



**Practice Advisory Series**

**SPECIAL IMMIGRANT JUVENILE  
STATUS AND EMPLOYMENT  
AUTHORIZATION**

**2021**

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## Practice Advisory Forward

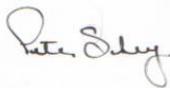
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*This practice advisory provides an overview of Special Immigrant Juvenile Status (“SIJS”) and the challenges SIJS face in obtaining a Form I-766 Employment Authorization Document (“EAD”).*

Manuals prepared by the Center are constantly being examined for improvements and updated to reflect current practices. Please feel free to email [pschey@centerforhumanrights.org](mailto:pschey@centerforhumanrights.org) if you would like to suggest updates or edits to portions of this practice advisory.

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Peter Schey  
President and Executive Director  
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Constitutional Law

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## I. LEGISLATIVE HISTORY OF SIJS

Congress passed the Immigration Act of 1990, which reformed the Immigration and Nationality Act of 1965 and notably created a humanitarian immigrant visa classification known as Special Immigrant Juvenile (“SIJ”) Status (“SIJS”). SIJS was designed to protect

[A]n immigrant (i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence...

[The Immigration Act of 1990, P.L. 101-649, §153\(a\)\(3\) at 28; 8 U.S.C. 1101\(a\)\(27\)\(J\).](#)

Section 153(b)(1) of the Act assured that certain specified deportation grounds “shall not apply to a special immigrant...based upon circumstances that exist before the date the alien was provided such special immigrant status. [The Immigration Act of 1990, P.L. 101-649, §153\(b\)\(1\) at 29; 8 U.S.C. §1251\(c\).](#)<sup>1</sup>

SIJS’s purpose was to provide these minors a permanent sanctuary. Even though “committee reports and conference documents...did not discuss [SIJ],” as the Congressional Research Service observed, Congress was clear-eyed about this vulnerable population’s acute need for stability, as evidenced by SIJ’s eligibility for lawful permanent residency. Ruth Ellen Wasem, *Special Immigrant Juveniles: In Brief*, CONGRESSIONAL RESEARCH SERVICE, at 2 (Aug. 29, 2014), <https://sgp.fas.org/crs/homsec/R43703.pdf>.

To that point, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 provided that a SIJ “shall be deemed, for purposes of subsection (a), to

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<sup>1</sup> For example, the provision providing that “Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens excludable by the law existing at such time is deportable[.]” does not apply to a SIJ. [8 U.S.C. § 1251\(1\)\(A\)](#). Likewise, the provision providing that “Any alien who entered the United States without inspection...is deportable” does not apply. [8 U.S.C. § 1251\(1\)\(B\)](#).

have been paroled into the United States.” [Pub. L. No. 102-232, 105 Stat. 1733; 8 U.S.C. 1255\(h\)](#). Subsection (a) states: “an alien who was inspected and admitted or paroled into the United States...may be adjusted by the Attorney General...to that of an alien lawfully admitted for permanent residence...” [8 U.S.C. 1255\(a\)](#).

The CJS 1998 Appropriations Act notably revised the SIJ definition to specifically cover juveniles “deemed eligible [] for long-term foster care due to *abuse, neglect, or abandonment...*” [Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, H.R. 2267, 105th Cong., at 22 \(1998\)](#) (emphasis added). Congress sought to prevent misuse of SIJS by immigrants who “might have been relinquishing parental rights so that their children could become SIJs...” [Wasem, \*Id at 3\*](#). The committee report reinforces this notion:

The language has been modified in order to limit the beneficiaries of this provision to those juveniles for whom it was created, namely abandoned, neglected, or abused children, by requiring the Attorney General to determine that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought *primarily* for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect.

[H.R. Rep. No. 105-405, at 130 \(1997\) \(emphasis added\)](#).

To further protect immigrant minors who had been abused, neglected, or abandoned, in the 2005 Violence Against Women Act, Congress “added section 287(h) to the INA, protecting a child applying for SIJ status from being compelled to contact the child's alleged abuser or any family members of the abuser.” [Special Immigrant Juvenile Petitions \(“Special Immigrant Juvenile Petitions”\) 76 Fed. Reg. 54978, 54979 \(proposed Sept. 6, 2011\); 8 U.S.C. 1357\(h\)](#).

In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPPRA”), which replaced the foster care requirement with more

expansive language; specifically, that prior to applying for SIJ status, a state court had to issue a finding that “reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” [Trafficking Victims Protection Reauthorization Act 2008 \(“TVPRA”\), Pub. L. No. 110-457, §235, 112 Stat. 5044, at 5079; INA § 101\(a\)\(27\)\(J\)\(i\), 8 U.S.C. 1101\(a\)\(27\)\(J\)\(i\).](#)

In the TVPRA, Congress mandated that DHS adjudicate SIJ petitions within 180 days (6 months) of filing: “All applications for special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) shall be adjudicated by the Secretary of Homeland Security *not later than 180 days after the date on which the application is filed.*” [8 U.S.C. §1232\(d\)\(2\)](#) (emphasis added); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457.

The TVPRA also included an “age out protection so that an alien cannot be denied SIJ classification based on age if the alien was under 21 years of age when the petition was filed.” [Special Immigrant Juvenile Petitions, \*Id.\*; 8 U.S.C. 1232\(d\)\(6\)](#) (“an alien described in section 101(a)(27)(J)...may not be denied special immigrant status...based on age if the alien was a child on the date on which the alien applied for such status.”).

As Reps. Pete Stark and Xavier Becerra of California noted (before the 2008 revision), “children [who] have aged-out of foster care or been adopted without obtaining SIJS...are forced into the underground economy, are extremely vulnerable to exploitation, and are under the constant threat of deportation back to a country that is unfamiliar to them and may be home to their abuser.” [154 Cong. Rec. E1603, at 1603 \(2008\).](#)

Practitioners Tip: The TVPRA makes clear that abused, neglected, or abandoned minors could apply for SIJS up to the age of 21 and could not be denied status if they turned 21 or older while their SIJ applications were pending.

As it stands today, SIJS eligibility requires a noncitizen child to be under 21 at the time the I-360 is filed and to be unmarried. It also requires that the noncitizen:

(i) has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status . . . .

[8 U.S.C. § 1101\(a\)\(27\)\(J\)](#); [8 CFR § 204.11](#).

## II. EMPLOYMENT AUTHORIZATION

In most circumstances, unless you have a green card, having an EAD is a prerequisite to being able to work legally in the United States as a noncitizen. C.F.R. §274a.12 enumerates which classes of noncitizens are authorized to accept employment.

Consistent with C.F.R. §274a.12, USCIS policy provides that “[c]ertain aliens who are in the United States may file Form I-765, Application for Employment Authorization to request employment authorization and an Employment Authorization Document (EAD)” USCIS, I-765, APPLICATION FOR EMPLOYMENT AUTHORIZATION, <https://www.uscis.gov/i-765> (last updated Nov. 9, 2021). The Instructions for Form I-765 further define which immigrant categories may file a Form I-765. *See* USCIS, INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION, at 1 (Aug. 25, 2020),

<https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>.

Current USCIS policy does not expressly contemplate granting employment authorization to SIJ eligible minors *until* they have a pending adjustment of status application. *See* Answer and Affirmative Defenses to Complaint at 8, *Godinez v. DHS*, No. 20-00828-CV-W-

GAF, 2021 U.S. Dist. (D. Mo. March 3, 2021) (“In general, individuals classified as SIJs are eligible to apply for employment authorization when they have a pending adjustment of status application, Form I-485. See 8 C.F.R. §274a.12(c)(9).”)<sup>2</sup>.

Unlike with SIJs, however, USCIS allows other immigrant categories to apply for employment authorization *before* they apply for adjustment of status, including TPS beneficiaries (per 8 U.S.C. § 1254a(a)(1)(B); 8 CFR § 274a.12(a)(12)), NACARA 203 applicants (per 8 CFR § 274a.12(c)(10)), Parole program beneficiaries (per 8 CFR § 274a.12(c)(11)), DACA beneficiaries (per 8 CFR § 274a.12(c)(14)), etc. See INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION, *Id.* at 6, 7, 16, 17.

### **III. THE IMPEDIMENT SIJs FACE IN OBTAINING AN EAD: VISA CAPS AND BACKLOGS**

#### **A. VISA CAPS AND BACKLOGS**

The issue with coupling SIJs’ ability to obtain an EAD with their eligibility to adjust their status is that obtaining a visa itself can take years. That’s because “Special Immigrants are subject to the fourth preference employment-based (EB-4) category, which is allocated 7.1% of the 140,000 visas available for employment-based visas per year, or 9,940 visas per year.” Resolution, A.B.A. (Feb. 22, 2021),

<https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2021/103a-midyear->

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<sup>2</sup> 8 C.F.R. §274a.12(c)(9) provides: “An alien who has filed an application for adjustment of status to lawful permanent resident pursuant to part 245 of this chapter. For purposes of section 245(c)(8) of the Act, an alien will not be deemed to be an “unauthorized alien” as defined in section 274A(h)(3) of the Act while his or her properly filed Form I-485 application is pending final adjudication, if the alien has otherwise obtained permission from the Service pursuant to 8 CFR 274a.12 to engage in employment, or if the alien had been granted employment authorization prior to the filing of the adjustment application and such authorization does not expire during the pendency of the adjustment application. Upon meeting these conditions, the adjustment applicant need not file an application for employment authorization to continue employment during the period described in the preceding sentence[.]” [8 C.F.R. §274a.12\(c\)\(9\)](#).

[2021.pdf](#); See 8 U.S.C. § 1153(b)(4) (“Visas shall be made available, in a number not to exceed 7.1 percent of such worldwide level, to qualified special immigrants...”).

Pursuant to 8 U.S.C. § 1152(a)(2), “the total number of immigrant visas made available to natives of any single foreign state...in any fiscal year may not exceed 7 percent...” [8 U.S.C. § 1152\(a\)\(2\)](#).

This employment-based classification translates to 9,940 visas available each year for SIJs, with each country allocated about 696 visas per year. That number is woefully short of meeting the demand. As some indication, there were 18,711 SIJ petitions received in FY 2020 alone. USCIS, NUMBER OF I-360 PETITIONS FOR SPECIAL IMMIGRANT WITH A CLASSIFICATION OF SPECIAL IMMIGRANT JUVENILE (SIJ) (Aug. 2021),

[https://www.uscis.gov/sites/default/files/document/data/I360\\_sij\\_performancedata\\_fy2021\\_qtr3.pdf](https://www.uscis.gov/sites/default/files/document/data/I360_sij_performancedata_fy2021_qtr3.pdf). These restrictive caps result in vast green card backlogs that could take years to process.

As the A.B.A. notes, “Each month, the Department of State publishes a visa bulletin that summarizes the availability of immigrant visa numbers. The system is chronological based on the date the SIJ petition was filed (called a ‘priority date’).” Resolution, A.B.A., *Id.* The priority date “is used to authorize the issuance of visas up to applications with the priority date or earlier. In other words, the priority date must precede the date in the preference and country category for a visa number to be available.” *Id.* “When their priority date is current in the ‘EB-4’ preference category, the Special Immigrant Juvenile has reached the front of the line and can seek LPR status.” *Id.*

Based off the Visa Bulletin for December 2021, the current priority date for the EB-4 preference category for El Salvador, Guatemala, and Honduras is March 15, 2019. Visa Bulletin For December 2021, U.S. DEPT. STATE, <https://travel.state.gov/content/travel/en/legal/visa->

Practitioners Tip: Because of the visa caps and vast backlog, clients who are seeking SIJ status should complete their I-360 Form ASAP.

[law0/visa-bulletin/2022/visa-bulletin-for-december-2021.html](http://law0/visa-bulletin/2022/visa-bulletin-for-december-2021.html) (last visited Dec. 2, 2021).

Assuming a minor filed their I-360 on March 15, 2020, and had their I-360 approved, they cannot file for adjustment of status because their priority date falls after the date listed. In other words, a minor may be forced to wait years before being allowed to apply for LPR status.

Indeed, as a report from The End SIJS Backlog Coalition and The Door makes clear: “On average, children in the SIJS backlog wait twice as long as other children to receive their green cards. For example, children from El Salvador, Honduras and Guatemala waited more than four years on average from applying for SIJS to receiving a green card in fiscal year 2020 through April 2021. Mexican children waited 2.6 years while children from other countries waited an average of 1.4 years.” End SIJS Backlog Coalition and The Door, *Any Day They Could Deport Me*, at 6 (Nov. 2021),

<https://static1.squarespace.com/static/5fe8d735a897d33f7e7054cd/t/61a7bceb18795020f6712eff/1638382830688/Any+Day+They+Could+Deport+Me-+Over+44%2C000+Immigrant+Children+Trapped+in+the+SIJS+Backlog+%28FULL+REPORT%29.pdf>.

Congress in 1990 could not have foreseen the exponential increase in unaccompanied abused, neglected, or abandoned minors seeking relief via SIJS today. In fact, “[v]ery few people received SIJ status in the mid-to-late 1990s. As some indication, in 1994, 501 people adjusted their status through SIJS.” *Id.* By contrast, there were 18,711 SIJ petitions received in FY 2020 alone. USCIS, NUMBER OF I-360 PETITIONS FOR SPECIAL IMMIGRANT WITH A CLASSIFICATION OF SPECIAL IMMIGRANT JUVENILE (SIJ) (Aug. 2021),

[https://www.uscis.gov/sites/default/files/document/data/I360\\_sij\\_performancedata\\_fy2021\\_qtr3.pdf](https://www.uscis.gov/sites/default/files/document/data/I360_sij_performancedata_fy2021_qtr3.pdf).

So, even though from 2015-2020, nearly 96,000 SIJ petitions were filed, only 9,940 green cards are available to SIJs each year. *Id.* In effect, a child with an approved SIJ petition “from El Salvador, Guatemala, Honduras, and Mexico must wait, potentially for years, before they can secure relief from deportation” by obtaining a visa. Dalia Castillo-Granados, *A Long Wait for Special Immigrant Juveniles Means a Risk of Deportation*, A.B.A. (Feb. 23, 2021), [https://www.americanbar.org/groups/public\\_interest/immigration/generating\\_justice\\_blog/a-long-wait-for-special-immigrant-juveniles-means-a-risk-of-depo/](https://www.americanbar.org/groups/public_interest/immigration/generating_justice_blog/a-long-wait-for-special-immigrant-juveniles-means-a-risk-of-depo/).

## **B. TIMELINE: FROM SIJ APPLICATION TO EAD**

Congress mandated that DHS adjudicate SIJ petitions within 180 days (6 months) of filing. [William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457; 8 U.S.C. §1232\(d\)\(2\)](#) (“All applications for special immigrant status...shall be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed.”). With respect to the 180-day timeframe,

The 180-day timeframe begins when the SIJ petition is received, as reflected in the receipt notice sent to the SIJ petitioner. 8 CFR 103.2(a)(7). If USCIS sends a request for initial evidence, the 180-day timeframe will start over from the date of receipt of the required initial evidence. 8 CFR 103.2(b)(10)(i). If USCIS sends a request for additional evidence, the 180-day timeframe will stop as of the date USCIS sends the request, and will resume once USCIS receives a response from the SIJ petitioner. 8 CFR 103.2(b)(10)(i)... USCIS does not interpret the 180-day timeframe to mean that an unadjudicated petition at the end of the timeframe will be automatically approved.

[Special Immigrant Juvenile Petitions 76 Fed. Reg. 54978, 54983 \(proposed Sept. 6, 2011\)](#).

Current processing times have well exceeded Congress’s 180-day mandate. The USCIS estimated processing time for a Form I-360 at the California Service Center ranges from “20.5 months to 26.5 months.” USCIS, CHECK CASE PROCESSING TIMES, <https://egov.uscis.gov/processing-times/home> (last visited Dec. 11, 2021).

Practitioners Tip: 8 U.S.C. §1232(d)(2) is a non-discretionary law. Unless a request for initial evidence is made, USCIS *must* adjudicate your client’s I-360 application within 180 days of filing.

Additionally, before SIJS is conferred, the applicant must attend a biometrics appointment to provide fingerprints, photographs, and digital signatures. See USCIS, POLICY MANUAL: CHAPTER 1 – PURPOSE & BACKGROUND, <https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-1> (last updated Oct. 20, 2021). “Depending on the type of application, region of the country, and workload, USCIS may initially schedule the biometrics appointment...within 3 to 8 weeks of filing your USCIS form.” *What Happens at a USCIS Biometrics Appointment*, Citizen Path, <https://citizenpath.com/uscis-biometrics-appointment/> (last visited Oct. 28, 2021). Then, “[d]epending on your application type and the service center processing it, it may be several weeks (or months) before you hear from USCIS again.” *Id.* The appointment itself takes about 20 minutes. See Ilona Bray, J.D., *What to Expect at a USCIS Biometrics Appointment*, NOLO, <https://www.nolo.com/legal-encyclopedia/free-books/fiance-marriage-visa-book/chapter14-25.html> (last visited Oct. 28, 2021). “Once your fingerprints are taken, it generally takes 30-45 days for the FBI clearances to appear in USCIS's system. The clearances are valid for 15 months from the date of the clearance. In some cases, applicants might need to be re-fingerprinted.” *FAQ: AOS: “My Form I-485 Has Been Filed. Now What?”* MarksGray.com, [https://www.marksgray.com/wp-content/uploads/2020/11/FAQ\\_AOS-%E2%80%9CMy-Form-I-485-Has-Been-Filed.-Now-What\\_.pdf](https://www.marksgray.com/wp-content/uploads/2020/11/FAQ_AOS-%E2%80%9CMy-Form-I-485-Has-Been-Filed.-Now-What_.pdf) (last updated Oct. 2020).

“Based on current practice, when an individual appears at a USCIS facility for a biometrics appointment, their photograph, signature, and right index fingerprint is digitally collected and stored in the Customer Profile Management System (CPMS) database, which is the USCIS data repository for biometrics information.” [Collection and Use of Biometrics by U.S. Citizenship and Immigration Services 85 Fed. Reg. 56338, 56370 \(proposed Sept. 11, 2020\)](#).

Practitioners Tip: Make sure your client goes to their biometrics appointment prepared. Visit USCIS’s website to see what your client needs to bring to their appointment: <https://www.uscis.gov/forms/filing-guidance/preparing-for-your-biometric-services-appointment>.

DHS does not offer a percentage to measure the accuracy of biometrics, but “DHS has internal procedural safeguards to ensure technology used to collect, assess, and store the differing modalities is accurate, reliable, and valid.” Collection and Use of Biometrics by U.S. Citizenship and Immigration Services, *Id.* “DHS may collect and store for present or future use, by electronic or other means, the biometric information submitted by an individual.” [8 CFR § 103.16\(a\)](#).

Altogether, a minor who is willing and able to work may be forced to wait at least a couple of years before receiving permission.

#### **IV. THE NEGATIVE IMPLICATIONS OF HAVING A LARGE UNDOCUMENTED POPULATION**

The ramifications of having undocumented immigrants, let alone minors, working illegally are well-documented. Living with undocumented status poses issues for the immigrant and the country writ large – be it due to fear of reporting crimes, lack of access to health care, or employer exploitation and workplace abuse. Without an EAD, SIJs are also unable to procure a driver’s license or state ID card, a social security number, in-state tuition at public colleges and universities, and certain scholarships and financial aid for higher education.

##### **A. THE FEAR TO REPORT CRIMES**

One of the more salient implications of having a large undocumented population is their reluctance to report crimes for fear of being deported or separated from their families. A 2013 University of Illinois survey found that “44 percent of Latinos surveyed reported they are less likely to contact police officers if they have been the victim of a crime because they fear that police officers will use this interaction as an opportunity to inquire into their immigration status or that of people they know.” Nik Theodore, *Insecure Communities: Latino Perceptions of*

*Police Involvement in Immigration Enforcement*, U. ILL. AT CHI., at i (May 2013),

[https://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](https://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF). “45 percent...stated that they are less likely to voluntarily offer information about crimes, and 45 percent are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status.” *Id.* Meanwhile, “70 percent of undocumented immigrants reported they are less likely to contact law enforcement authorities if they were victims of a crime.” *Id.*

Attorneys and advocates have also noticed this issue: “advocates reported that they worked with immigrants who dropped their civil and criminal cases because they were fearful of going forward.” Debra J. Robbin, *When Undocumented Immigrants Don’t Report Crimes, We All Suffer*, WBUR (Sept. 22, 2017), <https://www.wbur.org/cognoscenti/2017/09/22/undocumented-immigrants-report-crimes-debra-j-robbin>. Victims’ fear is being exploited by abusers, who “commonly threaten victims that reaching out for help will result in their removal or separation from their children[.]” Tom Dart, *Fearing deportation, undocumented immigrants wary of reporting crimes*, THE GUARDIAN (Mar. 23, 2017), <https://www.theguardian.com/us-news/2017/mar/23/undocumented-immigrants-wary-report-crimes-deportation>.

## **B. LACK OF ACCESS TO HEALTH CARE**

Access to health care is another issue plaguing undocumented immigrants. According to the Kaiser Family Foundation, undocumented immigrants “are at high risk of being uninsured because they have limited access to coverage options. Their high uninsured rates reflect limited access to employer-sponsored insurance and eligibility restrictions that bar them from participating in Medicare, Medicaid, the Children’s Health Insurance Program (CHIP), and the Affordable Care Act (ACA) Marketplaces.” Samantha Artiga and Maria Diaz, *Health Coverage*

*and Care of Undocumented Immigrants*, KFF (July 15, 2019), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-and-care-of-undocumented-immigrants/> (emphasis omitted). “[A]llowing undocumented immigrants to buy unsubsidized coverage could benefit the insurance-exchange market, as they are a large, young and relatively healthy population that could help keep premiums low.” *The True Healthcare Costs of Undocumented Immigrants*, UCLA HEALTH (2014), <https://www.uclahealth.org/u-magazine/the-true-healthcare-costs-of-undocumented-immigrants>. Making matters worse, “[t]hose who are uninsured often delay or go without needed care, which can lead to worse health outcomes over the long-term that may ultimately be more complex and expensive to treat.” Artiga and Diaz, *Id.* Indeed, as UCLA Health observed, “the undocumented who end up in the emergency room have often delayed getting any care until they are critically sick.” UCLA HEALTH, *Id.*

### **C. EMPLOYER EXPLOITATION AND WORKPLACE ABUSE**

Perhaps one of the more prevalent and notorious challenges undocumented immigrants confront is employer exploitation and workplace abuse. Though it’s unlawful to knowingly employ an unauthorized alien (8 U.S.C. § 1324a), the practice continues unabated.

According to the Economic Policy Institute, “the migrant workers’ lack of [basic labor] rights makes it difficult for them to bargain effectively for decent wages, and their weak leverage spills over to undercut the leverage of U.S. workers...” Daniel Costa, *Employers increase their profits and put downward pressure on wages and labor standards by exploiting migrant workers*, ECON. POL’Y INST. (Aug. 27, 2019), <https://www.epi.org/publication/labor-day-2019-immigration-policy/>.

Furthermore, they “are not fully protected by U.S. labor laws because of their precarious immigration status: Unauthorized workers are often afraid to complain about unpaid wages and

substandard working conditions because employers can retaliate against them by taking actions that can lead to their deportation. That also makes it difficult for unauthorized immigrants to join unions and help organize workers. This imbalanced relationship gives employers extraordinary power to exploit and underpay these workers, ultimately making it more difficult for similarly situated U.S. workers to improve their wages and working conditions.” *Id.*

A study conducted by the Center for Urban Economic Development, the National Employment Law Project, and UCLA Institute for Research on Labor and Employment found that “of 4,300 workers in three major cities found that 37.1% of unauthorized immigrant workers were victims of minimum wage violations, as compared with 15.6% of U.S.-born citizens. Further, an astounding 84.9% of unauthorized immigrants were not paid the overtime wages they worked for and were legally entitled to.” *Id.* The AFL-CIO “has long argued that a path to legal status for millions of undocumented workers is crucial to reducing wage theft that harms all workers.” Susan Ferris, *Wage theft hits immigrants — hard*, PBS (Oct. 14, 2021), <https://www.pbs.org/newshour/economy/wage-theft-hits-immigrants-hard>.

With respect to SIJs, specifically, “[b]ecause of the [] wait for work permits, some young people are forced into the precarious position of having to decide between perhaps experiencing homelessness or seeking potentially exploitative employment situations without permission to work.” End SIJS Backlog Coalition and The Door, *Any Day They Could Deport Me*, (Nov. 2021), <https://static1.squarespace.com/static/5fe8d735a897d33f7e7054cd/t/61a7bceb18795020f6712eff/1638382830688/Any+Day+They+Could+Deport+Me-+Over+44%2C000+Immigrant+Children+Trapped+in+the+SIJS+Backlog+%28FULL+REPORT%29.pdf>. Kristie-Anne Padron, Managing Attorney at the Catholic Legal Services Miami,

observed, “I think one of the biggest risks is exploitation by employers. Clients will work for weeks and weeks on the promise that they will get paid later, and then sometimes they find they have worked for months without getting paid. Sometimes they feel they have no recourse for wage theft because they still don’t have a work permit while stuck in the SIJS backlog...” *Id.*

## V. PRACTICAL SOLUTION

Given Congress’s original intent in protecting these victims of trauma and given the unanticipated hardships they face in promptly obtaining work permits, guidelines should be revised to allow an abused, neglected, or abandoned minor to receive an EAD upon approval of their SIJ petition, at the latest. As the administration proved vis-à-vis U Visa applicants, this can be done via a DHS memorandum until a formal regulation can be adopted.<sup>3</sup> Expediting this process would still enable USCIS to determine, via biometrics, whether the minor has committed a serious crime or poses a national security threat. Revising this policy should be seen as an act of mutual enrichment, not charity, as the nation writ large will reap the fruit of their labor.

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<sup>3</sup> On June 14, 2021, the Biden administration released a Policy Alert (“Bona Fide Determination Process for Victims of Qualifying Crimes, and Employment Authorization and Deferred Action for Certain Petitioners”) (“Policy Alert”) revising the guidelines for employment authorization permits for principal petitioners for U nonimmigrant status. USCIS, POLICY ALERT (June 14, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf>. Recognizing the sheer volume of U nonimmigrant applications “and a growing backlog awaiting placement on the waiting list or final adjudication, USCIS has decided to exercise its discretion under INA 214(p)(6) to conduct bona fide determinations (BFD) and provide EADs and deferred action to noncitizens with pending, bona fide petitions who meet certain discretionary standards.” USCIS, POLICY ALERT at 2.