

**NATIONAL
IMMIGRANT
JUSTICE CENTER**

A **HEARTLAND ALLIANCE** PROGRAM

Immigration & Family Law Relief for Unaccompanied Immigrant Children

www.immigrantjustice.org

About the National Immigrant Justice Center

Heartland Alliance's National Immigrant Justice Center is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers through a unique combination of direct services, policy reform, impact litigation and public education.

NIJC serves more than 10,000 immigrants annually with the support of a professional legal staff and a network of nearly 1,500 *pro bono* attorneys.



Who Are Unaccompanied Immigrant Children?

Why Children Are Coming to the United States

The reasons children are fleeing their homes in Central America and Mexico are complex and interrelated, and include:

- Extreme violence in society
- Abuse or neglect in the home
- Poverty and deprivation
- Reunification with family in the United States

Why Children Are Coming to the United States

Carlos, age 15, Honduras

When I was 13, the Mara Salvatrucha started telling me I had to join them or they would kill me. I went to school in a Mara 18 zone and every time I went to school, 18 would threaten me because I lived in an MS zone. One time they beat me up and threatened to kill me and my brother if they saw me again, so I stopped going to school. I used to be a good student, but then I was stuck hiding in my house every day and couldn't do anything, so I came to the United States because my mom and dad are here.

Why Children Are Coming to the United States

Joseline, age 16, El Salvador

My mom came to the United States when I was a baby and left me with my grandma. When I was seven, our neighbor Jose started to touch me and make me do things I didn't want to do. He stopped when I was older, but later I learned he did the same thing to my little sister. When I was 14, some mareros started telling me that I needed to be their girlfriend. At first they just laughed when they said it, but then they became serious. They started to follow me every time I went outside. One day, one man grabbed me on the street, and tried to pull down my pants. He had a gun, but I was able to get away from him. The next day, he started telling people I was his woman and he would kill me if I was with anyone else.

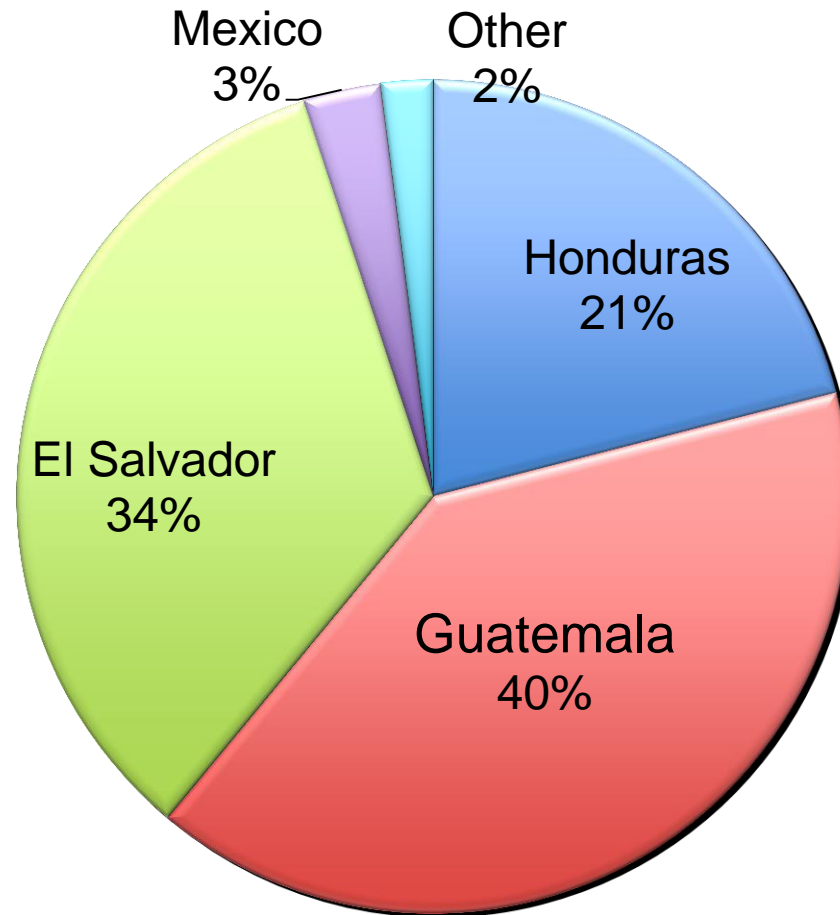
Why Children Are Coming to the United States

Estefany, age 14, Guatemala

My mom came to the United States when I was little and left me with my grandma. I never knew my dad. My grandma used to hit me with rope and cords even when I didn't do anything to make her mad. She told me that my mom left because she didn't love me and that things would be worse if I told anyone what happened at home. She wouldn't let me go to school because she said I needed to help my uncle on his farm and take care of my aunt's children. Sometimes, she wouldn't give me any food and would make me sleep outside with the animals. My neighbors knew that my grandma treated me this way, but they never did anything to help me.

The Numbers: Countries of Origin

FY2016



The Numbers: Demographics

FY2016:

- 67% male
- 33% female
- 32% 0-14 y/o

FY2014:

- 66% male
- 34% female
- 37% 0-14 y/o

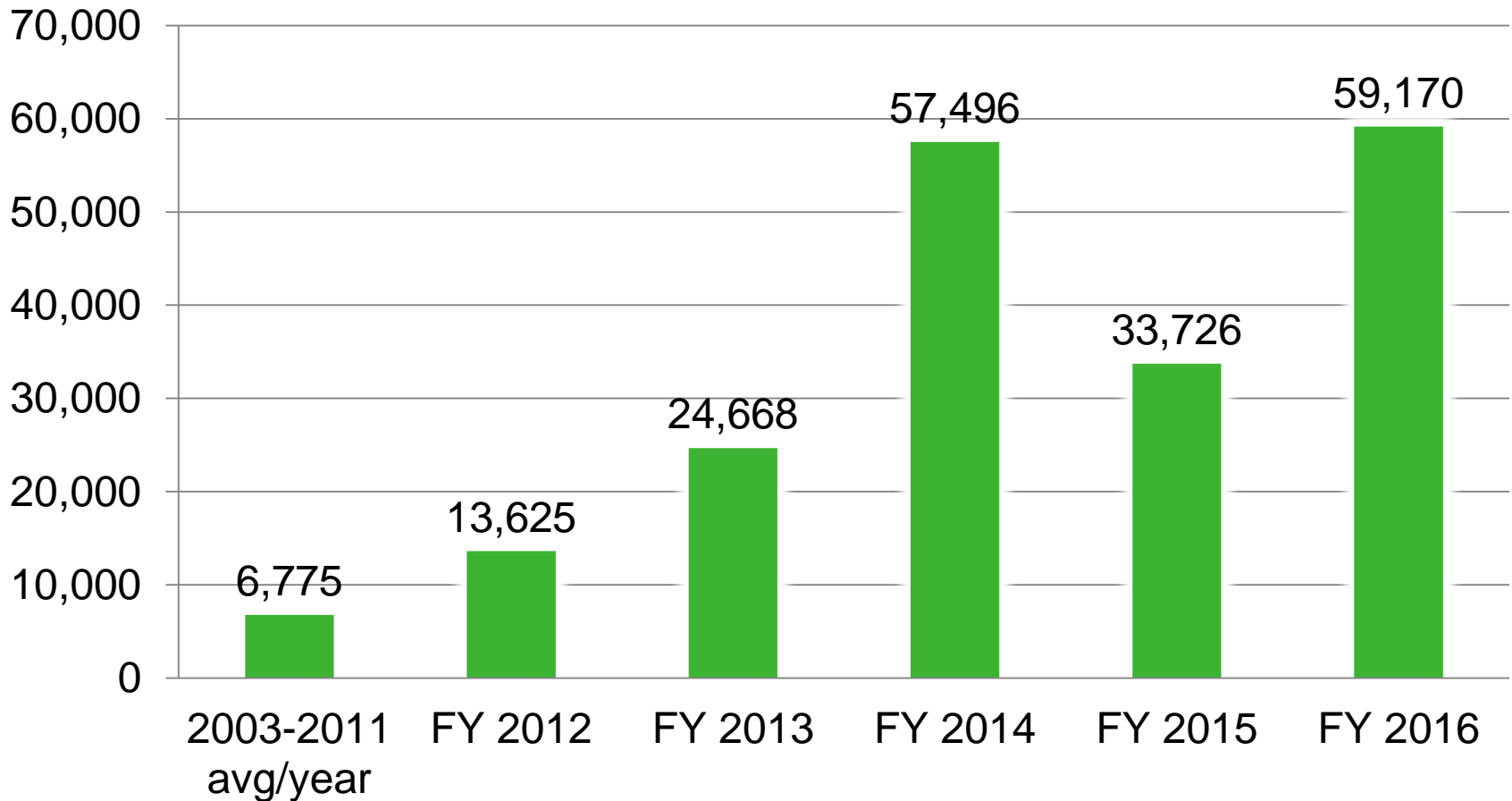
FY2015:

- 68% male
- 32% female
- 31% 0-14 y/o

FY2013:

- 73% male
- 27% female
- 27% 0-14 y/o

The Numbers: Referrals to ORR





Children and the Immigration Enforcement Process

Government Agencies Overseeing Immigration

- **Department of Homeland Security (DHS):**
 - **Immigration and Customs Enforcement (ICE):** interior enforcement, trial attorneys, removal operations
 - **Customs and Border Protection (CBP):** oversees borders and ports of entry
 - **U.S. Citizenship and Immigration Services (USCIS):** administers immigration benefits

Government Agencies, cont.

- **Department of Justice, Executive Office for Immigration Review (EOIR)**
 - Immigration Courts
 - Board of Immigration Appeals

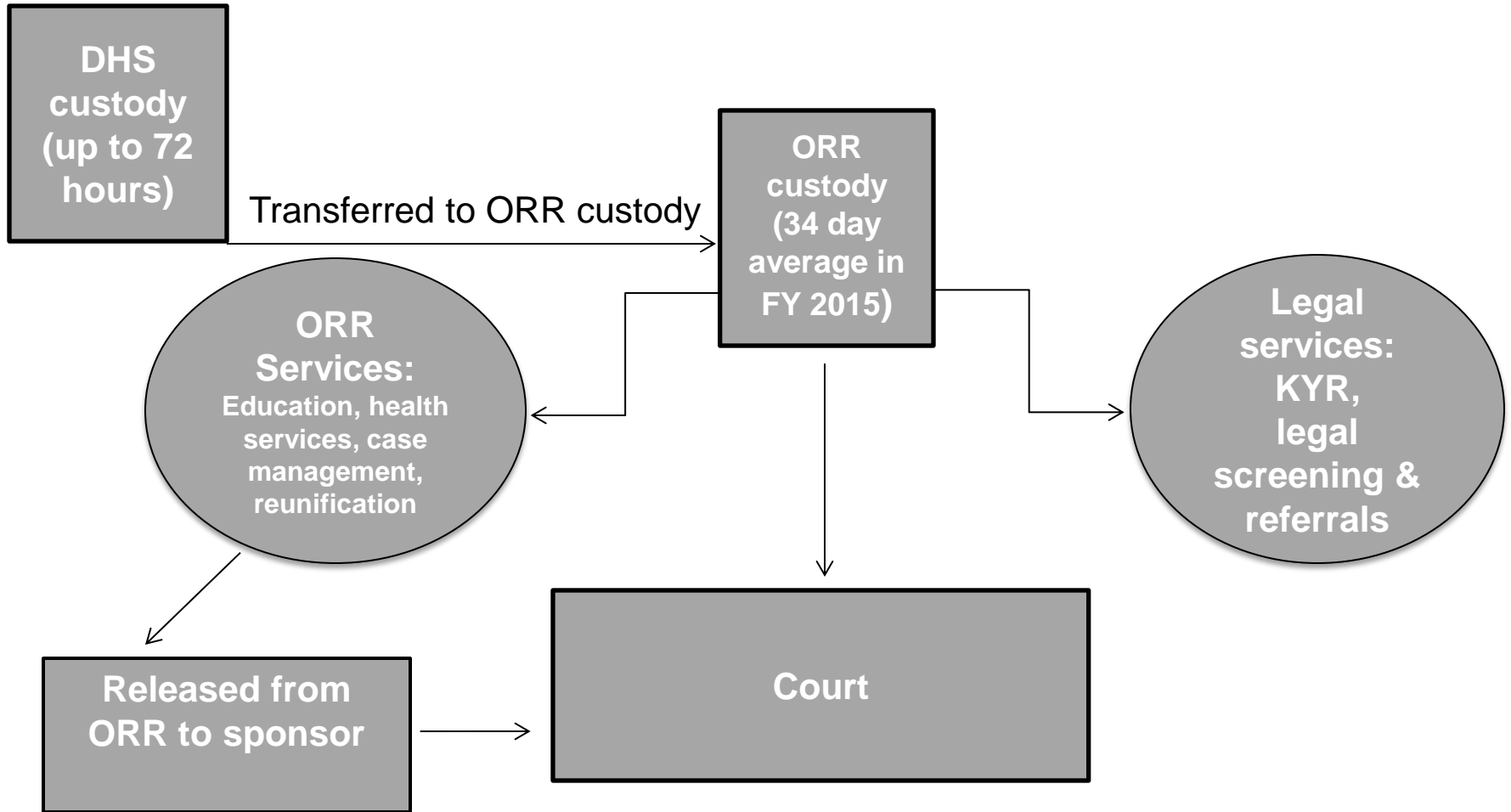
- **Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR):** care and custody of unaccompanied immigrant children (UICs)

What Happens When Children Reach the Border?

DHS initiates the apprehension, detention and removal process for individuals it suspects are present in violation of U.S. immigration law

- Apprehended by either CBP or ICE
- Served Notice to Appear in Immigration Court
- Individuals may be detained or released pending decision on removal

What Happens When Children Reach the Border



What Happens When Children Reach the Border

- ORR contracts with private facilities and NGOs around the country to provide care for UICs using a continuum of care including foster care, group homes, shelter, staff secure, secure, and residential treatment centers
 - NIJC serves several ORR shelters in and near Chicago
 - Children are released from shelters to sponsors around the country:
 - 552 releases to IL in FY2014 (Oct 2013 to Sept 2014)
 - 301 releases to IL in FY2015 (Oct 2014 to Sept 2015)
 - 519 releases to IL in FY2016 (Oct 2015 to Sept 2016)
 - Available at <http://www.acf.hhs.gov/programs/orr/programs/ucs/state-by-state-uc-placed-sponsors>
- ORR coordinates a Legal Access Project to provide Know Your Rights presentations, legal screenings, and facilitate pro bono representation of UIC in its care

Immigration Court

- Adversarial proceedings
 - Establish removability
 - Raise defenses and/or identify relief
- Few protections specific to children
- **No court-appointed counsel**

Legal Representation

- Immigration law has been compared in complexity to the tax code
- For children to be able to access protection, competent representation is crucial:
 - UIC are represented in only about 1 out of 3 cases (32%) before the immigration court
 - In almost 3 out of 4 cases (73%) when a child was represented, the child was allowed to remain in the United States
 - Only 15% of children appearing without representation were allowed to remain in the United States

Immigration Benefits

Most common forms of immigration benefits for which UICs are eligible are protection-based:

- Special Immigrant Juvenile Status
- Asylum
- T visa
- U visa



SIJS Statutory Relief

Special Immigrant Juvenile Status

- A form of immigration relief available to immigrant children who have suffered abuse or neglect by a parent
- Leads to permanent residency (green card) and eventually citizenship
- Available for accompanied and unaccompanied children

Statutory Authority

- Immigration and Nationality Act § 101(a)(27)(J) & 8 USC § 1101(a)(27)(J)
- Regulations (8 CFR § 204.11) have not been updated to reflect 2008 changes; refer instead to proposed new regulations & subsequent USCIS memos:
 - Proposed regulations: 76 FR 54978 (Sept. 6, 2011)
 - USCIS Policy Memo 602-0117 (June 25, 2015)
 - Updated USCIS Policy Manual:
<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html>

Statutory Requirements

- Under 21 years of age;
- Unmarried;
- Present in the United States;
- A “juvenile court” has:
 - Declared the child dependent on the court or placed them under the custody of a state agency, department, individual or entity;
 - Determined that child’s reunification with *one or both parents* is not viable due to abuse, neglect, abandonment, or a similar basis under state law;
 - Determined that it would not be in the child’s best interest to return to her home country; and
- the Secretary of Homeland Security consents to the grant of SIJ status

State Court Authority

- 8 C.F.R. § 204.11(a): “*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.”
- This can include **domestic relations/parentage, guardianship, adoption, juvenile dependency and juvenile delinquency courts**, among others.

See USCIS, Special Immigrant Juvenile Status: Information for Juvenile Courts. (in materials)

SIJS: Three Step Process

1. State court order

2. SIJS Petition

3. Application for adjustment of status
(green card)

Obtaining a Predicate Order in Illinois State Court

“Magic Language”

1. Child’s **reunification with one or both parents is not viable**
2. ...due to **abuse, neglect, abandonment**, or a similar basis under state law;
3. It would **not be in the child’s best interest to return to her home country**

What kind of case do I file?

- These predicate orders are obtained as the result of the same kinds of cases that you are already confident handling.
- SIJ findings cannot be the sole basis of the case.
- Thoroughly interview the client/family and discuss options with the immigration attorney to choose the best route.

Managing Client Expectations

- This process can be confusing for clients.
- Discuss the possible outcomes with your client *before you file the case*.
- Provide realistic expectations for client.
- There is no guarantee.
- Even if a predicate order is issued, this does not promise the desired immigration outcome.

Drafting Pleadings

Always keep the necessary predicate findings in mind while drafting pleadings or submitting other documents to the court.

1. Describe why reunification with one or both parents is not viable.
2. Describe the circumstances of abuse, abandonment or neglect.
3. Give specific details why it would not be in the child's best interest to return to her home country. Similarly, describe why it is in the child's best interest to remain in the U.S. by mentioning the child's performance in school, community involvement, access to healthcare, access to counseling or other necessary resources that may not be available in her country of origin.

Service of Process

Service Within Illinois

- **Persons authorized to serve process (735 ILCS 5/2-2-202)**
 - Sheriff, or any person who is 18 years of age or older and not a party to the action
 - Person serving the process in a foreign county may make return by mail.

- **Service on Individuals (735 ILCS 5/2-203)**
 - Leave copy w/individual personally;
 - Leave a copy at individual's place of abode w/resident or family member over 13 years, plus 1st class mail; **or**
 - Service by a sheriff or by a nonparty over the age of 18 w/court's permission
 - By publication

Service Within Illinois

- **Service by special order of court (735 ILCS 5/2-203.1)**
 - If service upon an individual is impractical under terms above. Petitioner may move, without notice, that the court enter an order directing a comparable method of service
 - Motion shall be accompanied w/an affidavit stating the nature and extent of the investigation made to determine the whereabouts of the individual and the reasons why service is impractical.
 - Include a statement showing that a diligent inquiry as to the location of the individual was made and reasonable efforts to make service have been unsuccessful

Service By Publication

➤ **Service by publication; affidavit; mailing (735 ILCS 5/2-206)**

Whenever, in any action affecting status w/in the jurisdiction of the court, file an affidavit showing that the individual:

1. resides or has gone out of this State, or
2. on due inquiry cannot be found, or
3. is concealed within this State, so that process cannot be served upon him, and stating the place of residence of the individual, if known

The clerk shall cause publication to be made in some newspaper published in the county in which the action is pending.

Service By Publication

➤ **Publication Period—Default (735 ILCS 5/2-207)**

- Notice may be given at any time after the commencement of the action and
- Published at least once in each week for 3 successive weeks
- No default shall be taken against any individual not served unless the first publication be at least 30 days prior to the time when the default is taken

Service Outside of Illinois

- **Personal service outside State (735 ILCS 5/2-208)**
 - Personal service must be in like manner as service within state
 - Personal service outside state when the person has submitted to jurisdiction has the same effect as personal service within state
 - Personal service outside state when the person has not submitted to jurisdiction has the same effect as service by publication

Service Outside of Illinois

- **Submission to Jurisdiction (735 ILCS 5/2-209)**
 1. Business in Illinois, commission of tort, property in state, conceive child in state, present or domiciled in state;
 2. For actions brought under the IL Parentage Act of 1984 or IL Parentage Act of 2015→the performance of an act of sexual intercourse within Illinois during the possible period of conception
 3. Failure to support a spouse or child after leaving them or directing them to reside in state
 4. Jurisdiction by any other basis under US or Illinois constitution

Service on Individual in Foreign Country

➤ **SERVICE ON AN INDIVIDUAL IN A FOREIGN COUNTRY/Fed. R. Civ. P. 4(f):**

An individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the U.S.:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the **Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents**;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by foreign country's law for service in that country in an action in its courts of gen jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses & sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

The Hague Convention

- Hague service is only necessary for *initial* service of process
 1. Person to be served resides in a country that is a party to the Hague Convention
 - The main channel for service of process under Hague is the destination state's Central Authority
 2. The document is a judicial or extrajudicial document,
 3. Case is a civil and/or commercial matter, and
 4. Address of recipient is *KNOWN*.
 - Hague *inapplicable* where service of process is made upon the agent of a foreign entity in US or the whereabouts of a foreign individual are *unknown*
 - *If unknown* → service by publication permissible
- List of Countries Party to the Hague Convention is found online
- Both the U.S. and Mexico are signatories to the Hague Convention

The Hague Convention: Central Authority

MAIN METHOD OF SERVICE → the CENTRAL AUTHORITY

The Central Authority:

1. Receives all requests from abroad for service of process
2. Sends the requests on to the appropriate authority to execute the request
3. Provides a certificate stating that service has been made or explains why it was not
4. Relieves having to figure out how to make service under the law of another country as one needs only to transmit the request for service to the other country's central authority

Hague Steps

Step 1: Complete Model—If the receiving country's official language is not English, prepare 2 certified translated copies of all documents to be served, including the USM-94

<https://assets.hcch.net/docs/706e1b50-b541-4909-8ebe-460d85311cba.pdf>

Step 2: Fill out form USM-94 from US Marshals Service <https://www.usmarshals.gov/forms/usm94.pdf>

Step 3: Attach fees if required by central authority

Step 4: An officer who is competent in state of origin should send the USM-94 form, along with 2 copies of all the documents to be served to the central authority of recipient country in their language.

➤ *Tip:* Call the clerk to ensure that the clerk will sign & seal form without the need for a motion

Step 5: Once service is completed, the foreign central authority will send the certificate of service directly to the applicant

➤ It likely **takes 3-6 months** to serve and return service – consider writing to CA to request an update on status or ask U.S. embassy or consulate to make request for an update on your behalf

Step 6: File Certificate of Service and translation with Illinois Court

INTER-AMERICAN CONVENTION ON LETTERS ROGATORY & ADDITIONAL PROTOCOL (IACAP)

- The IACLR & Additional Protocol (IACAP) are a pair of international agreements designed to facilitate judicial assistance between countries. The agreements are limited to covering service of process & countries **must be a party to both agreements in order for a treaty relationship to exist.**
 - Courts have held that letters rogatory are one method that may be used for service in countries party to the IACLR
 - Mexico, Guatemala, Argentina, Brazil, Columbia, Ecuador, Panama, Paraguay, Peru, Uruguay, Venezuela and U.S. are all parties
- IACAP replaces the traditional letters rogatory process and provides a mechanism for service of docs by a foreign central authority
- IACAP limits its application to civil and commercial matters
- Service under **IACLR is more time-consuming, expensive, and slow**
 - Execution of letters rogatory **may take six months to a year or more**
 - **Processing Fees** for letters rogatory (including seal and certificate for return) = **\$2, 275**
- **Best to use Hague** because U.S. courts handle more cases under Hague than under IACLR so there is more precedent for lawyers to rely on to ensure service handled correctly
- **Signature of Clerk of Court in U.S. Required**-- Unlike the Hague Con., IACAP requires the form bear the seal & signature of the judicial and the signature & stamp of the Central Authority

Service

SAMPLE REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE

NAME OF COURT IN SENDING STATE REQUESTING JUDICIAL ASSISTANCE

NAME OF PLAINTIFF
DOCKET NUMBER

V.

NAME OF DEFENDANT

REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE (LETTER ROGATORY)

(NAME OF THE REQUESTING COURT) presents its compliments to the appropriate judicial authority of (NAME OF RECEIVING STATE), and request international judicial assistance to the effect service of process to be used in a civil proceeding before this Court in the above captioned matter. A (trial/hearing) on this matter is scheduled at present for (DATE) in (CITY, STATE, COUNTRY).

This Court *request the assistance described herein as necessary in the interests of justice.* The assistance requested is that the appropriate judicial authority of (NAME OF RECEIVING STATE) effect service of process upon the below named individual/s.

(Letters should be written in simple, non-technical English and should not include unnecessary info which may confuse a court in the receiving foreign country. Include the specifics in the letters ~~rogatory~~ (verbatim transcript)

(Names of person/s to be served)
(Nationality of person/s to be served)
(Address of person/s to be served)
(Description of documents)

FACTS

[The facts of the case pending before the requesting court should be stated briefly, including a list of those laws of the sending state which govern the matter pending before the court in the receiving state]

RECIPROCITY

[The requesting court should include a statement expressing a willingness to provide similar assistance to judicial authorities of the receiving state]

REIMBURSEMENT FOR COSTS

[The requesting court should include a statement expressing a willingness to reimburse the judicial authorities of the receiving state for costs incurred in executing the requesting courts letters ~~rogatory~~]

|

SIGNATURE OF REQUESTING JUDGE
TYPED NAME OF REQUESTING JUDGE
NAME OF REQUESTING COURT
CITY, STATE, COUNTRY

DATE

Hague or IACAP only when no alternatives

- Service of process through either the Hague convention or IACAP is expensive and far more time consuming than other methods.
- Unless necessary to go through central authority consider alternatives.
- Most efficient ways to effect service are by publication or consent and waiver.

Consent and Waiver

- If client has contact information for respondent in foreign country, consider reaching out to see if party will waive formal service and consent to the jurisdiction and proceedings.
- Send copy of pleadings (translated if necessary) to respondent along with affidavit to be signed by party in front of notary or local judge, if possible.
- Tip: Ask for copy of photo ID with signature to be returned along with signed affidavit.

Jurisdiction

Illinois Parentage Act of 2015

750 ILCS 46/603 Subject matter and personal jurisdiction

(a) The circuit courts of this State shall have jurisdiction of an action brought under this Act. In a civil action not brought under this Act, the provisions of this Act shall apply if parentage is at issue. The court may join any action under this Act with any other civil action in which this Act is applicable.

(b) An individual may not be adjudicated to be a parent unless the court has personal jurisdiction over the individual.

(c) A court of this State having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in Section 201 of the Uniform Interstate Family Support Act 750 ILCS 22/201 are fulfilled.

(d) Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.

Uniform Interstate Family Support Act

➤ 750 ILCS 22/201 Jurisdiction Over Nonresident

- In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:
 1. Individual is personally served with notice within this State;
 2. Individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
 3. Individual resided with the child in this State;
 4. Individual resided in this State and provided prenatal expenses or support
 5. Child resides in this State as a result of the acts or directives of the individual;
 6. Individual engaged in sexual intercourse in this State and the child may have been conceived by that act of intercourse;
 7. Individual asserted parentage of a child in the putative father registry; or
 8. Any other basis consistent with the constitutions of Illinois or the U.S.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

750 ILCS 36/105 International Application Of Act

- (a)** A court of this State shall treat a foreign country as if it were a state of the U.S. for the purpose of applying Art 1 and 2.
- (b)** Except as otherwise provided in subsection (c), a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this Act must be recognized and enforced under Article 3.
- (c)** A court of this State need not apply this Act if the child custody law of a foreign country violates fundamental principles of human rights.

750 ILCS 36/108 Notice To Persons Outside State

- (a)** Notice required for the exercise of jurisdiction when a person is outside the State may be given in a manner prescribed by the law of this State or the law of the state in which service is made. Notice -- in a manner reasonably calculated to give actual notice but may be by publication if other means not effective.
- (b)** Proof of service may be made in the manner prescribed by the law of this State or by the law of the state in which the service is made.
- (c)** Notice is not required for the exercise of jurisdiction w/respect to a person who submits to the jurisdiction of the court.

UCCJEA

- The exclusive method of determining subject matter jurisdiction in **multi-jurisdictional child custody cases** is the UCCJEA.
- Under the UCCJEA, a central authority court must “treat a foreign country as if it were a state of the U.S. for the purpose of determining jurisdiction.
- “Home State” means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding.
- In some cases, it may be appropriate to litigate the existence of jurisdiction under UCCJEA in the first instance. The UCCJEA contemplates that jurisdictional issues will be raised by a party to the custody proceeding. **The UCCJEA allows a parent to participate in pending child custody proceedings without submitting to personal jurisdiction in this state.** (§ 3409, subd. (a).)

UCCJEA

- If one parent and child have resided in Illinois for 6 months, the UCCJEA residency requirements have been met.
- This means no personal jurisdiction over dad is required to enter custody order in favor of mom.
- Additionally, a **finding of abuse or similar conduct** has the potential to defeat a parent's claim for return of a child to the child's country of habitual residence under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention).
 - *See also Noergaard v. Noergaard*, 244 Cal.App.4th 76, 87–88 (2015) (“First, it is true that ‘the [Hague] Convention prohibits courts in countries other than that of the child's habitual residence from “adjudicating the merits of the underlying custody dispute.””)



Additional Considerations

Time is of the Essence

- Child can be up to age 21 to apply for SIJ
- In Illinois → Unless child is disabled, must get final order before child reaches age of majority.
- These cases are often initiated when child is 17.

Motive for Initiating Case

- If one parent is out of the picture, lives in another country or has been defaulted, why bring this case at all?

Perfecting the Final Order

- Absolutely *necessary* findings:
 - Reunification not viable;
 - Abuse, neglect, abandonment; *and*
 - Not in best interest to return to home country
- Strike a balance between bare bones and too much information.
- Should order include all factual basis for findings?
 - Immigration attorney may submit separate findings of fact, other portions of record or affidavits summarizing evidence presented.
- Have the immigration attorney review and approve final order before presenting to court.

Best Practices When Seeking a Predicate Order

- Know your judge
- The judge may be uncomfortable with findings that don't appear in IMDMA, Illinois Parentage Act, etc.
- Prepare to argue and explain the immigration laws if necessary (may be helpful to submit memo to court)
- Help a judge understand that he/she has the authority to make these findings and is not making a final immigration determination.
- Prepare client to testify

Communication with Immigration Attorney

- Communication and collaboration with your client's immigration attorney is the single most important way to ensure that your client's needs are met
- Be wary of cases where immigration attorney does not want to be involved

Communication with Immigration Attorney

- When in doubt, ask questions
- Brainstorm creative solutions
- Always cross-check facts and content of documents!

Illinois Case Law on SIJS

Illinois Case Law on SIJS

In re Estate of Nina L ., 2015 IL App (1st) 152223
(Sept. 16, 2015)

- Appeal from Cook County probate court where judge refused to enter SIJS findings in minor guardianship
- Appellate Court reviewed record and case law from other circuits and determined trial court erred in failing to make findings
- Reasoning should apply to domestic relations courts as well as probate

Illinois Case Law on SIJS

- Have mostly had success obtaining SIJS findings in Cook County domestic relations courts
- At least one Cook County probate court currently not entering SIJS findings despite *Nina L.*
- Alternative: non-parents can file for APR in domestic relations court if SIJS findings through guardianship are not viable



New Guidance from USCIS

USCIS New Guidance

- USCIS wants to see that SIJS was not “sought primarily for the purposes of obtaining [permanent resident] status...rather than for the purpose of obtaining relief from abuse or neglect or abandonment.”
- Avoid language that suggests child is seeking the state court order solely to get SIJS or immigration status (mixed motives are okay)
- Other possible benefits to custody order: school enrollment, access to health insurance, passport, clarification of parental rights.

USCIS New Guidance

The state court order must contain evidence of the factual basis for each conclusion, rather than simply reciting the magic language. Rather than:

“Maria’s reunification with one or both parents is not viable due to abuse, abandonment, or neglect,”

write:

“Maria’s reunification with her father is not viable due to his abandonment of her as follows: he left the family when Maria was three years old; he never provided economic or emotional support for Maria; and Maria has not seen him since she was seven years old.”

USCIS New Guidance

USCIS now requires that “if the findings are based on a father not listed on the petitioner’s birth certificate, **a determination that the claimed father is the father under state law should be established** in the juvenile court order.”

- Where possible, obtain an order establishing paternity, or at least referencing the father by name.
- Even if the court will not specifically establish paternity, you should still be able to get a custody order! Work with an immigration attorney to determine the best alternate language to include.

USCIS New Guidance

For the third special finding, “not in child’s best interest to return to home country,” it is not enough to simply state that it is in her best interest to remain with her caretaker in the U.S. Examples of acceptable language include:

“It is not in the child’s best interest to return to Honduras because she lacks an appropriate caregiver there.”

“It is not in the child’s best interest to return to Guatemala because her life would be in danger.”*

*remember, this is NOT an asylum case, just a best interest determination!

USCIS New Guidance

For NIJC's practice advisory and other updated information about the SIJS requirements, visit:

<http://www.immigrantjustice.org/resources/resources-attorneys-representing-unaccompanied-immigrant-children>

SIJS & New Enforcement Priorities

Border security implementation memo of 2/20/17 by John Kelly

“Accountability measures to protect alien children”

Accordingly, the Director of ICE and the Commissioner of CBP shall ensure the proper enforcement of our immigration laws against any individual who directly or indirectly facilitates the illegal smuggling or trafficking of an alien child into the United States. ...proper enforcement includes (but is not limited to) placing any such individual who is a removable alien into removal proceedings, or referring the individual for criminal prosecution.

https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf

SIJS & New Enforcement Priorities

Could discourage parents/relatives from coming forward as sponsors while kids are detained.

Could also destabilize and send whole family back to danger, even if child is eligible for relief.

SIJS & New Enforcement Priorities

Practice tips:

- Discuss risks with family members before filing in state court
 - the few instances of people being picked up at state court in Illinois have been for individuals with criminal histories, but this doesn't mean no risk for those without.
- Avoid any mention in pleadings of parent/sponsor's involvement in child's journey to the United States
- Be prepared to push back on questions about sponsor's immigration status – it's not relevant to custody case.

Final Practice Pointers

- Children who are granted SIJS may never apply for immigration benefits for either parent
- If child is represented by an immigration attorney, **consult with that attorney** regarding language in the court order to ensure it will meet USCIS requirements
- USCIS must receive child's application while the custody order is still valid (i.e., before child's 18th birthday). The immigration attorney **MUST** receive the predicate order well before the child's 18th birthday

Thank you!

For more information contact

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www.immigrantjustice.org

Ways to support NIJC:

- NIJC Annual Appeal
- Twitter: @NIJC
- Facebook: facebook.com/immigrantjustice