Undocumented Immigrant Youths and Special Immigrant Juvenile Status (SIJS): At the Crossroads of Child Welfare and Immigration Policy

by

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List of Abbreviations

AACWA: Adoption Assistance and Child Welfare Act (of 1980)
ABA: American Bar Association
ABC: American Baptist Churches
AG: Attorney General
ASFA: Adoption and Safe Families Act (of 1997)
BIA: Board of Immigration Appeals
CBP: U.S. Customs and Border Protection
CASA: Court Appointed Special Advocate
CILA: Children's Immigration Law Academy
CPS: Child Protective Services
CRC: Convention on the Rights of the Child (of 1990)
COVID-19: Coronavirus Disease 2019
DACA: Deferred Action for Childhood Arrivals
DHS: U.S. Department of Homeland Security
EOIR: Executive Office for Immigration Review
HHS: Department of Health and Human Services
ICE: Immigration and Customs Enforcement
IIRIRA: Illegal Immigration Reform and Immigrant Responsibility Act (of 1996)
ILRC: Immigrant Legal Resource Center
IMFA: Immigration Marriage Fraud Amendments (of 1986)
INA: Immigration and Nationality Act (of 1990)
INS: Immigration and Naturalization Service
ILO: International Labour Organization
IRB: Institutional Review Board
IRCA: Immigration Reform and Control Act (of 1986)
KIND: Kids in Need of Defense
LPR: Lawful Permanent Resident
MIT: Massachusetts Institute of Technology
MPI: Migration Policy Institute
NCBE: National Conference of Bar Examiners
NCSL: National Conference of State Legislatures
NGO: Non-Governmental Organization
NOID: Notices of Intent to Deny
PRWORA: Personal Responsibility and Work Opportunity Reconciliation Act (of 1996)
PSG: Particular Social Group
RA: Research Assistant
RFE: Requests for Evidence

SIJS: Special Immigrant Juvenile Status
SOUL: Sociology Opportunities for Undergraduate Leaders
SURO: Sociology Undergraduate Research Opportunities
TPS: Temporary Protected Status
TRAC: Transactions Records Access Clearinghouse
UBE: Uniform Bar Examination
UAC: Unaccompanied Alien Child
UNICEF: United Nations Children's Emergency Fund
USCIS: U.S. Citizenship and Immigration Services
U.S.C.: United States Code
U.S.: United States (of America)
VAWA: Violence Against Women Act (of 1994)
WWII: World War II

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Abstract

Immigrant youths who enter the U.S. without inspection present a dilemma for the State. While their classification as 'youth' characterizes them as vulnerable and deserving of protection, their status as 'illegitimate immigrants' poses a threat to the State's control over citizenship. Special Immigrant Juvenile Status (SIJS) emerges as a potential solution. SIJS is a unique law that bridges the laws, institutions, and authorities across two jurisdictions: (1) child and family welfare, which falls under the states' jurisdiction, and (2) immigration, which is a federal matter. To obtain SIJS, youths must first petition a state court judge for findings of parental abuse, abandonment, or neglect, demonstrating that returning to their home country is not in their best interest. These findings enable them to apply for SIJS with federal immigration authorities (USCIS).

This two-step jurisdictional decision-making process presents challenges, confusion, and frustrations for professionals navigating both domains. Lawyers must strategize across two sets of laws and balance competing judicial logics, while state court judges and federal immigration authorities grapple with questions of authority and relativity when logics conflict with established norms. Despite these challenges, SIJS is the most successful and preferred pathway to legal relief for undocumented immigrant youths. While federal authorities often restrict asylum eligibility, state court authorities can (re)open doors to immigration protections. The success of SIJS cases prompts inquiry into why the integration of the child welfare system and

notions of deservingness expands access to immigration protections, particularly within a landscape seeking to limit immigrants' avenues for recognition and protection.

Through SIJS's cross-jurisdictional decision-making process, this dissertation offers a unique perspective on extending immigration benefits through child welfare institutions. It explores three questions: (1) How and why do certain conceptualizations of vulnerability and violence prevail as recognized eligibility criteria for immigration legal relief, while others may not? (2) How does the involvement of non-federal institutions in the case of SIJS expand, rather than contract, immigration benefits? (3) What challenges do legal professionals confront as they work within this cross-jurisdictional law to apply and adjudicate moral categories of deservingness, establishing immigrant youths' eligibility for legal relief?

I argue that conceptualizations of vulnerability and violence in SIJS follow the logics of the U.S. domestic child welfare regime. This alignment renders them more attainable conditions of victimhood for youths, privileging them over other frameworks of suffering. Child welfare laws and institutions operate on a model of comprehensive inclusion and flexibility, with judges generously extending state protections. In contrast, relief forms like asylum tend to operate on an exclusive model driven by the State's suspicion of undocumented immigrants, leading adjudicators to seek reasons to deny rather than approve claims. While this inclusivity in child welfare interventions has facilitated the hyper-surveillance of marginalized families, its application in SIJS cases aids immigrants in accessing legal status, with state court judges serving as crucial gate-openers in immigration governance. Lawyers become key brokers between the institutional logics and authorities of the child welfare and immigration regimes, navigating legal complexities to secure SIJS for their clients while limiting the extension of state surveillance and exclusionary tactics over this population. The SIJS case asks us to consider how

the integration of different institutional logics within immigration governance can open or close doors to benefits based on the moral categories underpinning the institutions' perception of the individual within society.

Chapter 1 Introduction: Vulnerability and Deservingness Among Undocumented Immigrant Youth

CJ, 14-years-old, was held at gunpoint by gangs near his home in Honduras after refusing to join their ranks. They threatened to kill his family, spurring CJ and his mother, Maria, to flee to the U.S. and seek asylum. His application for asylum was denied. Despite finding CJ's story credible and his fear of return reasonable, the immigration judge argued that CJ did not prove that he had suffered harm that rose to the level of persecution, that he would face persecution if he returned to Honduras, or that the government had been unable or unwilling to control the gang. On appeal, however, CJ and his attorney argued that the judge had "erred in denying relief," and "violated his due process rights," in part due to "fail[ing] to advise him of his possibility for SIJ status," given requirements for immigration judges to inform immigrants of their "apparent eligibility" for certain benefits, including SIJS. During CJ and Maria's original asylum hearing testimony, when asked about contact with his father, CJ stated that he had not been in touch with him for several years, noting that his father had departed his and Maria's life a considerable time ago. CJ argued that the information about his father and the death threats established during his testimony should have "raised the reasonable possibility that he might be eligible for SIJS" because it was likely a state court would find that reunification with his father was not viable due to abuse, abandonment, or neglect, and that it would not be in his best interest to return to Honduras because of the death threats (C.J.L.G. v. Sessions 2018).

The Board of Appeals (hereafter "The Board") dismissed the appeal, affirming the original immigration judge's conclusions. The Board argued that it was "not required to advise CJ of a separate state court process that could ultimately form the predicate order for CJ's SIJS application with the immigration judge." The immigration judge pointed out that SIJS "depends on the state court making certain findings before [immigration authorities] may grant him such relief." Because CJ had not yet secured these findings and revealed them during the original hearing, CJ was not "apparently eligible," and the immigration judge was not obligated to inform him of his possible eligibility for SIJS. The Board stated that the immigration judge "is not required to parse the record for evidence of a petitioner's potential eligibility to pursue an independent *state court* action" (C.J.L.G. v. Sessions 2018).

The Board's decision, however, was reviewed by the 9th circuit en banc court, a situation in which the appellate court of a federal judicial circuit votes to rehear a case with all, or many, of the court's active judges. The panel of judges on the 9th circuit's en banc court determined that the immigration judge had actually erred in failing to advise CJ of his potential eligibility for SIJS (C.J.L.G. v. Barr 2019). The en banc court acknowledged that "CJ's eventual ability to obtain SIJ status depends on future decisions by the state court and USCIS," but stated that the "regulation speaks of 'apparent eligibility' and not certain entitlement" of a benefit. With regards to the Board's position that the immigration judge was only obligated to advise someone of their potential SIJS eligibility after obtaining the required state court order, the en banc court determined that was "nonsensical" because it undermined the purpose of the requirement that the immigration judge has a duty to advise aliens of benefits "of which he may not yet be aware." Following the judge's original denial of CJ's asylum claim, CJ successfully obtained the required

state-court order, and he subsequently filed his SIJS petition with USCIS, which the en banc court noted in their decision (C.J.L.G. v. Barr 2019).

*   *   *

CJ's case illuminates two circumstances of interest. First, CJ was denied asylum despite threats of violence made against him and his family by gangs, a danger that alongside his absent father made him eligible to apply for SIJS. CJ's experiences being held at gunpoint and having his family's lives threatened were insufficient to consider him deserving of asylum. However, CJ was eligible for SIJS because a state court determined that the absence of his father for most of his life constituted abandonment and the threats from these gangs demonstrated that it would not be in his best interest to return to Honduras. His deservingness for immigration relief hinged not on his fear of persecution by gang violence in a country that could not protect him, but rather on him being considered an abandoned child.

Second, CJ's case reveals that SIJS is a complex cross-jurisdictional benefit that involves both state court and federal immigration authorities and requires the applicant to navigate both jurisdictions in petitioning for immigration relief. The required state court findings as a prerequisite to federal authorities' determinations introduce questions of and tension over jurisdictional authority. Whether or not the immigration judge was required to inform CJ of his possible eligibility for SIJS, despite not having yet secured the required preliminary findings from a state court, was a debate that unfolded across the original judge, the Board, and an en banc court. While the en banc court concluded that the immigration judge erred in not advising CJ about his potential eligibility for SIJS, the original judge and the Board, on appeal, argued that the immigration judge, as a federal authority, was not obligated to advise someone to pursue a *state court* action. State and federal jurisdictions have separate laws, courts, and authorities that

govern different affairs laid out, and protected by, the U.S. Constitution. As CJ's case exposes, SIJS introduces complex, and often tense, discussions over authority.

Stories like CJ's are not unique. Many youths seeking immigration protections in the U.S., particularly those fleeing Central America, are escaping economic hardship or gang violence in search of better prospects. While the asylum regime in the U.S. frequently denies their eligibility for protection, claims for SIJS tend to have notably higher success rates. Under SIJS, immigration legal relief is granted based on experiences of certain dangers posing threats to the child's safety, instances of past parental abuse, abandonment, or neglect, or assessments by child welfare professionals indicating where the child has a suitable caretaker. Specifically, SIJS is a form of humanitarian immigration relief available to individuals who (1) are unmarried and under the age of 21, (2) have suffered parental abuse, abandonment, or neglect, and (3) have a state court judge assert that it is not in their best interest to return to their home country. These conditions elevate certain narratives of victimization and vulnerability, linking eligibility for immigration relief to an individual's recognition as an abused or neglected child deserving of protection in the U.S.

SIJS cases like CJ's also illustrate the complexities that arise when local or state-level authorities and institutions are incorporated into the federal decision-making apparatus. Specifically, SIJS reveals tensions and conflicts that surface when federal immigration protections hinge on preliminary decisions made by state authorities. While decisions about immigration, including who to extend humanitarian protection to, are federal matters, decisions about children's care, custody, and best interests, are under the authority of the U.S. states. A unique outcome of navigating these two competing jurisdictions in SIJS cases is that while federal authorities frequently close doors to immigration benefits by restricting asylum

eligibility, state court authorities can (re)open these doors. The success of SIJS cases raises the question as to why the incorporation of the child welfare system and conceptualizations of deservingness expands access to immigration protections, especially within a landscape that seeks to restrict immigrants' avenues for recognition and protection.

Research Questions

Through SIJS's cross-jurisdictional decision-making process, this dissertation explores the extension of immigration benefits through child welfare institutions. This dissertation asks three important questions. First, scholars have shown that the State's prerogative to police the boundaries of citizenship and discourage unwanted migration limit immigrants' access to humanitarian protections, creating "hierarchies of harm" (Shiff 2020a) that render certain experiences or identities more deserving of protection than others. Thus, how and why do certain conceptual frameworks of vulnerability and violence prevail as recognized eligibility criteria for immigration legal relief for undocumented youths, while others may not? Second, the devolution of immigration governance through local welfare or law enforcement institutions generally operates to reinforce State apparatuses of punishment and control over immigrants within the country's borders. Therefore, how does the involvement of non-federal institutions in the case of SIJS expand, rather than contract, immigration benefits in the SIJS case? Third, the involvement of different actors can complicate policy implementation as actors from different fields, such as child welfare and immigration, are embedded in different institutional logics and organizational objectives that inform how they approach advocacy and adjudication. Given this unique hybridization of the state child welfare and federal immigration jurisdictions in SIJS, what challenges do the legal professionals involved confront as they work to apply and adjudicate moral categories of deservingness, establishing immigrant youths' eligibility for legal relief?

I argue that the conceptual frameworks governing vulnerability and violence in Special Immigrant Juvenile Status (SIJS) adhere closely to the principles governing the U.S. domestic child welfare regime. Child welfare laws and institutions operate on a model of comprehensive inclusion. As a result, child welfare standards of abuse, abandonment, and neglect are broad and flexible, and judges have a proclivity towards offering help and protection to youths. Consequently, immigrant youths find it easier to gain recognition within these frameworks, thereby prioritizing these conceptualizations of victimhood over alternative understandings. Attorneys can often effectively translate clients' experiences of suffering and harm into evidence of unfit parenting and child endangerment, even though this process frequently requires attorneys to venture into ambiguous legal areas where poverty and community violence intersect with parental neglect. The broadness and comprehensiveness of states' abuse, abandonment, and neglect standards operate to expand, rather than contract, recognition of immigrant youths as "vulnerable," "dependent," and "victims of inadequate parenting," making SIJS a more successful and preferred pathway to immigration legal relief.

In contrast, other forms of humanitarian immigration relief, like asylum, adhere to an exclusive and restrictive model driven by the State's suspicion of undocumented immigrants and its prerogative to regulate access to citizenship. Asylum eligibility rests heavily on the discretion of adjudicators operating within structures that prioritize exclusivity over inclusivity, often seeking reasons to deny rather than approve claims. Thus, while undocumented immigrants frequently encounter challenges in proving their eligibility for scarce immigration protections and benefits, the hybridization of child welfare and immigration systems effectively opens doors to otherwise elusive benefits. This integration leads to significantly higher success rates for SIJS

cases but perpetuates the privileged recognition of protection from family over other understandings of harm and victimization.

Lastly, the SIJS process conjoins laws, norms, institutions, and adjudicators across two different jurisdictions, making it a unique and complex piece of law. The cross-jurisdictional nature of SIJS poses several challenges to the legal professionals involved in the process, particularly regarding jurisdictional authority, awareness and resources, procedural differences, and legal licensing requirements. Attorneys employ "explanatory brokerage" tactics alongside other strategies to move their SIJS cases across jurisdictions, facilitating their success by strategically coupling the policies and practices of the child welfare and immigration systems. They also ensure a degree of separation between adjudicators and evidence, thereby keeping the gate to immigration protections and citizenship ajar. Additionally, their brokerage role between their clients and the logics of these institutions also requires them to convey and rationalize their depictions of parental abuse and neglect to their clients, raising moral dilemmas that attorneys must overcome in justifying their clients' deservingness for this form of legal relief.

Drawing on and conjoining scholarship on migration, child welfare, deservingness, and legal decision-making, this dissertation explores how the involvement of certain local institutions within federal policies can facilitate or hinder individuals' access to benefits based on how categories of deservingness translate across institutions and how conjoined authorities' roles are in the evaluation and implementation of the State's laws. I focus on the ways legal professionals navigate the institutions governing child welfare and immigration to interpret, apply, and legitimize conceptualizations of protection and deservingness. In the domain of domestic child welfare regimes, parental abuse, abandonment, and neglect have long been harnessed to legitimize State intervention in the family, reinforcing State surveillance and policing of families

already disproportionately impacted by the State's more punitive assertions of power. However, in the context of SIJS, the same mechanisms are inversely used to expand immigration legal relief and protection to another marginalized population, undocumented immigrant youths, although not without consequences for their integrity. Legal professionals are able to leverage these broad standards of abuse and neglect, along with institutional procedures that prioritize inclusion, to (re)interpret family affairs and child welfare abroad as evidence of parental abuse or neglect in accordance with certain U.S. expectations. While the hybridization between local and federal institutions typically strengthens the State's penal capacities, SIJS shows that integrating state child welfare norms into federal immigration decisions facilitates access to the State's therapeutic promises. In the sections that follow, I situate SIJS within scholarship on migration, child welfare, deservingness, and legal decision-making and provide a brief background to the legislative history of SIJS.

Between Care and Control: The Left and Right Hands of the Immigration State

Constructions of Moral Deservingness Through Institutional Support and Surveillance

The expansion of neoliberalism reveals the ways in which "care goes hand in hand with discipline" (Ticktin 2011, p. 184) across most social, political, and economic realms of U.S. society. The coupling of the State's left (the extension of benefits and protections) and right (means of coercion, control, or surveillance) hands conjoin institutions' provisions of care and discipline (Paik 2011; Stuart 2016; Sweet 2023; Ticktin 2011; Wacquant 2009). For example, welfare benefits become conditioned on employment to encourage self-sufficiency and discourage dependency (Wacquant 2009). Participation in rehabilitation programs can reduce or eliminate jail time and fines for convicted individuals (Stuart 2016). In child welfare

interventions, the State provides parents with mental health and substance recovery programs but requires participation as a condition for reunifying with their child(ren) (Woodward 2021). The expansion of legal protections for undocumented immigrants who are the victims of trafficking in France has been paralleled with laws that punish women who solicit money for sex or laws that require information sharing about sex traffickers in exchange for residency protections (Ticktin 2011).

These provisions of care and support, while conditioned on or influenced by social control and punishment, are shaped by how these institutions create and apply moral categories of worth. Institutions – and the actors who work for them – are tasked with determining "who" is "deserving" of care and under what "conditions." In doing so, they create boundaries around worthy/unworthy, innocent/guilty, productive/unproductive, victim/aggressor, and the conditions under which people can adjust between them. Paige Sweet (2023) explores how stakeholders' mobilization of trauma discourses leads to an expansion of the State's provision of support services for victims. However, because these services are seen under the guise of protection, they are linked directly to the State's criminal and prosecutorial infrastructures targeting "perpetrators." Talia Shiff (2020a) examines how asylum adjudicators came to focus on certain attributes, like the immutability of certain body characteristics, in creating "hierarchies of harm" to differentiate who should be more deserving of asylum protections. Other scholars indicate the ways in which victims must present themselves as "morally good," "clean," or "innocent," and adjudicators are tasked with evaluating the authenticity of their presentations of self (Lakhani 2013; Sweet 2021; Ticktin 2011).

The hybridization of the logics of care/assistance and control/punishment produced through institutions' engagement in the lives of individuals often (re)produces ideas about

deservingness and worth. Laws and policies extending assistance are often hard to justify when they do not resonate with people's preexisting ideas or visions of who is worthy or vulnerable (Shiff 2020a; Streensland 2006). The institutionalization of norms and values shapes individuals' pathways in this therapeutic-penal, care-control complex. For example, structures of age, race, gender, class, and national background stratify individuals' access to services based on how providers associate individuals' identities with existing images of deviance or deservingness. The institution through which services are extended or accessed also shapes conceptualizations of worth with implications for treatment and control (Gong 2019; Haney 2010; McKim 2017; Ticktin 2011). As I will demonstrate, youths' access to immigration protections through the child welfare system – which is driven by moral conceptions of youths as "helpless" and "dependent" – supports their pathway to legal relief.

The State's Armed Love: Conditions of the State's Compassion for Immigrants

Global trends to alleviate suffering have prompted States to make humanitarian exceptions to their otherwise restrictive immigration policies to extend protection or assistance to immigrants considered in need (Chauvin and Garces-Mascarenas 2014; Galli 2020a; Ticktin 2011, 2014). However, such protections are often accompanied by forms of violence or surveillance, leading Miriam Ticktin (2011) to characterize them as the State's "armed love" (p. 5). The State's humanitarian protections for undocumented immigrants are "*exceptions"* to its prerogative to restrict access to the national jurisdiction (Ticktin 2011). Consequently, the State faces the challenge of defining deservingness by determining who qualifies for such exceptions. Typically, state policies approach immigrants' worthiness with suspicion and doubt, sometimes entangling their benefits in transactions that contribute to State surveillance.

Asylum is one of the most well-known forms of humanitarian protections a state can grant an immigrant who entered the country without inspection. But its low granting rates and its subjection to the State's rather restrictive immigration tactics makes it more an exception to the State's "humanitarian exceptions" (Ticktin 2011). Beyond asylum, the 1990s and 2000s witnessed the expansion of the State's humanitarian protections for immigrants it considers vulnerable and in need of protection. The Violence Against Women Act (VAWA) provides immigrant victims of domestic abuse by a U.S. citizen or resident family member a way to self-petition for permanent residency when their legal status in the U.S. would have otherwise been contingent on the perpetrator's sponsorship. Other visas offer protection and pathways to legal residency for the victims of certain crimes (U-visa) and trafficking (T-visa) who agreed to assist in the prosecution or investigation of the crime. While T-visas, U-visas, and VAWA all have higher acceptance rates[1] than asylum and are underutilized forms of relief for immigrants, they are not without their limitations ((Bistricer 2011; Castellano and Goehrung 2023; Smith 2013). For all three, eligibility is contingent on cooperation with local officials investigating the crime and on their ability to appear to the State as "morally good" victims (Berger 2009; Lakhani 2013). However, for undocumented immigrants, such interactions with authorities are anxiety-inducing, deterring them from cooperating and applying for these forms of relief (Carlson 2023; Minter 2018). Their protection – the State's therapeutic offerings – becomes contingent on opportunities for the State to extend its penal control.

While obtaining asylum is notoriously challenging and other humanitarian options may subject individuals to unwanted punitive measures, youths are afforded another opportunity

[1] (See: U.S. Citizen and Immigration Services (USCIS) 2023a; U.S. Citizen and Immigration Services (USCIS) 2023b; U.S. Citizenship and Immigration Services (USCIS) 2023).

through SIJS. Far more SIJS applications are approved than denied each year, and attorneys find the process better for themselves and their clients, rendering SIJS a promising opportunity. SIJS is an interesting case of the State's armed love because of its relatively easy access and comparatively limited contributions to the State's mechanisms of surveillance and punishment. In a landscape dominated by restrictive immigration policies, where the State's focus on constraining and punishing unauthorized migration often eclipses its humanitarian duties, SIJS stands out as a notable exception. The central involvement of the child welfare system in determining eligibility for this immigration benefit expands the boundaries of deservingness, opening doors to immigration protection for youths. The success of SIJS prompts inquiry into how the involvement of certain local institutions within a federal decision-making process can expand or contract benefits due to how categories of moral deservingness translate across institutional complexes.

Between Criminalization and Humanitarian Relief

The Early Development of the State's Humanitarian Protections

The extension of immigration protections in the U.S. to groups of people considered vulnerable began in the mid-20th century. The U.S. passed its first refugee resettlement law in 1948 – the Displaced Persons Act – to assist World War II (WWII) refugees. Subsequently, policies throughout the mid- to late-1900s expanded refugee eligibility to individuals suffering under communist regimes. These early U.S. refugee policies, however, focused less on broad humanitarian goals and operated, instead, to advance and support foreign policy objectives against communism during the Cold War. In these early decades of refugee laws, the U.S. limited eligibility to individuals fleeing a communist regime or the Middle East who were

victims of racial, religious, or political persecution (Anker and Posner 1981; Gorman 2017; Swanwick 2006).

Eligibility for refugee protections broadened in the later years of the 20th century. The 1980 Refugee Act not only nearly tripled the annual refugee quota but also removed specific geographic or ideological concerns from the eligibility criteria, adopting the definition of a refugee laid out in the 1951 United Nations Convention. As a result, eligibility for refugee protections expanded beyond individuals fleeing specific regimes to more broadly include individuals who established a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" (Bohmer and Shuman 2008). The 1980 Refugee Act also formalized asylum as a legal status (Gorman 2017; Refugee Act 1980). Asylum is the extension of refugee status and benefits to individuals already in the country, legally or otherwise. Prior to 1980, individuals were granted asylum on an ad hoc basis within the U.S., while most humanitarian refugees received formal designation prior to migrating to the U.S. or through processing centers on the border. The broadening of refugee eligibility, combined with standardized and statutory procedures for asylum, opened new doors for migrants to potentially access legal rights in the U.S., particularly for migrants seeking protection upon reaching their destination (Coutin 2011; Gorman 2017).

The Restrictive Turn in Immigration Policy and the Devolution of Immigration Surveillance

While activists applauded this expansion of refugee eligibility criteria, it raised anxieties for State officials concerned with how to exercise selectivity over migration and control unplanned, unauthorized, and unsolicited migration from countries on the other side of the U.S. Southern border (Coutin 2011; Gorman 2017; Martin 1988). Alongside the expansion of refugee eligibility came the increase of Mexican and Central American migrants fleeing economic

hardship and repressive political environments. Central American migrants make up many of today's undocumented immigrant population and constitute most immigrant youths entering the U.S., but they are often the target of the State's restrictive immigration tactics. Despite the broadening of refugee and asylum eligibility beyond Cold War geopolitical concerns, these migrants faced challenges seeking asylum protections due to ongoing foreign policy agendas. U.S. support for the governments in El Salvador and Guatemala during their civil wars, complicates many Central American migrants' efforts to legitimize their claims to asylum, despite the removal of ideological and geographic components to asylum eligibility. The government's denial of civil rights violations by allied governments undermines the legitimacy of these migrants' claims of repression and persecution. As a result, although migration out of these countries has been driven by political oppression from these governments and subsequent gang-related violence, migrants are unable to establish legitimate claims to asylum (Cheng 2011; Coutin 2011; Galli 2020a; Lippert and Rehaag 2013; Orlang 2012; Voss 2005).

The changes to refugee eligibility beginning in the 1980s also had the potential to expand access through the introduction of the broad – and largely undefined – "particular social group" (PSG) category. However, scholars have shown how immigration authorities have deployed tactics to increasingly narrow and restrict recognition within this category (Cheng 2011; Coutin 2011; Orlang 2012; Shiff 2020a, 2020b, 2022). Most Central American migrants apply for asylum under the PSG category (Carlson and Gallagher 2015; Orlang 2012). But these applicants face two significant challenges in light of government efforts to restrict eligibility within the PSG category: (1) showing that they are a member in a group of people targeted by gangs, and that a

shared immutable trait makes their group visible and particular,[2] and (2) defining gang-related violence as relevant persecution as gangs are non-state actors (Cheng 2011; Coutin 2011; Orlang 2012; Shiff 2020a, 2020b, 2022).

The Board of Immigration Appeal's (BIA) "visibility" criteria means that individuals must be able to define the PSG as a group that is particular and has well-defined boundaries. As BIA cases show, for example, "a group made up of male children who lack stable families and meaningful adult protection, who are from middle- and low-income classes, who live in the territories controlled by the MS-13 gang, and who refuse recruitment' is too "amorphous" to demonstrate the requisite particularity" (Coutin 2011:590; Matter of S-E-G- et al. 2008:582-585). Additionally, asylum seekers must show that the persecutor is the government "or an entity that the government is unable or unwilling to control" (U.S. Citizenship and Immigration Services (USCIS) 2023b:11) – a condition that is difficult to prove when the perpetrator is a gang. However, while adjudicators have fiercely worked to contend that such experiences do not constitute such particular group membership, they are willing to be more flexible when it comes to other forms of non-state persecution, such as female genital mutilation or domestic violence.

State efforts to restrict unwanted immigration have also occurred through the expansion of policies that penalize unauthorized immigration broadly across different institutions within society. For example, the Immigration Reform and Control Act (IRCA) of 1986 introduced employer sanctions that punish employers who knowingly hire unauthorized immigrants (Baker 1997; Calavita 1989; Jones-Correa and de Graauw 2013). This renders employers gatekeepers of immigration as *they* become subject to the State's surveillance when they fail to confirm, or they

[2] See: Matter of S-E-G- et al. 2008. This BIA case ruled that Salvadoran youths who have rejected or resisted gang recruitment efforts do not constitute a group of particularly and social visibility.

overlook, documentation authorizing individuals' legal rights to work (Baker 1997; Calavita 1989; Jones-Correa and de Graauw 2013). The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 set new welfare eligibility standards, making it virtually impossible for undocumented immigrants to obtain public welfare benefits. Policies throughout the 1990s and 2000s, especially the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, extended immigration control to local-level law enforcement agencies. These policies broadened the scope of deportable "criminal" offenses and permit local law enforcement collaborations with federal immigration authorities to conduct immigration-related investigations, such as workplace raids (Menjívar et al. 2016; Coleman 2012; Dowling and Inda 2013; Ewing, Martínez, and Rumbaut 2015; Inda 2013; Jones-Correa and de Graauw 2013; Menjívar 2014; Stumpf 2006). The "internationalization" of border controls through the expansion of "crimmigration" is a leading example of how the hybridization of institutions reinforces the State's right hand (Stumpf 2006). The ways in which these policies seek to apply moral categories of "criminal," "threat," and "problem" to immigrants strengthened the State's opportunities for punitive control and the exclusion of immigrants.

Parens Patriae **and the History of State Interventions in the Family**

Child welfare interventions are often State strategies for "getting eyes in the home" (Fong 2020), increasing its control of families already subjected to various forms of State scrutiny. These tactics also bolster the State's penal capacity, strengthening the dominance of its right-handed control over the population. In this section, I will discuss the history of child welfare interventions and how they have grown to disproportionately contribute to the policing and surveillance of ethnic and racial minority families of lower socio-economic status. These tactics have also contributed to the internalization of immigration controls through intervening in the

lives of mixed-citizen families, punishing immigrant parents while protecting citizen children. But amidst all these punitive tactics that reinforce the State's right hand, SIJS emerges as a policy that expands immigration relief and protections. While the devolution of immigration governance has often contracted immigration protections or punished immigrants within the country's borders, SIJS presents a case where the hybridization of child welfare and immigration systems actually opens doors to protections. Paradoxically, this expansion of protection relies on the same mechanisms of the domestic child welfare system that are known to punish and police families.

The Tension Between Family Rights and State Obligations

The U.S. Constitution protects parents' right to direct the care and upbringing of their children, yet the State also asserts that it has the responsibility to protect the well-being of its population, specifically children. The State maintains that when parents fail to care for their children, putting their children in harm's way or contributing to children's reckless behaviors that impact society, it must intervene in the family's lives as *Parens Patriae*, or parent of the country (Platt 1969; Sankaran 2009; Thomas 2007). Modern child welfare laws and institutions are rooted in the State's parens patriae doctrine, serving to protect children without (acceptable) parental care and socialize families in (appropriate) child rearing practices. The State's child rearing expectations, however, are rooted in two-parent White, middle-class, protestant values, contributing to higher numbers of child welfare interventions in families of color and of lower socio-economic status (Cook 1995; Edwards 2019; Fong 2020; Hubner and Wolfson 1998; Kasinsky 1994; Polsky 2001; Reich 2008; Roberts 2002).

In the late 20th century, however, efforts to address these disparities informed new child welfare laws that prioritized family unity as a core tenet of children's well-being. Against the

effort to remove children from their families, states must make all efforts to preserve family unity through preventing the removal of a child from their home and, in the case of removal, make reunification the priority (Adoption Assistance and Child Welfare Act (AACWA) 1980). However, there are limits to these family unity efforts because permanency is also a core tenet of children's well-being. Family unity efforts must be balanced against children's right to a stable and permanent home. Policies set by the Adoption and Safe Families Act (ASFA) of 1997 limit the time that parents have to complete court ordered services to reunify with their children, which is intended to prevent children's prolonged tenure in foster care (Allen and Bissell 2004; Curtis and Denby 2003; Moye and Rinker 2002). Family unity and permanency priorities, however, come into conflict as family reunification requirements for parents are often unmet within the time standards set by policies grounded in permanency efforts. Parents without stable housing or transportation, or who are working jobs with inconsistent hours, face difficulties visiting their child(ren) in care and completing state-ordered services within the required reunification timeline. Thus, the reunification timeline has perpetuated the disproportionate impact of child interventions and separations in ethnoracial minority families and families of lower socio-economic status, reinforcing White middle-class family norms (Kernan and Lansford 2004; Lercara 2016; Roberts 2002).

Policing Immigrant Parents and Protecting Citizen Children

Immigrant families are no exception to these tensions and the impact of state child welfare interventions. Scholars have highlighted how detention and deportation make it nearly impossible for undocumented immigrant parents to fulfil state reunification requirements when Child Protective Services (CPS) claims temporary custody of their often U.S.-born, citizen children (Boehm 2017; Byrd 2013; Fata et al. 2013; Heidbrink 2014a, 2017; Rabin 2011;

Valenzuela 2020). These studies also reveal how states use parents' detention or deportation to justify child neglect and terminate their parental rights (Menjívar et al. 2016; Rodriguez 2016, 2017, 2019). Such actions reflect ideologies among service providers that these (citizen) children would be better off remaining in the U.S as opposed to reunifying with their parents by returning to the parents' country of origin (Flores 2015; Rodriguez 2016; Stumpf 2006, 2020; Valenzuela 2020; Xu 2005). Conditions of immigration precarity and perceptions of cultural differences impact family unity and permanency priorities when child welfare intersects immigration regimes.

SIJS: Extending Protections to Non-Citizen Youths and the Transnationalization of State Interventions

These existing studies of domestic child welfare policies are still limited to showing how the government justifies its intervention in the lives of immigrant families when interventions seek to protect the largely U.S.-born children of immigrants whom the State considers "deserving" of certain family standards. But SIJS offers protection to *non-citizen* youths by intervening in the lives of non-citizen families both residing in the U.S. and in their home countries. In doing so, they extend their moral categories of vulnerability and harm beyond the U.S. national jurisdiction as the children they embrace are non-citizens and the parent(s) who become the object of state assessment are often not present in the U.S. These interventions still have legal consequences for family integrity. On the most severe grounds, they can strip parent(s) of their custody rights or terminate their parental rights during the required child welfare proceedings. Furthermore, SIJS is the only form of immigration relief that precludes recipients from having derivative recipients of the visa protection and the right to sponsor any parent's immigration as a naturalized citizen. Nevertheless, the State's surveillance tactics are

hindered by the impractical impossibility to extend child welfare governance beyond the national jurisdiction. These tactics also do not considerably undermine immigrant youth's desired outcome: humanitarian protections and legal rights to remain in the U.S. Consequently, SIJS appears to combine advantages from both realms: the State's humanitarian protections for immigrants and safeguards for vulnerable youths, with minimal involvement of or exposure to the State's punitive measures.

An Overview of SIJS: The Integration of Child Welfare and Immigration Protections

This brings us to SIJS and how such significant access to legal protections for youths emerged through this intersection of the State's child welfare and immigration regimes. Special Immigrant Juvenile Status (SIJS) was first introduced as a form of immigration relief in the Immigration and Nationality Act (INA) of 1990.[3] SIJS emerged out of child welfare professionals' concerns for undocumented immigrant youths in state foster care who would age out without any continuing benefits or protections. Spearheaded by Ken Borelli, a social worker in Santa Clara County, CA, who had experienced frustrations obtaining amnesty for undocumented immigrant children in foster care, the law was originally intended to help youths in the child welfare system without a parent who could file amnesty for them (Rodriguez 2023). The original SIJS criteria in 1990 stated that immigrant youths simply needed to be eligible for long-term foster care and that a judge needed to determine that it would not be in their best interests to return to their home country. While it did not explicitly state that it required findings of *abuse, abandonment, or neglect*, such circumstances were implied through youths'

[3] The 1990 INA included SIJS as an employment-based fourth preference visa (EB-4). It is unclear why exactly SIJS was included as an employment-based preference. Research into SIJS's legislative history reveals no justification and other scholars remain similarly puzzled.

dependency on the state court and eligibility for long-term foster care. Because of these eligibility criteria, however, SIJS did have implications for family unity. SIJS recipients are considered deserving of this protection *precisely because* they should not, or cannot, be in the care of their parent(s). As a result, the law states that "no natural parent or prior adoptive parent" of any SIJS recipient may "be accorded any rights, privileges, or status" as a parent of the recipient (8 USC § 1101(a)(27)(J)(iii)(II)). Even once the recipient naturalizes as a citizen – which SIJS provides a pathway for – they can never sponsor any parent's migration to the U.S.

Changes to SIJS eligibility unfolded throughout the 1990s and 2000s as child welfare advocates and immigration authorities grappled with how to protect vulnerable children without compromising immigration control. These changes reflect the tensions over moral categories of "worthiness" and "deservingness" that unfolded across competing logics of care (for children) and control (of immigrants). State courts were afforded the authority to make decisions regarding the care and custody of these youths, as the federal government recognized this as their area of expertise. However, concerns arose that certain immigrant youths, such as exchange students, were abusing SIJS to receive legal rights to remain in the U.S., driving amendments in the late 1990s that narrowed eligibility and requested additional federal oversight. The Appropriations Act of 1998 required the state findings of dependency to hinge specifically on parental abuse, abandonment, or neglect. These amendments also introduced more federal oversight by requiring most individuals to obtain permission from federal immigration agencies for the state court to oversee their dependency matters (a topic that will be explained in more detail in Chapter 4).

However, broader concerns about child well-being and children's rights in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA) introduced amendments to SIJS that broadened eligibility criteria in an effort to expand protections to more youths. Under the

2008 TVPRA, immigrant youths are permitted to apply if the state court determines that they cannot reunify with *at least one* parent due to abuse, abandonment, or neglect, making it possible for youths who reunify with one parent in the U.S. to get SIJS. It also removed the requirement that youths must obtain permission from the federal government before seeking a state dependency. However, the 2008 TVPRA did not change the statutory restrictions on SIJS recipients extending benefits to their parents. While the 2008 TVPRA permits youths to reunify with one parent and still be eligible for SIJS, restrictions on sponsorship still apply to *both* parents, including the parent not accused of abuse or neglect.

SIJS is still governed by the 20008 TVPRA.[4] This means that to be eligible for SIJS today, an individual must: (a) be unmarried and under the age of 21 at the time of filing the application with USCIS,[5] (b) be currently living in the United States, and (c) have a valid juvenile state court order that makes three important, and specific, findings. The state court predicate order must declare that: (1) the minor is dependent on the court, or in the custody of a state agency, department, or an individual appointed by the court; (2) the minor cannot be reunified with one or both parents because of abuse, abandonment, neglect, or a similar basis under state law; and (3) it is not in the minor's best interest to return to their home country or their or their parents' last habitual residence.[6]

SIJS was conceived as a minor immigration benefit to extend child welfare protections to vulnerable youths, however, as the most successful and favored immigration benefit today, it has since "metamorphosed into an entirely different immigration relief option" (Borelli cited in

[4] For an overview of the laws governing SIJS and changes since its inception, refer to Table 3.
[5] They must also *remain* unmarried as a "special immigrant juvenile," or until they become legal permanent residents.
[6] For an example of a state court predicate order, see the examples in the appendices of the Washington State Court SIJS Bench Book and Resource Guide (2016) and at the end of the Guidance for SIJS State Court Predicate Orders in California advisory (2021).

Rodriguez 2023; Daugherty 2015; Knoespel 2013; Porter 2001; Rodriguez 2023). Recognition for this form of immigration relief hinges on the ways in which deservingness, protection, and child vulnerability are legitimized within the child welfare regime. Establishing youths' eligibility for SIJS requires legal advocates to creatively broker between their clients' lives and the legal criteria that determine eligibility for humanitarian relief options. They must grapple with how different constructions of their clients' lives can open or close opportunities for legal relief.

The Production of Immigrant Worthiness Under Institutional Constraints

Receiving State assistance and benefits requires the individual to meet certain eligibility criteria. Decisions about "who" is deserving of support unfold across a complex interplay between the thoughts and decisions of individuals, sociopolitical ideologies, and institutional structures. Scholars of street-level bureaucracy have examined the significant role of professionals' discretion and agency in gatekeeping individuals' access to services. As the professionals involved in direct client interactions, their perceptions of and decisions about individuals (de)legitimize their claims of deservingness. Their agency is not unbounded; they operate within the structures, standards, and norms of sociopolitical pressures, institutional socialization, and organizational obligations. Thus, to achieve recognition for their clients, they engage in forms of brokerage between individuals' narratives and these institutional and professional constraints. I situate my study of SIJS within these bodies of scholarship to introduce the new forms of brokerage that attorneys employ when working in a cross-jurisdictional legal environment. When institutions conjoin in a decision-making process like SIJS, attorneys broker between the authorities, laws, and norms of both to simultaneously foster

integration while maintaining separation to continue to promote the extension of welfare benefits through this particular hybridization.

Street-Level Bureaucrats: Agents of Policymaking

The production of state policy and laws unfolds through the actions, interpretations, negotiations, professional obligations, and sociopolitical environments of various intermediaries and adjudicators involved in decision-making and service implementation (Fuglerud 2004; Gupta 1995; Hansen and Stepputat 2001; Morgan and Orloff 2017; Sarat and Clarke 2008; Valenzuela 2021). Laws and policies are legitimized through their enactment by local or national governments, but they become applied and enforced by bureaucrats and lower-level service providers (Borrelli 2022; Calavita 2000; Engelcke 2018; Gilboy 1991; Heyman 1995; Lipsky 1980; Maynard-Moody and Musheno 2003; Maynard-Moody and Portillo 2010). Many of these "street-level bureaucracy" scholars, building on Lipsky (1980), argue that the discretionary actions and decisions of these actors become central to the (re)production of the state's laws and policies.

Scholars studying humanitarian visas for undocumented immigrants that involve the cooperation of local authorities in certifying their experiences reveal the ways in which these discretionary decisions gatekeep individuals' access to benefits. T-visa and U-visa applicants have their victimhood legitimized by local-level authorities who sign certification forms recognizing their victimhood and asserting the survivor's willingness to cooperate in the prosecution of the crime. Yet whether officials sign these forms is subject to their discretion and often motivated by beliefs, values, ideals, and certain stereotypes. Ryan Goehrung and Rachel Castellano (2023) show how survivors of trafficking struggle to find officers willing to sign the certification forms, often due to concerns about credibility. Similarly, Tahja Jensen (2009)

describes how finding an official willing to sign the certification form for a U-visa remains "the first roadblock" (p. 693), a barrier that is not made easier by the choice afforded local authorities who are not legally obligated to sign the form. Regarding SIJS, individual state court judges are afforded extensive discretion in their application of the "best interest" findings for SIJS predicate orders, which can have a positive or negative impact on youths' recognition for SIJS (Paznokas 2017; Xu 2005).

Meso-Level Mediators: The Impact of Social and Organizational Logics

Professionals' decisions, however, are mediated by schemas, logics, and constraints that define what is relevant, appropriate, or permissible in specific situations. Cognitive and cultural schemas, and learned patterns of behavior, shape how actors interpret and organize social interactions (Bourdieu 1985, 1990; Giddens 1984; Sewell 1992). These schemas and patterns develop through various social institutions, such as families, communities, and workplaces. For the professionals who help individuals obtain benefits and recognition within certain categories of deservingness, many of the schemas informing their work – and outcomes for these individuals – originate from their professional obligations, the institutional norms and structures of their field, and the broader sociopolitical environment in which they operate (Affolter 2020; Borrelli 2022; Fuglerud 2004; Heyman 1995; Oberfield 2014).

SIJS reveals a specific way in which local sociopolitical environments and institutional structures impact how professionals respond in certain situations and whether individuals obtain recognition. In SIJS decision-making, different state- and local-level political and social environments impact the work of relevant professionals (primarily attorneys, social workers, and judges). The outcomes for SIJS applicants vary significantly depending on the U.S. state where the Department of Health and Human Services (HHS) reunites these youths with a sponsor

(Harris 20015). First, judges' willingness to embrace or their efforts to pushback on these cases can help or hinder youths' access to SIJS (Price 2017). When judges themselves or the communities they serve carry deep anti-immigrant sentiments, these sociopolitical beliefs negatively influence judges' willingness to ascertain the necessary best interest or abuse/neglect findings. As a result, the actions of individual judges can operate to deny youths' access to the necessary state court recognition as an abused or abandoned child that renders them eligible for SIJS (Blue et al. 2020; Perlmutter 2019).

Second, scholars have also shown how variations in states' court structures and standards for abuse, abandonment, and neglect, result in different opportunities for obtaining the necessary recognition from state courts to successfully petition for SIJS (Catangay 2016; Harris 2015; Pulitzer 2014). The federal statute governing SIJS considers youths under the age of twenty-one eligible to apply, but not all states have laws allowing family courts to hear and grant cases for youths over the age of eighteen (Hlass 2014; Price 2017). Similarly, what can meet one state's standard for abuse or neglect, may not rise to abuse or neglect in another state. These differences can also be reinforced by states' case laws that produce norms and precedents shaping professionals' arguments. As Hlass (2014) describes, the availability of such case law can limit judges' discretionary decisions in hearing cases for SIJS applicants because judges are legally bound to these previous decisions.

Third, the different laws, precedents, and values of states' child welfare regimes and those of the federal immigration system reveal the different institutional logics governing how professionals operating within each field consider and respond to different situations. Institutional logics are "the socially constructed historical patterns of cultural symbols and material practices" that provide actors with meaning, shape actors' reasoning, and guide

decision-making (Thornton and Ocasio 2008; Thornton, Ocasio, and Lounsbury 2012:2) Society is composed of various institutions and orders that determine what is meaningful and legitimate in any given context (Thornton et al. 2012). Institutional logics provide frameworks of 'deservingness,' 'vulnerability,' and 'victimhood' that are seen as legitimate within a given field. Child welfare laws and organizations have legitimized ideas about vulnerability, family rearing, and childhood that structure their decisions and arguments about child removal and reunification. Federal immigration bureaucracies have produced categories of vulnerability, worth, and deservingness that shape policies of inclusion and exclusion towards immigrants. The involvement of different actors can complicate policy implementation as actors from different fields, such as child welfare and immigration, bring different institutional logics and objectives to the decision-making and adjudication process (Hill and Hupe 2003; Michel, Meza, and Cejudo 2022).

Finally, organizational culture and bureaucratic structures also shape professionals' actions (Affolter 2020; Alpes and Spire 2014; Borrelli 2021; Fassin 2015; Fuglerud 2004; Heyman 1995; Oberfield 2014). Professionals' actions are informed by the goals, norms, and missions of the institutions within which they work. These schemas foster their professional habitus, developing the professional identity through which they interact with clients. Laura Affolter (2020) argues that these habituses develop through how professionals learn to do their jobs, how colleagues reinforce institutional ideas and behaviors, and how they relate to the work and system within which they work. People's position within their organization's structure of relationships and oversight also shapes their decision-making process (Affolter 2020; Brodkin 2011; Wakisaka 2022). In the case of SIJS, government child welfare agencies, Bar associations, legal aid NGOs, and federal immigration bureaucracies embody different organizational cultures,

goals, and hierarchies, influencing the professional and institutional habituses of those who work for them. As I turn to next, these meso-level mediators contribute to the brokerage role that attorneys play between their clients and the available laws.

Brokering Between Actors, Logics, and Clients' Experiences

Humanitarian relief visas for immigrants require legal professionals to broker between the State's laws and policies and their clients, facilitating clients' understanding of the law and negotiating their relationship to any given law. Importantly, professionals must craft their clients' lives into legible and, hopefully, credible cases of victimhood, vulnerability, and deservingness according to the laws and legal norms with which they must work (Berger 2009; Bhuyan 2008; Galli 2023; Holstein and Miller 1990; Kim 2022; McKinley 1997; Villalón 2010). Through this brokerage, attorneys mediate immigrants' access to legal benefits and reinforce or challenge eligibility criteria and membership in certain categories (Coutin 2000; Galli 2023). Sarah Lakhani (2013) shows how attorneys position U-visa clients as contributing members of society with clean, innocent narratives; they craft persuasive accounts of their clients' lives to conform to adjudicators' expectations of deservingness. This involves selectively emphasizing or ignoring aspects of clients' lives in depicting their experiences, reinforcing certain identities or situations or actions as 'good' or 'bad' in determining successful candidates (Berger 2009; Lakhani 2013). Chiara Galli (2018) reveals that attorneys try to depict youths as innocent, vulnerable, and dependent children, as they recognize these narratives afford them the best chance of recognition as deserving for certain forms of relief.

While these advocacy efforts facilitate immigrants' access to protections and benefits, they reinforce certain narratives as deserving over others. Constructing narratives to conform to legal norms and precedents can also reinforce gendered, racial, and classed stereotypes of

victimhood (Castellano and Goehrung 2023; Galli 2018; Sweet 2019; Villalón 2010; Watson 2023). As Michelle McKinley (1997) shows, legal advocates often promote and reinforce negative cultural stereotypes of non-Western cultures in eliciting persuasive arguments from their clients' experiences. Individuals seeking membership in a given category likewise come to perform these narratives to construe their legitimacy to adjudications. But in turn, clients and petitioners come to not only perform but also embody these narratives of self. As Cecilia Menjivar and Sarah Lakhani (2016) argue, the new behaviors, ideas, and practices that immigrants adopt in their efforts to achieve recognition as deserving of legal residency and citizenship become fundamental alterations to their self, not just temporary modifications or performances. Similarly, Susan Berger (2009) describes how VAWA applicants undergo a "cultural restructuring" as they perform certain victim narratives that can reshape how they think about themselves and their identities as women and victims.

Translating clients' experiences into legible cases of deservingness requires legal professionals to activate clients' "humanitarian capital" in giving value to certain instances of suffering (Galli 2020). The value that attorneys can give certain instances of suffering within clients' lives contributes to adjudicators' recognition of these instances as credible and legitimate claims for certain protections (Galli 2020, p.2184). Attorneys' assessment of individuals' humanitarian capital, however, indicates another crucial way that attorneys broker between their clients and humanitarian relief. To evaluate the potential success of a case – or how likely adjudicators will validate a clients' deservingness– attorneys "rank and quantify" clients' suffering to evaluate whether cases are strong (more likely to win) or weak (likely to fail) (Galli 2020, p. 2191). This process involves comparing clients' narratives with past successful cases to determine whether to support a client's case.

When attorneys broker between their clients and the laws, they reinforce or challenge the State's perceptions of deservingness and victimhood. Challenging these norms has the potential to broaden what adjudicators see as legitimate suffering or vulnerability required for certain forms of relief. However, attorneys often face constraints imposed by professional demands and organizational expectations, which typically reinforces existing boundaries regarding what is considered deserving of protection. Legal organizations and advocates strive for success and efficiency, often focusing on cases and narratives that allow them to assist the most clients and secure the most approvals (Galli 2023; Lakhani 2019; Villalón 2010; Yu 2023a). The "ranking and quantifying" of clients' suffering reflects the ways in which attorneys assess case winnability to maximize successful case representation and minimize the burden of cases on their time and resources (Yu 2023b), a strategy Chiara Galli (2023) refers to as organizations' *triage model* (p. 117-123). As Catherine Crooke (2023) shows, the intensity or longevity of case involvement impacts attorneys' capacity for work on certain cases. Determining which clients are "good fits" – or more likely to yield success for the attorney and their organization or firm – shifts based on organizations' funding, goals, specialties, and capacities (Yu 2023a). Thus, attorneys' brokerage role involves not only translating their clients' lives into legible claims for protection, but it also involves evaluating how successful or burdensome cases might be.

Brokering Across Institutions: Bridging and Separating Logics

The SIJS case reveals a new and important way that attorneys, and supporting professionals, broker between their clients and institutional norms and structures to secure legal relief for undocumented immigrants. I extend legal brokerage scholarship to include how these professionals must also mediate between the laws, courts, and adjudicators *across* jurisdictions in successfully legitimating clients' deservingness for SIJS. Attorneys must have a command of the

rules, norms, and practices that structure both child welfare and immigration decisions. They need to bridge these institutional spaces to an extent so that state court judges understand their obligation in the state court predicate order needed to support a successful immigration case. Yet they also have a vested interest in keeping these institutions separate while they navigate across them in the SIJS process. Currently, the involvement of the child welfare regime in this immigration decision-making process *expands* immigrants' access to benefits, *opening* doors for legal protections. But as scholarship on the hybridization of institutions and devolution of immigration governance demonstrates, the merging of local and federal institutions often has the effect of extending or bolstering the State's punitive, or penal, policies. This operates largely to *restrict* access to protections or *contract* benefits. In this brokerage role between the child welfare system and the federal immigration bureaucracy, attorneys reinforce among state court judges that they are not making immigration decisions and restrict federal authorities' attempts to (re)evaluate and (re)adjudicate the state court case. Keeping some separation between the two realms of laws, institutions, and authorities facilitates immigrant youths' access to important legal protections.

Data and Methods

To best understand how these various intermediaries and adjudicators grapple with the complexities of determining outcomes and advocating for undocumented immigrant youths at the intersection of immigration and child welfare regimes, this study relies on a multi-method qualitative approach. I triangulate (1) documentary analysis of appellate court cases involving undocumented immigrant youths, (2) in-depth interviews with social workers, attorneys, paralegals, judicial clerks, and judges assisting with and settling the cases of these youths, and

(3) virtual observations of legal trainings from NGOs for attorneys and judges involved with youths' cases.

Analyzing the written opinions and decisions in appellate court cases illuminates how attorneys framed suffering and vulnerability in their cases, as well as the reasoning given for why the case was appealed. These cases provide clear examples of the evidentiary criteria and standards used in SIJS cases and state court judges' responses to these cases. Importantly, given the low response rate from state court judges, the court case data provide an opportune window into judicial decision-making on SIJS cases beyond reflections shared in interviews with state court judges willing to speak with me. The court case data also allowed me to trace how cases were presented, adjudicated, and interpreted by judicial authorities over a longer time span.

The court case data show how attorneys substantiated and argued SIJS cases, but it is only through interviews with attorneys, social workers, and judges that we can deepen our understanding of how these professionals perceive their role, the evidentiary criteria, the SIJS legal process, and the lives of undocumented youths they are working with. While I did not speak directly with immigrant youths or their parents or guardians, the interviews with attorneys and social workers provided some insight into the experience undocumented immigrant youths and their families face when petitioning for legal relief. It is also through interviews that I can learn more about cases that are initially granted or denied and not appealed, combatting some of the limitations in my textual data, which provide insight only into appealed cases.

Finally, the observations of webinars provide insight into how professionals are trained to identify, develop, and substantiate SIJS cases. The triangulation of these data allows me to capitalize on new forms of information exchange and accessibility made possible through the 'virtualization' of life brought on by COVID-19 as well as obtain a more comprehensive and

richer understanding of the SIJS decision-making process. I analyzed the court cases, interview transcripts, and webinar notes using grounded theory approaches, and I coded and analyzed these data alongside several Sociology Undergraduate Research Opportunities (SURO) research assistants (RAs) using Dedoose software. This project received an exemption through the University of Michigan's IRB (HUM00195347).

Interview Data (n=57)

Data collection: I conducted 57 Zoom or phone interviews with 31 attorneys, two paralegals, 13 state court judges and commissioners, two judicial clerks, and nine social workers involved in supporting, filing, and adjudicating undocumented immigrant youths' cases for immigration legal relief. While I had initially intended to confine interviews to the 9th federal circuit, sampling opportunities and the importance of perspectives from other geographical locations in the U.S. quickly changed the scope of my interviews to all 50 U.S. states. I relied on networking platforms (LinkedIn and various Listservs), professional organizations, snowball sampling, and targeted outreach based on state databases of judiciary officers and legal aid organizations to diversify my sample and capture geographic variance that might have influenced professionals' work and immigrant youths' cases. My initial recruitment skewed representation from Democratic-leaning states and counties with higher concentrations of immigrant populations and immigration service resources. Thus, through targeted outreach, I specifically attempted to recruit professionals working in states and counties that varied my existing interview data by recruiting from conservative-leaning states, different federal judicial circuits, and rural and resource-limited counties.

To recruit judges, I initially relied on personal connections and networks, and then began randomly selecting five counties each week to contact the county clerk or judges' office via

email or phone. I also relied on snowball sampling from interviewed judges, names mentioned during interviews with attorneys, and the judges involved in decision making on the cases in the court case database to try and bolster recruitment and participation. Recruiting and speaking with judges was the most challenging aspect of this research. In most efforts, I received no response or received responses declining participation due to time constraints or no familiarity/experience with SIJS.

Data Analysis: Prior to each interview, I received verbal participation consent from each interviewee. With interviewees' permission, most interviews were recorded and transcribed verbatim by me, two student RAs, or a professional transcriber. I took detailed notes during the few interviews conducted over the phone or where the participant did not consent to recording (n=5) and subsequently typed the interview notes. All interviewees were assigned a pseudonym that was randomly generated through an online tool, accounting for the individual's self-identified gender and race/ethnic background. Attorneys, paralegals, and social workers were asked to self-identify their race/ethnic identity, gender identity, family's socioeconomic status growing up, and their self-affiliation as an immigrant, part of an immigrant family, or part of an immigrant community. Because of the shortened interview time with judges, potential race/ethnic and gender/sex identity were ascribed by the interviewer for simple comparison across White and non-White judges and female and male judges. Table 1 below provides an overview of interview participants.

The transcripts were uploaded into a Dedoose project, and I created descriptors for the interview data that reflected (a) the demographic data collected from interviewees and (b) state-based descriptors used for the court case data as well. All interview transcripts were assigned the following descriptors: a numeric code, pseudonym, race/ethnicity, sex/gender, state, state

political leaning, state immigration population, and federal judicial circuit. While I included the U.S. state where the professional resides and practices in my descriptors, I used state as a proxy for geographic political leaning and the density of immigrant populations that may impact resource availability and service accessibility. I do not refer to practitioners’ states of practice in my analysis to preserve anonymity, which was a concern among practitioners in low-resource, often conservative states. RAs and I determined categories for the immigrant population of the states where practitioners worked using data from the Migration Policy Institute (MPI). We calculated the percentage of the state’s population identified as immigrants from 1990-2021 and averaged these percentages. We then grouped these averaged percentages into five groupings based on percentiles: the 5th (very low), 25th (low), 50th (mid), 75th (high), and 95th (very high) percentiles. To calculate the state's political leaning, we relied on data from the National Conference of State Legislatures (NCSL) to calculate the proportion of years each state legislature was controlled by Republican or Democratic parties, or was split, from 2009-2023, and classified practitioners' states as either Democratic, Republican, or politically split based on the majority leaning across these years. For the two states with unicameral state legislatures (D.C. and Nebraska), we relied on whether these states leaned Democratic or Republican in the Presidential Elections across the same years. For an overview of interview participants, see Table 1 below. For a list of interviewee descriptors and their definitions, see Appendix A.

Table 1: Description of Interviewees

		N (%)			
		Attorney/paralegal	Judge/clerk	Social worker	Total
		n=33 (58%)	n=15 (26%)	n=9 (16%)	57 (100%)
Descriptor					
Gender Identification					
	Female	23 (70%)	9 (60%)	8 (89%)	40 (70%)
	Male	8 (24%)	6 (40%)	0 (0%)	14 (24.5%)
	Other	1 (3%)	0 (0%)	0 (0%)	1 (2%)
	Not Identified	1 (3%)	0 (0%)	1 (11%)	2 (3.5%)
Racial/Ethnic Identification					
	White	15 (45.5%)	10 (66.7%)	5 (55.6%)	30 (53%)
	Hispanic/Latinx	14 (42.4%)	3 (20%)	3 (33.3%)	20 (35%)
	Asian	2 (6.1%)	0 (0%)	0 (0%)	2 (3.5%)
	African American	1 (3%)	2 (13.3%)	0 (0%)	3 (5%)
	Not Identified	1 (3%)	0 (0%)	1 (11.1%)	2 (3.5%)
State's Political Leaning					
	Democratic	13 (39.4%)	10 (66.7%)	6 (66.7%)	29 (51%)
	Republican	12 (36.4%)	3 (20%)	3 (33.3%)	18 (31.5%)
	Split	8 (24.2%)	2 (13.3%)	0 (0%)	10 (17.5%)
State's Immigrant Population					
	Very High	6 (18.2%)	5 (33%)	2 (22.2%)	13 (22.8%)
	High	4 (12.1%)	4 (27%)	1 (11.1%)	9 (15.8%)
	Mid	12 (36.4%)	5 (33%)	4 (44.5%)	21 (36.8%)
	Low	3 (9.1%)	1 (7%)	1 (11.1%)	5 (8.8%)
	Very Low	8 (24.2%)	0 (0%)	1 (11.1%)	9 (15.8%)

To analyze the interview data, I created an initial list of core codes that I derived from (a) the research questions, (b) key themes in the relevant literature, and (c) preliminary findings of important themes from the ongoing court case data analysis. Ella Enquist, an undergraduate RA, and I then each read a subset of the interview transcripts from each profession group and added important primary codes and sub-codes to the list that reflected important themes and trends in the interview data. We compared our notes and revised the list of themes, consolidating our initial analyses into a final list of parent and child codes for analysis of the interview data. We defined each code and entered the codes and their definitions into the Dedoose software. We then read and coded the transcripts. In the process of coding, we added a few additional codes and sub-codes to our list that we realized were significant and different from the existing codes. We then returned to the transcripts to code for the added codes, when relevant. Ella then subsequently read the data contained in each code, writing memos summarizing the main findings of each code and, in a few cases, creating additional child codes for certain codes we decided were too broad. See Appendix B for the interview data codebook.

State Appellate Court Case Data (n=327)

In addition to conducting interviews, I analyzed state appellate court cases from all 50 U.S. States involving SIJS-relevant predicate findings in family, dependency, or juvenile courts. Since SIJS was enacted in 1990, I analyzed all cases between 1990-2021. While it is sometimes the parent/guardian appealing a guardianship, custody, or parental rights decision against them, it is generally the immigrant youth client and their attorney appealing the state court's decision not to make the necessary SIJS predicate order findings in the state court. This is because the attorney and their client are often in pursuit of SIJS legal relief in immigration court, which requires these outcomes in family court.

Data collection: I identified relevant court cases that had been appealed and compiled them into a database using the NexisLexis database and the invaluable support of several undergraduate RAs between March of 2021 and March 2023. The compilation of these cases into a dataset for analysis involved several stages: (1) the creation of search criteria to identify relevant cases in NexisLexis; (2) the process of determining the relevance of each case from the search for inclusion in the dataset; (3) checking for and removing duplicate cases.

I first identified a set of search criteria to broadly identify child welfare cases involving undocumented immigrant youths and used these search criteria for cases within state appellate courts in each of the 50 U.S. states. I used the following combinations of search terms: ("Special Immigrant Juvenile" or "unaccompanied alien child*" or "unaccompanied minor" or "undocumented minor") AND ("abandon*" or "neglect" or "abuse" or "deport*" or "orphan" or "foster care" or "child adoption" or "adjustment of status" or "termination of parental rights" or "termination of guardian rights" or "best interest"). In Winter 2021 and Fall 2021, RAs and I then compiled the returned cases for each search into an excel spreadsheet (n=1282). I then compiled the relevant cases into a single data set in a new spreadsheet. We then removed duplicate cases across the different search combinations. Fall 2021 and Winter 2022 RAs then determined the relevancy of the cases and adjudicated whether they should be included in the final dataset for analysis. Two RAs were assigned cases under each search return, and they independently adjudicated the relevancy of the case for the project relying on a set of preliminary research questions. Cases that both RAs determined to be irrelevant were removed from the dataset, and cases that both RAs determined to be relevant remained in the dataset. Cases where

the initial RAs disagreed about the relevancy of a case were adjudicated by me or a third RA between January and August of 2022.

Through the process of adjudicating for relevancy, we identified further possible duplicate cases that we did not identify in our initial search for duplicate cases because they (a) had a different decision date due to later decision being made on a case, or (b) because they had originally been 'unpublished' opinions that later became 'published' opinions. We identified these cases by comparing their case names and reading both cases to confirm whether it was truly a duplicate case or was a separate case. We removed the duplicates from the data, always keeping the most recent version, resulting in a final dataset of 327 unique appellate cases between 1990 and 2021.

Data Analysis: To code and analyze the court case data, I created a project and uploaded the 327 case PDFs into the Dedoose software. A team of RAs and I began initial coding of the court cases in Dedoose in the Fall of 2022. We relied on grounded theory and inductive code development in our initial coding of the cases. We created core themes from the initial search criteria and research questions, and we derived codes for the data inductively through reading the court cases. Each case was read and coded by two independent RAs. RAs who worked on the project described this two-coder process for the coding of the state court cases as an important way to identify key relevant trends and evidence in the data and provide oversight that could reduce the influence of bias. Two coders may also notice different themes in the data, which makes an inductive analysis more thorough.

In Winter 2023, SURO RAs and myself determined the descriptors – attributes and characteristics about the state court cases that would provide for comparative analysis of evidence – for the court case data through collaborative research and discussion. From the

literature, I identified important themes from which to think about case attributes we wanted to use for comparative analysis of the data. These included: the time period in which the case was heard, politics, the impact of different judicial circuits, and the concentration of immigrant communities and networks. Each RA and I independently derived a list of case descriptors, their categories, their definitions, and the credibility of the data they used to determine and define these attributes. We then collectively discussed our findings and agreed on a final list of descriptors, categories, and definitions (see Appendix A for a list of the data descriptors and their definitions). The descriptors were added to the court case data during Spring/Summer 2023.

In Fall 2023, SURO RAs and myself conducted a second round of coding by revising and consolidating the existing codes in the court case data into a more refined list of parent and child codes. These focused codes helped guide analysis of how legal professionals constructed and adjudicated evidence of abuse, abandonment, and neglect, immigrant youths' best interests, and disagreements about jurisdictional authority. We analyzed the data within each code from the initial analysis to determine (a) codes that were too broad that needed to be re-coded into different sub-themes; (b) codes that were similar and should be grouped together under a new umbrella code; (c) codes that needed to be combined into a single code; (d) and codes that needed to be renamed to better reflect the core theme of the data within that code. We also provided clear definitions for each parent and child code at this stage. SURO RAs and I worked independently to identify and revise codes and code groups, and we discussed and agreed on revisions over the course of several meetings (see Appendix C for the final court case codebook that resulted from this second coding process). Once we agreed on a final set of parent and child codes, we created and edited these codes in Dedoose accordingly.

Training Webinar Data (n=11)

Data Collection: I identified live and recorded webinars on topics related to both SIJS and working with undocumented immigrant youths seeking legal relief more broadly through two major legal resource organizations dedicated to training and assisting legal professionals, as well as those advertised by the American Bar Association (ABA). The Children's Immigration Law Academy (CILA) and the Immigrant Legal Resource Center (ILRC) are well-respected organizations, and their resources were often mentioned by the legal professionals I interviewed. In total, I observed 11 webinars. While most webinars I observed were recordings of previous live webinars, I did participate in some live webinars. In these live webinars, I was a passive observer. I did not interact with other participants or the hosts, and I did not participate in activities, such as polls. Given the format of the live webinars, I was also unable to observe interactions between participants or the reactions of participants during the webinar. I was, however, able to observe responses to polls and Q&A in the comment tab. During my observations, I took extensive notes of information presented, who was presenting, and how participants reacted to the material through questions and comments. Because I was observing these trainings on my computer, I also utilized a screenshot tool to capture poll responses, case studies presented, and the exact presentation of certain material. I compiled my notes into a single document divided by headers for each webinar.

Data Analysis: I applied the same set of codes from my interview data to my webinar observation notes for a parallel comparison with the information shared by interviewees. Following analysis of my interview data, I also created a summary of each webinar with a memo regarding how it related to specific themes and trends that emerged in my interview data. I then also created a memo for how information presented in certain webinars paralleled trends I was finding in the court case data, specifically in how evidence of abuse, abandonment, and neglect

was framed, or the best interest of the child was interpreted. While the webinar data was supplementary to my two primary forms of data – interview and court case data – I found important complementary themes, providing a link between how legal professionals are trained and the legal constructions they produce.

Additional Materials: Archival Documents and Secondary Sources

In addition to the three primary data sources, I supplemented my data with archival documents and secondary sources. I analyzed congressional documents, Memoranda from government agencies, and ombudsman reports to understand the legislative history of and underlying debates regarding SIJS. I also read policy manuals and state court benchbooks (legal guidelines for judges) to understand how materials informed federal government authorities and state court judges to adjudicate cases. I analyzed the information requested and how it was presented on all official forms for humanitarian legal relief. Additionally, I incorporate the research of many scholars, particularly the few who have conducted extensive qualitative research on undocumented immigrant youths pursuing humanitarian legal relief.

Organization of the Dissertation

This dissertation is organized into five empirical chapters, followed by the conclusion. Chapter 2-4 primarily address the dissertations first two research questions, which are (1) how and why do certain conceptualizations of vulnerability and violence prevail as recognized eligibility criteria for immigration legal relief for undocumented youths, while others may not? And (2) how does the involvement of non-federal institutions in the case of SIJS expand, rather than contract, immigration benefits? Chapters 5-6 primarily address the dissertation's third question: in this unique hybridization of the state child welfare and federal immigration

jurisdictions, what challenges do the legal professionals involved confront as they work to apply and adjudicate moral categories of deservingness, establishing immigrant youths' eligibility for legal relief?

Chapter 2 builds on a co-authored article with Yakirah Mitchel comparing SIJS and asylum outcomes and experiences for undocumented immigrant youths. I argue that the crucial role of the state child welfare court in recognizing immigrant youths as victims of parental abuse, abandonment, and neglect makes it easier for youths to establish legitimate vulnerability and victimhood to qualify for SIJS immigration benefits. The central involvement of the state courts also makes the process of applying for SIJS comparatively a less traumatic and invasive procedure, rendering it a better option for youths. As a result, SIJS is a more successful and easier pathway to legal relief for immigrant youths. Attorneys' preference for SIJS also helps prioritize victimhood based on parental abuse, abandonment, or neglect as more worthy of protection. While attorneys weigh the pros and cons of different relief options, they often promote SIJS for its promising success rate and child-friendly procedure.

Building on these ideas, Chapter 3 closely examines how eligibility for SIJS is embedded within the institutions, norms, and expectations of the child welfare system. I identify how the involvement of state family, juvenile, or dependency courts in the process of extending immigrant youths' immigration protections results in family dynamics abroad being (re)interpreted through U.S. laws and norms of child well-being. While there are certainly substantiated cases of abuse and neglect, securing legal relief for youths through SIJS often requires attorneys to teeter into grey areas that conflate poverty and community violence as parental neglect. Such conceptualization of abuse or neglect in the U.S. are precisely what makes the child welfare system an extension of the State's surveillance and control over already-

marginalized families. However, these same mechanisms make it easier for youths' experiences abroad to meet the definitions of abuse and neglect and be considered in need of state protection in the U.S. Legal advocates – attorneys, paralegals, and social workers – must grapple with these moral dilemmas as they justify these required depictions of parents to their clients in the process of securing them immigration legal relief. Finally, this chapter shows how SIJS's framing of abused and neglected children as deserving immigrants privileges the narrative that parents, not countries, governments, or State failure, are to blame for the victimization of children. Collectively with Chapter 2, I show how legal professionals contribute to the privileged recognition of protection from family over other visions of harm and victimization. SIJS's higher success rate prompts attorneys to find evidence of parental abuse and neglect, reinforcing these conceptualizations of vulnerability as stronger and more valuable humanitarian capital.

In Chapter 4, I trace the legislative history of SIJS and build on legal scholars' analysis of the federal consent function in SIJS to illustrate how state court authority over key SIJS eligibility criteria – namely the evidence of abuse, abandonment, neglect, and the child's best interest – limits federal authorities' exercise of discretion in determining SIJS applicants' eligibility. The incorporation of state court authority in determining an essential element of the eligibility criteria confines federal authorities' exercise of discretion in their decision-making. As a result, the governance of SIJS immigration benefits through the child welfare system operates to expand access to relief. I compare SIJS with the U-visa and marriage-based immigration visas – two other immigrant visas that involve state/local authorities and federal immigration authorities – to argue how the authority granted the state court in SIJS is not afforded state institutions in decisions regarding eligibility for the U-visa or marriage-based visas. As a result, federal discretionary decision-making has more power in U-visas and marriage-based visas.

These negotiations pinpoint the challenges of cross-jurisdictional decision-making and exemplify how understandings of authority unfold among adjudicators across jurisdictions.

Chapters 5 and 6 turn our attention to the challenges that legal professionals encounter working in a legal environment that conjoins the logics of child welfare and immigration. Chapter 5 focuses on the views and experiences of state court judges who have heard SIJS predicate orders. I discuss how the uniqueness of SIJS as a cross-jurisdictional law raises confusion and concern for state court judges regarding their authority to make decisions on these orders, despite the statutory differentiation between the child welfare predicate order findings and subsequent immigration determination. State court judges also raise concerns and questions about how SIJS is similar to and different from the local child welfare cases they hear regularly. State court judges are accustomed to certain procedural standards in court dependency cases and their continued involvement in the child's well-being. But the ways in which SIJS interjects into this system is quite different, leaving judges to grapple with how to navigate and understand their role in SIJS.

Judges raise concerns about three procedural differences: (1) The desired outcome in an SIJS case is different from the desired outcome in traditional child welfare cases. Whereas family reunification is the goal of traditional child welfare cases, SIJS seeks the exact opposite goal. (2) Relatedly, with SIJS cases, judges do not provide services, a parenting plan, or conduct a child welfare investigation. (3) In part because of these differences, judges express concerns about due process and due diligence across international borders and amidst the urgency with which attorneys need these cases decided. While SIJS relies on the state's child welfare laws and institutions, it does so while seeking different court involvement and procedural outcomes. This, I argue, reflects SIJS's ability to capitalize on the extension of benefits that come from youths'

recognition as "victims of parental abuse or neglect" without the ongoing surveillance that traditionally characterizes child welfare interventions as an extension of the State's punitive control over already-marginalized populations.

Finally, Chapter 6 explores the challenges faced and strategies employed by the attorneys, and supporting paralegals and social workers, advocating for immigrant youths' legal relief. I extend scholarship on legal brokerage to include how attorneys, paralegals, and social workers must broker not only between their clients and the laws but also between laws, courts, and judicial authorities when jurisdictions intersect. Collaboratively, Ella Engquist and I argue that navigating a cross-jurisdictional space where authorities (judges) lack certainty about their decision-making authority results in an additional labor performed by attorneys and, occasionally, supporting social workers and paralegals. I depict the ways in which attorneys engage in "explanatory brokerage" as a defensive strategy – a means to challenge judicial push back to their case at the state court level – and as an offensive strategy – a way to preempt potential pushback and confusion and learn about judges' existing familiarity with the matter. Their role as explanatory brokers often becomes a burden as it increases their labor and feels like an educational role they should not have to fulfill. This burden is highest on those working in geographic environments with existing compounding challenges, such as politically conservative counties or areas with fewer immigrants and limited resources for helping immigrant communities. Through describing these explanatory techniques, as well as the other strategies attorneys deploy to move their cases across jurisdictions, I show how attorneys facilitate the success of SIJS by conjoining the policies and practices of the child welfare and immigration systems while also maintaining separation between adjudicators and evidence to limit the possible extension of State surveillance and exclusionary tactics.

To conclude, I return to CJ’s story that highlights the selective prioritization of certain narratives of vulnerability and victimhood as legitimate qualifiers for immigration relief, as well as questions of authority that arise in cross-jurisdictional legal contexts. Following a summary of the dissertation’s research questions, I outline its contributions to scholarship on immigration law and policy, hybrid institutions, the politics of deservingness, and legal brokerage. By examining the internalization of immigration control and the devolution of governance, this study underscores how local institutions' involvement can favor the State’s therapeutic approaches over disciplinary tactics. Moreover, it connects research on child welfare and immigration, revealing how punitive strategies within child welfare can serve as tools of aid for other marginalized populations, as evidenced by SIJS selectively integrating child welfare standards while excluding surveillance mechanisms. I expand research on legal brokerage, examining how attorneys broker not only between their clients and the laws but also between different institutional legal environments and adjudicators tasked with applying or legitimating the categories of worth that determine clients’ access to benefits. This brokerage role is particularly important in legal scenarios encompassing multiple jurisdictions or institutions with distinct sets of laws, institutions, histories, and authorities. Additionally, I explore the significance of emotional negotiation in legal brokerage, highlighting how attorneys educate clients about the narratives that establish their eligibility for legal relief and simultaneously rationalize moral dilemmas. Finally, I address the study’s limitations and provide suggestions for future research. Importantly, the dissertation was envisioned and completed under the early months and years of the COVID-19 pandemic, which informed the questions that could be asked and data that could be collected.

Chapter 2 Between SIJS and Asylum

Special Immigrant Juvenile Status (SIJS) and asylum are the two primary pathways to immigration legal relief for undocumented immigrant youths. Both offer recipients a path to U.S. citizenship but through different conceptualizations of victims in need of protection. SIJS extends immigration benefits to youths considered vulnerable as a result of parental abuse, abandonment, or neglect. While these conceptualizations reinforce Western norms of child rearing and depict parents as the reason their children need protection (the topic of Chapter 3), SIJS is still considered by legal professionals to be undocumented immigrant youths' best option for immigration relief. SIJS is a notably more successful option than alternatives like asylum, largely because it is comparatively easier to establish the necessary vulnerability and victimhood criteria for deservingness. Moreover, the SIJS process offers youths more favorable application experiences, significantly reducing the trauma often associated with reliving past hardships and confronting various bureaucratic officials.

The way in which SIJS is embedded within, or emerges from, the U.S. domestic child welfare system makes it a promising pathway to immigration legal relief for youths. SIJS is the first and only child-specific form of immigration relief that specifically considers a "child's best interest" (Heidbrink 2014b; Jameson 2020), contributing to eligibility criteria and procedures that make it easier for youths to secure SIJS. The process of legitimating youths' eligibility through state court standards and procedures operates to expand youths' access to immigration

protections that are otherwise difficult to secure. But this opportunity for youths is not without consequences. Because SIJS relies on the child welfare system that intervenes in the relationships between parents and children, the extension of benefits has negative consequences for family integrity – an important child welfare priority. While exceptionally more difficult to secure, asylum does not come with the same compromises to family integrity. Attorneys weigh the pros and cons of legal relief options, but they view SIJS as youths' best option and, sometimes, youths' only option given the difficulties of establishing asylum eligibility.

In this chapter, I – in collaboration with Yakirah Mitchel[7] – analyze how legal advocates, especially attorneys and social workers, compare SIJS and asylum, focusing on their experiences supporting youths' petition for these legal relief options. We analyze how both SIJS and asylum consider children's best interests in their eligibility and application procedures, and how these differences influence practitioners' legal strategies. This chapter addresses the first question of this dissertation: why despite compromising family integrity, legal advocates prefer SIJS to other forms of humanitarian relief.

SIJS: The "Easier" and More Successful Route to Legal Relief

Comparing SIJS and Asylum Acceptance Rates

SIJS acceptance rates are high, rendering it a highly viable legal relief option for undocumented immigrant youths who have not reunified with both parents in the U.S. In 2021, USCIS approved 15,924 SIJS applications and only denied 1,372 (U.S. Citizenship and

[7] This chapter is based on a co-authored article (back under review as of April 1, 2024, following a Revise & Resubmit) with Yakirah Mitchel who was a SOUL (Sociology Opportunities for Undergraduate Leaders) and SURO (Sociology Undergraduate Research Opportunities) research assistant at the time of writing. I will use 'we' when the information presented mirrors information in our article, and 'I' when I extend analysis beyond the confines of the article.

Immigration Services (USCIS) 2022). For youths who can file an application for SIJS, their odds of being approved are quite likely – a likelihood they cannot count on when petitioning for asylum. In 2020, only 18% of asylum applications for youths under the age of 18 were granted, and 29% in 2021. These granting rates, however, are for youths from *all* countries; the rates for youths from Central America are likely even lower, given that the approval ratings for adults from these countries (El Salvador (20%), Guatemala (19%), and Honduras (18%)) are significantly lower than the overall asylum acceptance rate (42%) (Transaction Records Access Clearinghouse (TRAC) 2021). As laid out in the introduction, Central American migrants, in particular, face difficulties establishing their asylum eligibility. And youths, in general, face even greater difficulties establishing asylum eligibility compared with adults due to their limited ability to articulate necessary political histories and experiences of oppression (Bien 2004; Fassin 2013; Galli 2018, 2023; Heidbrink 2014b).

Attorneys supporting young clients often compare asylum and SIJS when discussing the options youths have for legal relief. They describe SIJS as being much "better," "easier," and "likely" compared with asylum. In my discussions with attorneys and social workers, I discovered that their preference for SIJS stems from their recognition that asylum is often improbable. Sadiya, an attorney, shares that her firm "does as much SIJS as possible because the legal burden is pretty low." Comparing SIJS to asylum, she notes that "asylum is getting harder and harder and harder to prove." She feels committed to ensuring that these youths have a solid path to relief, and SIJS "is more of a guarantee that they'll get there than asylum" (Sadiya, attorney). Similarity, in her book, Chiara Galli (2023) shares similar experiences from her fieldwork shadowing immigration attorneys working with youths. She finds that because attorneys often believe that SIJS is easier to win, they strategically try to build SIJS cases over

asylum for youths, particularly when the youth has a weak case, as ss the case for many escaping extreme poverty and/or gang-related violence (Galli 2023, p. 159-160).

Asylum – the extension of refugee status and benefits to individuals already in the country, legally or otherwise, who have a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" – is a notoriously difficult legal relief opportunity for undocumented immigrants to capitalize on. As discussed in the introduction, this is particularly the case for Central American migrants building claims on gang-related violence. Formal policies and discretionary decision-making also continually seek to restrict immigrants' access to this relief. For instance, the 1996 IIRIRA stipulates that individuals must apply for asylum within one year of their arrival in the U.S. It also grants the government the authority to deny applications if they determine that the individual could have applied for asylum in another country prior to arriving in the U.S. (IIRIRA 1996). Additionally, in 2018, Attorney General Jeff Sessions' decision in *Matter of A-B-* challenged an earlier legal precedent that had made it increasingly possible for victims of gender-based and domestic violence to petition their asylum eligibility (Matter of A-B- 2018).

Difficulties for Youths Articulating Asylum Eligibility

Asylum eligibility is difficult for all asylum seekers to establish, but particularly for youths. The eligibility criteria are the same for children as they are for adults. Children, like adults, must meet the formal definition of a refugee and demonstrate proof of a "reasonable possibility of persecution," generally understood as demonstrating they would experience significant physical or emotional harm back in their home country because of their race, religion, nationality, political opinion, or membership in a particular social group (American Immigration Council 2022; Kids in Need of Defense (KIND) 2015). However, articulating necessary political

histories and experiences of oppression that serve as evidence of a "well-founded fear" of persecution is challenging for youths (Bien 2004; Fassin 2013; Galli 2018, 2023; Heidbrink 2014a). Michael, an attorney I spoke with, describes these challenges for youths:

> It is a lot of pressure on a child to prove that they were persecuted on account of a particular social group and then to define that particular social group is and then to show that the actor was the government or outside the government's control, or that there is a likelihood of future persecution. They just grasp little of what is being asked. (Michael, attorney).

Comparatively, it is much easier for youths to meet the eligibility criteria of SIJS. The central involvement of the state child welfare system in legitimating youths' eligibility for SIJS is key to this success (a topic that will be discussed in more detail in Chapter 3). In incorporating state court decisions into the SIJS process, Congress acknowledged that state courts were better positioned than federal authorities to evaluate the best interests of children. As previously mentioned, SIJS is the only form of immigration legal relief to consider children's best interests as a factor in determining eligibility. Since SIJS was first introduced in 1990, a juvenile, family, or dependency state court judge must make a "best interest" finding, affirming that it would not be in the child's best interest to return to their home country. The state court's findings constitute the predicate order, which fulfills the primary eligibility criteria for SIJS. Considering that many of these youths are fleeing extreme economic hardship or violence, many state court judges do not find it difficult to reach these conclusions, thereby facilitating youths' recognition as deserving of immigration protections. In making these findings, state court judges become – knowingly or unknowingly – important *gate-openers* to immigration protections and benefits for undocumented youths.

SIJS Eligibility and "Best Interest" Findings

State court judges presiding over any dependency, custody, or guardianship case must consider the child's best interest in determining placement and living arrangements. With SIJS, their best interest findings also operate to determine the best permanent living plan for the child by evaluating whether or not it would be in the child's best interest to return to their home country or remain in the U.S. Appellate court cases reveal that the "best interest" declarations for SIJS cases often hinge on comparing opportunities and safety in the home country versus the U.S., accounting for where the youth has caretakers, dangers in the home country that threaten the well-being of the child, and where the abuse or abandonment occurred and how that might (re)occur if the child returns to or remains in that place. The table below provides a glance into the evidence used to make best interest findings in SIJS state court cases. Our primary codes, conceptualizations, and select examples from case excerpts under each code[8] are listed in Table 2 below to yield insight into key themes across the court case data.

Table 2: Overview of "Best Interest" Sub-Codes, Definitions, and Select Excerpts from State Appellate Court Case Data

"Best Interest" Sub-Code	Conceptualization	Example Excerpts
Meeting physical/ socioemotional needs	*Remaining in the U.S. best meets the physical or emotional needs of the child, often because of the absence of a caretaker in the home country.*	"It **would not be in Ena's best interest to return to Honduras because both of her parents reside in the United States** and there is no one in Honduras to care for Ena were she to return" (Matter of Martha R. Y. v Antonio S. 2015). "It would not be in the child's best interest to return to Nicaragua as **he would be separated from his mother who has consistently cared for and supported him. In Nicaragua, there is no one who can care for him** or support him" (Matter of Rosa M. M.-G. v. Dimas A. 2021). "The record reflects that, in Jamaica, **Trudy-Ann would have nowhere to live, and no means of supporting herself.** Accordingly, it is clearly in

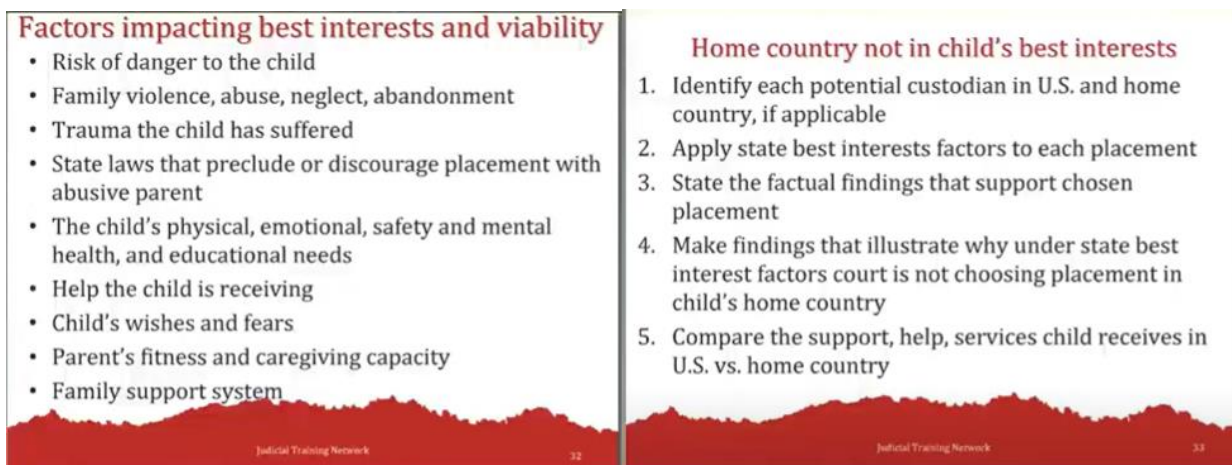
[8] Several codes were coded under multiple "best interest" sub-codes as evidence provided by legal professionals often spanned multiple themes we identified in the data, such as "meeting physical/socioeconomic needs" and "quality of life in the U.S."

		Trudy-Ann's best interest to continue living with her aunt in the United States.” (Matter of Trudy-Ann W. v Joan W. 2010). “If JBH were **returned to Venezuela, there would be no one fit to provide her with basic necessities, emotional stability, educational support, protection from violence, and other essential care.”** (In re JBH A.G. 2021).
Harm/abandonment by parents	*Considered best for the child to remain in the U.S. because of the harm/abandonment by their parents in the home country.*	“It is in the best interests of KB for her grandmother, A.D., to continue to act as her guardian. **KB's father abandoned her without any emotional or financial support from the age of six and her mother died** when KB was nine years old.” (Matter of K.B. 2008). “**Mother's failure to prevent Father's use of physical discipline amounted to neglect**…it is not in the Child's best interest to be removed from the United States and returned to Guatemala.” (Perez v. Perez, 2019). “Jose's mother physically and emotionally abused him during his childhood, including one incident when she beat him severely when he was eight or nine years old. it is **in Jose's best interests to remain in the United States because if he were to return to Ecuador, he would be subjected to his mother's abuse** and to the violence of those who murdered his father.” (In re Guardianship of Guaman 2016).
Issues in the home country	*Best to remain in the U.S. due to issues, problems, and dangers in the home country.*	“It was **not in Kevin's best interest to return to Honduras because he was threatened by a gang** and Honduras is dangerous.” (Bonilla v. Maldonado 2019). “It would not be in the child's best interests to return to El Salvador where the child testified that **after he refused to join gang members in El Salvador they threatened and assaulted him multiple times, and that if he were to go back to El Salvador, they would kill him**.” (Matter of Lucas F.V. 2019). “It would not be in the best interests of the child to return to his previous country of nationality and last habitual residence **where the child felt scared all the time and could no longer live a normal life because gang members were "killing people** if they didn't want to join."” (Matter of Victor R.C.O. v Canales 2019).

Parents' immigration matters	*The best interest determination is tied to parents' immigration status, such as being detained, deported, undocumented, etc.*	"The court found it **was not in Oliver's best interests to be placed in the custody of a person who is an undocumented immigrant** because, if plaintiff were deported, Oliver would be left alone in the United States" (N.C.T. v. F.T.S., 2018). "When questioned by the court, Jose testified that **when his mother was being deported, DHHS thought it was best if he did not return to Guatemala with his mother."** (In re Juvenile 2002). "Here, notwithstanding the mother's immigration status, the record demonstrates her intent to permanently reside in New York State. Thus**, the mother cannot be deemed a "non-domiciliary alien" who is ineligible to receive letters of guardianship… we find that the best interests of the children would be served by the appointment of the mother as their guardian."** (Matter of Alan S.M.C. 2018).
Quality of life in the U.S.	*Opportunities for the child are better in the U.S. than in the home country and they will have a better quality of life in the U.S.*	"In our view, the uncontroverted evidence overwhelmingly supports a conclusion that J.M.'s life **chances are much better in Maryland** than in El Salvador. **In Maryland, J.M. would have the financial and emotional support** of his mother and stepfather. In addition, J.M. has **access to education in Maryland** after having to leave school at age fourteen in El Salvador due to threats he received from gangs." (In re J. M., 2019). "It was not in the child's best interests to return him to his native country where he no longer had family residing. In contrast**, the guardian provided a stable home for the child where he felt safe and was attending school."** (Matter of Jose YY. 2018). "We leave it to the trial court to make this finding on remand, but note that, on the record before us, E.M.'s **return to El Salvador, where he will have no support, be unable to continue his education, and be subjected to gang threats** and potential violence, does not seem to be in E.M.'s best interest." (E.M. v. J.R., 2019). "the trial court found that it was not in B.E.L'S."s "best interest to return to Guatemala" because **B.E.L.S. would have "better employment and educational opportunities" in the United States** as well "as a better quality of life . . . distant from the public safety concerns in Guatemala." (B.R.L.F. v. Zuniga 2019).

The legal professionals I interviewed and the experts leading the educational webinars I observed corroborated these conceptualizations. In a 2015 ABA Center on Children and the Law webinar, *Special Immigrant Juvenile Status; Advocacy in the State Courts*, that I observed a recording of, one of the presenters – an attorney – discussed the factors that state court judges should consider when making findings as to why it is not in the child's best interest to return to the child or parent's country of residence. They shared that judges should "balance detriments if the child goes back…with the benefits of the child staying in the U.S.," listing healthcare, educational opportunities, people to care for the child, and unrest and gang activity as examples (see Figure 1 below).

Figure 1: PowerPoint screenshots from a 2015 webinar for state court judges about factors to consider when making a best interest determination in an SIJS case.



Similarly, I observed another recorded SIJS webinar from 2019, *Best Practices for Drafting State Orders,* which aimed to educate and inform state court judges about factors influencing children's best interests that should be taken into consideration. The presenter, a state court judge herself, also specifically discussed guidance on how state court judges should think about the home country not being in the child's best interest. In this webinar for state court judges, the presenter emphasized that it is "important [for state court judges] to connect the dots

for DHS as to what the facts are that support these [best interest] factors." She shared that some state court judges "get in a tizzy" over needing to "support these best interest conclusions with evidence" because they are concerned about "find[ing] facts about something that happened outside of the U.S." But the judge reminded attendees that this is "what we do in our courts – make determinations of facts on things that happened in another state. And we do it based upon the credibility of evidence presented in front of us." She emphasized that this is no different with the predicate order cases for SIJS, despite evaluating the criteria about conditions in another country to make these conclusions.

Comparing Conditions and Opportunity in the U.S. vs. the Home Country

Judges, attorneys, and social workers echoed these criteria in discussing with me how they advocate for or determine what would be in the best interest of the SIJS applicant. While the predicate order formally requires the judge to determine why it is *not* in the child's best interest to return to their home country, professionals discuss the various perspectives they consider when making this argument or declaration. Attorneys and judges compare situations in both the U.S. and the youths' home countries to articulate their arguments for what would be in the child's best interest. Some specifically emphasize the benefits of remaining in the U.S., whereas others focus primarily on the reasons why the youth should not return to their home country.

Professionals who interpret the child's best interest by focusing on the benefits of remaining in the U.S. often emphasize the resources available to the child in this country. Particularly when dealing with younger children, they also consider the life the child has been building here. Adriana, an attorney, describes how she thinks about the way in which "being in the United States gives these kids more access to resources for education and therapy," factors which she always highlights in her best interest analysis. Other attorneys focus on what the child

wants and where the child expresses wanting to be, which is unsurprisingly to remain in the U.S. Luis always asks his young clients where they want to be and how they like their new living situation in the U.S. For him, "if the kid seems like they are happy, comfortable, and safe here, then [he] feels like this kid knows best and that being here must be in their best interest" (Luis, attorney). Gabriela looks at the involvement of her younger clients in school and activities to consider how embedded they are in society here. For her younger kids who have already been in school and involved in activities, like soccer, she believes that "it is in their best interest to stay in the U.S. because they're developing and growing with the community here already" (Gabriela, attorney).

Other legal professionals discuss thinking more about why it would not be best for the youth to return to their home country when they develop their best interest arguments. Maria, an attorney, argues that if the child were to return to their home country, they would face the same conditions she contends constitute abuse and neglect.

> We are alleging all these things that happened while they were in the care of their mom or dad, or lack thereof. We are trying to argue that all of these bad things happened to this kid because mom and dad could not properly protect the child, or they neglected them, or whatever it is we are arguing. So, we allege that if the conditions have not changed, then the child would be returning to that home environment where dad is still a drug addict and mom is still dead or dad is in jail, or if the child returned, they would just continue to be forced to work in dangerous conditions and not be able to go school. (Maria, attorney).

In framing their arguments in such a way – that *returning* to the home country would be detrimental to the safety of the child *because* of the abuse, abandonment, or neglect they experienced, they are reminding the court of their role in ensuring the ongoing safety of a youth when they intervene in their family affairs.

However, while SIJS best interest findings are similar to such arguments made in traditional domestic child welfare cases when they focus on the potential safety concerns of returning a child to a home environment where they might be subjected again to parental abuse,

abandonment, or neglect, they differ in how they can often be based more broadly on environmental conditions. State court judges describe considering the home country conditions in determining where would be the best place for the child to live. For Martin, hearing about "multiple family and community members being killed by drug cartels" is for him evidence enough that there is "clearly no reason for the child to go back to that environment" (Martin, state court judge). Similarly, Nancy is often horrified and saddened by the difficult experiences these youths face in their home countries. She therefore finds that "it is pretty easy for [her] to conclude that it is not in the child's best interest to return to conditions in their home country" (Nancy, state court judge). Opportunities to compare broader sociopolitical conditions between immigrants' home countries and the U.S. in drawing their best interest conclusions make it easy for state court judges to determine it is not in the child's best interest to return to their home country. Accounting for broader environmental conditions, such as neighborhood safety, would not be grounds for justifying a living arrangement that does not reunify a child with their parent in traditional domestic child welfare cases. In traditional cases, "return home" considers only factors within the home, focusing on the family as the unit of analysis. However, SIJS cases broaden the focus beyond the family to include the broader sociopolitical environment within which the family is embedded. Whereas youths struggle to meet the evidentiary standards of asylum, state court judges' incorporation of such home country conditions as acceptable evidence for the required best interest decision, opens access to immigration protections.

SIJS and the Flexibility and Malleability of Abuse and Neglect Definitions

These best interest findings are not the only factors that constitute eligibility for SIJS. State court judges must also assert that the child cannot reunify with at least one parent due to abuse, abandonment, or neglect. Child welfare laws and norms governing standards of abuse,

abandonment, and neglect are often broad, operating to be more inclusive or comprehensive in what can be considered abuse, abandonment, or neglect. As will be discussed in depth in Chapter 3, this broadness often contributes to the State's intervention in already-marginalized families as conditions of poverty are construed into evidence of abuse, abandonment, or neglect. While these associations have contributed to disproportional state surveillance on families of color and of lower socioeconomic status, they make it easier for immigrant youths fleeing tough economic situations and dangerous environments to meet certain evidentiary criteria of child abuse, abandonment, or neglect.

In her observations of legal clinics representing immigrant youths, Chiara Galli (2023) finds that one reason attorneys preferred SIJS was because it was "easier [for them] to fit youths' home experiences in state laws defining abandonment, abuse, and neglect than in the narrow refugee category" (p. 160). Sofia, an attorney I interviewed, echoed similar sentiments:

> I hate to file an asylum application that I think would just be so hard to win unless there is really no other option. But in certain cases, I know I can formulate the SIJ order in a way that will work, and it is kind of a no brainer at that point. (Sofia, attorney).

Attorneys engage in such "strategic scripting" (Lakhani 2013, p. 466) of their clients' lives in order to strengthen their case for legal relief. The flexibility afforded state standards of abuse, abandonment, and neglect makes it easier for attorneys to legitimize their clients' experiences as evidence of abuse, abandonment, or neglect, contributing to their preference for SIJS over asylum. As attorneys compare how certain experiences of victimhood and vulnerability serve as grounds for immigrants' deservingness of asylum or SIJS, they elevate State policies that privilege protection from parents over protection from governments as more deserving of legal protection.

The Benefits of SIJS for Organizational Limitations

Attorneys' expressions of SIJS as easier or the "best" or "only" option reflect their often-deep moral commitments to or professional responsibilities for securing these youths legal relief. Sadiya, in describing her firm's preference for SIJS over asylum, emphasizes how it is their job to provide youths with a successful pathway to relief. Legal advocates who engage in humanitarian lawyering want to secure as many positive outcomes as possible, and often consider which cases and which types of legal relief will be the most "winnable" (Yu 2023a). Attorneys also consider the impact that certain cases will have on their organization's capacity and resources when determining which form of legal relief might be best for clients to pursue. Attorneys describe SIJS cases as involving less evidence and preparation compared with asylum cases, which often make them less of a burden on an organization's resources.

> We operate within organizational constraints. Asylum cases take a long time and require a lot of evidence and require us to prepare the child to testify for hours before a hostile immigration authority. Because SIJS cases do not require as much time, if a child is eligible for both SIJS and asylum, we will always do the SIJS case. Doing SIJS also enables us to represent more youths. (Anna, attorney).

The limitations Anna's organization – a non-profit legal clinic – faces means that both the easier process of SIJS for them and their client, combined with the higher success rate, make SIJS a better option for representation. Many non-profit legal clinics representing undocumented immigrants are constrained by resources, such as funding and attorneys, and are overburdened by high caseloads. While organizations face a number of challenges in pursuing SIJS due to its cross-jurisdictional process – complexities I describe in more detail in Chapter 6 – the ability for attorneys to construe their clients' lives more successfully as evidence of abuse, abandonment, or neglect for SIJS means that these cases fulfil their professional commitments to secure clients' legal protections and reduce the burden on their organizations.

Comparing the SIJS and Asylum Procedures for Youths

Anna's explanation of why SIJS is easier suggests that professionals' preference for SIJS is influenced by its procedural simplicity for both youths and attorneys, as well as its high success rate. Asylum cases necessitate a substantial amount of evidence due to the heightened challenge in establishing eligibility. Asylum cases also take a lot of attorneys' time and energy as they have to prepare youths for long, and often hostile, testimonies or interviews before an immigration judge or asylum officer. Many attorneys discuss how invasive, traumatic, and involved the asylum process is for youths. They compare SIJS as being a much more child-friendly process, which serves children's best interests better, and a process that, while complex due to the involvement of two jurisdictions, involves less intensive lawyering.

As previously noted, adults and children alike have the same eligibility criteria and must meet the same evidentiary standards for asylum. It has been well established that these standards and criteria are difficult for any individual to fulfill, and the asylum interview and court hearing are often stressful and traumatic for all applicants. But the asylum process is often more difficult for children, who have a tough time articulating their fear or hurt as persecution that rises to the level necessary for a legitimate asylum claim. Children often find it difficult to express that they were persecuted due to their affiliation with a particular group and that the persecution was carried out by government actors or entities beyond the government's control. Additionally, children may experience harm and persecution specifically because they are vulnerable and dependent on others (Bhabha and Young 1999; Bien 2004; Fassin 2013; Galli 2018; Heidbrink 2014a; Settlage 2016).

Attempts to Make Asylum More "Child Friendly"

In recent decades, however, certain immigration practices have attempted to become more "child-friendly," including policies that impact the asylum process for youths. For example, in 1998, the former immigration authorities, the Immigration and Naturalization Service (INS),[9] outlined child interviewing techniques for Asylum Officers (U.S. Department of Justice 1998). In 2007, the Executive Office for Immigration Review (EOIR) issued guidelines for federal judges confronting undocumented immigrant youths in immigration courts, describing the "best interest" standard as a factor relating to immigration judges' discretion in ensuring a child-appropriate court environment (U.S. Department of Justice 2007). However, a 2017 revised guideline removed the "best interest" language in discussing judges' discretion, stating that the Immigration and Nationality Act (INA) does not direct immigration judges to consider children's "best interest" as a legal standard for determining removability or eligibility for relief (Bronstein and Cutlip-Mason 2018; U.S. Department of Justice 2017).

The 2008 Trafficking Victims Protection and Reauthorization Act (TVPRA) – generally considered a piece of legislation that made paramount changes to the handling of immigrant youths – also made important changes to the asylum process for children. Prior to 2008, all asylum seekers in immigration removal proceedings applied through the defensive asylum process, requiring them to appear before an immigration judge. However, the 2008 TVPRA permits children – even those in removal proceedings – to apply for asylum affirmatively. Individuals applying for asylum through an affirmative process – traditionally individuals seeking asylum who have not been apprehended – do not defend their case in front of an immigration judge in court but rather submit an asylum application to USCIS and appear before

[9] The Homeland Security Act of 2002 dissolved the INS and, in its place, created the United States Department of Homeland Security (DHS) which divided authority between three offices: USCIS, U.S. Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE).

an asylum officer for a "non-adversarial" interview. An interview with an asylum officer trained to interview children would be more child-appropriate than the adversarial court hearing with cross-examination from a government attorney in front of an immigration judge.

Asylum: Still a Hostile, Traumatic, and Stressful Process for Youths

Nonetheless, despite these changes in asylum proceedings to make them more "child friendly," the asylum process remains a rather adverse and traumatic experience for youths. While children generally do not need to testify in front of an immigration judge unless USCIS denies their asylum application, the "child-friendly" interviews with asylum officers often last several hours. Attorneys discuss needing to prep their clients for these interviews, resulting not only in the child having to articulate their past experiences and fears during a multi-hour interview with a government authority figure but also having to recount these experiences multiple times with an attorney. As Valeria, an attorney, describes, "preparing a child, even an 18-year-old, to go into this office with a stranger for three hours is really hard on [the child]. And as much as you prepare, you never know what is going to be asked." In addition to being long and unpredictable, these interviews are often distressing for youths. Valeria continued:

> I have had asylum officers ask crude, unnecessary questions, making clients relive their trauma. For example, I had a client who had been sexually abused by two family members. And after that had been very well established, the asylum officer asked what was being said to her while she was sexually abused. I know asylum officers go through extensive training, but I do not think they keep in mind what that three-hour experience is like for a kid. (Valeria, attorney).

Preparing any client for an asylum interview or hearing requires attorneys to repeatedly ask the types of questions that asylum officers or judges might ask and for clients to repeatedly retell their traumatizing experiences. As "trauma informed as an organization or the interviewer can be," attorneys still have to "ask the child about the most traumatic things that have happened in their life" "dig deeper with clarifying questions," which can be "really terrible for the child"

(Diana attorney). This is an invasive and stressful process for anyone, but particularly children who may have difficulties both explaining these experiences to the degree needed and recounting these narratives for multiple adult authority figures in the U.S.

> Preparing a kid for asylum can be traumatic for them. For asylum, they not only have to tell me about their trauma, but they may have to go to a doctor and get a medical evaluation, which is another person they have to talk to about this. And the asylum officer will ask more probing questions than a state court judge in an SIJS order hearing, which can be traumatic. And then I may have to prep them multiple times for their asylum hearing because those hearings often get rescheduled. I think this idea that they will always have to talk about their trauma again for asylum adds its own level of stress and re-traumatization. (Anna, attorney).

As Anna illuminates, strong asylum cases can involve evidence from various experts, such as medical or psychological professionals, but including testimony or reports from these professionals requires youths to recount their trauma multiple times. Preparing for asylum hearings and interviews is also a prolonged process, which means that youths are repeatedly reminded of their traumatic experiences.

SIJS: The Less Invasive and More Child-friendly Path to Legal Relief

Comparatively, SIJS is a much less invasive, traumatic, and stressful process for the youth applicant, largely because state courts have procedures in place for working specifically with youths. As professionals concerned with the well-being of children, state court judges also implement practices that facilitate a child-friendly court environment. Attorneys and social workers currently working with SIJS applicants generally express that the involvement of the state court for these reasons improves the legal relief application process for youths. Many describe the state court process as a more positive experience for youths (and their attorneys) compared with the process in immigration courts and in front of immigration authorities.

> I would much rather a juvenile court make decisions that could benefit children than leave it to an immigration judge. In state court, there is more of an emphasis on children's well-being, and in immigration court they are not even necessarily seen as children. Immigration court is

> intimidating, and they talk to the youth like they are dangerous criminals. But in state court, they talk to youths like children who have opinions and should be respected. (Isabel, Attorney).

As Isabel also reveals here, state child courts within the child welfare regime perceive immigrant youths through different moral conceptualizations than immigration bureaucracies. Whereas immigration courts, these youths are often viewed as "dangerous criminals," state courts see these youths as "children" to be "respected." These lenses reveal different ways that institutions may be preconditioned to handle individuals.

In many SIJS cases, the applicant does not need to testify or undergo long, intensive questioning. In fact, many state court judges do not necessarily require the youth to testify in court. Many SIJS predicate order filings in family court contain only a written declaration of the child's experience, prepared by their attorney. Emily, an attorney, explains:

> Asylum is much harder for the client to get [than SIJS]. They have to tell their story for asylum on a level that they do not have to necessarily tell it for SIJS. There are certain facts that need to be known for SIJS, but you do not have to show all the details. For asylum, you really need to show the details, and you really do have to show the real physical or emotional harm. Kids really have to walk through all these events and how they affected them. Asylum is much more invasive. With SIJS, the petition includes a declaration that the attorney can write based on their discussions with the kid. (Emily, attorney).

Whereas with asylum, the child must recount their trauma to multiple adults, SIJS applicants often only need to share with their attorney and/or supporting social worker. Some state court judges express a preference for having the child testify. However, they characterize these interactions as an opportunity to hear from the child about their identity, their relationship with their guardian, their school, and their interests, rather than delving into the specifics of the alleged abuse, abandonment, or neglect. Attorneys often describe preferring SIJS and recommending that route to their clients because they find asylum to "re-traumatize youths in a way that's so unnecessary," especially when SIJS may be a viable alternative (Maria, attorney). These experiences from legal professionals support the reason for including state courts in SIJS.

State court family and juvenile judges are trained to work with children and understand matters pertaining to their welfare. The child welfare system's general "embrace" of youths is again a mechanism that operates to expand immigrant youths' access to often-hard-to-get immigration relief protections.

In the Best Interest of the Child: Family Integrity

SIJS is both a more likely and less traumatic pathway to legal relief for immigrant youths, but it is not without consequences. SIJS compromises family integrity, which is considered one of the paramount tenets of children's best interest principles. Family integrity, or family unity, is considered *the* key tenet of children's best interest principles (Byrd 2013; Jameson 2020). According to the 1990 Convention on the Rights of the Child (CRC), children have a right to family unity and to be raised by their biological parents (art. 7, 9, and 10), a right that the U.S. has also upheld in Supreme Court Decisions (Stanley v. Illinois 1972; Troxel v. Granville 2000). The U.S. explicitly began prioritizing family reunification through the Adoption Assistance and Child Welfare Act (AACWA) of 1980 in response to the increasing number of African American children being removed from their homes (Reich 2008; Roberts 2002). According to the AACWA, states must make "reasonable efforts to prevent or eliminate the need for removal of the child from his home and make it possible for a child to return home" (see: 42 U.S.C. § 671(B)).

SIJS challenges family integrity in three core ways: (1) states' court procedures and requirements can impose limitations on who can legally be recognized as a legitimate custodian or guardian for the child. These conditions, which often impose income requirements, residency documentation, and certain background check procedures, can make it challenging for undocumented immigrant family and community members to be recognized as the child's

guardian or custodian. (2) The federal laws governing SIJS limit the family members who can benefit from the child's immigration or citizenship status if they are awarded SIJS. (3) SIJS intervenes in families through the state court process, punishing parents and degrading parenting.

Barriers for Immigrants Becoming State Approved Guardians

Children's best interest principles state that children have the right to be raised by their biological parents or, when this is not possible, by other members of their family. When children are unable to be raised by their parents or other family members, children should be placed in an environment that preserves and reflects their families' cultural practices and values. Documentation requirements for proposed guardians, however, can hinder the ability of family members or community members of a shared cultural background from becoming a legal guardian or custodian for the youth. Attorneys discuss how certain judges require the to-be guardian or custodian of the SIJS applicant to have certain identification documentation. These requirements reflect child welfare licensing requirements for foster families, which vary by U.S. state (ABA Center on Children and the Law 2017). Required documentation may include citizenship or immigration status documentation, documented residency, social security numbers, and other forms of documentation for background checks.

Such requirements impede undocumented family and community members from becoming recognized legal guardians or foster parents for youths, despite the benefits of such care placements for youths (Greenberg et al. 2019; Hidalgo 2013; Thronson 2005). When the non-accused parent or other undocumented family/community member is confronted with these restrictions in becoming a recognized guardian for the SIJS applicant, families may have to resort to "reaching out to almost strangers" for assistance (Isla, attorney). Isla describes a recent case where the mother of an SIJS applicant had to ask her employer to formally file as the child's

guardian because she and her friends in the community were all undocumented. Placement with family members, guardians, or foster families with shared ethnic backgrounds (who may come from these communities), however, contributes to positive mental health among immigrant youths. As scholars show, they can provide youths with a sense of belonging, stability, and support (Aleghfeli and Hunt 2022; Mitra and Hodes 2019; O'Higgins, Ott, and Shea 2018). Policies that prevent family or community members from becoming guardians may negatively impact these youths' well-being and compromise family integrity.

Derivative Applicants and Family Sponsorship

Aside from transnational adoption, which legally severs the biological relationship between the adoptee and their birth parents in the adoption process (Kim 2007), SIJS is the only form of immigration relief that excludes derivative recipients (children and spouses who can receive relief or immigration status through the primary applicant) [10] or the ability of the recipient to sponsor otherwise eligible family members' immigration once they become a legal permanent resident or U.S. citizen. For example, asylum applicants and T-visa (humanitarian immigration relief for victims of trafficking) [11] recipients can petition for their parents' immigration to the U.S. and extend their benefits to certain derivative applicants, such as siblings or spouses. The 1980 Refugee Act recognized derivative applicants, establishing that the spouse or child of an asylee "shall be entitled to the same admission status as such refugee if accompanying, or

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[10] In immigration petitions, the applicant is referred to as the "principal" applicant, or the beneficiary. A derivative applicant would be a family member (spouse or child) of the principal applicant that is not filing their own individual petition or application and can gain legal status benefits from the approval of the principal applicant's application. This is different from being sponsored by a U.S. permanent resident or citizen, which would happen after the principal applicant's application was approved and their status adjusted. SIJS recipients, however, are not permitted to have any derivative applicants nor sponsor any family members once their status is adjusted (see: USCIS Form I-485).

[11] The T-Visa ("T Nonimmigrant Status") is a form of temporary humanitarian immigration relief available for certain victims of human trafficking. The initial protection lasts up to four years, but some T-Visa holders can apply to adjust their status after remaining in the U.S. for three years if they meet certain criteria (see: USCIS Form I-914).

following to join, such refugee and if the spouse or child is admissible" (8 U.S.C. § 1157(c)(2)(A)). Both the 1990 INA and 1996 IIRIRA upheld family unity principles within asylum, reiterating the eligibility of spouses and children of asylees to remain together (1990 INA Sec. 301; 1996 IIRIRA Sec. 208).

Asylees are permitted to have derivate applicants who receive their asylum protections and sponsor parents and other family members once they naturalize as U.S. citizens. However, a SIJS recipient is never permitted to sponsor a parent's immigration to the U.S., even after the recipient naturalizes as a U.S. citizen. This restriction applies to both parents, including the parent who has *not* been accused of abuse, abandonment, or neglect (8 U.S.C. § 1101(a)(27)(J)(iii)(II)). SIJS applicants commonly reunify with one parent in the U.S. or have a parent remaining in their home country who is not the subject of the alleged abuse or neglect, but they will never be able to extend their legal benefits to that parent (Jameson 2020). Attorneys sense that this limitation is not a concern for some of their clients, as many clients do not express strong attachments to their parents, or they simply want to secure relief at whatever cost. However, for other clients, discussing SIJS's family sponsorship limitations is a difficult and emotional conversation. Adriana, an attorney, describes clients' different reactions when she explains that they will never be able to help their parent(s) immigrate:

> Some kids really feel like their parents or parents abandoned them and they are glad to have this form of relief. But other children whose parent did everything they could…it is really painful for them to hear that their parents are being penalized and they will not ever be able to petition for their parent to come to the U.S. (Adriana, attorney).

Youths who feel strongly about family relationships and the possibility of extending benefits to their family members may prefer to try for asylum first, even if it is a harder and less promising process for securing immigration legal relief. Diana describes how when "there is a non-abusive parent who the kids have reunified with, sometimes they get pretty sad about [the

inability to protect their parents] and pin their hopes on asylum so they can someday petition for that parent." Carlos, a paralegal who works specifically with SIJS and asylum clients, describes how some youths are drawn to asylum because of the prospect for family sponsorship: "They like the idea that if they apply for asylum, they may be able to have their parents join them down the line" (Carlos, paralegal). Similarly, Kia, an attorney, talks about how some youths see "the ability to petition for family members" down the road as a "big benefit." But despite these family values, attorneys try to emphasize to their clients how "very rare to win" asylum is (Kia), setting "expectations about time and the possibility of a negative outcome" (Carlos).

In some cases, the difficulty of this limitation is compounded by the recognition that the abuse or neglect experienced by the child often affects other members of the family unit who cannot be afforded the same protections. Mariana describes how both parents and youths experience difficulties accepting SIJS's limitation on family sponsorship or derivative applicants when the alleged abuse that makes the youth eligible impacts parents as well:

> If there is a parent with them [that the child reunified with in the U.S.], it is tough on them, too. We have to explain that their child qualifies because of abuse, abandonment, or neglect, and we know [they] were trying [their] best and it was not [their] fault. And we have a lot of cases where the abuse was because of domestic violence by a partner. We have to explain that even if their child gets relief, their child can never adjust them, the parent. It is especially hard when it is an abusive situation because everyone in the unit suffers, but we can only help the minor. (Mariana, attorney).

When children reunify with a parent in the U.S. and the parent accompanies them to their appointments, attorneys have to explain to these parents the conditions of SIJS and limitations for family sponsorship. Attorneys shared with me that parents seem generally accepting of SIJS's limitation on family sponsorship. While attorneys describe some parents' reactions as initially sad or disappointed, parents usually express that they want what is best for their child, even if it does not provide them with immigration protections. Isla, a bilingual paralegal tasked with having these discussions with children and their parents, describes her interactions with parents

to me: “I just see their body demeanor drop and they are clearly disappointed, but most of them tell me that they will be happy if their child will be able to do something or be someone here.” Similarly, Carmen describes how parents usually “just want their child to have a better future” and they are “okay with however [the attorney] get[s] their child there, even if [they] don’t receive any benefits” (Carmen, attorney).

While most parents are fine with the reality that they will never receive immigration benefits from their child, if their child receives SIJS, parents still had concerns about being deported when only their child had legal protections in the U.S. Diana, an attorney, describes how “sometimes there is a sense of panic [from the parent] if their child is very young because they are still at risk of being removed while their child is not.” This is a valid concern, but this would be a concern regardless of whether the child could sponsor a parent’s immigration through SIJS. If an SIJS recipient could sponsor their parent’s immigration, their ability to do so would take many years as the SIJS recipient would first need to receive their green card and subsequently naturalize as a U.S. citizen before they would be eligible to petition for family members. The threat of deportation would remain an issue for the undocumented parent and their SIJS-recipient child even without SIJS’s restriction on sponsoring parents. Despite this reality, the definitive end of possibility and hope resulting from SIJS’s bar on sponsoring any parent’s immigration is a loss to family integrity. Finally, a SIJS recipient must also be unmarried when they apply and remain unmarried until they formally adjust their status and become a permanent resident (Special Immigrant Juvenile Classification 2022). For certain applicants, such as those from Central American countries, the backlog in annual green card allotments means that many SIJS recipients must remain unmarried well into their 20s (Castillo-Granados et al. 2022).

Degrading Parenting and the Impact of Abuse and Neglect Allegations

The protection offered youths through SIJS is promising and important, but it may perpetuate the disproportionate impact of State surveillance and intervention in the lives of certain populations. As will be discussed in detail in the following chapter, child welfare interventions in the U.S. disproportionately impact racial and ethnic minority families of lower socioeconomic status, often conflating consequences of poverty with abuse, abandonment, and neglect (Edwards 2019; Fong 2020; Reich 2008; Roberts 2002). The families of SIJS applicants often fall into these demographics. While providing youths with a crucial benefit to legally remain in the U.S., SIJS can also have devastating consequences for parents trying their best. SIJS's protection hinges on state child welfare findings of abuse, abandonment, or neglect, often reframing the dangers and hardships they are escaping as the consequence of their parents' (in)actions. On more severe grounds, SIJS can strip parent(s) of their custody rights or terminate parental rights during required child welfare proceedings in state courts. While there are certainly severe and substantiated cases of abuse, abandonment, or neglect, SIJS cases can compromise family integrity in pursuit of crucial legal relief and permanency for undocumented immigrant youths.

These are concerns that should be considered in SIJS cases but were not frequently discussed by attorneys. Some attorneys, like Nora and Luis, explicitly express their hesitations at relying on conditions of poverty for arguments of neglect. Nora discusses how she is "personally quite cautious about expanding neglect" because her law school training taught her to "be aware and concerned about how neglect functions to take children of color away from their parents" (Nora, attorney). However, while attorneys recognize the consequences of conflating poverty with neglect, Isabel was the only attorney I spoke with who explicitly described how child

welfare implications influence her law clinic's decision not to recommend SIJS for their clients in certain cases:

> For SIJS, we think about whether it is necessary to get the state involved. Dependencies have historically been very racist in how the state imposes itself on Black and Brown families and takes their children away. So, we do not want to get families into that situation if it is not necessary. For example, if the client has a child themselves, we might not want to pursue a dependency since we do not want to open doors for the state to have such close eyes on this young family. We try to balance these factors when considering relief options. (Isabel, attorney).

Child welfare interventions can have a cascading effect on families who are already disproportionately impacted by state surveillance. Scholars show that not only are families of color subjected to higher testing, questioning, and surveillance by public authorities, but such over-surveillance in one realm often cascades into increased surveillance in other aspects of their lives or across generations. Such over-surveillance also provokes fear of continued State intervention in private affairs (Baughman et al. 2021; Fong 2020; Harp and Bunting, 2020).

Accusations of abuse, abandonment, or neglect can also have profound consequences for the accused parent. These allegations can hinder parents' own immigration petitions, disqualify them from employment opportunities, or potentially lead to their deportation (Heidbrink 2014b; Liebmann 2007). As Isabel shared, consequences for the parents are not "something immigration attorneys think often about." But, as Alecia, a current state court judge but former attorney who represented parents in state child welfare cases, points out, states often have a database for child abuse and neglect and "if that parent is in the U.S. or if they come to the U.S. someday, [these allegations] could affect their ability to work in professions that might require a license" (Alecia, state court judge). Alecia recalls her concerns when an SIJS petitioner accused her client (a parent) of neglect. "I just didn't want my client to have that label [of being negligent], because I didn't know how it would affect their immigration status and what implications it would have for them, so we kind of put up a fight" (Alecia, current state court judge, former attorney). Some

state court judges reflect on the potential "collateral consequences for parents" (Sonia, state court judge) when they are accused of abuse, abandonment, and neglect, such as restrictions on their ability to work in certain places, such as daycare and adult care facilities (Sonia, state court judge). These concerns are valid as state child welfare interventions in families often have legal consequences for the accused parents and the allegations made for SIJS cases can have similar repercussions for parents.

Child abuse and neglect cases can also lead to criminal cases against accused parents in the U.S., triggering their deportation. While the bulk of what I discuss in this dissertation relates to the required findings in state juvenile, dependency, or family courts for SIJS predicate orders, which are civil child welfare cases, allegations of child abuse and neglect can result in both civil and criminal cases involving the accused parents. Civil court cases – where SIJS predicate orders are obtained – are concerned with children's best interests, protecting children, and providing support for family reunification. Criminal cases involving child abuse and neglect, on the other hand, aim to establish guilt and issue relevant punishments against parents found guilty of child abuse or neglect. While these are separate proceedings, a parent can find themselves involved in both civil and criminal cases when they have been accused of child abuse or neglect (Edwards 1987; Sagatun 1990; Sprague and Hardin 1996). Criminal findings of child abuse or neglect against a parent are considered deportable offenses (8 U.S.C. 1227(a)(2)(E)(i)). Thus, allegations of abuse or neglect against an immigrant parent residing in the U.S. can trigger their deportation if a criminal case is pursued and they are convicted.

These specific repercussions for the accused parents – the legal implications of abuse or neglect allegations – however, are often masked by the (accused) parent(s)' location abroad. While these tactics of punishing parents extend State control and surveillance over families

within the U.S., the concrete boundaries of these punishments are confined to the nation's borders. They limit potential prospects for kin migration, but such state surveillance and control over "improper parenting" abroad has negligible impacts of parents' rights within their home countries. Thus, these "consequences" to family integrity do not outweigh the benefits of protection offered to youths through SIJS.

This chapter has addressed why legal advocates prefer SIJS to its alternatives, specifically asylum, despite SIJS's compromises to family integrity. Asylum is a legal protection available to youths without negative consequences for family integrity – it neither forecloses family reunification nor prohibits the recipient from subsequently sponsoring family members' immigration. But it is a less likely and successful pathway to legal relief for undocumented immigrant youths compared with SIJS (Galli 2018, 2023; Heidbrink 2014b). The success rate of SIJS and better legal experience for youths contribute to professionals' opinion of SIJS as the *better* option for their clients. As I have argued, because SIJS eligibility hinges on state court judges' "best interest" determinations, which draw on family affairs *and* broader sociopolitical conditions within their home country environment, youths' experiences are much more likely to meet the eligibility criteria for SIJS than asylum. The central involvement of the child welfare system in SIJS decision-making elevates child welfare's priority of "protecting the vulnerable child" over immigration's concern with "protecting the country's borders from illegal immigration." In the next chapter, I build on the challenges that SIJS poses to family integrity by elaborating on how the viability of SIJS often requires professionals to work within the grey areas that conflate poverty and community violence with parental neglect. While SIJS may be the *better* option, its reliance on U.S. parental abuse and neglect standards projects Western

norms of child rearing and family relationships onto transnational families across international borders.

Chapter 3 Blaming Parents, Framing Victimhood: Making Youths Deserving of Relief

Special Immigrant Juvenile Status (SIJS) is a unique humanitarian relief opportunity in that it combines both federal immigration and state child welfare laws. To be eligible for SIJS, the youth must secure findings that they were abused, abandoned, or neglected by a parent from a family, juvenile, or dependency judge in a state court prior to filing for immigration relief with USCIS. As a result, youths' eligibility for SIJS hinges largely on state child welfare laws and precedents and is effectively determined by state court judges. To construct their clients' cases, attorneys rely on these state child welfare laws and precedents to represent their clients' experiences as evidence of parental abuse, abandonment, or neglect. Several youths seeking SIJS have faced severe forms of abuse, such as sexual abuse, or abandonment, when a parent has left shortly after their birth. However, in many cases, attorneys (re)interpret youths' experiences and lives in their home countries as cases of child abuse and neglect, construing loving, trying parents as inadequate or harmful. The flexibility of these child welfare standards enables attorneys to morph many instances of hardship and suffering into evidence of inadequate parenting, a practice that contributes to the perpetuation of State control over already-marginalized families in conventional child welfare interventions. In the case of SIJS, however, such adaptability in these standards is what ultimately renders it easier for youths to establish their deservingness for SIJS.

Gang threats and local gang violence are common reasons for youths' migration, but alone these threats and fears are often insufficient as evidence for immigration legal relief.

Appellate court cases reveal, however, that attorneys can creatively craft gang violence into evidence of parental abuse, abandonment, or neglect according to state law. Attorneys use frameworks of parental abandonment and neglect in family/dependency courts to argue that the youth's parents – whether they reside undocumented in the U.S. or remain in the home country – failed to protect their child from gang threats and violence. When youth explain to attorneys that they must work to support the family and are no longer attending school, attorneys can also craft these experiences into parental abuse or neglect, arguing that the parent(s) deprived their child the right to an education by requiring them to work and contribute to family earnings. These types of narrative constructions depict the ways in which attorneys engage in legal brokerage as they translate their clients' experiences into certain evidentiary criteria and categories of vulnerability and victimhood recognized by state child welfare institutions for the purpose of securing SIJS (Coutin 2000; Galli 2023; Lakhani 2013, 2014). While these decisions facilitate youths' access to immigration protections, they reinforce Western-centric beliefs and opinions regarding child well-being and appropriate child rearing practices, in turn instilling these perceptions of family affairs in youths and their families.

In this chapter, I trace these depictions to understand the ways in which undocumented immigrant youths are crafted by legal advocates into victims of abuse or neglect deserving of protection. I address the dissertation's first two research questions asking how and why certain conceptualizations of vulnerability prevail as recognized eligibility criteria for immigration legal relief and, relatedly, how the involvement of the state child welfare regime – and its broad and flexible standards of abuse, abandonment, and neglect – opens doors to immigration benefits for youths. This chapter discusses the history of child welfare interventions and the conflation of child abuse and neglect with the challenges arising from poverty to reveal how professionals can

translate their clients' experiences into conditions of parental abuse or neglect that make them eligible for SIJS. As legal brokers between their clients and options for immigration relief, attorneys capitalize on the State's parens patriae doctrine in securing SIJS for their clients. But extending the State's parens patriae ideology across international borders and onto transnational families elevates certain depictions of immigrant deservingness, privileging immigrant suffering and need for protection when it is at the hands of parents and not the failure of a government.

Historical Associations Between Poverty and Child Neglect in the United States

Scholars of child welfare have long investigated the politics of government intervention in the family in the U.S. Throughout the 20th century, government policies institutionalized White middle-class Protestant norms of parenting and family formation. At this point, family separation was the central mechanism of such intervention. The rapid industrialization, urbanization, and immigration of the Progressive Era at the turn of the 19th century caused concern among upper-to-middle class White Protestant families. Collectively these conditions challenged (their) traditional family roles and practices as families increasingly moved into congested urban housing developments and both men and women entered the industrial workforce to support the family, leaving many children to entertain themselves in these city neighborhoods (Cook 1995; Hubner and Wolfson 1998; Kasinsky 1994; Platt 1969; Polsky 2001; Reich 2008). Many middle-to-upper class women attributed the reckless and deviant behavior they observed from these children to parental neglect.

The programs and policies that emerged from growing concerns relocated low-income youths from urban areas to families deemed "respectable" in rural parts of the U.S., aiming to instill Protestant middle-class values in these youths (Cook 1995; Hubner and Wolfson 1998; Kasinsky 1994; Platt 1969; Polsky 2001; Reich 2008). These practices led to policies that

disproportionately affected racial and ethnic minority families with lower socio-economic statuses, as their economic circumstances or cultural values often diverged from the hegemonic standard of "normal" families. This trend persists today, with child welfare interventions continuing to disproportionately affect children and families from these demographic backgrounds (Edwards 2019; Fong 2020; Roberts 2002).

With the onset of State intervention programs and policies, the State confronted the need to legitimize its authority to intervene in families' child-rearing and child development practices, as the State had granted parents the rights to raise their children according to their own discretion. Thus, by virtue of its parens patriae doctrine, the State asserts its obligation to protect the "children of its country" in cases where it determines that parents have proven incapable of fulfilling their duty (Thomas 2007; Valenzuela 2021).

Immigration scholars have studied the ways in which the State extends this doctrine into the lives of immigrant families in the U.S., but these studies largely depict how the State uses intervention powers as a means to protect U.S.-born citizen children when their undocumented parents are detained, deported, or are otherwise deemed unfit (Flores 2015; Rodriguez 2016; Stumpf 2006, 2020; Valenzuela 2020; Xu 2005). State and legal bureaucrats have used parents' detention or deportation to justify child neglect and terminate their parental rights (Byrd 2013; Fata et al. 2013; Heidbrink 2017; Menjívar et al. 2016; Rabin 2011; Rodriguez 2017, 2019). In SIJS cases, however, the State shows willingness to intervene in the lives of non-citizens and non-citizen families in the name of protecting the wellbeing of non-citizen children. This extension of the State's parens patriae doctrine offers youths a pathway to immigration legal relief but, as touched on in Chapter 2, has consequences for family integrity.

Intake Screening: Seeking Evidence of Parental Abuse and Neglect

State definitions of abuse, abandonment, and neglect are often broad, providing attorneys advocating for SIJS an advantageous avenue to effectively frame their clients' circumstances, aligning them with the eligibility requirements of immigration protections. The promise of SIJS often leads attorneys into the murky terrain of child abuse and neglect, shaping youths' experiences of poverty and community violence into evidence of parental maltreatment. Maria, a managing attorney, describes how her clinic uses evidence within these grey areas of parental abuse and neglect to secure the necessary SIJS findings in state courts:

> What do you elicit when you have a situation that is maybe not clear-cut? I am going to argue neglect if the kid stops going to school, or if the child was having to wake up at five o'clock in the morning to go work in the agricultural fields for three hours before school and also return to this work after school, or they were working Saturdays underneath the sun with no protective gear and they are spraying pesticides. I mean, that is neglectful – that's almost abuse. So, if the child does not have enough food, whether it is purposeful or not – if the child is going to bed hungry, or if gang members are threatening them, then it is neglecting the child. Then the parents are unable to care for them. I try to explain to my staff attorneys that it is those cases that are very gray that are the ones where you need to listen for the most amount of detail to be able to craft something for the judge that shows that mom and dad were really great and they tried as best they could, however, the kid went hungry, the kid was attacked by gang members on his way to school every day, the kid was working all the time, and the kid stopped going to school when he was seven. (Maria, attorney).

Attorneys, like Maria, must recognize when aspects of their clients' lives and experiences meet the criteria of certain forms of relief, and they often need to capitalize on these narratives to secure their clients protection, even when they recognize that doing so comes with challenges. Some professionals struggle with and acknowledge the potential problems associated with (re)interpreting events and circumstances through the lens of abuse and neglect, signifying the moral dilemma that professionals face when brokering between available laws and their clients' experiences. For example, Nora, a social worker, talks about how it can be "really tricky" to "put the American lens on everything" and "view these circumstances in a completely different cultural lens than the kid might be viewing it." This way of lawyering often facilitates youths'

access to immigration legal relief, but does so while reinforcing the State's parens patriae ideologies and certain standards of parenting, even beyond the territorial boundaries of the U.S.

During my interviews with attorneys and social workers, I inquired about their procedures for assessing the potential eligibility of youths for various forms of legal relief. In response, many of them detailed their screening questionnaire or routine with me. Professionals primarily try to identify eligibility for asylum and SIJS in their screening. Without being prompted, almost all the professionals who discussed their screening questions with me shared that they specifically asked youths' questions about their upbringing and their relationship with their parents. These questions suggest that legal professionals try to uncover or establish evidence of parental abuse and neglect that could support an SIJS (*visa juvenil*) petition. The section on one intake interview guide shared with me by an attorney indicates how attorneys search for SIJS eligibility in their intake discussions with youths (see Figure 2 below).

Figure 2: Excerpt from Legal Clinic's Intake Interview Guide

I'm going to ask questions about your childhood so that we can talk further about whether you might qualify for *visa juvenil*. [*Note*: Once you conclude that youth has clearly been abused/ neglected/abandoned, you can stop asking these questions.]

13. In [COUNTRY], did you live with both parents? Who cared for you?
    a. Tell me about your relationship with them.
    b. When you didn't obey them/misbehaved/etc., what did they do? (assessing for physical abuse, deprivation of food, etc.)
    c. Did you ever not have enough food to eat?
    d. When you were sick, did your parent(s) take you to get medical care?
    e. Did you go to school? Until what age? (If left before 18, why?)
    f. Did you work? Tell me about your work. (Were they paid? Did they use dangerous tools/chemicals? Bad working conditions?)
    g. (If youth discloses harm/threats by gang or another adult, assess whether they informed parent(s) about said harm and how parent responded. E.g. If sexually abused by another relative and parent didn't take steps to protect them, this qualifies for SIJS.)
    h. Did anyone in the family use drugs or alcohol?
    i. Did your parents ever hurt each other in your presence?

While some of these questions pertain clearly to general country conditions and issues of poverty – such as access to medical care, access to education, the need for youths to contribute economically to the household, and gang violence – these questions are specifically framed to identify evidence that the youth's parents failed to raise them appropriately, provide them with access to education, or protect them from harm.

Compared with the rest of the questions on this clinic's intake guide, this specific set of SIJS-related questions is notably the most comprehensive. There is not a comparable section specifically addressing asylum eligibility. Section 13 – these questions pertaining to SIJS – is preceded by a broad question and two sub-questions that might pertain to asylum: "12. Why did you decide to come to the United States? (a) If unclear, ask: Are you afraid to return to [country]? Why? (b) Ask follow-up questions only as necessary to understand if they have a potential claim." Following the SIJS questions, Question 14 prompts attorneys to consider "if youth has not identified any harm yet" and ask, if they haven't, "Thinking about your whole life since you were born, has anyone ever hurt you? This includes insults, physical abuse, sexual abuse, a stranger attacking you, a family member hitting you, etc." While question 13 and its long list of sub-questions ask about very specific aspects of the potential client's childhood and parents' behaviors, questions 12 and 14 ask rather broadly about fear and harm. While they are not explicitly designated as questions pertaining to asylum claims – as question 13 specifically pertains to SIJS – they are seemingly the only questions on the intake guide that would indicate a search for asylum eligibility, along with other forms of potential relief, such as a U-visa, T-visa, or SIJS.

Seeking out SIJS to Protect Clients from the Trauma of Asylum

This focus on SIJS is not without reason for both attorney and client. Attorneys typically try to seek out SIJS eligibility because they know it is a far more likely and less adversarial pathway to legal relief for young clients than asylum. Anna discloses that she "always ask[s] questions that are SIJS-specific because the SIJS process is a lot faster than the asylum process." Similarly, Maryanne describes how she begins with questions about the potential client's parents because she prefers SIJS over asylum:

> When I am doing a consultation, and I hear that someone is under 21, the first question I ask is if both parents are still active and involved in the child's life. We generally prefer to do SIJS than asylum because the success rate is so much better. It is a non-adversarial process as long as they meet the eligibility requirements. (Maryanne, attorney).

Attorneys' preference for SIJS preconditions them to try and identify evidence of abuse and neglect in their clients' lives. Attorneys must work with the "options" provided by the State – the written laws and policies and precedents – in determining the best opportunity their client has for legal relief in the U.S. However, their approaches to SIJS, shaped by their recognition that framing youths' hardships and suffering as the effect of parental mistreatment, contribute to the elevation of certain conceptualizations of victimhood as more deserving than others. The following sections discuss specific ways that country conditions are molded into instances of parental abuse and neglect, as well as how the "best interest" standard comes into play.

Who Fails to Protect?: Gang Violence as Evidence of Parental Neglect

Fears and threats from local gangs are common motivators for youths' migration to the U.S., particularly for the many youths coming from Central America. As scholars have shown, however, winning an asylum claim based on fears of gang violence is incredibly challenging (Bhabha and Schmidt 2008; Carlson and Gallagher 2015; Coutin 2011; Frank-Vitale 2022; Galli 2023; Gorman 2017; Orlang 2012; Schoenholtz, Ramji-Nogales, and Schrag 2021; Shiff 2020a,

2022). But with SIJS, attorneys have discovered the possibility of framing gangs threats against their young client as parental neglect, contending that the parent neglected to protect their child from gang threats and violence in their vicinity. In doing so, attorneys expand access to legal status through creative lawyering, translating their clients' realities into schemas and conditions that meet certain evidentiary standards for legal relief options (Coutin 2000; Galli 2020a; Lakhani 2013).

The court cases I analyzed frequently featured arguments of parental neglect in response to gang violence and direct threats from gangs. In Matter of Dennis X.G.D.V (2018), a case that the trial court originally denied, the youth and their attorney argued that "though [the youth] was prevented from attending school by gang members who beat him while walking to school, the mother did not arrange for transportation, which was within her financial means, but instead, told him to stay home." He was then "expelled from school due to excessive tardiness." The child's testimony also stated that "the mother did not provide adequate supervision, often leaving the then eight-year-old child home alone at night in the neighborhood where he had encountered the gang violence." The appellate court, however, reversed the trial court's decision, arguing that the trial court's record "supports a finding that reunification of the child with his mother is not a viable option based upon parental neglect [and] reflects that the mother failed to meet the educational needs of the child" (Matter of Dennis X.G.D.V 2018).

Similarly, in J.C. v. M.T. (2017), the case was made that the mother neglected the child in El Salvador because of her "inability to provide financially for the child, and her inability to intervene when he was threatened by local gang members who were recruiting him and threatening to harm the family if she refused to pay them. Her neglect in this regard caused him to suffer emotionally and eventually quit school." While the probate court originally denied this

motion for SIJS-specific findings, the Appeals Court of Massachusetts reversed their order and sent the case back to the lower court, requiring them to enter the specific findings, including their finding that "the mother neglected [the child] by failing to take any action to protect him from dangerous local gangs, thereby putting his safety at extreme risk" (J.C. v. M.T. 2017).

These strategies were also clear in interviews with attorneys. The previously discussed interview guide from one attorney's organization (refer to Figure 2) indicates parents' response to gang threats as a potential criterion to consider when assessing parental abuse or neglect for SIJS cases. Question 13 notes how attorneys should follow-up statements about gang harm and threats made by youths to assess the relationship between gang threats and parental protection. The intake guide reminds attorneys to "assess whether they informed parent(s) about [gang] harm and how the parent responded" when the youth discloses that they were threatened or harmed by gangs or other adults.

The attorneys I interviewed also frequently discussed how they used gang threats to craft arguments that the parents did not protect their children or provide for their safety.

> After 2016 or so, there were more cases where it was argued that the parents could not keep the children safe from gangs. Every client's family had a story about the gang…usually that the gangs are trying to extort them all the time and telling families that if they do not do something then they will force their son to join or kidnap their daughter. So, I would explain in the document that the parents cannot adequately care for the child's safety. It was really hard because it sounded like we were blaming the parent. But when a parent decides that it is better to send their kid by themselves to the United States from Central America than to keep them home because of what is going on with the gangs, that means that there is no parent able to care for the child. These often were parents who did not abuse the kids and who loved and really cared for the kids, but they were so desperate that they sent these kids alone on a super dangerous journey to the U.S. because they could not protect them from gangs. (Faith, attorney).

Faith, and many other attorneys share how they rely on country conditions, such as gang violence and threats, to craft arguments that meet state standards of abuse, abandonment, or neglect, to secure the necessary state court predicate order for the child to apply for SIJS. Relying on "parents' inability to protect their children from gang threats and violence" is one

way attorneys respond to the challenges of successfully securing asylum around gang-related threats and fears. Faith even continued to mention how one client's parents tried to elicit help from the police when their child was threatened by gangs, but that the police did nothing, which she said was likely due to the influence gangs have on police in these communities. Considering this, Faith felt she had little option but to frame such experiences as the inability of the parents to "adequately care for the child's safety" to ensure that she could develop a compelling case for her client.

Such arguments may seem similar to child welfare cases made against parents who failed to shield their children from witnessing domestic violence (often between parents or a parent and a partner), a matter under constant debate as to when and how such circumstances should constitute neglect (Kantor and Little 2003; Landsman and Hartley 2007). However, arguments of parental neglect due to gang violence differ in that the perpetrator exists outside the boundaries of the home and family – the purview of which is traditionally the limits of state jurisdiction. These cases of neglect made against parents who "fail to protect" their children from external threats and harm indicate how the State views family responsibility and fault.

Poverty and Western Ideals of Child Rearing

In addition to experiencing threats and harm from violence within their communities, these youths are often escaping dire economic situations in hopes of better economic prospects for themselves and their families in the U.S. A recent collaborative report issued by the U.N. World Food Programme, Migration Policy Institute (MPI), and the Massachusetts Institute of Technology (MIT) found that conditions of poverty preventing individuals and families from covering their basic needs were the driving motivators of out-migration for Central American migrants (Soto et al. 2021). World Bank data show that around 50% of the population in

Guatemala and Honduras lives in poverty, and around 26% in El Salvador, which has more recently documented declines in national poverty levels (World Bank 2023a; World Bank 2023c; World Bank 2023b). These poverty rates are often even higher for Indigenous populations in these countries, which often constitute many of the migrants from these countries seeking protections in the U.S. (Bermeo, Leblang, and Alverio 2022). The U.S. does not grant humanitarian protection on the basis of economic need alone, leaving asylum seekers and their attorneys to find different ways to construe their need for relief. This can be challenging given that the humanitarian immigrant relief policies in the U.S. seek to separate immigrants in need of protection from those in search of better livelihoods, operating to restrict unauthorized economic migration.

Attorneys representing youths in their petitions for legal relief must strategize how to mold their clients' experiences of poverty into viable evidence that meets narrow eligibility criteria for humanitarian legal relief options. As legal brokers, attorneys (re)define clients' lives to conform to categories of victimhood and deservingness that are likely to be successfully recognized by the State (Coutin 2000; Galli 2020a; Yu 2023b). Maria, an attorney, discusses how she draws on the challenges of poverty to build SIJS cases for her clients:

> As a lawyer, you have to work with your facts. If my kid says, 'I wanted to help my dad! There was no food and no money, so I helped my dad by working eight hours a day.' But then they also say that they got hurt once. So, I will translate that into 'the father could not provide for the child and the child went to bed hungry, so the child felt like they had to help and was then exposed to very dangerous fumigation stuff without proper protection.' I will change it into the words that I need to use. I am not lying or anything, but those cases are hard because we are making a lot of parents look really bad when we know that they are really doing everything that they can. A lot of it is based on poverty, but we have to use those facts at the end of the day. (Maria, attorney).

Attorneys, like Maria, often have to be creative in how they craft these youths' lives into conditions of child maltreatment, particularly when they are left with few other options to secure their client immigration protections. Family poverty has a long history of being conflated with

parental neglect, as issues stemming from poverty can result in food and housing insecurity and children needing to work to support family finances (Amin, Quayes, and Rives 2004; Dickerson, Lavoie, and Quas 2020; Longford 1995; Pelton 2015; Warren and Font 2015). Definitions and standards of child abuse, abandonment, and neglect in the U.S. are broad, allowing for flexibility in determining what qualifies as such. In many of the countries where these youths were raised, the absence of certain child welfare laws, assistance, and oversight, combined with the broader economic situation across the country, normalizes certain experiences and expectations in everyday life. In the U.S., however, states have strict child labor and education laws, which become tools used by attorneys to craft arguments of parental neglect.

My analysis of state appellate court cases reveals the ways that attorneys draw on such state laws to mold common experiences of poverty into successful findings of parental neglect. For example, in M.F.R.V. v. J.R.M. (2019), J.V. and his attorney argued that his parents had neglected him when they could not afford to send him to school. While the trial court originally determined this did not constitute neglect, on appeal, the higher court argued that:

> The [trial] court, in concluding that J.V. had not been neglected, appeared to ignore evidence that supported a finding of neglect under Maryland law. A child between the ages of 5 and 18 is ordinarily required to attend school, and any person who has legal custody or care and control of such a child is required to see that that child attends school. […] By allowing him to quit school at 14-years-old, had it occurred in Maryland, J.V.'s parents would have violated Maryland law, which almost certainly would have resulted in a finding of neglect, regardless of whether J.V. agreed with his parents' decision. (M.F.R.V. v. J.R.M., 2019).

Similarly, attorneys have developed arguments of parental abuse and neglect around children's working requirements and conditions. In E.C.D. v. P.D.R.D. (2012), the attorney and client argued that because the father could not work full-time due to diabetes and the mother could not find employment for women in the local area, the child was required to quit school at the age of 11 and work with his father in construction (E.C.D. v. P.D.R.D. 2012). In another case, In re B.M. (2018), the attorney and client argued that the child had to work on farms to earn money

for school, food, and clothing because his parents would not support him. BM's testimony described this work as "hard manual labor, [which] required him to use a machete to cut vines, a tiller to till the soil, and a pump to fumigate crops." BM explains, in testimony, that he had not been provided with protective gear and had injured himself once, yet he "explained that his parents knew about his work conditions but did not express any concern […] he kept working under those conditions because that was the only way he could earn money for school, clothes, and food" (In re B.M. 2018).

U.S. "Standards" of Abuse and Neglect and the Challenges of Global Inequalities

The circumstances that these youths face are for many Americans unfathomable. International organizations, such as the United Nations International Children's Emergency Fund (UNICEF) and the International Labour Organization (ILO), have also worked to advocate against difficult child labor (International Labour Organization (ILO) and United Nations International Children's Emergency Fund (UNICEF) 2021; United Nations International Children's Emergency Fund (UNICEF) 2018). But while increasing research and advocacy show the negative impact hard labor has on children's well-being, many families in developing nations lack access or means to support their child's education or rely on their older children for economic contributions to the family. For SIJS, however, these experiences of dire poverty become used as evidence not of structural inequality, but rather as evidence of poor parental care.

Attorneys recognize the potential ethical dilemmas or concerns when making such arguments for their SIJS petitions. Like, Maria, who openly acknowledged that attorneys must sometimes make parents look bad when they are doing everything they can for their children, Elly, a social worker, also grapples with these challenges:

> I feel like [SIJS is] a way to manipulate the legal system to get immigration relief for these kids, which they deserve, and they should have, so I am all for manipulating the system to get these kids support. But it also feels a little bit murky or a little weird to me. It is like, by filing this, we are saying that [the youth] was neglected, abused, or abandoned. And like, I do not really think any of that is true. But I get how you can frame what happened as those things. To me, these issues are a consequence of poverty and socioeconomic status conditions in [the] country. That is not remotely the fault of [the youths'] parents. And that is what I feel icky about, because the implication is that you are faulting the parents for it. And I do not think it is true in most cases that the parents are at fault. but I also get that, like, this is what we got to do to get [youths] support. It is super tricky. (Elly, social worker).

The extension of child welfare interpretations and decisions across international borders is an interesting component of SIJS. For a state court to make a valid finding of abuse, abandonment, or neglect, the youth must be currently present in their jurisdiction. But the youths could have experienced the alleged abuse, abandonment, or neglect anywhere in the world. For SIJS applicants, state court judges in the U.S. are often interpreting situations that occurred in the home country according to that U.S. State's laws. As Zoe describes:

> Our standards are different here than if the child was in front of a state court judge in Guatemala. But since they are here, we have to use the standards that we have here and pretend as if the kids' parents were living here and if they had been subjected to that treatment here. (Zoe, attorney).

This mirrors what Chiara Galli experienced in her observations of attorneys preparing SIJS applicants: they had to "read childhood *there* through the lens of childhood *here*" (2023, p. 161). This is an important act of translation that attorneys engage in as they broker between their clients and their best opportunities for immigration protection.

The influence of cultural differences on SIJS cases was a common topic in both the state court cases and interviews with professionals. For example, Faith, an attorney, describes how "in that country, this would be seen as normal, but we put it on the petition here and say that their parents could not keep them safe because they do not have enough food." Additionally, cases such as H.S.P. v. J.K. (2015) have seen successfully appealed after the original trial court

dismissed the allegations, basing its evaluation of abuse, abandonment, or neglect on the laws of the child's home country rather than those of the U.S. state where the case was being tried.

SIJS presents an interesting case of child welfare decision-making across international borders. Interpreting home country conditions according to state laws often provides opportunity for youths' experiences in their home countries to rise to the levels of abuse, abandonment, and neglect here in the U.S. But judges did express concerns with these cultural translations in their decision-making. Nancy, a state court judge, tries to balance these concerns by drawing parallels between allegations of abuse and neglect in SIJS cases to the regular cases of abuse and neglect that have occurred in her county, while also considering the unique circumstances of the immigrant youth's petition. She wants to ensure the alleged abuse and neglect meets her state's definitions of these conditions while also helping these youths, within the limits of her jurisdictional authority.

> The kids coming from Central America are almost all without exception living in dire poverty at home. And poverty alone is not a reason to conclude that a child has been abused or neglected. So, I really try to dig into what is actually happening there. I will often see allegations that the child was required to work. So, I try and elicit more information about the work that they were doing to determine if we are talking about inappropriate child labor or talking about helping parents manage their own plot of land. It is important because, well, kids here are allowed to do agricultural work according to the laws. It is not as common in [state] as it used to be, but we are a fairly rural state. But now working from dawn until dark and working with heavy equipment – that is not appropriate. Another one of the hardest types of cases is where kids have not gone to school much because truancy is a reason families can become involved with child welfare authorities, but it is generally not a reason alone why we would say that the child can never live with their parents again. So, when these arguments come forward I really try to figure out whether it is something the parents had control over. So, if I hear that sometimes other siblings or children in the same community were going to school, then I treat that as a poor parental decision that would support a finding. (Nancy, state court judge).

Other judges, like Denise, contend with these cases by differentiating the standards of abuse and neglect for their SIJS cases as opposed to trying to identify parallels. They do this because they are aware of the immigration implications for these youths. Making these moral distinctions

between SIJS and conventional child welfare cases is a way for them to justify different interpretations of poverty as evidence of neglect:

> [In SIJS cases] the general allegations of abuse are less extreme than what I see in a traditional dependency. And by that, I mean that the argument generally says the parents are super poor, they can barely make ends meet, and if the child goes back, they will be super hungry, or they will not be able to go to school because they have to work or because of the gangs. Whereas when I have a dependency here with a local kid, it is usually more extreme. It is like mom and dad are on Fentanyl and kids are running around without clothes. So, the abuse is more extreme in a dependency here. I don't want to say these cases are generic, because it is certainly heartbreaking, but it is a little less severe when someone is just alleging that dad is a drunk, mom is struggling to make ends meet, or one of the parents is dead, or one parent has to work all day just to make money and if I go back home, I am going to be working and hungry. I am not going to get nitpicky with people. But if [the state's child welfare agency] was trying to take a kid away because mom and dad have to work a lot to make ends meet, I would not necessarily be able to give them a dependency for that reason because poverty alone is not reason to establish a dependency. So, I would say my standards are lower on an SIJS. [This is also because] I recognize the trauma that would come from returning them [to their home country]. (Denise, state court judge).

In addition to drawing parallels between SIJS and more traditional domestic child welfare cases, Denise also considers the trauma these youths would experience if they were forced to return home, and recognizes the role she can play in their ability to remain in the U.S. These perspectives provide Denise with the justification to differentiate her standards for abuse, abandonment, and neglect in her SIJS cases. In facilitating youths' recognition as abused or neglected children, state court judges are also important legal brokers in that they can have the power to (re)interpret or (re)consider categories and criteria in ways that promotes (or restricts) youths' eligibility for SIJS.

Case Law and Concerns Over Setting Precedents

Such compartmentalization, however, can be tricky because decisions made in one ruling become part of case law or "judge-made law" – law based on precedents from previous rulings. Decisions made by appellate courts are binding case law within that jurisdiction. For example, a decision made in the Massachusetts Court of Appeals is binding in all Massachusetts courts. The

binding nature of case law can complicate efforts to morally differentiate standards of abuse, abandonment, and neglect between SIJS and conventional child welfare cases. This is because establishing a precedent of defining neglect with a lower threshold based on poverty in an SIJS predicate order could subsequently serve as legal precedent (case law), potentially used to support guardianship or dependency petitions in local cases. While this was not often discussed as a concern by either attorneys or judges interviewed, some did express hesitation about using instances of poverty as evidence of neglect because of these implications. Luis shared that he "recognize[d] there are risks in arguing for broader definitions of abuse, neglect, and abandonment [in SIJS cases]" and was "learning to do a better job of holding off making an argument that the parents neglected the kid because they were poor unless absolutely necessary" (Luis, attorney). Similarly, Zoe shared how she understood why some judges were hesitant to make certain findings of abuse, abandonment, and neglect in SIJS cases because they may "not want to set case law that somebody's kids can be taken away just because the person is poor" (Zoe, attorney).

When I followed up with Denise about what implications she thought differentiating standards between SIJS and local cases would have on future cases, Denise discussed how her silo-ing of these matters was not difficult due to the very different ways SIJS cases interacted with the child welfare court. In response to my follow-up, Denise explained:

> I'm just doing a guardianship, so I am not affecting parents' rights in any way. I am also largely dealing with adults[12] here, which is very different from a six-year-old. I know that all I am doing [in these cases] is giving this kid an opportunity to stay here and continue to hopefully thrive. If I have a reason to do that and the legal basis to do that, I am going to do that. I can rationalize [differentiating these cases] and bifurcate them because there are very important constitutional rights that parents have that I am not affecting with SIJS cases like I am affecting when it comes

[12] This comment is in reference to the reality that many of the SIJS-seeking youths appearing in Denise's courtroom are likely 16-21 years of age. Denise's state has pathways for youths ages 18-21 to seek the guardianship orders necessary for SIJS. The youth that appear in front of Denise are either close or already past the age of legal adulthood.

> to our typical standard dependency dockets. So, it is not hard to silo [the SIJS cases]. (Denise, state court judge).

The different ways that SIJS cases are handled in court, as well as how court procedures differ between SIJS and traditional dependency/guardianship cases will be discussed in Chapter 5. Such silo-ing, however, is an important way that judges – and attorneys – justify construing experiences of poverty as evidence of parental abuse or neglect for the purpose of SIJS. While doing so secures youths important immigration relief to remain in the U.S. through SIJS, preventing their deportation and return to these conditions, it (re)legitimates the State's justification that these youths are deserving of protection because of their parent(s)' poor parenting.

(Re)framing Parents' Behavior to Young Clients

Conditions prevalent in youths' home countries – such as extreme poverty and gang violence – become frequently used as grounds for parental abuse, abandonment, neglect in an effort to secure these youths immigration relief. Attorneys must not only creatively construct these experiences of gang violence and poverty into arguments of parental abuse and neglect, but they must also explain and justify these arguments to their clients regarding their parents. This type of brokerage – the legal translation attorneys must provide clients who have limited knowledge of the law (Galli 2023) – can be difficult when it involves moral dilemmas. While youths may not perceive their parent(s) as abusive or neglectful, attorneys advocating for SIJS must educate their clients about such parental abuse and neglect. These portrayals can be damaging to how youths think about their parents and their care at home, raising moral dilemmas (Jameson 2020).

> We certainly never wanted to demonize parents who have been doing their absolute best to keep their kids safe. But there were definitely cases under [our state's] law that would meet the

> definition of neglect, abuse, or abandonment, but in other cultures might not rise to that level. So that was a conversation that we often had to have with kids: 'this meets the definition of abuse here and so you qualify for this form of relief. We are not saying that your mom or dad is a bad person, but these actions lead to this situation and will allow you to get the safety you need here.' There were young people who just had a hard time wanting to make this SIJS claim. They loved their parents even if a parent treated them poorly. That also was something we would talk about [with our clients]. We would tell them to honor that love for their parent(s) and that they can do that and still provide these facts to the court to seek this relief that they need. (Kayleigh, attorney).

In educating their clients about the conditions of abuse and neglect they experienced, attorneys contribute to the transnationalization of American standards and expectations of family rearing as they translate youths' experiences in the home country as cases of parental abuse and neglect according to U.S. state law. Kayleigh reveals the emotional labor that these cases can entail as they simultaneously need to educate clients on how they experienced parental abuse or neglect and manage their clients' emotional reactions to these conversations.

Although conversations with youths was not part of my research, my conversations with attorneys about their clients' responses to SIJS explanations and arguments shed light on the potential reactions and sentiments of youths whose legal relief hinges on allegations of parental abuse, abandonment, or neglect. Attorneys note that while some youths show little to no reaction when their experiences are framed as parental abuse or neglect, others, as Kayleigh indicates above, express feelings of hurt or reluctance upon encountering the idea of their parents being labeled as abusive or neglectful. As Adrianna, an attorney, describes:

> Some kids really feel like their parent(s) abandoned them and they are glad to have this form of relief. But for other children whose parents did everything they could, it is really painful for them to know that their parents are penalized, and they will not ever be able to petition for their parent. (Adrianna, attorney).

Other attorneys, like Luis, share how some clients already feel abused or neglected by their parents at home and they are not troubled by learning about the necessity of filing allegations against their parent(s) for the SIJS application. But even these attorneys share that these

conversations give “most kids pause” (Luis, attorney). Luis has had clients opt not to pursue SIJS because they value their relationship with their parent and hope to eventually petition for their parent to join them in the U.S. one day.

Attorneys have different strategies for explaining these allegations and rationalizing them with their clients. Many attorneys discuss how older male clients, clients who have never met one of their parents, or clients who do not have a good relationship with their parent(s) at home show little emotional concern for how their parent(s) are portrayed in their SIJS petition. But these conversations were often more difficult to have with younger clients or with clients whose cases construed poverty or gang violence as neglect. Luis, who has had youths decide not to pursue SIJS because of their relationship with their parent(s), describes how he works to validate and respect youths’ feelings during these difficult conversations:.

> [These conversations] are super awkward. I have to have long talks with my kids. I often say, ‘Listen, I am not asking you to betray your parents and I am not saying that your parents are bad people. I do not want you to think in your mind that your parents abused, neglected, or abandoned you, but [state] definitions of abuse, neglect, and abandonment are very broad, which is good for you, and we are going to try to show that you sort of fit into those, even if that is not how you feel. I totally respect that is not how you feel. I do not want you to feel that way if you love your parents. But we just have to do this to help make sure you can stay safe and stable here.’ (Luis, attorney).

While Luis tries to justify these moral dilemmas by validating youths’ feelings and emphasizing how they will help him secure immigration legal relief, Maria tries to describe the allegations to her clients without explicitly using the terms abuse, abandonment, and neglect. Doing so provides a way for her to compare situations across cultural contexts without assigning certain labels:

> I try to tell my client what forms of relief I think they qualify for and that, usually, the best option is SIJS. I use different language when I talk to the kids, though. I try not to say abuse, neglect, or abandonment. I explain that while these actions they described might not seem so bad to them, it is kind of illegal here to do those things. And because it is kind of illegal here, that will work for us in getting relief. (Maria, attorney).

Maryanne, on the other hand, talks about how she "manages expectations with clients" who are uncomfortable saying these things about their parents. Managing clients expectations involves educating clients about certain abuse or neglect standards according to U.S. state law and teaching them to see their parent's actions through these frames:

> I have had to manage expectations with the clients a couple of times where they do not want to say that about their mom. We explain to them that like, 'look, we are not saying that she is a bad parent. What we are saying is that she has financially abandoned you.' And I talk with the client about how that means that, 'according to our state's laws, in the last five years she has not provided you with any finances for care.' I will ask if they think that is accurate, and they say 'yeah,' so then we talk about how this argument will help them get immigration status. I just remind them that we're not making a judgement about their parent but rather that there has been financial abandonment, for example. We kind of remind them that we will say [to the court] that '[client] had a really good relationship with their mom, and she was really involved in [client's] life, but she was not able to financially provide for [client]. (Maryanne, attorney).

Attorneys respect their clients' decision to not pursue SIJS due to discomfort with how it portrays their parents or because it precludes them from sponsoring a parent's immigration. However, in managing clients expectations, they also stress to their clients that SIJS is likely their "only" or "most likely" pathway to legal status in the U.S. These conversations can be difficult for youths who do not perceive their parent(s) as abusive or neglectful, yet many inevitably agree to move forward with the proceedings because of SIJS's promising pathway to legal status in the U.S.

The ways in which attorneys discuss eligibility with clients and how youths react, reflects Galli's (2018, 2020b) argument that youths often undergo a "rite of reverse passage" as they develop their legal consciousness around the certain ideas about childhood and vulnerability that shape their eligibility for legal relief. Their migration narratives are often stripped of agency and (re)created into stories of parental abuse and neglect, depicting them as dependent and vulnerable children in need of protection and care due to parents' perceived inability to provide it (Galli 2018, 2020b). Youths not only have to internalize potentially new understandings of their

parents, but become keenly aware that their "need for relief" is tied to their victimization as an abused or neglected child, not as a young adult choosing to escape difficult and dangerous conditions in their home countries in pursuit of better opportunities in the U.S.

Substantiated Cases and Creative Cases

I have shown how many SIJS cases construe general experiences of poverty and community violence as parental abuse or neglect for the purpose of securing SIJS, but there are also very substantiated cases of parental abuse and neglect that these youths experience. For example, sexual assault by a family member is not an uncommon form of abuse experienced by young females immigrants. In these cases, it is relatively easy, and less morally conflicting, for attorneys to successfully argue for a SIJS state court order that the assaulting parent abused the child or that the parent's inability to protect their child from abuse by another family member constitutes parental abuse or neglect. This is not unlike domestic child welfare cases made against parents who are unable to protect their children from sexual abuse by a family member.

Abandonment at Birth

Additionally, many immigrant youths have been raised by a single parent after one parent – often the father – left the child either just before or shortly after the child's birth. These cases also offer attorneys a relatively straightforward and ethically less challenging way to establish instances of abandonment. As Maryanne describes, "my quintessential SIJS cases are cases where a biological father abandoned the mother either during pregnancy or right after the kid was born. So, they have not been in contact with the kid since they were born and have not provided financial support. Those are the easiest cases legally to prove." When attorneys describe these actions as abandonment to their clients, their conversations seems to have little

impact on the youths' emotions, unlike other portrayals of parental neglect mentioned previously. These constructions of abandonment seem to match children's feelings of having little to no attachment to these parents.

Death Without Explicit Care Arrangements

Attorneys have also found ways to creatively construct cases of parental abuse and neglect that meet the state's definitions without making accusations against a loving parent. For example, a common 'creative case' attorneys use is the argument that the death of a parent constitutes "a similar basis" to abuse, abandonment, or neglect, which is a valid argument for the SIJS predicate order under the 2008 TVPRA.

> We can argue death constitutes abandonment in cases where there are two involved parents but one of them died. It is unfortunate, but we argue it as death without a will, or death without making plans for the minor's care constitutes abandonment or 'a similar basis.' We make the argument that not planning for the minor's care in the event of [their] death constitutes abandonment under the law. It is a bit of a stretch, legally, but under SIJS has been an approved legal argument. (Maryanne, attorney).

The inclusion of "or a similar basis" to the required findings of abuse, abandonment, or neglect provides states with the ability to further expand or broader inclusion criteria for who and what constitutions an abused, abandoned, or neglected child.

Maryanne highlights that despite being a "bit of a stretch, legally," cases involving the death of a parent have proven to be successful legal arguments for establishing abandonment or "a similar basis." Some states, like New York, Massachusetts, and California, have strong statutory law supporting death as abandonment or a similar basis to abandonment (California Welfare & Institutions Codes; Massachusetts General Law; New York Family Court Act). Attorneys working in these states often then consider these SIJS cases as their "grand slam cases" (Luis, attorney). For attorneys working in such states, these cases are favorable because

they are not only easy to win, but they often make inquiries into the youth's life much less traumatic. For example, in her interviews with clients, Diana says that if she determines a parent has died, "then that can be a basis and we really do not go much further than that. We try to keep [the interviewing] as minimally traumatic as possible" (Diana, attorney).

However, not all states have statutory or case law that supports parental death as abandonment or a similar basis to abandonment. For example, both the trial court and, subsequently, the appellate court in In re of Guardianship of the Persons of D.S.M (2018) denied the petitioner's argument that he "had been abandoned or neglected by his father by virtue of his father's murder." The trial court argued that the father's murder did not constitute abandonment or neglect and the appellate court agreed, citing Nevada definitions of abandonment and neglect, which require "a willful act on the part of the parent" (In re of Guardianship of the Persons of D.S.M 2018). Under these laws, it is difficult for judges to consider death a willful act of neglect or abandonment. These decisions, particularly those issued by the state appellate court, present a significant hurdle for attorneys in those states when attempting to establish parental death as constituting abandonment, as these rulings set precedent within the state's legal framework. Given their binding nature, judges are obligated to adhere to these decisions and apply similar rulings to future cases.

While case law is only binding within the jurisdiction in which its argument originated, some attorneys and judges have been able to draw from other state's case law to argue that death constitutes abandonment or a similar basis in their own state. Case law from other state jurisdictions does not have legal binding authority in another state; however, it can be used as "persuasive authority," which means that legal authorities may turn to the rulings of other jurisdictions or lower courts, but that they do not bind those courts to certain decisions.

Attorneys, and even judges, have looked to and acknowledged other states' rulings on these matters to make a persuasive argument that the death of a parent constitutes parental abandonment in their case. For example, Bess, the clerk for a state appellate court judge, explains how, in one recent case, the judges turned to another state's case law to support their disagreement with the trial court's decision that the father's death did not constitute neglect. Because there was no existing case law addressing parental death as neglect in this specific state, the appellate court judges turned to case law from another state as persuasive law in support of their findings.

Protecting Vulnerable Youths as *Parens Patriae*

This chapter has shown how undocumented immigrant youths' eligibility for SIJS hinges, in part, on the (re)interpretation of their lives and experiences in their home countries through the laws and legal norms defining abuse, abandonment, and neglect according to the laws of U.S. states. While there are certainly substantiated cases of abuse and neglect, securing legal relief for youths through SIJS often relies on attorneys to venture into grey areas that conflate poverty and community violence as parental neglect. This projects Western norms of child rearing and family relationships onto transnational families across international borders, extending the State's parens patriae ideology beyond its citizenry. Laws governing definitions of abuse, abandonment, and neglect are rather broad and flexible, providing opportunity for youths' experiences of violence, poverty, labor, and limited educational opportunities to be molded into court findings of parental abuse and neglect, granting them the necessary predicate order to petition for federal immigration benefits through SIJS. This chapter shows how SIJS's framing of abused and neglected children as deserving immigrants privileges the narrative that parents, not countries or governments, are to blame for the victimization of children. These priorities, and the extension of

certain values related to child rearing and child vulnerability, normalize State intervention in the family matters. They prioritize protection from family-related harm as a more valued or deserving from of intervention compared to other instances of victimization.

In the next chapter, I illustrate how the central involvement of state courts, judges, and laws contributes to the success of SIJS as a form of legal relief for undocumented youths. By examining the legislative history of SIJS, I demonstrate how the incorporation of state court authority in the main process of determining eligibility – the predicate order findings – and the imposition of specific constraints on federal discretion in (re)assessing the state court decision, play crucial roles in contributing to the success of SIJS. This next chapter will begin to explore the complexities of cross-jurisdictional decision-making, through identifying how authority unfolds across both jurisdictions.

Chapter 4 Jurisdictional Disputes: State Court Authority over Federal Immigration Matters?

Special Immigration Juvenile Status today is governed by the criteria and procedures outlined in the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA). Since its inception in 1990, however, SIJS eligibility criteria have shifted over time, reflecting changing perceptions towards immigrant deservingness, as well as debates over the delineation between state and federal jurisdictional authority. Through an analysis of Special Immigrant Juvenile Status's (SIJS) legislative history, this chapter provides important background information on the evolution of SIJS eligibility, the reasoning for the state courts' involvement, and federal authorities' responses to split jurisdictional authority. These debates set the stage for the subsequent chapters that focus on how state court judges feel about and respond to the state court's involvement in the process (Chapter 5) and how attorneys navigate the challenges that arise when working across both state child welfare and federal immigration jurisdictions (Chapter 6).

Humanitarian immigration visas and legal protections are generally awarded by federal immigration authorities on a discretionary basis. Immigration matters – laws and decisions pertaining to who is permitted to legally live in the U.S. and who to exclude or deport – rest solely the jurisdiction of the federal government. While only federal immigration officials are vested with the power to grant or deny SIJS, like with other forms of humanitarian immigration relief, the law's integration of the state family and child welfare courts in providing the required

predicate order limits federal authorities' exercise of discretion in their decision-making. I build on the work of Amy Joseph, Amy Pont, and Christina Romero (2020) and Elizabeth Keyes (2016), and I compare SIJS with two other forms of immigration visas that involve state or local authorities: the U-visa and marriage-based green cards. The state court process in SIJS limits federal authorities' discretionary powers because, unlike with asylum, the state courts' authority over child welfare proceedings are protected by the U.S. Constitution.[13] Thus, federal attempts to (re)evaluate evidence presented in the state court case to examine the legitimacy of the state court's findings would be an overstep of their constitutional authority. As scholars like Joseph, Pont, and Romero (2020) and Keyes (2016) argue, the INA/USCIS have attempted to exercise deeper discretionary powers over SIJS and elevate their authority over the state court matters by redefining their consent function outlined in the SIJS statute. Their efforts, however, have been challenged by government entities and legal professionals alike, which has ultimately served to protect the decisions of the state courts in the SIJS predicate orders.

The success of SIJS relative to other forms of relief can be partially attributed to restrictions on federal authorities' ability to (re)evaluate the facts and decisions of the state court, thus limiting their say over who is considered deserving as an abused, neglected, or abandoned youth. This is not the case for the U-visa and marriage-based green card, as federal authorities are explicitly permitted to (re)assess the facts and determine the individuals' level of deservingness, legitimacy, and worth. The involvement of the state court and limits on discretionary decision-making at the federal level make SIJS unique compared to other immigration visas incorporating state and federal authorities. It is also these legal divisions of

[13] The U.S. federal system divides power between the federal government and state governments. The tenth amendment grants States power and authority over matters not specifically given to the federal government through the U.S. Constitution.

authority that contribute to SIJS's success compared with other forms of humanitarian legal relief. Nonetheless, while the division of authority facilitates youths' access to SIJS, negotiations over this division reveal some of the challenges of working across jurisdictions.

The Beginnings of SIJS: Support for Immigrant Youths in Foster Care

Research into the legislative history of SIJS and the Immigration Act of 1990 reveals little about why and how SIJS was conceived of and passed into law, but scholars have identified that it was originally envisioned as a child welfare benefit rather than a major immigration policy (Daugherty 2015; Joseph et al. 2020; Knoespel 2013; Porter 2001; Rodriguez 2023). According to Ellen Wasem (2014) SIJS seemed to be "a small provision included in a major overhaul of immigration law." The Immigration and Naturalization Service (INS) indicates that it was intended to "alleviate hardships experienced by some dependents of the United States juvenile courts by providing qualified aliens with the opportunity to apply for special immigrant classification and lawful permanent resident status, with the possibility of becoming citizens of the United States" (Special Immigrant Juvenile Status 1993). Passed as part of the 1990 INA as an employment-based, fourth preference (EB-4) visa,[14] which were reserved for different types of "special immigrants," SIJS became available to youths who were dependent on a juvenile court (eligible for long-term foster care) and whom a judge determined it would not be in their best interests to return home.

[14] None of the professionals I interviewed knew why SIJS became an employment-based visa. Research also yielded no additional insight. However, this classification contributes to the long visa wait and backlog for many applicants as under INA 202(a)(2), applicants from any given country cannot receive more than seven percent of the total employment and family-based visas in a given year. A recent April 2023 Visa Bulletin changed EB visa allocation in ways that will likely reduce the backlog and wait times for SIJS applicants from El Salvador, Guatemala, and Honduras, but at the time of writing, the impact of these changes was not yet known.

Recognizing State Court Authority on Children's Matters

When SIJS was introduced into law in 1990, state courts and judges were given the decision-making authority over the care and custody of the children in question, as this was their area of expertise. According to an SIJS-related webinar led by a state court judge – *Best Practices for Drafting State Orders* – Congress intended to rely on the courts and professionals already handling and adjudicating matters of child welfare rather than "create a whole new system where a federal court would determine abuse, abandonment, and neglect." There was, however, unease from federal entities regarding the involvement of state courts from the beginning. Commentators on the proposed law expressed concern that youths would abuse SIJS to simply obtain immigration protections and requested more federal control. To these concerns and requests, the INS responded that it would be both "impractical and inappropriate for [the INS] to routinely re-adjudicate judicial or social service agency administrative determinations as to the juvenile's best interest" (Special Immigrant Status 1993). The federal government thus acknowledged the authority of the state courts in child welfare matters and the limits of its own authority.

Despite the federal government's statement that it would not and should not oversee the state courts' determinations, it has called into question which jurisdiction should have legal "custody" of youths when they are both "apprehended immigrants" and "minors." Both Joseph et al (2020) and Keyes (2016) show in their own legislative analyses how the INS argued in the early years of SIJS that it should have legal custody of these youths precisely because they are undocumented immigrants, elevating their decision-making capacities over the state authorities handling youths' physical custody matters. These debates resulted in amendments that would

grant the federal government more oversight over how state courts could engage with immigrant youths and restricted SIJS eligibility (Joseph et al. 2020; Keyes 2016; Lloyd 2006).

Seeking Control: Attempts at Usurping State Authority in the Mid-1990s

Growing concerns throughout the 1990s that immigrant youths would seek juvenile court dependencies simply to gain access to legal residency prompted amendments that narrowed SIJS eligibility criteria and elevated the gatekeeping authority of the federal immigration bureaucracy (Porter 2001). In 1997, Senator Pete Domenici (New Mexico) described SIJS at a committee hearing as "a giant loophole" because "every visiting student from overseas c[ould] have a petition filed in a state court…declaring that they're a ward and in need of foster care" (quoted in Joseph et al. 2020). In response, Congress made two important changes issued in the 1998 Appropriations Act: (a) individuals now had to be dependent on a state court and eligible for long-term foster care <u>explicitly because</u> of abuse, abandonment, or neglect, and (2) minors in the custody of the INS (usually those who had been detained) were now required to obtain the Attorney General's (AG) consent *before* a state juvenile court could exercise jurisdiction over their physical custody and dependency proceedings.[15] As Keyes (2016) states, the introduction of this consent requirement "demonstrates a profound federal reassertion" of its authority over SIJS (p. 52). The new consent function operated as a "federal blessing" –without the AG's consent, state courts could not make any dependency findings regarding the care and custody of these youths (Chen 2000; Keyes 2016:52; Porter 2001).[16]

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[15] 1998 Appropriations Act, Pub. L. No. 105-119, §113, 111 Stat. 2440, 2460 (1998). This was formally classified as *specific consent*, though the specifically legal terminology for consent functions is outside the purview of this dissertation and not necessary for the argument of this chapter.
[16] see: USCIS Memorandum 2004

Following these amendments, the INS issued guidelines outlining this consent function, as well as new documentation requirements for SIJS Petitions (INS Memorandum 1999). These documents included, among other things, evidence of how the juvenile court determined that the youth was eligible for long-term foster care due to abuse, abandonment, and neglect, and the evidence that informed their best interest determination. According to the INS, "documents filed with the juvenile court would be the most reliable evidence of these elements" (INS Memorandum 1999).

The requirements for supporting documentation, however, directly contradict the INS's declaration in 1993 that it would be "impracticable and inappropriate" for them to reevaluate the state court's decisions (Lloyd 2006). Including the evidence supporting the state court's findings of abuse, abandonment, or neglect, "opened the door for then-INS to look behind state court decisions to see if there was truly abuse, abandonment, or neglect, and whether the federal government agreed with the state court interpretations" (Keyes 2016, p. 54). The statutory and policy changes in the late 1990s reflect federal authorities' concerns over the role of the state court and the loss of their authority over controlling unwanted immigration flows.

Defending State Authority: SIJS in the 2000s

Policy shifts in the 2000s broadly concerned with children's well-being, however, shifted authority back into the hands of the state courts and made SIJS accessible to more immigrant youths. First, the Homeland Security Act of 2002 transferred the custody and care of unaccompanied immigrant minors from the INS to the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS). While prior to 2002, the INS had been responsible for both the "care" and "discipline" of these youths as "minors" and "illegal

immigrants," the Homeland Security Act separated these responsibilities. Second, the 2008 TVPRA requires ORR to "promptly" place an immigrant youth in their custody in the "least restrictive setting," prioritizing placements with relatives (8 U.S.C. § 1232(b)(2)). These policy shifts elevated moral categorizations of youths as "dependent" and "vulnerable" within federal policies.

The 2008 TVPRA also expanded SIJS eligibility in several important ways. First, individuals now only had to be declared dependent "upon an individual or entity appointed by a State or juvenile court in the U.S., or the minor's guardians or custodians," expanding eligibility beyond youths eligible for long-term foster care (2008 TVPRA). Additionally, a state court judge needed to argue that reunification with *only one* parent – as opposed to with both – was not possible due to abuse, abandonment, or neglect. Consequently, immigrant youths could now reunify with a parent in the U.S. who has not been accused of abuse, abandonment, or neglect, and still be eligible for SIJS. However, even after naturalizing as a U.S. citizen, the youth would still be unable to sponsor the non-abusive parent for immigration to or legal status in the U.S.

Additional changes to SIJS eligible criteria in 2008 also (re)elevated the authority of the state courts over youths' eligibility for SIJS. The TVPRA expanded the conditions for SIJS eligibility by including "or a similar basis found under State law" alongside abuse, abandonment, or neglect. This amendment has broadened eligibility criteria, allowing attorneys more flexibility to make arguments, such as those based on the death of a parent (see Chapter 3). As Keyes (2016) highlights, this addition to the eligibility criteria elevates the state court's authority over what constitutes parental harm or neglect of the child.

Additionally, the 2008 TVPRA also changed the federal consent function in a way that limits the gatekeeping role assumed by the federal government in the late 1990s. Immigrant

youths who have been apprehended by immigration authorities no longer need federal permission to pursue a dependency or custody order in a state court. Instead, the new federal consent function (now granted by USCIS) affirms that USCIS agrees or disagrees that the applicant has met the criteria and filed the required evidence of their eligibility, generally legitimized by the completed state court predicate order.[17] Importantly, federal consent is now granted *after* youths have obtained the state court findings, meaning it no longer operates to gatekeep who can pursue state court findings of abuse, abandonment, and neglect (see Table 3 below for an overview of SIJS eligibility and the federal consent functions).

While this new consent function may indicate that the federal government still beholds a significant gatekeeping function between applicants and SIJS eligibility, scholars show how this consent function does not authorize the federal government to (re)evaluate the facts and decisions of the state court. As Joseph, Pont, and Romero (2020) argue, this consent function does not grant the federal government permission to scrutinize the content of the state court's findings of abuse, abandonment, or neglect – a limitation that is not even new under the 2008 TVPRA. A 2004 Memorandum issued by USCIS asserted that "the federal [adjudicator] should not second-guess the court rulings or question whether the court's order was properly issued…such findings [included in the I-360] need not be overly detailed but must reflect that the juvenile court made an informed decision." The 2004 Memo further clarifies that "the role of the District Director in determining whether to grant express consent is limited to the purpose of determining special immigrant juvenile status, and not for making determinations of dependency" (USCIS Memorandum 2004). Given that over 90% of SIJS applications are

[17] Specifically, the law describes this consent function as operating to acknowledge that the application is bona fide, meaning that federal authorities agree the application was sought for relief from abuse, abandonment, and neglect and not solely for immigration benefits (USCIS Memorandum 2009).

successful once submitted to USCIS, Keyes (2016) shows that the federal government's consent to the application being bona fide has not acted as a restrictive gatekeeping function. While federal authorities could previously try to limit who could come under the jurisdiction of the state court, preventing them from being able to file an application, they are now unable to gatekeep at this point in the application process.

Table 3: Overview of SIJS laws, eligibility criteria, and the federal consent function.

Law	SIJS Eligibility	Federal Consent	Specific Changes
1990 Immigration and Nationality Act (INA)	Individual must be: (1) Dependent on a juvenile court and eligible for long-term foster care. (2) State court judge must determine that it would not be in the juvenile's best interests to return to their home country.	No consent function.	N/A
1998 Appropriations Act	Individual must be: (1) Dependent on a state court and eligible for long-term foster care because of abuse, abandonment, or neglect (2) State court judge must determine that it would not be in the juvenile's best interest to return to their home country	Minors in the custody of the INS (usually those who had been detained) were now required to obtain the consent of the Attorney General (AG) to give the state juvenile court jurisdiction over their physical custody and dependency proceedings. This consent had to be obtained prior to pursuing a state court order.	Specifically required that the state dependency be due explicitly to findings of abuse, abandonment, and neglect. Introduced the federal consent function.
Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008	Individual must: (1) be unmarried and under the age of 21 at the time of filing the application with USCIS (2) be currently living in the United States (3) have a valid juvenile state court order with three findings: a) minor is dependent on the court, or in the custody of a state agency, department, or an individual appointed by the court; b) the minor cannot be reunified with one or both parents because of abuse, abandonment, neglect, or a similar basis under state law; c) it is not in the minor's best interest to return to their home country or their or their parents' last habitual residence	Federal consent function is now USCIS/DHS's acknowledgement that the application is bona fide – that the application is sought not solely for immigration relief. It acknowledges that the application is complete and meets the statutory requirements. This consent occurs after the applicant has already secured the state court order.	Removed the criteria that only individuals eligible for long-term foster care could apply for SIJS, making individuals who had reunited with one parent or a guardian eligible. Removed the criteria that the child could not reunify with both parents due to abuse, abandonment, or neglect, instead asserting that the child only had to experience abuse, abandonment, or neglect by at least one parent, making eligible youths who were living with one parent. Added the language "or similar basis" to abuse, abandonment, or neglect as legitimate reasons why the individual could not reunify with at least one parent. Changed the federal consent function from permission to seek a state court order to an acknowledgement that the federal immigration application is complete and meets the statutory requirements.

Comparison with Other Forms of State Involved Immigration Relief

I now turn to how federal discretionary decision-making power and state authority in two other types of immigration benefits that involve both federal and state/local jurisdictions. Marriage-based visas, for the immigrant spouses of U.S. citizens and legal permanent residents, and U-visas, for the victims of crimes, also involve decision-making at the local level prior to federal adjudication of immigration benefits. In marriage-based immigration visa petitions, marriage ceremonies and licensing requirements are conducted and authorized by the state judiciary. Similar to child welfare matters, laws regulating marriage are also under the purview of states' laws. States have the right to determine who is eligible to marry (generally by setting age limits, restrictions on polygamy and marriages between family members, and historically on which two sexes could marry), spousal obligations, and terms for divorce (Abrams 2007). When using a marriage for immigration purposes, however, the 'quality' of the marriage becomes a measure for scrutiny by the federal government, calling into question the authority of the state judiciary that legitimized the marriage. In the case of the U-visa, victims seeking these legal protections must first obtain a certification from a local law enforcement agency, prosecutor, judge, or other designated authority that acknowledges the crime they suffered and attests to their willingness to assist in the investigation or prosecution of the crime. Given that these local-level authorities are not legally obligated to sign this certification form, they exercise exceptional discretion and control over immigrants' recognition as "worthy victims" for legal protections.

Marriage-based Immigration Visas

Marriage-based immigration petitions permit federal immigration authorities the right to scrutinize and ascertain the authenticity of the marriage, ensuring that it was not entered into

solely for immigration purposes. Under the Immigration Marriage Fraud Amendments (IMFA), passed in 1986, couples filing for a spouse's marriage-based visa must demonstrate the legitimacy of their marriage by submitting evidence of cohabitation, comingling of finances, reproduction, and affidavits from third parties in their applications. Authorities then evaluate these conditions associated with "genuine marriages" to access the validity of the marriage for the purpose of legal residency benefits in the U.S. In parallel, couples must also pass immigration interviews that establish the credibility of their union (Abrams 2007; Blitzer 2004; Chetrit 2012).

While state courts authorize marriages, federal authorities have extensive discretionary authority over whether they believe the marriage is legitimate for immigration purposes. States exercise limited control over individuals' right to marry, often basing their decisions solely on factors such as age and familial relationships when issuing marriage licenses. Additional evidence to support the desire to marry is generally not required by states. The marriage license issued by the state is typically regarded as sufficient evidence of a legal marriage when proof is required. However, for immigration purposes, federal authorities frequently demand supplementary evidence beyond a state-issued license to validate a marriage. Their authority over marriage legitimacy thus extends beyond the state court's granting of the legal marriage.

The absence of a deeper fact-finding expedition by state courts and permission for this exploration by federal authorities is one key way in which marriage-based visas differ from SIJS procedures. State courts do not evaluate whether the relationship between two individuals constitutes a legitimate marriage, but it does investigate whether the facts presented by attorneys and petitioners constitute evidence of abuse, abandonment, and neglect. On the flip side, federal authorities do not have the same permission to conduct their own fact-finding missions or have

the discretion to (re)evaluate and (re)adjudicate the sufficiency of the state courts findings of abuse, abandonment, and neglect in SIJS cases. In adjudicating the I-360 application for SIJS, USCIS is required to defer to the state court decision regarding the legitimacy of the abuse, abandonment, and neglect suffered by the child. "Who" is considered abused and abandoned is strictly within the jurisdictional authority of the state courts. On the other hand, in the case of marriage-based visas, federal authorities are permitted to engage in extensive fact-finding, evaluation, and discretionary scrutiny of the lifestyle choices that constitute "who" is legitimately married.

U-visa: Immigration Relief in Exchange for Local Cooperation in Criminal Prosecution

U-visas – immigration visas for victims of crimes – are another form of immigration relief that involve state-level findings. To apply for a U-visa, an immigrant victim must demonstrate that they "suffered *substantial*[18] physical or mental abuse as a result of the qualifying crime" (U.S. Department of Homeland Security 2022). The applicant must submit Form I-918B, certifying their willingness to help local authorities in the investigation or prosecution of the crime. This form is signed (voluntarily[19]) by a local "certifying agency," defined by USCIS as "any federal, state, tribal, territorial, or local law enforcement agency, prosecutor, judge, or other authority that has the responsibility to detect, investigate, or prosecute the qualifying criminal activity, or convict and sentence the perpetrator" (U.S. Department of Homeland Security 2022). This certifying agency must also provide information about the known harm or abuse sustained by the victim and should, based on USCIS encouragement,

[18] Emphasis is my own.
[19] According to the I-918B instruction sheet, certification agencies are under "no legal obligation" to complete the form (Jensen 2009).

include supplemental documentation that substantiates the injuries and harm sustained (U.S. Department of Homeland Security 2022). According to this guide, evidence of the harm sustained can include photographs, police reports, findings, or court orders. In this process, the local certifying agency plays a crucial role in validating the immigrant's harm or vulnerability, which ultimately dictates their worthiness for protection as a crime victim.

The roles of local courts and authorities in the U-visa process and the state court in the SIJS process differ in important ways regarding the authority their actions have on USCIS's discretion over the case and their obligation to participate. Certifying agencies for a U-visa operate as evidence collectors – documenting evidence of the harm a victim suffered and asserting that they are willing to cooperate. USCIS possesses the sole power to evaluate whether these proclamations constitute sufficient evidence that the victim is worthy of U-visa protections. On the other hand, the state court acts as an important evidence assessor in the SIJS process. They not only collect evidence of abuse, abandonment, or neglect, but they also have the judicial responsibility to legally assert that an individual is a victim of these experiences. Their findings are formal court orders with legal implications and obligations. Conversely, the U-visa certification is a not a legally binding formal court order and recognized agencies and authorities are under no legal obligation to sign these documents. While state court judges may hesitate to make the specific SIJS predicate order findings or contest their jurisdictional authority over such cases, they are obligated to hear all child welfare cases filed within their jurisdiction.

Another important distinction between U-visa and SIJS criteria that operates to elevate the authority of the state courts in establishing eligibility for SIJS is the measure of the severity of these harms in establishing legitimate victimhood. In the case of SIJS, there are no specific criteria indicating the severity of abuse, abandonment, or neglect required for eligibility. The

statutory language delegates the determination of what constitutes these conditions to the state court, without providing federal authorities the opportunity to evaluate the severity of the abuse, abandonment, or neglect required for SIJS eligibility. On the other hand, eligibility for a U-visa requires that an individual have "suffered *substantial* physical or mental abuse as a result of the qualifying crime" (U.S. Department of Homeland Security 2022). Similar to the *well-founded* fear eligibility requirement in asylum, these criteria entail assessing fear or abuse levels, which federal immigration authorities must gauge to determine deservingness.

Who Decides What's Bona Fide?: Federal Attempts to Reclaim Power

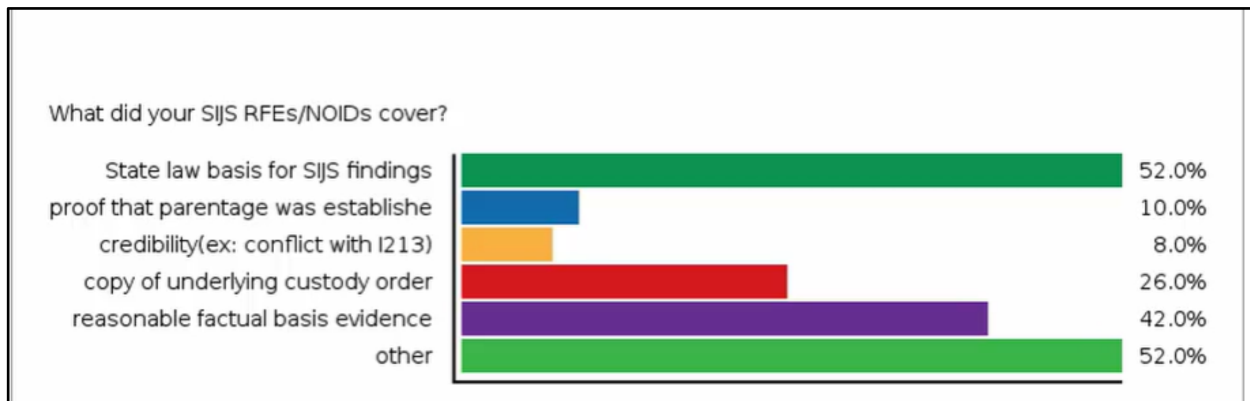
Federal authorities do not have the same discretionary authority over what is considered sufficient to constitute legitimate abuse, abandonment, or neglect in SIJS cases, however, they attempt to use and interpret the current consent function as a way to exercise such discretionary authority and challenge state court authority in SIJS matters. Efforts by USCIS to negotiate and control the boundaries of its "consent" function is a core topic of training for attorneys working on SIJS. In my fieldwork, I observed the ways in which attorneys were advised to respond to USCIS's attempts to expand their authority beyond what is permitted by their consent function through, in particular, increasing Requests for Evidence (RFEs) in SIJS cases. As a 2019 practice advisory on RFEs and NOIDs in SIJS cases, issued by the Immigrant Legal Resource Center (ILRC) notes, "USCIS generally issues Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) to seek additional information in cases when it has questions about eligibility or evidence" (Immigrant Legal Resource Center (ILRC) 2019). Federal authorities have frequently used these requests to try and acquire and reassess information concerning the evidence and determinations made in state court, despite the state's authority over the fact finding,

interpretation, and determination regarding whether a child has experienced abuse, abandonment, or neglect, and what would be in their best interest.

A 2017 webinar training, *Special Immigrant Juvenile Status: Responding to RFEs and NOIDs*, hosted by ILRC informed participants that there are certain instances in which USCIS may warrant additional evidence in the form of an RFE. Examples include instances when "the record *lacks* the required" dependency or best interest finding, or when the record contains evidence that "directly and substantively conflicts" with the evidence that was the basis for the state court order. However, the facilitators of this webinar also directly quote the USCIS Policy Manual to point out that USCIS acknowledges that decision-making regarding what constitutes abuse, abandonment, and neglect rests solely within the jurisdiction of the state court and that they should defer to the state court's decision on these matters. The Chapter on Determining Eligibility in Volume 6, Part J of the USCIS Policy Manual (Ch. 2.A.) states that "USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about abuse, abandonment, and neglect" (USCIS 2024). However, a poll among participants in the *Special Immigrant Juvenile Status: Responding to RFEs & NOIDs* webinar – primarily attorneys practicing immigration law – indicates that USCIS has primarily issued RFEs for additional information regarding how the state court came to its conclusions (See Figure 3 below).[20]

[20] This poll question followed a question that asked participants how many SIJS RFEs they had received, to which 49.6% of participants who responded answered that they had received at least one (51.4% of participants answered none).

Figure 3: Screenshot of Participant Poll Regarding the Reasons USCIS Provided for their RFE (or NOID).



The experiences of attorneys in this poll reflect the encroachment of USCIS on the authority of state courts and state laws in the SIJS process. The facilitators also commonly observe USCIS issuing an RFE to contend that the state court order lacked sufficient evidence to substantiate the factual basis of the state court's finding and requesting details of the underlying custody order issued by the juvenile court, including, in some cases, the entire juvenile court file (Citizenship and Immigration Services Ombudsman 2011; Immigrant Legal Resource Center (ILRC) 2019).

In response to these federal requests, state court attorneys were trained in this webinar to remind the federal authorities that the state court has the jurisdictional authority to determine what facts constitute sufficient evidence of abuse, abandonment, or neglect. The facilitators advised attorneys to "argue that the state law basis was already established in the earlier finding" and, if necessary, to "add evidence to show that all findings were requested in the state law context." They also advised attorneys not to disclose all the details of the court's decision concerning the facts related to abuse, abandonment, neglect, as well as considerations regarding the child's best interest. They then provided example language for attorneys to use from their own responses to USCIS RFEs: "the state court made findings based on presented evidence and

anything required for the state court to make the findings was provided to the state court." In doing so, they defend the authority of the state court judge and remind USCIS of the statutory separation of judicial power. They thus play a crucial intermediary role, brokering between authorities and jurisdictional rights to facilitate the success of their SIJS cases.

Attorney training sessions on navigating these authority debates also delve into the burden of proof necessary for the state court cases that constitute the required predicate order for SIJS. In the state courts, attorneys carry "the burden of proof to establish eligibility for SIJS by a preponderance of evidence," which is generally the burden of proof used in civil matters (Webinar: *Special Immigrant Juvenile Status: Responding to RFEs & NOIDs* 2017). A preponderance of evidence indicates that the evidence shows it is "more likely than not" that the petitioner satisfies the criteria (See: Matter of Dhanasar 2016) and that their claim is "probably true" (Matter of Chawathe 2010:376). This is a lower legal standard than the "clear and convincing" standard, which demands that the evidence presented in support of the claim demonstrate it to be "highly probably" or "beyond reasonable doubt" (Colorado v. New Mexico 1984; Matter of E-M- 1989). The application for SIJS must include the predicate order from the state court judge, providing their ruling on the required matters and containing the main grounds for the abuse, abandonment, or neglect, and the best interest determination.[21] The findings in the predicate orders generally contain the state's laws that support the reason and evidence for the abuse, abandonment, or neglect, and the best interest determination. Considering the standard of proof and the state court's authority in assessing evidence for their decision, the predicate order must contain the necessary findings, but it does not need to include the entire case file.

[21] See example predicate order templates in the appendices of the Washington State Court SIJS Bench Book and Resource Guide (2016) and at the end of the Guidance for SIJS State Court Predicate Orders in California advisory (2021).

This burden of proof also allows attorneys to strategically choose which evidence to share with federal authorities as part of the SIJS application, highlighting another method by which they can mediate between jurisdictional authorities to minimize federal oversight and enhance the likelihood of success in their SIJS cases. Responding to RFEs may require attorneys to provide additional case details. However, this burden of proof standard only requires attorneys to provide sufficient evidence to meet the criteria, not their best or more probative evidence (Webinar: *Special Immigrant Juvenile Status: Responding to RFEs & NOIDs* 2017). They can and should remind federal authorities of this burden of proof when issued RFEs.

Attorneys can also leverage the confidentiality rights of children and families in state court proceedings as a means to restrict federal authorities from obtaining and scrutinizing additional details of a state court cases when rendering a decision on an SIJS application. Most states' laws protect the confidentiality of children and families in the child welfare system (Webinar: *Special Immigrant Juvenile Status: Responding to RFEs & NOIDs* 2017). They generally have the right to the privacy of their records and personal information, and cases involving child abuse and neglect are often sealed court records. Federal immigration authorities' efforts to access complete case files and evidence from the juvenile or family court proceedings for reassessment contradicts and undermines not only the authority of the state court but also the confidentiality rights and concerns associated with state courts handling matters to child welfare (Citizenship and Immigration Services Ombudsman 2011; Joseph et al. 2020). These confidentiality restrictions are even acknowledged by federal authorities, as evidenced by procedural guidance for immigration authorities adjudicating SIJS:

> If an order (or order supplemented with findings of fact, as described above) is not sufficient to establish a reasonable basis for consent, the adjudicator must review additional evidence to determine whether a reasonable factual basis exists for the court's rulings. To do so, the adjudicator may request that the petitioner provide actual records from the judicial proceeding;

> however, adjudicators must be mindful that confidentiality rules often restrict disclosure of records from juvenile-related proceedings, so seeking such records directly from the court may be inappropriate, depending on the applicable State law. (USCIS Memorandum 2004).

The protection of case information in state family courts operates as another mechanism to limit federal authority over the evaluation and legitimation of the state court's findings in SIJS cases.

Uncertainty Over Authority: Immigration Matters in the State Courts

Despite attempts by the federal government to supersede the authority of the state courts in determining the credibility and deservingness of these youth, SIJS is unique in that the power of the federal authorities to challenge state court decisions is limited. State courts have an important, and fairly protected, role in determining the credibility of abuse, abandonment, or neglect allegations. Efforts from advocates and the USCIS Ombudsman across the last two decades have sought to protect the decision-making authority of the state judiciary in SIJS, not vice versa. Despite these efforts, state court judges still feel as though they are being asked to handle or adjudicate a matter that falls outside their jurisdiction. This is likely because the final outcome, for which the predicate order is needed, is an immigration decision, leading state court judges to feel or believe as though they are being asked to determine eligibility for immigration relief.

While the rights and powers of the U.S. states are protected under the 10th Amendment, certain federal powers still elevate the authority of the federal government over the states, which may contribute to doubt, deference, and hesitation. The preemption doctrine favors the higher authority of law when the two authorities conflict. And the Supremacy Clause of the U.S. Constitution (art. VI., para. 2) establishes that in a conflict between state and federal laws, the federal law will preempt or displace the decision of the states. It also prohibits states from exercising power that is a function entrusted to the federal government.

This Chapter has explored the legislative history of SIJS and frequent attempts by the federal government through mandates, policies, and official practices to increase its authority and discretionary power over state courts. The focus of this chapter has largely been on *federal* concerns about *their* authority in this cross-jurisdictional environment. Immigration control rests within federal jurisdiction, but SIJS's inclusion of the state courts as experts on children's best interests and cases of abuse and neglect, shifts authority over key eligibility criteria to the states. The role of the state court is significant as it differentiates SIJS from other forms of immigration humanitarian relief, over which federal authorities exercise extensive and exclusive control in determining eligibility and deservingness. I now shift my attention to how state court judges react to their role in these SIJS predicate orders. State court judges often find themselves uncertain about their role in the process or hesitant to make findings that seem to them to be related to immigration determinations. In the next chapter, I delve into the roots of state court judges' confusion, hesitation, and resistance. Specifically, I explore their unease with immigration matters and their limited understanding of SIJS, as well as the potential repercussions on their (re)election, particularly in conservative states. Additionally, I examine how their responsibilities in SIJS predicate orders differs from conventional child welfare cases.

Chapter 5 Reaching Beyond Domestic Family Courts: State Court Judges and SIJS Cases

The integration of the child welfare regime in SIJS applications represents a distinctive hybridization of institutions in matters regarding immigration legal relief protections. While decisions concerning eligibility for immigration rights and benefits in the U.S. fall squarely under federal jurisdiction, the inclusion of state court determinations in SIJS cases inevitably allocates some authority over eligibility to state court judges. The SIJS predicate orders require state court judges to issue findings regarding whether the child has been abused, abandoned, or neglected and what placement and living arrangement would be in their best interest. These findings mirror those made in routine child welfare cases handled by these judges. Nonetheless, the nature of SIJS cases diverges significantly. State court judges become aware of this difference, particularly considering the request to extend their best interest determinations across national borders, the potential implications of their decisions for youths, and significant differences in case priorities and court responsibilities. These differences sow confusion and apprehension among state court judges presented with SIJS predicate orders. This chapter explores these sources of confusion, hesitation, concern, and resistance by examining state court judges' awareness of SIJS and the ways in which SIJS predicate orders deviate from the procedural norms and objectives of conventional child welfare cases.

SIJS has been available to youths since 1990, however, its popularity has only more recently grown following the surge of unaccompanied immigrant youths entering the U.S. in 2014. Consequently, the level of familiarity state judges possess with SIJS varies, with the

majority having either limited knowledge or only recently acquired knowledge of SIJS. For example, when Richard, a state court judge, was handed his first SIJS predicate order case a few years ago, his immediate reaction was "What is this?" Since this first case, however, Richard, a judge in a Democratic-leaning state with a mid-sized immigrant population,[22] has presided over half a dozen SIJS predicate order cases during his ten years on the bench. While he now understands what SIJS is and what he needs to do, he shared that "many of [his] colleagues still have no idea what this is about" (Richard, state court judge). For many state court judges, SIJS predicate orders are still not common cases, compared with the day-to-day family and child welfare matters. While all the state court judges I interviewed have heard SIJS-involved cases, their familiarity and experience with the predicate orders vary. Some judges have seen only a handful of cases in their years on the bench (3-5) or hear anywhere from 5-10 SIJS predicate order cases a year. Others, particularly those in states or counties with very high immigrant populations, consider SIJS predicate orders part of their weekly routine, hearing a handful of cases a week.

State court judges are often confused about why they are being asked to hear "immigration matters" in their courtrooms as these cases appear on the surface to pertain to decisions beyond their jurisdictional authority. Judges feel the need to understand the intricacies of the federal law in order to rule on SIJS cases. As Sonia, a state court judge, describes, "[state court judges] just don't know the federal rules or even what the immigration rules are." Similarly, Marc, a state court judge, describes the federal statutes as "baffling," discussing how the first time he heard a case "it was hard to figure out what Congress was expecting [him] to do

[22] For an overview of descriptors used to contextualize the broader sociopolitical environments in which professionals work that may impact their involvement on SIJS cases, see Appendix A: Data Descriptors. To protect professionals' confidentiality, I do not refer to the U.S. state where practitioners work.

[because] reading federal statutes is not what [state court judges] do." Because of his discomfort with the federal statutes and uncertainty about his role, Marc describes how he was at first "very uncomfortable with [SIJS] because it's a complicated area of law." State court judges, though tasked solely with issuing findings within their jurisdictional boundaries, often feel compelled to grasp a more comprehensive understanding of the federal statutes governing SIJS. For many, this deeper comprehension seems necessary for them to fully grasp their involvement in matters of "federal" jurisdictional authority.

Confusion over jurisdictional authority and the role of the state court judge compared to federal authorities was not only a common topic in interviews. Just over 16% of the state court cases we analyzed were appealed because of jurisdictional disagreement. This jurisdictional disagreement mainly revealed the state court declining to make specific findings, citing a lack of jurisdiction over the matter. While jurisdictional disagreement was the *primary reason* for the appeal of 16% of cases in our database, jurisdictional disagreement between federal and state authority (27%) and the subject matter (9%) was discussed in about 36% of all cases. The next sections of this chapter explore three primary factors contributing to state court judges' perspectives on their jurisdictional authority in SIJS cases: (1) political attitudes and geographic location; (2) access to information and education about SIJS; and (3) procedural differences between SIJS and traditional child welfare court cases. These factors reflect the broader institutional structures, professional standards, and sociopolitical pressures shaping professionals' actions and decisions.

Political and Regional Impacts on Judges' Resistance and Receptivity

Geographic location and local political attitudes contribute to judges' knowledge, resources, and resistance regarding SIJS. As mentioned, familiarity with SIJS varies among state

court judges. Some of this variation in familiarity correlates with whether judges live in a state or county with a significant immigrant population and therefore have more experience with SIJS cases. Additionally, judges influenced by more Democratic values in their states (or their own beliefs) seem more liberal in their attitudes towards immigration matters, impacting their participation in or flexibility with SIJS cases. While the majority of state court judges I spoke with were from Democratic areas or expressed liberal immigration values, they also shared their experiences with colleagues from more politically conservative places or who had more conservative political views, revealing how political affairs affect judges' actions on SIJS predicate orders.

Judges' Political Attitudes and Election Concerns

Scholars have shown how regional politics and views towards immigrants contribute to variation in SIJS outcomes for youths across states, counties, and judges (Blue et al. 2021; Catangay 2016; Harris 2015; Paznokas 2017). Price (2017) shows that SIJS predicate findings may be more difficult to secure in politically conservative states where courts argue they should not be responsible for "national issues," and easier in more progressive states where courts adopt a more favorable approach towards immigrant youths. As Nancy, a state court judge in a politically split state but practicing in a Democratic county, notes, "these [SIJS cases] should not be a matter related to political beliefs, but they are. Some judges are very hostile to these proceedings [and that has] something to do with those judge's personal views" (Nancy, state court judge). Judges were not the only ones to acknowledge how political attitudes impact judges' engagement with SIJS proceedings. Attorneys also frequently describe receiving push back on their SIJS cases from judges in Republican-leaning states due to anti-immigrant sentiments.

Judges' own personal beliefs may not be the only political attitude impacting their actions; community political attitudes also play a role. Nancy discusses how state court judges are elected officials and how "some judges are concerned with how the public will view the decisions they are making." While Nancy acknowledges that she sits in a liberal county, she feels that judges in more conservative counties are hesitant to get involved in matters that may be controversial to their constituents

Attorneys also felt as though local elections and community political sentiments influenced the ways state court judges ruled on their SIJS cases. Chiara, an attorney practicing in a Republican-leaning state, talks about how the "optics in the room" during a trial can influence judges' responses to SIJS orders: "You know, there are powerful attorneys from the county chilling in the courtroom watching, and that judge, who might be up for reelection, might be harsher with you and not willing to make certain findings because of who is in the audience and what is going on" (Chiara, attorney). Similarly, Julia, an attorney practicing in a predominantly rural Republican state, describes the differences she experiences across counties based on the county's political leaning, how rural the county is, and the potential influence of elections:

> In one of the rural, conservative counties where I represent clients, some judges are hesitant to place a child in a parent's custody if they are not here legally. In conservative counties, you are just coming up against totally different belief structure and the influence of elections on judges. In [this rural conservative] county where I work, if a court official was deemed someone who was assisting all these illegal immigrants in getting legal status, that would be a strike against them and could possibly cost them reelection. Whereas in [the more urban liberal] county, where I also work, I never have an idea if the judge is conservative or liberal. (Julia, attorney).

These attorneys' experiences with state court judges mirror the concern raised by Nancy, a state court judge, about how local politics judicial elections contribute to state court judges' responses to SIJS cases. The method of electing state court judges, whether through partisan or non-partisan elections, varies by state; nevertheless, they are all required to maintain impartiality

while presiding over cases. Nonetheless, political bias and community pressures can impact their decisions.

Initiating Knowledge Sharing in the Community

States with larger immigrant populations tend to have more established networks and resources for immigrant communities, but the willingness of state court judges to seek out or develop these networks may be impacted by the broader political environment. Lucia is a state court judge in a Republican-leaning state, but liberal-leaning county, with a high immigrant population. She shares how being on the forefront of the immigration crisis in a border state community more receptive to immigrants has facilitated awareness efforts, education, and participation among state court judges in her area. She acknowledges, however, that such initiatives are not prevalent in other parts of the country:

> I would wager that the amount of education and knowledge that other judges in other areas have might not be as much as we have here. We were at the forefront of much of the immigration crises over the last several years, and so we became uniquely prepared. We all stepped up, and I think we had lots of legal education and lots of training. I am not entirely sure that is the same, you know, in other areas of the country. And I am sure there are also a lot of biases that exist, perhaps in some other, less receptive areas of the country. (Lucia, state court judge).

Different political attitudes and receptivity towards immigrants impacts judges' individual actions on a case and how judges' collectively respond to a situation. Broader community networks also served to help judges familiarize themselves and become comfortable with SIJS; however, the availability of these networks, and judges' willingness to engage them, is often a product of a region's existing infrastructure for working with and supporting immigrant populations. Peter, a judge in a Democratic-leaning state with a very high immigrant population, describes how he draws on interpreters in his community to learn about SIJS.

> These [SIJS] cases involve interpreters, and we have a strong community here for court interpreters. When you get to know them and talk with them, you know they are advocates for all kinds of things international. When these [SIJS] cases first started showing up, I talked with the

> interpreters, and they told me what these things meant to them as non-litigants and observers in the community. This allowed us judges to better understand SIJS and the backgrounds of these cases. (Peter, state court judge).

The infrastructure for supporting immigrant communities exists in Peter's state, providing networks that can help judges like Peter understand SIJS. But judges must not only have access to these types of resources and networks for them to be useful; they must also be open to seeking them out. Peter was willing to connect with court interpreters, knowing that they could help him better understand the backgrounds of the kids and families seeking SIJS predicate orders and the impact that the findings would have on their lives. This signals his open-mindedness towards immigration-related matters in his state courtroom. I next turn to the other ways state court judges seek out and receive information about SIJS to learn about their role in the process.

Knowledge Gaps: Information Resources and Networks for Judges

Judges' confusion and apprehension with SIJS cases also stems from the absence of training and education on the matter. For most judges, they had no familiarity with SIJS when they were presented with their first predicate order case, requiring them to research and network to gain insight into the matter. Many state court judges discuss using Google to research the background of SIJS and relevant statutes and case law, as well as identify educational PowerPoints, bench books, and reports from organizations. Judges also rely on networks with other professionals to learn about SIJS. For example, Richard recalls that when he received his first SIJS predicate order case, he "talked with a colleague who had done an SIJS case" in order to understand why he was involved and what he had to do. Peter's idea to approach court interpreters to learn more about SIJS and the broader concerns impacting immigrant youths and families reveals another important professional network as well.

Most importantly, judges rely on attorneys to learn about SIJS. Judges describe a well-prepared and well-educated attorney as a crucial factor in their comfort-level with an SIJS predicate order in their courtroom. For example, in response to my question about how he familiarized himself with SIJS, Martin shared, "most of the attorneys that come in are well-informed on the SIJS process and we get a lot of information from them. They are basically the ones doing all the heavy lifting. They are a great source of information" (Martin, state court judge). Another state court judge, Anthony, felt similarly: "With these SIJS cases, it all depends on the lawyer. Some lawyers seem more versed in that area of law. They make a tremendous record that provides the foundation needed for me to feel comfortable making a decision" (Anthony, state court judge). Judges recognize that they lack the necessary knowledge about the state court's role in SIJS and that attorneys presenting these cases are a useful source of information. Some courts have reached out to attorneys to train their judges on the topic. Ysela, a judicial clerk, describes how when her court first got some SIJS cases and none of the 20 judges on the bench knew what they were, she reached out to two attorneys she knew to teach the judges about this topic. When presented with new types of cases in their courtrooms, judges rely on the attorneys to brief them sufficiently on the subject and the relevant laws. This ensures that judges feel confident in their authority over the matter and have a clear understanding of the case's facts needed to reach a decision.

Although judges can rely on attorneys to educate them about SIJS – a topic I will discuss from attorneys' perspective in Chapter 6 – the absence of education or information is frustrating for many judges. Many judges assert that they want not only more training about their involvement in SIJS but also more open lines of communication between the two jurisdictions. For example, Peter is frustrated by the fact that none of his colleagues have any "idea where

these [SIJS] cases are coming from or where they are going" when they are done with them. He wishes that state court judges knew what the federal authorities were doing with them. Similarly, Sonia, a judge who has led SIJS educational initiatives, is frustrated by this gap. She advocates for more training and communication to alleviate judges' lack of awareness and concerns about their role:

> We have a gap. I want to make sure court officers are trained, and I do not think SIJS is part of our traditional education. Thankfully, most of these cases involve lawyers who have the expertise and the information. But it is still frustrating to me not to know if I have done something that has negatively or positively impacted a kid's immigration case. It is frustrating not to get that information and not to have free flowing contact or reports between the judicial officers. There is a real gap in information between the two systems that could be improved. I do not want to be worried about what I am doing for immigration and what consequences the state court orders might have for immigration purposes. (Sonia, state court judge).

As Sonia points out, SIJS is unique in that it is an outcome produced from two separate – yet connected – jurisdictional decisions.

Confusion among state court judges stems largely from the peculiarity of this cross-jurisdictional affair that integrates state child welfare decisions into federal immigration decisions. State court judges' confusion or hesitation about their involvement in SIJS matters relates to their lack of understanding or discomfort with their positionality as an adjudicator seemingly operating within the rules, regulations, and norms of a different institutional space. However, as I will reveal in Chapter 6, attorneys mediate between these institutional logics and their adjudicators, partly to maintain their separation. The limited cooperation and communication between the federal immigration and state child welfare adjudicators likely contribute to keeping the pathway open for this immigration relief, thereby restricting its potential to evolve into a more stringent gatekeeping mechanism of immigration control.

Fundamentally Different?: Child Welfare Court Procedures and SIJS

In addition to political attitudes and gaps in knowledge and communication, the procedural differences between SIJS cases and the traditional child welfare cases these judges routinely handle add to their sense of confusion, concern, frustration, and hesitation. SIJS predicate order cases interact differently with established state court practices in three important ways: (1) they do not require the same court responsibilities regarding follow-up court assessments, (2) they seek a different outcome from traditional child welfare cases that prioritize family reunification efforts, and (3) they are often uncontested, ex parte, hearings. For state court judges, these differences raise concern over required due process rights and notification attempts in SIJS predicate order cases. These differences also reveal the tensions that emerge when SIJS interacts with the existing norms, structures, and practices of the domestic child welfare regime.

Recall Marc from the beginning of this chapter who felt baffled by the federal statutes because it was not something state court judges often read. He felt frustrated at first because he could not figure out what it was that Congress wanted him – a state court judge – to do with an immigration-related matter. As Marc familiarized himself with SIJS and his role, he expressed that one of the most difficult aspects to get used to was how different SIJS cases would be from his routine child welfare cases. Putting his forehead down on his hands and shaking his head, Marc shared how he "really had to wrap [his] head around the fact that these SIJS cases were for a completely different purpose than ordinary dependency cases." While Marc acknowledges his jurisdiction, it took him some time to accept that these cases would look different from those typically seen on his regular dependency docket.

Same Court, Different Procedures?

Judges struggle with how to understand and accept the ways in which SIJS cases differ from the conventional dependency and custody cases they hear regularly in their courts. While slight variations exist among different types of proceedings – such as guardianship, dependency, or custody orders – and among states, courts and child welfare agencies generally adhere to standard procedures and expectations when pursuing an order of protection for a child due to allegations of abuse, abandonment, or neglect against a parent. These procedures involve multiple hearings to determine where the child will stay, appoint all parties – including the parents – attorneys, set a reunification plan and required services for parents to complete, and evaluate parents' progress and the child's well-being. As someone who actively participates in this legal process as a Court Appointed Special Advocate (CASA) in Washington State, I know from experience that this process is generally slow and prolonged, unfolding across several hearings over one to two years (as determined by the ASFA as the time limit for youths to remain in the system). Over this prolonged course of hearings, judges remain actively involved in the child's well-being and decisions regarding their care and placement.

However, the way SIJS interjects with this system differs significantly, leaving judges to wrestle with how to navigate and comprehend their role in these SIJS cases. Martin mentioned these differences when talking about the ways in which SIJS was, at first, difficult for him to understand as a state family court judge:

> These cases differ in a myriad of ways. First, there is no shelter hearing. You know, with our regular cases, the Department has to justify the removal of the child in front of a judge within 24 hours. Then we have a hearing to determine whether the child is a dependent of the state and design a case plan to alleviate the causes of dependency and reunify the family. The real work of dependency is in the case planning and management of the services and the reunification process. But you are not trying to do that at all in these Special Immigrant Juvenile cases. What is so weird about them is that there is no case planning. We just make the dependency finding, make the best interest finding, and then we are done. (Martin, state court judge).

Traditional child welfare cases often involve prolonged court involvement and evaluation. But as Martin lays out, the court does not remain involved in an SIJS case beyond the original dependency and best interest findings issued during the initial hearing. SIJS relies on states' laws, courts, and norms regarding child welfare – the factor that establishes state court judges' authority over determining evidence of abuse, abandonment, and neglect for the predicate order. However, despite this reliance on state courts and laws for their standards of child interventions, SIJS cases diverge from conventional child welfare interventions in that they do not incorporate the subsequent court engagement and oversight in the affairs of the family. The lack of ongoing court involvement in SIJS cases, which plays a role in surveilling and punishing marginalized families in the U.S., likely enhances its effectiveness as a pathway to legal relief for undocumented immigrant youths.

Family Reunification is Not the Goal with SIJS

When the State intervenes in family affairs and removes a child from their parents' care, the primary objective is to eventually reunify the family. The court's involvement extends beyond the initial findings of abuse, abandonment, and neglect to assess and monitor parents' progress towards reunification. With SIJS predicate orders, however, the goal of the court's intervention is not family reunification. Although the petitioner may be living with one parent in the U.S., SIJS eligibility depends on the state court's determination that reunification with the (accused) parent is not viable. Unlike a more conventional child welfare case, these state court findings are not accompanied by subsequent parenting evaluations and opportunities for reunification. While most SIJS cases today do not legally terminate the parental rights of the accused parent, although this can occur in some instances, the state court's findings do take away parents' custody and decision-making rights concerning the child. This is an inevitable legal

consequence of the state court's determination that reunification with one or both parents is not viable. For the purposes of immigration, it also means that the State will not recognize the parent-child relationship for any visa sponsorship in the future.

Participation in SIJS predicate orders requires state court judges to confront the court's primary, and most important goal, of conventional child welfare proceedings. SIJS cases can be challenging for state family court judges because family reunification is not the goal. Describing her interactions with state court judges, Nora, a social worker for a legal aid organization, talks about these differences and the difficulties for judges:

> It is so drastically different for them. The goals are different, and I think that is hard for some judges who might be used to the domestic system. The goal is not going to be reunification; the child is going to be in the system until they are 21. And maybe there's resistance to that idea because it is so different than what they are normally used to working towards. (Nora, social worker).

In general, judges are concerned with the well-being of children and are accustomed to intervening in family affairs when child welfare workers identify that children are currently in harm's way. But many of the youths seeking dependency orders for SIJS purposes appear to currently be in safe living conditions, raising confusion as to the necessity of the court's intervention:

> In all of the SIJS cases I saw, the kids were safe. They were not presently at risk of abuse or neglect, because they were being cared for in the U.S. And so, in these cases, you are not putting a family back together, which is really the main part of dependency. (Martin, state court judge).

Other state court judges discuss how they are confused by the role of the state court when the petitioning child is living safely with the other parent. In discussing a recent case where the petitioning child was living with one parent in his county, Richard shared how "usually when there is one adequate parent in child welfare cases, there is no need for a child welfare case because the child is safe with one parent." For a child to be dependent on the state according to most states' child welfare laws, the court first needs to determine that the child currently does not

have a parent capable of caring for them, usually due to allegations of abuse, abandonment, or neglect. When a child is living safely with one of their parents, they are united with their family, which the court views as an ideal situation and outcome. Whereas the goal with child welfare interventions is to limit the amount of time that the child is in the care of the state and reunify them with their family, ending their relationship with the court, the goal with SIJS is to keep them officially in the care of the State as long as possible without efforts being made towards reunification with the accused parent.

The different end goals between SIJS and traditional child welfare cases also contribute to different investigative processes into the abuse, abandonment, and neglect of the child. Peter explains how "with SIJS cases, I do not do anything – I do not provide any services and I do not have Child Protective Services (CPS) getting involved. I just make the finding and usually do what they are asking." As Peter describes, the allegations of abuse, abandonment, or neglect against a parent in a traditional child welfare case involve specific investigations to determine the validity of the allegations and establish the specific evidence of the abuse, abandonment, and neglect. With SIJS cases, however, there seems to be less investigation into the allegations. Marc, another state court judge, describes how with his SIJS cases, "there really aren't any welfare investigation into the claims, such as testimonies from a CPS investigator or the hospital about bruises or something like that." The ways in which state court judges like Peter and Marc talk about the different procedures and, seemingly, standards of investigation into the alleged abuse, abandonment, and neglect relates to concerns that several state court judges discuss about (the weakness of) due diligence and due process rights across international borders in SIJS cases.

Due Process Concerns Across International Borders

Individuals' due process rights – the right to a fair trial – are protected by the 5th and 14th Amendments of the U.S. Constitution. According to the 14th Amendment, no state shall "deprive any person of life, liberty, or property, without due process of law," which "protects the fundamental right of parents to direct the care, upbringing, and education of their children" (Troxel v. Granville, 530 U.S. 57 (2000)). These rights extend to non-citizen and undocumented immigrant parents as well as citizen and resident parents. Therefore, due process and, relatedly, due diligence, is required in all state child welfare cases, including SIJS predicate orders.

Due diligence was a concern brought up by several state court judges in interviews, revealing the challenges of adhering to the state's established procedures when cases span national borders. Richard was very sympathetic to SIJS cases but acknowledged that he found them challenging because of the seeming lack of due diligence: "in child welfare cases, there is a lot of due diligence, but there is really none of that in the process with SIJS cases" (Richard, state court judge). A court's due diligence in a case is central to upholding due process rights. Due diligence in law requires the court to ensure that all affected individuals have received proper notification of the legal actions, which provides them with an opportunity to respond to the claims. Due diligence is important to individuals' due process rights because without proper notification – and evidence thereof – the court could decide without the individual's knowledge. Martin echoes Richard's concerns in his discussion of the matter:

> These [SIJS] petitions often come to us from private attorneys and the involved parent often lives in some remote village in Central America. So how do I really know that they have received a copy of the petition? How do I know that it was translated for them? Before I grant custody, I want to make sure that we have something from the parent in whatever country they live in saying that they received a copy of the petition, and they are waiving their rights to appear before me, and they are okay with me proceeding without them. It can be a real nightmare because these attorneys do not want to go through that whole process. They think they can get anything done pretty quickly and bypass, I guess, the due process rights of parents or respondents or whoever. (Martin, state court judge).

The transnational nature of SIJS cases complicates courts' efforts at ensuring parents are properly notified of cases against them and that they understand the legal implications of the case. As Martin reveals, many of the parents that become the target of the State's investigation in these SIJS predicate order cases are neither in the U.S. nor in easy-to-reach places. Furthermore, they often do not speak English, raising new concerns for ensuring that they both receive and understand the court's notification.

Under the U.S. constitution, citizens and non-citizens on U.S. soil – including undocumented immigrants – are granted due process rights (Benner and Savage 2018; Petrelli Previtera, LLC 2023). Undocumented immigrants' due process rights, however, have been challenged by the U.S. Department of Homeland Security's Expedited Removal Policy. While originally the expedited removal policy only granted immigration authorities the right to deport people without a hearing, attorney, or right of appeal if they were found within 100 miles of the country's border and 14 days of entering the country, a 2023 Notice removed the geographical limits and expanded the timeframe to two years (Designating Aliens for Expedited Removal 2019). However, while undocumented immigrants' due process rights over deportation are compromised under current DHS policies, these rights remain relevant in state child welfare matters. The fourteenth amendment protects parents' rights over the custody of their children, regardless of their immigration status. In the case of undocumented immigrant and transnational families, courts and child welfare agencies still bear responsibility in supporting reunification (Dettlaff 2012; Park 2020). The parents' immigration status, or where they live, does not negate their recognized right to raise their child and to be notified of and involved in any child welfare proceedings. Furthermore, all U.S. States except for Wisconsin have laws granting parents the right to be represented by an attorney and be notified of this right when they are involved in a

child welfare case. This right is not based on citizenship or residency location, thus extending, in theory, to undocumented immigrant parents and parents abroad.

Formally notifying parents in other countries can be a difficult endeavor for courts but is a required process in ensuring due diligence. SIJS predicate orders are also often sought by attorneys with haste as many undocumented immigrant youths seeking legal relief are teenagers quickly approaching their age-out limit for SIJS, which is 18 in some states and 21 in other states. Judges, like Martin, are confronted with the challenges of ensuring due diligence procedures to protect due process rights in an environment where parties reside in different countries and attorneys battle tight timelines that motivate their desire to expedite certain aspects of the process.

Attorneys' swift pursuit of SIJS predicate orders frustrates state court judges, who seek due diligence, which in turn frustrates attorneys aiming to expedite the process before age-out deadlines. Justin, an attorney, describes his irritation recently when a judge did not want to waive a background check for a guardian who had previously been appointed for other SIJS clients:

> Usually when I do [SIJS] petitions, I just ask to waive the background check. In this particular case, we thought that because she already has guardianship over two brothers, it is known that she has a good track record and no criminal history. And we also asked for the sake of expediting the process because the whole background check takes weeks to process. The judge was very hung up in particular about the fact that we asked to waive the background check. The judge was like, 'oh, it is easy. You just get the forms and do it.' He was very dismissive when I explained the urgency to get this SIJ filed [because of the applicant's age] and that waiting for the background check kind of gums up the process. (Justin, attorney).

While many attorneys face time constraints trying to secure SIJS for their clients, requests to bypass common child welfare case procedures impinge on judges' understanding of due diligence. Justin may have been frustrated with the judge's "dismissiveness" at his request to waive a background check, but Alecia, a state court judge in a different state, gets frustrated

when attorneys even asked her to waive components of the background check that provide her with the information she needs to make child guardianship placement decisions:

> I really do not like to waive fingerprints for potential guardians. I want to get the registry results. I do not like to take short cuts because, if I do, I feel like I am not doing my due diligence in terms of making sure that my determination is really in the best interests of the child. (Alecia, state court judge).

Attorneys and judges both grapple with the complexities of managing child welfare cases that frequently extend across international borders and must be resolved within tight timelines. In addition to the challenges that judges face in ensuring proper notification, most SIJS predicate order cases end up being unopposed, or ex parte, because the accused parent does not participate or challenge the allegations against them.

Judges' Concerns with Ex Parte Proceedings

In conventional child welfare cases, judges weigh evidence and arguments presented by attorneys representing different parties on a case, allowing them to understand the situations of different parties and compare facts presented. However, with SIJS cases, the judge typically decides based solely on the case presented by the attorney and the client seeking SIJS, without having another party's case to consider. State court judges frequently discuss the uncontested nature of these cases as a difficulty, concern, or reservation for them. In comparing SIJS with their traditional child welfare cases, judges often focused on the ex parte nature of SIJS as a key difference, describing how it can raise moral dilemmas. Bess, a judicial clerk, describes how "it's harder when there's no opposing party because the only thing we have to go on is what the appellant is telling us." Similarly, Sonia, a state court judge, feels uncomfortable with the unopposed nature of SIJS cases because it limits checks and balances on the case:

> As a state court officer, I am used to having some checks and balances about the information I receive. But here, I just have to trust that I will not be misled. I guess there are some checks and

> balances in that if the agency or the youth's lawyer misleads the court, then they can be disbarred. But I do not know if there are sometimes collateral consequences to parents that I do not understand. But if the parents will not communicate with our courts, then there is really nothing I can do. (Sonia, state court judge).

Another state court judge, Richard, talks about the different perspectives that having opposing parties brings to the case, echoing Sonia's concerns about the potential absence of strong checks and balances when only presented one party's perspective:

> My uncomfortableness or my concern with SIJS cases is that they are all ex parte. In a typical child welfare case, you have an attorney for the mother, an attorney for the father, an attorney for the child welfare department, a CASA appointed to the child and an attorney for the child. So, you might have, like, four, five, even seven attorneys on the case. So, you are pretty comfortable that all the facts have been vetted and that the evidence you hear has been thoughtfully prepared to resolve disputes. But when something is ex parte, you just have to take that person's word for it. (Richard, state court judge).

In child welfare cases, judges' decisions carry significant implications for all parties, including both children and parents. Consequently, they prefer to receive information about a situation from various sources. However, due to the limited communication channels between jurisdictions in SIJS cases, they express unease over the uncertainty surrounding the potential implications of findings against parents, especially when parents are not involved, making it difficult to consider their perspectives.

State court judges' reservations about the ex parte nature of cases also stem from their commitment to due diligence, ensuring that all potentially involved parties have been properly notified and afforded the chance to present their perspectives and arguments. Alecia discusses how she has never had a parent show up to her courtroom on an SIJS case and she sometimes wonders whether she should be concerned about if they were really served.

> I have proof that they were served. I often have waivers signed that the documents were interpreted, and that the parent signed the documents asserting that they consented to the application and waived any appearances and that they consent to findings being made for the motion. But, again, I am really wondering if they even consented because they do not ever call in. I really wonder why the parents have never shown up. I mean, this is the complete opposite from conventional child welfare cases here. Of course, you get child welfare cases here and there where people just never show up to court, but the vast majority of respondents come, and they

> will fight. They might eventually get tired of fighting and stop coming, but at least they come initially to deal with the charges against them. (Alecia, state court judge).

Like Alecia, Shannon also describes traditional child welfare cases as "heavily litigated," which is just "the opposite from SIJS cases, which are unopposed" (Shannon, state court judge). State court judges are accustomed to having multiple parties involved in a case, which they describe as providing important checks and balances, different perspectives to evaluate, and well vetted facts and arguments.

However, while the ex parte nature of SIJS cases raises concerns among state court judges, it is regarded favorable by attorneys and supporting social workers advocating for SIJS clients. They describe the uncontested nature of SIJS state court hearings as simplifying the process of obtaining predicate orders. Nora, a social worker for a legal aid organization supporting attorneys, describes their SIJS cases as "a lot less complicated than working with two parties to determine a goal for the child." Devon, an immigration attorney working on both SIJS and asylum cases also discusses how not having another side contesting evidence and findings makes SIJS cases his quickest and best cases. While Devon has "never had to deal with a contested SIJS cases," he thinks it would be hard "having to really fight and gather all the evidence to fight the [contesting] parent." While the ex parte nature of SIJS cases may make these cases easier and quicker for advocates to secure their desired outcome, the absence of different perspectives and evidence raises concern or discomfort for state court judges. Judges' apprehensions about the ex parte nature of SIJS cases reflect their concerns about due process requirements and proper notification attempts. Ensuring due process and proper notification are procedures complicated by country borders, channels of communication, language barriers, and the urgency of the application timeline for many youths approaching either 18 or 21 years of age.

Reflections on the State Court's Role in SIJS

SIJS is unusual in that it involves courts, laws, and judicial authorities across two separate jurisdictions: child welfare, which is the purview of the state, and immigration, which is the domain of the federal government. As I discussed in Chapter 4, the authority afforded the state jurisdiction over important eligibility components is unique to SIJS compared with other forms of immigration humanitarian relief. But this marriage of state- and federal-authority is a source of confusion and hesitation for many state court judges presented with SIJS predicate orders. As I have shown in this chapter, state court judges are often baffled by federal statutes, which they do not commonly read but feel they must read in order to understand the 'immigration matter' in front of them. Judges rely on networks and community resources to support their education on the topic, access to which can vary across states and counties with significant consequences. Some judges are resistant to SIJS predicate order cases because of their own political convictions or their local community's or constituents' receptivity towards immigrants. While it is unlikely that many of their constituents are familiar with SIJS and tracking decisions on these cases in local courts, some judges are concerned with how their handling of 'immigration matters' will be perceived by their constituents and how it may impact their re-election.

Lastly, judges' confusion and concern also stem from the procedural differences between SIJS and traditional child welfare cases. Conventional child welfare cases require ongoing court monitoring and assessment in the family's lives. This involvement always (initially) works towards family reunification as the goal of the court's original decision to separate a child from their parent's care. In SIJS predicate order cases, however, the court's involvement ends after the original hearing. Many youths seeking these orders – though not all – are currently in safe and

caring environments, requesting findings of past abuse, abandonment, or neglect. But the state court still needs to determine that family reunification is not feasible without outlining plans for future reunification efforts. Moreover, these cases are often uncontested, leading some judges to worry about the adequacy of evidence presented and whether the parents possess sufficient knowledge about the case.

In the midst of these various factors contributing to confusion, concern, or hesitation among state court judges, especially upon their initial encounters with SIJS cases, they expressed differing sentiments regarding the state court's role in the SIJS process. For example, Denise, a state court judge in a Democratic state with a mid-sized immigrant population, feels like the state court is being inappropriately asked to gatekeep an immigration matter: "I think it is interesting we [state courts] have any role at all. I do not understand why we have this gatekeeping function. I do not understand why this is not in federal court" (Denise, state court judge). When I inquired why she felt this matter should be handled in the federal courts, Denise explained that although "guardianships are the realm of the state courts, this is not a guardianship in the same sense." She felt that this was "an immigration issue plain and simple" and therefore a matter that needed to be handled by federal courts. Like Denise, some state court judges did not feel as though their involvement in the matter was appropriate, despite its direct connection to child custody issues.

On the contrary, many state court judges concede that the state court is likely the appropriate authority in this matter even when they do not fully understand SIJS. They believe that their jurisdiction is rightfully recognized compared to federal courts for making child welfare decisions because they "deal with questions of what abuse, neglect, and abandonment is all the time" (Nancy, state court judge). Sonia, a judge who has led educational efforts for judges and child welfare agencies working with immigrant youths, believes that "the state court is in a

much better position to get information about child abuse and neglect than the federal court because that isn't in their purview of information to address." Similarly, Martin feels that it is "really important that juvenile courts are involved because [they are] specialized in dealing with child welfare matters" (Martin, state court judge). Like Sonia, he does not think these cases should be handled in federal court because federal judges do not have experience with these issues.

Some of these judges, who recognized or believed that the state court's role was appropriately acknowledged, even expressed positive emotions and joy at the opportunity to be involved. Karyn, a state court judge, "loved and welcomed the opportunity to be involved" and Shannon, another state court judge, shared that these cases usually fill the courtroom with "happiness and excitement" amidst the usual dreariness of conventional child neglect cases. The involvement of the state court in these predicate orders operates to improve youths' access to immigration relief. Some judges acknowledge their "gate-opening" role and see it as an important contribution that they can make to youths' well-being.

This chapter has centered on state court judges, exploring the origins of confusion and hesitation while elucidating their perceptions of their role in SIJS. The interviews I conducted likely skew in favor of judges who are more progressive in their attitudes towards immigrants, are receptive to SIJS cases and the state court's involvement, and who now feel comfortable with SIJS predicate orders. Recruiting state court judges posed a challenge, primarily due to issues contacting courts and low response rates. The information presented here reflect the thoughts, feelings, and experiences of judges who were willing to speak with a Sociology researcher about SIJS, indicating both a level of comfort with SIJS and willingness to talk about immigration in a formal and documented setting. In the upcoming chapter, which focuses on attorneys and

supporting legal professionals, it will become evident that not all judges are acquainted with and receptive to with immigrant youths and SIJS predicate orders. Confronted with confusion and resistance from judges, attorneys must figure out how to navigate difficult or concerned judges while efficiently and successfully completing the SIJS process for their clients. As I will argue, they devise defensive and offensive educational and explanatory tactics to strategically inform state court judges of their jurisdiction over the matter. The next chapter discusses the challenges encountered by attorneys and their strategic approaches to securing SIJS for their clients amidst numerous hurdles.

Chapter 6 Lawyering Across State and Federal Jurisdictions

The involvement of both state and federal jurisdictions, combined with significant procedural differences between SIJS and traditional child welfare court cases, undeniably makes SIJS a complex and confusing piece of law. State court judges are not the only legal professionals that encounter confusion in this cross-jurisdictional space. Attorneys supporting undocumented immigrant youths pursuing SIJS navigate *both* the state court procedure to obtain the necessary predicate order and, subsequently, the federal procedure to petition for immigration legal relief based on the state court's findings. While the USCIS authorities adjudicating the SIJS case may submit Requests for Evidence (RFEs) that require the attention of attorneys, federal authorities exercise minimal discretionary authority to evaluate the legitimacy of the claims compared with other forms of legal relief (as outlined in Chapter 4). Thus, most of the lawyering and persuasion over establishing SIJS eligibility happens in the state courts. For attorneys, state court judges' concerns and confusion can be roadblocks in their cases.

I begin this chapter by discussing what Ella Enquist and I describe as attorneys' explanatory brokerage role during the state court process of an SIJS petition. We argue that navigating a cross-jurisdictional space where authorities lack certainty about their decision-making authority relative to adjudicators in the other jurisdiction results in an additional labor performed by attorneys and, occasionally, the social workers and paralegals who support them. I extend scholarship on legal brokerage – studies that pinpoint how attorneys broker between the laws and their clients – to include how they must also mediate between laws, courts, and judicial

authorities when jurisdictions intersect. They engage in this work as both a defensive strategy – to challenge judicial push back to their case at the state court level – and as an offensive strategy – to preempt potential pushback and confusion and learn about judges' existing familiarity with the matter. Through describing these explanatory tactics, as well as the other strategies attorneys deploy to move their cases across jurisdictions, I show how attorneys facilitate the success of SIJS by conjoining the policies and practices of the child welfare and immigration systems while also maintaining separation between adjudicators and evidence to limit the possible extension of State surveillance and exclusionary tactics.

Who is in Charge?: Confusion Over Authority in SIJS Orders

Attorneys play a crucial role in mediating between state court judges and the federal and state components of the SIJS process. As discussed in the previous chapter, state court judges frequently rely on attorneys to educate them about SIJS and their role, and they respect attorneys who come to hearings well-prepared and well-informed about the matter. Thus, attorneys' mediating role between jurisdictions is often necessary to alleviate frustrations arising from encounters with confused or concerned judges and to effectively secure the necessary SIJS predicate order.

One of the biggest concerns that attorneys have to address with state court judges is their (un)involvement in immigration decisions. For example, Tia discusses how she frequently needs to clarify for state court judges that they are not legally determining whether the youth will receive the right to remain in the U.S.:

> I have had a lot of experiences with judges who are frustrated because they do not understand what the order means, or they think we are coming into court to ask them to order residency for the kids. And a lot of times we have to teach them what SIJS was and what they were not ordering. (Tia, attorney).

Tia's experiences are common. As previously discussed in Chapter 5, state court judges themselves were frequently confused by their involvement in what was seemingly an immigration matter. Attorneys are often left to clarify for judges the distinct roles of the state court and immigration bureaucracies. Devon, an attorney, recently had such an encounter with a judge:

> I brought the SIJS order to the judge and the judge looked at me and asked, 'so I am giving this person some sort of immigration status?' I clarified and said, 'No, it is not like that. You are just determining that they have been neglected or abused by one or both of their parents. Their immigration status will then be determined by USCIS when they file for their I-360. (Devon, attorney).

Devon explains the two-step decision-making process in an SIJS determination, outlining the specific roles of the state court and USCIS, and also reassuring the state court judge that they are not determining anything regarding the individual's legal immigration status. Similarly, Rebekah explains how her organization has "had to do a lot of educating the bench about the federal SIJS law to explain what immigration law says and why the state courts are involved" (Rebekah, attorney). She considers this necessary to assure the state court judges that they are not overstepping their jurisdictional authority.

As discussed in previous chapters, state court judges' concerns are not unfounded. The authority of the state court has been a source of tension among federal immigration authorities, who have tried through different avenues to usurp state court authority over the evaluation of abuse, abandonment, and neglect. State court judges also exhibit hesitation when presented with cases that appear to deal with immigration matters, which are outside the scope of their jurisdiction. As a result, attorneys and supporting professionals navigate a landscape of weariness and pushback among state court judges to pursue SIJS for their clients. To ensure that

this does not slow down or hinder their SIJS cases, they educate state court judges about the jurisdictional separation between state court and federal decisions.

Defensive Strategies: Correcting Confusion and Concern

State court judges' (mis)understandings about their authority results in frustrating interactions between attorneys and judges. For many attorneys, the need to educate judges emerged as a defensive strategy to secure the required SIJS predicate orders. Zoe describes how she engages in defensive educational strategies to advance her SIJS cases when judges push back on her request.

> I have had some issues with pushback from judges. Refusing to sign the order, they have proclaimed, 'we're not immigration officials, we can't give them status, and we can't issue an order for that.' And I had to say, 'you are not. Your order will be sent to immigration to make that final determination. Your part in this is just determining whether the child should be placed in the custody of one parent or in the custody of a guardian, and that it is not in their best interest to return to the home country. That is the only decision you are making. Immigration will give the actual permission or approval.' It has been an educational process, particularly in the beginning when not a lot of kids had done SIJS yet and the judges really did not understand what it was. (Zoe, attorney).

In Zoe's encounter, the judge initially declined to sign the SIJS predicate order, misunderstanding it as a request to directly confer immigration status onto youths. This required Zoe to clarify the distinctions between the decisions made by state court judges and immigration officials to persuade the judge to reconsider the case. Thus, she deployed such explanatory measures as a *defensive response* to the judge's initial unwillingness to sign the order.

In some instances, particularly in Republican-leaning areas, judges' reluctance stems not only from limited familiarity or concerns about their authority but also from their personal biases regarding immigrants. Michael, an attorney in a Republican-leaning state with a very low immigrant population, bitterly discusses a judge who refused to sign a predicate order because of what seemed to be the judge's own personal opinions about immigration.

> This judge denied to even rule on the petition because he said that he did not have jurisdiction because the petitioner and the child were not U.S. citizens or permanent residents and had no lawful status. I was like, 'you got to be kidding me! Surely, I do not have to brief you over jurisdiction based on the [state] Constitution or the United States Constitution. I mean, surely you would not say if they got arrested, the criminal court would not have jurisdiction because they do not have lawful status.' I briefed him on that, but we never ended up getting the predicate order. It felt like there was just an animus towards illegal immigrants. (Michael, attorney).

While an extreme case, Michael's general experience is not an outlier. As discussed in Chapter 5, judges themselves acknowledge how local receptiveness or bias towards immigrants influences how state court judges position themselves on the matter. Geographic location and local sociopolitical environments can enable or impede awareness of, education on, and engagement with SIJS among state court judges in a given area. Judges' personal biases can make them less receptive towards SIJS predicate orders, and the political views, or perceived views, of constituents can impact how a judge up for re-election responds to cases involving contentious immigration matters.

However, while political influences and judicial biases contribute to the resistance that attorneys encounter with SIJS in the state court process, much of this pushback seems to stem from widespread confusion and a general lack of awareness about SIJS and the role of the state court. Attorneys now recognize that educating state court judges is essential for establishing rapport and effectively facilitating their SIJS cases through the state court process.

> Some judges are just hostile to SIJS claims, and a lot of that can be chalked up to just general racism. But some of the judges, I think, were just hesitant. At the beginning there just was not a whole lot of familiarity with SIJS and there was a sense of, 'well why are we the ones in family court doing these kinds of immigration matters. Shouldn't someone else be doing these? We have a full docket already.' So, it was hard to train these judges and explain to them that these are kids who live in their court's jurisdiction and who need the court's protection as much as any other kid they see. When we have the opportunity, we try to talk with local judges and court staff about these cases because we go before them a lot and other practitioners go before them a lot. It seemed to help them become a little more familiar with our work and be a little less standoffish towards us. (Daniel, attorney).

Daniel describes how in his early years of bringing SIJS cases into the state courts, he experienced pushback from confused judges who were unfamiliar with these cases, requiring attorneys to undertake the arduous task of educating and training them. However, Daniel and other attorneys in his area have since adopted more proactive approaches. They engage in discussions with judges and court staff *prior to* these cases to enhance their familiarity with the subject matter and alleviate any apprehensions about these unconventional cases. This proactive rapport-building and forward-thinking educational strategy exemplifies how attorneys also take preemptive measures to improve judges' understanding and alleviate their concerns.

Offensive Strategies: Preempting Problems

Attorneys proactive, or offensive, strategies aim to enhance the likelihood that judges they encounter – or their peers encounter – are informed about SIJS and their role, thus reducing the likelihood of confusion that might impede their clients' access to relief. Diana, an attorney practicing in a politically split state with a mid-sized immigrant population, shares how her team of attorneys has begun implementing proactive educational strategies with judges. They recognized the need for this approach after repeated instances of resistance and confusion.

> I think the biggest thing that we see with state court judges is that some of them do not understand that even though we are in state court to get the predicate order, they believe they are making immigration decisions and are hesitant to put in the relevant special findings. And so, when we run into judges in state court who are unwilling, we have that added role of educating them that they are not making a decision on whether a child can stay in the U.S. or not; they are just making a decision about their custody, which is only about the component that they definitely have jurisdiction over. So now we do judge training. We are part of a working group – an SIJS working group for practitioners – to develop training to help local practitioners understand the laws, changes, and what is going on. There were a lot of SIJS changes recently, so we are revising our training on those updates. I think for the most part it has been a strong effort. And I do not think these cases are going away anytime soon so whether they like it or not, the judges are going to have to educate themselves on it. (Diana, attorney).

Diana's team of attorneys initiated larger training efforts in their community after being repeatedly frustrated and exhausted from continually educating judges. Their involvement in a

local SIJS working group demonstrates how proactive or offensive explanatory strategies not only benefit their own SIJS cases but also contribute to the broader success of SIJS cases in their communities. By implementing proactive educational programs, attorneys also facilitate the process for other attorneys presenting SIJS cases in these courtrooms.

Attorneys are aware of the benefits that such proactive explanatory and educational strategies have for their cases, yet they also perceive them as an additional burden that they should not have to bear. Valeria, an attorney in a split state with a very low immigrant population, also engages in proactive strategies by calling the clerks ahead of time in the court where she will be going to inquire about the specific information they require and prefer for these cases. She considers this an important initial step in her SIJS hearings because frequently, the clerks inform her that these cases are not something they can handle, prompting her to have to clarify that they can indeed handle them and why. To mitigate these issues from happening, the attorneys in her firm also give mini SIJS presentations in chambers to provide state court judges with the necessary background information to understand their role. However, she finds these efforts to be exhausting and burdensome for attorneys, especially since many are employed by legal aid NGOs and already overworked and underpaid:

> Honestly, I do not think that it should be our responsibility. I think that we should expect more from that individual as a judge, and I feel like they should be prepared and aware of how to handle these types of situations and cases. And that is just not the case. I cannot change that, so I guess it turns into our responsibility to educate them (Valeria, attorney).

The weight of explaining and educating judges does not fall evenly on all attorneys' shoulders. These proactive strategies become particularly important for attorneys representing clients in more rural areas or areas that receive fewer immigrants. Alexandra, an attorney in a Republican-leaning state with a very low immigrant population describes how she first "always submits a very long brief to the court that [she's] developed throughout the years that basically

explains the federal portion of SIJS to state court judges." Now she feels like judges in the specific county where she has filed most of her cases are more familiar with SIJS orders, and the process has become easier for her in that county. However, she explains that when she files in "some of those outlier courts in smaller towns where the judge hasn't seen an SIJS case, [she has] to provide more explanation and education" (Alexandra, attorney).

In geographic regions characterized by larger immigrant populations, increased availability of legal and social services, and a higher volume of SIJS cases processed through state courts, judges have progressively grown more acquainted and comfortable with SIJS. Their familiarity can also be bolstered by state-wide and county-wide tools that have been created to facilitate the SIJS process in the state courts. Sophia, an attorney who works in a Republican-leaning state with few immigrants and few legal resources, but which borders a state with a larger immigrant population and more relevant legal resources, describes her observation of key differences between these courts:

> [In my state and county] nobody really knows what I am doing every time I go to court. I have tried to explain it, but it seems like every time I go to court, they are like 'what's this and what's going on?' I think the issue is a lack of training, understanding, and frequency here, because in [county in neighboring state], they have developed an SIJS order template for judges to use. In that county, I also think the judges have seen those cases more. It is much better than here where there is not a concerted effort to help immigrants like in [neighboring state]. (Sophia, attorney).

Preemptively preparing materials and conducting educational advocacy is certainly a burden that falls on attorneys supporting undocumented immigrant youths; however, the additional labor seems to pay off in building important rapport with state court judges that makes the SIJS state court process smoother for attorneys and their clients. Faith, an attorney in a Democratic-leaning state with a mid-sized immigrant population, recalls how state court judges were "extremely suspicious and nervous" about SIJS cases before the surge of unaccompanied immigrant children (around 2014) that caused them to appear more frequently. She explains that it took "a lot of

advocacy from [her organization]" to clarify the different roles between state court judges and federal immigration authorities; however, these efforts seemed to pay off. Following these efforts, Faith felt that it "got easier for [attorneys] to work with the judges on these cases" because they both got a sense of what they were supposed to do with these cases and became familiar with these immigration legal aid organization attorneys (Faith, attorney). These proactive explanatory efforts are not unnoticed; Alexandra, an attorney, describes how judges "appreciate when [she] gives them the brief" before a case, mirroring judges' sentiments in Chapter 5 that well-prepared attorneys make them more amendable and comfortable with these cases.

The two-step decision process in SIJS that unfolds across both state and federal jurisdictions presents many challenges for both the state court judges being required to make relevant predicate findings and the attorneys having to navigate both systems. Concerns and confusion among state court judges are common, particularly in light of limited training, the absence of communication between the state and federal judicial systems, and in how SIJS cases differ from the traditional child welfare cases. As I have shown, attorneys navigate much of this confusion and concern through defensive and proactive educational advocacy. To combat or preempt judicial hesitation and push back, which can hinder or negatively impact their clients' SIJS cases, attorneys educate and inform state court judges about the statutory requirements of SIJS and how their role in the state court differs from the immigration decision made by federal authorities. This brokerage role facilitates the success of SIJS by clarifying and clearly differentiating the judicial responsibilities of both the state and federal authorities.

The need to perform these educational and explanatory tactics, however, is not the only hurdle that attorneys and supporting professionals encounter working with SIJS cases. As I

discuss next, attorneys must learn about and understand how SIJS unfolds across two jurisdictions. Unlike state court judges who must only understand and rule on the *state* court matter, attorneys supporting SIJS clients must understand and work across *both* the state court process and the federal immigration process. This cross-jurisdictional labor presents additional challenges and headaches, requiring many attorneys to be creative in their networking and resource-development strategies.

Working Across State and Federal Jurisdictions

Eligibility for SIJS is codified in federal law and granted by federal immigration authorities, but the required predicate findings for the SIJS application are determined within state-level jurisdictions, which can affect undocumented immigrant youths' likelihood of securing these findings based on the variations in state laws, practices, and available resources where they are residing (Paznokas 2017; Price 2017). This requires an immigration attorney to navigate family court or a family law attorney to navigate immigration court (Anderson 2017). As Carmen, describes:

> SIJS is very unique. In immigration, you normally just deal with the USCIS or immigration judge. You do not deal with local state authorities to pursue a federal immigration relief for a client. I knew from the beginning that there would be a learning curve – not just for me, but for everyone involved in that process. (Carmen, attorney).

As Carmen reveals, family law and immigration law attorneys who represent SIJS clients need to be familiar with both areas of law. For attorneys, SIJS requires "a very niche skillset [that takes] a specific set of attorneys who are capable and comfortable working with these cases" (Alyssa, attorney). This learning curve and cross-jurisdictional practice is not without challenges for the legal practitioners involved. As Alyssa describes, "a lot of attorneys are either very comfortable with family law and know nothing about immigration, or they know a lot about immigration law,

and they don't know anything about the state court piece." Working across federal and state jurisdictions is not a common exercise for attorneys, yet SIJS requires this skillset.

The division of authority between state and federal jurisdictions laid out in the statutory definition of SIJS requires attorneys to navigate and learn the laws and court procedures in a new jurisdiction. Some immigration attorneys describe the stress and anxiety of working across jurisdictions due to the time and energy required to navigate, and often relearn, the state court process, which they are less familiar with than their other day-to-day immigration work. This is a particular added layer of stress for Lydia, an attorney working for an immigration law firm in a rural state with a smaller immigrant population and a lower density of SIJS cases:

> When you are an immigration attorney, you get hyper-focused on what immigration requires – what are we going to present, what the fee is, where do we mail the forms, what does the statute require, and what does the regulation want out of us? But then [with SIJS] you also have to go to state court and do the state court process. It takes a while to feel comfortable in any state court process if you are very accustomed to the immigration court work. Each time I have a SIJS case, I have to kind of reteach myself the state court process because I am not regularly in state court. It takes a lot of time, contributing to an issue of capacity. For me, the issue of having to relearn it produces anxiety because the time it takes to relearn draws time away from my other cases. I can absolutely do it, particularly if I had nothing to do that week, but there is also a piece of me that is like, this is not my expertise. (Lydia, attorney).

Attorneys frequently grapple with overwhelming caseloads, which they manage by specializing in areas of law to improve their efficiency in case processing. However, when confronted with a more unfamiliar legal domain, adapting to new requirements and practices can impede their overall efficiency, affecting their performance in other cases. Similar to Lydia, Mira finds the state court process stressful because the protocols differ in state courts, causing frustration for immigration attorneys when they fail to meet the expectations of the state court:

> We are immigration attorneys. We are not family law attorneys, but we are dabbling in family law in this matter. So, we are now in civil courts and each court is unique. I had a court recently where I had submitted a petition that would have been accepted at any other district court or any other court in [my county], but this court returned it to me at least three different times saying that it was not sufficient and asking for something different. I really did not understand what the judge was asking of me. (Mira, attorney).

For immigration attorneys like Lydia and Mira, particularly those who do not regularly work on SIJS cases, the added state court component adds an additional layer of complexity, making the process even more arduous.

“Barred” From Practice

Immigration attorneys handling state family law for SIJS face more than just the challenge of learning new policies and procedures in state courts. They must also work within the professional bar requirements that permit attorneys to practice within a given state – a professional authorization that is less relevant for attorneys exclusively practicing federal law, like immigration law. Practicing law requires authorization in the specific jurisdiction where the attorney intends to practice (American Bar Association 2019). There is no national regulation of licensing to practice law, and licensing requirements for attorneys are generally state-specific. Consequently, an attorney is generally only permitted to practice in the U.S. state where they have completed that state’s bar requirements and become licensed. An attorney may only practice law in a different state than where they are licensed if permitted by the laws of the other state, usually known as “bar reciprocity” or “admission on motion,” meaning they can “waive in” to that state’s bar.

One means of bar reciprocity is the adoption by many states of the Uniform Bar Examination (UBE), a test created by the National Conference of Bar Examiners. Attorneys can transfer their UBE test scores (often within five years of taking the UBE) into another UBE-accepting jurisdiction. However, in many cases, there may also be additional requirements for an attorney to waive into another state. States can require an individual to have been practicing law for a minimum number of years before waiving in, such as five of the past seven years for

Massachusetts (Massachusetts Supreme Judicial Court 2024 3:01 § 6) and Texas (The Supreme Court of Texas 2017 § 6), and three of the past five years for Nebraska (National Conference of Bar Examiners (NCBE) and the American Bar Association (ABA) 2021). Additionally, states have different minimum score requirements to pass the UBE, which may be problematic for attorneys who have a passing score in one state but a failing score in another. For example, the minimum UBE passing score is 264 in Indiana, 268 in Michigan, and 272 in Pennsylvania (National Conference of Bar Examiners (NCBEX) n.d.).

Attorneys practicing immigration law are more mobile across states because they are not required to be barred in the U.S. state where they are physically working. To legally practice immigration law, an individual must be "in good standing of the bar of the highest court of any state, possession, territory, or Commonwealth of the United States, or the District of Columbia" (American Bar Association 2019). This is because federal laws, such as immigration matters, are established and adjudicated at the national level and are not state-specific, like laws governing family and child welfare matters. Immigration attorneys who are licensed in one state therefore do not need to consider limitations on their ability to practice if they move states or represent clients residing in different states. Immigration attorneys working with legal clinics and non-profit organizations may have moved to the clinic's location without needing to consider the potential implications of crossing state borders on their ability to legally practice immigration law.

SIJS, however, complicates these matters as attorneys petitioning for this form of (federal) immigration relief must first complete a state court process, requiring them to either be barred in that state or develop professional working relationships with other attorneys who can

legally practice in the U.S. state where their client resides. Devon, an immigration attorney at a private firm, talks about these challenges for attorneys:

> As an immigration attorney, if you are going to do SIJS, you have to keep localized with the state you are barred in. For example, we work with clients across [multiple] states, but I am only barred in [State 1]. So, we have to have lawyers barred in each state. There is one person at my firm who is barred in [State 2], but they work on [finance-related] law. So basically, I prepare everything for them and coach them a little and they do the state court process for me. It is hard. It is about resources. With immigration, it does not matter where you are barred. It is the federal system, so you can practice immigration law wherever you want. With SIJS, you have to be barred in that state and know that state's particularities with their custody cases. It is a logistical issue. (Devon, attorney).

Devon discusses an important strategy that immigration attorneys engage when working with SIJS clients living in multiple states. They may need to rely on other attorneys in their firm or organization with different state authorizations to *perform* the required state court actions for their SIJS cases. However, if these other attorneys are neither immigration nor child welfare specialists, the immigration attorney not only assumes all responsibilities in preparing the SIJS file but also in sufficiently teaching their colleague the information needed to successfully present, and secure, an SIJS predicate order case.

The increasing frequency of SIJS cases has led some immigration legal organizations to require that their immigration attorneys be barred in the state where the organization operates. One of those attorneys, Chiara, mentioned that when she was hired, she had to 'waive in' to the new state to work with immigrants:

> It is a requirement for us that you be barred here if you are doing SIJS cases because you have to be able to complete both the immigration and state portions yourself. I was someone who was barred in another state and had to wait to be waived in. During that time, I could not work with immigrant youths on SIJS cases. (Chiara, attorney).

Waiving into – or transferring recognition of one's license to practice between states that have reciprocity agreements – is one crucial way that immigration attorneys navigate the professional restrictions of working cross-jurisdictionally on SIJS cases. But, as previously mentioned,

waiving in does not eliminate all the challenges of working across state and federal laws; attorneys must still learn the intricacies of a new state's laws. Chiara describes how while waiving into the new state's bar legally permitted her to practice family law in that state, she still had to learn the specifics of that state's laws:

> It was just learning a whole new area of law, especially because I waived into [state] and did not study [this specific state's] laws in law school. So yeah, it just took a lot of webinars and did some internal training on SIJS. It was just a lot of hands-on learning and applying it [in cases]. (Chiara, attorney).

For other attorneys, the additional challenges or burdens of waiving into or sitting the new state's bar exam, when they have relocated, prevents them from becoming barred in that state and being able to represent SIJS clients in state court. Zoe is one such immigration attorney who came up against these burdens and constraints when she moved states for family reasons. Zoe had developed an expertise in SIJS cases as an immigration attorney because she graduated from law school and passed the bar right as the surge of unaccompanied children migrating across the border began in 2014. At the time, not many attorneys were doing SIJS cases, allowing her to fill a niche as an attorney. However, despite this expertise, she is not able to complete SIJS cases independently in her new state because she is not licensed to practice law in the new state courts. She talks about the time, complexities, and money that would be involved in becoming licensed in her new state:

> Here in [new state], I have not yet been to court myself on an SIJS case since I am not barred here. [Laughing and putting her hands on her head] I am not going to take the bar again – forget about that! The problem is that [the state where I previously lived and am barred] and [my new state] do not have reciprocity and so I cannot waive in. So, unless I want to take the bar exam here, I would otherwise have to get waived into [neighboring state] because they have reciprocity with [my old state], pay for that bar license, and then from that state I can get waived into [the state where I live now] and then pay for that bar license. It is complicated. And all-in-all it would cost me about $6,000 and I do not think I am willing to pay that at this point. (Zoe, attorney).

Zoe's challenges are not unique. Not all states offer bar reciprocity, leading attorneys to navigate a complex process of state agreements to obtain bar recognition in a new state without having to

take a new bar exam.[23] The costs of a bar license for admission on motion also vary drastically, making the waive in process, particularly for attorneys who go through multiple loopholes like Zoe would, expensive (NCBE and the ABA 2021).[24] Many immigration attorneys working on humanitarian relief cases work for legal aid clinics and non-profits – organizations that are usually fully invested in federal immigration matters and who do not have the means to cover the costs of bar fees. The particulars of state licensing only matter for the subset of cases that are SIJS.

So, what do immigration attorneys do when they encounter professional limitations preventing them from representing clients in state courts or filing state court motions, or when they feel really uncomfortable navigating these state court matters? To address these hurdles, many attorneys develop networks and partnerships with other attorneys across both physical and digital spaces to communicate and exchange information. These networks unfold across organizations, between organizations, and more broadly across digital networks of legal practitioners. For Zoe, such partnerships within her new organization helps her work around the licensing limitations that prevent her from working on SIJS cases:

> Not being barred is definitely a hindrance. But my colleague, who is barred here, and I are going to be working together. So. this is why I do not know if it is necessary to go through the process of getting barred here. I will look over everything my colleague does on the state court process, and we will work jointly on cases. But she will be the person technically in charge for the SIJS case in state court and I will kind of be behind the scenes getting stuff ready. (Zoe, attorney).

Zoe – an attorney with SIJS experience but who lacks the required state licensing to practice in state court – partners with a colleague, an attorney with the required state licensing but who lacks SIJS expertise, to support the organization's SIJS clients. These types of partnerships are crucial

[23] Though these reciprocity agreements still do not account for different minimum test score requirements, fees, and any other potential bar requirements.
[24] For example, Colorado's admission on motion fee is $1,800, Virginia's is $2,500, and New York's is $400.

for navigating the constraints of cross-jurisdictional lawyering. Such partnerships are not only essential for bridging legal barriers – such as state licensing – but also for exchanging and building a repertoire of knowledge on a niche area of law that requires expertise in federal (immigration) and state (family) jurisdictional matters. Zoe elaborated on the significance of such partnerships within her firm:

> We have been trying to build up our SIJS knowledge here in the firm and we have been trying to get people who can mentor us and answer our questions because there are so many particularities that are state court-centered, and we want to make sure that we are doing cases correctly. It is also really hard because there are materials [on SIJS] that are distributed nationally to immigration attorneys about submitting the I-360 after the state court piece. But getting state-particular resources for immigration practitioners on SIJS is so specialized that, especially, in smaller states with fewer practitioners, it is hard to find something like that, so you really have to reach out and find mentors and people who have done it before. (Zoe, attorney).

Zoe's experience seeking out partnerships and grappling with the challenges of learning the state specifics for the SIJS predicate order is not unique. Next, I explore how attorneys and organizations employ different networking strategies to effectively prepare and submit materials across both state and federal jurisdictions.

Scaffolding Networks

Immigration attorneys dappling in state law for the purpose of SIJS describe navigating the state court procedure as a "learn as you go" process. But many frustrations, like Mira's, and hinderances, like Zoe's, are mitigated through developing key partnerships between legal professions within and across organizations. Adriana, like Zoe, is not barred in the current state where she works for an immigration law organization, and so she, too, discusses having to contact a local law firm to have someone do her guardianship orders before she can complete and file the case with USCIS. Mira – the immigration attorney who repeatedly had a petition she filed returned without a clear sense of what the judge wanted from her – describes how

collaboration inevitably helped her overcome this hurdle when no one in her office knew what the judge was looking for and how to help her:

> It was stressful because we were on a tight deadline. The youth was about to age out. Thankfully, there was a family law attorney that had seen the petition – this was the pandemic and court was on Zoom – and messaged me. She said, 'Give me a call, I'll help you." And she sent me a petition. My petition had been like seven pages and hers was 24 pages! And that was what the judge wanted. Seeing the exact language that the judge wanted was really helpful. The judge kept telling me that "it was in the regulations" but I had read the regulations, and I did now know what he was looking for or see the language that the judge wanted me to use. Having that family law attorney reach out really helped me. We are an immigration law office, so we are not familiar with the day-in-day-out of state family court. (Mira, attorney).

Immigration attorneys come to rely heavily on barred family law attorneys to support the SIJS predicate orders. Immigration law organizations – particularly those supporting youths across multiple neighboring states – build strong partnerships with local family law firms and attorneys who can complete the formalities of the state court predicate order. While some firms and organizations can pay partnering attorneys at a "low bono" rate for their services in the SIJS state court process, many of these services are provided pro bono by the family law attorneys. For some of these family law attorneys, this serves as a means to log pro bono hours with their state bar, while for others, it provides an avenue to engage with a different area of law they are also passionate about. Alexandra is one such family law attorney who views volunteering her services on SIJS predicate orders as an opportunity to assist a community she cares deeply about:

> I started getting involved with SIJS orders when something came out through the [state] bar association looking for people to help with SIJS predicate orders. And in a previous job as a human resources director, I had hired a lot of immigrants on seasonal visas and the people became very dear to me and I wanted to be able to help those people because I knew about the struggles they went through in their lives. So [when the call came out] I thought that this would be an avenue to help people in a good area of service that I could perform. (Alexandra, attorney).

Partnering with other attorneys, such as private family law attorneys working pro bono, divides the state court and immigration filing labor between attorneys with different specializations; however, it does not mean that family law attorneys are entirely off-the-hook on

learning some of the intricacies of this cross-jurisdictional law. Diana is a managing attorney for an immigration law organization whose job involves teaching and supporting the family law attorneys working on clients' SIJS cases:

> We have a great project coming out of the volunteer lawyers' network. There are family law attorneys in private practice who, pro bono, take on our SIJS state court predicate orders. Part of my job is to answer their questions and help them figure out what they need to know about the immigration component of the SIJS cases that may inform the specifics of the predicate order. (Diana, attorney).

The SIJS predicate orders require specific findings to be sufficient evidence for SIJS when the application is filed with federal immigration authorities, making these cases a little different than traditional dependency, custody, and guardianship cases, and requiring some knowledge of how SIJS works overall. Rebekah is also an attorney at an immigration law clinic who trains state court family attorneys on SIJS. She has the pro bono family law attorneys work "hand-in-hand with one of [their] immigration attorneys to make sure they are proving what they need to prove to get the specific SIJS findings" (Rebekah, attorney). Many of the participants in the SIJS predicate order webinar trainings I observed were family law attorneys who needed or wanted to learn the specifics of the SIJS predicate orders and how the state court portion related to the overall federal immigration relief application. Dividing the components of the SIJS process between family law and immigration law attorneys is an important strategy firms and organizations employ to work around licensing restrictions and the challenges of becoming experts in the other area of law. While it certainly alleviates some of the burden, the specifics of the SIJS predicate orders and how they differ from conventional child welfare cases still means that both family law and immigration law attorneys working on SIJS cases have to become versed in the other area of law.

Certain organizations are better positioned to facilitate collaborations between immigration and family law specialists. Rosa works for a small immigration legal clinic and discusses how "relying on voluntary attorneys to do the state court portion" allows her clinic to take on SIJS cases, but "this divided representation limits [her organization's] capacity for these cases (Rosa, attorney)." Given the significance of SIJS as an opportunity for undocumented immigrant youth, Rosa describes how this barrier has really limited the organization's ability to take on undocumented immigrant youths as clients. Given the growing prevalence of these cases, Rosa's organization inevitably decided they needed to hire an attorney licensed that state to specifically handle these cases. This hiring decision, however, necessitated securing additional funding due to the organization's financial constraints as a non-profit organization.

Justin, on the other hand, is an attorney with a family law background who works for a private firm that does some immigration law cases, among other forms of legal services. When he started, he recognized the limitations his firm faced by outsourcing all SIJS predicate orders to other attorneys and firms. While he lacked the necessary knowledge in immigration law, he was able to partner with an immigration case coordinator in the firm to complete SIJS cases in-house, eliminating the firm's need to outsource the state court portion of SIJS cases to a family law firm.

> When I came to this firm, I learned that they were contracting out the guardianships to another firm here that we have a good relationship with, but they were having some issues with them. You know, they are a busy law firm with tons of cases, so our guardianship cases were starting to hit critical deadlines but were not getting done. So, I was like, 'you know, I am comfortable doing them and I can take them over.' So, they shifted over to me. I had to become familiar with the immigration side and I surrounded myself around one of our case coordinators who has been around as long as the organization has been around and has so much institutional knowledge. (Justin, attorney).

Justin is now largely in charge of all SIJS cases that the firm takes on, and while he has become more familiar with the immigration side of the matter, he still relies heavily on the case

coordinator and immigration attorneys at his firm for clarification and support. Rosa and Justin's experiences highlight the necessary, yet sometimes inconvenient, nature of relying on intra-organizational partnerships to complete SIJS cases, which often must be completed on tight deadlines due to filing requirements and age limitations. While Rosa's organization was able to hire a state-licensed attorney to manage these cases and Justin was able to fill this gap in his firm, not all organizations and firms have the resources to develop the necessary in-house partnerships of immigration and state attorneys. Private law firms, like Justin's, may be better positioned to develop in-house partnerships, especially since private law firms traditionally specialize in areas of state law, requiring all attorneys to be barred in that state (or neighboring states). They also likely have the fiscal resources over small non-profit law clinics relying on grants to hire attorneys to fill specific gaps.

Finally, immigration law clinics supporting clients in rural regions with lower immigrant populations may encounter challenges in establishing a network of attorneys to support their efforts. Diana, the managing attorney who trains family law attorneys to work on SIJS matters, faces this issue. Her immigration law organization serves clients in three neighboring states, requiring her to partner with attorneys licensed to practice in each of those states. However, she encounters difficulties securing pro bono assistance from family attorneys for SIJS cases in one of the rural states with fewer practicing attorneys. As she describes, "it's already such a small community of attorneys in this state and not very many of them are willing to take on seemingly complicated immigration matters" (Diana, attorney). Intra- and inter-organizational partnerships between immigration and family law attorneys facilitate the cross-jurisdictional work that attorneys engage into secure SIJS for their clients, but they are challenging to develop for organizations and attorneys practicing in rural, resource-limited environments.

These intra- and inter-organization networks, however, are not the only ways that attorneys confront the hurdles of working across jurisdictions. Apart from collaborating with local partners, attorneys often leverage online networks to strategize and address challenges encountered in their SIJS cases. In addition to attending national-level training webinars, like the ones I observed during this research, attorneys utilize email listservs and virtual collaborative meetings and forums to learn about and collaborate on SIJS. These networks were discussed by my interviewees, and I was also able to join a few and observe their use. Digital networks are useful for all attorneys but especially for attorneys with limited inter- or intra-organizational resources and partnerships. As Levin (2001, 2005) notes, solo or small firm attorneys may need to look towards these broader accessible networks, such as listservs, to develop an information exchanging and problem-solving community.

Digital Networks for Cross-Jurisdictional Work

Many of the attorneys I spoke with have joined national SIJS listservs and speak positively about these digital communities in helping them navigate SIJS's complexities. Compared with other areas of law, attorneys describe the engagement and support from these listservs as unmatched. For example, Gabriela, an attorney, shared that she often joins forums and listservs when she starts working in a new realm of law, but she has "never seen the camaraderie that [she] sees in the SIJS forum or the DACA (Deferred Action for Childhood Arrivals) forum" in the virtual networks for other specialties. Gabriela describes these forums as an important way for attorneys to work together and successfully get the necessary predicate orders for their clients.

Attorneys utilize these forums to actively exchange resources and experiences, seek advice on specific findings in particular counties, and inquire about others' experiences with

certain judges. In my own observation of information exchange over these listservs, I notice that participants often "reply all" to provide information to all members, and that participants are often quick to respond with an answer. Over the 18 months I observed activity on two different listservs, not a single question posed went unanswered. In my conversation with Luis, a newer attorney at a private firm, he excitedly described these listservs as "super active" and "just popping."

Learning about judges was a common way these listservs were used. While Luis has never used a listserv to ask about a state court judge, "about half of the emails [he sees] in a week are asking whether anyone knows anything about a particular judge." Gabriela also uses the listserv to learn more about judges in her surrounding area:

> One of the things I find really helpful about these listservs is for preparation before going in front of a judge who I have not gone in front of before. I'll ask and other attorneys will post their experiences or share what that judge is particular about. It is helpful because then I can prepare for that before getting to that judge. This is so helpful because each judge truly has their own way. Related to that, when a client may not have a strong SIJS claim, I can talk with other attorneys on these forums about how to present their case in this court so that we may have a better outcome. The attorneys on these forums are so great and they will even send over a sample that they previously filed at that court. I once also needed to get something out immediately and someone sent me a template from their work. Oh, it is lifesaving. (Gabriela, attorney).

Listserv participation can be particularly important for attorneys without a substantial network of colleagues within their organization or established inter-organizational partnerships. It can alleviate the challenges associated with navigating tasks independently.

These listservs have also become a key mechanism through which to collectively combat federal RFEs (requests for evidence) that have increasingly become a tool used by federal authorities to try and assert more discretionary authority over the applicant's deservingness for SIJS (see Chapter 4). Daniel, an attorney, describes how these listservs provide a way for attorneys to "rely on each other to stay updated and collaborate to keep abreast of

developments." He describes how he uses and observes the listservs to learn about and respond to the increasing number of RFEs that began around 2016:

> We started getting a ton of RFEs and they are a bit confusing in the sense that they were vague enough that we did not really know what the issue was with the application that we had submitted. We did not know why they were asking for specific documents, or which documents would actually satisfy what they were asking for, or which documents we should even send. But because the RFEs are pretty formulaic and were being sent out for similar reasons to different attorneys, it was just helpful to be able to go onto a serv and say: 'I have an RFE asking for x, y and z. Has anyone experienced this and what did you send in response to them?' These listservs allowed us to cast the widest net for that question because other practitioners have likely already fielded that question. (Daniel, attorney).

As discussed in Chapter 4, RFEs are one way that USCIS attempts to assert more oversight and authority over a critical component of SIJS eligibility. Successfully counting and responding to these requests is a crucial way that attorneys maintain separation between federal and state authorities in brokering between these two jurisdictions. Information exchange between attorneys regarding RFEs is an important way to prevent these federal attempts from gatekeeping their clients' access to SIJS.

Attorneys find these digital communities important, even when they themselves do not actively use them to ask questions. Luis has never himself asked a question on a listserv, but he "tries to read all the emails so that if [he] ever encounters this issue, [he] might know how to solve it." However, Luis also mentioned that he has not felt the need to use the listserv personally to ask a question because he has colleagues at his organization that he problem-solves with. As Luis recognizes, these listservs become an important site of collaboration and collegiality for individuals who do not have the strong inter- or intra-organization networks for problem-solving.

This chapter has described the challenges that attorneys, and supporting social workers and paralegals, face working with SIJS as a unique legal process that unfolds across both state and federal jurisdictions. As I have previously discussed, this cross-jurisdictional legal decision

process is what makes SIJS a peculiar piece of law, particularly as a form of immigration legal relief. Attorneys not only have to navigate both state and federal jurisdictions in supporting SIJS clients, but they carry the additional labor and burden of explaining the SIJS process to state court judges to facilitate their cases in state court. To successfully traverse state and federal jurisdictions, attorneys adopt defensive and offensive educational strategies when working with state court judges, form intra- and inter-organizational partnerships with attorneys specializing in one of the jurisdictional matters, and rely on digital networks to request and exchange valuable resources. Together, these strategies enhance the efficacy of SIJS by helping attorneys synthesize the policies and procedures of the child welfare and immigration systems, while also maintaining the distinction between adjudicators and evidence to mitigate the potential expansion of State oversight and gatekeeping measures that would stifle their SIJS cases.

Conclusion

I opened this dissertation with the story of CJ, a 14-year-old male from Honduras who had been held at gunpoint after refusing to join a gang. Along with his mother, he fled to the U.S. after the gang also subsequently threatened to kill his family. While these threats were insufficient for a successful asylum claim, they – combined with the absence of his father during his childhood – were considered sufficient evidentiary criteria to petition the federal government for Special Immigrant Juvenile Status (SIJS). His deservingness of immigration relief was tied not to his fear of persecution by gang violence in a State that could not protect him, but rather as an abandoned child deserving of protection in the U.S. from these very same gangs and death threats. In addition to revealing how CJ's vulnerability and his deservingness for immigration relief were legitimized, CJ's case also reveals the complex, often tense, discussions over authority in cross-jurisdictional legal matters like SIJS. Whether or not the immigration judge was required to inform CJ of his possible eligibility for SIJS because he did not yet have a state court order, was a debate that unfolded across the original judge, the Board, and an en banc court in his case.

SIJS is a unique form of immigration legal relief. SIJS relies on the laws, institutions, and authorities in two jurisdictions: (1) child and family welfare, which is state jurisdiction, and (2) immigration, which is federal jurisdiction. Youths seeking SIJS must first petition for findings of parental abuse, abandonment, or neglect and that it is not in their best interest to return to their home country. These determinations are made by state family, dependency, or juvenile court

judges according to the U.S. state laws where the youth currently residents in the U.S. Youths must then apply for SIJS, an immigration visa, with federal immigration authorities (USCIS), to remain in the U.S. with the possibility of becoming a U.S. citizen, despite entering the country without the government's initial authorization. This two-step jurisdictional decision-making process presents challenges, confusion, and frustrations for the professionals navigating both state governments' child welfare and the federal government's immigration laws and bureaucracies. Lawyers must strategize across two sets of laws and balance competing judicial logics, while state court judges and federal immigration authorities grapple with questions of authority and goals when logics conflict with established norms.

Yet despite these challenges, SIJS is the most successful and preferred pathway to legal relief for undocumented immigrant youths. In fact, within a landscape dominated by restrictive immigration policies, where the State's focus on constraining and punishing unauthorized migration often eclipses its humanitarian duties, SIJS stands out as a notable exception, boasting a granting rate often exceeding 90%. While federal authorities often restrict asylum eligibility, state court authorities can (re)open doors to immigration protections. The success of SIJS cases prompts inquiry into why the integration of the child welfare system and notions of deservingness expands access to immigration protections, particularly within a landscape seeking to limit immigrants' avenues for recognition and protection.

I use SIJS as a case to explore how the involvement of certain (local) institutions within a (federal) decision-making process can expand or contract benefits due to how (a) categories of moral deservingness in one realm translate into another, and (b) the degree of integration or separation of authorities' roles can privilege the State's penal policies or therapeutic offerings. To explore the extension of immigration benefits through child welfare institutions, this

dissertation asked three important questions. First, how and why do certain conceptualizations of vulnerability and violence prevail as recognized eligibility criteria for immigration legal relief, while others may not? Second, how does the involvement of non-federal institutions in the case of SIJS expand, rather than contract, immigration benefits? Third, what challenges do the legal professionals involved within this immigration-child welfare complex confront as they work to apply and adjudicate moral categories of deservingness, establishing immigrant youths' eligibility for legal relief?

To answer these questions, I collected and analyzed data across three primary data sources – state court cases, interviews, and observations from training webinars – supplemented by congressional documents, government memoranda and reports, and policy manuals. The state court case data provided examples of the evidentiary criteria and standards used in SIJS cases, and how they were interpreted and adjudicated by judges across thirty years. Interviews with attorneys, paralegals, social workers, and state court judges provided deeper understandings of how these professionals perceive their role, SIJS evidentiary criteria, the legal process required for a SIJS case, and the lives of their young undocumented clients. Finally, the supplemental observational data of webinars provided insight not just into what these actors do or think but also how they are trained to identify, develop, and substantiate SIJS cases.

"Hierarchies of Harm"[25]: Privileging Certain Victimizations Over Others

I argue that conceptualizations of vulnerability and violence in SIJS follow the logics of the U.S. domestic child welfare regime. This alignment renders them more attainable conditions of victimhood for youths. Consequently, they are privileged over other visions of victimhood

[25] I borrow this term from Talia Shiff (2020a).

stipulated by other forms of immigration legal relief. Child welfare laws and institutions operate on a model of comprehensive inclusion and flexibility, with judges generously extending state protections. The broad standards of abuse, abandonment, and neglect adopted by states recognize many of the experiences that immigrant youths faced in their home countries as evidence of child maltreatment and inadequate parenting. Traditionally, these broad standards of abuse and neglect, combined with institutional procedures that favor inclusion over exclusion in recognition of state dependency and need for protection, are precisely what makes the child welfare system an extension of the State's surveillance and control over already-marginalized families. Conversely, however, in the case of SIJS, these same logics are applied in the service of helping children remain in the U.S. without the same ongoing surveillance. They operate to facilitate the State's embrace of youths in the name of vulnerability and protection, making SIJS a more successful and preferred pathway to immigration legal relief.

In contrast, relief forms like asylum tend to operate on an exclusive model driven by the State's suspicion of undocumented immigrants, leading adjudicators to seek reasons for denial rather than approval. The narrow standards of what constitutes a "well-founded fear" or "membership in a particular social group," substantially restrict asylum's moral categories of worth and deservingness. This key difference makes attorneys prefer SIJS to asylum due to the higher success rate of the former, contributing to the privileged recognition of protection from family over other visions of harm and victimization. They seek to find evidence of parental abuse and neglect, reinforcing these conceptualizations of vulnerability as stronger and more valuable humanitarian capital. This underlines the idea that youths must be victims of parental abandonment or of their parents' poor parenting capabilities to be considered "vulnerable enough" or "harmed enough" to receive immigration legal relief benefits.

Establishing Eligibility Across Different Jurisdictional Norms and Procedures

The success of SIJS through this hybridization of child welfare and immigration regimes can also be credited to the ways in which legal advocates – attorneys and their supporting social workers and paralegals – broker between these jurisdictions. Devolved immigration governance generally reinforces the State's capacity to regulate and penalize immigrants, which I attribute to the federal government's explicit delegation of policing responsibilities to local authorities. Local law enforcement officials enter agreements with federal immigration agencies to identify and penalize undocumented immigrants in their communities. Additionally, federal immigration law mandates that employers verify the legitimacy of immigrants' work authorization documentation, or else they face legal consequences themselves. But in the case of SIJS, the role of immigration and child welfare authorities are statutorily separated. Attorneys broker between these authorities to keep them distinct, limiting the possible extension of State surveillance and exclusionary tactics and ensuring that the inclusive logics of the child welfare regime prevail. Attorneys' explanatory tactics, as well as the other strategies they deploy to move their cases across jurisdictions, reveals how attorneys facilitate the success of SIJS by conjoining the policies and practices of the child welfare and immigration systems while also maintaining separation between adjudicators and evidence to keep the doors open on this pathway to immigration protections and citizenship.

Scholarly Contributions

This dissertation contributes to the fields of immigration law and policy, hybrid institutions, the politics of deservingness, and legal brokerage. Using the case of SIJS, this dissertation reveals how the involvement of certain local institutions within a federal decision-making process can extend or restrict benefits based on how categories of deservingness translate

across institutions and the degree of integration between authorities' roles in the evaluation and implementation of the State's laws. Specifically, I show how the hybridization of the child welfare and immigration regimes via SIJS decision-making expands youths' access to the State's humanitarian protections. This occurs because the logic of vulnerability and harm within the child welfare system, along with the delineation of authority and assessment between child welfare courts and federal immigration agencies, facilitates access to these protections.

Immigration Governance at the Intersection of Different Institutional Logics

Contributing to studies of the internalization of immigration control and the devolution of immigration governance, this study reveals how the involvement of local level institutions in immigration governance can actually privilege the State's therapeutic offerings (left hand) over its disciplinary tactics (right hand). Traditionally, the "internalization" of immigration governance devolves decision-making and oversight authority to local-level institutions, which has the effect of enhancing State policies aimed at eliminating or punishing unwanted immigration. This occurs through consensus over how these policies apply negative moral categories, such as "criminal," "threat," "fraud," or "problem," to the immigrants they govern. On the contrary, the logics governing child welfare regimes conceive of youths as "helpless," "vulnerable," and "dependent," resulting in a different approach to the institution's engagement with this immigrant population. The moral conceptualizations of local law enforcement institutions trigger the State's penal policies, whereas those of the child welfare system activate the State's compassion and obligation to help.

Examining SIJS in the context of comparative studies on the devolution of immigration governance and the broader hybridization of the State's therapeutic-penal or care-control systems reveals how the institutions facilitating access to benefits project distinct moral frameworks of

worth. These frameworks have diverse consequences, ranging from improving access to benefits to exerting more control over individuals. This insight can be applied to other hybridized forms of immigration governance. For example, immigrant victims of certain crimes can apply for a U-visa, but their application for these federal immigration protections hinge on certification from a local official attesting to their helpfulness in the investigation of the crime. Several agencies and authorities are acknowledged as certifying bodies, and efficacy of each in facilitating or impeding victims' access to U-visa protection likely varies. Agencies may ascribe different categories of deservingness and worth to individuals, influenced by their institutional norms and standards for recognizing victimhood, as well as their priorities regarding intervention, support, or punishment for both victims and perpetrators. Local police officers operate with a presumption of suspicion, guided by institutional policies centered on surveillance and punishment. Conversely, family courts view victims as vulnerable, guided by institutional policies aimed at providing assistance. While family courts are recognized certifying agencies, they are underutilized in U-visa applications (Altreuter 2019; Kalil 2021). Individuals' access to U-visa benefits through these different institutions is likely uneven. Future research should explore the different hybridizations between these local agencies and the immigration bureaucracy to understand how the involvement of different local level institutions can hinder or facilitate immigrants' access to benefits.

Connecting the research on child welfare and immigration governance unveils fresh insights into how punitive strategies employed within the child welfare system, which have historically reinforced surveillance and control over marginalized groups, can alternatively serve as instruments of aid and support for another marginalized population. Child welfare has often been studied as a State mechanism to intervene in and punish families or color and lower

socioeconomic status. In the U.S., norms surrounding family upbringing and child development are rooted in White, middle-class expectations. This makes it challenging for working-class families of color to conform to these standards or align with the conventional image of an "ideal" family. These same expectations are applied to the lives and relationships of undocumented immigrant youths when they seek state courts' support for their SIJS applications. Global disparities leading to adversity, restricted opportunities, and violence, along with diverse cultural norms concerning familial dynamics and childrearing practices, also mean that these families often cannot meet these U.S. standards and norms. However, while SIJS cases involve legal consequences for family integrity, akin to conventional child welfare interventions, these cases do not employ the same punitive measures that exacerbate surveillance over already-marginalized families. This is because SIJS selectively integrates elements of the child welfare institution, such as standards of recognition, while excluding subsequent mechanisms of surveillance. This results in youths receiving protection without enduring extensive ongoing scrutiny. SIJS transnationalizes Western ideologies of child welfare by projecting its norms of parenting and child well-being onto parents abroad. However, ongoing surveillance, used as a mechanism of control, ceases at the nation's shore.

Scholarship on Legal Brokerage

The existing scholarship on legal brokerage has largely focused on two areas. First, scholars have studied how various bureaucratic and organizational demands influence how actors broker between their clients' lives and the law to facilitate their recognition within one of the State's moral conceptualizations of deservingness. I add that attorneys broker not only between their clients and the laws but also between the laws and the *adjudicators or authorities* tasked with applying or legitimating the categories of worth that determine clients' access to benefits.

This brokerage role is particularly important in legal contexts that span multiple jurisdictions or involve hybridized systems with distinct sets of laws, institutions, histories, and authorities. In the case of SIJS, attorneys ensure that state court authorities understand their role and obligation in the child welfare process without conveying that they are making an immigration decision, which most state court judges find to be beyond their jurisdictional authority. Likewise, attorneys must counter federal authorities' attempts to intervene with or overrule the state courts' findings, challenging the state courts' findings of abuse, abandonment, or neglect, and thereby limiting immigrants' access to legal protections. They strategically negotiate between authorities' concerns, obligations, and limitations as they pursue benefits for their clients.

Second, expanding upon research that delves into attorneys' brokerage role between clients and the laws, studies have explored the emotional impact on clients as they become aware of or even embody particular narratives of victimhood explained to them by their attorneys. As attorneys broker between the laws and their clients to depict clients' lives in the most successful ways possible, clients become aware of how they are seen in the eyes of the law. However, I reveal the consequences of professionals' thoughts and feelings regarding their brokerage role, exploring the emotional labor involved in rationalizing specific portrayals of harm and violence while guiding and instructing clients to perceive themselves through this lens. Attorneys are aware of the moral dilemmas that arise when they construe issues of poverty and country conditions as evidence of parental abuse and neglect. They balance emotional support with instilling in their clients the new realities that their parent(s)' (in)actions were neglectful or abusive. This helps attorneys justify their decisions to pursue or promote SIJS, despite potential emotional or physical consequences for their client's family relationships. This emotional negotiation is a vital aspect of legal brokerage, as it illustrates how attorneys educate clients

about the narratives that establish their eligibility for legal relief and simultaneously rationalize moral dilemmas.

Study Limitations and Additional Future Research Suggestions

This dissertation provides valuable insight into the connection between child welfare and immigration governance through the case of SIJS and the experiences, thoughts, and strategies of certain legal professionals involved in the process. However, the study's scope and data have their limitations, some of which can be addressed through future studies. First, this study was designed in the early months of the COVID-19 pandemic, and data collection occurred under COVID-19 restrictions. The availability and accessibility of data were driven by the possibilities and limitations of a remote landscape and under the hardships and duress individuals faced during the pandemic. The shift into a virtual world allowed this dissertation to capitalize on new forms of information exchange and accessibility, such as Zoom interviews and webinars, which allowed me to expand the reach of my interview and observational data collection nationally. However, virtual data collection made rapport-building difficult and limited the scope of my research to populations who had access to and were willing to speak with me through the phone or Zoom. Because of these limitations, I focused my research on the professionals working with immigrant youths and not the immigrant youths themselves or their families.

Chiara Galli's research on young asylum seekers offers insights into the ways young immigrants react to attorneys' portrayals of their lives and respond to inquiries about their parents (2018; 2020b; 2023). She reveals how youths are often confused about why their certain experiences of gang violence or threats are framed in relation to their parents or how youths are reluctant to engage with inquiries about family relationships. Yet her research reveals less about how youths grapple with potential emotions that emerge from receiving images of their parents

as abusive or neglectful, or how parents respond to these allegations. A study of this nature would offer valuable insight into the degree to which SIJS truly undermines values of family integrity by gaining deeper insight into the feelings of youths and their families. Consequently, it would shed light on the magnitude of the related moral dilemma that attorneys face in their construction of youths' lives for SIJS.

This dissertation also gleaned valuable insight about how state child welfare standards and procedures were applied to immigration matters through analyzing hundreds of state court cases and interviewing state court judges. However, I only analyzed appealed cases and not cases that had been approved at the initial hearing or denied and not appealed. This is due in part to the accessibility of state child welfare case data. Appealed cases are public record, whereas original trials and hearings in child welfare matters are often confidential and closed to the public. Furthermore, these are the state court cases that make the initial SIJS predicate order findings, which only provide answers about potential outcomes pertaining to the requested state predicate order. While this is a crucial component of an SIJS application, it is not fully determinative of the immigration outcome. However, acceptance rate data and information shared from attorneys reveal that we can largely assume individuals receive SIJS if they secure a predicate order with the necessary findings. A deeper understanding of SIJS outcomes and how various authorities respond would benefit from analyzing state court cases where decisions were originally granted or denied and not appealed, as well as analyzing federal SIJS applications and decisions.

Additionally, I identified and compiled the court case data during the preliminary research stage, which initially focused more broadly how immigrant youths and families interacted with state child welfare institutions. The dissertation's concentration on SIJS, specifically, emerged out of an early analysis of these data but was not the sole focus at the time

of initial collection. Thus, while most cases in the dataset pertain to SIJS predicate orders, there are some cases included in the analysis that do not pertain to SIJS specifically but more broadly to other child welfare decisions and interventions involving immigrant youths and parents.

This dissertation also relied on Zoom or phone interviews with attorneys, supporting professionals in their organizations and firms, and state court judges, which did not provide opportunities to observe these professionals during their work to see how they interacted with each other and their clients. An understanding of SIJS and cross-jurisdictional decision-making would benefit from further ethnographic observations of the interactions between legal professionals and immigrant youths and families, following the work of Chiara Galli (2023) and Luis Tenorio (2020). In particular, observing the ways in which attorneys broker between court authorities as they file and present their cases in state court and respond to Requests for Evidence (RFEs) with USCIS would deepen our understanding of this important brokerage role across jurisdictions.

Lastly, recruiting state court judges presented many challenges, including contacting courts, low response rates, and navigating judges' busy and uncertain work schedules. As a result, the sample of state court judges is relatively low and only includes judges familiar with SIJS. Future research would benefit from engaging with judges who are not familiar with SIJS, as well as observing and speaking with judges less receptive to SIJS and immigration matters. Finally, while I originally attempted to speak with federal immigration officers in USCIS, I was unsuccessful in this endeavor. The bureaucratic procedures for conducting research within federal offices and with federal employees was a barrier I was unable to overcome. As such, this dissertation is unable to account for the experiences and thoughts of the federal authorities involved in this cross-jurisdictional matter. A deeper investigation into the federal decision-

making component of SIJS would bring our understanding of cross-jurisdictional negotiations full circle.

Appendices

Appendix A: Data Descriptors

State Name (court case data only): Name of the U.S. State where the case was heard.

Year (court case data only): The year that the case was first decided in the appellate court.

Time Period (court case data only): Based on the year that the case was first decided in the appellate court, categories describing the laws, executive politics, and sociopolitical environments that might govern SIJS rules and outcomes in a given timeframe.

- *Pre-TVPRA (2008):* Case was decided prior to the 2008 TVPRA amendments, which made significant changes to SIJS eligibility, importantly changing consent requirements, and allowing youth to be eligible if found unable to reunify with just one and not both parents.
- *Obama Administration:* Case was heard in the early years following the 2008 TVPRA amendments.
- *Trump Administration:* Case was heard between January 20, 2017, and January 19, 2021.
- *Biden Administration:* Case was heard on or after January 20, 2021.

Federal Judicial Circuit: The federal judicial circuit (1st-9th) governing the U.S. state where the case was heard. While these cases are state court cases, possible previous asylum decisions discussed were or the future SIJS application will be shaped by the federal judicial circuit.

Reason for Appeal and Action (court case data only): Identifies the reason why the case was appealed and the action taken by the court. The reasons for appeal were grouped into three primary categories: (1) Jurisdiction reasons indicate that the original state court claimed it did not have jurisdiction over the matter; (2) Arrangement reasons describe the reason for appeal as due to questions, controversies, or disagreements over the proceeding type and finding (for example, guardianship, custody, dependency, or child support); (3) Criteria reasons indicate that the reason for appeal was due to the findings (or lack thereof) of abuse, abandonment, neglect, or the child's best interest). Within each of these reason for appeal categories, we identified six major action subcategories: (1) the appellate court upheld the decision of the lower court; (2) the appellate court reversed the lower court's order and/or remanded the case back to the lower court for further action; (3) the appellate court required the lower court to amend the order; (4) the appellate court vacated or dismissed the order; (5) the appellate court issues a peremptory writ, vacating the original order and making a decision on the case matter; and (6) the appellate court issues a peremptory writ, vacating the original order and requiring the lower court to have a specific hearing or make specific findings.

- Jurisdiction: upheld
- Jurisdiction: reverse/remanded
- Jurisdiction: required to amend
- Jurisdiction: vacate/dismiss
- Jurisdiction: peremptory writ (vacate and decided)
- Jurisdiction: peremptory writ (vacate and require specific hearing/findings)
- Arrangement: upheld
- Arrangement: reverse/remanded
- Arrangement: required to amend
- Arrangement: vacate/dismiss
- Arrangement: peremptory writ (vacate and decided)
- Arrangement: peremptory writ (vacate and require specific hearing/findings)
- Criteria: upheld

- Criteria: reverse/remanded
- Criteria: required to amend
- Criteria: vacate/dismiss
- Criteria: Peremptory writ (vacate and decided)
- Criteria: Peremptory writ (vacate and require specific hearing/findings)

State Political Leaning: Describes the general political leaning of the U.S. state where the case was heard (court case data) or where the professional lived and practiced (interview data) using state legislative data from 2009-2023.

- *Republican:* The state legislature was controlled by Republicans more than it was controlled by Democrats between 2009-2023.
- *Democratic:* The state legislature was controlled by Democrats more than it was controlled by Republicans between 2009-2023.
- *Split:* The state government was divided, which meant that either the legislature's control was split (i.e., a democratic controlled House and republican controlled Senate) or the governorship was a different political party from that majority party controlling the legislature.
- *Nonpartisan:* The state legislature is considered non-partisan and therefore cannot be determined to be controlled by Democrats or Republicans (the case in two territories: Washington D.C. and Nebraska).

State Immigrant Population: Describes the proportion of the state's population considered immigrants between 1990-2023. The state's immigrant population was determined to be very low, low, mid, high, or very high using the average of the percentages of each state's immigrant population recorded by Migration Policy Institute (MPI) data in 1990, 2000, 2010, 2019, and 2021. For court case data, this was the state where the case was heard. For interview data, this is the state where the professional lived and primarily practiced.

- *Very low (5th percentile):* < 3.86%
- *Low (25th percentile):* >= 3.86% and < 5.78%
- *Mid (50th percentile):* >=5.78% and < 12.13%
- *High (75th percentile):* >= 12.13% and < 18.87%
- *Very high (95th percentile):* >= 18.87%

Profession (interview data only): Describes the interviewee's profession.

- *Attorney:* the interviewee identified as a practicing attorney in both or either state law or immigration law.
- *Judge:* the interviewee was presently a state court judge or commissioner.
- *Judge Clerk:* the interviewee worked as a clerk for a state court judge.
- *Social worker*: the interviewee identified as a social worker or social welfare worker.
- *Paralegal*: the interviewee identified as a current paralegal for a firm or organization.

Gender Identity (interview data only): Interviewees self-identified their sex/gender identity. These were then grouped into Male, Female, Other, and Not Identified.

Race/ethnicity (interview data only): Interviewees self-identified race/ethnic identity. These were then grouped into five main categories, based on the most commonly used identification terminology by interviewees, for descriptive statistics (White, Hispanic/Latinx, Asian, African American, Not Identified).

Pseudonym (interview data only): First name randomly generated through an online tool, accounting for the individual's self-identified gender and race/ethnic background.

Appendix B: Interview Data Codes

Experience w/ Immigration Court and Judges: This code will be used to excerpt both professionals' and child's experiences in immigration court and with immigration judges. This code will be used for experience with immigration judges, as well as federal immigration courts. The code can also be used to excerpt professionals' descriptions of their minor clients' experiences with federal judges and courts.

Child's Relationship with Family: This code will broadly be used to excerpt discussions by professionals of children's relationships with their family members after migrating to the U.S. or after receiving relief. These discussions can include continued contact, financial support, and reunification with family members here and the child's experience. This code can be co-coded with other codes, but the consequences of family relationships due to relief, such as the inability to sponsor a parent, should be coded as con of SIJS.

Minors' Experience w/ Asylum: This code will be used to capture professionals' description of minors' experience applying for asylum or the benefits/challenges for minors when applying for asylum. May be co-coded with pros and cons of asylum when compared with SIJS.

Decision to Grant or Deny - This code will be used to excerpt judges' discussions of how they determine whether to grant or deny SIJS cases.

Decision not to Pursue SIJS - This code will be used to excerpt professionals' (largely attorneys') discussions of when and why they determined a UAC did not have a SIJS case.

Benefits of SIJS- This code will be used to excerpt perceived qualitative advantages of filing a SIJS petition for UACs, relative to other forms of federal immigration relief available to them.

- **Relief access/type -** use this code to excerpt when SIJS is discussed as a beneficial or preferred type of immigration relief without specifically providing a reason.
- **Less traumatic/invasive** - use when SIJS is described as not being very traumatic, invasive, or a negative experience for youths.
- **Likely success/secure** - use when the success rate or potential success of SIJS is discussed, or when SIJS is described as being easy, better, or likely to secure as a form of legal relief.
- **Easier** - use when SIJS is described as easier, in general, without specific reference to being easier for the child/family or practitioner/application process.
    - **Easier: Child/Family** - use when SIJS is specifically discussed as being an easier form of legal relief to endure or acquire for the child/family.
    - **Easier: Practitioner/Procedure** - use when SIJS is specifically discussed as being an easier form legal relief for the practitioner to secure for their client or an easier legal process to navigate.
- **State proceeding** - use when the advantages, benefits, or pros of SIJS are discussed as being related to the involvement of state courts, state laws, state child welfare procedures, or state court judges.

Cons of SIJS - This code will be used to excerpt discussions of the cons, frustrations, or disappointments with SIJS.

- **Impact on Immigrant Families/Communities** - this code is used to broadly excerpt difficulties, challenges, or hindrances SIJS has on family relationships and immigrants' communities, including how discussions about parental abuse and neglect impact youths and parents emotionally, child welfare

interventions in immigration families, and limitations of immigrant community members becoming involved in state child welfare proceedings. May be co-coded with "problem for family reunification."

- **Backlog/time to resident rights** - use this code to excerpt professionals' discussions of the long SIJS backlog or long time between application and LPR status for many applicants.
- **Blame parents** - this code is used to describe when blaming parents or framing parents negatively is described as a negative effect, con, downside, or product of SIJS.
- **Age out** - this code is used to describe age restrictions in state child welfare cases as a difficulty with SIJS.
- **Judge/jurisdiction difference** - this code is used to describe geographic or jurisdictional variation in judges' receptivity or response to immigrant youth/SIJS. This code can also be used to describe attorneys' experiences with judges/counties as worse than others.
- **More paperwork** - this code is used to excerpt discussions of the amount of paperwork or bureaucracy involved in SIJS as being a challenge or a downside of SIJS.
- **Problem for Family Reunification** - this code is used to excerpt the ways in which SIJS impacts the ability of the applicant to get a family member immigration benefits or live or remain in the custody of a parent.
- **two systems** - use this code when professionals discuss challenges, difficulties with, or cons to SIJS because of the involvement of child welfare/state and immigration/federal jurisdictions.

Comparing relief forms - the umbrella code itself can be used when forms of relief are talked about comparatively without indicating which form of relief.

- **SIJS v. asylum** - this code will be used specifically to excerpt discussions that compare SIJS and asylum or talk about one in comparison with the other. This code will also be used when the interviewee is talking just about asylum (as it is naturally in comparison with other relief forms)
    - **Asylum Con** - use general code when asylum is described as worse than compared with SIJS; or use general code for a limitation or con of asylum that is not related to the specified categories.
        - **Discretion/Political Changes** - use code to excerpt how asylum eligibility is impacted by executive policies and federal authorities' and judges' discretion.
        - **Child articulating persecution** - use code to excerpt the difficulties children have establishing asylum eligibility because of difficulties articulating persecution or a well-founded fear.
        - **Cannot return to home country** - use when professionals discuss asylum's limitations on traveling back to or returning to the home country in the future.
        - **Harder** - use when asylum is described as being hard, difficult, or challenging to get.
        - **Traumatic/Invasive** - use when the asylum process is described as being traumatic, invasive, or a negative experience for youth.
    - **Asylum Pro** - use general code when asylum is described as being better than or having benefits compared with SIJS; or use general code for an asylum benefit unrelated to family reunification matters or the wait time until the youth receives LPR status.
        - **Family reunification** - use code when the ability to have family derivatives or sponsor family members is discussed as a benefit of asylum compared with SIJS.
        - **Shorter wait to LPR** - use code when the shorter waiting time until the youth receives their LPR status/green card is discussed as a benefit of asylum compared with SIJS.
- **Comparison w/ other forms of relief: U-visa, VAWA, T-visa** - this code will be used specifically to excerpt discussions that compare SIJS with these three other relief forms, or when one of these relief forms is discussed on its own.

Evidentiary criteria for SIJS- This code will be used to excerpt descriptions of and references to the evidence used to establish UACs' eligibility for SIJS relief. These references are expected to include, but are not limited to, how professionals interpret and use the unique factual circumstances of UACs' cases to meet evidentiary standards established by judicial precedent and the SIJS statute.

Evidentiary criteria for asylum - this code will be used to excerpt references to common law and statutory standards for evidence used to petition or adjudicate UACs' cases for asylum. It will also include evidence professionals use to build a case, regardless of whether they mention the evidence is supported by statute or precedent. It will also include how courts/USCIS tends to rule on such evidence, when discussed.

Evidentiary criteria for other relief - this code will be used to excerpt references to common law and statutory standards for evidence used to petition or adjudicate UACs' cases for other forms of humanitarian relief that are not SIJS or asylum (i.e., T-visa, U-visa, VAWA). It will also include evidence professionals use to build a case, regardless of whether they mention the evidence is supported by statute or precedent. It will also include how courts/USCIS tend to rule on such evidence, when discussed.

"The only/best option" - used when SIJS is described by professionals (often attorneys) as being the only real or plausible option the minor has for relief or as being the best or most likely option they have.

Case background/children's experiences - code used to excerpt discussions from professionals about case backgrounds and/or children's experiences in the home country, during migration, (or perhaps in the US) that led to their need for relief and possible pursuit of SIJS.

- **Home country conditions** - use general code when interviewees describe living conditions directly experienced by UACs in their home country or living conditions generally/commonly characteristic of UACs' home country. These references include details used to substantiate UACs' claims that their economic, physical, emotional, educational, or general well-being would be diminished or endangered if required to return to their home country.
    - **Domestic abuse** - use code for descriptions of UACs' experiences with instances or long-term dynamics of physical, emotional, sexual, or otherwise abusive conditions within their home and/or immediate family environment.
    - **Government/gang persecution** - use code for descriptions of UACs' experiences as victims or potential victims/targets of threats and violence perpetrated by governmental authorities or (criminal) gang organizations.
    - **Poverty/economic well-being** - use code for descriptions of UACs' experiences with insufficient access to food, housing, financial, educational, or otherwise material resources in their home country; including general references to poverty or parents'/guardians' inability to provide adequate care and financial or physical support to UACs.
- **Common/Similar backgrounds** - use code for descriptions of UACs' experiences in their home country as common or regular occurrences; and/or use code for descriptions of common elements or characteristics of UACs' home country experiences used as evidence to support petitions for predicate orders/relief.
- **Familial/Relational impact** - use code for descriptions of how the relief-seeking process has affected UACs' relationships with family members or guardians; including how UACs' claims of abuse, neglect, abandonment, or otherwise inadequate/dangerous living conditions in their home country has strained or damaged relationships with their family members, and parents specifically. These excerpts reflect UACs' hesitancy or resistance to blaming and accusing their parents/guardians/family members of abuse, abandonment, or neglect. May be co-coded with sub-codes under "Cons of SIJS."
- **Abandonment** - use code for descriptions of UACs' experiences being physically or financially abandoned by their parents or guardians; generally characterized by parents'/guardians' long-term absence from UACs' lives and lack of communication/support for an extended period of time. Abandonment may be described as occurring at or before birth, where parents/guardians never had an established presence in UACs' lives, or at a specific time of separation during UACs' upbringing.
- **Life in US** - use general code for descriptions of UACs' experiences living in the United States after immigrating from their home country, including comparisons/differences between the quality of life, or opportunities otherwise unattainable and/or unavailable in their home country.
    - **Guardian/Placement** - use code for description of UACs' experiences living with their parents, guardians, or sponsors after immigrating to the United States; these excerpts may reference obstacles arising from UACs' adjustment to living with relatives or foster families, outside their families of origin.
    - **Institutional obstacles** - use code for descriptions of UACs' experiences or frustrations with legal and welfare institutions in the U.S.; including references to invasive procedures/evaluations/investigations of UACs and immigrant families, procedural or political barriers to relief, and other complications arising from the legal or social administration of UACs' cases.
    - **Personal obstacles** - use code for descriptions of UACs' experiences with their individual psychological, emotional, physical, or otherwise personal struggles which complicate their lives in

the United States; these include objective developmental/psychological/medical diagnoses, as well as more subjective barriers arising from UACs' unique identities and circumstances.

- **Migration/journey to US** - use code for descriptions of UACs' experiences migrating and traveling to the United States; including UACs' decisions to migrate, familial assistance and pressures, use of various migration methods/resources, encounters with gang violence/trafficking, and treatment by/interactions with (US) border authorities and law enforcement.
- **Relief process** - use general code for UACs' experiences applying/petitioning for relief through governmental and legal mechanisms, including intake interviews, preparing relief claims/petitions/pleadings, providing written/oral evidence and testimony, interactions with parents/guardians/sponsors, interactions with legal practitioners/welfare agencies/law enforcement, and actual case outcomes.
    - **Multiple applications** - use code for practitioners' experiences or descriptions of strategies to prepare applications for multiple types of relief for a single UAC; including references to contingent relief applications in case others fail or are delayed, to maximize UACs' chances of relief.
    - **Federal – immigration** - use code for descriptions of UACs' experiences interacting with federal (immigration) law enforcement, agencies, courts, judges, and policies throughout the adjudication process of their immigration-related claims/petitions.
    - **Access to resources** - use code for descriptions of UACs' experiences insufficient or inaccessible legal, social, medical, educational, or financial resources affecting their ability to successfully obtain immigration relief.
    - **State – predicate order** - use code for descriptions of UACs' experiences preparing and petitioning for SIJS predicate orders in state courts; including interactions with state court judges, local legal/welfare agencies and practitioners, and other state policies and procedures throughout the adjudication of their petitions.
    - **Talking about trauma** - use code for descriptions of UACs' articulation or vocalization of their traumatic experiences in intake interviews, preparing written testimony/affidavits, offering oral/live testimony in court, or otherwise discussing traumatic life details and experiences with practitioners. These excerpts may also reference the influence of when and where these discussions take place, and who is present on the comfort and depth with which UACs are able to describe their traumatic experiences, including practitioners' descriptions of their specific strategies and responses to UACs' disclosures.

Lawyers' feelings- This code will be used to excerpt lawyers' reflections on (1) their personal and professional experiences while representing UACs in state and federal court proceedings related to SIJS, and (2) their evaluations and perspectives of SIJS as immigration relief.

- **Lawyers' practical strategies-** This sub-code will be used to excerpt lawyers' descriptions of individual strategies they have developed to navigate the SIJS application process, and challenges that arise throughout UACs' cases. These excerpts can include references to how lawyers work around substantive legal, legislative, or relational challenges throughout the SIJS application process, which may arise with other professionals, parents, sponsors/guardians, and their UAC clients.

Parents' feelings- This code will be used to excerpt parents' reflections on their experiences throughout their children's application process for SIJS (as described by the professionals interviewed). This code is also applicable to parents' qualitative evaluations and perceptions of SIJS as immigration relief, and the practitioners responsible for its administration in the children's cases.

Minors' feelings- This code will be used to excerpt professionals' discussions of minors' reflections on all aspects of their experiences applying for SIJS, and specifically their experience as subjects of state judicial proceedings and interventions by child welfare agencies.

Judges' feelings- This code will be used to excerpt judges' reflections on their personal and professional experiences while adjudicating SIJS cases, and otherwise applying or interpreting the SIJS statute. This code will specifically include judges' broad legislative interpretations of SIJS; descriptions of challenges throughout the adjudication process; descriptions of their interactions with UACs, parents/guardians, and other SIJS practitioners; and reflections on the impact of their role in the SIJS application.

- **Judges' practical strategies-** This sub-code will be used to excerpt judges' descriptions of individual strategies they have developed to navigate the SIJS application process, and challenges that arise throughout UACs' cases. These excerpts can include references to how judges work around substantive legal, legislative, or relational challenges throughout the SIJS application process, which may arise with other professionals, parents, sponsors/guardians, and UACs.

Social workers' feelings- This code will be used to excerpt social workers' reflections on their personal and professional experiences while involved in the SIJS application process. Excerpts with this code will include social workers' broad evaluations and interpretations of SIJS as immigration relief; comparisons to traditional child welfare; descriptions of institutional challenges throughout the SIJS application process; descriptions of interactional challenges with UACs, parents/guardians, and other practitioners throughout the SIJS application process; and reflections on the impact of their role in the SIJS application process.

- **Social workers' practical strategies-** This sub-code will be used to excerpt social workers' descriptions of individual strategies they have developed to navigate the SIJS application process, and challenges that arise throughout UACs' cases. These excerpts can include references to how social workers work around substantive legal, legislative, or relational challenges throughout the SIJS application process, which may arise with other professionals, parents, sponsors/guardians, and UACs.

Professionals' weight of responsibility- This code will be used to excerpt professionals' discussions of the importance and gravity of their role in facilitating the SIJS application process for UACs. This code can include professionals' references to UACs' vulnerability and need for relief, barriers to and/or limitations on their abilities to help UACs obtain relief, and a broader recognition of their influence on the outcome of UACs' SIJS applications.

- **Emotional/personal investment** - use code for professionals' descriptions of how UACs' cases and interactions with UACs/families/parents/guardians/sponsors affect their personal lives and provoke emotional responses, including professionals' feelings of accomplishment, joy, sadness, disappointment, and other emotions in response to UACs' experiences prior to migration, while immigrating to the US, after their arrival in the US, and/or throughout the relief seeking process. Generally, these excerpts reference professionals' sense of their personal or individual responsibility for and impact on UACs' experiences and case outcomes.
- **Concern for UAC – immediate** - use code for professionals' descriptions of their concerns for UACs' immediate well-being, access to specific resources, the quality of their caregivers/life in the US, and their current relationships/interactions with family/parents/guardians/sponsors. These excerpts reference professionals' recognition of how their actions/inaction can affect and shape UACs' experiences and eligibility for relief immediately, in the short term.
- **Concern for UAC – future** - use code for professionals' descriptions of their long-term concerns for UACs' future well-being, including eligibility for and access to relief, improved/stabilized/restored relationships with family/parents/guardians/sponsors, educational opportunities, financial success, and social integration with their families/communities in the US. These excerpts reference professionals' recognition of how their actions/inaction can affect and shape UACs' experiences and eligibility for relief long term, in the future.
- **Individual power/duty** - use code for excerpts wherein professionals recognize the influence of their role in UACs' cases as unique and individual. These descriptions reflect professionals' understanding of the personal, rather than institutional, power they exert over UACs' lived realities and case outcomes.
- **Institutional advocacy** - use code for professionals' descriptions of advocating for UACs within legal and welfare agencies and institutions. These excerpts detail professionals' identification and negotiation of inadequate or unjust policies, procedures, and norms within legal and welfare agencies/institutions, in order to maximize UACs' chances of relief.

Comparison of SIJS and traditional child welfare- This umbrella code will be used to excerpt differences between SIJS and traditional child welfare cases, noted by professionals involved in the SIJS application process for UACs. This code can excerpt general discussions of SIJS in comparison to traditional child welfare broadly, or specific long term/temporary/domestic foster care, adoption, and guardianship processes. The umbrella code without subcode will be used when excerpting a relevant discussion that does not fit under one or more of the subcodes but relates to comparative discussions of undocumented immigrant youths and child welfare.

- **Procedural differences-** This sub-code can be used to excerpt professionals' references to practical and statutory differences between the legal/nonlegal processes required for relief in SIJS and traditional family

intervention. Excerpts can include references to differences in the legal framework of SIJS and traditional child welfare cases, references to paperwork required, as well as professionals' qualitative observations of micro-level, interactional effects they produce in the lives of SIJS practitioners, UACs, immigrant families, and other individuals involved in the relief process. Included in this code are discussions about cases as ex parte or unopposed.

- **Court involvement-** This sub-code can be used to excerpt differences between the adjudication and legal administration of SIJS and traditional child welfare cases. Excerpts can include discussions of differences in the statutory requirements and judicial procedures for SIJS and traditional child welfare cases. This sub-code can further be used to excerpt professionals' observations of how these differences affect the outcome of UACs' cases, UACs' experiences with child welfare politics, and professionals' experiences with the courts.
- **Perceptions/feelings about similarities and differences-** This sub-code can be used to excerpt professional's discussions of their attitudes towards and perceptions of the differences between SIJS and traditional child welfare cases. Specifically, this sub-code can be applied to professionals' reflections on how these differences affect UACs, immigrant families, and their own/other professionals' personal well-being.
- **Transnational/cultural differences-** This code can be used to excerpt references to differences in the administration of SIJS and traditional child welfare cases across the United States, and smaller, localized cultural communities. This sub-code will not only apply to differences between SIJS and traditional child welfare practices/procedures/relief, but also how these characteristics vary in practice, geographically and culturally.
- **Impact on immigrant families (compare) -** This code excerpts professionals' reflections on how mandated legal and nonlegal interventions throughout the SIJS application process affect the UACs and their families, as well as immigrant families more broadly. This code can be used to excerpt discussions of child welfare interventions and governance in immigrant families and how that can impact families' internal dynamics and lives in general. This code is only used when professionals' descriptions of these impacts are compared, contrasted, or otherwise evaluated relative to the impact of mandated legal and nonlegal interventions throughout traditional child welfare processes.
- **Parental involvement/notification-** This code can be used to excerpt professionals' comparisons of the degrees to which SIJS and traditional child welfare cases require and/or solicit the involvement of UACs' bio parents. This code can also be used to excerpt professionals' comparisons of efforts to notify UACs' parents of proceedings pursuant to SIJS and traditional child welfare cases, and the statutory requirements for proper notification methods.

Challenges with sponsor/guardian/parent - code used when professionals discuss challenges they have with a SIJS sponsor, guardian, or custodial parent. This can include challenges when guardians or sponsors are undocumented or must be members of the community to which the youth/family has little relationship to; can include when there is tension in the house, the minor runs away from the guardian during SIJS proceedings, or the house/family is deemed unacceptable by CW institutions. It can also include issues with placement when there is suspected or known domestic violence in the house.

- **Immigration status** - use code for references to difficulties arising from parents'/guardians'/sponsors' undocumented immigration status; including, how their undocumented status blocks access to relief/resources, delays UACs' cases, or otherwise creates obstacles which complicate the relief-seeking process for UACs.
- **Communication** - use general code for references to difficulties contacting, interacting with, or otherwise adequately communicating with parents/guardians/sponsors throughout the relief-seeking process.
    - **Contact/logistics** - use code for references to professionals' inability or struggle to initially locate and/or contact UACs' parents/guardians/sponsors; these difficulties may be attributed to parents'/guardians'/sponsors' intentional evasion of professionals' attempts to contact them, or logistical constraints on communication with parents/guardians/sponsors who are unreachable because they reside outside the US and/or do not have access to adequate translation resources and/or communication networks. These difficulties may arise with parents/guardians/sponsors who already reside in the US or remain in UACs' home country.
    - **Education/explanation** - use code for references to difficulties created by parents'/guardians'/sponsors' inability to understand the requirements for relief and the relief-seeking process; typically, these references are framed by professionals' descriptions of practical

strategies they developed to explain relief to parents/guardians/sponsors in order to secure their support or assistance in constructing and pleading UACs' cases.

- **Court/welfare interaction** - use code for references to professionals' difficulties interacting with parents/guardians/sponsors in their formal capacity as legal or welfare practitioners. These references may describe professionals' experiences brokering between or negotiating different/opposing standards for UAC/family/parent/guardian/sponsor involvement and support, or procedural/practical obstacles they face while performing their professional duties throughout the relief-seeking process.
- **Caregiving dynamics** - use code for references to professionals' concern or difficulty navigating parents'/guardians'/sponsors' inability, unwillingness, and/or failure to provide UACs with adequate care, resources, and support.
- **Parental concerns/resistance** - use code for references to professionals' encounters with and strategies for negotiating parents'/guardians'/sponsors' concerns for UACs' well-being, UACs' access to relief, future implications for their own immigration status/cases, or other resistance to pursuing relief for UACs; these descriptions may be framed by discussions of professionals' practical strategies for addressing and resolving these concerns in order to move forward with UACs' cases.
- **Poverty/under-resourced (guardian challenge)** - use code for references to difficulties in facilitating UACs' cases arising from parents'/guardians'/sponsors' inadequate financial, educational, material, or otherwise essential resources; the absence of these resources and/or impoverished circumstances pose unique and additional challenges to professionals' ability to facilitate UACs' cases and may preclude/diminish their eligibility for relief.

Learning about SIJS - code used to discuss how professionals familiarize themselves with SIJS. How they initially learned what it is, how they determined what they needed to do and their role in the process, and how they continue to learn.

Networking about SIJS - this code will be used to discuss how professionals network with other professionals to work together on SIJS topics or cases, problem-solve a case or new courtroom, or continue to familiarize themselves or educate others about SIJS. This can also include discussions of listservs, professional networks, law school colleagues that professionals rely on in their work.

Geographic resources/environment - This code will be used when professionals discuss differences between counties or states in how it impacts their work. This can include discussions of areas that receive higher numbers of immigrants or lower numbers of immigrants, limited or abundant networks or organizational infrastructure and support for work, rural vs. urban areas, or different state policies (may be doubled with other codes pertaining to state differences or judge familiarity when relevant).

Organizational network/professionals involved - This code will be used for discussions of how professionals' organizations operate/how roles are divided between staff. Examples include when there is an immigration and family law department for SIJS, when social workers are involved alongside attorneys, when paralegals and attorneys work together. It can also include formal partnerships between organizations or firms (which may be used in combination with networking).

Explanatory burden- Additional labor performed by various SIJS practitioners to explain the SIJS statute and requisite judicial proceedings to UACs, parents/guardians of UACs, and other practitioners engaged in the application process. Excerpts with this code can include descriptions of attempts or regularly expected duties to help UACs, parents/guardians, judges, lawyers, social workers, and other professionals to understand the meaning, scope, and procedures required to obtain relief through SIJS. This code may also be applicable to professionals' discussions of their responsibilities, the efficacy of SIJS as immigration relief, and the effects of this additional labor on their professional obligations and personal well-being.

- **EB: Attorneys explaining to judges** - use when the explanatory role indicates attorneys explaining the SIJS statute and requisite judicial proceedings to judges
- **EB: Attorneys/SW explaining to client/family -** use when the explanatory role indicates attorneys explaining the SIJS statute and requisite judicial proceedings to the youth and/or their family.

Influence of Politics - this code will be used for a discussion of how federal or state politics play a role. It may be used in combination with other codes (for example, geographic environment, when applicable). This code will be

used when people mention a presidential administration and how that might factor into their work, when they mention how elections may influence certain judges, political variances between counties or states, or how the population's views might impact their work.

Jurisdictional variance -This umbrella code is used to broadly capture discussions of variations in jurisdictions, laws, and procedures (across individuals, laws, geographical boundaries, and experience). Used broadly when a child code does not apply.

- **Evidentiary definitions** - used to capture differences in how definitions of abuse, abandonment, and neglect vary in different states (and across judges/courtrooms)
- **Judicial knowledge and experience** - used to excerpt discussion regarding judge's familiarity and experience with SIJS, as well as their knowledge of SIJS (can be from judges themselves or other professionals).
- **Attorney experience with judges** - code used to excerpt attorneys' discussions of their experience interacting or working with family court judges on SIJS predicate orders. It can also include judges' experiences with attorneys (if discussed).
- **Social workers' experience with judges** - This code is used to excerpt social workers' discussions of their/their organization's experience with different judges.
- **Attorney experience and limitations** - code used to excerpt discussions (largely from attorneys) about their professional limitations working with or familiarizing themselves with SIJS cases. These limitations include, but are not limited to, not being barred in the state where they practice, learning immigration as a family lawyer or learning family law as an immigration attorney.
- **Source of confusion** - This code will be used to excerpt when professionals express confusion over their role in a SIJS case or in the requirements or standards of a specific state/county/judge. This code will also be used to excerpt confusion expressed by practitioners over the language and interpretations of relevant statutes.
- **State v. federal** - code used to excerpt discussions from professionals about the different jurisdictions in comparison. This includes discussions from professionals about the role of one jurisdiction in the process, different state laws, different governing standards for immigration federal circuits, and other general discussions about the state vs. federal comparison in SIJS.
- **Aging out** - used for discussions of minor's age and state limitations (or flexibility) regarding minor's age that makes them eligible for SIJS.
- **Type of family proceeding** - used for discussions of the type of proceeding pursued, such as custody, dependency, guardianship.

Best Interest interpretations- This code will be used to excerpt professionals' definitional and practical interpretations of children's "best interests," and specifically whether it is in UACs' best interests to return to their home countries. This code can be used in the context of judges' factual findings for SIJS predicate orders, practitioners' strategies for alleging what is/is not in UACs' best interests, and practitioners' strategies for overcoming the ambiguous definition of "best interest" used in the SIJS statute.

Recommendations and ongoing challenges - code used specifically when professionals mention challenges, confusion, or frustrations they have in their work with legal relief cases and unaccompanied minors. It also will be used when professionals make specific recommendations or discuss desires/areas for reform in their work.

Professionals' goals/concerns for UAC's well-being- This code will be used to excerpt professionals' qualitative concerns, goals, and intentions for UAC's well-being throughout, and after the completion of the SIJS application process.

- **Future success** - use code for professionals' descriptions of their goals for UACs' future personal success; including hopes and aspirations for UACs' psychological, emotional, physical, educational, financial, or otherwise personal well-being after migration and/or relief. These excerpts may correspond to or intersect with those coded as "Concern for UAC- future" ("Professionals' weight of responsibility").
- **Caregiver/Living conditions** - use code for professionals' descriptions of their concerns about the quality of care and the living conditions UACs are provided by their parents/guardians/sponsors in the US, including concerns for their relational, emotional, physical, financial, and developmental well-being.

- **Dignity/Respect** - use code for professionals' hopes and intentions to ensure UACs are treated with dignity and respect throughout the relief-seeking process; both by their parents/guardians/sponsors, and other legal/welfare practitioners.
- **Access to relief/resources** - use code for professionals' hopes or goals for UACs to obtain adequate immigration relief through their respective legal claims/petitions, and/or be able to access ongoing social, legal, financial, and other resources necessary to support their well-being in the US.
- **Immigrant family dynamics** - use code for professionals' hopes that UACs' relationships with their families/parents/guardians/sponsors will improve in the future; the likelihood of which is often linked directly to the outcome of UACs' cases and their ability to obtain adequate relief/resources/support.
- **Intervention/Procedure Impacts (child)** - use code for professionals' hopes and intentions for UACs to either not be negatively affected or obtain some benefits/advantages throughout the relief-seeking process; these excerpts include reflections on how legal and welfare procedures (re)traumatized UACs, affected their relationships with family/parents/guardians/sponsors, or otherwise impacted their lives since initiating their relief claims/petitions.

Appendix C: Court Case Data Codebook

Neglect

- *Ability to protect from gangs/neighborhood danger:* use when claim for neglect is described as parents' failure to protect their child from gang activity/threats.
- *Hard working conditions:* use when neglect is used in reference to hard labor/working conditions the child faced.
- *Medical:* use when neglect is used in reference to parents' lack of providing medical needs for their child.
- *Time reference:* use when neglect is defined via a time of no support or connection, for example for "six months" the child had no contact or financial support from a parent.
- *Protection from DV:* use when neglect is used to describe a parent who could not protect a child or shield a child from domestic violence occurring in the house, even when the child was not the direct recipient of the violence.
- *Poverty/Ability to provide for needs:* use when neglect is used to describe how a parent could not adequately provide for the child's needs because of poverty, or the parents' inability to provide basic needs, such sufficient food, living space, clothing.
- *Drugs and Alcohol:* use when neglect is due to parents' use of drugs and alcohol.
- *Sent to the U.S. (neg):* use when neglect is used to define how the parent sent the child to the U.S.
- *Parental death (neg):* use when claim of neglect is based on the death of a parent.
- *Corporal punishment:* use when neglect is used in reference to corporal punishment by parents - likely also used in combo with abuse.

Dept Children Families Involvement: use when mention/discussion of the involvement of Department of Children and Families (or CPS or equivalent) in the case.

Federal Legal definitions: use when there is a reference to a legal definition of a federal law/statute.

Abandonment

- *Parental death (aban):* use when claim for abandonment is based on the death of a parent.
- *Abandonment at birth:* use when claim for abandonment is based on the parent abandoning the child at their birth/never being in contact with the child since birth.
- *Sent child to U.S. (aban):* use when claim for abandonment is based on the parent sending the child to US on their own.
- *Paternal abandonment:* use when the claim for abandonment references the father abandoning the child.

Abuse

- *Sexual abuse:* use when claim for abuse is described as sexual abuse or the child is described as abused because of sexual violence, sexual assault, sexual harassment.
- *Physical abuse:* use when claim for abuse is based on physical abuse, or the child is described as abused because of being physically harmed.
- *Emotional or verbal abuse:* use when claim for abuse is based on emotional abuse or verbal abuse, or the child is described as abused because of psychological distress.
- *Domestic violence (abuse):* use when excerpt references domestic violence, including when child witnessed domestic violence in the home and/or if child was victim of domestic violence.

Adoption: use when reference to adoption of the minor is made in the case.

Asylum: use when referring to an asylum claim, asylum law, asylee, or other status or situation explicitly related to asylum.

Background: SIJS history: use when the case mentions the history of the SIJS law.

Child support payment: refers to the ability for parent(s) to pay child support and whether they have consistently been making such court ordered payments.

Child's best interests

- *Custody matters:* use when the best interest of the child description is tied to their current custody arrangement.
- *Meeting physical/socioemotional needs:* remaining in the U.S. best meetings the physical needs or emotional needs of the child.
- *Quality of life in the U.S.:* opportunities for the child are described as better in the U.S. than in the home country or they will have a better quality of life in the U.S.
- *Issues in home country:* best interest findings are framed as best to remain in the U.S. due to issues, problems, dangers in the home country.
- *Harm/abandonment by parent:* best for the child to remain with guardian in the U.S. because of harm and abuse they suffered by parents (or former guardians).
- *Safety/stability:* best interests findings discussed as where they will have more safety or stability.
- *Parents' immigration matters:* the best interest determination is tied to parents' immigration status, such as being undocumented, being detained, or deported.
- *Court evaluation of parenting progress:* best interests for the child to remain or go home based on progress or lack thereof in parenting requirements or court ordered plans.
- *Other (best interest):* used when the reasoning does not fit within one of the other subcategories but provides reasons for the child's best interest.

Child's intentions: use when the court is discussing the child's intentions in pursuing the court case.

Child contact with parent(s): use when excerpt discusses the child's contact or lack thereof with their biological parents.

Court dependency: references the child's relationship with the court, specifically when they are unable to be taken care of by their parents, making it so that they are described as dependent on the court's discretion and care.

Credibility - child: use when the court is discussing the credibility of the child's testimony/evidence/affidavit.

Credibility - parent: use when the court is discussing the credibility of the parent's testimony/evidence/affidavit.

Custody: use when there is discussion within the case of the child's custody arrangement.

Dependency – caregiver: use when there is discussion of the child's dependency on their caregiver.

Deservingness – child: use when there is discussion of the child's deservingness of the court findings.

Errors of the court: use when the appellate court mentions errors made by the lower court.

Family reunification: use when there is mention of family reunification as possible or not possible.

Gang Affiliation- within the U.S.: use when the child or parent of the child is considered affiliated with a gang or gang activity in the United States.

Guardian criminal history/incarceration: use when there is discussion of the child's guardian's criminal history or previous incarceration.

Guardianship: use when guardianship findings are a part of the case.

Home country conditions

- *Gang violence directed at child:* use when there is history of gang violence directed at the child in the home country.
- *Gang violence directed at parent/caretaker:* use when there is history of gang violence directed at the parent of the child in the home country.
- *Gang violence directed at other family members:* use when there is a history of gang violence directed at a family member of the child in the home country.
- *Poverty (home):* use when the child/child's family is experiencing poverty in the home country, described as poverty, insufficient finances to support children, or parents' inability to afford basic needs.
- *Child required to work:* use when the child is described as having to hold a job in the home country to aid family members/earn money.
- *Barrier to education:* use when the child is unable to pursue education in their home country.
- *No caretaker in home country:* use when the child has no family or other caretaker in their home country.

Immigration status: use when there is mention of immigration status as a factor being considered in the case.

Jurisdiction

- *State vs. Immigration (Federal):* use when the court mentions the role of the state court in this matter compared with the role of the federal court, or when a claim is made about whether state or federal authorities have jurisdiction over the case.
- *Subject Matter:* use when the court discusses whether or not they have jurisdiction over the "subject matter."
- *Age:* use when the court discusses whether or not they have jurisdiction over the child due to them being between 18-21.
- *Dependency v. Ward:* use when the court discusses whether or not they have jurisdiction over the child based on the difference between being dependent on the court or being a ward of the state.

Juvenile delinquency

- *Child dependency - juvenile delinquency court:* use when the applicant seeks a dependency finding for SIJS based in their involvement in a juvenile court as a result of juvenile delinquency/involvement in crime.
- *Child rehabilitation – delinquency:* use when the case discusses a child going through / having gone through some sort of rehabilitation as a result of involvement with acts of juvenile delinquency/involvement in crime.

Life in U.S.

- *Poverty (U.S.):* use when the child/family of the child is experiencing poverty in the United States, described as poverty, insufficient finances to support children, or parents' inability to afford basic needs.
- *Economic potential:* use when the child/family of the child is described as having better economic potential in the United States than they did in the home country.
- *Stable Home (U.S.):* use when the child is described as having a stable home environment in the United States – often used in combo with child's best interest – safety/stability.
- *Educational opportunities:* use when the child has is described as having sufficient or better educational opportunities in the United States.

Court Contact with Parents

- *Parental contact - court attempted*: The court attempted to get into contact with one or both parents for compliance with trial proceedings or for updates on their situation.
- *Notify parents*: the parents are given notice of a decision or action that has been decided by the court.

One parent caring for child: use when there is discussion of a single parent.

Parent death: use when there is discussion of the death of a parent, not explicitly in reference to neglect or abandonment.

Parent deportation: use when a parent has been deported, but not in reference to the child's best interest.

Parental rehabilitation: use when case references the parent is going through rehabilitation.

Parental rights

- *Termination of Parental Rights:* use when a case discusses the termination of parental rights of one or both parents.
- *Relinquishment of Parental Rights:* use when one or both parents voluntarily relinquish their parental rights.
- *Return (Reinstatement) of Parental Rights:* use when the court discusses reinstating parental rights for one or both parents as a result of an appeal, often in conjunction with previous court error.
- *Other (parent rights):* use for other discussions of parental rights not subject to the other child codes.

Parental unemployment: use when the parent has a history/current situation of unemployment.

Parenting plan: use when the court has given a parent a parenting plan as a part of the case.

Parents cannot protect: use when the evidence/court describes the parent as "unable to protect" or having "failed to protect" the child.

Past case precedents: use when the court's determination discusses past case precedents.

Petitioner/guardian intentions: use when there is discussion of the petitioner's intentions in the court case.

Predicate order findings – standards: use when there is explicit discussion of the standards relevant for making the SIJS predicate order findings.

Pregnancy – child: use when there is discussion of the child being pregnant in the past or currently.

Reasons for migration: use when there is discussion of the reasons the child migrated to the U.S.

Relationship to parents: use when there is discussion of the parent-child relationship.

Risk of deportation: use when there is discussion of the risk of deportation for someone involved in the case.

Sending child to U.S.: use when there is discussion of the family sending the child to U.S., not explicitly in reference to reason for abandonment or neglect.

State Standards of Abuse, Abandonment, and Neglect: use when there is an explicit discussion of the standards of abuse, abandonment, and neglect, such as state law or home country conditions that reference how to make these determinations and statutes that demonstrate what constitutes the standards of these terms.

Court interpretation of SIJS standards and laws: use when there is any discussion of the court's interpretation (or misinterpretation) of standards related to SIJS (such as interpreting state law relevant to the case, court statutes, or guidelines from the state/federal government).

- *Lower court's application of the law:* use when there is specific discussion of how the lower court applied laws and standards related to the SIJS statute.
- *Appellate court's interpretation of the law:* use when there is specific discussion of how the Appellate Court interprets SIJS standards/the decision of the lower court.

State legal definitions: use when there is a citation/mention of state legal definitions that do not fall into the "state standards of abuse, abandonment, and neglect" code.

Testimony

- *Testimony – child:* use to excerpt a child's court testimony or references to a child's testimony.

- *Testimony - expert/law enforcement:* use to excerpt expert's opinion/testimony to court or references to their testimony.
- *Testimony – guardian:* use to excerpt testimony made by the guardian of the child or references to their testimony.
- *Testimony – parent:* use to excerpt court testimony made by the parent of the child, or references to their testimony.

Trafficking: use when there is mention of trafficking that is not related to gang activity and violence.

Vulnerability (child)

- *Psychological harm:* child described as exposed to situations that have inflicted psychological harm or stress.
- *Risk of psychological harm:* use when court citing that there is a future risk of harm if continuing to occupy their current environment or upon return to a previous environment within the U.S.
- *Physical danger:* use to describe a physical danger or unsafe condition that make a child vulnerable.
- *Risk of physical harm:* use when court citing that there is a future risk of physical harm if they continue to occupy their current environment or return to a previous environment within the U.S.
- *Risk of harm - return home country:* use when court citing there is a future risk of either physical or psychological harm upon return to home country.

Appendix D: Interview Guides

INTERVIEW GUIDE: SOCIAL WORKERS AND ATTORNEYS

Opening Questions:

- How long have you been working with UACs?
- What motivated you/led you into the work?

General work environment:

- Can you describe a day or a week of your work?
    - How do you work with UACs? What do you do?
- Can you describe your place of work? [Independent? Organization?]
- How do you identify clients? Or How do clients identify you?

General Questions about working cases with immigrant youths:

- Describe a recent case that you closed from start to finish.
- How do you identify potential sources of legal relief for clients?
- Describe the questions you ask during intake interviews.
- How do you determine which legal relief to pursue?
- Aside from the client (UAC), who else do you speak with about them or their case?

Building a case:

- How do you learn about their lives/immigration journey?
- Who from their family and community do you speak with? Describe those conversations.

SIJS cases

- Describe SIJS compared with other forms of relief.
- What makes it more challenging or more viable, in your opinion, than other opportunities?
- How often do you consider or pursue SIJS? What makes you consider it relative to other opportunities?
- How successful have your SIJS cases been? How does this compare to other forms of relief?
- Share your thoughts on SIJS as a policy and opportunity.
- What are some examples of abandonment in your cases? Neglect? Abuse?
- How do you think the cases for UACs compare to U.S.-citizen children and U.S.-based families?
- What kinds of cases are you commonly building?
- How do you determine what type of case or what kinds of evidence might result in a more successful SIJS case?

Working Across Jurisdictions:

- Describe the SIJS process working in both family court and immigration court.
- During the process, what other stakeholders or practitioners do you work with?
- Best interests. How do you interpret this? Explain reasoning.
    - Why is this important?

Challenges/Constraints/Support:

- Describe a recent time you felt challenged or constrained.
- How do you deal with these challenges?

- What other types of challenges or constraints do you face in your work with UACs?
- Describe how well you feel supported in your work (organization, networks, community, etc.).

General Demographics

- Racial/ethnic identity
- Immigrant community
- Gender identity
- SES growing up

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INTERVIEW GUIDE: JUDGES

SIJS Familiarity

- What is your familiarity with SIJS (Special Immigrant Juvenile Status)?
- When would you say that you first started seeing these cases or hearing about them?
- What were your initial thoughts about these cases or reaction to them as a judge?
- How did you familiarize yourself with these cases? [Networking]

Role in SIJS Cases

- What is your role in these cases? What do you need to do with them? How do you adjudicate them?
- How do you evaluate these cases when they are in your courtroom?
- How do you evaluate the conditions of abuse, abandonment, neglect?
- How do you evaluate whether or not it is in the best interest of the child to return?
- What might be an example of one you might not grant?

Comparison with Traditional CW Cases

- In your practice or opinion, how do these cases relate to other child welfare cases that come into your courtroom (dependency and guardianship cases)?

Feelings and Challenges

- How do you feel about the state court's role in SIJS?
- What has been challenging, if anything, about working with these cases and policy?

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