

TESTIMONY

Local Law Creating a Temporary Task Force on SIJS

New York City Council
Committee on Immigration

THE LEGAL AID SOCIETY

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My name is Katherine Fleet and I am a Staff Attorney with The Legal Aid Society's Immigration Law Unit. I work on the Immigrant Youth Representation Project, assisting NYC youth in obtaining legal status here in the United States. I submit this testimony on behalf of The Legal Aid Society and want to thank Chairman Stewart and Council Members Gerson, Mealy, and Recchia, for their initiative on the proposed Local Law establishing a temporary Task Force to review strategies to protect youth eligible for Special Immigrant Juvenile Status. I would also like to thank the Committee for the opportunity to participate in this hearing.

The Legal Aid Society strongly supports the proposed law creating a Task Force to review and analyze a number of issues related to Special Immigrant Juvenile Status (SIJS). The Legal Aid Society applauds the City Council for taking up this important issue affecting NYC's undocumented immigrant youth. New York City has long been committed to addressing the needs of immigrant youth, and we are pleased to see the City Council pursuing new strategies to benefit this vulnerable population.

The Legal Aid Society is the nation's oldest and largest non-profit public interest law firm for low-income families and individuals. Founded in 1876 to provide legal assistance to poor immigrants, the Society is organized into three practice areas: criminal, civil, and juvenile. Annually, Legal Aid Society staff provide direct legal assistance to approximately 300,000 poor families and individuals. The Civil Practice's Immigration Law Unit provides low-income New Yorkers with immigration services ranging from deportation defense to adjustment of status to Legal Permanent Residence and citizenship applications. Our Juvenile Rights Practice is the primary institutional provider of legal representation to children in New York City. In 2002, the Immigration Law Unit and Juvenile Rights Practice launched the Immigrant Youth Representation Project to respond to the special needs of undocumented youth in New York

City. Since its inception, the Youth Project has, through training, outreach, direct and *pro bono* representation, and policy advocacy, achieved tremendous success in assisting undocumented immigrant youth residing in New York City to obtain Special Immigrant Juvenile Status (SIJS) or other immigration benefits. The Society acknowledges the Department of Youth and Community Development, the Gimble Foundation, and the New York Community Trust for their invaluable financial support, which has made a tremendous difference in the lives of hundreds of immigrant youth.

As participants in the SIJS process for many foster care youth, Legal Aid has seen first-hand the successes and failures of the current identification, training, and application support systems that are the focus of the proposed Task Force. Legal Aid has been involved in cases where the system has worked extremely well, where NYC Children's Services ("ACS") and contract agencies have identified cases, referred them to the Youth Project for legal services, supported staff in getting critical documents such as birth certificates, and assisted in various ways throughout the SIJS process. Legal Aid has also observed the extraordinary difference obtaining SIJS can make in young people's lives, allowing them to remain legally in the United States and putting them on the path toward educational and professional opportunities. There have also been breakdowns in the system resulting in devastation and disappointment for children who miss out on the benefit of legal status. Youth who leave foster care with no legal immigration status face the constant threat of deportation, are unable to work legally, and lack access to important services such as Medicaid, federal financial aid, and housing assistance.

In recent years, the city has made progress toward meeting the needs of immigrant youth. Legal Aid and other legal service providers have met regularly with ACS staff, shared information and perspectives, and received many case referrals. The relationships developed

with ACS have enabled Legal Aid to ensure that undocumented youth referred to the Youth Project get the immigration legal assistance they need. We are grateful – as are many of our clients – for the efforts of Mark Lewis and his staff in the Office of Immigrant Programs, and Harry Gelb from Family Court Legal Services.

Still, there are many challenges and gaps in services that undermine the ability of qualifying youth to apply for SIJS, and there is much left to be done. There is still no reliable, systematic mechanism for identifying SIJS-eligible youth and many foster care agency staff have limited knowledge about SIJS. Many youth are identified only after they miss out on important educational and work-related opportunities or when they are close to aging out of foster care. Obtaining birth certificates and passports for SIJS applications remains challenging in many cases, and there is often little foster care agency cooperation throughout the application process.

Early identification of SIJS-eligible youth is essential, as is providing access to critical documents, such as birth certificates and passports, and collaboration from foster care agencies in obtaining other required documents (including medical examinations and fee waiver letters). These challenges are even more acute now, as recent federal legislation has expanded SIJS eligibility, thereby increasing the population that can benefit from our efforts.¹

Establishing a Task Force with members from various SIJS stakeholder groups is an excellent approach to solving this problem. The Legal Aid Society has a number of specific suggestions to offer today and welcomes the opportunity for further discussion through the Task Force.

¹ Under the 2008 Trafficking Victim Protection Reauthorization Act, SIJS is now a possibility for youth who are not reunifying with “one or both” parents (previously, the law required both) and youth can obtain SIJS if they file applications by age 21 (previously, the law required *adjudication* of applications by age 21, and the process was often lengthy). The recent legislation also provides reimbursement to states for expenses related to youth who obtain SIJS. Although that provision is subject to federal appropriations, it should become a source of additional funding for social service agencies working with immigrant youth.

- ACS data collection systems should systematically track each child’s country of origin, while protecting the confidentiality of this information.
- As already required under applicable regulations, ACS should also ensure that each child in foster care has a birth certificate. This data should be tracked systematically and updated consistently so that immigration issues are resolved well in advance of youth aging out of foster care.
- ACS, in conjunction with other city agencies, should provide assistance for youth who do not have birth certificates. Many young people are unable to obtain birth certificates from their home countries and need to seek assistance from local Consulates, whose policies vary widely, may be costly and time-consuming, and may require consent of parents or custodians, who are frequently unwilling or unable to consent or whose involvement may pose a danger to the youth. City involvement in this process is essential.
- All non-citizen youth without proper documentation should be referred to legal service providers.² Congress recently expanded eligibility for SIJS, but the precise contours of eligibility may be changed through regulations. Accordingly, immigration practitioners are best suited to assess eligibility. In addition, there is often overlap between SIJS and other forms of immigration relief, which may be more appropriate in certain situations. For example, many youth who are domestic violence victims would also qualify for U visas as crime victims.

Referring all of these cases to legal service providers ensures proper assessment

² This is consistent with the August 19, 2008 NYS Office of Children and Family Services Administrative Directive (ADM) regarding SIJS, which mandates all local departments of social service and voluntary agencies to assess SIJS eligibility, suggesting that “[a]ll youth in foster care who are not U.S. citizens and do not have documentation of lawful residence . . . need to be identified by agency staff and referred to immigration legal service providers for screening for SIJS and other possible immigration relief.”

of eligibility and also guarantees that youth will not age out without proper documentation. All youth should have the necessary documents (including unexpired green cards) before leaving foster care.

- All children should be identified and referred for immigration assistance as early as possible. Children of all ages are vulnerable to deportation and many young people without status miss out on critical opportunities for jobs, internships, special programs, etc. Gathering the necessary documents for immigration applications can also be a very lengthy process. Identifying cases early on puts youth in the best position to make successful applications.
- Training of both ACS and foster care agency personnel is critical and existing training programs are helpful but not sufficient. Immigration trainings should be mandatory and frequent for all employees working directly with youth in care, especially given the high rates of staff turnover at foster care agencies.
- Any SIJS Unit should be staffed fully and consistently. The staff should include a dedicated staff member who is part of the ACS Family Court Legal Services division, who can provide support and training, both to legal and non-legal staff, about the issues involved in this work.
- In addition to helping provide initial referrals, ACS should also take on a bigger role in coordinating with contract agencies, whose help is critical when immigration practitioners are working with youth in preparing SIJS applications.

The Legal Aid Society is hopeful that the New York City Council will pass the proposed law, which will enable the temporary Task Force to tackle the urgent needs of undocumented

youth in New York City. The Society is committed to being actively involved in this process and providing maximum possible input into the Task Force's recommendations.