RISKS OF APPLYING FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) IN AFFIRMATIVE CASES

Evolving USCIS Policies Increase the Risk of Placement in Removal Proceedings

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I. Introduction

A person who affirmatively applies for any kind of immigration benefit, including SIJS,[1] is identifying themselves to USCIS. If the person is undocumented, they can be placed in removal (deportation) proceedings if USCIS denies the SIJS petition or adjustment of status application. For this reason, an affirmative SIJS packet should only be submitted if you believe that it will be granted, unless the client is willing to accept the likelihood of being placed in removal proceedings (for example, in cases where they may be eligible for some other form of relief if placed in removal proceedings, or SIJS presents their only chance to gain legal status and they are willing to risk removal by applying).

II. New Risks of Filing for SIJS

In the past, it was almost unheard of for young people applying for SIJS to be placed in removal proceedings, even if USCIS denied SIJS or adjustment. However, very recently, USCIS issued updated guidance on when it will refer a person to Immigration & Customs Enforcement (ICE) or issue a Notice to Appear (NTA, the charging document that begins a case in immigration court).[2] Advocates must consult this memorandum in evaluating the risk of referral in individual cases. Notably, the new guidance now requires USCIS to issue an NTA in any case in which, "upon issuance of an unfavorable decision on an application, petition, or benefit request, the alien is not lawfully present in the United States."[3] Unfortunately, this appears to include children who have submitted an unsuccessful application for SIJS or SIJS-based adjustment of status.[4] USCIS has always had the authority to refer an applicant to ICE or place that person in proceedings; what has changed is that USCIS is now *required* to place someone in proceedings if that person 1) has

[1] For a primer on Special Immigrant Juvenile Status, see ILRC, *An Overview to Special Immigrant Juvenile Status* (Apr. 15, 2015), https://www.ilrc.org/overview-special-immigrant-juvenile-status-updated-march-2015.

[2] USCIS, *Policy Memorandum: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* PM-602-0050.1 (June 28, 2018), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf [hereinafter *USCIS NTA Memo*]. On July 30, 2018, USCIS announced that implementation of the USCIS NTA Memo is postponed until USCIS components "create or update operational guidance on NTAs and Referrals to ICE." See USCIS, *Updated Guidance on the Implementation of Notice to Appear Policy Memorandum* (July 30, 2018), https://www.uscis.gov/news/alerts/updated-guidance-implementation-notice-appear-policy-memorandum. It is unclear therefore when the guidance will be implemented. Nonetheless, advocates must engage in the risk analysis that the USCIS NTA Memo now requires in all affirmative cases and advise their clients of the same.

[3] *USCIS NTA Memo, id.* at 7.

[4] The USCIS NTA Memo does not specifically address SIJS petitions, nor are SIJS petitioners protected by the confidentiality protections that apply to applicants for the U visa, T visa, or VAWA, as discussed in Section VI.D of the USCIS NTA Memo. *USCIS NTA Memo, supra* note 2, at 9.

an application that is denied, and 2) lacks immigration status (e.g., is removable). This means that if an SIJS or SIJS-adjustment applicant lacks immigration status, they will be issued an NTA by USCIS upon denial.

The NTA guidance does provide that DHS can exercise prosecutorial discretion not to place someone in proceedings in "very limited circumstances."[5] However, it is unclear how this discretion will or will not be exercised. At this stage, we thus need to assume that an applicant will be placed in removal proceedings upon denial.

Given the now serious risk that youth applying for SIJS may be placed in removal proceedings, it is more important than ever to:

1. Ensure that clients are eligible for SIJS and SIJS-based adjustment of status before filing for these forms of relief affirmatively;
2. Monitor USCIS adjudication trends to understand the possible risks of denial even if your client meets the statutory and regulatory eligibility requirements for SIJS, as USCIS increasingly changes its interpretation of eligibility requirements without formal notice to the public;[6]
3. Investigate clients' eligibility for other forms of immigration relief as a back-up option, including those that are only available as a defense in removal proceedings, such as cancellation of removal and withholding of removal; and
4. Properly advise clients on the risks of filing for SIJS affirmatively so that they can make an informed decision about whether to proceed. Explain both the risk of being placed in removal proceedings and the risk of permanently losing the opportunity to apply for SIJS if they do not do so while under the age of 21 and under juvenile court jurisdiction. For some clients, it may be helpful to spell this out in writing as well as in conversation.

The NTA guidance, issued June 28, 2018, also authorizes (but does not require) referral to removal proceedings BEFORE adjudication for groups of cases where fraud is suspected, where the person is under investigation for an aggravated felony, or where the person appears inadmissible or deportable based upon a criminal offense that is not an aggravated felony.[7]

Note: The updated USCIS NTA policy memo is not currently in effect.[8] USCIS has delayed implementation until it develops operational guidance. USCIS was instructed to develop operational guidance within 30 days of the issuance of the new USCIS NTA memo. It has already been more than 30 days, so the operational guidance could be released any day and the USCIS NTA memo could be implemented. At this point, we need to assume that the USCIS NTA memo will apply to all pending applications when it goes into effect.

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[5] *Id.* at 10.

[6] For example, in April of 2018, the *New York Times* published an article describing a "rule change" that was resulting in mass denials of post-18 SIJS cases in New York. Liz Robbins, *A Rule is Changed for Young Immigrants, and Green Card Hopes Fade*, N.Y. TIMES, Apr. 17, 2018, https://www.nytimes.com/2018/04/18/nyregion/special-immigrant-juvenile-status-trump.html. This sea change occurred without USCIS issuing any public announcement about a change in policy or otherwise announcing a changed interpretation of the SIJS eligibility requirements. Soon thereafter, *Politico* reported on a "clarification" by the USCIS chief counsel's office – never announced publicly – "which called in February for the agency to reject pending applications in cases where applicants could not be returned to the custody of a parent." Ted Hesson, *USCIS Explains Juvenile Visa Denials*, Politico, Apr. 25, 2018, https://www.politico.com/newsletters/morning-shift/2018/04/25/travel-ban-at-scotus-182935. Since most courts cannot place a child back in the custody of their parent once the child reaches the age of majority, according to the new USCIS interpretation, those state courts "do not have power and authority to make the reunification findings for purposes of SIJ eligibility." *Id.*

[7] *USCIS NTA Memo, supra* note 2, at 5-7.

[8] USCIS, *Updated Guidance on the Implementation of Notice to Appear Policy Memorandum* (July 30, 2018), https://www.uscis.gov/news/alerts/updated-guidance-implementation-notice-appear-policy-memorandum.

A. Is there any risk to filing for an SIJS predicate order in state court?

No! Advocates working with juvenile court-involved youth who may be eligible for SIJS should continue to request the SIJS predicate orders from the juvenile court. Requesting or receiving this order from the juvenile court will not put the youth at increased risk of placement in removal proceedings. This process is entirely with the state court and does not involve communication with USCIS or any other branch of the Department of Homeland Security. Moreover, failing to request the SIJS findings from the juvenile court while the child is eligible will prevent the child from being able to apply for SIJS. If you can assist the child in receiving the SIJS predicate order from the juvenile court, they can then decide, based on guidance from immigration experts at that time, whether or not to file for SIJS with USCIS. For additional information about what to include in the SIJS predicate order, please consult with immigration experts and see ILRC, *New Guidance for SIJS State Court Predicate Orders in California* (Nov. 29, 2017), https://www.ilrc.org/new-guidance-sijs-state-court-predicate-orders-california.

B. What is the risk of filing an affirmative, stand-alone petition for SIJS (Form I-360)?[9]

Under the new USCIS NTA guidance, if an SIJS petition is denied and the petitioner does not otherwise have lawful immigration status, USCIS will issue an NTA, placing that person in removal proceedings. SIJS is technically not a discretionary immigration benefit; in other words, if the youth meets the eligibility requirements, their petition should be approved, and they need not demonstrate that they merit a favorable exercise of discretion or that they are admissible. Because of this, denials of SIJS-based I-360s were relatively rare in the past. In recent years however, USCIS has increasingly used its "consent"[10] function to deny SIJS to youth for a range of reasons, the most salient ones discussed below. Policy is ever-evolving in this area, and some of the issues below are the subject of current litigation. Please ensure that you are aware of the latest policy and case law before filing any petitions.

C. Is there a heightened risk in filing an affirmative, stand-alone petition for SIJS if the youth has a delinquency record?

For a stand-alone Form I-360, a delinquency record does not appear to cause a heightened risk. A youth need not demonstrate admissibility in order to be eligible for SIJS. In addition, Form I-360 asks no questions corresponding to potential inadmissibility, nor are biometrics typically required in connection with the adjudication of Form I-360. (Admissibility is required, and biometrics will be taken, if the youth subsequently files a Form I-485 application for adjustment of status.) Given this, it is unlikely that USCIS would even be aware of a youth's delinquency record when adjudicating a petition for SIJS. The one exception to this would be if the youth's SIJS predicate order was obtained in juvenile delinquency court; in that instance, USCIS would be aware that the youth has some juvenile delinquency record, but still would not be aware of any of the specifics of the record, and thus there appears to be no heightened risk.

As described in the next section, the NTA guidance allows for **possible** referral pre-adjudication in certain cases. However, it seems unlikely in the case of a stand-alone Form I-360 that USCIS would have the necessary information to determine that an applicant may fit into one of the EPS categories, for the reasons discussed above. A stand-alone Form I-360 that is denied will result in the issuance of an NTA **following denial.** However, under the new guidance this will occur any time the person has no lawful status and their application is denied, and there does not appear to be a heightened risk just because the youth has a delinquency record.

[9] A "stand-alone" I-360 refers to one not filed simultaneously with an I-485, application for adjustment of status.
[10] 8 USC § 1101(a)(27)(J)(iii).

D. Is there a heightened risk in filing for SIJS-based adjustment of status if the youth has a delinquency record?

For an SIJS-based application for adjustment of status, either filed concurrently with a Form I-360, or filed subsequent to the Form I-360, the existence of a delinquency record may increase the risk that the youth's application for adjustment of status will either be outright denied, resulting in the youth being issued an NTA, or referred to ICE prior to adjudication as an EPS case (see below). If the case is referred prior to adjudication, ICE will have the opportunity to decide "if, when, and how to issue an NTA or detain the alien."[11] To show eligibility for adjustment, an applicant must show that they are not inadmissible, or if they are inadmissible, that they qualify for and merit a waiver. An applicant must also submit biometrics. Thus, a client's record, including juvenile offenses, is reviewed at the adjustment stage. A juvenile adjudication cannot bar SIJS-eligibility because it is not a "conviction" for immigration purposes, but the underlying conduct could make the person inadmissible or result in their application being denied as a matter of discretion.

1. USCIS treatment of "Egregious Public Safety" (EPS) cases:

The NTA guidance provides that certain types of cases will be treated as EPS cases. Per the guidance, EPS cases are those in which information indicates the person is under investigation for, has been arrested for (without disposition), or has been convicted of various crimes.[12] This language is inexact, and leaves open the question whether a juvenile adjudication could cause an individual's case to be considered an EPS case. (Note that EPS cases are defined exactly as they were in the previous USCIS NTA guidance issued in 2011.[13] However, it is unclear whether practice here will change.) On the one hand, juvenile adjudications are not treated as convictions for immigration purposes,[14] and this list appears to refer to violations of the law that result in convictions. On the other hand, the language also refers to people who are under investigation for, or who have been arrested for, an offense, in which case it could potentially be applied to people whose cases have not yet been addressed in either juvenile or criminal court. It is the ILRC's position that this language should only refer to cases handled in adult criminal proceedings; however, since the NTA guidance is an internal USCIS memorandum, there may be no way to challenge their characterization of a case as an EPS case.

Thus, if you are concerned that your client's delinquency history could possibly cause USCIS to treat the case as an EPS case, you should be aware that USCIS will issue an NTA in all cases meeting the EPS definition, regardless of the existence of a conviction, if the application/petition is denied and the person is removable.

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[11] *USCIS NTA Memo*, *supra* note 2, at 7.

[12] The full list of crimes is: Murder, rape, or sexual abuse of a minor, as defined in INA § 101(a)(43)(A); Illicit trafficking in firearms or destructive devices, as defined in INA § 101(a)(43)(C); Offenses relating to explosive materials or firearms, as defined in INA § 101(a)(43)(E); Crimes of violence for which the term of imprisonment imposed, or where the penalty for a pending case, is at least one year, as defined in INA § 101(a)(43)(F); An offense relating to the demand for, or receipt of, ransom, as defined in INA § 101(a)(43)(H); An offense relating to child pornography, as defined in INA § 101(a)(43)(I); An offense relating to peonage, slavery, involuntary servitude, and trafficking in persons, as defined in INA § 101(a)(43)(K)(iii); An offense relating to alien smuggling, as described in INA § 101(a)(43)(N); Human Rights Violators, known or suspected street gang members, or Interpol
hits; or Re-entry after an order of exclusion, deportation or removal subsequent to conviction for a felony where a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, has not been approved.

[13] USCIS, *Revised Guidance for the Referral of Cases and Issuance of Notices to Appear in Cases Involving Inadmissible and Removable Aliens* (Nov. 7, 2011), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf.

[14] *Matter of Devison*, 22 I & N Dec. 1362 (BIA 2000) (citing *Matter of C. M.*, 5 I&N Dec. 27 (BIA 1953)); *Matter of Ramirez-Rivero*, 18 I & N Dec. 135 (BIA 1981).

In addition, USCIS *should* refer EPS cases to ICE **prior to adjudication** if "there are circumstances that warrant such action."[15] It is not clear what type of circumstances would warrant this action. Per the guidance, if USCIS refers an EPS case prior to adjudication, ICE will then decide whether to issue an NTA or detain the individual.

In sum, although the NTA guidance allows for **possible** referral pre-adjudication in an EPS case, it is ILRC's position that juvenile adjudications should not be included as EPS cases because they are not "convictions." Given that juvenile court documents are confidential in many states, it is also possible that USCIS would not have the necessary information to determine that an applicant may fit into one of the EPS categories. An SIJS-adjustment application that is denied will result in the issuance of an NTA **following denial**. However, under the new guidance this will occur any time the person has no lawful status and their application is denied; it does not require categorization as an EPS case.

2. USCIS treatment of non-EPS cases:

A non-EPS case is defined by USCIS as a case in which information indicates the person is under investigation for, has been arrested for (without disposition), or has been convicted of *any crime* not included in the list of EPS crimes. Similarly to EPS cases, the NTA guidance provides that USCIS will issue NTAs in all non-EPS cases if the application or petition is denied and the person is removable. If USCIS does not issue an NTA, the guidance states: "USCIS should refer Non-EPS cases to ICE *prior to final adjudication* if the alien appears inadmissible to or deportable from the United States based upon a criminal offense not included on the EPS list."[16] Thus, even if there is no possible argument that your client's case may constitute an EPS case, they could still possibly be referred pre-adjudication if USCIS believes them to be 1) inadmissible or deportable, 2) based on a criminal offense. A case involving juvenile adjudications should arguably never be treated as a non-EPS case because it would not be based on a criminal offense, but rather the conduct underlying the offense.

In sum, although the NTA guidance allows for **possible** referral pre-adjudication in a non-EPS case, it is the ILRC's position that juvenile adjudications should never trigger treatment as a non-EPS case, because adjudications are not "convictions." An SIJS-based adjustment that is denied will result in the issuance of an NTA **following denial**; however, under the new guidance this will occur any time the person has no lawful status and their application is denied; it does not require categorization as a non-EPS case.

E. Is there a heightened risk in filing for SIJS-based adjustment of status if the youth has a criminal record?

For an SIJS-based application for adjustment of status, either filed concurrently with an I-360, or filed subsequent to the I-360, the existence of an adult criminal record may increase the risk that the applicant's application for adjustment of status will either be outright denied, resulting in the applicant being issued an NTA, or referred to ICE prior to adjudication either as an EPS or non-EPS case (see above). If the case is referred prior to adjudication, ICE will have the opportunity to decide "if, when, and how to issue an NTA or detain the alien."[17] To show eligibility for adjustment, an applicant must show that they are not inadmissible, or if they are inadmissible, that they qualify for and merit a waiver. Unfortunately, criminal grounds of inadmissibility cannot be waived. Not every conviction will cause an applicant to be inadmissible. However, an applicant who either: 1) has a conviction, an arrest, or is under investigation for an EPS case (mostly aggravated felonies), OR 2) is removable *based on a* non-EPS criminal conviction, must be warned that they could be placed in proceedings pre-adjudication of their adjustment application. If the application is denied, they will be placed in proceedings regardless of the existence of a conviction if they have no lawful status.

[15] *USCIS NTA Memo*, *supra* note 2, at 7.
[16] *USCIS NTA Memo*, *supra* note 2, at 7 (emphasis added).
[17] *USCIS NTA Memo*, *supra* note 2, at 7.

F. What are the next steps if the youth is issued an NTA?

There are several possible scenarios:

- If a youth is issued an NTA prior to adjudication of the Form I-360 (unlikely, as discussed above), it is unclear how their case would proceed. Since USCIS has sole jurisdiction to adjudicate Form I-360, USCIS would presumably need to continue adjudication of the Form I-360 in order for the immigration court to determine how to handle the youth's case. If USCIS then denied the Form I-360, or the youth was issued an NTA following a denial of the Form I-360, the youth could appeal a denial of the Form I-360 to the Administrative Appeals Office (AAO).[18] If the Form I-360 was again denied by the AAO, the youth could also consider filing an action in federal court to challenge the denial of their I-360 under the Administrative Procedure Act.[19] They could also possibly file a new Form I-360 if they still meet the eligibility requirements, assuming the immigration court would permit them additional continuances to do so.
- If a youth is issued an NTA prior to adjudication or following the denial of the Form I-485 (but in a case where they have an approved Form I-360), the youth could renew their application for adjustment of status in front of the immigration judge.[20]
- In addition to pursuing the SIJS case, any youth placed in proceedings should also consider any defensive arguments that might apply, such as challenging removability if applicable, filing a motion to suppress if warranted, or moving to terminate if the NTA is defective.[21]
- If the proceedings continue, the youth should apply for any other form of relief they might be eligible for, including asylum, withholding of removal, cancellation of removal, etc.

G. Is there a heightened risk in filing a stand-alone petition for SIJS if the youth may be alleged to be gang-involved?

Yes! Although alleged gang involvement should have no bearing on eligibility for SIJS, advocates have reported a small number of denials or revocations in cases in which USCIS argued that the youth is gang-involved and that the youth failed to inform the state juvenile court making the SIJS findings of this fact. Per USCIS, had the state juvenile court known that the youth was gang-involved, the court would not have issued the SIJS findings, and thus the child is ineligible for SIJS. While there is no written policy to this effect, advocates must be aware that allegations of gang involvement, whether based on a juvenile record or unsubstantiated allegations such as photos posted on a youth's social media, can jeopardize the youth's chance of success not only in obtaining adjustment of status, but even in being granted SIJS.

In addition, allegations of gang involvement could lead to USCIS treating a case as an EPS case in the category of "known or suspected street gang members."[22] If treated as an EPS case, it could be referred to ICE prior to adjudication.

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[18] The AAO conducts administrative appellate review of USCIS officers' decisions regarding immigration benefit requests. For more information, see USCIS, *AAO Practice Manual* (Apr. 18, 2018), https://www.uscis.gov/aao-practice-manual.

[19] It is also possible to file an action in federal court prior to appealing to the AAO. If you are considering this route, please consult with experienced SIJS practitioners and federal court litigators prior to proceeding.

[20] The only exception is if the child you are assisting is in removal proceedings but ICE has charged them as an "arriving alien" by checking Box 1 on their Notice to Appear. In that case, USCIS alone has jurisdiction to adjudicate their application for adjustment of status. See 8 CFR § 245.2(a)(1). There is one exception to this exception. See 8 § CFR 1245.2. For more information on arriving aliens and adjustment of status, see American Immigration Council, *"Arriving Aliens" and Adjustment of Status* (Nov. 2015), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/ar_alien.pdf.

[21] See *Pereira v. Sessions*, 138 S.Ct. 2105 (June 2018) (finding that an NTA that did not list a time and date of the immigration court hearing was not a "notice to appear").

[22] *USCIS NTA Memo*, *supra* note 2, at 6.

H. Is there a heightened risk in filing a stand-alone petition for SIJS if the youth was over the age of 18 when the state court made the SIJS findings?

Yes! Prior to 2018, cases in which the youth was over 18 when the SIJS findings were made were routinely approved by USCIS.[23] In April of 2018, however, the *New York Times* published an article describing a "rule change" that was resulting in mass denials of post-18 SIJS cases in New York.[24] This sea change occurred without USCIS issuing any public announcement about a change in policy or otherwise providing information about a changed interpretation of the SIJS eligibility requirements. Soon thereafter, *Politico* reported on a "clarification" by the USCIS chief counsel's office – never announced publicly – "which called in February for the agency to reject pending applications in cases where applicants could not be returned to the custody of a parent."[25] Since most courts cannot place a child back in the custody of their parent once the child reaches the age of majority, according to the new USCIS interpretation, those state courts "do not have power and authority to make the reunification findings for purposes of SIJ eligibility."[26] At the time of writing, class action lawsuits have been filed challenging USCIS's denial of cases in New York and California based on this unannounced policy change.[27] However, in the meantime, it seems clear that USCIS intends to deny many cases in which the SIJS findings were obtained after the youth turned 18, though this may depend to some extent on state law.[28] Thus, in all cases in which the youth was over the age of 18 when the state court made the SIJS findings, we recommend that you consult with experienced SIJS practitioners in your state to determine whether to file the case with USCIS, as it may be very likely to result in a denial and subsequent issuance of an NTA.

I. In what other types of cases may there be a heightened risk of being issued an NTA?

USCIS has recently been issuing RFEs or NOIDs in SIJS cases with the following factual scenarios:

- The state predicate order lacked sufficient evidence to show a factual basis.
- The state predicate order did not highlight the *state* law or statute upon which the determination was based, and instead cited to the Immigration and Nationality Act (INA).
- The state predicate order did not show whom the court considered the parents (if not listed on the child's birth certificate).
- The Form I-360 contained facts that conflict with information in Form I-213, "Record of Deportable-Inadmissible Alien."[29]
- The state predicate order was issued when the child was over 18 (see above).
- The Form I-360 did not include a separate copy of the state court custody order (in addition to the SIJS findings).If your case falls into any of these categories, there may be a heightened risk of denial and issuance of an NTA, and we suggest you consult with experienced SIJS practitioners before filing your case.[30]

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[23] Denials of post-18 cases based on SIJS orders made in the state of Texas were being issued earlier than this, but on different legal grounds.

[24] Liz Robbins, *A Rule is Changed for Young Immigrants, and Green Card Hopes Fade*, N.Y. TIMES, Apr. 17, 2018, https://www.nytimes.com/2018/04/18/nyregion/special-immigrant-juvenile-status-trump.html.

[25] Ted Hesson, *USCIS Explains Juvenile Visa Denials*, POLITICO, Apr. 25, 2018, https://www.politico.com/newsletters/morning-shift/2018/04/25/travel-ban-at-scotus-182935.

[26] *Id.*

[27] *M. et al v. Nielsen et al*, No. 1:18-cv-05068 (S.D.N.Y. filed June 7, 2018); *J.L. et al v. Cissna et al*, No. 5:18-cv-04914 (N.D. Cal. filed Aug. 14, 2018).

[28] Through discovery obtained in the New York class action, *id.*, advocates have obtained copies of USCIS's internal guidance on post-18 cases, which makes clear that USCIS's new interpretation of the statute is that "in order for a court order to be valid for the purpose of establishing SIJ eligibility, the court must have competent jurisdiction to determine both whether a parent could regain custody and to order reunification, if warranted." Certified Administrative Record, *M. et al v. Nielsen et al*, No. 1:18-cv-05068, AR 724 (S.D.N.Y. filed June 7, 2018). As of the time of this writing, advocates have seen Notices of Intent to Deny (NOIDs) and denials in New York and California, in cases that originated out of guardianship proceedings in which the youth was over 18 but under 21 when the state court made the SIJS findings.

[29] The I-213 is the record that the immigration agent creates at the time of arrest.

[30] On July 13, 2018, USCIS issued a new Policy Memorandum, *Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b)*, https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf. The memo makes it

J. Are children's cases treated any differently than adult's cases under the new NTA guidance?

No. The NTA guidance makes no special provisions or carve-outs for children applying for immigration benefits (unless the children have DACA[31]). The one way that children *may* be treated differently under the guidance could be that they may present as more sympathetic candidates for the exercise of prosecutorial discretion. However, given the very limited circumstances in which the NTA guidance indicates that prosecutorial discretion will be exercised, it is uncertain to what extent it will be used in any cases, including those of children.

easier for adjudicators to deny SIJS and adjustment of status applications without first providing the applicant the opportunity to respond to the adjudicator's concerns. The memo will be implemented September 11, 2018.

[31] USCIS, *Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) When Processing a Case Involving Information Submitted by a Deferred Action for Childhood Arrivals (DACA) Requestor in Connection With a DACA Request or a DACA-Related Benefit Request (Past or Pending) or Pursuing Termination of DACA* (June 28, 2018), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0161-DACA-Notice-to-Appear.pdf (stating that the new USCIS NTA guidance does not apply to DACA cases.)

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