Federal Child Welfare Law & Resources

Child Protective Services
Federal law does not base eligibility for child protective services, which include prevention services, on a parent or child’s immigration status if certain conditions are met. ¹

Reunification with Parents
The first goal under Title IV-E of the Social Security Act is reunification with parents, when consistent with the child’s health and safety, ² and no part of Title IV-E expressly prohibits reunification with parents who are undocumented or who live outside the U.S.

Notice to Relatives
Child welfare agencies must notify all adult relatives when a child is removed from care of the parent within 30 days of the removal. The agency must exercise due diligence to identify and locate all adult relatives of the child. No exception is included in the statute for relatives who live outside the U.S.; a sole exception is articulated for family or domestic violence cases. ³

Relative Placements
Title IV-E does not expressly preclude placements with (or seeking other assistance from) relatives who are undocumented or living outside the U.S. ⁴

Immigration Relief Options

Special Immigrant Juvenile Status (SIJS)⁵
SIJS provides a path to lawful permanent residency for unmarried non-citizens under age 21, who are under the jurisdiction of a State “juvenile court,” and for whom the court has made these findings:

- the child has been declared dependent on a juvenile court or the court has placed the child in the custody of a state agency, individual, or entity appointed by a state or juvenile court;

¹ 8 U.S.C. § 1611(b)(1)(D); Attorney General Order No. 2049 (1996) (see 61 Fed. Reg. 45985-01). Title IV-B parts 1 and 2 are not considered Federal public benefits and can be provided regardless of a parent's or child's immigration status; this includes preventive services. U.S. Dept. of Health and Human Services, Admin. for Children's Services, Child Welfare Policy Manual section 7.1 #2;ACYF-CB-PIQ-99-01 (1/14/99).


⁵ U.S. Citizenship and Immigration Services, Memorandum from Donald Neufeld re: TVPRA of 2008: Special Immigrant Juvenile Status Provisions (March 24, 2009); Immigration and Nationality Act (“INA”) § 101(a)(27)(J); 8 C.F.R. § 204.11; see also USCIS, Special Immigrant Juvenile Status: Information for Juvenile Courts, and note that as part of a stipulation to the settlement agreement in Perez-Olano v. Holder, (No. CV 05-3604 (C.D. Cal.)) the child need not be under juvenile court jurisdiction when she files her SIJS application with USCIS if the that court jurisdiction terminated due to the child’s age and the youth is under 21 at the time of filing.
• the child’s reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
• the child’s best interests would not be served by being returned to his/her country of origin.

A “juvenile court” is defined as “a court located in the United States having jurisdiction under State law to make judicial decisions about the custody and care of juveniles.” In Colorado, this includes delinquency, dependency and neglect, probate/guardianship, adoption, and allocation of parental responsibilities proceedings. Without the findings from a State court, a child cannot petition the federal government for designation as a Special Immigrant Juvenile.

Asylum
A person, including a child, may qualify for this form of immigration relief if he or she has a well-founded fear of persecution due to race, religion, nationality, membership in a particular social group, or political opinion if returned to the home country or country of last permanent residence. After a year, an asylee may apply for lawful permanent residency (green card status). Refugee is a status conferred while a person is outside the U.S.; asylee status is via an application adjudicated while the person is already in the U.S.

Victims of Human Trafficking (T Visas)
The T Visa is available for a victim of human trafficking who:
• is the victim of a severe form of trafficking;9
• is physically present in the United States on account of trafficking;
• has complied with any reasonable requests for assistance in investigating or prosecuting trafficking (unless the person is not yet 18 years of age); and
• would suffer extreme hardship involving unusual and severe harm upon removal from the U.S.10

Crime Victim (U Visas)
The U Visa is available to an undocumented person who:
• was the victim of qualifying criminal activity in the United States;
• has suffered substantial physical or psychological abuse as a result of the crime;
• has been, is being, or is likely to be helpful to a federal, state, or local investigation of the criminal activity; and
• has a signed certification from a federal, state, or local judge, prosecutor, law enforcement officer, or other justice official involved in prosecuting or investigating the criminal activity, indicating that the victim has been, is being, or is likely to be helpful.12

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6 8 CFR § 204.11(a).
9 Federal law defines “severe forms of trafficking in persons” to mean: “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” The William Wilberforce Trafficking Victims Reauthorization Act, P. L. 113-126 (2010), codified in 22 U.S.C. §7102.
10 INA §101(a)(15)(T)(I)-(IV); Victims of Trafficking and Violence Protection Act (VTVPA), P. L. No. 106-386 (October 28, 2000).
12 The U.S. Department of Homeland Security has indicated that child and adult protective services agencies may sign the certifications needed for the U Visa application process. See Dept. of Homeland Security U Visa Certification Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, at p. 9; see also 8 C.F.R. § 214.14(a)(2) (defining “certifying agency” to include child protective services).
• If a child was the victim of a crime, he or she may include parents and siblings in his or her petition as derivative applicants. In the case of a U.S. citizen child victim of crime, his or her parent could be considered an “indirect victim,” who can apply for a U Visa, if the child is incapacitated due to age and the parent assists with the investigation or prosecution on his or her behalf.

• A child may access a derivative U Visa if his or her sibling was the victim of a crime, the sibling was under the age of 21, and the child is under the age of 18, or if the child’s parent was the victim of a crime, and the child is under the age of 21.

**Temporary Protected Status (TPS)**

The Secretary of Homeland Security may designate a foreign country for TPS due to conditions that temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.

**Violence Against Women Act (VAWA)**

VAWA allows an abused spouse or child of a U.S. Citizen or Lawful Permanent Resident (LPR) to petition for lawful status in the U.S., without the involvement of the abusive spouse/parent.

**Deferred Action for Childhood Arrivals (DACA)**

DACA is available to an individual who:

• was under the age of 31 on June 15, 2012 and is currently at least 15 years old (unless in removal proceedings);
• came to, and began residing in, the U.S. before reaching his or her 16th birthday;
• has continuously resided in the U.S. since June 15, 2007, up to the present time;
• was physically present and not in lawful immigration status in the U.S. on June 15, 2012, and at the time of making the request for consideration of DACA with USCIS;
• is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a GED certificate, or is an honorably discharged veteran of the armed forces or Coast Guard of the U.S.; and
• has not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.

**Coordination of ICE, Child Welfare & the Courts**

• **ICE Parental Interest Directive**: The directive emphasizes that “ICE personnel should ensure that the agency’s immigration enforcement activities do not unnecessarily disrupt the parental rights of” parents and guardians. The policy directs ICE, when appropriate, to consider parental/guardianship status in making decisions about deportation and detention and to:
  o attempt to keep detained parents/guardians near family and dependency courts;
  o identify, locate, and contact detained parents involved with immigration enforcement;
  o arrange and ensure parents’ court participation;
  o arrange visitation with children as required by the court or the child welfare agency; and

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17 ICE Directive at 1.
• if parents or guardians will be deported, allow them to contact others to help plan for their children.

• **Online Detainee Locator System** to locate parents: [www.ice.gov/locator](http://www.ice.gov/locator)

• **Immigration Enforcement and Child Welfare; Case Planning; Foster Care**. This Children’s Bureau Information Memorandum (IM) guides agencies’ work with families when a parent has been or is at risk of being detained or deported. The IM encourages: screening children for Special Immigrant Juvenile Status; working with ICE; training staff to perform culturally competent services; and adopting best practices.

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**Colorado Law & Resources**

**State Resources**

**Citizenship Assessment Instrument (2012)**

Colorado Department of Human Services Division of Child Welfare Services created this form to assist caseworkers in identifying potential immigration issues, as well as potential relief options for children. Caseworkers are directed to contact an immigration attorney if any responses lend themselves to immigration concerns.

**Child Welfare & Immigration Toolkit (rev. 07/2012)**

These presentations provide an overview of potential immigration issues that can be identified at different points throughout a child welfare case. The presentations follow child welfare procedures for program area five (ages 12 and under) and program area four (ages 13-21). The purpose of the presentations is to illustrate how and when immigration issues may arise during a child welfare case.

**Other Resources**


- Colorado child protection laws and policies neither create nor recognize distinctions in availability of protections and services based on immigration status; however, lack of immigration status may interfere with a child’s or family’s access to public services and ability to comply with requirements of treatment plans and reunification efforts.

- An undocumented child in Colorado has the same right to protection from abuse or neglect as a U.S. citizen child. Once a child is removed from his or her home, immigration status should not affect that child’s ability to access services and placement; however, immigration status may affect the source of the funding for services and placement.\(^{23}\)

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23 Id. (citing 8 U.S.C. § 1611(a) (limiting eligibility for federal public benefits to specified benefits or “qualified aliens.”)).
Colorado statutes limit access to Medicaid and other means-tested benefits for undocumented adults. However, services benefiting children under the age of 18 are specifically exempted from these statutory bars.

Pursuant to Senate Bill 13-033, the Colorado ASSET legislation now allows an undocumented student to pay in-state tuition at Colorado’s public colleges and universities as long as he or she meets certain qualifications, such as:

- has attended a Colorado high school for three years right before graduating;
- was admitted to a participating college within twelve months of graduating; and
- has signed an affidavit stating that he or she is not legally present in the U.S., but is seeking or will seek status when eligible.

When family reunification is not possible, children certified as trafficking victims, approved for SIJS, or granted refugee or asylee status may qualify for placement, case management, and other services under the federal Unaccompanied Refugee Minor (URM) program funded by the federal Office of Refugee Resettlement.

**Rocky Mountain Immigrant Advocacy Network (RMIAN)**

RMIAN Children’s Program provides free consultations, direct representation, and technical support for undocumented children and their service providers. RMIAN is the main contact for child welfare agencies in Colorado when they encounter a child without lawful status.

**Working with Immigrant Children & Families: Obstacles & Opportunities on the Path to Lawful Status in the United States**: On March 6, 2015, Abbie Johnson, Managing Attorney with RMIAN’s Children’s Program, presented at the Spring 2015 Conference for the Colorado Office of Child’s Representative. This training program provides a brief overview of immigration law concerning children, as well as potential relief options for undocumented children.

**Denver Immigration Court’s Priority Docket**

The Denver Immigration Court hears children’s and family removal cases one to two times per week. Neither children nor adults in removal/deportation proceedings are provided with government-appointed counsel to assist them in the proceedings. The court will generally grant one continuance of two to four months to find immigration counsel. Please contact RMIAN if your client is placed in removal proceedings.

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24 Id. (citing § C.R.S. § 24-76.5-103; Soskin v. Reirnerton, 353 F.3d 1242 (10th Cir. 2004)).

25 Id. (citing C.R.S. § 24-76.5-103(1); 9 C.C.R. 2503-1 § 3.140.12).

26 [http://www.ciccoloradoasset.org](http://www.ciccoloradoasset.org)


28 [http://www.rmian.org](http://www.rmian.org)

29 [http://www.rmian.org/childrens-program/](http://www.rmian.org/childrens-program/)