
SPECIAL IMMIGRANT JUVENILE STATUS IN FLORIDA

A Guide for Judges, Lawyers, and Child Advocates

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OVERVIEW

The *Special Immigrant Juvenile Status in Florida: A Guide for Judges, Lawyers, and Child Advocates* Manual was made possible through the hard work and dedication of the coordinated efforts of the Immigrant Children's Legal Services Partnership. Drafted by Wendi Adelson with the help of the Children & Youth Law Clinic; Jodi Samuels and Elisa Lemmer from the Miami office of Weil, Gotshal and Manges; and the Florida Immigrant Advocacy Center.¹ This guide is intended to provide an overview of the process of applying for Special Immigrant Juvenile Status in Florida and to help point out potential difficulties in the process. These materials are meant to assist judges, attorneys, social workers, accredited representatives and advocates in assisting those children potentially qualified for Special Immigrant Juvenile Status. The Manual, however, is not meant as a replacement for experienced legal support. Readers should consult with an experienced attorney in immigration or juvenile dependency matters to ensure that a child receives the best possible representation throughout the process. Although this Manual provides an overview of federal and state law with regard to SIJ Status, it is geared to assisting lawyers, social workers and judges operating in Florida.

The Immigrant Children's Legal Services Partnership

This partnership was created to form a human services, legal, and policy advocacy program dedicated to safeguarding the best interests, welfare and rights of unaccompanied immigrant children in Miami-Dade County. The following groups make up the partnership: the Children & Youth Law Clinic at the University of Miami School of Law; the Florida Immigrant Advocacy Center; Florida Legal Services; the Victim Services Center; the Carlos A. Costa Immigration and Human Rights Clinic at Florida International University College of Law; the University of Miami Department of Educational & Psychological Studies; Sisters of the Humility of Mary Service; Escoffery Consulting Collaborative, Inc.; Marta Pizarro Consulting Services; and Strategic Partners Consulting.

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SPECIAL IMMIGRANT JUVENILE VISA MANUAL

Introduction

In 1990 Congress enacted the special immigrant juvenile provision of the Immigration and Nationality Act² to assist undocumented immigrant children who have suffered parental abuse, abandonment or neglect. The enactment of the 1990 statute demonstrates Congress' recognition that children who have experienced maltreatment in their families deserve special protection. This Manual is intended to educate judges, practitioners and case workers on the critical role they play in the care, representation and adjudication of unaccompanied minors who are eligible for lawful permanent residence pursuant to the Special Immigrant Juvenile ("SIJ") Statute.³ The SIJ Statute implicates the laws of every state because, as discussed further in this Manual, to be eligible for permanent resident status under the statute, a child first needs to obtain from a state juvenile court⁴ a dependency order that contains a number of specific findings. Accordingly, this Manual also sets forth and explains the Florida law implicated by the SIJ Statute and how it has been interpreted and applied in dependency proceedings initiated by unaccompanied minors and by the Department of Children and Families ("DCF").

This Manual summarizes legal and other considerations relevant to unaccompanied immigrant minors seeking to obtain legal resident status in the United States. Section I of this Manual discusses the plight of unaccompanied minors in the United States. It also provides an overview of SIJ Status and examines the legislative history and policy concerns behind SIJ legislation. Section II discusses in further depth the SIJ Statute and SIJ Status, it explains federal eligibility requirements for SIJ Status, and provides an overview of state dependency law as it relates to petitions for SIJ Status. Section III discusses dependency proceedings for immigrant children. It takes the reader through the procedural aspects of these proceedings such as: (i) investigating the facts, (ii) drafting the dependency petition, (iii) planning for permanent placement and (iv) addressing special issues that arise when immigrant children turn 18. Section IV explains the responsibilities of DCF caseworkers with respect to immigrant children, discusses the services to which these children are entitled and addresses the myriad concerns facing

² 8 U.S.C. § 1101(a)(27)(J) (2006).

³ *Id.*

⁴ See Gregory Zhong Tian Chen, *Eliau or Alien? The Contradictions of Protecting Undocumented Immigrant Children under the Special Immigrant Juvenile Statute*, 27 HASTINGS CONST. L. Q. 597, n. 15 (2000), "Depending on the state, a "family court," "probate court," or "district court" may be vested with the authority to make the requisite orders for SIJ eligibility. See, e.g., *Gao v. Jenifer*, 185 F.3d 548, 551 (6th Cir. 1999) (affirming Michigan probate court's exercise of jurisdiction over Gao and the determination that Gao was a dependent of the court); *Arteaga v. Texas Dep't. of Protective and Regulatory Serv.*, 924 S.W.2d 756 (Tex. 1996) (noting that district court of Texas took jurisdiction over minor, declared her a "ward" of the court, and thus enabled her to obtain SIJ status)."

immigrant children in DCF custody. The Manual concludes with Section V, which discusses special considerations lawyers face in representing immigrant clients.

I. The plight of unaccompanied minors

A. How do children arrive in the U.S. and how do they end up in court?

While each child's story is different, in general, minors seeking relief pursuant to the SIJ Statute share similar characteristics. They have chosen to make a potentially dangerous trip from their country of origin to the United States, either alone, or with a relative or smuggler. Some of these children were brought to the U.S. by their parents who later abused, abandoned and/or neglected them here. Traveling to the United States often places these children in life threatening situations and exposes them to individuals who might seek to exploit them. It is not unusual for minors to travel to the U.S. in an effort to escape unbearable living conditions, including persistent abuse or neglect by caregivers, the complete lack of any caregiver or a person responsible for the child's welfare, threats from local gangs, and political persecution. It is imperative for attorneys and judges involved in cases concerning these children to keep in mind that the situation in their home country was horrible enough to cause them to make a life threatening pilgrimage to the United States.

One girl seeking SIJ Status explained that, at the age of three, her mother left her with her grandmother and moved to the United States. When she was seven years old, her grandmother got sick and could no longer care for her. Accordingly, her grandmother sent her to the U.S. where she was reunited with her mother. Unfortunately, when she arrived, her mother was living with a boyfriend, who sexually abused her. She was ultimately removed from the home and placed in foster care. Another girl reported that her father abused alcohol and physically abused both her and her mother. Her parents also prevented her from going to school after she reached the age of seven and instead forced her to work. She was eventually sent to the United States and, after being detained for two months, was released into the custody of her uncle.⁵

Another typical example of a child eligible for SIJ Status is "Alex,"⁶ from Honduras. When he was 10 years old, his father was stabbed to death by Alex's uncles. Alex found the body. "They killed my father to rob him of the money he had made from selling a cow," he said softly. People in the town were afraid of his uncles, who were drug users, and did not trust the authorities to investigate the crime and bring them to justice. With his mother living in the United States and his grandmother unable to work, Alex was forced to quit school and start working on farms, making bricks, building houses -- anything he could to support himself and his three younger brothers. His uncles started threatening to kill him, a pattern that continued for several years. Fearing for his life, Alex left Honduras bound for Houston at age 16. In order to get there, he traversed 2,000 miles and crossed three borders illegally. Alex's experience was harrowing. "I saw

⁵ See Andrew Shepard and Theo Liebman, *Law and Children*, NEW YORK LAW JOURNAL, June 19, 2006.

⁶ All names of potential SIJ applicants have been changed to protect the juveniles involved.

criminals robbing a kid, and then they shot him," he said. "I saw a woman being raped on a train." He also spent several days without food. Alex's journey ended three months later when he was arrested by Border Patrol shortly after crossing the Rio Grande in an inflatable boat in south Texas. He was transported in handcuffs to an adult jail, where he was held for 10 days before being sent to an ORR-run shelter for unaccompanied children in Chicago.⁷

Upon entry into the United States, most unaccompanied minors are apprehended by the Department of Homeland Security's ("DHS") Customs and Border Protection and placed in shelters, group homes, or secure detention facilities.⁸ Following the enactment of the Homeland Security Act of 2002, responsibility for the detention and care of unaccompanied children was vested with Office of Refugee Resettlement ("ORR").⁹ The ORR recently reported that, in 2005, 7,787 unaccompanied minors, 10.5 percent of whom were under the age of 12, were housed in shelters established by the ORR pursuant to the Homeland Security Act. If a family member or other acceptable caregiver for the detainee is located, the ORR will release the child into that person's care. In 2005, unaccompanied minors remained in the care of the ORR for an average of 45 days. Most of those children were placed in shelters during that time.

Unaccompanied minors who are not apprehended by immigration authorities may be taken in by relatives, family friends or even strangers. Other may end up homeless or experience other unsafe living arrangements. It is much harder to know how many of these children live in the U.S., but a large number of children fleeing abuse, abandonment and neglect come to the U.S. seeking shelter each year.¹⁰ Without close relatives to

⁷ Amanda Levinson, "Alone in America," http://www.womenscommission.org/archive/05/news_stories/Altnetnet.shtml (last visited Mar. 19, 2007).

⁸ It is also worth noting that some children who appear to be unaccompanied are actually U.S. citizen children born to parents residing, but without permanent legal status, in the U.S. In a recent example, one woman from Texas was pulled over for a small traffic infraction while on vacation in Miami, and found not to have legal status. Her two U.S. Citizen children were then taken from her, and were adjudicated dependent on the juvenile court in Miami without parental notification to either of the parents, who were in immigration detention. After that decision, the children were placed in foster care, despite the fact that the parents were desperate to locate their children and had persistently asked to be reunited with them in Texas, or to return to Honduras together if necessary. This situation is becoming an increasingly difficult and frequent problem for families with mixed legal status, especially when the caregiver is detained by immigration authorities. Judges, child advocates and social workers in contact with these children need to pay close attention to ensure that children who are not unaccompanied do not end up separated from their parents and adjudicated dependent on a juvenile court without parental consent.

⁹ The Homeland Security Act of 2002, Pub. L. No. 107-296, § 462, 116 Stat. 2153 (2002).

¹⁰ Of the approximately 8,000 children that pass through the immigration system, some portion of these children stay in the country and disappear, becoming part of the underground undocumented world. See <http://www.npr.org/templates/story/story.php?storyId=6469224> (last visited Mar. 19, 2007); Also, approximately 1.8 million children, some in families and some unaccompanied, live in the United States without legal immigration authorization. Some portion of these children are eligible for special immigrant juvenile status. See Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant*

petition for them, unaccompanied minors are unable to pursue the most common route to permanent residence or citizenship. As a result, they are unable to go to college, work legally and fully participate in American life. It was these concerns that prompted Congress to pass the provisions relating to special immigrant juveniles in the Immigration and Nationality Act in 1990. In 2005, the Florida legislature crafted legislation designed to complement and implement the federal SIJ statute and to help unaccompanied alien children in Florida.

B. Statistics

Nationwide, a relatively small number of undocumented minors are admitted for lawful permanent residence and granted a visa pursuant to the SIJ Statute (a “J Visa”).¹¹ According to statistical information published by DHS in 2005, 1,122,373 immigrants were admitted for lawful permanent residence in the United States. While approximately 26 percent of those admitted were under the age of 21, only 679 minors, or less than one tenth of one percent of the total, were admitted as lawful permanent residents pursuant to the SIJ Statute.¹² The low numbers of minors admitted pursuant to the SIJ Statute do not represent a new trend. The total number of minors admitted pursuant to the SIJ Statute has remained relatively static for the five year period preceding 2005.¹³

II. What is Special Immigrant Juvenile Status?¹⁴

A. Federal eligibility requirements

1. SIJ Status is a way for certain immigrant juveniles to become permanent residents of the United States.¹⁵ Specifically, SIJ Status “is a legal benefit for alien

Population in the U.S.: Estimates Based on the March 2005 Current Population Survey, at 8 (Pew Hispanic Center, Mar. 7, 2006).

¹¹ The “J Visa” is so named because it is codified at 8 U.S.C. §1101 (a)(27)(J).

¹² 2005 YEARBOOK OF IMMIGRATION STATISTICS (Nov. 2006).

¹³In 2000, 2001, 2002, 2003, and 2004, J Visas were granted to, respectively, 659, 556, 521, 470, 634 petitioning minors. See 2004 YEARBOOK OF IMMIGRATION STATISTICS (Jan. 2006), YEARBOOK OF IMMIGRATION STATISTICS: 2003 (Sept. 2004).

¹⁴ See Appendix for start to finish filing instructions.

¹⁵ 8 U.S.C. §1101(a)(27)(J) – “an immigrant (i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.” 8 C.F.R. § 204.11. A minor is “eligible for long-term foster care” when a court determines that family reunification is no longer a viable option. 8 C.F.R. § 204.11(a). A child that is eligible for long-term foster care will, in general, remain in foster care until such child (i) reaches the age of maturity, (ii) is adopted, or (iii) is placed in a guardianship situation. For the purposes

children who are dependents of a juvenile court.”¹⁶ To be considered for SIJ Status an applicant must satisfy three requirements:

- a. Consent.** First, DHS must specifically consent to the juvenile court’s jurisdiction to conduct dependency proceedings if the juvenile alien is in DHS custody.¹⁷ No juvenile court has jurisdiction to determine the custody status or placement of a juvenile immigrant in the actual or constructive custody of DHS unless DHS specifically consents to such jurisdiction.¹⁸
- b. State Court Findings.** Second, in order for a juvenile immigrant to obtain SIJ status, a state juvenile court must make findings that support the child’s ability to seek such status. This means that the court must:

Declare the child to be court-dependent (based on findings of abuse, abandonment or neglect) or legally commit the child to a state agency or department.

Find that the child is “deemed eligible for long-term foster care” due to abuse, neglect or abandonment.¹⁹

Find that it is not in the child’s best interests to return to his or her country of origin.²⁰

of SIJ status, if a child is adopted or placed in a guardianship situation after having been found to be dependent, such child will be considered to be eligible for long-term foster care. *Id.*

¹⁶ Christopher Nugent and Steven Schulman “*Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children*,” 78 INTERPRETER RELEASES (Oct. 8, 2001), at 1589, n.124.

¹⁷ See *Matter of Perez Quintanilla*, A97383010 (AAO 6/7/2007). This opinion clarifies that in the 11th Circuit, children who are in removal proceedings – but who have not received a final order of removal – are not in “constructive custody” of the Department of Homeland Security (DHS). These children therefore are not required to obtain the specific consent of the Secretary of DHS to receive juvenile court jurisdiction. The decision also makes it clear that an order extending juvenile court jurisdiction under Florida statute 39.013(2) is sufficient to permit a child’s eligibility for SIJS. In addition, the Deputy Director of USCIS issued this opinion in conjunction with a cover memo that directs all USCIS personnel to follow the reasoning of *Perez Quintanilla* in similar cases.

¹⁸ 8 U.S.C. § 1101(a)(27)(J)(iii)(I); The following cases relate to the issue of SIJ and consent: *M.B. v. Quarantillo*, 301 F.3d 109 (3rd Cir. 2002); *Yeboah v. D.O.J.*, 345 F.3d 216 (3rd Cir. 2003); *F.L. v. Thompson*, 293 F. Supp. 2d 86 (D.D.C. 2003); *Pierre v. McElroy*, 200 F.Supp. 2d 251 (S.D.N.Y. 2001); *Riley v. Gantner*, 2003 WL 22999487 (S.D.N.Y. 2003); *Yu v. Brown*, 36 F.Supp.2d 922 (D.N.M.1999); *Gao v. Jenifer*, 185 F.3d 548 (6th Cir. 1999); *Zheng v. Pogash*, 416 F.Supp.2d 550 (S.D.Tex. 2006); *A.A.-M v. Gonzales*, 2005 WL 3307531 (W.D.Wash. 2005); *Wang v. Reno*, 2001 WL 1150343 (S.D.N.Y. 2001).

¹⁹ “Eligible for long-term foster care” means that a determination has been made by the juvenile court that “family reunification is no longer a viable option” and that the child will normally be placed in foster care, adopted, or placed in a guardianship situation. See 8 C.F.R. § 204.11(a).

²⁰ See 8 U.S.C. § 1101(a)(27)(J)(ii). All of these findings should be clearly set forth in the order, and the court should also make clear that the findings and determinations were made as a result of the neglect,

B. Overview of state dependency law as it relates to SIJ petitions

Although SIJ status derives from federal immigration law pertaining to the J-Visa, the state courts make factual findings regarding allegations of abuse, abandonment or neglect of children and preside over dependency proceedings. The following Florida cases help outline some of the barriers and issues that may arise in representing unaccompanied children seeking an adjudication of dependency in order to qualify the entry of an Order Regarding Eligibility for SIJ Status in Florida juvenile courts.

1. *S.H. v. D.C.F.*²¹

In *S.H.*, an undocumented immigrant child who was sent to live with his uncle in Florida was found to not be “abandoned” within the meaning of the statute governing adjudications of dependency. Under Fla. Stat. § 39.01(1), a child is considered abandoned and thus qualified for dependency if “the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver responsible for the child’s welfare, while being able, makes no provision for the child’s support and makes no effort to communicate with the child. . .” The Court, in *S.H.*, held that the child’s uncle qualified as a “caregiver” under Fla. Stat. § 39.01(10), and therefore, the child had not been abandoned by his parent, legal custodian, or other caregiver.

However, the District Court’s interpretation of Florida law in this case arguably conflicts with a federal immigration administrative appeals unit’s interpretation of the applicable federal law in case of *Matter of Menjivar* which made it possible for juveniles in the custody of a family member appointed as a conservator by a Family Court Judge under Texas law to apply and qualify for SIJ status.²² In the *Matter of Menjivar* the Administrative Appeals Unit (AAU) considered whether a child was eligible for Special Immigrant Juvenile Status if, rather than being committed to state custody, the Court designated a family member to serve as the child’s guardian or conservator. The AAU stated:

The court’s placement of the beneficiary in a guardianship situation does not preclude a finding that the beneficiary is dependent on the juvenile court The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished [sic] control of the child, makes the child dependent upon the juvenile court,

abuse or abandonment of the child. Such a finding can be made by the court or an administrative agency. In Florida dependency proceedings, these findings can only be made by a Circuit Court judge, pursuant to Fla. Stat. § 39.5075(4) (2006).

²¹ *S.H. v. D.C.F.*, 880 So. 2d 1279, (Fla. 4th DCA 2004).

²² *In the Matter of Menjivar*, A70117167 A.A.U. 1, 4 (INS Administrative Appeals Unit, Dec. 27, 1994).

whether the child is placed by the court in foster care, or, as here, in a guardianship situation.²³

Menjivar thus established that a child situated in a stable guardianship arrangement could still be eligible for SIJ Status under federal law, although under current Florida law, as interpreted in *S.H. v. DCF*, an undocumented immigrant child placed with a family member is not considered “abandoned” within the meaning of the Florida abandonment statute and thus would be ineligible to petition for SIJ relief.

2. *P.G. v. D.C.F.*²⁴

In *P.G.* an undocumented juvenile was apprehended by the former Immigration and Naturalization Service upon entering the United States, and subsequently released into the custody of his uncle, who lived in Florida. While in immigration removal proceedings, the juvenile petitioned for dependency alleging neglect and abandonment by his parents. The Court held that it lacked jurisdiction due to the fact that the juvenile was in removal proceedings at the time of petition and thus, under INA § 1101, was in the constructive custody of the Attorney General. Thus, an undocumented juvenile paroled to a family member is in the constructive custody of the Attorney General and must gain consent from DHS before the child may seek protection from a juvenile court in order to qualify for SIJ status.²⁵

3. *F.L.M. v. D.C.F.*²⁶

In *F.L.M. v. D.C.F.*, an undocumented orphaned juvenile – living in Florida without any legal custodian or caregiver who was responsible for his welfare – petitioned for a declaratory judgment that he was dependent. The District Court held that because this juvenile had fathered a child, that he was in essence “emancipated” and could no longer be considered a child.²⁷ Still the District Court found that the juvenile would otherwise be considered dependent, given that he lacked a parent, custodian or caregiver responsible for his welfare.²⁸ However, the Fourth DCA on rehearing recognized that although a minor can be considered an adult if he/she marries, no such provision exists for the fathering of children. Therefore, this particular juvenile remained a child under

²³ *Id.*

²⁴ *P.G. v. D.C.F.*, 867 So. 2d 1248 (Fla. 4th DCA 2004).

²⁵ The holding in *P.G.* conflicts with several federal cases concerning consent and SIJ relief. *See, e.g., Gao v. Jenifer*, 185 F.3d 548 (6th Cir. 1999); *Zheng v. Pogash*, 416 F.Supp.2d 550 (S.D.Tex. 2006).

²⁶ *F.L.M. v. D.C.F.*, 912 So. 2d 1264 (Fla. 4th DCA 2006).

²⁷ *Id.* at 1266.

²⁸ *Id.* at 1266-67.

Florida state law. The Court found that, under Fla. Stat. § 39.01(14)(e), “any minor child in Florida without parents or legal guardian is dependent under Florida law.”²⁹

According to Florida law, a child who is dependent is one who is found by the court to be: (a) abandoned, abused or neglected by the child’s parent or legal custodians; (b) to have been surrendered to the department, the former Department of Health and Rehabilitative Services (“HRS”), or a licensed child-placing agency for purpose of adoption; (c) to have been placed with a licensed child-caring or child-licensing agency, adult relative, DCF, or HRS after which placement a case plan expired and the parent(s) or legal custodians have failed to substantially comply with the requirements of the plan; (d) to have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent(s) has signed a consent; (e) to have no parent or legal custodians capable of providing supervision and care; or (f) to be at substantial risk of imminent abuse, abandonment, or neglect by the parent(s) or legal custodians.

C. Immigration Proceedings

Once the juvenile court adjudicates the child dependent, and determines that the child is not a U.S. citizen, there then must be a further determination as to whether it would be in the best interest of the child to remain in the United States. Upon such a determination, a court should then issue an Order Regarding Eligibility for SIJ Status which is based on the following factors: an adjudication of dependency due to abuse, abandonment or neglect,³⁰ a finding that the child is eligible for long-term foster care because reunification with the child’s parents is not a viable option,³¹ a finding that it is not in the child’s best interests to return to his or her home country or county of last habitual residence,³² and that the child remains under the jurisdiction of the juvenile court.³³ Only when a court has signed this order is it then appropriate to petition for SIJS status.³⁴

The following materials will outline the dependency process involved in a special immigrant juvenile case. If, at the end of that process, the judge signs the Order Regarding Eligibility for Special Immigrant Juvenile Status (also known as the “Best Interest Order”),³⁵ an attorney should then file for adjustment of status under the SIJ

²⁹*Id.* at 1268-69.

³⁰ Fla. Stat. § 39.5075(1)(b)(1)(2006).

³¹ Fla. Stat. §§ 39.5075(1)(a) and (b)(2)(2006).

³² Fla. Stat. § 39.5075(1)(b)(3)(2006).

³³ 8 C.F.R. §204.11(c)(5) ; Fla. Stat. § 39.5075(1)(b)(4)(2006).

³⁴ Fla. Stat. § 39.5075(2)-(4)(2006).

³⁵ 8 C.F.R. §204.11(d)(2)(i)-(iii); *See supra* n. 31 and accompanying text; *See* <http://www.refugees.org/article.aspx?id=1559&subm=75&area=Participate&ssm=118> for examples of Best Interest Orders from Miami-Dade. (last visited Mar. 20, 2007).

provision.³⁶ An attorney should append the following documents to the application for adjustment of status:

- (1) The form I-360, supported by:
 - (a) a court order declaring dependency on the juvenile court or placing the juvenile under the custody of an agency or department of the State.
 - (b) a court order deeming the juvenile eligible for long-term foster care due to abuse, neglect, or abandonment.
 - (c) a determination from an administrative or judicial proceeding that it is in the juvenile's best interest not to be returned to his or her country of nationality or last habitual residence.
 - (d) Proof of the juvenile's age. Birth certificate preferable.
 - (e) Fee waiver documents³⁷
 - (f) G-28-Notice of Entry of Appearance as Attorney
- (2) The Form I-485, supported by:
 - (a) Birth certificate or other proof of identity in compliance with 8 CFR §103.2

³⁶ Immigrant children's advocates are currently encountering a number of difficulties from the Miami office of USCIS in relation to SIJ petitions. For example, the Miami Office of USCIS has repeatedly readjudicated cases decided by Miami-Dade juvenile court judges based on their own perceptions of improperly decided adjudications on abuse, abandonment and neglect. Advocates have also encountered situations where their clients' SIJ applicants are denied based on what the Miami Office of USCIS terms their own "federal" standards of abuse, abandonment, and neglect. Upon asking for clarification of these terms, the Miami Office has refused to provide any such information. In addition, the Miami Office has cited to unpublished AAO decisions to support their denials of otherwise ostensibly eligible candidates for SIJ relief. See Letter from the Florida Immigrant Advocacy Center to Cheryl Phillips Re: Adjudication of Petitions for Special Immigrant Juvenile Status, p. 5-6. However, the AAO has recently approved four SIJ petitions filed by the Florida Immigrant Advocacy Center. The decisions are as follows: *Matter of Francisco-Pascual*, A96782472 (AAO 6/5/2007) (upholding the best interest order despite the government's assertion that the youth did not prove her birthdate or citizenship); *Matter of Toussaint*, A96935074 (AAO 6/5/2007) (finding that a child who was found to be eligible for long term foster care prior to turning 18 would continue to be so eligible for SIJ purposes even though the state does not provide foster care to youth older than age 18); *Matter of Saint Preux*, A97634322 (AAO 6/5/2007) (finding that DHS consent to jurisdiction is not required for youth who are in removal proceedings, but not in physical custody of DHS because only those children who have been ordered deported are in constructive custody); and *Matter of Byfield*, A96676675 (AAO 6/5/2007) (finding that a youth whose father is dead and mother had abandoned him was appropriately deemed to be abandoned even though his step mother was caring for him).

³⁷ See Appendix H.

- (b) A sealed medical examination (Form I-639)
 - (c) Two passport photos
 - (d) Evidence of inspection, admission or parole (if available)
 - (e) If the applicant is over 14, he or she must also submit a Form G-325A (Biographic Information)
 - (f) If the applicant has an arrest record, certified copies of the records of disposition must be submitted with the application.
 - (g) If an applicant is applying for a waiver of a ground of inadmissibility that is not automatically waived under § 245(h)(2)(A), he or she must submit a Form I-601 along with supporting documentation (this could include affidavits, letters, press clippings, etc.)
 - (h) G-28-Notice of Entry of Appearance as Attorney
- (3) If the child wants work authorization, also send the following:
- (a) G-28
 - (b) Form I-765
 - (c) Copy of birth certificate
- (4) Order extending jurisdiction past the child's 18th birthday³⁸

The Office of United States Citizenship and Immigration Services (“USCIS”) usually reviews the SIJS petition and the application for adjustment to lawful permanent residency together. The child’s attorney should be prepared to accompany the child through all proceedings, including immigration interviews. If the child’s petition for SIJS is denied, the attorney can appeal to the USCIS Administrative Appeals Office (“AAO”).

D. Benefits and Risks of applying for SIJ Status

1. Benefits

- a. The most important benefit is the potential to obtain lawful permanent resident status (green card). A green card permits an individual to live and work permanently in the United States and to travel in and out of the country.

³⁸ See Appendix I.

Permanent residents are also eligible for some benefits (those that were not curtailed by the 1996 legislation). Additionally, permanent residents can apply for U.S. citizenship after five years.

- b. Lawful permanent residence is permanent, which means that a special immigrant juvenile who attains permanent residency will keep that status long after he or she is under juvenile court jurisdiction. The only reason lawful permanent residence would end would be if the person became deportable for some reason (i.e. conviction as an adult of certain offenses).

2. Risks

- a. The greatest risk to a child applying for SIJ is that if turned down, Immigration and Customs Enforcement (“ICE”) might attempt to remove or deport the child from the United States. When a child files for SIJS, the child alerts immigration officials to the fact that he or she is present in the U.S. illegally. Since these petitions are not confidential, if the SIJS petition and adjustment of status petition are denied, United States Citizenship and Immigration Services (“CIS”) might transfer the file to ICE, which could use that information to place the child into removal proceedings for deportation.
- b. It is essential to ensure that the child is likely to obtain SIJ status before submitting an application so that the application does not result in the issuance of an Order to Show Cause, which commences a removal or deportation proceeding. It is important to note that children ineligible for SIJ status may be eligible to get lawful status in some other way, such as through adoptive U.S. citizen parents before age 16,³⁹ under Violence Against Women Act (“VAWA”) provisions,⁴⁰ or asylum⁴¹ even if the child does not come under juvenile court jurisdiction.

III. Dependency Proceedings for Immigrant Children

A. *Investigating the Facts*⁴²

³⁹ 8 USC § 1101 (a)(5)(b)(1)(F)(i).

⁴⁰ The Violence Against Women Act (VAWA) provisions relating to immigration are codified in section 204(a) of the INA. Rules published in the *Federal Register* explain the eligibility requirements and procedures for filing a self-petition under the VAWA provisions. 8 CFR § 204. The Battered Immigrant Women Protection Act of 2000 (BIWPA) made significant amendments to section 204(a) of the INA.

⁴¹ *See* <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=3a82ef4c766fd010VgnVCM1000000ecd190aRCRD&vgnnextchannel=3a82ef4c766fd010VgnVCM1000000ecd190aRCRD> (last visited June 5, 2007).

⁴² *See* Appendix A.

Immigrant children arrive in the U.S. for a variety of reasons. Many flee to the U.S. because of abuse, abandonment or neglect by their parents in their country; as a result, children who can benefit from SIJ Status can be found anywhere. When an immigrant child is identified as SIJ eligible, the child's safety is the first priority. Next, an immigration attorney should determine what the child's potential options are for lawful immigration status.⁴³

Unlike traditional clients, immigrant children most likely will not trust attorneys or will feel uncomfortable talking about their situations. The attorney's role in deciphering the facts of the child's background is particularly difficult because the questions relevant to an SIJS case are extremely sensitive. The attorney must discuss the child's arrival to the U.S.; the child's living situation; and the family members who may have abused, abandoned and/or neglected the child. In a newly formed attorney-client relationship, the attorney should investigate the facts slowly and delicately. More often than not the children do not trust the attorney because of their unfamiliarity with the boundaries of the representation and their inability to understand the attorney's role as their advocate. Additionally, the child may still love the parent or relative who is the cause of the abandonment, abuse or neglect.⁴⁴

In an effort to not overwhelm the child with a single intensive interview, the attorney must be aware of the age of the child, to ensure that there is no time pressure, like the child's possibly impending eighteenth birthday. The attorney should strive for brevity in each individual meeting, spreading the discussion of the child's background over a series of interviews to ensure the thoroughness of the investigation – the more information the attorney can collect concerning the abandonment, abuse or neglect, the greater likelihood of gleaning sufficient facts central to success of the child's SIJS eligibility. Moreover, an attorney who regularly visits and corresponds with the client reassures the child that the attorney is trustworthy and will see the case through to the end.⁴⁵

B. Petition for Dependency

⁴³ Midwest Immigrant & Human Rights Center, *Special Immigrant Juvenile Status in Illinois*, Mar. 2006, at 7. <http://www.immigrantjustice.org/documents/SIJSTrainingManual2006.pdf> (Last viewed Nov. 30, 2006).

⁴⁴ For useful articles on the need for sensitivity to the psychological needs of vulnerable young clients who may have suffered trauma and may be reluctant to share intimate and painful information with an adult: See Joseph G. Allegretti, *Symposium Issue: Therapeutic Jurisprudence in Clinical Legal Education and Legal Skills: In a Dark Wood: Dante as a Spiritual Guide for Lawyers*, 17 ST. THOMAS L. REV. 875 (2005); Evelyn H. Cruz, *Validation Through Other Means: How Immigration Clinics Can Give Immigrants a Voice When Bureaucracy Has Left Them Speechless*, 17 ST. THOMAS L. REV. 811 (2005); Christopher Nugent, *Whose Children are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children*, 15 B.U. PUB. INT. L.J. 218 (2006); Paul Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLIN. L. REV. 373 (2002).

⁴⁵ See Jean Koh Peters, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (2d ed. 2001).

As noted above, the first step for SIJS eligibility is first being declared dependent on a juvenile court in the U.S. In order for the child’s attorney to seek such adjudication from the court, the attorney must file a petition identifying the child’s parents, if known, the current legal custodians of the child, and specifying the acts or omissions upon which the petition is based. This petition for dependency⁴⁶ must be signed by the attorney asserting that it was prepared in good faith.⁴⁷

1. Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”) Affidavit⁴⁸

The UCCJEA affidavit is a good faith statement by the child’s attorney asserting the court’s jurisdiction over the child’s dependency proceeding. Additionally, the attorney assures the court that he/she is unaware of any potential conflicts with simultaneous custody or dependency proceedings and forum non conveniens.⁴⁹ The UCCJEA affidavit should be attached to the petition for dependency.

2. Venue

Given the frequent mobility inherent in the lives of children eligible for SIJ relief, it is not always clear where venue is proper.⁵⁰ Venue may also be confusing when bringing a case in juvenile court because Chapter 39 of the Florida Statutes (2006), Proceedings Relating to Children, does not actually address venue.⁵¹ In most civil litigation in Florida, venue is appropriately brought where the defendant resides, where the cause of action accrued, or where the property in the litigation is located.⁵² In contrast, case law indicates that in the dependency court context, the overarching determination of whether a particular choice of venue is appropriate is the best interests of the child standard.⁵³ Accordingly, while there may be some flexibility in locating

⁴⁶ See Appendix B for an example.

⁴⁷ Fla. Stat. § 39.501(2006).

⁴⁸ Fla. Stat. § 61.501-542(2006).

⁴⁹ Fla. Stat. § 61.530(2006) and § 61.520(2006).

⁵⁰ Another problem with determining which venue is correct is that conceptually, venue and jurisdiction are often conflated. Venue is the legally proper place where a particular case should be filed or handled. Every state has rules determining the proper venue for different types of lawsuits. Jurisdiction refers to the authority of a court to hear and decide a case.

⁵¹ See *D.M.V. v J.D.M. ex rel. C.F.*, 814 So. 2d 1112, 1115 (Fla. 4th DCA 2002) (observing the absence of a venue provision in chapter 39).

⁵² Fla. Stat. § 47.011(2006).

venue beyond the residence of the child if it is shown to be in the best interests of the child,⁵⁴ venue will ordinarily lie in the juvenile, family or probate court in the county where the child resides.⁵⁵

3. Diligent Search

The petition for dependency must include information about the child's parents if such information is available.⁵⁶ If information about the parents of the child is unknown, the court will conduct a basic inquiry to ensure that every attempt has been made to identify and to serve process on the parents.⁵⁷ If the parent is not served, the court cannot assert jurisdiction over the petition for dependency.⁵⁸ If the attorney fails to find any information about the parents after exhausting all reasonable attempts, the court may proceed with no further notice⁵⁹; however, if some

⁵³ See *K.H. v. D.C.F.*, 846 So.2d 544, 547 (Fla. 3rd DCA 2003) (holding that general venue provisions do not apply to dependency actions because a dependency action is not a "cause of action" as defined under general venue provisions, and such provisions may fail to comport with the best interests of the child standard underlying dependency proceedings).

⁵⁴ The flexibility with regard to venue implied by the absence of a venue provision in chapter 39 is also reflected in another specific Florida statute that affects juveniles. Fla. Stat. §390.01114(4)(a) (2006), Parental Notice of Abortion Act, provides for a minor to petition "any circuit court in a judicial circuit within the jurisdiction of the District Court of Appeal in which she resides" for a waiver of the notice requirements with regard to judicial bypass of parental notification of juvenile abortions in certain circumstances. The legislative intent underlying this flexibility with respect to venue is to promote the ability of minors to cross county lines within the same circuit to ensure access to courts, fairness, due process, and to maintain their right to privacy. Although chapter 39 of the Florida States lacks a similar clear-cut venue provision, the same flexibility with regard to venue can be inferred from chapter 39 and its accompanying rules of juvenile procedure given that the focus remains on promoting the best interests of the child, including the child's right to safety and due process.

⁵⁵ See *K.H.*, 846 So.2d at 547 (holding that venue is properly determined by the regular domicile of the child with an eye toward effectuating the efficient administration of justice). See also Fla. R. Juv. P. 8.205(b), which governs the transfer of cases within the state of Florida and indicates that a petition for dependency may be filed in any circuit, but that the court may then transfer the action to the county of the child's domicile or usual place of residence.

⁵⁶ Fla. Stat. § 39.501(3)(d)(2006).

⁵⁷ See Adoption and Safe Families Act of 1997, 42 U.S.C. §1305, an act to promote the adoption of children in foster care; It is also a good idea to look for the parents in immigration detention in case the parents have not been informed that their children have been taken into state custody.

⁵⁸ This requirement of service on the parents before the court may assert jurisdiction over the case is due to the Constitutional imperatives underpinning the notice and service requirements to parents when their liberty interests are at stake. See *Santosky v. Kramer*, 455 U.S. 745 (1982) (holding that process is a constitutional right to a natural parent at a state-initiated parental rights termination proceeding; the 14th Amendment protects the fundamental liberty interests of natural parents regardless even when they have not been model parents or have lost temporary custody of their child).

⁵⁹ Fla. Stat. § 39.502(2006). See also Fla. Stat. § 61.509(2006).

information is known about the child's parents, the attorney must conduct a diligent search for the child's parents before the juvenile court may assume jurisdiction over the petition for dependency.⁶⁰ Because compliance with the diligent search requirement can be time consuming, it is recommended that attorneys begin the search even before filing the petition.

The diligent search must include, at a minimum, documented inquiries⁶¹ of all relatives of the child's parents; of all offices of program areas likely to have information about the identify or current whereabouts of the parents; of all postal service providers, appropriate law enforcement agencies, state agencies and government agencies.⁶² It is also recommended that the attorney contact the Consul General of the parents' country of origin, and seek any information through print and broadcast media, as well as governmental and non-governmental agencies in the parents' home country, as part of the diligent search process. If the diligent search identifies a natural parent the person must be given the opportunity to become a party to the dependency proceedings.⁶³ The court will be able to assume jurisdiction over the petition for dependency if it accepts the affidavit of diligent search proffered by counsel for the petitioner at the arraignment or adjudicatory hearing.

A parent may consent⁶⁴ to the adjudication of dependency of their children on the juvenile court provided that the consent was entered into knowingly, freely and voluntarily.⁶⁵ Once the parent has been properly served and notified of the hearing, the parent may give a plea of consent to the juvenile court as a basis for the adjudication of dependency.⁶⁶ The parent can also contest the allegations and seek an evidentiary hearing (i.e. an adjudicatory hearing).

C. Arraignment Hearing

The arraignment hearing notifies all parties that the child has filed a petition for dependency. Failure of a person served with notice to personally appear at the hearing constitutes the person's consent to dependency adjudication.⁶⁷ The court also reviews the child's placement at a shelter and/or the child's current living situation.

⁶⁰ Fla. Stat. § 39.503(2006).

⁶¹ See Appendix D.

⁶² Fla. Stat. § 39.503(6)(2006).

⁶³ Fla. Stat. § 39.503(8)(2006).

⁶⁴ See Appendix E.

⁶⁵ Fla. Stat. § 39.501(3)(a)(2006).

⁶⁶ See Appendix E.

⁶⁷ Fla. Stat. § 39.506(3)(2006).

At the conclusion of the arraignment hearing, all parties are notified of the next scheduled hearing.⁶⁸

D. Adjudicatory Hearing

“The adjudicatory hearing is the ‘trial.’”⁶⁹ At an adjudicatory hearing, the juvenile court hears all evidence in the petition for dependency in order to decide whether the child meets the statutory criteria to be adjudicated abused, abandoned and/or neglected.⁷⁰ If the court makes findings that comply with the statutory criteria for a dependency adjudication, or if the parent has consented to the allegations in the petition for dependency, the court adjudicates the child dependent.⁷¹ Florida Statutes § 39.01(14) outlines what it means for a child to be dependent on the court. The burden of proof to adjudicate a child dependent is by a preponderance of evidence, although the court can also, if warranted, make findings by clear and convincing evidence.⁷² The rules of evidence apply in the dependency adjudicatory hearing.⁷³

If at the conclusion of an adjudicatory hearing the court declares the child dependent, the court will schedule the disposition hearing within 30 days. The child may be placed in the care of relatives other than the parents during that time.⁷⁴

E. Dispositional Hearing

A disposition hearing is conducted after the court adjudicates the child to be dependent. At this hearing, the court determines whether the child can remain at the current home, whether the child should be placed in the custody of DCF for temporary shelter or foster care placement, or whether the child should be placed under the legal custody or guardianship of a person other than the parent.⁷⁵ All evidence relevant to the best interest of the child and to the court’s decision regarding disposition of the child is admissible at the dispositional hearing.

⁶⁸ Fla. Stat. § 39.506(9)(2006).

⁶⁹ Fla. Stat §39.507(2006).

⁷⁰ Fla. R. Juv. P. 8.330(a)(2006).

⁷¹ Fla. Stat. § 39.507(2006).

⁷² Fla. R. Juv. P. 8.330(a)(2006). *But see In re D.S.*, 849 So. 2d 411, 414 (Fla. 2d DCA 2003) (holding that although the dependency statute authorizes an adjudication of dependency based on a preponderance of evidence, “rule 8.330(a) gives the trial judge the option to make his or her findings on the subject of dependency either by the preponderance of the evidence or by clear and convincing evidence.”) (internal citations omitted).

⁷³ Fla. Stat. § 8.1-8.120(2006); Fla. R. Juv. P. 8.330(a)(2006).

⁷⁴ Fla. Stat. § 39.507(7)(2006).

⁷⁵ Fla. Stat. § 39.521(2006).

F. Post Dispositional Permanency Planning

Once the court determines the child's disposition, a permanency case plan must be developed to outline the steps that will be taken to achieve stability and permanency for the child. The case plan also defines the role of the child's parents, caregivers, DCF and any others, and the permanent placement goals.⁷⁶ Additionally, the case plan assures that the needs of the child will be met at the child's new permanent placement.⁷⁷

A permanency hearing must be held within the first year after the child was declared dependent on the court. The purpose of this hearing is to determine when the child will achieve permanent placement or whether the court needs to modify the current plan to effectuate the best interest of the child. The court sets permanency goals and their respective planned achievement dates⁷⁸; all services must support the goals set forth by the court.⁷⁹ The permanent placement is intended to continue until the child reaches the age of eighteen.⁸⁰ The following are permanency goals:⁸¹

1. Adoption §39.6011⁸²

A child who is adopted after having been adjudicated dependent on the court is still considered eligible for long-term foster care. As a result, adoption or placement in guardianship will not disqualify a child from obtaining permanent residency through SIJ Status.⁸³

⁷⁶ Fla. Stat. § 39.6011(2006).

⁷⁷ Fla. Stat. § 39.6012(2006).

⁷⁸ Fla.Stat. §39.621(4)(2006) At the permanency hearing, the court shall determine:

- (a) Whether the current permanency goal for the child is appropriate or should be changed;
- (b) When the child will achieve one of the permanency goals; and
- (c) Whether the department has made reasonable efforts to finalize the permanency plan currently in effect.

⁷⁹ Fla. Stat. §39.621(3)(a)(2006) "The report must include a recommended permanency goal for the child, suggest changes to the case plan, if needed, and describe why the recommended goal is in the best interest of the child."

⁸⁰ Fla. Stat. § 39.621(2006).

⁸¹ See *supra* n. 43.

⁸² See *also* Fla. Stat. ch. 63.

⁸³ Fla. Stat. § 39.621(2006).

Adoption is a valid permanency goal for the child as long as the termination of parental rights has been or will be filed with the court.⁸⁴ An adopted child may be able to become a U.S. citizen through naturalization citizenship if the child is under 16 years of age when the Final Judgment of Adoption is entered and the adoptive parents are U.S. citizens.

2. Chapter. 39 Permanent Guardianship

If a court determines that either reunification with the child's parents or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court. A child who is placed in a guardianship situation after having been adjudicated dependent on the court is still considered eligible for long-term foster care. The permanent guardian must be able to provide, at the court's discretion, a safe home for the child and commit to the achievement of the child's case plan.⁸⁵

3. Placement with a fit and willing relative §39.6231

The court wants to recognize familial relationships of the child as potential care givers in order to prevent the child's placement in the foster care system. Again, the relative must be fit and willing to provide for the best interests of the child at the court's discretion. The court requires that the relative petition for a court order determining that the child's placement under the relative's care aligns with the child's case plan.⁸⁶

DCF, through the Relative Caregiver Program, will provide financial assistance to relatives who care for children, subject to certain provisions,⁸⁷ based on available funds.⁸⁸

4. Placement in a planned living arrangement §39.6241

When the court finds that adoption, permanent guardianship or placement with a fit and willing relative is not in the best interest of the child, the court may approve of the

⁸⁴ Fla. Stat. § 39.621(2)(b)(2006).

⁸⁵ CFR § 205.1(a)(iv); *In re Matter of Menjivar*, File A 70 117 167 (INS Administrative Appeals Unit, Dec. 27, 1994).

⁸⁶ Fla. Stat. § 39.6231(2006).

⁸⁷ Fla. Stat. § 39.5085(2)(b)(2006). Caregivers who are relatives and who receive assistance under this section must be capable, as determined by a home study, of providing a physically safe environment and a stable, supportive home for the children under their care, and must assure that the children's well-being is met, including, but not limited to, the provision of immunizations, education, and mental health services as needed.

⁸⁸ Fla. Stat. § 39.5085(2)(a)(2006).

child's placement in another planned permanent living arrangement. The placement must adhere to the best interest of the child as well as the child's case plan.⁸⁹

G. Obtaining the Special/Best Interest Order

Once the court determines that the child is dependent on the court, eligible for long-term foster care and that it is not in the child's best interest to return to his/her country of origin, the attorney should file the motion for SIJS eligibility.⁹⁰ After the judge signs the Order Regarding Eligibility for Special Immigrant Juvenile Status or Best Interest Order, the attorney should have that document stamped by the clerk for inclusion with SIJS and adjustment of status documents that are later filed with CIS.⁹¹

H. Special Issues when Immigrant Children turn 18

For an immigrant child to be eligible for the entry of an Order Regarding SIJ Status, the child must be under the age of 18.⁹² As a result, the attorney must adhere to a strict timeline if the client is approaching the age of majority, i.e., close to turning 18, in order to petition for an adjudication of dependency. After the court adjudicates a child dependent, but before the court loses jurisdiction over the child at the age of 18, it is extremely important that the child should, through counsel, request that that juvenile court extend jurisdiction past the age of majority in order to ensure the final approval of the application for adjustment of status.⁹³ Florida law now expressly authorizes such a Motion for Extension of Jurisdiction to be granted in any case where the application for SIJ status and adjustment of status is expected to be pending past the child's 18th birthday.⁹⁴

When an immigrant child with a permanent placement in the foster care system for at least six months⁹⁵ then turns 18, and is thereupon discharged from the legal custody of DCF, he or she is eligible for benefits and services associated with the Road to Independence ("RTI") Act, including independent living training, funds and other

⁸⁹ Fla. Stat. § 39.6241(2006).

⁹⁰ See *supra* n. 33 and accompanying text. See Appendix G.

⁹¹ *Id.*

⁹² Fla. Stat. § 39.01(12)(2006). "Child" or "youth" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

⁹³ Fla. Stat. § 39.013(2)(2006).

⁹⁴ *Id.*

⁹⁵ Fla. Stat. § 409.1451(2)(b)(2006) "The department shall serve young adults who have reached 18 years of age or were placed with a court-approved nonrelative or guardian after reaching 16 years of age and have spent a minimum of 6 months in foster care pursuant to subsection (5)" § 409.1451(5)(b)(2)(c)(2006).

benefits such as RTI, Aftercare and Transitional services, as long as the youth meets the eligibility criteria for participation in those programs.⁹⁶

IV. Children in DCF custody

A. Immigrant children are entitled to foster care services

Immigrant children are entitled to foster care services pursuant to the Florida Administrative Code. All proceedings undertaken pursuant to Chapters 39, 409 and 415 of the Florida Statutes apply to all children in Florida without regard to alienage or immigration status.⁹⁷

B. DCF/CBC Caseworkers' responsibilities with respect to immigrant children

The responsibilities of DCF and Community Based Care (CBC) private foster care caseworkers with respect to immigrant children are laid out in the Florida Administrative Code, which describes the Procedures for Handling Alien Children Alleged to Be Abused, Neglected or Abandoned.⁹⁸ The administrative rule states in relevant part:

- All calls received by DCF Abuse hotline ("Hotline") will be screened without regard to the immigration status of the alleged victim or the family or household of the victim.

⁹⁶ See discussion *infra* at Part IV. C.1-3. Fla. Stat. § 409.1451(5)(2006) The Road to Independence Program requires the young adult to be either enrolled in a post secondary institution Fla. Stat. § 409.1451(5)(b)(2)(d)(I), or is currently enrolled in an accredited high school Fla. Stat. § 409.1451(5)(b)(2)(d)(II) or an accredited adult education program designed to provide the student with a high school diploma or its equivalent. Fla. Stat. § 409.1451(5)(b)(2)(d)(III). Post secondary institutions under (I) are also institutions which accept students with special diplomas. Recipients must be considered full time by the educational institution Fla. Stat. § 409.1451(5)(b)(2)(i) (I) and maintain "appropriate progress as required by the educational institution" Fla. Stat. § 409.1451(5)(b)(2)(i) (II).

If the young adult does not maintain appropriate progress, he/she is still eligible for transitional funds as long the recipient has a plan outlining how he/she will become self-sufficient. Transitional funds are designed to assist a young adults "own efforts" Fla. Stat. § 409.1451(5)(c)(2006).

The eligibility requirement which addresses the residency status of the student is contained in " Fla. Stat. §409.1451(5)(b)(2)(c)(2006). This subsection states that the student must be a resident of the state as defined in §1009.40. The student must have resided in the state for no less that 1 year preceding the award of aid. This residency must be for purposes other than to obtain an education. This section does not otherwise mention immigration status. Additionally, there is no reference to citizenship contained in the provisions for Transition Support Services.

⁹⁷ Fla. Admin. Code R. 65C-9.001 (2006).

⁹⁸ Fla. Admin. Code R. 65C-9.003 (2006); See also *Ocean v. Kearney*, 123 F.Supp.2d 618 (S.D. Fla. 2000) (former foster care beneficiary stated procedural due process claim against state officials by alleging that he had a property interest in securing legal immigration status with the assistance of DCF).

- A child's immigration status will be determined through SAVE only, and only in an effort to promote the child's best interests which includes ascertaining, in good faith, a child's eligibility for public benefits or need for an SIJ visa.
- No such status check or other contact shall be made for the purpose of seeking the child's or the family's detention by DHS or the initiation or resumption of removal proceedings against the child or the child's family.
- No DCF staff member may attempt to place any alien child in DHS custody.
- The immigration status of a child shall have no bearing on either the care or service rendered by DCF
- In the event an abuse report is determined to be unfounded, DCF shall not thereafter communicate with DHS concerning the child or the child's family.
- Absent an immediate and life-threatening emergency, no call will be accepted by the Hotline for alleged abuse, abandonment, or neglect of an undocumented alien child who is documented to be in DHS custody. Such callers will be referred to the appropriate officials within the U.S. Department of Justice and such referrals should be promptly documented by the Hotline.
- All other calls of alleged abuse, abandonment or neglect will be taken by the Hotline and investigated by DCF, regardless of a child's immigration status.
- DCF Protective Investigators will respond to the scene to determine the safety of the child, without regard to immigration status
- DCF shall not reference a child's alienage, immigration status, or DHS in a dependency petition unless such reference is in good faith material to the grounds for the petition's allegation of abuse, neglect or abandonment.
- DCF is not precluded from, following appointment of legal counsel and a Guardian Ad Litem for the child, requesting the assistance of a private international social service agency in determining the appropriateness of reunification of the child with family members abroad.
- No child shall depart the U.S. under this provision prior to exhaustion of all judicial appeal periods following a court order authorizing same, absent agreement on behalf of the child by his or her counsel.
- DCF shall not seek an extension to the Chapter 39 filing deadline of a dependency petition in order to ascertain a child's immigration status. But, DCF is not precluded from seeking reasonable extensions of time when necessary to promote the best interests of the child.
- When an undocumented or PRUCOL⁹⁹ alien child is adjudicated dependent and deemed eligible for long term foster care and it is determined to be in the child's best interest to remain in the U.S., DCF shall promptly seek a special interest order from the Circuit Court on the child's behalf.
- If DCF determines that such child does not meet the criteria for entry of a special interest order, the DCF official making that decision shall advise the child, if of suitable age, the child's Guardian Ad Litem, and counsel, in writing of the specific

⁹⁹ PRUCOL: (**P**ermanently **R**esiding in the United States **U**nder **C**olor **O**f **L**aw) are any aliens who are residing in the United States with the knowledge and permission or acquiescence of the United States Citizenship and Immigration Services (USCIS) and whose departure from the United States DHS does not contemplate enforcing.

factual or legal basis for the decision. A copy of this notice shall become part of the child's case file.

- DCF shall either (a) directly or pursuant to service contract handle the application for a special juvenile immigrant visa on behalf of a child for whom a special interest order has been obtained or (b) ensure that a volunteer attorney submits the visa application within sixty (60) days of the entry of the special interest order, failing which the obligation to do so shall revert to DCF.
- In the event that a working group or committee is established between DHS and DCF with respect to actual or prospective dependent children who are undocumented or PRUCOL aliens, the district administrator whose district participates in such group or committee shall invite a representative of the Guardian Ad Litem program and legal services or legal aid agency, if any, to at least become an observer, if not a participant of that group or committee.

C. Independent Living services for immigrant children

Undocumented immigrant children in or formerly in foster care are eligible for an array of independent living services designed to provide care and support for self sufficiency after discharging them from state care. They are eligible for services from the following three categories:

1. Aftercare Support Services
2. Road to Independence Program and
3. Transitional Support Services.

For former foster youth in Florida, Chapter 409 of the Florida Statutes outlines three types of services. None of these services directly addresses the immigration status of those applying. Specifically, §409.1451(5) Services for Young Adult Formerly in Foster Care outlines services available to former foster youth between the ages of 18 and 23, at which time they are no longer eligible. These young adults are eligible for three categories of services from DCF. Eligibility for these services is contained in each subsection which describes the services.

Section 409.1451(5)(a) provides for Aftercare Support Services. These services are available to assist young adults who were formerly in foster care in their efforts to continue to develop the skills necessary for independent living. The young adult's Community Based Care (CBC) provider helps determine which services should be provided through an aftercare services assessment. Also included in this section is a provision for temporary assistance to prevent homelessness.¹⁰⁰ This section contains no

¹⁰⁰ Fla. Stat. §409.1451(5)(a)(2)(2006).

reference to citizenship status. Any young adult between 18 and 23, regardless of immigration status, is eligible for these services.¹⁰¹

Section 409.1451(5)(b) provides for the Road to Independence Program. This program is intended to help eligible students who are former foster children in Florida obtain benefits in order to receive the education and vocational training needed to achieve independence. The amount of funding is determined on a case by case basis and is not to exceed a rate of 40-hour-a-week federal minimum wage job earnings. Subsection (b)(2) sets forth specific eligibility requirements for receipt of these funds. The young adult must have reached 18, request awards between the ages of 18 and 21, and may receive this funding until age 23.¹⁰² The young adult must also have been a dependent child, under Chapter 39 and living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday;¹⁰³ spent at least six months living in foster care before reaching his or her 18th birthday;¹⁰⁴ and must meet certain educational criteria which are contained in §409.1451(5)(b)(2)(d).

The eligibility requirement which addresses the residency status of the student is contained in §409.1451(5)(b)(2)(c). This subsection states that the student must be a resident of the state as defined in §1009.40. This references the statutes titled “General requirements for student eligibility for state financial aid.”¹⁰⁵ The student must have resided in the state for no less that one year preceding the award of aid. This residency in Florida must be for purposes other than to obtain in-state tuition. Residency status for purposes of receiving state financial aid awards is determined in the same manner as resident status for tuition purposes which is determined pursuant to §1009.21 and the rules of the State Board of Education.¹⁰⁶ Former foster youth are exempt from fees for certain post-secondary education under §1009.25. There are no immigration status, conditions or references contained in this section.

Subsection (c) provides former foster youth with Transition Support Services. This stipend is for short-term funding and services, which may include financial, housing, counseling, employment, education, mental health, disability, and other services, provided that the young adult demonstrates that the services are critical to the young adult’s own efforts to achieve self-sufficiency and to develop a personal support system. These funds are administered by the young adult’s Community Based Care provider. A young adult formerly in foster care is eligible to apply for these services at the age of 18

¹⁰¹ Fla. Stat. §409.1451(5)(a)(3)(2006).

¹⁰² Fla. Stat. §409.1451(5)(b)(2)(2006).

¹⁰³ Fla. Stat. §409.1451(5)(b)(2)(a)(2006).

¹⁰⁴ Fla. Stat. §409.1451(5)(b)(2)(b)(2006).

¹⁰⁵ Fla. Stat. §1009.40(1)(a)(2006).

¹⁰⁶ Fla. Stat. §1009.40(1)(a)(2)(2006).

before turning 23, if he/she was a dependent child pursuant to chapter 39, was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday, and had spent at least 6 months living in foster care before that date.¹⁰⁷ There is no reference to citizenship contained in the provisions for Transition Support Services.

V. Other Special Considerations

A. Confidentiality

Federal confidentiality laws mandate that juvenile courts protect confidential information about an undocumented child's abuse, abandonment or neglect. State courts may not disseminate such information to federal immigration authorities.¹⁰⁸ Preserving a child's confidential information is especially important given the current climate of the USCIS's tendency to second-guess the SIJ petitions. The USCIS has made burdensome requests for dependency court records other than the SIJ, Best Interest Order, and adjudication of dependency. Such information is confidential, and must remain so to protect a dependent juvenile from potential harm or abuse.

1. CAPTA.

a. Florida receives grants under the Child Abuse Prevention and Treatment Act ("CAPTA"), which requires that states receiving such federal grants must provide methods to preserve the confidentiality of "*all records* in order to protect the rights of the child, his parent or guardians."¹⁰⁹ Accordingly, Florida must preserve the confidentiality of juvenile court dependency and child welfare agency records. Florida state court judges and personnel must be cautious not to jeopardize Florida's right to continue receiving CAPTA funding.

b CAPTA Amendments – Since 1992, the CAPTA standard mandates that states receiving CAPTA funding may not release a child's records unless such a breach of confidentiality occurs in order "to save a child or for a legitimate state interest."

2. AACWA.

a. Similarly, the Adoption Assistance and Child Welfare Act ("AACWA"), requires Florida to restrict "disclosure of information concerning individuals" in the child protection and foster care system.¹¹⁰

¹⁰⁷ Fla. Stat. §409.1451(5)(c)(2)(2006).

¹⁰⁸ See Gregory Zhong Tian Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Immigrant Children under the Special Immigrant Juvenile Statute*, 27 HASTINGS CONST. L. Q. 597, 626 (2000).

¹⁰⁹ CAPTA, Pub. L. No. 93-247, 88 Stat. 4 (1974)(codified as amended at 42 U.S.C. §5101 et seq. (Supp. II 1996)); 42 U.S.C. §5106a(b)(2)(A)(v)(emphasis added).

¹¹⁰ See generally Laura Cohen, *Section III: Developments in the United States: Kids, Courts and Cameras: New Challenges for Juvenile Defenders*, 18 QUINNIPIAC L. REV. 701, 717 (1999)("Records relating to child

b. Under AACWA, Florida courts can disseminate such information *only* 1) to another governmental agency and 2) for purposes “directly connected with the administration” of the child’s foster care permanency plan.¹¹¹

B. Dispelling the Myth that SIJ Status is Overused in Florida

Some judges and occasionally DCF counsel have claimed that undocumented children “abuse” the dependency court process by filing petitions solely to qualify for SIJ Status. However, the small number of claims each year belies this assertion. Given its geographical placement, Florida has historically welcomed large numbers of immigrants from Latin America and the Caribbean. In 2005, USCIS granted legal resident status to the third largest number of immigrants in Florida, approximately 11 percent of the total,¹¹² behind only California and New York. That said, unaccompanied minors make up a mere fraction of that number. As noted above, less than one tenth of one percent of minors are granted a J Visa each year pursuant to the Special Immigrant Juvenile Statute and only a fraction of those will receive such visa by way of a dependency petition filed in Florida. Furthermore, some of the children who are admitted after obtaining a dependency order from the Florida juvenile courts will not be seeking benefits from the state, and, thus, place only a negligible burden on the state and its agencies.¹¹³

Moreover, DCF itself has suggested, in analyzing the proposed legislation to permit extended court jurisdiction of SIJS petitioners, that the state of Florida could *benefit* financially from the legislation that enhances the ability of undocumented minors to obtain permanent residency status. Pursuant to §39.5075 of the Florida Statutes, the Florida legislature has, *inter alia*, extended the juvenile courts’ jurisdiction over older immigrant children whose dependency petitions were filed but were not yet granted by the time the child reached his or her eighteenth birthday. In connection with the creation of this new legislation, DCF projected that there would be “no fiscal impact as a result of this bill[,]” and that “the bill may be slightly revenue-positive, as Florida cannot be federally reimbursed for foster care services to children who are non-documented aliens, but can be so reimbursed for those who achieve permanent residency status.”¹¹⁴

C. Representing immigrant clients

protective, preventive, and foster care services are subject to strict confidentiality rules of the federal Adoption Assistance and Child Welfare Act (AACWA) and the Child Abuse Prevention and Treatment Act (CAPTA).” Pub. L. No. 96-272, 94 Stat. 500 (codified at 42 U.S.C. §§670-679 (1994)).

¹¹¹ See 42 U.S.C. §671(a)(8).

¹¹² In 2005, 122,918 immigrants were granted legal resident status in the state of Florida, approximately two-thirds of which reside in the core area of Miami, Miami Beach, and Fort Lauderdale. See 2005 YEARBOOK OF IMMIGRATION STATISTICS (November 2006).

¹¹³ See, e.g., Carolyn S. Salisbury, *The Legality of Denying State Foster Care to Illegal Alien Children: Are Abused and Abandoned Children the First Casualties in America’s War on Immigration?*, 50 U. MIAMI L. REV. 633, 649 (1996) (arguing that given the extremely low number of dependent immigrant children, their exclusion from foster care would not improve the quality of the system).

¹¹⁴ Fla. S. Comm. on CF for SB 498 (2005) Staff Analysis (Feb. 2, 2005), at 4.

SIJs are children deemed dependents of the court who seek a special visa to allow them to remain in the United States. The overarching factor a court must consider when dealing with SIJ issues is the likelihood that the immigrant child has been abused, abandoned, or neglected by his or her parents and/or guardians and is at risk of harm or neglect. Therefore, SIJ cases require specialized attention and sensitivity, both by the judiciary as well as by other court personnel, including DCF and its legal counsel.

When representing an immigrant child, an advocate should explain the purpose and scope of the representation during the initial client interview, being careful to avoid legalese.¹¹⁵ It is very important that the advocate distinguish his or her role from that of the government, and emphasize the confidentiality of the communications between the advocate and the client.¹¹⁶ The advocate should begin the interview by building trust and rapport with the client by asking questions about the child's country, culture, cuisine, and hobbies.¹¹⁷ After establishing the basis for a trusting relationship, the advocate may address the legal issue for which the client is seeking the advocate's help.¹¹⁸ The attorney may then choose to provide the client with a basic framework of immigration law before delving into questions. Open ended questions should be used to gain a basic understanding of the client's story. Then, an advocate can seek to "fill in the gaps" of the facts needed to prove the legal claim by asking more tailored questions. Explaining the context of these questions may facilitate disclosure. It is important that the advocate remain sensitive to the background and current sensitivities of the client during the more tailored questions in order to keep communication flowing. An advocate should demonstrate respect and empathy by affirming the child's responses when appropriate.¹¹⁹ These interviewing and counseling skills are not only important for building trust and rapport with the client; they are essential for discovering the facts that could lead to success in the client's case.

The applicable statutes and legislative history evidence strong federal and state policies in favor of assisting unaccompanied minors who meet certain requirements, and family courts, attorneys, and DCF alike should be mindful of this message from law makers. In many cases, the dependency proceeding will be the only source of relief for these children, who have been abandoned, abused and/or neglected by their parents and, for the most part, are unrepresented. Accordingly, attorneys, officers of the court and

¹¹⁵ It is important to avoid legalese and tailor the conversation to the client's conceptual and linguistic capacities. See generally Christopher Nugent and Steven Schulman, *Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children*, 78:39 INTERPRETER RELEASES 1569, 1575-78(Oct. 8, 2001).

¹¹⁶ *Id.* at 1577.

¹¹⁷ *Id.* at 1577-78.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 1576.

others involved in dependency proceedings should be sensitive to the needs and concerns of unaccompanied immigrant children.

APPENDIX:

A. *Relevant State Law*

1) **Dependent**¹²⁰

Under Florida law, for a child to be considered dependent, he or she must have been:

(a) abandoned, abused or neglected by the child’s parent or parents or legal custodians;

(b) to have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;

(c) to have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;

¹²⁰ Fla. Stat. § 39.01(14) Fla. Stat. (2006). *See, e.g., E.M.A. v. Dep’t. of Children and Families*, 795 So.2d 183 at 187 (Fla. 1st DCA 2001) (discussing that “the mere possibility of future abuse, neglect, or abandonment will not support a finding of dependency” and exploring what constitutes a “substantial risk of imminent abuse or imminent neglect”); *see R.F. v. Fla. Dep’t. of Children and Families*, 770 So.2d at 1194 (finding that the fact that a ‘parent committed a sex act on one child does not by itself constitute proof that the parent poses a substantial risk of imminent abuse or neglect to the child’s sibling.” The court stated that “while the commission of such an act may be highly relevant, it is not automatically dispositive on the issue of dependency.”)

(d) to have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

(e) to have no parent or legal custodians capable of providing supervision and care; or

(f) to be at substantial risk of imminent abuse, abandonment or neglect by the parent or parents or legal custodians.”

2) Abandoned¹²¹

Florida law states that an abandoned child is one found in:

a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver responsible for the child's welfare, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If the efforts of such parent or legal custodian, or caregiver primarily responsible for the child's welfare, to support and communicate with the child are, in the opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. The term ‘abandoned’ does not include an abandoned newborn infant as described in §383.50, a ‘child in need of services’ as defined in chapter 984, or a ‘family in need of services’ as defined in chapter 984. The incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.¹²²

¹²¹ See, e.g., *In re M.K.S.*, 726 So.2d 309 (Fla. 2nd DCA1998) (holding that evidence, presented in proceeding to adjudicate child dependent after the mother’s death, that father made sporadic child support payments after he and mother were divorced, maintained telephone contact but did not personally visit daughter, and would allow daughter to remain in contact with maternal relatives with whom daughter lived while mother was ill, was insufficient to support finding that father had abandoned daughter, as would warrant finding child dependent.); *F.G. v. Dep’t of Children and Families*, 820 So.2d 1027 (Fla. 4th DCA 2002)(holding that child should be adjudicated dependent based on abandonment where father’s long-term incarceration coupled with the mother’s abusive conduct which placed the child at risk constituted abandonment and finding that the incarceration of minor child's parent is a factor to be considered together with other facts to determine whether clear and convincing evidence of abandonment exists to support dependency adjudication).

¹²² Fla. Stat. § 39.01(14)(a)(2) Fla. Stat. (2006).

3) Abuse¹²³

Florida law provides that abuse arises from:

any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

4) Neglect¹²⁴

Florida law set forth that neglect:

occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child shall not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:

¹²³ See, e.g., *P.C. v. D.C.F.*, 898 So. 2d 195 (Fla. 2d DCA 2005) (holding that a mother's act of throwing a plastic jug at a child on one occasion and physically disciplining her on another occasion did not constitute abuse because the child did not require medical attention or have her physical, mental, or emotional health significantly impaired); *T.G. v. D.C.F.*, 927 So. 2d 104 (Fla. 1st DCA 2006) (determining that parental corporal discipline, by itself does not constitute abuse; to constitute abuse, corporal discipline must be inappropriate or excessively harsh and likely to result in physical, mental, or emotional injury to a child).

¹²⁴ See *D.D. v. Dep't of Children and Families*, 773 So.2d 615 (Fla. 5th DCA 2000) (holding that evidence was sufficient to find prospective neglect so as to support a finding of dependency of five-year-old child, even in absence of medical or other expert testimony, where the child witnessed his father abuse his mother, and child's parents were more likely than not to resume their relationship in future and, thus, resume cycle of domestic violence in presence of child.); *D.H. v. Dep't of Children and Families*, 769 So.2d 424 (Fla. 4th DCA 2000) (finding that evidence did not support an adjudication of dependency based upon the probability of prospective abuse of child, despite evidence of an incident of abuse inflicted by the father on the child's half-sister, because there was no nexus proven between the act of abuse toward the half-sister for whom the father is a caregiver, and any prospective abuse to the child).

(a) medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or

(b) treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

Neglect of a child includes acts or omissions.¹²⁵

5) Juvenile Court:¹²⁶ Court located in U.S. having jurisdiction under State law to make judicial determinations about custody and care of juveniles.

6) Eligible for long-term foster care:¹²⁷ determination that family reunification is no longer a viable option. A child placed in guardianship after having been found dependent continues to be eligible for long-term foster care.

7) Relative Caregiver¹²⁸

(a) A relative caregiver is a relative within the third degree by blood or marriage to the parent; or the stepparent of a child if the stepparent is currently married to the parent of the child and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent jurisdiction involving one or both of the child's parents as an adverse party.

(b) The biological parents of these children often provided for their care by placing them temporarily with this extended family member who can better care for them.

(c) The relative caregiver must provide for the welfare of the minor child who is living with them.

8) Temporary Custody¹²⁹

¹²⁵ Fla. Stat. §39.01(43)(b)(2006).

¹²⁶ 8 C.F.R. § 204.11(a).

¹²⁷ Id.

¹²⁸ Fla. Stat. § 751.011(1), (2)(2006).

¹²⁹ Fla. Stat. § 751.01(2006).

(1) “Temporary custody” occurs when the relative caregiver maintains the physical custody of the extended family member, minor child. A temporary custodian lacks a legal document that explains and defines their relationship to the child, and is unable effectively to consent to the care of the child by third parties.

(2) A temporary custodian of a minor child to a family member may:

(a) Consent to all necessary and reasonable medical and dental care for the child, including non-emergency surgery and psychiatric care;

(b) Secure copies of the child's records, held by third parties, that are necessary to the care of the child, including, but not limited to:

i. Medical, dental, and psychiatric records;

ii. Birth certificates and other records; and

iii. Educational records;

(c) Enroll the child in school and grant or withhold consent for a child to be tested or placed in special school programs, including exceptional education; and

(d) Do all other things necessary for the care of the child.

B. Relevant Federal Law

1. INA § 101(a)(27)(J)(iii), 8 USC § 1101(a)(27)(iii)

(J) an immigrant who is present in the United States--

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status; except that--

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

2. 8 CFR § 204.11

a) Definitions.

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) Petition for special immigrant juvenile. An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

(1) Who may file. The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) Where to file. The petition must be filed at the district office of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence in the United States.

(c) Eligibility. An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or

(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

(d) Initial documents which must be submitted in support of the petition.

(1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) Decision. The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate

Commissioner, Examinations, in accordance with part 103 of this chapter.

C. Legal Resources

i. Fee Waivers

a. Pursuant to 8 C.F.R. 103.7(c), SIJ applicants may be eligible for fee waivers for forms I-360, I-485 and I-765. Humanitarian or compassionate reasons are given weight.¹³⁰

ii. Legal agencies to consult for assistance with bringing an SIJ petition

a. The Florida Immigrant Advocacy Center (FIAC)¹³¹

FIAC protects and promotes the basic human rights of immigrants in Florida through direct representation of individual clients and impact advocacy efforts. These efforts include (i) litigation and other advocacy relating to, among others, policies adversely affecting immigrants, (ii) participation in administrative rule-making, (iii) conducting investigative reports, (iv) promoting research and public education on the rights of immigrants, (v) assisting other Florida agencies in their advocacy efforts, and (vi) representation of immigrant children with an emphasis on Special Immigrant Juveniles (SIJs).

b. Catholic Charities Legal Services¹³²

Their mission is to provide legal services for those who come to South Florida from foreign lands and assistance for those who lack sufficient means to obtain legal help. The services are provided without regard to race, religion, or ethnic origin. Catholic Charities specializes in providing immigration services and attorney representation before the Department of Homeland Security, the Immigration Courts and the Board of Immigration Appeals. This experience could help practitioners to navigate through the regulations of the Immigration and Nationality Act (“INA”) and the procedures of DHS and the Immigration court system. They could assist with both general immigration services as well as immigration litigation.

c. Church World Service¹³³

Their mission: Christians working together with partners to eradicate hunger and poverty and to promote peace and justice around the world. The Miami affiliate of CWS provides immigration legal services. CWS Miami provided free or nominal fee

¹³⁰ *But see* n. 34, *supra*.

¹³¹ <http://www.fiacfla.org/> (last visited Sept. 24, 2006). Contact: Cheryl Little, Executive Director; 3000 Biscayne Boulevard, Suite 400, Miami, FL 33137; Telephone 305-573-1106.

¹³² <http://www.cclsmiami.org/index.shtml> (last visited Sept. 10, 2006). Contact: Randy McGrorty, Executive Director; 7101 Biscayne Boulevard, Miami, FL 33318; Telephone 305-758-3301.

¹³³ Church World Service, <http://www.churchworldservice.org/Immigration/miami/index.html> (last visited Sept. 10, 2006). Contact: Virginia Coto, Director; 1924 NW 84 Avenue, Miami, FL 33126; Telephone 305-774-6770.

immigration legal services to 7,706 individuals in 2005. The Legal Program provides newly arrived immigrants with free or very low cost legal assistance and representation in immigration matters. The Legal Program has a grant that is funded through DCF's Office of Refugee Services to assist Cuban and Haitian entrants, asylees, and refugees. Services are provided free of charge to those clients who meet the eligibility requirements. Low-cost legal assistance is available for all immigrants and refugees and includes individual court representation in immigration matters, assistance with applying for legal permanent residency, asylum applications, and naturalization. Again, if willing to help, CWS has extensive experience in immigration law that could aid a practitioner in figuring out the rules, regulations, and procedures when seeking to represent children in SIJS petitions.

d. **Children & Youth Law Clinic (CYLC), University of Miami School of Law**¹³⁴

The Clinic primarily serves the legal needs of children in the foster care system in dependency, health care, mental health, disability, independent living, education, immigration and other general civil legal matters, ensuring that they have a voice in the court proceedings, and engaging in impact litigation, law reform advocacy and community lawyering. The Children & Youth Law Clinic helps Florida's foster youths avoid dire outcomes by helping them get the support they need from state government to make the difficult transition to self-sufficient adulthood. The Clinic also seeks to instill in students a sense of ethics and professionalism and encourages them to pursue public interest law careers or to devote substantial portions of their legal practices to providing pro bono legal assistance to the poor.

CYLC is an in-house, live client clinic where approximately fifteen student interns each semester provide direct legal services to foster care youth in a range of legal matters, with the supervision of two clinical instructors who are licensed Florida attorneys, and a third attorney awarded a two-year fellowship. The Clinic has experience dealing with children's immigration issues and could provide guidance to a practitioner seeking to represent children in SIJS petitions.

e. **Catholic Legal Immigration Network, Inc. (CLINIC)**¹³⁵

Their mission is "to enhance and expand delivery of legal services to indigent and low-income immigrants principally through diocesan immigration programs and to meet the immigration needs identified by the Catholic Church in the United States." CLINIC

¹³⁴ Children & Youth Law Clinic, <http://www.law.miami.edu/cylc/clinic/mission.html> (last visited Sept. 10, 2006). Contact: Children & Youth Law Clinic, University of Miami School of Law; 1311 Miller Drive, Suite F305, Coral Gables, FL 33146 ; Phone: 305-284-3123, Fax: 305-284-4384.

¹³⁵ CLINIC, <http://www.cliniclegal.org/Advocacy.html> (last visited Sept. 24, 2006). Local Contact: Jill Sheldon, Miami Field Office Attorney(305-789-9907); General Contact: 415 Michigan Ave., NE, Suite 150, Washington, DC 20017, 202.635.2556, 202.635.2649 fax.

seeks to improve the practices of DHS and EOIR through its diverse advocacy programs that range from “alternatives to detention” to “voter registration”.

f. **Florida International University (FIU) College of Law Carlos A. Costa Immigration and Human Rights Clinic**¹³⁶

The Carlos A. Costa Immigration and Human Rights Clinic at the Florida International University College of Law utilizes student advocacy to represent immigrants of all nationalities in various immigration matters. The Clinic’s clients include refugees seeking asylum in the United States as a result of political persecution in their countries of origin; Cuban and Haitian nationals seeking relief under country-specific immigration legislation; and other vulnerable populations, such as abused spouses and children, unaccompanied minors, and aliens subject to immigration detention. Representation occurs in adversarial administrative hearings before immigration judges; in non-adversarial agency interviews; in appeals to the Board of Immigration Appeals; and, as necessary, in appeals to the federal courts and to international bodies.

g. **St. Thomas University School of Law Immigration Clinic**¹³⁷

Their mission “is to inspire in law students a long-life commitment to serve uprooted persons at the margins of society, to enable students to challenge and address those human structures and institutions that divide communities and foster discrimination against newcomers, and to give students the legal, ethical, and moral tools they need to provide high quality immigration legal services to families and individuals in need so that they may participate fully in society.”

h. **American Friends Service Committee (AFSC)**¹³⁸

Their mission includes “a practical expression of the faith of the Religious Society of Friends (Quakers). Committed to the principles of nonviolence and justice, it seeks in its work and witness to draw on the transforming power of love, human and divine.”

¹³⁶ FIU Immigration and Human Rights Clinic, http://law.fiu.edu/legal_clinic/carlos_costa.htm (last visited Sept 24, 2006). Contact: Troy Elder or Jennifer Volmar, Florida International University, University Park, Miami, FL 33199. Telephone 305-348-7541

¹³⁷ St. Thomas Immigration Clinic, <http://www.stu.edu/full-time-faculty-article-1439.html#37> (last visited May 9, 2007). Contact: Michael S. Vastine, Director, Immigration Clinic, St. Thomas University School of Law, 16401 NW 37th Avenue, Miami Gardens, Florida 33054. Telephone (305) 623-2340

¹³⁸ American Friends Service Committee: <http://www.afsc.org/default.htm> (Last visited Oct. 4, 2006). Contact: Jeanette Smith, Program Director, 10700 Caribbean Boulevard, Suite 301, South Dade Office, Tower 1, Miami, FL 33189, Telephone 305-252-6441

This AFSC community works to transform conditions and relationships in the world and which threaten what is precious in human beings. AFSC “nurtures the faith that conflicts can be resolved nonviolently, that enmity can be transformed into friendship, strife into cooperation, poverty into well-being, and injustice into dignity and participation.” AFSC “believes that ultimately goodness can prevail over evil, and oppression in all its many forms can give way.”

i. **International Rescue Committee (IRC)**¹³⁹

In addition to integrating refugees into the U.S., IRC offers a wide array of legal immigration services. The IRC sponsors an immigration orientation that eases the transition of newly arriving refugees. This orientation includes a handbook that teaches the naturalization, status adjustment, and other immigration processes. Furthermore, IRC provides direct services that include: assist with applications/petitions; adjustment of status; green card/citizenship group processing; and more. IRC advocates accompany clients to INS interviews as well as other outreach efforts for individual refugee cases.

j. **World Relief (WR)**¹⁴⁰

World Relief provides services to immigrants ranging from immigration legal advice and representation to English for Speakers of Other Languages (ESOL) to advocacy on refugee and immigration law and policy.

k. **Columbian American Service Association (CASA)**¹⁴¹

Immigration Assistance provides services that include preparation of immigration forms and guidance on the processes. CASA certified paralegals, under the supervision of a team of volunteer attorneys and vast legal resources, provide the legal assistance to immigrant clients.

l. **Fann Ayisyen Nan Miyami, Inc. (FANM)**¹⁴²

¹³⁹ International Rescue Committee: <http://www.theirc.org/> (Last visited Oct. 4, 2006). Contact: Leslye Boban, Director, 2750 Coral Way, Suite 200, Miami, FL 33145, Telephone 305-444-1417

¹⁴⁰ World Relief: <http://www.wr.org/ourwork/whatwedo/immigrantassistance.asp> (Last visited Oct. 4, 2006). Contact: Gregg Davis, Florida Director, 2150 SW 8th Street, Miami, FL 33135. Telephone 305-541-8320

¹⁴¹ Columbian American Service Association: http://www.casa-usa.org/programs_icare.htm#assistance (Last visited Oct. 4, 2006). Contact: Juan Carlos Zapata, Acting Director, 8500 SW 8th Street, Suite 218, Miami, FL 33144, Telephone 305-448-2272.

¹⁴² Fann Ayisyen Nan Miyami, Inc.: http://www.fanm.org/services/immigration_citizenship/index.html (Last visited Oct. 4, 2006). Contact: Marleine Bastien, Director, 7900 NE 2nd Avenue, 7th floor, Miami, FL 33138, Telephone 305-756-8050

The Immigration Advocacy and Citizenship section “focuses on public policy issues surrounding Haitian detainees, entrants, refugees, and asylees, meeting with the media, our elected officials, INS staff, and other ethnic groups and organizations that share our views and concerns surrounding unfair treatment of entrants into the United States, especially Haitian, educating the community about the current state of immigration via radio, assisting entrants with completion of INS applications, conducting workshops and presentations on immigration issues and citizenship procedures and completing citizenship documents, teaching civic education and English literacy classes

Special Immigrant Juvenile Status checklist¹⁴³

1. To proceed on a SIJ claim, follow the following steps:

- File UCCJEA, parental consent (or affidavit of diligent search) and petition for dependency in juvenile court, bring adjudicatory order (of dependency) for judge to sign if approved.
- File a predispositional report, case plan and home study for the child.
- File petition for permanency arrangement (motion for a permanent guardianship, adoption, etc.) and bring order for judge to sign if approved.
- File petition for Special Immigrant Juvenile Status, bring special/best interest order for judge to sign if approved.
- Upon receipt of special interest order, begin immigration paperwork component of SIJ which includes the following:

Packet 1:

- Cover page on top
- G-28-Notice of Entry of Appearance as Attorney (print on green paper)
- I-360 SIJ application
- Copy of birth certificate with English translation

¹⁴³ Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J).

- Copy of special/best interest order
- Filing fee (or include documents for fee waiver, See Appendix H)

Packet 2:

- G-28 Notice of Entry of Appearance as Attorney (print on green paper)
- I-485 form (Adjustment application)
- Copy of birth certificate with English translation
- Police clearance letter if the child is 14 or older (obtain from the clerk's office in Juvenile Court)
- Certified copy of all arrest affidavits and court dispositions for every arrest (including juvenile delinquencies)
- Medical Examination by a certified civil surgeon
- Form G-325 (biographical information)
- Two photographs
- Filing fee (or fee waiver documents)

Packet 3:

If the child wants a work authorization, also send:

G-28

Form I-765

Copy of birth certificate

- File petition for extension of jurisdiction and receive order if child is close to age 18 and immigration paperwork has been or will soon be filed.

**FORMS APPENDIX
APPENDIX A**

**CLIENT QUESTIONNAIRE
FOR J-VISA/DEPENDENCY CASES**

CHILD'S BIOGRAPHICAL DATA:

1. Full Name _____
2. Date of Birth _____ Place of Birth _____
3. Nationality _____
4. Marital Status _____
5. Any Children? _____

6. Current Address _____

7. Current School _____ Grade _____
8. Current Employment _____ Since _____
9. Social Security _____ Work Authorization Only? _____
10. I-94 Number _____ Alien Registration Number _____
11. Date of last entry into US? _____
12. Place of last entry into US? _____
13. Manner of entry into US? _____
14. Current Immigration Status? _____

15. Is child currently in Immigration Proceedings? _____

16. Type of Immigration Proceedings? (Exclusion, Etc.) _____

17. Does child have representation for Immigration Court? _____

Who and what
firm/organization? _____

18. Does child have a passport? _____

Country _____

19. Does child have a visa? _____ Type _____ Country _____

20. Child's Residence Last Five (5) Years:

21. Child's last residence outside the

US: _____

22. Child's employment last five (5) years:

23. Child's Education:

CHILD'S PARENTS:

1. Father's Name: _____ Father's D.O.B _____

2. Father's Place of Birth:

3. Father's Death (If applicable):

Date: _____ Place: _____

4. Date child last saw father: _____ Place: _____

5. Does child receive any contact from father? _____ If so, explain _____

How often? _____ What manner? _____

6. Does child receive any financial support from father? _____

How often? _____ How Much? _____

7. Does father know the child is in the United States? _____

8. Current/last known address of

father: _____

9. Mother's Name: _____ Mother's D.O.B _____

10. Mother's Place of Birth:

11. Mother's Death (If applicable):

Date: _____ Place: _____

12. Date child last saw mother: _____ Place: _____

13. Does child receive any contact from mother? _____ If so, explain

How often? _____ What manner? _____

14. Does child receive any financial support from mother? _____

How often? _____ How Much? _____

15. Does mother know the child is in the United States?

16. Current/last known address of mother:

17. Any siblings? _____ State names(s), ages, sex, full/half/step, addresses:

18. Any other family in United States? _____ State names, addresses and relationship to child:

19. Does the child currently reside with relative?: _____

State name, address, phone and relationship to child:

20. Does the current relative/provider (if applicable) meet needs of child? What is your yearly income? Number of persons in family/household?

DOCUMENTATION:

1. Copy of child's birth certificate? _____
2. Language of birth certificate? _____ Translation provided? _____
3. If no copy of birth certificate, can child obtain an official copy? _____
4. If no record of birth can someone verify child's age? _____
5. Passport? _____ Country Issued? _____
6. Death certificate(s) for parents available? _____

7. If parent(s) are deceased, and no documentation is available, will child sign affidavit stating death(s) of parent(s) with date(s), place(s) and the circumstances of the death(s)? _____

IMMIGRATION ISSUES:

1. In what manner did child arrive in United States? _____

2. Date and location of last entry? _____

3. Was child inspected by the INS? _____ Where? _____

4. Was child detained? _____ Where? _____ Dates: _____

5. Is the child in an INS proceeding? _____ Exclusion or Deportation? _____

6. Does child have legal representation for immigration proceedings? _____

Who? _____ Organization? _____

7. Passport?

8. Visa?

9. I94?

10. What motivated the child to come to the United States?

11. Any abuse(s) in background? Prior to arrival in US? In the US? Please explain:

12. Orphaned? Abandoned? Please explain circumstances.

13. Circumstances/consequences if child returns to native country:

14. Please explain any criminal activity, both in the US and prior to arrival:

15. Any drugs and/or alcohol use/abuse? Please describe:

16. Problems/issues in school? Please describe:

PERSONAL / SPECIAL NEEDS:

1. Medical Issues:

2. School/academic Issues:

3. Any other special needs to be addressed:

APPENDIX B
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR MIAMI-DADE COUNTY
JUVENILE DIVISION

In the interest of:

CLIENT X
DOB: XX/XX/XXXX

CASE NO.:

A minor child.

_____ /

PETITION FOR ADJUDICATION OF DEPENDENCY

COMES NOW Petitioner **CLIENT X'S ATTORNEY**,¹⁴⁴ attorney for the minor child, **CLIENT**, hereby files this Petition for Adjudication of Dependency in accordance with the applicable Florida Statutes and Rules of Juvenile Procedure, and in support thereof states as follows:

I. JURISDICTION

This court has jurisdiction over the minor child.

II. UCCJEA

The UCCJEA Affidavit is attached and is incorporated by reference. The affidavit states that we have no information of any custody proceeding pending in a court of this or any other state concerning the child.

III. THE PARTIES

1. The minor child is **CLIENT X**. **ATTACH CLIENT X'S BIRTH CERTIFICATE**

¹⁴⁴ The child cannot be the petitioner but must instead petition through a guardian or next friend. See *Kingsley v. Kingsley*, 623 So. 2d 780 (Fla. 5th DCA 1993).

2. **STATEMENT OF CLIENT X'S PARENTS/GUARDIANS.**

III. STATEMENT OF FACTS

3. **CLIENT X'S FACTS/BACKGROUND.**

4. Our knowledge is based on interviews with the child, her family, and other parties.

IV. CLIENT X IS A DEPENDENT CHILD

5. Section 39.01(14) defines a dependent child as one who the court finds: “(a) [t]o have been abandoned, abused or neglected by the child’s parent or parents or legal custodians”; (e) “[t]o have no parent or legal guardians capable of providing supervision or care”; or “(f) [t]o be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.”

6. **CLIENT X** is dependent because has no parents or legal guardians capable of providing supervision or care. **SPECIFIC FACTS TO CLIENT X.**

7. **CLIENT X** is an *abandoned* child within the meaning of section 39.01(1) because **SPECIFIC FACTS TO CLIENT X.**

8. **CLIENT X** is a *neglected* child under section 39.01(43), Florida Statutes, because **SPECIFIC FACTS TO CLIENT X.**

9. Chapter 39 provides this Court with an opportunity to protect this child from further abuse, abandonment or neglect.

WHEREFORE, Petitioner respectfully requests that this Honorable Court take jurisdiction over the minor child, **CLIENT X**, that the minor child be adjudicated dependent.

Respectfully submitted,

CLIENT X'S ATTORNEY

Florida Bar No.:

LAW FIRM INFORMAITON

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Before me, the undersigned authority, personally appeared ***CLIENT X'S ATTORNEY***, who, being sworn, says the Petition for Adjudication of Dependency is filed in good faith and on information, knowledge and belief is true.

Sworn to and subscribed before me on _____.

APPENDIX C
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

IN THE INTEREST OF:

FAMILY DIVISION

CLIENT X

XX/XX/XXXX

CASE NO.:

MINOR CHILD
_____ /

**UNIFORM CHILD CUSTODY JURISDICTION AND
ENFORCEMENT ACT (UCCJEA) AFFIDAVIT**

I, *CLIENT X'S ATTORNEY*, being sworn, certify that the following statements are true:

1. The number of minor children subject to this proceeding is one (1). The name, place of birth, birth date and sex of the child, the present address, periods of residence and places where the child has lived within the five (5) past years, and the name, present address and relationship of the person with whom the child has lived during that time are:

CHILD'S

NAME

CLIENT

X

**PERIOD
OF
RESIDENCE**

2. I have not participated as a witness, or in any other capacity in any other litigation or custody proceeding, in this or any other state, concerning the custody of the child subject to this proceeding.

3. I have no information of any custody proceeding pending in a court of this or any other state concerning the child to this proceeding.

4. I know that the following named persons not a party to this proceeding have physical custody of the child subject to this proceeding: ***NAME, ADDRESS, and TELEPHONE NUMBER.***

5. The child described in this affidavit is not subject to and existing child support order in this state or any state or territory.

6. I acknowledge that I have a continuing duty to advise the Court of any custody, visitation, child support, or guardianship proceeding (including dissolution of marriage, separate maintenance, child neglect, or dependency) concerning the child in this state or any other state about which information is obtained during this proceeding.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated this --- ***DATE.***

LAW FIRM INFORMATION

By _____
ATTORNEY
Fla. Bar No.:
Attorney for Minor

Subscribed and sworn to before me, a notary public, this *DATE*, by *CLIENT X'S*
ATTORNEY who is personally known to me.

NOTARY PUBLIC

My Commission Expires:

APPENDIX D
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
JUVENILE DIVISION

IN THE INTEREST OF:

CLIENT X

XX/XX/XXXX

CASE NO.:

MINOR CHILD
_____ /

AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

BEFORE ME, the undersigned authority, personally appeared **CLIENT X'S ATTORNEY**, who being first duly sworn, deposes and says that she has made a diligent search and inquiry to determine the residence of **CLIENT X'S PARENTS**, the parents of **CLIENT X**, and says the following:

1. I received the name of the parents, **CLIENT X'S PARENTS**, from the Child's relative custodians **INFORMANT**.
2. I have had no face-to-face contact with **CLIENT X'S PARENTS**.
3. I made inquiries of **FACTS**
5. **DATE**, I wrote to the Haitian Consulate General seeking information about the whereabouts of the parents. **DATE**, a legal intern in my office followed up with phone calls to that Haitian Consulate in Miami seeking their assistance in locating the parents. The Consulate staff advised the intern that they had no information about the whereabouts or residence of **CLIENT X'S PARENTS** and could not provide any further

assistance in locating the parents. The Consulate staff agreed to provide a letter to that effect, but I have not received a letter to date.

6. I have asked the following state and federal agencies about the whereabouts of the Child's mother and father:

- Dade County Health Department
- Florida Department of Labor
- Division of Unemployment Compensation
- Dade County Housing and Urban Development
- Metro Dade Police Department
- Department of Highway and Motor Vehicles
- Division of Voter Registration
- U.S. Postal Service
- Randolph Air Force Base, TX
- Florida Department of Corrections
- Department of the Navy
- Division of Commissioned Personnel
- Commander U.S. Army Reserve
- Cmdt. U.S. Army Enlister Records
- Medical Examiner Records
- Cmdt. U.S. Coast Guard
- Miami-Dade Correctional Institution
- Miami-Dade Training and Treatment Center
- Miami-Dade Turner Guilford Knight Correctional Center
- Miami-Dade Metro West Detention Center
- Broward Correctional Institution
- Mercy Hospital, Doctor's Hospital, Baptist Hospital, Jackson Memorial Hospital
- Northwest Medical Center, Plantation General Hospital, University Hospital and Medical Center, Westside Regional Medical Center

No one in these agencies knows the current address and telephone number for the parents

CLIENT X'S PARENTS.

7. ***DATE***, I telephoned information at 411 and was informed there is no listing for the father.

8. ***DATE***, I searched the telephone directory and was unable to locate a listing for the father.

9. After diligent search and inquiry, I was unable to determine the residence or whereabouts of the father and thus cannot personally serve process upon him.

10. After diligent search and inquiry, I was able to determine the town in which the mother, resides and was able to personally serve her. She does not have a fixed address or telephone.

Dated: **DATE**

CLIENT X'S ATTORNEY
Fla. Bar No

LAW FIRM INFORMATION

Before me, the undersigned authority, personally appeared **CLIENT X'S ATTORNEY**, the petitioner in this action, who produced Florida driver license as identification, and who affirms that the allegations are filed in good faith and are true and correct to the best of petitioner's knowledge.

SWORN TO AND SUBSCRIBED
before me this **DATE**

APPENDIX D (CONT)
DILIGENT SEARCH LETTER

DATE

Metro Dade Police Department
Central Records Bureau
9105 N.W. 25th Street
Miami, FL 33172-1505

Re: *CLIENT X'S PARENTS*

To Whom It May Concern:

A child dependency matter concerning the child of the above-named individuals is being conducted by *CLIENT X'S ATTORNEY*. The whereabouts of these persons must be ascertained before any further proceedings can be conducted.

Please check your records and advise me of any phone number(s), address(es), or other location(s) of this individual that you may have. Any assistance that you can provide will be very much appreciated. Please mail all pertinent information to

LAW FIRM INFORMATION. Thank you for your cooperation and assistance.

Sincerely,

CLIENT X'S ATTORNEY

APPENDIX D (CONT)
DILIGENT SEARCH ADDRESSES

- | | | |
|----|---|--|
| 1. | Honorable Consul General
Haitian Consulate General
259 S.W. 13 Street
Miami, FL 33130 | 111 N.W. 2 nd Avenue
Miami, FL 33128 |
| 2. | Dade County Health Department
1350 N.W. 14 th Street
Miami, FL 33026 | 9. U.S. Postal Service
Miami P&D Center
2200 N.W. 72 nd Avenue
Miami, FL 33126 |
| 3. | State of Florida
Department of Labor and
Employment Security
Vocational Rehabilitation
401 N.W. 2 nd Avenue
Miami, FL 33128 | 10. Records Department
Florida Department of
Corrections
2601 Blairstone Road
Tallahassee, FL 32399-2500 |
| 4. | Division of Unemployment
Compensation
Attention: Millie Gresham
107 East Madison Street
208 Caldwell Building
Tallahassee, FL 32399-0243 | 11. HQ AFPC / MSIMDL
550 C Street West, Suite 50
Randolph Air Force Base, TX
78150-4752 |
| 5. | Metro Dade Police Department
Central Records Bureau
9105 N.W. 25 th Street
Miami, FL 33172-1505 | 12. Head Officer, Response Branch
Department of the Navy
NMPC-0216, Room 2048
Washington, DC 20593 |
| 6. | Dade County Housing and Urban
Development
1401 N.W. 7 th Street
Miami, FL 33125 | 13. Commandant (G PE-3 TP 45)
U.S. Coast Guard
2100 2 nd Street, S.W., Room
4616
Washington, D.C. 20593 |
| 7. | Department of Highway and
Motor Vehicles
Division of Driver Licenses/
Records
Kirkman Building, Room B -235
Tallahassee, FL 32399-0575 | 14. Commandant Officer
U.S. Army Enlistee Records
Center
Fort Benjamin Harrison
Indianapolis, IN 46249-5301 |
| 8. | Division of Voter Registration
Dade County Elections
Department | 15. Commander
U.S. Army Reserve Personnel
Center
9700 Page Boulevard
St. Louis, Missouri 63132-5200 |

APPENDIX E
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
JUVENILE DIVISION

IN THE INTEREST OF:

Client X

XX/XX/XXXX

MINOR CHILD

CASE NO.:

**CONSENT TO DEPENDENCY PETITION AND
WAIVER OF NOTICE BY PARENT**

1. I, *Client X's parent*, am the *Relation* of the minor Child who is the subject of this Dependency Petition:

Name: *CLIENT X* Gender: D.O.B.: *XX/XX/XXXX* Birthplace:

2. I have been given and read a copy of the Dependency Petition in this matter.

3. I consent to a finding of dependency and entry of an order adjudicating the Child dependent.

4. I waive all notice of any hearings in this matter.

5. I understand the allegations in the Dependency Petition and the possible consequences of this consent.

6. I understand that my consent and failure to appear in this matter may result in a loss of custody of the child.

7. I understand that I have the right to an attorney if I cannot afford one, and I waive the right to an attorney.

8. I am entering this consent knowingly, freely and voluntarily.
9. This consent and waiver is not given under any duress or fraud.

Dated this **DATE**
Coral Gables, Florida, U.S.A.

Signature of Parent, **CLIENT X'S PARENT**
Address: _____

Sworn to or affirmed before me on this ____ day of _____, **XXXX**
in _____, FLORIDA.

NOTARY PUBLIC

Produced identification

APPENDIX F
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
JUVENILE DIVISION

IN THE INTEREST OF:

CLIENT X

XX/XX/XXXX

CASE NO.:

MINOR CHILD
_____ /

ORDER OF ADJUDICATION

THIS CAUSE came before this court on ***DATE***, under chapter 39, Florida Statutes, for adjudication of the Petition for Dependency filed for ***CLIENT X***. The following person was present: ***CLIENT X'S ATTORNEY(S)***, Petitioner and attorney *ad litem* for the Child.

This Court having heard testimony and argument and otherwise being fully advised finds:

1. The mother and father, ***PARENTS OF CLIENT X***, were given notice of the Petition and voluntarily entered a Consent. They were advised of their right to legal counsel and knowingly, intelligently and voluntarily waived their right to legal counsel.
2. That the minor Child who is the subject matter of these proceedings is dependent within the meaning and intent of chapter 39, Florida Statutes, and is a resident of the State of Florida.
3. ***CLIENT X'S FACTS.***

It is thereupon ORDERED and ADJUDGED that said child is hereby adjudicated to be dependent.

The Court, having considered further evidence addressed at the hearing and argument of the child's counsel, makes the following disposition: it is hereby ORDERED that the child remain under the care ***CLIENT X'S GUARDIAN.***

It is further ORDERED that this Court shall retain jurisdiction of this cause for the purpose of making such further other orders herein for the welfare of the child named herein as may be from time to time found necessary.

DONE AND ORDERED in Miami-Dade County, Florida, this ***DATE***.

CIRCUIT COURT JUDGE

APPENDIX G
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO:

IN THE INTEREST OF:
CLIENT X
DOB: **XX/XX/XXXX**
A MINOR,

_____ /

**MOTION FOR ORDER REGARDING MINOR'S
ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS**

(Expedited Hearing Requested)

GUARDIAN'S NAME ("Petitioner" or "Custodian"), as prospective temporary custodian of the person and property of **CLIENT X**, ("Minor", by and through undersigned counsel, respectfully requests this Court to enter an order regarding the **CLIENT X'S** eligibility for special immigrant juvenile status pursuant to 8 U.S.C. § 1101(a)(27)(J), and as grounds states as follows:

Introduction

**STATE WHY CLIENT X IS ELIGIBLE FOR SIJS STATUS –
ABANDONMENT, ABUSE, AND NEGLECT ARE ESSENTIAL FOR THIS
ELIGIBILITY, 8 U.S.C. § 1101(a)(27)(J).**

Background

CLIENT X'S Abuse and Abandonment Under FACTS

1. *CLIENT X* was born in *PLACE* on *DATE*.
2. *CLIENT X* was subjected to willful acts and omissions by *PARENTS* while in *HOME COUNTRY* that resulted in her physical, mental and emotional harm.

CLIENT X'S Arrival in the U.S. Under Care of Petitioner

3. *CLIENT X* arrived on *DATE* in the U.S.
4. Since *DATE*, when *CLIENT X* came to the United States, Petitioner has provided shelter, care and support of *CLIENT X*.

Petition for Temporary Custody by the CLIENT X'S GUARDIAN

5. But for the shelter, care and support provided to *CLIENT X* by *PETITIONER*, *CLIENT X* would be a homeless child. Petitioner has concurrently with this motion filed a Petition for Temporary Custody of *CLIENT X*. Given *CLIENT X'S ABANDONMENT AND ABUSE* Petitioner believes her temporary custody petition will be granted.

CLIENT X'S Current Immigrant Status

6. *CLIENT X* does not have legal immigration status at the present time. *CLIENT X* would like to continue going to school and as soon as possible become a citizen of the United States. By this motion, the custodian now seeks, on behalf of *CLIENT X*, to have her declared eligible for Special Immigrant Juvenile Status under 8 U.S.C. § 1101(a)(27)(J).

Memorandum of Law

**AN ORDER SHOULD BE ENTERED DECLARING *CLIENT X*
ELIGIBLE FOR SPECIAL IMMIGRANT JUVENILE STATUS**

a. Special immigrant juvenile (“SIJ”) Status under The Immigration Act of 1990

The Immigration Act of 1990 (the “Act”) created a classification of “special immigrants” entitled to obtain permanent immigration status. One of the special immigrant categories includes undocumented youths who are under the protection of a state juvenile, family or probate court. The intent of the Act is to protect a uniquely vulnerable class of immigrants –undocumented abandoned, neglected or abused minors regardless of their method of original entry into the United States. To qualify for SIJ classification under the Act, a minor must be a juvenile immigrant:

1. That has been declared dependent on a juvenile court;
2. That is eligible for long-term foster care due to abuse, neglect or abandonment;
3. And whose best interests are served by remaining in the United States.

8 U.S.C. §1101(a)(27)(J)

b. CLIENT X is dependent under the Act

Under the Act, “dependency” means a state court has accepted jurisdiction over the custody of the child by reason of the abandonment, abuse or neglect of the child by his parents. CLIENT X satisfies these qualifications for SIJ status.

b. CLIENT X is “eligible for long term foster care” under the Act

According to federal regulations implementing the Act, the term “eligible for long-term foster care” means that family reunification is not a viable option. CLIENT X’S anticipated placement under the permanent guardianship of PETITIONER does not preclude her eligibility for long-term foster care within the meaning of 8 U.S.C. §

1101(a)(27)(J). Once *CLIENT X* is placed in a guardianship situation, she will continue to be considered eligible for long-term foster care.

For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a *child who has been adopted or placed in (a) guardianship* situation after having been found dependent upon a juvenile court in the United States *will continue to be considered to be eligible for long-term foster care.*

8 C.F.R. § 204.11(a)(emphasis added); *see also Matter of Menjivar, supra.*

c. It is not in *CLIENT X'S* best interests to be returned” under the Act

10. Under the Act, “not in the best interests to be returned” simply means that, based on the evidence before the state court, it would not be in the best interests of the minor to be returned to his or her home country. *FACTS FOR CLIENT X*

d. Federal Law looks to the state courts to determine eligibility for SIJ

Status.

The Act looks to the state courts to determine whether a minor is eligible for SIJ status. The federal regulations implementing the Act expressed particular concern that federal procedures not delay child welfare actions urgently needed to ensure proper care for dependent children, and as such, look to the state courts to make the required urgent decisions based on the facts of each case. *See* 58 Fed. Reg. at 42847.

Conclusion

An order should be entered declaring *CLIENT X* eligible for special immigrant juvenile status because *CLIENT X* is an abandoned and abused child. Petitioner anticipates the Court will therefore accept jurisdiction over *CLIENT X* and award custody to Petitioner pursuant to §751, Fla. Stat. Although *CLIENT X* will then become a ward of Petitioner, this does not preclude a dependency finding, nor does it alter

CLIENT X'S status as “eligible for long term foster care” within the meaning of federal immigration law. Finally, it is in the *CLIENT X'S* best interest to remain in the United States.

WHEREFORE, the Custodian, on behalf of the Minor, respectfully requests this Court to enter an Order declaring *CLIENT X* eligible for Special Immigrant Juvenile Status, pursuant to 8 U.S.C. § 1101(a)(27)(J).

LAW FIRM INFORMATION

By _____
CLIENT X'S ATTORNEY
FLA. BAR NO.:

APPENDIX H

US Citizenship and Immigration Services
Department of Homeland Security
7880 Biscayne Boulevard
Miami, FL 33138

Re: Letter In Support of Affidavit to File In Forma Pauperis

To Whom It May Concern:

The Children & Youth Law Clinic is a 501(c)(3) nonprofit organization. Our mission is to provide direct legal services to children in the foster care system in dependency, health care, mental health, and other civil rights matters ensuring that the children have a voice in court proceedings.

A large part of our work is dedicated to impact advocacy work as well as legal representation of poverty level clients who could never afford legal representation. CYLC provides direct representation to clients whose cases are complex and require an attorney to represent them before the US Citizenship and Immigration Service (USCIS) or the Executive Office of Immigration Review (EOIR). CYLC targets those poverty-level clients who find it difficult to access legal services, such as unaccompanied minors.

All individuals requesting assistance from our office are required to complete an intake process in which the merits of their case, as well as their family and economic situation, are evaluated on a case by case basis by CYLC's attorneys.

Our office accepts cases for representation for individuals who are below the 125% poverty level according to the most recently published poverty guidelines.

XXXXXX XXXXXX's personal and financial situation submitting this request for a fee waiver has been evaluated by CYLC attorneys and has been deemed to qualify for your services.

Yours sincerely,

XXXXXX XXXXXX, Esq.
Staff Attorney

**AFFIDAVIT TO FILE APPLICATION IN FORMA PAUPERIS
MIAMI, FLORIDA**

IN THE MATTER OF:

_____ **XXXXXX XXXXXX** _____)

RESPONDENT/APPLICANT

Affidavit in Support of Request to File Application in Forma Pauperis

I, _____, being first and duly sworn depose and say that I am the applicant in the above entitled case; that in support of my affidavit to file application without being required to prepay fees, costs or give security therefore pursuant to 8 C.F.R. §103.7 (c), I state that because of my poverty I am unable to Pay the costs of said applications or to give security thereof.

I further swear that the response, which I have made to the questions and instructions below relating to my ability to pay the filing fees of the applications, are true.

1. Are you presently employed? Yes _____ No X _____
- (a) If the answer is yes, state the month of your salary or wages per month and give the name of your employer.
- Salary: _____
Wages per month: _____
Employer: _____
Name: _____
Address: _____

(b) If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

Date of last employment: _____ N/A _____
Salary: _____ Wages per month: _____

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest dividends, or other sources?

If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

Yes _____
No X _____

Source of income _____
Amount received _____

3. Do you own any cash or checking or savings account(s)?
(a) If the answer is yes, state the total value of the items owned.

Yes _____ No Total Value: _____

4. Do you own any real estate, stock, bonds, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

If the answer is yes, describe the property and state its approximate value.

Yes _____ No _____

Property: _____ Approximate value _____

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Name: _____ N/A _____ Relationship: _____

U.S.C.28§1746....I declare under penalty of perjury that the foregoing is true and correct.

Executed on: _____ 1/23/07 _____
Date

Signature: _____
Applicant

Date signed: _____

A# _____ N/A _____

APPENDIX I

February 1, 2007

VIA FEDERAL EXPRESS

US Citizenship and Immigration Services (USCIS)
Department of Homeland Security
ATTN: FABSI
427 S. LaSalle-3rd Floor
Chicago, IL 60605-1098

**RE: Request for Expedited Procession of Special Immigrant
Juvenile Petition (SIJS) and Adjustment of Status Petition.
Applicant: XXXXX XXXXXX
Alien Number: N/A
Date of Birth: 01/1/1989**

To Whom It May Concern:

Enclosed you will find petitions for Special Immigrant Juvenile Status (I-360), Adjustment of Status (I-485), Work Authorization (I-765) along with the fee waiver and required filing fees for the above-named minor. I have also enclosed the appropriate G-28.

XXXXX XXXXXX is a seventeen year old native of HAITI and meets the requirements for SIJS. **XXXXX XXXX is a dependent child in the custody of the Juvenile Court of the Eleventh Judicial Circuit and will turn 18 years old on January 1, 2007.**

While the jurisdiction of the Juvenile Court of the Eleventh Judicial Circuit over this minor has been extended pursuant to § 39.013(2), Florida Statutes, I am requesting expedited processing of this petition prior to the minor's eighteenth birthday.

Pursuant to the most recent Field Guidance on Special Immigrant Juvenile Status Petitions Memorandum:

"District Offices should assess new applications to avoid the risk of SIJ age outs, and take the following precautions to prevent it:

- *Schedule SIJ adjustment interviews well in advance of the petitioner's 21st birthday, or in jurisdictions where court dependency terminates before age 21, well in advance of that birth date . . .*
- *Ensure proper completion of background checks, including fingerprint clearances and name-checks . . .*

- *Provide for expedited processing of cases at risk of aging out (e.g. in-person filing for applicants who age out within a year; priority interviews and fingerprinting; other appropriate administrative relief)”¹*

XXXXXX XXXXX wants to become a pediatrician and can only afford to begin college courses at Florida International University if her SIJs application is approved in time.

For all the above reasons, I respectfully request expedited processing of this petition.

I appreciate your assistance with this matter. I can make the minor available for an interview at your earliest convenience. Please do not hesitate to contact me if there is any additional information that you may require to adjudicate this petition. I may be reached at (305) 555-1555

Sincerely,

XXXXXXXX XXXXXXXX
Attorney for XXXXX XXXXXXXX

¹ See William R. Yates, Associate Director of Operations. Memorandum #3---Field Guidance on Special Immigrant Juvenile Status Petitions. May 27, 2004.