in care in Texas, nationally, the number must also be small. Given this small population, responding responsibly should be easy. But, as discussed in Part 4, the complexity of federal immigration law and its misalignment with federal and state child welfare law currently makes responding responsibly difficult.

### Why Can't Undocumented Children Just Be Sent Home?

A state must protect all children from abuse or neglect regardless of whether they are in the country lawfully. Texas child protection laws make no distinction between lawfully present and unlawfully present children<sup>2</sup> and, in fact, doing so would likely violate the equal protection clause of the Fourteenth Amendment of the United States Constitution.<sup>3</sup>

Of course, once a state intervenes to stop ongoing abuse and neglect by removing children from the custody of the perpetrator, the state can then repatriate, or return, the children to their country of origin. States do send children back to their country of origin. For example, in Texas, the Department of Family and Protective Services (DFPS) has a process in place to evaluate repatriation for undocumented children and has signed a memorandum of understanding with social service representatives for the four Mexican states that border Texas.<sup>4</sup> Certainly there will be times when it is in the best interest of a child to be reunited with family in their country of origin.

Realistically, however, repatriating children is never simple and often is not viable. Many of the countries to which the children would be returned have inadequate



there are statistically significant changes to characteristics and outcomes.<sup>7</sup> But in Appendix B, we have included a table which lists the characteristics and outcomes for undocumented children in care for all of the years.

## The Characteristics of Undocumented Children in State Care Vary from Other Children in State Care

Looking at undocumented children versus all other children in care during 2009, there are several significant differences<sup>8</sup> that should inform policy and practice.

Undocumented children are more likely to be Hispanic, (though the percentage of undocumented African American children has been growing), older (though, on average, still preadolescent), and female. Undocumented children are less likely to have a sibling in care, though almost two-thirds still do.<sup>9</sup> More than 40 percent of undocumented children are from a “mixed” immigration status family in that they have at least one sibling in care that was a citizen or otherwise documented.

**Characteristics of Victim Children**

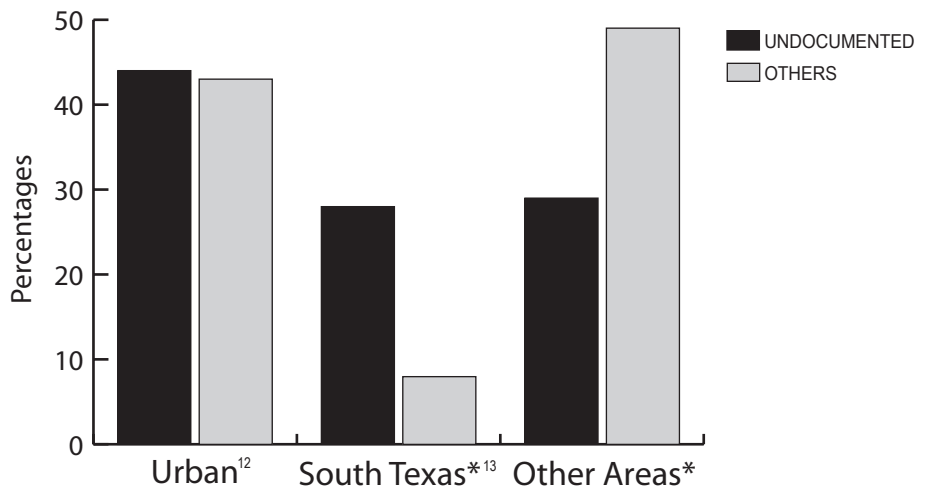
	Undocumented	Others
<b>Race/Ethnicity</b>		
Hispanic <sup>*10</sup>	85%	38%
African American <sup>*11</sup>	8%	30%
White (Non-Hispanic) <sup>*</sup>	6%	30%
Other	2%	3%
<b>Average age at removal (years)<sup>*</sup></b>	10.4	5.9
<b>Female<sup>*</sup></b>	56%	48%
<b>At least 1 sibling in care<sup>*</sup></b>	63%	71%

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Undocumented children are equally likely as other children to live in urban areas at the time they are removed into state care. But undocumented children are over three times more likely to live in South Texas as compared to other areas of the state. And over time, undocumented children in care have been shifting away from the urban areas to South Texas.

**Where They Come From**



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Not only are undocumented children different, so are their parents. Perpetrator mothers are more likely to be married and both parents are, on average, older.

### Characteristics of Perpetrator Parents

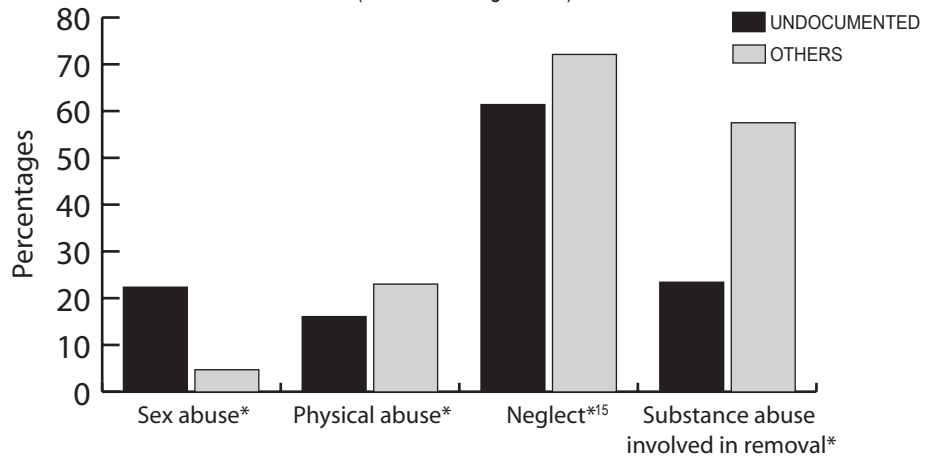
	Undocumented	Others
Married perpetrator mothers*	48%	32%
Average age of perpetrator mothers (years)*	31.4	28.8
Average age of perpetrator fathers (years)*	37.3	33.5

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Undocumented children also come into care for different types of maltreatment. Undocumented children are more than five times as likely to come into care for sexual abuse and are less likely to come into care for physical abuse or neglect. Substance abuse among families with undocumented children is substantiated at a far lower rate. Undocumented children are half as likely to have substance abuse identified as being involved in their removal.

### Type of Maltreatment (Confirmed Allegations<sup>14</sup>)



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The higher rate of coming into care for sexual abuse may explain, in part, why undocumented children tend to be older and female, as those are the usual victims. But this does not necessarily mean that the undocumented child population overall is sexually abused at a higher rate. It may be a result of differences in what type of abuse is reported. Undocumented individuals may be reluctant to report abuse for fear of becoming entangled with authorities and subsequently deported. As a result, they may only report abuse if it is very serious, such as sexual abuse, and fail to report less serious physical abuse or child neglect.

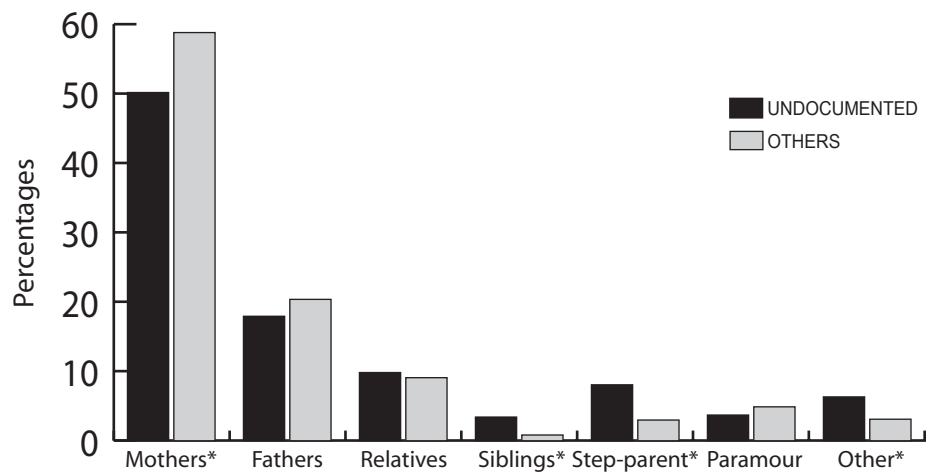
Or it may be that the dynamics in families with undocumented children provide more opportunity for sexual abuse. If the higher marriage rate among mothers of undocumented children is because they are marrying men who are not the child's biological father, undocumented girls will be more likely to have a step-parent in the home. If this is happening, there may be more opportunity for sexual abuse to occur. Studies have shown that girls with a step-father in the home are more likely to be subjected to sexual abuse.<sup>16</sup>



Differences in family dynamics for undocumented children may also account for the lower reported incidence of substance abuse. The parents of undocumented children are older and, in general, older adults are less likely to have used an illicit drug in the past year.<sup>17</sup> It may also be due to the higher rate of marriage among perpetrator mothers of undocumented children as married individuals have fewer substance abuse problems.<sup>18</sup> Or the difference may be that families with undocumented children want to avoid entanglement with authorities and so avoid using illicit drugs.

Parents are the dominant perpetrator in both populations. But for undocumented children, mothers are less likely to be a perpetrator while siblings, step-parents and others are more likely to be a perpetrator.

**Types of Perpetrators**



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It is likely that the variation in perpetrators is related to the differences in type of maltreatment. Mothers who are perpetrators are more likely to commit physical abuse or neglect as opposed to sexual abuse. Since undocumented children are less likely to come into care for physical abuse or neglect, they are less likely to have a mother designated as a perpetrator. Similarly, the higher rate of siblings, step-parents and others as perpetrators is likely related to the higher incidence of sexual abuse among undocumented children coming into care. In looking at the type of abuse perpetrators commit, sexual abuse is more likely to be committed by siblings, step-parents and others as compared to parents and relatives.

But exactly why these differences exist is unclear. Perhaps mothers of undocumented children are simply less likely to physically abuse or neglect their children and their siblings, step-parents and others are more likely to commit sexual abuse. Alternatively, it may be an issue of opportunity rather than behavior. Undocumented children may be in the company of adults other than their mother more often. So their mothers may have less opportunity to abuse and neglect while siblings, step-parents and others may have more.

# Undocumented Children in State Care Have Vastly Different Experiences From Other Children

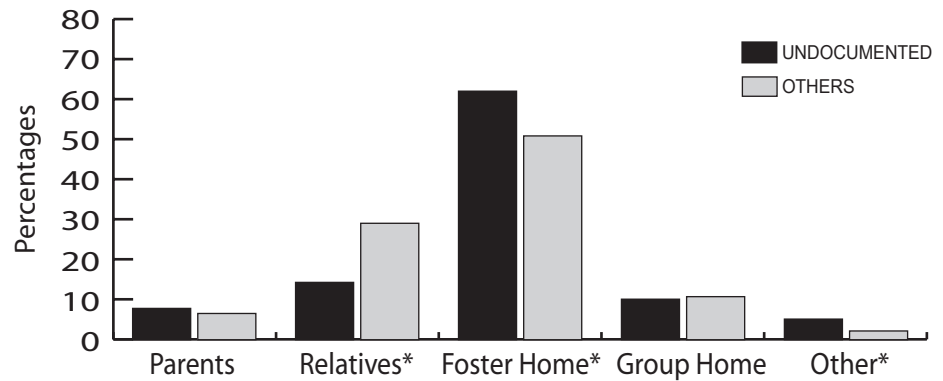
## WHERE THEY LIVE

Undocumented children in care are more likely to live in a foster home and are less likely to live with relatives. The most plausible explanation may be the simplest: undocumented children are less likely to have relatives in the United States.

Or it may be because the relatives that do live in the United States are undocumented themselves. As a result of their status, they may be less likely to come forward as a placement resource for fear of deportation<sup>19</sup> or, in practice, caseworkers may be reluctant to place children there.<sup>20</sup>

Alternatively, the higher rate of sexual abuse allegations may make using relative care less likely. In cases of sexual abuse, relatives may be more disbelieving or judged unable or unwilling to provide a safe and supportive environment.

Where They Live While in Care



STATISTICALLY SIGNIFICANT DIFFERENCES ARE NOTED WITH AN ASTERISK



## OUTCOMES

Undocumented children in care are likely to have one or both parents who are undocumented as well. As a result, the parents may have less access to the services necessary to resolve their underlying problem. This is further exacerbated by the large concentration of undocumented children in care who are from South Texas. That area in particular has a dearth of available services and undocumented parents are essentially trapped as they cannot pass through the internal border check points. As a result, one would expect that undocumented children would have a lower rate of reunification. But, in fact, undocumented children are almost twice as likely to reunify.

There are many possible explanations. Because undocumented children are older at the time they come into care, it may be that returning them home is less of a risk.

Reunification

	Undocumented	Others
Reunification*	52%	30%

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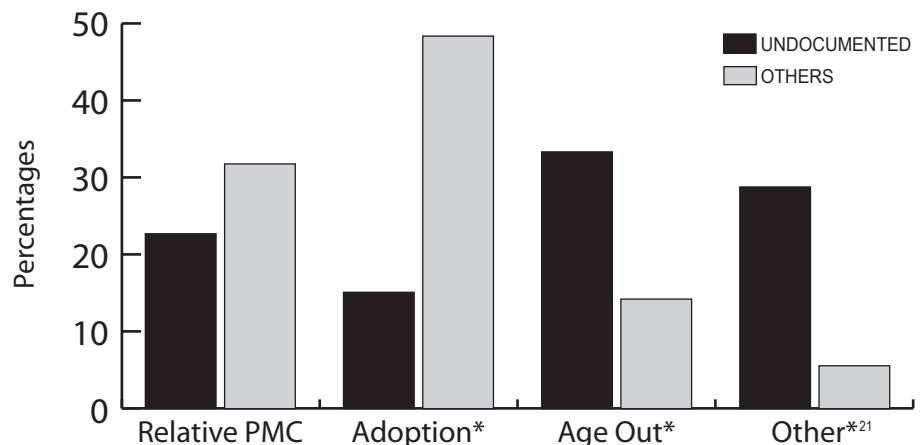
Or, perhaps a lower incidence of substance abuse makes reunification easier. Or, it could be that cases of sexual abuse are more easily resolved than cases of neglect. In sexual abuse cases, the mother is rarely the perpetrator. So once the perpetrator is removed and DFPS is assured the mother can protect the child from future abuse, the child can be returned. In contrast, neglect cases often involve chronic problems such as poverty or mental illness which are not easily remedied. Alternatively, there may be geographic differences in how the CPS system operates. For example, undocumented children are concentrated in South Texas and all children in that area are more likely to reunify as compared to other areas of the state.

Or, and this is a worrisome hypothesis, it may be that the system returns undocumented children home at a greater rate simply because it has no other alternatives. Undocumented children are less likely to be adopted and more likely to age out or have some other type of non-permanent exit such as running away. For children who do not return home, those who are undocumented are three times less likely to be adopted, two times more likely to age out, and are five times more likely to have an “other,” non-permanent exit. Part of the reason for the lower adoption rate may be because undocumented children have fewer relatives available as relatives account for a large percentage of all adoptions. Part of the difference may also be due to age. Undocumented children are older and older children are less likely to be adopted.

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### Exits Other Than Reunification



Of the children who age out, undocumented children are in care for a much shorter period of time, most likely because they are older when they enter care. But despite spending a shorter time in care before aging out, both documented and undocumented children who age out after a year in care experience the same level of placement instability, moving almost twice a year.

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### Age Out Exits

	Undocumented	Others
Average time in care (years)*	3.05	5.3
In care 3+ years*	45%	68%
Average moves per year	1.86	1.81



## SIJS Eligibility

To be eligible for SIJS, an undocumented child must meet the following criteria:<sup>24</sup>

1. The child is unmarried and under the age of 21;<sup>25</sup>
2. A juvenile court<sup>26</sup> (a) has placed the child in the legal custody of an agency of the state or with an individual or entity located in the United States; and (b) has found that reunification with one or both parents is not viable due to abuse, neglect, abandonment or similar basis found under state law. For children in federal custody, the Secretary of Health and Human Services has to consent to the state court exercising jurisdiction over the child before it can make the necessary findings.
3. Judicial proceedings, or administrative proceedings authorized or recognized by the juvenile court, in which it is determined that return to the child's country of origin would not be in the child's best interest; and
4. A juvenile court is still supervising the child when the petition is granted.

At least one change under the TVPRA may have important implications for undocumented children in state custody due to abuse or neglect in Texas. Under the old eligibility criteria, a child was not able to apply for SIJS until after a final order was issued placing the child in the long-term care of the state. This meant that the child may not have even been eligible to initiate the process until they had been in care for up to 18 months.<sup>27</sup> Under the new provision, however, reunification only has to be ruled out for one parent so a child may be eligible to apply much sooner. In many cases, at least one parent is absent from the child's life. If that parent is properly served and does not appear, the court can take a default and make a finding of abuse, neglect or abandonment (depending on what DFPS has pled) and that reunification with that parent is not viable. Once that order is made, the child may then be eligible to apply for SIJS even if they are still pursuing reunification with the other parent.<sup>28</sup>

A recent change in Texas law has important implications for SIJS eligibility as well. Before this past legislative session, a court's jurisdiction over a youth in state care terminated upon the youth's 18<sup>th</sup> birthday, even if the youth remained in foster care. As a result, a youth whose SIJS petition had not yet been filed or had been filed but not yet granted lost SIJS eligibility. The 2009 Legislature, however, amended the Texas Family Code so that now, a youth who is 18 can request that the court continue jurisdiction until they turn 21 or they withdraw their consent for continuing jurisdiction.<sup>29</sup>

*A recent change in Texas Family law allowing a court to continue jurisdiction over a child even after they turn 18 should make it easier for more children in state care to get SIJS.*

.....

## How the SIJS Process Works<sup>30</sup>

The SIJS process essentially requires the child to file a petition for a special immigrant status along with an application for a green card at the federal district office that has jurisdiction over the child. Anyone acting on the child's behalf may file the necessary paperwork. There is no filing fee for the petition, but the application for the green card has a filing fee of about \$1,000, although the fee can be waived.

The petition and application must include, among other things, the court orders establishing a child's eligibility, and supporting documentation establishing the child's age and fingerprints. The process generally requires an interview with the local U.S. Citizenship and Immigration Services (CIS) office, although this requirement can be waived if the child is less than 14 years of age or when the interview is deemed unnecessary.<sup>31</sup> Under TVPRA, the SIJS petition must now be adjudicated within 180 days.<sup>32</sup>

The Secretary of Homeland Security must consent to the SIJS.<sup>33</sup> The purpose of obtaining this consent is to ensure that the juvenile court findings supporting the petition were sought primarily for relief from abuse, neglect, or abandonment rather than to obtain a legal immigration status.<sup>34</sup> But that does not mean that the child can be extensively questioned about the abuse, neglect, or abandonment. In fact, a recent CIS field guidance memorandum specifically stated that the CIS officer should avoid questioning the child about the details of the abuse, neglect, or abandonment during the required interview.<sup>35</sup> Approval of the SIJS petition constitutes sufficient evidence of the Secretary's consent.<sup>36</sup>

Even if the child meets the SIJS eligibility criteria, the child may still be barred from obtaining legal status based on one of the enumerated grounds of inadmissibility.<sup>37</sup>

## Texas' Process to Pursue SIJS on Behalf of Undocumented Children in Care<sup>38</sup>

Texas' policy is to pursue SIJS in every case where it is appropriate. Each of the 11 regions in Texas has one DFPS attorney assigned to address immigration issues, although that attorney may also have other duties. There is also an attorney in the state office that is assigned to help the regional attorneys on immigration issues, when necessary. Caseworkers refer children with an undetermined immigration status to the regional attorney who evaluates whether the child is eligible for SIJS or other forms of immigration relief. If the child is eligible, the caseworker obtains the necessary state court order, prepares the necessary SIJS paperwork and documentation, and gives it to the regional attorney. The applications are generally submitted by mail to the regional office in Chicago, Illinois, although SIJS petitions in Houston are filed with the local CIS office if a child is already involved in federal removal proceedings.

The regional attorney attends the interview with the child. If the SIJS petition is denied, the regional attorney considers and pursues an appeal as appropriate. If a case is particularly complex, the DFPS attorneys consult with local immigration attorneys or, occasionally, refer a case to a private immigration lawyer. Region 10 (El Paso) consistently appoints undocumented children a pro bono attorney to help with immigration issues and pro bono attorneys are also sometimes provided in Region 7 (Travis).

• In 2009, the Texas Legislative Budget Board (LBB) reviewed DFPS' process for  
• handling SIJS cases and identified several challenges. The process relied heavily on  
• caseworkers to identify a child's eligibility and to do all the work in completing the  
• paperwork and obtaining all the necessary documentation. But most caseworkers  
• are already overworked and have little experience with SIJS beyond what they learn  
• during their basic training. As a result, there was significant variation in the time it  
• took to get the necessary paperwork completed. An LBB survey found it could take  
• anywhere from three to 18 months to prepare the necessary paperwork.

• Another barrier identified was that it was difficult to obtain funds to pay for the  
• filing fees and the fee waiver process was time consuming. It was also difficult to  
• obtain funds to pay for the required medical exam, which can only be conducted by  
• a CIS-approved physician, and fingerprinting.

• As a result, children were slipping through the cracks. Although DFPS has been  
• doing a better job of getting legal residency for undocumented children in care, in  
• 2009, only 15 percent of all children who had an undocumented status at some  
• point during the year changed to a documented status by the time they exited care  
• or by the end of the year.<sup>39</sup> Moreover, four of every five undocumented children  
• who emancipated were still undocumented at the time they left care.<sup>40</sup> In 2009, this  
• represents 18 youth who spent an average of three years in state care only to exit with  
• no permanent home or connection, no way to support themselves through legal  
• employment and no means to access social services.

• To help remedy this problem, in 2009, the legislature authorized DFPS to hire three  
• full time employees to focus on supporting caseworkers and regional attorneys with  
• the SIJS process. As of March 2010, DFPS had filled all three positions. Although  
• they provide support to caseworkers all over the state, they are based in Region 3  
• (Dallas/Ft. Worth), Region 6 (Houston) and Region 11 (South Texas) as over 80  
• percent of the undocumented children in care are from these areas. DFPS will create  
• a bimonthly report that identifies children with an undetermined status and the new  
• SIJS staff will follow up with legal staff and caseworkers, starting with the oldest  
• children, to ensure immigration options are pursued. The SIJS staff also will help  
• educate caseworkers on assessing immigration options for undocumented children,  
• coordinate with regional attorneys to help complete the necessary paperwork, and  
• track the progress of children in the SIJS process. DFPS is also reviewing current  
• policy relating to undocumented children and expects to have revisions by November  
• 2010.

*As of March 2010, DFPS has hired three full-time specialists dedicated solely to improving the SIJS process for children in care.*

.....

## Recommendations to Improve the SIJS Process in Texas

For a detailed list of best SIJS practices from other states, see Appendix C. Looking at these practices, there are several changes DFPS can make to improve how the process works in Texas.

- **In addition to internal changes, DFPS should work with local CIS offices to more efficiently and expeditiously process SIJS applications including:**
  - o File the petitions at the local office instead of by mail to Chicago.
  - o Ask CIS to designate a specific day for CPS interviews so transportation can be coordinated.
  - o Routinely ask for the interview to be waived, especially as recent federal guidance suggests waiving interviews as a means of ensuring that petitions are adjudicated within the required 180 days.<sup>41</sup>
  - o Request a blanket fee waiver for any child in state care.
- **DFPS and the courts should collaborate with law schools and other immigration organizations to create written resources regarding how to navigate the SIJS process in Texas.** Right now, the only available written resource for Texas caseworkers is the Special Immigrant Juvenile Status for Children in the Dependency System, a publication prepared by the Immigrant Legal Resource Center.<sup>42</sup> But the publication is not up-to-date regarding recent changes to the SIJS process; it is not easily accessible as caseworkers must request a hard copy from the state legal office; and it is not specific to Texas.<sup>43</sup> There is currently no written SIJS resource for CPS judges and attorneys. A list of SIJS resources that can be adapted for use in Texas is in Appendix D.
- **Court jurisdiction should not be terminated over a child who has an SIJS petition pending.** One requirement for SIJS under federal regulations is that the child is under court jurisdiction at the time the petition is granted. Caseworkers, attorney ad litem, and the court should advise all youth who turn 18 and have an SIJS application pending to extend court jurisdiction under the new Family Code provision to ensure they do not lose eligibility. To the extent a child has an SIJS petition pending, the court should not finalize an adoption or transfer legal custody to a relative until the petition is resolved.
- **DFPS should file the SIJS paperwork as soon as possible.** The sooner the process is started, the sooner the child can get their immigration status adjusted, eliminating the fear and complication of deportation proceedings. With the change under the TVPRA, if the court makes a finding that reunification with one parent is not viable, it may be possible for a child to file an SIJS petition even while the state only has temporary custody and the child pursues reunification with the other parent. DFPS needs to explore whether this avenue is available and, if so, pursue a finding of abuse, neglect or abandonment against parents who are not interested in or who cannot participate in reunification services as soon as possible.







The current financing structure is anachronistic, confusing, and unfair. The federal government controls immigration policy and enforcement. As a result, it should subsidize the foster care and Medicaid costs of any undocumented child who ends up in state custody because of abuse or neglect. At a minimum, ACF should change its policy to conform to the TVPRA changes so that once a child's SIJS petition is granted, the child becomes eligible for federal foster care and Medicaid subsidies both retroactively and going forward.

Federal law should also be changed so that a child who becomes an LPR through the SIJS process is exempt from the five year bar on obtaining federally subsidized benefits like Medicaid and food stamps. Exceptions to the bar already exist for certain vulnerable populations such as refugees or those seeking asylum.<sup>55</sup> Children in state care because of abuse or neglect are also a vulnerable population who came to this country and into state care through no fault of their own. They should be exempt as well, especially as they are only a very small population.

## Summary

If a child is undocumented, he falls within the purview of the federal immigration system. If a child is abused or neglected, he falls within the purview of the state child welfare system. When a child is both undocumented and abused and falls within the purview of both, one system needs to take the lead. Since state child welfare agencies are far better situated to address the more pressing problem of maltreatment and ensure appropriate care, they should take the lead. After an abused or neglected child enters state care, all federal immigration proceedings regarding the child should be suspended to give the state time to safely and appropriately repatriate the child or to seek SIJS. It makes no sense for the federal government to recognize the need for SIJS but design a system that is essentially a race between state child welfare officials and immigration officials to see who can move the fastest.

The question should not be whether state child welfare officials can secure SIJS before federal immigration officials can deport. Instead, the state child welfare system should be given the time to repatriate or secure SIJS. And while the child is in state care, state child welfare caseworkers should be able to freely transport the child to needed services and care. In those cases where the state child welfare system determines that a return to parents in the United States is appropriate, then federal immigration officials can act pursuant to their own policies.

But aligning state child welfare and federal immigration policy, however, is not enough. Because the federal government is responsible for immigration, the federal government should pay its share of the cost of foster care and Medicaid for undocumented children. At a minimum, when an undocumented child secures SIJS, the state should be able to retroactively claim reimbursement for foster care and Medicaid as set forth in TVPRA, in addition to securing federal financial participation going forward. Finally, children who have SIJS should also be exempt from the five-year ban on eligibility for federally subsidized social programs such as the Supplemental Nutrition Assistance Program, so that when they leave state care, they can still access the services they need. •



## Endnotes

- 1 *Common-sense Principles for Immigration Reform*. Center for Public Policy Priorities, April 2010.
- 2 Texas Human Resources Code §40.002.
- 3 *Plyler v. Doe*, 457 U.S. 202 (1982).
- 4 Child Protective Services (CPS) Handbook §§6581-83.
- 5 Passel J. *The Size and Characteristics of the Unauthorized Migrant Population in the U.S. Estimates Based on the March 2005 Current Population Survey*. Pew Hispanic Center. March 7, 2005.
- 6 Unless otherwise noted, all references to a year refer to the Texas state fiscal year which runs from September 1 to August 31.
- 7 Unless otherwise noted, we used a single variable ordinary least squares or logistic regression comparing 2005 to 2009, using a p-value of 0.05 to test for significance.
- 8 Significant differences were determined using a one variable ordinary least squares regression (if the dependent variable was continuous) or a one variable logistic regression (if the dependent variable was an indicator). The dependent variable was the characteristic (e.g., age at removal) and the independent variable was an indicator with 1 meaning the child was undocumented at some point during the year. A p-value of 0.05 was used to determine significance.
- 9 Because this analysis is conducted at the child level, it likely overstates the proportion of families with more than one child in care. Families with more than one child in care will be identified multiple times. For example, a family with two children in care shows up as having a sibling in care twice—once for each child.
- 10 We used the DFPS definition for Hispanic, which includes any of the following races that are also identified as Hispanic: White, Hawaiian or Pacific Islander, Multiple, and Unknown.
- 11 Includes those who are also identified as Hispanic.
- 12 Bexar County, Dallas County, Harris County, Tarrant County, and Travis County.
- 13 Defined as DFPS Region 11, which includes the following counties: Aransas, Bee, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kennedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio, Starr, Webb, Willacy, Zapata.
- 14 The abuse categories are mutually exclusive. If a case had multiple confirmed allegations, it was given the designation of the most serious abuse (sex abuse, physical abuse, and, finally, neglect).
- 15 Neglect is defined as any confirmed allegation other than sex abuse and physical abuse, and so includes: abandonment, medical neglect, physical neglect, neglectful supervision, and refusal to accept parental responsibility. Since very few cases had a primary allegation of emotional abuse, these cases were included in the neglect category as well.
- 16 Putnam FW. *Ten year research update review: Child sexual abuse*. J. AM. Acad. Child Adolesc. Psychiatry 42(3):269-278. (2003).
- 17 Based on data on illicit drug use from the Substance Abuse and Mental Health Services Administration 2008 National Survey on Drug Abuse and Health and population data from the Census Bureau comparing adults age 18 to 25 to adults age 26 and older.







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## APPENDIX A

### Data Description

The federal government will only reimburse a state for foster care expenses related to documented children (8 U.S.C. §1613; 62 F.R. 61433). As a result, for the children in state care, DFPS documents their immigration status in its statewide data system, called IMPACT (CPS Handbook §6584.1). Those for whom further verification is needed or who lack any documentation are identified with an “undetermined” immigration status (CPS Handbook §6584.1). Given the state’s financial incentive to document a child’s legal immigration status, it is likely that the vast majority of children with an undetermined status are undocumented. As a result, unless otherwise noted, we use the terms undetermined and undocumented interchangeably.

Using the IMPACT system, for each year from 2005 to 2009, DFPS provided de-identified information on children who had an undetermined immigration status during the year including child characteristics, confirmed allegations, living arrangements, birth date, dates of entry and exit, how a child exited state care, the child’s immigration status at the end of the year or the time of exit and perpetrator information. Children who were in care for more than one year are identified in each year for which they were in care and had an undetermined status.

To provide context and comparison, in a separate data run, DFPS also provided the same information for all children who were in care in 2009, both documented and undocumented. The data on undocumented children from the first data run and the second data run seem to be identical except on one child. In that case, in the initial data run, the child was identified with an “other” exit in 2009 and in the second data run, that child was identified with an exit to “reunification” in 2009. All other information regarding the child was identical in both data runs. As the child was living with their parents at the time of exit, we treated the exit as a reunification.

In looking at why a child comes into care, it is important to understand how allegations are handled. Children often have multiple confirmed allegations. Thirty-six percent of undocumented children with a confirmed allegation had more than one type of abuse or neglect confirmed. But this does not necessarily mean that each child was subjected to multiple, different incidents. For example, one incident of sexual abuse may result in a confirmed allegation for the child of sexual abuse (against the abuser) and negligent supervision (against the parent who failed to protect the child from sexual abuse). The same is true for physical abuse.

As a result, any analysis that uses the entire universe of confirmed allegations may not get a true picture of the prevalence of different types of abuse. If serious forms of abuse are more likely to have a concomitant negligent supervision finding for the same incident, it will distort the results. For example, a removal for sexual abuse may technically involve both abuse and neglect, but the major problem the family needs to address is the sexual abuse. By counting the incident as both sexual abuse and neglect, however, it arguably under counts the prevalence of sexual abuse and over counts the incidence of neglect. Doubling counting the incident also confounds findings related to neglect. A child with a confirmed allegation of neglect related to sexual abuse is in a very different position from a child with only a confirmed allegation of neglect.

More than 50 percent of the undocumented children in state care with a confirmed allegation of sexual or physical abuse also have a confirmed allegation for neglectful supervision. To avoid the problems discussed above, in our analysis we created abuse categories that are mutually exclusive so that each child is counted only once. If a case had multiple confirmed allegations, it was given the designation of the most serious abuse in the following order: sex abuse, physical abuse, neglect, and, then, emotional abuse. The category of neglect includes: abandonment, medical neglect, physical neglect, neglectful supervision, and refusal to accept parental responsibility. As less than one percent of the confirmed allegations involved only emotional abuse, we included it in the neglect category as well.



A single perpetrator can have confirmed allegations against multiple children from a single incident (e.g., sexual abuse to one child which places the other children at risk of sexual abuse). But counting a single perpetrator multiple times can distort the analysis regarding perpetrator characteristics. To avoid this, unless otherwise noted, we have counted each perpetrator only once even if they were involved in multiple incidents or with multiple children.

With the data on perpetrators for all children in care, we could not identify which perpetrators related to undocumented children and which related to documented. The same perpetrator may have committed abuse or neglect against multiple children, some of whom may be documented and some of whom may not. As a result, we used the entire universe of perpetrators as a comparison population to perpetrators of undocumented children. Although the perpetrators of undocumented children are also included in the comparison group, they comprise less than two percent of all perpetrators and so their inclusion is not likely to skew the results.

There was very little missing data. For undocumented children, there were five or fewer children in each year missing a county of removal, a last living arrangement, or an indicator about substance abuse. In 2006, one child had a birth date that was after the time the child entered state custody. As a result, we treated their age at time of removal as missing.

For the documented children in care in 2009, less than one percent was missing the county of removal, a last living arrangement or an indicator about substance abuse.

For perpetrators, less than one percent was missing their gender or a marital status.

To the extent a child or perpetrator was missing data on a particular data element, they were excluded from the analysis of that data element.

Our analysis of how children exited was based on exit, rather than entry, cohorts. This analysis is limited in that children may have been in care for different lengths of time and so may not be comparable as a group (Wulczyn & Delts 2001).

To the extent we did not find a statistically significant difference over the years for the undocumented population or between undocumented and documented children, it may be due to the relatively small size of the undocumented population rather than a lack of a relationship.

## APPENDIX B

### Data on Undocumented Children in State Care 2005-2009

#### Undocumented Children in Care

	2005	2006	2007	2008	2009
<b>Number</b>	497	556	500	447	400
<b>Percentage of Total Pop</b>	1.20%	1.20%	1.06%	0.99%	0.96%

#### Undocumented Child Characteristics

	2005	2006	2007	2008	2009	Others 2009
<b>Race/Ethnicity</b>						
Hispanic <sup>1</sup>	89.13%	88.67%	88.80%	86.80%	85.25%	37.84%
African American <sup>2*</sup>	3.82%	5.58%	5.60%	7.38%	7.50%	29.59%
White (Non-Hispanic)	5.03%	3.60%	3.00%	4.03%	5.75%	30.07%
Other	2.01%	2.16%	2.60%	1.79%	1.50%	2.50%
<b>Average age at removal (years)</b>	10.1	10.1	10.3	10.2	10.4	5.9
<b>Female</b>	58.15%	57.73%	55.20%	55.03%	56.00%	48.46%
<b>Where They Live</b>						
Urban*	50.61%	48.01%	46.79%	45.41%	43.75%	43.12%
South Texas*	21.95%	28.80%	29.32%	26.85%	27.75%	8.08%
Other areas	27.44%	23.19%	23.89%	27.74%	28.50%	48.80%

#### Family Dynamics

	2005	2006	2007	2008	2009	Others 2009
<b>Confirmed allegations<sup>3</sup></b>						
Sex abuse	26.22%	22.70%	22.34%	20.82%	22.44%	4.83%
Physical abuse	19.60%	21.75%	21.53%	18.77%	16.17%	23.10%
Neglect <sup>4*</sup>	54.17%	55.56%	56.13%	60.41%	61.39%	72.08%
<b>No allegation*</b>	30.18%	23.92%	26.60%	23.71%	24.25%	22.00%
<b>Substance abuse involved in removal</b>	19.92%	22.46%	19.28%	22.15%	23.50%	57.51%
<b>Perpetrators</b>						
Mothers	49.01%	51.01%	49.77%	50.77%	50.14%	58.76%
Fathers	22.03%	23.18%	21.03%	18.56%	17.97%	20.40%
Relatives	8.17%	7.90%	10.05%	9.22%	9.88%	9.14%
Siblings	2.72%	1.01%	0.93%	2.58%	3.48%	0.90%
Step-parent	6.93%	7.09%	7.01%	8.51%	8.12%	3.05%
Paramour	5.59%	4.66%	5.84%	4.12%	3.77%	4.95%
Other	5.45%	4.86%	5.37%	6.19%	6.38%	3.17%
Average age of mothers (years)	31.6	31.3	31.9	31.5	31.4	28.8%
Average age of fathers (years)	36.7	35.9	37.0	37.0	37.3	33.5%
Married mothers	51.72%	55.87%	51.03%	52.31%	47.90%	31.56%
<b>Siblings<sup>5</sup></b>						
At least 1 sibling in care					62.50%	70.72%
Documented sibling in care					43.25%	

### Where They Live While in Care

	2005	2006	2007	2008	2009	Others 2009
Parents	9.01%	8.19%	8.22%	5.60%	7.98%	6.72%
Relatives*	9.30%	11.30%	8.22%	13.38%	14.45%	29.14%
Foster Home	65.92%	67.80%	69.18%	66.22%	61.98%	50.86%
Group Home	13.24%	10.45%	8.56%	10.03%	10.27%	10.90%
Other*	2.54%	2.26%	5.48%	4.35%	5.32%	2.37%

### Change in Immigration Status

	2005	2006	2007	2008	2009
Number with change in status	43	32	31	39	61
Percent with a change in status*	8.65%	5.76%	6.20%	8.72%	15.25%
Years in care before change*	1.65	1.77	2.27	3.3	2.85
Change within 6 months	27.91%	40.63%	19.35%	5.13%	11.48%

### What Happens to Undocumented Children

	2005	2006	2007	2008	2009	Others 2009
<b>Number Who Exit From Care</b>	142	202	208	148	137	
<b>Reunification</b>	60.56%	56.44%	55.77%	48.65%	51.82%	30.17%
<b>Exits other than reunification</b>						
Relative PMC	28.57%	20.45%	33.70%	19.74%	22.39%	31.77%
Adoption	7.14%	11.36%	15.22%	17.11%	14.93%	48.32%
Age Out	42.86%	37.50%	28.26%	47.37%	32.84%	14.27%
Other	21.43%	30.68%	22.83%	15.79%	28.79%	5.64%
<b>Adoption</b>						
Number of adoptions	4	10	14	13	10	
Average time to completion (years)	3.8	2.6	3.5	3.1	3.0	2.5
<b>Age Out Exits</b>						
Number of exits	24	33	26	36	22	
Average time in care (years)	2.93	3.12	3.40	3.09	3.05	5.3
In care 3+ years	45.83%	36.36%	46.15%	41.67%	45.45%	67.90%
Average moves/year	1.14	1.26	1.26	1.59	1.86	1.81
Undocumented when exit	87.5%	100%	84.62%	94.44%	81.82%	
<b>Other Exits</b>						
Number of exits	12	27	21	12	20	
Average time in care (months)*	10.9	6.4	8.5	3.0	6	13.2
Average number of placements	2.5	2.3	2.4	1.6	1.6	3.2
Average age (years)*	14.09	12.19	13.32	10.30	8.98	10.19
Undocumented when exit	100%	100%	100%	100%	100%	

\*Denotes that the difference between 2005 and 2009 is statistically significant using an ordinary least squares or logistic regression and a p-value of 0.05.

- 1 We used the DFPS definition which includes any of the following races that are also identified as Hispanic: White, Hawaiian or Pacific Islander, Multiple and Unknown.
- 2 Includes those who are also identified as Hispanic.
- 3 The abuse categories are mutually exclusive. If a case had multiple confirmed allegations, it was given the designation of the most serious abuse (sex abuse, physical abuse, neglect and, finally, emotional abuse).
- 4 Neglect is defined as any confirmed allegation other than sex abuse and physical abuse and so includes: abandonment, medical neglect, physical neglect, neglectful supervision and refusal to accept parental responsibility and emotional abuse.
- 5 Data on both undocumented and documented siblings in care is only available for 2009.

## APPENDIX C

### SIJS Best Practices

#### Best practices for state systems to obtain SIJS include:

- Having individuals within or working with the child welfare agency to help caseworkers with the process.
  - Illinois and Los Angeles County have special, designated immigration units within the child welfare agency. In Los Angeles, all the members of the unit are certified interpreters.
  - New York City has a special Immigrant Issues Subcommittee Advisory Board and with a grant from the Annie E. Casey Foundation created a Special Director of Immigrant Services to oversee policy and practice issues regarding families. It also gives pro bono representation to undocumented children in foster care.
- Creating a written SIJS manual with state specific instructions, guidelines, and resources on how to handle the process.
  - Illinois has a manual developed by the National Immigrant Justice Center.
  - Florida has a manual developed with advocates, private law firms, and law school faculty. It also has statutory guidelines regarding the necessary findings and when the process should be initiated.
  - New York City has an immigration handbook developed especially for caseworkers and an interactive Web site regarding the SIJS process developed and maintained by Columbia Law School.
  - New Jersey has a special immigrant juvenile status training and information packet prepared by the American Friends Service Committee.
- Ensuring that costs associated with the process are covered.
  - The special immigration unit in the Los Angeles County child welfare agency has its own budget approved by the county which includes funding to pay for fees and expenses and funding for transportation for children to attend interviews.
  - New York City reimburses child placing agencies who work with undocumented youth for the SIJS filing costs.
  - Los Angeles County funds bone scan tests for children who have no other way to establish their age.
- Ensuring that children have transportation to the interviews
  - The specialized immigration unit in Los Angeles County transports children for their interviews.
- Providing specialized training for caseworkers
  - Both Los Angeles County and New York City have such training. In Los Angeles County, caseworkers are required to teach undocumented children how to acquire and complete the SIJS application as part of the child's independent living plan.
- Working with local offices of the U.S. Bureau of Citizenship and Immigration Services (CIS)
  - The child welfare immigration unit in Los Angeles County holds quarterly meetings with local CIS staff. It has arranged to file SIJS applications in person at the local office rather than mailing them to the district office. It also has a designated day for interviews.
- Providing for court supervision beyond the age of 18 to ensure that the child is still eligible when the application is granted.
  - Florida, California, and, now, Texas have statutory authority for the court to retain jurisdiction beyond age 18.

## APPENDIX D

### Resources Regarding the SIJS Process

- Immigrant Legal Resource Center, Remedies for Immigrant Children and Youth Web page:  
[https://www.ilrc.org/immigration\\_law/remedies\\_for\\_immigrant\\_children\\_and\\_youth.php](https://www.ilrc.org/immigration_law/remedies_for_immigrant_children_and_youth.php)  
Contains downloadable resources on immigration issues including guides for immigrant youth in English, Spanish and Korean and an immigration benchbook for Juvenile and Family Court judges.
- United States Conference of Catholic Bishops, SIJS Caseworker's Toolkit for Children in Federal Custody:  
<http://www.brycs.org/sijs/default.htm>  
Contains downloadable resources regarding the SIJS process for children in federal custody.
- U.S. Committee for Refugees and Immigrants, Special Immigrant Juvenile Status Web page:  
<http://www.refugees.org/article.aspx?id=1559&subm=75&area=Participate&ssm=118>.  
Contains downloadable general resources on SIJS as well as links to state specific resources.
- American Immigration Lawyers Association, Special Immigrant Juveniles Web page:  
<http://www.aila.org/Issues/Issue.aspx?docid=23300>  
Contains downloadable legal resources regarding immigration issues.
- National Immigrant Justice Center, Special Immigrant Juvenile Status in Illinois, A Guide for Pro Bono Attorneys:  
<http://www.njcpac.org/admin.asp?uri=2181&action=15&di=370&ext=pdf&view=yes>
- Special Immigrant Juvenile Status in Florida: A Guide for Judges, Lawyers and Child Advocates:  
[http://www.law.miami.edu/pdf/SIJ\\_Manual.pdf](http://www.law.miami.edu/pdf/SIJ_Manual.pdf)
- New York City's Administration for Children's Services, Immigration and Language Guidelines for Child Welfare Staff: [http://www.nyc.gov/html/acs/downloads/pdf/immigration\\_language\\_guide.pdf](http://www.nyc.gov/html/acs/downloads/pdf/immigration_language_guide.pdf)
- Special Immigrant Juvenile Status Training and Information Packet for New Jersey. September 2009:  
<http://www.njcpac.org/admin.asp?uri=2181&action=15&di=370&ext=pdf&view=yes>
- New York online guide to SIJS: [https://quickplace.law.columbia.edu/QuickPlace/childimmigrant/Main.nsf/h\\_Toc/C7676E2EC40EE46D85257123007C4802/?OpenDocument](https://quickplace.law.columbia.edu/QuickPlace/childimmigrant/Main.nsf/h_Toc/C7676E2EC40EE46D85257123007C4802/?OpenDocument)
- A Social Worker's Tool Kit for Working with Immigrant Families: Immigration Status and Relief Options. June 2009:  
<http://www.americanhumane.org/assets/docs/protecting-children/PC-migration-sw-toolkit-status-relief.pdf>







## MISSION

The Center for Public Policy Priorities is a nonpartisan, nonprofit policy institute committed to improving public policies to better the economic and social conditions of low- and moderate-income Texans. The center pursues its mission through independent research, policy analysis and development, public education, advocacy, coalition building, and technical assistance. We pursue this mission to achieve our vision for Texas.

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