



Where We Stand: A 20-Year Retrospective of the Unaccompanied Children's Program in the United States

By Jenny Rodriguez

CHAPTER FOUR PART TWO: Special Immigrant Juvenile Status

The U.S. Committee for Refugees and Immigrants (USCRI) and The Children's Village present chapter four, part two of Where We Stand: A 20-Year Retrospective of the Unaccompanied Children's Program in the United States. The retrospective will review the Unaccompanied Children's Program from the passage of the Homeland Security Act (HSA) of 2002 until today. It assesses 20 years of legislation, policies, litigation, and, most importantly, the U.S. federal government's care of unaccompanied migrating children, with a view toward the next steps and improvements for the years ahead. The fourth chapter looks at services offered to unaccompanied children. Part two will cover Special Immigrant Juvenile Status, one of the legal immigration statuses available for unaccompanied children.

In the 1990s, following advocacy by Santa Clara Child Welfare Agency and other organizations, Congress passed a federal law to assist certain undocumented youth in obtaining lawful permanent residency through "Special Immigrant Juvenile Status (SIJS)."¹ SIJS provides legal protection for certain undocumented immigrant youth who have been abused, abandoned, or neglected by one or both parents by allowing them to legalize their immigration status and become lawful permanent residents and eventually U.S. citizens.

"As a social worker at Santa Clara County, I worked on helping undocumented minors who were in long term foster care, also known as permanent placement, apply for amnesty and legal residency relief to reside in the United States. Most of the children in my caseload got approved, but in the process of applying, the Immigration and Naturalization Services (INS), changed their stance on me applying for the remaining undocumented children, because I was not the legal parent. As the social worker for these children, I disagreed. As a child welfare social worker, I was considered a "prudent parent," and I would be able to apply for permanent placement on behalf of these undocumented minors since there were no parents available to file for them," said Ken Borelli, co-author of the original SIJS legislation

¹ See Immigration Act of 1990 § 153, Pub L. No. 101-649. 1990.



“In fact, a whole subcategory of children in the child welfare system nationwide didn’t have parents to file for them. Many children in foster care at the time lost out on this window of opportunity to file for amnesty,” Mr. Borelli continued.

“The situation was very complex, and we didn’t know how to proceed, so I went to the Juvenile Court and spoke to Judge Leonard Edwards and explained the situation to him. He referred me to his father, Congressman Don Edwards (D-CA), and others on his staff including now Congresswoman Zoe Lofgren (D-CA) to work on the Special Immigrant Juvenile Status (SIJS) legislation. It is important to recognize that when the bill was written it was purely a piece of child welfare legislation. It’s origins however have now, metamorphosed into an entirely different immigration relief option, I think primarily through default, since no major piece of immigration relief legislation has been able to pass Congress, which is a sad observation of the times.” said Mr. Borrelli. ²

The Immigration Act of 1990 established the SIJ classification for children:

- 1) declared dependents on a juvenile court in the United States,
- 2) eligible for long-term foster care, and
- 3) for whom it would not be in their best interest to return to their country of origin.

To qualify for SIJS, first, children must be subject to the jurisdiction of a state juvenile court. The court will issue a finding on the harm they experienced and state that it's not in the child's best interest to return to their country of origin. Children then must file a petition to U.S. Citizenship and Immigration Services (USCIS) to be classified as a SIJ. Upon receiving an approved petition from USCIS, the last piece is for children to apply for adjustment of status to become a lawful permanent resident of the United States.

SIJS in the early 2000s

To understand the earlier days of SIJS, I sat down virtually with Kristen Jackson, senior staff attorney at Public Counsel, who has worked on SIJS issues since the fall of 2003.

“When I started working on SIJS in the early 2000s, a small network of attorneys collaborated across the country. The number of children applying for SIJS was much smaller than it is today. That’s the biggest difference in the program. The [Trafficking Victims Protection Reauthorization Act of 2008] TVPRA expanded eligibility for SIJS applicants, increased access to legal representation, and connected children with

² Zoom Interview by Jenny Rodriguez with Ken Borelli, co-author of SIJS.



lawyers knowledgeable about SIJS. These critical components lead to an expansion of the pool of applicants," said Kristen Jackson.³

The TVRPA of 2008 made significant changes to SIJS.⁴

- Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that the juvenile court finds that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.
- Expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court.
- Provided age-out protections so that SIJ classification may not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJ petition, regardless of the petitioner's age at the time of adjudication.
- Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJ classification instead of expressly consenting to the juvenile court order.
- Altered the "specific consent" function for those children in federal custody by vesting this authority with the Secretary of Health and Human Services rather than the Secretary of the Department of Homeland Security.
- Added a timeframe for adjudication: USCIS must adjudicate SIJ petitions within 180 days of filing.

"During the early days, there was no policy manual for SIJS, and we operated under the regulations issued by the federal government in the 1990s. As soon as the TVRPA of 2008 passed, we started reevaluating cases immediately. Attorneys started filing for guardianships and SIJS in places where that had never happened before. At that point, adjudications were not centralized, and there were varying degrees of training and people getting up to speed with the program. Things were rocky at the beginning, but that didn't last for too long," said Kristen Jackson.⁵

The TVPRA of 2008 expanded the definition of SIJS to the following:

- (i) A child who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody

³ Zoom Interview by Jenny Rodriguez with Kristen Jackson, attorney at Public Counsel.

⁴ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVRPA, P.L. 110-457).

⁵ *Id.*



- of an agency or department of a State or an individual or entity appointed by a state or juvenile court located in the United States, and whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence.⁶

Rachel Prandini, attorney at Immigrant Legal Resource Center, said, “SIJS was originally drafted to provide a pathway to citizenship for young people in foster care who had been removed from their parent's home. In 2008, that eligibility was expanded to include any child who can't reunify with one or both parents.”⁷

“One of the biggest changes brought on by the TVPRA was the expansion of the SIJS definition that allowed for the court to consider family reunification with one or both of the child’s parents and allowed for more vulnerable and mistreated children to qualify for this form of legal relief. Prior to the TVPRA, we would screen out many children who lived with one parent or might reunify with another. The change in the statute opened the door for us to represent many more children who wouldn't have received help before the passage of the TVPRA,” Kristen Jackson said.⁸

Once someone with SIJS has been a lawful permanent resident for five years, they may apply to become a U.S. citizen. Although U.S. citizens can petition for their spouse, children, and parents, young people who obtained legal status through SIJS are never able to petition for their parents.

SIJS Backlog

In the past, immigrant children have been able to apply for their green cards and work permit along with SIJS petitions. Once a child’s petition for SIJS was approved, many children received their work permits and green cards within six months to a year. In 2016, this time period changed due to an oddity in how SIJS children are classified under immigration law; children from countries that have reached their visa limits are unable to apply for their green cards and work permits for years.⁹ Strangely, the pathway to a green card for an SIJS child is

⁶ TPVRA of 2008. § 235(d)(1)-(d)(6)
⁷ Zoom Interview by Jenny Rodriguez with Rachel Prandini, attorney at Immigrant Legal Resource Center.
⁸ Zoom Interview by Jenny Rodriguez with Kristen Jackson, attorney at Public Counsel.
⁹ Davidson, Rachel, and Laila Hlass. “Any Day They Could Deport Me.” *The End SIJS Backlog Coalition and The Door*, Nov. 2021, <https://door.org/any-day-they-could-deport-me/>.



categorized under the "employment-based" immigration visa system which has country-specific and worldwide annual visa limits.¹⁰

As of December 2022, the backlog impacts children from all countries, though it is particularly pronounced for children from Honduras, Guatemala, El Salvador, and Mexico. The backlog for children from those countries has them waiting anywhere from two to five years before they can apply for their green cards.¹¹ The wait time for green cards varies depending on immigration trends. During this time, children approved for SIJS cannot access federal financial aid for college, struggle into independent adulthood, and find themselves at risk of trafficking, deportation, and homelessness.¹²

"The SIJS community was taken aback when the SIJS backlog started; we had no idea there was a visa cap. When I started working on SIJS, there was no backlog; young people could get their work permits and green cards very quickly and saw immediate results in the process. But now, with the SIJS visa backlog, there are more barriers that young people face while waiting a long time for their visa," Kristen Jackson said.

Action Needed by Congress

It is unknown how much or how long the program will continue to expand, but Congress needs to write corrective legislation to address and end the visa backlog impacting SIJS. The visa backlog is creating more barriers in the children's lives, many of which are the exact harms that SIJS was created to eliminate. USCRI wants to surround and strengthen unaccompanied immigrant children with quality care and services in their best interests.¹³ We want to provide opportunities, including access to immigration relief, such as SIJ status, to help the children overcome the obstacles they have faced and will face as they continue their journey to a dignified life.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ "In the Best Interest of the Child," USCRI policy paper, October 2019.