



*Re-Opening Our Doors
To Vulnerable
Immigrant Youth:*

*RECOMMENDATIONS ON U.S.
IMMIGRATION POLICY
IMPACTING YOUNG PEOPLE*

*THE DOOR'S LEGAL
SERVICES CENTER,
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INTRODUCTION

The Door's Legal Services Center ("The Door") respectfully submits for consideration the following recommendations to the Biden-Harris Transition Team on the immigration policy issues impacting immigrant youth.

The Door is an office of nearly forty attorneys, paralegals, social workers and support staff. We specialize in serving vulnerable youth, including those who are homeless, undocumented, and/or LGBTQ. Our attorneys represent youth facing removal proceedings, including hundreds of youth detained in Office of Refugee Resettlement ("ORR") custody, as well as those seeking to regularize their status through the filing of affirmative humanitarian applications. A large proportion of these young people are eligible for and apply for Special Immigrant Juvenile Status ("SIJS"). In Fiscal Year 2020, we handled 1575 immigration matters for over 1300 unique young people, primarily in their applications for SIJS, asylum, DACA, U-visas and T-visas. We anchor these recommendations in our extensive experience representing vulnerable young immigrants in humanitarian immigration matters.

Over the last four years The Door's legal practice and the lives of our young clients have been profoundly impacted by the Trump Administration's concerted assault on immigrants and immigration, through the issuance of new rules, policies, and precedent decisions, as well as the restructuring of the two agencies primarily responsible for regulating immigration in the United States, the United States Citizenship and Immigration Services ("USCIS") and the Executive Office for Immigration Review ("EOIR"). We have witnessed the systems created to protect refugees and vulnerable immigrant youth eviscerated beyond recognition and watched the rule of law disappear.

During these years, we have represented eighteen children forcibly separated from their parents by our government. As violence, economic injustice and political unrest in Central America and Mexico continued to drive unprecedented migration of unaccompanied minors to the southern border, we grew our practice to advocate for hundreds of minors detained in federal custody in New York. After USCIS began denying SIJS petitions on the basis of an unpublished and arbitrary policy change, we appealed dozens of our clients' wrongful denials to the Administrative Appeals Office ("AAO") and participated in a federal class action suit that enjoined USCIS' unlawful actions. We have counselled our clients on their rights and the risks of affirmatively applying for the humanitarian benefits to which they are entitled, while navigating the uncertainty of an administration inclined to issue punitive rules, policies, and decisions with retroactive effect. Most of all, we supported the young people we serve as they struggled with the ongoing trauma caused by the Trump Administration's aggressive anti-immigrant rhetoric and policies, and its deeply damaging efforts to change the character of our nation from one of refuge and inclusion, to a country championing bigotry, hatred, and xenophobia.

We are aware that it will take a long time for the Biden-Harris Administration to fully undo the harm done to our immigration system and to the immigrants caught up in it by President Trump and his allies. The Door urges the transition team to not only consider the harms done in the last four years but to envision a new pathway forward that recognizes that our immigration system

was broken before President Trump, and boldly imagines a transformed system where the dignity and lives of immigrants in America are paramount. As you embark on this work, The Door's Legal Services Center, our exceptional attorneys and the remarkable young people we represent, are honored to partner with you in this most important task.

REINSTATING AND EXPANDING THE DEFERRED ACTION FOR CHILDHOOD ARRIVALS PROGRAM (DACA)

The Door has represented hundreds of young people in their DACA applications since the program's inception. DACA is a life-saving status for our clients and has allowed them to attend school, work, and pay taxes, thereby immeasurably contributing to our society, economy and culture. In June of this year, [the United States Supreme Court rejected the Trump administration's 2017 attempt to terminate the DACA program](#). Remarkably, USCIS largely ignored the Supreme Court's decision, and instead [issued directives](#) to reject new applications, limit work permit authorization periods to one year and deny requests for advance parole. On December 8, 2020, a federal district court in Brooklyn ordered USCIS to fully reinstate the DACA program, including accepting new applications and issuing 2-year work authorization renewals.

The Door calls on the Biden-Harris administration to ensure that the DACA program is fully reinstated and expanded. This means:

- *In line with the December 8, 2020 Federal Court orders, applicants are able to file initial applications for DACA protection and renew their status as needed.*
- *The administration reviews all renewal applications denied since 2017.*
- *The administration restores DACA for recipients deported due to any such wrongful denials and guarantees a right of return.*
- *The administration eliminates the 2007 cut-off date for DACA applications to allow all otherwise eligible immigrants who arrived in the United States as children under the age of 21, as defined by the TVPRA, to apply for and receive DACA.*
- *The administration commits to not initiating removal proceedings for denied DACA applicants and terminates or administratively closes removal proceedings for all DACAmented immigrants.*
- *The administration prioritizes creating a pathway to citizenship for all DACAmented immigrants and their immediate relatives, as well as those who received improper denials since 2017.*

PROTECTING SPECIAL IMMIGRANT JUVENILE STATUS (“SIJS”)

TRUMP’S WAR AGAINST SIJS

Every year The Door represents hundreds of young immigrants in their applications for SIJS. These are young people who have been abused, abandoned or neglected by their parents and for whom it is not in their best interests to return to their country of origin. Congress explicitly acknowledged the vulnerability of these young people when it created SIJS as an expeditious pathway to permanent protection, with a mandatory adjudication period of 180 days for the SIJS petition. Over the last four years, The Trump Administration has systematically limited access to SIJS, in direct violation of Congressional intent, by issuing new, unlawful policies, impermissibly reinterpreting the SIJS eligibility criteria, and reopening for comment proposed SIJS regulations from 2011.

One of the Trump Administration’s most devastating attacks on SIJS began in 2018, when USCIS – without notice or formal rulemaking -- changed its internal adjudication policy for SIJS applicants who were over the age of 18 at the time a state juvenile court made the required predicate findings (“Over-18 Denial Policy”). USCIS adopted the legally unfounded position that despite the language of the TVPRA and explicit state laws to the contrary, state courts lacked the authority to reunify children over the age of 18 with their parents, therefore nullifying their eligibility for SIJS. SIJS applicants and legal services providers only slowly became aware of this policy shift through USCIS’ systematic issuance of thousands of RFEs, NOIDs and then finally denials of cases that would have previously been approved expeditiously. Cases that should have been decided within the mandated 180-day adjudication time-frame dragged on for years, and thousands of cases were ultimately denied. The Over-18 Denial Policy, combined with [a new NTA policy](#) which stated that applicants denied an immigration benefit would be placed into removal proceedings, put all of our affirmative SIJS clients at risk of removal, and was a crushing blow to young people who had been waiting years for their cases to be resolved.

The Door alone had hundreds of clients impacted by the Over-18 Denial Policy. We appealed each wrongful denial, which consumed our staff’s time and forced our offices to close intake to new clients for over a year. Each appeal cost our organization \$675. The total cost to our agency to defend our clients from this unlawful government action was well over \$50,000, not including the associated staff and operational costs. In November 2019, after various federal courts nationwide declared the Over-18 Denial Policy unlawful and enjoined USCIS’ conduct, USCIS again began lawfully adjudicating post-18 SIJS cases and the AAO began reopening wrongfully denied cases. Even today, however, some Door clients are still waiting for their wrongfully denied SIJS cases to be reopened.

While the government can never give these clients back the time they have lost, or repair the harm done to these young people in terms of economic and mental health consequences, the government can, at minimum, make financial amends by refunding the costs of defending unlawfully denied SIJS applications to SIJS applicants and the legal services providers who

collectively paid hundreds of thousands of dollars to USCIS to appeal their unlawfully denied cases. ***The Door urges the Biden Administration to instruct USCIS to refund the appeals fees to SIJS applicants who were impacted by the unlawful and arbitrary Over-18 Denial Policy and whose cases were ultimately reopened by the AAO.***

In November 2019, USCIS re-opened the comment period on proposed SIJS regulations originally published in 2011. ***The Door submitted comments in 2019, and urges your team to consider them, along with the numerous comments made by our sister organizations, before a rule is finalized.***

That same month, [USCIS announced SIJS policy changes](#) via a series of Adopted Administrative Appeals Office Decisions and subsequent changes to the USCIS policy manual. These changes would shrink access to SIJS for vulnerable young people by heightening the standards for findings made by state juvenile courts in determining eligibility for SIJS. ***USCIS should rescind the policies made through adopted Administrative Appeals Office (AAO) decisions and corresponding changes made to the Policy Manual.***

Most recently, [EOIR issued a proposed regulation](#) which would codify what constitutes “good cause” for a continuance in immigration court. Alarming, the proposed rule would preclude immigration judges from granting continuances to SIJS applicants where a visa is not available within 6 months. This would effectively force judges to issue removal orders for all retrogressed SIJS applicants from Mexico and the Northern Triangle who respectively face 2 and 3-year visa backlogs from the moment of application, essentially nullifying SIJS as a form of relief for Central American and Mexican youth. The rule punishes already vulnerable youth for a bureaucratic processing delay that is entirely beyond their control. ***Along with reforming the Adjustment of Status process for Special Immigrant Juveniles in the manner proposed below in this memo, The Door urges the Biden-Harris Administration to rescind these proposed regulations and protect SIJS as a form of relief for vulnerable immigrant youth.***

LOOKING AHEAD- REFORMING SIJS VISA RETROGRESSION

Visa Retrogression as applied to Special Immigrant Juveniles is one of the most pernicious examples of a bureaucratic processing delay that adversely impacts immigrant youth. The categorization of SIJS as a category 4 employment-based preference for the purposes of “visa allocation” undermines congressional intent in creating a rapid pathway to permanency for vulnerable youth. ***The Door urges the Biden-Harris administration to prioritize the reform of the adjustment of status process for SIJS.***

Currently, SIJS is a category 4 employment-based preference for the purposes of “visa allocation.” There is a cap on the number of visas that can be allocated every year,¹ and when a single country

¹ The scheme of limiting visa allocation is created by 8 USC § 1151, which specifies that the worldwide level of employment-based immigrants is 140,000, with some flexibility to compensate for failures to issue all the visas of the previous fiscal year. See 8 USC § 1151(d). 8 USC § 1153(b)(4) limits the number of visas allocated to special

accounts for at least 7% of visa issuances, the number of visas available to that country are capped.² These countries are deemed “retrogressed,” and to the extent Special Immigrant Juveniles from those countries wish to apply for visas to adjust their status to legal permanent residents, they must wait for a visa to become available. Currently Special Immigrant Juveniles from the Northern Triangle face an approximately 3-year retrogression backlog.³ Special Immigrant Juveniles from Mexico face an approximately 2-year backlog. The practical effect of this backlog is to freeze young people in time as “Special Immigrant Juveniles” forcing young people to wait years before they can adjust status and obtain the permanency that SIJS was expressly intended to provide.

While processing delays impact all applicants, they have an especially profound effect on young people, leaving them in limbo at a pivotal time in their lives. Lack of immigration status is a barrier to youth accessing many key benefits, including housing and education, and can seriously impact young people’s ultimate welfare and socio-emotional development. This state of limbo and its implications on a child’s ability to obtain permanency further traumatizes already vulnerable youth.

The backlog and inability of Special Immigrant Juveniles to obtain lawful permanent residence prevents these young people from working, going to school, and otherwise reaching their full potential; it also wastes valuable human and administrative resources, as it prolongs young people’s dependence on legal services and other state and local resources.

The backlog further places Special Immigrant Juveniles in removal proceedings at risk of deportation, as demonstrated by the [new proposed EOIR regulation on continuances](#) described above, an outcome that is entirely contrary to Congress’ intent in creating SIJS. Reforming the SIJS adjustment of status process would force the immigration courts to terminate removal proceedings for Special Immigrant Juveniles at approval, instead of keeping them in deportation proceedings needlessly for years, or even worse, deporting young people with approved SIJS just because there is no visa number available. This would conserve judicial resources and protect

immigrants (overall, not just SIJ) to 7.1% of the worldwide level of employment-based immigrants. Special Immigrant Juveniles are included in this category per 8 USC § 1101(a)(27)(J) (defining “special immigrant”). Give or take differences between previous fiscal years, Special Immigrant Juveniles share a total of 9940 visas per year with other special immigrants in Category 4 of the employment-based visa category.

² 8 USC § 1152(e) lays out the framework for country specific quotas. The [visa bulletin website](#) seems to indicate that the maximum number of people who can come from any given country is 25,620, but it does not set limits within the actual categories. The visa bulletin website says it this way: “Section 202 [of the INA] prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620.”

³ Between April and May 2016, a category was added in for Northern Triangle countries, though each country must be considered independently when it comes to numerical limitations on immigration from individual foreign states. 8 USC § 1152(b) (“Each independent country . . . shall be treated as a separate foreign state for the purposes of a numerical level established under subsection (a)(2)”). The rationale for including all three countries within the same category is unclear, especially given the differing migration patterns.

vulnerable Special Immigrant Juveniles from the traumatic nature of continued removal proceedings.

The fact that Special Immigrant Juveniles must adjust their status via the EB-4 category is nonsensical and has long undermined congressional intention with regards to SIJS. SIJS is a humanitarian form of immigration relief for highly traumatized children and should be treated as such.

The Door calls upon the Biden-Harris administration to:

- *Extract the SIJ adjustment of status process from the EB-4 visa category.*
- *Create a new adjustment of status framework for Special Immigrant Juveniles which would allow them to obtain permanent residence in a fashion similar to the adjustment of status process for asylees, without being subject to retrogression backlogs.*
- *In the alternative, direct USCIS to revise the regulatory definition of “immediately available” at § 8 CFR 245.1(g) to allow for the earlier filing of adjustment of status and employment authorization applications for Special Immigrant Juveniles.*

While the administration and Congress work on reforming the SIJS adjustment of status process:

- *Reinforce with EOIR through the issuance of a policy memo that SIJS and other forms of relief before USCIS are valid forms of immigration relief, irrespective of any visa backlogs. Clarify that no SIJ applicant should be forced to file a secondary application before the court, such as an asylum application, during the pendency of the adjudication of their cases before USCIS. Reinforce that no SIJS applicant should be removed during the application or adjudication period of their SIJS petition and its corresponding adjustment of status process.*
- *Codify through regulations that removal proceedings for Special Immigrant Juveniles should be terminated upon USCIS grant of SIJS, reinforcing that a SIJS approval deems a Special Immigrant Juvenile “paroled in” to the United States, and therefore nullifying most charges that are the basis for minors’ removal proceedings.*
- *Reinstate the “status docket” for retrogressed Special Immigrant Juveniles to safeguard valuable judicial resources, and protect retrogressed SIJS applicants from the needless trauma of having to repeatedly appear in immigration court.*

ENSURING TRAUMA-INFORMED DUE PROCESS FOR YOUTH IN REMOVAL PROCEEDINGS

The Door’s Legal Services Center represents hundreds of minors in removal proceedings every year. The due process rights of minors in removal proceedings were systematically attacked throughout the course of the Trump Administration. Because the immigration courts are not independent Article I courts, the Trump Administration had free rein to politicize the courts and use them as a key mechanism in implementing its anti-immigrant political agenda. In the past

four years, a Trump-controlled EOIR has re-decided seminal cases, stacked the BIA, prioritized case completion over substantive due process, and issued a series of internal adjudication policy directives that operate as an effective stranglehold on Immigration Judges' ability to freely and impartially decide the matters before them.

The Door fundamentally believes that no child should have to stand trial in immigration court and that all cases involving minors should be decided in a non-adversarial, culturally competent and trauma-informed process. We urge the Biden-Harris team to reconsider the design of removal proceedings and the immigration courts, with the specific needs of children and youth in mind and recommend the following:

- *Cease the initiation of removal proceedings in immigration courts for all unaccompanied minors. Instead, all unaccompanied minors' cases should be decided either before USCIS on the papers in the same manner as affirmative SIJS cases, or else within the context of a non-adversarial conferencing process with specially trained social workers, and youth "officers". Denials at the conferencing level would be judicially reviewable in immigration court in a manner similar to the judicial review afforded referred asylum applications.*
- *In the alternative, implement a child-centric framework for all immigration court processes. This means:*
 - *Ensure that the cases of children are heard and adjudicated only by immigration judges specially trained to employ child-centric, culturally competent and trauma-informed adjudication skills.*
 - *Initiate dockets at every court where the cases of young immigrants are adjudicated by these specially trained judges.*
 - *Ensure that all young people under the age of 21 in U.S. immigration proceedings have the right to free legal representation.*
- *Instruct DOJ and EOIR to discontinue policies that prioritize case completions at the expense of due process.*
 - *Rescind the Attorney General decisions in Matter of Castro-Tum, Matter of L-A-B-R, Matter of Mayen, and Matter of S-O-G and F-D-B*
 - *Rescind the [August 26, 2020 proposed regulation](#) that limits appellate procedures and administrative closure authority.*
 - *Rescind the [November 27, 2020 EOIR proposed regulation](#) that limits what constitutes "good cause" for a continuance in immigration court and essentially forces judges to order retrogressed SIJS applicants removed.*
 - *Implement the above-proposed recommendations related to the treatment of SIJS cases in immigration court.*

PRIORITIZING THE HUMAN RIGHTS OF UNACCOMPANIED MINORS IN ORR DETENTION

The Door is the ORR-subcontracted Legal Services Provider for a number of ORR programs in the greater New York area licensed by the New York State Office of Children and Families Services

("OCFS"). In this capacity, The Door is responsible for conducting "Know Your Rights" trainings and legal relief eligibility screenings for minors within 10 calendar days of their arrival at ORR facilities. The Door appears on minors' behalf in Immigration Court for those in active removal proceedings, initiates representation for minors upon their request and in certain mandatory instances, advocates on their behalf for their "safe and timely" release under the law, and advocates to protect their rights to be free from physical, psychological, and sexual abuse, among other rights, while they remain in ORR custody. The Door makes legal referrals post-release and continues to represent minors post-release who reside in the New York-area.

In addition to the key recommendations made by our colleagues at KIND in their report entitled, "Concrete Steps to Protect Unaccompanied Children", The Door urges the Biden Administration to:

- *Increase the regulation and oversight of state licensed facilities above and beyond the current state standards. [See September 2020 GAO report on the need to improve oversight of care of unaccompanied children.](#)*
- *Ensure the full reproductive rights of detained minors, including their right to privacy, judicial bypasses, and adequate funding for medical care. This is especially important in states without robust legal protections for reproductive rights.*
- *Immediately cease delegating the care of detained minors to private contractors such as MVM, Inc. who have no training in child-centric, culturally competent or trauma informed care.*
- *Cease the prospective centralization of the sponsorship approval process to one national contractor without significant child welfare expertise.*

CONCLUSION

Over the last four years, our government has used immigrant children and youth as pawns in an increasingly politicized national game of chess. This must stop. The lives of these vulnerable children and youth are a matter of grave humanitarian concern and the manner in which our country chooses to treat them is a measure of our moral compass as a nation. The recommendations we have proposed redirect our compass towards the fundamental American values of compassion and justice and effectuate Congressional intent in enacting the TVPRA and the Homeland Security Act.

We must learn from these last years. Permanent, legislative protection for young people is not optional, lest our best work be undone in the future. Our recommendations are urgent, and they are possible. The time for action is now. Congress and the Biden-Harris Administration have the power and means to achieve these goals, and in doing so, to signal to the children both within and at our borders that this Administration and country value them, their lives and the contributions they will make to our society. Let us re-open our doors to them.

For further information on our work and these recommendations, contact Rachel Davidson, Managing Attorney for Policy, at rdavidson@door.org.



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