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STATES AND STATUS: A STUDY OF GEOGRAPHICAL DISPARITIES FOR IMMIGRANT YOUTH

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STATES AND STATUS: A STUDY OF GEOGRAPHICAL DISPARITIES FOR IMMIGRANT YOUTH

Laila L. Hlass*

ABSTRACT

In this article, I consider the legal and practical challenges arising out of a particular immigration protection for abandoned, abused, and neglected child migrants called “Special Immigrant Juvenile Status” (SIJS). This benefit, which is a pathway to legal permanent residence and citizenship, is the only area within federal immigration law that requires a state court to take action in order for immigration authorities to consider an individual’s eligibility for relief. Differences among states impact the implementation of the SIJS statute. To understand how this important protection works in practice, I obtained an original data set of roughly 12,000 SIJS applications from the Department of Homeland Security in June 2013. Using this data set, I describe trends over time and by state regarding the number of SIJS applicants. After considering population differences, I examine application disparities among states and identify a subset of seven particularly high- and low-application states, as well as states that have had significant increases in the number of applications. Additionally, I conducted 33 interviews with federal government officials, state child welfare staff, and child immigration attorneys regarding SIJS practices, particularly focusing on these seven selected states. Based on the

* Clinical Associate Professor, Boston University Law School. For helpful insights and conversations at various stages of this project, thanks to Juliet Aiken, Jason Cade, Rachel Camp, David Koplow, Lindsay Harris, Geoffrey Heeren, Susan Schmidt, Andrew Schoenholtz, Philip Schrag, Ragini Shah, David Thronson, Amy Uelmen, and participants in the 2013 Clinical Law Review Writers Workshop. The Article also benefited from presentations to the law faculties at The University of Alabama and the University of South Carolina. I am also grateful to the many child immigration practitioners, federal and state public servants, and other stakeholders, who shared their experiences with me.

data findings, these interviews, and other research, this article discusses how factors such as states' family laws, child welfare policies, and specialized legal resources may affect the ability of potential SIJS applicants to access protection. I strive to understand the ways that this law meets and falls short of its intended purpose, as well as how it upholds the core principle of equality under the law. Ultimately, this article proposes a variety of reforms that seek to improve the law: increasing the screening of potentially eligible children, ensuring that these children have access to counsel, and creating a federal safeguard to address disparities created by differences in states' laws.

I. INTRODUCTION

Nineteen year old Ana¹ is a Virginia high school senior; she's short in stature, but has big dreams. She yearns to be an archeologist, however her future is uncertain. She may be deported at any moment. Several years ago, Ana fled her home country of El Salvador after years of being repeatedly raped by her stepmother's relatives. Three times they held guns to her face after violating her, threatening to finish her off. Ana found no comfort from her stepmother, who regularly beat and burned her, nor from her father, who never gave her any love, support, or protection. After fleeing to the United States, Ana was caught by immigration agents and placed in a child detention center, managed by the Office of Refugee Resettlement (ORR). ORR released her to Maria, her closest relative, who lives in Virginia.

With the help of child migrant organization Kids in Need of Defense,² Maria filed for custody of Ana when she was still seventeen. Within the custody proceeding, Ana also asked the Virginia court to make certain findings—that she had been abused and neglected, that reunification with her father was not likely, and that it was in her best interests not to return to El Salvador. With these findings, she would have been able to petition the federal government to classify her with Special Immigrant Juvenile Status (SIJS).³ Obtaining SIJS, an immigration protection for abandoned, abused, or neglected

1. Ana, whose name has been changed for privacy, has given permission for her story to be shared for the purpose of raising awareness of her and other children's plight.

2. Kids in Need of Defense, <http://www.supportkind.org/> (last visited Feb. 1, 2014).

3. 8 U.S.C. § 1101(a)(27)(J).

migrant children, would make her eligible for permanent legal residency and eventually citizenship.⁴ The day of the hearing was Ana's eighteenth birthday. While the judge found it in Ana's best interests to be in Maria's custody, she stated that the request for findings should be entitled a "petition" rather than a "motion," requiring that counsel re-file that day. Counsel did so, but the case was not calendared until a month and a half later, after Ana turned eighteen. A new judge promptly denied the petition for findings on a number of grounds, including that Virginia state law only allows custody petitions for individuals under the age eighteen.⁵

What would have happened if Ana lived in another state? If that one geography factor were changed, would the dice have rolled differently for her chance of staying in the United States? If she had been released to a relative in Mississippi, state law, which allows guardianship until twenty-one,⁶ would not have prevented her from obtaining a guardian and the necessary SIJS order. However, there are only a few immigrant direct services non-profit organizations in Mississippi, and none have a Mississippi-licensed attorney who could bring the family court action.⁷ With these odds against her, she may never have been screened for immigration relief or have found representation to bring the matter to family court. Even if she did somehow find help, the state court judge may be resistant to granting the order, as SIJS is not well known in Mississippi, leaving Ana in the same vulnerable position as before.

Alternatively, what if Ana had been released to a relative in New York City? There, she likely would have encountered an attorney at a child migrant organization,⁸ who would have then helped her with the guardianship proceeding, since state law extends jurisdiction to children under the age of twenty-one.⁹ Just as

4. 8 U.S.C. § 1255(h).

5. The details for Ana's story were provided by her attorney and from an affidavit (on file with author).

6. Miss. Code Ann. § 93-13-75 (establishing that guardianship terminates at majority); Miss Code Ann § 91-20-3(k) (defining a minor as someone under 21 years of age).

7. *Legal Project*, Miss. Immigrant Rights Alliance, <http://www.yourmira.org/about/legal-project/> (last visited Sept. 19, 2013) [hereinafter MIRA]; Telephone Interview with Patricia Ice, Legal Director, MIRA (Aug. 21, 2013); E-mail from Mary Townsend, El Pueblo, to author (Aug. 12, 2013, 1:00pm EST) (on file with author).

8. See *infra* Part IV.C.1 (detailing the increased availability of legal services in New York).

9. N.Y. Fam. Ct. Act § 661(a).

important, in New York City, most family court judges are familiar with the findings necessary for SIJS-eligible children, as there are standardized forms,¹⁰ guidance documents,¹¹ and periodic trainings.¹² Therefore, she would likely have been able to obtain a legal guardian, and the SIJS findings order, putting her on the road towards US citizenship and her dreams. Three different states; three different outcomes; all under one supposedly equal federal program.

More than 60,000 unaccompanied minors are estimated to be apprehended while entering the United States in 2014,¹³ while more than a million unauthorized minors live in the United States undetected by the Department of Homeland Security.¹⁴ Many youths come to the United States to flee family violence like Ana, while others may be running from slavery, gangs, war, or other forms of persecution.¹⁵ Although overall unauthorized migration into the

10. Special Immigrant Juvenile Status Order GF-42, New York Family Court, *available at* <http://www.nycourts.gov/forms/familycourt/pdfs/gf-42.pdf>.

11. Memorandum from the Honorable Ann Pfau, Chief Administrative Judge, to Judges and Clerks of the Family Court (Oct. 8, 2008).

12. Telephone Interview with Harry Gelb, Child Welfare Worker (June 18, 2013).

13. United Nations High Commissioner for Refugees, Children on the Run (2014), *available at* http://www.unhcrwashington.org/sites/default/files/UAC_UNHCR_Children%20on%20the%20Run_Full%20Report.pdf; Lisa Frydman, Elizabeth Dallam & Blaine Bookey, A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System i (2014), *available at* http://www.supportkind.org/joomlatools-files/docman-files/macArthur_report_A_Treacherous_Journey.pdf. In fiscal year 2012, 24,481 unaccompanied immigrant minors were apprehended near the border. Customs Border Protection, Juvenile and Adult Apprehensions – Fiscal Year 2012, <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202012%20Sector%20Profile.pdf>.

14. Michael Hoefer et al., Dep't of Homeland Sec., Estimates of the Unauthorized Immigrant Population Residing in the United States (2012), https://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2011.pdf.

15. Jessica Jones & Jennifer Podkul, Women's Refugee Commission, Forced From Home: The Lost Boys & Girls of Central America, (2012); Simy Cuervo & Tosin Ogunyoku, The United States Conference of Catholic Bishops Migration and Refugee Services, The Changing Face of the Unaccompanied Alien Child: A Portrait of Foreign Born Children in Federal Foster Care (2012), *available at* http://www.usccb.org/about/children-and-migration/unaccompanied-refugee-minor-program/upload/A-Portrait-of-Foreign-Born-Children-in-Federal-Foster-Care-and-How-to-Best-Meet-Their-Needs_USCCB-December-2012.pdf; Amanda Levinson, Migration Policy Institute, Unaccompanied Immigrant Children: A Growing Phenomenon with Few Easy Solutions (2011), *available at* <http://www.migrationinformation.org/Feature/display.cfm?ID=823>.

United States has stalled,¹⁶ the number of unaccompanied juveniles apprehended while entering the United States doubled in 2012, with stakeholders calling this unprecedented growth the “new normal.”¹⁷ Unlike Ana, most juveniles face deportation proceedings without representation.¹⁸ Many SIJS-eligible youths are never screened for eligibility and thus never have the chance to access the protection that the federal legislation intended.¹⁹ As a result, the SIJS statute has been vastly underused since its created twenty years ago.²⁰

The national conversation regarding immigration, particularly child immigration, rages on.²¹ Since June 2012 when President Obama rolled out “Deferred Action for Childhood Arrivals”

16. Jeffrey Passel et al., Pew Research Center, Population Decline of Unauthorized Immigrants Stalls, May Have Reversed (2014), *available at* <http://www.pewhispanic.org/2013/09/23/population-decline-of-unauthorized-immigrants-stalls-may-have-reversed/>.

17. Julia Preston, *Young and Alone, Facing Deportation*, N.Y. Times, Aug. 26, 2012, at A1.

18. Nat'l Collaboration for Youth & Nat'l Juvenile Justice Network, Undocumented Immigrant Youth: Guide for Advocates and Service Providers (2006), *available at* <http://www.refugees.org/resources/for-lawyers/special-immigrant-juvenile-status/undocumented-immigrant-youth.pdf> (last visited Sept. 22, 2013).

19. Yali Lincroft & Jena Resner, Undercounted. Underserved. Immigrant and Refugee Families in the Child Welfare System 7 (2006), *available at* <http://www.f2f.ca.gov/res/pdf/UndercountedUnderserved.pdf>; Kristen Jackson, *Special Status Seekers*, Los Angeles Lawyer, Feb. 2012, at 20–22, *available at* <http://www.lacba.org/Files/LAL/Vol34No11/2893.pdf>; Anna Gorman, *Green Cards Go Unclaimed by Many Youth in Foster Care*, L.A. Times, June 25, 2007, *available at* <http://articles.latimes.com/2007/jun/25/local/me-foster25> (last visited Sept. 22, 2013) (“Los Angeles County is among the few areas where the law works well, experts said...But elsewhere around the nation, the law is not implemented as consistently.”).

20. See Gorman, *supra* note 19 (“Abused children throughout California and the nation who are undocumented but entitled to green cards are frequently not receiving them.”).

21. See Ian Gordon, *70,000 Kids Will Show Up at Our Border This Year. What Happens to Them?*, Mother Jones, July/August, 2014, *available at* <http://www.motherjones.com/politics/2014/06/child-migrants-surge-unaccompanied-central-america> (stating that the number of unaccompanied minors arrested while entering the country surged to an estimated 70,000 in 2014). See Richard Cowen, *U.S. Immigration Reform Advocates See New Hope In 2014*, Reuters (Jan. 17, 2014), *available at* <http://www.reuters.com/article/2014/01/17/us-usa-congress-immigration-idUSBREA0G1NB20140117> (stating that in 2013, the Senate passed a comprehensive immigration reform bill, Border Security, Economic Opportunity, and Immigration and Modernization Act. S. 744, 113th Cong. (2013), and in 2014, House Republicans discussed introducing their own immigration reform bill).

(DACA), a prosecutorial discretion program aimed at high-achieving immigrants who have grown up in the United States, more than half a million individuals have applied to receive temporary work authorization under the program.²² The federal government is increasingly trying to tailor immigration laws to address the special needs of migrant children.²³ In the past few years, an inter-agency federal government working group has come together to address the needs of unaccompanied immigrant children.²⁴

Further, in the last several years there has been increased attention to the role of states in regulating immigration; states have rolled out an unprecedented number of laws regarding immigrants,²⁵ and the Supreme Court, under the federal preemption doctrine, struck down portions of Arizona's SB 1070, which mandated state actors enforce certain immigration violations.²⁶ While scholarship has increasingly focused on the role of states legislating in the field of immigration,²⁷ little attention has been given to SIJS, the only area of

22. Tom K. Wong, Angela S. Garci, Marisa Abrajano, David Fitzgerald, Karthick Ramakrishnan & Sally Le, Center for American Progress, Undocumented No More: A Nationwide Analysis of Deferred Action for Childhood Arrivals 9 (2013) (stating that as of Aug. 15, 2013, 573,404 DACA applications have been submitted).

23. Consider the Deferred Action for Childhood Arrivals program as well as the Border Security, Economic Opportunity, and Immigration Modernization Act, which would create a path for child migrants to obtain legal permanent residence. S. 744, 113th Cong. § 2103, § 2101(c)(13).

24. Interview with Julie Plavsic, Policy Analyst, Int'l & Humanitarian Affairs Div., Office of Policy & Strategy, U.S. Citizenship & Immigration Servs., Dep't of Homeland Sec. in D.C. (Sept. 24, 2012).

25. Ian Gordon & Tasneem Raja, *164 Anti-Immigration Laws Passed Since 2010? A MoJo Analysis*, Mother Jones, Mar./Apr. 2012, available at <http://www.motherjones.com/politics/2012/03/anti-immigration-law-database> (last visited Sept. 22, 2013); Sunny Harris Rome, *Untangling the Web: Immigration Law and Child Welfare Practice*, 12 Mich. Child Welfare Law J. 14, 16 (2008) (noting that in 2007, over 1400 bills related to immigration were introduced into state legislatures).

26. *Arizona v. United States*, 132 S.Ct. 2492 (2012).

27. See generally, Gerald L. Neuman, *The Lost Century of American Immigration Law (1776–1875)*, 93 Colum. L. Rev. 1833 (1993) (detailing the changes in early American immigration law); Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 Mich. L. Rev. 567 (2008); *Learning to Live with Immigration Federalism*, 29 Conn. L. Rev. 1627 (1997); Mark S. Grube, Note, *Preemption of Local Regulations Beyond Lozano v. City of Hazelton: Reconciling Local Enforcement with Federal Immigration Policy*, 95 Cornell L. Rev. 391, (2010); Scott A. Gray, Note, *Federalism's Tug of War: Alabama's Immigration Law and the Scope of State Power in Immigration*, 64 Ala. L. Rev. 155 (2012); Jordan Jodré, *Preemptive Strike: The Battle for Control*

immigration law where the federal government requires the involvement of state courts in order to grant immigration relief.²⁸ Current scholarship regarding SIJS has primarily focused on particular aspects of the federal law such as amendments or requirements,²⁹ provided case studies of SIJS in one particular region,³⁰ or used SIJS as a lens to examine children's rights within the immigration scheme.³¹ While some scholarship has discussed more systemic issues relating to the interaction of state and federal law, none has done so using existing empirical data regarding SIJS applications.³²

over *Immigration Policy: An Examination of the Ninth and Tenth Circuits' Split over Federal and State Authority in Regulating Immigration*, 25 Geo. Immigr. L.J. 551 (2011); Kathryn J. Couch, *This Land is Our Land, a Local Solution to a Local Problem: State Regulation of Immigration Through Business Licensing*, 21 Geo. Immigr. L.J. 641, (2007); Kevin R. Johnson, *Immigration and Civil Rights: State and Local Efforts to Regulate Immigration*, 46 Ga. L. Rev. 609 (2012); Keith Cunningham-Parmeter, *Forced Federalism: States as Laboratories of Immigration Reform*, 62 Hastings L.J. 1673 (2011).

28. State court proceedings may implicate other types of immigration matters. State court judges may certify a form for applicants for U Nonimmigrant Status, and orders of protection issued by state courts are often central evidence for Violence Against Women Act self-petitions and other immigration relief for survivors of domestic violence. Furthermore, the outcome of state criminal proceedings often has serious immigration consequences and similar crimes may have different consequences depending on state law.

29. See Katherine Porter, *In the Best Interests of the INS: An Analysis of the 1997 Amendment to the Special Immigrant Juvenile Law*, 27 J Legis. 441 (2001) (providing an overview of the 1997 amendment); Angela Lloyd, *Regulating Consent: Protecting Undocumented Immigrant Children from Their (Evil) Step-Uncle Sam, or How to Ameliorated the Impact of the 1997 Amendments to the SIJ Law*, 15 B.U. Pub. Int. L.J. 237 (2006); Symposium, Gregory Zhong Tian Chen, *Eliau or Alien? The Contradictions of Protecting Undocumented Children under the Special Immigrant Juvenile Statute*, 27 Hastings Const. L.Q. 597 (2000); Emily Rose Gonzalez, *Battered Immigrant Youth Take the Beat: Special Immigrant Juveniles Permitted to Age-out of Status*, 8 Seattle J. for Soc. Just. 409 (2009).

30. See Theo Liebmann, *Keeping Promises to Immigrant Youth*, 29 Pace L. Rev. 511 (2009) (detailing changes in New York's policy approaches to SIJS); Lauren D'Ambra, *The Vital Role of the Rhode Island Family Court and its Unique Jurisdiction in Immigration Cases Involving Abused and Neglected Children*, 15 Roger Williams U. L. Rev. 24 (Spring 2010).

31. David B. Thronson, *Kids Will Be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law*, 63 Ohio St. L.J. 979 (2002).

32. Jennifer Baum, Alison Kamhi & C. Mario Russell, *Most in Need but Least Served: Legal and Practical Barriers to Special Immigrant Juvenile Status for Federally Detained Minors*, 50 Fam. Ct. Rev. 621 (Oct. 2012); Randi Mandelbaum, Elissa Steglich, *Disparate Outcomes: The Quest for Uniform*

This article is a first effort to collect, analyze, and present national data on SIJS, serving as an initial inquiry into views that immigration practitioners have long expressed with regard to how differences in states laws, policies, and resources affect who is able to access SIJS protection.³³ Part I of this article provides an overview of child migrants in the United States and the process of seeking SIJS. Part II looks at an original data set of SIJS applications over time, as well as population estimates of unauthorized immigrants, to identify trends and disparities of applications by state. Using multiple methods of comparing unauthorized immigration population and SIJS application rates, this section finds that there are stark differences in the application rates of states, and identifies a sampling of seven states including states with high and low application rates as well as states that have had a significant increase in their rates over the last several years.

Part III uses the information from these seven states to study the various ways in which implementation may differ, including laws, child welfare policies and practices, and access to legal representatives, and how these differences may affect the ability of potential SIJS applicants to access protection. In short, states with the highest rates of applications are: 1) states that have explicit policies indicating that children in care must be screened for SIJS and their immigration status must be addressed; 2) states with courts that have familiarity with SIJS findings evidenced through court forms or memorandum; and 3) states where children have more access to counsel. Finally, Part IV proposes reforms to harmonize the process for SIJS-eligible youths across states. Suggested reforms seek to ensure that children are identified and screened for immigration status and eligibility for relief, to increase access to representation of youths in both state and immigration proceedings, and to provide a

Treatment of Immigrant Children, 50 Fam. Ct. Rev. 606 (Oct. 2012). However, there has been one study using USCIS data regarding SIJS from the years 2004–2010. Jacqueline Bhabha & Susan Schmidt, *From Kafka to Wilberforce: Is the U.S. Government's Approach to Child Migrants Improving?* 11-02 Immigr. Briefings 1, Appendix 1 (Feb. 2011).

33. This article does not examine grant rates or how different practices in local Citizenship and Immigration Services offices affect adjudication. The CIS Ombudsman has issued some analysis of problems identified within SIJS adjudications at various USCIS regional offices. USCIS Ombudsman, *Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices*, (Apr. 15, 2011), available at <http://www.dhs.gov/xlibrary/assets/Citizenship-and-Immigration-Services-Ombudsman-Recommendation-Special-Immigrant-Juvenile-Adjudications.pdf> (last visited Sept. 19, 2013).

federal safeguard against instances where SIJS-eligible children are not able to obtain the necessary state court order despite their status as abandoned, abused, or neglected.

II. CHILD MIGRANTS AND SPECIAL IMMIGRANT JUVENILE STATUS

Migrant youths are pushed and pulled into the United States for a number of reasons—they may be fleeing domestic abuse, gang violence, extreme poverty, natural disaster and war; reunifying with a family member; or being trafficked.³⁴ This section will give 1) an overview of how migrant youths engage with immigration agencies; and 2) the process for child migrants to obtain SIJS classification, which requires that the child be under 21, unmarried, subject to a state court, and that reunification with a parent is not viable due to abandonment, abuse, or neglect.³⁵

A. The Path of Migrant Youths Through the United States and its Immigration System

More than 60,000 unaccompanied minors will be apprehended in 2014,³⁶ and there are an estimated 1,120,000 unauthorized immigrant youths under the age of eighteen within the United States.³⁷ SIJS seekers include both youths already caught in the immigration system and those not yet detected. However, most immigrant legal services organizations focus their resources on children already in deportation proceedings as a matter of priority.³⁸

34 . Rachel Reyes, *The Rise in Unaccompanied Minors: A Global Humanitarian Crisis*, Center for Migration Studies (Oct. 15, 2012), <http://cmsny.org/the-rise-in-unaccompanied-minors-a-global-humanitarian-crisis/> (last visited Oct. 31, 2014); Andrew I. Schoenholtz, *Developing the Substantive Best Interests of Child Migrants: A Call for Action*, 46 Val. U. L. Rev. 991, 994–95 (Summer 2012); Women's Refugee Commission & Orrick, Herrington & Sutcliffe LLP, *Halfway Home: Unaccompanied Children in Immigration Custody* (2009), available at <http://www.womensrefugeecommission.org/resources/download/196>; Jacqueline Bhabha & Susan Schmidt, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.* 20–22 (2006).

35. 8 U.S.C. § 1101(a)(27)(J).

36. Frydman, Dallam & Bookey, *A Treacherous Journey*, *supra* note 13.

37. Jeffrey Passel, *Demography of Immigrant Youth: Past, Present and Future*, The Future of Children, Spring 2011, at 24, available at http://futureofchildren.org/futureofchildren/publications/docs/21_01_02.pdf (unauthorized immigrants under eighteen are 1.5% of all children, numbering 74,699,000).

38. Telephone Interview with Alex Fung (May 13, 2013); Telephone Interview with Aleandra Minnaar (August 13, 2013); Telephone Interview with

While a Special Immigrant Juvenile must be a “child” under immigration law—meaning under twenty-one years of age and unmarried³⁹—there are special protections for a smaller set of youths who are under eighteen years old without a legal guardian or parent, referred to as Unaccompanied Alien Children (UAC),⁴⁰ many of whom may qualify for SIJS. Once immigration agents within the Department of Homeland Security (DHS) apprehend a child, the agency determines her age⁴¹ and status. DHS transfers all UACs to the custody of the Office of Refugee and Resettlement (ORR), the agency tasked with the care and custody of these youths.⁴² If a child is accompanied or over eighteen years old, then DHS continues to have jurisdiction to detain her, to release her on her own recognizance, or to set a bond.

ORR is tasked with incorporating child welfare principles in making placements, case management, and release decisions, and providing services such as education, health care, recreation, mental health services, and referrals for legal representation.⁴³ Many aspects of the detention and release of unaccompanied minors are regulated by the 1997 *Flores v. Reno* settlement, resulting from a twelve year class action suit brought on behalf of migrant children in immigration detention.⁴⁴ In accordance with this settlement, minors must be held

Dalia Castillo-Granado (Aug. 19, 2013); Telephone Interview with Rebekah Fletcher (Aug. 2, 2013). Some state child welfare agencies have policies regarding identifying SIJS-eligible youth, who are often not in removal proceedings.

39. 8 U.S.C. § 1101(b) and 8 U.S.C. § 1101(c).

40. 6 U.S.C. § 279(g)

41. The vast majority of UAC’s who are apprehended are between 15 and 17 years old. Chad C. Haddal, Cong. Research Serv., Unaccompanied Alien Children: Policies and Issues 1 (2009) (80% of unaccompanied minors are between 15 and 18); Olga Byrne & Elise Miller, Vera Institute of Justice, The Flow of Unaccompanied Children through the Immigration System: A Resource for Practitioners, Policy Makers and Researchers 32 (2012), *available at* <http://www.vera.org/sites/default/files/resources/downloads/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf> (34% of unaccompanied children are 17 years old, 23% are 16 years old, and 13% are 15 years old); Cuervo & Ogunyoku, *supra* note 15 (according to a US Conference of Catholic Bishops study, the average age of unaccompanied child entering their care was 16.7 years old).

42. 8 U.S.C. § 1232(b)(1); Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. 1997).

43. Elaine Kelley, ORR Programs for Vulnerable and Unaccompanied Children (2009).

44. *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. 1997) (settlement agreement).

in the least restrictive setting possible, be provided with various services, and be released when possible.⁴⁵

The number of unaccompanied minors entering the United States has surged in the past four years.⁴⁶ Most children are coming from Honduras, Guatemala, and El Salvador, and eighty-five percent are fourteen to seventeen years old.⁴⁷ Once the children are in ORR custody, they may be transferred amongst different shelters in various states. There are about eighty facilities in twelve different states,⁴⁸ and their numbers are growing.⁴⁹ The average length of stay in an ORR facility is sixty-one days,⁵⁰ and is even longer for those children that will enter foster care—their average stay in ORR is about seven months.⁵¹ These timeframes become utterly critical, as the length of time spent in ORR can be an obstacle to eligibility for SIJS, both because of the age limits to SIJS relief and because the ability to obtain legal representation is affected by transfers and lengthy ORR stays.

45. *Id.*

46. Historically, about 8,000 children entered ORR care annually, although this number has continued to double each year since the end of 2011. Kelley, *supra* note 43. In fiscal year 2012 this number reached about 14,000, and in 2013, almost 24,500 children were transferred to ORR care. Customs Border Protection, *supra* note 13. A projected 60,000 children may enter ORR custody in 2014. *Unaccompanied Alien Children (UAC)*, Refugee Council USA, <http://www.rcusa.org/index.php?page=uac> (last visited Sept. 22, 2013).

47. Kelley, *supra* note 43. See *infra* Appendix B for demographic information regarding SIJS applicants.

48. E-mail from Toby R. M. Biswas, Policy Analyst & Special Projects Assistant, U.S. Dep't of Health and Human Servs., Admin. for Children and Families Office of Refugee Resettlement, Div. of Children's Servs to author (Feb. 10, 2014, 8:46 AM EST). ORR stated that they do not release the locations of these facilities for the purposes of safety. Interview with Toby R. M. Biswas, Policy Analyst & Special Projects Assistant, U.S. Dep't of Health and Human Servs., Admin. for Children and Families Office of Refugee Resettlement, Div. of Children's Servs., D.C. (Mar. 5, 2013).

49. Jones & Podkul, *supra* note 15, n. 77 at 40.

50. *Id.* at 4. The average number of days changes every year. In FY 2010 it was 66, and in FY 2011, it was 72 days. In FY 2012, the average was on track to be 55 days.

51. Cuervo & Ogunyoku, *supra* note 15 (7.74 months FY 2008 to 6.44 in FY 2011). From 2008–2012, 8.5% of all placements were transfer placements of children who were already in ORR custody. E-mail from Toby R. M. Biswas, Policy Analyst & Special Projects Assistant, U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Office of Refugee Resettlement, Div. of Children's Servs., to author (Mar. 26, 2012, 3:51 PM EST) (in Fiscal Year 2008, the percentage of transfers from ORR was 7.67%, in Fiscal Year 2009 it was 8.28%, in Fiscal Year 2010 it was 11.07%, and in Fiscal Year 2011 it was 7.78%).

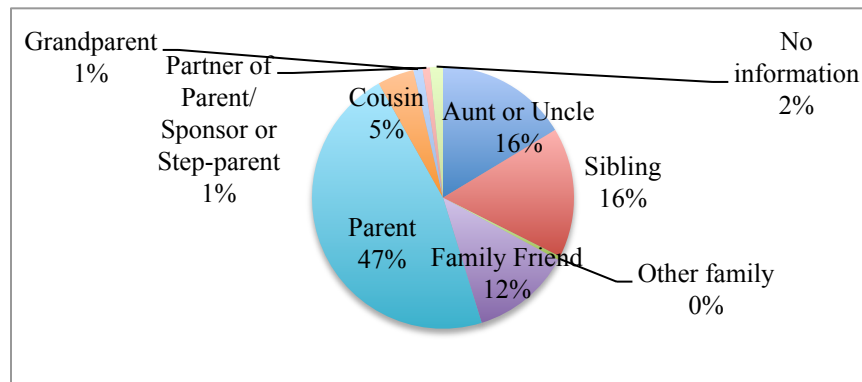
In fiscal years 2009–2010, about sixty-five percent of children who entered ORR custody were ultimately placed with a sponsor, and sixty-eight percent of these placed children were put into the custody of someone other than a parent.⁵² In fiscal years 2011 and 2012, about fifty-five percent of children who entered ORR were released to a non-parental sponsor.⁵³ These trends indicate that many of these children are potentially eligible for SIJS, which requires that reunification with one or both parents is not viable.⁵⁴ SIJS eligibility is further implicated by a study estimating that eighty-five percent of sampled ORR children have experienced trauma, such as sexual or physical assault, because of the SIJS requirement that reunification not be viable due to abandonment, abuse or neglect.⁵⁵

52. Byrne & Miller, *supra* note 41, at 17, 19.

53. E-mail from Toby R. M. Biswas, Policy Analyst & Special Projects Assistant, U.S. Dep’t of Health and Human Servs., Administration for Children and Families, Office of Refugee Resettlement, Div. of Children’s Servs. (Mar. 26, 2012, 3:51 PM EST).

54. Byrne & Miller, *supra* note 41, at 26.

55. Cuervo & Ogunyoku, *supra* note 15, at 8.

FIGURE 1. TYPE OF CUSTODIAN (FISCAL YEAR 2012)⁵⁶

Whether released to a relative or not, a juvenile who has been apprehended by immigration agents is subject to immigration court proceedings, unless the U.S. voluntarily returns the child to her home country through a repatriation program.⁵⁷ In several immigration courts, there are juvenile dockets, where an immigration judge hears all juvenile cases during the same time block.⁵⁸ While some juvenile dockets may be staffed by pro bono organizations, migrant children, like adults, do not have the right to a government provided attorney.⁵⁹ In 2010, Vera Institute for Justice subcontractors identified possible defenses to deportation for about 40% of unaccompanied alien children in custody.⁶⁰ One of the most common types of relief sought by youths is Special Immigrant Juvenile

56. Statistics used in this graph were provided by an e-mail from Toby R. M. Biswas, Policy Analyst & Special Projects Assistant, U.S. Dep't of Health and Human Servs., Admin. for Children and Families, Office of Refugee Resettlement, Div. of Children's Servs. (Mar. 26, 2012, 3:51 PM EST). According to the Perez-Olano settlement, the order of preference for sponsors to release children to is: 1) parent; 2) legal guardian; 3) an adult relative (brother, sister, aunt, uncle, or grandparent); 4) an adult individual or entity designated by the child's parent or legal guardian; 5) a licensed program willing to accept legal custody; or 6) an adult or entity approved by ORR, when another alternative to long term detention is unlikely and family reunification does not appear reasonable.

57. Byrne & Miller, *supra* note 41, at 22 (Mar. 2012); 8 U.S.C. § 1232.

58. As of April 2008, there were 10 juvenile dockets: Phoenix, Ariz.; Los Angeles, San Diego, and San Francisco, Cal.; Miami, Fla.; Chicago, Ill.; New York, N.Y.; Harlingen, Houston, and San Antonio, Tex. Press Release, Exec. Office for Immigration Review, Dep't of Justice, (April 22, 2008 (Revised)), *available at* <http://www.justice.gov/eoir/press/08/UnaccompaniedAlienChildrenApr08.htm>.

59. 8 U.S.C. § 1363.

60. Byrne & Miller, *supra* note 41, at 24–25.

Status.⁶¹ In fact, among 7,020 individual children in ORR custody who were methodically screened by Vera subcontractors, 22.8% appeared eligible for Special Immigrant Juvenile Status.⁶²

B. Migrant Youths' Journey Through the SIJS Process

Migrant children could be in one of two procedural postures when they apply for SIJS. Some youths⁶³ apply “defensively” while they are in immigration court proceedings, hoping to prevent their deportation. Other youths who apply for SIJS classification do so “affirmatively,” meaning that they are not in immigration court proceedings and that the DHS only becomes aware of their existence after they file for status. Some of these youths arrived in the United States with parents at a young age, and were later abandoned or neglected and put in foster care. Others came alone and are homeless or living with friends, employers, or adult caretakers in informal guardianship situations.⁶⁴ All of the advocates at child immigration organizations interviewed for this article focused their attention mostly—and sometimes exclusively—on children in removal proceedings.⁶⁵

Regardless of whether children are in an affirmative or defensive posture, the process for obtaining SIJS protection can be divided into two major steps: first, a state court proceeding determining best interests of the child and viability of parental reunification, and second, a DHS adjudication to determine whether the child meets SIJS requirements. In the first step, the youth must obtain an order with certain findings from a “juvenile court,” any state court having authority over the care and custody of juveniles.⁶⁶ Courts of general jurisdiction, probate courts, family courts, domestic

61. Other common forms of relief for children are asylum, U nonimmigrant status for crime survivors, and T nonimmigrant Status for human trafficking survivors.

62. Byrne & Miller, *supra* note 41, at 25.

63. The data set provided by USCIS did not include information about which cases involved youth in removal proceedings, so the percentage of affirmative versus defensive cases is not available.

64. Mirela Iverac, *For Abused, Undocumented Kids, A Legal Lifeline*, Time, Dec. 1, 2010, available at <http://www.time.com/time/nation/article/0,8599,2034139,00.html>.

65. One important question that this phenomena raises is how many SIJS eligible children are there who have not yet been identified or screened, because they are not in removal proceedings, and therefore are not as high a priority for under-resourced child migrant organizations.

66. 8 C.F.R. 204.11(a).

relations courts, and juvenile courts are all common forums for these proceedings.⁶⁷ The type of proceeding may vary as well, depending on state law, regional practice, and the individual circumstances of the child; some examples are permanency or foster care-related, protective orders, guardianship, adoption, custody, delinquency, declaratory judgments, and probate proceedings.⁶⁸

The findings needed in the state court order have changed over time as SIJS was amended, alternatively restricting and expanding the definition of which children qualify for SIJS.⁶⁹ Under current law, the order must indicate that 1) the child is dependent on the court or the court has placed the child in the custody of an individual or entity, often through a legal proceeding related to foster care, guardianship, or custody; 2) reunification with one or both parents is not viable due to abandonment, abuse, neglect, or a similar basis; and 3) it is not in the best interests of the juvenile to be returned to her country of origin.⁷⁰ Once the state court order is obtained, the youth can petition the federal government for a SIJS visa.⁷¹ If DHS approves a child for SIJS status, he or she is immediately eligible to apply for legal permanent residence,⁷² so a child will often file both applications at the same time.⁷³

67. *Special Immigrant Juvenile Status*, Immigration Ctr. for Women and Children, <http://icwclaw.org/services-available/special-immigrant-juvenile-status-sils/>; see also Laila Hlass, *Immigration for Legal Aid Lawyers*, in Louisiana Legal Services and Pro Bono Desk Manual 556, available at <http://loyno.edu/~probono/manual/immigration.pdf> (last visited Sept. 22, 2013) (indicating types of courts are common).

68. See *id.*; Jackson, *supra* note 19. See also National Immigrant Women's Advocacy Project, Opportunities to Make Findings in State Court Cases, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/powerpoint-presentations-trainings-for-state-court-judges/DS%20Superior%20Court%20SIJS%20Training%20w%20CIS%20NIWAP%20Part%20Dec%205%202013.pdf> (providing an overview of the differences in state court proceedings).

69. See *infra* Appendix A in order to understand specifically how and when the definition has changed.

70. 8 U.S.C. § 1101(a)(27)(J).

71. USCIS, Instructions for Form I-360, Petition for Amerasian Widow(er), or Special Immigrant, available at <http://www.uscis.gov/files/form/i-360instr.pdf>.

72. 8 U.S.C. § 1255(h). Most non-citizens seeking adjustment of status must prove that in addition to having a valid basis for seeking adjustment (such as being approved for SIJS or a family visa) they must not be "inadmissible," which is defined in 8 U.S.C. § 1182 and includes a variety of factors such as health, criminal, national security, public charge, immigration violations, and documentation grounds. SIJS-approved youth are exempted from a number of these grounds, and have some waivers that are unavailable to most categories of

III. SIJS FROM 1999 – 2012: PROCESSING TIMES OF APPLICATIONS, AVERAGE AGE OF APPLICANTS, AND DISPARITIES IN STATES OF RESIDENCE

The number of SIJS applicants has fallen and risen with the corresponding restrictions and expansions of the statute.⁷⁴ In the first decade of SIJS, the number of youths already approved for SIJS who were applying for legal permanent residence hovered around 500 each year;⁷⁵ while in 2011 the number of SIJS-approved youth applying for legal permanent residence rose to 1,626. That same year, the number of youths applying for SIJS reached 2,226.⁷⁶ In order to understand how the SIJS application process and the number SIJS applicants changed over time, this section looks at the number of applications per year, as well as processing times and average age of applicants over time. By looking at raw application numbers, the ratio of SIJS applications per unauthorized immigrant population, and the difference between states' SIJS application rankings and unauthorized immigrant population rankings, this section also shows that the growth in SIJS applications differs by state. Additionally, using the analysis in this section, I selected seven states with high and low application rates to explore more thoroughly in Section III in order to identify patterns of best and worst practices.⁷⁷

adjustment seekers. See 8 U.S.C. §1255(h)(2) (describing the exceptions that apply to SIJS youth).

73. Memorandum from William R. Yates, U.S. Citizenship and Immigr. Servs., *Memorandum #3: Field Guidance on SIJS Petitions*, (May 27, 2004), available at http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf.

74. See Appendix A *infra* for history of SIJS amendments.

75. Dep't of Homeland Sec., Yearbook of Immigration Statistics 2004–2012, available at <https://www.dhs.gov/yearbook-immigration-statistics>; Dep't of Homeland Sec., Yearbook of Immigration Statistics 1997–2003, available at <https://www.dhs.gov/archives#1>; Yearbook of Immigration Statistics 1991–1997 is available at the USCIS Historical Library and on file with author.

76. Raw data.

77. As some states' child welfare practices and policies, as well as access to certain resources, vary by county I include some discussion of county variances. However, the data set did not include city of residence, so there is no way to distinguish the number of applicants by county.

A. Methodology

Between August 2012 and June 2013, I made a series of requests⁷⁸ to the U.S. Citizen and Immigration Services branch of DHS for the data set of SIJS applications from fiscal years 1990 until 2012.⁷⁹ On June 19, 2013,⁸⁰ I received a data set including 12,059 SIJS applications⁸¹ from the Data Analysis and Reporting Branch of the Office of Performance and Quality (OPQ).⁸² OPQ searched their database using a query to pull the data set for fiscal years 1990 through 2012 regarding Form Number I-360 where option “C – Special Immigrant Juvenile” was selected for Part 2.1, which asks the basis of the petition.⁸³ The fields pulled include a unique identifier for each case, the date of birth of the applicant, the service center where the form was adjudicated, the state of residence for the applicant, the date of receipt of the application, the final status of the application, the date of the decision, and the fiscal year the form was received.⁸⁴ I scrubbed the data of entries that had no date of birth, and inserted “unknown” for blank entries in the country of origin and

78. While I was prepared to file a Freedom of Information Act request, USCIS staff assured me that doing so was not necessary and provided the response voluntarily.

79. USCIS provided me five versions of this data set between December 2012 and June 2013, but each time there were either missing fields or duplicative and conflicting data points, except for the June 19, 2103 data set.

80. E-mail from David Lee, Acting Branch Chief for Data Analysis and Reporting Branch, Office of Performance and Quality, Dep’t of Homeland Sec./U.S. Citizenship and Immigration Servs. to author (June 19, 2013 10:56 AM EST) (on file with author).

81. The query was “Parameters: Form Number = I360; Class Preference = C; DATEIN between 1-OCT-91 AND 20-SEP-12; STATS <> 13.”

82. The Office of Performance and Quality is responsible for analyzing data to report on immigration statistics, calculating processing times for various USCIS applications, and overseeing monthly national quality assurance reviews. See, e.g., *Telecon Recap: Application Processing Times: A Conversation with USCIS Office of Performance and Quality*, Dep’t of Homeland Sec. (Apr. 27, 2011), <http://www.dhs.gov/telecon-recap-application-processing-times-conversation-uscis-office-performance-and-quality> (explaining the general functions of the USCIS Office of Performance and Quality).

83. The immigration agency issued a new Form I-360, which became available on Oct. 11, 1991, at the beginning of fiscal year 1992 with Special Immigrant Juveniles listed in box “c,” while the Form I-360 has been amended dozens of times since 1990, Special Immigrant Juvenile has always remained option “c.” Various Form I-360s on file with author and at the USCIS Historical Library.

84. Fiscal years begin on Sept. 1 of the preceding year and end on Oct. 31.

state of residence fields.⁸⁵ Lastly, I filtered out the applicants who were over the age of 21 at the time of application. Because 21 is the statutory limit for SIJS status, that data seems unreliable.⁸⁶ After these removals, there were 11,247 remaining applications.

In this article, I focus on the total number of SIJS applications rather than the number of SIJS applications approved. This is partly because a SIJS application is usually approved once it is filed with the federal immigration agency. Between 2010–2012, only about four percent of SIJS applications were denied.⁸⁷ Another reason I focus on total SIJS applications is because this article attempts to chronicle the various ways that SIJS eligible children are not able to move past the first step of the SIJS process, which happens at the state court level, as opposed to the second step, which happens at the federal level.

Since there are no estimates of the population of abandoned, abused, and neglected immigrant children by state, I use the estimated unauthorized immigrant population as a proxy to compare application rates among states. Therefore, the calculations regarding disparities in state application rates rely on the assumption that abandoned, abused, and neglected immigrant children are generally evenly distributed throughout the larger unauthorized immigrant population.⁸⁸

85. I excluded the eight entries without date of birth information. I coded blank states of residence and countries of origin as “unknown.” In all analysis other than Figure 2, I excluded applicants who were over 21 years old at the time of application as they would be statutorily ineligible. I suspected it may have been erroneous data.

86. Since the settlement of *Perez-Olano v. Holder* in 2010, some individuals over the age of 21 could have applied and been granted SIJS status. *Perez-Olano v. Holder*, Case No. CV 05-3604, (C.D. Cal. 2010) (settlement agreement).

87. 4.6% is the arithmetic mean of denial rates from fiscal years 2010, 2011, and 2012. U.S. Citizenship and Immigration Services, Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant Juvenile, with Classification of Special Immigrant Juvenile (C) Performance Data Years 2010–2012, *available at* <http://www.aila.org/content/default.aspx?docid=43925> (last visited Sept. 23, 2013). This high approval rate is likely because SIJS fact-finding is primarily done at the state court level as opposed to most other types of immigration relief, where fact-finding is mostly conducted by the immigration agency or immigration judge. If a child obtains the required state court order, the only other evidence needed is proof of identity and age.

88. One reason why abandoned, abused, and neglected children might congregate more in some jurisdictions than others is that ORR has child detention facilities in just 12 states, so there is some subset of abandoned, abused and neglected children who are forced to live in those 12 states. That said, the vast

In Section III and in parts of Section II, I use a smaller sub-set of states to examine disparate application rates more closely. In order to select states, I looked at the total number of applications historically by state; growth in applications over time in the states by percentage increase and raw increase; ratio of SIJS applications per unauthorized immigrant population in the state; and the difference between the rankings of each state in terms of its size of SIJS applications and its estimated unauthorized immigration population. Using these factors, I chose states with high application numbers, those with low application numbers, and those with a growth in application numbers. I identified New York,⁸⁹ California,⁹⁰ and Massachusetts⁹¹ as states with the highest application numbers.⁹² The states with the lowest overall SIJS application rankings are Mississippi⁹³ and Illinois.⁹⁴ Lastly, I selected Colorado⁹⁵ and Texas⁹⁶ as the states with high growths in SIJS applications.⁹⁷

majority of children in ORR custody are released to custodians, who may live in any state.

89. In FY 2012, New York led all states for the most SIJS applications. Historically and from 2007–2012 combined, it came in second after California. According to the data set, New York has had 1,759 applications, making up 15.4% of total applications.

90. California has led overall in SIJS applications. According to the data set California had 2,526 applications, making up 22.1% of all applications.

91. In 2010, Massachusetts had 72 SIJS applications and an estimated 160,000 unauthorized immigrants. The ratio of applications per population, after dividing the population by 1,000 was 45% in 2010, which is about four times higher than the median ratio of other states (11.03%).

92. I selected three high application rate states, as it seems particularly instructive to study multiple states with successful SIJS practices to consider best practices.

93. Of states with reported unauthorized immigrant populations that had any SIJS applications, Mississippi had the lowest ratio of SIJS applications to unauthorized immigrant population, which was 2.22%, with only one application in 2010 for an estimated 45,000 unauthorized immigrants.

94. Illinois is ranked sixth for unauthorized immigrant population with an estimated 525,000 unauthorized immigrants in 2010, yet it ranked 15th in terms of states with the most SIJS applications, making it the third worse state in the difference between rankings of population and SIJS applications. Illinois' number of SIJS applications per unauthorized immigrant population is 4%, making it the fourth worst state of those with reported unauthorized immigrant populations that had any SIJS applications in 2010.

95. In 2005, Colorado had only two SIJS applications. By 2010, there were 16 applications, and in FY 2012, there were 36. The ratio of applications per population shifted from 0.83% to 10% from 2005 to 2010, which is about 1100% growth.

After identifying these states, I conducted thirty-three telephone and in-person interviews with federal government officials,⁹⁸ state child welfare agency staff, and child immigration attorneys to learn about the policies and practices regarding SIJS in various states, challenges that SIJS-eligible children face in obtaining relief, and efforts that have been made to address these challenges.

1. Data from 1992 to 1999 is unreliable and excluded from this study

Before delving into analysis of this SIJS data set, it is important to emphasize that the data from 1992 to 1999 is unreliable, as explained below—both because it is missing a large number of SIJS applications and because it includes applications that cannot be SIJS applications. Therefore, except for Figure 2, which demonstrates this trend, I have not included these years.⁹⁹ From 1992 to 1999, the

96. In 2005, Texas had only 18 SIJS applications and by 2010, there were 182. In 2012, there were 492. The ratio of applications per population shifted from 1.29% to 11.03% between 2005 and 2010, which is a growth of 757%, making it the fourth highest percentage increase among states included. Texas had the third highest raw number increase in SIJS applications (434), behind New York (512) and California (485) from 2007 to 2012. Texas also topped the percentage increase from 2007 to 2012 of applications with a 748% increase.

97. I did not include states with estimated unauthorized populations under 10,000 in the years 2005, 2007, or 2010 in any calculations: Alaska, Maine, Montana, North Dakota, South Dakota, Vermont, West Virginia, and Wyoming. I also did not include territories for which I did not have population information. When looking at highest positive rate of change in ratios between 2005, 2007, and 2010, I excluded states that had no SIJS applications in any of those years, as the denominator would be zero: Arkansas, Delaware, Hawaii, Idaho, Mississippi, Nevada, and New Hampshire.

98. These officials include staff from the Office of Refugee Resettlement, Immigration, and Customs Enforcement, as well as Citizen and Immigration Services.

99. USCIS could not explain the number of “too old” applicants, as the alien files were so old that they were not readily accessible through current systems. There are a few potential explanations for these discrepancies and undercounting: 1) applicants may have mislabeled their date of birth on the form; 2) applicants wrongly chose option “C: Special Immigrant Juvenile,” but instead were applying for another type of visa; 3) applicants may have filed adjustments without first filing the underlying SIJS petition. 68 Interpreter Releases 1125 (Aug. 30, 1991); 4) since automation of immigration systems largely began in the 1990’s, there may have been problems digitizing alien files, and the transfer of data when upgrading or changing of information technology systems may have corrupted some data; and 5) when the Violence Against Women Act was first enacted in 1995, the immigration agency instructed applicants to select option “C: Special

vast majority of applicants included in the data set were well above age 21 when they applied, which is the regulatory limit.¹⁰⁰ Even more telling is that a great number of those applicants were approved for SIJS, a legal impossibility.

2. Data from 1999 to 2006 is under-representative

After comparing the annual number of SIJS applications and the number of legal permanent residents who obtained their status through SIJS, I have determined that the number of SIJS applicants is obviously too low from 1992 until 2006. During this fifteen-year timeframe, the number of individuals who applied for legal permanent resident status as a result of already having been approved for SIJS is greater than the number of SIJS applicants every year.¹⁰¹ Although the reliability of the 1999–2006 data is better than earlier data, the undercounting seems to persist through 2006.¹⁰²

The chart below shows the numbers of SIJS-based legal permanent residence, or “adjustment,” petitions compared with the reported number of SIJS applications until 2012 (the latest year with reported SIJS-based adjustment petitions). This chart demonstrates both the trends in falling and rising SIJS applications¹⁰³ as well as the unreliability of the early data, since the SIJS petitions are far fewer than SIJS-based adjustments for the first fifteen years.

Immigrant Juvenile,” then cross it out and re-write “Crime Victim,” until the revised form came out. 72 Interpreter Releases 178 (Jan. 30, 1995).

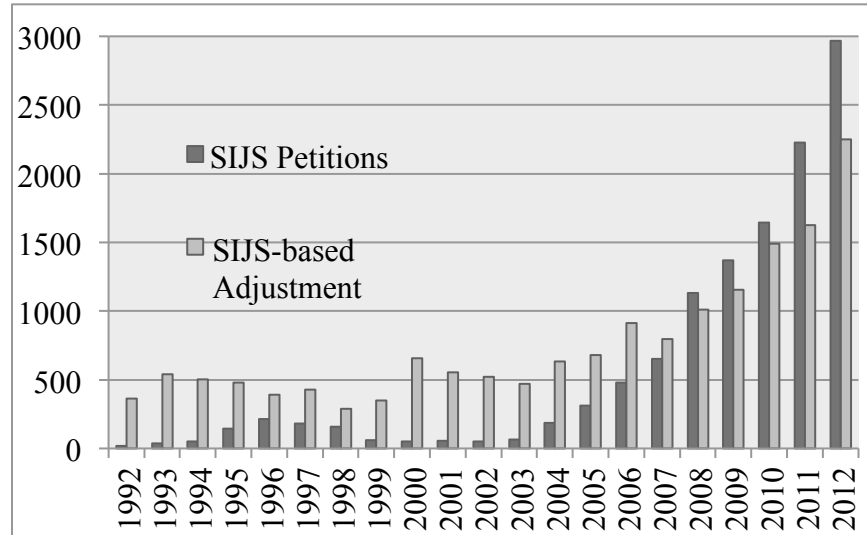
100. 8 C.F.R. 204.11(c)(2009).

101. It is useful to look at the Annual Yearbook of Statistics referencing the number of legal permanent resident applications, which were based on previously approved SIJS applications. For example in fiscal year 1992, there were only 19 SIJS applications, yet there were 361 adjustments petitions based on approved SIJS applications. Similarly in fiscal year 1993, USCIS reports only 36 SIJS applications, yet there were 541 lawful permanent resident petitions based on approved SIJS applications. Also, in interviews SIJS experts with experience in the early 90s—Ken Borelli and Harry Gelb—dismissed these numbers as artificially low.

102. There may be some valid reasons for why applicants over 21 may have applied and been approved for SIJS in recent years. After the Perez-Olano settlement in 2009, applicants who filed after May 13, 2005 and were under 21 at the time of filing, but later denied SIJS due to age or dependency were encouraged to re-open their case and re-apply under the settlement and should have been approved. *Perez-Olano v. Holder*, Case No. CV 05-3604, (C.D. Cal. 2010) (settlement agreement).

103. Some of these trends correspond with historical changes in the SIJS statute, described in depth in Appendix A.

FIGURE 2. SIJS-BASED ADJUSTMENT PETITIONS
AND SIJS APPLICATIONS



While the number of SIJS petitions and SIJS adjustments would not necessarily correspond one to one,¹⁰⁴ there is no way that there could be fifteen years in which adjustment petitions based on SIJS far outpaced SIJS applications. This is because approved SIJS applications are a pre-requisite to apply for adjustment based on SIJS. Therefore, the SIJS applications and SIJS adjustment petitions should be somewhat similar in number, or it could be possible that the SIJS applications could regularly outpace adjustment petitions.¹⁰⁵ In order to address these problems, I exclude the data from 1992 through 1999 from all analysis, and data from 1999 to 2006 is put

104. There are a few reasons for this: 1) some individuals apply for SIJS first and either apply for adjustment in another fiscal year or never apply for adjustment because they may not be eligible for adjustment; or 2) some may apply for SIJS and adjustment concurrently, but they may not be approved at the same time.

105. This is the case because not all SIJS applicants will necessarily apply for adjustment, as they may become eligible for another type of relief, or they may become ineligible for adjustment. Furthermore, there is an annual cap on adjustment such that SIJS adjustments combined with other employment-based adjustments can only be 7.1% of worldwide adjustments. 8 U.S.C. § 1153(b)(4) (2006).

forward with the caveat that it seems under-representative of actual application numbers.

B. SIJS Application Numbers Have Increased Over Time, With Steady Growth Since the Implementation of the TVPRA of 2008

In fiscal year 2012, there were 2,959 Special Immigrant Juvenile Status applications, which represents a six-fold increase in applications since 2006, when there were 474 applications. The growth and decline in total SIJS applicants appears to correspond with the restrictions and expansions in the definition of SIJS¹⁰⁶ as well as the growth in organizations serving the migrant youth population and the growing number of migrant youth.¹⁰⁷

Although there appears to be under-reporting of a few hundred SIJS applications between 1992 and 1999, Figure 2 shows that the general trends of legal permanent residence applications based upon SIJS status show a similar growth pattern to the data set of SIJS applications.¹⁰⁸ In other words, there were very few applications for the first fifteen years after the law was enacted, with a dip in applications after the restrictive 1997 amendments.¹⁰⁹ As seen in Figure 3, the numbers of applications grew around 2004, when USCIS issued a memorandum to clarify and modify some procedures for SIJS seekers. Application numbers ballooned from a few hundred to a few thousand after the implementation of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), which expanded the definition of SIJS allowing many more children to apply.¹¹⁰

106. See *infra* Appendix A (explaining the full history of SIJS amendments).

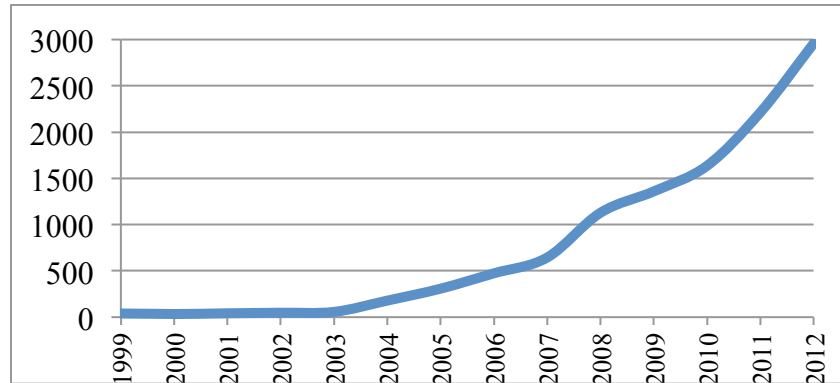
107. Numbers of unaccompanied minors have remained consistent historically, except for fiscal year 2012, ruling that out as an explanation for the changing numbers of applicants.

108. Yearbook of Immigr. Statistics 2004–2012, Dep’t of Homeland Sec., available at <https://www.dhs.gov/yearbook-immigration-statistics>; Yearbook of Immigr. Statistics 1997–2003, Dep’t of Homeland Sec., available at <https://www.dhs.gov/archives#1>. Yearbook of Immigration Statistics 1991–1997 is available at USCIS Library and on file with author.

109. See “Figure 2. SIJS-based adjustment petitions and SIJS applications” above, which shows the dip in SIJS petitions and adjustments in 1998.

110. See *infra* Appendix A (detailing the history of changes of the SIJS statute, regulations, and policy memoranda).

FIGURE 3. FREQUENCY OF SIJS APPLICATIONS FROM 1999 – 2012



There certainly may be other factors related to this growth trend. Indeed, there has been a significant increase in the number of unaccompanied minors entering the United States. Historically the number hovered around 8,000¹¹¹ until 2012, when the number of unaccompanied migrant minors shot up to about 14,000.¹¹² Additionally, this increase may be related to the growth of national nonprofits that screen children for relief and represent them.¹¹³

C. Most SIJS Applicants are About 17 Years Old, Which Approaches the Age When Many States Lose Jurisdiction Over Youths

Age plays a major part in SIJS eligibility. Differences in how states set jurisdictional age can mean the difference between

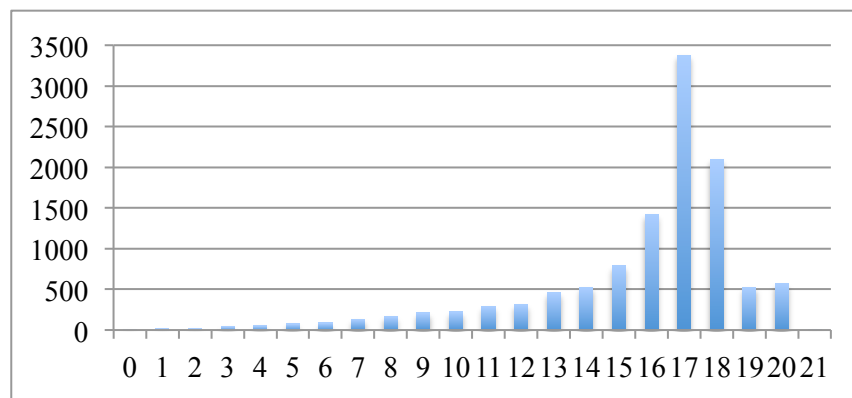
111. Paemla M. Prah, *Number of Undocumented Children Who Cross U.S. Border Alone Has Tripled*, The Pew Charitable Trusts (May 9, 2013), <http://www.pewstates.org/projects/stateline/headlines/number-of-undocumented-children-who-cross-us-border-alone-has-tripled-85899474787>.

112. Kelley, *supra* note 43; Customs Border Protection, *supra* note 13.

113. In 2005, the US Committee for Refugees and Immigrants opened its National Center for Refugee and Immigrant Children, which has served 4,000 children since it opened its doors. *USCRI's Immigrant Children's Legal Program*, U.S. Committee for Refugees and Migrants, <http://www.refugees.org/our-work/child-migrants/about-ncric.html> (last visited Sept. 22, 2013). In Oct. 2008, Kids in Need of Defense was launched to provide representation for migrant children, and since then have served more than 5,000 children and trained more than 5,500 attorneys. E-mail from Megan McKenna, Communications and Advocacy Director, Kids in Need of Defense to author (Aug. 30, 2013) (on file with author).

protection and deportation for a SIJS-eligible child. To qualify for SIJS, not only do applicants have to be under twenty-one, but they have to fall under the jurisdiction of a state court for the purposes of permanency, adoption, guardianship, custody, delinquency, or a related proceeding, which, depending on the state, may terminate at anywhere from age sixteen¹¹⁴ to twenty-one or later¹¹⁵ (although a common cut off age is eighteen).¹¹⁶ Prior to the TVPRA of 2008, there was also a requirement that the applicant be under the jurisdiction of the court at the time of the petition's adjudication, so the processing time could effectively disqualify an eligible child from protection.¹¹⁷

FIGURE 4. SIJS APPLICATIONS BY AGE



114. Some states end jurisdiction for delinquency proceedings for youth aged 16, but all other types of juvenile proceedings end at age 18 or older. *See infra* Part III.B (detailing the impact of age restrictions).

115. *E.g.*, Jane Kim & Kevin Sobczyk, American Bar Ass'n Ctr. on Children and the Law, *Continuing Court Jurisdiction in Support of 18 to 21 Year-Old Foster Youth* (2004), available at http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/resourcecenter/continued_court.authcheckdam.doc.

116. *See infra* Part III.C (explaining that seventeen is the average age of filing due to age restrictions).

117. *See infra* Appendix A for a history of amendments to SIJS requirements.

Seventeen-year-olds are the most frequent SIJS applicants—from 1999 to 2012, the median age has hovered between seventeen and eighteen annually, with an overall median age of 17.4. Why might this be? First, the average age of unaccompanied minors entering the country is around sixteen or seventeen,¹¹⁸ and as discussed in Part I, many of these youths are SIJS eligible. Further, for someone who has not been apprehended by the immigration agency, this is the age at which he may consider getting a driver's license or taking college entrance tests. These events can trigger a realization that he is unauthorized, because he does not have the required identification.¹¹⁹ At this point, he may be more likely to seek help and get screened for eligibility.¹²⁰ Lastly, age seventeen might be so common because many state laws lose jurisdiction over youths at age eighteen, so SIJS-eligible youths eighteen and older may not be able to obtain the predicate state court order and therefore never apply for federal immigration protection. These hypotheses are certainly not exhaustive, but they are reflective of the conventional understanding of child advocates.¹²¹ Section III of this article will take a closer look at state laws, child welfare policies and practices, and access to representation in a sampling of states to further probe the issue of variance of jurisdiction age in juvenile and family state laws.

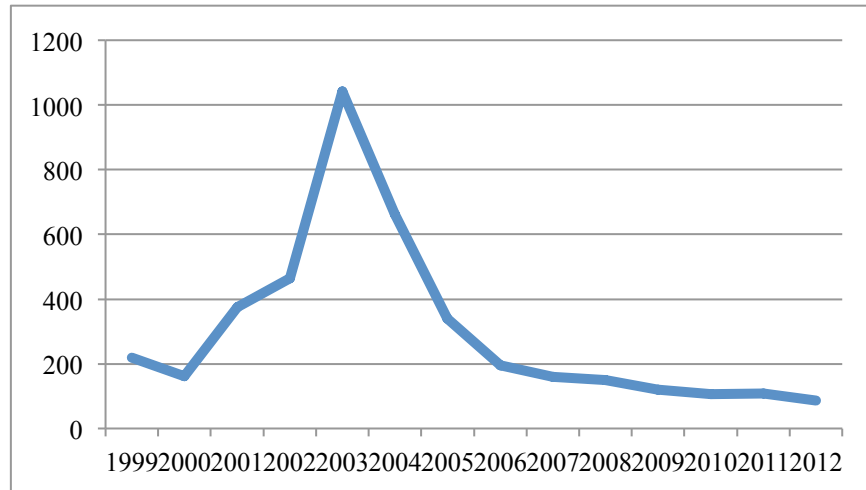
118. See Haddal, *supra* note 41, at 1 (indicating that 80% of unaccompanied minors are between 15 and 18.); Byrne & Miller, *supra* note 41, at 32 (stating that 34% of unaccompanied children are 17 years old, 23% are 16 years old, and 13% are 15 years old).

119. *E.g.*, Jose Antonio Vargas, *My Life as an Undocumented Immigrant*, N.Y. Times, June 22, 2011.

120. Various resources encourage undocumented youth to seek assistance from a lawyer. *See, e.g.*, Immigrant Legal Res. Ctr., *Living in the United States: A Guide for Immigrant Youth*, 8 (2007).

121. I heard these explanations from other practitioners during my eight years of practice and these sentiments were echoed in the 33 interviews I conducted with federal government workers, child welfare staff, and child immigrant attorneys.

FIGURE 5. MEDIAN PROCESSING TIME (IN DAYS)



D. Long Processing Periods Contributed to “Aging Out” Pre-TVPRA

Historically, SIJS seekers have faced “aging out” issues at both the state and federal stages of the SIJS process, although federal aging out issues have been largely addressed by the TVPRA of 2008. A youth may age out as she avails herself of the state courts, because state jurisdictional laws exclude her from submitting to the court’s jurisdiction. Furthermore, before the TVPRA, a youth was required to remain under the jurisdiction of the state court until the federal agency made a determination about her application in order to remain eligible for SIJS. Therefore, she may also have faced “aging out” issues after obtaining the necessary state court order, as she waited for her application to be processed. In the past, if a youth ceased to be dependent on the state juvenile court during the processing of the SIJS application, then her SIJS application would be denied. Lastly, pre-TVPRA, a youth could age out of federal eligibility if she turned 21 while the application was pending.

Processing times spiked in fiscal years 2002 and 2003, with a wait time of 464 and 1,043 days respectively, which is likely related to delays in the processing of immigration applications after the September 11 attacks. The combination of the pre-TVPRA requirement that youths remain under the jurisdiction of the court,

and the average applicant's age of seventeen, increased the chances that youths living in states with jurisdiction restrictions at age eighteen or younger would age out of protection while waiting for their applications to be processed.

Over the years, child migrant advocates have raised significant concerns with children aging out of eligibility due to processing times.¹²² The TVPRA of 2008, which was implemented in March of 2009, mandated SIJS applications be adjudicated within 120 days and also created other age out protections, such as preservation of the age at the time of filing.¹²³ Correspondingly, in 2009 the median processing time was 121 days. Processing times have dropped to less than three months in 2012. Due to the current protections under the TVPRA, as well as the Perez Olano settlement, "aging out" is generally limited to the state court process in states that have jurisdictional age limitations, which are more restrictive than the federal cut-off of twenty-one.¹²⁴

E. There is Great Variance by State in the Number of SIJS Petitions

In this section, I look at differences in SIJS application by states through three lenses: raw numbers, the difference between a state's SIJS application ranking and unauthorized immigrant population ranking, and the ratio of a state's SIJS applications to the unauthorized immigrant population.¹²⁵

122. To prevent aging out, some child representatives filed writs of mandamus to force the immigration agency to act on SIJS applications and SIJS-adjustment petitions before a child turned 18 or 21, depending on the type of underlying state proceeding and related jurisdictional age under state law. Also the Perez-Olano settlement created protections against USCIS denying applications based upon problems with continuing jurisdiction of state courts.

123. For example, a 20 year old who files for SIJS status will remain eligible for relief even if they turn 21 before their application is adjudicated, because the TVPRA freezes the child's age at the time of filing for the purpose of determining eligibility.

124. See Part III.B.

125. As stated in the methodology section, these latter two tests rely on the assumption that the unauthorized abandoned, abused, and neglected youth population is evenly distributed among the general unauthorized immigrant population.

1. There is great variance in raw numbers of SIJS applications by State

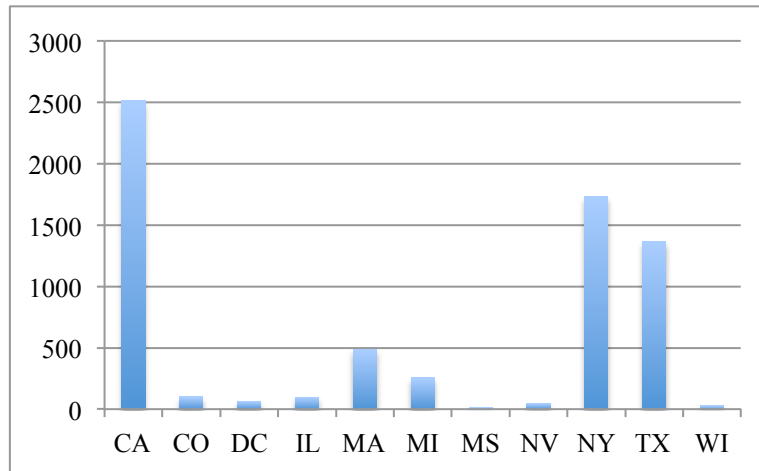
In almost all states, the number of SIJS applicants over time has generally increased, and some states' numbers have grown quite dramatically. Figure 6 includes the raw number of SIJS applications in the seven states selected for further analysis in Section III,¹²⁶ as well as two high¹²⁷ and low-performing¹²⁸ states. There is a great difference in raw numbers of SIJS applications by state, which is not surprising given the vast population differences.

126. California, Colorado, Illinois, Massachusetts, Mississippi, and Texas.

127. Michigan and the District of Columbia.

128. Wisconsin and Nevada.

FIGURE 6. NUMBER OF SIJS APPLICATIONS (1999-2012)



State	SIJS Applications
CA	2,512
CO	101
DC	65
IL	98
MA	488
MI	254
MS	17
NV	49
NY	1,736
TX	1,366
WI	29

2. States' population rankings for unauthorized immigrants compared to their ranking of total SIJS applications shows disparities

I also measured disparities among states by ranking states in terms of both unauthorized immigrant population and total SIJS applications, and then compared each state's position on the two lists. For example, from 2007 to 2012, there were 2,311 SIJS applicants with California as their state of residence, ranking it first among states for SIJS applications for this six-year period. It is also ranked first in total unauthorized immigrant population,¹²⁹ such that the difference between its rankings is zero. However, some states such as Massachusetts, Rhode Island, and Michigan, as well as the District of Columbia, have SIJS application rankings that outperform their unauthorized immigrant population ranking by a difference of nine or more. Other states—such as Illinois, Wisconsin and Nevada—underperform with a SIJS application ranking much lower than their unauthorized population ranking. The median difference¹³⁰ between a state's population and SIJS application ranking is four in either the positive or negative direction.

Figure 7 plots the raw difference between each state's ranking of raw SIJS applications between 2007 and 2012 and its ranking of unauthorized immigrant population.¹³¹ There are a number of states that hover near the zero axis, with little difference between their SIJS and population rankings. Many other states have SIJS rankings that outperform and underperform their population ranking.

129. The population used here is taken from Passel and Cohn's study using the 2010 population estimates. Jeffrey Passel & D'Vera Cohn, Pew Research Ctr., U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade (2011), *available at* <http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-national-and-state-trends-2010/>.

130. The mean difference is 4.8.

131. States that have an unauthorized immigrant population of fewer than 10,000 have been excluded.

FIGURE 7. DIFFERENCE BETWEEN RANKS OF POPULATION AND
TOTAL SIJS APPLICATIONS RANKING (2007 – 2012)¹³²

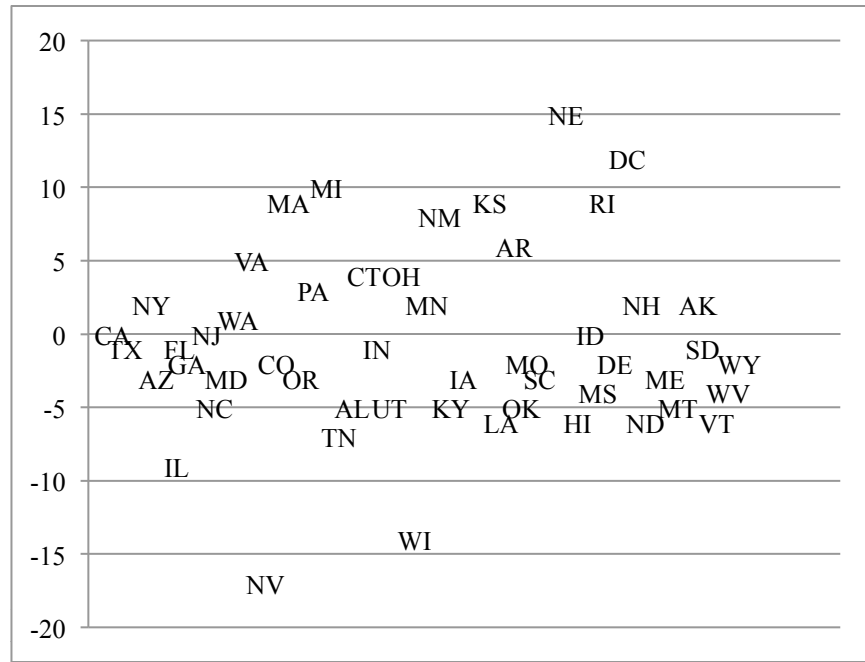
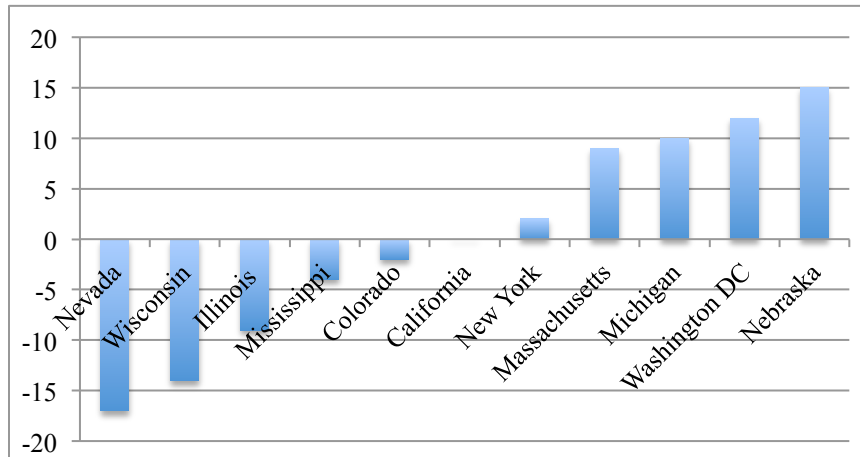


Figure 8 takes a closer look at eleven states and the District of Columbia to display their ranking differences as well as their unauthorized populations and raw SIJS applications. This chart illustrates how disparate some states' SIJS rankings are from their population rankings, with Nevada, Wisconsin and Illinois's SIJS rankings falling way below their population rankings, and Michigan, Washington DC and Nebraska's SIJS rankings far surpassing their population rankings. The chart also demonstrates some states whose SIJS application rankings are similar to their population rankings—e.g. California, Texas, and New Jersey—such that they are on or very near the zero axis line.

132. I include the seven states selected for further study in Section III: California, Colorado, Illinois, Massachusetts, Mississippi, New York, and Texas. I also include the three “best” and “worst” states for SIJS applicants under this test, which overlap with some of the states selected for further study.

FIGURE 8. DIFFERENCES BETWEEN RANKING OF
POPULATION AND TOTAL SIJS APPLICATIONS



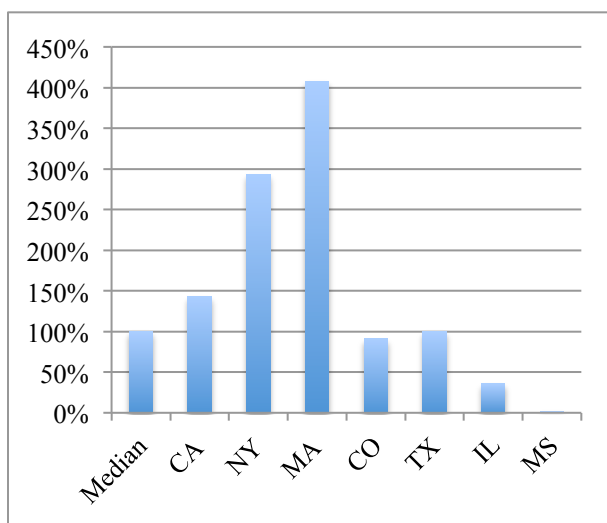
Difference in Ranking	State	Unauthorized Population Ranking (and population) ¹³³	SIJS Application Ranking (and raw applications)
-17	Nevada	13 th (190,000)	30 th (47)
-14	Wisconsin	24 th (100,000)	38 th (24)
-9	Illinois	6 th (525,000)	15 th (92)
-4	Mississippi	36 th (45,000)	40 th (16)
-2	Colorado	14 th (180,000)	16 th (90)
-1	Texas	2 nd (1,650,000)	3 rd (1,287)
0	California	1 st (2,550,000)	1 st (2,311)
+2	New York	4 th (625,000)	2 nd (1,542)
+9	Massachusetts	15 th (160,000)	6 th (436)
+10	Michigan	18 th (150,000)	8 th (239)
+12	Washington D.C.	41 st (25,000)	29 th (51)
+15	Nebraska	36 th (45,000)	21 st (81)

133. This is an estimate for unauthorized population of 2010, as none exist for 2011 and 2012.

3. The ratio of states' SIJS applications per population of unauthorized immigrants varies significantly

A third test I used to understand how the numbers of applicants have varied, taking population into account, involves comparing the number of applicants to the estimated unauthorized immigrant population¹³⁴ in that state during the same year.¹³⁵ The median ratio of SIJS applications to the unauthorized population estimate¹³⁶ is eleven percent.¹³⁷ Some states, like New York (2.9 times greater than the median) and Massachusetts (four times greater than the median), perform much better than the median application rate, while others perform much worse—like Illinois (about one third of the median) and Mississippi (about one fifth of the median).

FIGURE 9. 2010 SIJS APPLICATION RATES OF SELECTED STATES COMPARED TO MEDIAN RATE



134. In order to make the scale of the ratio more manageable, I divided the population estimates by 100,000.

135. SIJS application numbers are calculated in the fiscal year, while population estimates are calculated in the calendar year.

136. Passel & Cohn *supra* note 129, app. A, tbl. A3.

137. The arithmetic mean is 14.31%.

State	Application Rate	% of Median Rate
CA	15.76	143%
NY	32.33	293%
MA	45	408%
CO	10	90%
TX	11.03	100%
IL	4	36.36%
MS	2.22	20.18%

IV. STATES' CHILD WELFARE POLICIES & PROCEDURES, LAWS, AND RESOURCES

Ken Borelli, a child welfare worker, and Congresswoman Zoe Lofgren, a then-Congressional aide, drafted the Special Immigrant Juvenile Status statute in the late 1980s, after an immigration officer denied the amnesty applications Mr. Borelli had submitted for children in the foster care system in Santa Clara, California.¹³⁸ After the law passed, Mr. Borelli applied for SIJS for all the eligible children that he identified in the Santa Clara foster care system.¹³⁹ Other jurisdictions that already had immigration units within their child welfare system—such as New York City and Los Angeles County—also began filing applications immediately.¹⁴⁰ The president of the National Juvenile Judges Association helped publicize the law soon after its passage, and there have been ongoing trainings at national state judge conferences. Even so, the law is not nationally well known.¹⁴¹ Mr. Borelli calls the implementation of SIJS a “tragedy,” as there is absolutely no consistency in implementation across the country.¹⁴²

138. *Tribute to Ken Borelli*, Congressional Record Vol. 152, No. 63 at E895-E896 (2006), available at <http://www.gpo.gov/fdsys/pkg/CREC-2006-05-19/html/CREC-2006-05-19-pt1-PgE895-4.htm>; Telephone Interview with Ken Borelli, Child Welfare Worker (June 18, 2013).

139. *Id.*

140. Telephone interview with Ken Borelli, Child Welfare Worker (June 18, 2013); Telephone interview with Harry Gelb, Child Welfare Worker (June 18, 2013); Jackson, *supra* note 19.

141. *Id.*

142. Telephone interview with Ken Borelli, Child Welfare Worker (June 18, 2013).

States vary in many ways that influence a youth's ability to access the state court and obtain the necessary SIJS order. There is variance between states in 1) child welfare policy and practice; 2) family law; and 3) access to specialized representation. First, states differ in having explicit policies about screening for and addressing immigration needs of youths in care. Second, family laws of states differ as to the ages that youths are subject to various proceedings.¹⁴³ Lastly, states vary in terms of access to pro bono attorneys with expertise in the intersection of immigration and youth law, such that children in resource-poorer states may be less likely to be screened and represented in the requisite proceedings.

In this section, I will use a sampling of states to explore how they differ in child welfare policy and practice, laws, and access to representation. Additionally, there may be great variance in child welfare practice and policy between counties within states that have county-administered child welfare systems, unless there has been state-wide legislation. Some states in the sample, namely California, Colorado, and New York, are in a minority of states that have a county-administered child welfare system, although Colorado's is state-supervised and locally administered.¹⁴⁴ For New York and California, where counties have developed very different policies and practices, I will mostly limit my inquiry to the practices and policies of the biggest metropolitan areas, namely New York City and Los Angeles. The other states in the sample, Massachusetts, Illinois, Texas, and Mississippi, are state-administered child welfare systems.¹⁴⁵

A. Variance in Child Welfare Policies & Practices

Around the late 1990s, Cecilia Saco, a child welfare worker in Los Angeles County, received a call from Immigration and Naturalization Services (INS) asking her "what their office was

143. See Kim & Sobczyk, *supra* note 115 (detailing differences in state laws regarding age of majority); see also *Legal Jurisdiction Over Foster Youth After 18th Birthday*, State Child Welfare Policy (2009), <http://www.childwelfarepolicy.org/maps/single?id=80> (showing an interactive map which shows differences in definition of child abuse and neglect, as well as foster care age limits among states); see also Child Welfare Information Gateway, *Determining the Best Interests of the Child* (2012), https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf (detailing various state statutes on the "best interests of the child").

144. Child Welfare Information Gateway, *supra* note 143.

145. *Id.* (only nine of the 50 states are county-administered, three are hybrid, and 38 are state-administered).

doing.” The INS representative told her that half of all SIJS applications nationwide came from her office, the Special Immigrant Status Unit of Los Angeles’ Department of Children and Family Services (DCFS).¹⁴⁶ The answer is that Los Angeles DCFS was screening, identifying, and assisting children in their care to petition for SIJS.¹⁴⁷ It continues to be DCFS policy to help unauthorized immigrant children apply for relief. Furthermore, they have dedicated child welfare staff with immigration expertise and a responsibility to assist unauthorized children, as well as a long history of providing assistance.

A growing number of states and localities have explicit policies dictating child welfare workers’ responsibilities towards immigrant children and families in the system.¹⁴⁸ However, many states and localities do not, leaving it to individual caseworkers to decide whether or not pursuing immigration protection for their migrant child wards is worthwhile. Furthermore, some states have developed protections to screen and track unauthorized children in their care to ensure that they are assisted before aging out of the foster care system. Among states and localities that do not have a formal policy, some provide resources for caseworkers who wish to address a child’s immigration needs, while others do not provide resources.

There appears to be a relationship between how states perform with SIJS applicants and the existence and quality of their child welfare policies and practices. Child welfare systems in the higher-performing SIJS application states—New York, California, Texas, and Massachusetts—all have explicit policies regarding serving immigrant children in their care. Even though New York’s child welfare system is county-administered, the state has issued administrative guidance, directing child welfare workers to screen for immigration status and address this need.¹⁴⁹ Similarly, even though

146. E-mail from Cecilia Saco, Supervising Children’s Social Worker, Los Angeles County Department of Children and Family Services to author (June 6, 2013 3:20 PM EST) (on file with author).

147. Jackson, *supra* note 19, at 23.

148. *E.g.*, New York City Administration for Children Services, Immigration and Language Guidelines for Child Welfare Staff (2d ed. 2005), available at http://www.nyc.gov/html/acs/downloads/pdf/immigration_language_guide.pdf.

149. Administrative Directive, Special Immigrant Juvenile Status, from New York State Office of Children & Family Services, to Director of Services, Child Protective Services Supervisors, Voluntary Agency Program Directors, at 1–2 (Aug. 19, 2008) (“The purpose of this administrative directive is to notify

California's foster care is also county-administered, the state recently passed a statute that will require screening for SIJS.¹⁵⁰ The states of lower-performing Mississippi and recently growing Colorado do not have explicit policies, although Colorado does provide resources to counties on how to screen and assist immigrant youths in their care. Although Illinois has developed an explicit policy, it has a lower proportional number of applicants, albeit with much growth in the past few years, so it is an outlier on this point. Illinois also varies from other high application states a great deal in other factors such as its screening procedures, the absence of a uniform state court form, the existence of a state law that limits SIJS findings to youths under 18, and fewer specialized legal resources.¹⁵¹

What else do the high frequency SIJS states have in common? They have created uniform special immigrant juvenile forms,¹⁵² have higher numbers of nonprofit attorneys engaged in this specialty practice,¹⁵³ and they tend to regularly train specialized child welfare workers regarding SIJS and other immigration implications.¹⁵⁴ The following section focuses briefly on each state's policies and practices around identifying and helping SIJS-eligible youths access immigration protection.

local departments of social services and voluntary authorized agencies that Special Immigrant Juvenile Status eligibility must be assessed for youth in foster care If the youth is found to qualify for SIJS, this status should be pursued whenever appropriate.” (emphasis added).

150. Reuniting Immigrant Families Act, 2012 Cal. Legis. Serv. Ch. 845 (S.B. 1064) (West).

151. Policy Transmittal, Immigr./Legalization Servs. for Foreign Born DCFS Wards, from Erwin McEwen, Director, Dept. of Children and Family Services, to Staff (May 16, 2008), *available at* <http://www.f2f.ca.gov/res/pdf/PolicyGuideImmigration.pdf>.

152. Mandelbaum, & Steglich, *supra* note 32, at 613–14 (to make these proceedings more routine, the Judicial Counsel of California adopted Form JV-224, the “Order Regarding Eligibility for Special Immigrant Juvenile Status,” on Jan. 1, 2007, which was revised in accordance with the TVPRA amendments on July 1, 2011, JV-224) (on file with author).

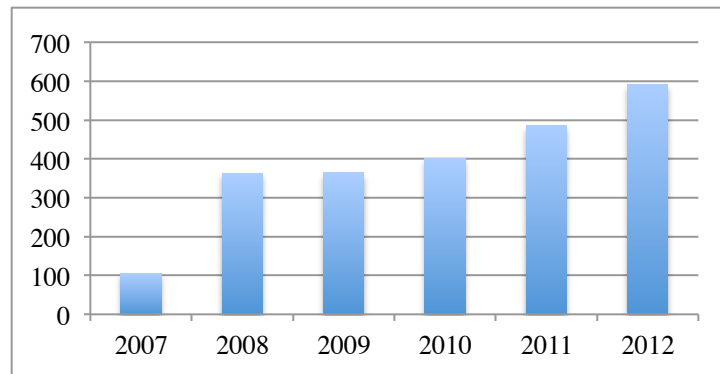
153. *See infra* Part IV.C (explaining the impact of access to legal resources on SIJS outcomes).

154. *See infra* Part IV.A (explaining variances in child welfare practices).

1. Higher-application rate jurisdictions have a long history of immigration liaisons, child welfare policy to address immigration needs and sophisticated screening

- a. California

FIGURE 10. CALIFORNIA SIJS APPLICATIONS (2007-2012)



California has more SIJS applications over time than any other state.¹⁵⁵ California is home to the highest estimated unauthorized immigrant population. It is also one of the states with the highest percentages of unauthorized immigrants as a share of the total population.¹⁵⁶ In particular, Los Angeles County has long been a leader in serving immigrant children.¹⁵⁷ For example, the Los Angeles DCFS has a long history of incorporating immigration status into its commitment to serving the best interests of children in its care. In 1986 it established an Undocumented Children's Unit and helped 400 children in its care apply for amnesty.¹⁵⁸ In August of 1991 this unit

155. That is true using all SIJS applications from 1992–2012, as well as when just focusing on all SIJS applications from 2007–2012.

156. Passel & Cohn *supra* note 129, at 15.

157. Jackson, *supra* note 19, at 23.

158. Cecilia Moreno Saco, Filing Special Immigrant Juvenile Status in Los Angeles County: An important Resource to meet the needs of undocumented children in the Dependency System, 23 (Dec. 2006) (unpublished M.S.W. thesis, California State University, Los Angeles) (on file with author) [*hereinafter* Saco thesis].

changed its name to “Special Immigrant Status Unit,”¹⁵⁹ and since this incarnation, it has filed more than 3,000 SIJS applications for undocumented children.¹⁶⁰

The Los Angeles DCFS provides services to any child—regardless of immigration status—who may be a victim of abuse, neglect, or abandonment.¹⁶¹ If a child is identified as undocumented and potentially eligible for SIJS, caseworkers are required under current policy to refer the child to the Special Immigrant Status unit as soon as possible.¹⁶² Unique to Los Angeles’ model is that social workers and eligibility workers—rather than attorneys—complete the filing of SIJS applications for children in foster care.¹⁶³

Historically, the Special Immigrant Status Unit has received referrals mostly from foster caseworkers who identify eligible children, but also occasionally from other stakeholders, such as children’s attorneys, CASA workers, and caseworkers.¹⁶⁴ While there are fields for immigration status in the State of California Children Welfare Service case management system, they are not mandatory, so they are often left blank or have conflicting or incorrect information, as different workers put in different answers.¹⁶⁵ Despite this

159. *Id.* at 23; Texas Legislative Budget Board Staff, Texas State Government Effectiveness and Efficiency: Selected Issues and Recommendations, at 245, available at <http://www.lbb.state.tx.us/Government/Government%20Effectiveness%20and%20Efficiency%20Report%202009.pdf> (last visited Sept. 23, 2013); Jackson, *supra* note 19, at 23.

160. E-mail from Cecilia Saco, Supervising Children’s Social Worker, Special Immigrant Status Unit, Los Angeles County Department of Children and Family Services, to Laila Hlass (June 6, 2013 3:20 EST) (on file with author).

161. *Saco thesis, supra* note 158, at 24.

162. “Special Immigrant Status: Procedural Guide 1200-500.85 (Revisions of Existing Procedural Guide 1200.500.85, dated 3/19/2008) at 2, dated Dec. 19, 2011, available at <http://lacdfs.org/Policy/Hndbook%20CWS/1200/120050085SISv1211.doc> (stating that case workers must Complete DCFS Form 852 and fax or mail to the SIS Unit if they identify a potentially eligible child—according to policy it “is not at the discretion of the case-carrying CSW or SCSW”).

163. *Saco thesis, supra* note 158, at 23; Jackson, *supra* note 19, at 23. Illinois is another state that has this model.

164. *Saco thesis, supra* note 158, at 27. In fact, Los Angeles county reported that there was not an accurate tracking system of undocumented children receiving foster care services, and that the information was not collected systematically. *Id.* at 26.

165. *Id.* at 24–25.

undercounting issue, Los Angeles remains a leader in helping vulnerable immigrant children access SIJS protection.¹⁶⁶

Since the California system is county-administered, there is great variance in SIJS practice throughout the state. As of January 2014, the implementation of SB 1064, “Reuniting Immigrant Families Act,” should begin to create more uniformity, as it requires California’s Department of Social Services to provide best practices annually on how to help SIJS-eligible children in juvenile court.¹⁶⁷ According to child welfare advocates, not all counties help SIJS eligible children access immigration protection, and, in fact, counties vary in their published policies relating to immigrant children in care.¹⁶⁸ Some counties require that caseworkers help children with immigration assistance if they are SIJS eligible,¹⁶⁹ while others provide resources but do not explicitly mandate assistance in their policy manuals.¹⁷⁰ A number of counties have an immigration liaison

166. This article relies on the assumption that SIJS-eligible children should be helped in accessing this protection, as it is in their best interest to achieve stability. It could be argued that states have the prerogative to be neutral or to obstruct SIJS-eligible children due to various other priorities such as saving resources or immigration-restrictionist ideology.

167. Cal. Welf. & Inst. Code § 10609.97.

168. *State Policies & Examples*, Migration and Child Welfare National Network, <http://research.jacsw.uic.edu/icwnn/state-specific-resources/#California>.

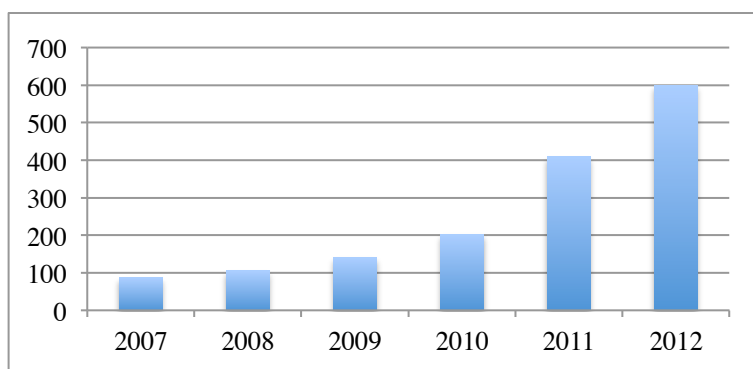
169. Riverside County Department of Public Social Services, Department Policy 45-201E: Non-Citizen Foster Children, 6 (2009), *available at* <http://research.jacsw.uic.edu/icwnn/files/2013/03/Riverside-Non-Citizen-Foster-Children.pdf>; Orange County Social Services Agency, CFS Operations Manual 3 (2007), *available at* <http://cssr.berkeley.edu/cwscmsreports/LatinoPracticeAdvisory/Orange/Policies%20Procedures-UndocDependents.pdf> (“CFS social workers help eligible, undocumented dependents to obtain lawful permanent resident status, when it is in the dependent’s best interest to do so.”); San Francisco Human Services Agency, Family and Children’s Services Handbook Immigration and Child Welfare Practices, Section 62-2: Special Immigrant Juvenile Status, 1 (Oct. 9, 2009), *available at* <http://research.jacsw.uic.edu/icwnn/files/2013/03/SF-SIJS.pdf> (“It is SFHSA policy to assist in securing SIJS status for all eligible dependent minors in long-term placement.”); Fresno County Dep’t of Social Servs., Immigrant Children and Family Program, *available at* <http://research.jacsw.uic.edu/icwnn/files/2013/04/Fresno-Imm-CF-Program-presentation.pdf> (last visited Sept. 14, 2014) (“Shall assist detained undocumented/foreign minors with their return to their country of origin or in obtaining legal residency.”).

170. San Diego Special Immigrant Juvenile Status Program Guide, <http://research.jacsw.uic.edu/icwnn/files/2013/03/SD-Special-Immigraton-Juvenile-Status-SIJS.pdf> (last visited Aug. 16, 2013); Child Welfare Services, Special Immigrant Juvenile Status for Children Under Juvenile Court

to whom case workers should refer their wards.¹⁷¹ At least one jurisdiction asks law guardians to complete the application,¹⁷² while others make it clear that an outside attorney should be contacted. The implementation of the Reuniting Immigrant Families Act should encourage counties to be more uniform, and, in fact, the enactment of this law has encouraged other states to contemplate similar legislation.¹⁷³

b. New York

FIGURE 11. NEW YORK STATE SIJS APPLICATIONS 2007-2012



Jurisdiction (2004), *available at* <http://cssr.berkeley.edu/cwscmsreports/LatinoPracticeAdvisory/Madera/Policy%20and%20Procedures%20SIJS.pdf>.

171. Riverside County Dep't of Public Social Servs., *supra* note 169, at 6; "Undocumented Dependents," *supra* note 169, at 3.

172. San Francisco Human Services Agency, Immigration and Child Welfare Practices 10 (2009), *available at* <http://cssr.berkeley.edu/cwscmsreports/LatinoPracticeAdvisory/San%20Francisco/Special%20Immigrant%20Juvenile%20Status.pdf> (noting that dependency attorney must fill out or have immigration attorney appointed if necessary).

173. In New York, S 4185/ A 6377 "Reuniting Families Act" was enacted on March 13, 2013. S4185A-2013, 2013-2014, Reg. Sess. (Noy. 2013). On Feb. 27, 2013, Illinois introduced HB 3050, sponsored by state Representative Elizabeth Hernandez (D-Cicero). H.B. 3050, 98th Gen. Assemb. (Il. 2013). *See Bill Status of HB3050*, Illinois General Assembly website (last accessed Sept. 14th, 2014), <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=3050&GAID=12&DocTypeID=HB&SessionID=85&GA=98>.

In 2012, for the first time, New York unseated California as the state with the most SIJS applications, with 599 compared to California's 591. This coincides with very recent reforms at the statewide and New York City-wide levels regarding immigrants in the child welfare system. New York City has been more aggressive than other parts of the state in ensuring that SIJS eligible children are identified and served, described in depth below.¹⁷⁴

New York City, like Los Angeles, has had a history of serving immigrant children. The child welfare office had a program resettling unaccompanied refugee children, and soon after the SIJS statute passed in 1990, Harry Gelb, a supervisory child welfare attorney who, at the time handled all immigrant youth issues, sent a survey throughout the agency to see whether case workers were aware of any immigration issues with their children. After receiving results, Mr. Gelb tried to link the children to a variety of nonprofit immigration services organizations to determine whether the children were eligible for immigration protection. Mr. Gelb remembers that they identified at least one hundred children.¹⁷⁵ Today, the Administration for Children Services (ACS), the agency that administers the city's child welfare program, has much more formal screening, tracking, and referral mechanisms.

Screening, tracking, and referral protections for immigrant children in care became more sophisticated in recent years after the passage of Local Law 6, which was signed into law by Mayor Bloomberg in 2010 with the intent that ACS "ensure that immigration relief is a factor in permanency planning for non-citizen youths."¹⁷⁶ As a result of the law, ACS must designate someone to create and implement a new plan to provide services to potentially SIJS-eligible children, by 1) ascertaining country of birth of all children involved in the system; 2) as soon as possible identifying potential immigration relief such as SIJS; 3) tracking these children; 4) assisting them with immigration services; and 5) training workers regarding these immigration issues.¹⁷⁷

There are several screening systems in place, some of which have been added as part of their new plan. On a monthly basis since January 2011, the Director of the Office of Advocacy and Immigrant

174 . Telephone Interview with Mark Lewis (July, 2013); Telephone interview with Harry Gelb, Child Welfare Worker (June 18, 2013).

175. Telephone Interview with Harry Gelb, Child Welfare Worker (June 18, 2013).

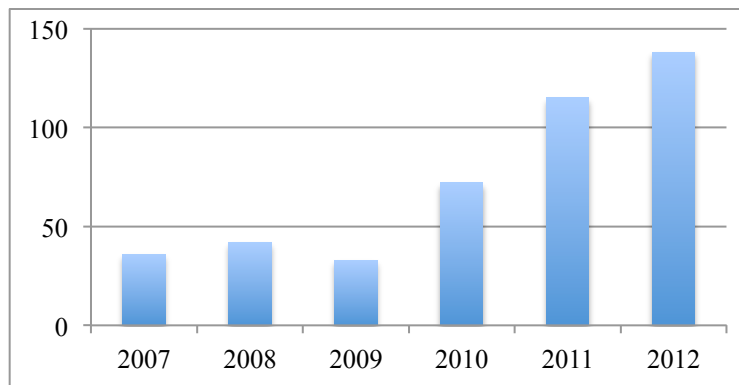
176. N.Y.C., N.Y., Local Law 2010/006 § 1 (2010).

177. N.Y.C., N.Y., Admin. Code § 21-904 (a).

Services within the ACS receives a report about children who do not meet IV-E federal foster care reimbursement qualifications under the Social Security Act.¹⁷⁸ These children are ineligible either due to immigration status¹⁷⁹ or wealth.¹⁸⁰ Since few children are too wealthy to receive reimbursements, IV-E reports generally indicate unauthorized immigration status. Also, as part of intake procedures, caseworkers and contract foster care agencies should identify immigration status. The child's attorney in the foster care matter should also check for status. Once a child is identified as undocumented, she should be referred to an immigration attorney to identify and apply for any available relief. ACS has authorized funds to pay these attorneys a small fee to prepare SIJS applications. In addition to screening for children in permanency proceedings, the agency is starting to make sure that children in delinquency receive referrals as well as preventive services.¹⁸¹

c. Massachusetts

FIGURE 12. MASSACHUSETTS SIJS APPLICATIONS (2007-2012)



178. *Local Law 6 of 2010 Annual Report*, N.Y.C. Admin. for Children's Serv. (2012).

179. 42 U.S.C. 672(a)(4) (2010).

180. 42 U.S.C. 672(a)(3)(B) (2010).

181. Telephone Interview with Mark Lewis (July 1, 2013); N.Y.C., N.Y., Local Law 2010/006 § 1 (2010) (stating that ACS must identify "all children within ACS, as early as possible, who may qualify for SIJS or other immigration benefits," which does not limit to children only in foster care proceedings).

Massachusetts is a SIJS high-performing state with the highest SIJS application rate,¹⁸² which is 400% greater than the median rate for states. Furthermore, Massachusetts ranks fourth amongst states for its SIJS application ranking (sixth) outpacing its unauthorized immigrant population ranking (fifteenth) by nine.¹⁸³ In 2012, 138 SIJS applications designated Massachusetts as the applicant's state of residence, up from thirty-six applications in 2007. While immigrant children have long been present in the Massachusetts child welfare system, the number of immigrant children in care has recently increased, particularly with the growing numbers of unaccompanied alien children.¹⁸⁴

Like the child welfare offices of other high application jurisdictions, Massachusetts' Department of Children Services (DCF) has had a long-standing practice of helping immigrant children in its care. Since 1990, the Department has contracted with a private immigration law firm to assist with the immigration needs of children in its care.¹⁸⁵ DCF similarly has an immigration unit, which is responsible for liaising with individual caseworkers to identify

182. In 2012, Massachusetts' SIJS ratio was 45%, while the median applications to unauthorized population ratio was 11%. See Figure 9 for comparisons of states' application rates.

183. Nebraska has the highest difference (15) between its SIJS ranking (21) and immigrant population ranking (36), followed by DC whose difference is 12 between its SIJS ranking (29th) and population ranking (41st), followed by Michigan, whose difference is 10 between its SIJS ranking (8th) and immigrant population ranking (18th). Kansas and Rhode Island also are the fourth highest with Massachusetts for having a difference of nine.

184. Telephone Interview with Ilana Greenstein, Associate, Kaplan, Friedman & Assoc. (Sept. 4, 2013); see also, Mass. Dep't of Children and Families, Legal Services for Immigrant Children in Foster Care Project 2 (2011).

There are a number of foreign born children/youth in the custody of DCF who have been placed in foster care as a result of abuse, neglect, or abandonment by their caretakers. . . . Recently a handful of children have entered foster care following a period of time in which they were detained in federal custody by the Inspections [sic.] and Customs Enforcement (ICE) branch of the U.S Department of Homeland Security and placed in removal proceedings. *Id.*

185. Telephone Interview with Ilana Greenstein, Associate, Kaplan, Friedman & Assoc. (Sept. 4, 2013). See also Mass. Dep't of Children and Families, Legal Services for Immigrant Children in Foster Care Project (2011) (detailing the processes for obtaining legal services for immigrant children).

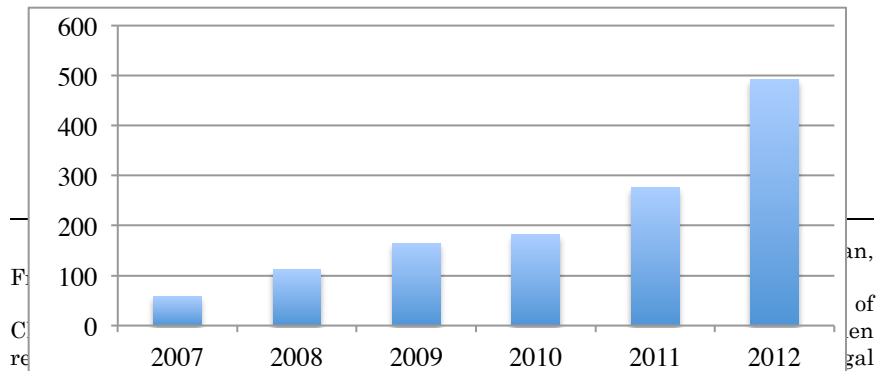
children eligible for immigration relief and for referring those children to a contracted law firm.¹⁸⁶

Like New York and Los Angeles, Massachusetts has explicit guidance on responding to a child's immigration needs. According to DCF policy, caseworkers should identify children who have immigration needs and determine whether a referral for SIJS is necessary.¹⁸⁷ DCF policy on planning for the youth's permanency identifies multiple points where the youth's immigration status should be addressed, with the latest point being when the youth turns seventeen years old.¹⁸⁸ Furthermore, policy dictates that the placement services should continue for children and young adults with pending immigration cases until the case is resolved.¹⁸⁹

Massachusetts is another jurisdiction where there seems to be widespread knowledge among juvenile and family courts regarding SIJS, making it easier for advocates in child welfare proceedings to obtain court orders with the special findings required for SIJS. Judges attend periodic trainings on SIJS cases.¹⁹⁰ While Massachusetts does not have a statewide uniform court form like New York and California, one Massachusetts court has regularly used a form Special Immigrant Juvenile order.¹⁹¹

d. Texas

FIGURE 13. TEXAS SIJS APPLICATIONS (2007-2012)



start to determine whether a referral for Special Immigrant Juvenile Status (SIJS) is necessary, as applicable.”

188. *Id.* at 55.

189. *Id.* at 56.

190. Honorable Paula M. Carey, Admin. Office of the Probate and Fam. Ct, Annual Report for Fiscal Year 2011, at 15 (2011).

191. Mandelbaum & Steglich, *supra* note 32, at 614; E-mail from Elizabeth Badger to author (July 28, 2014) (on file with author).

Texas has had some recent growth in the numbers of SIJS applicants and it may be because of recent changes to their procedures. The Department of Family and Protective Services (DFPS) has a policy to help children apply for SIJS in every case that is appropriate.¹⁹² This policy has been refined over time to ensure that caseworkers are more diligent in addressing immigration status. For instance, in March 2010 the policy stated that for any youth aged sixteen or older who is undocumented or whose status in the tracking system is “undetermined,” the child’s worker must review with the DFPS regional attorney the child’s eligibility for SIJS or other immigration relief.¹⁹³ However, July 2013 revisions state that the caseworker’s responsibility is to make sure that every eligible youth receives appropriate citizenship and immigration relief.¹⁹⁴

In the last few years, Texas lawmakers have scrutinized the state’s child welfare practices, resulting in significant policy changes. In 2009, the Texas Legislative Budget Board reviewed the Department of Family and Protective Service’s practices regarding SIJS-eligible children.¹⁹⁵ Its report outlined a number of problems that contributed to the number of SIJS-eligible children who aged out of DFPS services without accessing immigration relief. The report also emphasized that children in state foster care who remain in unauthorized status add to the burden on Texas state resources, and detailed the amount of money that could be saved by helping these

192. Tex. Dep’t of Fam. and Protective Servs., Int’l and Immigr. Servs., Undocumented Youth Who Are 16 or Older § 6712 (Mar. 2010) (“For youth age 16 or older who is an undocumented immigrant, or whose immigration status in the IMPACT system is undetermined, the child’s worker must review with the DFPS regional attorney the youth’s eligible for special immigrant juvenile status or another appropriate immigration option.”).

193. *Id.*

194. Tex. Dep’t of Fam. and Protective Servs., Int’l and Immigr. Servs., Caseworker Responsibility for Citizenship and Immigration § 6715 (2013), available at https://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_6700.asp#CPS_6715.

195. Tex. Legislative Budget Board, Tex. State Government Effectiveness and Efficiency: Selected Issues and Recommendations 239–52 (Jan. 2013).

children obtain SIJS and permanent residency, which would make them eligible for Title IV-E federal foster care reimbursements.¹⁹⁶

The problems identified in the report include: 1) a heavy reliance on caseworkers to identify a child's eligibility and to complete all necessary paperwork and obtain all documentation; 2) a lack of SIJS and immigration-related expertise among most caseworkers; 3) the lack of a system for tracking the status of children's SIJS applications; 4) extended delays in completing applications due to a lack of designated funds to pay for filing fees and related expenses; and 5) a practice of cutting off all state case services, including immigration services, for children who reach the age of eighteen.¹⁹⁷ These problems resulted in at least 160 children between 2003 and 2008 emancipating out of Texas foster care with undetermined immigration status.¹⁹⁸ The report found that the Department's over-reliance on individual caseworkers without a centralized support system resulted in great variation in how long caseworkers took to prepare the SIJS paperwork—ranging from three to eighteen months—which does not even include USCIS's processing time. This extended time period can have dire consequences for potential “aging out” problems. Only fifteen percent of children in Texas foster care who were identified as undocumented obtained SIJS or other documentation by the time they exited care or by the end of the year. Also, four out of five undocumented children who emancipated were still undocumented when they aged out.¹⁹⁹

The Texas Legislature Budget Board made a number of recommendations, many of which have been implemented. These recommendations include: creating new positions for three state-wide immigration specialists to provide support and guidance to DFPS caseworkers; providing state budget allocations for the medical exams and passport photos required for SIJS and other immigration-related applications—costs which were previously not covered but rather left to individual caseworkers; amending state law²⁰⁰ to allow juvenile courts to extend jurisdiction over foster care youths and young adults

196. *Id.* at 251–52.

197. *Id.* at 239–40, 247–251.

198. *Id.* at 251.

199. Jane Burstain, Ctr. for Pub. Policy Priorities, *Undocumented and Abused: A Texas Case Study of Children in the Child Protective Servs. System* 11 (2010).

200. Tex. Fam. Code Ann. § 263.601 (West 2013) (“‘Young adult’ means a person who was in the conservatorship of the department on the day before the person's 18th birthday.”).

up to age twenty-one; and improving tracking systems by regularly pulling federal Title IV-E foster care reports to determine which children are classified as having “unknown immigration status” and ensuring through the specialty workers and regional attorneys assigned to these children are following up on the children’s immigration status.²⁰¹ These specialists also track cases that have been marked for unauthorized or undetermined immigration status to make sure that caseworkers follow through with their responsibilities so that children do in fact obtain protection. Regional attorneys are usually responsible for reviewing a SIJS application after a caseworker prepares it, except in Region 10 where cases are regularly referred to pro bono attorneys.²⁰² Although there is no uniform judicial form for SIJS findings in Texas, DFPS created a model motion in 2011 to determine eligibility for SIJS status, so that DFPS attorneys across the state can request the necessary findings.²⁰³

Even despite these statewide improvements, there continues to be variance in practice regionally. Texas’ Region 8 assigns all SIJS-eligible foster care children to two caseworkers who have expertise in these types of applications. As a result, children in Region 8 have incredibly short wait periods to access protection; the Region’s internal goal is to obtain legal permanent residence for SIJS eligible children before the eleven-month child welfare hearing, which it is generally able to do. In the fastest cases, children obtained legal permanent residence within forty-three days.²⁰⁴ Other regions do not designate caseworkers with immigration expertise to SIJS-eligible children, nor do they have as prompt success in obtaining legal permanent residence.²⁰⁵

201 . Tex. Legislative Budget Board Staff, Tex. State Government Effectiveness and Efficiency: Selected Issues and Recommendations, at 239–42 (Jan. 2013); Telephone Interview with Mauro Valdez, Attorney, Tex. Dep’t Fam. & Protective Servs. (Sept. 9, 2013).

202. Burstain, *supra* note 199, at 10; Telephone Interview with Mauro Valdez, Attorney, Tex. Dep’t of Fam. & Protective Servs. (Sept. 9, 2013).

203. Tex. Dep’t of Fam. & Protective Servs., The Texas Practice Guide for Child Protective Services Attorneys § 11 (3rd ed. 2011); *see also* Tex. Dep’t of Fam. & Protective Servs., The Texas Practice Guide for Child Protective Services Attorneys § 11 (4th ed. 2011) (listing model motions and guidelines).

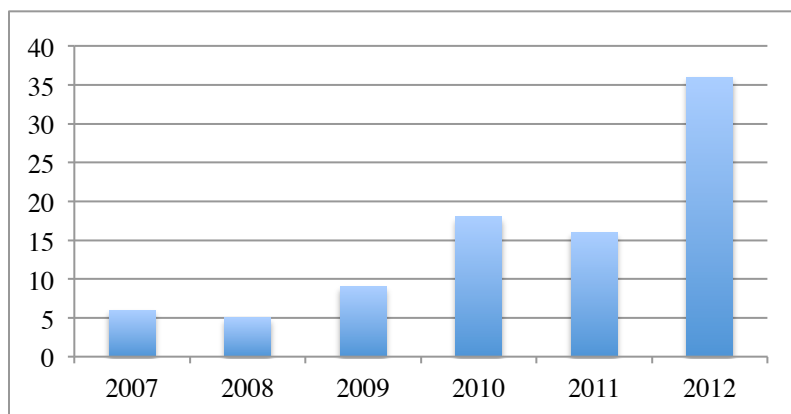
204. Telephone Interview with Mauro Valdez, Attorney, Tex. Dep’t of Fam. & Protective Servs. (Sept. 9, 2013).

205. *Id.*

2. Lower-application states do not have policies mandating that immigration needs be met, sophisticated screening programs, standardized judicial forms, or long-standing immigration specialists

a. Colorado

FIGURE 14. COLORADO SIJS APPLICATIONS 2007-2012



Colorado has a state-supervised, county-administered foster care system, which means that practices vary quite a bit by county. Colorado's Division of Child Welfare does not have a specific immigration division as some other states and counties do, but these matters come under the purview of the Residential Care Administrator within Colorado's Division of Child Welfare.²⁰⁶ The first official policy regarding SIJS was issued on September 28, 2006. It merely informs county directors and child welfare workers about SIJS, but does not offer any requirement or encouragement that SIJS-eligible children should be screened and assisted with immigration needs.²⁰⁷

Colorado has had a surge in the ratio of SIJS applicants to unauthorized immigrant population in recent years, although overall

206. Telephone Interview with Kerry Swenson, Residential Care Adm'r, Div. of Child Welfare, Colo. Dep't of Human Servs., (July 24, 2013); Telephone Interview with Kathleen Glynn, Managing Att'y, Children's Program, Rocky Mountain Immigrant Advocacy Network (June 25, 2013).

207. Agency Letter from Office of Children, Youth and Fam. Servs., Colo. Dep't of Human Servs. (Sept. 26, 2006).

numbers are very small. In 2012, there were thirty-six applications, while in 2007 there were only six. The increase in applications could be related to changes including the issuance of the 2006 policy and the implementation of recommendations from a recent statewide committee, the “Citizenship Pathways Taskforce.” In 2009, Colorado Governor Ritter identified undocumented children in foster care as an issue that needed to be explored, and in 2010, the Citizenship Pathways Taskforce was created.²⁰⁸ The committee was tasked with creating suggestions to improve child welfare policy and practice to better serve immigrant children and families while avoiding undue administrative and fiscal burdens.²⁰⁹ The final recommendations were: 1) update rules and agency letters regarding immigration status, federal funding, and permanency planning for undocumented youth in county care; 2) obtain a child welfare immigration consultant to assist in obtaining immigration status, safe repatriation, travel documents, and related services; 3) create a Colorado-specific immigration related toolkit with guidance useful for stakeholders; 4) create and provide interdisciplinary training regarding best practices and protocols for working with undocumented children and families; and 5) make changes to the Colorado information technology system that tracks child welfare cases to improve early identification of immigration status.²¹⁰

In furtherance of these recommendations, the Department of Human Services has twice notified counties of SIJS resources, including the assessment and planning tool, the incoming immigration consultant, resource toolkits, web based option training, and planned changes to the information technology system.²¹¹ These letters merely inform directors of the availability of relief and basic facts, but do not weigh in on whether immigration needs should be

208. Telephone Interview with Kerry Swenson, Residential Care Adm’r, Div. of Child Welfare, Colo. Dep’t of Human Servs. (July 24, 2013); Telephone Interview with Kathleen Glynn, Managing Attorney, Children’s Program, Rocky Mountain Immigrant Advocacy Network (June 25, 2013); PowerPoint presentation of Citizenship Pathways, “CPS & Immigrant Children: An Introductory Survey of Laws, Directives, and Policies in Florida, Texas, New York, Illinois, California, and New Jersey” (on file with author).

209. PowerPoint presentation of Citizenship Pathways, “CPS & Immigrant Children: An Introductory Survey of Laws, Directives, and Policies in Florida, Texas, New York, Illinois, California, and New Jersey” (on file with author).

210. *Id.*

211. Letter from Julie Krow, Dir. Office of Children, Youth and Fam., Colo. Dep’t of Human Servs. to Cnty. Dirs. (Aug. 13, 2012) (on file with author).

addressed.²¹² Additionally, an Equal Justice Works Fellow, Kathleen Glynn,²¹³ began working as an on-call consultant, ready to screen and provide representation to children in the welfare system after they have been identified by caseworkers. She has also created a manual regarding SIJS for Colorado attorneys.²¹⁴ Ms. Glynn states that one of the biggest problems has been creating awareness about her position, but she is beginning to receive more referrals from caseworkers and county attorneys.²¹⁵ As a result of the county system and the fact that the state does not mandate that immigration issues are a part of a child's needs that have to be addressed, there are very different practices and awareness among counties with regard to identifying and helping SIJS-eligible children.²¹⁶

b. Mississippi

There does not seem to be an explicit Department of Human Services policy regarding working with non-citizen children in Mississippi's foster care system.²¹⁷ As a result it does not appear that Mississippi's child welfare system routinely screens for immigration status, nor does Mississippi have specialized staff with immigration expertise. This may contribute to Mississippi's low application numbers and rates. From 2007 to 2010, there was only one application per year. In 2011 there were seven, and in 2012 there were five. The ratio of SIJS applications per unauthorized immigrant population was one-fifth that of the median rate, making it the lowest of all states included in the analysis.²¹⁸

212. *Id.*

213. Memorandum from Rocky Mountain Immigrant Advocacy Network, Child Welfare Immigration Consultant (undated) (on file with author).

214. Kristin Petri & Kathleen Glynn, *Immigration Law for the Colorado Practitioner* (Nancy B. Elkind et al. eds., 1st ed., vol. 2, Supp. Feb. 2013).

215. Telephone Interview with Kathleen Glynn, Managing Attorney, Children's Program, Rocky Mountain Immigrant Advocacy Network (June 25, 2013).

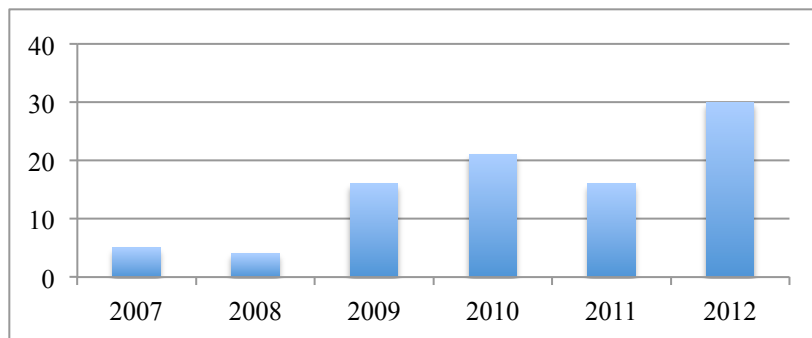
216. *Id.*; Telephone Interview with Kerry Swenson, Residential Care Adm'r, Div. of Child Welfare, Colo. Dep't of Human Servs. (July 25, 2013).

217. E-mail from David Calder, Family Clinical Professor, Univ. of Miss., to author (July 23, 2013, 21:06 CST) (on file with author).

218. Mississippi's rate is 2.22%, one fifth of the median state rate, with only one application in 2010 for an estimated 45,000 unauthorized immigrants.

3. Illinois is a lower-application state that has explicit policies and staff with immigration expertise, although the screening procedures are very new, and the state has a law that limits SIJS findings to youths under eighteen

FIGURE 15. ILLINOIS SIJS APPLICATIONS



Illinois first began providing immigration services to children in 1995, but the Department of Children and Family Service's (DCFS) Immigration Services Unit did not become functional until 1997.²¹⁹ This unit has historically consisted of two people: the Assistant Guardian and an immigration specialist, who is a social worker.²²⁰ As early as 1995, written procedures addressed immigration issues to ensure immigrant children's statuses were addressed.²²¹ Under current procedures, caseworkers are required to submit a SIJS referral form to the Immigration Services Unit once they identify an undocumented or foreign-born youth.²²² Once the Immigration Services Unit staff member confirms that a child is eligible for SIJS, she then asks the caseworker to provide a number of documents to

219. E-mail from Lisa Robinson, Assistant Guardian, Dep't of Children and Family Servs., to author (Sept. 4, 2013, 17:51 CST).

220. Telephone Interview with Manoj Govindaiah, former Staff Att'y, Nat'l Immigrant Justice Ctr. (Aug. 7, 2013); Telephone Interview with Lisa Robinson, Assistant Guardian, Dep't of Children and Family Servs. (Aug. 13, 2013).

221. E-mail from Lisa Robinson, Assistant Guardian, Dep't of Children and Family Servs., to author (Sept. 4, 2013) (stating Procedures 305 and 302 addressed this concern).

222. Memorandum from Erwin McEwen, Dir., Dep't of Children and Family Servs. to DCFS and POS Child Welfare Staff, Rules and Procedures Bookholders (May 16, 2008), available at <http://www.f2f.ca.gov/res/pdf/PolicyGuideImmigration.pdf>.

begin the process for applying for SIJS.²²³ The Immigration Services Unit staff person then completes the necessary paperwork and liaises with the caseworker to obtain necessary signatures and other documentation.²²⁴

How does DCFS screen for immigration status? As of July 2013, the immigration unit has begun to examine monthly reports of children in care who are not eligible for federal IV-E foster care reimbursements to investigate the children's immigration status.²²⁵ Any increased effects from this recent procedure will not be reflected in the data as it ended with fiscal year 2012. Before this change, DCFS's immigration unit has relied on caseworkers and the attorneys representing the children in family court to identify undocumented youths. It is generally seen as the role of attorneys, not caseworkers, to screen for status, though caseworkers that identify immigration status as an issue should alert the immigration unit.²²⁶ As there is no particular intake questionnaire that asks for immigration status, status may be identified at the temporary custody hearing when parents are asked whether they have a social security number. Lack of a social security number can be one indicator of unauthorized status, prompting the law guardian to inquire about the child's immigration status.²²⁷ Immigration status may come to the attention of a caseworker who fills out a social history, which is a standard procedure at the beginning of a child welfare case.²²⁸

Illinois is an outlier in this sample of states, because it is a low application state that shares some of the child welfare best practices with high application states, namely having a long-standing immigration unit and policies addressing the legal needs of undocumented children. However, Illinois is distinct from the high application states in that it does not have a uniform judicial form. Another difference from other jurisdictions is a state law that defines a "Special Immigrant Juvenile" as someone who is under the age of eighteen.²²⁹ This definition is more restrictive than the current one used by federal law and does not incorporate amendments from the

223. *Id.* at 4.

224. *Id.* at 5.

225. Telephone Interview with Lisa Robinson, Assistant Guardian, DCFS (Aug. 13, 2013).

226. *Id.*

227. Telephone Interview with Julie Sollinger, Assistant Pub. Guardian of Cook Cnty. (Aug. 9, 2013).

228. *Id.*

229. 705 Ill. Comp. Stat. Ann. 405 / 2-4a(a) (West 2003).

TVPRA of 2008. For example, it requires that reunification not be viable with both parents, as opposed to either one or both,²³⁰ and that the reason can only be for abuse, abandonment, or neglect—not allowing for “a similar basis under state law.”²³¹ Lastly, its screening process has only very recently shifted to utilize federal IV-E foster care reimbursements eligibility reports to identify undocumented children in care.²³²

There may be other reasons for the low numbers. Perhaps immigrant children are far more underrepresented in the Illinois child welfare system than in other states. Furthermore, there may be a large number of SIJS-eligible children outside of the child welfare system who are unable to access protection, potentially because of a lack of specialized representation,²³³ court procedures,²³⁴ or judicial resistance. It is also possible that USCIS records on the number of Illinois SIJS applicants are inaccurate.²³⁵

B. Variance in State Laws

State laws vary in many aspects relating to the SIJS statute, specifically: 1) factors to be considered for “best interests”²³⁶; 2) the

230. 705 Ill. Comp. Stat. Ann. 405 / 2-4a(b)(2) (West 2003).

231. 705 Ill. Comp. Stat. Ann. 405 / 2-4a(a) (West 2003).

232. This IV-E report cross-checking seems to have begun around July, 2013. Telephone Interview with Lisa Robinson, Assistant Guardian, DCFS (Aug. 13, 2013) (Ms. Robinson stated that the federal IV-E report checking began about one month prior).

233. See *infra* Part III.C.3 (describing differences in state laws that lead to different rates of SIJS-eligible children having access to SIJS protection).

234. Advocates report that Cook County juvenile courts have been reluctant to recognize their jurisdiction over children in ORR care, and that in Cook county, the State Attorney’s office, which is always party to dependency proceedings, often opposes cases involving children in ORR care; Telephone Interview with Manoj Govindaiah, previously a Staff Attorney at National Immigrant Justice Center, (Aug. 7, 2013).

235. DCFS reports having anywhere from 27 to 45 undocumented children in care per year. Telephone Interview with Lisa Robinson, Assistant Guardian, DCFS (Aug. 13, 2013). As of August 2013, DCFS had 85 children in care with some type of immigration issue. Telephone Interview with Julie Sollinger, Assistant Pub. Guardian of Cook County, (Aug. 9, 2013). Although the number of SIJS applicants would be lower than the total number of children with immigration issues, these numbers are quite a bit larger than the total number of Illinois applicants from 2007–2011 (respectively 5, 4, 16, 21, and 16).

236. For a discussion of state differences in best interest determinations, see Child Welfare Information Gateway, *Determining the Best Interest of the Child* (2012), available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf.

definition of abuse, abandonment, neglect, or similar state provisions²³⁷; 3) types of courts and proceedings where SIJS findings can be obtained, which also implicate age at which jurisdiction ends²³⁸; 4) state residency requirements and other procedural matters including filing and service requirements; and 5) laws passed in reaction to SIJS.²³⁹ Furthermore, some states' courts have developed significant case law in the area of Special Immigrant Juvenile Status further delineating the legal landscape.²⁴⁰

Because age is so central to SIJS status and because differences in jurisdictional age provide strict barriers to relief, I will focus on this aspect of state law.²⁴¹ Furthermore, since there are numerous potential bases for the types of judicial procedures in which a SIJS order can be obtained, I will focus only on the most common: dependency/foster care, guardianship/conservatorship, and delinquency. While there are a number of similar concepts across states, there are also unique types of legal proceedings that do not exist across all states.²⁴²

Overall, there is a great deal of variance regarding jurisdictional age limits and various types of state proceedings. However, there does not appear to be a relationship between higher performing states and higher age limits. This may be for a number of reasons. Perhaps it is because a particular state has a lower age limit in one type of proceeding, but a higher age limit in another, so that

237. "Specific definitions of the terms 'abuse, neglect, or abandonment' for the purposes of juvenile dependency proceeding derive from State law and therefore vary from state to state." Special Immigrant Juvenile Petitions, Fed. Reg. 54980 (proposed Sept. 6, 2011).

238. "State juvenile court age limitations on jurisdiction and dates of 'emancipation' vary greatly from state to state." *Id.*

239. For example, Florida and New Mexico have passed laws mandating immigration status screening and case planning services to regularize immigration status, if applicable. Fla. Stat. Ann. § 39.5075 (West 2005); N.M. Stat. Ann. § 32A-4-23.1 (West 2009).

240. This article does not delve into a study of case law amongst the 50 states, but notes that there has been significant litigation in New York, as well as some in California.

241. A comparison of states' differing service requirements, definitions of abandonment, abuse, and neglect, and case law may shed more light on this investigation. However, in the interests of limiting the scope of the paper, I have refrained from including these inquiries.

242. In Texas, for example, SIJS orders are often obtained through a declaratory judgment proceeding. Some other unique proceedings include Person or Child in Need of Care, Allocation of Parental Rights, and New York's Destitute Child Act.

not enough children are prevented access to create a discernible trend.²⁴³ Also, the higher performing states may out-perform other states to such high degrees that the numbers of youth that face age barriers are not significant enough to affect the trend. To understand the degree that the states vary, I will compare age limits for dependency/foster care, guardianship/conservatorship, and delinquency.

In all the selected states—California,²⁴⁴ New York,²⁴⁵ Massachusetts,²⁴⁶ Colorado,²⁴⁷ Mississippi,²⁴⁸ Illinois,²⁴⁹ and Texas²⁵⁰—a young person must be under the age of eighteen to enter the foster care system. However, the age at which she can remain in the system varies. In Massachusetts, jurisdiction generally ends at eighteen, although it could be extended until twenty-two if the youth is a full-time student or in other exceptional circumstances.²⁵¹ Illinois terminates jurisdiction at age nineteen, unless there is good cause and then the child may stay until age twenty-one.²⁵² Minors who were found to be dependent but later discharged can also re-enter the system between the ages of eighteen and twenty-one upon petition.²⁵³ California,²⁵⁴ New York,²⁵⁵ and Colorado²⁵⁶ allow a juvenile court to retain jurisdiction of a dependent child until age twenty-one and Mississippi²⁵⁷ allows it until age twenty. Texas allows for foster care

243. For example, while 18 is the cut off age in Massachusetts for a child seeking guardianship, children 18 and over may proceed in Probate Court under equity proceedings.

244. Cal. Welf. & Inst. Code § 101(a) (West 2013); Cal. Fam. Code § 6500 (West 1994).

245. Fam. Ct. Act § 1087(a) (McKinney 2012); Fam. Ct. Act § 1012(e), (f) (McKinney 2009).

246. Mass. Gen. Laws Ann. ch. 118, § 1 (West 1995); Mass. Gen. Laws Ann. ch. 119, § 21 (West 2013).

247. Colo. Rev. Stat. § 19-1-103(18) (2014).

248. Miss. Code Ann. § 43-21-105(d) (West 2013).

249. 705 Ill. Comp. Stat. § 405/2-3 (2013) (stating that neglected and abused minors are under 18); 705 ILCS 405/2-4(1) (stating that dependent minors are under 18); 705 Ill. Comp. Stat. § 405/2-4(1)(a) (2009) (stating that a Special Immigrant Juvenile minor is under 18).

250. Tex. Hum. Res. Code Ann. § 42.002(1) (West 2011).

251. Mass. Gen. Laws Ann. ch. 118, § 1 (West 1995); Mass. Gen. Laws Ann. ch. 119, § 23(f) (West 2010).

252. 705 Ill. Comp. Stat. 405 / 2-31(1) (2014).

253. 705 Ill. Comp. Stat. 405 / 2-33(2) (2014).

254. Cal. Welf. & Inst. Code § 303(a) (West 2014).

255. N.Y. Fam. Ct. Act § 1055(e) (McKinney 2012).

256. Colo. Rev. Stat. § 19-3-205 (2011).

257. Miss. Code Ann. § 43-21-151(2) (West 2014).

services for children until age twenty-two;²⁵⁸ before 2009, the court's jurisdiction over foster care youths automatically ended at eighteen even if the child remained in care, but now foster care youth can elect to remain under the jurisdiction of the court until twenty-one.²⁵⁹ Other procedural points may vary as well—some states allow a private party to petition for a child to enter foster care, while others delegate it to the child welfare agency or the district attorney's office. Therefore, depending on the government agency's priorities and attitudes, a child may or may not have an opportunity to enter the system.

Jurisdictional ages for delinquency proceedings vary even more. In California, a child may be subject to delinquency proceedings until age eighteen, and then once adjudicated as a delinquent she may continue to be subject to the system until age nineteen. Upon a court order, delinquency jurisdiction may be extended until age twenty-one.²⁶⁰ In New York, a youth can be adjudicated as a delinquent from age seven to sixteen,²⁶¹ while in Massachusetts, the age range is from seven to eighteen.²⁶² In Illinois, a delinquent minor is under eighteen years old.²⁶³ In Texas, a youth can be adjudicated as a delinquent from age ten to sixteen, although a seventeen-year-old can be adjudicated as a delinquent for behavior that took place when they were under seventeen.²⁶⁴ In Colorado, a youth can be adjudicated as a delinquent from age ten to eighteen,²⁶⁵ although she can receive services until the conclusion of her case.²⁶⁶ In Mississippi, she must enter delinquency proceedings before age eighteen, but can remain receiving services until twenty.²⁶⁷

Guardianships are one of the most frequent jurisdictional vehicles where SIJS findings are requested, though age requirements vary considerably. Higher performing California²⁶⁸ and

258. Tex. Fam. Code Ann. § 264.101(f) (West 2010).

259. Burstain, *supra* note 199, at 9.

260. Cal. Welf. & Inst. Code § 208.5 (West 2007); Cal. Welf. & Inst. Code § 607 (West 2012).

261. N.Y. Fam. Ct. Act § 301.2(1) (McKinney 2010).

262. Mass. Gen. Laws Ann. ch. 119, § 52 (West 2013).

263. 705 Ill. Comp. Stat. § 405 / 5-105(3) (West 2014); 705 Ill. Comp. Stat. § 405 / 5-120 (West 2014).

264. Tex. Fam. Code Ann. § 51.02(2) (West 2013).

265. Col. Rev. Stat. § 19-1-103(68) (West 2014).

266. Col. Rev. Stat. § 19-2-104(6) (West 2014).

267. Miss. Code Ann. § 43-21-151 (West 2014).

268. Cal. Prob. Code § 1600(a) (West 2014) (guardianship terminates when ward attains majority); Cal. Prob. Code § 1510 (West 2014) (allowing for

Massachusetts²⁶⁹ allow guardianships for youths only up to age eighteen, as do lower performing Illinois,²⁷⁰ recently growing Texas,²⁷¹ and Colorado²⁷²—although Colorado does allow courts to extend jurisdiction of an already existing guardianship past age eighteen under extenuating circumstances.²⁷³ Until a few years ago, higher performing New York allowed guardianships for youth only up to age eighteen, but now youths can have a guardian appointed up to age twenty-one,²⁷⁴ which is also the age limit for guardianship in lower performing Mississippi.²⁷⁵

While state juvenile age limit laws vary, based on these selected states, a later jurisdictional cut-off age is not necessarily a determinative factor for high performing SIJS states. For example, high application states Massachusetts and California limit guardianship at eighteen, while low application rate state Mississippi has jurisdiction until twenty-one.

Nonetheless, it is clear that eligible youths can be excluded from SIJS protection due to these differences. Recall Ana, whose case was described in the introduction to this article. In New York, a relative could petition for guardianship over her, and she would be eligible to seek SIJS status. In Illinois—as in her home state of Virginia—she is out luck.

appointment of minor, where minor is defined as under Cal. Fam. Code § 6500 (West 2014).

269. Mass. Gen. Laws Ann. ch. 190B, § 5-204 (2012) (allowing for the appointment of a guardian for a minor); Mass. Gen. Laws Ann. ch. 190B, § 5-210 (West 2009) (guardianship terminates at age of majority, which is age 18 as defined in Mass. Gen. Laws Ann. ch. 231, § 85P); H.R. 1414, 188th Gen. Court (Mass. 2013).

270. 755 Ill. Comp. Stat. 5/11-14.1 (West 2008) (guardian of minor lasts until minor reaches age of majority); 755 Ill. Comp. Stat. 5/11-1 (West 2008) (age of majority is 18 years old).

271. Tex. Estate Code Ann. § 22.022 (West 2014) (minors are under 18). In Texas, a petitioner may gain custody of a child through a Suit Affecting Parent-Child relationship, which also defines children as under 18. Tex. Fam. Code Ann. § 152.102.

272. Colo. Rev. Stat. Ann. § 15-14-204 (stating probate guardianship terminates at 18 unless extenuating circumstances); Colo. Rev. Stat. § 15-14-210.

273. Colo. Rev. Stat. Ann. § 15-14-210.

274. N.Y. Fam. Law § 661(a) (McKinney 2011).

275. Miss. Code Ann. § 93-13-75 (1991) (stating guardianship terminates at age 21).

C. Variance in States' Legal Resources

Access to representation seems to be an important factor in states that have higher and lower SIJS applications. Attorneys provide access to courts by drafting appropriate pleadings. As an initial matter, without an attorney to provide legal screening, a child will often not even be identified as eligible for SIJS. Furthermore, in jurisdictions with skeptical and uninformed judges, *pro se* children are ill-equipped to educate judges. Lastly, it is difficult to imagine *pro se* youths preparing their own immigration forms. Since children cannot screen themselves for relief, and since many judges across the country are unaware of SIJS, an attorney is often the linchpin of the SIJS process. High SIJS application states such as New York, California, Massachusetts, and Texas have greater availability of representation with specialization in immigration and family law, which is generally needed to seek SIJS.²⁷⁶ States with lower numbers of SIJS applicants—such as Illinois and Mississippi—have fewer nonprofit resources that provide direct representation in state proceedings.

1. Los Angeles, New York City, and Massachusetts, which have high SIJS application rates, are resource-rich jurisdictions.

While many Los Angeles SIJS seekers are identified in the foster care system by caseworkers who then prepare their SIJS applications, children are also able to petition for predicate orders through probate, guardianship, delinquency, or custody proceedings. Los Angeles County benefits from having a number of non-profits²⁷⁷ that help identify and serve immigrant children in the area in these various proceedings.²⁷⁸ Furthermore, for the last several years, Public

276. Due to the requirements of specialized knowledge and the ability to initiate proceedings, it is almost unheard of for a child to be able to obtain a predicate order without representation. Even Public Counsel's *pro se* guardianship clinic, which identifies SIJS eligible children and advises their potential guardians to make a request for SIJS findings, uses lawyers to screen for eligibility, which depends on whether there are judges who are familiar with the law.

277. *E.g.*, Public Counsel, Southwestern Law School Clinic, Kids in Need of Defense, the Immigr. Center for Women and Children, Alliance for Children's Rights; Catholic Charities, and CARECEN.

278. Jackson, *supra* note 19, at 23; *Saco thesis*, *supra* note 158, at 25; *see also* Public Counsel, Special Immigrant Juvenile Status Manual (Dec. 2010) (showing how local workers should help eligible youths apply for SIJS).

Counsel has been running a *pro se* guardianship clinic, screening for immigration status of children as they do intake. If the clinic identifies an undocumented child, it tries to refer the case to pro bono attorneys or, at a minimum, alert the *pro se* guardianship petitioners about the child's SIJS eligibility so they will make a request for SIJS predicate order findings as part of the guardianship proceedings.²⁷⁹

New York City's Administration for Children Services contracts with attorneys to complete immigration petitions on behalf of children in its care. Children who are not in care can often access representation through one of the many nonprofit legal services providers that serve immigrant children, including the Legal Aid Society, the Door, Catholic Charities, Kids in Need of Defense, and Lawyers for Children.

Massachusetts has a number of resources to help SIJS-eligible children once they have been identified. The Department of Children and Families contracts with a private attorney to provide legal immigration services—primarily for SIJS eligible children, but also for other immigrant children in their care.²⁸⁰ SIJS eligible children in non-foster care proceedings can find representation through one of many non-profits such as Greater Boston Legal Services, Ascentria, Kids in Need of Defense, South Coastal Counties Legal Services, Community Legal Aid, Catholic Charities (Bedford and Boston), Children's Law Center, and Community Legal Services, as well as a number of law school clinics.

2. Texas, which has a slightly higher than average application rate, is a medium-resourced state.

The Texas application rate is 11.03%, just a few hundredths of a percentage above the median of eleven percent. In Texas, Child Protective Services mandates that its caseworkers address the immigration needs of children. As a result, they have designated regional law guardian liaisons to be responsible for the children's immigration needs. These attorneys either make sure the applications are done in house or, in one region, they outsource to pro bono immigration attorneys. Considering the large unauthorized immigrant population in Texas, there are only a handful of nonprofit organizations that tend to the needs of SIJS eligible children who are

279. Telephone Interview with Kirsten Jackson, Senior Staff Attorney, Public Counsel (June 11, 2013).

280. Mass. Dep't of Children, Legal Services for Immigrant Children in Foster Care Project (Oct. 2011).

not in care, and advocates report that needs far outpace their capacity.²⁸¹ There is a monthly convening of statewide SIJS advocates²⁸² which includes representatives from KIND, Probar, RAICES, Human Rights Initiative, Dallas Catholic Charities, Diocesan Migrant Refugee Services, and the Bernardo Kohler Center.

3. Illinois, and to a greater extent, Mississippi, which have low SIJS application rates, are resource-poor jurisdictions.

Illinois' applications rate is about one third of the median rate and Mississippi's rate is about one fifth of the median, making them under-performing SIJS states. These states are also resource-poor in terms of nonprofit specialists who represent immigrant children in state court proceedings. In Illinois, SIJS applications for children in foster care are generally completed by the Immigration Services Unit of the Department of Children and Family Services. Otherwise the SIJS providers for the state,²⁸³ which is ranked sixth in unauthorized immigrant population, are the National Immigrant Justice Center, the Children's Clinic of Loyola Law School, Northwestern Law School's clinic, and, occasionally, Chicago Volunteer Legal Services. Two of these providers are law school clinics,²⁸⁴ which by nature of being educational institutions will often have lower case loads than traditional legal service offices.

Mississippi does not have immigration specialists within their child welfare system and has only one nonprofit, direct-services attorney. Additionally, there are a few full-time Board of Immigration Appeals (BIA) accredited representatives, who are non-lawyers allowed to practice limited immigration law.²⁸⁵ The Mississippi

281. Telephone Interview with Dalia Castillo-Granados, Staff Attorney, Kids in Need of Defense, Houston Field Office (Aug. 19, 2013); Telephone Interview with Alexandra Minnaar, former Staff Attorney, RAICES (Aug. 13, 2013).

282. Telephone Interview with Dalia Castillo-Granados, Staff Attorney, Kids in Need of Defense, Houston Field Office (Aug. 19, 2013).

283. Telephone Interview with Manoj Govindaiah, former Staff Attorney, National Immigrant Justice Center (Aug. 7, 2013).

284. Valparaiso Law School has recently initiated an immigration clinic that serves SIJS seekers as part of their docket. *The Law Clinic*, Valparaiso Law School, <http://www.valpo.edu/law/current-students/c-academics/c-clinic-and-skill-based-learning/c-law-clinics> (last visited Sept. 21, 2014). Since the clinic began in 2012, its SIJS applicants would not be reflected in the data set used in this article.

285. The Mississippi Immigrant Rights Alliance has a Legal Director who provides direct immigration legal services at a low cost in some instances. *Legal*

Immigrant Rights Alliance is a membership-based alliance that works to expand the rights of vulnerable immigrants in Mississippi mostly through advocacy, organizing, and education. They also provide some low cost direct legal services.²⁸⁶ Other immigration services providers that have BIA-accredited representatives in the state include Catholic Charities and Social Services of Biloxi. El Pueblo has one immigration attorney, who is not licensed in Mississippi, in addition to BIA-accredited representatives.²⁸⁷ While BIA-accredited representatives have the capacity to complete the SIJS application, only an attorney licensed to practice in Mississippi can represent children in state courts to obtain the mandatory predicate order.²⁸⁸ Therefore, because none of the few immigrant services organizations in Mississippi have Mississippi-licensed attorneys, they cannot help low-income SIJS eligible children access Mississippi family courts for the first part of the SIJS process.²⁸⁹

V. RECOMMENDATIONS

Section III suggests that states that have engaged in policy reform to address state problems in the implementation of SIJS have increased their rates of applications. This trend highlights the need for a nationwide effort to ensure all states address SIJS implementation, as well as the need for the federal immigration agency to address the lack of uniform state implementation in its own regulations and practices.

In order to address the disparities created by differences in state law, policy, practices, and resources, state and federal governments should take steps to increase access to and decrease discrepancies in the use of this federal benefit to eligible children across the country. Important changes would ensure children are identified and screened for immigration status and protection and that they have access to representation for both state and immigration proceedings. These proposals include: 1) forming a working group to analyze SIJS application disparities and state

Project, Miss. Immigrant Rights Alliance, <http://www.yourmira.org/about/legal-project/> (last visited Sept. 19, 2013).

286. *Id.*; Telephone Interview with Patricia Ice, Legal Director, MIRA, (Aug. 21, 2013).

287. E-mail from Mary Townsend, El Pueblo, to author (Aug. 21, 2013 1:00pm EST).

288. *Id.* In fact, Mary Townsend reports that they have received referrals for SIJS applicants after they have obtained the underlying state court order.

289. *Id.*

practices; 2) enacting federal law to increase state screening and assistance for immigrant children to apply for SIJS; and 3) amending SIJS to create a federal safeguard to address state discrepancies.

I do not recommend that states cede control of the whole SIJS process to the federal government, even if it may seem to be a natural solution for uniformity. A completely federal system would be inefficient, costly, and impractical. The SIJS determination is an ancillary consideration in what can be a much more in-depth state court process to determine the best interest of the child and the most appropriate placement. Taking into consideration this larger investigation that state courts conduct, as well as the traditional role that states have over family and juvenile law, it makes sense for this adjudication to remain under state control.

A. Form working group to analyze SIJS application disparities and state practices, and publish data on SIJS applicants

A somewhat simple and limited cost step towards decreasing disparity and increasing accessibility would be to create a nationwide working group of stakeholders, including federal and state actors, to study SIJS policies and practices across states and to share best practices information. States such as Colorado and Texas have shown that states can increase their SIJS applications through self-study and implementation of best practices.²⁹⁰ One potential best practice identified in this article is having a uniform form for a SIJS order to ease the process for applicants to obtain the precise mandatory language and to familiarize state court judges with SIJS. States may benefit from learning how other states have developed these uniform SIJS forms, how those states screen immigrant children in care utilizing federal IV-E foster care reimbursement reports, how they have passed laws to make clear the state court's jurisdictions to make factual findings necessary for SIJS, and how they have developed laws to extend jurisdiction for children between ages eighteen to twenty-one.

To assist this working group, federal agencies with data regarding SIJS applicants should better track and publish this information. ORR, which has its contractors screen children for SIJS eligibility, should track SIJS eligible youths to see if they ultimately obtain attorneys and access relief. They should also track which states children are released to and analyze disparities in accessing

290. See *infra* Part III.A (detailing differences in state policies and practices regarding SIJS eligibility).

relief in these states. Due to the Perez-Olano settlement, the immigration agency must publish reports of total SIJS applications per year, specifying the numbers of approved and denied applications.²⁹¹ The immigration agency should also include state-by-state breakdowns to make it possible to monitor SIJS application disparities across states.

B. Enact the Federal Foster Care Opportunity Act to require states to screen for and address immigration status for children in foster care, to amend IV-E eligibility to provide federal funding to SIJS-grantees, to provide technical assistance to states, and to promote training of stakeholders.

The Foster Children Opportunity Act, which was introduced into the House in May 2013, addresses issues of screening immigrant children in care, training, and technical assistance for states, and of amending federal law to ensure SIJS-grantees are eligible for public benefits, including federal foster care reimbursements.²⁹² The numbers of immigrant children in the child welfare system has not been investigated at a national level, so the scope of this issue remains unknown.²⁹³ However, Texas, which has done a thorough study of its own SIJS practices, found that four out of five unauthorized immigrant children in its care were emancipated without obtaining legal status. Furthermore, Texas estimated that if it better identified and served SIJS-eligible children, the state could save about \$1 million dollars through federal reimbursements.²⁹⁴

291. Settlement in *Perez-Olano v. Holder*, Case No. CV 05-3604, (C.D. Cal. 2010), at ¶32, available at http://www.uscis.gov/sites/default/files/USCIS/Laws/Legal%20Settlement%20Notices%20and%20Agreements/Perez-Olano%20v%20Holder/Signed_Settlement_Agreement.pdf.

292. The Federal Foster Care Opportunity Act, H.R. 2036, 113th Cong. (2013).

293. Rome, *supra* note 25.

294. In a case study of Texas in 2005, the state found nearly 60% of the children in its care were Title IV-E eligible, but only 5% of Latin American immigrants were Title IV-E eligible. Mostly likely this is due to immigration status, as approximately 70% of all Latin American-born children in Texas are undocumented. T. Vericker et al., *Title IV-E Funding: Funded Foster Care Placement by Child Generation and Ethnicity*, The Urban Institute, May 2007, at 2, available at http://www.urban.org/uploadedpdf/311461_title_iv-e.pdf.

The Foster Children Opportunity Act would ensure that states have procedures to assist children in the foster care system with applying for SIJS and other appropriate immigration relief, and that states document their efforts to do so.²⁹⁵ The bill provides technical assistance and allows judicial education funds to be used to train judges, attorneys, and other legal workers on this matter.²⁹⁶ It also makes it possible for states to obtain reimbursement for the foster care costs of a child once the child obtains SIJS status and ensures that children who receive SIJS are exempted from the five-year ban placed on receiving federal means-tested public benefits.²⁹⁷

C. Amend the SIJS to create a federal safeguard to respond to state disparities, such as a secondary evidence exception for SIJS applicants.

Congress should amend the SIJS statute to create a secondary evidence exception so that a SIJS eligible child who is unable to obtain the state court order can provide other evidence that it is not in her best interests to return to her home country and that she has accessed state court proceedings through an adoption, custody, guardianship, dependency, or related proceedings because reunification with one or both parents is not viable due to abandonment, abuse, or neglect. This secondary evidence exception would serve as a federal safeguard to address state differences that prevent SIJS-eligible children from accessing state courts and obtaining the required state court order.

A secondary evidence regulation exists in immigration law when a required record is not available.²⁹⁸ Often this regulation is used when the primary evidence to prove age—a birth certificate—is unavailable; in those cases, DHS will accept secondary evidence such as baptismal, school, and medical records to prove age. If those typical secondary evidence documents are not available, then the regulation allows for affidavits from people with personal knowledge

295. The Fed. Foster Care Opportunity Act, H.R. 2036, 113th Cong. §§ 3, 4 (2013).

296. *Id.* at §§ 5, 6; *see also* Theo Liebmann, and L. Wren, *Special Issue Introduction: Immigrants and the Family Court*, 50 Fam. Ct. Rev. 570–79 (2012) (describing further the scope of these trainings).

297. The Fed. Foster Care Opportunity Act, H.R. 2036, 113th Cong. § 7 (2013).

298. 8 C.F.R. 103.2(b)(2).

of the circumstances, along with evidence regarding the unavailability of the required document and secondary evidence.²⁹⁹

In the case of SIJS, state judges in some jurisdictions may be hostile or unsure of their authority and decline to make a decision regarding SIJS findings. In other cases, state laws may preclude such a finding, due to state-specific jurisdictional age limits or other procedural hurdles, such as timing of residency or service requirements. In these cases, when a SIJS predicate order cannot be obtained for an otherwise eligible youth, the youth should have the opportunity to submit evidence of his or her status as an abandoned, abused, and neglected child, whose best interest is to remain in the United States. This would allow DHS to determine whether the evidence is sufficient to overcome the unavailability of the required order.

D. Increase rates of representation

Representation is a critical factor for a SIJS-eligible child, as it is almost impossible for children to gain access to state court systems and request the necessary findings without an attorney. Furthermore, attorneys are often an important screening mechanism. That said, fewer than half of unaccompanied minors in removal proceedings have access to legal counsel in immigration court.³⁰⁰ While increasing representation may be costly, it might be the most effective way to ensure that vulnerable immigrant children are identified and achieve status. Children often need representation at two entry points: within immigration courts and within family courts.

There has been some interest in providing advocates for unaccompanied minors in immigration court. TVPRA 2008 allows for some appointment of guardians *ad litem* for particularly vulnerable children, and the Senate's comprehensive immigration reform bill has a provision to appoint counsel for these children in immigration removal proceedings. If youths in removal proceedings had immigration attorneys, the attorneys could screen children for SIJS relief. For SIJS-eligible children, the attorneys could either represent them in state court proceedings or partner with other attorneys licensed in the necessary states to complete the state court process.

299. A similar context is under the T nonimmigrant status provision. If trafficking victims are unable to obtain a law enforcement certificate certifying them as victims, they are allowed to submit other evidence to demonstrate they qualify as a trafficking victim. 8 C.F.R. 103.2(b)(2) (2013).

300. Rome, *supra* note 25.

To increase representation in state court proceedings, a statutory fix is needed to amend Legal Services Corporation funding restrictions so that representing individuals in pursuit of SIJS-related proceedings is possible. Currently, Legal Services Corporation-funded organizations are precluded from helping most unauthorized immigrants.³⁰¹ Congress has carved out special exceptions for the representation of domestic violence survivors³⁰² as well as immigrants who qualify as victims of serious crimes³⁰³ and trafficking.³⁰⁴ Congress should also lift restrictions to include the representation of otherwise ineligible adults for purposes of obtaining custody or guardianship of potentially SIJS-eligible youths, as well as SIJS-eligible children. This would allow legal aid organizations nationally to start addressing the needs of SIJS-eligible children, increasing representation nationally.³⁰⁵

VI. CONCLUSION

Alexis de Tocqueville wrote that America's passion for equality is "ardent, insatiable, incessant, invincible."³⁰⁶ Yet vulnerable immigrant children in America face wholly unequal chances at federal protection based upon where they happen to live. Although Congress created Special Immigrant Juvenile Status more than twenty years ago to protect abandoned, abused, and neglected

301. 45 C.F.R. § 1626 (2014).

302. 45 C.F.R. § 1626.4 (2014).

303. VAWA Reauthorization of 2006, Pub. L. No. 103-322 (2006); Letter from Helaine M. Barnett, President Legal Services Corporation, to All Legal Services Corporation Program Directors, "Program Letter 06-2" (Feb. 21, 2006), *available at* <http://www.lsc.gov/sites/default/files/LSC/progltr06-2.pdf>.

304. Trafficking Victim Protection Act of 2000, Pub. L. No. 106-386, as amended by Trafficking Victim Protection Act of 2003 (2000); Letter from Helaine M. Barnett, President Legal Services Corp, to All Legal Services Corporation Program Directors, "Program Letter 05-2" (Oct. 6, 2005), *available at* https://lscgrants.lsc.gov/Easygrants_Web_LSC/Implementation/Modules/Login/Controls/PDFs/Progltr05-2.pdf.

305. It should be noted that merely allowing Legal Services Corporation-funded organizations to represent SIJS-eligible children and their potential guardians may not mean that these organizations actually will take on this representation. *See* Geoffrey Heeren, *Illegal Aid: Legal Assistance to Immigrants in the United States*, 33 Cardozo L. Rev. 619 (2011) (describing the extremely complicated regulations and politically contentious history of immigrant representation at Legal Service Corporation-funded groups, which has deterred these organizations from engaging in immigrant representation).

306. Alexis de Tocqueville, Volume Two: Influence Of Democracy On Progress of Opinion in The United States (1840).

migrant youths, many states still have almost no SIJS applicants at this time³⁰⁷ and little access to representation. While the state laboratories may have created some successful models to identify and assist SIJS-eligible children, not all states have taken efforts to effectuate this law. Twenty years after the creation of Special Immigrant Juvenile Status, Congress and the fifty states should take stock of the implementation of this law and address its inequities, so that the states and federal government are no longer left to play roulette with the lives of vulnerable children like Ana.

307. A number of states have reported less than 10 applications since 1999: Hawaii (7), Maine (8), Montana (1), North Dakota (1), Puerto Rico (4), South Dakota (6), Vermont (1), Virgin Islands (1), West Virginia (2), and Wyoming (2).

APPENDIX A: HISTORY OF SIJS STATUTE

The original 1990 definition of a Special Immigration Juvenile was

an immigrant (i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care, and (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.³⁰⁸

The immigration agency issued an interim rule on May 21, 1991, defining key terms and notably requiring not only a juvenile court order, but all underlying evidence from the state court proceeding.³⁰⁹ The immigration agency's attempt to re-adjudicate state findings has been a recurring issue.³¹⁰ The law has had some technical failures, such that the Immigration and Naturalization Service sent a cable in 1991 stating "at the present time, most dependent juveniles will be unable to obtain lawful permanent resident status as special immigrant juveniles."³¹¹ These technical failures were addressed in a corrections bill on October 1, 1991.³¹² Final regulations were promulgated in August of 1993.³¹³

The relief was restricted in 1997³¹⁴ due to Congressional concern with fraud.³¹⁵ The amendment narrowed "Special Immigrant

308. Immigration Act of 1990, § 153, Pub. L. No. 101-649 (1990) (amended 1997).

309. Special Immigrant Juvenile Status Regulation, 56 Fed. Reg. 23207-01 (May 21, 1991).

310. Citizen and Immigr. Servs. Ombudsman, Special Immigrant Juvenile Adjudications: An Opportunity for the Adoption of Best Practices (2011), *available at* <http://www.dhs.gov/xlibrary/assets/Citizenship-and-Immigration-Services-Ombudsman-Recommendation-Special-Immigrant-Juvenile-Adjudications.pdf>.

311. INS, INS Implements Special Immigr. Status for Juveniles 68 No. 33 Interpreter Releases 1125 (Aug. 30, 1991).

312. INS, INS State Dep't Implement Transitional Procedures for 1990 Act 68 No. 38 Interpreter Releases 1277 (Oct. 7, 1991).

313. INS, INS Finalizes Regulations on Juvenile Special Immigrants, Bona Fide Marriages 70 Interpreter Releases 1057, 1057 (Aug. 16, 1993).

314. Dep'ts of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119 § 113, 111 Stat. 2440 (1997) (amended 2008).

Juvenile” to include only those juveniles deemed eligible for long-term foster care based on abuse, neglect, or abandonment, and added a provision requiring the U.S. Attorney General to approve children in removal proceedings to submit to the jurisdiction of a state court in order to obtain SIJS findings, without providing any mechanism for the Court to request the Attorney General’s consent.³¹⁶ The amendment further required that all approved SIJS applications filed prior to the implementation of the law, even those that were also already approved for legal permanent residence, be reviewed using the new requirements; the memorandum further stated the agency would take further steps to rescind approvals.³¹⁷ Unsurprisingly, the agency stated that they “anticipate the number of these cases will remain small and should decrease with the implementation of the new law.”³¹⁸ A year later, the agency issued further guidance, clarifying that for children even to be considered for SIJS, the Attorney General must review the dependency order and other supporting evidence as a precondition to the grant of status, creating a two-tiered review process for seeking SIJS status.³¹⁹

In 2003, the Homeland Security Act divided Immigration and Naturalization Services into a few bureaus, including U.S. Citizen

315. Memorandum from Thomas E. Cook, INS, Interim Field Guidance relating to Public Law 105-119 (Sec. 113) amending § 101(a)(27)(J) of the INA — Special Immigrant Juveniles, HQ/70/6.1P (Aug. 7, 1998) (“In the past, individuals who did not suffer abuse, abandonment or neglect were known to have sought the court’s protection merely to avail themselves of legal permanent resident status. This amendment ensures that this will no longer be possible.”).

316. Dep’t of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-119 § 113, 111 Stat. 2440 (1997) (amended 2008); see Memorandum from Thomas E. Cook, Immigr. and Naturalization Serv., Interim Field Guidance relating to Public Law 105-119 (Sec. 113) amending Section 101(a)(27)(J) of the INA — Special Immigrant Juveniles, HQ/70/6.1P (Aug. 7, 1998).

317. Memorandum from Thomas E. Cook, Immigr. and Naturalization Serv., Interim Field Guidance relating to Public Law 105-119 (Sec. 113) amending Section 101(a)(27)(J) of the INA — Special Immigrant Juveniles at 2, HQ/70/6.1P (Aug. 7, 1998).

318. *Id.*

319. See Memorandum from Thomas E. Cook, Acting Assistant Comm’r, Adjudications Div., INS, Special Immigrant Juveniles — Memorandum #2: Clarification of Interim Field Guidance (July 9, 1999) *available at* http://www.uscrrrefugees.org/2010Website/5_Resources/5_4_For_Lawyers/5_4_2_Special_Immigrant_Juvenile_Status/5_4_2_3_Published_Decisions_and_Memoranda/Cook_Thomas_SpecialImmigrantJuvenilesMemorandum.pdf (“A dependency order issued for a juvenile not in INS custody may serve as a precondition only if two elements are established.”).

and Immigration Services (USCIS), which was housed under the newly-created Department of Homeland Security. In 2004, USCIS issued further guidance on SIJS adjudications, easing the evidence requested, stating that a findings order “need not be overly detailed, but must reflect that the juvenile court made an informed decision.”³²⁰ Furthermore, it made clear that adjudicators should not generally second-guess the court’s order, although it is appropriate to request the applicant “provide actual records from the judicial proceeding.”³²¹ The 2004 memorandum reiterated the stringent consent requirements, finding that “if specific consent was necessary but not timely obtained,” then the dependency order should be considered invalid and thus, the SIJS application must be denied.³²² The memorandum also delineated how children could seek a waiver of the application fees for SIJS, work authorization, and legal permanent residency.³²³ Lastly, the agency noted the problem of youths “aging out” of eligibility and encouraging advocates to apply in a timely fashion.³²⁴ Aging out refers to children who are eligible when they apply, but due to processing times of applications or other delays, no longer meet certain requirements of the statute, for example the age limit of twenty-one years old. Alternatively, SIJS-eligible youths may age out of the jurisdiction of the state court at an age even before they reach twenty-one years old.

Enacted in 2008, the Trafficking Victim Protection Reauthorization Act broadened the SIJS definition and addressed the “aging out” problem. Currently the definition includes children who have been declared dependent on the court, or whom the court has put into the custody of an agency or individual and that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis.³²⁵ The major changes include 1) broadening the requirement that reunification be not viable from both parents to only one parent; 2) expanding protected grounds from abandoned, abused, and neglected to include “a similar basis” under state law; and 3) the removal of language requiring the child be found eligible for “long-term foster care,” explicitly including children who

320. Yates, *supra* note 73, at 5.

321. *Id.*

322. *Id.*

323. *Id.* at 7.

324. *Id.* at 6.

325. Immigration and Nationality Act, 8 U.S.C. §1101(a)(27)(J) (2008).

are placed in guardianship, adoption, and custody proceedings.³²⁶ In order to protect children from aging out, the amendments designated the child's age at filing as controlling and mandated a maximum six-month adjudication of petitions.³²⁷ Lastly, procedures were eased for children currently in the custody of the Office of Refugee Resettlement,³²⁸ and detained children who are approved for SIJS could be transferred to the Unaccompanied Refugee Minor program to receive social services.

USCIS settled an ongoing class action, and agreed not to deny SIJS applications or SIJS-based legal permanent resident applications based on age or dependency status, as long as at the time of filing the applicant was under twenty-one and subject to a valid court order.³²⁹ The class action also authorized individuals previously denied or revoked since May 13, 2005 to file a motion to re-open.³³⁰ As of the writing of this article, USCIS still has not promulgated final regulations reflecting the changes made by the TVPRA of 2008.³³¹

326. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235, 122 Stat. 5044 (2008) (explaining that the purpose of this Act is to prevent human trafficking, and therefore the law sought to protect youth at the edge of aging out who were still vulnerable and in need of protection); Memorandum from Donald Neufeld, Acting Assoc. Dir. Domestic Operations, U.S. Citizenship and Immigr. Servs., Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juveniles Status Provisions (Mar. 24, 2009) available at http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf. Note that prior to the amendment, adoption and guardianship were referred to in SIJS regulations and common practice in many jurisdictions, so it is not clear how much this explicit mention in the amendment changed eligibility or practice.

327. William Wilberforce Trafficking Victims Protection Reauthorization Act Pub. L. No. 110-457, § 235, 122 Stat. 5044 (2008).

328. *Id.*

329. Settlement, *Perez Olano v. Holder*, 248 F.R.D. 248 (C.D. Cal. 2010) (No. CV 05-3604).

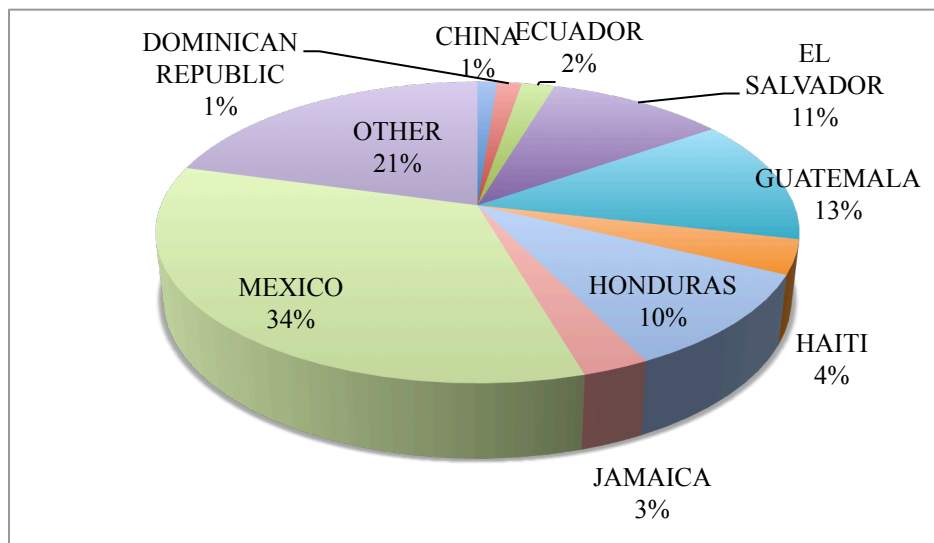
330. *Id.*

331. Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. pt. 204, 205, and 245).

APPENDIX B

FIGURE 16. SIJS APPLICANTS COUNTRY OF ORIGIN (1999-2012)

Country of Origin	Number of Applications
MEXICO	3,765
GUATEMALA	1,487
EL SALVADOR	1,180
HONDURAS	1,157
HAITI	407
JAMAICA	317
ECUADOR	220
OTHER ³³²	2,302
Total	11,129



332. Applicants from all other countries of origin comprise less than 2% each of total applicants. There are applicants hailing from 140 identified countries and 141 with unknown countries of origin.