

Special Immigrant Juvenile Status

A Critical Pathway to Safety and Permanence



Guidance for Practitioners 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 employment opportunities in the United States.^{1,2} To better serve and support the well-being of these children and youth, advocates, attorneys and practitioners have supported these children and youth in petitioning for **Special Immigrant Juvenile Status (SIJS)** – a critical pathway to lawful permanent residency for children and youth for whom it is deemed to be in their best interests to remain in the U.S. and cannot be returned to their home country due to abuse, neglect or abandonment. SIJS visas are designated for such children and youth who are younger than 21 years of age and are not married.^{3,4} Although SIJS status is not the only form of immigration relief for migrant children and youth, it is often the first form of relief sought because of its expedited timeline and the lower burden of proof placed on the applicant, who is often a vulnerable child.⁵

As a result of the increase in children and youth entering the United States from Central America, the U.S. State Department announced this April⁶ that it has reached

its allocated FY 2016 cap for SIJS visas for children from El Salvador, Guatemala and Honduras.⁷ The State Department also announced that the SIJS cap had been reached for children and youth from Mexico in its July visa bulletin.⁸ Through the end of the fiscal year (September 30, 2016), the U.S. Citizenship and Immigration Services (USCIS) has indicated that while **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.⁹

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 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 2015.¹⁰ Children and youth from these four 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

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.

petitions for lawful permanency residency (Form I-485).

Without lawful permanent residency, these children and youth, though eligible through SIJS, will not be eligible for the federally reimbursed services including health care, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), the Supplemental Nutrition Assistance Program and federally funded foster care and adoption subsidies.

Migrant Children and Child Welfare

Once migrant children and youth arrive in the United States, many face challenges in accessing services and supports due to language, cultural and legal barriers. 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. Migrant children and youth face additional barriers to their education due to enrollment processes and requirements despite federal legislation and legal safeguards.^{12, 13} Older youth often face additional barriers to enrollment due to their age and the potential that they will not complete their education before reaching the age-cap on public school enrollment and consequently are often pushed to pursue alternative education

programs.¹⁴ Importantly, they have experienced multiple layers of trauma in their home country, during their migration to the United States and as they acclimated to a new culture, family and country. Such traumatic experiences can create additional challenges and stress that impacts their well-being. In addition to these concrete and measurable instabilities, migrant children and their families also often face constant fear of harsh immigration enforcement, deportation and familial separation due to lack of legal status.

Migrant children and their families come into contact with the child welfare system due to either allegations of neglect, abuse – like all families – or in some cases because the child or youth does not have a parent or guardian living in the United States who is able to meet their needs and provide a safe and stable home. When migrant children and families are involved with child welfare, systems struggle to identify and implement supportive services – both concrete supports and individualized services – to meet their needs due to their legal status and the barriers discussed earlier. For example, these children and families are not eligible for TANF, Medicaid and SNAP, thereby creating significant barriers to accessing concrete supports and supportive services, including mental health and substance abuse services. This can create safety and risk concerns that result in the child or youth being

Unaccompanied Children and Adolescents, by Fiscal Year and Nationality

Country	2009	2010	2011	2012	2013	2014	2015	2016*
El Salvador	1,221	1,1910	1,394	3,314	5,990	16,404	9,389	11,404
Guatemala	1,115	1,515	1,565	3,835	8,068	17,057	13,589	12,337
Honduras	986	1,017	974	2,997	6,747	18,244	5,409	6,152
Mexico	16,114	13,724	11,768	13,974	17,240	15,634	11,012	8,052

*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.

removed and placed in foster care.

When these children and youth are removed from their parent or legal guardian – or placed in foster care as a result of not having a parent or guardian – the child welfare system and practitioners have a unique opportunity to support the long-term well-being of these children and youth by ensuring that they are assisted in obtaining immigration relief, including SIJS and lawful permanent residency.

Impact of Hold on SIJS Visas for Children and Youth in Child Welfare

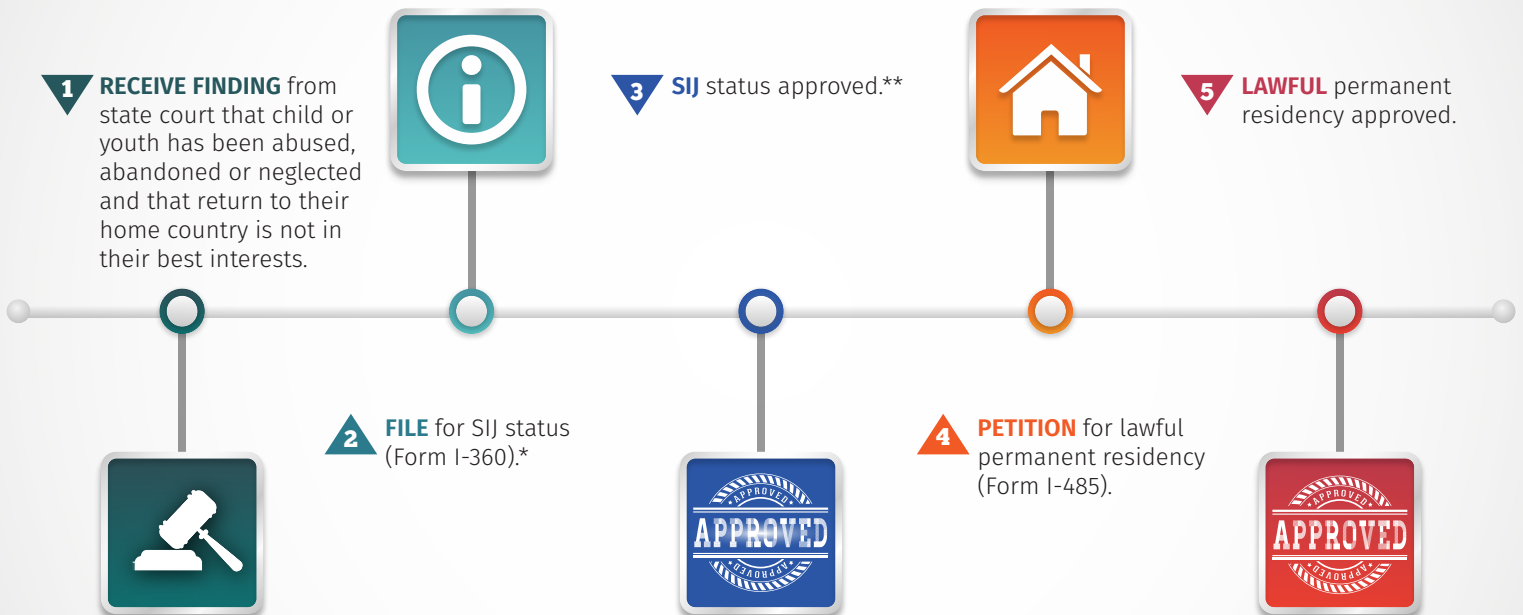
Although the impact of the SIJS visa cap being reached has a profound impact on all migrant children and youth, the impact on children and youth involved with child welfare is slightly more complex due to restrictions in how federal funding is used to support this population. Child welfare systems have a responsibility to children and youth to ensure their safety, promote permanency and support their well-being. The Child Abuse Prevention and Treatment Act (CAPTA) prohibits immigration status from being a barrier to ensuring child safety, however, children and youth who are not lawful permanent residents are not eligible for federally funded foster care or adoptions subsidies.¹⁵ In addition, while children and youth may qualify for some short-term services that are “necessary to protect life or safety” – including crisis counseling – eligibility for these services is based on an exception to federal benefit eligibility.¹⁶

The barrier created by no longer accepting applications for

SIJS visas dramatically impacts access to important services for migrant children from El Salvador, Guatemala, Honduras and Mexico. For youth who are age 16 years and older and not yet lawful permanent residents, services to support independent living through federally funded Chafee Independent Living Programs likely would not be qualified as “necessary to protect life and safety” and so as a result, migrant youth would not have access to these important services, which are designed to foster skills that are key for youth in transitioning successfully to adulthood.

Permanency is also a critical function of the child welfare system, and when children and youth are unable to return to their parents, adoption is often sought. Children and youth who are Title IV-E eligible are eligible for an adoption subsidy, which is often a critical resource for adoptive families who welcome a new member to their family. For families adopting a child or youth who does not have lawful permanent residency, lack of access to this resource may be a barrier to that child or youth’s ability to achieve permanency and exit the foster care system in a positive manner. For older youth in foster care who are seeking employment opportunities either while in foster care or when they age out of care, the USCIS decision to no longer accept applications (Form I-485) for lawful permanent residency prevents them from being able to secure Employment Authorization – which youth are able to do while their Form I-485 is in process. This also has a negative impact on older youth who are seeking higher education as their lack of status directly limits their ability to access affordable higher education opportunities and financial aid.

Process for Securing SIJS Visa



*One major benefit provided through the SIJS application process is that a child or youth can petition United States Citizenship and Immigration Services (USCIS) for both SIJ status and lawful permanent residency at the same time.

** Unlike other forms of immigration relief, SIJS statute is largely non-discretionary, meaning that if a child meets the eligibility requirements for SIJS, his or her I-360 petition should be granted. SIJ status makes a child or youth immediately eligible to apply for lawful permanent residency and these forms may be filed at the same time. After five years of lawful permanent residency status, an immigrant may apply to become a U.S. citizen.



Practitioner Recommendations

Child welfare agencies have an obligation to provide clear guidance to all staff including supervisors and frontline workers to ensure knowledge and implementation of best practices, particularly as they relate to the current unavailability of SIJS visas for children and youth from El Salvador, Guatemala, Honduras and Mexico. Frontline workers and supervisors work diligently to support safety and well-being for all children and youth in foster care. However, in addition to needs related to permanency, safety and well-being, migrant children have specific needs related to their immigration status. Child welfare workers and supervisors are not experts on immigration and often need additional support to ensure unaccompanied minors acquire legal permanent residency. Migrant children and youth live across the country, and it is important that all state agencies understand their unique circumstances and needs. All child welfare systems need to issue guidance to frontline workers and provide support on how to access immigration support and acquire and file the appropriate paperwork to ensure migrant children and youth receive an SIJS visa. In some areas, like Los Angeles, there is a unit that is trained and dedicated to working with migrant children and youth, but this may not be possible in all systems, which further highlights the need for systems to provide guidance and coaching to ensure safety, well-being and permanency for migrant children and youth.

Furthermore, child welfare practitioners and advocates have opportunities to support well-being and promote permanency throughout their practice. The following recommendations outline actions child welfare practitioners and administrators should take to promote the well-being and permanency of migrant children involved with child welfare systems.

To promote well-being:

- ▶ **Continue to file for SIJS (Form I-360) on behalf of minors from Guatemala, Honduras, El Salvador and Mexico.** The current cap on SIJS visas should not prohibit child welfare workers and practitioners, including attorneys and guardians ad litem, from moving forward and filing for SIJS. To be eligible for SIJS, the appropriate court findings and paperwork must be filed before the child or youth's 21st birthday.¹⁷ It is imperative that practitioners and advocates continue to seek the necessary findings in court and file the appropriate forms to move forward with petitioning for lawful permanent residency once the cap is lifted in October 2016 (when the new fiscal year begins). It can be difficult to get a case in front of the court once a child or youth has exited the foster care system so having the appropriate findings issued during an open foster care case is imperative.
- ▶ **Seek deferred action for SIJS eligible children while awaiting the availability of SIJS visas.** USCIS has the authority to grant deferred action, which is temporary relief from deportation, for SIJS visa-eligible applicants, although it has not yet done so. By obtaining Deferred Action, these children and youth will be exempt from deportation for two years and will be eligible to apply for Employment Authorization.
- ▶ **Inform children and youth petitioning for SIJS that a change to their circumstances can impact their eligibility for an SIJS visa.** Despite having the appropriate finding and forms completed, youth

may be found no longer eligible for a SIJS visa if they get married or are arrested.

- ▶ **Ensure children are enrolled in state Medicaid programs as soon as their Form I-360 petitions are approved and have access to mental and behavioral health services.** Currently there is no mandate to ensure children and youth who are in the process of seeking an 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 access, several states provide excellent examples of state-funded programs that ensure migrant children and youth can access health care. Practitioners and advocates should ensure migrant children and youth are enrolled in these programs and advocate for the development of such programs when they are not readily available. Furthermore, lack of health insurance should not be a barrier to migrant children and youth accessing appropriate mental and behavioral health services to promote their well-being, and efforts should be made to ensure access to services that are on a sliding scale, provided pro-bono or funded through other means – including local, state or foundation dollars.
- ▶ **Support migrant children and youth enrolling in appropriate education settings.** Migrant children and youth often face barriers to school enrollment despite legal safeguards that exist to ensure residency is not a barrier to enrollment. Child welfare systems are dedicated to supporting the educational development of migrant children and youth in foster care through access to quality education to grow, develop and succeed. It is particularly critical that practitioners and advocates support older youth in navigating and accessing their educational options.

To promote permanency:

- ▶ **Continue to work toward achieving positive exits to permanency for migrant children and youth in foster care.** Child welfare workers and practitioners, including attorneys and guardians ad litem, should continue to pursue adoption or guardianship for children and youth who cannot be reunited with their birth parent. Furthermore, when the goal for a child is adoption and the child is 16 or younger, child welfare practitioners and advocates should pursue this permanency outcome in a timely manner as the child may be granted automatic U.S. citizenship if the child is adopted by a citizen and meets additional qualifications.

- ▶ **Support permanent caregivers in pursuing adoption or guardianship.** Prior to closing a child or youth's case in family court, those who become permanent caregivers through adoption or guardianship of migrant children must have a strong understanding of:
 - the community-based resources available
 - the federal supports for which children and youth qualify
 - the next steps in moving forward with seeking an SIJS visa for the child or youth in their care

Caregivers may not be aware of these resources and the necessary next steps to support the well-being of the child and youth in their care, both of which are essential to ensuring long-term stability, success and well-being.

- ▶ **Support older youth prior to aging out of foster care.** Older youth who age-out of foster care are more likely to experience negative outcomes related to their health, well-being, housing, education and employment. Youth who do not have legal status prior to aging out of care are at an increased disadvantage and even more likely than peers who are citizens that age out of care to experience poor outcomes upon leaving foster care. Systems should support older youth by:
 - ensuring the proper findings have been issued by the court and all forms (I-360 and I-485) have been filed.
 - connecting youth to community-based agencies that can provide support and specific guidance related to pursuing permanent legal residency once the cap is lifted.
 - ensuring youth have filed for health insurance under the ACA or other health care coverage.
 - informing and connecting youth to adult education and higher education opportunities.
 - filing all the appropriate forms to receive authorization for employment.
- ▶ **Advocate for the court to appoint legal representation to support migrant children and youth resolve their immigration status.** Petitioning for an SIJS visa is a complex process that requires specific knowledge related to legal findings and administrative processes. Practitioners and advocates should request the court appoint representation for migrant children and youth to support them through the immigration process.

Endnotes

1. UNHCR's Children on the Run: <http://www.unhcr.org/en-us/children-on-the-run.html>.
2. Silva Mathema, "They Are Refugees: An Increasing Number of People Are Fleeing Violence in the Northern Triangle" Center for American Progress. (Feb 24, 2015), <https://www.americanprogress.org/issues/immigration/news/2016/02/24/131645/they-are-refugees-an-increasing-number-of-people-are-fleeing-violence-in-the-northern-triangle/>.
3. 8 U.S.C. § 1101(a)(27)(J)(defining Special Immigrant Juvenile Status).
4. 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."
5. SIJS 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.ilrc.org/files/documents/ilrc-immig_options_undoc_children-2013-07.pdf.
6. U.S. Department of State, Bureau of Consular Affairs. (May, 2016). Visa Bulletin: Immigrant Numbers for May 2016. Retrieved from https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_May2016.pdf.
7. USCIS allocates 10,000 visas every fiscal year to "Special Immigrants", including special immigrant juveniles, certain employment-based applicants and certain 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/I360_sij_performeddata_fy2016_qtr1.pdf.
8. U.S. Department of State, Bureau of Consular Affairs. (June, 2016). Visa Bulletin for July 2016. Retrieved from <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-july-2016.html>
9. (<https://www.uscis.gov/green-card/special-immigrant-juveniles/sij-petition-process>).
10. U.S. Department of State, Bureau of Consular Affairs. (June, 2016). Visa Bulletin for July 2016. Retrieved from <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-july-2016.html>.
11. 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).
12. Plyer v. Doe, 457 U.S. 202 (1982).
13. Georgetown Law Human Rights Institute Fact Finding Project. (2016). Ensuring every undocumented student succeeds: A report on access to public education for undocumented children." Retrieved from <https://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/events/upload/2015-16-HRI-Fact-Finding-Report.PDF>.
14. Georgetown Law Human Rights Institute Fact Finding Project. (2016).
15. 42 U.S.C. §5101.
16. 8 U.S.C. §1611(b)(d)(iii).
17. Under the Perez-Olano settlement concluded in April 2015, USCIS agreed that it will not deny, revoke, or terminate a SIJS application (Form I-360) or SIJS-based adjustment of status if, at the time of filing a SIJS application (1) the applicant is or was under 21 years of age, unmarried, and otherwise eligible, and (2) the applicant either is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing. Accordingly, SIJs should be protected from age out by properly filing Form I-360, even if SIJS-based adjustment is delayed after age 21.

About the Authors

This brief was authored by Rosalynd Erney, a policy and research assistant, and Alexandra Citrin, a senior policy analyst at CSSP.

Special thanks to CSSP staff Shadi Houshyar and Megan Martin and Wendy Cervantes, Vice President of Immigration and Child Rights at First Focus and Director of the Center for the Children of Immigrants and Jessica Jones, Policy Council at Lutheran Immigration and Refugee Service for their expertise and feedback on this brief.