

SIJS Updates



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Tahirih Justice Center

The mission of the Tahirih Justice Center (Tahirih) is to enable women and girls who face gender-based violence to access justice.

Tahirih engages in direct litigation, public policy advocacy, education, and outreach to ensure systemic change that protects women and girls from violence.



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Tahirih: Children's Border Project

- To address urgent pleas for help from parents, sponsors, and caretakers in the Houston area, Tahirih Justice Center delivers holistic, comprehensive legal and social services support for children (and AWCs) in need of legal protection
 - Free Legal Representation
 - Legal Information and Counsel
 - Social Services Support

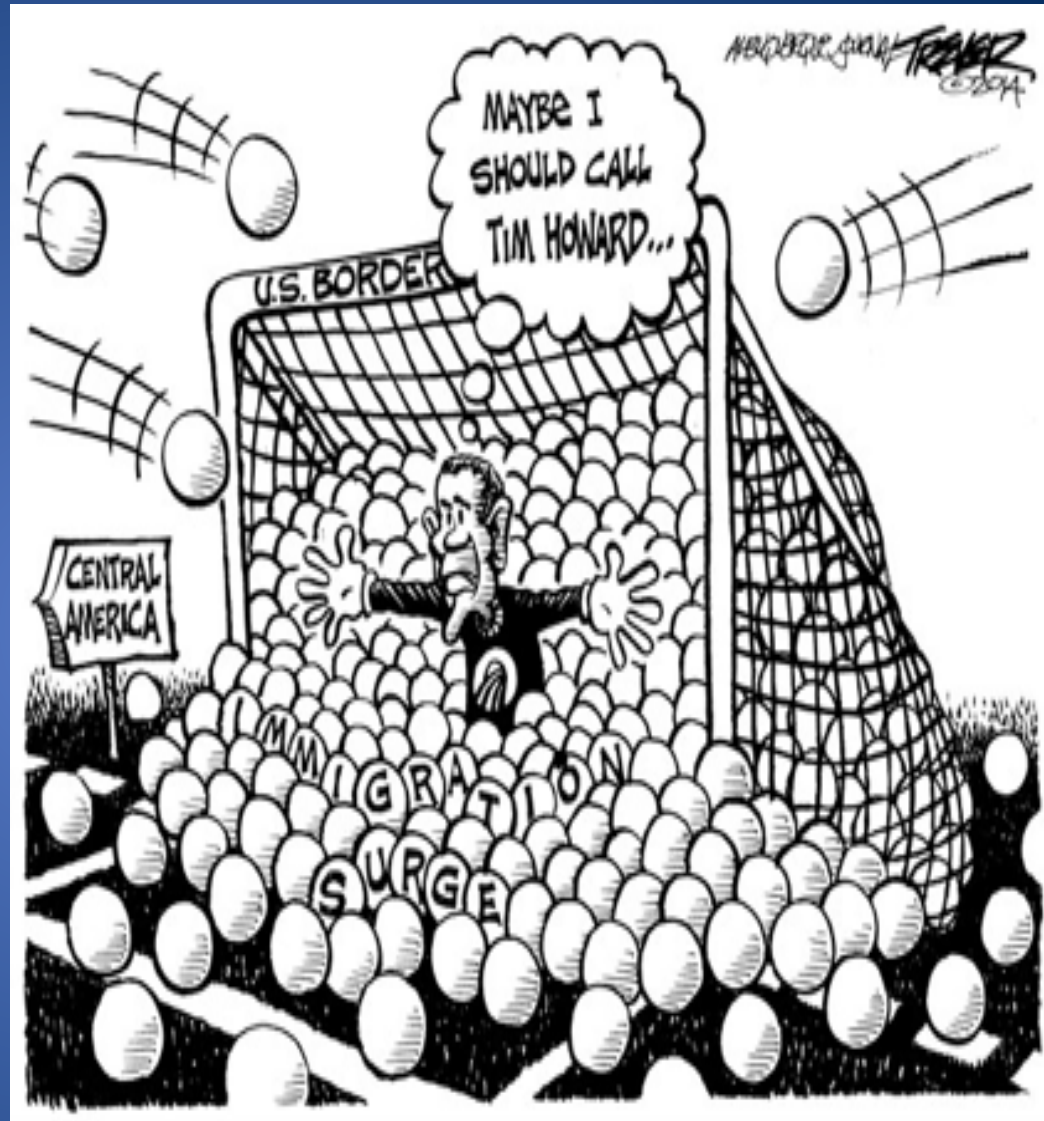


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Quick Background

- FY 2014 UAC Surge: 68,550 UACs Apprehended
- 39, 970 FY15 (42% Decline)
- 59,692 FY16 (33% Increase)
- Months of January and February 2017, 6,339 UACs apprehended
 - 39% decline between December 16'- January 17'
 - 60% decrease from January-February 17'
- Worsening Violence in Northern Triangle
 - ES: Homicide Rate of 104 per 100,000 inhabitants
 - 22x higher than U.S.
 - H: Arrival numbers increased
 - (22% for H vs 8% ES)



Cartoon Source: *Infinite Unknown.net*
Statistics: http://www.wola.org/commentary/surprising_august_increase_unaccompanied_migrant_children



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Special Immigrant Juvenile Status (SIJS)

Child Victims of Abuse, Neglect, or Abandonment



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SIJS Overview

- Background & Policy
- Benefits
- Eligibility
- Application Process
- Issues & Challenges
- Resources



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SIJS Background and Policy

- Originally for immigrant children in foster care
- Expanded to include all children who meet abuse, abandonment or neglect requirement
- Unique form of relief because it involves State courts
- Many unaccompanied minors (UACs) are eligible



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Benefits of SIJS

- Eligible to apply for legal permanent residency
- Cannot petition for parents after becoming permanent resident



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Who is eligible for SIJS?

- “Child” = unmarried and under the age of 21
- Reunification with one or both parents is not viable due to abuse, abandonment, or neglect
- Not in child’s best interests to return to home country
- Declared dependent on juvenile court or custody decided by juvenile court



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SIJS Application Process



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Issues and Challenges

- Delayed Adjudication
- Extended Removal Proceedings
- State Court Challenges
- Post-18 Children Cases



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Delayed Adjudication

- Annual Limits Reached for EB4 Category
- EB4 “Special Immigrants”
 - Religious workers, broadcasters, translators with U.S. armed forces, and Special Immigrant Juveniles.
 - 10,000 annual visas available: Priority dates for this category were generally “current” until May 2016.
- Check USCIS Visa Bulletin: <https://www.uscis.gov/visabulletininfo>



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Delayed Adjudication

- Final Action date currently set at July 15, 2015
- SIJS grantees cannot file I-485 until priority date of I-360 is earlier than final action date



The screenshot shows the USCIS website page titled "Final Action Dates for Employment Based Adjustment of Status Applications". The page contains a table with columns for "Employment Based", "All Chargeability Areas Except Those Listed", "CHINA mainland born", "EL SALVADOR GUATEMALA HONDURAS", "INDIA", "MEXICO", and "PHILIPPINES". The table lists various employment-based categories and their corresponding final action dates.

Employment Based	All Chargeability Areas Except Those Listed	CHINA mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	15DEC12	C	BLANK	C	C
3rd	01DEC16	23MAR14	01DEC16	23MAR15	01DEC16	15MAR12
Other Workers	01DEC16	31FEB16	01DEC16	23MAR15	01DEC16	15MAR12
4th	C	C	15JUL15	C	15JUL15	C
Certain Religious Workers	C	C	15JUL15	C	15JUL15	C
5th Non-Regional Center (CS and TR)	C	01MAR14	C	C	C	C
5th Regional Center	C	01MAR14	C	C	C	C



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Extended Removal Proceedings

- Depending on your jurisdiction, it may not be possible to request Termination or administrative closure
 - *Check with your local OCC ICE
 - *Request extended continuance if no MTT



Photo Credit:
[Desert News.com](http://DesertNews.com)



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State Court Challenges

- Best Interest Finding
- Adjudication of Paternity
- Amicus Appointments



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Best Interest Finding

- *BIF*: Not be in the child's best interest to return to his or her country of nationality (or last residence).
 - Federal vs State law Deference
 - Is BIF an immigration determination?
- *Helpful Tip
 - Consider blending language in your order!
 - “It is in the best interest of the child to reside with her mother instead who currently resides in Harris County.”



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Adjudication of Paternity

- SAPCR/Custody Cases
 - Unmarried Couples
 - Common Law/ Civil Union/ Union Libre
 - Both parents on BC
 - Acknowledgement of Paternity Signed
 - Presumption of Paternity
- Adjudication
 - DNA; AOP Certification by TX AG; or in-court testimony



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Adjudication of Paternity

- *Helpful Tips

- Plead that Respondent's past relationship meets presumption of paternity
 - *Tex.Fam.Code Ann.* § 160.204 (a)(5): during the first two years of the child's life, he continuously resided in the household in which the child resided and he represented to others that the child was his own.
- Include paternity acknowledgement statement in Waiver of Citation
- DNA Testing can be done abroad
 - Contact TX AG Office

Photo Credit: <https://www.youtube.com/watch?v=L30U3PjwsZQ>



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Amicus Appointments



- \$750 Flat Fee, upfront
- Court Delay
- Vicarious Trauma

- Mandatory Assignment
- Eyes and Ears for the Court
- *Tex.Fam.Code Ann. § 107.001 (1)*
 - *“Attorney appointed by the court in a suit, other than a suit filed by a governmental entity, whose role is to provide legal services necessary to assist the court in protecting a child's best interests rather than to provide legal services to the child.”*
 - Amicus attorney provides legal services to the court, not the child.



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Amicus Appointments

- *Helpful Tips
 - File Motion for Pro Bono Amicus Appointment (if available)
 - Object to use of Amicus in original pleadings
 - File denial motion to discharge the Amicus through an Interlocutory Appeal
 - File Writ of Mandamus



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Post-18



Child

- Under 18
- Unmarried/ Never married
- No disabilities of minority removed

- BIGGEST Challenge:
 - TX SIJS Predicate Order signed AFTER child's 18th birthday
- RFEs, NOIDs, NOIRs
- “Juvenile Court”
 - Jurisdiction to determine both care and custody
- “Juvenile” not defined in TX Family Code
 - Child Definition: *Tex.Fam.Code Ann. § 101.003 (a)*



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Post 18

- *Budhathoki v. Dep't of Homeland Sec.*, No. A-16-CA-275-SS, 2016 WL 7159125 (W.D. Tex. Oct. 21, 2016), available at: <https://casetext.com/case/budhathoki-v-dept-of-homeland-sec>
 - Upheld USCIS' motion to dismiss appeal containing post-18 child support SAPCR order with special findings based on lack of jurisdiction and lack of dependency based on child age.
- *Matter of J-A-D-L-*, ID# 00060126 (AAO Feb. 3, 2017), available at: https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2017/FEB032017_01C6101.pdf
 - Unpublished AAO decision; post 18 SAPCR child support case
 - Juvenile court lacked jurisdiction to determine both care and custody under Texas Family Code



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Post 18

- *Helpful Tips
 - Always cite to the Texas Family Code and not the INA in pleadings and final orders
 - Characterize your post-18 client as a “child” under the Texas Family Code
 - Establish “Dependency” pursuant to child support or paternity
 - Request custody and child support in original pleadings



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Resources

- CILA: children's immigration “think tank”
 - Trainings, Guides, TA
 - <http://www.cilacademy.org/>
- TX Family Law Practice Manual and Forms
 - Free access for nonprofits
- TX Bar CLE Online Library
- Check Your Local Rules!



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¿Preguntas?

Questions???



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