

# CHAPTER EIGHT

## Juveniles

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### **8.1 IMMIGRATION CONCEPTS RELEVANT TO DELINQUENCY DETERMINATIONS**

#### **A. Delinquency Determinations Can Directly Impact Noncitizen Youths’ Immigration Issues**

While juvenile court judges do not have direct jurisdiction to make decisions about immigration status, it is imperative that judges be aware that the decisions that are made within delinquency and dependency proceedings can have far-reaching immigration implications for a noncitizen youth. For example, entering a finding that a noncitizen youth violated a no-contact order triggers a ground of deportation, which can result in the removal of lawfully present

noncitizen youth (such as permanent residents and refugees) and can foreclose avenues to obtain lawful status for undocumented youth.<sup>1</sup>

Additionally, in some cases, juvenile courts can play an important role in facilitating eligible non-citizen youth to obtain lawful immigration status. For example, in order for an undocumented youth to obtain lawful status under the “special immigrant juvenile status” (SIJS) provisions, a delinquency, dependency or other family court must make specific findings regarding their status.<sup>2</sup>

If juvenile courts do not understand their role in this process, they may jeopardize the lawful status of noncitizen youthful offenders and/or foreclose otherwise viable avenues to obtain lawful status for undocumented youth.

## **B. Delinquency Determinations Are Not “Convictions” Under Immigration Law**

A juvenile delinquency adjudication is not considered a conviction for immigration purposes.<sup>3</sup> However a juvenile convicted as an adult will have a conviction for immigration purposes.<sup>4</sup> Consequently, declining a juvenile under RCW 130.04.030 to be prosecuted in adult court can have severe immigration consequences for a noncitizen youth.

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<sup>1</sup> 8 U.S.C. § 1229a(b)(2)(A)(4) (statutory bar to cancellation of removal for survivors of domestic violence where applicant triggers crime-related deportation grounds).

<sup>2</sup> See 8 U.S.C. § 1101(a)(27)(J).

**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, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

**(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 Secretary of Homeland Security consents 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 custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services 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; and 8 CFR § 204.11 (Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile)); and 8 CFR § 204.11.

<sup>3</sup> *Matter of Devison*, 22 I&N Dec. 1362, 1362 (BIA 2000) (resentencing of New York youthful offender following probation violation does not convert juvenile adjudication into a judgment of conviction); *Matter of De La Nues*, 18 I&N Dec. 140, 140 (BIA 1981); *Matter of Ramirez-Rivero*, 18 I&N Dec. 135, 135 (BIA 1981); *Matter of F-*, 4 I&N Dec. 726, 726 (BIA 1952); *Matter of A-*, 3 I&N Dec. 368, 368 (BIA 1948); *Matter of O’N-*, 2 I&N Dec. 319, 319 (A.G. 1945).

<sup>4</sup> *Matter of De La Nues*, 18 I. & N. Dec. 140, 140 (BIA 1981); *Matter of C-M-*, 9 I. & N. Dec. 487, 487 (BIA 1961); *Matter of P-*, 8 I. & N. Dec. 517, 517 (BIA 1960); *Matter of N-*, 3 I. & N. Dec. 723, 723 (BIA 1949); *Matter of F-*, 2 I. & N. Dec. 517, 517 (BIA 1946).

For example, a delinquency determination for the offense Robbery 1<sup>st</sup> Degree does not trigger grounds of deportation or inadmissibility. Consequently it cannot result in the youth's removal (deportation) from the U.S., nor does it create statutory bars to being admitted to the U.S. or to being granted lawful status. (Note that it will be a significant negative discretionary factor warranting denial of any application for immigration status or citizenship.) If the same youth were convicted in adult court of Robbery 1, he is likely to face removal for the conviction since Robbery 1 is classified as both a crime of moral turpitude (CIMT) and an aggravated felony "crime of violence" under immigration law.

The fact that juvenile delinquency determinations are not convictions under immigration law is a distinction with important implications, namely that no delinquency determination can trigger crime-related grounds of deportation or inadmissibility that require a "conviction" (which most do). However, as outlined below, this does not mean that these decisions do not have significant immigration consequences. Certain offenses can trigger the "conduct-based" removal grounds, which do not require formal convictions to apply.

### **C. Detention of Noncitizen Youth during Immigration Proceedings**

Youth in state custody are generally identified and apprehended by Immigration and Customs Enforcement (ICE) when state or local law enforcement or detention officials share information with ICE regarding children and/or allow ICE to question youth while in custody. Federal law does not mandate that state and local officials report noncitizens (children or adults) to ICE. However, as noted at the end of this chapter, there is a question of whether RCW 10.70.140 requires notice to ICE when a noncitizen juvenile is detained.

Once ICE becomes aware of a suspected undocumented youth, they may file an immigration hold or detainer with state or local detention authorities. A detainer is a request that a criminal justice agency inform ICE of impending release of an immigrant in order for ICE to assume custody in order to initiate deportation proceedings against a person.<sup>5</sup> As with adults, detainers or holds over a juvenile does not mean that he or she is actually deportable or that the case is active with ICE; as ICE commonly places a hold on anyone it believes to be in violation of immigration laws. In many cases, the youth may not be subject to deportation and/or has legal relief from deportation. See Chapter Two for more information on ICE detainers and ICE enforcement issues.

Once ICE assumes custody over a noncitizen youth removal proceedings are generally initiated. Children, like adults, have no right to counsel in removal proceedings and most go unrepresented.<sup>6</sup>

Youth who are apprehended and placed in removal proceedings are either detained by ICE, or transferred to the custody of the U.S. Department of Health and Human Services, depending on an initial determination by ICE of whether that child is "accompanied" or "unaccompanied." In 2002, the U.S. Department of Health and Human Services, Office of Refugee Resettlement,

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<sup>5</sup> 8 U.S.C. 1357(d); 8 CFR 287.7

<sup>6</sup> 8 U.S.C.A. § 1182(a)(9).

Division of Unaccompanied Children's Services (ORR/DUCS) became the agency responsible for the custody and care of "unaccompanied alien children."<sup>7</sup> An Unaccompanied Alien Child is defined as a child who is under eighteen, without legal status, and without a parent or guardian who can take custody.<sup>8</sup> In many cases, a youth may have family in the United States, but the family members cannot come forward to claim their child from ICE without risking their own apprehension by ICE, resulting in determination that the youth is "unaccompanied."

If a youth is deemed by ICE as "accompanied," (either because he or she has legal status, or he or she has family willing to come forward) the youth will remain detained by ICE, usually at a contracted facility such as a local city or county jail or juvenile detention facility. A youth who is determined by be "unaccompanied" must be transferred out of ICE custody to the custody of ORR/DUCS within 72 hours.<sup>9</sup>

Pursuant to a 1996 settlement agreement, youth detained by federal immigration authorities must be held in the least restrictive setting suitable to meet the child's needs and ensure s/he will not pose a danger to himself or the community.<sup>10</sup> ORR contracts facilities throughout the United States to provide four levels of care: foster care, shelter care, staff-secure, and secure facilities.

Youth who come into ORR custody via the juvenile or criminal justice systems are usually placed into staff-secure or secure facilities; often the same facilities contracted by state and local agencies to detain juvenile offenders. In determining the most appropriate placement for a youth, ORR considers the minor's juvenile delinquency or criminal record, including charges not yet adjudicated. Youth may also be stepped-down to a less restrictive placement or stepped-up to a more restrictive facility, depending on behavior.<sup>11</sup> Placement decisions, including initial placement and transfers, are also influenced by bed space availability. Children are frequently placed or transferred to ORR facilities out of state, even if the youth's family is local and/or his criminal or juvenile delinquency case is still pending in Washington.

ORR generally does not transport children in its care to out of state juvenile court hearings, or have a formal process for notifying juvenile courts regarding a youth's custody status with ORR. This frequently results in a youth's nonappearance at juvenile court hearings.

If ORR identifies a family member or suitable non-family member who is willing to accept custody and care of a child, it will seek to release the child to that person's care (referred to by ORR as a "sponsor"). A parent or other sponsor who seeks to have a child released to his or her care must complete a series of paperwork including background checks and affidavits of support. If a youth is on active probation or there are other concerns about the suitability of a sponsor,

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<sup>7</sup> Homeland Security Act of 2002 § 462(a), 6 U.S.C. § 279(a)(2006). Information regarding the Office for Refugee Resettlement's Division of Unaccompanied Children *available at* [http://www.acf.hhs.gov/programs/orr/programs/unaccompanied\\_alien\\_children.htm](http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_alien_children.htm).

<sup>8</sup> Homeland Security Act of 2002 § 462(g)(2); 6 U.S.C. § 279(g)(2).

<sup>9</sup> Homeland Security Act of 2002 § 462(g); 8 U.S.C. § 279(a)(2006); Trafficking Victims Protection Reauthorization Act §235(b)(3).

<sup>10</sup> *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. filed Jan 17, 1997).

<sup>11</sup> *Id.*

ORR will conduct a home study prior to releasing a child. A child who is released to a sponsor is still in removal proceedings until or unless those proceedings are concluded.

Many youth are subject to prolonged immigration detention even after having completed his or her juvenile or criminal sentence. Although children are placed in immigration custody because of unlawful immigration status rather than any underlying offense, in many cases the underlying offense (including unadjudicated charges) will result in a youth's placement in a more secure immigration detention facility. A child transferred to ORR or ICE custody who has no family member or sponsor to be released to, or whose release is not approved, may remain in ORR custody until the resolution of his or her removal proceedings. In some cases, particularly if a youth is seeking legal relief in immigration court, this can take many months and sometimes many years.

## **D. Ensuring Effective Assistance of Counsel to Noncitizen Juvenile Offenders**

Like their adult counterparts, youthful offenders have a Sixth Amendment right to effective assistance of counsel.<sup>12</sup> As such, defense counsel representing noncitizen youth have a duty to address immigration consequences as outlined in *Padilla v. Kentucky*<sup>13</sup> as part of his/her representation, including both negotiating to avoid outcomes that would trigger removal as well as preserving eligibility for avenues to obtain lawful immigration status and U.S. citizenship.<sup>14</sup>

Remembering that there is no appointed counsel in removal proceedings, juvenile defense counsel is often the first and last lawyer noncitizen youth ever see. As such, it is often times the only opportunity to both avoid triggering negative immigration consequences such as removal, but also a critical time to identify avenues for undocumented youth to obtain lawful status.

Juvenile court judges can play an important role in ensuring that noncitizen youth who appear before them are receiving representation consistent with *Padilla* by making sure that the defenders who appear before them are consistently accessing the readily available resources available to them through the Washington Defender Association's Immigration Project.<sup>15</sup> The Washington Defender Association's Immigration Project has a specific focus on assisting juvenile defenders to not only negotiate resolutions that avoid or mitigate negative immigration consequences, but also to identify undocumented youth who qualify for one of the avenues to obtain lawful immigration status outlined below – and connect them with legal resources to assist their clients in that process.

## **8.2 IMMIGRATION CONSEQUENCES OF DELINQUENCY FINDINGS**

Although delinquency adjudications are often less severe than adult court convictions, juvenile offender adjudications pertaining to certain criminal offenses can still significantly impact a youth for immigration purposes. Chapter One provides in greater detail an overview of

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<sup>12</sup> *Application of Gault*, 387 U.S. 1 (1967).

<sup>13</sup> 130 S.Ct. 1473 (2010).

<sup>14</sup> *Id.* at 1482-83.

<sup>15</sup> Information about WDA's Immigration Project is available at [www.defensenet.org](http://www.defensenet.org).

immigration law and procedure, and outlines the important distinctions between the grounds of inadmissibility and the grounds of deportation, such as when and to whom they apply.

## A. Delinquency Determinations & the Grounds of Inadmissibility

If triggered, the grounds of inadmissibility can render undocumented youth statutorily ineligible to obtain lawful immigration status through one of the avenues outlined in §8.3. They can also prevent lawfully present youth from obtaining U.S. citizenship, and bar them from re-entering the U.S. if they go abroad.

Juvenile delinquency determinations can trigger the following conduct-based grounds of inadmissibility:

- **Where the government has “reason to believe” that a juvenile is or has been, or has assisted a drug trafficker.**<sup>16</sup> This includes juvenile adjudications for sale, possession for sale, cultivation, manufacture, distribution, delivery, and other drug trafficking offenses that contain a commercial element. This is the harshest provision affecting juveniles because it can be a permanent bar to obtaining lawful status despite significant equities and there are generally no waivers available to forgive this conduct.
- **Being a current drug addict or abuser.**<sup>17</sup> This involves repeated findings of drug abuse and/or addiction to drugs. “Current” is defined as drug abuse or addiction in the last three years for non-medical purposes.<sup>18</sup> Drug addiction is defined as non-medical use of a controlled substance “which has resulted in physical or psychological dependence.”<sup>19</sup> Drug abuse is *any* drug use that goes beyond mere “experimentation” with drugs. The example provided for experimentation was *taking an illegal drug one time*.<sup>20</sup> This ground rarely comes up in immigration proceedings.
- **Engaging in prostitution.**<sup>21</sup> This involves being the prostitute and not the customer. Although a finding of guilt related to the offense of being the customer is a crime involving moral turpitude, triggering the CIMT inadmissibility ground generally requires a conviction. See §4.11 for more on the immigration consequences of prostitution offenses.
- **Mental disability posing threat to self or other.**<sup>22</sup> This encompasses suicide attempt, torture, mayhem, repeated sexual offenses against younger children (predator), and perhaps repeated alcohol offenses (showing alcoholism).

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<sup>16</sup> 8 U.S.C. § 1182(a)(2)(C).

<sup>17</sup> 8 U.S.C. § 1182(a)(1)(A)(iv).

<sup>18</sup> Amendments to p. III-14, 15 of Technical Instructions for Medical Examination of Aliens.

<sup>19</sup> 42 U.S.C. § 201(k).

<sup>20</sup> 42 C.F.R. §§ 34.2(g) and (h).

<sup>21</sup> 8 U.S.C. § 1182(a)(2)(D).

<sup>22</sup> 8 U.S.C. § 1182(a)(1)(A)(iii).

- **False claim to U.S. citizenship.**<sup>23</sup> This involves the use of false documents and fraud offenses where a juvenile claims to be a U.S. citizenship for any purpose or benefit under immigration laws or any federal or state law.

## B. Delinquency Determinations and the Grounds of Deportation

Most of the crime-related grounds of deportation require convictions to apply. However, triggering one of the **conduct-based deportation grounds** listed below can result in loss of immigration status for noncitizen youth who are lawful permanent residents (LPRs) and refugees (as well as other lawfully present youth).

- **Where Court finds violation of domestic violence protective order or “no-contact” order** issued to prevent repeated harassment, credible threats of violence or bodily injury.<sup>24</sup> See §4.4(E) for more information on violations of no-contact order offenses.
- **Being a drug addict or abuser anytime since being admitted to the U.S., even if the juvenile has overcome the problem.**<sup>25</sup> Although it appears to be applied randomly and infrequently, drug addiction is defined as non-medical use of a controlled substance “which has resulted in physical or psychological dependence.”<sup>26</sup> Drug abuse is *any* drug use that goes beyond mere “experimentation” with drugs. The example provided for experimentation was *taking an illegal drug one time*.<sup>27</sup> This ground rarely comes up in immigration proceedings.
- **False claim to U.S. citizenship.**<sup>28</sup> This involves the use of false documents and fraud offenses where a juvenile claims to be a U.S. citizen for any purpose or benefit under immigration laws or any federal or state law.

## C. Delinquency Determinations Are Negative Discretionary Factors

Most immigration benefits (e.g. LPR status and U.S. citizenship) and most avenues to request relief from removal before an immigration judge are discretionary. Thus, even though a juvenile delinquency determination will not trigger conviction-based grounds of deportation or make someone statutorily ineligible for immigration benefits, it can and will be a significant negative factor in weighing whether the noncitizen deserves the requested benefit or relief from removal as a matter of discretion.

**Gang-Related Allegations & Serious Felony Conduct.** In particular, delinquency findings involving serious felony offenses will be significant and weighty negative discretionary factors that a noncitizen youth must overcome by a showing of rehabilitation in order to be granted any

<sup>23</sup> 8 U.S.C. § 1182(a)(6)(C)(ii), (F).

<sup>24</sup> 8 U.S.C. § 1182(a)(2)(E)(ii).

<sup>25</sup> 8 U.S.C. § 1182(a)(1)(A)(iv).

<sup>26</sup> 42 U.S.C. § 201(k).

<sup>27</sup> 42 C.F.R. §§ 34.2(g) and (h).

<sup>28</sup> 8 U.S.C. § 1182(a)(6)(C)(ii), (F).

immigration benefits such as lawful immigration status or U.S. citizenship. In particular, allegations of gang-related or sexual activity will present especially high hurdles since targeting non-citizen gangs and sex offenders are a high priority to federal immigration authorities and therefore, may be insurmountable for a juvenile to overcome. As such, competent defense counsel may be seeking to eliminate or avoid gang-related references in the record, where possible.

### **8.3 AVENUES FOR NONCITIZEN YOUTH TO KEEP OR OBTAIN LAWFUL IMMIGRATION STATUS**

Noncitizen youth can pursue avenues to avoid deportation and obtain or retain lawful immigration status (often referred to as “**immigration relief**”) either affirmatively (before they are placed in removal proceedings) or defensively (before the immigration judge in removal proceedings). Youth applying for relief affirmatively have a distinct advantage. Most affirmative applications for adjustment of status or immigration relief are submitted to United States Citizenship and Immigration Services (USCIS). The process is administrative, and there is no opposing party or adversarial process. On the other hand, asserting eligibility for relief defensively occurs in the context of adversarial and onerous proceedings in which the noncitizen youth is accused of illegal conduct and opposed by the federal government. The noncitizen also does not have a right to government appointed counsel and often goes unrepresented in these proceedings.

These avenues for immigration relief, particularly the protections for noncitizen juveniles, are generally only available to noncitizen youth if juvenile justice system actors identify them and assist them to get the resources needed to navigate the application and/or removal process. Juvenile court judges can also play an important role in this effort by ensuring that defenders, prosecutors and probation officers associated with their courts have policies and practices in place for addressing these issues with regard to noncitizen youth. Juvenile justice policies that encourage the referral of juveniles to immigration authorities and which result in the initiation of removal proceedings decrease the odds that eligible youth will achieve legal status. In addition, policies and practices that subject noncitizen youth to more restrictive detention criteria than those applied to citizen youth can effectively bar access to immigration advocacy services.

- **Readily Available Resources to Assist Juvenile Justice System Actors:**
  - **The Washington Defender Association’s Immigration Project** ([www.defensenet.org](http://www.defensenet.org)) provides case assistance and other resources to defenders, prosecutors and courts to 1) address immigration-consequences associated with criminal charges 2) identify avenues available to noncitizen youth for obtaining or retaining lawful status and 3) connect eligible youth to legal resources.
  - **Volunteer Advocates for Immigrant Justice (VAIJ)**, a program of the American Bar Association located in Seattle, provides legal representation to noncitizen youth throughout Washington State to obtain or retain lawful immigration status. VAIJ contact: Rebekah Fletcher, Children’s Program Supervising Attorney at [Rebekah@vaij.org](mailto:Rebekah@vaij.org) or (206) 359-6203.

- **The Northwest Immigrant Rights Project (NWIRP)** ([www.nwirp.org](http://www.nwirp.org)), with offices in Seattle, Tacoma (serving noncitizens detained at the Northwest Detention Center), Yakima and Moses Lake, provides immigration legal representation to low income noncitizens and their families throughout Washington State. NWIRP has dedicated resources to serve noncitizen youth. Contact Diana Moller at [Diana@nwirp.org](mailto:Diana@nwirp.org).

## **A. Immigration Relief Lawfully Present Noncitizen Youth: LPRs and Refugees**

Noncitizen youth who are LPRs or in refugee status who end up in removal proceedings due to criminal activity will have the same avenues for seeking relief from removal (i.e., keeping their lawful status) as adults, which are outlined at §1.5(E).

## **B. Avenues for Undocumented Noncitizen Youth to Obtain Lawful Immigration Status**

Obtaining lawful immigration status allows youth to live and work openly in their communities, remain with their families and in their schools, and gain access to the basic necessities essential to their well-being. In some cases, return to one's country of origin presents grave dangers and gaining immigration status can save a juvenile's life.

Congress has provided a specific avenue for certain undocumented juveniles to obtain lawful permanent resident status, known as **Special Immigrant Juvenile Status (SIJS)**. In recognition of the special needs of undocumented youth, Congress, in 2008, expanded the legal protections for these youth with the passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).<sup>29</sup> The TVPRA expanded the protections available to noncitizen youth through the SIJS process and provided for more sensitive procedures for all noncitizen youth in immigration custody and at risk of imminent removal.

The chart below highlights the primary legal avenues for noncitizen youth to obtain lawful immigration status. Because SIJS requires specific involvement from Washington delinquency and/or dependency courts, it is highlighted below at §8.3(C). More information on the U and T visa options, as well as the other forms of immigration relief listed in the chart (which are available to noncitizen youth, but are not juvenile specific), is available at §1.4 and §1.5(E).

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<sup>29</sup> Pub.L. 110-457, 122 Stat. 5044, enacted December 23, 2008.

## Overview of Forms of Immigration Relief for Noncitizen Youth

<b>Special Immigrant Juvenile Status (SIJS)</b>	<p>A youth can become eligible to apply for lawful permanent residence if</p> <ul style="list-style-type: none"> <li>• He or she is under the jurisdiction of a juvenile court (dependency, delinquency or guardianship),</li> <li>• the court has made a finding that reunification with one or both parents is not viable due to abuse, neglect or abandonment or a similar basis under state law, and</li> <li>• it is not in the child’s best interest to be returned to his/her home country.</li> </ul> <p>An order is required from the juvenile court making the above findings.</p>
<b>Violence Against Women Act (VAWA)</b>	<p>A youth is eligible for lawful permanent residence if</p> <ul style="list-style-type: none"> <li>• he/she has been “battered or subject to extreme cruelty” (including purely emotional abuse) by a <i>U.S. citizen or permanent resident spouse, parent, or step-parent</i>, or</li> <li>• his/her parent was a victim of domestic violence by a U.S. citizen or Lawful Permanent Resident.</li> </ul>
<b>T Visas for Victims of Trafficking</b>	<p>A youth can obtain a visa with a path to permanent residence if</p> <ul style="list-style-type: none"> <li>• he/she or his/her parent is a victim of severe forms of trafficking in persons<sup>30</sup> (“human trafficking”)</li> <li>• he/she complies with reasonable requests for assistance in investigation or prosecution of the offense (unless he/she is under the age of 16), and</li> <li>• he or she has suffered extreme hardship.<sup>31</sup></li> </ul>
<b>U Visas for Victims of Violent Crimes</b>	<p>A youth can obtain a visa with a path to permanent residence if</p> <ul style="list-style-type: none"> <li>• he/she or his/her parents suffer substantial physical or mental abuse resulting from a qualifying crime,</li> <li>• he/she possesses information concerning the activity and is helpful to the investigation or prosecution of the criminal activity.<sup>32</sup></li> </ul> <p>A judge, prosecutor, investigator (police) or similar official must sign a certification regarding the requirements.<sup>33</sup></p>

<sup>30</sup> 8 USC § 1101(a)(15)(T).

<sup>31</sup> For information on the T visa, see the Legal Aid Foundation of Los Angeles, [www.lafla.org](http://www.lafla.org).

<sup>32</sup> 8 USC § 1101(a)(15)(U).

<sup>33</sup> For information on the U visa see [www.ilrc.org](http://www.ilrc.org) and [www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org).

<p><b>Asylum</b></p>	<p>A youth can obtain asylum with a path to permanent residence if</p> <ul style="list-style-type: none"> <li>• He/she fears return to his/her home country because of an individualized fear of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group.</li> </ul> <p>Applicants are subject to specialized procedures to determine whether they have a valid asylum claim.</p>
<p><b>Cancellation of Removal (CoR) for Non-Permanent Residents</b></p>	<p>A youth can obtain permanent residence if</p> <ul style="list-style-type: none"> <li>• He/she has lived in the United States illegally for ten years or more and</li> <li>• He/she can show that he/she has a parent, spouse or child who is a U.S. citizen or permanent resident who would suffer extraordinary hardship if the youth were deported.</li> </ul>
<p><b>U.S. Citizenship and Family Immigration</b></p>	<p>Some youth may be citizens based on U.S. citizenship of parents and in some cases, grandparents. Some youth may have U.S. citizen or lawful permanent resident family members in the U.S. who can help them become a lawful permanent resident.</p>
<p><b>Deferred Action For Childhood Arrivals (DACA)</b></p>	<p>DACA will defer any government action to pursue removal and grant the applicant a work permit. It will not grant him LPR status or a way to obtain LPR status. Noncitizens can qualify if they establish the following:</p> <ul style="list-style-type: none"> <li>• In U.S. and under 30 yrs. old on June 15, 2012;</li> <li>• Entered the U.S. when she or he was under age 16;</li> <li>• Continuously resided in U.S. during preceding 5 years;</li> <li>• Currently in school, graduated from high, obtained a GED, or honorably discharged from armed forces;</li> <li>• <b>Have not been convicted of a felony, a “significant” misdemeanor or multiple misdemeanors (juvenile dispositions are not deemed “convictions”); and</b></li> <li>• <b>Does not pose a threat to public safety or national security.</b></li> </ul>

## C. Special Immigrant Juvenile Status & Washington Delinquency and Dependency Courts

- **An Overview of Special Immigrant Juvenile Status**

Special Immigrant Juvenile status is a classification under federal law that makes some undocumented children who are under a juvenile court’s jurisdiction eligible to apply for lawful permanent residence.<sup>34</sup> Juvenile delinquency and dependency courts play an integral part in establishing a child’s eligibility for SIJS classification, as Congress specifically deferred to juvenile courts to make the required findings.<sup>35</sup> Thus, a child cannot request SIJS classification without a predicate order from a state juvenile court. For many noncitizen children who come into contact with the delinquency and/or dependency system, SIJS may be the only route to lawful immigration status. Juvenile courts can support efforts to ensure that policies and procedures are in place to identify such children and connect them with needed legal representation.

- To be eligible for SIJS status, a noncitizen youth present in the U.S. must prove that she is someone:
  - who has either been declared dependent on a juvenile court located in the United States, or
  - whom such a court has legally committed to, or
  - who is placed under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States;
- Whose reunification with one or both parents is not viable due to abuse, neglect, abandonment or a similar basis found under State law; and
- 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 his/her home country.

Federal regulations also require that a child must be unmarried and under the age of 21 at the time s/he petitions for SIJS status.<sup>36</sup> A “Juvenile Court” is defined in the regulations as a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles<sup>37</sup>; therefore, in many states, including Washington, **SIJS findings can be made by the Juvenile Court in dependency or juvenile offender proceedings, or in guardianship proceedings.**

A SIJS predicate order by a juvenile court must include the following findings:

- The child is under 21;
- The child is unmarried;

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<sup>34</sup> See 8 U.S.C. 1101(a)(27)(J).

<sup>35</sup> 8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(a); *Perez-Olano v. Gonzales*, 248 F.R.D. 248, 265 (C.D. Cal. 2008).

<sup>36</sup> 8 C.F.R. § 204.11(c).

<sup>37</sup> *Id.*

- The child is either dependent of a juvenile court; **or** a juvenile court has placed the child in the custody of a state agency or department; or an individual or entity appointed by the juvenile court;
- Reunification with one or both of the child’s parent(s) is not viable on account of abuse, abandonment, neglect, or a similar basis under State law; and
- It is not in the child’s best interest to return to his/her home country.

It is important to note that factual findings by the juvenile court, standing alone, do not entitle a child to SIJS status. Rather, the SIJS-predicate order entered by a state court is the first step in the SIJS status process – it simply makes an immigrant child *eligible* for SIJS classification by USCIS, but USCIS retains the ultimate authority over whether to grant SIJS status to the immigrant child. Furthermore, children who are granted SIJS and who then apply for lawful permanent residence are subject to the same eligibility requirements, with some exceptions, as any individual seeking lawful permanent residence.

## **8.4 POLICY CONSIDERATIONS FOR WASHINGTON COURTS REGARDING NONCITIZEN YOUTH**

As outlined in Chapter Two, federal law does not require state or local governments to inquire into or report immigration violations to federal immigration authorities. Moreover, federal law does not compel the reporting of immigration information about juveniles.<sup>38</sup> However, determining whether to cooperate with immigration enforcement efforts focused on the juvenile justice system, and, if so, to what degree, is a significant question for many local jurisdictions.

The question raises a host of significant issues that local juvenile justice systems must grapple with in order to craft their policies. These issues include whether local officials identify and report noncitizen children to ICE, whether and under what circumstances does ICE have access to confidential records and information, and under what circumstances do ICE agents have access to detained youth. The list below, which is not intended to be exhaustive, is offered to assist judges and courts in facilitating discussions with relevant participants.

- **Whether Reporting Youth To ICE And Is Consistent With The Goals of the Juvenile Justice Act (JJA) and Core Mission Of The Juvenile Justice System**

The Washington Supreme Court has recognized the core mission of the juvenile justice system has two animating goals: punishment and rehabilitation.<sup>39</sup> In crafting local policies, local

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<sup>38</sup> See, e.g., *Sturgeon v. Bratton*, 174 Cal. App. 4th 1407 (2009) (upholding “Special Order 40,” a local provision restricting city police from questioning individuals about immigration status and holding that it did not conflict with § 1373); *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755, 771 (C.D. Cal. 1995) (preempting and invalidating state law provision requiring state and local law enforcement to notify federal immigration authorities of immigration violators); see also 8 U.S.C. § 1357(g)(9) (section 1357(g) enables states and localities to enforce immigration laws pursuant to a signed agreement with the Attorney General, but cannot be construed to require states or localities to sign such an agreement).

<sup>39</sup> *State v. Chavez*, 163 Wn.2d 262, 267-68 (2008); see RCW 13.40.010.

jurisdictions' decisions should exercise care to not conflict with Washington law. ICE's focus on removal of noncitizens is not necessarily aligned with these goals.

- **Whether Disclosure of Immigration Status and Citizenship Information To Immigration Officials Is Permitted Under RCW 13.50**

RCW 13.50.050 specifically limits the dissemination of information relating to juvenile offenders.<sup>40</sup> Although the statute contains some exceptions to its general prohibition against disclosure, these exceptions do not expressly include disclosure of a juvenile's immigration or citizenship information to immigration authorities. It is important for local jurisdictions to determine whether such disclosure is authorized by the statute.

Assuming some degree of release of information is permitted, the question becomes under what circumstances? Do immigration officials qualify for confidentiality exceptions listed at RCW 13.50.050 and RCW 13.50.10(8)? If not, or if only partially, must a court order be obtained first?

- **Does the proposed local policy comport or conflict with other State and Federal Laws?**

At least two other laws should be considered in adopting local policies. 8 U.S.C. § 1373 provides that federal, state, and local entities and officials may not prohibit or restrict such entities or officials from sending or receiving information regarding citizenship or immigration status to or from immigration authorities. RCW 10.70.140 requires state and local penal facilities to identify and report to immigration officials the noncitizens who have been committed to their facilities. Whether and how they apply are open legal questions in general. Local officials should address these questions in the context of crafting and implementing local policy.

- **How Does Any Proposed Local Policy Impact Public Safety, Access to Justice and Potential Exposure to Civil Liability?**

As highlighted in Chapter Two, policies and practices of local collaboration with immigration enforcement actions can have implications for community cooperation with law enforcement, impact the perceptions of immigrant communities that they can access justice in the courts, and open local jurisdictions to civil liability.

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<sup>40</sup> RCW 13.50.050.