



FAQs: Immigration Issues and CASA Advocacy in California¹

March 2017

In California, CASA volunteers, “represent the best interests of the children involved, and consider the best interests of the family.”² Therefore these FAQs are written from that perspective, in order to help CASA volunteers in California advocate for children and youth affected by immigration law and policy.

Information Sharing

Q: Can a CASA volunteer share confidential case information with any federal officials, including federal immigration officials?

A: No, not without a valid court order specific to CASA. The state of the law has been, and remains that the juvenile case file and information related to the juvenile – including name, and immigration status – are confidential. California law has a specific list of those entitled to inspect the juvenile case file and federal officials are not on it. So, access to this information by federal officials would require a court order made after filing a petition. Additionally, even if someone was on the list, or had a petition granted, California law requires a specific order authorizing the CASA to disclose the information to anyone other than the court, the parties and their attorneys, and CASA staff.³

Q: What about social workers, attorneys, and others – can they give information related to the juvenile to federal immigration officials?

A: Again, no, not without a valid court order made pursuant to a petition. In fact, the California Legislature enacted AB 899 (2015) clarifying that existing law does not allow disclosure of juvenile information, including the juvenile case file, without a valid court order.⁴

Q: Should a CASA volunteer ensure that others in the case know the immigration needs of the youth?

A: It depends, so you should consult with your case supervisor. CASA volunteers represent the best interests of the youth, so if it is not in the youth’s best interests then it may be better to not disclose certain facts at a particular time. Of course, CASA volunteers are officers of the court, and if the judge asks you pointedly about something, including immigration issues, you must answer and answer honestly.⁵

Placement and Permanency

Q: Can a child be placed with a parent or relative who is not a legal resident of the U.S.?

A: Yes. California law states that a child may be placed with a parent or relative “regardless” of the “immigration status” of the parent or relative. This is true even if the parent was previously a noncustodial parent.⁶

Q: What about a nonrelative extended family member (NREFM)? Can a child be placed with a NREFM who is living in the United States but is not a legal resident?

A: This is unclear. Unlike with parents and relatives, California law does not specifically allow for placement with NREFMs who are undocumented. However, the California Department of Social Services has issued All County Letter 14-21, that interprets state law to mean that, “immigration status alone cannot be used as a disqualifying factor when making placement and custody decisions,” and this includes placements with NREFMs.⁷

Q: How does the county run a background check on a relative, prospective guardian, or another who does not have legal residency?

A: An identification card from a foreign consulate or a foreign passport are valid forms of identification for conducting a criminal records check and fingerprint clearance.⁸

Q: Can a social worker place a child outside of the United States?

A: Yes, but only after the juvenile court makes a finding that doing so is clearly and convincingly in the best interests of the child.⁹

Q: Should the social worker provide a relative caregiver, who does not have legal residency, information about adoption and guardianship options?

A: Yes, in fact, a relative caregiver must be given information regarding permanency options of guardianship and adoption (and the long-term pros and cons of each), regardless of immigration status.¹⁰

Q: The court is about to schedule a hearing to permanently plan the child (at the .26 hearing) where it may be terminating parental rights. Does the fact that the parent is detained or deported affect the court’s decision?

A: The court will order what it finds to be in the best interests of the child. However, the law does require that before setting the hearing, it take into account any barriers to a parent’s ability to maintain contact with the child because of the detention or deportation.¹¹

Child Welfare Services and Reunification

Q: Do social workers have an obligation to make sure information and forms are provided in the language spoken by the parent and/or child?

A: Yes, California regulations mandate counties maintain certain bilingual staffing levels and use interpretation services.¹² Also, “counties are prohibited from using minor children as interpreters except temporarily under extenuating circumstances or at the specific request of the client.”¹³

Forms must be in the appropriate language to the extent available, and otherwise verbally translated. For example, the case plan will be in writing and may have translated headings in writing; however, the body of the case plan will be written in English. If the client is not fluent in English, the social worker must provide at least verbal translation for the client. This is true of any written document that is not in the client’s native language.

Q: Does the child's case plan have to address the child's progress in applying for legal residency?

A: Yes, for a child 16 or older. The Transitional Independent Living Plan (TILP) must include, "whether the youth has an in-progress application pending for... Special Immigrant Juvenile Status or other applicable application for legal residency and an active dependency case is required for that application."¹⁴

Q: Whose responsibility is it to assess the immigration needs of the youth?

A: California law is not specific enough to assign the responsibility of assessing immigration needs to any one professional. Therefore, it is essential that someone take ownership and this can be the CASA. The social worker will generally be aware of the child's immigration status for public benefits purposes, but they may need help in applying for SIJS in a timely way. The minor's attorney has a duty to let the court know about the legal needs of the youth, and the court must "take whatever appropriate action is necessary to fully protect the interests of the child."¹⁵

Q: Whose responsibility is it to actually seek relief for the immigration needs of the youth?

A: Once the immigration needs of the youth are known, the social services agency is responsible for providing for those needs as it deems necessary, or as ordered by the court. The court oversees and ensures the provision of those services, and can make orders to the social services agency to provide or arrange for needed services.¹⁶

Q: If a parent is detained or deported, what happens to reunification services?

A: If a parent is otherwise entitled to receive services to reunify with their child, the court shall order reunification services unless it is clearly and convincingly a detriment to the child. Detention by Homeland Security and even deportation does not affect this fact. The social worker must document the reunification efforts made for parents who have been detained or deported. Reasonable services can include anything including collect phone calls, transportation, visitation, etc.¹⁷

Q: If a parent has been detained by the Department of Homeland Security, how do they comply with their case plan so that they can have their child returned to them?

A: Receiving services is an issue. Take note, however, that being detained by the Department of Homeland Security is one of the few circumstances that allows a court to order up to 24 months of services (as opposed to the usual 18 month limit). Conditions must be met, of course, including that the parent is making significant and consistent progress in establishing a safe home for the child's return.¹⁸

Q: How can the court find that the child is likely to be returned to a parent when the immigration actions make everything so uncertain?

A: When deciding whether to extend services the court must find whether there is a "substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period," but in doing so, it must consider barriers to the parent's or guardian's access to services, ability to maintain contact with his or her child, and good faith efforts that the parent or guardian has made to maintain contact with the child.¹⁹ If the court extends the time period, the court must specify the factual basis for its conclusion that there is a substantial probability that the child will be returned.²⁰

Q: Can the court return a child to a parent who has been deported?

A: Absolutely, as long as doing so would not be detrimental to the child.

Q: What about when the dependency case is dismissed and the family court takes over, does immigration status affect custody?

A: No, in family law proceedings (as well as in other child custody courts, like probate), immigration status does not – as a matter of course – disqualify a parent, legal guardian, or relative from receiving custody of a child.²¹

Advocacy

Q: What can a CASA do to help a youth who is not a citizen or legal resident?

A: It depends on the situation – it is important to help the youth gain legal status if possible. At the very least, you can help the youth avoid delinquent and criminal conduct. If you can, help identify any path to legal residency. The most common paths to lawful immigration status for youth are through Special Immigrant Juvenile Status (SIJS), U-visa, T-visa, or VAWA. It is essential that the child seek the help of a qualified immigration attorney to identify potential eligibility for relief and assist the child in their application.

Q: Should I always seek SIJS and a green card for the youth if they qualify?

A: Always keep your eye on the best interests of the child. Do not discount reunification just because it might negatively affect the youth's chances of gaining a green card – safe and successful reunification is the goal! But you must consider the immigration needs of the youth and advocate as necessary to protect their best interests.

Q: As a CASA, how can I best help the child gain legal residency?

A: It is almost always a good idea to seek the necessary court findings as soon as possible – which will likely be as soon as a child is not able to reunify with at least one of their parents.

First, it is imperative to get the SIJS findings, and get the youth the help of a qualified immigration attorney to discuss the application process and their chances of successfully attaining SIJS and subsequent legal residency.

Second, if it is determined that the youth should apply, then it is essential that the youth apply for SIJS and legal residency as soon as possible. There is generally a waitlist for completing applications.

Third, work with the youth to ensure that he or she stays out of trouble with the law. Charges of criminal conduct could negatively affect their chances of receiving legal residency.

Lastly, work to ensure that the child has a good professional who is paying careful attention to the timelines and the complicated application process.

Q: What are important things to think about regarding the timing of an application for Special Immigrant Juvenile Status (SIJS)?

A: For dependent youth an application for SIJS can only be made 1) after reunification services are terminated as to at least one of the youth’s parents, 2) before the youth turns 21 years old, and 2) is under a valid juvenile dependency jurisdiction.

Q: Can the judge refuse to make Special Immigrant Juvenile Status (SIJS) findings?

A: No, the law requires the judge to make the SIJS findings if the evidence supports those findings.²²

Q: How can a CASA volunteer help prevent the youth from being charged as a delinquent?

A: Besides working to ensure that the youth has healthy hobbies and activities, and necessary interventions, a CASA volunteer can help advocate for a youth who becomes involved in the delinquency system. For example, when a youth in foster care is charged with a delinquent act, the delinquency court must hold a hearing pursuant to Welf. & Inst. Code section 241.1. The youth’s CASA volunteer should provide a statement to be included in the report that is prepared for the court, and the CASA is entitled to notice of the hearing and a copy of the report. The CASA can address the court and advocate that the youth remain a dependent.²³

Q: What is PRUCOL?

A: PRUCOL refers to those who are “Permanently Residing Under the Color of Law,” and relates to eligibility for certain public benefits for individuals who are residing in the U.S. with the knowledge of the Department of Homeland Security (DHS), when the Department of Homeland Security does not contemplate initiating deportation proceedings. PRUCOL does not confer any immigration status or rights and does not protect against deportation, however, it allows for the eligibility for certain public benefits (e.g. SSI).²⁴ (Watch for developments as the DHS changes policies around classes of individuals it seeks to deport.)

SIJS – Special Immigrant Juvenile Status (SIJS)

Q: What is Special Immigrant Juvenile Status (SIJS)?

A: SIJS is an immigration classification that allows a youth to apply for legal residency (a green card). It does not, in and of itself, confer lawful presence in the country. However, it does clear a path to apply for, and receive a green card – and ultimately U.S. citizenship.

Q: So, should every immigrant child submit an SIJS application as soon as reunification services are terminated to at least one of their parents?

A: Not necessarily. Great care must be taken, and a competent immigration attorney should assess each child’s circumstances. Most advise that a child should not apply for SIJS status unless there is some confidence that it will be granted. Juvenile delinquency, criminal records, and other factors could affect what happens to the child, and strategies and options should be explored with an immigration attorney before it is wise for a child to make his or her presence known to the Department of Homeland Security.

However, in most cases, SIJS is a very good (and often, the only) option for an undocumented child to be able to get immigration status.

Q: How does a child qualify for SIJS?

A: Generally, once reunification services are terminated to at least one of parent, the court can make findings sufficient to allow the child to apply for SIJS. Generally, the court must determine whether reunification with one or more²⁵ parent, “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” and (2) whether it would be in his “best interest to be returned to [his] ... previous country of nationality or country of last habitual residence.” The court will make orders on Judicial Council form JV-224.²⁶

Q: Who applies for SIJS for the child?

A: This varies from county to county, but the minor’s attorney has a duty to let the court know about the legal needs of the youth, and the court must “take whatever appropriate action is necessary to fully protect the interests of the child.”²⁷ This generally takes the form of the social service agency arranging for someone (that may include an immigration attorney) to handle the child’s SIJS and legal residency application.

Q: So SIJS is complicated! What do I need to remember as a CASA?

A: SIJS can be complicated, so remember to guard the confidentiality of the child’s immigration related information, and then: 1) ensure that the court is aware of the need, and makes SIJS findings, 2) advocate for an immigration attorney for the youth, 4) do not allow the case to be dismissed before SIJS is granted, and 3) try to get the youth to stay out of trouble with the law, and 4) help the youth gather important documents. Also, help the youth understand the process and make sure that the youth’s needs are being met.

Q: Does the granting of SIJS mean the youth is safe from deportation?

A: No. SIJS is merely a classification that allows the youth to apply for legal residency, and get a “green card.” Therefore, it is important to stay focused on ensuring that the youth completes the adjustment of status application for legal residency.

Q: I am working with a youth who was adjudicated a 602 delinquent – can she qualify for SIJS even though she is not a 300 dependent?

A: Yes. The youth does not need to be a 300 dependent to qualify for SIJS; a dependency court can make SIJS findings, but so can other child custody courts, like family, delinquency or probate court.²⁸

Q: The youth was granted SIJS status and is waiting for his adjustment of status to become a legal resident. Does the juvenile case have to remain open?

A: It is safest to retain jurisdiction. However, if youth’s application was complete, filed before the youth turned 21 years old, and at the time of filing the youth was under a valid dependency order, then the application should still be good despite the fact that the dependency order was subsequently terminated based on age.²⁹ Still, if the case is dismissed after the youth turns 18, advocates recommend obtaining specific language in the juvenile court order terminating jurisdiction of the case that states that the case is being closed “due to age.”³⁰

Q: Can a child who gets a green card through SIJS petition for a green card for her parents or siblings?

A: If a child gets a green card through the SIJ program, that child can never petition for a green card for her parents. The youth is not barred from petitioning for a green card for siblings, however, the youth must wait until after she becomes a U.S. citizen.³¹

Q: Are there any guides that can help understand the details of SIJS?

A: Yes indeed, there are several. Here are some detailed ones provided by Public Counsel and the Immigrant Legal Resource Center: 1) [Public Counsel's Special Immigrant Juvenile Status Manual](#), December 2010, 2) [The Immigration Benchbook for Juvenile and Family Court Judges](#), July 2010, and 3) [On Overview to Special Immigrant Juvenile Status](#), December 2014.

Protecting the Child from Deportation

Q: How can I ensure that my youth does not get deported?

A: There is no easy answer here. But it seems that it is important to: 1) maintain confidentiality of the youth's immigration status, except as needed to get the youth's immigration needs addressed, 2) communicate to the youth the importance of not being charged with a crime, and 3) get both SIJS status and then legal residency for the youth as soon as possible (or ensure that the youth pursues legal status through some other form of relief such as U-Visa, T-Visa, or VAWA).

Q: What are the paths to legal residency that one can consider?

A: SIJS status is the most common path, once services are terminated to at least one parent. However, there are also "U" visas for victims of serious crimes, "T" Visas for victims of human trafficking, and "VAWA self-petition" based on child abuse perpetrated by a U.S. citizen or lawful resident. These options, and others, should be discussed with a qualified immigration attorney.

Q: Should the child carry a copy of their immigration documents with them?

A: If a youth has documents showing their legal residency, the youth can carry a COPY of these documents. The originals should be kept in a safe place. Also, if the youth has applied for immigration status or is in immigration proceedings, they should ask their immigration attorney for a copies so they can show proof.

Q: What is the Dream Act, and how can it help my youth become a citizen?

A: The federal Dream Act never became law – it is of no help. California did pass laws that together are referred to as the "California Dream Act," that makes certain noncitizens eligible for financial aid for college.³²

Q: What is DACA – and how can it help my youth become a citizen?

A: DACA stands for Deferred Action for Childhood Arrivals. It is federal immigration policy initiated in 2012 that guides prosecutorial discretion as to whether to initiate deportation proceedings. This allows certain individuals who entered the US as children to officially apply for the temporary deferral of deportation and receive authorization to work. It does not provide lawful status or a path to citizenship.

At the time of this writing (3/6/17) DACA is still official U.S. policy (see Memo from Secretary of Homeland Security, John Kelly, entitled: *Enforcement of the Immigration Laws to Serve the National Interest*, dated February 20, 2017). Also, regarding deportation, “prosecutorial discretion... shall be made on a case-by-case basis,” and the manner of federal implementation remains uncertain (also, this memo promises that the November 20, 2014 memorandum, which would have expanded DACA and created DAPA – Deferred Action for Parents of Americans and Lawful Permanent Residents – will be addressed in the future).³³ At this time, the future of DACA is uncertain, and care should be taken before signing up, as President Trump and his administration have not decided what to do with DACA just yet.³⁴

Deportation of Parents

Q: If a parent is deported, what happens to reunification services?

A: If a parent is otherwise entitled to receive services to reunify with their child, the court shall order reunification services unless it is clearly and convincingly a detriment to the child. Detention by Homeland Security and even deportation does not affect this fact. Reasonable services can include anything reasonable, including paying for phone calls (even those made collect), transportation, visitation, etc.³⁵

Q: Is there anything stopping the deportation of parents – even if the child is a U.S. citizen?

A: No. President Obama attempted to institute a policy for deferred action for parents of children who were lawful residents, but on February 16, 2015, a federal court judge issued a temporary injunction stopping its implementation.³⁶ While there is an ICE Parental Interests Directive that encourages immigration officials to consider the effects on families, but this does not stop deportation proceedings.³⁷

Q: In California, can the police detain someone because they have an immigration hold by the federal government?

A: Since 2014, California law enforcement officials are not supposed to detain someone eligible for release just because they have an immigration hold. Of course, releasing the individual can only occur if consistent with law and the alleged crime is not one of the serious ones listed in statute (note, criminal child abuse and/or endangerment are crimes that would allow an immigration hold).³⁸

Q: What are the paths to legal residency that one can consider?

A: Options include: asylum, Temporary Protected Status, “U” visas for victims of serious crimes, “T” Visas for victims of human trafficking (including labor and sex trafficking), and “VAWA self-petition” based on family abuse perpetrated by a U.S. citizen or lawful resident. These options, and others, should be discussed with a qualified immigration attorney.

Q: Are there any policies to help ensure that parental detention or deportation has a minimal impact on the child?

A: There is a general directive to federal immigration personnel to try to limit the disruption of parental rights when enforcing immigration laws.³⁹ More information can be had by reading [All County Information Notice I-68-15](#).

Helpful Resources

Q: Is there a handy guide to the intersection between child welfare and immigration issues?

A: Yes!

If you have a special immigration related question, you can contact attorneys at the Immigrant Legal Resource Center (ILRC) by emailing them at: aod@ilrc.org Let them know you are a CASA!

- You can also go onto the ILRC's website at: www.ilrc.org.
- The Center for Immigration and Child Welfare posted detailed toolkits, available here; <http://cimmcw.org/resources/practice/practice-toolkits/>
- Also, the good people at the ABA produced a California specific, "Quick Guide to Child Welfare & Immigration Law" – it can be downloaded here: http://www.americanbar.org/content/dam/aba/administrative/child_law/CWImmCalifornia.aut_hcheckdam.pdf

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² Welf. & Inst. Code § 102(c)(2).

³ See Welf. & Inst. Code §§ 827, 831; Welf. & Inst. Code § 105, and California Rule of Court 5.655(m)(1).

⁴ See Welf. & Inst. Code §§ 827, 831.

⁵ See Welf. & Inst. Code § 103.

⁶ See Welf. & Inst. Code § 361.2(e).

⁷ All County Letter 14-21.

⁸ See Welf. & Inst. Code § 361.4(b)(2).

⁹ See Welf. & Inst. Code § 361.2(f).

¹⁰ See Welf. & Inst. Code §§ 366.21(i)(2)(B), 366.22(c)(2)(B).

¹¹ See Welf. & Inst. Code § 366.215.

¹² See Manual of Policies and Procedures, Division 21, and All County Letters 03-56 and 06-20.

¹³ Manual of Policies and Procedures, Division 21-115.16. Also, All County Letter 03-56.

¹⁴ Welf. & Inst. Code § 16501.1(g)(16)(A)(ii).

¹⁵ See Welf. & Inst. Code § 317.

¹⁶ See Welf. & Inst. 362(a), and Welf. & Inst. 317(e)(7).

¹⁷ See Welf. & Inst. Code § 361.5(e)(1) and All County Letter 14-21. See also Welf & Inst. Code § 362(a).

¹⁸ See Welf. & Inst. Code § 366.22(b).

¹⁹ See Welf. & Inst. Code § 361.5(a)(3).

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- ²⁰ See Welf. & Inst. Code § 361.5(a)(3).
- ²¹ See Family Code § 3040(b). For See also Probate Code §§ 1510(a) and 1514(c).
- ²² See Code Civ. Pro § 155(b).
- ²³ See Welf & Inst. Code § 241.1 and Cal. Rule of Court 5.512.
- ²⁴ See Second Circuit case of *Berger v. Heckler* (1985) 771 F.2d. 1556, and 42 CFR 435.406 (health), 20 CFR.1618 (SSI) for example. See also SB 4 (2015) that extends full-scope Medi-Cal to children under age 19, regardless of immigration status.
- ²⁵ See *Eddie E. V. Superior Court* (2015) 234 Cal.App.4th 319, see also *In re Israel O.* (2015) 233 Cal.App.4th 279.
- ²⁶ See JV-356 (request for SIJ findings) <http://www.courts.ca.gov/documents/jv356.pdf>, and JV-357 (SIJ findings) <http://www.courts.ca.gov/documents/jv357.pdf>.
- ²⁷ See Welf. & Inst. Code § 317.
- ²⁸ See Code of Civ. Pro § 155. See also *Leslie H. v. Superior Court* (2014) 224 Cal.App.4th 340 (delinquency) and *B.F. v. Superior Court* (2012) 207 Cal.App.4th 621 (probate).
- ²⁹ See terms of the Perez-Olano Settlement Agreement, specifically number 23 on page 7. More information online, available 2/21/17, here: <https://www.uscis.gov/laws/legal-settlement-notice/settlement-agreement-perez-olano-et-al-v-holder-et-al-case-no-cv-05-3604-us-district-court-central-district-california>.
- ³⁰ See the Immigrant Legal Resource Center (ILRC), and the document “An Overview of Special Immigrant Juvenile Status,” available on their website at: https://www.ilrc.org/sites/default/files/resources/sijs-4th-2015-ch_03.pdf.
- ³¹ United States Citizenship and Immigration Services (USCIS) website, available 2/21/2017: <https://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status>.
- ³² See AB 130 (2011) and AB 131(2011). For more information see: http://www.e4fc.org/images/E4FC_CADAGuide.pdf.
- ³³ See Memo from Secretary of Homeland Security, John Kelly, entitled: *Enforcement of the Immigration Laws to Serve the National Interest*, dated February 20, 2017. For more information on DACA go to <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>, see also the November 20, 2014 Memo from DHS, available 2/21/17 here: https://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.
- ³⁴ See President Trump’s comments regarding DACA during the February 16, 2017 White House press conference, where he indicated that he is still undecided, stating, “We’re gonna show great heart; DACA is a very, very difficult subject for me.”
- ³⁵ See Welf. & Inst. Code § 361.5(e)(1) and All County Letter 14-21.
- ³⁶ See the Deferred Action for Parents of Americans (DAPA) program and subsequent injunction in *State of Texas, et al. v. United States*, No. 1:14-cv-254 (S.D. Tex. Feb. 16, 2015).
- ³⁷ See ACIN I-68-15, see also US Immigration and Customs Enforcement Directive 11064.1 available 3/6/17 at: https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf
- ³⁸ See Gov’t Code § 7282.5 sub. (a)(1)(E), and (b).
- ³⁹ See ACIN I-68-15, see also US Immigration and Customs Enforcement Directive 11064.1 available 3/6/17 at: https://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf