



# Advising the Children of Undocumented Parents: Guidance for California Immigration and Family Law Attorneys

The U.S. immigration system is among the most fractured and politically gridlocked, shaped by executive action rather than legislation since the 1990s. In California, home to millions of mixed-status families, legal practitioners often face the difficult task of protecting children when an undocumented parent is detained or deported.

Many of these children have never lived outside the U.S. and have little to no connection to their parents' country of origin. The threat of deportation doesn't just impact the individual, but puts the safety, stability and future of entire families at risk.

This guide outlines the key legal tools and protective measures available to children whose parents face deportation, along with strategies for attorneys working at the complex and emotionally charged intersection of immigration and family law.

## Immigration options for children

Although the options are limited, several immigration pathways may be available, depending on the child's circumstances. These include:

### 1 Special Immigrant Juvenile Status (SIJS)

Children under 21 who have been abused, neglected or abandoned may qualify for [SIJS](#). For this legal status to apply, a juvenile court must find that reunification with one or both parents is not viable and that it's not in the child's best interest to return to their home country. If approved, SIJS allows the child to remain in the U.S. and can lead to lawful permanent residency.



## 2 Violence Against Women Act (VAWA)

Children abused by a U.S. citizen or lawful permanent resident parent may qualify under [VAWA](#), which allows them to self-petition for legal status. This protection also applies to abused parents of U.S. citizen children over 21.

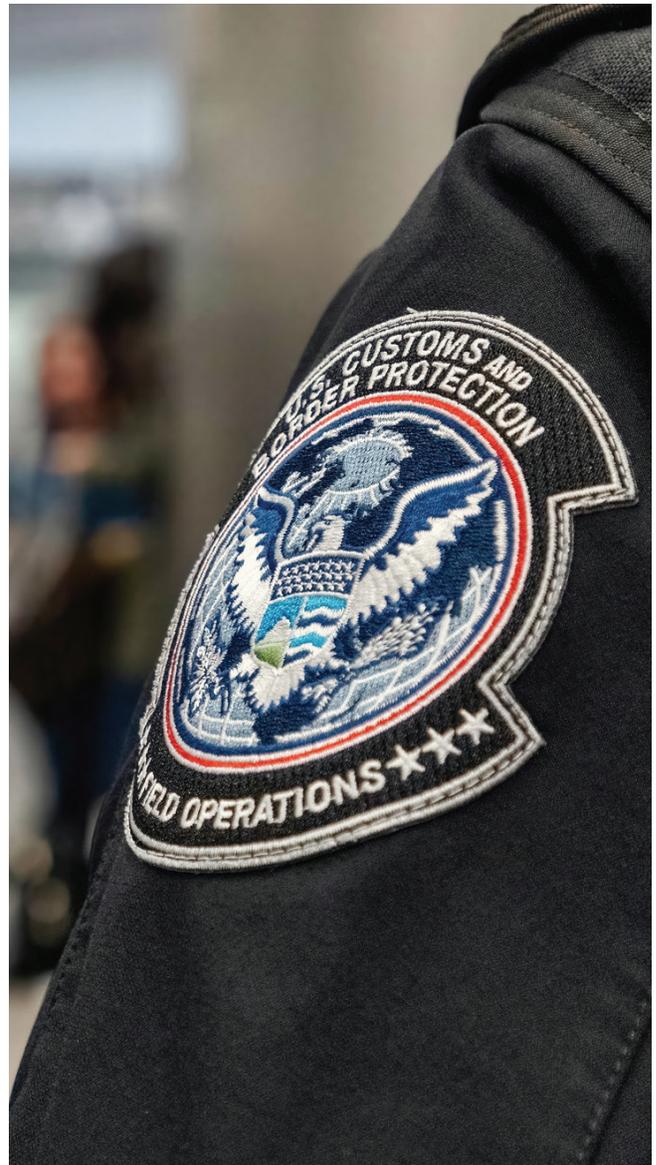
Under the Child Status Protection Act, children who age out during the application process can still retain eligibility.

## 3 U and T visas

These nonimmigrant visas are designed to provide relief for crime victims and certain family members.

[U visas](#) apply to victims or witnesses who have helped law enforcement investigate or prosecute [qualifying crimes](#), including abduction, domestic violence, rape, murder and obstruction of justice. This can include children who have suffered or witnessed abuse, such as domestic violence or sexual assault. The U visa allows them to stay in the U.S. for up to four years and provides a pathway to permanent residency after a few years of continued cooperation. Note that there is an annual statutory cap of 10,000 U visas, resulting in multiyear waits for many applicants.

[T visas](#) are available to victims of severe trafficking, including minors and family members. As with the U visa, eligibility typically depends on cooperation with law enforcement in detecting, investigating or prosecuting trafficking offenders. In some cases, minors may qualify even if they are unable to cooperate directly due to their age or trauma. Applicants may need to demonstrate that they would suffer extreme hardship involving unusual and severe harm if they were removed from the U.S. T visa holders can stay in the country for up to four years and have a path to permanent residency. This visa has an annual cap of 5,000 applicants.



## 4 Asylum

**Asylum** applicants must demonstrate a well-founded fear of persecution in their home country based on race, religion, nationality, political opinion or membership of a particular social group. If granted, asylees are protected from removal and can apply for work authorization, petition to bring family members to the U.S., and apply for permanent residency after one year.

While this is a viable option for some, asylum should be approached cautiously. A **frivolous claim** can result in permanent ineligibility for immigration benefits, so the facts must strongly support the claim.

## 5 Temporary Protected Status (TPS) and Cancellation of Removal



**TPS** is available to nationals of certain countries designated by the Secretary of Homeland Security due to conditions such as armed conflict, environmental disaster or extraordinary circumstances that temporarily prevent safe return. While this route is not specifically designed for children, it may be applicable and offer temporary relief.

Note that TPS eligibility for Venezuelan citizens is currently in flux. The Trump administration terminated this designation on Feb. 5; however, Senior U.S. District Judge Edward Chen of the Northern District of California blocked the termination, preserving TPS protections while a legal challenge proceeds.

# Family law tools: Planning for a child's care

Family law remedies also play a critical role in safeguarding the welfare of children whose parents may be deported.

## 1 Caregiver authorization affidavits

[California law](#) allows parents to authorize another adult to make decisions about their child's education and healthcare without this affecting parental rights, such as custody and control. This can be a practical short-term solution if removal is imminent or likely.

## 2 Guardianship

For longer-term care arrangements, parents can [petition to appoint a legal guardian](#) for their child. This grants the guardian authority to manage the child's affairs and may help prevent placement in foster care. In California, only a state court can grant another person guardianship of a child – meaning this can't be done informally or via power of attorney. While this arrangement doesn't terminate parental rights, it does suspend them while the guardianship is in effect. The probate court must terminate the guardianship for parental rights to resume.

## 3 Adoption

Adoption is generally a last resort, as it involves terminating parental rights. Immigration law also imposes strict conditions: the child must be under 16, and the adopting party must have had legal custody for two years before applying. Most families only consider this option when there is no other alternative.

There are three processes allowing immigration on the basis of intercountry adoption:

- [The Hague Process](#): This international treaty applies to children who habitually reside in the U.S. (or any country that is party to the Hague Intercountry Adoption Convention).
- [The Orphan Process](#): This applies to children whose parents have died or disappeared, or have abandoned or separated from them. It also applies if a child's sole or surviving parent cannot care for them. The orphan process covers non-Hague countries.
- [Immediate Relative Petition](#): U.S. citizens or permanent residents can petition for a child to become a lawful permanent resident if they meet certain criteria.





## Best practices for attorneys

### 1 Start early

Encourage undocumented parents to plan in advance for potential immigration emergencies such as detention or removal. Discuss the various options and agree on a plan ahead of time, ensuring a trusted adult is available to care for the child in case the parents are unable to do so. Drafting guardianship paperwork, caregiver affidavits and emergency contact authorizations in advance can help avoid unnecessary child welfare involvement or custody disputes.

### 2 Coordinate across legal disciplines

Immigration and [family law](#) move at different paces and have different evidentiary standards. Whenever possible, coordinate efforts between immigration and family law counsel to ensure consistency in facts, affidavits and strategy. This is especially important in SIJS cases, where a family court finding is critical to immigration relief.



### 3 Assess the child's status separately

Don't assume that a child has no options just because their parents are undocumented. Always independently assess the child's own immigration status and eligibility for relief. U.S. citizen children may be eligible to petition for their parents later, and undocumented children may qualify for relief such as SIJS or asylum in their own right.

### 4 Avoid overreliance on asylum without strong grounds

Frivolous or weak asylum claims can do more harm than good. When asylum is considered, make sure the client understands the risks, and work with experts to thoroughly document the claim, especially for children suffering psychological harm or facing particular vulnerabilities in their country of origin.

### 5 Maintain trauma-informed practices

Children facing the threat of losing a parent to deportation may be experiencing fear, anxiety or past trauma. Use interpreters who are trained in trauma-informed communication when necessary, and take time to explain legal processes in developmentally appropriate ways.



### 6 Keep an eye on policy shifts

Immigration policies are evolving at the executive level. Stay up to date on policy changes around [Deferred Action for Childhood Arrivals](#) (DACA), [TPS designations](#) and prosecutorial discretion. Sometimes, simply understanding when a case might benefit from administrative closure or deferred action can be the most powerful approach.

## 7 Document the best interests of the child

In both immigration and family court, decisions often hinge on what's in the "best interest" of the child. Build strong evidence through school records, medical reports, therapy notes and community ties. Affidavits from teachers, coaches and faith leaders can be incredibly useful and persuasive.

## 8 Use community resources

Partner with immigrant advocacy organizations, local social services and consulates. Many organizations offer mental health support, emergency planning workshops and legal clinics that can supplement your representation.

### Every family's situation is unique

Immigration and family law are uniquely emotional and high-stakes. Attorneys practicing in either discipline must be prepared to educate themselves on overlapping legal frameworks and collaborate with practitioners in complementary fields. A well-coordinated strategy will blend compassion with careful legal planning to protect children and preserve families in the face of a fragmented and unforgiving immigration system.



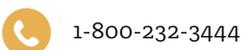
*This blog post summarizes key points from a recent CEB webinar, "[Advising U.S.-Born Children with Undocumented or Illegal Immigrant Parents](#)," featuring immigration and family attorney Faith Nouri of Nouri Law Corporation and litigator and family law attorney Marilyn Smith of Marilyn Smith Law APC. For a more detailed discussion, the webinar recording is available at [ceb.com/webinars](https://ceb.com/webinars).*

For more insights into immigration and family law, schedule a free demo with CEB.



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