

Louisiana's immigrant children:

- ← Since 2014, about 15,000 children were released from shelters to a caretaker in Louisiana.
- ← Last fiscal year, about 3,400 children were released to a caretaker in Louisiana. The highest number recorded since 2014.
- ← Most of our clients come to the US fleeing:
 - ← Endemic violence
 - ← Widespread poverty
 - ← Mistreatment by parents or caregivers
 - ← Inadequate protection by law enforcement
 - ← Limited access to education, medical care, and social services
- ← <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>



Immigration 101

- ❑ **US Citizens** (USCs): Conferred all rights
 - By birth in the US, acquisition through birth abroad to USC parents, derivation through a USC parent, or naturalization
- ❑ **Immigrants**: Come to the US legally to work and reside permanently
 - Lawful permanent residents (LPRs, or green card holders)
- ❑ **Non-immigrants**: Come to the US for a specific purpose, for a limited period of time
 - Tourists, business purposes, students, foreign diplomats
- ❑ **Undocumented individuals**: Entered the US without inspection (EWI) or overstayed/violated a nonimmigrant status
- ❑ **Other**: Live in the US with the government's permission but are neither immigrants nor nonimmigrants
 - Asylum, TPS, DACA

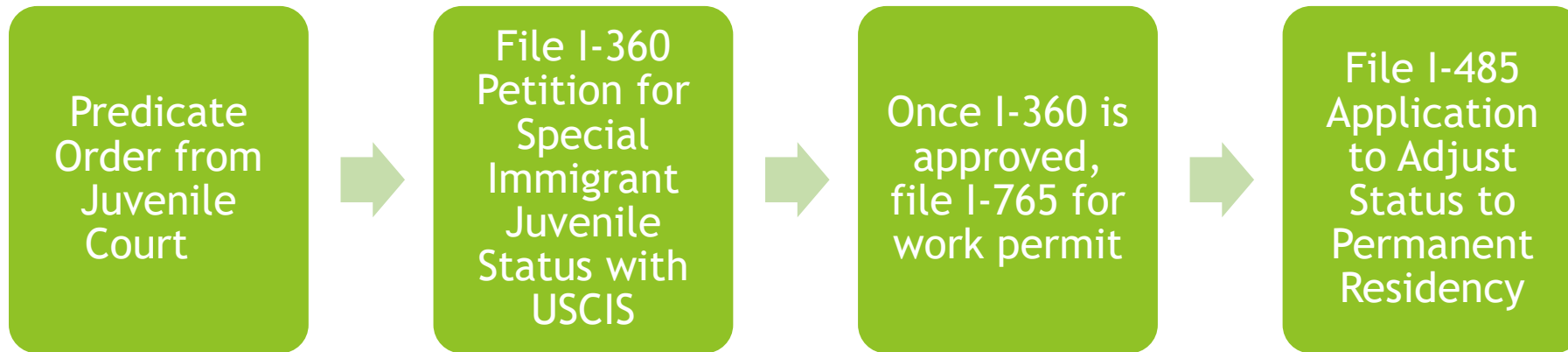
SO WHAT IS SIJS?

- ❑ SIJS provides protection from deportation and a pathway to a green card to a class of particularly vulnerable children.
- ❑ These children are especially vulnerable because:
 - They have been abused, neglected, or abandoned by one or both parents; and
 - It's not in the child's best interest to return to their home country.



INA § 101(a)(27)(J)(codified at 8 U.S.C. § 1101(a)(27)(J))

OVERVIEW OF SIJS PROCESS



JUVENILE COURT'S ROLE

- A “juvenile court” is defined as a court located in the United States that has jurisdiction under state law to make judicial determinations about the custody and care of juveniles. 8 C.F.R. § 204.11(a).
- A state juvenile court must find that:
 - reunification with one or both parents is not viable because of abuse, neglect or abandonment; and
 - not in a child’s best interest to return to his/her home country.
- The juvenile court is NOT making an immigration decision
- The juvenile court order is a prerequisite for the child to apply to USCIS for SIJS status and, subsequently, for a work permit and adjustment to LPR status

THE JUDGEMENT OR PREDICATE ORDER

Findings of fact plus conclusions of law with citations to Louisiana law, not Federal.

1. Court's jurisdiction over the minor
2. Minor's dependency upon the court
3. Award of custody
4. Abuse/abandonment/neglect that precludes reunification with one/both parents
5. Best interest of minor against returning to country of nationality or last habitual residence

JURISDICTION AND VENUE

Federal authority

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State authority

- LA Children’s Code Article 302 provides family and juvenile courts of Louisiana with original juvenile jurisdiction, and specifically provides juvenile court with exclusive original juvenile jurisdiction.
- Article 303 provides juvenile courts with exclusive jurisdiction over child in need of care proceedings as well as “other such jurisdiction over children as may be provided by law.”
- Article 314 establishes venue is proper in “the parish in which the child is domiciled with his parent or tutor, the parish in which the child is residing, the parish in which the act complained of took place or the conditions complained of existed, or the parish in which the child is found.”

CUSTODY

- ▶ **LA Children's Code 116(12) Legal Custody:** includes the right to have physical custody of the child and to determine child's residency; to exercise the rights and duty to protect, train, and discipline the child; the authority to consent to major medical treatment; and to provide the child with basic care.
- ▶ **LA. C.C. Art. 132 Custody to a Parent:** shown by clear and convincing evidence to serve the best interest of the child.
- ▶ **LA C.C. Art. 133 Custody to a Non Parent:** when custody to either parent would result in substantial harm to the child, the court shall award custody to another person with whom the child has been living in a wholesome and stable environment, or otherwise to any other person able to provide an adequate and stable environment.

ABUSE: ACTS THAT ENDANGER OR INJURE

La. Children's Code Article 1003(1) governing Termination proceedings:

"Abuse" means any of the following acts which seriously endanger the physical, mental, or emotional health and safety of the child:

- (a) The infliction or attempted infliction, or, as a result of inadequate supervision, the allowance or toleration of the infliction or attempted infliction of **physical or mental injury upon the child** by a parent or any other person.
- (b) The **exploitation or overwork of a child** by a parent or any other person.
- (c) The involvement of the child in **any sexual act** with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's sexual involvement with any other person or of the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

❖ *See also* La. Children's Code Article 603(2) governing CINC proceedings.

NEGLECT: FAILURE TO PROVIDE + HARM

La. Children's Code Article 1003(10) "Neglect" means:

- ▶ the refusal or failure of a parent or caretaker to supply the child with necessary food, clothing, shelter, care, treatment, or counseling for any injury, illness, or condition of the child,
 - ▶ as a result of which the child's physical, mental, or emotional health and safety is substantially threatened or impaired.
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- ❑ Neglect includes prenatal neglect.
 - ❑ BUT the inability of a parent or caretaker to provide for a child due to inadequate financial resources shall not, for that reason alone, be considered neglect.
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- ❖ *See also* La. Children's Code Article 603(18) governing CINC proceedings.

ABANDONMENT: **6 MONTHS OF PARENTAL AVOIDANCE**

La Children's Code Art. 1015(5):

- ▶ Abandonment of the child by **placing him in the physical custody of a nonparent**, or the department, or by otherwise leaving him under circumstances **demonstrating an intention to permanently avoid parental responsibility** by any of the following:
 - ▶ (a) For a period of at least four months as of the time of the hearing, despite a diligent search, the whereabouts of the child's parent continue to be unknown.
 - ▶ (b) As of the time the petition is filed, the **parent has failed to provide significant contributions to the child's care and support for any period of six consecutive months.**
 - ▶ (c) As of the time the petition is filed, the parent has **failed to maintain significant contact with the child by visiting him or communicating with him for any period of six consecutive months.**

Best Interest of the Child

LA Civil Code Art. 134. Factors in determining child's best interest:

The court shall consider all relevant factors in determining the best interest of the child, including:

- The potential for the child to be abused
- Emotional ties between each party and the child.
- Ability to give the child love, affection, education and spiritual guidance.
- Ability to provide the child with food, clothing, medical care, and other material needs.
- The length of time the child has lived in a stable, adequate environment.
- The permanence, as a family unit, of the existing or proposed custodial home.
- The moral fitness of each party.
- The history of substance abuse, violence, or criminal activity of any party.
- The mental and physical health of each party.
- The home, school, and community history of the child.
- The reasonable preference of the child
- The responsibility for the care and rearing of the child previously exercised by each party.

HOW DO YOU GET A PREDICATE ORDER?

- ❑ File Petition for Finding of Eligibility for Special Immigration Juvenile Status (i.e., modified custody petition that is filed in juvenile division or court)
 - Available in certain LA jurisdictions (e.g. Orleans, Jefferson, St. Tammany, Lafayette, etc)
- ❑ File Custody Proceeding (e.g., voluntary transfer of custody or tutorship)
 - Move for SIJS findings within the custody petition
 - Add SIJS findings to custody order
- ❑ Move for SIJS Findings
 - within existing proceeding (e.g. CINC or delinquency proceeding)
- ❑ Use Existing Judgment
 - Amend it to include necessary findings
 - Supplement with other evidence for USCIS (e.g., birth certificate, affidavits)

FILING A SIJS PETITION

- A comprehensive SIJS filing will include:
 1. Petition or Motion - with sufficiently tailored facts to initiate the action
 2. Memorandum of Law - to establish more facts, legal argument, and analysis
 3. Evidence of alleged facts - exhibits
 4. Order for Hearing
 5. Proposed Judgment - with requested findings of facts and conclusions of law
 6. Proof of Service, Waiver of Service, or evidence summarizing why those are not available, when required (eg, Orleans Parish)

DOCUMENTARY EVIDENCE

ALL COURTS

- Birth Certificate w/ translation
- Office of Refugee Resettlement (ORR) Release
- Country Conditions of child's home country

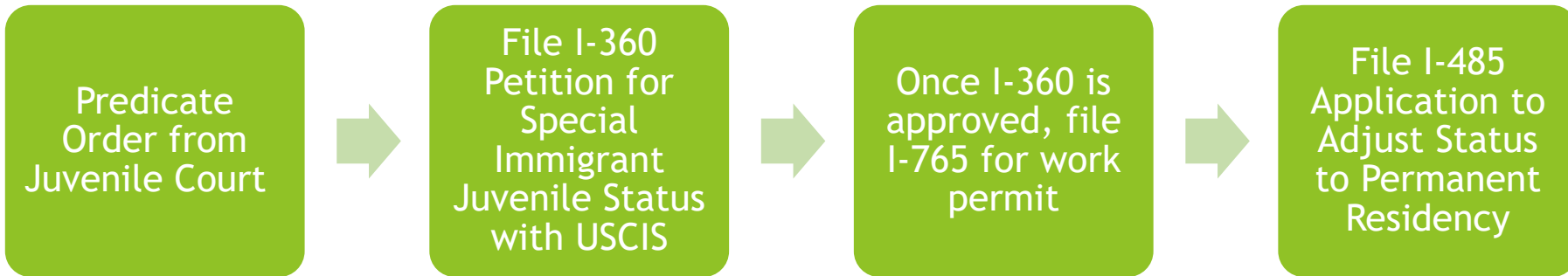
SOME COURTS

- Verification of Residence (bills or lease in Petitioner's name)
- School Enrollment Verification (Report Card or letter)
- Caregiver's Identification (Passport, foreign ID, etc.)
- Proof or Waiver of Service; Proof of Service Efforts (or death certificate if relevant)
- Affidavits

Best Practices in a SIJS Case

- ❑ **Know your case; the facts matter.** Take time to know your client's story from their perspective. Build trust and use child and trauma informed interviewing methods. (play cards, draw, ask questions about hobbies and school). Don't make assumptions.
- ❑ **Know your judge and know your legal standards.** Use available resources to know what the court is looking for to grant your petition with as little stress to the minor as possible. Ask us!
- ❑ **Stick to the facts as presented by your client.** Avoid exaggerating or including a different perspective other than your client and their sponsor.
- ❑ **Prep your client and sponsor for court.** They will likely be scared. Do a mock hearing and go over your direct several times. Describe the courthouse/room and the different parties involved. (Including security guards and other uniformed officers). Give examples of what's appropriate to wear and what's not.

WHAT NEXT?



WHAT NEXT?

- ❑ Complete I-360 Petition with child and parent/guardian
 - Child must still be under 21
 - Unmarried
 - Present in the US

- ❑ Mail I-360 to USCIS with required evidence.
 - Predicate Order
 - Birth Certificate with translation

- ❑ Once USCIS issues a form I-797 Receipt Notice, link child to healthcare plan.

- ❑ Once I-360 is approved, you can complete I-765 application for work authorization! Child will receive a social security card as well.

- ❑ When a visa is available, complete I-485 application.