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## Abused, Abandoned, Neglected, and Still Not Protected: The Need for an Expansion of Juvenile Immigrants' Rights in Nebraska

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COMMENT\*

# Abused, Abandoned, Neglected, and Still Not Protected: The Need for an Expansion of Juvenile Immigrants' Rights in Nebraska

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\* Jayden Barth, J.D. candidate, 2022, University of Nebraska College of Law; B.A., 2019, University of Nebraska-Lincoln. I dedicate this Comment to my parents, Erika and Stan, my sisters, Tianna and Shaylin, and my fiancé, Blake. The love and support from my family means the world to me. I thank my family, friends, professors, and my fellow NEBRASKA LAW REVIEW editors for supporting me, my article, and my future. The hard work of those around me continues to inspire me.

## I. INTRODUCTION

At a young age, Jose witnessed several murders and numerous dead bodies lying in the streets and experienced familial violence on multiple occasions while living in his home country of Guatemala.<sup>1</sup> Jose recalls his uncles—his own blood relatives—abusing several members of his family.<sup>2</sup> In fact, one of the brutal beatings included his grandmother, whom his uncles beat into hospitalization.<sup>3</sup> Jose also details vivid dreams and recollections of his father abusing his mother in front of him.<sup>4</sup> As a result of this trauma, Jose now suffers from post-traumatic stress disorder.<sup>5</sup> His brother, Luis, bears eerily similar memories of his family and home country, including memories of direct abuse by both his mother and father.<sup>6</sup>

Because of this abuse by family members and the lack of safety in Guatemala, Jose and Luis traveled undocumented with their mother to the United States sometime in 2001 or 2002, eventually settling in Grand Island, Nebraska.<sup>7</sup> However, soon after their arrival, their mother was deported back to Guatemala after being arrested.<sup>8</sup> At the time of their mother's deportation, Jose and Luis both lived elsewhere—in a group home and a foster home, respectively.<sup>9</sup> At this point, the boys were without their family, but at least they were safe compared with their living situation in Guatemala.<sup>10</sup>

Sadly, Jose and Luis's story is similar to that of many undocumented juveniles living in the United States.<sup>11</sup> This may be because

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1. *In re* Interest of Luis G., 17 Neb. Ct. App. 377, 764 N.W.2d 648 (2009).

2. *Id.*

3. *Id.* (“Jose described his two uncles, who live in Guatemala and abuse members of the family, and how he would not feel safe because there is basically ‘no law’ to protect him and Luis. Jose explained that he did not know where in Guatemala his mother was living, because she had been living with his grandmother until the grandmother was placed in the hospital after being beaten by his uncles.”).

4. *Id.*

5. *Id.* (“Jose stated that the posttraumatic stress disorder stemmed from . . . witnessing ‘[m]urders and dead bodies’ in Guatemala.”).

6. *Id.* at 381, 764 N.W.2d at 652 (“Luis also described being abused by his mother with a belt and the abuse inflicted by his father, in Guatemala, with a belt and/or open hand.”).

7. *Id.* at 378, 764 N.W.2d at 650.

8. *Id.* at 378, 764 N.W.2d at 651 (discussing how U.S. Citizenship and Immigration Services deported Jose and Luis's mother in 2006 following her arrest).

9. *Id.* at 379, 764 N.W.2d at 651.

10. *Id.*

11. *See* *Dep't of Revenue v. Lopez*, 76 N.E.3d 960, 963 (Mass. 2017) (“In 2013, when Yosselin was fifteen years of age, she began receiving death threats from a local gang. The gang demanded that she either join the gang or be killed.”); *H.S.P. v. J.K.*, 121 A.3d 849, 853 (N.J. 2015) (“M.S.'s siblings both died of unknown causes when each was seventeen years old. M.S. believes that their deaths resulted from malnourishment, unsanitary living conditions, the unavailability of medical care, and heart problems.”); *State v. L.P.L.O.*, 381 P.3d 846, 847 (Or. Ct. App. 2016)

the number of undocumented juveniles crossing the border into the United States each year is staggeringly high.<sup>12</sup> In fact, there are over one million undocumented juveniles estimated to be living in the United States.<sup>13</sup> This number is likely to increase during the Biden administration, as President Biden is looking to “modernize” the immigration system.<sup>14</sup> In January 2021, the month of President Biden’s inauguration, border agents encountered over double the number of migrants at the border than in January 2020.<sup>15</sup> By March 2021, immigration agencies reported that “[t]he number of migrant children in custody along the border has tripled.”<sup>16</sup>

Given the extremely high number of undocumented juveniles in the country at any given moment, the pathways that allow for documentation and eventual citizenship are gravely important to understand. Special Immigrant Juvenile Status (SIJS) is just one option available to immigrant children who have been abused, abandoned, or neglected, as a pathway to permanent legal resident status in the United States.<sup>17</sup> Since SIJS is highly dependent on state courts and

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“Petitioner’s father would hit petitioner with a belt, cord, or rope, sometimes daily . . . . [W]hile in El Salvador, criminal gangs threatened to kill petitioner if he did not participate in ‘doing bad things to people,’ and he knew of other people who had been killed when they refused similar requests.”)

12. Justin Potesta, Article, *Special Immigrant Juvenile Status: Refining State and Federal Practice*, 49 LOY. L.A. L. REV. 873, 875 (2017) (“During the 2016 fiscal year, United States Customs and Border Patrol (CBP) apprehended 59,692 unaccompanied children at the Southwest border, around 20,000 more than in the previous fiscal year.”); *Profile of the Unauthorized Population: United States*, MIGRATION POL’Y INST., <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US> [<https://perma.cc/5AUH-E2DV>] (last visited Feb. 19, 2021). In a study pooling U.S. Census Bureau data from 2014 until 2018, there were 593,000 undocumented immigrants in the United States under the age of sixteen and another 1,706,000 between the ages of sixteen and twenty-four. *Id.*
13. *Undocumented Students*, NAT’L ASS’N OF SECONDARY SCH. PRINCIPALS, <https://www.nassp.org/policy-advocacy-center/nassp-position-statements/undocumented-students/> [<https://perma.cc/F5PL-K6XA>] (last visited Feb. 19, 2021) (discussing how despite the difficulty in accurately assessing the undocumented immigrant population there are approximately 1.09 million undocumented children in the United States).
14. *Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His Commitment To Modernize Our Immigration System*, WHITE HOUSE (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/> [<https://perma.cc/2QUL-N6RR>].
15. Zolan Kanno-Youngs & Michael D. Shear, *Biden Faces Challenge from Surge of Migrants at the Border*, N.Y. TIMES (March 8, 2021), <https://www.nytimes.com/2021/03/08/us/politics/immigration-mexico-border-biden.html> [<https://perma.cc/UYT9-TBTC>].
16. *Id.*
17. 8 U.S.C. § 1101(a)(27)(J) (2014) (defining special immigrant juvenile as a juvenile declared dependent on a juvenile court for whom reunification with a parent is

statutes,<sup>18</sup> states must provide for the most efficient and effective ways for juveniles to navigate through SIJS proceedings to better protect immigrant children in the United States.

This Comment considers SIJS and calls for the expansion of protections for immigrant juveniles living in the State of Nebraska. Part II will examine the process for obtaining SIJS, the history of the federal SIJS statutes, the relationship between state courts and federal courts during the process, and the application of SIJS statutes in various states. Part III of this Comment will discuss Nebraska's solidification of authority for courts to make SIJS findings and argue that Nebraska, which is already trending toward expanding certain protections for juveniles, should expand jurisdiction for SIJS proceedings until juveniles reach the age of twenty-one.

## II. BACKGROUND

### A. Overview of the Special Immigrant Juvenile Status Process

The federal statute containing SIJS is 8 U.S.C. § 1101(a)(27)(J), while the implementing regulation is 8 C.F.R. § 204.11.<sup>19</sup> The implementing regulation indicates general eligibility requirements for juveniles applying for SIJS. The requirements include that a juvenile:

- (1) Is under twenty-one years of age; (2) Is unmarried; (3) Has been declared dependent upon a juvenile court located in the United States in accordance with the state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court; (4) Has been deemed eligible by the juvenile court for long-term foster care; (5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and (6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents.<sup>20</sup>

Therefore, if the juvenile is under twenty-one and is dependent on a juvenile court, the juvenile may file a petition for SIJS, and a state court must then subject the juvenile to judicial proceedings as the next step of the process.<sup>21</sup>

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not viable because of abuse, neglect, abandonment, or similar basis under state law).

18. *Id.* (providing that a state law determination of abuse, abandonment, or neglect is required for special immigrant juvenile status).

19. *Id.*; 8 C.F.R. § 204.11 (2009) (containing the general eligibility requirements for juveniles seeking special immigrant juvenile status).

20. 8 C.F.R. § 204.11(c) (2009).

21. *Id.*

The judicial proceedings require a state court judge to make a set of findings. These findings are indicated by the language of the SIJS statute, which provides that a special immigrant juvenile is:

[A]n immigrant who is present in the United States—(i) who has been declared dependent on a juvenile court located in the United States or whom such a 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 both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; (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 to the alien's or parent's previous country of nationality or country of last habitual residence; and (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status.<sup>22</sup>

In short, the requirements in this step of the SIJS process include dependency on a juvenile court; nonviability of reunification due to abuse, abandonment, or neglect by at least one parent; and that it be against the child's best interests to return to their home country.<sup>23</sup> If a state court judge determines these requirements are fulfilled, then the judge will include them in the state's predicate order.<sup>24</sup>

After a juvenile meets the general eligibility requirements, has been subject to judicial proceedings by an authorized juvenile court, and has received the required predicate order from a state court judge, a juvenile's case will then be heard by U.S. Citizenship and Immigration Services (USCIS).<sup>25</sup> USCIS will then make the final determination of whether a juvenile will receive SIJS.

## B. History of Special Immigrant Juvenile Status

Congress enacted the first federal SIJS statutes in 1990.<sup>26</sup> Since enactment, the statutes and implementing regulation have been amended twice.<sup>27</sup> Originally, the statute required a state court to find the child dependent on the court, eligible for long-term foster care, and

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22. 8 U.S.C. § 1101(a)(27)(J).

23. *Id.*

24. See Katie Annand et al., *Guidance for SIJS State Court Predicate Orders in California*, IMMIGRANT LEGAL RES. CTR., Nov. 29, 2017, at 1, [https://www.ilrc.org/sites/default/files/resources/guidance\\_for\\_sij\\_predicate\\_orders\\_11.29.17.pdf](https://www.ilrc.org/sites/default/files/resources/guidance_for_sij_predicate_orders_11.29.17.pdf) [<https://perma.cc/99GU-KJDF>] (“[T]he three eligibility findings for SIJS must be included in the state court predicate order.”).

25. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11.

26. Nathan Price, Comment, *Special Immigrant Juvenile Status: Special Here, Special There, but Not Special Everywhere*, 32 MD. J. INT'L L. 374, 378 (2017).

27. Shannon Aimee Daugherty, Note, *Special Immigrant Juvenile Status*, 80 BROOK. L. REV. 1087, 1091 (2015) (“SIJS was introduced to protect undocumented, minor immigrants eligible for long-term foster care in 1990. It has been substantively amended twice, first in 1997 (1997 Amendments) and most recently in 2008 (2008 Amendments).” (footnotes omitted)).

for it to be against the child's best interests to return to their home country.<sup>28</sup>

The first amendment of the SIJS statutes occurred in 1997. The amendment's primary purpose was to prevent juveniles from taking advantage of this seemingly "easier" pathway to citizenship.<sup>29</sup> This amendment introduced the abused, abandoned, or neglected requirement into the equation, narrowing the pool of juveniles eligible for SIJS.<sup>30</sup> The second amendment to SIJS, enacted in 2008, broadened the applicability of SIJS, increasing the number of eligible immigrant juveniles.<sup>31</sup> This 2008 amendment discarded the requirement that a juvenile be eligible for long-term foster care.<sup>32</sup> The critical addition was the nonviability of reunification requirement.<sup>33</sup>

Additionally, the 2008 amendment required that USCIS, which handles SIJS applications, consider a juvenile immigrant's age at the time they file their application.<sup>34</sup> This amendment effectively protected children who received a predicate order from their state of resi-

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28. Price, *supra* note 26.

29. Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. J. 48, 50 (2012) ("In 1997, due to perceived end runs to improperly legalize certain undocumented youth, statutory language was added to clarify that SIJS applies specifically to abused, neglected, or abandoned children."); Price, *supra* note 26, at 379 (discussing the amendment of federal SIJS statutes occurred primarily due to concern that students traveling to the United States on student visas were fraudulently obtaining special immigrant juvenile status).

30. Junck, *supra* note 29; Price, *supra* note 26, at 379.

31. Junck, *supra* note 29 ("[R]evisions to the SIJS statute were made in 2008 . . . providing critical protections for the tens of thousands of unaccompanied minors who come to the U.S. each year . . ."); Price, *supra* note 26, at 380 ("In 2008, Congress took dramatic steps toward rearming the SIJS statute with the power it needed to protect the vulnerable, underage immigrants for whom it was created.")

32. Price, *supra* note 26, at 380 (providing that the 2008 amendment to federal statutes no longer required the juvenile be eligible for long-term foster care to be eligible for SIJS).

33. *Id.* ("[T]his amendment . . . now required a finding that at least one parent had abused, abandoned, or neglected the child. The amendment also explicitly required that the state court consider the best interest of the child when determining the child's eligibility for SIJS.")

34. *Id.* at 381. Before this amendment, the process took into account an applicant's age at the time the application was adjudicated by USCIS instead of at the time of filing. *Id.*

The TVPRA [Trafficking Victims Protection Reauthorization Act] also instituted limited 'age-out' protections at the federal level for children eligible for SIJS by requiring United States Citizenship and Immigration Services (USCIS) to consider the age of the child at the time the child filed his or her petition for SIJS. This prevented a common occurrence where otherwise eligible children would pass the cut-off age of twenty-one while their applications were passed from desk to desk or were lost, sometimes multiple times.

*Id.*

dependency from aging out immediately upon turning twenty-one.<sup>35</sup> Overall, considering the broadening of protections and the critical age-out preventions, the 2008 amendments were a step in the right direction for SIJS.

### C. Role of State Courts in Special Immigrant Juvenile Status Proceedings

As discussed in section II.A, a juvenile applying for SIJS depends heavily on state courts.<sup>36</sup> The basic relationship between the state and federal entities involved in the process is that the state courts must issue their predicate order, which USCIS then uses to approve or deny a juvenile's petition for SIJS.<sup>37</sup> The predicate order must include the state court judge's findings regarding the juvenile's dependency on a juvenile court; the nonviability of reunification due to abuse, abandonment, or neglect by at least one parent; and the best interest of the child—which are the strict limiting factors of SIJS.<sup>38</sup>

State law, not federal law, governs these predicate orders. To issue a predicate order regarding a juvenile's SIJS eligibility, the state court must have jurisdiction over the juvenile and authority over matters of custody and care.<sup>39</sup> When considering jurisdiction and authority, state court judges must first look to their own state statutes for guidance.<sup>40</sup> For example, Nebraska's jurisdictional statute provides that:

In addition to having jurisdiction to make judicial determinations about the custody and care of a child, a court of this state with exclusive jurisdiction under subsection (a) of this section has jurisdiction and authority to make factual findings regarding (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with at least one of the child's parents due to such abuse, abandonment, neglect, or a similar basis under state law, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin

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35. *Id.*

36. *See supra* section II.A (discussing state court predicate orders which are required for a juvenile to move to the next step of the SIJS process).

37. Jami Vigil & Frances R. Johnson, *State Court Orders Supporting Special Immigrant Juvenile Status*, 45 COLO. LAW. 45, 45 (2016) ("This program is unique in that it involves both state and federal entities. To petition for SIJS, an applicant must have a specific state court order, which is then used by the U.S. Citizenship and Immigration Services (USCIS) to determine the applicant's status.").

38. 8 U.S.C. § 1101(a)(27)(J) (2014); Daugherty, *supra* note 27, at 1089 ("The increasing popularity of SIJS among immigration advocates gives the impression that SIJS is a comprehensive form of child-specific immigration relief. However, in actuality, SIJS was meant to protect only the most vulnerable undocumented children and to this day is an inadequate statutory and regulatory scheme to recognize which youth are the most vulnerable."). If a juvenile does not meet one of the strict limiting factors, they will not be eligible for SIJS and will not receive a predicate order from their state court judge. *See* § 1101(a)(27)(J).

39. Vigil & Johnson, *supra* note 37.

40. *Id.* (providing that any state court with authority to make decisions regarding the care or custody of children can enter the necessary order).



or last habitual residence. If there is sufficient evidence to support such factual findings, the court shall issue an order containing such findings when requested by one of the parties or upon the court's own motion.<sup>41</sup>

Nebraska's statute specifically provides that any court within the state with jurisdiction to make child custody determinations also has jurisdiction and authority to make the requisite SIJS findings.<sup>42</sup>

Then, the state court must make the required findings regarding the abuse, abandonment, neglect, and best interests before a juvenile may petition USCIS for approval of their SIJS application.<sup>43</sup> State law also provides the standards and definitions for determinations of abuse, abandonment, neglect, and a juvenile's best interests.<sup>44</sup> For example, in Nebraska, child abuse is defined by statute.<sup>45</sup> Child abuse occurs when a person knowingly, intentionally, or negligently causes a minor child to be: (1) in a situation where their mental or physical safety is endangered; (2) confined or punished in a cruel manner; (3) deprived of necessities such as food, clothing, shelter, or care; (4) or placed in a situation where they may be sexually exploited, abused, or trafficked.<sup>46</sup> Since Nebraska's statutes govern the definition of child abuse, when a juvenile's SIJS petition hinges on whether or not they were abused, Nebraska state court judges must make the determination based on state law, and USCIS will then defer to this determination.<sup>47</sup>

Even though these determinations seem straightforward and easy for state judges to make, they are often reluctant to do so.<sup>48</sup> Their reluctance is mainly because many state judges are wary about their ability to make the required findings, or are unsure about immigration law in general and feel uncomfortable with the prospect of determining immigration matters.<sup>49</sup> However, the state court judges must overcome this discomfort and realize that their determinations are all based on state law, with which they are incredibly familiar. This is important because USCIS relies heavily on a state court's findings in

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41. NEB. REV. STAT. § 43-1238(b) (Cum. Supp. 2020).

42. *Id.*

43. 8 U.S.C. § 1101(a)(27)(J).

44. Vigil & Johnson, *supra* note 37, at 46.

45. NEB. REV. STAT. § 28-707 (Cum. Supp. 2020) (defining child abuse).

46. *Id.*

47. Vigil & Johnson, *supra* note 37, at 46.

48. Michelle Anne Paznokas, Note, *More Than One Achilles' Heel: Exploring the Weaknesses of SIJS's Protection of Abused, Neglected, and Abandoned Immigrant Youth*, 9 DREXEL L. REV. 421, 447 (2017) ("Many state judges are reluctant to make favorable findings for viable SIJS applicants, either because they are unfamiliar with the dictates of immigration law, or they are simply uncomfortable with making a decision that is traditionally reserved for the federal government.").

49. *Id.*

determining whether to approve or deny an SIJS petition.<sup>50</sup> Thus, if a state court judge is reluctant to issue the required findings, the system cannot function as intended because USCIS may, as a result, never review petitions from juveniles seeking much-needed protection.

#### **D. Treatment of Special Immigrant Juvenile Status in Other States**

As discussed in section II.C, state law governs the predicate orders issued by state court judges, which are then used by USCIS to determine whether to grant or deny an application for SIJS.<sup>51</sup> One major problem with this large role for state courts is the difference in which states apply the federal SIJS statutes in conjunction with their own state statutes. While some states and judges negatively view SIJS as a way for immigrant juveniles to use their status to bypass the complicated immigration system,<sup>52</sup> other states have amended their laws to allow more juveniles to obtain SIJS more easily.<sup>53</sup> The application of state law to the federal SIJS process has caused a significant disparity in SIJS approval, depending on which state the juvenile is residing in at the time of application.

##### *1. States Making It Harder for Juveniles Seeking SIJS*

Florida, Missouri, and Ohio are examples of states that have consistently made it difficult for juveniles to obtain SIJS.<sup>54</sup> In Florida, judges generally view SIJS negatively.<sup>55</sup> In 2016, in two separate cases, the District Court of Appeals in Florida held that juveniles who requested SIJS predicate findings were ineligible for SIJS.<sup>56</sup> In both

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50. *Id.* USCIS relies almost completely on a state court judge's findings when evaluating an immigrant juvenile's application for SIJS. *Id.*

51. *See supra* section II.C (discussing the role of state courts in SIJS determinations).

52. Paznokas, *supra* note 48, at 449 ("Due to their lack of familiarity with Congress's intent behind SIJS, some judges see the visa as a way to 'cheat the system' and obtain a disproportionately easy form of relief.")

53. *See infra* subsection II.D.2 (discussing states that have expanded jurisdiction over juveniles until they are twenty-one).

54. *See Gonzalez v. Rodriguez*, 115 N.E.3d 718 (Ohio Ct. App. 2018).

55. *In re S.A.R.D.*, 182 So. 3d 897, 905 (Fla. Dist. Ct. App. 2016) ("Florida's dependency statutes were meant to protect children who are the victims of abuse, abandonment, or neglect, and who are in need of intervention by the court and services by the State. The primary goal of the statute is to preserve the family structure, not to provide a gateway to citizenship for children who are entering this country illegally in search of a better life."); *In re F.J.G.M.*, 196 So. 3d 534, 538 (Fla. Dist. Ct. App. 2016) ("SIJ status allows the child who entered the United States or stayed in the United States illegally to jump to the front of the line ahead of those who are attempting to immigrate to the United States lawfully and permits the child to bypass many of the requirements established for regular legal immigration.")

56. *In re S.A.R.D.*, 182 So. 3d at 905; *In re F.J.G.M.*, 196 So. 3d at 540.

cases, the judges took time in their opinions to discuss how SIJS is a way for children to “bypass” the proper immigration system and “jump to the front of the line.”<sup>57</sup> Contrary to the judges’ beliefs that the children in both of the 2016 cases were attempting to jump the line, the children were actually seeking SIJS due to their abandonment by one, or both, of their parents.<sup>58</sup>

Since the children sought SIJS on legally permitted grounds under 8 U.S.C. § 1101(a)(27)(J), the judges used state law to prohibit the juveniles from obtaining favorable predicate orders.<sup>59</sup> Under Florida’s statutes, judges must assess the facts supporting an SIJS petition in light of the nature, severity, and frequency of the abuse, the time between the act in question and the petition’s filing, whether the risk of harm is still present, whether the juvenile has another parent capable of care, and any other factors the judge sees fit.<sup>60</sup> In both of the 2016 cases, the juveniles were abandoned several years prior to their SIJS applications.<sup>61</sup> Still, the judge in each case used the state law factors to determine that abandonment at birth, or ten years before application, was “too remote” under state law to constitute abandonment for SIJS purposes; thus, the judges declined to make SIJS predicate orders.<sup>62</sup>

Courts in Missouri have also systematically denied applicants for SIJS. In 2017, a juvenile who had been abandoned since 2003 and feared he would not have anyone to care for him if returned to his home country requested the court make the necessary predicate find-

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57. *In re S.A.R.D.*, 182 So. 3d at 900; *In re F.J.G.M.*, 196 So. 3d at 538.

58. *In re S.A.R.D.*, 182 So. 3d at 899 (“In his petition, S.A.R.D. alleges that when he was seven years old . . . his father abandoned him.”); *In re F.J.G.M.*, 196 So. 3d at 539 (“Escobar has acknowledged paternity and it is undisputed that he abandoned F.J.G.M since his birth in 2003 . . .”).

59. *In re S.A.R.D.*, 182 So. 3d at 902 (“When evaluating the facts supporting these private dependency petitions, trial courts should consider: (1) the nature, severity and frequency of the abuse, neglect or abandonment; (2) the time that has elapsed between the abuse, neglect or abandonment and the filing of the petition; (3) whether the child is presently at a continued, but not necessarily imminent, risk of harm before turning eighteen years old; (4) the availability of a caregiver capable of providing both supervision and care; and (5) any other relevant factors unique to the particular case.” (quoting *O.I.C.L. v. Dep’t of Child. & Fams.*, 169 So. 3d 1244, 1249 (Fla. Dist. Ct. App. 2015))).

60. *Id.*

61. *Id.* at 899 (“In his petition, S.A.R.D. alleges that when he was seven years old, over ten years ago, his father abandoned him.”); *In re F.J.G.M.*, 196 So. 3d at 539.

62. *In re S.A.R.D.*, 182 So. 3d at 903 (“Because the alleged abandonment by S.A.R.D.’s father in Honduras nearly eleven years prior to the filing of S.A.R.D.’s petition was too remote and S.A.R.D. presented no evidence that there was a substantial risk of abuse, neglect, or abandonment for the nine days from the filing of his petition until he reached the age of majority, the trial court correctly denied S.A.R.D.’s petition on the basis of abandonment by his father.”); *In re F.J.G.M.*, 196 So. 3d at 539 (“[A]bandonment by Escobar over thirteen years ago is too remote to serve as a basis for dependency . . .”).

ings required for him to obtain SIJS.<sup>63</sup> In that case, instead of relying on state law, the judge relied on 8 U.S.C. § 1101(a)(27)(J),<sup>64</sup> concluding that it contained no requirement for a state court to issue predicate findings for SIJS cases.<sup>65</sup> Under this interpretation, a judge in Missouri may decline to make SIJS findings, not because SIJS requirements are unfulfilled, but simply because there is no requirement that the court do so.<sup>66</sup>

Some courts will blatantly misinterpret federal statutes regarding requirements for SIJS as another strategy to avoid making the requisite predicate order for SIJS. In a 2018 Ohio case, a juvenile requested the court make SIJS findings at his custody hearing.<sup>67</sup> Under 8 U.S.C. § 1101(a)(27)(J), the juvenile must meet a dependency requirement to be eligible for SIJS.<sup>68</sup> A juvenile meets the dependency requirement if they have either been declared dependent on a juvenile court, placed under the custody of a state agency, or placed in the custody of an individual by the state.<sup>69</sup> However, during the 2018 case, the court identified that a custody hearing did not meet the dependency requirement, and thus the court could not make the requisite SIJS predicate findings.<sup>70</sup>

To make matters worse for juveniles seeking to apply for SIJS in Ohio, the court in 2018 also addressed the reunification requirement,<sup>71</sup> holding that if the child reunified with one of the parents, the

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63. *de Rubio v. Rubio Herrera*, 541 S.W.3d 564, 568 (Mo. Ct. App. 2017).

64. *Id.* at 571–73.

65. *Id.* at 572 (declaring that there is no language in the federal SIJS statutes requiring the judges to make SIJS findings).

66. *Id.*

67. *Gonzalez v. Rodriguez*, 115 N.E.3d 718, 719–20 (Ohio Ct. App. 2018) (claiming that the juvenile’s biological father had abandoned him and that that juvenile had come to the U.S. to escape “extreme poverty and widespread gang violence”).

68. *See supra* text accompanying note 22.

69. *See supra* text accompanying note 22. *Gonzalez*, 115 N.E.3d at 721.

70. *Gonzalez*, 115 N.E.3d at 722 (discussing how the requirement for dependency is not met with a petition for an allocation of custody). This ruling came even though amendments to the SIJS statutes, which occurred well before 2018, provided that dependency may be found either by dependency on the court or placement in an individual’s custody. Christina Ritchie Cooper, *A Guide for State Court Judges and Lawyers on Special Immigrant Juvenile Status*, A.B.A. (Mar. 1, 2017), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-36/mar-apr-2017/a-guide-for-state-court-judges-and-lawyers-on-special-immigrant/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/mar-apr-2017/a-guide-for-state-court-judges-and-lawyers-on-special-immigrant/) [https://perma.cc/2LV2-95ZB]. In fact, after the amendments, the American Bar Association published practice tips advising that “judges are able to make the finding in . . . any matter where custody or guardianship is awarded to a relative or other third[-]party caregiver.” *Id.*

71. *Gonzalez*, 115 N.E.3d at 722 (“Evidence must show that the juvenile’s ‘reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.’ . . . Thus, a child who is reunified with a parent will not meet this definition.”).

child did not meet the eligibility requirements necessary for the court to make an SIJS predicate order.<sup>72</sup> However, the federal reunification requirement states that an applicant is eligible for SIJS when reunification is not viable due to one or both of an immigrant juvenile's parents abusing, abandoning, or neglecting them.<sup>73</sup> Although the federal statute's language specifies that the abuse, neglect, or abandonment of a juvenile by just one of the parents may make reunification unviable,<sup>74</sup> Ohio states that a child who reunifies with one parent is ineligible<sup>75</sup>—a clear conflict.

Overall, these states have used state law or interpretation of federal law to systematically prevent juvenile immigrants from obtaining SIJS. In other words, an immigrant juvenile's application for SIJS could be inherently disadvantaged merely because they live in the “wrong” state.

## 2. States Making It Easier for Juveniles Seeking SIJS

Even though Florida, Missouri, and Ohio have restricted necessary access to SIJS,<sup>76</sup> many states like Oregon,<sup>77</sup> New Jersey,<sup>78</sup> Massachusetts,<sup>79</sup> and Connecticut<sup>80</sup> have expanded eligibility for SIJS<sup>81</sup> or have at least concretely provided state judges with proper jurisdiction to issue predicate orders.

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72. *Id.*

73. 8 U.S.C. § 1101(a)(27)(J).

74. *Id.*

75. *Gonzalez*, 115 N.E.3d at 722.

76. *See supra* subsection II.D.1 (discussing how Florida, Missouri, and Ohio consistently deprive immigrant juveniles access to SIJS by interpreting the federal SIJS statutes as not requiring states to make predicate findings or by using state law interpretations of abuse, abandonment, and neglect as a way around making the requisite findings).

77. *See State v. G.V.L.*, 417 P.3d 517 (Or. Ct. App. 2018); *State v. L.P.L.O.*, 381 P.3d 846 (Or. Ct. App. 2016).

78. *See H.S.P. v. J.K.*, 121 A.3d 849 (N.J. 2015); *O.Y.P.C. v. J.C.P.*, 126 A.3d 349 (N.J. Super. Ct. App. Div. 2015).

79. *See Hernandez-Lemus v. Arias-Diaz*, 100 N.E.3d 321 (Mass. 2018); *Dep't of Revenue v. Lopez*, 76 N.E.3d 960, 963 (Mass. 2017); *Recinos v. Escobar*, 46 N.E.3d 60 (Mass. 2016).

80. *See In re Henry P.B.-P.*, 173 A.3d 928 (Conn. 2017).

81. *See Yasmin Yavar & Dalia Castillo-Granados, Special Immigrant Juvenile Status in a Nutshell*, 56 JUDGES' J. 27, 28 (2017) (“An individual must be under 21 years of age in order to establish eligibility for SIJS. Whether an individual can obtain the required state court order after turning 18 is another matter. This will depend on state law, and whether a court is able to exercise jurisdiction over the individual after age 18 for purposes of making the required findings. Some states have provisions for extending jurisdiction over the custody and care of juveniles past 18 years of age under certain circumstances. In addition, some states have adopted statutes extending jurisdiction until the age of 21 for SIJS cases.”).

In Oregon, the courts realized the danger of juveniles aging out of the SIJS proceedings as soon as they reached eighteen years old.<sup>82</sup> In most states, as soon as the juvenile reaches the age of majority, or the age at which a juvenile court loses jurisdiction over the juvenile, the juvenile's petition for SIJS is dismissed.<sup>83</sup> Thus, a child who ages out during the pendency of trial is out of luck, even if they requested the state court make SIJS findings well before they aged out.<sup>84</sup> Oregon decided to protect these vulnerable juveniles in 2016 by providing that the court's jurisdiction attaches immediately when a juvenile initiates an action and continues until findings are made.<sup>85</sup> This act by the Oregon Court of Appeals effectively eliminated the age-out danger for juveniles in the state.

Having already made huge strides toward protecting immigrant juveniles, Oregon clarified its jurisdictional limits on juveniles again in 2018.<sup>86</sup> Previously, the legislature in Oregon had adopted a statute stating that juveniles are within the court's jurisdiction as wards of the state until twenty-one years of age.<sup>87</sup> Originally, the courts applied the statute only to citizens. However, in 2018, the Oregon Court of Appeals clarified that wardship may continue until any juvenile turns twenty-one, even if the juvenile is an undocumented immigrant seeking SIJS.<sup>88</sup>

Like Oregon, New Jersey also concluded that judges are required to make the federally mandated predicate orders as long as the juvenile is under the age of twenty-one.<sup>89</sup> The rationale for the decision rested on the interpretation of the word "juvenile" by the federal agen-

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82. *L.P.L.O.*, 381 P.3d at 852 (“[U]nder the state’s scenario, the newly turned 18 year old has no redress when a juvenile court incorrectly refuses to protect him until he turns 21. We do not find support in the statute, or the legislative history, for such an anomalous basis for jurisdiction—that is, where jurisdiction depends on the juvenile court initially reaching the correct result.”).

83. *See Henry*, 173 A.3d at 940 (discussing previous cases in the state where juveniles had aged out upon turning eighteen).

84. In one case, a trial was set before the petitioner turned eighteen, but opposing counsel claimed they were “unavailable” that day. *In re Jessica M.*, 35 A.3d 1072, 1073 (Conn. 2012), *superseded by statute*, CONN. GEN. STAT. § 45a-608n (2018), *as recognized in Henry*, 173 A.3d 928. The juvenile court was unable to schedule trial before the petitioner turned eighteen and the claim was dismissed for lack of subject matter jurisdiction. *Id.*

85. *L.P.L.O.*, 381 P.3d at 851 (“There is nothing in the statutory text or our case law that suggests or implies that the child must remain under 18 years of age for the court to have authority to enter the jurisdictional judgment.”).

86. *State v. G.V.L.*, 417 P.3d 517 (Or. Ct. App. 2018).

87. *Id.* at 523 (“In fact, the legislature has expressly provided that a child found to be within the jurisdiction of the court may continue to receive the court’s protection until the child is 21 years old.”).

88. *Id.*

89. *O.Y.P.C. v. J.C.P.*, 126 A.3d 349 (N.J. Super. Ct. App. Div. 2015).

cies responsible for the implementation of SIJS.<sup>90</sup> Since the federal definition of juvenile includes all those under twenty-one, the New Jersey court requires findings for juveniles until age twenty-one as well.<sup>91</sup>

Further, New Jersey solidified the role of state court judges in SIJS determinations. In 2015, the Supreme Court of New Jersey stated that judges in family courts, when asked to make SIJS predicate orders, should make the factual findings necessary under 8 C.F.R. § 204.11.<sup>92</sup> Additionally, family courts are instructed to make the findings regarding each of the juvenile's parents and apply state law in doing so.<sup>93</sup> This clarification by the New Jersey Supreme Court provides a clear pathway for immigrant juveniles to obtain SIJS to gain protection from abuse, abandonment, or neglect.

Like both New Jersey and Oregon, Massachusetts has expanded jurisdiction over juveniles and solidified the role of state judges in SIJS situations.<sup>94</sup> In doing this, Massachusetts judges are instructed by explicit precedent that they must make the necessary findings as to the likelihood of the federal authorities granting the status, regardless of personal beliefs or their perception of a juvenile's motivation.<sup>95</sup> For jurisdiction expansion, the Massachusetts Supreme Judicial Court declared that probate and family courts have "broad equity powers," that may be used to "fill in" the jurisdictional gap for juveniles in the state seeking SIJS between the age of eighteen and twenty-one.<sup>96</sup> Thus, in Massachusetts, courts may treat individuals between eighteen and twenty-one years of age as juveniles in making SIJS findings.<sup>97</sup>

Finally, in 2017, Connecticut expanded jurisdiction over juveniles applying for SIJS.<sup>98</sup> The Connecticut Supreme Court observed the age-out problem, noting multiple SIJS cases were dismissed immedi-

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90. *Id.* at 351 (declaring that the word "juvenile" is interpreted to include all individuals under twenty-one years of age).

91. *Id.* at 353 ("Because the brother was under the age of twenty-one, the trial court should have made the federally-required SIJ findings.").

92. *H.S.P. v. J.K.*, 121 A.3d 849, 852 (N.J. 2015) (providing that courts in New Jersey making SIJS findings should issue their predicate orders with regard to the requirements in 8 C.F.R. § 204.11).

93. *Id.* at 860–61.

94. *Dep't of Revenue v. Lopez*, 76 N.E.3d 960, 966 (Mass. 2017) ("The State court's role is solely to make the special findings of fact necessary to the USCIS's legal determination of the immigrant child's entitlement to SIJ status.").

95. *Hernandez-Lemus v. Arias-Diaz*, 100 N.E.3d 321, 323 (Mass. 2018) ("A judge may not decline to make special findings based on his or her assessment of the likelihood that the SIJ application ultimately will be successful before the Federal authorities, or on any consideration of the juvenile's motivation for seeking SIJ status." (citing *Lopez*, 76 N.E.3d at 962)).

96. *Recinos v. Escobar*, 46 N.E.3d 60, 66 (Mass. 2016).

97. *Id.*

98. *In re Henry P.B.-P.*, 173 A.3d 928 (Conn. 2017).

ately upon the petitioner turning eighteen.<sup>99</sup> In one case, a trial had been set before the petitioner turned eighteen, but opposing counsel claimed they were unavailable for that date, and the trial court failed to reschedule the trial before the juvenile turned eighteen.<sup>100</sup> The claim was then immediately dismissed for lack of subject matter jurisdiction.<sup>101</sup>

To address the lack of care state trial courts used in scheduling trials for SIJS findings, the Connecticut Supreme Court decided that a probate court does not lose its authority to make juvenile status findings when juveniles turn eighteen years old during the pendency of a petition for SIJS.<sup>102</sup> When reaching this conclusion, the court cited section 45a-608n(b) of the General Statutes of Connecticut as the basis for the state court's responsibilities to juveniles who petition for SIJS.<sup>103</sup> Further, the court pointed to the federal statute's definition of "child," which is defined as an unmarried person under twenty-one years of age.<sup>104</sup>

In general, Oregon, New Jersey, Massachusetts, and Connecticut have all taken advantage of the role of state law in SIJS determinations to expand protections for some of the most vulnerable children in our country. These states have employed two distinct methods for SIJS cases: expanding jurisdiction over juveniles after they turn eighteen to prevent aging out of the system<sup>105</sup> and clarifying the responsibilities of state judges by mandating that they shall make the requisite predicate findings.<sup>106</sup>

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99. *Id.*

100. *See In re Jessica M.*, 35 A.3d 1072, 1073 (Conn. 2012), *superseded by statute*, CONN. GEN. STAT. § 45a-608n (2018), *as recognized in Henry*, 173 A.3d 928.

101. *Henry*, 173 A.3d at 928.

102. *Id.* at 931 ("We . . . conclude that the Probate Court did not lose its authority to make juvenile status findings pursuant to § 45a-608n (b) when Henry turned eighteen years old during the pendency of the petition.").

103. *Id.* at 937–38 ("Authorizing the Probate Court to make juvenile status findings with respect to a minor child who has turned eighteen years old during the pendency of the petition is entirely consistent with the overarching purpose of § 45a-608n (b), which is to facilitate our state courts' responsibilities with respect to juvenile status petitions brought to Immigration Services under 8 U.S.C. § 1101 (a)(27)(J), the federal statute that is expressly cited in the text of § 45a-608n (b).").

104. *Id.* (emphasizing that a child under the federal SIJS statute is defined as an unmarried person under twenty-one years old).

105. *See supra*, notes 86–87, 96, 102 and accompanying text.

106. *See supra*, notes 92, 94–95 and accompanying text.



## III. ANALYSIS

## A. Nebraska Jurisdiction and Authority Clarification

In recent years, the trend in Nebraska has leaned toward jurisdiction expansion. In 2009, on appeal from county court, Luis and Jose<sup>107</sup> were issued the predicate orders necessary for them to submit an SIJS application to USCIS.<sup>108</sup> They were lucky to have a chance at obtaining SIJS after the county court initially stripped them of their opportunity based on the juveniles' perceived motivations.<sup>109</sup> Jose and Luis were fortunate because Nebraska courts continued using a juvenile's motivations as the basis to deny making SIJS findings for years after the brothers successfully obtained the requisite predicate order for SIJS.<sup>110</sup>

In 2018, the legislature finally made a step toward the protection of vulnerable juveniles.<sup>111</sup> The previous version of Nebraska's juvenile jurisdiction statute provided that the "exclusive jurisdictional basis" in child custody cases included only traditional bases, such as Nebraska being the juvenile's home state.<sup>112</sup> However, with the 2018 amendment, the legislature revised the language of section 43-1238(b) of the Nebraska Revised Statutes to read:

In addition to having jurisdiction to make judicial determinations about the custody and care of the child, a court of this state with exclusive jurisdiction under subsection (a) of this section has jurisdiction and authority to make factual findings regarding (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with at least one of the child's parents due to such abuse, abandonment, neglect, or a similar basis under state law, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence. If there is sufficient evidence to support such fac-

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107. *See supra* Part I (discussing Jose and Luis's journey from Guatemala to Grand Island, Nebraska, to escape widespread violence and abusive family members).

108. *State v. Luis G.*, 17 Neb. App. 377, 388, 764 N.W.2d 648, 656 (2009) ("[W]e find that the court erred in vacating the order regarding the minors' eligibility for special immigrant juvenile status. As such, we reverse the decision of the county court and remand the cause to the county court with directions.").

109. *Id.* at 383, 764 N.W.2d at 653 ("First of all, the mother brought them here illegally presumably for a better life. Secondly, a conscious decision was made by this family to leave the children in the care and custody of [OJS] when the mother was deported. It is incongruous for the guardian ad litem or [DHHS] to argue the mother abused and neglected these children by leaving them here in the United States and at the same time argue that by doing so, they were being afforded a better life with greater opportunity." (alteration in original)).

110. *See In re Erick M.*, 284 Neb. 340, 348, 820 N.W.2d 639, 646 (2012) ("USCIS will not consent to a petition for SIJ status if it was 'sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.'").

111. NEB. REV. STAT. § 43-1238 (Cum. Supp. 2018).

112. NEB. REV. STAT. § 43-1238 (Reissue 2016) (amended 2018).

tual findings, the court shall issue an order containing such findings when requested by one of the parties or upon the court's own motion.<sup>113</sup>

With this amendment, Nebraska went from a state that allowed judges to argue they lacked the authority or capability to make SIJS findings, making it harder for juveniles to obtain SIJS, to a state that expressly enumerates courts' role and authority to make the required findings, allowing juveniles to more easily receive SIJS when needed.<sup>114</sup> This amendment has shown success in a string of cases from 2018 to 2020, in which juveniles more efficiently obtained SIJS because the statute determined the courts' role and codified the courts' authority to make the factual findings.<sup>115</sup>

### B. Nebraska's Trend Toward Jurisdiction Expansion

In addition to merely defining authority for state court judges, Nebraska should seize the opportunity to expand jurisdiction even more for juveniles seeking SIJS. Starting in 2013, Nebraska initiated its trend toward jurisdiction expansion over vulnerable youth by passing Legislative Bill 216 (LB 216).<sup>116</sup> The Young Adult Bridge to Independence Act<sup>117</sup> establishes a voluntary program for children between the ages of nineteen<sup>118</sup> and twenty-one who age out of foster care.<sup>119</sup> The Bridge to Independence (B2I) program gives continued support to eli-

113. NEB. REV. STAT. § 43-1238(b) (Cum. Supp. 2018). The statute's language mirrors that of the federal statute. *See supra* text accompanying note 22.

114. *See supra* subsections II.D.1-2 (comparing and contrasting states that make it harder with states that make it easier for juveniles to obtain SIJS).

115. *Sabino v. Ozuna*, 305 Neb. 176, 182, 939 N.W.2d 757, 762 (2020) ("The language of § 43-1238 provides that if a court has jurisdiction to make an initial child custody determination, it also has the jurisdiction and authority to make the factual findings relevant to SIJ status."); *Gonzalez v. State*, 300 Neb. 646, 656, 915 N.W.2d 581, 588 (2018) ("Section 43-1238(b), as amended, instructs a court with the jurisdictional basis of a child custody determination under § 43-1238(a) that it has the authority to also make factual findings, where requested and where there is sufficient evidence to support the findings.")

116. *Bridge to Independence*, NEB. APPLESEED, <https://neappleseed.org/b2i> [<https://perma.cc/DB9A-HNUG>] (last visited Sept. 16, 2020) (discussing the Young Adult Bridge to Independence Act introduced in the Nebraska Legislature by Senator Amanda McGill in 2013).

117. NEB. REV. STAT. §§ 43-4501 to -4514 (Reissue 2016).

118. In Nebraska, minors are individuals under the age of nineteen, unless the individual is married. NEB. REV. STAT. § 43-2101 (Reissue 2016).

119. To be eligible for the Bridge to Independence program, youth must be between nineteen and twenty-one years old and have aged out of out-of-home foster care, been discharged from foster care to independent living, or entered a guardianship or adoption agreement when sixteen years old or older. B2I ELIGIBILITY REQUIREMENTS, NEB. DEP'T HEALTH HUM. SERVS. (Aug. 7, 2019), <https://dhhs.ne.gov/Documents/B2I%20Eligibility%20Requirements.pdf> [<https://perma.cc/4FHL-AAVU>]. Eligibility also applies to those eighteen-year-old individuals where tribal law establishes that as the age of majority. NEB. REV. STAT. § 43-4503(1)(b) (Reissue 2016).

gible children, providing access to various resources, assistance from a caseworker, health care, and monthly payments.<sup>120</sup> The Nebraska Legislature deemed these services necessary to support juveniles' transition into adulthood and to protect them at a vulnerable stage in their lives.<sup>121</sup>

Nebraska enacted this extended care program for foster care children who age out of the system to protect children like Kris.<sup>122</sup> Kris, a Nebraska resident, moved from foster home to foster home throughout her childhood. By the time Kris turned nineteen, she had lived in at least twenty different homes.<sup>123</sup> After she aged out of the foster care system, Kris's case was closed, and her current foster family kicked her out of their home.<sup>124</sup> At the tender age of nineteen, Kris had not only herself to take care of but a new baby too.<sup>125</sup> Before the Young Adult Bridge to Independence Act, Kris struggled to provide for herself and her child because she lacked the job and resources to help her succeed.<sup>126</sup>

An additional consideration for the jurisdiction expansion came from the allowance by federal statute for a more comprehensive and inclusive program.<sup>127</sup> Under the Fostering Connections to Success and Increasing Adoptions Act of 2008,<sup>128</sup> states are permitted to apply federal foster care funds to children until the age of twenty-one.<sup>129</sup> It is significant that the federal statute immensely influenced Nebraska's adoption of LB 216 in 2013. This is because Nebraska is in the same position now with SIJS as it was with foster care in 2013. The federal government provides the opportunity for immigrants to obtain SIJS

120. *Bridge to Independence (B2I)*, NEB. DEP'T HEALTH & HUM. SERVS., <http://dhhs.ne.gov/Pages/Bridge-to-Independence.aspx> [<https://perma.cc/HE5D-5JU7>] (last visited Sept. 14, 2020).

121. *Introducer's Statement of Intent: Hearing on Legis. B. 216 Before the Health & Hum. Servs. Comm.*, 103d Leg., 1st Sess. 1 (2013) [hereinafter *Hearing*] (statement of Sen. Amanda McGill, Principal Introducer) ("Approximately 300 older youth leave the custody of the state each year in Nebraska, either because they reach the age of majority or because they are discharged from the care of the state and left to live independently. Nebraska has some programs and services in place to help these young people in this time of transition, but there are significant gaps.").

122. JoAnne Young, *Bridge to Independence for Former Foster Children*, LINCOLN J. STAR (May 17, 2013), [https://journalstar.com/news/local/bridge-to-independence-for-former-foster-children/article\\_2f85d426-99e5-5b4e-b319-623651f0b18a.html](https://journalstar.com/news/local/bridge-to-independence-for-former-foster-children/article_2f85d426-99e5-5b4e-b319-623651f0b18a.html) [<https://perma.cc/X62U-V3QK>].

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Hearing*, *supra* note 121 ("A more comprehensive program is allowed under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008.").

128. Pub. L. No. 110-351, 122 Stat. 3949 (codified in scattered sections of 42 U.S.C.).

129. *Hearing*, *supra* note 121.

until they are twenty-one.<sup>130</sup> In analogizing SIJS to the Bridge to Independence program, Nebraska is in the ideal position to expand jurisdiction over individuals for SIJS purposes by simply encompassing the federal statute's age provisions.

Overall, before the Young Adult Bridge to Independence Act, juveniles who were pushed out of foster care at nineteen struggled to survive. Advocates of the bill believed that extending services until the age of twenty-one would drastically improve their chances by providing them "access to family structures, housing, education, transportation, jobs and health care."<sup>131</sup> The welfare of juveniles between nineteen and twenty-one pushed legislators to adopt the Young Adult Bridge to Independence Act.<sup>132</sup> Despite the welfare of individuals in that age group drastically influencing the Young Adult Bridge to Independence Act, the immigrant juveniles of the same age group—juveniles who often face the same difficulties, if not more, due to abuse, abandonment, or neglect by one or more of their parents—are ignored in Nebraska for SIJS.

### C. Federal Special Immigrant Juvenile Status Eligibility

As discussed in section II.A, a juvenile may apply for SIJS as long as they are under the age of twenty-one.<sup>133</sup> Although the federal statute provides for eligibility until twenty-one, a state may prematurely cut off a juvenile's eligibility on account of state law.<sup>134</sup> State court judges, charged with making the requisite predicate order before USCIS may consider a juvenile's application for SIJS, must issue their predicate order according to state law findings.<sup>135</sup> This means that state court judges making these findings must have jurisdiction over the juvenile within the court, which is how state court judges may deny making findings on SIJS as soon as a juvenile turns nineteen.<sup>136</sup>

Many states, including Nebraska, specify that state courts only have jurisdiction over juveniles until they are a certain age, usually

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130. *See infra* section III.C (discussing the federal SIJS eligibility).

131. Young, *supra* note 122 ("[I]t wasn't shocking that they had a hard time finishing school, finding a place to live, landing full-time jobs and supporting themselves. . . . Extending support to age 21 would give them better access to family structures, housing, education, transportation, jobs and health care . . .").

132. *See id.* (discussing how members of a youth-led organization in Nebraska called Project Everlast assembled people to share their stories with senators in support of LB 216).

133. 8 C.F.R. § 204.11(c)(1) (2020).

134. Yavar & Castillo-Granados, *supra* note 81.

135. *See supra* section II.C (discussing the application of state law in the SIJS process).

136. Yavar & Castillo-Granados, *supra* note 81.

eighteen or nineteen years old.<sup>137</sup> When it comes to SIJS petitions, some states have elected to extend jurisdiction until twenty-one in accordance with the cut-off age for federal SIJS eligibility.<sup>138</sup> Since the cut-off age for federal eligibility is twenty-one, it is unclear why other states are unwilling to extend their jurisdiction over SIJS matters until twenty-one.<sup>139</sup> Leaving a gap disadvantages juveniles seeking SIJS for lawful reasons—juveniles who need protection from abuse, abandonment, or neglect. With Nebraska's decision to define a judge's authority to make SIJS predicate orders—allowing for greater protection of immigrant juveniles<sup>140</sup>—the next logical step is jurisdiction expansion for juveniles until the age of twenty-one. Nebraska has expanded programming availability in protecting juveniles before, with its Bridge to Independence program allowing programming for juveniles until twenty-one.<sup>141</sup> Therefore, Nebraska should add protection for juvenile immigrants who are similarly, if not more at-risk than those protected under the Young Adult Bridge to Independence Act.

The federal government allows juveniles to maintain eligibility for SIJS until they turn twenty-one, and it also ensures additional protections for juveniles in the next step of the process.<sup>142</sup> Once a state makes the requisite predicate order and after USCIS grants the juveniles SIJS, the juvenile may apply for a green card with their SIJS classification.<sup>143</sup> During this step, USCIS prevents juveniles from aging out of the green card application process.<sup>144</sup> USCIS's position is that as long as the juvenile properly starts the green card process before they turn twenty-one years old, USCIS may not deny their application just because the individual is over twenty-one at the time of

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137. In Nebraska, though “juvenile” is defined as “any person under the age of eighteen,” NEB. REV. STAT. § 43-245(11) (Reissue 2016), Nebraska's Juvenile Code goes on to specify that “any individual adjudged to be within the provisions of this section until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction,” NEB. REV. STAT. § 43-247(12) (Reissue 2016).

138. *See supra* notes 81, 83, 86–87, 89–91, 96 and accompanying text.

139. Perhaps it is due to anti-SIJS sentiments as seen in states like Florida. *See supra* notes 55–62 and accompanying text.

140. *See supra* section III.A (discussing how juvenile courts in Nebraska have the authority to make the findings necessary to issue a predicate order for juvenile immigrants seeking SIJS).

141. *See supra* section III.B (discussing the Bridge to Independence program available for juveniles until age twenty-one).

142. *See Green Card Based on Special Immigrant Juvenile Classification*, U.S. CITIZENSHIP & IMMIGR. SERVS., [https://www.uscis.gov/green-card/green-card-eligibility/green-card-based-on-special-immigrant-juvenile-classification#:~:text=the%20Special%20Immigrant%20Juvenile%20\(SIJ, residence%20in%20the%20United%20States](https://www.uscis.gov/green-card/green-card-eligibility/green-card-based-on-special-immigrant-juvenile-classification#:~:text=the%20Special%20Immigrant%20Juvenile%20(SIJ, residence%20in%20the%20United%20States) [https://perma.cc/V5NY-JXKJ] (last visited Sept. 13, 2020).

143. *Id.*

144. *Id.*

their application's adjudication.<sup>145</sup> Therefore, not only does the federal SIJS statute itself maintain eligibility for SIJS until a juvenile turns twenty-one, but USCIS also protects juveniles from aging out during the subsequent green card application process.

#### D. Why Juveniles Should Be Protected Until Twenty-One

In general, there are many reasons juveniles age out of the SIJS process under state jurisdiction.<sup>146</sup> These reasons include aging out while awaiting trial,<sup>147</sup> unawareness of eligibility, the lack of an attorney, or the general lack of knowledge that the SIJS statute even exists.<sup>148</sup> The major problem with aging out of the SIJS process is that juveniles between eighteen and twenty-one are extremely vulnerable due to their transitional state.<sup>149</sup> This vulnerability translates to an increase in premature pregnancies, homelessness, and incarceration for at-risk individuals—like those who age out of the foster care system.<sup>150</sup>

The Bridge to Independence program, which expanded protections for individuals who had aged out of foster care, has proven successful.<sup>151</sup> Juveniles who participated in the Bridge to Independence pro-

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145. *Id.*

146. See Emily Rose Gonzalez, Article, *Battered Immigrant Youth Take the Beat: Special Immigrant Juveniles Permitted To Age-Out of Status*, 8 SEATTLE J. FOR SOC. JUST. 409, 414–15 (2009).

147. See *In re Jessica M.*, 35 A.3d 1072, 1073 (Conn. 2012) (discussing how a juvenile aged out of the process during the pendency of trial due to the juvenile's mother's counsel being unavailable for trial until the juvenile turned eighteen).

148. Gonzalez, *supra* note 146, at 414 (“There are a broad range of reasons why children age-out: lack of representation; nonrecognition by legal authorities of a child's eligibility early on; a child's unawareness of the availability of SIJ status; or aging-out of a child while his or her application is pending.” (citing Gregory Zhong Tian Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Children Under the Special Immigrant Juvenile Statute*, 27 HASTINGS CONST. L.Q. 597, 604 (2000))).

149. This is evident when examining the impact aging out has on juveniles leaving the foster care system in the United States. See Gonzalez, *supra* note 146, at 417 (“Youths aging-out of foster care often find themselves worse off than before. . . . Currently, an estimated twenty thousand children age-out of foster care every year; within two to four years of aging-out, 25 percent are homeless, 40 percent are on public assistance, and 50 percent are unemployed.” (citing Kevin Crust, *Passing Foster Care's Point of No Return*, L.A. TIMES, May 27, 2005, at E2)); *supra* section III.B (discussing the Bridge to Independence program in Nebraska, which offers additional services to juveniles aged eighteen to twenty-one who age out of foster care).

150. Gonzalez, *supra* note 146, at 417 (“[A]bout 25 percent of all aged-out males will have been incarcerated and more than 50 percent of all females will have a child.” (citing Crust, *supra* note 149)); Young, *supra* note 122 (discussing the difficulties faced by juveniles who age out of foster care without support).

151. See Kristin Sepulveda et al., *Nebraska Bridge to Independence Extended Foster Care Evaluation*, CHILD TRENDS (Nov. 13, 2019), <https://www.childtrends.org/>

gram reported having a better support network and were more likely to have at least some post-secondary education, affordable and safe housing, and the ability to pay bills.<sup>152</sup> With these positive outcomes, the legislature's worry regarding individuals aging out of foster care was adequately addressed by extending programs to individuals under twenty-one.

Outside of foster care, children between eighteen and twenty-one were a massive point of debate in considering raising the age cut-off for juvenile incarceration facilities.<sup>153</sup> One of the main reasons for this push was the developmental state of individuals under twenty-one.<sup>154</sup> Many studies point to how brain development is not complete until an individual reaches his or her mid-twenties.<sup>155</sup> In fact, eighteen- to twenty-year-old individuals often exhibit traits like risk-taking and impulsive behavior.<sup>156</sup> Further, this group is vulnerable to sexual assault while incarcerated, which legislators considered in raising the age of jurisdiction.<sup>157</sup>

In most states, the legislature's goal was to keep individuals between eighteen and twenty-one in the juvenile system as long as possible to provide for increased protection.<sup>158</sup> Additionally, if kept in the juvenile system, these individuals had the opportunity to participate in beneficial programs such as counseling or substance abuse treat-

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publications/nebraska-bridge-to-independence-extended-foster-care-evaluation [https://perma.cc/G774-34QE].

152. *Id.* at 3. ("In general, participating in b2i is associated with improved outcomes for young people.")
153. Teresa Wiltz, *Children Still Funneled Through Adult Prisons, but States Are Moving Against It*, USA TODAY (June 17, 2017, 7:00 AM), <https://www.usatoday.com/story/news/2017/06/17/how-raise-age-laws-might-reduce-recidivism/400065001/> [https://perma.cc/EZV6-DT2P] ("[I]n some states, if you're under 18 and you break the law, you'll be treated as an adult, no matter how slight the crime . . . . Over the past decade, at least seven states have raised the age of criminal responsibility . . . . And more changes are on the way.")
154. See Katie Lannan, *Bill Would Classify 18- to 21-Year-Olds as Juveniles*, TELEGRAM (May 31, 2017, 2:42 PM), <https://www.telegram.com/news/20170531/bill-would-classify-18-to-21-year-olds-as-juveniles> [https://perma.cc/5D2R-QN76] (reporting on Massachusetts state legislation that "would raise the upper limit on juvenile jurisdiction from 18 to 21, lawmakers and researchers cited recidivism statistics and neurological and sociological studies to make their case, saying that the population known as 'emerging adults' could be better served under the juvenile justice system and its supports").
155. *Id.* ("Lael Chester, a research fellow at the Harvard Kennedy School, said brain development is not complete until the mid-20s or later, and the 18- to 20-year-olds are developmentally similar to their 16- and 17-year-old peers, exhibiting traits including volatility, impulsiveness, susceptibility to peer influence and willingness to take risks.")
156. *Id.*
157. See Wiltz, *supra* note 153.
158. *Id.*

ment.<sup>159</sup> Preliminary evidence shows that when teenagers are actually prosecuted as minors, they are less likely to commit crimes in the future.<sup>160</sup> Further, Illinois, one of the states that raised the age for jurisdiction for juveniles in the criminal justice system, saw the number of juveniles in prison decrease from 1,195 to less than 400 juveniles since the change.<sup>161</sup>

In considering the legislative reforms for individuals in the foster care or juvenile justice systems between eighteen and twenty-one years of age, one of the main deciding factors in moving ahead with legislation was the vulnerability of individuals in that age range.<sup>162</sup> This sentiment must be translated to protect the juvenile immigrant populations in the State of Nebraska. Immigrant juveniles are arguably more at risk than juveniles who are citizens of the United States aging-out of foster care or subject to the juvenile justice system.

Immigrant juveniles are more at risk not only because those seeking SIJS are abused, abandoned, or neglected by their parents, but also because these youth are often facing multiple disadvantageous situations at once, all while facing the threat of deportation.<sup>163</sup> These factors are exacerbated by the fact that many of these immigrant juveniles—who have suffered immense trauma—often face incarceration, the foster care system, or a combination of both.<sup>164</sup> Considering the hardships incarcerated youth and youth aging-out of foster care face, it should be no surprise that the addition of being an undocumented immigrant on top of those conditions only makes matters worse.

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159. *See id.* (“The goal is to steer older teens into the juvenile court system, where they can participate in counseling and diversion programs such as substance abuse treatment and educational assistance.”); Lannan, *supra* note 154 (“Sen. Karen Spilka said that including people up to age 20 in the juvenile justice system would make it easier for them to access services that could help them build successful adult lives, such as education, employment assistance and mentorship.”).

160. Wiltz, *supra* note 153.

161. *Id.*

162. *Hearing, supra* note 121; Gonzalez, *supra* note 146; Wiltz, *supra* note 153.

163. This problem has only gotten worse for immigrant juveniles in the United States since the Trump administration put numerous strict immigration policies in place, leading to a record number of immigrant youth spending time in shelters, detained in centers, or separated from their families. Christopher Sherman et al., *US Held Record Number of Migrant Children in Custody in 2019*, AP NEWS (Nov. 12, 2019), <https://apnews.com/article/015702afdb4d44fbf85cf5070cd2c6824> [<https://perma.cc/586G-YA9K>] (reporting that the almost 70,000 migrant children held in government custody in 2019 was a forty-two percent increase from the prior year and that “[t]he Trump administration’s series of strict immigration policies has increased the time children spend in detention, despite the government’s own acknowledgement that it does them harm”).

164. *See* Gonzalez, *supra* note 146, at 416–17 (“Some SIJs age-out of foster care sooner than other SIJs because states vary as to when children age-out of foster care or state dependency. . . . [A]bout 25 percent of all aged-out males will have been incarcerated . . .”).



Further, when looking more specifically at youth aging out of foster care in Nebraska, the Bridge to Independence program provides additional programs to those who age out, but the majority of its programs are available only to individuals who are citizens.<sup>165</sup> Due to the lack of programming available to immigrant juveniles, they face even more adversity in Nebraska than their citizen peers.

Immigrant juveniles need increased protections until they turn twenty-one because they lack supportive programming while facing greater hardships than their peers. The best way to provide the necessary protection for the immigrant juvenile population in Nebraska is to expand access to SIJS until the immigrants turn twenty-one. Upon expanding access, fewer members of the vulnerable population will age out during the pendency of their applications,<sup>166</sup> and more immigrant juveniles will have the chance to obtain SIJS during their vulnerable transition into adulthood.<sup>167</sup>

#### IV. CONCLUSION

Gaining SIJS in the United States is a long, complicated, and exhausting process for immigrant youth seeking a home in the United States away from abuse, abandonment, and neglect. The process, with both state and federal government involvement, lacks uniformity across the country.<sup>168</sup> Some states attempt and succeed in making SIJS harder for immigrant juveniles to obtain.<sup>169</sup> Others, like Nebraska, have taken steps toward an easier and more encompassing process.<sup>170</sup> Although Nebraska took care to define the roles of state court judges in the SIJS process, affirmatively providing for authority to make the necessary predicate orders,<sup>171</sup> Nebraska still has a long way to go before matching the protections offered in states like Ore-

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165. *J.S. v. Neb. Dep't of Health & Hum. Servs.*, 306 Neb. 20, 22–23, 944 N.W.2d 266, 270–71 (2020) (“In this Administrative Procedure Act appeal, J.S., a noncitizen who was admitted into B2I, challenges the district court’s judgement affirming a state agency’s denial of Medicaid eligibility after she reached age 19. Essentially, we must decide whether the statutes or regulations she cites authorized her participation despite her immigration status and age. Because they do not, we affirm the judgement.” (footnotes omitted)).

166. *See supra* section III.D (discussing the implications of aging out).

167. *See supra* section III.D (discussing the vulnerability of juveniles aged eighteen to twenty-one).

168. *See supra* subsections II.D.1–2 (discussing the application of state law to the SIJS process, with some states making it harder for juveniles to obtain SIJS versus other states making it easier).

169. *See supra* subsection II.D.1 (discussing states like Florida, Missouri, and Ohio, which make SIJS harder to obtain).

170. *See supra* section III.A (discussing Nebraska’s amendment of section 43-1238 of the Revised Statutes of Nebraska).

171. *Id.*

gon, New Jersey, Massachusetts, and Connecticut.<sup>172</sup> If Nebraska expanded courts' jurisdiction over juveniles until twenty-one, Nebraska could better protect their immigrant juvenile population and provide them a necessary pathway to obtain lawful residence in the United States.

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172. *See supra* subsection II.D.2 (discussing the application of SIJS statutes in Oregon, New Jersey, Massachusetts, and Connecticut, including the expansion of SIJS protections for juveniles until age twenty-one).