

Best Practices: Addressing Immigration Issues in Juvenile Court



Table of Contents

Child Welfare Best Practices

Child Welfare Best Practices	Page 1-3
DCFS MOU with Mexican Consulate	Page 4
Child Welfare Checklist for Judges	Page 5

Delinquency Best Practices

Delinquency Best Practices	Page 6-7
Delinquency Checklist for Judges	Page 8

Procedures & Legal Requirements

Service of Process in Foreign Nations	Page 9
Consular Procedures	Page 10
Participation in Court Hearings	Page 11-13
Brief Overview of International Conventions	Page 14-15

Resources & Tools

Avenues for Minors Seeking Legal Status	Page 16
Frequently Asked Questions	Page 17
Unique Challenges	Page 18-20
Helpful Terms	Page 21-22
Resources	Page 23-24

Child Welfare Best Practices

General Considerations

- Children in the United States have a right to protection regardless of their citizenship or immigration status. This right extends to continued safety, permanency, and well-being.
- Every effort should be made to keep a child connected to his or her language, culture, and heritage.
- A foreign national is an individual who is not a citizen or national of the United States. A legal immigrant is a foreign national who has been granted the right to live in the United States. A foreign national living in the United States may have legal or undocumented immigration status.
- The United States is obligated to comply with applicable international and bilateral conventions related to foreign nationals regardless of their immigration status.
- The court does not have a legal obligation to determine or inquire about immigration or foreign national status. However, if the court becomes aware of a party's foreign national or immigration status, it should refer to [Foreign National Status](#) below or [Immigration Status](#) on the next page.

Foreign National Status

- The court should rely on the Division of Child and Family Services (DCFS) or other parties to raise issues of foreign national status.
- When a guardianship or trusteeship is being considered with respect to a foreign national *child*, the foreign national's consulate must be notified. For notification requirements regarding foreign national *parents* in child welfare cases who are arrested or detained, refer to [Consular Procedures on page 10](#).
- In child welfare cases involving custody of a foreign national *child*, DCFS should notify the appropriate consulate as early as possible. The court should inquire whether consular notification procedures were followed.
- If notification has not occurred, the court should direct DCFS to follow consular notification procedures.
- With regard to children who are U.S. citizens *and* nationals of another country (dual citizens), consular notification is not required. *But see*, [DCFS MOU with Mexican Consulate on page 4](#). However, consulate offices may be a helpful resource to locate parents who are out of the country, and to provide kinship options and other services.
- For purposes of consular notification, no inquiry into immigration status should be made. If immigration status is raised by a party, refer to [Immigration Status](#) on the next page.
- A consulate may have an important role in child welfare proceedings. For more information, refer to [Consular Procedures on page 10](#).

Child Welfare Best Practices

Immigration Status

- A child welfare proceeding does not automatically affect the immigration status of the parties, but the immigration status of the parties may affect the child welfare proceeding.
- If the court becomes aware of issues involving a party's immigration status, the court may advise the party or the party's guardian to consult with an immigration attorney.
- The court should ask only the information necessary for managing the case, and should not show bias by presuming the immigration status of a party.
- In order to prevent the introduction of stereotypes, the court should restrict the consideration of immigration status to those instances where the person's status impacts his or her ability to care for the child. In those situations, the court should require the proponent to articulate the reason for presenting evidence on immigration status.
- Immigration status per se does not impair parental rights. *See* David B. Thronson and Judge Frank P. Sullivan, *Family Courts and Immigration Status*, JUV. & FAM. CT. J. 1, 9 (Winter 2012).
- "Presence in the United States without authorized immigration status is not in and of itself evidence of instability." *Id.* at 14.
- The court should consider the totality of the circumstances surrounding a person's abilities, or lack thereof, in providing for a child.
- Parents should not be denied custody solely based on their immigration status. However, if it impacts his or her ability to care for the child, a parent's status is relevant.
- Immigration status may present unique barriers specific to the service and notification process, visitation rights of parents, kinship placement, and the stability of the child's relationship and home environment.



Child Welfare Best Practices

Relative Placement

- Relative placement is preferred as a best practice under both federal and state law.
- Extensive efforts should be made to locate and engage kin, and to transcend country boundaries, as families often maintain strong ties with nuclear and extended family members in their home country. These family members may be an important resource for support and/or placement of children.
- Relatives, as defined by statute, need not be foster care licensed or legal immigrants to be considered as placements for children. However, relatives are required to complete all background checks and undergo a limited home inspection to be considered as a placement.
- Foreign national relatives who are undocumented immigrants cannot be foster care licensed. However, they may be considered for a preliminary placement and/or appointed as a permanent guardian of a child.
- The court should consider the stability of the proposed relative placement, and not solely the placement's status as a legal or undocumented immigrant.
- Issues related to permanency, adoption, and concurrent planning may require additional attention in cases where children are placed with relatives who are undocumented immigrants.
- If the court is considering placing the child with relatives out of the country, the court should take evidence on whether the foreign nation has any restrictions which might prevent such a placement. Additionally, the court should require the parties to address how services and other court orders can be managed in the foreign nation.

Foster Care Licensing

- Prospective foster parents are not required to be United States citizens, but they must be in the United States legally in order to be licensed as foster parents.
- In the case of a married couple, where one spouse is a legal immigrant or a U.S. citizen but the other spouse is not, neither can be licensed as a foster parent. However, the couple may be qualified to be permanent guardians and/or to adopt the child.



DCFS Memorandum of Understanding with Mexican Consulate

Agreement Between DCFS & the Mexican Consulate

The Utah Division of Child and Family Services (DCFS) has entered into a Memorandum of Understanding (MOU) with the Mexican Consulate in Salt Lake City, Utah, relating to Mexican nationals in DCFS custody.

DCFS Obligations

The MOU requires that DCFS provide notice to the Mexican Consulate whenever a Mexican minor is placed in the protective custody, temporary custody, or custody of DCFS. It provides that the Mexican Consulate has the right to communicate with, visit, and assist Mexican minors in DCFS custody. For dual nationals who are U.S. citizens and Mexican nationals, the MOU recognizes the policy of the United States that these children may be treated exclusively as U.S. citizens. However, the MOU indicates that DCFS *may* provide notice to the Mexican Consulate when it has custody of a dual national child, and that DCFS *will* provide such notice when the dual national child has a Mexican national parent in Mexico or no family in the United States.

Mexican Consulate's Obligations

The MOU also provides that the Mexican Consulate may assist DCFS to: locate parents or family members in the United States or Mexico, serve notice of child welfare proceedings upon parents in Mexico, obtain and authenticate relevant documents in Mexico, facilitate communication between the Mexican minor or dual national and his family, provide information relevant to the child's best interest, arrange travel for family members to participate in child welfare proceedings, arrange placement of a Mexican minor with a parent or family member in Mexico, and coordinate assistance and services by the Agency of the National System for Integral Family Development (DIF) in Mexico.



Child Welfare Checklist for Judges

If the court becomes aware that a party is a **FOREIGN NATIONAL**, a judge:

- **Should** ensure that proper service is effected. See [Service of Process to Foreign Nations on page 9](#).
- **Should** ask the Division of Child and Family Services (DCFS) if consular notification procedures were followed.
- **Should** ask DCFS whether consular notification procedures were followed as outlined by the MOU with Mexico (if a child is a Mexican national or dual citizen).
- **Should** direct DCFS to follow consular notification procedures if notification has not occurred.
- **May** make orders to allow an incarcerated or out-of-country party to participate remotely if necessary.

If the court becomes aware of a party's **IMMIGRATION STATUS**, a judge:

- **Should** restrict consideration of immigration status to instances where the party's status impacts their ability to care for the child.
- **Should** require the proponent to articulate the reason for presenting evidence of immigration status.
- **Should** consider the totality of the circumstances and **should not** deny custody based solely on the party's immigration status.
- **May** advise the party or the party's attorney to consult with an immigration attorney about how child welfare proceedings might impact their immigration rights.

In considering **PLACEMENT** of a child, a judge:

- **Should** consider relative placement, even with those who are not foster care licensed, as a preferred placement.
- **Should** be familiar with placement options and limitations for undocumented relatives.
- **Should** inquire into DCFS's efforts to locate and engage kin in and out of the United States.
- **Should** consider the stability of the proposed placement and not solely the immigration status of the parent or relative.
- **Should** seek additional information from kin and parties to satisfy legitimate concerns about stability and criminal convictions.
- For placements outside the United States, a judge:
 - **Should** take evidence on whether the foreign nation has any placement restrictions.
 - **Should** require parties to address how services and court orders are managed in the foreign country.
 - **Should** be specific regarding the type of evaluation, services, and "background" checks expected.

Delinquency Best Practices

General Considerations

- Minors who are accused of committing delinquency offenses are guaranteed certain constitutional rights, including the right to due process, regardless of their immigration status.
- A foreign national is an individual who is not a citizen or national of the United States. A legal immigrant is a foreign national who has been granted the right to live in the United States. A foreign national living in the United States may have legal or undocumented immigration status.
- The United States is obligated to comply with applicable international and bilateral conventions related to foreign nationals regardless of their immigration status.
- Certain delinquency offenses may negatively impact a foreign national minor's immigration status, regardless of whether the minor is a legal or undocumented immigrant.
- A juvenile detained pursuant to a delinquency order who has an ICE hold should be held for a time not to exceed 48 hours, from when he or she would otherwise be released, excluding weekends and holidays, to give the Department of Homeland Security time to assume custody.
- Generally, immigration law does not recognize expungements.
- The court does not have a legal obligation to determine or inquire about immigration or foreign national status. However, if the court becomes aware of a minor's foreign national or immigration status, it should refer to the **Foreign National and Immigration Status** subsection below.

Foreign National and Immigration Status

- The court should rely on the parties to raise foreign national and immigration status issues.
- If the court becomes aware that a minor who has been detained or arrested is a foreign national, the court should inform the minor of his or her right to contact the consulate. For purposes of consular notification, no inquiry into immigration status should be made.
- If the minor is arrested the court should ask if consular notification procedures were followed.
- A consulate may have an important role in delinquency proceedings. For more information, refer to [Consular Procedures on page 10](#).
- The court *should* advise the minor that delinquency adjudications might impact the minor's immigration status. If questions are raised, the court *may* direct the minor or his/her guardian to consult with an immigration attorney about how delinquency proceedings may impact their immigration rights. However, this is defense counsel's role, not the court's responsibility.
- The court should ask only the information necessary for managing the case, and should not show bias by presuming the immigration status of a party.
- In order to prevent the introduction of stereotypes, the court should restrict the consideration of immigration status to those instances where the proponent is able to articulate the reason for presenting evidence on immigration status.

Delinquency Best Practices

Conduct-Based Grounds and Offenses

- Certain conduct, even absent a conviction, can trigger a ground of removability and have harmful immigration consequences. IMMIGRANT LEGAL RESOURCE CENTER, IMMIGRATION BENCHMARK FOR JUVENILE AND FAMILY COURT JUDGES, at 106 (July 2010), http://www.ilrc.org/files/2010_sijs_benchmark.pdf.
- Grounds of inadmissibility found at 8 U.S.C. § 1182 apply to individuals who have not yet been admitted in any legal status to the United States. Grounds of deportability found at 8 U.S.C. § 1227 apply to individuals who have been admitted to the United States, even if they are no longer in lawful status. Most of the conduct-based grounds for removal affect undocumented minors who have not yet been admitted rather than minors with legal immigrant status because only a few conduct-based removal grounds trigger the loss of legal immigration status. *Id.*
- Problematic offenses include: **engaging in prostitution** (inadmissible but not deportable); **being a drug addict or abuser** (inadmissible if person is a current drug addict, and deportable if he has been one at any time since he was admitted to the U.S.); **offenses that demonstrate the person is a sexual predator** (inadmissible under mental pathology (repeated offenses) or under bad conduct (single offense adjudication)); **making a false claim to U.S. citizenship; using false documents** (inadmissible or deportable); **reason to believe that the person is trafficking drugs** (inadmissible, but not deportable); and **violating protective orders** (deportable if criminal or civil court finds a violation). *Id.*
- Medical conditions such as testing positive for HIV, or mental conditions such as posing a risk to self and others are also grounds for inadmissibility. *Id.*
- All offenses, even if they do not trigger inadmissibility or deportability, are considered negative factors in discretionary decisions regarding a minor's immigration status. *Id.* Also, some offenses will be viewed with particular concern, including: **offenses involving violence, domestic violence, firearms, gang-related activity, and sex offenses.**



Delinquency Checklist for Judges

If the court becomes aware of a minor's **IMMIGRATION STATUS** or that a minor is a **FOREIGN NATIONAL**, a judge:

- **Should** inform the minor of his or her right to contact their consulate.
- **Should** ask the State if consular notification procedures were followed (if the minor is arrested or detained).
- **Should** direct the State to follow consular notification procedures if notification has not occurred (if the minor is arrested or detained).
- **Should** be familiar with how certain delinquency adjudications or admissions may affect the minor's immigration status.
- **Should** inform the minor that a delinquency adjudication may impact their immigration status.
- **May** advise the minor or the minor's guardian to consult with an immigration attorney about how delinquency proceedings may impact their immigration rights.
- **Should** order that a juvenile detained pursuant to a delinquency order who has an ICE hold should be transferred to the Department of Homeland Security within 48 hours, not including weekends, from when he or she would otherwise be released.



Service of Process in Foreign Nations

International Service under the Utah Rules of Civil Procedure

- In the absence of an international treaty, [Rule 4 of the Utah Rules of Civil Procedure](#) requires that service should occur in the manner provided by law for service in that country: 1) by letter rogatory, unless prohibited by that country's laws; 2) by delivery to the individual personally or by certified mail (or similar international mail service); 3) by return receipt requested, mailed by the clerk of court; or, 4) by any other means not prohibited by international law as directed by the court.
- In some cases, local service by publication may be sufficient under [Utah Code section 78A-6-109\(13\)](#). When service in a foreign nation is required, service by publication may be possible; however, it may not be a valid method of service under the laws of a particular foreign nation. If service to a foreign nation becomes necessary and service by publication is appropriate under [Rule 4 of the Utah Rules of Civil Procedure](#), the service rules of that nation should be researched and followed. Because service by publication may not be possible in all foreign nations, it may be best to first seek a letter rogatory to effect service. For more information refer to the [U.S. Department of State's website](#).

Hague Convention

- Under [the Hague Convention](#), service may be effected by a request directed to the foreign nation's Central Authority. In this case, a translated pleading is usually required. The Central Authority will serve the documents, and the Central Authority or its agent will provide a return of service.
- Alternatively, service may be effected by mail unless prohibited by the foreign nation. This method requires that a certified return receipt be requested or a similar process be completed. Some states interpret this provision as applying only to documents requiring service after the initial complaint or petition has been served.
- Finally, service may be effected by a method allowed by the foreign nation for service of another nation's pleadings. This option applies only if the foreign nation has adopted a specific law for service of foreign documents.

Letters Rogatory

- A letter rogatory is a request from one court to another for service of process. Under this method of service, pleadings must be translated. In this case, the foreign court serves the pleadings using methods recognized by the foreign state. Effecting service by a letter rogatory is often the most time-consuming method for service in a foreign nation. For more information on how to complete a letter rogatory refer to the [U.S. Department of State's website](#).

Consular Procedures

Obligations Under the Convention

- The United States has undertaken by treaty the obligation to notify foreign consulates and permit them access to foreign nationals who are arrested or detained or for whom a guardianship proceeding is pending.
- These obligations arise under the Vienna Convention on Consular Relations (VCCR) (particularly Articles 5, 36, and 37) and various bilateral conventions.
- The U.S.'s consular notification obligations apply to many countries. The United Nations has a [list of the countries that ratified the Vienna Convention](#) on its website.
- The fulfillment of these obligations falls to federal, state, and local law enforcement; judicial officials; and other government officials. To assist federal, state, and local officials in this duty, the U.S. Department of State has published an instructional manual ([CNA Manual](#)).

Summary of Consular Notification Requirements

- When applicable, a foreign national who is arrested or detained may, upon request, have his consulate notified of his arrest or detention, and may have communications to his consulate forwarded, without delay. In addition, foreign nationals must be advised of this right without delay.
- In cases where the foreign national is from a mandatory notification country, the consulate must be notified of the arrest or detention even if the foreign national does not request or desire notification.
- When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or an incompetent adult, the foreign national's consulate must be notified.

Judicial Responsibilities

- As requested by the U.S. Department of State, courts that preside over arraignments and initial court appearances of foreign nationals should inquire at that time whether consular notification procedures have been followed as required by applicable conventions or bilateral agreements requiring mandatory notification.
- If the court becomes aware that a party before the court is a foreign national, the court should ask whether consular notification is required, and, if yes, whether the notification was completed per the requirements of the applicable convention. Once the consulate has been properly notified, the court may proceed regardless of whether the consulate responds and chooses to participate.

Consulate's Role

- The consulate is entitled to communicate with, and have access to its nationals in detention, and to provide consular assistance to them, including arranging for legal representation.
- Consular officers are not parties to child welfare or delinquency matters and are not permitted to practice law in Utah. They may, however, participate in litigation as "friends of the court," and they may assist a foreign national and his or her legal counsel in preparation of the foreign national's defense, if the foreign national agrees.

Participation in Court Hearings

General Considerations

- Although a party has a right to notice, an incarcerated or out-of-state party does not have a right to be transported to the hearing.
- It is not the court's responsibility to transport an incarcerated or out-of-state party. Assuming that proper service and notice has been effected, the onus is on the party to make arrangements to be present for the hearing.
- The incarcerated or out-of-state party should propose a method for participation in the court proceedings. The court should determine whether that method is appropriate. If a party cannot appear in person, the court may consider allowing the party to appear remotely. In determining the medium used, the court should weigh the ability of the party to otherwise appear in person against the challenges of assessing the credibility of the witness, maintaining a record, and allowing cross examination.
- If the incarcerated or out-of-state party is unrepresented, the court may order the petitioner to assist with executing the necessary writ or order for transportation or remote appearance.
- If a party is allowed to appear remotely, the court may consider changing the order of examination and cross examination to ensure the party's testimony is received, in the event that the party becomes unavailable. Additionally, the party's testimony might be obtained by deposition.
- The court should also consider making a record that clearly identifies the out-of-courtroom participant as the person they purport to be. This may include an official, such as a notary, corrections, or consulate official, attesting to the person's identity by signing a particular document, obtaining or providing appropriate identification, and faxing, scanning, or mailing these documents to the court.
- All documents should be served on the parties according to the Utah Rules of Juvenile Procedure, the Utah Rules of Civil Procedure and, where applicable, foreign service requirements. For more information, refer to [Service of Process in Foreign Nations on page 9](#).

Parties in Federal or Out-of-State Custody

- Petitioner should determine where the party is located, and inform the court as soon as possible.
- The court should issue a summons in accordance with [Utah Code section 78A-6-109](#).
- If remote appearance is allowed by the court, Petitioner or defense counsel should contact the prison to see if the incarcerated party can appear remotely. If the prison has a phone, Skype, or similar resources, Petitioner or defense counsel should determine what arrangements must be made to set up an appearance by the incarcerated party using one of these resources. If the prison does not have this capability, Petitioner or defense counsel should inquire as to whether there are any special requirements or forms for transporting an inmate in addition to the writ.
- Petitioner or defense counsel should ask how much time the prison needs from the date it receives the writ to ensure remote appearance or transport of the inmate.
- Petitioner or defense counsel should then inform the court of the time the prison needs to ensure remote appearance or to transport the inmate.

Participation in Court Hearings

Parties in Federal or Out-of-State Custody Continued

- Petitioner or defense counsel should obtain a Writ of Habeas Corpus ad Prosequendum from the court. Because the state is responsible for transportation to Utah state court proceedings, transportation will need to be ordered and coordinated with a state transporting entity (e.g. the county sheriff).
- The court should specifically order who will bear the costs of the transportation. The court has authority to order the state or county to bear these costs. Otherwise, the court may order one of the parties to reimburse the transporting entity for these costs.
- The court should set the hearing with enough time for the party to appear by phone, Viack, Skype, or by similar means, if the court chooses to allow remote appearance, or for the prison to transport the party, and should specify which party will execute the writ.
- The party ordered to execute the writ should serve the writ on the federal prison in accordance with the Utah Rules of Juvenile Procedure and the Utah Rules of Civil Procedure. Typically, a state entity, such as the Attorney General, should seek and serve the writ. In the case of a private petition, Petitioner and the court can work with local law enforcement to ensure execution of the writ.
- The party ordered to execute the writ should complete any other forms or documents required by the prison for transportation of an inmate.
- The party ordered to execute the writ should follow up with a phone call to the federal prison at least one week before the hearing to ensure that the inmate has not been moved and that the transport or remote appearance will take place.
- An example writ and more information can be found at:
<http://www.kledispatches.ky.gov/transportfedprisoners0808.pdf>.

Parties in State Custody

- Petitioner should determine where the party is located, and inform the court as soon as possible.
- The court should issue a summons in accordance with [Utah Code section 78A-6-109](#).
- Petitioner or defense counsel should contact the prison/jail to inquire as to whether there are any special requirements or forms for transporting an inmate in addition to the order.
- Petitioner or defense counsel should ask how much time the prison needs from the date it receives the order to ensure transport of the incarcerated party.
- Petitioner or defense counsel should then inform the court of the time the prison/jail needs to ensure the incarcerated party's transport.

Participation in Court Hearings

Parties in State Custody Continued

- Petitioner or defense counsel should obtain a transportation order from the court. Because the state is responsible for transportation to Utah state court proceedings, transportation will need to be ordered and coordinated with a state transporting entity (e.g. the county sheriff).
- The court should specifically order who will bear the costs of the transportation. The court has authority to order the state or county to bear these costs. Otherwise, the court may order one of the parties to reimburse the transporting entity for these costs.
- The court should set the hearing with enough time for the prison/jail to transport the party and should specify which party will execute the order.
- The party ordered to execute the order should serve the order on the prison/jail in accordance with the Utah Rules of Juvenile Procedure and the Utah Rules of Civil Procedure. Typically, a state entity, such as the Attorney General, should seek and serve the order. In the case of a private petition, Petitioner and the court can work with local law enforcement to ensure execution of the order.
- The party ordered to execute the order should complete any other forms or documents required by the prison for transportation of an inmate.
- The party ordered to execute the writ should follow up with a phone call to the prison/jail at least one week before the hearing to ensure that the inmate has not been moved and that the transport will take place.

Out-of-Country Parties

- The court should determine in which country the party is located. If the court is unable to determine the location of the party, where practicable, the court should order the other parties (DCFS through the Attorney General, other Petitioner, Respondent, and the child through the Guardian ad Litem) to assist with locating the out-of-country party.
- If a party cannot appear in person, the court may allow the party to appear remotely.
- The court should set any hearings with enough time to allow the other parties to contact the out-of-country party and make arrangements for his appearance in person, by phone, Viack, Skype, or similar means.
- If the country has a consulate, the other parties should contact the consulate to see if it can provide help in contacting the out-of-country party and assisting him or her to appear before the court in person, by phone, Viack, Skype, or similar means.
- The court should issue a summons in accordance with [Utah Code section 78A-6-109](#). For information on service in foreign nations, refer to [Service of Process in Foreign Nations on page 9](#).

Brief Overview of International Conventions

Vienna Convention on Consular Relations

- [The Vienna Convention on Consular Relations](#) provides for communication between consulates and nationals of their state. It applies only in cases involving nationals of other signatory states.
- If the foreign national requests, or if the foreign national is from a mandatory notification country, the authorities of the receiving state shall notify the foreign national's consulate when he has been arrested, committed to prison, or detained in any other manner. Authorities of the receiving state shall also notify the foreign nation's consulate whenever a guardianship or trusteeship is being considered with respect to the foreign national. Those authorities shall forward any correspondence from the foreign national to the consulate without delay. Additionally, they shall allow the consulate to have access to the foreign national while in prison, custody, or detention.
- While the court has no direct obligations under the Vienna Convention, the court can ensure that the authorities of the receiving state are complying with the convention. If the court becomes aware of a party's foreign national status, and if the party qualifies for the protections of the convention, the court may order the State to inform the appropriate consulate. Additionally, the court may make orders ensuring that the appropriate consulate has access to a juvenile who is detained.

Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

- [The Hague Convention on the Civil Aspects of International Child Abduction](#) provides an expeditious method for return of an abducted child under age 16 from one nation to another.
- Under the convention, a person can apply to the judicial or administrative authorities of a contracting state to have a wrongfully removed child returned to their home country. The court need not order return of the child if the person opposing return can show that the petitioner was not exercising custody rights at the time the child was removed or there is a grave risk that returning the child would subject him to physical or psychological harm. The court may also refuse to order return of the child if the child is of sufficient maturity and objects to the return. Where the court has reason to believe that the child has been taken to another state, it may stay or dismiss the proceedings. The court may ask the applicant to obtain an order from the child's home state indicating that the removal was wrongful.
- The convention also requires that nationals of other contracting states be entitled to legal aid in matters involving the convention in this state as if they were nationals of and habitually resident in this state. The authorities of each state are responsible for their own costs, except that they may require the payment of expenses related to returning the child. The court may direct the person who wrongfully removed the child to pay those expenses.
- The court has an obligation to act expeditiously in cases involving the return of children. If the court has not reached a decision within 6 weeks of commencement of the proceeding, the applicant or state authority may ask the court for a statement of the reasons for the delay. Where the proceedings have been commenced more than one year after removal of the child, the court shall order return of the child, unless it is determined that the child is settled in his new environment. The court shall not make a decision on custody on the merits until it determines that the child is not to be returned under the convention.

Brief Overview of International Conventions

Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption

- [The Hague Convention on Protection of Children](#) works to provide safeguards for intercountry adoption to prevent the sale or traffic in children.
- As a territory of the United States, Utah is a contracting state. The convention applies where a child habitually resident in one state, has been, is being, or will be moved to another contracting state either after her adoption, or for the purposes of adoption. The convention covers only adoptions which create a permanent parent-child relationship. An adoption in the child's state of origin which does not have the effect of terminating the child's parent's parental rights may be converted into an adoption having such effect in this state, if this state's laws permit, and the appropriate consents have been given.
- The court shall allow such an adoption only if it has determined that the child is adoptable, that intercountry adoption is in the child's best interests; that the persons giving consent to the adoption have received legal counsel regarding their consent and have freely consented; and that the child has received legal counsel regarding her consent, the court has taken into account the child's wishes, and the child's consent (where required) has been given freely and was not induced by payment or compensation. Additionally, the adoption may take place only if the prospective parents are eligible and suited to adopt, they have received legal counsel as necessary, and the child will be authorized to permanently reside in this country.
- Unless manifestly contrary to its public policy, the court of a contracting state shall recognize an adoption certified by the competent authority of another contracting state. Recognition of the adoption includes recognizing the legal parent-child relationship between the child and her adoptive parents, the parental responsibility of the adoptive parents, and the termination of the legal parent-child relationship of the child and her mother and father. The court shall make sure that information it has about the child's origin, particularly the identity of her parents, and her medical history, is preserved and that the child or her representative has access to it. The court shall act expeditiously in adoption proceedings under the convention.

Bilateral Consular Conventions

- The United States currently has bilateral consular conventions with 58 different countries. When a judge has a case involving a foreign national, the judge should refer to their law clerk or legal counsel to learn if the United States has a bilateral convention with the foreign national's country, whether the convention is applicable to the case, and if so, the court's obligations under the convention. For more information, refer to the [list provided by the U.S. Department of State](#).

Inapplicable Conventions (Not Ratified by the United States)

- Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children
- United Nations Convention on the Rights of the Child

Avenues for Minors Seeking Legal Immigrant Status

Special Immigrant Juvenile Status (SIJS)

Special Immigrant Juvenile Status (SIJS) is available to some children in child welfare and delinquency proceedings depending on findings made by the court. For a juvenile to be eligible for SIJS status, the juvenile court must make specific findings. See [SIJS Form Order](#).

Violence Against Women Act (VAWA)

Violence Against Women Act (VAWA) is available to some victims of domestic violence.

“T” Visa

A “T” Visa is available to some victims of human trafficking.

“U” Visa

A “U” Visa is available to some crime victims who assist in the investigation and prosecution of the crime.

Asylum/Withholding of Removal

Asylum/Withholding of Removal is available to some children who fear persecution on account of their race, nationality, religion, political opinion, or membership in a particular social group.

Adoption

A child adopted after the age of 16 is not recognized as a child for immigration purposes, with one exception; a person under age 18 adopted with a sibling under age 16 qualifies as a child.

Family Visa

A child of a U.S. citizen or lawful permanent resident (LPR) parent can benefit from a family visa for the child. However, a U.S. citizen child cannot be the source of a family visa for an alien parent.

For more information refer to [Helpful Terms on page 21](#).



Frequently Asked Questions

Why is knowledge of immigration issues important in child welfare cases?

The foreign national or immigration status of parents and children may impact court proceedings, placement options, service and notification options, and court orders for family reunification. Additionally, a child welfare case may enable the child to apply for Special Immigrant Juvenile Status (SIJS). It is also important to remember that immigration law and family law have fundamentally different notions of “child” and “family.” Further, unlike family law, immigration law does not place significant importance on the “best interest of the child” in immigration removal proceedings.

Why is knowledge of immigration issues important in delinquency cases?

A delinquency adjudication is not a criminal conviction for immigration purposes, but admissions made in delinquency proceedings may impact a child’s ability to obtain a grant of SIJS, naturalization, or other discretionary immigration benefits. Additionally, certain offenses may influence whether the child is “inadmissible” or “deportable,” and admissions (without convictions) of certain offenses may negatively impact immigration benefits. Knowledge of immigration issues is also important in dually adjudicated cases since the dependency aspect of the case may enable the child to apply for the SIJS.

What is the difference between Foreign National Status and Legal Immigrant Status?

Immigration status should be distinguished from foreign national status. A foreign national is an individual who is not a citizen or national of the United States. A legal immigrant is a foreign national who has been granted the right to live in the United States. A foreign national living in the United States may be a legal or undocumented immigrant. The United States is obligated to comply with applicable international and bilateral conventions related to foreign nationals regardless of their immigration status. The court’s knowledge of a person’s foreign national status should not implicate the person’s immigration status.

How are child welfare timelines impacted by cases involving immigration issues?

Statutory requirements for child welfare timelines apply in all child welfare cases, regardless of the immigration or foreign national status of one or more of the parties. Best practices encourage the timely resolution of these cases when possible. However, in a case involving immigration issues, the court’s ability to meet the child welfare timelines may be impacted by a number of things including difficulty locating one of the parties, and service of process in a foreign country. Therefore, although the court should make efforts to follow the child welfare timelines, in a case with immigration issues, the court may find itself out of compliance.

Unique Challenges

Eligibility for Benefits or Services

Judges may need to take into account limits on eligibility for benefits or services for both legal and undocumented immigrants in custody determinations, dependency dispositions, and dispositions in juvenile delinquency cases. Major problem areas include the availability of services in different languages and services geared to different cultures; the ability to meet probation conditions, such as the ability to find a job to pay restitution; and services that are not available to undocumented immigrants such as medical services, mental health services, and financial assistance. For more information about organizations that provide services to immigrants refer to [Resources on page 23](#).

Difficulty Assessing Home Conditions in Foreign Countries

Judges may need to rely on assistance from the consulate and international social services in locating family members and completing home studies in a foreign country. The court should be specific regarding the type of evaluation and services that it needs or expects. Terms such as “random” testing, and mental health or drug and alcohol evaluation may mean something very different in a foreign country than what the court anticipates. Judges should also be specific regarding their expectations for “background” checks. Judges should make their requests early and be prepared for these services and evaluations to take additional time. The best results will be obtained if expectations are clearly explained and understood, and judges allow plenty of time to complete these tasks.

Placement Concerns

Because of limitations that DCFS has regarding licensing for foster care or recommending adoption with undocumented persons, the court may be asked to grant custody/guardianship to undocumented persons in lieu of continued custody with DCFS. Judges should seek additional information from the kin and parties to satisfy legitimate concerns as to why continued DCFS custody, licensure, and/or adoption are not viable options in the best interest of the child(ren). Background checks for undocumented persons are often difficult because they may not be able to be tracked by regular means. This process becomes more complicated if persons use more than one name (for example, in some Hispanic cultures it is common to use both maternal and paternal surnames). The court may need to ask for additional information to establish stability and a lack of criminal record where the usual means of checking those concerns are not available.

Avoiding Assumptions, Stereotypes, and Biases

It is important to avoid bias in considering placement of children with kin outside the United States. Judges should be aware of the unfounded assumption that it is always best to reside in the United States or that immigrants’ lives are inherently unstable. For more information on avoiding placement bias, see David B. Thronson and Judge Frank P. Sullivan, *Family Courts and Immigration Status*, JUV. & FAM. CT. J. 1 (Winter 2012).

Unique Challenges

Foreign Languages and Use of Interpreters

Use of foreign languages in the courtroom can be challenging and exacerbated by having a non-English speaking party out of the courtroom. Effective use of interpreters is critical to assure legitimacy and fairness during court hearings.

Best Practices for the Use of Interpreters

- As in all cases involving interpreters, judges should ensure that the interpreter is either certified, or has been properly sworn. See [UTAH R. JUD. ADMIN. 3-306](#).
- Judges should consider whether *simultaneous* or *consecutive* translation is needed. Consecutive translation is more cumbersome, but provides a better record and an opportunity for assistance by other interpreters. Consecutive translation should be considered for termination of parental rights trials or complex hearings where interpreters may become fatigued.
- For trials and complex hearings, judges should consider a conference with the interpreters and determine their needs to most effectively assist the court.
- Consideration should also be given to the number of interpreters needed in the courtroom, as more than one party may need an interpreter. Audio devices are available to allow simultaneous interpretation to two or more persons in the courtroom.
- For hearings scheduled two hours or longer, two interpreters should be requested. The interpreters can take turns interpreting every twenty minutes, and provide a back-up if unfamiliar words arise or unintended inaccuracies occur.
- Judges should also consider whether *sight* translation is needed, where an interpreter may be called upon to read a document in a source language and render a verbal interpretation in another language. Judges should provide the interpreter with sufficient time to read through the document before asking for translation.
- Interpretation over the telephone is particularly difficult. The interpreter misses visual cues, such as a pause to allow the interpreter to render the interpretation. Video conferencing is more effective, although clear audio during video conferencing may become an additional concern. This concern may be alleviated by having an interpreter present at the location with the person speaking the foreign language.

For more information, see [CODE OF PROFESSIONAL RESPONSIBILITY FOR COURT INTERPRETERS](#).

Unique Challenges

Mixed Status Families

In cases involving foreign national or immigrant families, it is common for children and parents in a family to have different immigration or citizenship statuses. It is important to note that immigration courts cannot prevent a deported parent from taking a child with him or her, even if the child is a United States citizen. Federal law provides for cancellation of a deportation order if the removal would result in “exceptional and extremely unusual hardship to the alien’s spouse, parent, or a child who is a United States citizen or lawful permanent resident.” 8 U.S.C. § 1229b(b)(1)(D). However, the hardship must exceed the normal hardships that are inherent in moving a child to another country.

Unlike the immigration court, a juvenile court can make custody or placement orders in child welfare proceedings regarding the ability of parents to take children to another country.

Refugee Foster Care (Unaccompanied Refugee Minors Program)

In the course of serving children with immigration issues, the court may come across children in “Refugee Foster Care” (RFC). This type of foster care is a program of the federal State Department, and neither Utah nor DCFS is involved with it in any way. The State Department identifies refugee children overseas who are eligible for resettlement in the United States, but do not have a parent or a relative available and committed to providing for their long term care. Upon arrival in the United States, these refugee children are placed into the Unaccompanied Refugee Minors (URM) program and receive refugee foster care services and benefits. Children in RFC only come to the attention of DCFS, JJS, or the Juvenile Court when there are independent circumstances of abuse, neglect, dependency, or delinquency.

In Utah, the URM program is coordinated by Catholic Community Services (CCS) and is referred to as their RFC Program. The RFC Program provides temporary guardians and housing for unaccompanied refugee children until family members are located or until the children are eighteen years of age. With the assistance of CCS, families in our community provide care until the children can be reunited with their families or become adult members of the community.

Child Protective Orders

In child protective order proceedings, the Court may advise the party or the party’s attorney to consult with an immigration attorney about how these proceedings might impact their immigration rights.

Helpful Terms

Alien – any person who is not a citizen or national of the United States.

Asylee – see *Refugee*.

Crime Involving Moral Turpitude – a crime that contains an element of fraud or other behavior considered morally offensive. The courts have interpreted this category to include crimes that involve evil or malicious intent or inherent depravity; intent or reckless behavior to commit great bodily harm; and intent to defraud, including theft.

Deportable – vulnerable to losing current immigration status, such as permanent residency.

“Good Moral Character” – a required condition for eligibility to become a naturalized citizen, lawful permanent resident (LPR) under VAWA and T Visa, and most other legal immigrant statuses. Good moral character is determined by a sum of a person’s actions. Federal statute provides that a person is not of good moral character if he or she has engaged in any of the following: habitual drinking; prostitution; receiving primary income from illegal gambling; conviction of two or more gambling offenses; conviction of a crime of moral turpitude; multiple convictions with aggregate sentence of more than five years; drug trafficking; imprisonment for 180 days or more; conviction of aggravated felony; smuggling aliens into the U.S.; polygamy; a crime related to a controlled substance; participation in Nazi prosecution or religious prosecutions; and illegal voting or falsely claiming U.S. citizenship.

Immigration and Customs Enforcement (ICE) – a division of the Department of Homeland Security (DHS) responsible for identifying and removing noncitizens in violation of immigration law. It is the former Immigration and Naturalization Service (INS).

Inadmissible – ineligible to obtain legal immigrant status unless a waiver of inadmissibility is available.

Lawful Permanent Resident (LPR) – an alien who is allowed to reside and work permanently in the United States.

Non-Immigrant Alien – an alien who is in the United States legally on a temporary basis. The non-immigrant visa has an expiration date, and overstaying the visa without permission makes the alien an undocumented alien.

Refugee or Asylee – an alien qualifies for refugee status based on a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion if returned to the home country. Once admitted, the alien is allowed to stay in the U.S. as long as returning to the alien’s home country would put him or her at safety risk (unless he or she meets grounds for loss of status). Refugee status is adjudicated while the individual is outside the U.S., while asylee status is adjudicated while the individual is in the U.S.

Special Immigrant Juvenile Status (SIJS) – an immigration status available for an alien child for whom a juvenile court has made the following findings: (1) the child has been declared dependent on juvenile court and placed in the custody of a state agency or an individual appointed by the juvenile court; (2) 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 (3) that it would not be in the child’s best interest to be returned to the child’s or parent’s previous country of nationality or origin.

T Visa – a visa available to victims of severe human trafficking who assist in the investigation or prosecution of traffickers. The maximum length of stay under a T visa is four years unless extended. The holder of a T visa is eligible to apply for LPR status if he or she is of good moral character and has been in the U.S. continuously for three years.

Helpful Terms

United States Citizenship and Immigration Services (USCIS) – a division of the Department of Homeland Security (DHS). It performs many administrative functions formerly carried out by the former United States Immigration and Naturalization Service (INS). The stated priorities of the USCIS are to promote national security, to eliminate immigration case backlogs, and to improve customer services. Please see www.uscis.gov/portal/site/uscis for additional information.

U Visa – available to aliens who: (1) have suffered severe physical or mental abuse as victims of criminal activity; (2) have been, are being, or are likely to help law enforcement in the investigation of the criminal activity causing the abuse. The maximum length of stay under a U Visa is four years unless extended. The holder of a U Visa is eligible to apply for LPR status if he or she is of good moral character and has been continuously in the U.S. for three years.

Violence Against Women Act (VAWA) – a federal law that allows an alien who has been battered or subjected to extreme cruelty by a United States citizen or LPR (or who is the parent of a child who has suffered the same), to petition for LPR status without the cooperation of the abusing spouse under the self-petitioning provisions of the VAWA.



Organizations

ACLU of Utah

355 North 300 West, Salt Lake City, Utah 84103

(801) 521-9862

<http://www.acluutah.org/immigration.shtml>

Areas of Assistance: education and information regarding immigrants' rights, investigation of reports of immigrant abuse.

Asian Association of Utah – Refugee and Immigrant Center

155 South 300 West, Salt Lake City, Utah 84101

(801) 467-6060

<http://www.aau-slc.org/>

Areas of Assistance: prevention and clinical services, employment and social services, ESL and life skills, interpreting and translation.

Catholic Community Services of Utah – Immigration and Refugee Resettlement

745 East 300 South, Salt Lake City, Utah 84102

(801) 977-9119

<https://www.ccsutah.org>

Free consultations every Wednesday.

Areas of Assistance: adjustment of status, consular processing, employment authorization, family-based petitions, NACARA, naturalization/citizenship, removal hearings, Special Immigrant Juvenile Status, T visas, Temporary Protected Status (TPS), U visas, Violence Against Women Act (VAWA) petitions.

Holy Cross Ministries of Utah – Immigration Services

860 East 4500 South, Suite 204, Salt Lake City, Utah 84107

(801) 261-3440, ext. 48

<http://holycrossministries.org/>

Appointment information is listed on its website.

Areas of Assistance: consular processing, employment authorization, family-based petitions, naturalization/citizenship, removal hearings, U visas, Violence Against Women Act (VAWA) petitions.

International Rescue Committee (Salt Lake City)

231 East 400 South, Suite 50, Salt Lake City, Utah 84111

(801) 328-1091

<http://www.rescue.org/us-program/us-salt-lake-city-ut>

Areas of Assistance: adjustment of status, consular processing, family-based petitions, naturalization/citizenship.

Resources

Legal Clinics

Utah Legal Services

205 North 400 West, Salt Lake City, Utah 84103
(801) 328-8891

<http://www.utahlegalservices.org>

Areas of Assistance: farm worker program, immigration assistance for victims of domestic violence.

Immigration Law Free Clinic

Horizonte School Cafeteria
1234 South Main Street, Salt Lake City, Utah 84101
1st and 3rd Tuesday of each month
5:00 p.m. – 7:00 p.m.

Sponsored by S.J. Quinney College of Law

Areas of Law: immigration, naturalization/citizenship, adjustment of status, deportation, visas.

Consulates

For information regarding a specific consulate, please contact the Juvenile Court Law Clerk.

Other Resources

U.S. Citizenship and Immigration Services (USCIS)

660 South 200 East, Suite 400, Salt Lake City, UT 84111

<http://www.uscis.gov/portal/site/uscis>

Resources: forms, information about immigration law.

Benchbooks

Juvenile and Family Immigration Bench Guide

Center for Public Policy and State Justice Institute

http://www.sji.gov/PDF/Juvenile_Bench_Guide_20100713.pdf

Immigration Benchbook for Juvenile and Family Court Judges

Immigrant Legal Resource Center

http://www.ilrc.org/files/2010_sjjs_benchbook.pdf



Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114