



Practice Alert: Remediating Removal Orders Entered Against Special Immigrant Juveniles Harmed by the State Department’s Illegal Action¹

May 30, 2023

In late March 2023, the U.S. Department of State (“State Department”) [announced](#) that since 2016 it had been committing a legal error when allocating visas in the employment-based fourth preference category (“EB-4”). Recipients of EB-4 visas include children approved for special immigrant juvenile status (“special immigrant juveniles”). The State Department announced that it would correct its mistake prospectively, beginning with the April 2023 Visa Bulletin. But it offered no remedy for those harmed by the agency’s past unlawful conduct—including those special immigrant juveniles who received removal orders in immigration court because they did not yet have an available visa. This practice alert offers strategies for practitioners representing special immigrant juveniles who received removal orders because they lacked an available visa, and whose “final action date”—the date that determines when they have a visa available—was incorrectly calculated because of the State Department’s error. As discussed below, in some circumstances, practitioners should consider taking action **on or before June 20, 2023**.

Specifically, this practice alert discusses potential remedies for individuals with removal orders issued by an immigration judge (“IJ”) or the Board of Immigration Appeals (“BIA”)² who meet the following criteria [hereinafter referred to as “impacted special immigrant juveniles”]:

- Are from El Salvador, Guatemala, or Honduras
- Were ordered removed by an IJ or BIA decision issued between May 1, 2016 and March 31, 2023, that was based at least in part on the lack of a current priority date or the remoteness of their priority date
- Filed a petition for Special Immigrant Juvenile Status (“SIJS”) that was either pending or approved on the date of the IJ or BIA decision

¹ Publication of the End SIJS Backlog Coalition, www.sijsbacklog.com, 2023. The End SIJS Backlog Coalition, a project of the [National Immigration Project](#), is a nationwide coalition of directly impacted youth and allied advocates seeking to eradicate the SIJS backlog legislatively, and in the meantime mitigate its worst harms through administrative reforms. This practice alert is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). It is not a substitute for independent legal advice provided by legal counsel familiar with a client’s case.

² While many of these individuals are in the United States, some subset of these individuals were physically removed, or departed after receiving a removal order. Some may still be outside the United States; others may have re-entered. This practice alert does not cover legal implications and strategic considerations for motions to reopen for clients who have departed the United States. For some resources on this subject see Catholic Legal Immigration Network and Boston College, [Practice Advisory: Post-Departure Motions to Reopen and Reconsider](#) (Nov. 2019). The Coalition invites practitioners with SIJS clients outside of the United States to complete our [survey](#).

Section I of this alert provides brief background on the State Department’s misinterpretation of the law. Section II describes how certain special immigrant juveniles were harmed by this legal error. Section III outlines remedies that practitioners representing impacted special immigrant juveniles with removal orders might seek and provides practice tips for raising these arguments.

I. Background: The State Department’s Error

At the end of March 2023, the State Department [admitted](#) that since May of 2016 it had been unlawfully holding back visas for EB-4 immigrant visa applicants (which include special immigrant juveniles) from three countries: El Salvador, Guatemala, and Honduras. This means that the State Department provided fewer visas to special immigrant juveniles from El Salvador, Guatemala, and Honduras than were legally owed to them, and that individuals from those countries had to wait longer before a visa was available to them. The State Department did this by making the “final action” date—the cut-off date before which an individual needs to have filed their visa petition in order to have a visa available—earlier than it should have been for individuals from El Salvador, Guatemala, and Honduras. The agency corrected its mistake beginning with the [April 2023 Visa Bulletin](#). The April 2023 changes meant that the “final action” dates for special immigrant juveniles from El Salvador, Guatemala, and Honduras advanced, or moved forward, by some months. For special immigrant juveniles from all other countries, the April 2023 changes meant that their final action dates retrogressed, or moved backward, significantly.

The State Department issued a [notice](#) explaining its mistake. The notice states that the agency had been incorrectly interpreting the law that imposes an annual 7 percent per-country cap on family- and employment-based visas.³ That law says that once a country reaches the 7 percent cap in a given year, then the visas from that country are restricted.⁴ From May 2016 until April 2023, the State Department wrongly concluded that EB-4 immigrant visa applicants from El Salvador, Guatemala, and Honduras had reached the 7 percent annual per-country cap and thus limited their visas even when their priority dates preceded those of other applicants who were issued visas. In fact, the 7 percent per-country cap had never been reached for applicants from El Salvador, Guatemala, and Honduras as the State Department had been using the wrong denominator to conclude otherwise,⁵ and so their visas should not have been limited. Beginning with the April 2023 Visa Bulletin, the State Department eliminated the previous separate category in the employment-based preference charts for applicants from El Salvador, Guatemala, and Honduras—a category that the State Department first created in May 2016, when it wrongly determined that applicants from those countries had reached the cap. Starting in April 2023, individuals from El Salvador, Guatemala, and Honduras who are seeking employment-based visas (including special immigrant juveniles from those countries) are included in the category titled “All Chargeability Areas Except Those Listed” [hereinafter referred to as “Rest of World category”]. While the now-eliminated El Salvador/Guatemala/Honduras Visa Bulletin category

³ See INA § 202(a)(2).

⁴ INA § 202(e).

⁵ Instead of considering whether a country’s demand for visas exceeded 7 percent of all family- and employment-based preference visas available in a given year, the State Department wrongly considered whether visa demand exceeded 7 percent of the much smaller number of visas available annually in the EB-4 category.

had been backlogged since May of 2016, the Rest of World category was almost always current—meaning there was no wait and visas were immediately available—until December of 2022.⁶ The Rest of World category was almost always current because the State Department had incorrectly held back the visas of EB-4 applicants from El Salvador, Guatemala, and Honduras. For more about the changes, see the Coalition’s [March 24, 2023 Practice Alert](#).

The recent revelation of the State Department’s error highlights the larger problem of the ever-growing visa backlog for special immigrant juveniles. The cause of this backlog is the placement of special immigrant juveniles in the employment-based visa category. The [End SIJS Backlog Coalition](#) believes that special immigrant juveniles should not be subject to the numerical limitations imposed on the EB-4 category. In order to end the SIJS backlog, which now seriously harms all special immigrant juveniles from all countries, the Immigration and Nationality Act (“INA”) must be amended to align with the original humanitarian intent of the SIJS statute by exempting special immigrant juveniles from the employment-based visa caps. Keeping the numerical limitations for special immigrant juveniles in the EB-4 category is not logical and leaves immigrant children and youth unable to promptly secure the permanency Congress intended for them. The End SIJS Backlog Coalition continues to organize impacted youth and advocate for the exemption of special immigrant juveniles from the employment-based numerical limitations through all possible legislative vehicles. To find out more and to join the Coalition, please visit sijsbacklog.com or email rdavidson@nipnlg.org.

II. Special Immigrant Juveniles Harmed by the State Department’s Error

Individuals in the SIJS backlog—who do not have a visa immediately available—are vulnerable to deportation, unable to work lawfully,⁷ may lack access to medical care or higher education, and may face exploitative employers, hunger, and homelessness, among other harms.⁸ The State Department’s error harmed special immigrant juveniles from El Salvador, Guatemala, and Honduras by pushing them further into the backlog than they should have been, while favoring special immigrant juveniles from other countries. Many special immigrant juveniles from El Salvador, Guatemala, and Honduras are (or were) in immigration court removal proceedings, where their eligibility to adjust status is a defense to removal. During the Trump administration, then-attorney general Jeff Sessions issued a series of decisions (some of which have since been overruled) that made it difficult for IJs to postpone an individual’s removal proceedings to await a visa number, particularly if the individual’s priority date was remote in time based on the Visa Bulletin chart.⁹ During the years that the State Department was incorrectly calculating visa

⁶ In the [December 2022 Visa Bulletin](#), the Rest of World EB-4 category listed a final action date of June 22, 2022. The date remained as June 22, 2022 in the [January 2023](#) and [February 2023](#) Visa Bulletins. The [March 2023 Visa Bulletin](#) had a final action date of February 1, 2022 for the Rest of World EB-4 category.

⁷ In May 2022, USCIS began implementing a [policy](#) whereby it considers for deferred action individuals with approved SIJS petitions who do not have a visa available. A discretionary grant of deferred action protects the individual from physical removal during the period of the deferred action and provides a basis to apply for a work permit. For more on the deferred action policy, see the [Coalition’s FAQ](#).

⁸ See Rachel Leya Davidson & Laila L. Hlass, End SIJS Backlog Coalition, [“Any Day They Could Deport Me”: Over 44,000 Immigrant Children Trapped in the SIJS Backlog](#) (2021).

⁹ See [Matter of Castro-Tum](#), 27 I&N Dec. 271 (A.G. 2018), overruled by [Matter of Cruz-Valdez](#), 28 I&N Dec. 326 (A.G. 2021); [Matter of S-O-G- & F-D-B-](#), 27 I&N Dec. 462 (A.G. 2018), overruled by [Matter of Coronado-Acevedo](#), 28 I&N Dec. 648 (A.G. 2022); [Matter of L-A-B-R-](#), 27 I&N Dec. 405 (A.G. 2018).

availability, some special immigrant juveniles from Guatemala, El Salvador, and Honduras were ordered removed because the IJ or BIA determined that their visa priority date was too remote based on the final action date found in the now-eliminated El Salvador/Guatemala/Honduras Visa Bulletin category.

This practice alert suggests that practitioners argue that their client's correct final action date should have been determined looking at the Rest of World category for the relevant month. That category was largely current each month until December of 2022, and though it was not current from December 2022 to March 2023, the final action date was relatively recent during that period as well. In other words, under this argument, had the IJ or BIA not applied a final action date based on an incorrect interpretation of the law and had they instead applied the final action date from the Rest of World category, the special immigrant juvenile would have had an available visa at the time of the removal order.

Note on causation. This practice alert offers arguments that can be made in cases where the client's removal order was grounded at least in part on lack of a current priority date, or a too-remote priority date. Special immigrant juveniles may have pursued other relief in immigration court before receiving a removal order, such as asylum, withholding of removal, or protection under the Convention Against Torture ("CAT"). In this type of scenario, there may be an IJ removal order denying the asylum, withholding, or CAT relief, but there may have been an earlier denial of a request to postpone the case based on the SIJS petition. This could take the form of a denial of a motion for a continuance, for placement on the status docket, for administrative closure, or for termination or dismissal. If the IJ denied the postponement motion because of the visa priority date's remoteness, the arguments here are relevant. Practitioners could also consider the strategies offered below even in cases where the special immigrant juvenile never sought a postponement from the IJ, perhaps because they determined it would have been futile to do so at the time, though they would want to establish that the State Department's error impacted them (*i.e.* that they are from El Salvador, Guatemala, or Honduras, that the IJ or BIA ordered removal between May 1, 2016 and March 31, 2023, and that they had a pending or approved SIJS petition on the date of the IJ or BIA decision).

Many special immigrant juveniles from El Salvador, Guatemala, and Honduras who may benefit from these arguments lack a current priority date under the current month's Visa Bulletin. This is because, when El Salvador, Guatemala, and Honduras were added to the Rest of World category in April 2023, it caused that category to retrogress—or move back—about 4 years. This practice alert suggests that such individuals nevertheless make legal arguments challenging the validity of their removal order given the legal error it was based upon, and ground their analysis in the Visa Bulletin for the month during which the IJ or BIA ordered removal—when the final action date was likely current for the Rest of World category.¹⁰ However, even if these individuals achieve reopening of their removal orders, they still must wait until a visa becomes available (until their priority date is a date earlier than the final action date) to adjust status. For this reason,

¹⁰ It is of course more complicated than looking at the relevant month's Rest of World column to determine if an impacted special immigrant juvenile client would have had a visa available but for the State Department error, since doing so would require recalculating EB-4 visas issued each month since May 2016 in a counterfactual scenario where the State Department did not artificially limit visas from El Salvador, Guatemala, and Honduras. We thus suggest arguing that the client should have gotten the benefit of the relevant month's Rest of World category's final action date and letting the government figure out the more complex calculation if desired.

practitioners need to analyze in each case whether it is strategically wise to seek reopening now, and if so, what other remedies—for example, termination—can be sought to protect the client from another removal order while they wait for a visa.

III. Remedies Practitioners Might Seek on Behalf of Impacted Special Immigrant Juveniles and Tips for Pursuing Them

The contours of the remedy an impacted special immigrant juvenile might seek depend in part on the procedural posture of their removal order—whether it is (1) on appeal with the BIA, (2) pending petition for review with the relevant U.S. court of appeals, or (3) a final removal order with no pending appeal. The discussion below addresses each of these circumstances.

A. Cases with a Pending BIA Appeal

Impacted special immigrant juveniles whose removal orders are on appeal with the BIA may consider asking Immigration and Customs Enforcement Office of the Principal Legal Advisor (“OPLA”)—the prosecutors representing DHS in removal proceedings—to join in a motion, or pursuing a unilateral motion before the BIA.

First, special immigrant juveniles may contact OPLA to request that they join in a motion in an exercise of prosecutorial discretion.¹¹ The impacted special immigrant juvenile could cite harm caused by the State Department’s violation of law, as well as any other humanitarian factors, as a basis for DHS’s exercise of prosecutorial discretion. What type of prosecutorial discretion to request will depend on the special immigrant juvenile’s circumstances. If the special immigrant juvenile’s priority date is now current and they would like to adjust status before the IJ, then they could ask OPLA to join a motion to remand the case back to the IJ for a hearing on adjustment of status. Note, however, that if the impacted special immigrant juvenile entered the United States as an “arriving alien”—something that the client’s Notice to Appear will indicate by a box checked at the top—then only USCIS, and not the immigration court, has jurisdiction over the adjustment of status application.¹² If the special immigrant juvenile’s priority date is not current, and/or if they want to pursue adjustment in the first instance with USCIS, then they could ask OPLA to join a motion to dismiss the case.

Second, regardless of whether OPLA is willing to join any motion in an exercise of prosecutorial discretion, impacted special immigrant juveniles with cases pending before the BIA can file a motion with the BIA seeking a remedy based on the State Department legal violation. The strategy will vary depending on whether their priority date is now current or is not yet current.

Those whose priority date is now current could file a motion to remand in order to seek adjustment with the IJ, or, if desired, a motion to terminate in order to pursue adjustment with USCIS. Motions to remand are not subject to the time and number limitations that restrict motions to reopen (though they are subject to the same substantive requirements of needing to

¹¹ For more information about requesting prosecutorial discretion from OPLA, see [OPLA’s prosecutorial discretion webpage](#). See also National Immigration Project, [Practice Advisory: Advocating for Prosecutorial Discretion in Removal Proceedings Under the Doyle Memo](#) (July 2022).

¹² 8 CFR § 1245.2(a)(1).

show material, previously unavailable evidence) and can be filed at any time while the BIA appeal is pending; the BIA may consider the appeal and motion to remand concurrently.¹³ The motion to remand should include a copy of the current month’s Visa Bulletin showing that the client’s priority date is now current as well as a copy of the client’s adjustment of status application with supporting documentation demonstrating *prima facie* eligibility. If seeking termination to pursue adjustment with USCIS, the impacted special immigrant juvenile should cite *Matter of Coronado-Acevedo*, 28 I&N Dec. 648 (A.G. 2022), which recognizes that IJs and the BIA have authority to terminate cases where necessary for the noncitizen to seek relief with USCIS. That decision specifically lists special immigrant juveniles seeking adjustment with USCIS as an example of a case appropriate for termination.¹⁴

Those impacted special immigrant juveniles whose priority date is not current, but would have been current or less remote at the time of the IJ’s removal order under the Rest of World category, should consider the most advantageous way to raise the issue with the BIA. Those who are appealing the denial of other relief, for example asylum, may prefer to keep the BIA appeal alive to preserve the ability to challenge the asylum denial, and ask the BIA to administratively close the case to await visa availability. Others may prefer to not have any pending removal case and may wish to file a motion to terminate with the BIA. In either type of motion (for administrative closure or termination), the impacted special immigrant juvenile could argue that the IJ’s removal order was based on legal error and that the BIA should grant the remedy sought in recognition of this prejudicial error. The impacted special immigrant juvenile could rely on the *Coronado-Acevedo* decision, explaining that by terminating the BIA puts them in a position to be able to seek adjustment with USCIS once a visa becomes available. The impacted special immigrant juvenile could also argue that termination is appropriate under *Matter of Garcia-Flores*, 17 I&N Dec. 325 (BIA 1980), where, as here, an agency violated a legal requirement.¹⁵

B. Cases with a Pending Petition for Review

Impacted special immigrant juveniles with pending petitions for review (“PFR”) should approach the Department of Justice Office of Immigration Litigation (“OIL”) attorney assigned to the case to discuss potential settlement. The impacted special immigrant juvenile might ask OIL to agree to a joint motion to remand the case to the BIA—assuming it is in the client’s interest to forego the PFR. In 2022, OIL published [remand criteria](#), one of which is when the agency decision under review “contains a material error of law.” Practitioners could argue that, where the IJ or BIA’s decision relies on the Visa Bulletin final action date from the now-defunct “El Salvador/Guatemala/Honduras” category, the decision rests on a material error of law. In

¹³ See BIA Practice Manual Ch. 5.8, [“Motions to Remand”](#) (last updated Aug. 15, 2022).

¹⁴ 28 I&N Dec. at 649.

¹⁵ In *Matter of Garcia-Flores*, the BIA recognized that an INS officer’s violation of a regulatory requirement could be grounds for termination of proceedings in certain circumstances where prejudice is either presumed or demonstrated. Practitioners could argue that the State Department violated 22 CFR § 42.51(b) (requiring correct allocation of visas), 9 FAM 503.2-5(A), 9 FAM 503.1-2(A)(c), and that the court must presume prejudice occurred because the regulations are required by federal law. The contours of this argument are beyond the scope of this practice alert. Please contact Rex Chen at Legal Services NYC (rexchen@lsnyc.org) with questions, requests for samples, and to share your own samples or reports on how adjudicators respond to this argument.

cases where the impacted special immigrant juvenile's priority date is now current, the case for remand is even stronger.¹⁶

Even for those who do not have a current priority date, seeking remand from OIL may be successful. Practitioners could push for a directed remand (*e.g.*, for reopening and termination), perhaps bringing OPLA into the discussion to try to gain their agreement to this outcome.¹⁷ If OIL is unwilling to negotiate a remand through direct outreach, practitioners could seek to have the case placed into the court's mediation program and/or could ask for judicial closure in jurisdictions where the latter is available. Judicial closure would allow the PFR to be placed on hold until the client has a current priority date, at which point the parties could seek a remand.

C. Cases with an Unexecuted Final Removal Order and No Pending Appeal

Impacted special immigrant juveniles with final, unexecuted removal orders and no pending appeal should consider first reaching out to OPLA to request prosecutorial discretion.¹⁸ The impacted special immigrant juvenile could cite harm caused by the State Department's violation of law, as well as any other humanitarian factors, as a basis for the exercise of prosecutorial discretion. What precise type of prosecutorial discretion to request will depend on the special immigrant juvenile's circumstances. If the special immigrant juvenile's priority date is now current and they would like to adjust status before the IJ,¹⁹ they should ask OPLA to join a motion to reopen. If the special immigrant juvenile's priority date is not current, and/or if they want to pursue adjustment in the first instance with USCIS, then they could ask OPLA to join a motion to reopen and dismiss the case. OPLA may be more likely to agree to a joint motion to reopen and dismiss than a joint motion to reopen. It is the Coalition's understanding based on engagement with OPLA that generally speaking that office prefers to receive requests for joint motions to reopen once a special immigrant juvenile's priority date is current.²⁰ However, the Coalition is aware of successful requests for joint reopening and dismissal in cases of special immigrant juveniles whose priority date is not yet current—and the newly disclosed State Department error should provide an additional reason for OPLA to exercise prosecutorial discretion even when the client's priority date is not yet current. In making prosecutorial discretion requests, practitioners could cite harm that the State Department's mistake—and, if

¹⁶ Other OIL remand factors that may be relevant here include where “[c]ircumstances outside the administrative record indicate that the record has become stale,” or where remand would facilitate DHS exercise of prosecutorial discretion including where “a petitioner may have recently become eligible for adjustment of status.”

¹⁷ The [OIL remand guidance](#) notes that “OIL will consider remanding cases in order to facilitate exercises of prosecutorial discretion by DHS, or in other circumstances in which DHS believes that reopening of the case before the Board of Immigration Appeals is appropriate (*e.g.*, cases in which a petitioner may have recently become eligible for adjustment of status or presents other equities such that DHS Immigration and Customs Enforcement would not oppose reopening by the Board).” See also discussion in section III.A above about seeking prosecutorial discretion with OPLA and arguing for termination based on *Coronado-Acevedo* and/or *Garcia-Flores*.

¹⁸ Before reaching out to OPLA, practitioners should consider the potential risks of bringing the client's case to DHS's attention and should counsel the client on the potential risks and benefits of making a prosecutorial discretion request.

¹⁹ However, recall that individuals classified as “arriving aliens” cannot seek adjustment of status in immigration court and must instead apply for adjustment with USCIS. See 8 CFR § 1245.2(a)(1).

²⁰ Many practitioners have reported lengthy delays—or no response at all—from OPLA after they submit a request to join a motion to reopen for a special immigrant juvenile. The Coalition has urged OPLA to promptly respond to, and grant, requests to join motions to reopen of SIJS recipients regardless of priority date.

true, OPLA’s previous advocacy for a removal order against the client that was in part grounded in the incorrect “final action” date —caused the client as well as any other humanitarian or positive discretionary factors. If the practitioner receives no response or a negative response, they could escalate their request to the Chief Counsel of the local OPLA office.²¹

If OPLA will not join a motion to reopen, practitioners can consider filing a unilateral motion to reopen based on the prejudicial error. Whether to use the client’s “one” motion²² to reopen now will depend on the client’s individual situation, including whether or not they have a currently available visa.

For clients who now have a current priority date, wish to adjust status, and cannot do so unless their case is reopened,²³ it makes sense to file the motion to reopen as promptly as possible. Filing promptly is important to comply with the statutory motion to reopen deadline of 90 days after the final removal order,²⁴ or, if that deadline has passed, to demonstrate diligence for any equitable tolling argument.²⁵ For those whose removal order was issued fewer than 90 days ago, it is likely wise to file the motion to reopen now in order to comply with the 90-day reopening deadline.

Impacted special immigrant juveniles who are beyond the 90-day deadline and whose priority date is not current will need to weigh the advantages of filing promptly after the State Department disclosed the legal error with the risk that the IJ or BIA may deny the motion to reopen because there is no current priority date. Motions to reopen must present new, previously unavailable evidence, and, if based on new eligibility for relief, must include a copy of the application and show *prima facie* eligibility for that relief.²⁶ In this situation, the new, previously unavailable evidence would be the State Department error and the fact that the client’s priority date should have been assessed using the Rest of World category. But an IJ or the BIA could deny the motion to reopen based on the lack of current priority date, concluding that the client is not currently *prima facie* eligible for adjustment. To attempt to avoid this outcome, practitioners could ground the motion on the error as newly available evidence that is material because it could have impacted the client’s ability to get a postponement and avoid a removal order in the first place, rather than grounding the motion in newly available relief.

Those who are beyond the 90-day deadline, lack a current priority date, and wish to file a motion to reopen now based on the State Department error will likely want to file a motion to reopen

²¹ During a May 2023 Federal Bar Association conference, Principal Legal Advisor Kerry Doyle stated that escalation of prosecutorial discretion requests was possible and encouraged.

²² By statute, noncitizens are generally limited to filing one motion to reopen. INA § 240(c)(7)(A); *see* 8 CFR §§ 1003.23(b)(1) (IJ motions to reopen), 1003.2(c)(2) (BIA motions to reopen).

²³ All those with unexecuted removal orders, except for those classified as “arriving aliens,” must first achieve reopening in order to be able to apply for adjustment of status with the IJ, or, if proceedings are then dismissed or terminated, with USCIS. *See* 8 CFR § 1245.2(a)(1).

²⁴ Generally, noncitizens must file a motion to reopen within 90 days of a final removal order. INA § 240(c)(7)(C)(i); *see* 8 CFR §§ 1003.23(b)(1) (IJ), 1003.2(c)(2) (BIA).

²⁵ For information on equitable tolling arguments and on motions to reopen generally, *see* Catholic Legal Immigration Network, [Practice Advisory: Motions to Reopen for DACA Recipients with Removal Orders](#) (Oct. 12, 2020).

²⁶ INA § 240(c)(7)(B); *see* 8 CFR §§ 1003.23(b)(3) (IJ), 1003.2(c)(1) (BIA).

and terminate,²⁷ in order to eventually pursue adjustment with USCIS. They could argue that the 90-day reopening deadline should be equitably tolled because the State Department's error from May 2016 to March 31, 2023 was an extraordinary circumstance that stood in their way of timely filing a motion to reopen, and that they acted with reasonable diligence in pursuing their rights. If pursuing this tolling argument, it is wise to file the motion within 90 days of the March 22, 2023 State Department announcement of its legal error—**by June 20, 2023**. In addition, practitioners should include an alternative argument that the State Department's legal error and recent change in interpretation is grounds for *sua sponte* reopening. *See, e.g., Matter of G-D-*, 22 I&N Dec. 1132, 1135 (BIA 1999) (recognizing that a fundamental change in law can be grounds for *sua sponte* reopening).

IV. Conclusion

Practitioners representing special immigrant juveniles with removal orders impacted by the State Department's legal error must analyze whether it is wise to promptly take steps to raise the error and seek appropriate remedies in the client's removal case. Whether or not it makes sense to take prompt action will depend on the client's individual circumstances and goals. Even if the practitioner decides that no immediate action is warranted, practitioners may wish to raise this error (along with other applicable arguments) when seeking reopening at a later time.

²⁷ See also discussion in section III.A above about arguing for termination based on *Coronado-Acevedo* and/or *Garcia-Flores*.