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2014-08-19 Discussion on Special Immigrant Juvenile Status cases in North Carolina

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A. Hypotheticals for Discussion:

1. Eduardo, age 15, comes from El Salvador. His father died when he was 5, and he was raised by his mother, Alina. Ever since Eduardo was about 6 years old, Alina had a live-in boyfriend named Fausto. Both Alina and Fausto hit Eduardo on a regular basis. Fausto would lash Eduardo with a belt when Eduardo did something as simple as spilling water. Fausto also drank heavily and used drugs, and he became extremely violent on these occasions, at times throwing chairs at Eduardo. Also, once when Eduardo was about 8 years old, Fausto picked him up and hurled him across the room while yelling curses at him. Eduardo's mother Alina did nothing to prevent Fausto from harming Eduardo; in fact, she also cursed at Eduardo, told him he was "good for nothing", and hit him regularly with her hands or with household items such as shoes. Finally, when Eduardo was 14, he could no longer stand the domestic violence and he fled to the United States, hoping to live with his uncle Reynaldo, with whom he had had a relationship through phone conversations since he was very young. Eduardo now lives with Reynaldo in NC.
2. Julisa is sixteen and was born in Guatemala. Her family is from the Quiche indigenous group. Her father left Julisa, her mother, and her four siblings when she was two years old. Julisa's mother later remarried. Julisa left school after the sixth grade to work and help her family. She worked at a butcher shop arriving at 4:30 a.m. Monday through Saturday. She chopped meat, cleaned, and served at the shop. Last year, her stepfather was told to leave his small farm by a group of young men. Julisa thinks the men were part of a gang that picks on the "indios." Her stepfather said he had no way to feed his family if he didn't have his land. The gang came back and shot her stepfather. He died a few days later. Julisa's mother told Julisa she had to go to the US to find work and to help her family. Julisa was apprehended at the border and was released to her Aunt Juana.
3. Hector is 17 years old. He came from Honduras, and is currently living with his mother in NC. Hector's mother was never married to his father, and only had a brief relationship with him. His father left Hector's mother when she was pregnant with Hector, and has never had any contact with Hector. When Hector was nine years old, his mother came to the US and left him in the care of her own mother, his maternal grandmother. When Hector was 16, his grandmother died. Having no other relatives who were willing to house and care for him, Hector left Honduras and made his way to



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the US, hoping to reunite with his mother. Hector was apprehended in Texas and released to his mother Theresa. Theresa lives alone. She has not seen Hector's father in many years and does not know his address.

B. Authorities:

1. **N.C. Rules of Civil Procedure** for International Service of Process or Service of Process by Publication: [N.C. Gen. Stat. § 1A-1, Rules 4\(j1\) and 4\(j3\)](#) (also note requirements for proof of service contained in [N.C. Gen. Stat. § 1-75.10](#))
2. **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)** that vests NC courts with the jurisdiction to render custody determinations regarding minor children after six months of residence and arguably sooner, treating a foreign country like another state, and the information that must be included with any new filing: [N.C. Gen. Stat. § 50A-102, -105, -201, -209](#) (and [50A-204](#) allows the state court to act in emergency circumstances involving abuse or abandonment, prior to NC becoming the ‘home state,’ after which point it can ripen into a permanent order.)
3. **Chapter 50 Child Custody Actions** that generally allows anyone, per [N.C. Gen. Stat. § 50-13.1](#) to custody of a minor child, including non-parents, so long as they have standing with respect to the particular child, the requirements for which are discussed in caselaw and additionally involves showing unfitness of the parents, and [N.C. Gen. Stat. § 50-13.2](#) codifies the fact that a best interests standard applies, and [N.C. Gen. Stat. § 50-13.5](#) provides for the procedure in more detail including grounds for *ex parte* and temporary orders prior to service of process. Also of note, [N.C. Gen. Stat. § 50-13.8](#) provides for custody of individuals past 18 where they are physically or mentally incapable of self-support.
4. **Guardianship Proceedings** under [N.C. Gen. Stat. Ch. 35, Art., 6](#) are available to appoint a guardian of the person or general guardian (types of custodian) only where the minor has no “natural guardian.” (Confusingly, a guardian of the estate, which handles the child’s money, can be instituted even when the parents are alive.) These informal “special proceeding” are handled by the Clerk’s office, not by judges, and do not follow the rules of civil procedure. In practice, it is rarest for a guardianship proceeding to be practicable as vehicles for a custody determination, but is an option available for orphans (this is the appropriate vehicle for effectuating the testamentary recommendations of deceased parents for some particular person to act as guardian).
5. **Mandatory Reporting Law:** [N.C. Gen. Stat. § 7B-301](#) (also note Immunity from liability for reporters: [N.C. Gen. Stat. § 7B-309](#))
6. **NC State Bar Ethics Opinion** indicating that a lawyer may violate client confidence to comply with the reporting statute (substantially the same language exists in the current statute, but the references in the opinion are to the version prior to recodification into Ch. 7B): [RPC 175 January 13, 1995](#) (see also consistent prior opinion [RPC 120 July 17, 1992](#))



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7. **NC State Bar Ethics Opinion** indicating that attorneys may not report opposing parties to ICE: [2009 FEO 5 January 22, 2009](#).
8. **NC State Bar Ethics Opinion** that attorneys may prepare an *acceptance of service document*, but **not** a *waiver of the right to answer* or an *answer* or other responsive pleading: [CPR 296 July 15, 1981](#) (see also [CPR 121 July 15, 1977](#))
9. **Definitions** for “Abused Juvenile,” “Neglected Juvenile,” and “Dependent Juvenile,” for purposes of Juvenile A/N/D (“DSS Court”) Proceedings: [N.C. Gen. Stat. § 7B-101](#)
10. **Definitions** for “Abandonment” and other grounds for purposes of Termination of Parental Rights Proceedings: [N.C. Gen. Stat. § 7B-1111](#)
11. **Hague Service Convention** governing service in many countries around the world as the US is a full party to the convention: you may wish to read the [Full Text of the Treaty](#) and determine whether the other country is also a party by looking in the [Status Table](#)
12. **Inter-American Service Convention and Additional Protocol** governing service in certain Western Hemisphere Countries, as the US is a full party to the convention (and considers parties who adopted the original convention but not the additional protocol not to be full parties): you may wish to read the text of the [Additional Protocol](#) and refer for further information to the (and the [country information widget](#) on the website lets you query by country for status of this and other treaties)
13. **USCIS Memorandum No. 3: Field Guidance on Special Immigrant Juvenile Status Petitions (May 27, 2004)** (a.k.a. “Yates Memo”) articulating policies for adjudicating SIJS cases, available on the [USCIS website](#).
14. **USCIS Memorandum: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions (March 24, 2009)** (a.k.a. “Neufeld Memo”) articulating updated policies for adjudication of petitions implementing the TVPRA’s changes, available on the [USCIS Website](#).
15. **Materials relating to the 2010 settlement in the Perez-Olano case** (a class action lawsuit filed on behalf of children whose applications for Special Immigrant Juvenile Status or SIJS-based Adjustment of Status were denied because they either turned 21 or ceased to be under the jurisdiction of a juvenile court while their applications were pending):
 - a. **Perez-Olano settlement agreement (May 4, 2010)**, available at [The USCRI Website](#).
 - b. **USCIS Policy Memorandum on Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement (April 4, 2011)**, available on the [USCIS Website](#).
 - c. **CLINIC’s brief discussion of USCIS’s above Policy Memorandum**, by Sarah Bronstein, available at the [CLINIC Website](#).

C. CONTACT INFORMATION FOR PANEL:



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