In the Child's Best Interest

The State of Special Immigrant Juvenile Status and Recommendations for Reform

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Executive Summary

Special Immigrant Juvenile Status (SIJS) is a form of legal relief and pathway to citizenship for undocumented immigrant children in the U.S. who have been abused, abandoned, or neglected by one or both of their parents. The system that surrounds SIJS seeks to identify and safeguard the “best interest” of vulnerable immigrant children. Yet the SIJS system often falls short in ensuring the best interest of the children who it is designed to protect. Drawing from a series of interviews with immigrant youth, their adult sponsors, attorneys, judges, and community stakeholders, this report identifies flaws and gaps in the SIJS system and recommends a set of reforms that will help to address those issues.

Background

Between 2014 and 2016, approximately 168,000 unaccompanied immigrant children were detained on the U.S.-Mexico border, the majority coming from El Salvador, Guatemala, Honduras, and Mexico. While this wave of migration tapered off slightly in the first half of 2017, large numbers of unaccompanied children continue to flee gang violence and extreme poverty in their home countries to seek refuge in the U.S. Despite the trauma and persecution that many experience, the vast majority of these children do not meet the stringent requirements for receiving asylum in the U.S. Yet many, if not most, are likely eligible for Special Immigrant Juvenile Status.

The Immigration Act of 1990 established Special Immigrant Juvenile Status as a form of legal relief for undocumented immigrant children who had been “deemed eligible…for long-term foster care” and for whom “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.” The Williams Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) subsequently removed the foster-care requirement and modified the criteria for SIJS eligibility. Under the current law, a child is eligible for SIJS if:

- the child is unmarried
- the child is under the age of 21
- the child has been declared dependent on a juvenile court, has been legally committed to or placed under the custody of an agency or department of a State, or who has been placed under the custody of an individual or entity appointed by a State or juvenile court
- reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law.
- it would not be in the child’s best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

The application process for SIJS involves multiple steps and the interaction of a number of different stakeholders on the state and federal level. The process generally begins when an immigrant child is detained at the U.S. border without a parent and without proper documentation. The TVPRA mandates that unaccompanied children under the age of 18 from any country non-contiguous with the U.S. must be transferred to the Office of Refugee Resettlement (ORR) within the Department of Health and Human
Services (DHHS). While these children are not immediately deported, they are placed in removal proceedings and ordered to appear in immigration court. If a child has a parent, family member, or other appropriate individual in the U.S. with whom the child can be reunified, ORR will transfer the child to that individual, who will be designated the child’s “sponsor.” When children do not have anyone to be reunified with, they generally enter the foster care system. If they meet the criteria for SIJS, children can then apply for SIJS in order to acquire legal status and terminate removal proceedings. In less common circumstances, undocumented children may enter the U.S. without being detained by immigration authorities. In these cases, the children may choose to apply affirmatively for SIJS once living with a qualified guardian or under state custody in the U.S.

In order to apply for SIJS, immigrant children must first, with the assistance of an attorney, petition a state court judge in their local circuit court to make a set of legal findings determining that they meet the criteria for SIJS described above. However, in order to do this, the judge must have jurisdiction over the child. There are four major pathways through which a child can access that jurisdiction: guardianship, custody, dependency, and delinquency. In guardianship and custody cases, a parent or relative of a child petitions the court for guardianship or custody over the child. In dependency cases, a child is declared dependent on a state agency, which occurs when the child enters foster care. Finally, in the case of delinquency proceedings, a child is legally committed to a juvenile court because the child is being adjudicated for a juvenile offense.

If a judge has jurisdiction through any of these four pathways, and makes the requisite findings for SIJS eligibility on behalf of a child, the child can then submit an application for SIJS to United States Customs and Immigration Enforcement (USCIS), an agency of the Department of Homeland Security (DHS). If USCIS approves the application, the child is granted Special Immigrant Juvenile Status and becomes eligible for permanent residency, or a “green card.” After possessing the green card for 5 years, the child can then apply to become a U.S. citizen. While adult legal permanent residents and naturalized U.S. citizens are generally permitted under federal immigration law to petition for legal status for some of their family members, children who obtain their permanent residency through SIJS are barred from petitioning for their parents at any point during their lives.

In recent years, a number of changes have been made to the way the federal government and individual states adjudicate SIJS claims. While federal law allows immigrant youth to apply for SIJS up until the age of 21, courts in most states only have jurisdiction to make decisions about the care and custody of juveniles up until the age of 18, and therefore cannot make the requisite SIJS findings after a child has turned 18. In order to expand access to SIJS and to make their law compatible with the federal SIJS law, some states, including California, Maryland, and Washington, recently passed legislation to extend the maximum age of jurisdiction from 18 to 21 for immigrant children applying for SIJS.
On the federal level, new policies have extended the amount of time that SIJS recipients must wait for their green cards. In order to be able to adjust their immigration status to permanent residency, SIJS recipients must first gain access to a visa. The Immigration and Nationality Act caps the fourth employment-based visa category (EB-4), which includes SIJS, at approximately 100,000 visas per year. In May of 2016, anticipating that the cap would be reached by the end of the year due to the high quantity of SIJS applications, USCIS set a cutoff date, which is moved forward on a periodic basis, for the issuance of visas to youth from El Salvador, Guatemala, Honduras, Mexico, and India, the countries of origin of the vast majority of SIJS applicants. Only those SIJS recipients who filed their applications before the cut-off date are able to apply for their green cards. A substantial backlog has resulted, forcing SIJS recipients from the affected countries to wait for approximately 2 years for a green card after their SIJS applications are approved. In the past, youth could apply for work authorization and for permanent residency at the same time or immediately after they applied for SIJS, and would generally receive their work permits while they were still waiting for their green cards. Now, because they cannot apply for work authorization until they apply for permanent residency, SIJS applicants must wait years until they can work legally. Thus, due to the visa backlog, many SIJS recipients are stuck in a legal limbo for an extended period of time without a work permit and without any official legal status.

In the most recent change on the federal level, USCIS centralized the adjudication of SIJS applications in November of 2016. Whereas in the past SIJS applications were reviewed by regional offices around the country, the USCIS National Benefits Center in Missouri now adjudicates all SIJS applications nationwide. One of the purposes of the centralization was to make the adjudication process more standardized and consistent.

Methodology
The data for this study was collected over the course of four months, from May 2017 to August 2017. The researcher conducted a total of 65 semi-structured interviews with individuals who interact with or have interacted with the SIJS system. These individuals were classified into the following five groups:

- **Group A**: Immigrant children who have SIJS or are in the process of applying for SIJS (23 interviews)
- **Group B**: Adults who are applying to be or have already become the legal guardians of SIJS-eligible children (8 interviews)
- **Group C**: Attorneys who represent immigrant children in SIJS cases (23 interviews)
- **Group D**: State court judges who hear SIJS cases (3 interviews)
- **Group E**: Other stakeholders with expertise or knowledge related to SIJS (8 interviews)

Individuals in Group A and B were recruited to participate in the research through referrals from non-profit organizations that represent immigrant children. The researcher independently reached out to individuals in Groups C, D, E to request their participation. Limitations on time and on access resulted in
a participant pool that is not fully representative of the greater population of individuals who interact with the SIJS system in the U.S. For instance, the researcher was unable to arrange any interviews with immigrant children who had accessed SIJS through the dependency or delinquency processes because these individuals are generally detained in a facility or under state or federal custody. Nonetheless, the researcher made an effort to interview individuals from a number of different regions of the U.S. and from a diverse array of organizations. Interviews were conducted with participants in California, the District of Columbia, Maryland, Massachusetts, Virginia, and Washington.

Some of the research participants in Groups A and B were undocumented, and some in Groups C, D, and E requested anonymity due to the nature of their positions. Taking into consideration these vulnerabilities, the data was collected in an anonymous manner. The names and identifying information of participants were not attached to any of the information they provided in interviews.

Results

Group A: Immigrant Youth

Twenty-three percent immigrant youth were interviewed for the research. Of the interviewees, 43% percent were female and 57% were male, ranging from 13 to 23 years of age. Approximately one fourth of the youth had already received work authorization and/or their green card at the time of the interview, while the remainder were either in the process of applying for SIJS or were currently on the waitlist for legal status.

When asked to describe their motives for coming to the U.S., 65% (15) of participants said they sought to escape gang violence in their home country, 48% (11) cited the desire to access better educational opportunities, 17% (4) left to escape familial abuse, and 17% (4) percent mentioned wanting to reunite with their family members in the U.S. Participants cited a number of reasons for applying for SIJS upon arrival in the U.S, including access to work authorization, educational opportunities, and the ability to get a driver’s license. For a majority (65%) of participants, however, the primary reason for applying for SIJS was to have protection from deportation.

All participants who had already received their work authorization and/or their green card at the time of the interview said they were able to access better job opportunities after they received these documents. A majority of participants who were still waiting for work authorization expected to start working or to change jobs as soon as they received it. These participants were aware, however, that they would have to wait a long time due to the visa backlog. Of those participants who applied for or were applying for SIJS after May of 2016 and thus were affected by the visa backlog, 83% (15) cited the inability to work legally as the backlog’s most detrimental effect. When asked what additional services or resources they would like to have access to, participants mentioned English classes, mental health services, health insurance, and scholarships for higher education. Many of the participants said they we
waiting until they received their official legal status in order to seek out these resources. For example, 22% (4) said they were delaying higher education until they received their permanent residency, which they hoped to use to obtain financial aid.

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<th>Effects</th>
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<td>Inability to work legally</td>
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<td>Delaying higher education</td>
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<td>Can't access government benefits</td>
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Thirty-nine percent of participants mentioned facing difficulties adjusting to life with their new guardians in the U.S. All participants who identified these difficulties had lived with their guardian for less than 5 years in their home countries or were living with their guardians for the first time in their lives. Participants described difficulties such as having to follow new and different rules, struggling to respect the authority of their guardians, or being forced by their guardians to work in order to financially contribute to the household. One participant did not obey his mother when he first came to the U.S. in part, he said, because “I didn’t know whether she was really my mother or not.” Outside of the home, 61% (14) of participants described playing soccer as their primary method of connecting with their community. Meanwhile, 13% (3) said they lacked any means to meet peers and involves themselves in their communities.

Of the 23 participants in Group A, 6 started the process of applying for SIJS between the age of 18 and 21. When asked whether they benefitted or would benefit from having a guardian in the U.S., all 6 answered affirmatively. They explained that their guardians provided them with financial support, which helped them focus on pursuing an education. They regarded this financial support as essential because

**Spotlight- Group A**

Elena is an 18-year-old girl from El Salvador. She entered the U.S. without papers at a young age and began living with her father. While she was still young, Elena’s father abandoned her, leaving her with her mother. When Elena went with her sister to an appointment at a local immigration law non-profit, she found out she might be eligible for SIJS. She decided to apply for SIJS so that she would no longer have to fear deportation and because her undocumented status was starting to become a problem at school. Elena was able to get her work permit soon after her SIJS application was approved, and she got a job as a nursing assistant. Elena excelled in high school and won a scholarship to a private university, where she starts this year. While she is excited to pursue her dream of becoming a doctor, she is frustrated because she cannot access financial aid and does not have health insurance due to the fact that she has not received her green card yet. Elena also worries about her mother, who is undocumented. If she had the opportunity to petition for her mother, who has always worked hard to support her, Elena said she wouldn’t think twice about it.
they were not legally capable of working to support themselves. Participants also mentioned that their guardians helped connect them with resources, such as legal representation and medical care.

When asked whether they would petition for legal status for one of their parents if they had the opportunity to do so, 95% of Group A participants answered “yes.” Participants living with an undocumented parent in the U.S. said they wanted to help that parent acquire legal status in order to protect him or her from deportation. Of those participants living with a non-parent guardian in the U.S., almost all had a parent back in their home country who they hoped to bring to the U.S.

**Group B-Adult Guardians**

Eight adult guardians of SIJS-eligible children participated in the study, five of whom were in the process of petitioning for guardianship or custody over a child, and three had already been granted guardianship or custody. Participants were asked why they petitioned for guardianship or custody over the child, outside of the fact that it was necessary for the child’s legal case. Three-fourths claimed they chose to do so because they saw themselves as the only person in the U.S. willing and capable to take care of the child. Meanwhile, 37.5% (3) said that they volunteered to seek guardianship because they had legal status while other potential guardians did not. One participant who had a green card stated that she volunteered to take the place of another potential guardian who was undocumented because she was concerned that the original guardian could be deported, leaving the child vulnerable.

Most adult guardians (6) said they were afraid of going through the process to become a legal guardian. The majority of those who voiced this fear were undocumented. While legal status is not a prerequisite to petition for guardianship or custody, the SIJS process requires the petitioner to enter a courthouse, which many were reluctant to do because they feared they could be caught and deported. One participant said “when you are undocumented, you always have fear of entering government institutions.” Others voiced concern about the current environment of heightened immigration enforcement, and believed that they might be a more visible target for deportation if they became the legal guardian of an unaccompanied child.

Five of the participants in Group B had become or were seeking to become the legal guardians of individuals over the age of 18. When asked why they believed these children benefitted from their

**Spotlight - Group B**

Rosa, a woman from Guatemala, became the legal custodian of her two children, who went on to apply for and obtain SIJS. The father of Rosa’s children abandoned the family while the kids were still young back in Guatemala. Rosa came to the U.S. so that she could work and send money back to her children. Rosa’s children came to the U.S. later on and were detained by immigration authorities. Although she is undocumented and was afraid of sharing her information with the government, Rosa arranged for her kids to be transferred to her. When she learned her children were eligible for SIJS, she overcame her fear of entering court in order to petition for custody of her children. Rosa said, “If you have to decide between fear and the desperation of not knowing what will happen to your child, you choose fear.” Rosa says that her 20 year old daughter needs her care just as much as her younger son does, because she provides for both of them financially and connects them to resources. Looking towards the future, Rosa hopes that her children will find a career in which they can help other people, and that they will have everything that she never had.
guardianship despite no longer being minors, participants said that they provided essential financial and emotional support to the children, advised them in making important legal and medical decisions, and helped keep them out of trouble.

Adult guardians expressed many of the same difficulties in adjusting to life with the children as were voiced by Group A participants. Concerned about them jeopardizing their pending legal cases, many guardians said they implemented rules to keep the children out of trouble, such as enforcing strict curfews and prohibiting their children from going out with friends. One guardian mentioned pulling her son out of a school with a large Hispanic immigrant population and moving him to a school of almost entirely white, U.S. citizen students because she was concerned her son would get involved with gangs at the old school.

**Group C - Attorneys**

Twenty-three attorneys from a variety of non-profits organizations and government agencies were interviewed for the study. These organizations and agencies included CAIR Coalition, Casa Cornelia, Catholic Charities of Baltimore, Catholic Charities of DC, Catholic Charities of Los Angeles, Catholic Legal Immigration Network Inc. (CLINIC), Center American Resource Center (CARECEN), Children’s Law Center, Immigrant Legal Resource Center (ILRC), Kids in Need of Defense (KIND), Los Angeles County Department of Children and Family Services (DCFS), Northwest Immigrant Rights Project (NWIRP), and Public Counsel.

Attorneys shared similar concerns about recent changes to the SIJS system, and mentioned facing similar challenges in their work, although they differed in how they proposed to address those challenges and concerns. A majority of attorneys voiced some degree of frustration with their local circuit court judges, some of whom they claimed created unnecessary procedural hurdles and were unduly reluctant to make SIJS findings. Some attorneys believed that judges’ resistance was due at least in part to a lack of understanding of the federal law that underpins SIJS. Unfamiliarity with the law, they said, often led to misconceptions, such as the idea that judges are unilaterally granting immigration status to children by making SIJS findings. These misconceptions made judges less likely to issue the court order that a petitioner needs in order move forward in the application process. Thus, many attorneys believed that if judges were more properly trained on SIJS law, they would be more receptive to SIJS petitions. Other attorneys countered that some judges are resistant to make SIJS finding not because they are unfamiliar with SIJS, but rather because their personal political biases or their conceptions of proper court procedure

**Spotlight - Group C**

The Special Immigrant Juvenile Status Unit, housed within the Los Angeles County Department of Children and Family Services (DCFS), is comprised of a team of trained “eligibility workers” who petition the LA Children’s Court for SIJS findings and file SIJS applications on behalf of undocumented children who are under state custody due to parental abuse, abandonment, or neglect. An employee from the SIJS Unit said that while they do the majority of the legal work for SIJS cases, the unit also consults with immigration law non-profits to represent children who are in removal proceedings in immigration court. Since it started processing applications in 1991, the SIJS Unit has helped over 3000 children obtain legal status. Yet, according to the DCFS employee, their work is more difficult than it used to be. Cases have been stalled due to the high quantity of Requests for Additional Evidence from USCIS. Additionally, SIJS recipients who wish to emancipate from their foster families feel stuck because they cannot get work permits in order to become self-sufficient.
influence their decisions. Consequently, these attorneys doubted whether additional training of judges would increase access to SIJS in any significant way.

Attorneys also shared concern about the recent centralization of USCIS adjudication within the National Benefits Center. Since the centralization occurred last year, 65% (15) of attorneys reported receiving at least one “Request for Additional Evidence” (RFE) from USCIS for SIJS applications filed after November 2016. Such requests, according to attorneys, were uncommon prior to the centralization. Frustrated with the delays caused by the RFEs and presuming that the recent centralization of adjudication is at least partly responsible for the uptick in RFEs, 30% (7) of the attorneys advocated for the decentralization of the system back to the way it used to be. The attorneys noted that the USCIS adjudicators in the National Benefit Center are not familiar with the law in the attorney’s jurisdictions to the same extent that adjudicators from the local USCIS officers were, and therefore are not in an adequate position to be scrutinizing applications. Other attorneys countered that the centralization is positive because it brings greater consistency to the system. Although they shared concern about the influx of RFEs, these attorneys contended that centralization was not necessarily the root of the problem. They pointed instead to a lack of proper training for USCIS adjudicators and voiced concern about the recent issuance of new policy guidelines that demand stricter scrutiny of SIJS applications.

When asked about the effect the visa backlog has on their clients, attorneys pointed to the delay in receiving work authorization and the inability to access government benefits, such as health insurance and financial aid for higher education. Attorneys also saw a potential threat of deportation during the period in which children await their green card. According to attorneys in California, Maryland, and Virginia, immigration judges who, in the past, would routinely terminate or temporarily close removal proceedings for children whose SIJS applications had already been approved are now refusing to do so, in part because they do not foresee visas becoming available to the children anytime in the near future. The result is that children in removal proceedings must continue appearing for their court dates in order to ask for continuances in their cases. Yet recent guidance from the Department of Justice has placed pressure on immigration judges to refrain from granting continuances without explicit justification. Thus, children trapped in the SIJS backlog are vulnerable to deportation because at any point a judge could refuse to continue their case and instead order them deported. Indeed, a recent news story from Pennsylvania tells the story of child who faces imminent deportation despite having already been granted SIJS.

Attorneys were asked whether they noticed additional needs in their clients outside of their legal cases. Of those asked, 87% (20) identified mental health services as a major need that often went unmet. Many of the children, they pointed out, are grappling with serious trauma as a result of parental abuse or abandonment, gang persecution, or their dangerous journeys to the U.S. Some attorneys specifically emphasized the importance of offering family counseling to SIJS-eligible children and their legal
guardians, many of whom have been separated for long periods of time or may be living together for the first time in their lives. The difficulty that children and guardians faced in navigating new relationships is demonstrated by the fact that 74% (17) of the attorneys said they had witnessed disagreements or unhealthy relationships between children and their guardians. In some cases, these situations led to conflicts of interest, forcing the attorney to withdraw from the case and terminate representation of the child. Additional needs identified by attorneys included housing, medical services, and help with school placement. While most attorneys said they did their best to refer clients to services, they lamented the fact that they lacked the time and expertise to properly meet the children’s’ needs. One attorney said that she felt that she was constantly doing “fake social work” because she would try to help her clients with non-legal issues even though it was beyond her expertise to do so.

Attorneys expressed concern about a number of recent developments in federal and state law that have the potential to limit access to SIJS. A DHS memorandum issued in February of this year called on its agencies to deport or prosecute any parent or family member who “directly or indirectly- facilitates the illegal smuggling or trafficking of an alien child into the United States.”22 In accordance with this memo, Immigration and Customs Enforcement (ICE) recently announced a “surge initiative” aimed at targeting parents who pay traffickers to smuggle their children into the U.S., many of whom become their children’s ORR sponsors.23 According to attorneys and stakeholders interviewed for the research, these policies are likely to create a reluctance on the part of undocumented individuals to come forward to sponsor unaccompanied minors. Indeed, a staff member of a non-profit that conducts background checks for potential ORR sponsors mentioned that the quantity of persons coming in for appointments has decreased dramatically from ten per day to three per week. Attorneys claimed that the decrease in available sponsors might inhibit access to SIJS, because immigrant children would spend more time in federal custody, where it is often harder to acquire an attorney and where it is may be more difficult to pursue an SIJS case in the absence of someone who can petition for custody or guardianship over the child.

Attorneys also raised concern about a bill pending in the U.S. House of Representatives that could significantly narrow eligibility for SIJS. The Asylum Reform and Border Protection Act of 2017 would revoke a series of reforms made by the 2008 TVPRA and require SIJS applicants to demonstrate that they “cannot be reunified with either of [their] parents.”24 When asked about the bill, 82% of attorneys said that the its passage would exclude a majority or at least a significant number of their clients from SIJS eligibility.

Finally, attorneys mentioned the implications of a recent court decision in Virginia, which has jeopardized the ability of immigrant children to seek SIJS findings in Virginia’s courts. In Canales v. Orellana, the Court of Appeals of Virginia held that it did not have jurisdiction to make legal findings
related to SIJS eligibility, namely that it is in the child’s best interest to remain in the U.S. and that reunification with the child’s parents is not viable. The Court of Appeals stated that “nothing in the federal statutory scheme mandates or requires that a state court take any action regarding SIJ findings.” and that nothing in Virginia’s state law specifically authorizes courts to make those findings. As a result, many judges across the state are refusing to issue the court orders that petitioners need to apply for SIJS. One attorney working in Virginia said that her organization currently views SIJS cases in that state as “experimental.” Another Virginia attorney remarked, “SIJS is dead here.” Attorneys expressed fear that a similar situation could arise in other states in the future.

Group D- Judges

Three state court judges with experience hearing SIJS cases were interviewed for the research. When asked to respond to the concerns presented by attorneys, the judges pointed out that what attorneys might see as undue resistance or unnecessary obstacles may simply be a judge’s effort to ensure the best interest of the child and to protect the due process rights of all the parties to the case. For example, one judge mentioned that he was reluctant to make SIJS findings in guardianship and custody case if he was not entirely confident that the parents of the child had been properly notified and that they willfully consented to the petition. Another judge said that she conducted thorough questioning of the child and the child’s proposed guardian during SIJS hearings because she saw it as her responsibility to make sure the child was being placed in a safe environment. While most SIJS cases are legitimate, the judge said, in some cases she had concerns about fraud or human trafficking. The judges acknowledged, however, that some of their peers were not well-informed about SIJS law or the SIJS process, and would benefit from additional training.

All three of the judges interviewed for the research said they had received Requests for Additional Evidence (RFEs) in the past year, whereas they rarely if ever received such requests in the past. The RFEs asked the judges to modify the orders they originally sent to USCIS containing the requisite SIJS findings, often specifically requesting a more detailed basis for the findings under state law. Judges, who saw themselves as experts on state law, admitted they were frustrated about being asked to modify their orders by officials from USCIS who have no training or expertise in state law.

Two of the judges interviewed for the research expressed concern that, in the SIJS system as it currently operates, some eligible children may fall through the cracks. A juvenile judge said that while she has presided over numerous SIJS cases involving guardianship or custody proceedings in her career, she has never seen a petition for SIJS findings in foster care or delinquency proceedings. The judge said that she has seen children in her courtroom who could potentially be eligible for SIJS, but she felt as though she could not make any findings related to SIJS unless the child or the child’s attorney were to petition for the findings themselves.
Recommendations

Interviews with participants revealed a number of flaws and gaps in the SIJS system. The researcher has compiled a list of practices and policies that could be implemented to address the issues identified in this report. They aim to facilitate access to SIJS and to better meet the needs of immigrant children going through the SIJS process. The recommendations were developed through consultation with experienced stakeholders and through observation of practices and policies that have already been implemented. They are divided into 3 groups: organizational, state, and federal. The organizational recommendations are directed at non-profit legal aid providers that represent children in SIJS cases, whereas the state and federal recommendations are targeted to state governments and various agencies and branches of the federal government.

Organizational

1. **Hire a full-time or part-time social worker**

When asked to offer advice to other legal providers, 62% of attorneys from non-profit organizations suggested hiring a full-time or part-time social worker to provide case management services to SIJS clients and other immigrant youth. The majority of the attorneys who made this recommendation worked for organizations that already had a social worker on staff, while the remainder were currently in the process of seeking candidates for a social worker position. Two social workers employed by non-profit legal providers were also interviewed for the research. These stakeholders pointed out that social workers play a pivotal role in meeting the needs of SIJS clients outside of their legal cases. Social workers not only connect clients to resources such as therapy, medical care, and housing, but also provide a framework for understanding and utilizing these services. For example, both of the social workers who were interviewed said they regularly have conversations with children and their guardians about the benefits of therapy in order to break through the stigma against mental health services often present in Latino and immigrant communities. Stakeholders emphasized that the involvement of a social worker also improves the outcomes of clients’ legal cases. Social workers intervene to mitigate or resolve conflicts between SIJS clients and their guardians, avoiding situations in which attorneys may have to terminate representation. While working with clients, social workers often come across important information relevant to the legal case that clients did not disclose to the attorney. Finally, social workers help keep youth engaged during drawn out legal cases, an asset that is particularly important in the current context due to the visa backlog for SIJS clients. One attorney said that he would like to have additional support for his clients because “We have kids who just disappear.”

2. **Conduct centralized trainings of judges on Special Immigrant Juvenile Status**

State court judges play a crucial role in the SIJS process because they make the requisite findings that allow immigrant youth to apply for legal status through the federal government. Thus, equal access to
SIJS is contingent upon a robust and universal understanding of the SIJS law amongst state court judges in every jurisdictions across the country. Unfortunately, as attorneys interviewed for the research pointed out, some judges have limited or no knowledge of the law that underpins SIJS, making it less likely that they will feel comfortable making SIJS findings. As one judge observed, “Ignorance breeds resistance.” Because judges’ understanding of SIJS varies between and within jurisdictions, a child who goes before one judge may win his case and go on to receive SIJS while another child who goes before a different judge in the same courthouse may be denied, even if the cases presented by the two children are nearly identical. This inconsistency in the system should be addressed.

While judges in many jurisdictions have already received SIJS training, and while attorneys report that judges’ understanding of SIJS has increased significantly in recent years, a majority of attorneys said they would like to see more training of state court judges on SIJS. One attorney said, “The more versed they are in the law, the better they will be in applying in the law.” All of the judges who were interviewed agreed that their colleagues and they could benefit from additional training. Attorneys emphasized that the source of this training would be crucial in determining the outcome it produced. Most believed that experienced attorneys should be giving the training rather than officials from USCIS, because attorneys would be more likely to emphasize the need for relief amongst abused immigrant children whereas USCIS would be more likely to focus purely on eligibility criteria. Attorneys also said that the information and guidance on SIJS should be conveyed in such a way that it brings more uniformity to the system.

Attorneys could provide centralized guidance to judges by giving detailed presentations on SIJS at mandatory judge trainings, which occur on a regular basis. In Maryland, for example, all judges are required to attend an orientation program when they are first appointed, continuing education on an annual basis, and specialized programs corresponding to the type of cases they adjudicate, such as the Child Abuse, Neglect, and Delinquency Options (CANDO) training for juvenile judges. One Maryland judge pointed out that attorneys would be welcome to come to any one of these trainings to educate judges on SIJS. Admittedly, centralized judge training would not entirely resolve the inconsistency in the SIJS system, because some judges may require different standards and procedures than others and some judges may be resistant to SIJS for reasons others than a lack of knowledge. Nonetheless, because mandatory training would reach most if not all judges in a given state, it would be a step towards more consistency and greater accessibility in the SIJS system. As one attorney said, “Justice should not be determined by which courtroom you are assigned to.”

3. **Partner with other community organizations connected to the immigrant community**

A majority of immigrant youth interviewed for the research said they participated in some activity through which they could meet peers and connect with their community. However, many of these
participants admitted that they did not get as many opportunities to engage in these activities as they would like. Moreover, 14% of participants did not identify any way that they connected with their community. This social isolation appears to be exacerbated by the well-intentioned but perhaps counter-productive attempts of adult guardians to strictly regulate the behavior of the children in an effort to keep them out of trouble. Some of the youth acted out when they felt isolated. One boy got involved with low-level gang activity and ended up being arrested, which jeopardized his chance of getting legal status through SIJS the process. He said, “I started hanging out with the gang members because I felt alone.”

Providing methods for SIJS clients to connect with their peers in a safe and structured manner may help them integrate in their communities. An example of an organization that provides this opportunity is Soccer Without Borders (SWB), which organizes soccer leagues and educational programming for immigrant and refugee youth. Such a program would likely be appealing to the SIJS-eligible immigrant youth interviewed in the study, 64% of whom identified soccer as their favorite community activity. Non-profit legal providers could partner with community organizations such as SWB, allowing them to refer clients to these organizations. Additionally, non-profit legal providers could train staff of community organizations on how to identify preliminary eligibility for SIJS, enabling those organizations to refer their members to the legal providers.

State

1. Extend the age of jurisdiction for SIJS cases from 18 to 21

California, Maryland, Massachusetts, and Washington all recently enacted legislation that enabled their state courts make SIJS findings for immigrant children up until the age of 21. California’s law, AB 900,27 is a model of such legislation. AB 900 sought to expand access to SIJS and to make California law consistent with federal law, which permits an immigrant youth to apply for SIJS until age 21.28 The extension of jurisdiction, however, was not solely for immigration purposes. The California legislature recognized that the ability to petition for a guardian until the age of 21 is “particularly necessary in light of the vulnerability of this class of unaccompanied youth, and their need for a custodial relationship with a responsible adult as they adjust to a new cultural context, language, and education system, and recover from the trauma of abuse, neglect, or abandonment.”29

The findings from this study corroborate the statements made in AB 900. Six immigrant youth who applied for SIJS between the ages of 18 and 20 and five adult guardians of immigrant youth between the ages of 18 and 20 were interviewed for the study. These participants viewed it as important for immigrant youth over 18 to have a guardian because the guardian provides the youth with essential financial support, helps them stay in school, and connects them with resources. In reference to fighting her immigration case upon entering the U.S., one youth said, “If I was alone going through this process, I don’t know what I would have done.” A majority (65%) of attorneys advocated for the extension of court jurisdiction for
SIJS cases from 18 to 21 in their state or in other states, pointing out that it brings greater consistency to the SIJS system, facilitates access to SIJS, and has important benefits outside of the immigration case. All three of the judges who participated viewed the 18 to 21 extension as positive, in part because it makes state law consistent with federal law. Additionally, some attorneys and judges pointed out that legislation like AB 900 has the supplementary effect of establishing a basis under law for making SIJS findings, thereby minimizing the risk of a court decision like Canales vs. Virginia that could severely restrict access to SIJS. Thus, states across the country should promptly seek to implement legislation similar to AB 900.

2. *Train employees of state agencies to identify SIJS eligibility*

SIJS can be pursued through four main pathways: guardianship, custody, dependency, and delinquency. While this report has thus far focused on the first two pathways, through which an adult assumes guardianship or custody over a child, it is also important to note the issues that are prevalent in the dependency and delinquency pathways. Attorneys, stakeholders, and judges who work on dependency or delinquency cases expressed concern that some SIJS-eligible children are falling through the cracks in these processes. When children enter the foster care system or the juvenile justice system, the state employees who interact with them, whether that be a social worker or a government-appointed attorney, are generally not aware of SIJS or immigration law in general. If those employees do not seek SIJS findings for the child, it is unlikely that anyone will. Thus, an undocumented child who meets all the eligibility requirements for SIJS may pass through the foster care or juvenile justice system without any immigration relief being sought.

A few agencies around the country have found ways to fill this gap in relief. The Los Angeles Department of Children and Family Services formed an internal agency called the Special Immigrant Juvenile Status Unit, whose responsibility it is to determine eligibility for SIJS and to file applications on behalf of undocumented children who have been declared dependent on the state of California due to parental abuse, abandonment, or neglect.\(^{30}\) Additionally, one public defender agency interviewed for the research said that it was starting to develop a program to train its juvenile public defenders on SIJS so that they would be able to identify eligibility and petition for SIJS findings in conjunction with delinquency proceedings. These models should be replicated by state agencies across the country to facilitate access to SIJS. Once trained on SIJS, employees of child welfare agencies and public defenders could consult with immigration law non-profits to resolve complex legal issues and to represent clients in immigration court. Beyond the fact that it would benefit undocumented children in their custody, states have a clear incentive to develop systems like those described above. When undocumented youth receive states benefits or are placed under state custody, the financial burden is placed entirely on the state. Providing a pathway for undocumented youth to gain access to federal benefits through SIJS would decrease this burden.\(^ {31}\) Thus,
states should invest in training their employees to identify SIJS eligibility and assist with SIJS applications.

Federal

1. **Grant deferred action status and work authorization to SIJS recipients waiting to adjust their status to permanent residency**

Raising the visa cap in order to reduce the waiting period for SIJS recipients would require an act of Congress, which is unlikely in the current political landscape. Indeed, one attorney interviewed for the research remarked, “as long as the number of SIJS applications remains high, the cap and the backlog are not going anywhere.” Nonetheless, there are ways to mitigate the negative effect that the backlog has on SIJS-eligible youth. In pursuit of this goal, the Department of Homeland Security should grant deferred action status and eligibility for work authorization to individuals whose applications for SIJS have already been approved. By granting deferred action, DHS agrees not to initiate removal proceedings against an individual, although that individual is not given any official legal status.\(^{32}\) Granting deferred action to SIJS recipients would be consistent with the current policies of DHS. A 2011 DHS memorandum laid out a set of criteria used to establish eligibility for deferred action, which include, “whether the person is likely to be granted temporary or permanent status or other relief from removal” and “the person's age, with particular consideration given to minors and the elderly,”\(^{33}\) both of which apply to SIJS recipients. Moreover, USCIS grants deferred action to recipients of legal relief under the Violence Against Women Act (VAWA) immediately upon approval of their applications.\(^{34}\) Just as individuals are eligible for VAWA status if they suffer from familial or spousal abuse, SIJS recipients have suffered from familial abuse and neglect. Thus, it would be logical and equitable for USCIS to extend deferred action status to SIJS recipients as they do for recipients of VAWA status. This would protect SIJS recipients from the threat of deportation that they currently face due to the visa backlog.

SIJS recipients should also be permitted to apply for and obtain work authorization before they apply for their green cards. Before the backlog, SIJS applicants were able to apply for work authorization and permanent residency at the same time or soon after applying for SIJS, and would often receive their work authorization before receiving their permanent residency. Similarly, recipients of VAWA status are given work authorization in addition to deferred action after approval of their applications, which they can use to start working while they wait for a visa. Allowing SIJS applicants to obtain work authorization while they wait for their green cards would allow them to start pursuing a career and move towards self-sufficiency. In the study, 88% of immigrant youth who had not yet received their work authorization were of legal working age, and 70% said that they expected to change jobs or start working as soon as they obtained work authorization. About a third of these participants said they were currently working informal jobs without paying taxes and without access to benefits, while the rest were not working at all.
Youth over the age of 18 who were unable to enroll in high school or had already graduated found their inability to obtain work authorization to be particularly burdensome. Not only would providing SIJS recipients with work authorization be beneficial for them, but it would also be advantageous for the federal government. By bringing workers into the formal economy and encouraging currently employed youth to begin working, it would expand the tax base. Failing to change the policy would mean that SIJS-eligible youth will have to continue to wait in limbo without opportunities to advance themselves. Interviews with SIJS recipients indicated that they are ready and willing to work if given the opportunity. When asked what additional services or resources he would like to have in the U.S., one participant answered, “All I want is a work permit.”

2. Amend federal law to allow SIJS recipients to petition for their non-abusive parent

SIJS was originally intended as a narrow means of relief for undocumented immigrants in the foster care system. Prior to the 2008 amendments, SIJS was restricted to children who had been abused, abandoned and neglected and who had been deemed eligible for long-term foster care by a state court. In order for courts to establish eligibility for foster care, they generally must find that “family reunification is no longer a viable option.” Thus, SIJS as it was originally envisioned was contingent upon proving that reunification with both of the child’s parents was not viable due to abuse, abandonment, or neglect. Consistent with this vision, the Immigration Act of 1990 included a provision that barred children who obtain legal status through SIJS from petitioning for legal status for either of their parents. It appears that the intention of this provision was to protect immigrant children from the exploitation of parents who had abused, abandoned, or neglected them.

When the 2008 TVPRA replaced the language in the Immigration Act of 1990 with language specifying that reunification need not be unviable with both parents, but rather “one or both” parents, it did nothing to modify the bar on parental reunification. Due to fact that the TVPRA passed with barely any debate, it is difficult to determine whether there was a specific reason for not proposing such an amendment or whether it was merely overlooked. Regardless, an amendment of SIJS law to allow recipients to petition for their non-abusive parent would have been consistent with the changes made by the 2008 TVPRA. The TVPRA created a new pathway for SIJS eligibility through which a parent may assume custody of her child if the other parent abused, abandoned, or neglected the child. In this situation, the parent assuming custody is entirely innocent of harming the child, and is often serving as the child’s primary caretaker. It seems unreasonable to deny that parent a pathway to legal status because of the actions of the other parent. Similarly, there is little reason to prohibit a child living with a non-parent guardian in the U.S. from petitioning for his non-abusive mother or father living in the child’s home country. Such a prohibition may detract from, rather than contribute to, the child’s best interest. It destines immigrant youth to remain in a situation of constant vulnerability, in which their parents could be taken
away from them at any moment. Furthermore, interviews with immigrant youth indicated that the prohibition is inconsistent with their wishes. An overwhelming 95% of Group A participants who were abused, abandoned, or neglected by one parent said that they would petition for their non-abusive parent if they had the opportunity to do so. Thus, the Immigration and Nationality Act should be amended to allow SIJS recipients to petition for their non-abusive parents once they obtain permanent residency, as other legal immigrants are allowed to do.

3. **Train USCIS adjudicators to give deference to state courts**

USCIS should provide clear guidance to its adjudicators on the extent and limitations of their authority vis-à-vis juvenile courts in the SIJS system. Since October of 2016, when USCIS consolidated SIJS adjudication within the National Benefits Center and issued a new policy manual on SIJS, the number of Requests for Additional Evidence (RFEs) sent by USCIS appears to have increased. Judges and attorneys interviewed for the research reported receiving significantly more RFEs than they had in the past. Many of the RFEs questioned the legal basis for findings contained in judges’ orders. As justification for these RFEs, adjudicators appear to be referring to the new USCIS policy manual, which authorizes an adjudicator to issue an RFE if it is “unclear if the order was made…in accordance with state law.”40 The purpose of seeking this clarification, it seems, is to ensure “that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit.”41 Yet this practice of questioning the findings of juvenile courts runs contrary to past guidance that has come from within USCIS. A 2004 USCIS Interoffice Memorandum clarified that the “adjudicator generally should not second-guess the court rulings or question whether the court’s order was properly issued.”42 Additionally, a 2015 report from the USCIS Ombudsman recommended that adjudicators “stop the practice of issuing overly burdensome documentation regarding underlying juvenile court dispositions.”43

The USCIS policy manual should be amended in such a way that it clearly instruct adjudicators to give deference to juvenile court findings and to refrain from issuing RFEs that second-guess court orders. In the SIJS system, state courts are entrusted to make determinations about the care and custody of juveniles, which provide the basis for SIJS eligibility. Courts are granted this authority because it is presumed that they have expertise in state law and are in the best position to identify and protect a child’s best interest.44 The role of USCIS, meanwhile, is “only to consent to the grant of SIJS.”45 Thus, when USCIS adjudicators question findings made by juvenile courts, they push the limits of their authority. Not only is this breach of authority problematic in and of itself, but it also produces negative consequences. RFEs requiring changes to court orders “have an adverse impact on legal service providers who must expend limited resources to respond to such inquiries”46 and place a burden on judges who are already
dealing with oversized caseloads. Additionally, they create significant delays and unnecessary stress for SIJS applicants. One immigrant youth interviewed for the research said he was very worried when he received an RFE because he thought it meant he was going to be deported. In order to streamline the SIJS application process, to more closely comply with past guidance from USCIS, and to more appropriately execute their roles in the SIJS system, the USCIS National Benefits Center should train its SIJS adjudicators to give deference to juvenile court findings and to refrain from issuing RFEs except when absolutely necessary.

**Conclusion**

In an SIJS case, one of the central findings that a judge is asked to make is that it is in the child’s “best interest” to remain in the U.S. Indeed, as many attorneys pointed out, SIJS is the only form of immigration relief that incorporates a “best interest” standard. Yet far too often, the SIJS system fails to ensure the best interest of the children who it is designed to protect. A number of obstacles prevent eligible youth from accessing SIJS, and certain policies or lack thereof inhibit youth from succeeding after they have received it. If the best interest of SIJS-eligible children is to be truly achieved and safeguarded, the flaws and gaps in the SIJS system must be rectified.

In order to address the issues present in the SIJS system, attorneys, judges, non-profit organizations, state governments, and the federal government must work in conjunction with one another. While the recommendations made above are tailored to specific actors in the SIJS system, the interaction and advocacy of other actors may facilitate the implementation of those recommendations. Attorneys and other stakeholders are encouraged to advocate for the implementation of the recommended state and federal policies, and governments are called upon to provide funding and resources for the implementation of the organizational recommendations. Additionally, it is hoped that stakeholders will pursue further research to guide the implementation of this report’s recommendations and to identify additional challenges and solutions. This report has provided an overview of a number of issues present in the SIJS system and made a set of preliminary recommendations, all of which should be explored in more depth.

**About the Researcher**

Austin Rose, the researcher and author of this report, is a senior at Georgetown University majoring in Government and pursuing a certificate in Latin American Studies. He was motivated to explore this topic after volunteering for a number of years at Catholic Charities of Baltimore Esperanza Center, where he assisted pro bono attorneys in their representation of immigrant children pursuing Special Immigrant Juvenile Status cases.
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To receive asylum, immigrants must prove that they have a well-founded fear of persecution on the basis of their religion, race, ethnicity, political opinion, or membership in particular social group. Refugee Act of 1980 § 201 (42)

3 Immigration Act of 1990 § 153 (a)(3)

4 William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) § 235 (d)(1)

5 The SIJS system has been referred to as a “hybrid” system, in that it involves collaboration between the federal and state governments. Thronson, David B. (2002). “Kids Will Be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law.” Ohio St. Law Journal 63(979): 1004.

6 All countries fall under this category except for Canada and Mexico


8 Id. at (c)(2)

9 An application for legal status is “affirmative” if it is filed solely for some positive benefit, as opposed to a “defensive” application, which is filed, at least in part, as a way to terminate removal proceedings.

10 The court makes these findings by issuing a court order


12 While technically a child is declared “dependent” in all four of the jurisdiction pathways, I use the term “dependency” here to refer to the process of a child entering state custody.

13 Immigration and Nationality Act (INA) § 101(a)(27)(J) (iii)(II)

14 For purposes of this paper, an “SIJS recipient” is someone whose SIJS application has been approved by USCIS, but does not necessarily have a green card yet.

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30 For more information, see “Spotlight-Group C” in the Results section of the report.


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