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# “Any Day They Could Deport Me”

**OVER 44,000 IMMIGRANT CHILDREN  
TRAPPED IN SIJS BACKLOG**



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## About the End SIJS Backlog Coalition

The End SIJS Backlog Coalition is a national group of directly impacted youth and over 70 allied advocate organizations across the country, working to educate Congress, relevant administrative agencies, and the public about the harmful impacts of visa caps on vulnerable immigrant children, and to advocate for an end to the backlog. The coalition aims to center the voices and experiences of SIJS backlog impacted youth, whose stories are the heartbeat of our work and best illustrate how ending the backlog can restore the purpose of the statute — realizing permanent legal protection in the United States for immigrant children who have survived abuse, abandonment, and neglect. Learn more at [www.sijsbacklog.com](http://www.sijsbacklog.com) and follow us on [Twitter](#).

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## About The Door

The Door is an unparalleled model for youth development, offering a comprehensive range of integrated services for nearly 11,000 New York City youth annually. At The Door, youth can access health care and education, mental health counseling and crisis assistance, legal assistance, high school equivalency and college preparation services, career development, housing supports, arts, sports and recreational activities, and nutritious meals – all for free and under one roof.

The Door's Legal Services Center provides legal and case management services to youth in need of immigration and other civil legal assistance. The Door handles upwards of 2,500 immigration cases per year, and has particular expertise in representing immigrants seeking SIJS status. Learn more at [www.door.org](http://www.door.org) and follow us on [Twitter](#), [Instagram](#) and [LinkedIn](#).

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# Executive Summary

**IN 1990** Congress created “Special Immigrant Juvenile Status (SIJS),” to protect immigrant children who have been abandoned, abused or neglected—creating a pathway to achieving lawful permanent residence or a “green card,” and eventually citizenship. First, a state court must place the child into the care of an adult or foster care system and issue a finding on the harm they experienced, stating that it is not in the child’s best interests to return to their country of origin. Next, the child must file a petition to U.S. Citizen & Immigration Services (USCIS), asking the immigration agency to recognize them as a Special Immigrant Juvenile. Historically, immigrant children have been able to apply for their green cards and work permits concurrently with their SIJS petitions, receiving a decision on their Special Immigrant Juvenile Status and then shortly thereafter, on their work permits and green cards, all within the span of six months to a year. But that all changed in 2016 when the SIJS backlog emerged. Due to an oddity in how SIJS children are classified under immigration law, children from countries that have reached their visa limits are barred from applying for their green cards and work permits for years. Strangely, the pathway to a green card for a SIJS child is categorized under the “employment-based” immigration visa system, despite being a humanitarian status, which has country-specific and world-wide annual visa limits.

Currently, the backlog impacts children from El Salvador, Guatemala, Honduras and Mexico with these children waiting anywhere from two to five years for their green cards. Each month, wait times to apply for a green card may vary depending on the vagaries of larger immigration trends. During this time, children with approved SIJS cannot attain the permanency or stability that Congress intended. They cannot work lawfully, cannot access federal financial aid for college, struggle to age out of foster care into independent adulthood, and often find themselves at risk of homelessness, trafficking, wage theft and deportation—the exact harms that SIJS was created to protect these children from.

To quantify the harms of the SIJS backlog, we obtained a dataset of nearly 140,000 SIJS petitions, as well as 26,000 SIJS-based green card applications, after suing USCIS under the Freedom of Information Act. This is the first time that data on the SIJS backlog has been made available to the public. Our report is based on findings from this data set, analyzed by the Migration Policy Institute, and from first-hand peer interviews of impacted youth conducted by Maria Huerta Rodriguez and Ivonne Silva, our youth researchers, as well as interviews with legal services providers and child welfare agencies across the country.

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# Key Findings

- The SIJS backlog grew to more than 63,000 youth by April 2020, and more than 44,000 children from El Salvador, Guatemala, Honduras and Mexico remain in the backlog as of April 2021.
- On average, children in the SIJS backlog wait twice as long as other children to receive their green cards. For example, children from El Salvador, Honduras and Guatemala waited more than four years on average from applying for SIJS to receiving a green card in fiscal year 2020 through April 2021. Mexican children waited 2.6 years while children from other countries waited an average of 1.4 years.
- Children experience a variety of harms while in the backlog, including vulnerability to deportation, an inability to work lawfully, and at times are unable to access medical care or higher education. Children in the SIJS backlog are forced to make difficult decisions to survive, dropping out of school, working for exploitative employers, and struggling with hunger and homelessness.
- The data shows how extended time waiting to obtain a green card may subject children to political whims and abrupt policy changes. We found a disturbing trend during the Trump administration: the rate of issuing “Notices of Intent to Deny” increased eight-fold from 2016 to 2018—from 2% of all adjudicated applications receiving these notices to 16%. Similarly, the rate of requiring applicants to send in additional information through formal “Request for Evidence” notices rose to 35% of all adjudicated cases in 2018, from only 2% in 2016.
- The SIJS backlog also puts a strain on the foster care system, resulting in social workers and child welfare representatives focusing more time and resources to resolving backlog-specific issues, as well as extending placements of youth in the SIJS backlog who might otherwise have achieved independence.
- Many SIJS children have already faced trauma in their country of origin, as well as on their journey to the U.S., and the threat of deportation, along other challenges stemming from the SIJS backlog, further harms children’s mental health.
- SIJS backlog cases are unnecessarily burdening the immigration court system. 92% of Honduran SIJS children who applied for green cards in or after May 2016 were in immigration court deportation proceedings. 90% of Guatemala SIJS children with pending green card applications and 84% of Salvadoran SIJS children with pending green card applications were in deportation proceedings. This is as compared to only 27% of SIJS children with pending green card applications from non-backlogged countries.
- The SIJS backlog has a negative impact on access to representation for immigrant youth. Legal service providers capacity is strained due to the added resources needed to represent children in the backlog and law firms are hesitant to represent SIJS children from backlogged countries as part of their pro bono docket because of the extended length of time that it takes to complete the cases.

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# Key Recommendations

- Congress should act to end the SIJS backlog by amending the Immigration and Nationality Act to exempt SIJS children from the per-county and world-wide employment-based visa limitations that are the cause of the backlog.
- The Biden Administration should take measures to lessen the harms of the backlog on immigrant children while Congress enacts these amendments by issuing a formal statement of support. The Biden Administration should direct USCIS to create a new Employment Authorization Document category for SIJS youth and to issue proposed regulations, with an opportunity for public comment, providing work authorization and protections from deportation for SIJS children.
- Immigration and Customs Enforcement (ICE) should issue final guidance to ensure that SIJS children are not deported before being permitted to seek a green card. While there is interim guidance on joining motions to dismiss deportation proceedings and policy regarding prosecutorial discretion for SIJS beneficiaries, final guidance should be issued indicating that ICE should join motions to dismiss deportation proceedings, join motions to reopen in previously concluded deportations proceedings, and grant stays of deportation for SIJS children, including those in the backlog.<sup>1</sup>
- The Department of Justice (DOJ) and Executive Office for Immigration Review (EOIR) should fully restore immigration judges' (IJs) authority to use the full range of docket management tools to ensure SIJS children in the backlog are not ordered deported merely because they are waiting for their priority date to become current.

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<sup>1</sup> U.S. Immigration and Customs Enforcement, Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities (May 27, 2021) ("it generally will be appropriate to move to dismiss such proceedings without prejudice so that the noncitizen can pursue that relief before the appropriate adjudicatory body... [including] a child who appears prima facie eligible to pursue special immigrant juvenile status.")

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# Methodology

**THE QUANTITATIVE ANALYSIS IN THIS REPORT** is based on data obtained from USCIS through a Freedom of Information Act request.<sup>2</sup> In September 2021, USCIS provided two datasets to the authors of this report. The first data set relates to SIJS (Form I-360) petitions, containing a record for each SIJS petition filed between October 2010 and April 2021, covering fiscal year 2010 through part of fiscal year 2021. This file contains information on each application's filing date, latest status (approved, denied, pending, revoked, or administratively closed), and on whether the application received a request for evidence (RFE), or notice of intent to deny the application (NOID) and the dates of those RFEs or NOIDs. It also contains some information on the characteristics of applicants, including their country of birth, gender, date of birth, and city and state of residence. This file contains 1,444 records that were exact duplicates of another record. After deleting these duplicates, the file used for analysis contains 139,464 records. The second dataset from USCIS contains records for green card applications (Form I-485 adjustment of status) filed by SIJS applicants and recipients. This file contains records for some applications filed as early as October 2013 and as late as April 2021, and mainly contains applications that were processed by USCIS in FY 2019-2021. In total, the file contains 26,198 records. It contains information on each application's priority date (though 13% of records are missing this information), date of submission, and current status (approved, denied, pending, revoked, or administratively closed). The file also includes information on applicants' country of birth, date of birth, gender, city and state of residence, and whether they were in removal proceedings. Raw data was analyzed by Julia Gelatt and Laura Harjanto at the Migration Policy Institute. Grace Han designed the associated infographics.

The qualitative analysis in this paper is based on interviews from impacted youth, child welfare representatives and legal services providers. End SIJS Backlog Coalition youth leaders, Maria Huerta Rodriguez and Ivonne Silva, conducted 12 peer interviews of impacted youth across the country. Half of the youth interviewed are currently in the SIJS backlog, while the other half now have their green cards after waiting in the SIJS backlog for years. Dr. Carola Suarez Orozco trained Maria and Ivonne in trauma-informed interviewing skills, and together they developed the interview questions and protocol. Interviews were conducted in English and Spanish, based on the preference of the interviewee. Each interviewee selected a pseudonym to protect their identity. Daniela Czemerinski, a legal clerk at the Door, conducted interviews of child welfare representatives and legal services providers across the country. Child welfare agency representatives were recruited through an open call on various list serves as well as through individual outreach. Legal Services Providers were recruited from the member organizations of the End SIJS Backlog Coalition.

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<sup>2</sup> FOIA Production COW2021-1524 (U.S. Citizenship and Immigr. Serv. CD-ROM, Sept. 2021).



# Introduction

**MORE THAN 44,000 CHILD IMMIGRANTS**, granted special humanitarian protection known as “Special Immigrant Juvenile Status” (SIJS) by the United States Citizenship and Immigration Service (USCIS), are trapped in a legal limbo, unable to obtain lawful permanent residence (“green cards”) as Congress intended.<sup>3</sup> Without green cards,<sup>4</sup> they are vulnerable to deportation, lack the ability to work lawfully, and cannot access federal financial aid for college. In some cases, they are even unable to access medical insurance or in-state tuition for college.<sup>5</sup> This legal limbo is the SIJS backlog.

Congress created SIJS in 1990, amending the Immigration and Nationality Act, to protect immigrant children who have been abused, abandoned, or neglected by providing a pathway to permanency and eventually citizenship.<sup>6</sup> To be eligible for SIJS, a child must be under the age of 21, unmarried, and have been subject to a state court proceeding finding that at least one parent abandoned, abused, or neglected the child and that it is not in the child’s best interest to return to their country of origin.<sup>7</sup> SIJS children have often experienced severe trauma as victims of physical, sexual and emotional abuse. Some are living with a family member and many others are in foster care. In fact, one of the law’s drafters is a former child welfare worker who was upset by the instability and insecurity undocumented foster youth faced without a pathway to green cards and eventually citizenship.<sup>8</sup>

“Fernando” is one of the children Congress meant to protect with SIJS. Fernando’s parents could not care for him in Guatemala, and he came to the U.S. around age 15. Upon arrival in the U.S., Fernando struggled with homelessness as a child on his own. After living on the streets for about a year, he entered the New York foster care system. Fernando suffered depression so severe that he had to be hospitalized, but he is now working towards a stable future. He has been approved for SIJS and is currently waiting in the backlog, unable to work or transition out of foster care. While he dreams one day of being a business owner, his life is on hold while he waits in the SIJS backlog.<sup>9</sup>

## Unfortunately, SIJS does not provide permanency on its own.

3 FOIA PRODUCTION COW2021—1524 (U.S. Citizenship and Immigr. Serv. CD-ROM, Sept. 2021).

4 Green cards are proof that someone has lawful permanent residence, and for the purpose of this paper, we will use the colloquial term “green card” or green card holder to refer to lawful permanent residents.

5 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, 6:00 AM), <https://www.themarshallproject.org/2021/01/28/these-young-people-were-told-they-could-stay-in-the-u-s-they-might-get-deported-anyway>.

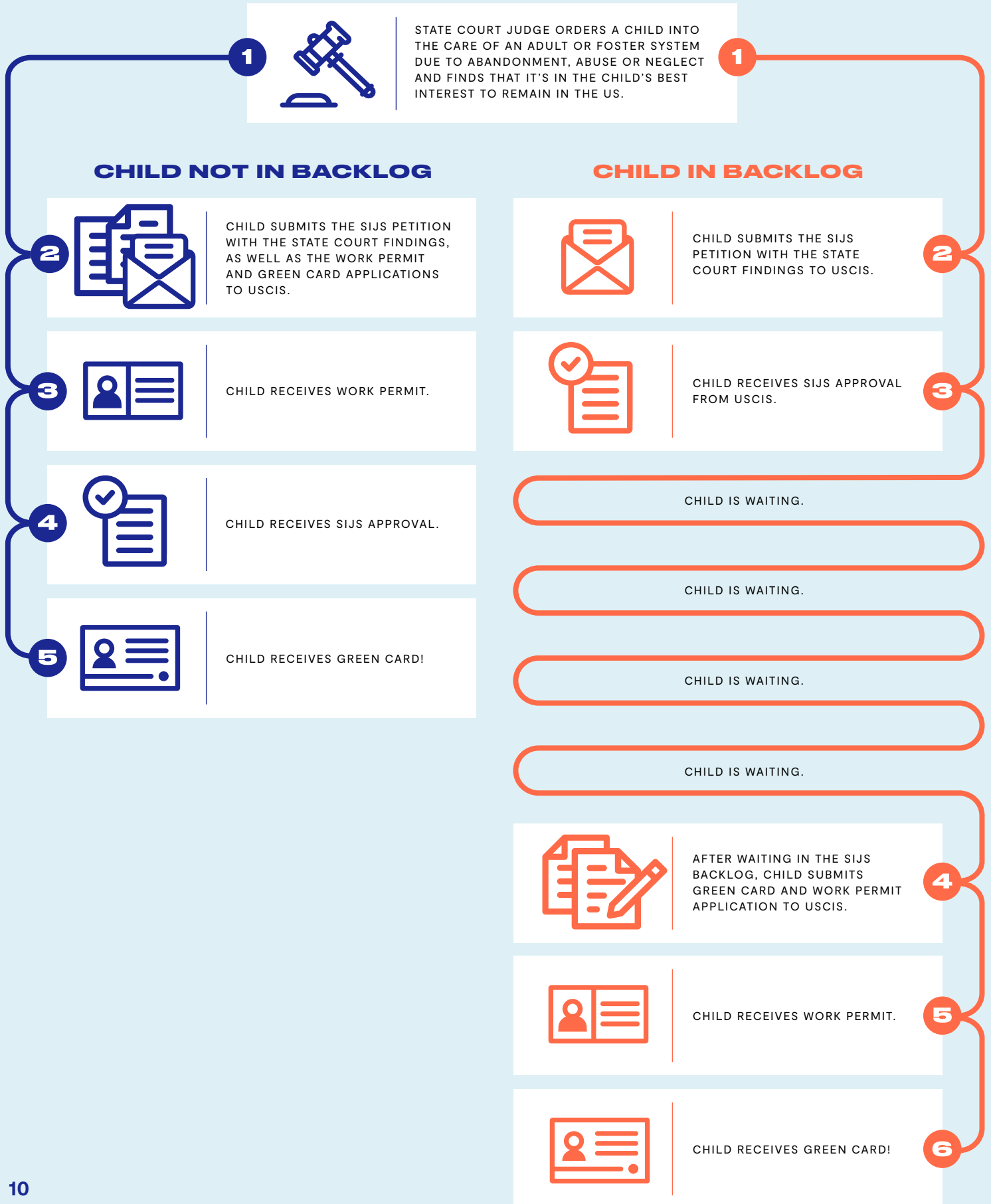
6 See Immigration Act of 1990 § 153, Pub L. No. 101-649. 1990.

7 8 U.S.C. § 1101(t)(a)(27)(J).

8 Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 Colum. Hum. Rts. L. Rev. 300, 315-28 (2014).

9 Zoom interview by Ivonne Silva with Fernando, a SIJS youth (May 29, 2021)

# The SIJS Process



## Tens of thousands of children like Fernando live in a years-long unstable and, at times, dangerous limbo, even after being granted SIJS.

This is because obtaining state court orders and then being approved for SIJS by USCIS is only one part of an even longer journey to obtaining a green card. When Congress created this humanitarian protection it situated the pathway for SIJS youth to become green card holders in the employment-based section of the Immigration and Nationality Act. Specifically, SIJS children are grouped in the “EB-4” category alongside special immigrant workers, including religious workers, certain doctors and translators, and members of the U.S. armed forces.<sup>10</sup>

The inclusion of SIJS children in the EB-4 special workers category has been called “odd,”<sup>11</sup> since they do not have employment visas but are, in fact, recipients of a form of humanitarian immigration protection. There is not much in the legislative history to explain this seemingly random placement in the EB-4 category, so advocates and legislators are left to speculate that it is a result of there not being an obvious legislative home for the SIJS pathway to residency in the statute.<sup>12</sup>

But what is clear is that this legislative accident has alarming implications for tens of thousands of children from Central America and Mexico. As part of the “employment-based” immigrant visa system, SIJS children are subject to annual numerical limits, including country-specific limits.<sup>13</sup> These limits were set more than 30 years ago and have no logical connection to the humanitarian intent of SIJS.<sup>14</sup> For decades, no SIJS children were impacted by the “employment-based” immigration system restrictions because the SIJS statute was historically underutilized.<sup>15</sup>

This all changed starting in 2016 when the SIJS backlog became a reality. USCIS began barring SIJS children from Honduras, El Salvador, Guatemala, Mexico, and India from immediately applying for green cards due to the numerical and per-country limits within the employment-based categories that year. The backlog grew to more than 63,000 youth by April 2020.

## It has started to drop in the past year although more than 44,000 children remain in the backlog as of April 2021.

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<sup>10</sup> *Employment-Based Immigration: Fourth Preference EB-4*, U.S. CITIZENSHIP AND IMMIGR. SERV. (May 11, 2021), <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4>.

<sup>11</sup> STEPHEN LEGOMSKY AND DAVID B THRONSON, IMMIGRATION AND REFUGEE LAW AND POLICY 1411 (Foundation Press, 7th ed. 2018) (“The provision for SIJS is oddly placed under the “special immigrant” sub-part of the employment-based fourth preference.”).

<sup>12</sup> Deborah S. Gonzalez Esq., *Sky Is the Limit: Protecting Unaccompanied Minors by Not Subjecting Them to Numerical Limitations*, 49 ST. MARY’S L.J. 555, 559–61 (2018).

<sup>13</sup> INA 203(b)(4).

<sup>14</sup> Deborah Gonzalez, *Sky Is the Limit: Protecting Unaccompanied Minors by Not Subjecting Them to Numerical Limitations*, 49 ST. MARY’S L. J., 558 (2018).

<sup>15</sup> Laila Hlass, *Minor Protections: Best Practices for Representing Immigrant Children*, 47 N. M. L. REV. 247, 252 (2017).

# SIJS Backlog, October 1st and April 1st from FY 2016 to 2021



# SIJS Green Card Backlogged Cases Between FY2016-April FY2021

MONTH/YEAR	NUMBER OF CASES IN SIJS BACKLOG
April 2016	0
October 2016	18,063
April 2017	27,317
October 2017	32,421
April 2018	39,307
October 2018	45,963
April 2019	51,350
October 2019	56,213
April 2020	63,817
October 2020	53,025
April 2021	44,335

Since 2016, wait times may vary each month depending on the vagaries of larger immigration trends.

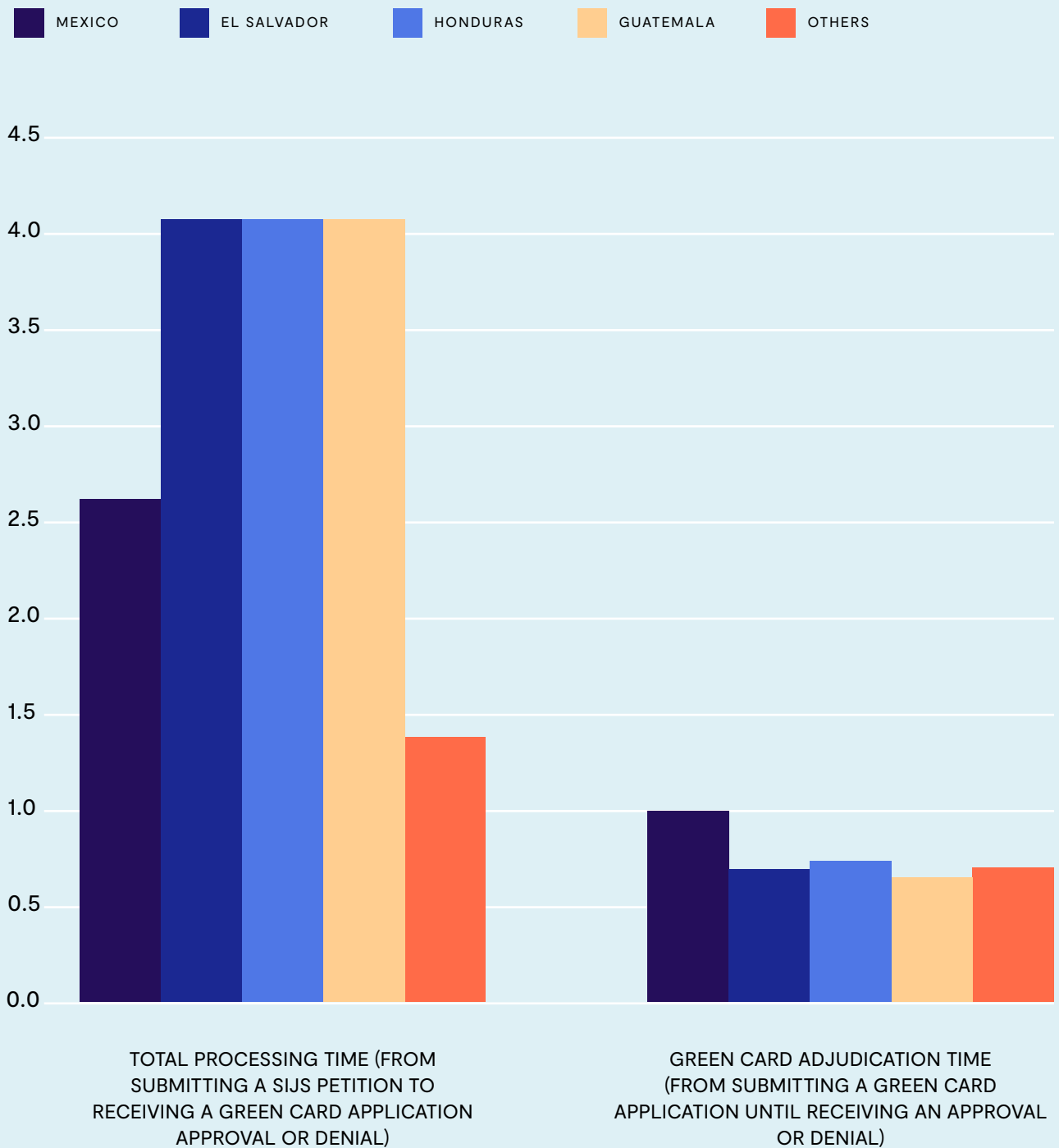
**In fact, wait times have extended for as long as six years for SIJS children.<sup>16</sup>**

As of November 2021, children from El Salvador, Guatemala, Honduras and Mexico still continue to wait years until they can complete the process to secure permanency and receive green cards. According to the November 2021 visa bulletin, Mexican children have a twenty month long wait, while children from El Salvador, Guatemala, and Honduras must wait more than two and a half years to apply for green cards after seeking SIJS.<sup>17</sup> Because the work permit category for these youth is tied to their green card applications, they cannot seek work permits as they wait in the backlog either. As the years pass these young people transition into adulthood without legal permission to work, exposing them to trafficking and labor abuse, the exact harms that SIJS was created to protect them from.

<sup>16</sup> In May of FY2016 the priority date for El Salvador, Guatemala and Honduras was January 2010. *The Visa Bulletin*, U.S. DEPT. OF STATE, <http://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (last visited Nov. 15, 2021).

<sup>17</sup> *The Visa Bulletin*, U.S. DEPT. OF STATE, <http://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (last visited Nov. 5, 2021).

# Median Total Processing Time from Submitting SIJS Petition (Form I-360) to Green Card Application (Form I-485) Decision versus Green Card (I-485) Processing Time in Years



MEDIAN PROCESSING TIMES ARE FOR SIJS CASES THAT RECEIVED A FINAL GREEN CARD APPROVAL OR DENIAL IN FY 2020 OR FY 2021, THROUGH APRIL 2021. ANALYSIS OF DATA ON SIJS AND GREEN CARD APPLICATIONS, OBTAINED FROM USCIS THROUGH A FOIA REQUEST, BY LAURA HARJANTO.

Ironically, Congress mandated that SIJS petitions (Forms I-360) be decided expeditiously, within 180 days of filing, yet neglected to ensure similar speed for SIJS children to proceed towards obtaining green cards (Forms I-485).<sup>18</sup> USCIS data demonstrates that the median processing time from the filing of the SIJS petition to the adjudication of a green card application for children from El Salvador, Guatemala and Honduras is 4.1 years. A child from Mexico is waiting on average 2.6 years. But for the backlog, a child applying for SIJS could go from being completely undocumented to a green card holder within six months to a year and a half, as Congress intended.

The impacts are profound for SIJS children who cannot apply for green cards, leading to disparate outcomes based on where the child was born. The legal limbo results in challenges to enrolling in college, foster youth not being able to move to independent living, work permit delays, and lack of access to health insurance. Most horrifying are the tens of thousands of SIJS children who are vulnerable to deportation, being ripped from their caregivers and the lives they have built.<sup>19</sup> One SIJS youth explained “I am always afraid ...And I know it’s going to be three very long years until I get my green card.”<sup>20</sup>

SIJS children are not the only ones impacted by the backlog—there are ripple effects for child welfare agencies, legal service providers, and the larger legal system. The systemic and human costs of this legislative accident are far reaching. The SIJS backlog puts a strain on the foster system, extending children’s time in foster care, and resulting in social workers and child welfare representatives spending more time and resources to address ongoing backlog-specific issues. It also impacts immigration legal service providers. Since children have no right to a court-appointed lawyer, non-profit legal service providers attempting to meet these needs are under enormous pressure to balance thousands of backlogged SIJS cases with the unprecedented demand of newly arriving youth.<sup>21</sup> Overloaded immigration court dockets are also being overburdened with SIJS backlog cases, resulting in delays for other immigrants awaiting court hearings and decisions.

What does being trapped in this legal limbo mean for the lives of children whom Congress set out to protect? From missing educational and career opportunities to making them more vulnerable to homelessness, hunger, exploitation, and deportation, the impacts on the safety and socio-emotional development of children are far-reaching. What are the ripple effects of the SIJS backlog on child welfare workers and the foster system as well as immigrant child attorneys and the immigration agency and courts? What does our country gain by keeping these children and youth in this perpetual state of waiting? More critically, what do we all lose?

In this report, we seek to illustrate the costs of the SIJS backlog to directly impacted children, to the local and state child welfare agencies charged with their care, as well as to immigration legal services attorneys, immigration agencies and the courts. Lastly, we offer recommendations to end the backlog, including specific federal legislative amendments that could solve the problem and provide permanent protection, as Congress intended, for the tens of thousands of vulnerable immigrant children.

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18 8 U.S.C. § 1232(d)(2).

19 END SIJS BACKLOG, ADMINISTRATIVE AGENCY ACTIONS TO MITIGATE THE HARMFUL EFFECTS ON IMMIGRANT CHILDREN OF THE SPECIAL IMMIGRANT JUVENILE STATUS GREEN CARD BACKLOG (2021), <https://static1.squarespace.com/static/5fe8d735a897d33f7e7054cd/t/60a63e62a7a01358d9f42398/1621507682683/End+SIJS+Backlog+Coalition+Sign-On+Letter+05.20.21.pdf>.

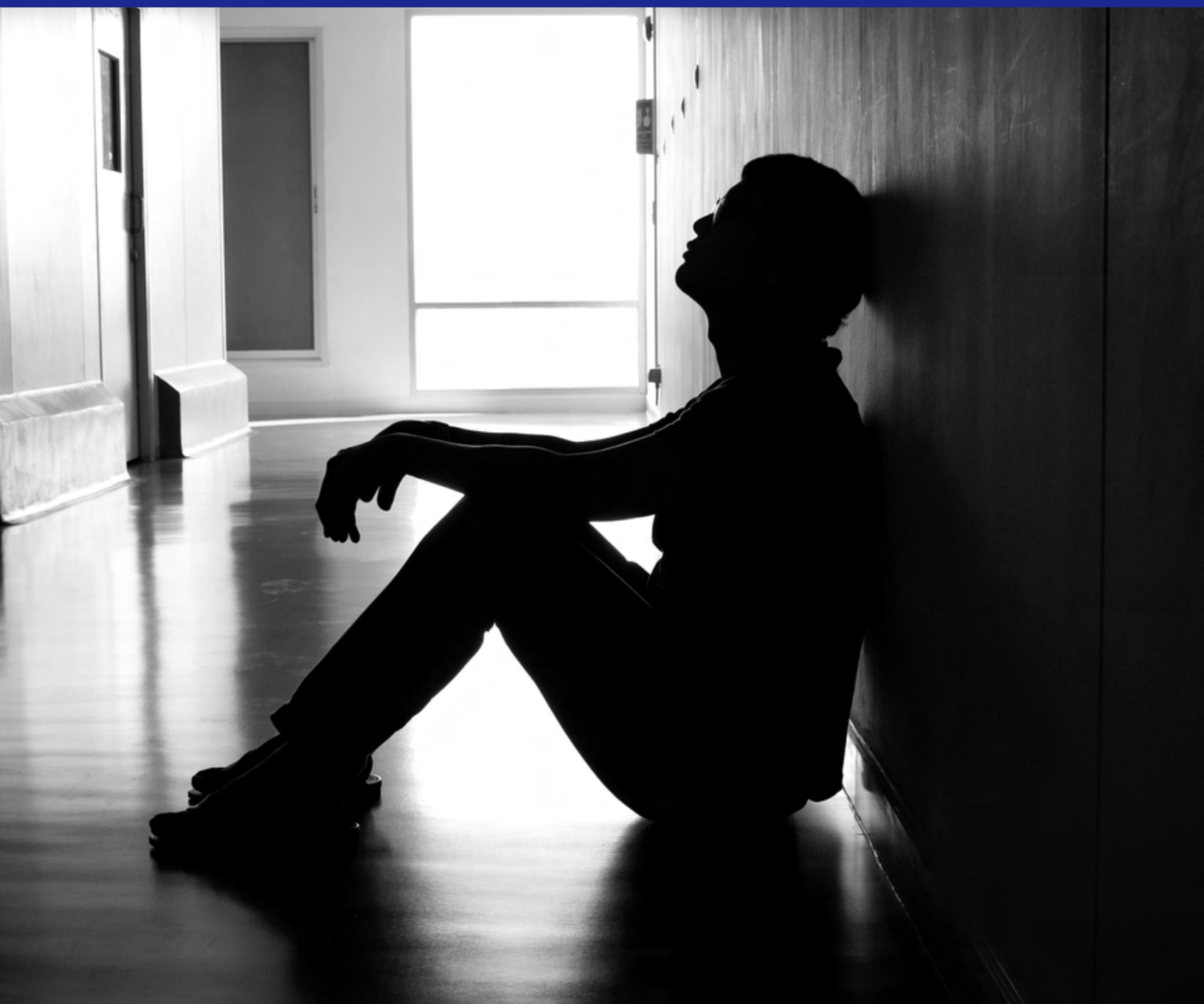
20 Andrew R. Calderón, *These Young People Were Told They Could Stay in the U.S. They Might Get Deported Anyway*, THE MARSHALL PROJECT

(Jan. 28, 2021 6:00 AM), <https://www.themarshallproject.org/2021/01/28/these-young-people-were-told-they-could-stay-in-the-u-s-they-might-get-deported-anyway>.

21 END SIJS BACKLOG, ADMINISTRATIVE AGENCY ACTIONS TO MITIGATE THE HARMFUL EFFECTS ON IMMIGRANT CHILDREN OF THE SPECIAL IMMIGRANT JUVENILE STATUS GREEN CARD BACKLOG (2021), <https://static1.squarespace.com/static/5fe8d735a897d33f7e7054cd/t/60a63e62a7a01358d9f42398/1621507682683/End+SIJS+Backlog+Coalition+Sign-On+Letter+05.20.21.pdf>.

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# The Impacts of the SIJS Backlog on Immigrant Children



*“My sister, she can’t sit and tell this story [of the trauma we faced living in an orphanage for years and then fleeing to the US], because it destroys her... Small children saw things that they never in their lives should have seen. And I was very young...”<sup>22</sup>*

**Rana,** LEFT HONDURAS AT AGE 16, WAS IN THE SIJS BACKLOG FOR YEARS.

**MANY CHILDREN TRAPPED IN THE SIJS BACKLOG** came to the United States years earlier, having fled abuse, neglect and violence, crossing continents on their own. Some suffered abuse and harm on their journey to the U.S., even seeing others die as they migrated northward. For these young people, obtaining SIJS represents a promise of permanent protection and a better chance at a future to live out their dreams. When speaking with young people in the U.S. who have been or are currently stuck in the SIJS backlog, it becomes clear that without access to a work permit, federal financial aid, or protection from deportation, these young people, who already carry so much trauma, are being confronted with another layer of instability, unanticipated by Congress. The grave psychological and emotional impacts of the SIJS backlog, particularly during this pivotal transitory stage in their lives, cannot be overstated.

*“The backlog leaves young people frozen in time. They have to stay in this unnatural limbo where they’re not able to move forward with their basic goals of finding employment, pursuing higher education, things as simple as getting ID documents, getting financial aid. As they get older it prevents them from getting married or meaningfully pursuing romantic relationships, because you can’t get married and still get a green card through SIJS – it means they just stay stuck, frozen in time and unable to progress into adulthood.”<sup>23</sup>*

**Kaavya Viswanathan,** DIRECTOR, THE DOOR’S LEGAL SERVICES CENTER

<sup>22</sup> Zoom Interview by María Huerta Rodríguez with Rana, a SIJS youth (May 2, 2021).

<sup>23</sup> Zoom Interview by Daniela Czemerinski with Kaavya Viswanathan, Dir. of the Door’s Legal Serv. Ctr. (July 26, 2021).



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# “You have to work to live”: Lack of Employment Authorization

*“I think the hardest thing is the work part. Because you have to work to live, so without papers it’s very difficult...they discriminate against you and treat you poorly.”<sup>24</sup>*

**Fernando**, LEFT GUATEMALA AT AGE 15, CURRENTLY IN THE SIJS BACKLOG.

Children in the SIJS backlog face the same years-long wait to work lawfully, because they cannot apply for a work permit until they can apply for their green card. As their time in the backlog drags on, this inability to work lawfully stalls a young person’s growth and development. Young people in the SIJS backlog are unable to transition to independent adulthood, and they miss out on unique opportunities that could launch them toward their dreams. Instead, they are often exposed to poverty, exploitation, and dependence on abusive adults—the exact harms that SIJS was created to address. Because of the related wait for work permits, some young people are forced into the precarious position of having to decide between perhaps experiencing homelessness or seeking potentially exploitative employment situations without permission to work.

## Young people who are able to find jobs report unsafe working conditions, wage theft, and even forced labor.

*“I think one of the biggest risks is exploitation by employers. Clients will work for weeks and weeks on the promise that they will get paid later, and then sometimes they find they have worked for months without getting paid. Sometimes they feel they have no recourse for wage theft because they still don’t have a work permit while stuck in the SIJS backlog... I think that the SIJS kids are more susceptible to these arrangements and exploitation because they are in no-man’s-land and can’t survive so many years without any way of working...”<sup>25</sup>*

**Kristie-Anne Padron**, MANAGING ATTORNEY, CATHOLIC LEGAL SERVICES MIAMI

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<sup>24</sup> Zoom interview by Ivonne Silva with Fernando, a SIJS youth (May 29, 2021).

<sup>25</sup> Zoom interview by Daniela Czemerinski with Kristie-Anne Padron, Managing Att’y at Catholic Legal Serv. Miami (July 22, 2021).

## CHRIS

Chris left Honduras at age 16 after being abandoned by his father and abused by adults living nearby who threatened to kill his family if he reported the abuse. After coming to the U.S., Chris and his attorney filed his SIJS petition two years ago. Although it was approved, he must still wait in the backlog before he can apply for a green card. For Chris, now 18 years old and living in California, one of the hardest parts about having to wait so many years for his green card is that he does not have a work permit. To support himself and assist his family to make ends meet, he works in a hostile environment, with a boss who demeans him due to his immigration status. “I was able to find work with a man doing maintenance and, to be honest, I feel uncomfortable...[My boss] treats Central Americans poorly because of the stuff with our papers.” With a work permit, Chris says that he would “feel more secure,” and that it would open many doors. “I’ve been to many places that interest me, but then they tell me that I need a social [security number].” Despite receiving his SIJS approval, Chris shared that “For the time being, nothing has changed [in my life],” and that he yearns for the safety of “working with my papers, having everything in order.”<sup>26</sup>

## MICHELLE

Michelle was abandoned by her father in Guatemala and came to the United States at age 16. She waited in the backlog for five years before she was finally granted her green card. Once she was able to get a work permit, her life changed completely. “The first thing I did was look for jobs that accepted people with work permits,” so she was no longer dependent on exploitative employers. “[W]here I worked before, the bosses were very ignorant. Since you don’t have anything, [you] work a lot and they pay [you] very little... I wanted to have a work permit because a lot of people say that with it there are more opportunities to work at big companies, so I used to say that one day I’d like to have a work permit so that I could leave the place where I was working. Once I got the work permit, the first thing I did was leave that restaurant, and I applied to a company...that is where I am working now.”<sup>27</sup> As she supports herself, Michelle has also enrolled in college and hopes one day to be a nurse.

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<sup>26</sup> Zoom interview by Maria Huerta Rodriguez with Chris, a SIJS youth (June 10, 2021).

<sup>27</sup> Zoom Interview by Ivonne Silva with Michelle, a SIJS youth (May 23, 2021).

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# “During those years we could have studied”: Lack of Federal Financial Aid for College

*“I’m still hoping. Because if they do approve me, for more doors to open in this country, to keep fighting in my studies, to be able to be a professional.”<sup>28</sup>*

**Sofia,** LEFT EL SALVADOR AT AGE 16, CURRENTLY IN THE BACKLOG.

Many immigrant children have big dreams of being the first in their family to go to college, having a career, and contributing to their communities. That is the promise of SIJS, and what Congress envisioned in creating a pathway to legal permanency and citizenship for immigrant children who have been abandoned, abused and neglected. Yet, SIJS children in the backlog lack both access to work permits and subsequently better jobs, as well as lack access to federal financial aid for college.

**Faced with these challenges, thousands of SIJS children in the backlog abandon their dreams for college and future careers.**

## CARLA

Carla left El Salvador at age 13. After a traumatic time detained in an Office of Refugee Resettlement youth shelter, she was released in New York to a family member. She applied for SIJS and waited nearly five years in the backlog before receiving her green card. During most of this time, she could not work legally. After graduating high school, she wanted to go to an out of state college, like her peers, and study social work. But without access to financial aid, the cost was too high. She enrolled in a community college but then the bill came, and it became clear that even community college was out of reach. Without access to financial aid or the ability to work, she was forced to leave school, putting her dreams on hold. In Carla’s words, “during those years [waiting in the backlog], us immigrants could have worked, we could have studied, but we can’t because we don’t have papers [while in the backlog].” Instead, Carla explains how she is frozen in place, unable to progress: “We don’t have help from the government to go to school, we don’t have legal papers to be able to work and to help our families.”<sup>29</sup>

## Even if, against all odds, a young person with SIJS can cobble together enough money through scholarships or support from others, the experience is still riddled with anxiety and fear.

In the words of one anonymous employee at a child welfare agency, “With this undocumented population, it’s kind of like ‘yeah, you can go to school *maybe*, if you can afford the other half of the tuition.’ But how feasible is that?”<sup>30</sup>

### STEPHANY

Stephany left El Salvador at age 14 and has been waiting for years in the backlog. Despite not qualifying for FAFSA, she was offered three scholarships and is now attending a four-year college, on her way to achieving her dream of a career in medicine. But for Stephany, her lack of permanent immigration status brings her anxiety and uncertainty. “[SIJS] is something that, even though it may seem like it is easy and like it is a protection for us, it is not; because, in the end, the government makes the final decision.” For her, receiving her green card would alleviate this constant fear: “I will finally be in the mindset that they won’t deport me and that I won’t need to return to my country before becoming someone and without a degree and with nothing. I think that having [a green card] would give me the opportunity to achieve by studying, and after studying it will allow me to get a better job.”<sup>31</sup>

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<sup>28</sup> Zoom Interview by María Huerta Rodríguez with Sofia, a SIJS youth (June 1, 2021).

<sup>29</sup> Zoom Interview by María Huerta Rodríguez of Carla, a SIJS youth (Apr. 11, 2021).

<sup>30</sup> Zoom Interview by Daniela Czemerinski with Anonymous Rep. of Child Welfare Agency (July 20, 2021).

<sup>31</sup> Zoom Interview by María Huerta Rodríguez with Stephany, a SIJS youth (May 21, 2021).

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# “You’re Going Back to Your Country”: Vulnerability to Deportation

*“If I had my green card I’d feel different...I’d walk around, I’d feel more safe going out...because right now when I go out to San Francisco, I don’t feel very safe.”<sup>32</sup>*

**Chris,** LEFT HONDURAS AT 16, CURRENTLY IN THE BACKLOG.

**Many children trapped in the SIJS backlog live in constant fear of deportation, even though they have been granted SIJS.**

Under some administrations, immigration courts and immigration officials have not considered SIJS alone to be a permanent form of immigration relief. Under this logic, SIJS children have been put in removal proceedings, detained, and even ordered deported. Children with approved SIJS in the immigration court system are forced to regularly appear for hearings to determine whether they will be deported, while awaiting the ability to apply for their green cards.

**In states along the border where there are frequent checkpoints, young people fear traveling to doctor’s appointments, putting their physical health and well-being at risk.**

Tatiana, who spent years in the SIJS backlog reflected on the most difficult part of her wait, “To know that...anything can happen [while in the backlog], ICE sees us and they ask us...and tell us: *you’re going back to your country*. That was my biggest fear.”<sup>33</sup>

## MARIA

Maria is a young person with approved SIJS who is currently in the backlog. She is in foster care in a state adjacent to the U.S.-Mexico border that has multiple checkpoints. Maria's doctor's appointments are on one side of a checkpoint, and her foster placement is on the other side. She has serious medical conditions that require her to have frequent doctor's visits. However, every trip to the doctor's office carries with it a significant risk that she might be apprehended and detained simply because she is in the backlog and does not yet have a green card.<sup>34</sup>

**Without green cards, these children's safety and well-being are subject to the whims of change in political administration's policies and practices.**

"The backlog leaves vulnerable children and youth at risk of deportation, a result which robs them of the very permanent protections Congress intended and the federal government granted them through SIJS humanitarian relief. We have seen young people celebrate an approval of their petition for Special Immigrant Juvenile Status only to have to turn around and fight a removal order because a green card was not yet available to them. Addressing the backlog will provide the long-term stability these young people need so that they can truly step into their future."<sup>35</sup>

**Mary Tanagho Ross**, SENIOR STAFF ATTORNEY, PUBLIC COUNSEL

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<sup>32</sup> Zoom Interview by Maria Huerta Rodriguez with Chris, a SIJS youth (June 10, 2021).

<sup>33</sup> Zoom Interview by Ivonne Silva with Tatiana, a SIJS youth (May 29, 2021).

<sup>34</sup> Zoom Interview by Daniela Czemerinski with Anonymous Representative of Southwestern Foster Care Agency (July 20, 2021).

<sup>35</sup> Email Correspondence by Rachel Davidson with Mary Tanagho Ross, Senior Staff Att'y at Pub. Couns. (Aug. 17, 2021) (on file with author).

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# “Any Day They Could Deport Me”: Mental Health Impacts of the Backlog on Immigrant Youth

*“The hardest part was not knowing anything about my case. Nothing. [The government] did not even tell me how it was going or anything. That was the most difficult part. Because I was very worried. I would think: I don’t know anything...on any day they [ICE] could deport me or something. I did not know anything.”<sup>36</sup>*

**Michelle,** LEFT GUATEMALA AT AGE 16, WAS IN THE SIJS BACKLOG FOR YEARS.

The threat of deportation, along with other challenges stemming from the SIJS backlog often have an adverse impact on SIJS children’s mental health. Many SIJS children have already faced trauma in their country of origin, as well as on their journey to the U.S. Research shows that immigrant children are at risk for repeated exposure to stressors, as they migrate fleeing violence as well as face danger along their way to the U.S.<sup>37</sup> Studies have documented high rates of Post-traumatic Stress Disorder, anxiety, depression and even suicidal ideation in immigrant children who have come to the U.S. on their own.<sup>38</sup> Lack of permanent immigration status and the uncertainty of how long the wait will be contributes to overall instability, with significant adverse impacts on a young person’s emotional and mental health. Children in the SIJS backlog may experience extreme anxiety and face other mental health concerns.

“Permanency—knowing you are safe, what comes next, and that you are supported—is a key factor in health and development of children, youth, and young adults. Until the SIJS backlog is resolved, tens of thousands of young people will continue to lack this critical sense of permanency, despite the fact that a judge has determined for each one that return to home country places them in harm’s way and is not in their best interests. Eliminating the backlog would remove a threat that is antithetical to the very purpose of SIJS and would allow young people to experience and embrace permanency.”<sup>39</sup>

**Jennifer Nagda,** POLICY DIRECTOR, YOUNG CENTER FOR IMMIGRANT CHILDREN’S RIGHTS

An employee of a child welfare agency in the Southwest United States described the impact he sees on children. He works with SIJS children who are afraid to seek medical care or even participate in after school activities, and they seek reassurance from him regularly: “A lot of them [SIJS children] generally understand that they are different than their American-born counterparts, and there is an automatic fear of ‘I don’t want to do anything that is going to make my life complicated.’”<sup>40</sup> He describes how he and staff have constant communication to simply lower their anxiety.

## **The years of instability take an emotional toll on children as well as child welfare workers who have limited capacity as they work with growing numbers of children stuck in the SIJS backlog.**

### **RANA**

Rana suffered family abuse and lived in an orphanage in Honduras until about age 16. After arriving in the US and being approved for SIJS, she waited in the SIJS backlog for over four years while living in NYC before getting her green card. During this time, she graduated high school and dreamt of becoming a nurse. The wait itself and the uncertainty it brings has taken the biggest toll on Rana’s mental health, causing great anxiety: “The wait was the hardest part... Your mind is not in the present moment; you are constantly thinking about this.” Rana explains that the wait caused by the backlog forces young people to put their lives on hold, unable to work, attend college, or enter into adulthood. “The wait makes you waste a lot of time, a lot of time that one needs... If [Congress] made it take less time than what it normally takes, a lot of us – those of us that are sitting and waiting for our case to be read – could use that time maybe for something better, because one loses [a lot of] years... [Because of the wait, I spent] more than five years doing nothing.”<sup>41</sup>

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36 Zoom Interview by Ivonne Silva with Michelle, a SIJS youth (May 23, 2021).

37 Charles D. R. Baily et al., *The Mental Health Needs of Unaccompanied Immigrant Children: Lawyers’ Role as a Conduit to Services*, 15 GRADUATE STUDENT J. PSYCHOL., 3 (2014).

38 *Id.*

39 Email Correspondence by Rachel Davidson and Laila Hlass with Jennifer Nagda, Policy Director for the Young Center for Immigrant Children’s Rights (October 12, 2021).

40 Zoom Interview by Daniela Czemerinski with anonymous Rep. of Southwestern Foster Care Agency (July 20, 2021).

41 Zoom Interview by María Huerta Rodríguez with Rana, a SIJS youth (May 2, 2021).



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# **The Cost of the Backlog to State and Local Child Welfare Systems**



“The backlog undermines the purpose of SIJS, because it creates such long delays on undocumented youth in foster care being able to achieve permanency and obtain all of the things that they need in terms of public housing, vouchers, federal financial aid, work authorization, benefits, medical care – all of these things that they often cannot access without a green card. And it creates a huge burden on the foster care agencies and the child welfare agencies to oversee the program, to oversee the process. And also on the legal service organizations. For basically no benefit, no reason.”<sup>42</sup>

**Child Welfare Representative,** NEW YORK CITY

The SIJS backlog has direct impacts on state and local child welfare agencies, as well as the broader community of children in the foster system. The SIJS backlog presents unique challenges for foster youth, including forcing them to extend their stay in the foster system because of the prospect of homelessness without the ability to work lawfully, as well as complications with adoption, and susceptibility to labor abuses and trafficking. The SIJS backlog also puts a strain on the foster care system, resulting in social workers and child welfare representatives focusing more time and resources to resolving backlog-specific issues, as well as extending placements of youth in the SIJS backlog who might otherwise have achieved independence.

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## Impacts on Foster Children

The foster care system is charged with protecting and supporting children, helping them reunify with family where possible and eventually achieving independence. However, due to the SIJS backlog, some foster youth are stuck in care past their age of majority if state law allows this, or they face aging out of foster care without the resources to help them transition to independence successfully. Without the financial support, lacking work permits and access to federal financial aid for college, these SIJS young people may experience homelessness and all the accompanying harms of instability and insecurity. In the words of one child welfare representative in Los Angeles County, “Unfortunately, if they age out, legally they are not able to work because they are still in the SIJS process. And because they are not able to work, their quality of life may be diminished...They have to figure out a way to survive.”<sup>43</sup>

The SIJS backlog also frustrates foster care children’s ability to find permanent homes through adoption and guardianships. Child welfare workers have reported that because of children’s undocumented status and exclusion from federal funding, adoptive families face financial challenges to adoption until children obtain their green cards.<sup>44</sup>

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<sup>42</sup> Zoom Interview by Daniela Czemerinski with anonymous New York child welfare rep. (Aug. 11, 2021).

<sup>43</sup> Zoom Interview by Daniela Czemerinski with anonymous LA county child welfare rep. (Aug. 5, 2021).

<sup>44</sup> *Id.*

Feeling stuck in a system that was intended to protect them, some children and youth simply give up on the process and run away. For a young person fearing deportation and without the ability to work lawfully, three to four years of waiting can feel endless. Even for those who stay as long as they can in the foster system, they may age out before they can even apply for their green card. Even worse, the agency may then not have a way to reach the young person who ages out and who will be unaware that they can finally apply for their green card.

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## Foster Care Agency Impacts

The backlog has led to administrative complexities, further straining the capacity of child welfare agencies to serve all young people. As the SIJS backlog grows and impacts foster youth, this increases child welfare agencies' workloads. This might present as more required communication with young people who stay in the system longer than they typically would, additional work to ensure immigration documents are in order as youth's immigration cases drag on, as well as increased likelihood that there may be turnover of legal representatives, thus requiring additional outreach to access legal representation. This is all time and resources that could otherwise go to supporting other children and youth in foster care.

“The backlog is extremely burdensome for the agency for many different reasons. One is just the added length that the case takes, and all of the complications that come up when trying to ensure that the youth is continuing along their journey of getting their immigration status resolved. And, as you can imagine, in social services there is staff turnover...so there are new caseworkers who come in on the case, and when a case takes years, you have to catch each person up... [Our unit] spends so much of our time picking up the pieces when things kind of go off the rails – when someone leaves and they didn't finish the process, and they need to do the medical exam, and making sure that there is continuity there. Whereas, if the case were to only take six months, it would be completely different and much, much easier.”<sup>45</sup>

**Anonymous child Welfare Representative**

Some child welfare representatives report having to restructure their immigration services in order to account for the added legal complexities of the SIJS backlog. In Los Angeles County, child welfare representatives used to handle a SIJS case from the filing of the SIJS petition until the young person obtained their green card. Once the backlog became an issue, the county was forced to change the system and now has to rely on legal services providers for support in filing the SIJS petitions.<sup>46</sup>

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<sup>45</sup> Zoom Interview by Daniela Czemerinski with anonymous child welfare rep. (Aug. 11, 2021).

<sup>46</sup> *Id.*

“It all changed... [SIJs] were getting permanent resident cards within three to six months, and then once the backlog started, it seemed like immigration was just looking for different things to reject, or just looking at a lot of things that they weren’t looking at before to try to reject these kiddos from getting their permanent resident card. So [the child welfare agency] just thought it was a huge liability, and it would be best for an attorney to just file from beginning to end.”<sup>47</sup>

**Child Welfare Representative,** LOS ANGELES COUNTY

In cities where foster care agencies have always relied on non-profit legal service providers for SIJS support, agencies have found that attorneys have less capacity to take on new cases because of how long each SIJS case takes, which in turn impacts foster care agencies’ ability to help undocumented youth access timely legal representation.<sup>48</sup>

Moreover, federal reimbursements to state and city foster care agencies are not available for services provided to undocumented children and youth, leaving a financial burden on state and local agencies.

“Anytime where there are federal funds distributed for childcare or foster care, [the undocumented kids] don’t qualify. So in California the state foots the bill for children that are undocumented, because the federal government won’t pay any money for undocumented kids to be fostered. And I’m sure that in other states it’s the same thing. The state or the county gets the bill.”<sup>49</sup>

**Child Welfare Representative,** LOS ANGELES COUNTY

SIJS youth in the backlog linger in foster care longer than other foster youth, which has a very tangible impact on an agency’s capacity to accommodate other children and youth. As one New York City child welfare representative stated, “There are only so many beds in the foster care system. If children are remaining in care just to await the processing of their immigration papers, then those very same beds are not available to be provided to other children who need a foster care placement.”<sup>50</sup>

Costs for states can be compounded because child welfare agencies in certain states continue to provide SIJS-related assistance even once a youth has aged out of foster care.<sup>51</sup> But for the backlog, child welfare agencies would not have to bear the added financial and resource burden of continuing to provide services to children who otherwise would have achieved independence.

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<sup>47</sup> Zoom Interview by Daniela Czemerinski with anonymous LA county child welfare rep. (Aug. 5, 2021)

<sup>48</sup> Zoom Interview by Daniela Czemerinski with anonymous child welfare rep. (Aug. 11, 2021)

<sup>49</sup> Zoom Interview by Daniela Czemerinski with anonymous LA county child welfare rep. (Aug. 5, 2021)

<sup>50</sup> Zoom Interview by Daniela Czemerinski with anonymous New York child welfare rep. (Aug. 11, 2021).

<sup>51</sup> For example, New York considers immigration status as children are aging out of foster care. Special Immigrant Juvenile Status and Services, [https://www1.nyc.gov/assets/acs/pdf/immigrant\\_services/ACS\\_Policy\\_and\\_Procedure\\_on\\_SIJS\\_and\\_Immigration\\_Services\\_2013\\_FINAL.pdf](https://www1.nyc.gov/assets/acs/pdf/immigrant_services/ACS_Policy_and_Procedure_on_SIJS_and_Immigration_Services_2013_FINAL.pdf)

# State Distribution of SIJS Backlogged Cases, April 2021

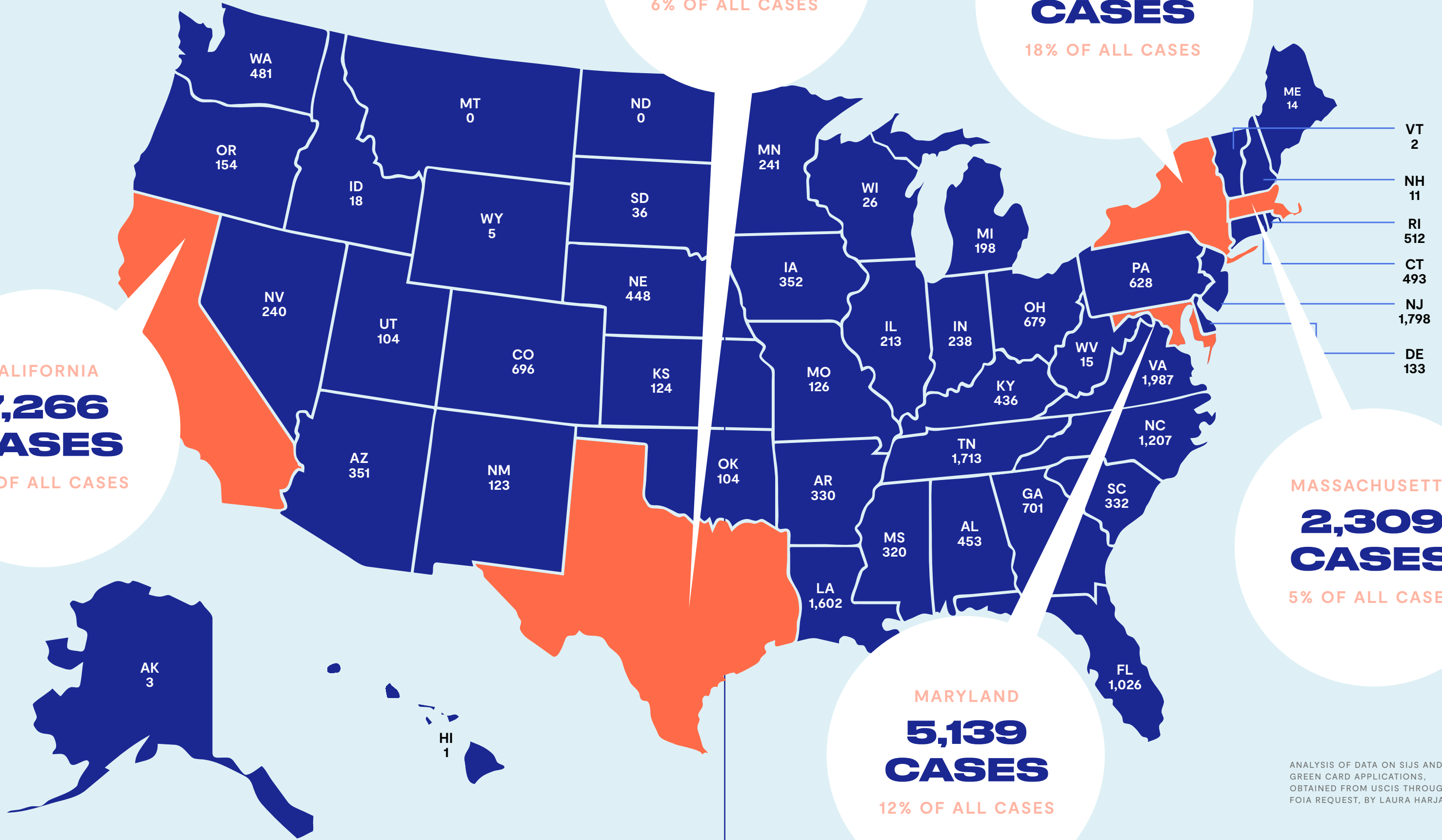
TEXAS  
**2,540 CASES**  
 6% OF ALL CASES

NEW YORK  
**7,695 CASES**  
 18% OF ALL CASES

CALIFORNIA  
**7,266 CASES**  
 16% OF ALL CASES

MASSACHUSETTS  
**2,309 CASES**  
 5% OF ALL CASES

MARYLAND  
**5,139 CASES**  
 12% OF ALL CASES



ANALYSIS OF DATA ON SIJS AND GREEN CARD APPLICATIONS, OBTAINED FROM USCIS THROUGH A FOIA REQUEST, BY LAURA HARJANTO

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# The Costs of the Backlog to the Legal Community



**THE SIJS BACKLOG ALSO IMPACTS THE LEGAL COMMUNITY**, including the functioning of immigration courts and the delivery of free legal services. SIJS children in immigration court make up a portion of the 1.3 million cases awaiting hearings in immigration courts.<sup>52</sup> The number of immigration cases in court has ballooned so significantly that some people wait ten years for their cases to be decided.<sup>53</sup> SIJS backlog cases may have multiple status hearings over a period of years which in turn is a waste of court resources.

According to USCIS data, SIJS children from El Salvador, Guatemala, and Honduras are disproportionately in immigration court “removal proceedings,” where ICE attorneys are seeking their deportation, as compared to children from other countries. Less than 1/3 of SIJS children from countries other than the Northern Triangle of Central America were in deportation proceedings. Meanwhile more than 80% of children from El Salvador, Guatemala and Honduras who had approved SIJS petitions and were seeking green cards were in deportation proceedings.

## SIJS Children with Pending Green Card Applications in Removal Proceedings

	MEXICO	EL SALVADOR	HONDURAS	GUATEMALA	OTHER	ALL
TOTAL APPLICANTS	3,630	5,822	3,969	4,459	7,053	24,933
IN REMOVAL PROCEEDINGS	1,021	4,919	3,646	4,034	1,879	15,499
SHARE IN REMOVAL PROCEEDINGS	28%	84%	92%	90%	27%	62%

OF APPLICANTS WHO SUBMITTED THEIR GREEN CARD APPLICATION (FORM I-485 BASED ON A SIJS APPROVAL) IN OR AFTER MAY 2016, THE NUMBER/SHARE IN REMOVAL PROCEEDINGS, BY COUNTRY. ANALYSIS OF DATA ON SIJS AND GREEN CARD APPLICATIONS, OBTAINED FROM USCIS THROUGH A FOIA REQUEST, BY LAURA HARJANTO.

Legal services attorneys representing SIJS children in deportation hearings must be ready at any moment to prepare motions to ensure that children are not deported while waiting in the backlog. These attorneys may also have to regularly appear in immigration court to advocate for continuances or terminations, which immigration courts and ICE prosecutors must respond to, adding to decreased capacity throughout the entirety of the immigration court system.

The impact on resources may be multiplied for attorneys representing SIJS children in rural areas, where the court may be hours away. For example, in New Mexico, where attorneys report that judges refuse to put SIJS cases in the backlog on the “status docket”<sup>54</sup> while they await visa availability, this means hours of time in the car every other month, multiplied by 15 to 20 times for each client in the backlog, over the course of years just to report to the judge that a child is still in the backlog.<sup>55</sup>

<sup>52</sup> *As Immigration Courts Face Backlogs, Advocates Say It's Time to Overhaul the System*, NPR (July 26, 2021, 4:32 PM), <http://www.npr.org/2021/07/26/1020866553/as-immigration-courts-face-backlogs-advocates-say-its-time-to-overhaul-the-syste>

<sup>53</sup> *Id.*

<sup>54</sup> The “status docket” is a docket management tool the immigration courts use to free hearing space and enable immigration judges to address all cases in the most efficient manner. Immigration judges use this tool to delay the final adjudication of a case according to law, such as the requirement to continue a case to allow for the adjudication of an application before USCIS. Up until recently it was fairly common practice for immigration judges to put cases in the SIJS backlog on the status docket to allow for their priority dates to become current.

<sup>55</sup> Zoom Interview by Daniela Czemerinski Monica with Newcomer Miller, Supervising Attorney at New Mexico Immigrant Law Center (July 23, 2021).

“I have about 15–20 [SIJS backlog clients] that I go with [to immigration court] every couple of months, and there’s two other attorneys that have the same amount, and the judges prefer us to file a Notice of Status ahead of time... [which takes] two hours per case. That’s 40 hours leading up to a hearing for those 20 cases... So basically a week’s worth of just filing the Notices and making sure the E-28 is right, making sure the [SIJS backlog] kids are going to show up, and making sure that everything is in place for those hearings...It’s a lot of wasted time and totally unnecessary.”<sup>56</sup>

**Monica Newcomer Miller,** NEW MEXICO IMMIGRANT LAW CENTER

Because of the broad discretion awarded to individual immigration judges alongside changing rules and regulations, there is no way to predict the outcome of these cases, nor estimate how much time and resources will be required for each case in proceedings. Therefore, SIJS children may end up seeking multiple forms of relief that they are eligible for to cover their bases, even when their SIJS has been approved and, but for the backlog, would be their best form of relief. This increases the burden on the immigration court system as well as the legal services attorneys.

“In the Boston court, which is the court for Maine, some judges have been pretty unfriendly with granting continuances, and in the past, we’ve had concerns that people who are in the backlog would be ordered deported while waiting for adjustment. At the very least [some judges had wanted] to have some form of relief pending before the court. So we had seen that where someone has an approved I-360 [SIJS petition] and they have a hearing, that they were required to file an application for asylum or something [to avoid deportation]...”<sup>57</sup>

**Maggie Leoffelholz,** ATTORNEY, IMMIGRANT LEGAL ADVOCACY PROJECT

“The way that an approved I-360 [SIJS] petition case is being dealt with in removal proceedings has changed so much, and we are just constantly trying to adjust to those changes. It used to be that we would get SIJS findings [from state court], and just with the findings, the immigration judge would terminate the removal case. Then things shifted, and we were able to get only administrative closure of those cases. Then the *Castro-Tum* decision came out and bumped out that option. Now that [*Castro-Tum*] has been overruled that’s on the table again. And then the status docket was in jeopardy... So that just highlights the reason why we were having to constantly monitor what was going on in removal proceedings. It was because these kids were all here with approved or pretty-soon-to-be-approved SIJS petitions, but unable to adjust status because of the backlog.”<sup>58</sup>

**Neha Marathe,** SENIOR ATTORNEY, LAW FOUNDATION OF SILICON VALLEY



As a case remains open for years, a child becomes vulnerable to potential policy changes that impact their legal case, as well as risks that the child may be put into or forced to continue with deportation proceedings in immigration court. For example, children seeking SIJS increasingly experienced challenges in their applications during the period of the Trump administration. Starting in February 2018, based on internal guidance, the Trump administration began systematically denying SIJS for applicants in certain states who received state court orders when they were over the age of 18. In California and New York, federal courts issued injunctions, declared the practice unlawful, and ordered USCIS to stop denying SIJS on this basis. USCIS stopped applying the policy nationwide in October 2019 but not before thousands of cases were unlawfully denied.<sup>59</sup> Correspondingly, USCIS data shows a steep increase in the number of SIJS petitions being targeted with “Requests for Evidence,” notices from USCIS requiring additional evidence to be submitted, or potentially resulting in a denial of the application. There was also a steep increase in the number of SIJS children receiving “Notices of Intent to Deny (NOID),” which indicate the agency plans to deny the application, unless the applicant can address key area(s) with more evidence or additional legal argument.

From 2012 to 2016, the NOID rates for SIJS applications were between 0% to 2%. In 2017, the rate doubled to 4% and then multiplied four-fold to 16% of all applicants receiving Notices of Intent to Deny.

## “Notice of Intent to Deny” Rate for SIJS Petitions

FISCAL YEAR OF NOID ISSUANCE	NOID RATE	NUMBER OF NOIDS	NUMBER OF ADJUDICATIONS BY FY
2012	0%	8	2,789
2013	0%	16	3,559
2014	2%	79	4,951
2015	2%	175	9,053
2016	2%	288	15,555
2017	4%	635	14,618
2018	16%	1,226	7,453
2019	9%	2,553	27,888
2020	4%	1,683	42,358
2021 (through April)	4%	503	12,206

ANALYSIS OF DATA ON SIJS AND GREEN CARD APPLICATIONS, OBTAINED FROM USCIS THROUGH A FOIA REQUEST, BY LAURA HARJANTO.

From 2012-2016, the rate of SIJS children receiving an RFE hovered between 2% to 5%, but in 2017 that number rose to 27% overall for SIJS children. In 2018, 41% of Guatemalan children received an RFE notice, 39% of Mexican children received one, 35% of Honduran children and 30% of Salvadoran children. While the RFE rate has declined somewhat with the Biden administration, it remains notably higher than before Trump-era changes in SIJS adjudications. These apparent policy changes have the effect of increasing the burden on legal service providers, increasing the burden on USCIS officials, and further delay final decisions therefore extending cases in immigration courts as well.

## “Request for Evidence” Rate for SIJS Petitions

FISCAL YEAR OF RFE ISSUANCE	MEXICO RFE RATE	EL SALVADOR RFE RATE	HONDURAS RFE RATE	GUATEMALA RFE RATE	RFE RATE OF ALL COUNTRIES	RFE TOTALS FOR ALL COUNTRIES
2012	5%	7%	4%	5%	4%	2,789
2013	3%	5%	1%	2%	3%	3,559
2014	6%	4%	5%	3%	4%	4,951
2015	6%	3%	8%	4%	5%	9,053
2016	4%	2%	2%	2%	2%	15,555
2017	24%	30%	25%	23%	27%	14,618
2018	39%	30%	35%	41%	35%	7,453
2019	24%	20%	22%	29%	23%	27,888
2020	15%	13%	13%	24%	28%	42,358
2021 (through April)	15%	11%	13%	17%	14%	12,206

ANALYSIS OF DATA ON SIJS AND GREEN CARD APPLICATIONS, OBTAINED FROM USCIS THROUGH A FOIA REQUEST, BY LAURA HARJANTO

Even when a SIJS child is not in deportation proceedings, backlogged cases decrease the capacity of legal service providers, as they must constantly check on the status and check on child clients to ensure they are still safe and have not been detained. According to one child services attorney, her clients in rural areas of Maine are at greater risk of being racially profiled, picked up by the police and transferred to border patrol or ICE who may detain them as their immigration case is pending. This means that youth in the SIJS backlog are particularly susceptible to detention while waiting to apply for and receive their green cards.<sup>60</sup>

As cases in the backlog drag on for years, attorneys must check in frequently with the young people that they work with to ensure that they do not lose contact, that they are complying with SIJS requirements, and that they are physically and mentally okay. This extra work, coupled with the challenges of protecting clients from deportation, results in legal service providers reaching capacity and being unable to take on more cases.

“[The backlog] really extends the length of the cases and reduces our capacity to serve more kids. It increases the chances that we lose contact, the chances that their placement changes, or some other life forces happen, and [our clients] have to move... A lot of things can happen in three years... It just creates a lot of insecurity and instability, and it creates a lot of extra administrative work in just reminding clients that we are still here, we are still on top of it. They just have to keep waiting.”<sup>61</sup>

**Kristie-Anne Padron,** MANAGING ATTORNEY, CATHOLIC LEGAL SERVICES MIAMI

Many legal service providers rely on pro bono partners to support their work by lending time and resources to take on individual SIJS cases. However, since the backlog became an issue, big law firms have been hesitant to work on SIJS cases because of the long length of time that it takes for these cases to be completed.

## **This decrease in available partnerships exacerbates the lack of legal representation faced by immigrant youth.**

“No pro bono firm wants to take on these backlogged cases because they do not want to have a case...that’s going to sit on their docket for five years, because they know that they’re going to have staffing turnovers and it’s going to be difficult to keep track of what’s happening in the case. So, it’s a nightmare trying to get pro bono partners to take on cases from backlogged countries.”<sup>62</sup>

**Kaavya Viswanathan,** DIRECTOR, THE DOOR LEGAL SERVICES CENTER

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<sup>56</sup> *Id.*

<sup>57</sup> Zoom Interview by Daniela Czemerinski with Maggie Leoffelholz, Immigrant Children’s Project Attorney at Immigrant Legal Advocacy Project (July 19, 2021)

<sup>58</sup> Zoom Interview by Daniela Czemerinski with Neha Merathe, Senior Attorney at Legal Advocates for Children and Youth (July 23, 2021)

<sup>59</sup> SARAH PIERCE & JESSICA BOLTER, DISMANTLING AND RECONSTRUCTING THE U.S. IMMIGRATION SYSTEM: A C ATALOG OF CHANGES UNDER THE TRUMP PRESIDENCY (2020), available at <https://www.migrationpolicy.org/research/us-immigration-system-changes-trump-presidency>

<sup>60</sup> Zoom Interview by Daniela Czemerinski with Maggie Leoffelholz, Immigr. Child.’s Project Att’y at Immigr. Legal Advoc. Project (July 19, 2021).

<sup>61</sup> Zoom Interview by Daniela Czemerinski with Kristie-Anne Padron, Managing Att’y at Catholic Legal Services Miami (July 22, 2021).

<sup>62</sup> Zoom Interview by Daniela Czemerinski with Kaavya Viswanathan, Dir. of the Door’s Legal Serv. Ctr (July 26, 2021).

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# Ending the SIJS Backlog: Recommendations to Congress



*“I wish they could feel how it feels [to wait]...because if they knew how it felt, I think they’d put more effort into doing it [fixing the backlog].”<sup>63</sup>*

**Marlin**, LEFT GUATEMALA AT 18, WAITING YEARS IN THE BACKLOG.

While the impacts of the SIJS backlog on immigrant youth, child welfare agencies, and the legal community are complex, the solution is simple. Congress has the power to end the SIJS backlog by amending the Immigration and Nationality Act to exempt SIJS children from the per-country and world-wide employment-based visa limitations that are the cause of the backlog. This would bring SIJS in line with other humanitarian classes of immigrants, like asylees, who are exempt from these restrictions.<sup>64</sup> With merely three minor textual amendments, Congress could end the SIJS backlog immediately. All it takes is the political will.

First, Special Immigrants Juveniles (found under subparagraph (J) of INA § 101(a)(27)) should be added to the list of statuses exempt from worldwide annual visa limitations under INA § 201(b)(1)(A).

## INA § 201 - Worldwide level of immigration

....

### (b) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS

Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a), are as follows:

(i)(A) Special immigrants described in subparagraphs **(A) or, (B), or (J)** of section 1101(a)(27) of this title.

Then, Congress should exempt SIJS children from the per-country caps which, together with the worldwide and EB4 specific limits, create the backlog that immigrant youth from Mexico, El Salvador, Guatemala, and Honduras are currently subject to. This can be accomplished by explicitly adding SIJS exemption language to INA § 202(a)(2).

<sup>63</sup> Zoom Interview by Ivonne Silva with Anonymus (May 2, 2021).

<sup>64</sup> The Refugee Act formally introduced asylum into federal law and specifically left the asylum category without a numerical cap. In 2005 The Real ID Act of 2005 eliminated the 10,000 annual cap on the number of asylees who could adjust status to lawful permanent residents. See Pub. L. 109–13, 119 Stat. 302. Currently, (i) there are no geographic constraints on asylum grants, (ii) there are no numerical limitations on asylum grants or adjustment of status for asylees and (iii) asylum applicants are generally eligible to apply for employment authorization while their application is pending.

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## INA § 202 - Numerical limitations on individual foreign states

### (a) PER COUNTRY LEVEL

....

### (2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS

Subject to paragraphs (3), (4), and (5), **and except for special immigrants described in subparagraph (J) of section 1101(a)(27) of this title**, the total number of immigrant visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 1153 of this title in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.

Finally, SIJS should be added to the list of statuses exempt from the 7.1 percent of worldwide levels allocated for special immigrants<sup>65</sup> in INA § 203(b)(4).

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## INA § 203- Allocation of immigrant visas

....

### (b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS

Aliens subject to the worldwide level specified in section 1151(d) of this title for employment-based immigrants in a fiscal year shall be allotted visas as follows:

....

### (4) CERTAIN SPECIAL IMMIGRANTS

Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants described in section 1101(a)(27) of this title (other than those described in subparagraphs **(A) or, (B), or (J)** thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 1101(a)(27)(C)(ii) of this title, and not more than 100 may be made available in any fiscal year to special immigrants, excluding spouses and children, who are described in section 1101(a)(27)(M) of this title.

Together, these three textual changes would fix the backlog and protect the more than 44,000 SIJS children currently in the backlog, as well as future children seeking SIJS.

Exempting SIJS children from employment-based visa caps would in turn free up visas for other immigrants seeking true employment-based status. Most urgently, it would free up visas for Afghan interpreters who are in the same category as SIJS children.

The sooner Congress acts, the faster SIJS children can receive the protection created for them, go to college, transition into adulthood, reach towards their dreams, and contribute to their communities. The sooner Congress acts, the faster immigration courts can terminate these cases, easing the burden on an already overtaxed system. The sooner Congress acts, the faster pro bono lawyers can close cases and the more children they can represent. The sooner Congress acts, the faster states can cease footing the bill for the continued custody and care of immigrant foster children, care necessitated by the federal governments SIJS backlog.

Congress has exempted categories of immigrants from visa limitations on a number of occasions. In particular, there are already multiple categories of employment-based visa petitioners who are exempt from the limitations.<sup>66</sup> Most recently, exemptions for other employment-based immigrant categories have been introduced in the 2021 House Reconciliation Bill.<sup>67</sup>

## **There is a moral imperative for Congress to extend these exemptions to vulnerable immigrant children.**

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<sup>65</sup> Special Immigrants, or the EB4 category, is the employment-based preference category for visas that includes SIJS, in addition to special immigrant worker categories.

<sup>66</sup> INA 201(b) already exempts two categories of “special immigrants” from the worldwide numerical limitations. 8 USC § 1151(b); 8 USC § 1101(a)(27)(A) (“[A]n immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad”); 8 USC § 1101(a)(27)(B) (“[A]n immigrant who was a citizen of the United States and may, under section 1435(a) or 1438 of this title, apply for reacquisition of citizenship”).

<sup>67</sup> H.R. 5376, 117th Cong. (2021–2022). See *Featured Issue: Immigration Reforms through Budget Reconciliation*, AMERICAN IMMIGRATION LAWYERS ASSOCIATION (Nov. 3, 2021), <http://www.aila.org/advo-media/issues/all/featured-issue-immigration-reforms-through-budget>.

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# **Lessening the Harms of the SIJS Backlog: Recommendations to the Biden Administration**





**WHILE THERE IS NO WAY** to permanently resolve the SIJS backlog without legislative action, there are specific administrative solutions that the Biden administration can take to mitigate the harmful effects of the SIJS backlog on immigrant children while Congress works on a legislative solution.

On May 20, 2021, the End SIJS Backlog Coalition sent a letter signed by over 400 organizations and individuals to senior personnel within the Department of Homeland Security and the Executive Office for Immigration Review urging the relevant immigration agencies to take specific and concrete actions to protect SIJS youth in the backlog.<sup>68</sup>

The Biden administration has taken some positive steps to help SIJS children, such as expressing a commitment to addressing the SIJS backlog in “The Biden Administration Blueprint for a Fair, Orderly, and Humane Immigration System”.<sup>69</sup> DHS leadership issued recent policies with explicit protections for SIJS-eligible youth including a directive to ICE to refrain from civil immigration enforcement against children with pending or approved SIJS petitions and green card applications based on SIJS, as well as interim guidance to OPLA calling on ICE attorneys to join motions to dismiss in cases where a child appears eligible for SIJS protection.<sup>70</sup> The Department of Justice took steps to restore Immigration Judges’ general administrative closure authority, but without specific guidance related to SIJS children.<sup>71</sup> However, there remains much to be done.

## Recommendations

- The Biden administration should make a public statement of support and encourage Congress to take action to end the SIJS backlog.
- The administration should also direct USCIS to create a new Employment Authorization Document category for SIJS youth.
- USCIS should issue proposed regulations, with an opportunity for public comment, providing work authorization and protections from deportation for SIJS children.
- Immigration and Customs Enforcement (“ICE”) should issue final guidance to ensure that SIJS children are not deported before being permitted to seek a green card. While there is interim guidance on joining motions to dismiss deportation proceedings and policy regarding prosecutorial discretion for SIJS beneficiaries, final guidance should be issued indicating that ICE should join motions to dismiss deportation proceedings, join motions to reopen in previously concluded deportation proceedings, and grant stays of deportation for SIJS children, including those in the backlog.
- The Department of Justice (“DOJ”) and Executive Office for Immigration Review (“EOIR”) should fully restore immigration judges’ (“IJs”) authority to use the full range of docket management tools to ensure SIJS children in the backlog are not ordered deported merely because they are waiting for their priority date to become current.

# Conclusion

It is past time for Congress to act. Children that the government has already approved for SIJS protection should not be forced to languish in the backlog, at risk of deportation, trafficking and other harms. While there are interim stop-gap actions that the Biden Administration and the Department of Homeland Security could take to mitigate some of the harms of the backlog, none of these solutions are permanent, nor do they address the root cause of the backlog: the misapplication of employment-based visa limitations to vulnerable SIJS children.

Our country gains nothing by keeping immigrant children and youth with approved humanitarian status in this perpetual state of waiting. The backlog only creates loss—loss of the collective contributions of tens of thousands of young people to society. Most painful though, is the loss of years of opportunity for these young people—to go to college, fall in love and get married, work towards and obtain a dream job, and just participate in American life without fear of deportation.

As Stephany, who came to the US at age 14 and spent years in the SIJS backlog, stated when asked what she would tell members of Congress about the backlog,

**“I would tell them that they shouldn’t take their time because in the end these are the dreams of human beings and in the end we are all the same...We’ve all come looking for the American dream, right?”<sup>72</sup>**

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<sup>68</sup> END SIJS BACKLOG, ADMINISTRATIVE AGENCY ACTIONS TO MITIGATE THE HARMFUL EFFECTS ON IMMIGRANT CHILDREN OF THE SPECIAL IMMIGRANT JUVENILE STATUS GREEN CARD BACKLOG (2021), <https://static1.squarespace.com/static/5fe8d735a897d33f7e7054cd/t/60a63e62a7a01358d9f42398/1621507682683/End+SIJS+Backlog+Coalition+Sign-On+Letter+05.20.21.pdf>

<sup>69</sup> *Fact Sheet: The Biden Administration Blueprint for a Fair, Orderly and Humane Immigration System*, THE WHITE HOUSE (July 27, 2021), <https://www.hsdl.org/?view&did=856716>

<sup>70</sup> U.S. Immigration and Customs Enforcement, *Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities* (May 27, 2021), and U.S. Immigration and Customs Enforcement, *Using a Victim-Centered Approach with Noncitizen Crime Victims*, ICE Directive 11005.3 (Aug. 10, 2021).

<sup>71</sup> *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021)(overruling *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018); restoring *Matter of Bavakan Avetisyan*, 25 I&N Dec. 688 (BIA 2012) and *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017)).

<sup>72</sup> Zoom Interview by Maria Huerta Rodriguez with Stephany, a SIJS youth (May 21, 2021).

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