

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Leobardo MORENO GALVEZ, Jose Luis
VICENTE RAMOS, and Angel de Jesus MUÑOZ
OLIVERA, on behalf of themselves as individuals
and on behalf of others similarly situated,

Plaintiffs,

v.

Lee Francis CISSNA, Director, U.S. Citizenship
and Immigration Services, Kirstjen M. NIELSEN,
Secretary, U.S. Department of Homeland Security,
Robert COWAN, Director, National Benefits
Center, UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, and UNITED
STATES CITIZENSHIP AND IMMIGRATION
SERVICES,

Defendants.

Case No. 2:19-cv-321

**COMPLAINT – CLASS ACTION
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

INTRODUCTION

1
2 1. Plaintiffs Leobardo Moreno Galvez, Jose Luis Vicente Ramos, and Angel de
3 Jesus Muñoz Olivera are immigrant youth under the age of 21 who have applied for Special
4 Immigrant Juvenile Status (SIJS), a form of humanitarian relief that provides vulnerable youth
5 with a path to long-term legal status. Congress provided SIJS for children and youth under the
6 age of 21 who obtain specific factual determinations by a state court with jurisdiction over their
7 custody. Namely, the state court must find that (1) reunification with one or both of the youth’s
8 parents is not viable due to abuse, neglect, abandonment, or similar basis under state law, and (2)
9 it is not in the youth’s best interest to be returned to their country of origin. *See* 8 U.S.C. §
10 1101(a)(27)(J)(i)-(ii). In each Plaintiff’s case, a Washington state court has made these requisite
11 findings, and each Plaintiff has thus applied for SIJS. Until a recent and unlawful U.S.
12 Citizenship and Immigration Services (USCIS) policy targeting youth who have reached the age
13 of 18, each Plaintiff would have been found eligible for SIJS within 180 days after filing their
14 application, as statutorily required. 8 U.S.C. § 1232(d)(2). Now, after lengthy delays, two have
15 been unlawfully denied SIJS and the other faces imminent denial. Scores of other youth in
16 Washington State face the same threat.

17 2. On behalf of themselves and other similarly situated youth, Plaintiffs bring this
18 class action to challenge the federal government’s policy of refusing to adjudicate their SIJS
19 petitions in accordance with the Immigration and Nationality Act (INA). The government’s
20 blanket denial of SIJS for youth who obtain predicate SIJS orders after turning 18 but before the
21 age of 21 violates the controlling statute and regulations. In addition, the government has a
22 practice of delaying the adjudication of Plaintiffs’ and proposed class members’ applications, in
23 violation of a clear statutory requirement that all SIJS petitions be adjudicated within 180 days

1 after the date of filing. These statutory violations by USCIS punish a vulnerable class of young
2 people, in direct contradiction to the statutory terms implemented by Congress, unlawfully
3 denying them the opportunity to obtain lawful permanent residence and rendering them likely to
4 be removed.

5 3. Congress created SIJS to provide all vulnerable children and youth under age 21 a
6 pathway to lawful permanent residence and citizenship. Under the current SIJS statute, an
7 applicant for SIJS must be (1) under 21 years of age at the time the petition is filed;
8 (2) unmarried; (3) declared dependent on a state court, or placed in the custody of a state agency
9 or individual appointed by such a court, such as a guardian; (4) the subject of specific findings by
10 a state court that reunification with one or both parents is not viable due to abuse, abandonment,
11 neglect, or similar basis under state law, and that it is not in the child's best interest to return to
12 their home country (SIJS findings). Every SIJS petition submitted to USCIS must include the
13 predicate state court order containing these findings (SIJS order).

14 4. The SIJS statute outlines discrete and separate roles for state courts and USCIS.
15 Specifically, Congress authorized state courts—not USCIS—to enter SIJS findings. In order to
16 enter SIJS findings, the state court must have jurisdiction over the custody and placement of the
17 youth. State law dictates whether a state court has such jurisdiction and accordingly, the
18 authority to enter SIJS findings for a youth. USCIS, in turn, is tasked with verifying that all other
19 requirements for a SIJS petition have been met and conferring immigration benefits on the
20 applicant. Pursuant to the statutory framework created by Congress, USCIS must give full faith
21 and credit to the state court's findings and thus defer to the state court's expertise in child
22 welfare matters and interpretation of state laws.

1 5. Washington state courts exercise jurisdiction over the custody of youth past their
2 eighteenth birthdays in various types of proceedings. In juvenile offender proceedings, state
3 courts have clear authority to extend their jurisdiction and make custody determinations of youth
4 beyond the age of 18. Dependencies and determinations regarding foster care can also be
5 extended past the eighteenth birthday. In addition, Washington state law also grants juvenile
6 divisions within its superior courts clear authority to appoint guardianships through the
7 Vulnerable Youth Guardianship (VYG) Program enacted by the state legislature in 2017. In
8 VYG proceedings, state courts issue guardianship orders to youth who are between ages 18 and
9 20. In the context of all of these proceedings, Washington state courts have authority to issue
10 predicate SIJS orders, thus enabling the youth to file a SIJS petition before USCIS.

11 6. Congress has defined a “child” for purposes of all immigration benefits, including
12 SIJS, to be “an unmarried person under twenty-one years of age.” 8 U.S.C. § 1101(b)(1).
13 Accordingly, SIJS is available for any individual under the age of 21 who is unmarried and
14 otherwise meets the SIJS criteria. *See* 8 C.F.R. § 204.11(c)(1).

15 7. Nonetheless, in or around February 2018, USCIS began imposing a new, ultra
16 vires requirement outside the scope of the SIJS statute—that the state court issuing the predicate
17 SIJS order have jurisdiction to return children to their parents’ custody. Under this arbitrary
18 policy, USCIS has denied or threatened to deny the SIJS petitions submitted by youth who
19 obtained SIJS orders from Washington state courts after turning 18, even though they clearly
20 meet all eligibility criteria.

21 8. USCIS’s imposition of arbitrary requirements for SIJS eligibility violates the law
22 and irreparably harms hundreds of vulnerable youth who would otherwise qualify for SIJS.
23 Obtaining SIJS allows children to remain safely in the United States with their legal guardians

1 and provides a path to legal permanent residence and citizenship. For countless youth like
2 Plaintiffs, a denial of SIJS will deprive them of shelter and a loving family, foster parents, or
3 guardians who can best protect their welfare and help them to recover from the abuse,
4 abandonment, or neglect they have experienced in their lives.

5 9. Plaintiffs thus seek declaratory and injunctive relief to enjoin this unlawful
6 implementation of the SIJS statute and agency action that runs contrary to the Administrative
7 Procedure Act (APA). On behalf of themselves and the class they seek to represent, Plaintiffs
8 respectfully request that this Court (1) declare Defendants' ultra vires policy of rejecting SIJS
9 findings issued by Washington state courts for youth ages 18 to 20 to be in violation of the INA
10 and APA, (2) compel the government to rescind the improper SIJS denials already issued and
11 reopen those SIJS petitions, (3) enjoin any future denials of SIJS petitions on the basis that
12 Washington state courts lacked the authority to reunify children with their parents, and (4)
13 require USCIS to adjudicate Plaintiffs' and proposed class members' SIJS petitions within 180
14 days after the date of filing, as required by statute.

15 JURISDICTION AND VENUE

16 10. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §
17 1101 *et seq.*, the regulations implementing the INA, and the APA, 5 U.S.C. § 701 *et seq.*

18 11. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331, as a civil
19 action arising under the laws of the United States, and the Mandamus and Venue Act of 1962,
20 28 U.S.C. § 1361. The Court may grant declaratory and injunctive relief pursuant to 28 U.S.C.
21 §§ 2201-2202, 5 U.S.C. § 702, and 28 U.S.C. § 1361. The United States has waived its sovereign
22 immunity pursuant to 5 U.S.C. § 702.
23

1 12. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §
2 1391(e)(1) because Defendants are officers or employees of the United States or agencies thereof
3 acting in their official capacities. A substantial part of the events or omissions giving rise to the
4 claims occurred in this district, and Plaintiffs Leobardo Moreno Galvez and Jose Luis Vicente
5 Ramos reside in this district, as do many putative class members.

6 **PARTIES**

7 13. Plaintiff Leobardo Moreno Galvez is a 20-year-old citizen of Mexico. In October
8 2016, the Skagit County Superior Court placed him in the custody of a state agency or
9 department and entered a SIJS order. On December 2, 2016, Leobardo submitted his SIJS
10 petition to USCIS. On December 20, 2018, USCIS denied his application solely based on its
11 erroneous policy requiring predicate SIJS orders to be issued by a state court that has authority to
12 make a legal conclusion about returning the youth to his parent's custody.

13 14. Plaintiff Jose Luis Vicente Ramos is a 20-year-old citizen of Guatemala. In June
14 2018, the Pierce County Superior Court appointed Jose's relative as his guardian in a Vulnerable
15 Youth Guardianship proceeding, during which the court also entered a SIJS order. On February
16 5, 2019, USCIS denied his application solely based on its erroneous policy requiring predicate
17 SIJS orders to be issued by a state court that has authority to make a legal conclusion about
18 returning the youth to his parent's custody.

19 15. Plaintiff Angel de Jesus Muñoz Olivera is a 19-year-old citizen of Mexico. In
20 November 2017, the Pierce County Superior Court appointed Angel's relative as his guardian in
21 a Vulnerable Youth Guardianship proceeding, during which the court also entered a SIJS order.
22 On November 15, 2017, Angel submitted his SIJS petition to USCIS. USCIS has not adjudicated
23 his SIJS petition. Upon information and belief, USCIS will deny his SIJS petition based on its

1 erroneous policy that a predicate SIJS order is not valid unless the issuing state court has
2 authority to make a legal conclusion about returning the youth to his parent’s custody.

3 16. Defendant Lee Francis Cissna is the Director of U.S. Citizenship and Immigration
4 Services (USCIS), an “agency” within the meaning of the APA, 5 U.S.C. § 551(1). In this
5 capacity, he oversees the adjudication of immigration benefits and establishes and implements
6 governing policies. 6 U.S.C. § 271(a)(3), (b). He has ultimate responsibility for the adjudication
7 of SIJS petitions and is sued in his official capacity.

8 17. Defendant Kirstjen Nielsen is the Secretary of the Department of Homeland
9 Security (DHS), an “agency” within the meaning of the APA, 5 U.S.C. § 551(1). In this capacity,
10 she is responsible for the administration of the INA and for overseeing, directing, and
11 supervising all DHS component agencies, including USCIS. Defendant Nielsen is sued in her
12 official capacity.

13 18. Defendant Robert M. Cowan is the Director of the USCIS National Benefits
14 Center, which directly adjudicates SIJS petitions and which issued the Proposed class members’
15 SIJS denial notices or Notices of Intent to Deny. Defendant Cowan is sued in his official
16 capacity.

17 19. Defendant U.S. Citizenship and Immigration Services is a component of U.S.
18 Department of Homeland Security, 6 U.S.C. § 271(a)(1), and an “agency” within the meaning of
19 the APA, 5 U.S.C. § 551(1). USCIS is responsible for adjudicating immigration benefit
20 applications, including applications for SIJS.

21 20. Defendant U.S. Department of Homeland Security is an executive agency of the
22 United States and an “agency” within the meaning of the APA, 5 U.S.C. § 551(1). DHS is
23

1 responsible for implementing the INA, including provisions relating to SIJS. DHS has authority
2 to grant SIJS petitions and delegates this authority to USCIS.

3 **LEGAL BACKGROUND**

4 **I. HISTORY OF SPECIAL IMMIGRANT JUVENILE STATUS**

5 21. In 1990, Congress created Special Immigrant Juvenile Status to protect abused,
6 abandoned, and neglected immigrant children in foster care and to provide them a pathway to
7 lawful permanent residence. SIJS was initially available only to children and youth eligible for
8 foster care, pursuant to the statutory definition of “special immigrant juvenile” at the time:

9 an immigrant (i) who has been declared dependent on a juvenile court
10 located in the United States and has been deemed eligible by that court for
11 long-term foster care, and (ii) for whom it has been determined in
12 administrative or judicial proceedings that it would not be the [immigrant’s
13 best interest to be returned to the [immigrant’s] or parent’s previous country
14 of nationality or country of last habitual residence.

15 Immigration Act of 1990, Pub. L. No. 101-649 § 153, 104 Stat. 4978, 5005-06 (1990). The
16 implementing regulations enacted by the Immigration and Naturalization (INS) in 1993 defined
17 the term “[e]ligible for long-term foster care,” to mean “that a determination has been made by
18 the juvenile court that family reunification is no longer a viable option.” 58 Fed. Reg. 42843,
19 42850 (Aug. 12, 1993) (codified at 8 C.F.R. § 204.11(a)).

20 22. The INA defines a child for purposes of the SIJS statute to be “an unmarried
21 person under twenty-one years of age.” 8 U.S.C. § 1101(b)(1). Accordingly, the INS recognized
22 that any individual under the age of 21 qualifies as a juvenile for purposes of SIJS. 58 Fed. Reg.
23 at 42850 (codified at 8 C.F.R. § 204.11(c)(1)).

24 23. In 1994, Congress broadened the scope of SIJS eligibility beyond those deemed
25 eligible for foster care, redefining “special immigrant juvenile” to include an individual “legally
26 committed to, or placed under the custody of, *an agency or department of a State.*” Immigration

1 and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, § 219, 108 Stat. 4305,
2 4316 (1994) (emphasis added). This amendment greatly increased the class of children eligible
3 under the statute by expanding the types of proceedings in which state courts could enter SIJS
4 findings.

5 24. Congress once again significantly expanded SIJS eligibility through the William
6 Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No.
7 110-457 § 235, 122 Stat. 5044 (2008), which was passed with broad bipartisan support. The
8 TVPRA removed placement in long-term foster care as a basis for SIJS eligibility, replacing it
9 with a more expansive requirement that a state juvenile court find “reunification with 1 or both
10 of the immigrant’s parents is not viable due to abuse, neglect, or abandonment, or a similar basis
11 under State law.” TVPRA § 235(d)(1)(A), 122 Stat. at 5079. In addition, by expanding SIJS
12 eligibility to include not only children who are declared dependent on the court, but also those
13 children legally committed to or placed in the custody of a “State, or an individual or entity
14 appointed by a State or juvenile court,” *id.*, the TVPRA made clear that Congress intended
15 USCIS recognize SIJS findings issued by any state court that had the power to place a child in
16 any custodial relationship.

17 25. Consistent with the INA’s definition of a “child,” 8 U.S.C. § 1101(b)(1), the
18 amendments under the 2008 TVPRA provided age-out protections, ensuring the SIJS
19 classification would not be denied to anyone on the basis of age so long as the child was under
20 21 at the time of filing the SIJS petition. TVPRA § 235(d)(6), 122 Stat. at 5080.

21 26. In addition, Congress recognized the need for expeditious adjudications of SIJS
22 petitions and imposed a 180-day deadline requiring USCIS to adjudicate all SIJS petitions within
23 180 days after the date of filing. TVPRA § 235(d)(2), 122 Stat. at 5080.

1 Aytes, Interoffice Memorandum, *AFM Update: Chapter 22: Employment-based Petitions*
2 (*AD03-01*), 82 (Sept. 12, 2006), <https://bit.ly/2tMnsWF> (“The task of the adjudicator is not to
3 determine whether the [SIJS] order was properly issued.”); USCIS Policy Manual, vol. 6, pt. J,
4 ch. 2(D)(4) (last updated Feb. 12, 2019), <https://bit.ly/2NAGVCT> (“There is nothing in USCIS
5 guidance that should be construed as instructing juvenile courts on *how to apply their own state*
6 *law.*”) (emphasis added).

7 31. In adjudicating SIJS petitions, USCIS asserts the right to determine whether a
8 SIJS order was “properly issued under state law,” *id.*, and whether the issuing state court relied
9 on a factual record, *id.* Ch. 2(D)(5). However, “USCIS relies on the expertise of the juvenile
10 courts in making child welfare decisions and does not reweigh the evidence” independently. *Id.*
11 (“USCIS generally consents to the grant of [SIJS] when the order includes or is supplemented by
12 a reasonable factual basis for all of the required findings.”).

13 III. THE RELEVANT WASHINGTON STATE FRAMEWORK

14 32. Washington state law has designated state courts to make determinations about
15 the custody and care of children in numerous specialized proceedings, including for youth who
16 have attained the age of 18. SIJS orders can be issued in a variety of proceedings under
17 Washington state law, including juvenile offender proceedings, dependency and extended foster
18 care proceedings, non-parental custody proceedings, divorce and other family law proceedings,
19 and Child in Need of Services/At-Risk Youth proceedings. Specifically, Washington state courts
20 have express authority under state law to make custody determinations and SIJS findings for
21 youth ages 18 to 20 in three different types of proceedings: juvenile offender, Vulnerable Youth
22 Guardianship, and Extended Foster Care.

1 A. Juvenile Offender Proceedings

2 33. In Washington State, juvenile offender proceedings are governed by Revised
3 Code of Washington (RCW) § 13.40.300(3), which expressly states “[a] juvenile may be under
4 the jurisdiction of the juvenile court or the authority of the department of social and health
5 services beyond the juvenile’s eighteenth birthday . . . if prior to the juvenile’s eighteenth
6 birthday: (a) Proceedings are pending seeking the adjudication of a juvenile offense and the court
7 by written order setting forth its reasons extends jurisdiction of [the] juvenile court over the
8 juvenile beyond his or her eighteenth birthday.”

9 34. Pursuant to RCW § 13.40.300(1)-(2), a juvenile court in Washington State may
10 sentence a juvenile offender to be committed to a correctional facility up until their twenty-first
11 birthday, and, in some circumstances, up until their twenty-fifth birthday.

12 35. Washington juvenile courts with jurisdiction over offender proceedings therefore
13 have authority to enter SIJ findings. USCIS and various other state appellate courts have also
14 recognized that juvenile courts in the offender context have authority to make SIJS findings even
15 after a child has attained the age of 18. *See Matter of E-G-C-V*, 2016 WL 8316261 (AAO Dec.
16 20, 2016) (finding Colorado law permitted extension of jurisdiction where juvenile offender
17 proceedings had commenced *prior* to age 18, and that the state court had jurisdiction to make
18 determinations about the care and custody of the petitioner as a juvenile where petitioner was
19 over 18 years old at the time the court issued its order); *Leslie H. v. Superior Court*, 224 Cal.
20 App. 4th 340 (2014); *In re Mario S.*, 38 Misc. 3d. 444, 453-54 (N.Y. Fam. Ct. 2012).

21 B. Vulnerable Youth Guardianship Proceedings

22 36. Since 2017, Washington state courts have had jurisdiction to provide guardians to
23 18- to 20-year-old youth after the state legislature passed legislation establishing the Vulnerable

1 Youth Guardianship (VYG) Program. RCW § 13.90.010 *et seq.* The state legislature intended to
2 “provide an avenue for . . . vulnerable [immigrant] youth to petition the superior courts to
3 appoint a guardian of the person, even if the youth is over eighteen years old.” *Id.* §
4 13.90.901(1)(e). In establishing VYG proceedings, the state legislature recognized “vulnerable
5 youth arriving [in] the United States” require “a *custodial* relationship with a responsible adult as
6 they adjust to a new cultural context, language, and education system, and recover from the
7 trauma of abuse, neglect, or abandonment.” *Id.* (emphasis added). Moreover, the legislation
8 sought to “serve[] the state’s interest in eliminating human trafficking, preventing further
9 victimization of youth, decreasing reliance on public resources, reducing youth homelessness,
10 and offering protection for youth.” *Id.* § 13.90.900.

11 37. Specifically, the VYG statute “grants the superior courts jurisdiction to make
12 judicial determinations regarding the custody and care of . . . an unmarried person under twenty-
13 one years of age.” *Id.* § 13.90.901(1)(a) (citing the INA’s definition of “child,” 8 U.S.C. §
14 1101(b)); *see also id.* § 13.90.010(6) (defining “vulnerable youth” as “an individual who has
15 turned eighteen years old, but who is not yet twenty-one years old”). Under state law, the
16 juvenile divisions within the superior courts have jurisdiction over VYG proceedings. *Id.* §
17 13.90.010(3).

18 38. To obtain a VYG, the youth must file a petition in the juvenile division of a
19 Washington superior court. *Id.* §§ 13.90.020(1) (requiring petition to be filed in “juvenile
20 court”), 13.90.010(3) (defining “juvenile court” as “the juvenile division of the superior court”).
21 In VYG proceedings, parties have the right to present evidence and cross-examine witnesses and
22 are governed by the rules of evidence. *Id.* § 13.90.030(1). Where all requirements for a VYG are
23 met by a preponderance of the evidence, *id.* § 13.90.030(2), the state court can issue an order

1 appointing a guardian for the petitioner and “specify the guardian’s other rights and
2 responsibilities concerning the care, custody and nurturing of the vulnerable youth,” *id.* §
3 13.90.040(1)(a)-(b). In addition, the court’s order must specify the “need for and scope of
4 continued [judicial] oversight.” *Id.* § 13.90.040(1)(d).

5 39. Under state law, “parents, licensed foster parents, relatives, and suitable persons”
6 can be designated as a guardian for a vulnerable youth. *Id.* § 13.90.020(2). The court determines
7 placement with a suitable and responsible guardian. *Id.* § 13.90.020(3)(d)-(e). Until the age of
8 21, when the VYG automatically terminates, a state court has the authority to determine the
9 vulnerable youth’s custodial placement. *Id.* § 13.90.060.

10 **C. Extended Foster Care Proceedings**

11 40. Washington state courts are authorized to maintain and exercise jurisdiction over
12 18- to 20-year-old youths through the Extended Foster Care (EFC) program. RCW §
13 13.34.267(1). EFC allows youth who were legally dependent on the state at age 18 to voluntarily
14 agree to continue receiving foster care services, including placement services, while working
15 towards independence. A youth enrolled in the EFC program is eligible for services such as a
16 foster care placement, supervised independent living placement, medical, dental, and transitional
17 living services, case management, and referrals to community resources. *See* Wash. State Dep’t
18 of Children, Youth, and Families, Extended Foster Care, [https://www.dcyf.wa.gov/services/
19 extended-foster-care](https://www.dcyf.wa.gov/services/extended-foster-care) (last accessed Mar. 1, 2019).

20 41. In order to participate in EFC, a state court must first determine that the youth was
21 legally “dependent” before turning 18. RCW § 74.13.031(11)(b). Under state law, a “dependent
22 child” is one who: “(a) has been abandoned; (b) is abused or neglected . . . by a person legally
23 responsible for the care of the child; (c) has no parent, guardian, or custodian capable of

1 adequately caring for the child such that the child is in circumstances which constitute a danger
2 of substantial damage to the child’s psychological or physical development; or (d) is receiving
3 extended foster care services.” *Id.* § 13.34.030(6). A finding under RCW § 13.34.030(6)(c)
4 constitutes a “similar basis” under state law that makes the youth eligible for SIJS. 8 U.S.C. §
5 1101(a)(27)(J)(i).

6 42. Where a youth elects to participate in EFC upon turning 18, the dependency
7 proceedings will continue and the state court will maintain jurisdiction over the youth’s custody.
8 Until reaching the age of 21, the youth may enter and exit the EFC program as needed. RCW §
9 74.13.031(11)(b), (e).

10 43. To be eligible for the EFC program, a youth must be dependent *and* must: (1) be
11 enrolled in high school or a high school equivalency program; (2) be enrolled in, apply for, or
12 demonstrate intent to timely enroll in a post-secondary academic or post-secondary vocational
13 certification program; (3) participate in a program or activity designed to promote or remove
14 barriers to employment, including part-time employment; (4) be employed 80 hours or more per
15 month; or (5) be unable to engage any of these activities due to a documented medical condition.
16 *Id.* § 13.34.267(1).

17 44. During the continued dependency proceedings for EFC, the presiding state court
18 is required to consider factors such as safety of the placement, continuing eligibility for EFC,
19 whether the placement is developmentally appropriate for the youth, the youth’s independent
20 living skills, and overall progress toward independence. *Id.* § 13.34.267(7). Moreover,
21 Washington state law provides for the appointment of counsel to represent the youth during these
22 proceedings. *Id.* § 13.34.267(6).

1 **IV. NEW USCIS POLICY ON 18- TO 20-YEAR-OLD SIJS PETITIONERS**

2 45. USCIS previously routinely approved SIJS petitions for youth who had obtained
3 SIJS findings from state juvenile courts while they were 18 to 20 years old. Prior to 2017, USCIS
4 had not denied a single SIJS petition filed by 18- to 20-year-olds on the grounds that a state
5 juvenile court of any state lacked authority to reunify a child with her or his parent.

6 46. USCIS is required to adjudicate all SIJS petitions within 180 days. 8 U.S.C. §
7 1232(d)(2). Since 2017, USCIS has routinely and as a matter of practice delayed the adjudication
8 of SIJS petitions for months beyond this statutory deadline. This practice leaves many vulnerable
9 youths in a state of uncertainty and increased vulnerability.

10 47. In February 2018, USCIS’s legal counsel purportedly issued “new guidance” for
11 USCIS, which was never published on its website. In April 2018, USCIS spokesperson Jonathan
12 Withington publicly acknowledged this new guidance. The guidance states that the SIJS statute
13 requires a state court have the authority to return a child to the custody of his or her parent in
14 order for that court to find reunification is not viable, one of the required SIJS findings.

15 48. USCIS’s new policy has since been incorporated into its Consolidated Handbook
16 of Adjudications Procedures (CHAP), which is distributed to USCIS employees. USCIS has not
17 incorporated the guidance into the publicly available USCIS Policy Manual. *See* USCIS Policy
18 Manual, vol. 6, pt. J.

19 49. Beginning in February 2018, USCIS began to issue Notices of Intent to Deny
20 (NOIDs) and denials to applicants in Texas, New York, California, and now Washington,
21 implementing its novel position that the state court that issued SIJS findings was not a “juvenile
22 court” under the SIJS statute when it issued SIJS orders for youth 18 to 20 years old because it
23 did not have the authority to return them to parental custody.

1 50. In the NOIDs and denials it has issued to Plaintiffs and similarly situated SIJS
2 petitioners, USCIS has made clear how it applies its new requirement. USCIS now contends that
3 Washington state courts lack the authority to issue SIJS findings to 18- to 20-year-olds because
4 Washington courts do not have authority to order the physical reunification of those youth with
5 their parents.

6 51. The SIJS statute contains no such requirement, providing only that the state court
7 determine that “reunification with one or both of the immigrant’s parents is not viable due to
8 abuse, neglect, abandonment, or similar basis found under State law.” 8 U.S.C. §
9 1101(a)(27)(J)(i). While USCIS has relied on 8 C.F.R. § 204.11 to allege that the SIJS findings
10 must be issued by a state juvenile court that has authority to reunify petitioners with their
11 parents, no regulation contains this requirement. *See, e.g.*, 8 C.F.R. § 204.11(a) (defining
12 “juvenile court”). Even USCIS’s own policy manual makes no indication state juvenile courts
13 must have the legal authority to reunify children with their parents in order to find reunification
14 is not viable.

15 52. USCIS’s policy is also inconsistent with the plain language of the statute
16 regarding age limits for SIJS. Not only does 8 U.S.C. § 1101(b)(1) define a child as an unmarried
17 person under 21 years of age, the TVPRA provided age-out protections so the SIJS classification
18 would not be denied to anyone on the basis of age so long as they are under 21 years old on the
19 date they file a SIJS petition (even if they turn 21 while the petition is pending). With this
20 change, Congress manifested its clear intent to provide access to SIJS relief to all children and
21 youth until the age of 21.

22 53. In denying SIJS to Plaintiffs, USCIS additionally fails to defer to the state court’s
23 findings, as the SIJS statute requires. Congress granted state courts the exclusive power to make

1 57. After he made the solitary journey to the United States, Leobardo went to live
2 with his aunt, who supported him as he adjusted to life in a new country. His parents had not
3 supported him for more than four years at the time juvenile offender proceedings were
4 commenced against him in 2016 after he was arrested for Minor in Possession of Alcohol as a
5 17-year-old.

6 58. On August 11, 2016, before Leobardo's 18th birthday, the Skagit County Juvenile
7 Court entered an Order Extending Jurisdiction, as authorized by RCW § 13.40.300(3)(a),
8 allowing the court to maintain jurisdiction past the time he would attain the age of 18 on
9 September 2, 2016. The order specified the court would retain jurisdiction until September 2,
10 2017.

11 59. On October 20, 2016, the Skagit County Juvenile Court entered a SIJS Order
12 regarding Leobardo's custody and placement, finding that he had been "legally committed to or
13 placed in the custody of a state agency or department"; that reunification with both of his parents
14 was not viable due to abuse, neglect, or abandonment; and that it was not in his best interest to
15 return to Mexico.

16 60. On December 2, 2016, Leobardo submitted his I-360, Petition for SIJS to USCIS.
17 On May 1, 2017, USCIS issued a Request for Evidence, followed by a first NOID on August 23,
18 2018, and a second NOID on October 31, 2018. Leobardo submitted timely responses to all of
19 these requests.

20 61. On December 20, 2018, more than two years after Leobardo filed his SIJS
21 petition, USCIS issued a denial stating that "[w]hile you have presented evidence that a court has
22 placed you in a guardianship with your consent, the evidence you submitted does not establish
23

1 that the state court had jurisdiction under state law to make a legal conclusion about returning
2 you to your parent(s) custody.”

3 62. USCIS’s denial incorrectly stated Leobardo had been placed “in a guardianship.”
4 The Skagit County Superior Court, which issued the predicate SIJS order for Leobardo’s SIJS
5 petition, did not place him in a guardianship.

6 **II. JOSE VICENTE RAMOS**

7 63. Plaintiff Jose Luis Vicente Ramos is a 20-year-old citizen of Guatemala. Jose was
8 physically abused by both of his parents throughout his childhood. They would beat him with
9 sticks, belts, and cords; his father even beat him with the butt of a rifle. He fled from Guatemala
10 when he was 17 years old.

11 64. After entering the United States on July 3, 2016, Jose was immediately detained
12 by immigration authorities and placed in the custody of the Office of Refugee Resettlement. He
13 was thereafter released to live with his cousin and her family in Vancouver, Washington.

14 65. On February 8, 2018, Jose was visiting another cousin’s home when the police
15 came to the house to conduct a search for drugs. Jose had no knowledge of any drug-related
16 activity and was not charged with any criminal offense. Nevertheless, the police transferred Jose
17 to ICE custody. Jose was taken to the Northwest Detention Center in Tacoma, Washington.

18 66. On June 1, 2018, Jose’s cousin was appointed his Vulnerable Youth Guardian,
19 and the Pierce County Superior Court also entered a SIJS order finding that reunification with
20 Jose’s parents was not viable on account of abuse and it was not in his best interest to return to
21 his home country.

1 73. On November 3, 2017, the Pierce County Superior Court appointed Angel's first
2 cousin once removed, who lives in Kennewick, WA, as his Vulnerable Youth Guardian and
3 entered a predicate SIJS order with SIJS findings.

4 74. On November 15, 2017, Angel submitted his Form I-360, Petition for Special
5 Immigrant Juvenile Status, to USCIS. USCIS has not adjudicated Angel's SIJS petition, which
6 has been pending before USCIS for nearly 16 months.

7 75. Angel is enrolled in high school, participates in youth group activities at his
8 church, and depends on his relative—appointed his vulnerable youth guardian—for support.

9 **CLASS ACTION ALLEGATIONS**

10 76. Plaintiffs bring this action on behalf of themselves and all others who are
11 similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action
12 is proper because this action involves questions of law and fact common to the classes, the
13 classes are so numerous that joinder of all members is impractical, Plaintiffs' claims are typical
14 of the claims of the classes, Plaintiffs will fairly and adequately protect the interests of the
15 respective classes, and Defendants have acted on grounds that apply generally to the class, so
16 that final injunctive relief or corresponding declaratory relief is appropriate with respect to the
17 class as a whole.

18 77. Plaintiffs seek to represent the following statewide class: All individuals who
19 have been issued predicate SIJS orders by Washington state courts after turning eighteen years
20 old but prior to turning twenty-one years old, and have submitted or will submit SIJS petitions to
21 USCIS prior to turning twenty-one years old.

22 78. The proposed class meets the numerosity requirements of Federal Rule of Civil
23 Procedure 23(a)(1). The class is so numerous that joinder of all members is impracticable.

1 Plaintiffs are not aware of the precise number of potential class members. Plaintiffs estimate
2 there are nearly 100, if not more, class members.

3 79. The proposed class meets the commonality requirements of Federal Rule of Civil
4 Procedure 23(a)(2). The members of the class are subject to denial or revocation of SIJS relief
5 based on the government's arbitrary imposition of additional requirements not supported by law.
6 The lawsuit raises numerous questions of law common to members of the proposed class,
7 including whether the government's action in imposing an additional requirement for SIJS relief
8 and denying SIJS based on the new requirement violates the INA, whether the government's
9 action is arbitrary and capricious under the APA, and whether the action violated the APA's
10 rulemaking requirements. The lawsuit also challenges the government's delay in adjudicating
11 SIJS petitions in violation of the INA, a practice affecting all members of the proposed class.

12 80. The proposed class meets the typicality requirements of Federal Rule of Civil
13 Procedure 23(a)(3) because the claims of the representative Plaintiffs are typical of the class.
14 Each of the class members has been denied or will be denied SIJS despite having met the
15 requirements under the law for relief. Plaintiffs and the proposed class share the same legal
16 claims, which assert the same substantive and procedural rights under the INA and APA.

17 81. The proposed class meets the adequacy requirements of Federal Rule of Civil
18 Procedure 23(a)(4). The representative Plaintiffs seek the same relief as the other members of the
19 class—namely, an order prohibiting the government from relying on its unlawful policy to deny
20 SIJS to children who received SIJS orders from Washington state courts after turning 18 but
21 prior to turning 21, and an order reopening and approving any wrongfully denied SIJS
22 applications.

1 82. Plaintiffs will fairly and adequately protect the interests of the proposed class
2 members because they seek relief on behalf of the class as a whole and have no interest
3 antagonistic to other class members.

4 83. Plaintiffs are also represented by competent counsel with extensive experience in
5 complex class actions and immigration law.

6 84. The proposed class also satisfies Federal Rule of Civil Procedure 23(b)(2).
7 Defendants have acted on grounds generally applicable to the proposed class, thereby making
8 appropriate final declaratory and injunctive relief.

9 **CAUSES OF ACTION**

10 **COUNT I**

11 **(Violation of the INA and the APA)**

12 85. All the foregoing allegations are repeated and realleged as though fully set forth
13 herein.

14 86. The INA deems a child eligible for SIJS if he or she is (1) under 21 years of age at
15 the time the petition is filed; (2) unmarried; (3) declared dependent on a state court, or placed in
16 the custody of a state agency or individual appointed by such a court (such as having his or her
17 custodial placement approved by a juvenile probation department or being appointed a guardian);
18 and (4) the subject of specific findings that reunification with one or more parents is not viable
19 due to abuse, abandonment, neglect, or a similar basis under state law, and that it is not in the
20 child's best interest to return to his or her home country. *See* 8 U.S.C. §§ 1101(b)(1),
21 1101(a)(27)(J), and 1232(d)(6).

22 87. Defendants have a policy of requiring that the predicate SIJS order be issued by a
23 state court with the authority to make a legal conclusion about returning the youth to his parent's

1 custody. Pursuant to this policy, Defendants have denied or will deny all SIJS petitions filed by
2 youth who have obtained SIJS orders in Washington state courts after turning 18 years old but
3 prior to turning 21.

4 88. The APA prohibits agency action that is “in excess of statutory jurisdiction,
5 authority, or limitations.” 5 U.S.C. § 706(2)(C).

6 89. Defendants violate the INA and APA by imposing requirements not found in the
7 statute. Additionally, the requirement at issue contravenes the terms of the statute. In the SIJS
8 statute, Congress defined a child as any unmarried person under 21 years of age. Moreover,
9 Congress recognized state courts’ exclusive authority to make determinations about child welfare
10 pursuant to state law. By denying SIJS petitions on the basis of a new requirement not
11 contemplated by the SIJS statute or prior regulations, and by substituting their own decision-
12 making for that of Washington state courts, Defendants have acted in contravention of the plain
13 language of the SIJS statute and violated the APA.

14 **COUNT II**

15 **(Violation of the APA – Arbitrary and Capricious Action)**

16 90. All the foregoing allegations are repeated and realleged as though fully set forth
17 herein.

18 91. The INA deems a child eligible for SIJS if he or she is (1) under 21 years of age at
19 the time the petition is filed; (2) unmarried; (3) declared dependent on a state court, or placed in
20 the custody of a state agency or individual appointed by such a court (such as having his or her
21 custodial placement approved by a juvenile probation department or being appointed a guardian);
22 and (4) the subject of specific findings that reunification with one or more parents is not viable
23 due to abuse, abandonment, neglect, or a similar basis under state law, and that it is not in the

1 child's best interest to return to his or her home country. *See* 8 U.S.C. §§ 1101(b)(1),
2 1101(a)(27)(J), and 1232(d)(6).

3 92. Defendants have a policy of requiring that the predicate SIJS order be issued by a
4 state court with the authority to make a legal conclusion about returning the youth to his parent's
5 custody. Pursuant to this policy, Defendants have denied or will deny all SIJS petitions filed by
6 youth who have obtained SIJS orders in Washington state courts after turning 18 years old but
7 prior to turning 21.

8 93. The APA prohibits agency action that is "arbitrary, capricious, an abuse of
9 discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

10 94. Defendants violate the INA and APA by imposing arbitrary requirements without
11 a basis in the statute. Additionally, the requirement at issue contravenes the terms of the statute.
12 In the SIJS statute, Congress defined a child as any unmarried person under 21 years of age.
13 Moreover, Congress recognized state courts' exclusive authority to make determinations about
14 child welfare pursuant to state law. By denying SIJS petitions on the basis of an arbitrary
15 requirement not contemplated by the SIJS statute nor prior regulations, and by substituting their
16 own decision-making for that of Washington state courts, Defendants have acted in
17 contravention of the INA and violated the APA.

18 **COUNT III**

19 **(Violation of the APA – Notice and Comment Rulemaking)**

20 95. All the foregoing allegations are repeated and realleged as though fully set forth
21 herein.

22 96. The INA deems a child eligible for SIJS if he or she is (1) under 21 years of age at
23 the time the petition is filed; (2) unmarried; (3) declared dependent on a state court, or placed in

1 the custody of a state agency or individual appointed by such a court (such as having his or her
2 custodial placement approved by a juvenile probation department or being appointed a guardian);
3 and (4) the subject of specific findings that reunification with one or more parents is not viable
4 due to abuse, abandonment, neglect, or a similar basis under state law, and that it is not in the
5 child's best interest to return to his or her home country. *See* 8 U.S.C. §§ 1101(b)(1),
6 1101(a)(27)(J), and 1232(d)(6).

7 97. Defendants have a policy of requiring that the predicate SIJS order be issued by a
8 state court with the authority to make a legal conclusion about returning the youth to his parent's
9 custody. Pursuant to this policy, Defendants have denied or will deny all SIJS petitions filed by
10 for youth who have obtained SIJS orders in Washington state courts after turning 18 years old
11 but prior to turning 21.

12 98. In implementing the new USCIS policy, the agency has changed the substantive
13 criteria necessary for obtaining SIJS relief. Defendants did not follow the procedures required by
14 the APA before taking action impacting these substantive rights.

15 99. With exceptions that are not applicable here, agency rules must go through
16 notice-and-comment rulemaking. *See* 5 U.S.C. § 553.

17 100. Defendants promulgated and implemented these rules without authority and
18 without notice-and-comment rulemaking, in violation of the APA. Plaintiffs are impacted
19 because they have not had the opportunity to comment on the imposition of a new SIJS
20 eligibility requirement.

21 **COUNT IV**

22 **(Violation of the INA and APA; Petition for Mandamus)**

1 101. All the foregoing allegations are repeated and realleged as though fully set forth
2 herein.

3 102. The INA requires USCIS to adjudicate all SIJS petitions within 180 days after the
4 date on which the petition is filed. 8 U.S.C. § 1232(d)(2).

5 103. Defendants have an unlawful practice of delaying the adjudication of SIJS
6 petitions filed by proposed class members beyond the 180-day statutory deadline.

7 104. SIJS adjudications are discrete agency actions USCIS is required to take. Such
8 adjudications also constitute final agency actions that mark the end of the agency's decision-
9 making process, and they determine a SIJS petitioner's rights and obligations.

10 105. The APA prohibits "agency action unlawfully withheld or unreasonably
11 delayed." 5 U.S.C. § 706(1). Under the APA, Defendants have a duty to adjudicate SIJS petitions
12 within a "reasonable time." 5 U.S.C. § 555(b). The statutory deadline establishes the timeframe
13 Congress considers a "reasonable time" under the APA. Defendants' failure to timely adjudicate
14 Plaintiffs' and proposed class members' SIJS petitions constitutes unreasonably delayed action
15 that the APA empowers this Court to compel.

16 106. Mandamus is available to compel a federal official or agency to perform a duty
17 owed to the plaintiff. *See* 28 U.S.C. § 1361. Defendants' failure to timely adjudicate Plaintiffs'
18 and proposed class members' SIJS petitions violates the government's clear, nondiscretionary
19 obligation to adjudicate SIJS petitions within 180 days after the date of filing.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs respectfully pray for this Court to:

- 22 a. Assume jurisdiction over this matter;
23 b. Certify the case as class action as proposed herein;

- 1 c. Appoint Plaintiffs as representatives of the class;
- 2 d. Declare that Defendants’ denial of SIJS and imposition of a new requirement for SIJS relief
3 is contrary to state and federal law and violates the Immigration and Nationality and
4 Administrative Procedure Act;
- 5 e. Declare that the imposition of a new requirement for SIJS eligibility and resulting denial of
6 Plaintiffs’ and the putative class members’ SIJS petitions by USCIS were arbitrary;
- 7 f. Permanently enjoin Defendants from:
- 8 i. Denying SIJS petitions on the grounds that a Washington state court does not
9 have jurisdiction or authority to reunify an 18 to 20 year old with his or her
10 parents;
- 11 ii. Initiating removal proceedings against or removing any SIJS petitioner who was
12 placed into the custody of a state agency or department pursuant to RCW §
13 13.40.300, appointed a guardian pursuant to RCW § 13.90.010 *et seq.*, or placed
14 into extended foster care under RCW § 13.34.267, and whose SIJS petition has
15 been denied on the grounds that the Washington state court did not have authority
16 to “reunify” an individual who has reached age 18 with his or her parents; and
- 17 iii. Providing less than 14 days’ notice to Plaintiffs’ counsel before Defendants take
18 any adverse adjudicatory or enforcement action against any of the Plaintiffs or
19 members of the Proposed class during the pendency of this litigation;
- 20 iv. Delaying the adjudication of class members’ SIJS petitions beyond the statutory
21 180-day deadline for rendering a decision on such petitions;
- 22 g. Rescind the improper denials of Plaintiffs’ and class members’ SIJS petitions, and order
23 USCIS to reopen their petitions;

- 1 h. Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to Justice Act,
2 and any other applicable statute or regulation; and
3 i. Grant such further relief as the Court deems just, equitable, and appropriate.

4 DATED this 5th day of March, 2019.

5 s/ Matt Adams
6 Matt Adams, WSBA No. 28287

7 s/ Leila Kang
8 Leila Kang, WSBA No. 48048

9 s/ Aaron Korthuis
10 Aaron Korthuis, WSBA No. 53974

11 s/ Tim Warden-Hertz
12 Tim H. Warden-Hertz, WSBA No. 53042

13 s/ Meghan Casey
14 Meghan Casey, WSBA No. 45275

15 s/ Olivia Gibbons
16 Olivia Gibbons, WSBA No. 52760

17 NORTHWEST IMMIGRANT RIGHTS PROJECT
18 615 Second Avenue, Suite 400
19 Seattle, WA 98104
20 Telephone: (206) 957-8611
21 Email: matt@nwirp.org
22 leila@nwirp.org
23 aaron@nwirp.org
tim@nwirp.org
meghan@nwirp.org
olivia@nwirp.org