Guidance for Policymakers to Protect Children and Youth from Guatemala, Honduras, El Salvador and Mexico in the Absence of Visa Availability

The number of migrant children and youth – particularly those from Guatemala, Honduras, El Salvador and Mexico – has continued to increase since 2011 as children and youth flee extreme violence, unsafe homes and unstable communities and seek protection, family reunification better education and better employment opportunities in the United States. These children and youth, known legally as “unaccompanied alien children”, face challenges in accessing services and supports due to language, cultural and legal barriers and often lack stable family members who can help meet their basic needs in this country. As a result, these children and youth are at an increased risk for experiencing disruptions in their education, receipt of preventive health care and access to healthy nutrition. Furthermore, these children and youth face unique challenges due to the trauma they may have experienced in their home country and through their migration. Many do not have an identified caregiver in the United States who can support their physical and emotional needs.

To better serve and support the well-being of these children and youth, Congress created the Special Immigrant Juvenile Status (SIJS) program in 1990 to ensure a path to lawful permanent residency for vulnerable undocumented children who have been victims of abuse and for whom return to their home country would not be in their best interests. To be eligible for SIJS, a child or youth must be younger than age 21 at the time of the SIJS application, unmarried and a juvenile or family court must find that:

- The child or youth is a dependent of the court or has been legally placed with a state agency, a private agency or a private person.
- It is not in the best interests of the child or youth to return to his/her home country (or the country he/she last lived in).
- The child or youth cannot be reunited with one or both parents because of abuse, abandonment or neglect.
Opportunities through SIJS

By obtaining SIJS, concrete supports – including Temporary Assistance for Needy Families (TANF), Medicaid and the Supplemental Nutrition Assistance Program (SNAP) – can be accessed and help pave the way for increased stability for these children and youth. Specifically, while a SIJS petition for lawful permanent residency is pending before U.S. Citizenship and Immigration Services (USCIS), these children and youth are eligible to apply for health insurance through the Health Insurance Marketplace under the Affordable Care Act (ACA) and may be eligible for certain state Medicaid benefits depending on their state of residence. In addition, a key benefit particularly for older youth is that once a petition for lawful permanent residency has been submitted and is pending, the youth can apply for authorization to secure legal employment even before lawful permanent residency has been granted.

Once a child or youth has successfully adjusted their status to become a lawful permanent resident, they become eligible for Supplemental Security Income (SSI), federal foster care or adoption assistance and additional concrete supports in times of need. These supports and services can promote stability and access to therapeutic services to address trauma – both of which are critical to the development and well-being of children and youth. Without being able to achieve lawful permanent residency through SIJS or other immigration relief options, these children and youth are likely to continue to experience circumstances that could place them at continued risk for negative outcomes – including homelessness, poor health and lower rates of education completion and employment. Thus, the SIJS program provides a unique and often essential pathway for ensuring migrant children and youths’ access to services and supports that promote their well-being and safety.

Terms Defined

Special Immigrant Juvenile: An immigrant child who has been abused, abandoned or neglected and for whom return to their home country is not in their best interests.

Unaccompanied child: A child who has no lawful immigration status in the United States, is younger than age 18 and with respect to whom:

1. There is no parent or legal guardian in the United States; or
2. No parent or legal guardian in the United States available to provide care and physical custody.

Unaccompanied children are legally referred to as Unaccompanied Alien Children, or UACs. Unaccompanied children have typically entered the United States very recently.

Undocumented child: A child who has no lawful immigration status in the United States and is younger than the age of 18. Undocumented children may have been living in the United States their whole lives.

Lawful Permanent Residency: A status granted to non-citizens of the United States who are living in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. Lawful Permanent Residents (LPRs) may also be known as Green Card Holders and Permanent Resident Aliens.

Title IV-E funding refers to the Federal Foster Care Program authorized by Title IV-E of the Social Security Act. Title IV-E funding is awarded by formula as an open-ended entitlement grant and is contingent upon an approved Title IV-E plan to administer or supervise the administration of the program.

Title XX funding refers to the Social Services Block Grant (SSBG), authorized by Title XX of the Social Security Act. SSBG is a capped entitlement program that allocates block grant funds to states to achieve a wide range of social policy goals, including preventing child abuse, neglect and exploitation, providing community- or home-based care. States have discretion in determining the services they provide through Title XX funding and the groups who may be eligible for these services.
Current Status of SIJS Visas

As a result of the dramatic increase in Central American children and families seeking safety in the United States, the U.S. State Department announced this April that it has reached its allocated FY2016 cap for SIJS visas for children from El Salvador, Guatemala and Honduras. The State Department also announced that the SIJS cap had been reached for children and youth from Mexico in its July visa bulletin. Through the end of the fiscal year (September 30, 2016), USCIS has indicated that although it will continue to process petitions for SIJS (Form I-360), it will no longer accept petitions seeking lawful permanent residency (Form I-485) for children and youth from these countries. The State Department has also indicated that beginning on October 1, 2016, new SIJS visas will be immediately available for all children and youth applying from Mexico. However, visas will not be immediately available for all children and youth from Guatemala, Honduras and El Salvador given the already high numbers of applicants. Instead, the State Department has indicated that it will begin processing applications for children and youth from these countries who have applied for SIJ status after the start of the next fiscal year on a priority basis based on the date at which they applied – which is yet to be determined but will likely be a date in 2015. Children and youth from these three countries who applied after this yet to be determined date will be subject to the current set of circumstances – USCIS will process their SIJS petitions (Form I-360) but will not accept petitions for lawful permanency residency (Form I-485).

Unaccompanied Children and Adolescents, by Fiscal Year and Nationality

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<tbody>
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*FY2016 data is for partial data from October 1, 2015 – May 31, 2016
The number of children represented in this table is an underrepresentation and, for example, does not include children and youth who enter the United States undetected or who overstay authorized visas.
Without lawful permanent residency, though eligible through SIJ status, these children and youth will not be eligible for the federally reimbursed services discussed earlier to promote stability and well-being. Furthermore, youth who are currently unable to petition for lawful permanency residency (Form I-485) will no longer be able to secure Employment Authorization while their application is pending. This is particularly devastating for older youth who could otherwise obtain work, support themselves and contribute to their community’s economy.

Recommendations

Policymakers have significant opportunities to address these barriers at both the federal and state level. In the absence of available visas, the following are recommendations for better supporting the needs of children and youth from Guatemala, Honduras, El Salvador and Mexico.

Federal Policymakers:

- Ensure alternative options for children and youth to achieve temporary immigration relief while their lawful permanent residency status is pending, including encouraging USCIS to exercise its authority to approve Deferred Action, described below, for SIJS visa-eligible applicants. There are a variety of additional existing legal avenues that can be opened for children with approved SIJS petitions while they await visa availability. The examples detailed below are consistently used to provide temporary immigration relief to different migrant groups and are forms of temporary, administrative relief from deportation that confer work authorization.

Deferred Action

Deferred Action is very similar to “parole in place” but differs slightly in that it confers exemption from deportation for two years, and individuals who have been granted deferred action may apply for work authorization. Deferred action has been used previously as a form of relief for immigrant victims of domestic violence in the United States under the Violence Against Women Act (VAWA) and immigrant victims of crime in the United States (U-Visas) for whom visas had similarly run out for a specified fiscal year.

Parole in Place (PIP)

PIP is a form of relief that USCIS uses to grant parole to undocumented people who are physically present in the United States and who entered without a visa. PIP grants authorized stay in the United States and employment eligibility for one year, and individuals who have been granted parole and are direct relatives of U.S. citizens may be eligible to adjust their status to achieve lawful permanent residence. In the past, PIP has been granted to undocumented family members of those in the U.S. Armed Forces or to certain groups of people for humanitarian reasons.

Temporary Protected Status (TPS)

USCIS may grant TPS to nationals from certain countries, thereby extending temporary work authorization and relief from deportation for the duration of their TPS. This status is typically used in the case of ongoing armed conflict, environmental disaster or other extraordinary or temporary conditions.

- Issue clear funding guidance to states regarding healthcare enrollment. To ensure children and youth from these four countries are connected to health care services, the U.S. Department of Health and Human Services (HHS) should issue guidance directing states to ensure SIJS eligible children and youth (Form I-360 approved) are enrolled in state-funded Medicaid.

- Revise current regulations to promote access to employment for youth. Rejecting all I-485 petitions for any specified period of time – thereby eliminating a youth’s ability to apply for Employment Authorization – will negatively impact thousands of youth. USCIS should amend regulations so that older youth can seek employment while an I-360 is pending to remove barriers for youth accessing quality jobs that will support their ability to provide for themselves and family members and contribute to their community and the economy.

- Ensure funding opportunities for legal representation and/or a child advocate for children and youth in their immigration proceedings. Petitioning for a SIJS visa is a complex process that requires specific knowledge related to legal findings and administrative processes. The knowledge and skills that are necessary to navigate the legal and immigration systems are unique...
and without these skills, children and youth are at a significant disadvantage. As children and youth who have been abused and neglected are appointed an attorney, guardian ad litem and/or a Court Appointed Special Advocate in child abuse and neglect hearings to protect and ensure their safety and well-being, the same rationale should apply to protecting and ensuring the safety and well-being of migrant children and youth.

**State Policymakers:**

- **Ensure children who have approved Form I-360 petitions are enrolled in state Medicaid programs.** Currently there is no mandate to ensure children and youth who are in the process of seeking a SIJS visa are eligible for state Medicaid programs. As a result, this limits the ability for children and youth to secure preventive and ongoing health care. In response to this barrier to health care, several states provide excellent examples of state-funded programs that ensure migrant children and youth can access health care.

  - The District of Columbia Healthcare Alliance serves low-income residents who are not eligible for Medicaid, Medicare, or subsidies on DC Health Link, DC’s healthcare marketplace – mostly undocumented immigrants.

While some migrant children and youth do not have a willing and able caregiver who can support their physical and emotional well-being once they enter the United States, others may have come with a parent or legal guardian who is later deported or found unable to meet their needs. These children may come into contact with the child welfare system – and be placed in foster care. Although the Child Abuse Prevention and Treatment Act prohibits immigration status from being a barrier to ensuring child safety, children and youth who are not lawful permanent residents are not eligible for federally funded foster care or adoption subsidies. Additionally, the immigration status of these children and youth may make them ineligible for concrete supports through categorical eligibility as a result of their status in foster care. State policymakers should support the well-being of youth in child welfare through the following recommendations.

- **Dedicate state funding to support children with approved I-360 petitions for adoption subsidies to ensure children do not remain in foster care longer than necessary.** Permanency is important to promote the well-being of children in foster care and should not be delayed due to the lack of an adoption subsidy as these children are not eligible for federal title IV-E adoption subsidies. Furthermore, by moving a child to permanency through adoptions, the state will likely save funds on placement, case management and service costs compared to the adoption subsidy rate.

- **Include youth who have aged out of foster care and have approved I-360 petitions in the Affordable Care Act presumptive eligibility category for the full Medicaid benefit until their 26th birthday.** Similar to the ways that states can elect to cover former foster youth regardless of where the youth was in care, states should also elect to cover former foster youth who have approved I-360 petitions and would be otherwise able to proceed with pursuing lawful permanent residency if not for the current cap on SIJS visas.

- **Provide legal representation and/or a child advocate for children and youth in their immigration proceedings.** States should dedicate funding – either federal, state or local dollars – to ensure that all migrant children and youth are represented and supported by a professional with knowledge and skills to navigate the complex legal and immigration systems on their behalf. Similarly to providing representation for children and youth in child abuse and neglect hearings the state should ensure that migrant children and youth have legal representation to protect and ensure their safety and well-being.
Endnotes

3. SIJ visas are not the only form of immigration relief for undocumented migrant children. These children and youth may be eligible for asylum status, immigration relief as victims of trafficking or crime, Temporary Protected Status (TPS) or Deferred Action for Childhood Arrivals (DACA). However, due to strict eligibility and burden of proof requirements and lengthy adjudication processes for these other legal avenues of immigration relief, SIJS is often the form of relief sought for the most vulnerable children who qualify. Information on other forms of relief can be found at: http://www.iirc.org/files/documents/ilrc-immig_options_undoc_children-2013-07.pdf
5. In 2008, SIJS was amended to clarify that children who cannot reunify with one parent (rather than both parents) due to abuse, neglect or abandonment can qualify for SIJS. This amendment, which was authorized through the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, increased eligibility for SIJS including for children who may reside with their non-offending parent. See Immigrant Legal Resource Center, “Special Immigrant Juvenile Status: Primer for One-Parent Cases.”
10. USCIS allocates 10,000 visas every fiscal year to “Special Immigrants”, including special immigrant juveniles, certain employment-based applicants and certain religious and certain members of religious workers. In the first quarter of FY 2016, 3,117 SIJ petitions were approved and 4,493 petitions were awaiting decision. U.S. Citizenship and Immigration Services. (March, 2016). Number of I-360 Petitions for Special Immigrant with a classification of Special Immigrant Juvenile (SIJ) by Fiscal Year and Case Status 2010-2016. Retrieved from https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/1360_sij_performance_data_fy2016_qtr1.pdf
14. Children and Adolescents included here defined as: one who has no lawful immigration status in the United States; has not attained 18 years of age, and with respect to whom; 1) there is no parent or legal guardian in the United States; or 2) no parent or legal guardian in the United States is available to provide care and physical custody. (Office of Refugee Resettlement)
15. In the absence of available SIJS visas, USCIS has indicated they will reject all lawful permanent residency requests for children and youth from El Salvador, Guatemala and Honduras (beginning May 1, 2016) and children and youth from Mexico (beginning July 1, 2016).