

Tipping Point Community of Practice Training: How Special Immigrant Juvenile Status (SIJS) can Protect Transition Aged Undocumented Youth

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Equal Justice Works Fellow at Youth Law Center Sponsored by Baker McKenzie & Salesforce Inc.

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 - Trainings, and Workshops, Workgroups, and Outreach
 - Consultation, Research, Co-Counseling and Technical Assistance
 - Resource Materials, Information Services and Support
- **Areas of expertise include:** child welfare; juvenile justice; public benefits for juvenile court involved youth; education of juvenile court involved youth; health and mental health; housing issues impacting current and former system involved youth and their families; juvenile court records; language access; fees, fines and other juvenile court system imposed costs; immigrant-related issues; civil practice issues on child advocacy

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- **This presentation by the Youth Law Center is provided for educational and/or informational purposes only, and should not be construed as legal advice.**

Agenda

1. **SIJS Overview & Statutory History**
2. **SIJS Eligibility & California Court Process**
3. **Spotlight Bay Area SIJS Legal Representation**
4. **SIJS Visa Backlog**
5. **Q&A**

SIJS Introduction & Statutory History

Special Immigrant Juvenile Status



- **Special Immigrant Juvenile Status (“SIJS” or “SIJ”) is a humanitarian protection available to undocumented youth who have been abused, abandoned or neglected by one or both parents.**
- **SIJS permits children and youth to apply for lawful permanent residence.**

Origin of SIJS

- **SIJS was created by Congress in 1990 by the Immigration and Nationality Act of 1990. 8 U.S.C. § 1101(a)(27)(J). Congress initially created SIJS to:**
 - Aid undocumented youth living in the foster care system.
 - Provide stability through lawful permanent residency.
 - Amended four times to expand protection

1997 SIJS Amendment

- Expanded SIJS eligibility from just youth who are in foster care to help youth who were “abused, abandoned, or neglected” regardless of foster youth status.

2005 SIJS Amendment

- **Violence Against Women Act (VAWA) barred the U.S. Department of Homeland Security from compelling youth to contact and gain consent from alleged abusive parent(s)**

2008 SIJS Amendment

- Clarified youth who are living with an a protective parent, including battered immigrant parents, are eligible to protection under SIJS.
- Required a finding that reunification not viable with only at least one parent.
- Any state court with jurisdiction to address care or custody of a child could make predicate state court findings.
 - Long term foster care not required
 - Any court that, under state law has jurisdiction to address aspects of “care or custody” of a child
- State courts adjudicate “abuse, abandonment, or neglect”
 - Apply state law without regard to where abuse occurred
 - U.S. Department of Homeland Security no longer authorized to inquire about details of the abuse from youth applicant.

2023 SIJS Amendment

- Clarifies SIJS applicant must only remain unmarried through the adjudication of the SIJS petition rather than through the adjustment of immigration status.
- Clarifies juvenile court order must be in effect on the date the applicant files the SIJS petition and continue *only* through the date the applicant files the SIJS and *continue only* through United States Citizenship and Immigration Services (“USCIS”) adjudication of the petition and not through the ultimate adjustment of status.
- Prohibits USCIS from taking any action that would require the applicant to contact the person who battered, abused, neglected, or abandoned them.

Important Limitations of SIJS



- SIJS recipients who do not yet have a green card cannot leave the United States and re-enter.

Important Limitations of SIJS



- **Youth who gain U.S. citizenship through SIJS will never be able to petition for their parents.**
 - This is true even if you were only abused, abandoned, or neglected by one parent and still have a good relationship with your other parent.
 - The youth retains the ability to petition for siblings, a future spouse, and children.

SIJS Three Step Process:

Step One



- Obtain a state court order that makes the relevant findings and places the youth with an individual/agency or under the jurisdiction of the court.

SIJS Three Step Process:

Step Two



- **Youth applies for Special Immigrant Juvenile Status with the United States Citizenship and Immigration Services (“USCIS”)**
 - Filing of I-360 Petition for Special Immigrant Juvenile Status

SIJS Three Step Process: Step Three



- **Youth applies for an adjustment of Status with USCIS**
 - Can sometimes apply concurrent with SIJS application

**Obtain
State Court
Order**
(Predicate Order)

**Petition for SIJ
Status (I-360)**

**Apply for Lawful
Permanent
Residence (I-485)**

SIJS Eligibility & California Court Process

When to Consider SIJS

- **Anytime you encounter a young person who is not a U.S. Citizen or permanent resident:**
 - Under the age of 21;
 - Child lives with non-parent caregiver;
 - Child is in state foster care;
 - Child is in delinquency proceedings;
 - Child lives with one parent;
 - Child is unaccompanied and not living with a supportive family member.

SIJS Eligibility Requirements for youth Seeking SIJS

- Under 21;
 - Unmarried;
 - Cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis as defined by state law;
 - Return to country of origin is not in their best interest;
 - Under the jurisdiction of a state “juvenile court.”
-
- INA Sec. 101(a)(27)(J)/8 U.S.C. 1101(a)(27)(J)

California's Definition of "Abuse"



- Physical harm inflicted non accidentally (Welf. & Inst. Code § 300(a));
- Victim of sexual trafficking (Welf. & Inst. Code § 300(a));
- Sexual abuse (Welf. & Inst. Code § 300(d));
- Act of cruelty (Welf. & Inst. Code § 300(i));
- Abuse defined – bodily injury, sexual assault, etc. (Fam. Code § 6203);
- History of abuse (Fam. Code § 3011(b));
- History of sexual abuse (Fam. Code § 3030(a));
- Domestic violence (Fam. Code § 6211);
- Criminal child abuse (Penal Code §§ 11165.1, 11165.3, 1116.4, 273.5)

California's Definition of "Neglect"



- **Conduct of parent resulting in serious emotional damage (Welf. & Inst. Code § 300(c));**
- **Harm as a result of failure or inability to supervise or protect (Welf. & Inst. Code § 300(b));**
- **Neglect/cruel treatment (Fam. Code § 7823(a));**
- **Criminal child neglect (Penal Code § 270, 11165.2)**

California's Definition of "Abandonment"



- Child left without provision for support (Welf. & Inst. Code § 300(g)) [including death of parent(s)];
- Child left in the care of one parent, with failure by other parent to provide support for 1 year, or without communication from the other parent, with intent to abandon (Fam. Code § 7822(a)(2)-(3);(b));
- “Abandoned” defined as child left without provision for reasonable and necessary care or supervision (Fam. Code § 3402(a));
- Death, inability or refusal to take custody, or abandonment (Fam. Code § 3010(b)); Criminal child abandonment (Penal Code § 270)

California's Definition of “a similar basis”



- **Death (leaves the child “without any provision for support” - Welf. & Inst. Code § 300(g));**
- **Finding that placement with a parent would be detrimental to the child’s health, safety, or welfare (Fam. Code § 3041);**
- **Inability to protect (Welf. & Inst. Code § 300(b));**
- **Other emerging arguments**

California's Definition of "best interest"



- In California, the “best interest” of the child is defined by reference to the child’s health, safety, and welfare. See Fam. Code § 3020(a).

Why screen for SIJS Eligibility?

- **Many undocumented youth and service providers are not familiar with SIJS and might not have thought to make the youth aware of potential eligibility.**
- **SIJS Provides Many Protections and Benefits for Youth:**
 - Ensures the child has a safe guardian/caregiver
 - Provides a pathway to Lawful Permanent Residency (Green Card); After five years, the youth can apply for U.S. Citizenship.
 - Youth maintains eligibility for financial aid through the California Dream Act Application (CADAA) and through FAFSA once a green card is obtained.
 - Frees the youth from the anxiety and uncertainty caused by the threat of removal/deportation

California Law on SIJS

- **California Code of Civil Procedure Section 155**
 - Explicitly provides that California superior courts have the jurisdiction to make the qualifying custody orders and SIJS Findings, including “the juvenile, probate, and family court divisions of the superior court”
 - Requires the state court to make the findings if they are requested and the evidence supports them
 - Evidence contemplated is the child’s declaration and supporting documentation

Spotlight of Bay Area SIJS Legal Representation

Snapshot of Legal Organizations Offering SIJS Representation in the Bay



- Legal Services for Children (LSC)
- Bay Area Legal Aid (BayLegal)
- Law Foundation of Silicon Valley Legal Advocates for Children and Youth (LACY)
- Legal Aid Society of San Mateo
- East Bay Community Law Center (EBCLC)

California State Bar Pro Bono Immigration Representation



- The California State Bar provides an abridged list of California legal services providers who focus on immigration. It includes some providers funded by the State Bar and others who frequently provide representation.
- The list is organized geographically by federal immigration court locations. Some of the providers represent youth pursuing SIJS, but not all.
- <https://www.calbar.ca.gov/Portals/0/documents/accessJustice/Pro-Bono-Immigration-Legal-Services.pdf>

Immigration Advocates Network: National Immigration Legal Services Directory



- Only nonprofit organizations that provide free or low-cost immigration legal services are included in this directory.
- You can search by the zipcode and filter to show only organizations that provide representation for SIJS.
- <https://www.immigrationadvocates.org/legaldirectory/>

Choose Language ▼

National Immigration Legal Services Directory

Welcome to the National Immigration Legal Services Directory. Use the options below to search for immigration legal services providers by state, county, or detention facility. Only nonprofit organizations that provide free or low-cost immigration legal services are included in this directory. If you have questions, please see our list of [frequently asked questions](#) or email us at directory@immigrationadvocates.org.

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Refine Search

Select “Attorneys” with Caution



- **Not all “attorneys” are good attorneys. In this practice area there is an unfortunate trend where many individuals represent themselves as attorneys when they are not.**
 - Ask any “attorneys” what states they are allowed to practice law.
 - In California you can look up attorneys who are licensed to practice law in the state.
 - Review this guide from the [California State Bar](#) and the [California Department of Justice](#).
- **Want to select an attorney who has experience with immigration law.**
 - There might be pro bono partnerships where non-immigration attorneys are working with immigration law experts to obtain the predicate state court orders for youth seeking SIJS.



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[More about This Attorney](#) ▼

License Status, Disciplinary and Administrative History

All changes of license status due to nondisciplinary administrative matters and disciplinary actions.

Date	License Status ⓘ	Discipline ⓘ	Administrative Action ⓘ
Present	Active		
2/4/2022	Admitted to the State Bar of California		

Additional Information:

- [About the disciplinary system](#)

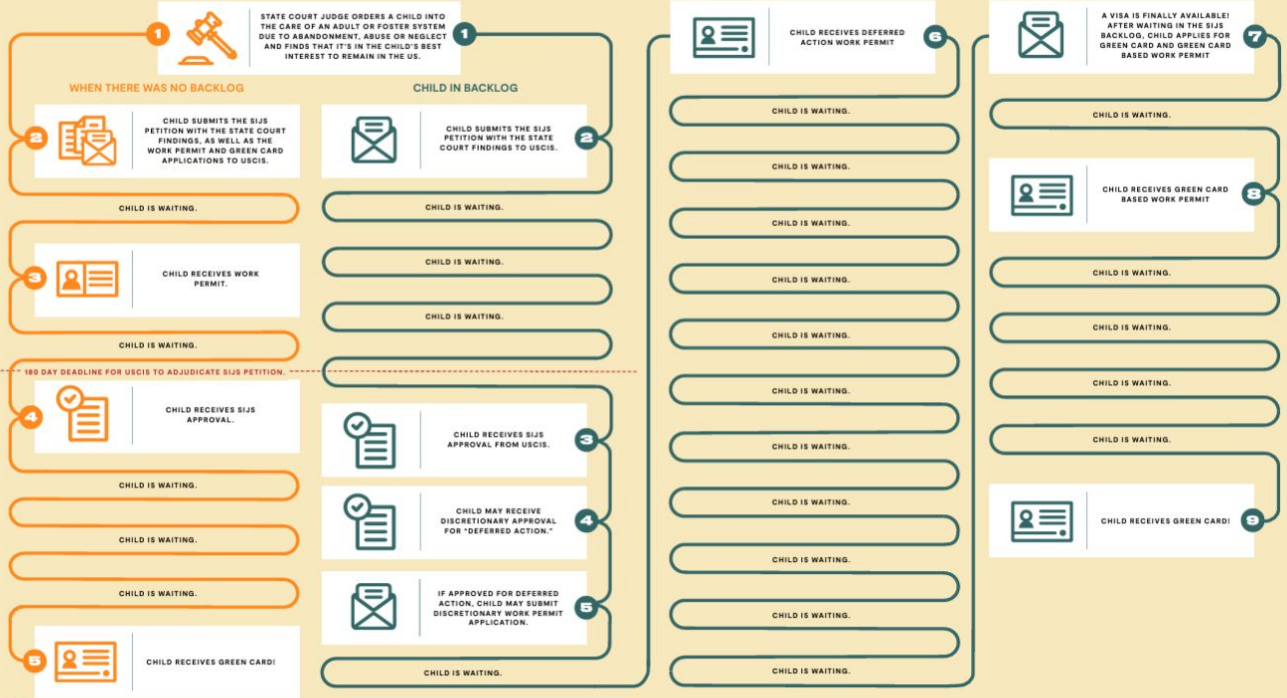
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SIJS Visa Backlog

What's the Problem?

- Despite SIJS being a humanitarian status, the law categorizes the SIJS green card application process as “employment-based,” subjecting it to the numerical caps despite SIJS being a humanitarian status.
 - Specifically they are subject to the numerical caps imposed on the “EB-4” category
- As a result of the numerical caps, SIJS youth are impacted a very large backlog and have to wait years to ultimately obtain green cards.
- For an overview of the issue please review the [False Hopes: Over 100,00 Immigrant Youth Trapped in the SIJS Backlog](#) Report from the End SIJS Backlog coalition.

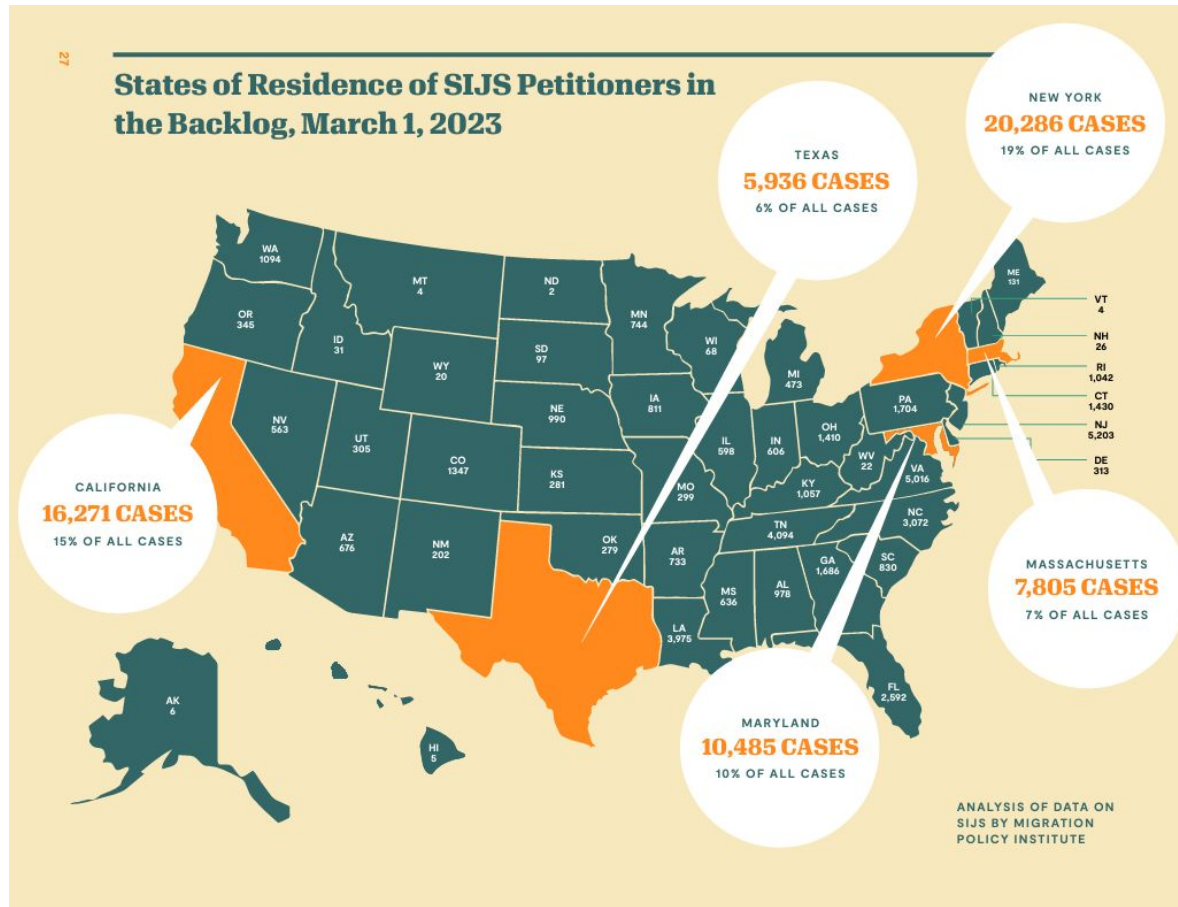
The SIJS Process



20

Graphic from **“False Hopes: Over 100,00 Immigrant Youth Trapped in the SIJS Backlog”** designed by **Grace Han**

States of Residence of SIJS Petitioners in the Backlog, March 1, 2023



Graphic from “[False Hopes: Over 100,00 Immigrant Youth Trapped in the SIJS Backlog](#)” designed by Grace Han

USCIS Non-Compliance with 180-day Deadline

- **Between 2018 to 2023, the average time for USCIS to approve a SIJS petition was 337 days, almost twice the legal limit.**
- **In the 2023 fiscal year, the average time for USCIS to approve a SIJS petition was 263 days.**
- **Biden-Harris administration offered SIJS youth the ability to work lawfully through a new deferred action program that was introduced May 2022.**
 - No guarantee the next administration will maintain this program post January 2025.

Legislative Solutions

- **Congress could fix the SIJS backlog immediately by exempting SIJS youth from the visa limits of the employment-based system.**
 - There's already proposed legislation: the Protect Vulnerable Immigrant Youth Act and the Working for IMMigrant Safety and Empowerment Act that would resolve the backlog.

Administrative Solutions

Cont.-



- **USCIS must comply with its congressionally mandated 180-day deadline.**
- **Department of Homeland Security should codify protections from removal and access to work permits for all youth who are unable to seek lawful permanent residence status because a visa is not immediately available.**
- **Department of Homeland Security should facilitate the rescission of removal orders of SIJS youth, regardless of current property date.**
 - Many immigration judges today will stay or dismiss removal proceedings if a youth client has obtained a state predicate SIJS order and have petitioned USCIS for SIJS status.

Administrative Solutions

- **The Department of Education should align their federal student aid handbook definition of “eligible non-citizen” to include students with approved SIJS petitions as eligible for federal student aid.**
 - SIJS youth in California are eligible for aid via the CA Dream Act Application.

Protection, but not Perfection

- SIJS status provides valuable protection to undocumented youth who have experienced abuse, neglect and abandonment.
- However, there are both large structural challenges and more granular implementation barriers that prevent SIJS providing the kind of protection that would provide stability and certainty to youth in a quick manner.
- Even with these limitations, SIJS offers youth protection from deferral and deportation; an opportunity to pursue education in the United States; and ultimately pursue legal permanent residency and U.S. citizenship.

“

**We've already been
abused in many
ways, we've never
had stabilities
throughout our
lives. It's just a
matter of time and
this question that's
haunting you, when
is it going to stop?**

CLAUDE
FROM GEORGIA, LIVING IN NEW YORK, CURRENTLY IN THE BACKLOG.

”

Graphic from “False Hopes: Over 100,00 Immigrant Youth Trapped in the SIJS Backlog” designed by Grace Han

How can you Help?

- Discuss whether your organization is interested in [joining the End SIJS Backlog Coalition](#).
- As individuals, follow and share their advocacy efforts.

Join the Coalition.

We are lawyers, immigrant youth, child welfare organizations and other stakeholders from across the country joining together to end the SIJS backlog.

Member Commitments

- Galvanize your resources in service of the goals of this coalition
- Place your organizational name (if possible) on this website. Individuals are welcome to join as well
- Use your social media to uplift SIJS Backlog issues
- Provide input on proposed actions
- Connect and represent the coalition to your legislators
- Share info and connections in service of our goals
- Pay sliding scale organizational membership dues. Individuals encouraged to contribute. Impacted youth are exempt.

To join the End SIJS Backlog Coalition, please fill out the information in the form linked below.

[Join the Coalition](#)

**Thank you for your
time today!
If you have any
questions about this
presentation please
contact:**

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