

City Council Committee on Immigration Hearing
Testimony by Mark Lewis, Director of Immigration Services
New York City Administration for Children's Services

October 26, 2009

Good Afternoon Chair Stewart and members of the Immigration Committee. My name is Mark Lewis and I am the Director of Immigration Services at the Administration for Children's Services. I appear before you today with Margaret Morgan, the Chief of Staff to the Deputy Commissioner for the Division of Family Court Legal Services. We would like to take this opportunity to update you on Children's Services' work with children in foster care who may be eligible for Special Immigrant Juvenile Status (SIJS).

Special Immigrant Juvenile Status

Children's Services provides child welfare services, which includes child protective, preventive and foster care services, to all families and children residing in New York City regardless of immigration status. In the course of providing child welfare services, some children placed into foster care by Children's Services are undocumented immigrants. Some of these youth may be eligible for Special Immigrant Juvenile Status, a statutory provision included in the Federal Immigration Act of 1990, which enables undocumented young people in foster care to become permanent residents and to obtain green cards. The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 made changes in SIJS since ACS last appeared before the City Council in 2007.

In order for a child to be eligible for SIJS, a young person now must be:

- Unmarried and under 21-years-old at the time of application;
- Placed in foster care prior to his or her 18th birthday due to abuse, neglect or abandonment, as determined by a family court judge;
- Receive a finding that the youth's reunification with one or both of the parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State Law;

- Receive a declaration from a family court judge that it is not in the applicant's best interests to return to his or her country of origin.

Helping eligible foster children obtain SIJS is crucial to their ability to work, attend school, and remain in the United States once they leave the foster care system. As such, Children's Services recognizes that we have a special responsibility to aid foster children in obtaining SIJS. When Children's Services or foster care agencies confirm that a young person in foster care is undocumented, we promptly refer the youth to independent counsel to assess the child's eligibility for SIJS, and if appropriate, to begin their SIJS applications.

To do this, we rely on and work closely with a network of public service and *pro bono* counsel dedicated to representing foster children and who have expertise in SIJS and can provide the legal representation needed to obtain SIJS status. To support the SIJS application process, Children's Services reimburses foster care agencies for all fees associated with a SIJS application, which exceed \$1,000 per child, as well as for the cost of legal services provided by public service legal agencies. In 2005, Children's Services increased the legal services reimbursement rate to advocates and lawyers who handle SIJS cases from \$400 to \$700—a seventy-five percent increase—to ensure that legal service providers can afford to do this critical work. The Department of Youth and Community Development provides grants to certain legal service providers to provide legal assistance for youth eligible for SIJS and Children's Services, and foster care agencies will refer foster care youth to these providers.

Numbers of Immigrant Youth Receiving SIJS: In 2008, according to the Department of Homeland Security Yearbook, 989 youth received SIJS nationwide. In New York City, we estimate that approximately 50-60 foster care youth receive SIJS on an annual basis, out of a total foster care population of approximately 16,000.

Children's Services Actions to Improve SIJS Services: Children's Services has undertaken a number of actions to ensure the identification of immigrant youth in care and to refer them for legal assistance.

- In 2008, Children's Services hired an Immigrant Advocate to work with the Director of Immigrant Services on SIJS and other immigration and language assistance issues.
- In 2009, through a grant from New Yorkers For Children, Children's Services hired a part-time Immigrant Youth Advocate to be a resource to work with foster care agencies, immigrant youth in foster care and legal service providers on SIJS.
- In 2009, Children's Services received a grant from New Yorkers For Children to hire graduate students in Social Work to review foster care caseloads to identify immigrant youth in foster care. Through this grant, we have reviewed the caseloads of nearly 20 foster care agencies and reviewed over 1,500 cases. Approximately 150 potential youth were identified as potential SIJS eligible. We are working with the foster care agencies to review these cases and to refer these youth to legal services providers. By the end of the year, all cases of foster care youth ages 12 and above should have been reviewed to ensure that all immigrant youth are identified and referred for legal services.
- Children's Services worked with the New York State Office of Children and Family Services on an Administrative Directive targeted to local social services districts and foster care agencies on SIJS.
- Children's Services issued the attached Policy on SIJS in August 2009 for Children's Services and foster care agency staff. The Children's Services policy on SIJS is intended to ensure that all immigrant youth in care are identified and referred to legal services providers. This guidance also reinforces the importance of the SIJS process for eligible youth and identifying these youth as soon as possible.
- Children's Services is working with foster care agencies to ensure that we are identifying immigrant youth. The requirements and expectations around youth

in foster care having necessary records/documents for transition have been communicated to the agencies along with the necessary follow up for legal services as needed. Through our Centralized Support Team, we work with agencies to provide birth certificates and Social Security Numbers based on requests that come to us. Our Family Team Conference (FTC) facilitators/permanency specialists are aware of the policy/requirements and it is expected that they will direct agencies appropriately as SIJS issues arise in the FTC. This will be one of the on-going topics/refreshers incorporated into in-service training for facilitators.

- Children's Services regularly meets with immigrant advocacy organizations and legal service providers to ensure that we have a mechanism to share information, respond to concerns and identify issues to be addressed. Children's Services also responds to any case specific concerns raised by advocates.

SIJS Training

Children's Services also offers extensive training on SIJS. We train all of our child protective staff on cultural competency, including a component on the SIJS process. This training is a part of the common core curriculum that all child protective staff receives. Children's Services also trains all new attorneys in our Family Court Legal Services on the SIJS process and requirements. A special training focused solely on immigrant issues is available to all Children's Services and foster care agency staff through our James Satterwhite Training Academy. Finally, SIJS training has also been provided at quarterly meetings with all foster care directors. Ensuring that all our new child welfare staff are trained in SIJS is crucial to the identification of potential SIJS youth and ensuring their awareness of its importance.

Conclusion

I hope that it is clear from our testimony today that Children's Services is genuinely committed to working with our staff, provider agencies and immigration advocates to

ensure that undocumented youth in our care receive all the services for which they are eligible. We believe that the steps we have taken over the past several years, as I described in my testimony today, are significant. We now have resources within ACS dedicated to this work. We also have strong relationships with our advocates and systems in place to make sure that we are regularly receiving feedback and looking at how we can do better.

We are concerned, however, that Intro. 787 is unnecessary as we are already working closely with stakeholders to assess our work and make improvements as needed. As a result, we cannot support this bill as currently written. We are always willing, however, to sit down with stakeholders, and of course with members of the City Council, to discuss our efforts and to receive input. We greatly appreciate the interest and dedication of the City Council on this important issue and thank you for giving us the opportunity to discuss this topic.

**City of New York
Administration for Children's Services**

Guidance 2009/07

SUBJECT: Special Immigrant Juvenile Status

APPROVED:  **John B. Mattingly**

PAGE: 1 of 5 (2 Attachments)

ISSUE DATE: August 13, 2009

IMPLEMENTATION RESPONSIBILITY:
Children's Services Divisions of Child Protection,
Financial Services, Family Support, Family Permanency,
Policy and Planning, Family Court Legal Services, and
Provider Agency staff

PURPOSE: The purpose of this policy is to ensure that no child leaves foster care without the opportunity of consideration for Special Immigrant Juvenile Status (SIJS), to permit him/her to stay in the US legally as a permanent resident.

SCOPE: This guidance is effective immediately and it applies to Children's Services Divisions of Child Protection (DCP), Financial Services (DFS), Family Support (FSS), Family Permanency (FPS), Policy and Planning (P&P), Family Court Legal Services (FCLS), and all provider agencies involved in the provision of services to children in foster care who are not lawful permanent residents or US citizens. This guidance should be used to determine a child's resident status in the US, and, when appropriate, to submit an application to the United States Citizenship and Immigration Services (USCIS) for SIJS to enable child to gain permanent resident status. This guidance supplements the Special Immigrant Juvenile Status Commissioner's Memorandum dated 1/26/07.

POLICY: **GENERAL POLICY**
Children's Services and our foster care provider agencies must ensure that any child in care who is eligible to acquire permanent resident status through Special Immigrant Juvenile Status (SIJS), to permit him/her to stay in the US legally, is granted a fair opportunity to do so.

It is essential that foster care provider agencies identify all children and youth that are eligible for SIJS.¹ This immigration status permits an approved applicant to live permanently in the United States, work legally, be eligible for certain government jobs, including the armed forces, receive financial aid for college, and access some forms of public benefits, including Public Assistance, Medicaid, and Food Stamps.

SIJS was created through a special immigration law designed to help youth in foster care obtain legal residence status in the United States. All youth in foster care who are not US citizens or do not have documentation of lawful residence (such as a valid green card) may be eligible for SIJS status and should be referred to legal service providers for screening and if appropriate, assistance in applying for SIJS. Emphasis should especially

¹ As stated in Commissioner Mattingly's Special Immigrant Juvenile Status Memorandum dated 1/26/07.

be placed on SIJS-eligible youth with a goal of Another Planned Permanency Living Arrangement (APPLA). If a child is final discharged before receiving this relief to which he or she is entitled, he or she may face possible deportation.

Note: Under the new Trafficking Victim Protection Reauthorization Act of 2008 (TVPRA) the Department of Homeland Security must adjudicate a SIJS application **within 180 days** from the date the application is filed.

I. Applying for Special Immigrant Juvenile Status (SIJS)

The application process for permanent residency is time-consuming; it is therefore recommended that agencies teach their staff to identify children in care for SIJS eligibility early into the child's placement. SIJS applications must be submitted before the youth turns 21. Additionally, unless the youth has aged out of care he/she must be in foster care when the application is filed and must remain in foster care throughout the process of obtaining SIJS status and the permanent resident card.

Regarding age and time deadlines, any youth deemed eligible for SIJS should be informed of the consequence of leaving foster care after reaching the age of 18 and should be counseled against doing so. If a youth voluntarily leaves care before his/her SIJS application is adjudicated and approved, he/she may forfeit eligibility for this benefit.

Before submitting an SIJS application, it should be known that the notification of immigration officials of a youth's immigration status will alert the USCIS to the youth's unlawful presence in the US and could lead to deportation. **For this reason, provider Agency and Children's Services must NEVER contact USCIS to discuss a youth's SIJS status or application for SIJS. All SIJS inquiries and applications must be done through a qualified immigration attorney (see list of referrals attached). The attorney will assess the youth's eligibility based on the criteria listed below and provide advice accordingly.**

Prompt referral to immigration counsel is important so that the application process can be commenced in a timely fashion. Immigration counsel will inquire privately and confidentially of the child regarding the child's background and history, and may later ask the foster care agency to assist in this regard, as well as in matters of obtaining documentation, application fees, etc.

II. Indicators for Determining Immigration Status

The following is a list of indicators that foster care provider agencies should use to assist in determining if a child is residing legally in the US.

- Information gathered from child;
- Social security number;
- Birth certificate.

Information Gathered from Child

Provider agencies should utilize casework contacts, Family Team Conferences and other meetings with a child in care as opportunities to ask the child about his/her country of origin, language spoken at home, and length of time in the US, so as to help determine the youth's eligibility for SIJS as well as any need for assistance with language/dialect or culturally sensitive issues. It is suggested that provider agency staff

document SIJS eligibility information in CONNECTIONS to inform other case planners if the youth moves to a new agency. This will ensure that the new agency will be aware of the youth's immigration issues.

Social Security Number

If a youth has a social security number that is verified with the Social Security Administration as valid, this generally indicates that he or she is a US citizen, a lawfully admitted permanent resident, or a lawful temporary resident (e.g. child is in the US on a student visa or some temporary permit that allows issuance of a valid social security card). If the youth does not have a social security number, or if the visa permitting the use of a social security card has expired, provider agencies should contact an immigration attorney or immigration legal service for advice on this matter before contacting any immigration authorities.

Birth Certificate

Difficulty acquiring a birth certificate could be considered as a flag for illegal status.² Provider agencies should utilize the following avenues to obtain a copy of the child's birth certificate:

- i. Contact the Division of Child Protection (DCP) and when practicable Children's Services Division of Policy and Planning's Title IV-E unit to establish whether or not a birth certificate was obtained at the initiation of the case.³
- ii. Attempt to obtain the birth certificate through the youth's family or by requesting a copy from the local vital records office in the state or city in which the youth was born (see *SIJS Applications, Section IV*, page 4 for additional information).
- iii. Another avenue that can be explored is public assistance records. Public Assistance programs administered by the Human Resources Administration provide a list of acceptable documentation to prove US citizenship and/or qualified immigrant status.

Note: If any of the above listed indicators leads the provider agency to believe that a child does not have legal residence status in the US, the provider agency must refer the youth to an immigration attorney or legal service provider to be screened for SIJS or other possible immigration relief. If an immigration legal service finds that a child in care qualifies for SIJS, Children's Services DCP, FPS, FSS or Central Eligibility Unit and provider agency staff should cooperate in the provision of documents and application fees (if any) necessary to proceed with the application for SIJS.

III. Criteria for Special Immigrant Juvenile Status (SIJS) Eligibility

The following is a list of factors that should be used to determine the child's potential eligibility for SIJS:

- At the time of application for SIJS the youth must be under 21 years old however, if the child turns 21 and is final discharged from care after filing the application for SIJS he or she will still be eligible to receive SIJS status.

² Refer to Process for Obtaining and Correcting Birth Certificates, for Obtaining Reports of Foundling and Death Certificates - 10/07/05 for further instructions.

³ The DCP and the Title IV-E Unit are the primary areas in Children's Services that are responsible for acquiring information pertaining to the child's nationality when the child enters care.

- Under the federal statute, the court order submitted on behalf of a child in care in support of a SIJS application (often called a Special Findings Order) must establish that the youth has been declared a dependent of the Family Court in New York. It should also establish that the court has placed the youth under the custody of an agency or department of a state, or to an entity or individual appointed by a state juvenile court.
- A youth initially placed voluntarily in foster care, or adjudicated as a Juvenile Delinquent (JD), or Person in Need of Supervision (PINS), may still be eligible for SIJS, as long as the court makes a finding that the youth is eligible for long-term foster care due to abuse, neglect, or abandonment.
- There must be a finding by the Family Court that the youth was abused, neglected, or abandoned.
- The court must determine that due to abuse, neglect, abandonment, or a similar basis found under State law, reunification with one or both of the immigrant's parents is not a viable option.
- The court must determine that it would not be in the best interest of the youth to be returned to the youth's or parent's previous country of nationality or country of last habitual residence.

Provider agencies must first consult with an immigration attorney specializing in SIJS to predetermine if the child can apply to the Family Court to get a Special Findings Order. Once it has been established that the child can apply to the Family Court the provider agency must contact the youth's Law Guardian who will petition the court on his/her behalf. The Law Guardian must be informed that the child needs a Special Findings Order so that the application can be presented to the Family Court immediately.

IV. Special Immigrant Juvenile Status (SIJS) Applications

Having determined potential SIJS eligibility and acquired the Special Findings Order, the child's immigration attorney will initiate the application for SIJS. The provider agency should at all times utilize an approved SIJS immigration attorney to submit the application to the United States Citizenship and Immigration Service (USCIS). Please refer to *Applying for SIJS* above for further information on using immigration attorneys. A list of some legal service providers and immigration/SIJS technical assistance resources is provided in Attachment 1 of this Guidance.

It is the provider agency's responsibility to provide the SIJS immigration attorney with necessary documents (such as passport, birth certificates, Family Court Orders, etc.) needed to supplement the SIJS application, and/or to assist in obtaining those documents. The local consulate of the youth's home country may be able to provide the agency with various types of assistance, including assistance obtaining these necessary documents, locating family members in the youth's home country, obtaining information from the home country, and/or facilitating communication for youth or families who speak uncommon dialects. Once the provider agency obtains the supplemental documents, the immigration attorney will submit them to the USCIS along with the following forms:

- i. Application for SIJS (Form I-360)
- ii. Application for Legal Permanent Residency (Form I-485)
- iii. Employment Authorization Application (Form I-765 –Working Papers) must be submitted in conjunction with Forms I-485 and I-360.

Note: If an agency has difficulty obtaining assistance from the local consulate of the youth's country, they should contact the ACS Vital Records Unit at (212) 442-1589.

V. The Adjustment of Status Interview

After the immigration attorney submits the SIJS application, USCIS will notify the youth in writing whether or not he or she meets the eligibility requirements for SIJS, and indicate the scheduled date for an "adjustment of status" interview at a district immigration office.

The immigration attorney will prepare the youth for the "adjustment of status" interview and represent the youth during the interview. A provider agency worker can also accompany the youth to provide moral support and guidance, but may not be allowed into the interview. Timely attendance at this interview is extremely important as lateness is excused only in very limited circumstances.

VI. Decision Notification

Sometimes the decision of approval is made at the interview, but the notification can also occur at a later date. USCIS may request additional documents or evidence and offer additional time to respond. Once any requested additional documents are submitted, the youth will receive a decision as to whether the application has been granted or denied. If the adjustment of status application is denied, the notice of denial will inform the applicant of his or her appellate rights.

VII. Fees

There are several fees associated with the SIJS application process such as application fees, fees for the medical examination, birth certificate, and passport and legal fees. The provider agency must issue payment for these fees immediately upon request of the child's immigration attorney. These costs are refundable by Children's Services, and should be claimed as a special payment directly from ACS Payment Services using the Standard Detail Sheet. Please see Attachment II for a list of applicable fees

For additional information on SIJS immigration issues please contact Mark Lewis, Director of Immigrant Services for Children's Services, at (212) 487-8636 or Mohammed Essayoufi, Immigrant Advocate, at (212) 487-9574.

For additional information on Family Court Legal Services (FCLS) related SIJS issues please contact Harry Gelb, Assistant Supervising Attorney FCLS at (718) 590-5438 or (718) 590-5944.

SIJS-Approved Legal Services Organizations:

Legal Aid Society
Immigration Law Unit
SIJS Contact: Katie Fleet, Esq.
(212) 577-3328
kafleet@legal-aid.org

Lawyers for Children
Immigrant Rights Project
SIJS Contact: Myra Elgabry, Esq.
(212) 966-6420 ext. 638
melgabry@lawyersforchildren.org

Catholic Charities Community Services
Immigration Services Department
SIJS Contact: Emiko Furuya-Cortes, Esq.
(212) 419-3749
emiko.furuya@archny.org

Sanctuary for Families
Brooklyn Family Justice Center Project
SIJS Contact: Molly Bowen, Esq.
(718) 250-5081
mbowen@sffny.org

Urban Justice Center
Peter Cicchino Youth Project
(serving lesbian, gay, bisexual, transgender or questioning youth)
SIJS Contact: Susan Hazeldean, Esq.
(646) 602-5636
shazeldean@urbanjustice.org

Safe Horizon Immigration Law Project
SIJS Contact: Lynn Neugebauer, Esq.
(718) 899-1233 ext. 126
lneugebauer@safehorizon.org

The Door Legal Services
SIJS Contacts: Camila Sosman Palmer, Esq.
(212) 941-9090 ext. 3219
cpalmer@Door.org

Brooklyn Catholic Migration Services
SIJS Contact: Paul Shonk, Esq.
(718) 236-3000
pshonk@DOB.org

Additionally a listing of the Foreign Consular Offices in the United States can be obtained at the Department of State website: <http://www.state.gov/s/cpr/rls/fco/>.

Special Immigrant Juvenile Status (SIJS) Fees

SIJS fees are subject to change by the United States Citizenship and Immigration Services USCIS; therefore all SIJS fees should be verified by the immigration attorney before submitting application with payment. The current SIJS fees are as follows¹:

- i. Application for SIJS (Form I-360) Fee- \$375²;
- ii. Application for Legal Permanent Residency (Form I-485) Fee- \$930;
- iii. Biometrics (fingerprinting) Fee- \$80;
- iv. There is a requirement for a medical examination by authorized providers and the costs will vary from as low as \$80 if the child or provider agency can document vaccinations, to as high as \$300;
- v. Passport photos, approximately \$10-\$20;
- vi. Passports and birth certificates from the native country may also be required, and these costs will vary by consulate;
- vii. Additionally, Children's Services will reimburse provider agencies for up to \$700 for legal services associated with assisting youth in care through the SIJS process. As indicated above, provider agencies should pay the legal services provider directly and Children's Services will reimburse these costs.

¹ Fees quoted are as of 7/08

² Form I-360 is waived for Special Immigrant Juveniles

Hunter College School of Social Work
Immigrants and Child Welfare Project

Testimony of Ilze Earner, Ph.D.

Committee on Immigration

October 26, 2009

Good afternoon Chair Stewart and members of the Immigration Committee. My name is Ilze Earner and I am an assistant professor at the Hunter College School of Social Work and the director of the Immigrants and Child Welfare Project. I am a consultant with the National Resource Center for Family Centered Practice and Permanency Planning, a resource center of the Children's Bureau, I provide technical assistance on issues affecting refugee youth through the United States Conference of Catholic Bishops, Bridging Refugee Youth and Children's Services and the Office of Refugee Resettlement Division of Unaccompanied Children's Services ; I provide training to foster care contract services providers with the Adolescent Services Resource Network of the Office of Children and Family Services of New York State. I appear before you today in support of the creation of a temporary Task Force to review strategies to protect children in care with the Administration for Children's Services who qualify for Special Immigrant Juvenile Status as well as other forms of immigration relief. My testimony will be brief.

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) is one form of immigration relief that enables certain qualified undocumented children in long-term foster care to become permanent residents of the United States.

In order for a child to be eligible for SIJS the child must be:

- Unmarried and under 21 years of age;
- Placed in foster care prior to their 18th birthday due to abuse, neglect or abandonment as determined by order of the court;
- Have a permanency plan that indicates a goal of long-term foster care placement with all attempts at family reunification ceased;
- Obtain a declaration by the court that it is not in their best interests to be returned to their country of origin;
- Be in foster care at the time that the SIJS application is filed with the United States Immigration and Citizenship Services (USCIS) and remain in care until USCIS adjudicates their application.

For undocumented youth in long term foster care immigration relief must be a factor in permanency planning. It is crucial that qualified youth in care obtain immigration relief so that when they leave care they are not relegated to a life underground – unable to legally work, unable to obtain financial aid for school, unable to live legally in the United States. This was the purpose and reason that Special Immigrant Juvenile Status was created and included in the Federal Immigration Act of 1990.

Other Forms of Immigration Relief

It is important to recognize that SIJS is not the only form of immigration relief available to undocumented youth – in other words it should not be viewed as a ‘one size fits all’ model for undocumented youth in care. In fact, there are reasons this form of immigration relief may not be optimal for certain undocumented youth and it is important that foster care caseworkers, attorneys and others involved in working with undocumented youth recognize this and be able to address it appropriately.

Other potential forms of immigration relief include:

- Trafficking Victims Protection Act
- Violence Against Women Act
- “U” and “T” visas
- Unaccompanied Refugee Minor

Immigration Relief Training

The Administration for Children’s Services has made great strides in recent years to address the immigration needs of children in their care by ensuring that their child protective staff, attorneys and supervisory staff are trained on immigrant issues. This represents a huge step forward. It is however, not enough.

Through the Adolescent Services Resources Network funded by the Office of Children and Family Services of New York, I provide training to contract foster care services providers and others who work with youth on SIJS and trafficking. Over the last three years I have provided 8 trainings to 82 contract service providers. I continue to be surprised and disheartened by the lack of information, knowledge, resources, technical assistance and support provided to contract services providers in the area of immigration relief for their clients. This is a disservice to immigrant youth in care and must be addressed. Imagine what it feels like to have a contract foster care provider come to a training and exclaim – “Oh I wish I had known about this because I did not know how to help my client and he left care – I don’t know what happened to him”. That is permanency, stability and well-being denied.

Models of Immigration Relief in Child Welfare

There are models of providing immigration services to youth in care that can be examined for appropriateness to New York – these include Los Angeles County, which has a special unit within child welfare dedicated to pursuing SIJS for qualified children in care. Other states have manuals, screening

procedures and trainings that can be examined. This Task Force represents the much needed opportunity to look for ways to eliminate the remaining barriers for undocumented children in care to achieve the permanency, stability and well-being that all children deserve. Thank you for allowing me to discuss this issue with you this afternoon. I welcome any questions you may have.

Testimony by Myra Elgabry
Director, Immigration Rights Project

Lawyers For Children, Inc.

**Presented to Hon. Kendall Stewart, Chair, The New York City Council-Committee
on Immigration.**

October 26, 2009

Good afternoon, my name is Myra Elgabry. I am the Director of the Immigration Rights Project at Lawyers for Children, Inc. ("LFC"). Thank you Chairperson Stewart, esteemed members of the Immigration Committee, and Co-Sponsors of the proposed legislation, Council Members Alan Gerson, Darlene Mealy, and Domenic Recchia, Jr. for the opportunity to testify and for your continued interest in the welfare of our City's most vulnerable children. As you may know, Lawyers For Children is a not-for-profit organization dedicated to protecting the rights of individual children in foster care and to compelling system-wide foster care reform in the City of New York. Every child we represent receives free legal and social work services in cases involving foster care, abuse, neglect, termination of parental rights, adoption, guardianship, custody and visitation. Our caseload exceeds 4000 such cases a year.

Today we want to express our strong support for the proposed temporary Task Force to review strategies to protect children who qualify for Special Immigrant Juvenile Status ("SIJS"). As we have testified over the last several years, there is a continued need for the NYC Administration For Children's Services ("ACS") to improve identification of children eligible for SIJS and immigration services for children eligible

for SIJS. The proposed Task Force is an important step towards making those changes a reality and a recognition by the City Council of this crucial issue for our city's children.

First, I would like to address a few relevant developments since we last addressed the City Council. In August 2008, the New York State Office of Children & Family Services ("OCFS") issued an Administrative Directive on SIJS [08-OCFS-ADM-05] to all local departments of social services. It requires that youth in foster care who are not U.S. Citizens or lawful permanent residents be identified as early as possible and referred to immigration legal service providers for SIJS screening. Once youth are identified, social services staff are directed to cooperate and assist with the documents necessary for the SIJS application. The proposed Task Force on SIJS would help determine whether ACS is meeting these new State obligations.

On December 23, 2008, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) was enacted by Congress and made changes to the statute governing SIJS. (See 8 U.S.C. § 1101(a)(27)(J)). It expanded the definition of a Special Immigrant Juvenile so that the Family Court findings can now be made against one parent, rather than against both parents in every case. The Court now must find, among other requirements, that "reunification with 1 *or* both [] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law". (Id., emphasis added). The new statute also added the "similar basis under State law" category which increases the flexibility for the Court to make the appropriate findings. While these changes are still new, they will potentially result in an even larger number of children in foster care being eligible for SIJS, such as children who may possibly reunify with a non-neglectful parent. This likely increase in eligible children supports an even greater need for the

Task Force to research whether ACS is identifying and coordinating SIJS services so that no children lose this important benefit.

We would like to thank ACS Director of Immigrant Services, Mark Lewis, and ACS Supervising Attorney, Harry Gelb, who have provided valuable assistance with individual SIJS cases, have issued instructive memos on SIJS to the foster care agencies, and have made efforts to add SIJS issues to youth programs and staff training. Mr. Lewis and his staff are working on reviewing current files to identify SIJS-eligible children based on federal funding indicators. Unfortunately, it is not clear to what extent those indicators correlate with SIJS-eligible clients, or how long such a process will take. More improvements are needed to create an accurate and efficient system of identification, and to coordinate immigration services in order for ACS to meet its obligation to protect the rights of immigrant children.

A uniform method of collecting SIJS data is essential in order to accurately assess children as early as possible once they enter foster care. Over the last several years, we have repeatedly asked for ACS to include "country of birth" as a required field in every child's case file, but to our knowledge this has not been implemented. This field would help prevent children from being discharged or aging out without the opportunity to apply for SIJS. For example, we recently had a client who was severely disabled and non-verbal who was in foster care for *11 years* before he was first identified as undocumented just 6 months prior to turning 21. We were able to rush his application and get it approved at the last possible deadline. But if ACS had screened his case earlier he would not have been at risk of losing the opportunity for SIJS, which would have had life-altering effects.

For children that are identified, there continue to be problems with the foster care agencies fulfilling their obligations to assist with the SIJS process. We regularly encounter foster care agency caseworkers that have no knowledge of SIJS. Due to rapid turnover at the agencies, it is common that a child's caseworker will change several times over the course of the SIJS process which causes delays, and often the loss of important documents. One client's example illustrates these challenges:

Our client, Ann (name changed to protect confidentiality) is 17 years old. We obtained the SIJS findings from the Family Court, which determined she was abandoned by her parents and should not return to her home country of China. We then requested a passport and the required medical exam from the agency caseworker ("CW"). After several months the CW did not obtain Ann's passport, and the agency had to be directed by the Court to do so. Then the CW left the agency, and the new CW never properly requested the \$200 fee for the medical exam, lost the paperwork, and asked for the request again. We did make this request again, only to find another month later that the second CW left the agency and we had to send the request a third time to a new CW. At that point, the Court had to order the agency to expedite the fees. After a few weeks, Ann was taken to the medical exam. However, the doctor needed to do an additional test that included a fee of \$40. The CW couldn't find anyone at the agency to authorize the \$40 and instead of notifying us, she simply did nothing. By the time we found out the medical exam was incomplete, even more time had passed. Eventually, the fee was paid and we are now ready to file the SIJS application, but after almost one year of unnecessary delays. Ann doesn't understand why it is taking so long to get her green card, and is justifiably concerned about how this delay will impact her ability to get financial aid for college, get a job, or apply for housing programs.

Because of such delays and difficulties, we have urged that ACS create a SIJS Unit with full-time staff devoted to administering SIJS services. The SIJS unit's

responsibilities would be to: 1) ensure identification of all foreign-born youth; 2) ensure foreign-born youth are screened for SIJS-eligibility and that appropriate legal referrals are made for completion of the SIJS process; 3) ensure timely collection of documents and fees for SIJS cases; and 4) provide *mandatory* training to ACS case workers, ACS attorneys, and all contract agency caseworkers. We also urge that every contract agency be required to identify a SIJS-liaison to assist with facilitating the SIJS process in cooperation with the SIJS unit and immigration attorneys.

The proposed SIJS Task Force's planned research and recommendations could greatly benefit immigrant youth in foster care. We urge that the Task Force be implemented as soon as possible because the stakes for any child who is SIJS-eligible are enormous. Losing SIJS eligibility means a child will not qualify for financial aid for college, will not be able to apply for jobs, will not receive federal housing assistance, and will be at risk of deportation back to a country where he/she likely has no resources and, in some cases, may not even speak the language. We all share an obligation to ensure that no child in our city's care is overlooked or ages-out of these crucial benefits.

The City Council has provided important leadership on issues for children in foster care and immigrant services, and we applaud you for continuing to do so. We believe that the collaborative efforts of the Task Force with ACS and SIJS advocates will help ensure that all SIJS-eligible children in foster care have the opportunities that they deserve.

We are available to assist in any way possible to improve the services and quality of care for children who are in need. Thank you.

TESTIMONY

Local Law Creating a Temporary Task Force on SIJS

New York City Council

Committee on Immigration

THE LEGAL AID SOCIETY

199 Water Street, 3rd Fl.

New York, NY 10038

October 26, 2009

Contact: Katherine A. Fleet (212-577-3328; kafleet@legal-aid.org)

The Legal Aid Society, Civil Practice, Immigration Law Unit

My name is Katherine Fleet and I am a Staff Attorney with The Legal Aid Society's Immigration Law Unit. I work on the Immigrant Youth Representation Project, assisting NYC youth in obtaining legal status here in the United States. I submit this testimony on behalf of The Legal Aid Society and want to thank Chairman Stewart and Council Members Gerson, Mealy, and Recchia, for their initiative on the proposed Local Law establishing a temporary Task Force to review strategies to protect youth eligible for Special Immigrant Juvenile Status. I would also like to thank the Committee for the opportunity to participate in this hearing.

The Legal Aid Society strongly supports the proposed law creating a Task Force to review and analyze a number of issues related to Special Immigrant Juvenile Status (SIJS). The Legal Aid Society applauds the City Council for taking up this important issue affecting NYC's undocumented immigrant youth. New York City has long been committed to addressing the needs of immigrant youth, and we are pleased to see the City Council pursuing new strategies to benefit this vulnerable population.

The Legal Aid Society is the nation's oldest and largest non-profit public interest law firm for low-income families and individuals. Founded in 1876 to provide legal assistance to poor immigrants, the Society is organized into three practice areas: criminal, civil, and juvenile. Annually, Legal Aid Society staff provide direct legal assistance to approximately 300,000 poor families and individuals. The Civil Practice's Immigration Law Unit provides low-income New Yorkers with immigration services ranging from deportation defense to adjustment of status to Legal Permanent Residence and citizenship applications. Our Juvenile Rights Practice is the primary institutional provider of legal representation to children in New York City. In 2002, the Immigration Law Unit and Juvenile Rights Practice launched the Immigrant Youth Representation Project to respond to the special needs of undocumented youth in New York

City. Since its inception, the Youth Project has, through training, outreach, direct and *pro bono* representation, and policy advocacy, achieved tremendous success in assisting undocumented immigrant youth residing in New York City to obtain Special Immigrant Juvenile Status (SIJS) or other immigration benefits. The Society acknowledges the Department of Youth and Community Development, the Gimble Foundation, and the New York Community Trust for their invaluable financial support, which has made a tremendous difference in the lives of hundreds of immigrant youth.

As participants in the SIJS process for many foster care youth, Legal Aid has seen first-hand the successes and failures of the current identification, training, and application support systems that are the focus of the proposed Task Force. Legal Aid has been involved in cases where the system has worked extremely well, where NYC Children's Services ("ACS") and contract agencies have identified cases, referred them to the Youth Project for legal services, supported staff in getting critical documents such as birth certificates, and assisted in various ways throughout the SIJS process. Legal Aid has also observed the extraordinary difference obtaining SIJS can make in young people's lives, allowing them to remain legally in the United States and putting them on the path toward educational and professional opportunities. There have also been breakdowns in the system resulting in devastation and disappointment for children who miss out on the benefit of legal status. Youth who leave foster care with no legal immigration status face the constant threat of deportation, are unable to work legally, and lack access to important services such as Medicaid, federal financial aid, and housing assistance.

In recent years, the city has made progress toward meeting the needs of immigrant youth. Legal Aid and other legal service providers have met regularly with ACS staff, shared information and perspectives, and received many case referrals. The relationships developed

with ACS have enabled Legal Aid to ensure that undocumented youth referred to the Youth Project get the immigration legal assistance they need. We are grateful – as are many of our clients – for the efforts of Mark Lewis and his staff in the Office of Immigrant Programs, and Harry Gelb from Family Court Legal Services.

Still, there are many challenges and gaps in services that undermine the ability of qualifying youth to apply for SIJS, and there is much left to be done. There is still no reliable, systematic mechanism for identifying SIJS-eligible youth and many foster care agency staff have limited knowledge about SIJS. Many youth are identified only after they miss out on important educational and work-related opportunities or when they are close to aging out of foster care. Obtaining birth certificates and passports for SIJS applications remains challenging in many cases, and there is often little foster care agency cooperation throughout the application process.

Early identification of SIJS-eligible youth is essential, as is providing access to critical documents, such as birth certificates and passports, and collaboration from foster care agencies in obtaining other required documents (including medical examinations and fee waiver letters). These challenges are even more acute now, as recent federal legislation has expanded SIJS eligibility, thereby increasing the population that can benefit from our efforts.¹

Establishing a Task Force with members from various SIJS stakeholder groups is an excellent approach to solving this problem. The Legal Aid Society has a number of specific suggestions to offer today and welcomes the opportunity for further discussion through the Task Force.

¹ Under the 2008 Trafficking Victim Protection Reauthorization Act, SIJS is now a possibility for youth who are not reunifying with “one or both” parents (previously, the law required both) and youth can obtain SIJS if they file applications by age 21 (previously, the law required *adjudication* of applications by age 21, and the process was often lengthy). The recent legislation also provides reimbursement to states for expenses related to youth who obtain SIJS. Although that provision is subject to federal appropriations, it should become a source of additional funding for social service agencies working with immigrant youth.

- ACS data collection systems should systematically track each child's country of origin, while protecting the confidentiality of this information.
- As already required under applicable regulations, ACS should also ensure that each child in foster care has a birth certificate. This data should be tracked systematically and updated consistently so that immigration issues are resolved well in advance of youth aging out of foster care.
- ACS, in conjunction with other city agencies, should provide assistance for youth who do not have birth certificates. Many young people are unable to obtain birth certificates from their home countries and need to seek assistance from local Consulates, whose policies vary widely, may be costly and time-consuming, and may require consent of parents or custodians, who are frequently unwilling or unable to consent or whose involvement may pose a danger to the youth. City involvement in this process is essential.
- All non-citizen youth without proper documentation should be referred to legal service providers.² Congress recently expanded eligibility for SIJS, but the precise contours of eligibility may be changed through regulations. Accordingly, immigration practitioners are best suited to assess eligibility. In addition, there is often overlap between SIJS and other forms of immigration relief, which may be more appropriate in certain situations. For example, many youth who are domestic violence victims would also qualify for U visas as crime victims.

Referring all of these cases to legal service providers ensures proper assessment

² This is consistent with the August 19, 2008 NYS Office of Children and Family Services Administrative Directive (ADM) regarding SIJS, which mandates all local departments of social service and voluntary agencies to assess SIJS eligibility, suggesting that “[a]ll youth in foster care who are not U.S. citizens and do not have documentation of lawful residence . . . need to be identified by agency staff and referred to immigration legal service providers for screening for SIJS and other possible immigration relief.”

of eligibility and also guarantees that youth will not age out without proper documentation. All youth should have the necessary documents (including unexpired green cards) before leaving foster care.

- All children should be identified and referred for immigration assistance as early as possible. Children of all ages are vulnerable to deportation and many young people without status miss out on critical opportunities for jobs, internships, special programs, etc. Gathering the necessary documents for immigration applications can also be a very lengthy process. Identifying cases early on puts youth in the best position to make successful applications.
- Training of both ACS and foster care agency personnel is critical and existing training programs are helpful but not sufficient. Immigration trainings should be mandatory and frequent for all employees working directly with youth in care, especially given the high rates of staff turnover at foster care agencies.
- Any SIJS Unit should be staffed fully and consistently. The staff should include a dedicated staff member who is part of the ACS Family Court Legal Services division, who can provide support and training, both to legal and non-legal staff, about the issues involved in this work.
- In addition to helping provide initial referrals, ACS should also take on a bigger role in coordinating with contract agencies, whose help is critical when immigration practitioners are working with youth in preparing SIJS applications.

The Legal Aid Society is hopeful that the New York City Council will pass the proposed law, which will enable the temporary Task Force to tackle the urgent needs of undocumented

youth in New York City. The Society is committed to being actively involved in this process and providing maximum possible input into the Task Force's recommendations.

COVENANT HOUSE  **NEW YORK**
460 WEST 41ST STREET, NEW YORK, N.Y. 10036 • (212) 613-0300

Testimony of Nancy Downing, Director of Advocacy
before
The New York City Council
Committee on Immigration
(October 26, 2009)

My name is Nancy Downing. I am the Director of Advocacy for Covenant House New York. I would like to thank the New York City Council and the members of the Committee on Immigration for providing me with the opportunity to testify here today in support of Int. 0787-2008, a local law to amend the administrative code of the city of New York, in relation to establishing a temporary Task Force to review strategies to protect children who qualify for Special Immigrant Juvenile Status.

For more than 35 years, Covenant House New York has been serving homeless, runaway and at-risk youth. We are the nation's largest, privately funded, non-profit adolescent care agency serving this population. Last year, Covenant House New York served approximately 7,000 young people, primarily between the ages of 16 and 21, in our residential and community-based programs, and through our street outreach efforts.

Many of the youth who find themselves in homeless situations are undocumented immigrants. Most have lived in the United States since they were small children. Many of these children have been abused, neglected or abandoned by their parents. For most of these youth their best opportunity to adjust their immigration status to a legal status is through the Special Immigrant Juvenile Status process. Yet, particularly for youth who are nearing their 18th birthday, we continue to see delays in processing their cases by the Administration for Children's

Services; delays, which in these cases tragically lead to a life of poverty (in constant search of off-the-book jobs), homelessness, and constant fear of deportation.

Additionally, each year we see cases of youth who sign themselves out of foster care at age 18, unaware of their immigration status and/or unaware of the need to remain in foster care until their status has been adjusted through the Special Immigrant Juvenile Status process. Here again, for most of these young people they have lost the one opportunity available to them to legalize their immigration status.

This is not a new issue, but one that has been ongoing for several years. Therefore, we support the need for the immediate establishment of a temporary Task Force to review strategies to protect our city's children who qualify for Special Immigrant Juvenile Status; strategies that would include more in-depth and on-going training of ACS caseworkers concerning SIJS; better identification and tracking of youth in foster care who qualify for SIJS; and more effective delivery of information and education to youth concerning their immigration status and the consequences of signing themselves out of foster care before the SIJS process has been completed.

We thank the Committee on Immigration for holding this hearing and we urge the City Council to act immediately to pass this local law so that not one more youth loses the opportunity to legalize their immigration status and to develop and use the many gifts they have for their individual good and for the good of our city.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/26/01

(PLEASE PRINT)

Name: Theresa Moser

Address: 199 Water St NYC 10038

I represent: The Legal Aid Society, Juvenile Rts.

Address: same

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I represent: IMMIGRANTS & CHILD WELFARE

Address: _____ PROJECT

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Name: Myra Elgib

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I represent: 110 Lafayette St. 8th Fl. NY NY

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Date: 10/26/09

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Name: Katherine Fleet

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I represent: The Legal Aid Society

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Date: 10/26/09

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Name: Mark Lewis

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in favor in opposition

Date: 10/26/09

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Name: Nancy Downing Director of Advocacy

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I represent: Covenant House New York

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Please complete this card and return to the Sergeant-at-Arms