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KIDS IN NEED OF DEFENSE

Immigration Protections for Children- How You Can Help

March 14, 2024

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AGENDA

- Introductions
- Reasons Children come to the U.S. and Overview of Immigration System and Removal Proceedings
- Special Immigrant Juvenile Status (SIJS) and the Juvenile Court
- Q & A

Providing Lawyers

- KIND provides pro bono attorneys to represent unaccompanied children in their removal (deportation) proceedings.
- We do this through our partnerships with major law firms and corporations which have agreed to represent children referred to KIND at no cost.
- KIND trains and mentors our volunteer attorneys so no prior immigration experience is necessary.
- KIND provides malpractice insurance.

Attorneys can make a huge difference

- Over 50% of children have no one to represent them in their removal proceedings
- Immigration Judges are almost 100 times more likely to grant legal relief to unaccompanied children with attorneys than to those without.

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Why are children coming to the U.S. alone?

To escape:

- Gang violence
- Gang forced recruitment
- Severe abuse
- Domestic Violence
- Gender-based violence
- Natural disasters
- Abandonment
- Neglect
- Deep poverty
- Trafficking
- Family unification
- Political strife/war

Seeking:

- Reunification with caretaker
- Economic opportunities
- Education
- Safety and security

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The Journey to the Southern Border

Children face a long and treacherous journey to the United States.

Arrival in the U.S.

Apprehension by CPB at the border and placement in DHS custody → **Transfer** to HHS/ORR Custody → **Release** to ORR Sponsor and **Referral to KIND**

The Legal Process:

ICE Files Notice to Appear with Immigration Court

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EOIR: Immigration Removal Proceedings

Pursue Immigration Relief with **USCIS**

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Special Immigrant Juvenile Status (SIJS)
Asylum
U Visa
T Visa

Top States Where Unaccompanied Children Released to Sponsors, FY22

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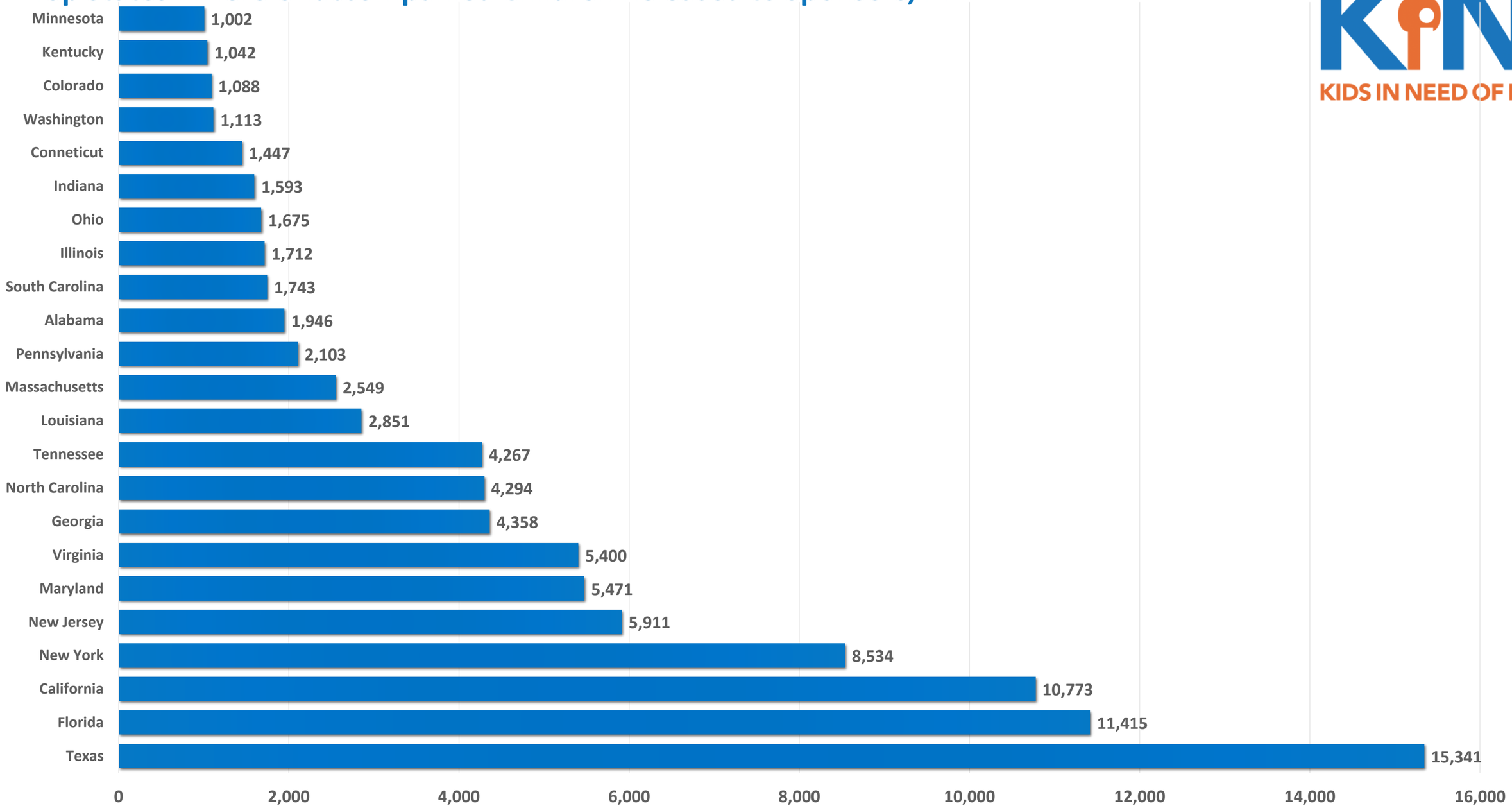

Total Number of Unaccompanied Children Released to all States: 107,686

Special Immigrant Juvenile Status (SIJS)

- Special Immigrant Juvenile Status is a form of immigration relief for **Abused**, **Abandoned,** or **Neglected** Children
- Hybrid process involving a state court proceeding and federal immigration process
- **Three step process** that allows the child to apply to be a Lawful Permanent Resident
- Requires an order from a juvenile court containing 5 special findings for SIJS relief (“**Predicate Order**”)

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THREE KEY STEPS IN SIJS CASES

Step 1:

Obtain a Qualifying Juvenile Court Order

Step 2:

Petition for Special Immigrant Juvenile Status with USCIS

Step 3:

Apply for Lawful Permanent Residence

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(1) State Court Predicate Order

1. Under 21;
2. Unmarried;
3. *Dependent* on state "juvenile court" **OR** *placed in custody* of individual/entity;
4. Reunification with one or both parents not viable due to abuse, neglect, abandonment **OR** similar basis; and
5. Not in the child's best interest to return to home country.

pursuant to INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J)

Role of the Juvenile Court

Definition of Juvenile Court:

"[A] court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles." 8 C.F.R. § 204.11

In Maryland, juvenile delinquency courts also meet this definition. *See* CJP § 3-8A-03; *see also Monterroso v. Perez*, 463 Md. 182 (2019) (" In SIJ status cases, like custody cases, circuit courts exercise their "equity jurisdiction" under CJP § 1-501, see FL § 1-201(a)(10) (2018 Supp.), although there may be instances when the courts sit as "equity" and "juvenile" courts concurrently.")

Qualifying Juvenile court orders:

- Issued while court is exercising jurisdiction over the child as a juvenile
- Judicial determinations in accordance with State law
- The juvenile court order(s) must be in effect on the date the petitioner files the petition and continue through the time of adjudication of the petition

8 C.F.R. § 204.11

Dependent on juvenile court or placed in custody of the state

- The child is dependent on a juvenile or State court or has been legally committed or placed by a juvenile or State court in the custody of an agency or department of the State or an individual or entity
- Children can benefit from the full range of placement options available in any delinquency case to identify a placement that is in the child's best interest pursuant to state law. These can include:
    - Juvenile detention
    - Probation
    - Diversion programs
    - State foster care

Viability of Reunification

The federal SIJS statute requires a state juvenile court finding that reunification with one or both parents is not viable.

- State court is required to make under state law.
- To qualify for SIJS, the juvenile court must find that the child cannot reunify with one or both parents due to abuse, abandonment, neglect, or a similar basis under state law.
- Only one ground is necessary.
- The Court should not consider:
  - Immigration policy
  - Whether the parent's conduct was legal (e.g. child labor) or accepted (harsh corporal punishment) in home country.
- Maryland Courts must evaluate the totality of circumstances in order to establish whether viability of reunification is practical

Non-Viability of Reunification

Abuse, Neglect, Abandonment or Similar Basis Under State Law:

Abuse (*FL § 5-701(b)*)

"(1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or (2) sexual abuse of a child, whether physical injuries are sustained or not."

Neglect (*FL § 701(s)*)

"the leaving of a child unattended or other failure to give proper care and attention to a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate: (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or (2) mental injury to the child or a substantial risk of mental injury."

Abandonment (*FL § 9.5-101(b)*)

"left without provision for reasonable and necessary care or supervision."

Similar Basis

Best Interest Analysis

The court will consider any facts about how being in the U.S. versus home country affects the child's well-being.

- Lack of caregivers and supportive family networks in home country versus U.S.
- Access to education, therapy, medical care
- Any specific threats to child's safety from gangs, abusive parent or relative, etc.
- General violence in home country

Preparing for State Court

Preparation of Motion for Special Findings:

- Affidavits for Child
- Proposed Orders
- Other required forms and filings related to process

File with Court

Locate and Serve Defendants or Interested Parties

- As required in proceedings

State Court Hearing

- Testimony from adult and child (unless very young)
- Receive SIJS predicate order

(2) Petition for SIJS

- Petition for Special Immigrant Juvenile Status (I-360) is a **self-petition** filed with United States Citizenship and Immigration Services (USCIS)
- Prerequisite = **valid predicate order** issued by the state juvenile court
- Approval of an I-360 form/grant of Special Immigrant Juvenile Status does not grant a person legal status. The applicant must apply for adjustment to lawful permanent residence to acquire legal status.
- Must be filed prior to 21st birthday
- Adjudicated by mail- option for Deferred Action and Employment Authorization once I-360 is granted

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