

**FEERICK CENTER  
FOR SOCIAL JUSTICE**

**NEW YORK  
UNACCOMPANIED  
IMMIGRANT  
CHILDREN PROJECT  
FAMILY COURT  
WORKING GROUP**

**FINDINGS FROM A SURVEY OF LAWYERS  
REPRESENTING IMMIGRANT YOUTH  
ELIGIBLE FOR SPECIAL IMMIGRANT  
JUVENILE STATUS IN NYS FAMILY COURT**

**March 2014**



**FORDHAM UNIVERSITY**  

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# FEERICK CENTER FOR SOCIAL JUSTICE

Fordham Law School's Feerick Center for Social Justice seeks to develop concrete, achievable solutions to the discrete problems of urban poverty while educating and inspiring law students, serving the needs of low-income New Yorkers, and energizing and informing lawyers and the Fordham University community. To accomplish this goal, the Center engages in fact finding, policy research, legal analysis, convening, and consensus building, and combines the urgency of a social justice mission, the creativity of a problem-solving center, and the educational rigor of a law school.

## ACKNOWLEDGEMENTS

The primary authors of this report are the law students and recent graduates who developed and conducted the survey, sought feedback on preliminary findings, and drafted and edited the text. They are: New York Women's Bar Association Foundation Fellows Chrissie Cahill (Fordham '13), Jennifer Puchalski (Fordham '14), Lauren Irby (Fordham '15), and Sofia Linarte (Fordham '15), and Summer Law Interns Jessica Pulitzer (Cardozo '15), Kortni Hadley (NYU '15), and Jackeline Rodriguez (Fordham '13). All students worked in collaboration with and under the supervision of Dora Galacatos, Executive Director, and Olga Byrne, Project Director at the Feerick Center for Social Justice. We are also grateful for the work of the Feerick Center's Dean's Fellow, Anna Stallman, who edited and proofread several drafts, as well as Sienna College Summer Legal Fellows Marissa Potts and Sara Klock, and New York City Bar Association Thurgood Marshall Fellow Olufolarin Olubajo, who assisted in source checking and coding interviews.

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# EXECUTIVE SUMMARY

Immigrant youth who have suffered abuse, neglect, abandonment, or similar harms by a parent may be eligible for an immigration benefit called Special Immigrant Juvenile Status (“SIJS”), which renders most beneficiaries immediately eligible to adjust to legal permanent residence (or obtain a “green card”). To demonstrate eligibility, youth must obtain factual findings from a state court with jurisdiction to decide matters relating to juveniles. In New York, these special findings orders are most often sought in family court.

The Fordham Law School Feerick Center for Social Justice launched the New York Unaccompanied Immigrant Children Project (“the Project”) in January 2013 to engage and bring together a broad array of stakeholders, including legal and social service providers, policy makers, researchers, members of the community, and others working on immigrant children’s issues, to improve state and local policy and practice affecting immigrant youth. The Feerick Center’s work on this Project has given it unique access to a network of experts through which it learned that while SIJS has the potential to provide stability and protection to some of the most vulnerable youth, immigrants routinely encounter obstacles in accessing the family courts to seek the requisite factual findings. As a first step to address this problem, the Project’s Family Court Working Group undertook a survey to collect information on the nature and extent of these obstacles to accessing the courts.

Focused on lawyers who have experience representing immigrant youth in SIJS proceedings, this study surveyed 30 practitioners, many of whom work exclusively in this practice area at organizations that have been on the cutting edge of SIJS law since the federal law was enacted in 1990. While this study did not gather information directly from immigrant youth and their families or court personnel, the information gathered from practitioners has shed light on immigrants’ experiences in family court.

This report describes findings from the surveys and offers a series of recommendations, which were developed in collaboration with the co-chairs and members of the Project’s Family Court Working Group, which includes 19 individuals from 17 organizations.

## KEY FINDINGS INCLUDE:

- While survey respondents largely touted the family courts’ immigrant-friendly practices, they nevertheless reported that immigrant youth and their families who do not have immigration status may be reluctant to go to family court for fear of being reported to immigration enforcement authorities. Individuals with limited English language proficiency sometimes do not have meaningful access to court interpreters in languages other than Spanish.
- Immigrant families encounter obstacles to filing petitions with the family court, including being turned away by petition room clerks and difficulty obtaining court-ordered fingerprints.
- Attorneys working with SIJS-eligible youth and their families encounter case-processing delays related to procedural variations across counties, the OCFS 3909 form, and the lack of expeditious access to case status information.
- Immigrant youth do not always have meaningful access to counsel; while the New York State Bar Association Standards for Attorneys Representing Children require lawyers to screen for SIJS eligibility, this does not happen regularly in practice.

## RECOMMENDATIONS:

- The family court should strive to ensure that its protections and services remain available to immigrant families and citizens alike, recognizing that societal patterns of discrimination against immigrant youth and their families create special needs that the family court system is uniquely positioned to address. Among other things, the family court should consider adopting a written non-discrimination policy and periodic trainings on cultural awareness for court personnel.
- The family court should continue its efforts to provide interpreter services to all individuals with limited English language proficiency and fully implement *Court Interpreting in New York: A Plan of Action*, which was issued by the Office of Court Administration in 2006.

- The family court should formally adopt a non-cooperation policy clarifying that the family court will not share information related to immigration status with immigration enforcement officials.
- The family court should augment the ongoing training provided to clerks who work in the petition room, including both new and longtime court personnel, with detailed instructions on the statutory filing requirements for each type of petition. Such training should reinforce that state law prohibits rejection of court filings except in narrow circumstances.
- The family court should require its private contractors that conduct fingerprint checks to make their service accessible to noncitizens by accepting identification issued by foreign countries, such as foreign passports.
- The family court, in collaboration with OCFS, should seek to ensure that court personnel are trained on the purpose and process of completing the OCFS 3909 address history form to streamline processes and minimize unnecessary delay in case processing.
- The family court should make publicly available contact information for the guardianship clerk in each county.
- The family court should provide information in plain view at the courthouses and on the New York State Uniform Court System's website that would be helpful to pro se litigants as well as attorneys; specifically, information should be provided on the filing requirements for all types of petitions, what to expect during the fingerprinting process, and how to lodge a complaint. There should be transparency in the complaint process such that the family court provides information about what actions it is taking to meaningfully address complaints. All information should be made available in plain language in English, Spanish, and other commonly spoken languages.
- The family court should further explore the use of technology to improve efficiency in family court proceedings and facilitate systematic access to case status information to counsel and parties.
- The court should require education and training for members of the Attorneys for Children panel on SIJS to enhance and expand access to high-quality legal assistance for and identification of SIJS-eligible children and youth.
- The family court should permit SIJS-eligible children and youth to be represented by the counsel of their own choosing, consistent with Family Court Act Sections 241 and 249.
- Education and training should be provided or encouraged for family court judges, referees, and other court personnel on SIJS, including identifying potential eligibility for SIJS and adjudicating cases.
- The New York State Unified Court System should establish a statewide Standing Advisory Committee on immigrant youth and families. The Committee should address issues related to access to the courts; access to competent legal counsel, including pro bono counsel; procedural and substantive legal issues related to special immigrant juvenile motions; and any other issues related to serving immigrant youth and families. This Committee should include practitioners who specialize in representing immigrant youth, institutional providers, law firm pro bono coordinators, members of bar associations, child welfare agencies, and members of the immigrant community who have previously been involved in family court proceedings, in addition to judges and court personnel.

# INTRODUCTION

This report contains the findings from a telephone survey of practitioners conducted from March to July 2013 regarding their experiences in New York State family courts representing youth who are eligible for Special Immigrant Juvenile Status (“SIJS”) and recommendations to the New York State Office of Court Administration and administrative and supervising judges. Fordham Law School’s Feerick Center for Social Justice and its New York Unaccompanied Immigrant Children Project (“NYUICP” or “the Project”) developed the survey in collaboration with members of the Project’s Family Court Working Group. The NYUICP is a two-year effort focusing on local and state practice and policy pertaining to this vulnerable population. The Family Court Working Group is engaged in convening, fact finding, and legal and policy research with the intent of improving outcomes for SIJS-eligible children in that forum.

## I. BACKGROUND ON SPECIAL IMMIGRANT JUVENILE STATUS

New York State is home to a growing population of immigrants,<sup>1</sup> placing new pressures on the family courts and the child welfare system.<sup>2</sup> It is estimated that well over 1,000 children who enter foster care in New York State each year do not have legal immigration status.<sup>3</sup> Moreover, an increasing number of

children are fleeing abuse and neglect in other countries. Indeed, the number of migrant children traveling to the United States on their own<sup>4</sup> doubled in 2012 and is expected to have tripled by the end of 2013.<sup>5</sup>

Recognizing the need to provide a path to lawful permanent residency, Congress created Special Immigrant Juvenile Status, an immigration benefit designed to provide protection to certain immigrant youth on the grounds of abuse, neglect, abandonment, or similar basis under state law through a process by which they may acquire legal permanent residence in the United States.<sup>6</sup> SIJS involves a unique hybrid procedure requiring collaboration between state and federal systems. Section 101(a)(27)(J) of the Immigration and Nationality Act (“INA”) defines a Special Immigrant Juvenile as an immigrant “who has been declared dependent on a juvenile court . . . 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,” who cannot be reunified with one or both parents due to abuse,

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1 Based on Census data from the American Community Survey, the Center for Immigration Studies reported that the immigrant population in New York State grew by 11.1% from 2000 to 2010. Steven A. Camarota, *Immigrants in the United States, 2010: A Profile of America’s Foreign-Born Population*, CENTER FOR IMMIGRATION STUDIES 15 (2012), <http://www.cis.org/sites/cis.org/files/articles/2012/immigrants-in-the-united-states-2012.pdf>. In 2010, the U.S. Department of Homeland Security estimated that in New York State there were 50,000 undocumented minors and 55,000 undocumented young people between the ages of 18 and 24. See MICHAEL HOEFER ET AL., U.S. DEPARTMENT OF HOMELAND SECURITY, ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2010 5 (2011), available at [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2010.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf). While these estimates represent the undocumented population, many more may live in a legal limbo, moving in and out of legal immigration status.

2 NEW YORK STATE BAR ASSOCIATION, TASK FORCE ON FAMILY COURT: FINAL REPORT 51–53 (2013), available at <http://www.nysba.org/TFFCFinalReport/>.

3 See NEW YORK STATE BAR ASSOCIATION, COMMITTEE ON CHILDREN AND THE LAW, STANDARDS FOR ATTORNEYS REPRESENTING CHILDREN IN PERSON IN NEED OF SUPERVISION PROCEEDINGS § C-6 (2008), available at <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=33614>.

Recognizing the importance of enabling access to SIJS benefits for immigrant youth, New York City officials undertook commendable steps to improve the identification of SIJS-eligible youth in foster care by passing a municipal ordinance. N.Y.C. Admin. Code § 21-904 (2012).

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4 The Feerick Center’s project is focused on a population we term “unaccompanied immigrant children.” The Homeland Security Act of 2002 defines an “unaccompanied alien child” as an individual under 18 years of age who has no lawful immigration status in the United States and for whom no parent or legal guardian is available to provide care and physical custody. Homeland Security Act of 2002, 6 U.S.C.A. § 279(g)(2) (2008). While the Immigration and Nationality Act uses the term “alien” to refer to all noncitizen individuals, we consider the term “unaccompanied immigrant children” equivalent. Some of these children, who have been classified as “unaccompanied” by the U.S. Department of Homeland Security (“DHS”) upon apprehension for allegedly violating immigration laws, are eligible for SIJS. The challenges identified and discussed in this report apply to all SIJS-eligible children, which also includes those whom DHS classifies as “accompanied children,” youth who are over 18, and children and youth who have not had any contact with DHS.

5 See Julia Preston, *Young and Alone, Facing Court and Deportation*, N.Y. Times (Aug. 25, 2012), <http://www.nytimes.com/2012/08/26/us/more-young-illegal-immigrants-face-deportation.html> (“Young migrants say they are fleeing sharply escalating criminal violence in their home countries.”); Cindy Chang, *Unaccompanied migrant youth in U.S. detention centers rises 50%*, L.A. Times (Oct. 16, 2012), <http://articles.latimes.com/2012/oct/16/local/la-me-immigration-children-20121016> (“In interviews conducted with 151 children in federal holding facilities, nearly 80% told researchers that violence was the main reason they set out for the U.S. by themselves . . .”) (referencing WOMEN’S REFUGEE COMMISSION, FORCED FROM HOME: THE LOST BOYS AND GIRLS OF CENTRAL AMERICA (Oct. 2012), available at <http://womensrefugeecommission.org/forced-from-home-press-kit> (follow “Forced From Home: The Lost Boys and Girls of Central America (full report)” hyperlink)).

6 Immigration and Nationality Act of 1990 (INA), 8 U.S.C.A. § 1101(a)(27)(J) (2013).

neglect, abandonment, or a similar basis under state law.<sup>7</sup> Under the SIJS statutory scheme, state courts are called upon to make factual determinations related to family reunification and the best interests of the child. The youth must make a motion requesting that a state court judge sign an order making these factual findings as well as a determination that it is not in the youth's best interest to return to his or her home country.<sup>8</sup> In New York State, SIJS-related cases are most commonly heard in family court.<sup>9</sup> Youth or adults acting on their behalf have submitted motions for special findings and the family court has found the youth dependent in the context of guardianship, custody, adoption, paternity, Persons in Need of Supervision, child protective, delinquency, and other proceedings.

State court factual findings, standing alone, do not endow the young person with legal permanent residence or any other immigration benefit. Rather, these special findings orders enable the youth to apply to U.S. Citizenship and Immigration Services ("USCIS") for special immigrant juvenile status and adjustment of status to lawful permanent residence.<sup>10</sup> USCIS will consider the special findings order, as well as other factors, when deciding on the youth's application.<sup>11</sup> The number of applications submitted to USCIS has recently increased. In 2012, approximately 678 individuals applied to USCIS for SIJS

in New York State.<sup>12</sup> By contrast, prior to 2009, less than 150 individuals in New York applied to USCIS for SIJS annually.<sup>13</sup> Nevertheless, some experts feel that SIJS continues to be underutilized, due to under-identification of cases, young people's lack of knowledge about the law, and other structural barriers.<sup>14</sup>

Many of our survey respondents made positive remarks about family court services to the immigrant community, particularly as compared to five or ten years ago. They noted marked progress with regard to court personnel's handling of SIJS petitions and dealings with litigants. However, there is a need for improved understanding about the needs of immigrant youth and training on the complex law underlying SIJS.<sup>15</sup> Given the growing population of immigrants in New York State and the particular vulnerability of SIJS-eligible youth, these issues warrant attention from family court personnel, practitioners, and policy makers.

## II. THE NEW YORK UNACCOMPANIED IMMIGRANT CHILDREN PROJECT AND THE FAMILY COURT WORKING GROUP

In January 2013, Fordham Law School's Feerick Center for Social Justice launched the New York Unaccompanied Immigrant Children Project, which aims to bring together a broad array of stakeholders to improve state and local policy and practice affecting immigrant youth. The Project seeks to engage policy makers, child and youth service providers,

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7 *Id.* The meaning of juvenile court is defined by federal law. 8 C.F.R. § 204.11(a) (2009). *See also* ANGIE JUNCK ET AL., IMMIGRANT LEGAL RESOURCE CENTER, IMMIGRATION BENCHMARK FOR JUVENILE AND FAMILY COURT JUDGES 12 (2010) available at [http://www.ilrc.org/files/2010\\_sijs\\_benchmark.pdf](http://www.ilrc.org/files/2010_sijs_benchmark.pdf) (citing 8 C.F.R. § 204.11(a) (2009)) ("The term 'juvenile court' means a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. In many states, this includes courts that handle dependency cases, guardianship cases, delinquency cases or adoption cases. Whether a court is a 'juvenile court' under the federal definition is not determined by the label that the state gives the court, but rather the function of the court.") [hereinafter JUNCK ET AL., ILRC].

8 JUNCK ET AL., ILRC, *supra* note 7, at 3–7.

9 SIJS petitions can be filed in other courts as well, including surrogate's and supreme Court.

10 *Matter of Marcelina M.-G. v. Israel S.*, 973 N.Y.S.2d 714, 720-21 (2d Dep't 2013). USCIS will consider the youth's background, including any factors that would constitute grounds of inadmissibility or bars to adjustment of status. *See* David B. Thronson, *Kids Will Be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law*, 63 OHIO ST. L.J. 979, 162–168 (2002) ("Though critical decisions affecting eligibility are delegated to juvenile courts, the INS retains authority over the final immigration determination. For example, grounds of inadmissibility and bars to adjustment of status, which apply to all immigrants, generally are applied to special immigrant juveniles.")

11 8 U.S.C. § 1255(h) (2008).

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12 Interview by Olga Byrne with Eileen Matuszak, Management and Program Analyst, U.S. Citizenship & Immigration Services (May 14, 2013). We expect that most of these youth obtained the special findings order from a family court; however, it is possible that some obtained the special findings order in a supreme court or other New York State court.

13 *See* Jacqueline Bhabha and Susan Schmidt, IMMIGRATION BRIEFINGS, *From Kafka to Wilberforce: Is the U.S. Government's Approach to Child Migrants Improving?*, No. 11-12, at 22 (Feb. 2011). The William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 expanded the statutory definition of SIJS. *See* Memorandum from Donald Neufeld, Acting Associate Director of Domestic Operations, and Pearl Chang, Acting Chief of the Office of Policy & Strategy, U.S. Citizenship and Immigration Services (Mar. 24, 2009) (providing a detailed explanation of the expanded definition of and eligibility criteria for Special Immigrant Juvenile Status), available at [http://www.uscis.gov/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/TVPPRA\\_SIJ.pdf](http://www.uscis.gov/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPPRA_SIJ.pdf).

14 Kristen Jackson, *Special Status Seekers*, L.A. Lawyer, Feb. 2012, at 20, 22.

15 *See, e.g.*, JOHN A. MARTIN ET AL., CENTER FOR PUBLIC POLICY STUDIES, ADDRESSING IMMIGRATION IN THE STATE COURTS 8 (2009) ("[K]nowledge about the composition, needs, and implications for [state] court services of both the legal and undocumented immigrant communities is fragmented . . ."), available at [http://www.sji.gov/PDF/Addressing\\_Immigration\\_in\\_the\\_State\\_Courts.pdf](http://www.sji.gov/PDF/Addressing_Immigration_in_the_State_Courts.pdf).

family court and immigration practitioners, child advocates, researchers, members of the community, and others working on immigrant children's issues. The Project has organized its work into four working groups focused on: the family court, fact finding and research, pro bono and access to justice, and model state statutes.<sup>16</sup> Family Court Working Group participants include representatives from the organized bar, the nonprofit sector, law firms, academia, and government. Working Group co-chairs and members are listed in Appendix A.

Through convenings with experts in the field, we learned that while SIJS has the potential to provide protection to some of the most vulnerable youth, eligible young people and caretakers routinely encounter obstacles in accessing the family courts to seek the requisite factual findings.<sup>17</sup> The Family Court Working Group determined that as a first step to address this problem, it would undertake a survey to collect information on the nature and extent of these obstacles to accessing the courts.<sup>18</sup>

The Feerick Center consulted with expert practitioners and the Working Group chairs to develop a survey designed to collect information regarding barriers to access to the family courts encountered by SIJS-eligible youth, their caretakers, and their counsel. This report presents findings and some recommendations. We hope that this information will be helpful to court administrators and other stakeholders who work on matters related to SIJS-eligible youth and who serve this vulnerable population. To the extent some of the identified issues relate to family court cases generally, we hope the Court will consider implementing these recommendations with the view of benefiting the broader community.

### III. METHODOLOGY

The Working Group undertook an information-gathering process that combined open-ended, introductory conversations with specialized legal service providers, telephone surveys involving a semi-structured questionnaire with practitioners who have represented youth in SIJS cases, and two group discussions with practitioners and other experts to review preliminary findings and analyses from the surveys.<sup>19</sup> The objective in our early conversations with specialized legal service providers was to identify the key issues presenting challenges to youth and their legal counsel, which would allow us to draft a semi-structured questionnaire. We were particularly interested in examining obstacles in accessing the court, rather than substantive legal challenges. The initial conversations identified three problematic areas: fingerprinting, pro se litigants' difficulty filing petitions, and guardianship for youth between 18 and 21 years old.

We developed a survey that asked brief questions about the respondent's background representing immigrant youth. Surveys began with a general question about the respondent's experiences filing SIJS-related petitions in family court, then asked about the three problematic areas identified in earlier conversations (if these issues were not already raised by the respondent). Surveys concluded with an open-ended question regarding any additional issues or recommended solutions to the problems identified.

To identify survey participants, the Working Group reached out to practitioners through a listserv of professionals representing SIJS-eligible youth in New York State, to organizations and associations referred by other practitioners, and by word of mouth. The Working Group made a targeted effort to contact lawyers from Attorneys for Children panels by reaching out to training coordinators in the First and Second Departments. Two Fordham Law School students conducted the surveys under the supervision of Olga Byrne and Dora Galacatos of the Feerick Center, speaking with thirty practitioners who have experience assisting young people seeking SIJS special findings

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16 In addition to the Family Court Working Group, the Fact Finding and Research Working Group strives to fill gaps in knowledge related to undocumented children's experiences in the community and contacts with various systems; the Model Statutes Working Group is developing model state statutory provisions and policy recommendations to promote fairness and uniformity in state proceedings concerning undocumented immigrant children; and the Access to Justice Working Group has developed trainings on SIJS for family court practitioners.

17 See FEERICK CENTER FOR SOCIAL JUSTICE, NEW YORK CITY CONVENING ON UNACCOMPANIED IMMIGRANT CHILDREN: CONFERENCE CONCLUSIONS (2012), available at [http://law.fordham.edu/assets/FeerickCenter/2012\\_Feerick\\_Center\\_Unaccompanied\\_Immigrant\\_Children\\_\(Conclusions\).pdf](http://law.fordham.edu/assets/FeerickCenter/2012_Feerick_Center_Unaccompanied_Immigrant_Children_(Conclusions).pdf).

18 The Family Court Working Group is chaired by Marilyn Flood, Counsel to the New York County Lawyers' Association, and Theo Liebmann, Clinical Professor of Law and Director of Clinical Programs, Maurice A. Dean School of Law, Hofstra University.

19 Attendance at the two group meetings included practitioners (many of whom participated in the survey); other attorneys working in policy or program development; and government personnel from the New York City Administration for Children's Services, the New York State Bureau of Refugee and Immigrant Assistance, and the New York State Office of Children and Family Services.

in family court. In order to promote discussion and allow for follow-up questions, the students conducted the surveys by telephone. The survey questionnaire is attached as Appendix B.<sup>20</sup>

The thirty survey respondents included representatives from the broad spectrum of attorneys handling these cases, including highly specialized practitioners from nonprofit and legal services organizations, law firm attorneys and solo practitioners who provide pro bono representation, law school clinics and programs, and members of the panels of Attorneys for Children. Some respondents exclusively represent unaccompanied children who have been apprehended by immigration law enforcement and placed in removal proceedings. However, for at least one respondent, most of his SIJS cases involved affirmative applications on behalf of youth not in removal proceedings. One respondent litigated SIJS cases for foster youth only. Fourteen respondents specialized in providing legal representation to immigrant youth, with a high concentration of SIJS cases. The remaining respondents had varying levels of experience with SIJS matters, although we sought practitioners who had handled at least three cases during the past year.

We surveyed a significant sample of practitioners who file the majority of SIJS petitions in New York State.<sup>21</sup> Furthermore, several organizations represented in our survey, including the Door, the Legal Aid Society, and Catholic Charities Community Services, have been on the cutting edge of SIJS practice since the federal law was enacted. A number of the respondents focus exclusively on this area of the law, carrying a caseload of over 100 SIJS cases. Survey respondents have practiced in family courts in Albany, Bronx, Columbia, Greene, Kings, Livingston, Nassau, New York, Orange, Orleans, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, and Westchester counties.

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20 The survey was adapted several times to accommodate additional information or knowledge we acquired during the information-gathering process. The survey attached in Appendix B is the final version. All survey responses are on file with the Feerick Center for Social Justice.

21 Of the 678 individuals who filed SIJS applications with USCIS in calendar year 2012, we believe well over half were represented by our survey respondents. Several survey respondents carry a caseload that consistently includes over 100 SIJS cases and other survey respondents carry caseloads ranging from 10 to 75 cases.

After conducting approximately five surveys, it was evident that practitioners, particularly those with a high level of expertise, were interested in speaking about issues beyond the three main areas identified in the earlier conversations. The Working Group adapted the survey to include prompts related to additional issues identified by the survey respondents and several open-ended questions.

This survey has several limitations. Our data has been collected through self-reported responses from a relatively small, though significant, sample of self-selected practitioners. Given the exceptional vulnerability of SIJS-eligible children and the protections and rights they can access through SIJS, additional and more extensive fact finding focused on the adjudication of SIJS-related cases in New York State courts is warranted. We recommend that future research include a broader array of respondents, including court personnel (clerks, court attorneys, judges, court administrators, and referees); litigants (children, youth, and guardians); greater numbers of practitioners, especially more panel attorneys and institutional providers; and a broader geographic area.

#### **IV. FINDINGS AND RECOMMENDATIONS**

Through our surveys and follow-up discussions with practitioners, we gathered information about the challenges and obstacles experienced by litigants and their legal counsel with SIJS-related cases in family courts. Our findings are described below in four sections: the particular needs and vulnerabilities of the immigrant community; case filing and processing; ensuring access to competent counsel; and training and coordination. In each section, we recommend possible solutions or steps toward developing a solution. The Family Court Working Group understands that addressing these findings presents a difficult task especially given the very challenging fiscal constraints faced by the courts, but meeting the challenge could allow the courts to better meet the needs of SIJS-eligible immigrant youth and perhaps benefit the broader community of families in need of family court intervention.

## A. THE PARTICULAR NEEDS AND VULNERABILITIES OF THE IMMIGRANT COMMUNITY

Globally, migrants and refugees are highly vulnerable to racism, xenophobia, and discrimination.<sup>22</sup> Within the United States, some state and local governments have passed discriminatory laws that profile immigrants and exclude them from housing, health care, and even education.<sup>23</sup> New York, on the other hand, has a strong history as an immigrant-friendly state. In 2003, recognizing that undocumented immigrants may avoid accessing needed services in fear that their lack of immigration status will be reported to immigration law enforcement,<sup>24</sup> then Mayor Bloomberg signed into law Executive Order No. 41, prohibiting New York City agencies from disclosing an individual's immigration status except under certain limited circumstances.<sup>25</sup> In 2011, Governor Cuomo issued Executive Order No. 26, directing state agencies to provide language assistance services to people of limited English language proficiency and develop a Language Access Plan.<sup>26</sup>

Overall, survey respondents applauded the New York family court system for its understanding of immigrant issues and overwhelmingly provided positive feedback on their experiences representing immigrant youth in this forum. They touted the fact that citizenship or lawful immigration status is not, under New York law, a prerequisite for finding an adult suitable to care for a child. Survey respondents with several years of experience representing immigrant youth noted that court personnel have increasingly improved access to services for this growing population. Nevertheless, some attorneys who participated in this

survey reported courtroom experiences that give the impression that some adjudicators treat immigrant youth seeking SIJS differently than they would treat U.S. citizen youth.<sup>27</sup>

Survey respondents also generally praised the courts' efforts to provide interpreters, particularly to Spanish speakers. The Working Group is aware that the New York State Office of Court Administration's Action Plan to improve the quality and manner in which court interpreting services are provided has helped make New York a national leader among court systems in meeting the needs of individuals with limited English language proficiency.<sup>28</sup> The Uniform Rules for New York State Trial Courts provide that the court will appoint an interpreter for parties, witnesses, or an interested parent or guardian of a minor who is not able to meaningfully participate in the proceedings due to limited English language proficiency.<sup>29</sup> Interpreters will also be provided at the clerk's office "in accordance with the needs of the person seeking assistance and the availability of court interpreting services."<sup>30</sup> However, one survey respondent, who represents Asian youth and families, stated that interpreters are not always provided for Mandarin speakers, particularly in Kings County.<sup>31</sup> Bengali, Urdu, and Korean were also cited as languages that are not adequately served by court interpreters.<sup>32</sup>

Finally, notwithstanding the family court's efforts to ensure the accessibility of the court to immigrant families, undocumented individuals may be apprehensive about family court procedures due to fear that their immigration status will be reported to federal immigration law enforcement.

22 See INTERNATIONAL LABOUR OFFICE ET AL., INTERNATIONAL MIGRATION, RACISM, DISCRIMINATION AND XENOPHOBIA (2001), available at <http://www.unesco.org/most/migration/imrdx.pdf>.

23 See HUMAN RIGHTS WATCH, UNITED STATES: NO WAY TO LIVE: ALABAMA'S IMMIGRATION LAW (2011), available at [http://www.hrw.org/sites/default/files/reports/us1211ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us1211ForUpload_1.pdf).

24 See generally YALI LINCROFT AND JENA RESNER, ANNIE E. CASEY FOUNDATION, UNDERCOUNTED. UNDERSERVED: IMMIGRANT AND REFUGEE FAMILIES IN THE CHILD WELFARE SYSTEM (2006), available at <http://www.aecf.org/upload/publicationfiles/ir3622.pdf>.

25 City of New York Office of the Mayor, Exec. Order No. 41 (Sep. 17, 2003), available at <http://www.nyc.gov/html/imm/downloads/pdf/co-41.pdf>.

26 State of New York Office of the Governor, Exec. Order No. 26 (Oct. 6, 2011), available at <http://www.governor.ny.gov/executiveorder/26>. Similarly, the City of New York developed Executive Order No. 120, creating a language access policy, which mandates that all New York City agencies providing direct public services create a language access implementation plan to ensure meaningful access to their services by all residents, including those with limited English proficiency. City of New York Office of the Mayor, Exec. Order No. 120 (July 22, 2008), available at <http://www.nyc.gov/html/imm/downloads/pdf/co-120.pdf>.

27 Interview 21 (May 8, 2013) (noting an instance in which a judge asked an immigrant child to remove his clothes to prove he had scars from parental beatings, and other instances of adjudicators making off-the-record remarks, calling SIJS "sham guardianship"); Interview 19 (May 6, 2013) (noting that judges are less open to granting special findings in PINS or delinquency cases because they "don't want these kids in the country"); Interview 2 (Feb. 14, 2013) (noting that some judges seem to carry an assumption that immigrant youth are not credible); Interview 28 (May 22, 2013) (noting a "skepticism" among judges in Kings County of immigrant youth's motivations); Interview 29 (May 23, 2013) (stating that one judge remarked that guardianship is becoming "the new fraud marriage"); Interview 30 (July 10, 2013) (describing a case before a judge in Albany County where the judge made demeaning remarks about the "Asian culture" in reference to the petitioner and her family, who were of Iraqi origin).

28 See NEW YORK STATE UNIFIED COURT SYSTEM, COURT INTERPRETING IN NEW YORK: A PLAN OF ACTION: MOVING FORWARD 12 (2011), available at <http://www.nycourts.gov/publications/pdfs/ActionPlanCourtInterpretingUpdate-2011.pdf>.

29 N.Y.S. Uniform Rules § 217.1 (2007).

30 *Id.* § 217.2.

31 Interview 29 (May 23, 2013).

32 *Id.*

- *Recommendation 1:* The family court should strive to ensure that its protections and services remain available to immigrant families and citizens alike, recognizing that societal patterns of discrimination against immigrant youth and their families create special needs that the family court system is uniquely positioned to address. Among other things, the family court should consider adopting a written non-discrimination policy and periodic trainings on cultural awareness for court personnel.
- *Recommendation 2:* The family court should continue its efforts to provide interpreter services to all individuals with limited English language proficiency and fully implement *Court Interpreting in New York: A Plan of Action*, which was issued by the Office of Court Administration in 2006.
- *Recommendation 3:* The family court should formally adopt a non-cooperation policy clarifying that the family court will not share information related to immigration status with immigration enforcement officials.

## B. CASE FILING AND PROCESSING

Obstacles in filing petitions and case-processing delays not only waste limited court and counsel resources, but also may prevent a child from seeking relief from the court or delay adjudication.<sup>33</sup> Survey respondents described obstacles and delays with respect to filing petitions, fingerprinting, the address history form, and the general lack of notification from the courts.

### 1. Filing Petitions, in Particular for Pro Se Litigants

New York State law mandates that court clerks accept papers for filing, with limited and narrow exceptions.<sup>34</sup> Respondents cited examples of petition room clerks providing exceptionally

high-quality assistance to pro se litigants and pro bono counsel in filing petitions; some respondents made particular mention of the guardianship clerks in certain counties.<sup>35</sup> Unfortunately, despite the excellence of some clerks and the statutory requirement that clerks accept papers, numerous respondents reported that court personnel turned away unrepresented petitioners, preventing youth from accessing a family court judge or requiring that the litigant return to court accompanied by an attorney. Respondents noted this problem in cases involving guardianship for a youth between the ages of 18 and 21, undocumented guardians, and youth who self-petition for guardianship.<sup>36</sup> Two respondents noted that clerks rejected petitions without explaining why they did so.<sup>37</sup> In the Bronx, for example, an unrepresented petitioner was prevented from filing, but when the child's pro bono attorney later accompanied the petitioner to the court, the clerk readily accepted the petition.<sup>38</sup> Immigrant families may be at an even greater disadvantage than other unrepresented litigants in family court due to limited English proficiency, unfamiliarity with the legal system, and possible fear of undocumented status being reported to immigration enforcement officials.

New York State law makes clear that guardianship is available for young people until the age of 21.<sup>39</sup> Despite this express statutory language, several respondents reported difficulties in filing

33 The TVPRA of 2008 clarified that a youth's eligibility for SIJS is determined by the date of filing with USCIS. William Wilberforce Trafficking Victims Protection Act of 2008 (TVPRA) 8 U.S.C.A. § 1232(d)(6) (2013).

34 N.Y. Family Ct. Act § 216-c(b)-(c) (1981) ("No clerk of the court or probation officer may prevent any person who wishes to file a petition from having such petition filed with the court immediately" and "[i]f there is a question regarding whether or not the family court has jurisdiction of the matter, the petition shall be prepared and the clerk shall file the petition and refer the petition to the court for determination of all issues including the jurisdictional question"); N.Y. C.P.L.R. 2102(c) (2008) ("A clerk shall not refuse to accept for filing any paper presented for that purpose except where specifically directed to do so by statute or rules promulgated by the chief administrator of the court, or order of the court.").

35 Telephone conversation with Family Court Working Group members (Sep. 16, 2013) (noting that the guardianship clerks in Nassau, Kings, and Bronx Counties were particularly helpful).

36 Interview 28 (May 22, 2013) (reporting having come across cases where pro se petitions are refused by the clerk's office); Interview 18 (Apr. 18, 2013) (noting that interviewee's law firm has established a policy whereby pro bono counsel accompany pro se guardianship petitioners to file the petition in the clerk's office); Interviews 10 & 11 (Mar. 22, 2013) (recounting an instance in Suffolk County Family Court where clerk rejected guardianship petition because the address of the child and the address of the proposed guardian differed); Interview 2 (Feb. 14, 2013) (reporting instances of clerks refusing pro se petitioners in Greene and Kings County family courts); Interview 4 (Feb. 14, 2013) (noting difficulty of clients filing petitions in Queens County).

37 Interview 7 (Feb. 21, 2013) (suggesting that court administrators should address the practice whereby clerks turn litigants away and fail to provide any explanation); Interview 4 (Feb. 14, 2013) (noting that court personnel do not always provide an explanation when they refuse a petition for filing).

38 Interview 21 (May 8, 2013) (noting "a few times in the Bronx" in which an unrepresented litigant attempting to file a guardianship petition was turned away by the clerk's office and when respondent accompanied the litigant "there [wasn't] an issue").

39 N.Y. Family Ct. Act § 661 (2013)(a) (2013) ("For purposes of appointment of a guardian of the person pursuant to this part, the terms infant or minor shall include a person who is less than twenty-one years old who consents to the appointment or continuation of a guardian after the age of eighteen.").

guardianship petitions for youth ages 18 to 21 in clerks' offices<sup>40</sup> and a lack of familiarity about<sup>41</sup> and even some resistance to such petitions by adjudicators.<sup>42</sup> Likewise, several respondents reported incidents of clerks who refused petitions of undocumented guardians, and specified that they knew of such incidents occurring in Kings and Bronx County family courts.<sup>43</sup> One respondent reported that in Kings County a supervising clerk informed a petitioner that he could not file a guardianship petition because he was undocumented.<sup>44</sup>

Furthermore, respondents reported that youth who self-petition for a guardian to be appointed encounter resistance from clerks who refuse, or attempt to refuse, the filing of such a petition.<sup>45</sup> In New York, youth over the age of 14 have the right to self-petition for a guardian, and the form is available on the website of the New York State Unified Court System.<sup>46</sup>

Other obstacles encountered by litigants relate to misunderstandings about the necessary paperwork by the clerks receiving the petition. For example, one advocate described a guardianship case where a clerk stated that a consent to guardianship form must be filed with the petition, even though it is in fact not required by law.<sup>47</sup> This respondent noted that

clerks sometimes mistake common practices for requirements; when something is usually done in a particular court, a clerk might assume that this is a requirement even if it is not.<sup>48</sup> Another respondent complained of petition room clerks providing attorneys with incorrect information.<sup>49</sup>

Some of the situations described by respondents echo issues discussed by the Fund for Modern Courts in its Family Court Task Force report, titled *A Call to Action: The Crisis in Family Court*. The report found that while "many court clerks . . . were described as outstanding with *pro se* litigants . . . too many others . . . were described as acting as gatekeepers disallowing litigants the opportunity to file their petitions on grounds that have little or nothing to do with the jurisdiction of the court."<sup>50</sup> Regrettably, such gate-keeping practices, while they contravene the law, appear to occur with some regularity in SIJS-related cases so that some unrepresented litigants are turned away before even filing a petition in family court.

## 2. Fingerprinting / Criminal Background Check

The petition for the appointment of a "guardian of the person" must declare whether the guardian or any adult living in the home of the proposed guardian has been the subject of an indicated report or the subject of a child protective proceeding.<sup>51</sup> The New York State Office of Children and Family Services carries out this investigation by conducting a review of the New York State Central Register of Child Abuse and

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40 Interview 29 (May 23, 2013) (reporting difficulty in filing petitions because court personnel did not know that guardianship is available up to age 21); Interview 28 (May 22, 2013) (reporting same in Queens County); Interview 24 (May 15, 2013) (reporting same in Dutchess County and generally in upstate counties); Interview 21 (May 8, 2013) (reporting same in Bronx and Queens Counties); Interview 12 (Apr. 12, 2013) (same generally); Interview 7 (Feb. 21, 2013) (reporting same but that instances are "uncommon"); Interview 4 (Feb. 14, 2013) (reporting same in Queens County, but noting the problem does not exist in Nassau, Suffolk, and Rockland Counties); Interview 2 (Feb. 14, 2013) (reporting same, especially in Kings County).

41 Interview 15 (Apr. 16, 2013) (relating a case involving a SIJS petition in Bronx Family Court where the referee did not know that guardianship petitions are permitted up to age 21); Interview 12 (Apr. 12, 2013) (noting that Westchester County Family Court judge was unaware that 18- to 21-year-olds are eligible for guardianship).

42 Interview 21 (May 8, 2013) (stating that respondent had encountered judicial hostility to guardianship petitions on behalf of young people over the age of 18). See also *infra* Part IV.

43 Interview 29 (May 23, 2013); Interview 7 (Feb. 21, 2013) (reporting same but that respondent "had not seen that [occur] in years in New York City" except for one instance in Bronx County approximately one year ago); Interview 2 (Feb. 14, 2013) (reporting rejection of petition due to immigration status).

44 Interview 2 (Feb. 14, 2013).

45 Interview 29 (May 23, 2013).

46 See New York Family Court Form 6-1-a, Petition by Person Over 14 for Appointment Of Guardian of a Person Or Permanent Guardian, available at <http://www.nycourts.gov/forms/familycourt/pdfs/6-1-a.pdf> (last visited Oct. 29, 2013). However, this form is not available on certain family court websites, such as the Nassau Family Court website.

47 Interview 8 (Mar. 7, 2013); see also N.Y. Surrogate's Ct. P. Act § 1704 (2008).

48 Interview 8 (Mar. 7, 2013); see also Interview 3 (Feb. 14, 2013) (stating the same as to Westchester County).

49 Interview 3 (Feb. 14, 2013) (noted as to Westchester and Orange Counties). This complaint was repeated by other respondents. See also Interviews 25 & 26 (May 16, 2013); Interview 16 (Apr. 16, 2013).

50 The Task Force recommended, inter alia, that the family court establish and support in every county "self help centers that are staffed by knowledgeable and informed individuals and equipped with relevant print and electronic resources." THE FUND FOR MODERN COURTS, A CALL TO ACTION: THE CRISIS IN FAMILY COURT (2009), available at [http://www.moderncourts.org/documents/a\\_call\\_to\\_action.pdf](http://www.moderncourts.org/documents/a_call_to_action.pdf), at 19 [hereinafter Call to Action].

51 N.Y. Surrogate's Ct. P. Act § 1704(6) (2008) ("A petition for the appointment of a guardian of an infant must show: . . . (6) Whether the petitioner has knowledge that a person nominated to be a guardian therein, or any individual eighteen years of age or over who resides in the home of the proposed guardian is a subject of an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with the statewide central register of child abuse and maltreatment pursuant to title six of article six of the social services law, or has been the subject of or the respondent in a child protective proceeding commenced under article ten of the Family Court Act, which proceeding resulted in an order finding that the child is an abused or neglected child.").

Maltreatment.<sup>52</sup> By contrast, the petition for the appointment of a permanent guardian must include the results of a criminal background check of the guardian and any adult living in the home of the proposed permanent guardian in addition to a search of the New York State Central Register; such criminal background checks require the adults to present themselves for fingerprinting.<sup>53</sup> There is no statutorily mandated criminal background check for appointment of a guardian of the person. When family court adjudicators order criminal background checks in petitions for appointment of guardians of the person, they do so at their discretion.

Participants in our group meeting on July 16, 2013 recognized that the safety of the home environment is a proper concern of the court and adjudicators must have access to information in order to make sound decisions on whether to grant guardianship. In some cases, it may be warranted to take extra precautions by ordering that criminal background checks be conducted of the proposed guardian of the person as well as other adults residing in that person's home. However, in other instances, criminal background checks create obstacles to obtaining relief for SIJS-eligible youth.<sup>54</sup> Fingerprint applications are sometimes delayed by those processing

the background check and are occasionally lost.<sup>55</sup> As with other barriers to accessing the courts, inordinate delays in the processing of fingerprints can be detrimental to SIJS-eligible youth, especially those who are approaching their 21<sup>st</sup> birthdays.<sup>56</sup>

Undocumented household members who have no arrest history of any kind may nonetheless be apprehensive about presenting themselves to authorities for purposes of fingerprinting, solely for fear that their lack of immigration status will be reported to immigration law enforcement.<sup>57</sup> Although criminal background checks are not required in guardianship of the person petitions, survey respondents report that family court judges often request criminal background checks of the proposed guardian and all other adults residing in the guardian's household.<sup>58</sup> Furthermore, several respondents reported cases in which judges or referees required anyone over 18 residing in the youth's household to also be fingerprinted in cases where the youth and proposed guardian live in different homes.<sup>59</sup> Background checks should be conducted with a view to the circumstances in each case and with sensitivity to the challenges they may present. Overly extensive orders for background checks place an undue burden on the youth's ability to move forward with his or her guardianship case and may also place an undue burden on ancillary nonparties.

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52 N.Y. Surrogate's Ct. P. Act § 1706(2) (2008) ("The court shall inquire of the office of children and family services and such office shall inform the court whether or not a person nominated to be a guardian of such infant, or any individual eighteen years of age or over who resides in the home of the proposed guardian is a subject of an indicated report or in a report which is under investigation at the time of the inquiry, as such terms are defined in section four hundred twelve of the social services law, filed with the statewide central register of child abuse and maltreatment pursuant to title six of article six of the social services law. The office shall, upon completion of the investigation, inform the court as to the outcome of such investigation.")

53 *See id.* § 1704(8)(a)(v), (vi) (stating that "... the petition for appointment of a permanent guardian of an infant or child shall include ... (v) the results of the criminal history record check with the division of criminal justice services of the guardian and any person eighteen years of age or older residing in the guardian's household conducted by the office of children and family services pursuant to subdivision two of section three hundred seventy-eight-a of the social services law if such a criminal history record check has been completed; (vi) the results of a search of the statewide central register of child abuse and maltreatment records regarding the guardian and any person eighteen years of age or older residing in the guardian's household, including whether such person has been the subject of an indicated report conducted pursuant to subparagraph (e) of paragraph (A) of subdivision four of section four hundred twenty-two of the social services law, if such a search has been conducted ...").

54 Interview 7 (Feb. 21, 2013) (stating challenges related to fingerprinting are a "huge problem").

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55 Interview 29 (May 23, 2013) (reporting that technical glitches create delays and citing as an example the rejection of fingerprint applications if the application indicates "China" instead of "People's Republic of China"); Interview 22 (May 8, 2013) (describing problems with fingerprinting including lost fingerprints); Interview 13 (Apr. 16, 2013) (noting that the fingerprinting process can be "slow and inefficient").

56 Interview 22 (May 8, 2013) (noting that delays are detrimental to young people); Interview 13 (Apr. 16, 2013) (stating that in her experience, with regard to the fingerprinting requirements, the courts were insensitive to aging out cases).

57 Interview (May 8, 2013); Interviews 10 & 11 (Mar. 22, 2013); Interview 7 (Feb. 21, 2013).

58 Interview 24 (May 15, 2013) (noting that the "biggest difficulty pro se [litigants] have is getting fingerprints"); Interview 27 (May 16, 2013) (noting that while practice is not mandated, more people than necessary are required to be fingerprinted); Interview 7 (Feb. 21, 2013) (noting that this practice, while not actually required by law for appointment of guardians of the person, is the case "across the board").

59 Interview 27 (May 16, 2013) (reporting instance in Queens County where child lived with one person and proposed guardian lived somewhere else and the court ordered fingerprinting of all household members at both locations as well as court-ordered investigations at both locations); Interview 21 (May 8 2013) (reporting that "frequently judges require fingerprinting not only of the guardian and the guardian's over-18 household [members], but they also require fingerprinting of the child and the child's over-18 household [members], if the child doesn't live with the guardian"); Interview 15 (Apr. 16, 2013) (recounting case where judge required fingerprinting of household members in both youth's household and proposed guardian's household and the youth was about to age out).

Westchester and Nassau Counties present additional difficulties in obtaining the necessary fingerprints. Both counties employ private contractors which require U.S. government-issued identification that immigrants may not carry.<sup>60</sup> Advocates have developed several ways around these identification requirements, but these serve as only short-term solutions. In Nassau County, for example, if an individual does not have U.S. government-issued identification, attorneys may advise the individual to request fingerprints at a local police precinct and ask the police officer to sign an affidavit verifying the authenticity of the fingerprints. The individual must deliver the fingerprints and the police officer's affidavit in a sealed envelope to the family court clerk.<sup>61</sup> In Westchester County, individuals have an option to pay \$100 to have fingerprints taken elsewhere.<sup>62</sup> Nonprofit and pro bono attorneys have had to expend limited resources developing roundabout solutions to these fingerprinting requirements.

In Suffolk, there are additional delays in the fingerprinting process of up to three weeks for simply obtaining a fingerprinting appointment.<sup>63</sup> A three-week delay "can mean the difference between staying in the United States and deportation" in age-out cases.<sup>64</sup>

### 3. OCFS 3909 Form

Guardianship petitioners must complete the OCFS 3909 Form and submit it to the family court. The purpose of the form, which asks petitioners to list their address history going back 28 years, is to verify whether the person has been the subject of a report with the Statewide Central Register of Child Abuse and Maltreatment. While some respondents reported that they had no problems completing the form, others described great difficulties with this facet of the family court guardianship petition process, noting that it often causes

delays.<sup>65</sup> One advocate commented that courts have different requirements for how the forms should be completed and that clerks do not review them in a uniform manner.<sup>66</sup> For example, in Queens, a pro bono attorney was instructed by a clerk to ignore the instructions printed on the form and to complete it according to the clerk's directions.<sup>67</sup> Petitioners who have experienced homelessness or have moved frequently find the form particularly difficult to complete.<sup>68</sup>

The Feerick Center has had conversations with OCFS regarding the address history form and OCFS personnel agreed to consider clarifying the instructions on the form and to be available to work with the family court to streamline processes and minimize instances in which these forms are unnecessarily rejected.

### 4. Obtaining Case Status Information

Obtaining status information about cases from family court personnel presents another issue relating to case-processing concerns.<sup>69</sup> For example, survey respondents reported that they occasionally learn about documents missing from the case file, such as fingerprint results, only after appearing in court, at

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60 Interview 24 (May 15, 2013) (noting problem of requirement of United States-issued identification in order to process fingerprinting application); Interview 12 (Apr. 12, 2013) (noting that Westchester County contractor requires two forms of government-issued identification); Interview 4 (Feb. 14, 2013) (noting that in Nassau County the private contractor requires two forms of government-issued identification).

61 Interview 8 (Mar. 7, 2013).

62 Telephone conversation with Family Court Working Group members (Sep. 16, 2013).

63 Interview 4 (Feb. 14, 2013).

64 *Id.*

65 Interviews 25 & 26 (May 16, 2013) (noting that the form was rejected three times by the clerk); Interview 17 (Apr. 18, 2013) (noting that problems with the form are more common in Kings County Family Court; that it causes "massive delays;" and that she had a case where only the form was missing, she had to turn it in twice, the delays caused several adjournments, and the young person was 20 years of age and at risk of aging out); Interview 15 (Apr. 16, 2013) (describing the form as a "burdensome requirement" and noting instance involving a young person about to turn 21 in which the address form contained an error but the court failed to notify counsel).

66 Interview 4 (Feb. 14, 2013).

67 Interviews 25 & 26 (May 16, 2013).

68 *Id.*; Interview 16 (Apr. 16, 2013); Interview 7 (Feb. 21, 2013).

69 Interview 21 (May 8, 2013) (stating that generally, respondent found it difficult and nearly impossible to find out the information about the case prior to the next court hearing); Interview 17 (Apr. 18, 2013); Interview 14 (Apr. 16, 2013); Interview 16 (Apr. 16, 2013) (noting that lack of notification is an issue in SIJS cases); Interview 13 (Apr. 16, 2013) (stating that the courts never notify counsel if documentation is missing); Interview 8 (Mar. 7, 2013); Interviews 10 & 11 (Mar. 22, 2013) (noting that counsel learn about missing documents, such as fingerprint results, only at court appearances resulting in continuances and delays in the case); Interview 7 (Feb. 21, 2013) (stating that lack of notification is a problem for SIJS cases); Interview 4 (Feb. 14, 2013) (noting that the clerk will not contact counsel when there is a problem with the filing, such as missing fingerprints or that the OCSF form has been rejected); Interview 2 (Feb. 14, 2013) (stating that lack of notification is a problem for SIJS cases and that this problem has occurred in Kings and Westchester County Family Courts); Interview 17 (Apr. 18, 2013) (noting problem and that it occurs more frequently in Kings County); Interview 2 (Feb. 14, 2013) (reporting that lack of notification is a problem in SIJS cases and that the advocate had experienced it with cases in Kings and Westchester County Family Courts).

which time they must reschedule the court appearance pending production of the missing information.<sup>70</sup> Several respondents reported difficulty in contacting the appropriate clerk in a guardianship petition.<sup>71</sup> In addition, one respondent recounted an instance when the clerks did not notify counsel that the OCFS form had been rejected, resulting in counsel believing that the form was being processed while instead the petition was held in abeyance.<sup>72</sup> Survey respondents expressed concern about these delays.<sup>73</sup> As noted above, delays are especially problematic for age-out cases, which require expediency.<sup>74</sup> At the same time, the Working Group notes the critical importance of practitioners' obligation to file cases in a timely manner and to exercise all due efforts to ensure that SIJS-eligible youth do not needlessly age out.

Various reports have documented the well-known problem of delayed family court adjudications, which involve, among other issues, multiple adjournments, inefficient case processing, and difficulty in parties and counsel obtaining information from the court about the status of cases.<sup>75</sup> These challenges are endemic to the family courts and not specific to cases involving immigrant youth. As with other urgent family court matters, which often implicate fundamental rights tied to safety and family unity, many respondents expressed frustration with the impact of these limitations on the lives of SIJS-eligible children and youth.

70 Interviews 10 & 11 (Mar. 22, 2013) (noting that counsel learned about missing documents, such as fingerprint results, only at court appearances resulting in continuances and delays in the case).

71 Interviews 25 & 26 (May 16, 2013); Interview 21 (May 8, 2013) (recounting incident during which respondent had difficulty contacting clerk in Richmond County); Interview 16 (Apr. 16, 2013) (describing the challenge of contacting the appropriate clerk in family court); Interview 8 (Mar. 7, 2013) (same); Interview 2 (Feb. 14, 2013) (same as to Greene County); Interview 4 (Feb. 14, 2013) (same generally).

72 Interview 4 (Feb. 14, 2013). A similar case was recounted by a pro bono attorney. Interview 15 (Apr. 16, 2013).

73 Interview 18 (Apr. 18, 2013); Interview 17 (Apr. 18, 2013) (noting case for which a missing State Central Register report and lack of notification from the court caused significant delays).

74 Interview 15 (Apr. 16, 2013) (noting instance involving a young person about to turn 21 in which the address form contained an error but the court failed to notify counsel); Interview 7 (Feb. 21, 2013) (noting that lack of notification can be particularly frustrating in age-out cases).

75 NEW YORK COUNTY LAWYERS' ASSOCIATION, TASK FORCE ON THE FAMILY COURT: JULY 2010 INITIAL REPORT (2010), available at [https://www.nycla.org/siteFiles/Publications/Publications1381\\_0.pdf](https://www.nycla.org/siteFiles/Publications/Publications1381_0.pdf), at 36 ("Participants in NYCLA's two conferences on the Family Court, as well as members of the Task Force on the Family Court, discussed the trial process in Family Court and identified delay in proceedings as the most serious issue."); CALL TO ACTION, *supra* note 50, at 12 ("There is [in Family Courts] excessive re-scheduling of cases and months pass between adjournments.").

- *Recommendation 4:* The family court should augment the ongoing training provided to clerks who work in the petition room, including both new and longtime court personnel, with detailed instructions on the statutory filing requirements for each type of petition. Such training should reinforce that state law prohibits rejection of court filings except in narrow circumstances.
- *Recommendation 5:* The family court should require its private contractors that conduct fingerprint checks to make their service accessible to noncitizens by accepting identification issued by foreign countries, such as foreign passports.
- *Recommendation 6:* The family court, in collaboration with OCFS, should seek to ensure that court personnel are trained on the purpose and process of completing the OCFS 3909 address history form to streamline processes and minimize unnecessary delay in case processing.
- *Recommendation 7:* The family court should make publicly available contact information for the guardianship clerk in each county.
- *Recommendation 8:* The family court should provide information in plain view at the courthouses and on the New York State Uniform Court System's website that would be helpful to pro se litigants as well as attorneys; specifically, information should be provided on the filing requirements for all types of petitions, what to expect during the fingerprinting process, and how to lodge a complaint. There should be transparency in the complaint process such that the family court provides information about what actions it is taking to meaningfully address complaints. All information should be made available in plain language in English, Spanish, and other commonly spoken languages.
- *Recommendation 9:* The family court should further explore the use of technology to improve efficiency in family court proceedings and facilitate systematic access to case status information to counsel and parties.

### C. FACILITATING ACCESS TO COMPETENT COUNSEL

The New York State Bar Association (“NYSBA”) Standards for Representing Children require that attorneys “determine at the outset of the case whether the child is an undocumented immigrant.”<sup>76</sup> The Standards further provide that attorneys representing children in child protective, foster care, or termination of parental rights proceedings “should be familiar with [the SIJS] statute in order to determine whether the young person is eligible . . . . If the young person is SIJS eligible, the attorney should obtain the family court orders required in order to adjust the young person’s immigration status and connect them with appropriate immigration resources so that the child can obtain a green card.”<sup>77</sup> Attorneys representing children in guardianship and persons in need of supervision (“PINS”) proceedings are also required to screen for SIJS eligibility, as well as in custody, visitation, or support proceedings.<sup>78</sup> The Working Group hopes that in the future this screening requirement will be placed on attorneys representing children in delinquency proceedings.<sup>79</sup> The NYSBA Standards for Representing Children advise attorneys to consult with immigration attorneys before giving immigration advice, due to the complexity of immigration law.<sup>80</sup>

The panel attorneys surveyed for this report stated having had

very little or no training on SIJS.<sup>81</sup> One of the panel attorneys had learned about SIJS only through previous work experience at a child welfare agency.<sup>82</sup> All felt that additional training on SIJS would be helpful.<sup>83</sup> Some respondents who specialize in legal services for immigrant youth and who have worked collaboratively with panel attorneys on cases recommended mandatory training for panel attorneys.<sup>84</sup> The Feerick Center has been collaborating with the New York City Bar Association’s Immigration and Nationality Law Committee and with court personnel from the First and Second Departments to develop trainings for panel attorneys.

Pro bono counsel also play an important role in advocating for immigrant youth. Unfortunately, according to our survey, pro bono attorneys representing immigrant youth sometimes find family courts to be intimidating and do not feel as welcome in family court as in other fora.<sup>85</sup> For example, in each immigration court, one judge, designated as the “pro bono liaison judge,” interacts with entities outside the court to facilitate pro bono representation.<sup>86</sup> In a practice area where the need for enhanced access to justice is urgent, these experiences in family court merit attention.<sup>87</sup> Practitioners representing immigrant children

76 NEW YORK STATE BAR ASSOCIATION COMMITTEE ON CHILDREN AND THE LAW, Standards for Attorneys Representing Children in Child Protective, Foster Care, and Termination of Parental Rights Proceedings § C-7 (2008); NEW YORK STATE BAR ASSOCIATION COMMITTEE ON CHILDREN AND THE LAW, Standards for Attorneys Representing Children in Custody, Visitation, and Guardianship Proceedings § C-8 (2008).

77 NEW YORK STATE BAR ASSOCIATION COMMITTEE ON CHILDREN AND THE LAW, Standards for Attorneys Representing Children in Child Protective, Foster Care, and Termination of Parental Rights Proceedings § C-7 (2008).

78 NEW YORK STATE BAR ASSOCIATION COMMITTEE ON CHILDREN AND THE LAW, Standards for Attorneys Representing Children in Custody, Visitation, and Guardianship Proceedings § C-8 (2008). *See also* NEW YORK STATE BAR ASSOCIATION COMMITTEE ON CHILDREN AND THE LAW, Standards for Attorneys Representing Children in Need of Supervision Proceedings § C-6 (2008) (noting that “[u]ndocumented children who are initially placed on a PINS petition, but continue to remain in care due to abuse, neglect, or abandonment may be eligible for Special Immigrant Juvenile Status (SIJS) under the Federal Immigration and Naturalization Act”).

79 It should also be noted that these standards were promulgated before the revisions to the SIJS statute created by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 went into effect, which expanded SIJS eligibility to include youth “who cannot be reunified with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law.” Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J) (2013).

80 NEW YORK STATE BAR ASSOCIATION COMMITTEE ON CHILDREN AND THE LAW, Standards for Attorneys Representing Children in Need of Supervision Proceedings § C-6 (2008).

81 Interview 19 (May 6, 2013); Interview 22 (May 8, 2013); Interview 23 (May 8, 2013). It should be noted that in New York City, training on SIJS has been provided in the family courts for at least the past several years.

82 Interview 19 (May 6, 2013).

83 *Id.*; Interview 22 (May 8, 2013).

84 Interview 22 (May 8, 2013); Interview 19 (May 06, 2013). Other respondents noted that some of the law guardians they had interacted with were not familiar with SIJS. Interviews 10 & 11 (Mar. 22, 2013); Interview 7 (Feb. 21, 2013); Interviews 5 & 6 (Feb. 15, 2013); Interview 3 (Feb. 14, 2013).

85 Interview 27 (May 16, 2013); Interview 14 (Apr. 16, 2013); Interviews 25 & 26 (May 16, 2013) (stating that clerks in Queens County are not helpful in assisting pro bono counsel).

86 Memorandum from David L. Neal, Chief Immigration Judge, U.S. Dept. of Justice, Guidelines for Facilitating Pro Bono Legal Services (Mar. 10, 2008), available at <http://www.justice.gov/eoir/efoia/ocij/oppm08/08-01.pdf>.

87 Currently, children do not receive a court-appointed lawyer in immigration proceedings. *See* Immigration and Nationality Act, 8 U.S.C. § 1362 (2006) (“In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.”). In 2011, advocates estimated that in some areas in the United States anywhere between 60 percent to 80 percent of children are unrepresented and may be deported without access to counsel. M. Aryah Somers & Anne Marie Mulcahy, *Facing Deportation Alone: Immigrant Children and the Immigration System*, slide 15 (Oct. 27, 2011) (PowerPoint presentation on file with authors). Note as well that the New York State Bar Association has recommended expansion of pro bono to help address the “justice gap” in the family courts. NEW YORK STATE BAR ASSOCIATION: TASK FORCE ON FAMILY COURT, Final Report 10 (2013), available at <http://www.nysba.org/TFFCFinalReport/>.

often practice in several family courts. Many survey respondents commented on the lack of uniformity in filing and procedural requirements from county to county,<sup>88</sup> among judges and referees within the same county, and between individual clerks.<sup>89</sup> This lack of uniformity is especially difficult for pro bono counsel, who usually have less experience with the family court system and are likely to practice in multiple jurisdictions. One respondent remarked that, although it is called the “Unified Court System,” there is an utter lack of uniformity. He explained that in Bronx County, for example, a person can file without appearing, while in other courts, a person has to file in person and may have to sit and wait all day.<sup>90</sup> Another respondent reported that in practicing in several family courts, she confronted procedural rules that varied widely. She noted that being unaware of an exact rule or practice, such as the specific filing requirement in a particular court, resulted in delays and a lack of predictability.<sup>91</sup> Two respondents expressed the view that clerks do not make the effort to help pro bono counsel with the filing of petitions.<sup>92</sup> The wide variety of practices among the various boroughs and counties has resulted in frustration for attorneys and delays in cases.

Respondents further indicated that some family court judges appoint members of the panel of Attorneys for Children to represent children in cases where a pro bono attorney has

already filed a notice on behalf of the youth.<sup>93</sup> In situations where the child has affirmed his or her desire to be represented by the pro bono attorney, family court judges should not impose appointed counsel. In fact, the Family Court Act provides that “minors who are the subject of family court proceedings or appeals in proceedings originating in the family court should be represented by counsel of their own choosing or by assigned counsel . . .”<sup>94</sup> and further clarifies that counsel should be appointed “if independent legal representation is not available to such minor.”<sup>95</sup>

- *Recommendation 10:* The court should require education and training for members of the Attorneys for Children panel on SIJS to enhance and expand access to high-quality legal assistance for and identification of SIJS-eligible children and youth.<sup>96</sup>
- *Recommendation 11:* The family court should permit SIJS-eligible children and youth to be represented by the counsel of their own choosing, consistent with Family Court Act Sections 241 and 249.

#### D. ONGOING EDUCATION AND TRAINING ON SIJS

Court administrators have taken steps to address the increasing number of SIJS-related cases. For example, several years ago, the New York State Unified Court System made a sample SIJS special findings order available on its website.<sup>97</sup> In addition, some family court judges have extensive experience with SIJS cases and have developed a high degree of familiarity

88 Interview 29 (May 23, 2013) (noting “general lack of uniformity” among the courts); Interview 24 (May 15, 2013) (stating that no family court handles SIJS petitions the same and that even within a particular family court, judges have different practices; also noting vastly different practices and requirements with regard to service); Interview 21 (May 8, 2013) (recommending training for judges and referees to address lack of uniformity); Interview 18 (Apr. 18, 2013) (noting that procedure such as filing requirements can differ between boroughs and judges); Interview 14 (Apr. 16, 2013) (noting need for greater uniformity and, in particular, markedly different requirements related to service of parents).

89 Interviews 25 & 26 (May 16, 2013) (counsel was given inconsistent information by the clerk’s office regarding the need for the petitioner to be present for the filing of the papers); Interview 27 (May 16, 2013) (noting different procedures and practices by clerks and the fact that they “control the door” into the family court); Interview 17 (Apr. 18, 2013) (noting “different protocols that vary among . . . clerks”).

90 Interview 16 (Apr. 16, 2013); *see also* Interview 14 (Apr. 16, 2013) (same).

91 Interview 21 (May 8, 2013); *see also* Interview 18 (Apr. 18, 2013). Another pro bono respondent noted the lack of uniformity for requirements among judges and noted that in Kings County, judges imposed service requirements more stringently than in other counties. Interview 14 (Apr. 16, 2013); Interview 24 (May 15, 2013) (noting that service requirements differ in various courts and that service issues present a significant concern).

92 Interviews 25 & 26 (May 16, 2013).

93 Interview 14 (Apr. 16, 2013) (noting that in Westchester County, judges sometimes appoint counsel from the panel of Attorneys for Children even when the child is already represented by pro bono counsel); Interview 3 (Feb. 14, 2013) (noting a case in Rockland County in which a judge expressed strong preference that a panel attorney be appointed); Interview 8 (Mar. 7, 2013); Interviews 10 & 11 (Mar. 22, 2013).

94 N.Y. Family Court Act § 241 (2010).

95 *Id.* § 249.

96 Interview 9 (Mar. 7, 2013); (suggesting training for panel attorneys); Interviews 5 & 6 (Feb. 15, 2013) (same, particularly with regard to working with children).

97 NEW YORK STATE UNIFIED COURT SYSTEM, Special Immigrant Juvenile Status Order (Form GF 42), *available at* <http://www.nycourts.gov/forms/familycourt/pdfs/gf-42.pdf>.

with its purposes and benefits.<sup>98</sup> Nevertheless, the responses to this survey suggest that additional focus on SIJS by court administrators is warranted.

Survey respondents reported that some adjudicators display a lack of familiarity and wariness about SIJS and its place in the family courts.<sup>99</sup> A respondent described a case in which a family court judge suggested that SIJS provided a “back door” avenue to receive immigration status, suggesting a misunderstanding of the express purpose of SIJS to provide protection and permanency to youth who have suffered abuse, neglect, abandonment, or similar mistreatment by a parent.<sup>100</sup> Similarly, respondents also reported cases of adjudicators objecting to guardianship for a young person who was over 18 at the time. For example, in Westchester County, a young person over the age of 18 self-petitioned for guardianship pro se, and the petition was denied because, according to the judge, he was too old to need a guardian.<sup>101</sup> It appears that some family court adjudicators are wrestling with the broad array of issues presented in these cases spanning evidentiary, procedural, and substantive concerns.<sup>102</sup> Moreover, family court judges have

an opportunity, and arguably an obligation, to explore SIJS eligibility *sua sponte*.<sup>103</sup> Respondents were almost unanimous in recommending additional ongoing education and training for family court judges, referees, and other personnel on SIJS.<sup>104</sup>

- *Recommendation 12:* Education and training should be provided or encouraged for family court judges, referees, and other court personnel on SIJS, including identifying potential eligibility for SIJS and adjudicating cases.
- *Recommendation 13:* The New York State Unified Court System should establish a statewide Standing Advisory Committee on immigrant youth and families. The Committee should address issues related to access to the courts; access to competent legal counsel, including pro bono counsel; procedural and substantive legal issues related to special immigrant juvenile motions; and any other issues related to serving immigrant youth and families. This Committee should include practitioners who specialize in representing immigrant youth, institutional providers, law firm pro bono coordinators, members of bar associations, child welfare agencies, and members of the immigrant community who have previously been involved in family court proceedings, in addition to judges and court personnel.

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98 Interview 24 (May 15, 2013) (noting that some judges and referees remark that SIJS cases are particularly gratifying); Interview 20 (May 7, 2013) (noting that respondent had generally positive experiences with judges); Interview 18 (Apr. 18, 2013) (recounting generally positive experiences with judges); Interview 15 (Apr. 16, 2013) (stating that on the whole and with one exception the respondent found court personnel and judges to be receptive to SIJS cases); Interview 16 (Apr. 16, 2013) (stating that he has not found judges to be insensitive in SIJS cases); Interview 8 (Mar. 7, 2013) (noting that lack of sensitivity from the court is “not common” and is “rare”); Interview 9 (Mar. 7, 2013) (stating that with training, judges come to understand SIJS and judges are receptive to SIJS cases in Bronx and Kings County Family Courts).

99 Interview 29 (May 23, 2013); Interview 28 (May 22, 2013); Interview 24 (May 15, 2013); Interview 21 (May 8, 2013); Interview 22 (May 8, 2013); Interview 23 (May 8, 2013); Interview 19 (May 6, 2013); Interview 17 (Apr. 18, 2013); Interview 13 (Apr. 16, 2013); Interview 14 (Apr. 16, 2013); Interviews 10 & 11 (Mar. 22, 2013) (noting instances during which judges seem hostile to SIJS cases); Interview 2 (Feb. 14, 2013).

100 Interview 14 (Apr. 16, 2013) (Kings County). Another longtime family court practitioner and pro bono attorney for a legal services provider opined that judges needed training in order to counter the view that SIJS petitions are “loopholes” and instead focus on the fact that they provide statutory bases for relief. Interview 9 (Mar. 7, 2013).

101 Interview 12 (Apr. 12, 2013). In another county, a judge thought that an 18-year-old was simply too old to be eligible for guardianship and denied the petition. Email exchange with Interviewee 8, July 8, 2013.

102 Interview 4 (Feb. 14, 2013).

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103 *See In re YM*, 207 Cal. App. 4th 892, 912 (Cal. App. Dep’t 2012) (stating that “in keeping with the overarching goals to protect the child and promote his or her best interests, [the state court should] issue state dependency orders to the fullest extent its jurisdiction allows.”); Interview 24 (May 15, 2013); Interview 13 (Apr. 16, 2013) (suggesting that family courts proactively consider SIJS eligibility).

104 Interview 21 (May 8, 2013) (same); Interview 22 (May 8, 2013); Interview 18 (Apr. 18, 2013) (same); Interview 15 (Apr. 16, 2013) (same); Interview 16 (Apr. 16, 2013) (same, especially with regard to foster youth); Interview 13 (Apr. 16, 2013) (same, particularly with regard to one-parent SIJS applications); Interview 12 (Apr. 12, 2013); Interview 9 (Mar. 7, 2013); Interviews 5 & 6 (Feb. 15, 2013) (same, particularly with regard to the jurisdiction of courts other than family court to adjudicate SIJS petitions); Interview 1 (Feb. 14, 2013) (remarking on need for training for court personnel, particularly outside of New York City); Interview 2 (Feb. 14, 2013) (remarking on need for sensitivity training for court personnel).

# CONCLUSION

Congress designed Special Immigrant Juvenile Status to provide urgently needed protection, permanency, and stability for a highly vulnerable population.<sup>105</sup> Obtaining lawful immigration status is a critical component of protection from abuse, neglect, and abandonment, as well as permanency planning, providing immigrant youth with access to higher education, employment opportunities, and government benefits.<sup>106</sup> Indeed, the undocumented immigration status of SIJS-eligible children and youth often underlies and exacerbates their many other struggles in life. The failure to acquire immigration status for an eligible

child might render all other efforts to achieve permanency meaningless; moreover, it may mean deportation to a country where the child would be subjected to abuse or neglect.<sup>107</sup> By adjudicating SIJS motions for special findings, the family court has the opportunity to profoundly impact the lives of immigrant youth. The Working Group hopes that the information and recommendations above will be helpful to court administrators. Finally, the Feerick Center's New York Unaccompanied Immigrant Children Project is available to serve as a resource to the stakeholder community to explore and develop strategies to ensure that SIJS-eligible children have access to family courts and the protections made available to them by Congress.

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105 See generally Randi Mandelbaum and Elissa Steglich, *Disparate Outcomes: The Question For Uniform Treatment of Immigrant Children*, 50 FAM. CT. REV. 66 (2012).

106 See NEW YORK STATE BAR ASSOCIATION COMMITTEE ON CHILDREN AND THE LAW, STANDARDS FOR ATTORNEYS REPRESENTING CHILDREN IN CHILD PROTECTIVE, FOSTER CARE, AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS § C-7 (2007) available at <http://www.nycourts.gov/ad3/OAC/June2007CoverandStandards.pdf>; NEW YORK STATE BAR ASSOCIATION COMMITTEE ON CHILDREN AND THE LAW, STANDARDS FOR ATTORNEYS REPRESENTING CHILDREN IN CUSTODY, VISITATION AND GUARDIANSHIP PROCEEDINGS § C-8 (2008) available at <http://www.courts.state.ny.us/ad3/OAC/2008CustodyStandards.pdf>.

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107 See Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 52 JUVENILE AND FAM. COURT J. (2012).

# APPENDIX A

## THE FAMILY COURT WORKING GROUP

### CO-CHAIRS

- Marilyn Flood, Counsel, The New York County Lawyers' Association
- Prof. Theodor Liebmann, Clinical Professor of Law and Director of Clinical Programs Maurice A. Deane School of Law at Hofstra University

### MEMBERS

- Prof. Lenni Benson, Professor of Law, New York Law School
- Lauren Burke, Executive Director, Atlas: Developing Immigrant Youth
- Myra Elgabry, Director, Immigrants' Rights Project, Lawyers for Children
- Veronica Escobar, Solo Practitioner and Attorneys for Children panel, Second Department
- Shaylyn Fluharty, former Staff Attorney, Catholic Charities Community Services
- Bianca Gersten, Associate, Milbank, Tweed, Hadley & McCloy
- Michele Lampach, Director, UnLocal, Inc.
- Hon. J. Kevin McKay, Acting Justice, New York State Supreme Court, Ret. & Vice Chair, Justice Center, New York County Lawyers' Association
- Maureen McLoughlin, Attorneys for Children panel, Second Department
- Jeremiah Quinlan, Pro Bono Attorney for The Door
- Maureen Schad, Chadbourne & Parke LLC
- Martha Schneiderman, Deputy Director of Trials and Training, The Children's Law Center
- Brett Stark, Equal Justice Works Fellow, Catholic Charities Community Services
- Christa Stewart, Coordinator, NYS Human Trafficking and Unaccompanied Children Programs Bureau of Refugee and Immigrant Assistance / OTDA
- Wendy Wylegala, Supervising Attorney for Pro Bono Programs (NY), Kids in Need of Defense (KIND)

# APPENDIX B

## SURVEY FOR PRACTITIONERS: SIJS-RELATED FAMILY COURT CASES

Unaccompanied Immigrant Children (UIC)

**Date:**

**Background information:**

**Name:**

**Organization:**

**Role/Title:**

**Years working with UIC:**

**Background working with UIC:**

- Approximately how many SIJS cases have you taken (or do you take per year)? Are you providing direct legal representation in family court?
- In which family courts have you practiced?

**General: [for Pro Bonos]**

- How would you describe your overall experience filing a case in family court? Was there anything that made the experience particularly challenging?

**Guardianship:**

- Have you or your clients had problems related to court personnel who do not understand that people between the ages of 18 and 21 qualify for guardianship?
  - If yes, in any particular courts? Any particular clerks?
  - How frequently does this occur?
  - What did you do to help your client? Were you successful?
  - Do you believe this to be an occasional or systematic problem?
  - If you believe there is a problem, what would your recommendations be for possible remedies?
- Have you had any issues regarding the 28-year rule for address history with guardianship petitions?
- Have you come across a situation where a guardian is not being allowed to file because he/she is undocumented?

**Pro se**

- Have you come across cases where pro se guardianship petitions are refused in any NY State family courts?
  - If yes, how did you become aware of this issue?
  - If the petition was refused, who refused them (e.g., a clerk, or some other court personnel)?
  - Was a reason given for the refusal?
  - What were the consequences of the petition being refused? (e.g., missed court deadlines).

- How many petition refusals have you come across? Or how often do petition refusals come up?
- Any particular courts or clerks? Days of the week?

### **Fingerprinting:**

- Have you come across court personnel who require unreasonable or burdensome fingerprinting of children's family or household members beyond what is required by law?
  - If yes, in any particular courts? Any particular clerks?
  - How frequently does this occur?
  - Did you contest this issue? What was the outcome?
  - Do you believe this to be an occasional or systematic problem?
  - If you believe there is a problem, what would your recommendations be for possible remedies?

### **Identification:**

- Have any of your clients or their family members had problems accessing the courts because of lack of proper identification? Getting into the building or filing a petition?
  - If yes, do you feel the courts were unreasonable in their demand for identification? (e.g., not accepting unexpired foreign passports)
  - In any particular courts? Any particular clerks (or contractors)?
  - How frequently does this occur?
  - Do you know what is the source of these unreasonable requests (such as a policy directive, lack of training)?
  - Do you believe this to be an occasional or systematic problem?
  - If you believe there is a problem, what would your recommendations be for possible remedies?

### **Clerks:**

- Have you had any issues contacting clerks?
- Any issues with clerks giving incorrect information?

### **ADDITIONAL QUESTIONS:**

- Have you had any issues with lack of notification? For example, after you have filed something with the court and a document is missing, for example the fingerprinting, have you had an issue with the court not letting you know?
- We have heard that some courts will not allow a retained lawyer to represent the child and the court instead assigns a panel attorney. The court is not allowing the child to choose his/her own lawyer. Has this happened in any of your cases?
- Have you interacted with law guardians? What was your experience like?
- Do you ever feel that there is a lack of sensitivity in court? (Either from judges or court personnel.)

### **ENDING QUESTION:**

- What other issues do you think need to be addressed?

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