UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN DOE, Petitioner, v. ANTONE MONIZ, et al., Respondents.	)	C.A. No. 25-12094-IT

DECLARATION OF ELIZABETH BADGER

I, Elizabeth Badger, declare the following under penalty of perjury:

1. My name is Elizabeth Badger. I am a Senior Attorney at the Political Asylum/Immigration Representation (PAIR) Project, a not-for-profit legal services organization representing low-income noncitizens in Massachusetts. I make this declaration based on my personal and professional knowledge and, if called to testify to these facts, could and would do so competently.

2. I am a member of the Massachusetts bar and have practiced exclusively in the area of immigration law since 2005. Since 2010, a substantial amount of my practice has included the representation of noncitizen youth seeking permanent residence through the Special Immigrant Juvenile Status (SIJS) process. From 2014 – 2019, I was a senior attorney at Kids in Need of Defense (KIND), where I argued cases before the Massachusetts Court of Appeals and the Massachusetts Supreme Judicial Court regarding the SIJS process in the Massachusetts trial courts, explained more below. I was also part of a team of attorneys to develop state legislation and

protocols on access to the state courts for SIJS applicants. In 2019, I began my current position at the PAIR Project, where I also co-lead working groups for the End SIJS Backlog Coalition, dedicated to addressing obstacles faced by SIJS applicants waiting to become eligible for lawful permanent residence based on an approved SIJS case, explained further below.

3. SIJS is a humanitarian form of immigration relief defined at 8 U.S.C. § 1101(a)(27)(J) as an immigrant present in the U.S.:

> (i) who has been declared dependent on a juvenile court located in the United States or whom such court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or bother of the immigrant's parents is not viable to abuse, neglect, abandonment, or a similar basis found under state law;
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> (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned ot the alien's or parent's previous country of nationality or country of law habitual residence; and
>
> (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that –
>
> > (I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
> >
> > (II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

4. In summary, the SIJS process is a three-step process to permanent residency. It begins with the youth seeking findings from a state court judge with jurisdiction to adjudicate matters related to child custody and dependency as to whether the child falls within the definition of 8 U.S.C. § 1101(a)(27)(J). Subsequently those findings are submitted to U.S. Citizenship & Immigration Services (USCIS) along with an application form for SIJS. If approved, they then become eligible for lawful permanent residency and can adjust their status once their priority date

listed on their approval notice becomes "current" on the Department of State Visa Bulletin. From May 2022 until April 7, 2025, those approved for SIJS were also being granted Deferred Action protection, as the wait time for a SIJS grantee to become eligible for their permanent residency is presently several years. The SIJS Deferred Action status was intended to be an additional form of protection from removal during this lengthy delay.

5. The statute and federal regulations at 8 C.F.R. § 204.11 require that a SIJS petitioner be under the age of 21 when the petition is received by USCIS, be unmarried and physically present in the U.S. through the point of adjudication of the SIJS petition, be the subject of a qualifying state court order with the required judicial determinations (presently referred to as "findings"), and obtain consent from the Department of Homeland Security (DHS). For children residing outside of the custody of the Office of Refugee Resettlement (ORR), consent comes from USCIS. The definition of a child for SIJS eligibility tracks the definition in the Immigration and Nationality Act found at 8 U.S.C. § 1101(b)(1).

6. As noted, the process commences with obtaining a judicial determination before a state court with jurisdiction under state law to adjudicate dependency and/or custody and care of a child. *See* 8 C.F.R. § 204.11(c)(1)(i). In Massachusetts, such determinations may be made by the Massachusetts Probate and Family Court or the Juvenile Court in the context of a proceeding over which that court has jurisdiction such as, but not limited to, guardianship, paternity, custody, care and protection, child requiring assistance, or dependency proceedings. The state court findings must include first that the child is dependent on the court and/or a determination regarding the child's custody. 8 C.F.R. § 204.11(c)(1)(i)(B). The findings must further include a determination that the child's reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar circumstance – which in Massachusetts can include the death of a parent. *See*

Mass. Gen. Law c. 119 § 39M(a); 8 C.F.R. § 204.11(c)(1)(ii). Lastly, the judicial determination must include that it would not be in the child's best interest to return to their or their parent's country of nationality or last habitual residence, following the state court's regular standards for making a best interest determination about a child. 8 C.F.R. § 204.11(c)(2)(i), (ii).

7. Once the state court has issued the required judicial determinations, they are submitted along with supporting information about the child to USCIS with the immigration form I-360 for adjudication of the SIJS petition. A USCIS determination that the petition is bona fide, or that a primary reason for the juvenile court order was to obtain relief from parental maltreatment or other similar circumstance, accomplishes the consent requirement of the statute. *See* 8 C.F.R. § 204.11(b)(5).

8. USCIS issues a receipt notice listing the priority date, which is the date the petition was received by the agency. If the SIJS petition is granted, the child is placed "in line" for an immigrant visa by which they may apply for lawful permanent residency.

9. SIJS petitions may be revoked only in certain limited circumstances and through certain specified processes. One circumstance is if a juvenile court through a court order reverses its determination regarding the viability of parental reunification or its best interests determination. 8 C.F.R. § 204.11(j)(1). USCIS may also revoke an approved petition upon notice "for good and sufficient cause." 8 C.F.R. § 204.11(j)(2). A denial or revocation of SIJS can be appealed to either USCIS Administrative Appeals Office (AAO), *see* 8 C.F.R. § 2041.11(h), or to a federal district court. *See, e.g., Ore v. Clinton*, 675 F. Supp. 2d 217, 223 (D. Mass. 2009) (finding that the INA does not require an appeal to the AAO for a USCIS decision to constitute final agency action ripe for judicial review).

10. A SIJS grantee becomes eligible for permanent residence and may file their permanent residency application when their priority date – or date of receipt of their SIJS petition – becomes "current" on the Department of State's monthly visa bulletin.[1] *See* 8 U.S.C. § 1255(a). This is because SIJS grantees are subject to a quota system that controls several categories of permanent residency eligibility. 8 U.S.C. § 1153(b). SIJS grantees are part of the employment-based fourth preference category, known as "EB-4," a catch-all category that includes religious workers and Afghan and Iraqi translators or interpreters. 8 U.S.C. § 1153(b)(4). This category is allocated 7.1 percent of the 140,000 visas available for employment-based visas per year, or 9,940 visas per year. *Id.* Immigrant visa numbers are also limited to 7 percent per country, with some flexibility if visas in other categories go unused. 8 U.S.C. § 1152(a)(2), (3). Due to these limitations and the number of SIJS-based permanent residency applicants per year, there is wait for a SIJS grantee to obtain permanent residence that lasts several years. This wait time is commonly referred to as the "backlog."

11. Due to this backlog, USCIS implemented a policy in 2022 to grant deferred action to SIJS grantees for a period of 4 years on a case-by-base basis where the agency determines that the SIJS grantee merited a favorable exercise of discretion. Deferred action afforded some degree of protection to SIJS grantees waiting in the backlog as well as made them eligible to apply for employment authorization. *See* 8 C.F.R. § 274a.12(c)(14). This grant of deferred action happened either automatically at the time that the SIJS petition was adjudicated or some time after adjudication, after the SIJS grantee had attended a biometrics appointment.

[1] *See* https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html.

12. On June 6, 2025, USCIS announced that it was rescinding its deferred action policy for SIJS grantees,[2] updating the USCIS Policy Manual, Vol. 6, Part J, chapter 4, § G accordingly.[3] USCIS had, in practice, stopped granting deferred action to SIJS grantees in early April 2025. The updated language of the Policy Manual states that those with deferred action will retain deferred action for the period it is granted unless USCIS, on a case-by-base basis, decides to terminate deferred action as a matter of discretion. *See* Vol. 6, Part J, ch. 4, § G(2) ("If USCIS previously granted deferred action to an alien with SIJ classification in the exercise of discretion, the alien's deferred action remains valid for the authorized period, unless terminated by USCIS, on a case-by-case basis, as a matter of discretion."). USCIS states that examples of reasons to "terminate prior grants of deferred action" may include, but are not limited to, that "USCIS determines the favorable exercise of discretion is no longer warranted," that the SIJS petition "was approved in error and the petition is revoked," and that the "prior deferred action and related employment authorization were granted in error." *See id.*

13. Once a SIJS grantee's priority date is prior to the final action date, they may file their permanent residency application and have it adjudicated. Among other things, they must show they are admissible under 8 U.S.C. § 1182. Under 8 U.S.C. § 1255(h)(2)(A), several provisions of inadmissibility do not apply to SIJS grantees, including 8 U.S.C. § 1182(a)(6)(A)(i) for noncitizens present in the U.S. without having been admitted or paroled and 8 U.S.C. § 1182(a)(7)(A)(i)(I) for noncitizens not in possession of a valid unexpired immigrant visa or other valid entry document. These particular waivers track with the grant of parole for SIJS grantees,

[2] *See* https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf.

[3] *See* https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4.

afforded by 8 U.S.C. § 1255(h)(1). Waivers of certain other provisions of inadmissibility are available to SIJS grantees for humanitarian, family unity, or public interests reasons pursuant to 8 U.S.C. § 1255(h)(2)(B).

14. If a SIJS grantee is in removal proceedings before an immigration court, the immigration judge maintains jurisdiction to adjudicate the application for permanent residency. 8 C.F.R. § 1245.2(a)(1). Similarly, if a SIJS grantee has been ordered removed in removal proceedings initiated under 8 U.S.C. § 1229a, they must reopen their proceedings to seek adjustment before the immigration judge. However, if the SIJS grantee is not in removal proceedings and has never had a removal order issued under 8 U.S.C. § 1229a, USCIS maintains jurisdiction to adjudicate the permanent residency application. 8 C.F.R. § 245.2(a)(1).

15. From 2023-2024, other advocates and I worked with representatives from USCIS, ICE, and the DHS Office of Principal Legal Advisor ("OPLA") to address systemic obstacles in the immigration process for SIJS grantees. One issue which was not resolved before these working relationships ceased was a manner for SIJS grantees who had left the U.S. while still awaiting permanent residency eligibility in the backlog to return to the U.S. to pursue permanent residency. A proposal to the government agencies had been a SIJS-specific humanitarian parole process pursuant to 8 U.S.C.§ 1182(d)(5)(A) such that a SIJS grantee could reenter the U.S. and then file their permanent residency petition, as there is currently no means for a SIJS grantee to seek permanent residency outside of the U.S. *See* USCIS Policy Manual, Vol. 7, Part F, ch. 7, § C. Therefore, at present, there remains no mechanism for a SIJS grantee who has departed the U.S., whether voluntarily or under an order of removal, to access a pathway to adjust status to permanent residency through their approved SIJS petition.

Executed August 1, 2025.

Elizabeth Badger, Esq.