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Pro Bono | Immigration Task Force Update

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## Special Immigrant Juvenile Status (SIJS): Legislative Foundations, Program Overview, and Recent Rollback of Protections

*Gibson Dunn's Immigration Task Force is available to help clients understand what these and other expected policy changes will mean for them and how to comply with new requirements.*

### I. INTRODUCTION

Special Immigrant Juvenile Status (SIJS) is a form of federal immigration relief created by Congress in 1990 to protect noncitizen children who have been abused, neglected, or abandoned by one or both parents. Since its creation, SIJS has provided a pathway to lawful permanent residence (a green card) for some of the country's most vulnerable young people. However, that pathway has always been a long one, with approved SIJS recipients often waiting several years for a visa to be available before they can apply for a green card. To bridge that gap and provide protection to this particularly vulnerable category of noncitizens, the U.S. Citizenship and Immigration Services (USCIS) implemented a deferred action policy in 2022, shielding SIJS holders from deportation and allowing them to work legally while awaiting visa availability. As of May 10, 2026, that policy has now been substantially rolled back.

This alert summarizes the legal framework underlying SIJS, the visa backlog that has left over 100,000 young people in legal limbo, and the evolving administrative and litigation landscape following USCIS's recent elimination of the deferred action policy for SIJS holders.

## II. LEGISLATIVE HISTORY OF SIJS

Congress created SIJS with broad bipartisan support in 1990, codified in the Immigration Act of 1990.<sup>[1]</sup> In its original form, SIJS allowed noncitizen children in state foster care who were abused, neglected, or abandoned to secure lawful immigration status in the U.S.<sup>[2]</sup> Eligibility for SIJS has expanded over time, in recognition of the needs and vulnerability of noncitizen children both in and out of the foster care system. In 2008, President George W. Bush signed the Trafficking Victims Protection and Reauthorization Act (TVPRA), a bill passed with unanimous bipartisan support in Congress. The TVPRA was animated by a concern for protecting the vulnerable population of noncitizen children in the United States, including through expanding SIJS eligibility by removing the requirement that a juvenile court find the child eligible for long-term foster care. Since this expansion, a child is now eligible for SIJS if a state juvenile court finds that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment, or another similar basis under state law.<sup>[3]</sup> This allows children who are living with one parent but have been abused, neglected, or abandoned by the other parent to qualify for SIJS. The TVPRA also extended SIJS eligibility to children placed under the custody of a guardian or agency.

The TVPRA remains the basis for SIJS eligibility today. SIJS is currently available to individuals who apply with a form I-360 and who:<sup>[4]</sup>

- are physically present in the U.S.;
- are unmarried;
- are younger than 21 at the time of filing; and
- have a state juvenile court order (1) placing them in the custody of a guardian or in state foster care, (2) finding that the petitioner cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law, and (3) determining that it would not be in the petitioner's best interest to be returned to their (or their parents') country of origin or last residence.

Even though SIJS is a status under federal law and applications for SIJS are processed by a federal agency (USCIS), SIJS was designed to require a state court order because state juvenile court judges are seen as having expertise on the child welfare determinations that SIJS requires.<sup>[5]</sup> Additionally, the factors to determine what is in a child's best interest vary from state to state, and thus are seen to be best applied by state court judges.

As modified by the TVPRA, SIJS is unique among the various forms of immigration relief available to gain status in the United States because it introduces the "best interest" of the child applicant into legal determinations—unlike most other forms of immigration relief. This consideration comes from the United Nations' Convention on the Rights of the Child, the most comprehensive children's rights treaty in the world.<sup>[6]</sup> The Convention on the Rights of the Child instructs that "[i]n all actions concerning children . . . the best interests of the child shall be a primary consideration."<sup>[7]</sup> The Convention on the Rights of the Child also instructs that children who are "temporarily or permanently deprived of his or her family environment, or in whose best interests cannot be allowed to remain in that environment, shall be entitled to special protection

and assistance provided by the State.”[\[8\]](#) SIJS is the primary program the U.S. has to provide these rights to noncitizen children.

### III. OVERVIEW OF SIJS: NATURE OF RELIEF, ELIGIBILITY, AND VISA BACKLOG

SIJS is intended to—and does— provide a pathway to lawful permanent residence (a green card). A SIJS applicant must go through a two-phase process. First, while still a juvenile, the applicant must obtain an order from a state juvenile court establishing that the applicant is dependent upon the juvenile court or under the appropriate custody of a state agency or assigned individual; that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law; and that it is not in the applicant’s best interest to be returned to their or their parent’s country of nationality or last habitual residence.[\[9\]](#) Second, the applicant must file a Form I-360 petition with the USCIS submitting evidence of age, valid juvenile court order(s), evidence of a similar basis (if the juvenile court determined that parental reunification was not viable due to a similar basis to abuse, neglect, or abandonment), and additional evidence relevant to the juvenile court order(s) for USCIS consent.[\[10\]](#)

Under the statute, USCIS is required to make a decision on a petition for SIJS within 180 days of receipt of a properly filed petition with all the required evidence.[\[11\]](#)

However, approved SIJS recipients must wait for a visa to be available before they can apply for a green card. Strict statutory limits on immigrant visas have created a significant and growing backlog. As a result, many SIJS recipients must wait several years—often well into adulthood—before a visa becomes available. For example, as of the date of publication of this alert in May 2026, green cards are becoming available to SIJS holders who were approved in mid-2021, meaning they spent approximately five years in legal limbo *after* obtaining the necessary predicate orders, filing the required applications with USCIS, *and* having those applications approved by the agency.[\[12\]](#)

Procedurally, each SIJS youth is assigned a “priority date,” which reflects the date the SIJS petition was filed and establishes the applicant’s place in line for a visa.[\[13\]](#) To determine their visa eligibility, the SIJS recipient must compare their priority date to the Visa Bulletin on the U.S. Department of State’s website and cannot move forward to apply for lawful permanent residence unless their priority date is current under the Visa Bulletin.[\[14\]](#)

Despite SIJS’s basis on the best interests of the child and not employment, Congress assigned SIJS youth to share immigrant visas with the employment-based fourth preference (EB-4) visa category for “special immigrant” workers, which has an annual cap of less than 10,000 visas.[\[15\]](#) Moreover, in 2016, the Department of State determined that the annual limit on “immigrant visas” had been reached for certain countries, creating a backlog that has grown exponentially.[\[16\]](#) In 2023, the Department of State issued a public notice admitting that it had erroneously misinterpreted and misapplied the per-country cap, which led to it “correcting” the issue by creating a retrogression for all EB-4 applicants from all countries—including SIJS holders—and resulting in a years-long worldwide backlog for applicants from all countries.[\[17\]](#)

Currently, there are over 100,000 vulnerable immigrant children in the SIJS backlog, meaning more than 100,000 SIJS holders are still waiting for their turn to be able to apply for a green card despite indisputably meeting all substantive eligibility criteria to become permanent residents.<sup>[18]</sup> During their years-long wait, these SIJS youth remain in legal and economic limbo without important opportunities and protection, even though USCIS has already recognized the legitimacy of their claims for relief. Because of the enormous backlog, the deferred action policy created in 2022 (and described below) has played a critical role in providing temporary stability, including work authorization, while SIJS recipients await visa availability.

#### **IV. THE 2022 SIJS DEFERRED ACTION POLICY: A BRIDGE DURING THE BACKLOG**

In May 2022, in light of the growing backlog, USCIS updated its SIJS policy to automatically consider SIJS applicants for deferred action upon submission of their I-360 petition. Under this framework, once the I-360 was approved, the noncitizen child would be granted deferred action—a form of prosecutorial discretion exercised by the Department of Homeland Security (DHS), the parent agency of USCIS, whereby the government elects to temporarily defer removal of a noncitizen for a designated period. USCIS adopted this approach in recognition of the fact that the approved SIJS holder could not apply for adjustment of status solely because an immigrant visa number was not immediately available, leaving the SIJS holder without status or protection despite having established eligibility for humanitarian relief.<sup>[19]</sup> The policy was incorporated into the USCIS Policy Manual, reflecting the agency's commitment to addressing the practical consequences of visa retrogression within the SIJS framework.<sup>[20]</sup>

Although deferred action does not confer lawful immigration status, it provides meaningful interim protection. In the SIJS context, deferred action is specifically tied to individuals with approved petitions who are unable to proceed to adjustment of status due to the visa backlog. As a practical matter, deferred action protects SIJS holders from deportation while they wait for a visa to become available and, crucially, it allows them to apply for a work permit while their priority date remains non-current.<sup>[21]</sup> Between 2022 and 2025, approximately 200,000 SIJS youth awaiting green card eligibility were granted protection from deportation under this policy and had the opportunity to obtain work authorization.<sup>[22]</sup>

The significance of deferred action for this population extends well beyond protection from removal. SIJS beneficiaries who obtain employment authorization are not only lawfully permitted to work but are also eligible for a Social Security number and federally recognized identity documents, enabling them to attend college, access state services, and avoid labor exploitation. Deferred action thus serves as a critical interim safeguard for vulnerable SIJS youth facing prolonged visa backlogs, promoting financial and personal stability during the waiting period for green card availability.

#### **V. POLICY ROLLBACKS UNDER CURRENT ADMINISTRATION**

##### ***A. Initial Rescission***

Beginning in 2025, USCIS initiated a series of policy changes aimed at eliminating automatic consideration of deferred action for SIJS beneficiaries unable to adjust status due to visa

unavailability. These changes carry significant consequences for SIJS recipients, including being unable to obtain employment authorization and increased exposure to removal proceedings.

On May 29, 2025, USCIS issued a 60-day information collection notice proposing changes to the form it uses to process deferred action<sup>[23]</sup> that would remove SIJS from the eligible categories to apply for deferred action.<sup>[24]</sup> On June 6, 2025, USCIS issued a policy alert eliminating automatic consideration of deferred action for SIJS recipients unable to adjust their status due to visa unavailability.<sup>[25]</sup> The policy applied to all SIJS recipients regardless of petition approval date.<sup>[26]</sup>

In July 2025, a nationwide class action, *A.C.R. et al. v. Noem*, was filed by nine immigrant youth and two legal services providers in the U.S. District Court for the Eastern District of New York challenging the federal government's decision to end the SIJS deferred action policy.<sup>[27]</sup> The plaintiffs allege that USCIS's rescission was arbitrary and capricious, contrary to agency regulations, a violation of the *Accardi* doctrine, and procedurally defective for failure to comply with Administrative Procedure Act (APA) rulemaking requirements.<sup>[28]</sup>

On November 19, 2025, the court granted a stay of the SIJS deferred action rescission, finding that the plaintiffs were likely to succeed on the merits.<sup>[29]</sup> The court noted that USCIS failed to account for the "serious reliance interests" of affected youth—many of whom had already enrolled in educational programs or built careers in reliance of the deferred action program—and its potential consequences that would "radiate outward" to families, schools, employers, and even state governments.<sup>[30]</sup> The court held that the government's failure to account for these reliance interests was likely arbitrary and capricious under the APA.<sup>[31]</sup>

In January 2026, the court issued a clarifying opinion holding that its November order did not require USCIS to treat SIJS as a "strong factor that weighs heavily in favor of granting deferred action."<sup>[32]</sup> Instead, the court created a two-tier framework in which applicable deferred action standard varies based on petition approval date. For SIJS beneficiaries approved between April 6, 2025 and June 6, 2025, USCIS must treat SIJS approval as a particularly strong factor weighing in favor of granting deferred action.<sup>[33]</sup> All other SIJS beneficiaries approved after June 6, 2025, and those seeking to renew their existing deferred action, are subject to a less favorable standard.<sup>[34]</sup> For this group, USCIS is only required to conduct an individualized, case-by-case evaluation pursuant to the 2022 Policy Alert, meaning SIJS approval carries no heightened weight.<sup>[35]</sup>

In February 2026, the plaintiffs filed an appeal to the Second Circuit Court of Appeals challenging the district court's decision to allow for higher deferred action standards for applicants approved after June 6, 2025.<sup>[36]</sup> If appellants succeed on appeal, all SIJS beneficiaries would be entitled to a deferred action adjudication under the more favorable standard, which treats SIJS approval as a particularly strong positive factor, regardless of when their SIJS petition was approved. Briefing on the appeal is expected to conclude by early June 2026.

### ***B. Second Rescission (USCIS Memorandum PM-602-0198)***

On April 10, 2026, USCIS once again rescinded SIJS-based deferred action through its issuance of Policy Memorandum PM-602-0198.<sup>[37]</sup> In this new policy memorandum, USCIS announced

that it was considering the government's and affected parties' interests, including current and future SIJ petitioners.<sup>[38]</sup>

Under this new policy, which became effective May 10, 2026, USCIS will no longer automatically consider deferred action for prospective SIJS beneficiaries who cannot yet adjust their status due to the visa backlog.<sup>[39]</sup> Instead, those individuals will need to affirmatively request deferred action and USCIS will evaluate each request on a case-by-case basis on its own merits, without treating SIJS approval as a particularly strong positive factor.<sup>[40]</sup>

## **VI. PRACTICAL IMPACT OF THE APRIL 10, 2026 POLICY**

As of May 10, existing SIJS beneficiaries with deferred action will retain their status and employment authorization until their validity period expires.<sup>[41]</sup> However, USCIS may, within its discretion, terminate a grant of deferred action through the issuance of a Notice to Appear or a Notice of Termination, and revoke any employment authorization prior to the end of its validity period.<sup>[42]</sup> Once the SIJS beneficiary receives a written notice of the government's intent to revoke their employment authorization, the individual has fifteen days to submit countervailing evidence.<sup>[43]</sup> A USCIS district director will make the final unappealable decision.<sup>[44]</sup>

New SIJS petitioners who file their Form I-360 on or after May 10, 2026 will not receive automatic deferred action consideration along with no automatic pathway to employment authorization.<sup>[45]</sup> SIJS beneficiaries may still apply for deferred action via Form G-325A, but their SIJS approval will no longer be treated as a strong positive factor that weighs in favor of granting deferred action. Without deferred action, approved SIJS beneficiaries waiting for green card eligibility are no longer able to apply for employment authorization based on their SIJS approval status and may face potential removal proceedings.

## **VII. CONCLUSION**

The fate of SIJS-based deferred action remains unsettled. With the Second Circuit appeal pending and USCIS's April 2026 policy memorandum now in effect, the coming months are likely to bring further legal and administrative developments with significant consequences for tens of thousands of vulnerable young people.

<sup>[1]</sup> Pub. L. 101-649 (November 29, 1990).

<sup>[2]</sup> U.S. Citizenship and Immigration Services, Policy Manual Vol. 6 Pt. J Ch. 1, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-1> (last visited May 14, 2026).

<sup>[3]</sup> Pub. L. No. 110-457, 122 Stat. 5044 § 235(d) (2008).

<sup>[4]</sup> U.S. Citizenship and Immigration Services, Policy Manual Vol. 6 Pt. J Ch. 1, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2> (last visited May 14, 2026).

<sup>[5]</sup> Hannah Bridge & Leslye E. Orloff, *Settled Law: The Role of State Court Judges in Making Special Immigrant Juvenile Status (SIJS) Judicial Determinations* (Nov. 26, 2024),

<https://niwaplibrary.wcl.american.edu/wp-content/uploads/SIJS-Settled-Case-Law-DHS-Regs-Policies-Final-3.14.24.pdf>.

[6] Sarah Mehta, *There's Only One Country that Hasn't Ratified the Convention on Children's Rights: US*, ACLU (Nov. 20, 2015), <https://www.aclu.org/news/human-rights/theres-only-one-country-hasnt-ratified-convention-childrens>.

[7] United Nations Convention on the Rights of the Child, <https://www.unicef.org/child-rights-convention/convention-text>. It is noteworthy that while the U.S. signed the Convention in 1995, it is the only country in the U.N. to not have ratified the treaty. So, while the U.S. is not bound by the Convention, it is an important document informing fundamental principles for how to protect and give rights to all children, including immigrant children.

[8] *Id.*

[9] C.F.R. § 204.11(c).

[10] C.F.R. § 204.11(d).

[11] C.F.R. § 204.11(g).

[12] U.S. Dep't of State, Visa Bulletin for May 2026, "Final Action Dates for Employment-Based Preference Cases," <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-may-2026.html> (last visited May 7, 2026) (showing that visas may be issued for those with priority dates before July 15, 2022).

[13] National Immigrant Justice Center, "Your Special Immigrant Juvenile Status Petition (Form I-260) has been Approved!" [https://immigrantjustice.org/wp-content/uploads/2025/05/sijs\\_backlog\\_infosheet\\_2024-02-16\\_english.pdf](https://immigrantjustice.org/wp-content/uploads/2025/05/sijs_backlog_infosheet_2024-02-16_english.pdf).

[14] U.S. Dep't of State, The Visa Bulletin, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (last visited May 5, 2026).

[15] Rachel Leya Davidson et al., *False Hopes: Over 100,000 Immigrant Youth Trapped in the SIJS Backlog 22* (Dec. 2023).

[16] *Id.* at 8; 22-23.

[17] *Id.* at 22-23.

[18] *Id.* at 10; National Immigrant Project, "About the SIJS Backlog," <https://www.sijsbacklog.com/aboutsijs> (last visited May 5, 2026).

[19] *Id.* at 2.

[20] U.S. Citizenship & Immigr. Servs., Policy Manual Update: Special Immigrant Juvenile Classification and Deferred Action (Mar. 7, 2022),

<https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf>.

[21] *Id.*

[22] *Immigration and Citizenship Data*, U.S. Citizenship & Immigr. Servs., <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (last visited May 7, 2026).

[23] Agency Information Collection Activities; Revision of a Currently Approved Collection: Biographic Information (for Deferred Action), 90 Fed. Reg. 22,752 (May 29, 2025) (to be codified at OMB Control No. 1615–0008), <https://www.govinfo.gov/content/pkg/FR-2025-05-29/pdf/2025-09616.pdf>.

[24] U.S. Citizenship & Immigration Servs., Dep't of Homeland Sec., Draft Instructions for Biographic Information (for Deferred Action), Form G-325A, OMB No. 1615-0008 (May 15, 2025), <https://downloads.regulations.gov/USCIS-2005-0024-0074/content.pdf>; U.S. Citizenship & Immigration Servs., Dep't of Homeland Sec., Table of Changes — Form G-325A, Biographic Information (for Deferred Action), OMB No. 1615-0008 (May 15, 2025), <https://downloads.regulations.gov/USCIS-2005-0024-0073/content.pdf>.

[25] U.S. Citizenship & Immigr. Servs., *Policy Alert: Special Immigrant Juvenile Classification and Deferred Action*, PA-2025-07 (June 6, 2025), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf>.

[26] *Id.* at 2.

[27] *A.C.R. et al. v. Noem et. al.*, No. 1:25-cv-03962 (E.D.N.Y. July 17, 2025), Dkt. No. 1 (Complaint).

[28] *Id.*

[29] *A.C.R. v. Noem*, 809 F. Supp. 3d 103, 128–29 (E.D.N.Y. 2025), reconsideration denied, No. 25-CV-3962 (EK)(TAM), 2026 WL 102611 (E.D.N.Y. Jan. 14, 2026).

[30] *Id.* at 121–22.

[31] *Id.* at 119–23.

[32] *A.C.R. v. Noem*, No. 25-CV-3962 (EK)(TAM), 2026 WL 102611, at \*4 (E.D.N.Y. Jan. 14, 2026).

[33] *Id.* at \*3 n. 7.

[34] *Id.* at \*3–4.

[35] *Id.*

[36] Notice of Appeal, *A.C.R. et al. v. Noem et al.*, No. 26-236 (2d Cir. Feb. 3, 2026), *appeal from* No. 1:25-cv-03962-EK-TAM (E.D.N.Y. Jan. 14, 2026).

[37] U.S. Citizenship & Immigr. Servs., *Policy Memorandum: Special Immigrant Juvenile Classification and Deferred Action*, PM-602-0198 (Apr. 10, 2026), <https://www.uscis.gov/sites/default/files/document/memos/PM-602-0198-SIJDeferredAction-20260410.pdf>.

[38] *Id.* at 1, 5.

[39] U.S. Citizenship & Immigr. Servs., *Special Immigrant Juveniles*, <https://www.uscis.gov/working-in-US/eb4/SIJ> (last visited May 14, 2026).

[40] U.S. Citizenship & Immigr. Servs., *Policy Memorandum: Special Immigrant Juvenile Classification and Deferred Action*, PM-602-0198 at 5–6, 9 (Apr. 10, 2026), <https://www.uscis.gov/sites/default/files/document/memos/PM-602-0198-SIJDeferredAction-20260410.pdf>.

[41] *Id.* at 5.

[42] *Id.*

[43] 8 C.F.R. § 274A.14 (b)(2).

[44] *Id.*

[45] U.S. Citizenship & Immigr. Servs., *Special Immigrant Juveniles*, <https://www.uscis.gov/working-in-US/eb4/SIJ>.

**The following Gibson Dunn lawyers prepared this update: Katie Marquart, Stuart Delery, Ariana Sanudo, Laura Raposo, Arthur Halliday, Irvin De La O, Gracie Maynetto, and Harshini Malli.**

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, any leader or member of the firm’s [Pro Bono](#), [Public Policy](#), [Administrative Law](#)

& Regulatory, Appellate & Constitutional Law, or Labor & Employment practice groups, or the following members of the firm's Immigration Task Force:

Stuart F. Delery – Co-Chair, Administrative Law & Regulatory Practice Group,  
Washington, D.C. (+1 202.955.8515, [sdelery@gibsondunn.com](mailto:sdelery@gibsondunn.com))

Naima L. Farrell – Partner, Labor & Employment Practice Group,  
Washington, D.C. (+1 202.887.3559, [nfarrell@gibsondunn.com](mailto:nfarrell@gibsondunn.com))

Nancy Hart – Partner, Litigation Practice Group,  
New York (+1 212.351.3897, [nhart@gibsondunn.com](mailto:nhart@gibsondunn.com))

Katie Marquart – Partner & Chair, Pro Bono Practice Group,  
Los Angeles (+1 213.229.7475, [kmarquart@gibsondunn.com](mailto:kmarquart@gibsondunn.com))

Laura Raposo – Associate General Counsel,  
New York (+1 212.351.5341, [lraposo@gibsondunn.com](mailto:lraposo@gibsondunn.com))

Matthew S. Rozen – Partner, Appellate & Constitutional Law Practice Group,  
Washington, D.C. (+1 202.887.3596, [mrozen@gibsondunn.com](mailto:mrozen@gibsondunn.com))

Ariana Sañudo – Associate, Pro Bono Practice Group,  
Los Angeles (+1 213.229.7137, [asanudo@gibsondunn.com](mailto:asanudo@gibsondunn.com))

Betty X. Yang – Partner & Co-Chair, Trials Practice Group,  
Dallas (+1 214.698.3226, [byang@gibsondunn.com](mailto:byang@gibsondunn.com))

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