

## Appendix B:

### Special Immigrant Juvenile Status Legislative History<sup>1</sup>

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December 19, 2017

### Special Immigrant Juvenile Status in the Context of Humanitarian Protections for Victims

Many children arriving in the United States may have been victims of violence in their home countries, during their journey to the U.S., and/or after their arrival. Children arriving in the United States are very susceptible to various forms of violence, including child abuse, child sexual exploitation, incest, dating violence, domestic violence sexual assault, and human trafficking.<sup>2</sup> Between 1990 and 2013 a wide range of humanitarian forms of immigration relief were created by Congress to offer help, protection, and a path to lawful permanent residence for immigrant crime victims and children.

Depending on the circumstances, children and teens may be eligible for immigration relief through VAWA Self-Petitions, Special Immigrant Juvenile Status (SIJS), U visa for immigrant crime victims, T visa for trafficking victims or asylum. It is important for state courts responding to requests for SIJS findings in court orders addressing the care, custody and placement of children to understand the evolution of the protections that SIJS offers. The legislative history described in this Appendix provides courts important legally correct information about current SIJS statutes and their evolution countering myths and misconceptions about the SIJS program.

SIJS was original created by Congress in 1990 as part of the Immigration and Nationality Act. The Act created this category as a way to assist foreign born children who have been abused, neglected or abandoned. The law has evolved over time to offer protection for a broader range of needy immigrant children who have suffered abuse, abandonment or neglect perpetrated by a parent. This evolution provides more types of circumstances of immigrant child victims than was originally contemplated at the time of the promulgation of the original law. This Appendix discusses the legislative history and the evolution of SIJS statutory protections.

### Legislative History of SIJS

#### *The Immigration & Nationality Act – 1990*

In 1990, Congress included SIJS as one of the forms of immigration relief included in the Immigration and Nationality Act (INA). SIJS was created as a form of relief for undocumented or foreign born children living in the United States who had been abused, neglected, or

<sup>1</sup> This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

<sup>2</sup> *Review of the President's Emergency Supplemental Request for Unaccompanied Children and Related Matters: Hearing on S. 272 DHS Appropriations Bill before the S. Comm. on Appropriations*, 113<sup>th</sup> Cong. (2014) (statements of Jeh Johnson, Sec. of Dept. of Homeland Security, and Sen. Dick Durbin).

abandoned. Immigrant children in long term foster care were the first group of immigrant children whom the original statute made eligible for SIJS.

To qualify under the original statute, the following requirements had to have been met:

- State juvenile court had to declare the petitioner dependent on the court;
- The court had to deem the individual eligible for long term foster care;
- The court had to determine that it was not in the petitioner's best interest to return to his home country.<sup>3</sup>

#### *Miscellaneous and Technical Immigration and Nationality Amendments of 1991*<sup>4</sup>

In 1991, the INA was amended recognizing that SIJS children need a path to lawful permanent residence as an important part of the relief from abuse, abandonment and/or neglect. Access to lawful permanent residence enhances stability for SIJS eligible children. These 1991 Congressional amendments made the following changes in the SIJS program:

- Children whose SIJS applications had been approved were to be considered paroled into the United States so that they could file to adjust their immigration status and receive lawful permanent residence.
- Foreign national children cannot apply for admission or be admitted to the United States in order to obtain SIJS. Immigrant children must be in the United States at the time that the child applies for SIJS.

#### *The Immigration and Nationality Technical Corrections Act of 1994*<sup>5</sup>

The amendments of 1994 expanded eligibility for SIJS to additional groups of immigrant children. Following the 1994 amendments to qualify for SIJS an immigrant children would need to meet one of the following criteria:

- The immigrant child was declared dependent on a juvenile court; or
- A court had legally committed to, or placed under the custody of, a state agency or department.

#### *The 1998 Appropriation Act*

Congress amended the law as part of the *Departments of Commerce, Justice and State, the Judiciary, and Related Agencies 1998 Appropriations Act*<sup>6</sup> to more closely connect the ability for immigrant children to receive SIJS to the abuse, abandonment or neglect the child suffered and to require federal immigration authorities' involvement when the immigrant child is in federal government custody. The 1998 amendments did the following:<sup>7</sup>

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<sup>3</sup> Immigration and Nationality Act of 1965, Pub. L. No. 101-649, § 153(a)(3), 104 Stat. 4978, 5005-06 (1990).

<sup>4</sup> Pub. L. No. 102-232, 105 Stat. 1733.

<sup>5</sup> Pub. L. No. 103-416, 108 Stat. 4305.

<sup>6</sup> Pub. L. No. 105-119, § 113, 111 Stat. 2440, 2460 (1997).

<sup>7</sup> 3-35 CHARLES GORDON, STANLEY MAILMAN, STEPHEN YALE-LOEHR, & RONALD Y. WADA, IMMIGRATION LAW AND PROCEDURE § 35.09 (2017).

- Limited eligibility to children declared dependent on the court because of abuse, neglect, or abandonment
- Provided that children are eligible for SIJS only if the Attorney General (later changed to the Secretary of the Department of Homeland Security) expressly consents to the juvenile court order serving as a precondition to the federal immigration authorities granting the child SIJS
- Prohibited juvenile courts from determining the custody status or placement of a child who is in the custody of the federal government, unless the Attorney General (later changed to the Secretary of the Department of Health and Human Services) specifically consents to the court's jurisdiction

*Reauthorization of the Violence Against Women Act -2005*

Prior to 2005, it was a common practice for immigration officials, immigration enforcement agencies and government officials to directly contact the child's abusive parent or parents (or family member of the alleged abuser) during the investigation and adjudication of an abused immigrant child's SIJS case. Contacting a child's parent and/or family members who had been involved in perpetrating or covering up the abuse, abandonment or neglect the child experience jeopardized the safety of the immigrant child. Perpetrating parents were often not cooperative and used the facts they learned to further harm their victims. Congress amended the SIJS statute in the Violence Against Women Act of 2005<sup>8</sup> to stop these practices and improve the ability of abused, abandoned or neglected SIJS children to safely apply for SIJS. The Bi-Partisan House legislative history states that:

Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings....These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims...This Committee wants to ensure that immigration enforcement agents and government officials do not initiate contact with abusers, call abusers as witnesses or rely on information furnished by or derived from abusers to apprehend, detain and attempt to remove victims of domestic violence.<sup>9</sup>

This statutory change ensured that any immigrant child who had been abused, neglected or abandoned could no longer be compelled to contact the alleged abuser at any stage of applying for SIJS.<sup>10</sup> In furtherance of the amendment, the Department of Homeland Security issued a policy implementing VAWA 2005 SIJS provisions.<sup>11</sup> The implementing memo directed DHS officers not to contact SIJS applicant children's parents about the SIJS application or any details of the abuse. Findings regarding the abuse were to be made instead by the state court judges

<sup>8</sup> Pub. L. No. 109-162, § 826, 119 Stat. 2960, 3065-66 (amending 8 U.S.C. § (1965)).

<sup>9</sup> 146 Cong. Rec. H9,046 (2000), at 126, H.R. REP.NO. 109-233.

<sup>10</sup> Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 826, 119 Stat. 2960, 3065-66.

<sup>11</sup> Memorandum from Donald Neufeld, Acting Associate Director of Domestic Operations, & Pearl Chang, Acting Chief of Office of Policy and Strategy to Field Leadership, U.S. Dept. of Homeland Security (March 24, 2009) ("During an interview, an officer should focus on eligibility for adjustment of status and should avoid questioning a child about the details of the abuse, abandonment or neglect suffered, as those matters were handled by the juvenile court, applying state law."),

<http://library.niwap.org/wp-content/uploads/2015/IMM-Gov-USCISMemoTVPRA2008-03.04.09.pdf>.

with expertise on child welfare matters who would be issuing the state court predicate orders that are a prerequisite to a child's ability to file an SIJS application. State court judges have the requisite expertise in working sensitively with traumatized children.

*The Trafficking Victims Protection and Reauthorization Act of 2008*

On December 23, 2008, the William Wilberforce Trafficking Victim Protection Reauthorization Act of 2008 (TVPRA) further amended the SIJS law making significant changes to both the substantive and procedural requirements for eligibility for SIJS.<sup>12</sup> The amendments contained in TVPRA 2008 were designed to promote healing, security, and stability for immigrant children who have been abused, abandoned, or neglected by one or both of their parents. Prior eligibility requirements limited SIJS relief to immigrant children who has suffered harm from both of their parents in the form of abuse, abandonment or neglect.

In one of its most significant amendments, TVPRA allows immigrant children who were abused, abandoned or neglected by one of their parents to apply for SIJS immigration relief while continuing to live with the child's caregiving non-abusive parent. The TVPRA amendments were designed to offer immigrant children the immigration protection they needed without requiring the child be placed in a state or federal institution or foster care system. Children who were living with a primary caretaker, nurturing, non-abusive parent or guardian who was helping the child heal from the trauma the child had experienced, could file for and receive SIJS based on abuse, abandonment, or neglect by only of the child's parents.<sup>13</sup> Children who had suffered these harms perpetrated by both of their parents also continued to be eligible for SIJS.<sup>14</sup> This amendment allows for abused, abandoned or neglected immigrant children to remain in loving and stable home environments while maintaining SIJS eligibility.

Until 2008 in order to qualify for SIJS the applicant must have been deemed eligible for long-term foster care by a juvenile court.<sup>15</sup> This option places the child's non-abusive caregiving parent in the position of having to surrender their immigrant child to long-term foster care for the child to receive the humanitarian protections offered by SIJS. For immigrant child trauma survivors who have suffered abuse, abandonment or neglect by a parent to avoid removal to a home country where they had no safe caregivers, the child had to be subjected to the additional trauma of separation from their nurturing parent or guardian. This placed immigrant children and their protective parent, guardian and other supportive care providers who under State law would be granted custody or guardianship of the child in the child's best interest in the untenable position of having to choose between options that were antithetical to the child's best interests.

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<sup>12</sup> Pub. L. No. 110-457, 122 Stat. 5044 § 235(d) (2008).

<sup>13</sup> See Policy Memorandum, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement*, U.S. CITIZENSHIP AND IMMIGRATION SERVICE, (June 25, 2015), [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624\\_Perez-Olano\\_Settlement\\_Agreement\\_PM\\_Effective.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624_Perez-Olano_Settlement_Agreement_PM_Effective.pdf).

<sup>14</sup> See Policy Memorandum, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement*, U.S. CITIZENSHIP AND IMMIGRATION SERVICE, (June 25, 2015), [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624\\_Perez-Olano\\_Settlement\\_Agreement\\_PM\\_Effective.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624_Perez-Olano_Settlement_Agreement_PM_Effective.pdf).

<sup>15</sup> Immigration Act of 1990, Pub. L. No. 101-649, § 153(a)(3), 104 Stat. 4978, 5005-06 (1990).

This approach was inconsistent with the outcomes called for under state child's best interests' laws, best practices and research on the needs of children who were victims of child abuse, abandonment or neglect or of witnessing domestic violence at home. State family laws prohibit or discourage placement of a child in the custody of perpetrators of domestic violence perpetrators and instead encourage courts to award custody to the non-abusive protective parent.<sup>16</sup> State family courts recognize that the best interests of children who suffer or witness abuse in the home is best served by placing the child in the care of a protective non-abusive parent or guardian rather than placing the child in foster care.<sup>17</sup> State family courts play a significant role in intervening to mitigate the harms children suffer at the hands of their parents and court intervention can mean the difference between a child merely surviving or thriving.<sup>18</sup>

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<sup>16</sup> Men who perpetrate domestic violence against their intimate partners who are the mothers of their children parent differently from non-abusive men. See Jeffrey L. Edelson, *Children's Witnessing of Adult Domestic Violence*, 14 J. INTERPERSONAL VIOLENCE 839 (1999); *Behind Closed Doors: The Impact of Domestic Violence on Children*, U.N. CHILDREN'S FUND (2006), <http://www.unicef.org/protection/files/BehindClosedDoors.pdf>; see Rashida Manjoo, *Violence Against Women in the U.S. and the State's Obligation to Protect: Civil Society Briefing Papers on Community, Military and Custody Submitted to the United Nations Special Rapporteur on Violence Against Women*, Rashida Manjoo in Advance of her Mission to the U.S. of America January 24 – February 7, 2011 (2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/138/26/PDF/G1113826.pdf?OpenElement> (citing PETER G. JAFFE, DAVID A. WOLFE, & SUSAN KAYE WILSON, CHILDREN OF BATTERED WOMEN (1990)). Perpetrators of domestic violence are less involved with their children and use parenting practices that are harmful to their children including spanking, shaming and displays of anger. George W. Holden & Kathy L. Ritchie, *Linking Extreme Marital Discord, Child Rearing, and Child Behavior Problems: Evidence from Battered Women*, 62 CHILD DEVELOPMENT 311, 321 (1991); George W. Holden, Joshua D. Stein, Kathy L. Ritchie, Susan D. Harris & Earnest N. Juries, *Parenting Behaviors and Beliefs of Battered Women*, in CHILDREN EXPOSED TO MARITAL VIOLENCE: THEORY, RESEARCH AND APPLIED ISSUES, 185 (George W. Holden, et al. eds., 1998), cited with approval in Manjoo, *supra* note 45. Abusive men do not serve as role models for healthy relationships and conflict resolution in relationships. See generally R. LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS (2002); A.A. Levendosky & S.A. Graham-Bergmann, *Mothers' Perceptions of the Impact of Abuse on Their Parenting*, 6 VIOLENCE AGAINST WOMEN 247-71 (2000).

<sup>17</sup> See H. Lien Bragg, *Child Protection in Families Experiencing Domestic Violence*, U.S. DEP'T OF HEALTH AND HUM. SERVS., ADMIN. FOR CHILD. & FAMS. 35 (2003), <https://www.childwelfare.gov/pubpdfs/domesticviolence.pdf> (issuing guiding principles for child protective services workers that recognize that offering protection to domestic violence victims, enhances protection for children and has the benefit in domestic violence cases of keeping children with their non-abusive parent).

The following guiding principles can serve as a foundation for child protection practice with families when domestic violence has been confirmed. The safety of abused children often is linked to the safety of the adult victims. By helping victims of domestic violence secure protection, the well-being of the children also is enhanced. Perpetrators of domestic violence who abuse their partner also emotionally or psychologically harm their children, even if the children are not physically or sexually harmed. Identifying and assessing domestic violence at all stages of the child protection process is critical in reducing risks to children. It is important to understand potential effects of domestic violence to children beyond those that are physical in nature. If the family's circumstances are clear and it is appropriate, every effort should be made to keep the children in the care of the non-offending parent. Supportive, non-coercive, and empowering interventions that promote the safety of victims and their children should be incorporated in child protection efforts. Once domestic violence has been substantiated, the perpetrators must be held solely responsible for the violence while receiving interventions that address their abusive behaviors. CPS must collaborate with domestic violence programs and other community service providers to establish a system that holds abusers accountable for their actions.

<sup>18</sup> See Linda Burgess Chamberlain, *The Amazing Brain: Trauma and the Potential for Healing* [http://www.instituteforsafefamilies.org/sites/default/files/isfFiles/The\\_Amazing\\_Brain-2.pdf](http://www.instituteforsafefamilies.org/sites/default/files/isfFiles/The_Amazing_Brain-2.pdf) (providing an overview of how trauma affects the brain development of children and youth, discusses the actions that can be taken to make a difference and highlights how intervention at all ages improves outcomes for children and youth and provides links to excellent resources on the latest research and supportive strategies); see also, *Appendix E: Understanding the Significance of a Minor's Trauma History in Family Court Proceedings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-e-effects-of-trauma-on-minors-fact-sheet/>.

After the enactment of TVPRA 2008, a non-abusive immigrant parent whose child was abused could take the child, flee the abusive home, and the child could remain in the nurturing care of the non-abusive parent and could be eligible to pursue SIJS protection. By basing SIJS eligibility in abuse, abandonment or neglect by either one **or** both parents, the TVPRA 2008 amendment promoted consistency with State laws that direct courts to issue orders that promote safety and healing from trauma as a crucial step in promoting the best interests of children. The TVPRA 2008 amendment helped keep SIJS eligible children out of long-term foster care and opened up more stable options for abused, abandoned or neglected immigrant children with a range of possible supportive care providers.

Since the amendments no longer required the child that a child be placed into long-term foster care to qualify for SIJS, a child could qualify without any termination of parental rights of the abusive parent. As a result of the TVPRA 2008 amendments, if a child has one abusive parent and one protective parent, the court may find that reunification between the abusive parent and the child is not viable due to abuse, while granting physical and legal custody to the non-abusive parent.

Each of the significant changes made by the TVPRA of 2008 to SIJS are listed below:<sup>19</sup>

- Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that a state court with jurisdiction over the child's care, custody or placement find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law;<sup>20</sup>
- Expanded eligibility to include children whom a state court has placed under the custody of an individual person or an entity chosen by state court;<sup>21</sup>
- Provided age-out protections so that SIJS could not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJS petition, regardless of the SIJS petitioner's age at the time of adjudication;<sup>22</sup>
- Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJS status by DHS instead of expressly consenting to the state court order;<sup>23</sup>
- Altered the "specific consent" function for children who are in federal custody<sup>24</sup> by vesting this authority with the Secretary of Health and Human Services, rather than the Secretary the Department of Homeland Security;<sup>25</sup>

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<sup>19</sup> See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(d), 122 Stat. 5044 (2008).

<sup>20</sup> Trafficking Victims Protection Reauthorization Act § 235(d)(1)(A); Immigration & Nationality Act of 1965, Pub. L. No. 89-236, § 101(a)(27)(J)(i), 79 Stat. 911; 8 U.S.C. § 1101(a)(27)(J)(i).

<sup>21</sup> Trafficking Victims Protection Reauthorization Act § 235(d)(1)(A); Immigration & Nationality Act § 101(a)(27)(J)(i); 8 U.S.C. § 1101(a)(27)(J)(i) (this can be custody or placement in a wide variety of state court proceedings in which family, juvenile, probate or other state courts issue court orders regarding the custody, care or placement of children).

<sup>22</sup> Trafficking Victims Protection Reauthorization Act § 235(d)(6).

<sup>23</sup> Trafficking Victims Protection Reauthorization Act § 235(d)(1)(A); Immigration & Nationality Act § 101(a)(27)(J)(iii)(I); 8 U.S.C. § 1101(a)(27)(J)(iii)(I) (this amendment eliminates the need for any federal government agency involvement or service in the state court proceeding in which the immigrant child is seeking SIJS findings).

<sup>24</sup> Usually federal foster care.

Trafficking Victims Protection Reauthorization Act § 235(d)(1)(A); Immigration & Nationality Act § 101(a)(27)(J)(iii)(I); 8 U.S.C. § 1101(a)(27)(J)(iii)(I).

- Added a timeframe for adjudication: USCIS shall adjudicate SIJS petitions within 180 days of filing.<sup>26</sup>

These amendments had the effect of following best practices in the field that aim to promote placement of children with family members or other care providers whom state courts determined it was in the child's best interests.<sup>27</sup> Children who are able to remain with family members or other familiar and caring guardians are better able to adjust to their settings and are less likely to face behavioral problems.<sup>28</sup>

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<sup>26</sup> Trafficking Victims Protection Reauthorization Act § 235(d)(2).

<sup>27</sup> See *Stepping Up for Kids: What Government and Communities Should Do to Support Kinship Families*, THE ANNIE E. CASEY FOUNDATION (January 1, 2012), <http://www.aecf.org/resources/stepping-up-for-kids/> (reporting that “extended family members and close family friends care for more than 2.7 million children in this country, an increase of almost 18 percent over the past decade.”).

<sup>28</sup> See *Stepping Up for Kids: What Government and Communities Should Do to Support Kinship Families*, THE ANNIE E. CASEY FOUNDATION (January 1, 2012), <http://www.aecf.org/resources/stepping-up-for-kids/>.