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Re: Administrative agency actions to mitigate the harmful effects on immigrant children of the Special Immigrant Juvenile Status green card backlog

Dear Ms. Kelley, Mr. Perry, Mr. Trasviña, Ms. Escobar Carrillo, Ms. Baran, Ms. Tabaddor, Ms. Sheehey, & Mr. Lang:

The [End SIJS Backlog Coalition](#) is a nationwide coalition of directly affected youth and professionals with expertise in working with children and youth who have survived abuse and neglect. On behalf of the Coalition, as well as other members of the community, including child welfare experts, doctors, social workers, and others, we write with concern for young people at

risk of deportation and to propose solutions for the harms caused by the Special Immigrant Juvenile Status (“SIJS”) green card backlog.

SIJS is an immigration status that allows children and youth who have survived parental abuse and neglect to apply for lawful permanent residency in the United States. It combines special protections of both state child welfare law and humanitarian immigration law to help survivors of trauma attain stability and permanency with as little delay as possible. To receive SIJS, a young person must provide U.S. Citizenship and Immigration Services (“USCIS”) with a state juvenile court dependency or custody/guardianship order finding that reunification with a parent is not viable due to abuse, abandonment, or neglect and that it is not in the youth’s best interest to be returned to their country of origin. A SIJS petition (Form I-360) must be adjudicated within 180 days,^[1] and but for the backlog, a SIJS petitioner is eligible to apply simultaneously for lawful permanent residence (a “green card”). Congress created SIJS—with its direct pathway to a green card—to provide young people with tools to achieve stability: eligibility for college financial aid, work authorization, and protection from deportation.

However, the wait for SIJS-based green cards now prevents many young people from accessing those tools in a timely and meaningful way. Tens of thousands of SIJS beneficiaries from Mexico, Guatemala, El Salvador, and Honduras now face a wait of multiple years before they can apply for lawful permanent residence due to annual employment-based visa limits and per-country caps on green cards.^[2] These young people are left in limbo, unable to achieve permanency goals or access the protections and stability that SIJS was created to achieve. High school graduates must delay college studies. Young people lacking financial support are denied employment authorization. Children in foster care struggle to become independent. And the tens of thousands of SIJS beneficiaries waiting for a visa number are vulnerable to deportation to countries they fled to escape familial abuse. Many of us have witnessed this harm in the lives of the youth we serve.

The SIJS backlog also places significant pressure on immigration courts, agencies, and workers. Historically overloaded immigration court dockets are further clogged with cases of those caught in the SIJS backlog. Simple requests for continuances to permit time for the SIJS backlog to advance turn into mini-trials that strain court resources, and worse, place these youth at risk of deportation. Under guidance and rulings issued by the previous administration, immigration courts refuse to terminate backlogged SIJS cases, forcing thousands of young people to file for alternate protections against deportation at asylum offices and at individual hearings, or risk removal despite approved SIJS status. The filing of these alternate applications increases the wait times of the already-backlogged asylum offices and immigration courts, forcing them to schedule interviews and hearings further and further in the future. And because children are not guaranteed a lawyer in immigration court, non-profit legal service providers attempting to fill that gap are under enormous strain to balance thousands of backlogged SIJS cases with the unprecedented demand for legal services for newly arriving youth. The SIJS backlog thus compounds serious stressors on the timely and fair functioning of our immigration system, including the ability of children to obtain the very limited pro bono legal services that exist.

While legislative action is necessary to truly eliminate the backlog, common sense solutions exist that can ameliorate many of its negative impacts. We offer several that can be implemented by administrative agencies to mitigate the SIJS backlog's harmful effects.

First, USCIS should take action to further the purpose of SIJS to grant streamlined access to stability for vulnerable immigrant youth. USCIS should:

- create a new Employment Authorization Document (“EAD”) category for SIJS youth; and
- issue a notice of proposed rulemaking incorporating 2011 and 2019 comments and integrating EAD and protection from removal (deportation) provisions for SIJS youth, with a 60-day comment period.

Second, Immigration and Customs Enforcement (“ICE”) should take steps to ensure that SIJS petitioners and beneficiaries are not removed before being permitted to apply for a green card. ICE should:

- join motions to dismiss or terminate cases where the respondent has a pending or approved SIJS petition, regardless of the petition's priority date;
- join or non-oppose motions for a continuance or to place a case on a status docket while a respondent pursues SIJS before state courts and USCIS, regardless of the priority date;
- cease moving to re-calendar, and withdraw previously filed motions to re-calendar, cases that were administratively closed where a SIJS petition is pending, or where the petition is approved but the priority date is not yet current;
- in cases of youth with orders of removal who have a pending or approved SIJS petition, join motions to reopen and dismiss or terminate;
- grant stays of removal to youth with pending or approved SIJS petitions, regardless of the petition's priority date; and
- join motions to adjudicate without a hearing or to advance individual adjustment of status hearings for individuals with an approved SIJS petition and a current priority date.

Third, the Department of Justice (“DOJ”) and Executive Office for Immigration Review (“EOIR”) should eliminate barriers to the efficient and fair disposition of cases of individuals with pending or approved SIJS petitions. DOJ and EOIR should:

- restore the discretion of Immigration Judges to efficiently manage their dockets through administrative closure by vacating *Matter of Castro-Tum*, reinstating *Matter of Avetisyan*, and withdrawing the final rule eradicating administrative closure (currently enjoined by the federal courts);^[3]
- restore the discretion of Immigration Judges to efficiently manage their dockets through continuances and use of status dockets by:
 - vacating *Matter of L-A-B-R-*,
 - rescinding restrictive status docket criteria in [EOIR PM 19-13](#),
 - rescinding [EOIR PM 21-13](#) to the extent that it purports to narrow eligibility for a continuance for an individual in the SIJS backlog,
 - issuing guidance clarifying that cases where an individual is pursuing SIJS before a state court or USCIS or awaiting a current priority date are appropriate for continuances and status docket placement,
- issue guidance directing Immigration Judges to terminate cases where the respondent has a pending or approved SIJS petition and vacate *Matter of S-O-G- & F-D-B*;

- issue guidance directing Immigration Judges to favorably adjudicate motions to reopen for youth with pending or approved SIJS petitions, including through the use of *sua sponte* reopening authority, and withdraw the final rule eradicating *sua sponte* reopening authority (currently enjoined by the federal courts);^[4] and
- prioritize scheduling of individual adjustment of status hearings when requested by a SIJS beneficiary with a current priority date.

SIJS is an important, meaningful protection against harm and injustice. In a properly functioning system, it provides a timely path to safety and stability for young people who have overcome tremendous hardship and now show tremendous potential for leadership and good. This administration can restore the protective purpose of SIJS and repair that system by acting decisively to mitigate the worst harms of the SIJS backlog.

On behalf of the undersigned, representatives of the End SIJS Backlog Coalition respectfully request the opportunity to discuss these recommendations further. Please contact Rachel Davidson at advocacy@sijsbacklog.com to schedule a meeting.

Sincerely,



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cc: Esther Olavarria, Deputy Director, Domestic Policy Council

^[1] 8 U.S.C. § 1232(d)(2).

^[2] See Andrew R. Calderón, “These Young People Were Told They Could Stay in the U.S. They Might Get Deported Anyway,” The Marshall Project (Jan. 28, 2021), <https://www.themarshallproject.org/2021/01/28/these-young-people-were-told-they-could-stay-in-the-u-s-they-might-get-deported-anyway> (citing USCIS data).

^[3] *Centro Legal de La Raza v. EOIR*, No. 21-cv-00463, 2021 WL 916804 (N.D. Cal. Mar. 10, 2021); *CLINIC v. EOIR*, No. 21-cv-00094 (D.D.C. Apr. 4, 2021). *Matter of Castro-Tum* has already been overturned in several circuits and should be vacated nationwide.

^[4] See cases cited in *supra* note 3.

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Al Otro Lado
Alliance for Children's Rights

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Asian Americans Advancing Justice
Asian Pacific Islander Legal Outreach
Ascentria Care Alliance, Immigration Legal Assistance Program
Attorneys for Families and Children
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Center for Safety & Change
Center for the Study of Social Policy
Central American Resource Center - CARECEN- of California
Central West Justice Center
Centro Legal de la Raza
Charlotte Center for Legal Advocacy
Children's Law Center of MA
Children's Law Center of California
Children's Legal Services of San Diego, Inc.
Citizens Concerned for Children, Inc.
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Colorado Immigrant Rights Coalition
Colorado Lawyers Committee
Colorado Office of the Child's Representative
Committee for Public Counsel Services (Massachusetts public defender agency)
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Dolores Street Community Services

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Immigrant Defenders Law Center
Immigrant Justice Corps
Immigrant Legal Advocacy Project
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