

by Kristen Jackson

# Special Status SEEKERS

Through the underused SIJS process,  
immigrant juveniles may obtain legal status

FOR DECADES, it seems, discussions of immigration law have focused on adults, with congressional debate and media coverage leaving children in the margins or completely off the page. Now, however, the spotlight is shifting. President Obama, in his May 2011 speech in El Paso, spoke on behalf of the proposed DREAM Act to legalize “promising, bright students—young people who have worked so hard and speak about what’s best in America.”<sup>1</sup> Scholars and think tanks have pulled back the curtain on the suffering of young U.S. citizens whose parents are being deported.<sup>2</sup> Advocates are attracting attention with their calls for reform.

While all these developments are occurring, an important statutory tool already in place remains ready and available to help young

immigrants. Sitting largely unnoticed on a single page of the Immigration and Nationality Act is a unique classification whose purpose is not only to benefit immigrant children but also to do so consistent with accepted child welfare principles and with international norms. This classification is known as Special Immigrant Juvenile Status, or SIJS.

SIJS has solid roots in California. Throughout the 1980s, despite that decade’s amnesty program, immigrant children in the Bay Area were aging out of foster care, or being adopted out of the system, without lawful status. With their prospects bleak, these children needed their own path to lawful permanent residency and the chance for stability by living and working legally and eventually becoming U.S. citizens.

The Santa Clara County Social Services Agency sought a solution, and in 1990 Congress created SIJS.<sup>3</sup> SIJS provided a path to residency in a truly child-centered way. Unlike all other immigration relief, SIJS incorporates the “best interest of the child” standard. This standard is internationally recognized as essential to all actions affecting children, including immigration decisions.<sup>4</sup> It also is fundamental to child welfare proceedings.<sup>5</sup> Congress tied SIJS to the best inter-

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est standard by making state juvenile court findings a prerequisite to SIJS. At its inception, SIJS was poised to remedy a pressing problem for undocumented children.

Yet today, more than 20 years later, SIJS is largely unused. In some parts of the country, neither juvenile court attorneys nor immigration attorneys have heard of it. Only 1,492 children gained residency through SIJS in 2010—a year in which 1,042,625 people became lawful permanent residents.<sup>6</sup> Rather than a flood anticipated by some SIJS detractors, the number of SIJS grantees has been only a trickle. Why is this? No one answer emerges. Surely the federal government is partly to blame; it has encouraged SIJS applications but failed to implement any systematic outreach to the juvenile courts in which these children are found.<sup>7</sup> Juvenile courts and child welfare agencies, for their part, often lack policies for identifying and assisting children with SIJS. Juvenile court and immigration attorneys frequently fear crossing over into each other's worlds. These structural barriers, combined with the reality that most young potential SIJS beneficiaries know nothing about the law, mean that thousands of children each year miss out on this invaluable benefit.<sup>8</sup>

Fortunately, Los Angeles County stands in sharp relief. SIJS was not born here but it has grown here most vibrantly. While other major metropolitan areas lacked programs to assist SIJS-eligible children, Los Angeles led the nation in SIJS cases.<sup>9</sup> Here, the courts, child welfare personnel, and immigration attorneys breathe life into this federal protection. Advocates creatively work with state law to open avenues for SIJS. Volunteer attorneys represent hundreds of SIJS-eligible children from all over the world. Los Angeles, through collective hard work and vision, is an innovator for SIJS nationwide.

### Interplay of Federal and State Law

SIJS involves an intricate interplay of federal and state law. The federal statute and regulations provide the skeleton, and the state courts supply the flesh. The federal requirements for SIJS are spare. First, a juvenile court must establish the child's eligibility for immigration relief.<sup>10</sup> Without the court's findings, the child cannot apply for SIJS.<sup>11</sup> A "juvenile court," for SIJS purposes, is "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles."<sup>12</sup> This broad definition encompasses many California courts—those that handle dependency and delinquency proceedings as well as those that hear guardianships, adoptions, and even family law cases. What matters is the jurisdiction of California courts, not the labels they use for themselves.<sup>13</sup>

Second, the juvenile court must have either 1) declared the child dependent on the court, 2) legally committed the child to, or placed the child under the custody of, an agency or department of a state, or 3) legally committed the child to, or placed the child under the custody of, an individual or entity appointed by the court.<sup>14</sup> Juvenile court dependents under California Welfare and Institutions Code Section 300 meet this requirement. So too do Welfare and Institutions Code Section 602 wards when the court vests their "care, custody and control" in the probation department.<sup>15</sup> A child whose custody is placed with a guardian, including an institutional guardian, or with a prospective adoptive parent also meets this requirement. U.S. Citizenship and Immigration Services (USCIS)—which has sole jurisdiction to grant SIJS petitions—acknowledges that a child "on whose behalf a juvenile court appointed a guardian may now be eligible" for SIJS.<sup>16</sup>

Third, the juvenile court must have determined that the child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.<sup>17</sup> Congress imposed this requirement in 2008, supplanting the requirement that the child be "eligible for long-term foster care."<sup>18</sup> USCIS has not promulgated final regulations interpreting this new provision, but it has granted SIJS to children living with one parent, as well as to children living with neither parent.<sup>19</sup> State law provides the content for "abuse, neglect, [and] abandonment." The SIJS statute and regulations do not define the terms; instead, these factual determinations are left to the juvenile court applying state standards.

Under California law, children have met this requirement when, for example, their parents are deceased; their parents' identities are unknown; their parents have sexually, physically, or emotionally harmed them; or their parents have not provided appropriate care, support, or protection. By definition, SIJS-eligible children have suffered the lack of a stable and safe two-parent household.

Fourth, judicial or administrative proceedings must have established that it is not in the child's best interest to return to the child's or his or her parent's country of nationality.<sup>20</sup> The federal government, in issuing its SIJS regulations, explicitly stated that juvenile courts applying state law are unfettered in making this determination: "[T]he Service does not intend to make determinations...regarding the 'best interest' of a child for the purposes of establishing eligibility for special immigrant juvenile classification."<sup>21</sup> In California, courts are not bound by hard and fast rules when determining a child's best interest. They have called the best interest standard an "elusive guideline that belies

rigid definition"<sup>22</sup> and they may weigh, among other things, "any special physical, psychological, educational, medical, or emotional needs of the child."<sup>23</sup>

Additionally, the child must meet other requirements when he or she files a SIJS petition with USCIS. The child must be in the United States—the federal government cannot admit the child from abroad to seek SIJS.<sup>24</sup> The child must be unmarried and remain so until he or she becomes a lawful permanent resident, since marriage triggers an automatic revocation of an approved SIJS petition.<sup>25</sup> The juvenile must be under the age of 21 on the date of filing<sup>26</sup> and subject to juvenile court jurisdiction when filing—and this jurisdiction must remain until USCIS grants the child SIJS, unless the child's age causes the loss of jurisdiction.<sup>27</sup> Given these last two requirements, under California law a child with an open dependency or delinquency case must file his or her SIJS petition with USCIS before turning 21.<sup>28</sup> A child with a California probate guardianship, however, must file the SIJS petition with USCIS before he or she turns 18, since the child's guardianship dissolves on his or her 18th birthday.<sup>29</sup>

### SIJS and Lawful Permanent Residency

When a child meets all these requirements—both the federal and state components—USCIS can classify him or her as a Special Immigrant Juvenile. USCIS then need only consent to the petition—that is, find it bona fide—to issue an approval.<sup>30</sup> Yet SIJS classification alone is not enough. To reap SIJS's real benefits, a child must use it to achieve lawful permanent residency through an "adjustment of status."

Stringent standards apply to adjustment applicants. They are judged on, among other things, their method of entry, criminal record, likelihood of needing welfare benefits, and harmful physical or mental conditions.<sup>31</sup> Special Immigrant Juveniles, however, face fewer and lower hurdles. They are deemed "paroled" into the United States, regardless of how they actually entered.<sup>32</sup> Some bars to adjustment—referred to as grounds of inadmissibility—do not apply, and most others are waivable "for humanitarian purposes, family unity, or when it is otherwise in the public interest."<sup>33</sup> These provisions, combined with the fact that California juvenile delinquency dispositions are not "convictions" for immigration purposes,<sup>34</sup> means that Special Immigrant Juveniles are well positioned to become lawful permanent residents.

To obtain SIJS and lawful permanent residency, the child follows a streamlined process. The juvenile court—at the request of the child's attorney, social worker, probation officer, or guardian—first makes the SIJS findings

establishing the child's eligibility for relief. In California, this can be done on Judicial Council Form JV-224.<sup>35</sup> The child then submits his or her Form I-360 SIJS petition and supporting materials to USCIS. If the child is not in the midst of immigration court proceedings, he or she can include the Form I-485 application for adjustment of status; if the child is in immigration court proceedings, he or she submits the I-485 to the immigration judge. USCIS will take the child's photograph and fingerprints, and a local USCIS office (there are nine in California) interviews the child if he or she is 14 or older. Unlike other immigration processes, which can last years, SIJS moves quickly—particularly since USCIS must adjudicate all I-360 SIJS petitions within 180 days of filing.<sup>36</sup>

If USCIS does not grant the child's applications, it can place him or her into immigration court proceedings. If, however, USCIS approves the child's I-360, he or she is classified as a Special Immigrant Juvenile. When either USCIS or the immigration judge grants the I-485 based on the approved I-360, the child becomes a lawful permanent resident. The child is then eligible to work legally, access federal financial aid, obtain a California driver's license and Social Security number, and apply for U.S. citizenship after five years. What the child cannot do, however, is legalize his or her "natural parent or prior adoptive parent."<sup>37</sup>

### Taking the Lead in Los Angeles

While the SIJS process is swift and effective, it clearly requires those who work with SIJS-eligible children to identify and assist them. This is precisely what happens within the Los Angeles County Department of Children and Family Services. DCFS's Special Immigrant Status (SIS) Unit—established decades ago and headed since its founding by Cecilia Saco—processes hundreds of SIJS cases annually. It takes referrals of juvenile court dependents from attorneys and social workers and obtains SIJS findings and handles immigration filings from start to finish. It organizes quarterly SIJS stakeholder meetings with USCIS. DCFS's approach is innovative. Indeed, it is rare to find legalization workers within a child welfare agency.

Yet the approach is not without its limitations. DCFS does not have immigration attorneys on staff and so cannot represent children in immigration court proceedings. As a result, it partners with Public Counsel, Southwestern Law School, Kids in Need of Defense (KIND), and the Immigration Center for Women and Children (ICWC). KIND, for its part, spurred the Los Angeles Immigration Court to create a children's docket now staffed by three SIJS-knowledgeable immigration judges.<sup>38</sup> National attention has

focused on the SIS Unit.<sup>39</sup> Other states have recognized it as an efficient model for serving SIJS-eligible children.<sup>40</sup> Although the SIS Unit is not a one-size-fits-all template—other child welfare agencies may lack the staff or sizeable immigrant population to sustain an in-house immigration unit—it has put Los Angeles prominently on the SIJS map.

This strong DCFS SIJS program set the tone for other Los Angeles-based innova-

because they come into the juvenile court system through an arrest rather than a child welfare petition, they often are viewed as undeserving of immigration help—and may even be targeted for ill-conceived immigration enforcement.<sup>42</sup> SIJS, however, does not discriminate. The statute plainly covers all types of juvenile court proceedings, and the federal government has acknowledged that children can gain SIJS through delinquency courts.<sup>43</sup>



tions. For years, advocates recognized that some abused, neglected, and abandoned children missed out on SIJS because the probate court—not the dependency court working with DCFS's SIS Unit—handled their cases.<sup>41</sup> Now, SIJS eligibility through guardianships is well established. Children around the country have obtained SIJS and lawful permanent residency by following Los Angeles's lead. Although the SIJS guardianship cases lack a strong agency player like DCFS's SIS Unit, collaboration among not-for-profit law firms and volunteer attorneys has made these cases viable.

By contrast, children in juvenile delinquency proceedings struggle to be identified and assisted with SIJS. Many of these children not only have been abused, neglected, or abandoned but also have been in the United States for years—and their best interests clearly involve remaining here. Nevertheless,

Once again, for children in delinquency proceedings, Los Angeles is on the cutting edge. Los Angeles County delinquency court judges have been trained regarding SIJS, and they have made SIJS findings since 2002.<sup>44</sup> The Los Angeles County Probation Department and Public Defender have collaborated with Public Counsel—one of the few organizations with expertise on the intersection of juvenile delinquency and immigration—to obtain SIJS for youth. While the number of SIJS cases through the Los Angeles County delinquency courts is very small, each case represents a new beginning for a formerly undocumented child.

### SIJS and Adoption

A fresh start also is at the core of a more recent SIJS innovation in Los Angeles: SIJS through adoption proceedings. While the adoption of children from around the globe

is not a novel way to create a family, adoptive parents often are surprised that adopting an undocumented child within the United States comes with its own immigration hurdles. Indeed, many U.S. citizens with an adopted child have been shocked to learn—often years after the adoption is completed—that their child does not gain citizenship automatically through adoption.<sup>45</sup> Social Security Administration officials may deliver the news when U.S. citizen parents unsuccessfully apply for a child's Social Security number.<sup>46</sup> Or State Department officials may drop this bomb when the U.S. citizen parents try to obtain a child's U.S. passport. At that point, citizen parents learn that their child is undocumented, and the parents' own U.S. citizenship is not enough to shield the child from possible deportation.

The hurdles to immigrating an adopted child are not overcome easily. Notably, immigration law does not recognize the adopted child as a U.S. citizen's child for immigration purposes until the child has been in the new parent's legal custody and resided with the new parent for two years.<sup>47</sup> With one narrow exception, the child must be under 16 when adopted to qualify as a "child."<sup>48</sup> Once these requirements are met, the adoptive parent can file a family-based visa petition for the child. If USCIS approves the petition, it makes a visa number immediately available to the child—but the child must still apply for lawful permanent residency.<sup>49</sup>

At this point the process often breaks down. Unless the child entered the United States with the federal government's permission—and many adopted children from other countries do not, through no fault of their own—the child cannot adjust his or her status in the United States.<sup>50</sup> Instead, the child must return to his or her country of nationality and overcome any inadmissibility grounds before the U.S. government may permit the child to reenter as a permanent resident. This requirement applies to all children, no matter their age. It often causes disruption, expense, and dismay to U.S. citizen parents and their adopted children. But the situation can be even more dire. If the Hague Adoption Convention<sup>51</sup> applies and the attorney handling the adoption fails to follow its complex requirements, the completed adoption will not be a vehicle for the parent to immigrate the child.<sup>52</sup>

SIJS can prevent these problems. A child who seeks SIJS before adoption need not wait two years, or any time, to do so. The child is not in a family-based visa category, and visa numbers are nearly always immediately available to the child.<sup>53</sup> The child obtains lawful permanent residency in the United States, with no need for a consular process abroad, regardless of his or her man-

ner of entry.<sup>54</sup> The parents then adopt a lawful permanent resident child, not an undocumented child who may be subject to deportation. And if the finalized adoption is valid and one or both parents are U.S. citizens, the permanent resident child later gains U.S. citizenship by operation of law rather than naturalization.<sup>55</sup>

Children in Los Angeles have been obtaining SIJS before adoption for years. DCFS's SIS Unit legalizes undocumented children in foster care before their adoptions are complete.<sup>56</sup> However, until recently, children going through "independent" adoptions that are not within the reach of DCFS have been less fortunate. When attorneys identified some children in adoption proceedings as SIJS eligible, the children's adoption petitions were typically withdrawn, and the children were sent to probate court to obtain SIJS findings. Only after the children became permanent residents were their adoption petitions refiled.<sup>57</sup>

In 2007, this approach changed. Levitt & Quinn Family Law Center, in partnership with Public Counsel, obtained the first SIJS findings in a Los Angeles adoption proceeding—and this victory may be the first of its kind in the nation.<sup>58</sup> Seeking SIJS findings within an adoption case, rather than outside of it, made perfect sense. A California court handling an independent adoption clearly meets the federal definition of a juvenile court.<sup>59</sup> In most cases the court can place the child into the prospective adoptive parent's custody.<sup>60</sup> Further, the court is positioned to make reunification and best interest findings. Not all children being adopted were abused, neglected, or abandoned, but those who were can and should pursue SIJS before finalizing their new family relationship.

### Recent Developments and the DREAM Act

The effectiveness of the SIJS program in Los Angeles also set the stage for *Garcia v. Holder*, the Ninth Circuit's recent and only precedential SIJS opinion.<sup>61</sup> In *Garcia*, the court addressed the intersection of SIJS and cancellation of removal—a form of immigration relief for some lawful permanent residents who might otherwise face deportation.<sup>62</sup> The case addressed whether SIJS's unique characteristics rendered a former Los Angeles County juvenile court dependent "admitted in any status" so that he accrued the seven years of continuous residence needed for cancellation of removal. The Ninth Circuit resolved that issue clearly in the affirmative in the only federal court opinion tackling this topic.<sup>63</sup> Judge Ronald M. Gould, writing for a unanimous panel, recognized that the former dependent's SIJS-based parole triggered the running of the seven-year continuous residence clock.<sup>64</sup> Thus, the former

dependent was statutorily eligible for cancellation of removal.

The court noted that Congress has given Special Immigrant Juveniles "recognition and opportunity to make contacts in this country, and for that reason [they] should not be wrenched away without adequate process."<sup>65</sup> This opinion, binding courts and advocates within the Ninth Circuit and offering guidance to those outside, is important for all Special Immigrant Juveniles. Additionally, it demonstrates the powerful combination of the SIS Unit's support for its former dependents with the creative advocacy of pro bono attorneys.<sup>66</sup> Los Angeles not only follows but also helps to make the law governing SIJS.

Although SIJS thrives in Los Angeles, the SIJS system in this county is not perfect. Some eligible children fall through the cracks and learn of this relief only after they are too old to obtain it. Also, while Los Angeles's SIJS programs in dependency, delinquency, guardianship, and adoption proceedings should be emulated, a significant gap would still exist even if every city and state developed SIJS programs to match those in Los Angeles. Thousands of immigrant children simply do not qualify for SIJS. They may not have been abused, neglected, or abandoned, or they may not be under juvenile court jurisdiction. Some may apply for other relief, like the U Visa, relief under the Violence Against Women Act, or asylum<sup>67</sup>—but under current law, many promising young people raised in the United States have no way to become lawful permanent residents or U.S. citizens. Absent comprehensive immigration reform, their best hope is the DREAM Act.<sup>68</sup>

As drafted in the Senate, the DREAM Act would allow certain immigrant students who have grown up in the United States to apply for lawful conditional residency. If they complete two years of college or U.S. military service, they later could apply for lawful permanent residency and eventually U.S. citizenship.<sup>69</sup> Fortunately, Congress retained the child-centered approach it adopted in SIJS and incorporated it into some aspects of the DREAM Act. The act allows students to adjust their status in the United States regardless of their manner of entry—the same approach that has benefited many SIJS-eligible children who were brought to the United States at a young age.<sup>70</sup> The act, like SIJS, applies fewer inadmissibility bars to students, and most remaining bars are waivable under the generous SIJS standard.<sup>71</sup> Although the DREAM Act lacks the best interest standard articulated in SIJS, Congress essentially has taken it into account by extending protections to children as young as five who may one day qualify for DREAM Act adjustment.<sup>72</sup>

As the DREAM Act remains in committee, Congress should look further at the

lessons SIJS teaches. On the one hand, it should incorporate even more of SIJS's statutory strengths. It should institute a deadline for USCIS's DREAM Act adjudications, like the 180-day limit it instituted for adjudicating SIJS petitions. With this deadline, students are more likely to obtain relief quickly and consistently across the country. Congress also should remove the formal "good moral character" requirement for DREAM Act adjustment.<sup>73</sup> The applicable inadmissibility grounds—including those for criminal convictions, drug trafficking, terrorism, smuggling, draft dodging, and unlawful voting—are more than sufficient to screen for character.<sup>74</sup> Excising this portion of the bill will eliminate an unnecessarily evidence-intensive inquiry, one that SIJS has functioned successfully without. On the other hand, Congress should craft the DREAM Act to avoid SIJS's primary pitfall—uneven implementation due to a lack of public awareness combined with the federal Legal Services Corporation (LSC)'s restrictions on attorneys' representing undocumented persons.<sup>75</sup>

Failure to act will have predictable results. As it stands, the DREAM Act requires no outreach plan and, if passed unrevised, the 900 LSC-funded law offices across the country cannot use LSC money to represent DREAM Act eligible students.<sup>76</sup> It is true that the DREAM Act—like the Nicaraguan Adjustment and Central American Relief Act (NACARA) of the late 1990s<sup>77</sup>—has received more attention from the news media than SIJS ever did, and students have educated one another about the bill. Nonetheless, some students will miss out on this path to U.S. citizenship if no implementation strategy is created,<sup>78</sup> particularly since the DREAM Act requires that a youth apply for its benefits within a tight time schedule regardless of where he or she lives or whether adequate representation is available.<sup>79</sup> Moreover, many low-income students who might be eligible for DREAM Act protection will be gouged by unscrupulous notaries if legal services attorneys are not allowed to represent them.<sup>80</sup>

At its core, SIJS is successful in Los Angeles because attorneys and agency staff educate others to identify SIJS-eligible children, and they operate free from LSC restrictions. This is a luxury Los Angeles has, but one not shared nationwide.<sup>81</sup> To make the DREAM Act work for students, Congress needs to learn from Los Angeles's implementation of unique humanitarian relief for young people. If passed, the DREAM Act's force around the country should rival the impact of SIJS in Los Angeles.

The SIJS experience shows how elected leaders and policy makers put aside partisanship for the best interest of children and

our nation's future. SIJS has not opened the floodgates to unauthorized immigration, but it has changed thousands of children's and adoptive parents' lives. The DREAM Act has the same potential to transform politics, policy, and the futures of many people. ■

<sup>1</sup> See <http://blogs.wsj.com/washwire/2011/05/10/text-of-obamas-speech-on-immigration/>.

<sup>2</sup> See, e.g., AJAY CHAUDRY ET AL., *FACING OUR FUTURE: CHILDREN IN THE AFTERMATH OF IMMIGRATION ENFORCEMENT* (The Urban Institute 2010); David B. Thronson, *Thinking Small: The Need for Big Changes in Immigration Law's Treatment of Children*, 14 U.C. DAVIS J. JUV. L. & POL'Y 239 (2010).

<sup>3</sup> Telephone interview with Ken Borelli, Former Deputy Director, Department of Family and Children's Services of Santa Clara County (June 13, 2011).

<sup>4</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, *GUIDELINES ON INTERNATIONAL PROTECTION: CHILD ASYLUM CLAIMS UNDER ARTICLES 1(A)2 AND 1(F) OF THE 1951 CONVENTION AND/OR 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES* ¶5 (2009).

<sup>5</sup> See Gary C. Seiser et al., *Goals of Dependency Proceedings*, 1-2 CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE §2.11 (2011); Jenina Mella, *Termination of Parental Rights Based on Abuse or Neglect*, 9 CAUSES OF ACTION 483, §11 (2d ed. 2005).

<sup>6</sup> U.S. DEPARTMENT OF HOMELAND SECURITY, *YEARBOOK OF IMMIGRATION STATISTICS: 2010*, Table 7 (Mar. 2011), available at <http://www.dhs.gov/files/statistics/publications/LPR10.shtm>.

<sup>7</sup> Cf. Michael Biggs, *Special Immigrant Juvenile Status Is Key to Advocating for Immigrant Youth*, THE CONNECTION, Summer 2006, at 5.

<sup>8</sup> No one knows the precise number of children who should qualify for SIJS each year. Hard data on immigrant children is rarely collected. See YALI LINCROFT ET AL., *UNDERCOUNTED, UNDERSERVED. IMMIGRANT AND REFUGEE FAMILIES IN THE CHILD WELFARE SYSTEM 4* (Annie E. Casey Foundation 2006) [hereinafter LINCROFT].

<sup>9</sup> Telephone Interview with Cecilia Saco, Supervisor, Special Immigrant Status Unit, Department of Family and Children's Services of Los Angeles County (June 13, 2011).

<sup>10</sup> 8 U.S.C. §1101(a)(27)(J)(i).

<sup>11</sup> 8 C.F.R. §204.11(d)(2) (2011).

<sup>12</sup> 8 C.F.R. §204.11(a) (2011).

<sup>13</sup> See *N.O. v. Superior Court of Cal., County of Alameda*, No. A122430, at 2-3 (Cal. Ct. App. Sept. 25, 2008) ("Given this authority, regardless of the department in which they sit, judges of the superior court have concurrent jurisdiction. Thus, under the federal legislation, any superior court judge would have jurisdiction to hear the SIJS petition.").

<sup>14</sup> 8 U.S.C. §1101(a)(27)(J)(i).

<sup>15</sup> See WELF. & INST. CODE §727(a).

<sup>16</sup> DONALD NEUFELD, ACTING ASSOCIATE DIRECTOR FOR DOMESTIC OPERATIONS, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008: SPECIAL IMMIGRANT JUVENILE STATUS PROVISIONS 2* (Mar. 24, 2009) [hereinafter NEUFELD].

<sup>17</sup> 8 U.S.C. §1101(a)(27)(J)(i).

<sup>18</sup> See William Wilberforce *Trafficking Victims Protection Reauthorization Act of 2008* (TVPPRA), Pub. L. No. 110-457, §235(d)(1)(A).

<sup>19</sup> USCIS issued proposed SIJS regulations last fall, and the public comment period closed on November 7, 2011. See *Special Immigrant Juvenile Petitions*, 76 Fed. Reg. 54, 978 (Sept. 6, 2011). It is not known when USCIS will finalize the regulations.

<sup>20</sup> 8 U.S.C. §1101(a)(27)(J)(ii).

<sup>21</sup> *Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court*, 58 Fed. Reg. 42,843, 42,847 (Aug. 12, 1993).

<sup>22</sup> *In re Ethan N.*, 18 Cal. Rptr. 3d 504, 512 (2004) (quoting *Adoption of Michelle T.*, 117 Cal. Rptr. 856, 858 (1975)).

<sup>23</sup> See WELF. & INST. CODE §361.3(a)(1) (outlining best interest factors guiding relative placement of a dependent child).

<sup>24</sup> 8 U.S.C. §1101(a)(27)(J), 1255(h).

<sup>25</sup> 8 C.F.R. §204.11(c)(2), 205.1(a)(3)(iv)(B) (2011).

<sup>26</sup> Compare 8 C.F.R. §204.11(c)(1) (2011) with TVPPRA §235(d)(6) (relying upon 8 U.S.C. §1101(b)(1)'s definition of a child as a person under 21).

<sup>27</sup> Compare 8 C.F.R. §204.11(c)(5) (2011) with *Perez-Olano v. Holder*, No. CV 05-3604, Settlement Agreement ¶23 (C.D. Cal. 2010) (litigated by Los Angeles's Center for Human Rights and Constitutional Law).

<sup>28</sup> See WELF. & INST. CODE §607(a).

<sup>29</sup> See PROB. CODE §1600(a).

<sup>30</sup> See NEUFELD, *supra* note 16, at 3. A child must, however, obtain prior "specific consent" from the federal Department of Health and Human Services if he or she is in its custody and wants the juvenile court to determine his or her "custody status or placement." 8 U.S.C. §1101(a)(27)(J)(iii)(I).

<sup>31</sup> 8 U.S.C. §§1182, 1255(a), (c).

<sup>32</sup> 8 U.S.C. §§1255(h)(1).

<sup>33</sup> 8 U.S.C. §1255(2)(A), (B).

<sup>34</sup> See *Matter of Devison-Charles*, 22 I. & N. Dec. 1362, 1365-66 (BIA 2000).

<sup>35</sup> See <http://www.courtinfo.ca.gov/forms/fillable/fjv224.pdf>.

<sup>36</sup> TVPPRA §235(d)(2).

<sup>37</sup> 8 U.S.C. §1101(a)(27)(J)(iii)(II).

<sup>38</sup> Telephone Interview with Gladis Molina, Pro Bono Coordinator, KIND (June 20, 2011).

<sup>39</sup> LINCROFT, *supra* note 8, at 23, 26.

<sup>40</sup> LEGISLATIVE BUDGET BOARD STAFF, *TEXAS STATE GOVERNMENT EFFECTIVENESS AND EFFICIENCY 245-46* (2009).

<sup>41</sup> See, e.g., Virginia G. Weisz & Suzanne McCormick, *Abandon Probate Court for Abandoned Children: Combining Probate Guardianship of the Person and Dependency into One Stronger, Fairer Children's Court*, 12 S. CAL. REV. L. & WOMEN'S STUD. 191, 213 (2003).

<sup>42</sup> Cf. JOHN MORTON, ASSISTANT SECRETARY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *CIVIL IMMIGRATION ENFORCEMENT: PRIORITIES FOR THE APPREHENSION, DETENTION, AND REMOVAL OF ALIENS 2* (June 30, 2010) (Juveniles warrant "particular care.").

<sup>43</sup> See THOMAS COOK, ACTING ASSISTANT COMMISSIONER, ADJUDICATIONS DIVISION, U.S. DEPARTMENT OF JUSTICE, *INS INTERIM FIELD GUIDANCE RELATING TO PUBLIC LAW 105-119 (SEC. 113) AMENDING SECTION 101(j)(27)(A) OF THE INA—SPECIAL IMMIGRANT JUVENILES 3* (Aug. 7, 1998).

<sup>44</sup> Telephone Interview with Andrea Ramos, Director of the Immigration Law Clinic at Southwestern Law School (June 20, 2011).

<sup>45</sup> See Anna Gorman, *A Twisted Route to Gain Legal Status for Adopted Children*, L.A. TIMES, June 25, 2007, <http://articles.latimes.com/2007/jun/25/local/me-fosterside25>.

<sup>46</sup> *Id.*

<sup>47</sup> 8 U.S.C. §1101(b)(1)(E).

<sup>48</sup> *Id.*

<sup>49</sup> By contrast, if the adoptive parents are permanent residents, not U.S. citizens, their child must get into a long queue for a visa number before adjusting status. See 8 U.S.C. §1153(a)(2); U.S. DEPARTMENT OF STATE, *VISA BULLETIN* (July 2011), at [http://www.travel.state.gov/visa/bulletin/bulletin\\_5489.html](http://www.travel.state.gov/visa/bulletin/bulletin_5489.html).

<sup>50</sup> 8 U.S.C. §1255(a).

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<sup>51</sup> Hague Adoption Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, May 29, 1993, 32 I.L.M. 1134 (entered into force in the United States Apr. 1, 2008).

<sup>52</sup> See Cynthia Hemphill et al., *Intercountry Adoptions: Understanding the Procedures One Year After the Implementation of the Hague Adoption Convention*, in IMMIGRATION & NATIONALITY LAW HANDBOOK 885, 898 (2009-2010 ed.).

<sup>53</sup> See 8 U.S.C. §1153(b)(4) and ANGIE JUNCK ET AL., SPECIAL IMMIGRANT JUVENILE STATUS AND OTHER IMMIGRATION OPTIONS FOR CHILDREN AND YOUTH 8:19-20 (2010) [hereinafter JUNCK].

<sup>54</sup> JUNCK, *supra* note 53, at 5:1-2.

<sup>55</sup> See 8 U.S.C. §1431.

<sup>56</sup> Telephone Interview with Cecilia Saco, *supra* note 9.

<sup>57</sup> Telephone Interview with Lucia Reyes, Legal Services Director, Levitt & Quinn Family Law Center (June 27, 2011).

<sup>58</sup> *Id.*

<sup>59</sup> 8 C.F.R. §204.11(a) (2011).

<sup>60</sup> See FAM. CODE §§7820-7829.

<sup>61</sup> Garcia v. Holder, 659 F. 3d 1261 (9th Cir. 2011) (petition for panel rehearing pending).

<sup>62</sup> 8 U.S.C. §1229b.

<sup>63</sup> Garcia is the only published Ninth Circuit opinion on SIJS. This is not unusual. Only two other federal appellate circuits have issued binding decisions involving SIJS. See Yeboah v. INS, 345 F. 3d 216 (3d Cir. 2003); M.B. v. Quarantillo, 301 F. 3d 109 (3d Cir. 2002); Zhen-Hua Gao v. Jenifer, 185 F. 3d 548 (6th Cir. 1999). Only a handful of federal district courts have addressed SIJS in published decisions. As a result, those working on SIJS regularly consult the statute, regulations, and administrative decisions but maneuver largely without federal court guidance.

<sup>64</sup> Garcia, 659 F. 3d at 1263.

<sup>65</sup> *Id.* at 1271.

<sup>66</sup> Attorney Claudia Bowley-Fuentes represented Garcia before the immigration court and the Board of Immigration Appeals. The SIS Unit provided support letters for Garcia, which became part of the case's administrative record.

<sup>67</sup> See JUNCK, *supra* note 53, at 10:1-12:40.

<sup>68</sup> The Development, Relief, and Education for Alien Minors (DREAM) Act, S. 952, 112th Cong. (2011).

<sup>69</sup> NATIONAL IMMIGRATION LAW CENTER, DREAM ACT: SUMMARY (May 2011), <http://www.nilc.org/immlaw-policy/dream/dream-bills-summary-2011-05.pdf>.

<sup>70</sup> See S. 952 §3(b)(1).

<sup>71</sup> Compare S. 952 §§3(b)(1)(D)(i), (b)(2) with 8 U.S.C. §1255(2)(A), (B).

<sup>72</sup> See S. 952 §3(e)(2).

<sup>73</sup> S. 952 §3(b)(1)(C).

<sup>74</sup> S. 952 §3(b)(1)(D)(i).

<sup>75</sup> See Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, §504(d)(2)(B), 110 Stat. 1321, 1321-54; 45 C.F.R. §§1626.1-1626.11 (2011).

<sup>76</sup> See *id.*

<sup>77</sup> Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, 111 Stat. 2160 (1997).

<sup>78</sup> Cf. TVPRA §235(e), (i).

<sup>79</sup> S. 952 §3(d)(2).

<sup>80</sup> See Victoria Kim, *Nationwide Program Cracks Down on Scam Artists Who Prey on Immigrants in Need of Legal Help*, L.A. TIMES, June 11, 2011, <http://articles.latimes.com/2011/jun/11/local/la-me-immigration-scams-20110611>.

<sup>81</sup> See Rebekah Diller & Emily Savner, *Restoring Legal Aid for the Poor: A Call to End Draconian and Wasteful Restrictions*, 36 FORDHAM URB. L.J. 687, 703 (2009) ("In many parts of the country, there are no non-LSC-funded legal aid offices that can serve undocumented and other excluded immigrants.")