The Slow Death of Childhood For Immigrant Youth

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Abstract

As a first-ever scholarly application of slow violence theory to immigrant youth, this Article conceptualizes the "slow death of childhood" that many children experience in the U.S. immigration system due to prolonged periods of waiting, resulting in uncertainty and forms of exclusion from society. Humanitarian immigration protections have the potential to assist vulnerable children in achieving lawful permanent resident status, and eventually, citizenship in the United States. These protections ostensibly create more permanency in young people's lives, and open up a variety of social, educational, and economic opportunities. Yet the immigration legal system might also be a site of further trauma for children described through slow violence theory.

This Article examines one example of prolonged uncertainty and exclusion for children in the immigration system, employing an original dataset of more than 200,000 digital records spanning more than a decade that is related to children impacted by the backlog for Special Immigrant Juvenile Status (SIJS), a humanitarian protection for abused, abandoned, and neglected children. This backlog is notable as youth must be children when they first seek SIJS and may age out of childhood while waiting to apply for lawful permanent resident status. The backlog requires waiting for protracted and unknown amounts of time to be able to access immigration protection, creating uncertainty and exclusion from a variety of social, educational, and economic institutions. Unlike acts of "spectacular violence," the slow violence of the SIJS backlog is spread over space and time, resulting in harm that is less visible and less clearly connected to the cause of harm. Children are uniquely susceptible to slow violence due to their developmental stage and because of how the impacts of childhood trauma reverberate throughout one's lifespan.

The slow death of childhood concept reveals how the SIJS backlog, draped in bureaucratic mundaneness and largely invisible to society, chips away at young people during a pivotal developmental crossroads, at times colliding with other adverse childhood experiences.

Table of Contents

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Introduction

Growing up in a violent home in the country of Georgia, "Claude"[1] felt life was suffocating.[2] He remembers one horrible night at age eleven when his father pushed a wardrobe on top of him, knocking him unconscious.[3] Although Claude tried to hide who he was, he faced violence outside the home when people suspected he was gay.[4] Amid raids and homophobic violence near a Pride parade, Claude was brutalized by three men, leaving him hospitalized for two weeks.[5] He knew he had to leave Georgia to survive. Claude dreamed of being reborn in New York City and was excited when he was admitted to an arts college there with a scholarship.[6] Unfortunately, after he moved to the United States in the fall of 2021, he could not close the gap in the full cost of education. He had fewer options to finance his education than students with green cards or U.S. citizenship who can access federal financial aid.[7] As a result, Claude lost his student visa status and became undocumented.[8]

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[1] Claude is a pseudonym. *See also* Daniella Silva, *Backlog for Abused Young Immigrants Waiting for Green Cards Has Doubled, Advocates Say*, NBC News (Dec. 4, 2023), https://www.nbcnews.com/news/world/backlog-abused-young-immigrants-waiting-green-cards-doubled-advocates-rcna127573 [https://perma.cc/7BCB-LNMK].

[2] Zoom Interview by Rachel Leya Davidson with Claude (Aug. 22, 2023) (transcript on file with author). *See also* Silva, *supra* note 1 (describing his adverse childhood experiences).

[3] Zoom Interview, *supra* note 2.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *See*, *Eligibility for Non-U.S. Citizens*, Dep't of Education, https://studentaid.gov/understand-aid/eligibility/requirements/non-us-citizens [https://perma.cc/5KKJ-5FS3]. (last visited Feb. 10, 2025).

[8] Zoom Interview, *supra* note 2.

Around this time in 2022, Claude encountered a pro bono attorney at a youth organization. The attorney realized Claude was likely eligible to seek Special Immigrant Juvenile Status (SIJS), a humanitarian protection for children that provides a basis for seeking lawful permanent resident (LPR) status.[9] To be eligible for SIJS, Claude needed to be under twenty-one[10] and unmarried,[11] and a state court would have to find that he had been abandoned, abused, or neglected by a parent.[12] The court would also have to find that it was not in Claude's best interest to return to his country of origin while the court placed Claude under the dependency of the court, a state agency, entity, or with an adult caretaker.[13] With that state court judgment, Claude would then have to petition the U.S. Citizen and Immigration Services (USCIS) within the Department of Homeland Security (DHS) to be recognized as a Special Immigrant Juvenile.[14]

With his attorney, Claude successfully received the necessary state court judgment and then simultaneously filed a petition for Special Immigrant Juvenile Status along with applications for work authorization and lawful permanent resident status,[15] the core benefits of being approved for SIJS. While the immigration agency would not consider the lawful permanent resident status or work authorization applications until SIJS was approved, he was allowed to apply for them concurrently. Claude felt hopeful when his SIJS was approved, thinking his green card and work authorization would be forthcoming soon after.[16]

Unfortunately, this was not even close to the end of his case. Months after he submitted his SIJS petition and other applications, the Department of State issued a statement that there was a worldwide backlog impacting all Special Immigrant Juveniles seeking LPR status.[17] The SIJS backlog affects immigrant youth with pending and approved SIJS who are waiting for an immigrant visa to become available. The youth cannot acheive LPR status until

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[9] 8 U.S.C. § 1101(a)(27)(J) (defining eligibility for SIJS); 8 U.S.C. § 1255(h) (defining eligibility for those classified with SIJS to seek LPR status).

[10] While SIJS petitioners must be under age 21 at the time of filing their SIJS petitions, they will remain eligible after they turn 21 as long as all other criteria are met. 8 C.F.R §204.11(b)(1).

[11] For much of the existence of the SIJS backlog, youth had to remain unmarried through adjudication of the LPR status application, no matter how many years of waiting was involved. 8 C.F.R §204.11(c)(2) (2009) ("is unmarried"). However, under 2022 regulations, they are only required to remain unmarried through the adjudication of the SIJS petition. 8 C.F.R. §204.11(b)(2) (2022) ("Is unmarried at the time of filing and adjudication").

[12] 8 C.F.R. § 204.11(c)–(d) (2022) (describing the required juvenile court findings needed for SIJS classification).

[13] 8 U.S.C. § 1101(a)(27)(J) (defining eligibility for SIJS); 8 C.F.R. § 204.11 (defining basis for juvenile court dependency).

[14] *Special Immigrant Juveniles*, U.S. Citiz. and Immigr. Servs., https://www.uscis.gov/working-in-US/eb4/SIJ [https://perma.cc/3DTL-EBQU] (last updated Apr. 1, 2024).

[15] Zoom Interview, *supra* note 2.

[16] Rachel L. Davidson, Laila L. Hlass, Katia Leiva, & Gabriela Cruz, False Hopes: Over 100,000 Immigrant Youth Trapped in the SIJS Backlog 16 (2023), https://www.sijsbacklog.com/s/2023-false-hopes-report.pdf [https://perma.cc/3XBD-Q58K] [hereinafter False Hopes].

[17] *Visa Bulletin For December 2022*, U.S. Dep't of State (Nov. 10, 2022), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-december-2022.html [https://perma.cc/YCF5-FX5Y] (SIJS-LPR visas are found in fourth category of the Employment-based visa bulletin).

immigrant visas in their category are available.[18] There was never a backlog for the first twenty-five years of the SIJS program; then, in May 2016, a small backlog emerged for children from a few countries.[19] This backlog grew and by December 2022, all children seeking SIJS became impacted by the backlog.[20] For Claude, even though his SIJS petition was approved, the backlog meant USCIS would no longer consider his LPR status or work authorization applications; instead, he was put in line, waiting for an immigrant visa.[21]

A few months after the December 2022 worldwide backlog announcement, Claude was hit with another life-altering piece of news.[22] In March 2023, the Department of State acknowledged they had been misinterpreting the per-country rule for visa availability, and they had been wrongfully limiting visas for children from Honduras, El Salvador, and Guatemala, and routing the visas to children from other countries.[23] In light of this misinterpretation, the Department of State announced that it needed to readjust the dates for all SIJS youth to apply for green cards.[24] The annoucement established that only those SIJS youth who had filed for SIJS in September 2018 or earlier, essentially five or more years prior, would be allowed to seek LPR status at that time.[25]

Claude felt shocked when he learned the backlog would stretch for an unknown number of years.[26] It was particularly hard news because he had finally felt like his life was looking brighter.[27] Claude explained that "I feel like I ran away from so many problems that I had in terms of being accepted for who I was and everything that I had to go through with my family, but here I am introduced to further, bigger problems."[28] Claude had hoped to restart his education, but existing Department of Education interpretation of rules excluded him from obtaining federal financial aid.[29] He also was also excluded from professional opportunities, including a scholarship for homeless young

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[18] *About the SIJ Backlog*, End the SIJS Backlog, https://www.sijsbacklog.com/aboutsijs [https://perma.cc/9QUY-NA7L] (last visited July 18, 2024).

[19] Laila L. Hlass, Rachel Leya Davidson & Austin Kocher, *The Double Exclusion of Immigrant Youth*, 111 Geo. L.J. 1407, 1481-1482 (2023) (describing how the SIJS backlog first emerged in 2016, although SIJS was codified into law in 1991) [hereinafter *Double Exclusion*].

[20] *Visa Bulletin For December 2022*, U.S. Dep't of State (Nov. 10, 2022), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-december-2022.html [https://perma.cc/99ZG-EDSW].

[21] *See* 8 § U.S.C. 1255(a) (making clear that those seeking LPR must have an immigrant visa "immediately available to him at the time his application is filed).

[22] Zoom Interview, *supra* note 2.

[23] Employment-Based Preference Immigrant Visa Final Action Dates and Dates for Filing for El Salvador, Guatemala, and Honduras, 88 Fed. Reg. 18252 (Mar. 28, 2023); *Employment-Based Fourth Preference (EB-4) Announcement,* U.S. Dep't of State, https://travel.state.gov/content/travel/en/News/visas-news/employment-based-fourth-preference-eb4-announcement.html [https://perma.cc/QH2G-4CLK] (last updated Mar. 28, 2023).

[24] Employment-Based Preference Immigrant Visa Final Action Dates and Dates for Filing for El Salvador, Guatemala, and Honduras, 88 Fed. Reg. 18252 (Mar. 28, 2023).

[25] *Visa Bulletin For April 2023*, U.S. Dep't of State (Mar. 22, 2023), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-april-2023.html [https://perma.cc/D4SP-N53M].

[26] Zoom Interview, *supra* note 2.

[27] *Id.*

[28] Silva, *supra* note 1 (quoting Claude).

[29] False Hopes, *supra* note 16, at 17.

people, due to his immigration status.[30] Claude described the agonizing stress of waiting for an indeterminate amount of time without access to LPR status: "We've already been abused in many, many ways, we've never had stabilities throughout our lives. It's just a matter of time and this question that's haunting you, when is it going to stop?"[31]

The harms Claude faces, like other youth impacted by the SIJS backlog, is an example of "slow violence."[32] Slow violence is a useful concept for several reasons. First, it reveals the violence behind seemingly banal, routinized harm that occurs gradually over time.[33] Specifically, slow violence reveals the violence within burecratic systems that require waiting and which contribute to maintaining poverty.[34] Secondly, the slow violence concept helps make clear the depth of the harm, which may have been obfuscated by time and space. Thirdly, it cleaves through simplistic and misguided notions of personal choice to reveal how the state and powerful private actors may be at fault for the harm.[35] Ultimately, slow violence can reveal how a system has been set up as simply unwinnable for marginalized communities—communities are worn down, experiencing slow death, as they attempt to achieve in a system where they have been set up to fail.[36]

This Article argues that childhood is a uniquely significant moment where slow violence can occur. This stems from how children experience time more profoundly—confronting a crossroads with starkly different trajectories at particular developmental moments[37]—and how childhood trauma has reverberating impacts throughout a person's lifespan, evidenced by Adverse Childhood Effects (ACEs) research.[38] This Article conceptualizes the "slow death of childhood" to capture the short- and long-term harms due to protracted uncertainty and the loss of educational, social, and employment opportunities over time. Critically, the Article applies this theory to the case study of children impacted by the Special Immigrant Juvenile Status (SIJS) backlog,

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[30] *Id.*

[31] *Id.* at 48.

[32] Rob Nixon, Slow Violence and the Environmentalism of the Poor 47–48 (2011) (explaining that slow violence, easily ignored by capitalism, heightens the vulnerability of ecosystems and disadvantaged people, while fueling social conflicts from worsening living conditions).

[33] *Id.* at 47 (the impact of slow violence "may stretch beyond the horizon of time imaginable").

[34] Akhil Gupta, Red Tape: Bureaucracy, Structural Violence, and Poverty in India 5 (2012) ("political, administrative, and judicial action or inaction that prevents poor people from making a living, obtaining medical aid, and securing such necessities of life as food, clothing, shelter, and sanitation" should be recognized as violence.).

[35] *See, e.g.*, Nixon, *supra* note 32, at 205 (slow violence concept helps reveal the government's culpability for not addressing the devestating health impacts for Gulf War veterans who were exposed to depleted uranium).

[36] Lauren Berlant, Cruel Optimism 38 (2011) (slow death is a means of cruel optimisim, where for example, low wage workers will defer enjoyment in hopes to take pleasure in future enjoyment in life that they actulaly will never be able to attain).

[37] Jennifer M. Zubler et al., *Evidence-Informed Milestones for Developmental Surveillance Tools*, 149(3) Peds., March 2022 at 1, https://publications.aap.org/pediatrics/article/149/3/e2021052138/184748/Evidence-Informed-Milestones-for-Developmental?autologincheck=redirected [https://perma.cc/HGX6-TUKP] (describing developmental milestones and importance of early interventions when children experience delays as compared to others).

[38] *About Adverse Childhood Experiences*, CDC, https://www.cdc.gov/aces/about/index.html [https://perma.cc/UH58-2QNS] (last updated Oct. 8, 2024).

relying on an original dataset of more than 200,000 digital records spanning more than a decade.[39] The dataset reveals the size and shape of the backlog, as well as key demographic information about the children impacted by it.

The SIJS backlog can be understood as both a site of and trigger for the slow death of childhood. To begin with, children in the SIJS backlog are particularly vulnerable to having experienced childhood trauma before entering the backlog, and then the backlog itself may expose them to further trauma. Building on key findings of ACEs research as well as data analysis of the demographics, case outcomes, and case processing times of youth in the SIJS backlog, this Article theorizes that the prolonged uncertainty and vulnerable immigration status of youth in the SIJS backlog puts them at risk of the slow death of childhood. It reveals how bucreatic action such as creating arbitrary and rigid limis on immigrant visas, as well as prolonged processing time contributes to creating an unwinnable system for immigrant youth, instead of fulfilling a promise of permancy. This Article, therefore, contributes to growing literature on the ACEs framework by applying broader structural questions to understandings of childhood adverse experiences—including how race, racism, and immigration legal status may impact children's exposure to trauma.

This Article enriches the literature focused on immigrant children's rights by asking how the immigration legal system itself impacts children, particularly as they age into adulthood, due to the existence of backlogs. Children's rights and roles are an emerging area of immigration law literature, yet much of this scholarship seeks only to understand children's rights *within* the immigration system as opposed to how the system may impact children.[40] This Article therefore engages more broadly with immigration law literature that critiques the punitive nature[41] and violence[42] of the immigration system, which manifests through immigration incarceration,[43] "shadow [removal] proceedings,"[44]

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[39] This dataset was received through FOIA litigation and settlement, containing case by case records for each SIJS petition filed between October 1, 2009 and February 28, 2023, covering fiscal year (FY) 2010 through part of FY 2023. The last supplement of data was received by overnightmail in a CD with a cover letter. Letter from Cynthia Munita, Dir., FOIA Operations, U.S. Citiz. & Immigr. Servs., to Laila Hlass, Professor, Tulane Univ. L. School (Jun. 9, 2023) (on file with author).

[40] *See generally* David B. Thronson, *Kids Will be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law*, 63 Ohio St. L.J. 979 (2002); David B. Thronson, *You Can't Get Here from Here: Toward a More Child-Centered Immigration Law*, 14 Va. J. Soc. Pol'y & L. 58 (2006); Ragini Shah, *Sharing the American Dream: Towards Formalizing the Status of Long-Term Resident Undocumented Children in the United States*, 39 Colum. Hum. Rts. L. Rev. 639 (2008); Bridgette A. Carr, *Incorporating a 'Best Interest of the Child Approach' into Immigration Law and Procedure*, 12 Yale Hum. Rts. & Dev. L. J. 120 (2008); Laila L. Hlass, *Minor Protections: Best Practices for Representing Child Migrants*, 47 N.M. L. Rev. 247 (2017); Elizabeth Keyes, *Evolving Contours of Immigration Federalism: The Case of Migrant Children*, 19 Harv. Latino L. Rev. 33 (2016).

[41] César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA L. Rev. 1346, 1360 (2014).

[42] Angélica Cházaro, *The End of Deportation*, 68 UCLA L. Rev. 1040, 1070 (2021).

[43] César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. Rev. 245, 275 (2017).

[44] Jennifer Lee Koh, *Removal in the Shadows of Immigration Court,* 90 S. Cal. L. Rev. 181, 193 (2017).

far-reaching discretion,[45] unlawful policing,[46] executive defiance,[47] administrative violence,[48] and exceptionalism.[49] These features take a particular form with children who often face "adultification"[50] and the "school to deportation" pipeline[51] in the immigration system.

This Article proceeds in four parts. Part I describes the concept of slow violence and how it is implicated in the "slow death of childhood" for immigrant youth. Part II illustrates an emblamatic sub-set of immigrant children, those seeking and approved for SIJS, giving an account of the legal landscape of SIJS, including the SIJS backlog. Relying on an original dataset of 200,000 SIJS records, Part III presents key empirical findings describing youth in the SIJS backlog, including their countries of origin and gender breakdown, the size and scale of the backlog over time, where children in the backlog reside, and how youth age through the backlog. Many of these characteristics are relevant to considering the risk profile and presentation of childhood trauma for SIJS youth. Part IV argues that the SIJS backlog is the site and trigger for the slow death of childhood, as it puts the health and wellbeing of impacted young people at risk, while depriving them of long- and short-term educational, economic, and social opportunities. The slow death of childhood reveals a throughline to the political structures responsible for the deprivation of young people. Ultimately, this Article demands urgent action including abolishing the SIJS backlog to address these harms.

I. Slow Violence Theoretical Approach

Building on Rachel Carson's work in *Silent Spring*, environmentalist scholar Rob Nixon introduces the term "slow violence" to illuminate how slow-release environmental harms and cumulative injuries have devastating impacts that may be invisible to society at large.[52] Since its introduction, scholars from different disciplines have used the concept to describe a host of challenging problems, often calling for public action. While the core theory has not changed through these different applications, one advancement that scholar Rachel Pain has introduced is how trauma, particularly intergenerational and community trauma, is a form of slow violence that can accumulate

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[45] Shoba Sivaprasad Wadhia, *Darkside Discretion in Immigration Cases*, 72 Admin. L. Rev. 367, 374 (2020).

[46] Jason A. Cade, *Policing the Immigration Police: ICE Prosecutorial Discretion and the Fourth Amendment*, 113 Col. L. Rev. Sidebar 180, 180 (2013).

[47] Jennifer Lee Koh, *Executive Defiance and the Deportation State*, 130 Yale L. J. 948, 954 (2021).

[48] Stephen Lee, *Administrative Violence in Immigration Law*, 66 Ariz. L. Rev. 739, 749 (2024).

[49] Jill E. Family, *Immigration Law Exceptionalism and the Administrative Procedure Act*, 37 Pub. Affs. Q. 209, 210 (2022).

[50] *See generally* Laila L. Hlass, *The Adultification of Immigrant Children*, 34 Geo. Immigr. L. J. 200 (2020).

[51] *See generally* Laila L. Hlass, *The School to Deportation Pipeline*, 34 Ga. St. U. L. Rev. 697 (2018).

[52] Nixon, *supra* note 32, at xi (author states he is building upon the phenomena of slow environmental violence articulated by Rachel Carson in Silent Spring).

to exacerbate the impacts of other forms of slow (and fast) violence that communities may experience. This Article builds upon this foundation, but illuminates the particular vulnerability of immigrant children to slow violence, as they may face pronounced and unique health and socio-economic impacts throughout their lifespan stemming from childhood trauma.

A. Evolution and Application of Slow Violence Theory

Scholar Rob Nixon introduced the concept of slow violence to make the urgency of an issue visible, to reveal the link between cause and effect, and to spur social action. Concepts of slow violence have proliferated across disciplines and social issues. Slow violence has been used by humanist scholars across disciplines, including criminology,[53] political geography,[54] urban studies[55] and environmental studies.[56] It has been used alongside calls for social action to address problems as wide-ranging as housing dispossession,[57] policing,[58] school bullying,[59] water contamination,[60] and incarceration.[61] Slow violence theory helps explain how the people and structures often responsible for harm evade accountability, as they are insulated by ambiguous boundaries of time and space, which obscures the connection between cause and effect.[62]

Slow violence is related to the concept of slow death, which is the "physical wearing out of a population and the deterioration of people in that population."[63] In the essay in which literary scholar and cultural theorist Lauren Berlant develops the concept of slow death, they reconceptualize the so-called health epidemic of obesity as not a consequence of individual personal choices but stemming from the U.S. capitalist regime policies which harm poorer communities of color: "the bodies of U.S. waged workers will be more fatigued, in more pain, less capable of ordinary breathing and working, and die earlier than the average for higher-income workers, who are also getting

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[53] Geoff Ward, *The Slow Violence of State Organized Race Crime*, 19 Theor. Criminol. 299, 304 (2015); Rory Kramer & Brianna Remster, *The Slow Violence of Contemporary Policing*, 5 Ann. Rev. Criminol. 43, 44 (2022); Gina Fedock et al., *"Scum (of the Earth)": Incarcerated Mothers' Experiences of Slow Violence*, 71 Soc. Probs. 1068, 1069 (2022).

[54] Nahid Rezwana & Rachel Pain, *Gender-Based Violence Before, During, and After Cyclones: Slow Violence and Layered Disasters*, 45 Disasters 741, 754 (2021).

[55] Nikhil Anand et al., *Enduring Harm: Unlikely Comparisons, Slow Violence and the Administration of Urban Injustice*, 46 Int'l J. Urb. Reg'l Rsch. 651, 651 (2022); Lalitha Kamath & Anushri Tiwari, *Ambivalent Governance and Slow Violence in Mumbai's Mithi River*, 46 Int'l J. Urb. Reg'l Rsch. 674, 674 (2022).

[56] *See generally* Nixon, *supra* note 32.

[57] Rachel Pain, *Chronic Urban Trauma: The Slow Violence of Housing Dispossession*, 56 Urb. Stud. 385, 386 (2019).

[58] Naa Oyo Kwate & Shatema Threadcraft, *Dying Fast and Dying Slow in Black Space: Stop and Frisk's Public Health Threat and a Comprehensive Necropolitics* 14 Du Bois Rev. 535, 539 (2017).

[59] Ben Lohmeyer, *The Institutionalised Momentum of Slow Violence: Spatiotemporal Contradictions in Young People's Accounts of School Bullying*, 44 Brit. J. Socio. Educ. 259, 268 (2022).

[60] Kamath & Tiwari, *supra* note 55, at 676.

[61] Fedock et al., *supra* note 53, at 1069.

[62] James Rice, *Slow Violence and the Challenges of Environmental Inequality*, 9 Env't Just. 176, 176 (2016).

[63] Lauren Berlant, *Slow Death (Sovereignty, Obesity, Lateral Agency)*, 33 Crit. Inquiry 754, 754 (2007).

fatter, but at a slower rate and with relatively more opportunity for exercise."[64] Berlant's contribution to slow violence literature is to reveal how harm may stem from capitalist structures and that communities most harmed are often people of color in poverty, experiencing multiple interlocking systems of oppression. Berlant also contextualizes the harm historically, as a continuum of capitalist regime violence.[65]

Slow violence theory has expanded in recent years to incorporate concepts of trauma, including collective and generational trauma.[66] While Nixon's theory of slow violence focused on long- and short-term physical effects, Pain raises the importance of understanding trauma, which is distinct from the physical illness and damage described by Nixon.[67] She argues that trauma, a psychological effect of violence, may have important consequences in the short- and long-term, particularly for places and people that experience repeated harms.[68] Pain acknowledges that for communities who experience repeated violence—both slow and fast—trauma can be collective, and the scope and scale of the traumatic shockwaves from this violence can be massive.[69] She argues that "[t]he trauma created by slow violence not only oscillates over time, but becomes magnified where the source of violence continues and proliferates; trauma becomes, in turn, a powerful force sustaining the effects of violence."[70]

Stephen Lee introduced the concept of slow violence to the immigration legal system. In *Family Separation as Slow Death*, he argues that the everyday functioning of the system serves to separate families in slow motion through immigration admissions, enforcement, adjustment, and transnational banking, in contrast to the spectacular violence occurring when U.S. government officials tear screaming children from their parents at the border.[71] Lee argues that slow death is instructive to reconceptualize the breadth and depth of family separations as a foundation of the U.S. immigration system, instead of the traditionally understood concept of family unity.[72] This insight reveals how immigration law normalizes immigrant suffering, and, consequently, it demands transformation of the whole system.[73] In recent years, immigration law and legal studies scholars have begun applying slow violence theory to describe aspects of the immigration apparatus including electronic monitoring,[74] immigration courts,[75] and asylum systems.[76]

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[64] *Id.* at 775.

[65] *Id.* at 780 ("[T]his attrition of life or pacing of death where the everyday evolves within complex processes of globalization, law, and state regulation is an old story . . . .").

[66] *See generally* Pain *supra* note 57.

[67] *Id.* at 385.

[68] *Id.* at 388.

[69] *Id.* at 388–89.

[70] *Id.* at 393.

[71] Stephen Lee, *Family Separation As Slow Death*, 119 Colum. L. Rev. 2319, 2323 (2019).

[72] *Id.* at 2330.

[73] *Id.* at 2324.

[74] Sarah R. Sherman-Stokes, *Immigration Detention Abolition and the Violence of Digital Cages*, 95 U. Col. L. Rev. 219, 230 (2024).

[75] Maya Pagni Barak, The Slow Violence of Immigration Court: Procedural Justice on Trial 4 (2023).

[76] Natash Saunders & Tamara Al-Om, *Slow Resistance: Resisting Slow Violence of Asylum*, 50 Millennium 524, 526 (2022); Lucy Mayblin et al., *Necropolitics and the Slow Violence of the Everyday: Asylum Seeker in Welfare in the Postcolonial Present*, 54 Socio. 107, 109 (2019).

B. The Slow Death of Childhood

Building upon slow violence theory, this Article introduces the concept of the "slow death of childhood," which describes the impact of protracted uncertainty, exclusion from educational, social, and professional opportunities, and resulting risks to health and wellbeing that children face while navigating the immigration legal system. The "slow death of childhood" incorporates research about childhood trauma with slow violence theory and takes into account the critical stage of transition and trajectory of adolescence. Immigrant children have often already experienced trauma in their country of origin and in transit before arriving to the United States. While children may seek humanitarian protection in the immigration system, the system may be a locus of further trauma.

Children, due to their developmental stages, experience trauma differently than adults,[77] and that trauma may have life-long effects.[78] A growing body of research has shown that trauma, such as childhood abuse and neglect, has long-term impacts on people's lives.[79] Childhood trauma stems from an extreme stressor where the child perceives a threat, such as violence at home or in the community, the death of a parent, natural disasters, motor vehicle accidents, or life-threatening illnesses and associated painful medical procedures.[80] Growing up with instability and lack of safety can disrupt neurobiological, cognitive and social-emotional development.[81]

Adverse Childhood Experiences (ACEs) is a common framework to assess and understand childhood adversity and trauma.[82] The original ACEs study in the 1990s found an association between having an adverse childhood experience and negative outcomes in adult life relating to mental and maternal health, chronic and infectious disease, and loss of financial and academic opportunities.[83] Adverse Childhood Experiences are defined as potentially traumatic events that impact children specifically, such as experiencing violence, abuse or neglect, witnessing domestic or community violence or a family member death, as well as aspects of living environments that impact their stability, such as instability due to parental separation or a household member being incarcerated, or growing up in a household with substance abuse or mental illness.[84] Studies have found that about half of children under the age

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[77] *See* Regina M. Sullivan, *The Neurobiology of Attachment to Nurturing and Abusive Caregivers*, 63 Hastings L.J. 1553, 1569 ("[A]nimal research suggests that the early life brain processes trauma differently than the adult brain.").

[78] Heather Dye, *The Impact and Long-Term Effects of Childhood Trauma*, 28 J. Hum. Behav. Soc. Env't 381, 381 (2018).

[79] Karen Hughes et al., *The Effect of Multiple Adverse Childhood Experiences on Health: A Systematic Review and Meta-Analysis*, 2 Lancet Pub. Health 356, 363 (2017).

[80] Deanna Mulvihill, *The Health Impact of Childhood Trauma: An Interdisciplinary Review*, 1997-2003, 28 Issues Compreh. Ped. Nursing 115, 117 (2005).

[81] Jack P. Shonkoff & Andrew S. Garner, *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 Peds. 232, 237 (2012).

[82] Patricia Logan-Greene, BK Elizabeth Kim, & Paula S. Nurius, *Childhood Adversity Among Court-Involved Youth: Heterogenous Needs for Prevention and Treatment*, 5 Juv. Just. 68, 69 (2016).

[83] About the CDC-Kaiser ACE Study, CDC, https://www.cdc.gov/violenceprevention/aces/about.html [https://perma.cc/4SH3-WKZ9] (last updated Apr. 6, 2021).

[84] About Adverse Childhood Experiences, CDC, (Oct. 8, 2024), https://www.cdc.gov/aces/about/index.html [https://perma.cc/RV4A-8MYR].

of 18 in the United States have experienced at least one ACE, and nearly one-third have experienced multiple.[85]

Adverse Childhood Experiences may disrupt the body's regulatory systems—neurological, nervous, immune, neurological, metabolic and genetic—acting through a toxic stress response.[86] The general stress response—commonly called the "fight or flight" response—involves biological responses stemming from an activated nervous system that impact heart rate, blood pressure, and breathing among other physical effects.[87] Usually, these changes are fleeting, and the body will return to baseline state.[88] Toxic stress, on the other hand, involves a prolonged or permanent physiological response to stressors with a risk of harming organs.[89] For children, toxic stress may disrupt brain circuity and regulatory systems at a stage of development which brings health and behavioral impacts decades later.[90] Toxic stress in early childhood may change genetic chemistry, impacting how the brain develops and functions for a lifetime.[91]

The accumulation of ACEs is predicative of numerous problems later in life, including academic failure, poor health outcomes, and unhealthy social and emotional relationship development.[92] Adverse Childhood Experiences and toxic stress can even biologically age children—by increasing "wear and tear" on their nervous, endocrine, and immune systems, which then may result in accelerated cellular ageing, alongside heightened risk of age-related diseases.[93] Adverse Childhood Experiences are connected with over sixty mental and physical health outcomes and premature death, including heart disease, cancer, suicide, stroke, diabetes, and kidney disease.[94] ACEs are also associated with dementia, epilepsy, attention-deficit/hyperactivity disorder, as well as sleeping problems, chronic pain, learning and behavioral problems, autism spectrum disorders, and Post-Ttraumatic Stress Disorder. [95] Childhood trauma does not preclude healthy and happy futures, but it can erect significant additional

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[85] Ida Haahr-Pedersen, Camila Perera, Philip Hyland, Frédérique Vallières, David Murphy, Maj Hansen, Pernille Spitz, Pernille Hansen, & Marylène Cloitre, *Females Have More Complex Patterns of Childhood Adversity: Implications for Mental, Social, and Emotional Outcomes in Adulthood*, 11 Eur. J. Psychotraumatology 1, 2 (2020).

[86] Robin Ortiz, Rachel Gilgoff, & Nadine Burke Harris, *Adverse Childhood Experiences, Toxic Stress, and Trauma-Informed Neurology*, 79 J. Am. Med. Ass'n Neuro. 539, 539 (2022).

[87] Hillary A. Franke, *Toxic Stress: Effects, Prevention and Treatment*, 1 Child. 390, 390 (2014).

[88] *Id.*

[89] *Id.* at 391.

[90] Andrew S. Garner & Jack P. Shonkoff, *Early Childhood Adversity, Toxic Stress, and the Role of the Pediatrician: Translating Developmental Science Into Lifelong Health*, 129 Peds. 224, 225 (2012).

[91] Jack P. Shonkoff et al., *Early Experiences Can Alter Gene Expression and Affect Long-Term Development* 1, 2–3 (Nat'l Sci. Council on the Dev. Child, Working Paper No. 10, 2010), https://developingchild.harvard.edu/wp-content/uploads/2024/10/Early-Experiences-Can-Alter-Gene-Expression-and-Affect-Long-Term-Development.pdf [https://perma.cc/YX26-DZSH].

[92] Ellen Goldstein, James Topitzes, Julie Miller-Cribbs, & Roger L. Brown, *Influence of Race/Ethnicity and Income on the Link Between Adverse Childhood Experiences and Child Flourishing*, 89 Ped. Rsch. 1861, 1861 (2021).

[93] Andrea Danese & Bruce S. McEwen, *Adverse Childhood Experiences, Allostasis, Allostatic Load, and Age-Related Disease*, 106 Physiology & Behav. 29, 31 (2012).

[94] Ortiz et al., *supra* note 86, at 539.

[95] *Id.*

barriers for people as they navigate their lives. All of this underscores the need for trauma-informed responses across social systems.[96]

Social factors, including race, may play an important role in understanding Adverse Childhood Experiences and childhood trauma broadly. More recently, the ACE framework has been adapted to encompass adverse experiences such as discrimination, witnessing violence outside of the home, bullying and economic hardship.[97] Adverse Childhood Experiences are commonly both chronic and intergenerational.[98] Children of color[99] as well as children who are socioeconomically vulnerable,[100] female-identifying,[101] LGBTQ,[102] or lack high school education are more likely to have experienced ACEs.[103] Although Adverse Childhood Experiences affect people across racial, ethnic, and socioeconomic spectrums, children and families of color, particularly from low-income neighborhoods, face higher patterns of trauma and are particularly vulnerable to health impacts from ACEs.[104]

Immigration status may also be a critical factor.[105] Some researchers argue that the traditional ACEs assessment may fail to recognize the unique stressors related to immigration status, and that the threats of and experiences related deportation should be fully integrated into the ACEs screening.[106] Immigrant children are at an elevated risk for having mental health challenges related

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[96] *See e.g.*, Nicole Tuchinda, *The Imperative for Trauma-Responsive Special Education* 95 NYU L. Rev. 766, 823 (2020); Lindsay M. Harris and Hillary Mellinger, *Asylum Attorney Burnout and Secondary Trauma* 56 Wake Forest L.Rev. 733, 812 (2021); Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering,* 22 Clin. L. Rev. 359, 369 (2016); Ortiz et al., *supra* note 86, at 540.

[97] Goldstein et al., *supra* note 92, at 1861.

[98] *Id.*

[99] Donte L. Bernard, Casey D. Calhoun, Devin E. Banks, Colleen A. Halliday, Chanita Hughes-Halbert, & Carla K. Danielson, *Making the "C-ACE" for a Culturally-Informed Adverse Childhood Experiences Framework to Understand the Pervasive Mental Health Impact of Racism on Black Youth*, 14 J. Child & Adol. Trauma 233, 233 (2021); Joshua P. Mersky, James Topitzes, & A.J Reynolds, *Impacts of Adverse Childhood Experiences on Health, Mental Health, and Substance Use in Early Adulthood: A Cohort Study of an Urban, Minority Sample in the U.S.*, 37 Child Abuse & Negl. 917, 918 (2013).

[100] Mersky et al., *supra* note 99, at 921.

[101] Haahr-Pedersen, *supra* note 85, at 1.

[102] Phillip W. Schnarrs, Amy L. Stone, Robert Salcido, Jr., Aleta Baldwin, Charlotte Georgiou, & Charles B. Nemeroff, *Differences in Adverse Childhood Experiences (ACEs) and Quality of Physical and Mental Health Between Transgender and Cisgender Sexual Minorities*, 119 J. Psych. Rsch. 1, 1 (2019); Melissa T. Merrick, Derek C. Ford, Katie A. Ports, & Angie S. Guinn, *Prevalence of Adverse Childhood Experiences from the 2011-2014 Behavioral Risk Factor Surveillance System in 23 States*, 172 J. Am. Med. Ass'n Peds. 1038, 1039 (2018).

[103] Merrick et al., *supra* note 102 at 1040.

[104] *See generally,* Goldstein et al., *supra* note 92.

[105] Naomi Schapiro, Samira Soleimanpour, Sophia Navarro, & Claire D. Brindis, *Screening Adolescents for Adverse Childhood Experiences (ACEs): Addressing the Unique Needs of Immigrant Youth* 2 (2021), https://www.acesaware.org/wp-content/uploads/2021/12/Screening-Adolescents-for-ACEs-Addressing-the-Unique-Needs-of-Immigrant-Youth.pdf [https://perma.cc/QE67-PKHC].

[106] Tania Maria Caballero, Sara B. Johnson, Cara R. Muñoz Buchanan, & Lisa Ross DeCamp, *Adverse Childhood Experiences Among Hispanic Children in Immigrant Families Versus U.S.-Native Families*, 140 Peds. 1, 8 (2017); R. Gabriela Barajas-Gonzalez, Cecilia Ayón, Kalina Brabeck, Lisseth Rojas-Flores, & Carmen R. Valdez, *An Ecological Expansion of the Adverse Childhood Experiences (ACEs) Framework to Include Threat and Deprivation Associated with U.S. Immigration Policies and Enforcement Practices: An Examination of the Latinx Immigrant Experience*, 282 Soc. Sci. Med. 1, 6 (2021).

to being exposed to violence.[107] Immigrant children often have histories of trauma related to migration, because they face dangers pre-migration, on the journey, and upon arrival to the destination country.[108] Premigration children may face violence from war or within their communities.[109] The travel path for the largest portion of migrant chidren to the U.S.—through Mexico and Central America to the Southern border—may compound the violence many children experience. It is well-documented that children migrating through this region experience assaults, theft, sexual abuse, and witnessing violence against and even death of others.[110] Postmigration stress may be characterized by ongoing PTSD, due to low levels of social support, financial difficulties, delays in immigration processing, family separation, loneliness, language barriers, and being denied the ability to work lawfully.[111]

Immigrant children might also experience stressors related to court exposure. While there has not been research specifically about impact of immigration court on children, research has looked at the effects of other court exposure on children. Research involving detained youth subject to juvenile court proceedings has found that these youth carry substantial histories of adversity, including multiple forms of trauma.[112] Furthermore, children more broadly involved in juvenile court proceedings typically experience ACEs prior to and at times in connection with court proceedings.[113] The threat of court

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[107] Jodi Berger-Cardoso, *Running to Stand Still: Trauma Symptoms, Coping Strategies, and Substance Use Behaviors in Unaccompanied Migrant Youth*, 92 Child. & Youth Servs. Rev. 143, 149 (2018); India J. Ornelas & Krista M. Perreira, *The Role of Migration in the Development of Depressive Symptoms Among Latino Immigrant Parents in the USA*, 73 Soc. Sci. Med. 1169, 1174 (2011).

[108] Sean D. Cleary, Ryan Snead, Daniela Dietz-Chavez, Ivonne Rivera, & Mark C. Edberg, *Immigrant Trauma and Mental Health Outcomes Among Latino Youth*, 20 J. Immigr. & Minority Health 1053, 1057 (2018); Omar G. Gudiño, Erum Nadeem, Sheryl H. Kataoka, & Anna S. Lau, *Relative Impact of Violence Exposure and Immigrant Stressors on Latino Youth Psychopathology*, 39 J. Cmty. Psych. 316, 316 (2011); Sarah A. Jolie, Ogechi Cynthia Onyeka, Stephanie Torres, Cara DiClemente, Maryse Richards, & Catherine DeCarlo Santiago, *Violence, Place, and Strengthened Space: A Review of Immigration Stress, Violence Exposure, and Intervention for Immigrant Latinx Youth and Families*, 17 Ann. Rev. Clinical Psych. 127, 133 (2021). Anne Elizabeth Sidamon-Eristoff, Emily M. Cohodes, Dylan G. Gee, & Catherine Jensen Peña, *Trauma Exposure and Mental Health Outcomes Among Central American and Mexican Children Held in Immigration Detention at the United States–Mexico Border*, 64 Dev. Psychobiology 1, 7 (2022).

[109] Stuart L. Lustig, Maryam Kia-Keating, Wanda Grant Knight, Paul Geltman, Heidi Ellis, J. David Kinzie, Terence Keane, & Glenn N. Saxe, *Review of Child and Adolescent Refugee Mental Health*, 43 J. Am. Acad. Child Adolesc. Psych. 24, 26 (2004).

[110] Janna Ataiants, Chari Cochen, Amy Henderson Riley, Jamile Tellez Liberman, Mary Clare Rediy, & Mariana Chilton, *Unaccompanied Children at the U.S. Border, a Human Rights Crisis that Can be Addressed with Policy Change,* 20 J. Immigr. Minority Health 1000, 1001 (2018); Centro de Derechos Humanos, La-72 & KIND, *Blocked from Protection: Unaccompanied Migrant Children on Mexico's Southern Border* 7_10, https://supportkind.org/wp-content/uploads/2022/09/Southern-Border-Report_Final.pdf [https://perma.cc/H3N6-XV9C] (last visited Mar. 22, 2025).

[111] Derrick Silove, Zachary Steel, & Charles Watters, *Policies of Deterrence and the Mental Health of Asylum Seekers*, 284 J. Am. Med. Ass'n Peds. 604, 606 (2000).

[112] Karen M. Abram, Linda A. Teplin, Devon R. Charles, Sandra L. Longworth, Gary M. McClelland, & Mina K. Dulcan, *Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention*, 61 Archives Gen. Psych. 403, 407 (2004) ("Exposure to trauma is a fact of life for delinquent youth.").

[113] Logan-Greene et al., *supra* note 82, at 81; Michael T. Baglivio & Nathan Epps, *The Interrelatedness of Adverse Childhood Experiences Among High-Risk Juvenile Offenders*, 14 Youth Violence & Juv. Just. 179, 194 (2016).

might be a stressor itself. Research has also shown that Latina/o immigrants may also experience stressors such as fear of deportation, family separation, discrimination and challenges related to legal systems.[114] This is relevant to youth impacted by the SIJS backlog who must appear in some form of juvenile court, and many of whom also face immigration court proceedings.

ACEs research has documented the long-term health, educational, and socio-economic impacts of childhood trauma. While immigration status and the experience of immigration court have not been studied specifically within ACEs research, this Article posits that ACEs are critical to understanding the complexities of childhood trauma for immigrant children. The slow death of childhood theory rests on an understanding that childhood trauma should be independently understood and studied within slow violence research. The "slow death of childhood" captures both the operation of slow-release trauma that children experience over time, as well as the result of that childhood trauma: negative health impacts and loss of educational, economic and social opportunities. While this theory might be relevant to children subjected to other legal systems, such as the juvenile and family regulation legal systems, this Article focuses on children in the immigration legal system, specifically the emblematic case of those impacted by the SIJS backlog.

II. Special Immigrant Juveniles

SIJS is a useful case study for understanding children's experiences in the immigration system, as it is one of the most common protections youth seek and the only one that was designed just for vulnerable children. Although immigrant children have specialized needs due to their developmental status and the trauma they may have experienced, there are little accommodations for them under the Immigration and Nationality Act, attendant regulations, and policies.[115] Children in the immigration legal system are most often treated as adults.[116] Arguably, the only substantive immigration benefit designed exclusively for children is Special Immigrant Juvenile Status.[117]

For this reason, SIJS is critical to understanding immigration law's approach to childhood.[118] Therefore, even though other immigration backlogs

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[114] Carola Suárez-Orozco, Frosso Motti-Stefanidi, Amy Marks, & Dalal Katsiaficas, *An Integrative Risk and Resilience Model for Understanding the Adaptation of Immigrant-Origin Children and Youth*, 73 Am. Psych. 781, 791–92 (2018); Mariana K. Falconier, Monica Huerta, & Ed Hendrickson, *Immigration Stress, Exposure to Traumatic Life Experiences, and Problem Drinking Among First-Generation Immigrant Latino Couples*, 33 J. Soc. Pers. Relationship 469, 470–71 (2016).

[115] *See generally* Laila L. Hlass & Lindsay M. Harris, *A Child-Centred Approach to Representing Children in Immigration Legal Systems*, *in* Oxford Handbook of Migrant Children and Child-Centred Approach (Barbara Gornik, Zorana Medaric, & Mateja Sedmak eds., 2025).

[116] Laila L. Hlass, *The Adultification of Immigrant Children*, 34 Geo. Immigr. L.J. 199, 202 (2020).

[117] *Id.* at 214.

[118] *See* Dalia Castillo-Granados, Rachel Leya Davidson, Laila L. Hlass, & Rebecca Scholtz, *The Racial Justice Imperative to Reimagine Immigrant Children's Rights: Special Immigrant Juveniles as a Case Study*, 71 Am. U.L. Rev. 1779, 1853 (2022).

exist,[119] the SIJS backlog is distinctly important to understanding children's experience in the immigration legal system. In fact, many children age into adulthood while waiting in this backlog. The study of immigrant youth at this developmental stage is particularly important as their time in the backlog often coincides with a vital transition point of adolescence, where youth could be launched into higher education, professional vocational opportunities or left behind. Although SIJS has helped tens of thousands of vulnerable children obtain LPR status, the SIJS backlog has frustrated the promise of SIJS.[120] This section sketches how the underlying law, policy and practices of the SIJS program and the SIJS backlog operate, including ways children have been excluded from protection.

A. The SIJS Process

Congress created SIJS as a humanitarian protection in 1990 to respond to an outcry from child advocates troubled by the experience of undocumented children aging out of the foster system who faced additional barriers in their transition into adulthood without legal status.[121] Without employment authorization, access to federal financial aid and a pathway to stable immigration status, children faced exclusion from higher education opportunities, safe working environments, and youth development programs.[122] While SIJS is an important protection, youth continue to experience numerous challenges along the path to seeking SIJS and LPR status. This section outlines the legal and procedural requirements for SIJS, emphasizing barriers that children may experience as they navigate the immigration legal system.

SIJS may be available to a child, defined as under the age of twenty-one and unmarried, after a state court has placed the child in the custody of a caretaker or entity because reunification with at least one parent is not viable due to abuse, abandonment or neglect.[123] The proceedings vary not only by state, but by locality.[124] Depending on the circumstances of the child and locality, the decisionmaker might be a juvenile court judge in a child in need of care proceeding, a civil district court judge in the process of making a sole custody determination, or a probate court judge issuing a guardianship judgment, to name just a few.[125] The judge must also make findings that it is not in the child's best interest to return to their country of origin.[126]

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[119] *E.g.*, Jason A. Cade & Mary Honeychurch, *Restoring the Statutory Safety-Valve for Immigrant Crime Victims: Premium Processing for Interim U Visa Benefits*, 113 Nw. U. L. Rev. Online 120 (2019) (exploring solutions to the U Visa backlog).

[120] Silva, *supra* note 1.

[121] Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 Colum. Hum. Rts. Rev. 1, 43 (2014) [hereinafter *States & Status*].

[122] *Double Exclusion*, *supra* note 19, at 1407.

[123] 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(a).

[124] *States & Status*, *supra* note 121, at 3; Keyes, *supra* note 40, at 38; Shani M. King & Nichole Silvestri Hall, *Cooperative Federalism and SIJS*, 61 B.C. L. Rev. 2869, 2872 (2020).

[125] *States & Status*, *supra* note 121, at 14.

[126] 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11 (2022).

After obtaining this court order, a child may petition USCIS to be recognized as a Special Immigrant Juvenile. [127] This involves submitting a signed Form I-360, petition for Special Immigrant Juvenile Status, along with proof of age and a copy of the order to USCIS.[128] Upon receipt of the petition, USCIS should send a notice listing the date of receipt, which is called the "priority date."[129] The priority date is a placeholder, indicating where youth will be in line; and if a backlog exists, this date is used to determine when the youth will be permitted to seek LPR status. In the absence of a backlog, children who are not in removal proceedings may also apply for LPR status concurrently with their SIJS petition.[130]

Historically, SIJS youth were not allowed to apply for work authorization until they were also applying for LPR status. This was not much of a challenge for the first twenty-five years of the law, because there was no SIJS backlog and children could often apply concurrently for work authorization and LPR status alongside their SIJS petition, or at least in quick succession. However, with the SIJS backlog and yearslong delay, in recent years the lack of work authorization has been devastating for young people's pursuit of professional opportunities, and for many, even an obstacle to survival.[131] In 2022, the Biden administration issued a policy to address this emerging problem. The policy allows SIJS youth impacted by the backlog to be considered for a discretionary grant of deferred action, along with their SIJS approval, allowing them to obtain work authorization.[132]

Importantly, SIJS must generally be granted for children who are found by a state court to meet the statutory requirements under the Immigration and Nationality Act. To be classified as SIJS, children must also be under the age of 21 at the time of filing the SIJS petition and unmarried.[133] If, as the USCIS adjudicator reviews the submission, the adjudicator determines that the submitted evidence is not sufficient for approval, they may issue a Request for Evidence (RFE), asking the petitioner to provide different or more evidence, or a Notice of Intent to Deny (NOID), specifying the intent to deny

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[127] *Special Immigrant Juveniles: How to Petition for SIJS Classification (Form I-360)*, U.S. Citiz. & Immigr. Servs., https://www.uscis.gov/working-in-US/eb4/SIJ [https://perma.cc/RR4U-MLJ8] (last updated Apr. 1, 2024).

[128] *Id.*

[129] *Visa Availability and Priority Dates*, U.S. Citiz. & Immig. Servs., https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates [https://perma.cc/LY5J-JFRN] (last updated Apr, 29, 2020).

[130] Double Exclusion, *supra* note 19 at 1411.

[131] *See generally* Kids in Need of Defense, *Left in Limbo: Why Special Immigrant Juveniles Need Employment Authorization,* https://supportkind.org/wp-content/uploads/2022/01/SIJS-EAD-Brief-1.10.21-FINAL.pdf [https://perma.cc/9ME8-VQBA].

[132] *See Policy Alert: Special Immigrant Juvenile Classification and Deferred Action*, U.S. Citiz. & Immig. Servs. (Mar. 7, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307- SIJAndDeferredAction.pdf [https://perma.cc/2U9A-NH4Z]; *USCIS Announces Policies to Better Protect Immigrant Children Who Have Been Abused, Neglected, or Abandoned*, U.S. Citiz. & Immigr. Servs. (Mar. 7, 2022), https://www.uscis.gov/newsroom/news-releases/uscis-announces-policies-to-better-protect-immigrant-children-who-have-been-abused-neglected-or [https://perma.cc/6XRC-SFUM].

[133] 8 C.F.R. § 204.11(b), (d)(6) (2022) (noting that if a child is in the custody of the U.S. Department of Health and Human Services (HHS), there is an additional requirement of HHS consent to the petition).

and reason for denial.[134] However, unlike asylum, SIJS in itself is not a discretionary protection, meaning that children who meet the requirements do not have an additional hurdle of proving they deserve protection with positive equities.[135] As a result, the vast majority of SIJS petitions are approved, with an approval rate close to 95% for many years.[136]

Despite the relatively straightforward requirements for SIJS petitions, USCIS practices regarding SIJS have become politicized at times, making the path for children to access protection quite complex.[137] The Trump administration's openly hostile rhetoric relating to migrant children was reflected in agency policy and practices.[138] For example, while overall SIJS denial rates have remained relatively stable at 5% or less since the establishment of the SIJS program in 1990,[139] the denial rate spiked during the Trump era, hitting 16.7% in 2018.[140] Disparities of denial rates exist across a handful of factors, notably the petitioner's nationality and their state of residence. For example, SIJS petitioners from India and Bangladesh have been denied 19.2% and 22.5% over a twelve-year period.[141] Also, while USCIS rarely issued RFEs before December 2016, these became more commonplace during the first Trump administration.[142] In 2017, 14.1% of all I-360s adjudicated in the year had received at least one RFE during the case.[143] By 2018, the percent of all I-360s adjudicated with at least one RFE climbed dramatically to 52.1%.[144] This rate began to decline and plateau at an elevated rate of just above 20% for petitions decided in 2019 (22.5%), 2020 (21.8%), and 2021 (21.8%).[145] NOIDs increased during this period, too.[146] Out of all SIJS petitions completed in 2018, 9.1% received at least one NOID, up from 3.6% in 2017.[147] NOID rates remained at elevated levels in 2019 (5.3%), 2020 (7.6%), and 2021 (8.3%).[148]

This change in RFE and NOID practice is significant because of ripple effects for SIJS petitioners. The change potentially impacts the ultimate outcome, delays decision timeframes, and causes capacity shockwaves throughout under-resourced legal service provider ecosystems, resulting in waitlists and

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[134] 8 C.F.R. § 103.2 (2022).

[135] *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (rule makers clarifying that DHS removed reference to consent as a discretionary function instead that the requirement is solely to determine if "bona fide"); *see also* Amy Joseph, Amy Pont, & Cristina Romero, *Consent Is Not Discretion: The Evolution of SIJS and the Consent Function*, 34 Geo. Immigr. L.J. 263, 301 (2020).

[136] *Double Exclusion*, *supra* note 19 at 1448.

[137] *Id.* at 1407.

[138] Castillo-Granados et al., *supra* note 118, at 1828; Laila Hlass, *The Adultification of Immigrant Children*, 34 Geo. Immigr. L.J. 199, 205 (2020).

[139] *States & Status*, *supra* note 121, at 18; *Minor Protections*, *supra* note 40, at 272; *Double Exclusion, supra* note 19, at 1448.

[140] *Double Exclusion, supra* note 19, at 1448.

[141] *Id.* at 1450.

[142] *Id.* at 1449.

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] *Id.*

[148] *Id.*

intake closures.[149] From the Obama administration into the Trump years, denial rates nearly tripled for cases where an RFE was issued. In 2016, 9.4 % of cases where an RFE was issued were denied, which nearly doubled to 17.1% in 2017.[150] At the height of the Trump administration, in 2018-2021, the rate of RFE-issued cases that were denied shot up to between 50-60% .[151] Furthermore, delays for petitioners receiving a decision became the default. Since 2008 amendments to SIJS, USCIS must issue a decision in SIJS petitions within 180 days.[152] However, USCIS was regularly violating the law, through a practice of issuing RFEs and NOIDs and interpreting that as a "pause" of the 180-day clock.[153] The average processing time for the I-360 petition swelled to nearly 500 days in 2019, during the Trump era while NOIDs and RFEs had become commonplace.[154] In 2019, USCIS appears to have violated the law by taking more than 180 days to adjudicate in 97.5% of SIJS petitions.[155] This is in stark contrast to prior years, when USCIS adjudicated between 77.9% and 94.2% of cases within the required 180-day timeframe.[156] In July 2023, a federal court found that USCIS's practice of pausing the clock violates the law.[157]

Once a SIJS petition is approved, the core benefit for the youth is the opportunity to seek lawful permanent resident status and then U.S. citizenship, after a minimum of five years of having LPR status. Citizenship provides a wide array of benefits—from security from deportation, authorization to work, access to a wide array of social welfare benefits, access to federal financial aid, and eligibility to participate in civic life, such as through voting.[158] Permanent residence provides access to many, but not all, of the benefits of citizenship.[159] However, accessing permanent resident status has become increasingly difficult for SIJS children because of the SIJS backlog, which involves an indeterminate number of years of waiting in liminal legal status before being able

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[149] *See* Rachel Leya Davidson & Laila L. Hlass, Any Day They Could Deport Me (2021), https://www.sijsbacklog.com/s/Any-Day-They-Could-Deport-Me-Over-44000-Immigrant-Children-Trapped-in-the-SIJS-Backlog-FULL-REPORT.pdf [https://perma.cc/6V9T-9BHW] (describing how a variety of factors, such as backlog delays and removal proceedings, may result in legal service providers reaching capacity limits) [hereinafter Any Day].

[150] *Double Exclusion*, *supra* note 19, at 1449.

[151] *Id.*

[152] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (codified as 8 U.S.C. § 1232(d)(2)).

[153] *Question & Answer Session: Special Immigrant Juvenile (SIJ) Policy Clarifications Engagement* 2, U.S. Citizen. & Immigr. Servs. (Dec. 10, 2019), https://www.uscis.gov/sites/default/files/document/questions-and-answers/Question_and_Answer_Session_from_Special_Immigrant_Juvenile_SIJ_Policy_Clarifications_Engagement.pdf [https://perma.cc/JU94-XGMZ].

[154] *Double Exclusion*, *supra* note 19, at 1477.

[155] *Id.*

[156] *Id.*

[157] Casa Libre/Freedom House v Mayorkas, No. 2:22-cv-01510-ODW, 2023 WL 4872892, at *8 (C.D. Cal. May 31, 2023); *see also* Galvez v. Jaddou, 52 F.4th 821, 838 (9th Cir. 2022).

[158] *See* Madeleine Sumption & Sarah Flamm, *The Economic Value of Citizenship for Immigrants in the United States* 1, Migration Policy Institute (2012), https://www.migrationpolicy.org/sites/default/files/publications/citizenship-premium.pdf [https://perma.cc/UML3-6QBM].

[159] *The Rights of Lawful Permanent Residents*, Immigr. Legal Rsch. Ctr. (2017), https://www.ilrc.org/sites/default/files/resources/lpr_info_sheet_final_march_2017.pdf [https://perma.cc/MWZ6-MCA9].

to seek LPR status. Claude, who has already been waiting for years in the backlog explains that this prolonged limbo feels worse than the isolation and homophobic abuse he suffered: "I feel like I ran away from so many problems that I had in terms of being accepted for who I was and everything I had to go through with my family, but here I am introduced to further, bigger problems. It still is too much."[160]

B. The SIJS Backlog

Despite being designed as a form of humanitarian releif, youth seeking SIJS face exclusion and precarity in the process of attempting to access permanent protection. By statute, SIJS youth should be granted LPR status as long as they are not disqualified under specific bars, they are found to merit a positive exercise of discretion, and there is an immigrant visa available.[161] Congress has provided more leniancy for SIJS youth to standard bars as well as additional basis to seek waivers on their pathway to permanent resident status.[162] For the first twenty-five years after the enactment of the first SIJS law in 1990, children could generally apply for SIJS and permanent residence concurrently, or in close succession because there was no backlog. In fact, the program has positively impacted a large number of immigrant children with 130,731 children granted SIJS from 2010 to 2021, and 53,607 youth granted LPR status based on SIJS in this same time period.[163] Despite this success, a variety of policy and procedural challenges have plagued SIJS youth seeking lawful permanent resident status since the creation of SIJS.

As an initial matter, when SIJS was created in 1990, the law failed to specify the pathway SIJS youth could petition for LPR status, due to a drafting oversight.[164] Congress passed technical amendments to fix this issue in December 1991,[165] but oddly, the immigrant visas for SIJS youth, allowing for the possibility to seek LPR status, were then classified within the employment-based system,[166] specifically under the "special workers" category.[167]

The problem of the backlog for SIJS youth can be traced to the placement of immigrant visas for SIJS youth in the employment-based system. Congress set a rigid limit on the number of visas in the employment-based immigrant visa system annually, and specifically set further limits within the fourth employment subcategory. Under the law, the minimum number of allocated visas annually for employment-based immigrants is 140,000, which

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[160] Silva, *supra* note 1.
[161] 8 U.S.C. §1255(h).
[162] *Id.*
[163] *Double Excluion*, *supra* note 19 at 1425.
[164] Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendment; Adjustment of Status, 58 Fed. Reg. 42843, 42844 (Aug. 12, 1993) https://archives.federalregister.gov/issue_slice/1993/8/12/42839-42852.pdf#page=5 [https://perma.cc/RY24-UKKA].
[165] Immigration Technical Corrections Act, Pub. L. No. 102-232, 105 Stat. 1742 (1991).
[166] Castillo-Granados et al., *supra* note 118, at 1783.
[167] 8 U.S.C. §1151(d); 8 U.S.C. §1152(a)(2); 8 U.S.C. §1153(b)(4).

is about 80,000 fewer visas than the minimum set for the family-sponsored visa system.[168] There is some room to reallocate immigrant visas from the family-based visa system to the employment-based system and vice-versa, if they are not used in a given year, but it is not common to have a large infusion of converted visas.[169]

Additionally, immigrant visas within the employment-based visa system are not distributed evenly, and the fourth employment subcategory of "special workers" has many fewer immigrant visas than other categories. Some have speculated that Special Immigrant Juveniles were placed in the fourth employment category with little thought, simply because they share the word "special" with "special workers."[170] The five distinct employment-based categories include (1) priority workers, including outstanding professors, researchers and multinational executives and managers; (2) advanced degree holders and those with exceptional ability; (3) skilled, professional, or other workers; (4) special workers, including religious workers and long-term foreign employees of the U.S. government;[171] and (5) million-dollar investor-entrepreneurs. Generally, 28.6% of visas are available for each of the first three categories, and 7.1% are available for each of the fourth and fifth category.[172] The fourth employment category also suffers from not being able to benefit from the reallocation of unused visas from other employment sub-categories, which the first, second and third employment-based categories are allowed to do.[173] The upshot of this scheme is that the first three categories of the employment-based visas comprise almost 86% of the total employment-based visas.[174] Meanwhile, the combined groups of special immigrants in the fourth category—including SIJS youth as well as religious workers and international organization employees—often have less than 10,000 immigrant visas available annually, unless the category benefits from unused visas in the family-based system that are reallocated.[175] In contrast, some so-called humanitarian forms of relief, such as asylum, refugee status, and cancellation of removal, are not subject to worldwide and per-country caps.[176]

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[168] 8 U.S.C. §1151(c); 8 U.S.C. §1151(d). These minimum numbers set—226,000 for family and 140,000 for EB—are generally the amounts available annually, although under law the formula for determining the number of employment-based immigrant visas annually is 140,000 plus any unused family-sponsored visas, and vice versa.

[169] Walter Ewing, *Biden Administration Close to Reaching Increased Cap on Employment-Based Green Cards*, Immigr. Impact, (Sept. 13, 2022) https://immigrationimpact.com/2022/09/13/biden-close-reaching-increased-cap-employment-green-cards/ [https://perma.cc/H69M-D7QK] (describing the unusual infusion of family-based immigrant visas to the employment-based system related to the pandemic).

[170] Deborah Gonzales, *Sky is the Limit: Protect Unaccompanied Minors by Not Subjecting Them to Numerical Limitations*, 49 St. Mary's L.J. 555, 561 (2018).

[171] 8 U.S.C. §1153(b)(4); 8 U.S.C. §1101(a)(27).

[172] 8 U.S.C. § 1153(b).

[173] *Employment-Based Adjustment of Status FAQs,* U.S. Citizen. & Immigr. Servs., https://www.uscis.gov/green-card/green-card-processes-and-procedures/fiscal-year-2023-employment-based-adjustment-of-status-faqs [https://perma.cc/PBK3-SEJT] (Jan. 24, 2025).

[174] 8 U.S.C. § 1153(b).

[175] This is assuming there are about 140,000 employment-based immigrant visas, although there could be more if there is spillover from the family-based system. 8 U.S.C. § 1153 (b)(5)(B)(i)(II).

[176] 8 U.S.C. §1151(b)(1). However, while those who are granted cancellation are not subject to worldwide and country limits there is an annual cap of 4,000, which has resulted in a backlog

These visa restrictions led to the first SIJS backlog in May 2016.[177] Taking a step back, visa shortages in a category exist when an immigrant visa category is "oversubscribed," and the Department of State must determine a cutoff date, called the "final action date," to decide which applications can be considered through comparison to an individual's priority date. For SIJS children, the date USCIS received their original SIJS petition, Form I-360, is the priority date, and the Department of State will use that date to compare against the final action date listed in the visa bulletin. When the priority date is earlier than the final action date, that means the priority date is "current," and they will be allowed to apply for LPR status, as there are available immigrant visas.

The emergence of a backlog in May 2016 led to another problem for some SIJS youth. At the time the SIJS backlog first began in 2016, the Department of State began restricting visas only for young people from the most common countries of origin. This was a consequence of the Department of State's mistaken interpretation of a visa limitation rule, called the "per-country cap" limitation. This cap was written into the 1990 immigration statute and prevents any individual country from exceeding 7% of total immigrant visas across the family-sponsored and employment-based systems cumulatively.[178] The Department of State mistakenly applied the 7% per-country restriction to each sub-category individually within the employment system, instead of applying it to the total number of all family-based and employment-based visas. Additionally, the Department made a decision to combine three countries—El Salvador, Guatemala and Honduras—in determining the per-country visa allocation.[179] As a result of this interpretation, those three countries became backlogged from 2016 to 2022, while children from most other countries were allowed to apply for permanent residence concurrently with SIJS, or shortly after.[180]

In March 2023, the Department of State acknowledged their error in interpreting the per-country limit on visa availability. This new interpretation addressed disparities based on nationality, but also forced all children into the yearslong backlog, alongside all other special immigrants in the fourth employment category.[181] All children seeking SIJS, regardless of nationality, are

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as well. 8 U.S.C. §1229b(e); Law Offices of Timothy W. Davis, *Cancellation of Removal*, https://www.beatdeportation.com/our-services/immigration-court/cancellation-of-removal/ [https://perma.cc/4D6C-QVGY] (last visited January 2025) (stating there is a two to three year backlog of visas for non-LPR cancellation cases).

[177] Any Day, *supra* note 149, at 11.

[178] 8 U.S.C. §1152(a)(2); Employment-Based Preference Immigrant Visa Final Action Dates and Dates for Filing for El Salvador, Guatemala, and Honduras, 88 Fed. Reg. 1825 (Mar. 28, 2023).

[179] *See Practice Alert: April 2023 Visa Bulletin Updates Impacting SIJS Recipients* 1, End SIJS Backlog (March 24, 2023), https://static1.squarespace.com/static/5fe8d735a897d33f7e7054cd-/t/641df0443273dd2fb2ca245a/1679683652530/2023_24March-visa-bulletin-changes-alert.pdf [https://perma.cc/7YCT-YARY].

[180] There have been backlogs impacting SIJS youth from Mexico and occasionally India as well, although anyone from those countries would have been subject to the per country limit under current interpretation of the rule because India and Mexico exceeded 7% of visas over all categories.

[181] The Department of State now will look at each country's portion of visas in all employment and family categories as a whole, instead of setting caps based on each employment

now similarly situated in the backlog, with the same final action date and an indeterminate yearslong wait before they are able to seek LPR status.[182]

Unfortunately for those youth impacted by the SIJS backlog, there is not a clear way to estimate how long the wait will last. In fact, many certainly will age into adulthood, age 21 or older, while they wait. SIJS youth must check the visa bulletin each month online to see if their priority date is a date earlier than the final action date listed for their category that month. If so, they may finally submit their LPR application.[183]

There are complex factors that play into how the Department of State decides the final action date for each given category which contributes to challenges in estimating the timeline for youth. The Visa Office within the Department of State divides the number of immigrant visas set for any given year into monthly allocations based on historical data regarding applicants as well as estimates of future use, which are then compared to the number of seemingly qualified applicants in each category, provided monthly by consular posts and USCIS.[184] The Department of State's predictions of how many visas will be available changes each month, as more or fewer applicants seek immigrant visas, or as unused visas get reallocated. Therefore, the final action date for a given month may move forward or backward from the previous month, depending on estimates by the Visa Office. When the final action date in a specific visa category is changed to a date that is even earlier than the previous month, the phenomenon is called visa retrogression.[185] As a result of changing numbers of available immigrant visas and how many SIJS and other special worker petitions there are, each month the size of the backlog may shift.

Figures 1 and 2 show two examples of the monthly visa bulletin from when the SIJS backlog first began in May 2016 and then again in April 2023, reflecting the Department of State's correction to address misinterpretation of per-country caps. The visa bulletin either lists a date, a C, or a U, for each

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and family sub-category. *Employment-Based Fourth Preference (EB-4) Announcement*, U.S. Dep't of State (Mar. 28, 2023), https://travel.state.gov/content/travel/en/News/visas-news/employment-based-fourth-preference-eb4-announcement.html [https://perma.cc/SVU9-67HS]; Employment-Based Preference Immigrant Visa Final Action Dates and Dates for Filing for El Salvador, Guatemala, and Honduras, 88 Fed. Reg. 1825 (Mar. 28, 2023), https://www.federalregister.gov/documents/2023/03/28/2023-06252/employment-based-preference-immigrant-visa-final-action-dates-and-dates-for-filing-for-el-salvador? [https://perma.cc/A3B9-5DCA]; *see* End SIJS Backlog, *supra* note 179.

[182] *Visa Bulletin for April 2023*, U.S. Dep't of State (Mar. 22, 2023), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-april-2023.html [https://perma.cc/C7XY-TFDH].

[183] At times, USCIS will allow applicants to submit an LPR application when Department of State has listed the "dates for filing" as current, even though the final action date is oversubscribed. *Priority Dates, Dates for Filing, and Final Action Dates: An Intro to the Visa Bulletin for Adjustment of Status Applicants*, AILA (Sept. 15, 2023), https://www.aila.org/blog/priority-dates-dates-for-filing-and-final-action-dates-an-intro-to-the-visa-bulletin-for-adjustment-of-status-applicants [https://perma.cc/KAP2-4Z6G].

[184] *The Operation of the Immigrant Numerical Control System*, U.S. Dep't of State, https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/Immigrant%20Visa%20Control%20System_operation%20of.pdf [https://perma.cc/V2PL-X3FX].

[185] *Visa Availability and Priority Dates*, U.S. Citiz. & Immigr. Servs. (Apr. 29, 2020), https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates.

category. C is shorthand for current, meaning that petitioners in that category can immediately apply for LPR status.[186] U means that immigrant visas are unavailable, because all of the immigrant visas for the year have been used. Otherwise, there is a final action date listed, indicating whose priority dates have reached the front of the line.

FIGURE 1. MAY 2016 VISA BULLETIN[187]

Employment-Based	All Chargeability Areas Except Those Listed	China-Mainland Born	El Salvador Guatemala Honduras	India	Mexico	Philippines
1st	C	C	C	C	C	C
2nd	C	9/1/12	C	11/22/08	C	C
3rd	2/15/16	8/15/13	2/15/16	9/1/04	2/15/16	8/8/08
Other Workers	2/15/16	4/22/07	2/15/16	9/1/04	2/15/16	8/8/08
4th	**C**	**C**	**1/1/10**	**C**	**C**	**C**
5th	C	2/8/14	C	C	C	C

For example, per Figure 1, in May 2016, El Salvadorans, Guatemalans and Hondurans in the fourth category of employment-based immigrant visas were only eligible to seek lawful permanent residence if their priority date was earlier than January 1, 2010. That means SIJS youth from those countries were only allowed to apply for LPR status if they had petitioned for SIJS more than six years prior. Meanwhile children from any other country were considered "current," such that they could concurrently apply for LPR as they sought SIJS, or soon after.[188]

After the March 2023 announcement about the error in interpretation of per-country visas, the column for the region of El Salvador, Guatemala, and Honduras was removed, which can be seen in Figure 2. Also, final action date in the fourth category for children from all nationalities was set as September 1, 2018, meaning that only those youth whose SIJS petitions were filed on August 31, 2018, or earlier had visa availability and were therefore allowed to apply for LPR status based on SIJS.

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[186] *The Visa Bulletin,* U.S. DEP'T OF STATE, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html [https://perma.cc/H3NH-ASG5].

[187] *Visa Bulletin for May 2016*, U.S. DEP'T OF STATE (Apr. 12, 2016), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2016/visa-bulletin-for-may-2016.html [https://perma.cc/P2VB-XQ5Y].

[188] *Double Exclusion*, *supra* note 19, at 1433–34.

Figure 2. April 2023 Visa Bulletin[189]

Employment-Based	All Chargeability Areas Except Those Listed	China-Mainland Born	India	Mexico	Philippines
1st	C	2/1/22	2/1/22	C	C
2nd	7/1/22	6/8/19	1/1/11	7/1/22	7/1/22
3rd	C	11/1/18	6/15/12	C	C
Other Workers	1/1/20	10/1/14	6/15/12	1/1/20	1/1/20
4th	**9/1/18**	**9/1/18**	**9/1/18**	**9/1/18**	**9/1/18**
5th unreserved	C	7/8/15	6/1/18	C	C
5th Set Aside	C	C	C	C	C

Once SIJS youth have an immigrant visa available, they are no longer part of the backlog. They are permitted to file an LPR application with either the immigration court or USCIS, depending on the procedural posture of the case.[190] Notably, a majority of those seeking LPR status based on SIJS are subject to removal proceedings in immigration court, which may pose barriers for ultimately obtaining LPR status.[191] In 2021, SIJS-based LPR cases in removal proceedings had a 29.9% chance of receiving a denial, whereas those not in removal had only a 5.3% denial rate.[192] In other words, a young person in removal proceedings had a denial rate for SIJS-based LPR status more than five times that of one who was not in removal proceedings.[193]

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[189] *Visa Bulletin for April 2023*, U.S. Dep't State (Mar. 22, 2023), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-april-2023.html [https://perma.cc/HDN8-5BNN].

[190] If a child granted or seeking SIJS is in removal proceedings in immigration court, they must seek LPR status before an immigration judge, or seek to dismiss or terminate court proceedings to allow USCIS to assume jurisdiction. *See* Andrew Craycroft & Rachel Prandini, Immigr. Legal Res. Ctr., *Adjustment of Status Through Special Immigrant Juvenile Status (SIJS)* 1, 10 (2022), https://www.ilrc.org/sites/default/files/resources/adjustment_of_status_through_special_immigrant_juvenile_status_sijs_june_2022.pdf [https://perma.cc/JJ73-PHYF]. Children who are not actively in removal proceedings should seek LPR status before USCIS. *See id.* at 4. Children who are categorized as arriving aliens just have their LPR application decided by USCIS, regardless of whether they are in removal proceedings. *See id.* at 10.

[191] Between 2016 to 2021, 63% of SIJS-based LPR applicants were in removal proceedings. *Double Exclusion*, *supra* note 19, at 1458.

[192] *Id.* at 1457.

[193] However, in December 2023, the Biden Administration released new guidance regarding establishment of juvenile dockets nationally for all children. The stated purpose of such

SIJS youth may experience the SIJS backlog as violence through disruptions and exclusion along a purported pathway of permanence and protection. Careless drafting by Congress led to rigid numerical limits on immigrant visas, and the inclusion of SIJS beneficiaries in the employment-based immigration visa fourth sub-category, which has even more limitations. These problems led to the creation of the SIJS backlog twenty-five years after SIJS was created, and the government's misinterpretation of per-country caps led to children from three countries having visas wrongfully restricted to them for nearly seven years. SIJS youth from all other countries became impacted by the backlog when the Department of State corrected its error in 2023, by implementing a visa retrogression for SIJS youth world-wide. The scale and scope of the SIJS backlog has been largely obscured because of the complexity of the immigrant visa system and because USCIS did not release information to the public about the size of the backlog until Congress called for more transperancy in the FY 2023 DHS Consolidated Appropriations Bill.[194]

III. Key Characteristics of Backlog-Impacted Children

To provide a richer description of children's experience in the immigration legal system, this Article focuses on the case example of SIJS youth, relying on analysis of an original dataset of SIJS petitions as well as selected youth narrative.[195] By shedding light on the incredible number of impacted youth in the SIJS backlong as well as key characteristics such as gender, country of origin, and geographic distribution in the US, this analysis is helpful in understanding the risk of trauma exposure that SIJS youth might face.

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courts is that court proceedings will be more "consistent" and "child-centered," although research is needed to determine the success of this new policy. *ICE, EOIR Establish 'Juvenile Docket' for Children and Teenagers*, U.S. Immigr. & Customs Enfor., Dec. 21, 2023, https://www.ice.gov/news/releases/ice-eoir-establish-juvenile-docket-children-and-teenagers [https://perma.cc/LWL5-38KN]. *See* David L. Neal, U.S. Dep't of Justice, Children's Cases in Immigration Court (Dec. 21, 2023), https://www.justice.gov/d9/2023-12/dm-24-01.pdf [https://perma.cc/2Y26-SY3F].

[194] USCIS has started releasing information about broader backlogs, but not breaking out SIJS specifically. *See Number of Form I-140, I-360, I-526 Approved Employment-Based Petitions Awaiting Visa Availability By Preference Category and Country of Birth*, U.S. Citiz. & Immigr. Servs. (Dec. 2022), https://www.uscis.gov/sites/default/files/document/data/EB_I140_I360_I526_performancedata_FY2023_Q1.pdf [https://perma.cc/NQP5-9E67]. *Joint Explanatory Statement*, U.S. Dep't of Homeland Sec. Consol. Appropriations Act, Pub. L. No. 117-328, 136 Stat. 4459 (2023), https://www.appropriations.senate.gov/imo/media/doc/Division%20F%20-%20Homeland%20Statement%20FY23.pdf [https://perma.cc/4DCD-95CL]. (SIJS specific backlogs will be published). Historically, the only data USCIS has published included some summary data of the raw numbers of pending SIJS petitions, approvals and denials per quarter, as required under a civil rights lawsuit settlement alongside annual numbers of those approved for LPR status based on SIJS. *E.g.*, *Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) By Fiscal Year, Quarter, and Case Status*, U.S. Citiz. & Immigr. Servs., https://www.uscis.gov/sites/default/files/document/data/I360_sij_performancedata_fy2023_qtr1.pdf [https://perma.cc/57MV-FRWS] (last visited Jul. 21, 2023).

[195] SIJS data set (on file with author).

A. Data and Methodology

This Article contributes to emerging research regarding the SIJS program[196] and offers analysis of an original dataset of SIJS petitions, based upon a final and third release of administrative records obtained from USCIS through a Freedom of Information Act request and subsequent litigation and settlement in *Hlass et al v. USCIS*.[197] To uncover broader trends for young people seeking SIJS and SIJS-based LPR status, the author, along with a children's rights advocate Rachel L. Davidson, submitted an expedited Freedom of Information Act request to USCIS in April 2021.[198] USCIS denied the request for an expedited release, necessitating litigation.[199] As part of litigation settlement negotiation, USCIS released 139,464 original SIJS petition records, including SIJS petitions filed between October 2010 and April 2021, as well as 26,198 SIJS-based LPR applications, mostly filed in FY 2019-2021. Based on these records, an advocacy report detailing the growth and size of the SIJS backlog through April 2021 was released.[200] After USCIS released a second set of administrative records including SIJS petitions filed through November 2021, the author, along with colloborator Rachel L. Davidson, published a broader study regarding SIJS adjudications.[201]

The data analysis for this Article is based on a third release of data, including digital records of SIJS (Form I-360) petitions, containing case by case records for each SIJS petition filed between October 1, 2010, and February 28, 2023, covering fiscal year (FY) 2010 through part of FY 2023. This comprises approximately 200,000 records after removing about 500 records that were exact duplicates of another record.[202] The spreadsheet file contains information on each application's filing date, latest status (approved, denied, pending, revoked, or administratively closed), and whether the application received a request for evidence (RFE), or notice of intent to deny the application (NOID) and the dates of those RFEs or NOIDs. It also contains some information on

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[196] *See generally* Susan Schmidt & Jacqueline Bhabha, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection*, 1 J. of the Hist. of Childhood & Youth 126 (2006); *States & Status*, *supra* note 121 (examining differences in implementation of SIJS across various states); *Minor Protections*, *supra* note 40; Castillo-Granados et al., *supra* note 118; *Double Exclusion, supra* note 19.

[197] Hlass v. U.S. Citiz. & Immigr. Servs., No. 21-cv-02200 (D.D.C. July 5, 2023).

[198] Laila Hlass in her own capacity and Rachel Leya Davidson as a representative of the Door Legal Services Center drafted and filed the FOIA. See FOIA Request for Data Regarding Special Immigrant Juveniles from Laila L. Hlass, Professor, Tulane Univ. L. Sch. & Rachel Leya Davidson, Managing Att'y for Pol'y & Special Projects, The Door, to FOIA/PA Headquarters Off., U.S. Citiz. & Immigr. Servs. (Apr. 21, 2021) (on file with author).

[199] Complaint at 1, *Hlass*, No. 21-cv-02200; *The Door Immigration Advocacy Coalition Files Lawsuit Against USCIS for Special Immigrant Juvenile Status Data*, The Door (Aug. 19, 2021), https://www.door.org/articles/the-door-immigration-advocacy-coalition-file-lawsuit-against-uscis-for-special-im/ [https://perma.cc/KLM7-C8G3].

[200] Any Day, *supra* note 149.

[201] *See generally Double Exclusion, supra* note 19.

[202] There were 204,288 records. Analysis conducted by Julia Gelatt (figures 3, 4, 5,6, and 9) were based on a total of 203,702 records after removing 586 duplicates. Analysis by Austin Kocher (figures 7 and 8) found 501 duplicates which were removed, after filtering out denied (8,035), revoked (262) and administratively closed cases (515), so the total number in the backlog was 194,975.

the characteristics of applicants, including their country of birth, gender, date of birth, and city and state of residence.

This Article relies on collaboration with two social scientists, Dr. Austin Kocher of Syracuse University and Dr. Julia Gelatt of Migration Policy Institute who conducted the quantitative data analysis. To calculate the SIJS backlog, Drs. Kocher and Gelatt include those cases with approved or pending I-360 petitions, as of the beginning of the listed month, who were not yet eligible for a legal permanent resident status due to their priority date when compared to the final action date in the visa bulletin.[203]

B. Portrait of SIJS Youth and Risks of Childhood Trauma

Certain characteristics, like gender and race may be particularly relevant to understanding youth's risk profile for childhood trauma. Research has shown that some social factors correspond with a higher likelihood of having experienced ACEs, including race,[204] migration history,[205] gender,[206] and exposure to court, particularly considering disparate challenges that exist across different geographic regions.[207] The SIJS dataset demonstrates that the backlog predominantly impacts youth from Latin American countries, who are male-identified, and living across the United States. Furthermore, prior research has shown that a majority of SIJS youth in recent years are in removal proceedings.[208] While the data set does not have information regarding race specifically, it includes country of origin, revealing that Latin American countries comprise the highest portion of SIJS youth's countries of origin.

1. Country of Origin

While children in the backlog are predominantly Latin American, as of March 1, 2023, they hail from 151 different countries. Guatemala (36%), El Salvador (26%) and Honduras (25%) comprise the highest proportion of youth impacted by the SIJS backlog. Brazil, Colombia, Ecuador, Mexico, Nicaragua, Venezuela, and India round out the ten countries with the most backlog-impacted youth. Country of origin and immigration status may be relevant to risk profile. Youth impacted by the backlog are predominantly Latina/o, and research shows that Latina/o immigrants may experience unique stressors

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[203] Administratively closed cases and cases that were denied were excluded from the calculation of the number of cases in the SIJS backlog.

[204] Bernard et al., *supra* note 99, at 239; Mersky et al., *supra* note 99, at 918.

[205] Cleary et al., *supra* note 108, at 1056.

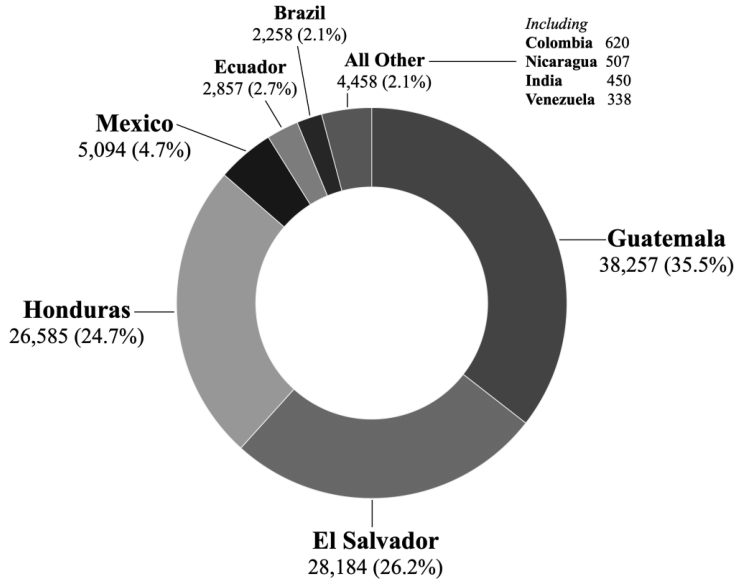
[206] Haahr-Pedersen et al., *supra* note 85, at 7.

[207] *E.g.* Logan-Greene et al., *supra* note 82, at 79; Michael T. Baglivio & Nathan Epps, *The Interrelatedness of Adverse Childhood Experiences Among High-Risk Juvenile Offenders*, 14 Youth Violence & Juv. Just. 179, 190 (2015) (This study focuses on juvenile justice courts, and there has not been large study regarding exposure to immigration courts.).

[208] *Double Exclusion*, *supra* note 19, at 1456.

identified as "immigration stress."[209] This includes fear of deportation, family separation, discrimination, and challenges related to legal systems.[210] According to some research, these stressors may be more pronounced for Latina/o community, regardless of community members' actual immigration status, because of the cultural significance of family orientation and because of the large portion of undocumented immigrants who identify as Latina/o.[211] Together, these factors may contribute to broader community fears around deportation within the Latina/o community.[212]

Figure 3. Country of Origin for SIJS Youth Impacted by the Backlog, March 1, 2023[213]



Furthermore, there have been studies in recent years focused specifically on immigrants, including child immigrants, from Guatemala, Honduras, and El Salvador, the countries which most backlog-impacted youth hail from, and these studies have found high levels of exposure to trauma in these immigrant communities. According to a 2021 study, Central American detained immigrant children experienced very high rates of trauma exposure (97.4%).[214] A 2017 study of Central American immigrants found 32% of respondents met diagnostic

[209] *See generally* K.J. Aroian, A.E. Norris, T.V. Tran, & N. Schappler-Morris, *Development and Psychometric Evaluation of the Demands of Immigration Scale*, 6 J. Nursing Measurement 175 (1998).
[210] Falconier et al., *supra* note 114, at 476.
[211] *Id.* at 471.
[212] *Id.*
[213] 149 cases had an unknown country of birth. SIJS data set (on file with author).
[214] Sidamon-Eristoff et al., *supra* note 108, at 8.

criteria for PTSD, 24% met criteria for depression, and 17% for both.[215] These may be due in part to significant pre-migration trauma. For example, in a 2016 study of Central American immigrant children, a Salvadoran fourteen-year-old girl reported she fled due to gang violence: "They [gang members] go into the school and take girls out and kill them . . . I used to see reports on the TV every day about girls being buried in their uniforms with their backpacks and notebooks. I had to go very far to go to school and I had to walk by myself."[216] In this same study, Mario, age seventeen, also reported extreme violence with gangs who told him that he would be killed if he did not join:

> I have many friends who were killed or disappeared because they refused to join the gang. I told the gang I didn't want to. Their life is only death and jail, and I didn't want that for myself . . . They beat me up five times for refusing to help them. The pain from the beatings was so bad, I couldn't even stand up. They killed a friend of mine in March because he didn't want to join, and his body wasn't found until May . . .[217]

Notably, the four countries that comprise the vast majority of the SIJS backlog—Guatemala, Honduras, El Salvador and Mexico—match the four countries of origin for children who were interviewed as part of a 2016 study of unaccompanied minors who recently arrived to the U.S. This study found that youth migrating from these four countries experienced violent forced conscription, sexual violence, and extortion, alongside specific violent assaults at the hands of powerful international gangs in their countries.[218] While children were predominantly fleeing violence in society, a significant portion also experienced violent and sexual abuse in the home and deprivation of basic needs.[219] In addition to this kind of pre-migration trauma, immigrant children often experience trauma in their migration journey including violence, sexual assault, kidnapping, and even human trafficking.[220]

2. Gender

Alongside the factors of country of origin and race, the relationship between gender and childhood trauma is an area of significant research. Emerging research reveals that the kind of ACEs children experience may have a

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[215] Allen Keller, Amy Joscelyne, Megan Granski, & Barry Rosenfeld, *Pre-Migration Trauma Exposure and Mental Health Functioning among Central American Migrants Arriving at the U.S. Border*, 12 Plos One 1, 6–7 (2017).

[216] United Nations High Comm'r for Refugees, Children on the Run 32 (2014), https://www.unhcr.org/us/media/children-run-full-report [https://perma.cc/ZT9K-VUEF].

[217] *Id.*

[218] *Id.*

[219] *Id.*

[220] Valeria Luiselli, *Riding 'The Beast': Child Migrants Reveal Full Horror of Their Journeys to America*, The Guardian (Oct. 5, 2017, 6:00 AM), https://www.theguardian.com/inequality/2017/oct/05/riding-the-beast-child-migrants-reveal-full-horror-of-their-journeys-to-us; *see also A Dangerous Journey: Central American Migrants Risk "The Beast" To Head North*, Doctors Without Borders (Aug. 6, 2014), https://www.doctorswithoutborders.org/latest/dangerous-journey-central-american-migrants-risk-beast-head-north [https://perma.cc/6MK8-KT6J].

relationship to their gender. Research also has shown that gender difference shape vulnerability to developing traumatic symptoms and how those symptoms may present.[221]

In terms of the youth impacted by the SIJS backlog, as of March 2023, there were a larger portion of male-identified youth (48%) than female-identified youth (30%),[222] although the portion of female-identifying youth applying for SIJS has steadily increased over time.[223] A little more than one-fifth of cases in the SIJS backlog did not list a gender because of USCIS's practice to wait to input gender until the time of adjudication of the I-360.[224]

Figure 4. Gender Distribution of SIJS Youth Impacted by the Backlog, March 2023[225]

Gender	**Number of Cases**	**Portion of Total**
Female-identified	32,409	30%
Male-identified	51,822	48%
Unknown	23,462	22%
Total	107,693	100%

This increase in the proportion of girls in the SIJS backlog over time mirrors the overall growth in the proportion of girls and women migrating to the United States, which appears to be related to gender-based violence.[226] According to a 2015 United Nations High Commissioner for Refugees study, there has been an increased proportion of female-identified immigrants migrating to the U.S., although the majority of migrants overall has remained male. [227] This migration stems in part from escalating gender-based violence in El Salvador, Guatemala, Honduras, and Mexico.[228] These are the same four countries where a majority of backlog-impacted youth hail from, and they reflect the origin of the general population of child migrants to the U.S. in recent decades.

Research regarding female-identifying migrants has revealed a higher prevalence of particular types of pre-migration trauma, potentially relevant to

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[221] Jiyoung K. Tabone, Carrie W. Rishel, Helen P. Hartnett, Kathy F. Szafran, & Richard Royse, *Examining the Effects of Adverse Childhood Experiences and Gender on Trauma-Informed Intervention Outcomes*, 16 J. Child & Adol. Trauma 9, 9 (2022).

[222] SIJS dataset (on file with author).

[223] *Double Exclusion*, *supra* note 19, at 1440–43.

[224] As noted in an earlier study, USCIS did not electronically track gender for SIJS petitioners before 2017, USCIS does not track gender outside of the male/female gender binary, and USCIS does not input gender until after adjudication of SIJS petition. *Double Exclusion*, *supra* note 19, at 1461–62.

[225] SIJS dataset (on file with author).

[226] United Nations High Comm'r for Refugees, Women on the Run: First Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras and Mexico 4 (2015), https://www.unhcr.org/us/media/women-run [https://perma.cc/468C-V3NB].

[227] *Id.*

[228] *Id.*

female-identifying youth in the SIJS backlog. For example, the 2015 United Nations study reveals that women from El Salvador, Guatemala, Honduras and Mexico reported that they and their children experienced extreme violence including being raped, assaulted and threatened by members of armed criminal groups.[229] In fact, a large majority of women in that study (62%) indicated they saw dead bodies in their neighborhoods, and some reported that they and their children were confronted with dead bodies weekly.[230] Honduras and El Salvador have some of the highest rates of femicide in Latin America and those two countries have been ranked among the most dangerous places in the world for girls and women.[231]

Gender is an important factor in conceptualizing risk of childhood trauma, because research has found that some trauma might be more common by gender and that mental health challenges may present differently by gender. Research has found that sexual abuse is more prevalent among girls[232] than boys, and some research has found female-identifying people are more likely to have multiple and more complex trauma histories.[233] Meanwhile, male-identifying people report are more likely to report experienced physical abuse.[234] While different forms of trauma often overlap in potential effects, such as anxiety and depression, there are also differences which may call for unique interventions.[235] For example, some children who have been sexually abused may experience challenges later in life with sexual adjustment, challenges in building trust with adults, and be at risk of engaging in self-harming behaviors.[236] Meanwhile, children exposed to physical abuse may lose their normal fight or flight reactions, present as numb and withdrawn, or be at risk of expressing aggression themselves.[237]

Childhood adversity is a major risk factor for mental health challenges, and symptoms may differ by gender. For example, research has shown for that relatively small portion of people impacted by psychosis, there are higher rates of depression in women with psychotic disorders whereas men exhibit worse long-term functioning than women.[238] ACEs research regarding gender has

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[229] *Id.*

[230] *Id.*

[231] Natalie Gonnella-Platts, Jenny Villatoro, & Laura Collins, No Justice: Gender-based Violence and Migration in Central America 4 (2024).

[232] Ami Rokach & Shauna Clayton, Adverse Childhood Experiences and Their Life-Long Impact 60 (2023).

[233] Constance L. Chapple et al., *Gender, Adverse Childhood Experiences, and the Development of Self-Control*, 74 J. Crim. Just. 1, 3 (2021).

[234] Rosie Teague et al., *Linking Childhood Exposure to Physical Abuse and Adult Offending: Examining Mediating Factors and Gendered Relationships*, 25 Just. Q. 313, 314 (2008).

[235] *See generally Trauma Types*, Nat'l Child Traumatic Stress Network, https://www.nctsn.org/what-is-child-trauma/trauma-types [https://perma.cc/HT6J-HL2C] (last visited July 20, 2024).

[236] *Sexual Abuse: Effects*, Nat'l Child Traumatic Stress Network, https://www.nctsn.org/what-is-child-trauma/trauma-types/sexual-abuse/effects [https://perma.cc/X5KS-8AW5] (last visited July 20, 2024).

[237] *Physical Abuse: Effects*, Nat'l Child Traumatic Stress Network, https://www.nctsn.org/what-is-child-trauma/trauma-types/physical-abuse/effects [https://perma.cc/D4YV-NEDX] (last visited July 20, 2024).

[238] Marita Pruessner et al., *Gender Differences in Childhood Trauma in First Episode Psychosis: Association with Symptom Severity Over Two Years*, 205 Schizophrenia Rsch. 30, 30 (2019).

also found that female-identifying youth are more likely than those identifying as male to be diagnosed with PTSD.[239] More research is needed to understand trauma exposure of children in the SIJS backlog and how it might vary by age, race, and gender.

3. Court Exposure

Another significant characteristic that may have a relationship with trauma is children's exposure to court. While the SIJS petition dataset analyzed for this paper did not have reliable data on immigration court-involvement, a related study of SIJS youth seeking LPR status found that 63% of SIJS-based LPR applicants from 2016 to 2021 were in removal proceedings.[240] Immigration court-involvement is more common for children from certain countries. For example, children from the countries that comprise the largest portion of the SIJS backlog are more likely to be in removal proceedings—specifically 92.4% of SIJS-based LPR applicants from Honduras, 90.9% of those from Guatemala and 86.8% from El Salvador were in removal proceedings.[241] Furthermore, all SIJS youth must appear in a juvenile or family court in order to be eligible to seek SIJS.

Court exposure may be a critical factor in conceptualizing the risk of childhood trauma. Research has found that children involved in juvenile court proceedings often experience multiple ACEs prior to and at times in connection with court proceedings.[242] Unfortunately, ACEs research has not focused on children in immigration removal proceedings or family court, but there are a number of reasons that children in removal proceedings might have experienced or be experiencing trauma. A study of immigration court reported that the "strain of being placed in deportation proceedings weighs heavily" on people's lives.[243] Immigrants reported feeling "intimidated," "scared," "vulnerable," and "ashamed" when subjected to removal proceedings.[244]

Immigration court might be traumatic for children because the proceedings are adversarial. Children face a prosecutor seeking their removal, as well as a judge who may seem intimidating or threatening.[245] Children are not guaranteed a right to representation, so they may experience challenges in securing a lawyer, such as calling many nonprofits and being turned away or placed on a waitlist, and many must move forward without a lawyer.[246] Some children

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[239] Haahr-Pedersen et al., *supra* note 85, at 2.

[240] *Double Exclusion*, *supra* note 19, at 1457.

[241] *Id.* at 1458.

[242] Logan-Greene et al., *supra* note 82, at 79 (2016); Michael T. Baglivio & Nathan Epps, *The Interrelatedness of Adverse Childhood Experiences Among High-Risk Juvenile Offenders*, 14 Youth Violence & Juv. Just. 179, 194 (2015). Karen M. Abram et al., *Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention*, 61 Archives Gen. Psych. 403, 403 (2004).

[243] Barak, *supra* note 75, at 2.

[244] *Id.* at 88.

[245] Laila L. Hlass, *Defenseless Children,* Slate (July 5, 2018), https://slate.com/news-and-politics/2018/07/children-detained-at-border-dont-have-lawyers-must-represent-themselves.html [https://perma.cc/Q6KX-QLK3].

[246] *Representation for Unaccompanied Children in Immigration Court*, TRAC Immigr. (Nov. 25, 2014), https://tracreports.org/immigration/reports/371/ [https://perma.cc/ZTK2-X3XM].

may fall victim to *notario* fraud, a common occurrence where individuals falsely claim to be able to provide legal services to immigrants.[247] These unpredictable circumstances and lack of safeguards may be further sources of trauma.

Despite the high stakes of removal proceedings and some efforts to create orientation programs for children, immigration court may be confusing, due to language barriers, insufficient orientation, and the child's age.[248] Adults have experienced courtrooms as "often rather bleak."[249] Courtrooms can be difficult to navigate, even for adults, and courts do not necessarily have clear signage or bilingual staff to help direct people. Court hearings proceed in English, and the interpretation may be of varying quality and not always encompass every part of a proceeding. Furthermore, each court has unique cultures and practices, familiar to institutional players but not to those who appear in the court. Judges and attorneys may use formal legal language, particularly when judges are giving standard advisals. Many children report confusion and do not understand the proceedings.

Relatedly, immigration court cases often span years with multiple appearances required, which may be quite disruptive to a child's life. Children may live hundreds of miles from the immigration court, forcing them to navigate securing transportation, traveling a long distance, and obtaining accommodations to make their court appearance at the scheduled time.[250] Court dates may involve disruption of a regular life events, accruing absence in school and taking time off of a job, which could be critical for survival. Even when internet-based virtual hearings are available those present their own problems, requiring the children to navigate technical systems and have access to a steady wifi signal.[251]

Immigration court proceedings begin with initial matters in a master calendar hearing, and often, a child will have several of these hearings spread out over years, before either an individual merits hearing, or termination of proceedings. Master calendar hearings are set for a block of time, often with dozens of people set for the same time. The child will have to be on time, but also may have to wait for hours for their name to be called. Court dates are cancelled and rescheduled commonly due to judge's schedules as well as government shutdowns. Notices of court date changes may not reach the respondent.

Ultimately, since the central legal question in immigration court is whether someone will be deported, children may feel anxious about being deported, despite having been granted SIJS. These fears are based in fact.

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[247] Barak, *supra* note 75, at 73; *see also Notario Fraud: Overview*, Pub. Couns., https://publiccounsel.org/issues/immigrants-rights/notario-fraud/#:~:text=What%20is%20Notario%20Fraud%3F,them%20at%20risk%20of%20deportation [https://perma.cc/YV46-Y8QK] (last visited July 20, 2024).

[248] Chiara Galli, Precarious Protections: Unaccompanied Minors Seeking Asylum in the United States 23 (2023).

[249] Barak, *supra* note 75, at 1.

[250] Valeria Gomez, *Geography as Due Process in Immigration Court*, 23 Wisc. L. Rev. 1, 4 (2023).

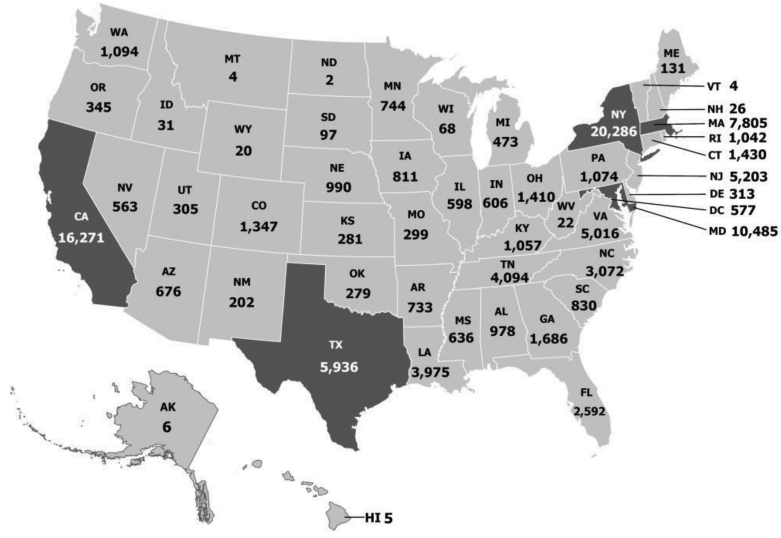
[251] *See e.g.*, *Your Guide to Preparing for Webex Immigration Court,* Cohen, Tucker & Ades P.C. (Oct. 18, 2023), https://cohentuckerlaw.com/free-resources/blog/webex-immigration-court/ [https://perma.cc/92YN-JHNU].

SIJS youth in removal proceedings have higher denial rights for protection than SIJS youth who are not in removal proceedings; in fact, according to a prior study, SIJS youth in removal proceedings had a denial rate for LPR status more than five times that of a SIJS youth not in removal proceedings.[252]

4. Geography

Geography is another important factor that may shape youth's trauma exposure. Youth impacted by the SIJS backlog live in all fifty states, the District of Columbia and Puerto Rico, but they are not distributed evenly or proportionately across states or localities.[253] The uneven geography of those impacted by the SIJS backlog may reflect where SIJS-eligible youth are released, where there is access to attorneys who engage in this specialized practice, particularly pro bono attorneys, as well where there is access to broader social support programs.[254] While these trends may exist for all SIJS youth, even in the absence of a backlog, the disparities and uncertainties of life for youth impacted the SIJS backlog may be exacerbated by uncertainties and disparities that exist across geographic boundaries of where they live within the United States.

Figure 5. States of Residence of SIJS Petitioners in the Backlog, February 28, 2023[255]



[252] *Double Exclusion, supra* note 19, at 1457 (finding SIJS-based LPR cases in removal proceedings had a 29.9% chance of receiving a denial, whereas cases that were not in removal had a 5.3% denial rate).

[253] SIJS dataset (on file with author).

[254] *Id.* at 1469.

[255] 519 cases had an unknown state of residence. SIJS dataset (on file with author).

The top ten states where SIJS backlog impacted youth live include New York (19%), California (15%), Maryland (10%), Massachusetts (7%), Texas (6%), New Jersey (5%), Virginia (5%), Tennessee (4%), Louisiana (4%), and North Carolina (3%).[256] A state's portion of youth impacted by the SIJS backlog does not directly correlate to the size of their portion of undocumented immigrants, which may be the result of a number of factors. For example, a recent study ranks the five states with the highest overall unauthorized immigrant population as California (1.8 million), Texas (1.6 million), Florida (1.2 million), New York (650,000), New Jersey (475,000), and Illinois (400,000); the study found that these are the same states that have consistently had the most unauthorized immigrants since 1990 and earlier.[257] Meanwhile, although Florida has the third highest number of unauthorized immigrants,[258] it has a smaller portion of backlog impacted SIJS youth[259] than two states that have about one-third of Florida's unauthorized population, namely Massachusetts and Maryland.[260] As of March 1, 2023, Massachusetts was home to 7,805 youth in the backlog and Maryland for 10,485 youth impacted by the SIJS backlog, while Florida was home to only 2,592 SIJS youth impacted by the backlog.[261] Similarly, Texas has almost twice as many undocumented immigrants as New York,[262] but Texas only ranks as the state with the fifth highest number of SIJS backlog-impacted youth with New York having the most.[263] Furthermore, Texas has seen a decline in terms of the percentage of its overall SIJS petitions since 2013.[264] These differences may also stem from differences in state laws where children are restricted from access to state courts at younger ages in Texas, compared to Massachusetts, Maryland, and New York.[265]

More research is needed to discern various factors implicated by the geographic distribution of backlog-impacted SIJS youth and why the size of the broader undocumented immigrant population in a state might not correspond directly to how many SIJS youth are there.[266] However, one possibility is that there is a suppression of SIJS petitions in states that are generally more hostile to immigrants and where there are fewer resources including pro bono immigration attorneys.[267] It is practically impossible for immigrant youth who have

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[256] SIJS data set (on file with author).

[257] Jeffrey S. Passel & Jens Manuel Krogstad, *What We Know About Unauthorized Immigrants Living in the U.S.*, Pew Rsch. Ctr. (July 22, 2024), https://www.pewresearch.org/short-reads/2023/11/16/what-we-know-about-unauthorized-immigrants-living-in-the-us/ [https://perma.cc/559J-2EHW].

Id. (estimating 1,600,000 for Texas versus 600,000 for New York).

[258] *Id.*

[259] SIJS data set (on file with author).

[260] Passel & Krogstad, *supra* note 257.

(Massachusets has an estimated 325,000 and Maryland an estimated 300,00 unauthorized immigrants, compared to Florida at 1,150,000).

[261] SIJS data set (on file with author).

[262] Passel & Krogstad, *supra* note 257.

Id. (estimating 1,650,000 for Texas versus 650,000 for New York).

[263] SIJS Data set (on file with author).

[264] *Double Exclusion, supra* note 19, at 1472.

[265] *State by State Age-out Database*, Project Lifeline, https://projectlifeline.us/resources/state-by-state-age-out-database/ [https://perma.cc/V29V-L3RB] (last visited Mar. 23, 2025).

[266] For instance, the existence of state laws restricting access to juvenile court for SIJS eligible children may be a factor.

[267] *States & Status*, *supra* note 121, at 324.

been abandoned, abused or neglected to be able to seek SIJS without an attorney.[268] This is visible in the data, which shows that nearly all SIJS petitions contained information about their legal representatives.[269]

Geography may play a role for children impacted by the backlog in relation to the kinds of trauma they have experienced or will experience. In addition to difficulties in obtaining an immigration lawyer, which varies geographically, there are disparities in levels of scrutiny SIJS petitions receive across geographic regions, reflected by notices requiring further evidence, notices of intent to deny, and final outcomes of SIJS petitions. A past study has shown that southern[270] and midwestern states generally have worse outcomes for SIJS petitions, while West Coast states tend to have better outcomes.[271] Receiving a negative determination or more notices requiring additional evidence may be stressors for children that are not spread evenly over geography. One youth who spent years in the SIJS backlog reflected the uncertainty and feeling of exposure to being deported took the most toll on her: "To know that. . .anything can happen [while in the backlog], ICE sees us and they ask us. . .and tell us: you're going back to your country. That was my biggest fear."[272]

Considering geography is important because research has shown that anti-immigrant policy and rhetoric, at times termed "deportation threat," can predict psychological distress in immigrant communities,[273] including immigrant children.[274] This research has specifically found that Black and Latina/o children living in states with more social stigma, including where there are more anti-immigrant policies, had smaller hippocampal volumes, indicating exposure to chronic stress.[275] Research has also found that systemic inequities including anti-immigrant policies were significantly associated with the number of chronic physical health conditions and mental health problems with immigrant and U.S. citizen Latina/o children, living in those states.[276]

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[268] *Double Exclusion*, *supra* note 19, at 1467 (stating applying for SIJS without an attorney would be "theoretically possible" but "highly improbable").

[269] *Id.* (noting that 93.4% of SIJS petitions were accompanied with information about their legal representative and speculating the blank information for the remaining 6.3% was due to representatives omitting the form or an omission in the data).

[270] But four southern states had lower than average denial rates, including Louisiana, Tennessee, North Carolina, and Virginia.

[271] *Double Exclusion supra* note 19, at 1472.

[272] Any Day, *supra* note 149, at 22.

[273] Amy L. Johnson et al., D*eportation Threat Predicts Latino U.S. Citizens and Noncitizens' Psychological Distress, 2011 to 2018*, 121 Procs. Nat'l Acad. Scis. U.S. 1, 1 (2024); D. Imelda Padilla-Fruasto et al., Immigrants in California Have Increased Psychological Distress and High Rates of Unmet Need for Mental Care 2 (2023), https://healthpolicy.ucla.edu/sites/default/files/2023-12/californias-immigrant-adults-report-increased-psychological-distress-and-high-rates-of-unmet-need-for-mental-health-care-policy-brief-december-2023.pdf [https://perma.cc/N5HB-C4YE].

[274] Luis M. Garcini, *Implications of Undocumented Status for Latinx Families During the COVID-19 Pandemic: A Call to Action*, 53 J. Clinical Child & Adolescent Psych. 10, 12 (2023) (discussing how anti-immigrant rhetoric can lead to feelings of rejection, shame, and diminished self-esteem, and how this rhetoric can increase identity confusion for children, which can contribute to mental health disorders).

[275] Mark L. Hatzenbuehler et al., *Smaller Hippocampal Volume Among Black and Latinx Youth Living in High-Stigma Contexts*, 6 J. Am. Acad. Clinical Child & Adolescent Psychiatry 809, 815 (2022).

[276] Natalie Slopen et al., *State-Level Anti-Immigrant Sentiment and Policies and Health Risks in U.S. Latino Children*, 152(3) Peds. 1, 1 (2023).

This research suggests that children in the SIJS backlog living in states with rising anti-immigrant rhetoric and policies might be at greater risk of harm to mental health.

On top of considering geography at a state level, local geography considerations may also contribute to children's risk of trauma. For example, some research has posited that urban regions may be more stressful with more pollution than rural areas, although rural areas are often characterized by geographic isolation, limited access to specialized health care, and lower socio-economic status, which may lead to health disparities for children.[277] According to a 2017–18 National Survey of Children's Health study, depression, anxiety, and behavioral conditions were more prevalent among children living in rural areas compared with urban areas.[278] Furthermore, children living in rural areas may have steeper challenges in accessing services such as pro bono lawyers, which can be a stressor itself. While some research has theorized very different legal systems and access to justice for SIJS youth on the local level,[279] more research is needed to understand the variety of factors that might shape health and wellbeing outcomes.

Figure 6. Top Ten Home Cities for SIJS Youth Impacted by the Backlog, February 28, 2023[280]

City	**Number**	**Percent**
New York, NY	6,346	6%
Los Angeles, CA	6,122	6%
Houston, TX	1,564	1%
Boston, MA	1,334	1%
Silver Spring, MD	1,194	1%
Hyattsville, MD	1,126	1%
Baltimore, MD	1,162	1%
Hempstead, NY	1,106	1%
Charlotte, NC	1,001	1%
Brentwood, NY	997	1%
All other cities	85,741	80%
Total	107,693	100%

[277] *Rural/Urban Differences in Child Health*, Health Res. and Servs. Admin. (Oct. 2020), https://mchb.hrsa.gov/sites/default/files/mchb/data-research/rural-urban-differences.pdf [https://perma.cc/HX99-KPV9].

[278] *Id.*

[279] Keyes, *supra* note 40, at 37.

[280] SIJS data set (on file with author). 318 cases had an unknown state of residence. *Id.* New York, NY, includes all cities and neighborhoods within the five boroughs of New York City. Los Angeles, CA, includes "Los Angeles" and neighborhoods that fall within the city of Los Angeles. Boston, MA, includes all neighborhoods within the city of Boston.

Unsurprisingly, the highest clusters of SIJS youth in the backlog are in major cities. New York and Los Angeles are each the home to 6% of youth impacted by the SIJS backlog. Eight other cities are each home to about 1,000 SIJS backlog-impacted youth each. Interestingly, some of the most populous cities—overall or even by number of unauthorized immigrants—are not within the top ten. For instance, Chicago and Phoenix are the third and fifth most populous cities according to the U.S. Census Bureau,[281] but do not make it onto the top-then list of where the most SIJS backlog-impacted youth live. According to the Pew Research Center, the Dallas-Fort Worth metropolitan area and the Miami-Fort Lauderdale metropolitan area are within the top five most populous city regions of unauthorized migrants,[282] but neither of these cities are one of the top ten cities where SIJS youth impacted by the backlog live. These geographic disparities may also relate to state law differences that impact eligibility for SIJS—Arizona and Texas have more restrictive age cut-off laws than Maryland, Massachusetts, California, and New York.[283]

Certain characteristics of children impacted by the SIJS backlog may be related to their risk of having experienced ACEs, and later health and social impacts stemming from such trauma. Youth impacted by the SIJS backlog are predominantly male-identifying although a growing portion is female-identifying, predominantly from El Salvador, Guatemala, Honduras and Mexico, and according to prior research, most are in removal proceedings. Meanwhile, existing ACEs research has revealed that gender, race, immigration status, and court involvement play roles in likelihood of ACEs exposure, the type of ACEs that may be present, and how that might later manifest in health impacts. Past research has shown that there are significant geographic differences in how SIJS youth are treated throughout the process of seeking SIJS.[284] More research is needed to understand how the current configuration of the SIJS backlog might relate to additional stressors in the immigration process, including securing representation, experience in the state court, experiences living in states creating legislation hostile to immigrants, and differences in immigration processing. These facts raise the need for specific ACEs research regarding children impacted by the SIJS backlog to understand whether broader ACEs trends can be observed in this context.

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[281] Abigail Jones, Christopher Adams, & Jeremy Tanner, *Census Data Shows Two Cities Climbing List of 15 Largest in* U.S., Fox59 (May 17, 2024), https://fox59.com/news/national-world/census-data-shows-two-cities-climbing-list-of-15-largest-in-us/ [https://perma.cc/H6N5-2J94].

[282] Jeffrey S. Passel & D'Vera Cohn, *20 Metro Areas Are Home to Six-in-Ten Unauthorized Immigrants in U.S.,* Pew Rsch. Cntr. (March 11, 2019), https://www.pewresearch.org/short-reads/2019/03/11/us-metro-areas-unauthorized-immigrants/ [https://perma.cc/DQ2D-254H].

[283] *State-by-State Age-Out Database,* Project Lifeline, https://projectlifeline.us/resources/state-by-state-age-out-database/ [https://perma.cc/6PFM-7SQD] (last visited Feb. 5, 2025). Illinois and Florida, however, do not have more restrictive age cut-offs. *Id.*

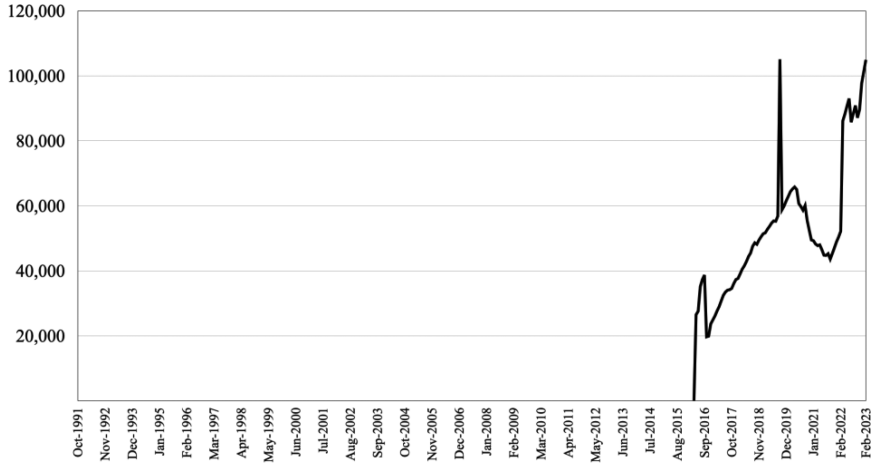
[284] *States & Status*, *supra* note 121, at 288; Keyes, *supra* note 40, at 74.

C. A Massive and Growing Backlog

For nearly twenty-five years, children were generally able to apply for SIJS and LPR status at the same time, or in quick succession, without the prolonged uncertainty of a backlog.[285] There were no shortages of immigrant visas in the employment-based fourth category for almost twenty-five years.[286]

Figure 7 illustrates the size of the SIJS backlog month by month from the early days of SIJS as an established protection. For more than twenty-five years, there was no backlog. In this way, the current backlog can be understood as an anomaly within the SIJS program, not necessarily anticipated by Congressional drafters of the law at the inception of SIJS.[287] Since the backlog began in May 2016, the number of impacted youth has grown steadily, with occasional drops before climbing again.

FIGURE 7. NUMBER OF YOUTH IMPACTED BY THE SIJS BACKLOG, 1991–2023[288]



The SIJS backlog has changed in size and shape over time, although it has generally increased except during the pandemic when the number of SIJS youth impacted decreased for about one year. Like other phenomena

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[285] *Double Exclusion*, *supra note 19,* at 1481.

[286] *Visa Bulletin for May 2016*, U.S. DEP'T OF STATE (Apr. 12, 2016), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2016/visa-bulletin-for-may-2016.html [https://perma.cc/VH4L-5MKX].

[287] However, SIJS is not the only system current facing a backlog in in the immigration. The family-based and employment-based systems, as well as U nonimmigrant status and cancellation of removal all have backlogs. *See generally*, Jason A. Cade and Mary Honeychurch, *Restoring the Statutory Safety-Valve for Immigrant Crime Victims: Premium Processing for Interim U Visa Benefits*, 113 NW. U.L. REV. ONLINE 120 (2019) (exploring solutions to the U Visa backlog); *Cancellation of Removal*, DEP'T OF JUSTICE, https://www.justice.gov/eoir/page/file/1596141/dl?inline [https://perma.cc/5SBK-NHWZ] (last visited Feb. 3, 2025) (stating it make take years of waiting due to the 4,000 year cap).

[288] SIJS data set (on file with author).

understood to operate as a form of violence, the SIJS backlog evades public scrutiny, despite harming a sizable community of people. The occasional drops in the size of the backlog are often attributable to the start of the fiscal year, October for the immigration agency, when annual visas become available. The first decrease in the size of the backlog occurred in October 2016, six months after the backlog first began.[289] In September 2016, there were 38,684 youth impacted by the SIJS backlog, and by October, the number dropped to 19,683. The size began climbing again until October 1, 2018, when there was a small drop from 48,610 to 48,152 youth impacted by the backlog. A notable spike and drop occurred in September 2019 and October 2019, respectively. For the first (and only) time during the study period, immigrant visas became completely unavailable in September 2019, meaning that all visas had been used up for the entire year.[290] That month, all SIJS youth were in the backlog, comprising 105,084 impacted youth, up from 56,842 youth in the prior month. In the next month, October 2019, there was a drop in the size of the backlog. This is because the new year's visas came available, leaving 58,784 impacted youth in the backlog, down from 105,084 in September.

There was one period of sustained decrease in the size of the backlog during the COVID-19 pandemic. At that time, the number of SIJS youth impacted by the backlog stalled and then declined, which is likely attributable to increased visa availability; additionally, there may have been some stalling in petitions being filed early in the pandemic when legal offices were temporarily closed. From May 2020 through September 2021, the number of youth impacted by the SIJS backlog decreased from 65,016 to 43,585.[291] Early in the pandemic, there was potentially a decreased number of petitions filed when legal offices shut down. Later, with COVID-related border closures, there were fewer immigrant visas being used in the family-based system as people were unable to consular process and move to the United States.[292] Those unused immigrant visas were then reallocated to the employment-based system,[293] such that the SIJS backlog decreased fourteen out of seventeen months from May 2020 to September 2021. Because of the unused visas, fiscal year 2021 had 262,288 immigrant visas and fiscal year 2022 had 281,507 immigrant visas available.[294] This is unusual as the family-based immigration system typically uses all the immigrant visas allocated to the system, leaving the employment-based system

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[289] *Id.*

[290] *Visa Bulletin for September 2019*, U.S. Dep't of State (Aug. 9, 2019), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-september-2019.html [https://perma.cc/EVN2-68EU].

[291] SIJS dataset (on file with author).

[292] Camilo Montoya-Galvez, *Legal Immigration to the U.S. Rebounds from Pandemic Drop in Visa Approvals*, CBS NEWS (Dec. 14, 2022, 9:23 AM), https://www.cbsnews.com/news/immigration-us-visa-approvals-rebound-covid-19-pandemic/ [https://perma.cc/47M7-LJHM].

[293] *Id.* ("In recent years, the cap for employment visas has been higher than the usual 140,000 ceiling because of a provision in U.S. immigration law that funnels unused family-based visas to the employment-based visa pool.").

[294] *Visa Bulletin for September 2021*, U.S. Dep't of State (Aug. 9, 2021), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-september-2021.html [https://perma.cc/68S5-7UWN]; *Visa Bulletin for September 2022*, U.S. Dep't of State (Aug. 3, 2022), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-september-2022.html [https://perma.cc/U9HK-DR99].

with just the minimum floor set by statute at 140,000 for all five employment visa categories.

Figure 8. Size of the SIJS Backlog, by Month[295]

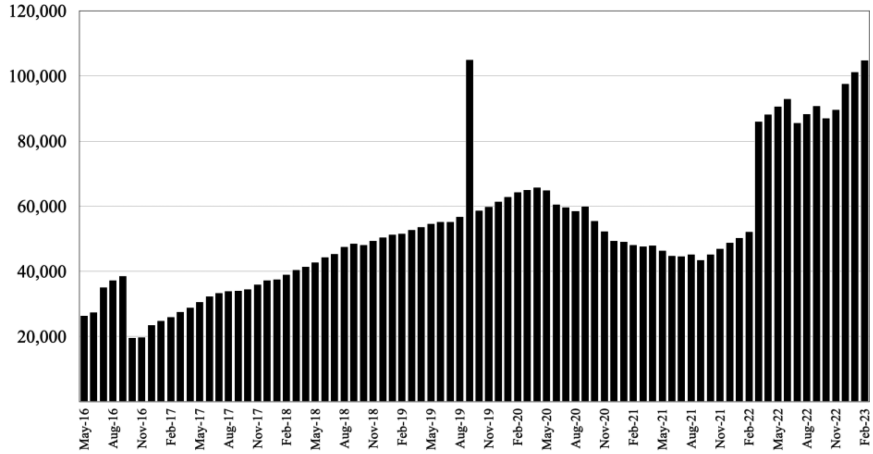

Figure 8 demonstrates the number of impacted youth over time, currently including more than 100,000 young people. The size of the backlog doubled within a year, from 52,176 in February 2022 to 104,909 in February 2023. And due to the uncertain nature of how future visa bulletins will shift, young people do not know how long they will remain in limbo. If the number of visas in the fourth employment category remains stagnant at fewer than 10,000 annually, and the number of SIJS petitioners annually remains larger than that, the backlog and length of time youth will have to wait will continue to grow.

There are two steep increases in the size of the SIJS backlog, first in September 2019 and then again in March 2022. As noted above, the September 2019 spike relates to the unavailability of any immigrant visas such that all SIJS seekers were impacted by the backlog. In March 2022, there was a large jump in the number of youth impacted by the backlog when the final action date in the visa bulletin retrogressed nearly two years for El Salvadoran, Guatemalan, and Honduran youth from the prior month's final action date of May 15, 2019 to May 1, 2017.

Particular communities of youth have experienced disparate impact in how the visa caps were interpreted. For many years, young people from El Salvador, Guatemala, Honduras were impacted by the backlog, while others were not impacted at all, or less so.[296] The Department of State first determined there was a shortage of immigrant visas for the EB-4 category in 2016,

[295] SIJS data set (on file with author).

[296] Youth from Mexico also faced years-long backlogs, although shorter than those from the Northern Triangle of Central America. There has also occasionally been a short backlog for youth from India. *See supra* notes 19-25.

twenty-six years after the creation of the SIJS program.[297] In April 2016, the Department of State announced that starting in May there was a shortage of immigrant visas for children from some countries.[298] Specifically, the Department reported there was a shortage when combining El Salvador, Guatemala and Honduras into one category, and determined that SIJS seekers from those three countries would have had to apply for SIJS before January 1, 2010, to be eligible to seek LPR status.[299] Meanwhile children from all other countries were "current," meaning they may be able to apply for SIJS and LPR status concurrently.[300] From that time until March 2023, the Department of State misapplied the law regarding country-specific visa limitation, causing children from El Salvador, Guatemala, and Honduras to experience a much longer wait.[301] Meanwhile, children from most other countries had no wait for visa availability and could apply for LPR status in quick succession after SIJS. Over the years, with the Department of State using this unlawful interpretation of the country limit, the backlog continued to grow for petitioners from El Salvador, Guatemala, and Honduras.[302]

Then in December 2022, due to limited fourth category employment-based immigrant visas, SIJS youth from all countries were subjected to the backlog. [303] Children from historically backlogged El Salvador, Guatemala, and Honduras had immigrant visa availability only if they had applied for SIJS before March 15, 2018, meaning they had waited more than four and a half years.[304] Children from Mexico were "current" if they had applied for SIJS before September 14, 2020, meaning they had a more than two-year wait, and children from all other countries would had to have applied six months earlier, before June 22, 2022.[305]

Uncertainty spiked again for many youth when the Department of State acknowledged its error and changed the interpretation of how the visa bulletin dates were calculated in 2023. In March, the Department of State issued a public notice admitting the error, and announced they would address the problem starting in April 2023.[306] The new interpretation stopped the unlawful restriction of visas for youth from El Salvador, Guatemala, and Honduras, allowing these youth to decrease their wait time, but the changes also caused a retrogression of final action dates for all other countries, resulting in a years-long worldwide backlog for EB-4 applicants from all countries. Children from the negatively impacted countries reported feeling "more depressed,"

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[297] False Hopes, *supra* note 16, at 6.

[298] *Visa Bulletin for May 2016*, U.S. Dep't State (Apr. 12, 2016), https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_May2016.pdf [https://perma.cc/FY3R-RZYS].

[299] *Id.*

[300] *Id.*

[301] Children from Mexico also often had a years long wait, but this was consistent with current interpretation of visa allocation because Mexico is one of several countries that have exceeded visa limits for individual countries.

[302] False Hopes, *supra* note 16, at 5.

[303] *Visa Bulletin for Dec. 2022*, U.S. Dep't State (Nov. 10, 2022), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-december-2022.html [https://perma.cc/XQ52-9EUU].

[304] *Id.*

[305] *Id.*

[306] *See supra* notes 23–25.

"speechless," "stress[ed]," and "scared" when they learned they were subjected to the backlog with this longer wait.[307] The data set on which this article is based on does not contain data of SIJS petitions filed March 1, 2023 or later, so there is no analysis of how the size of the impact shifted.

For nearly twenty-five years, there was no backlog for SIJS children. Abandoned, abused, and neglected children could apply for LPR status alongside or soon after filing their SIJS petition. Then in 2016, SIJS children from a handful of countries had to wait and monitor the visa bulletin to know when they could apply for LPR status. Since its inception, the number of SIJS youth impacted by the backlog has grown substantially, with some drops and spikes. Despite impacting more than 100,000 youth, the SIJS backlog has long evaded significant public scrutiny.

D. Aging and Waiting

The SIJS dataset not only reveals how many youth have been impacted by the backlog, but also provides insights regarding the average age of youth seeking SIJS, and the prolonged waiting SIJS youth might experience as they enter the backlog. Together these findings suggest youth may enter the SIJS backlog at pivotal points in their lifespan, when they are poised to potentially launch or flounder into young adulthood, and provides some evidence that the immigration system has already taken a toll on youth.

The mean age of SIJS petitioners at the time of filing has fluctuated between sixteen and seventeen years old, with more than one-fifth of petitioners who are seventeen years old.[308] Due to extended wait times, youth may age out of childhood without having achieved LPR status based on SIJS. While the SIJS statute ensures youth who age out of childhood while in the backlog are still eligible to seek LPR status, these bouts of years-long waiting and aging may be harmful to youth as stressors, and because being in this legal limbo means they may be deprived of other opportunities, including access to higher education and certain professions.[309] Furthermore, access to work authorization is not guaranteed upon approval of SIJS, and this precarity adds to further uncertainty for youth.

Children seeking SIJS are often subjected to multiple rounds of uncertain waiting periods due to how the law was constructed and how it has been implemented. First, before a child can even apply for SIJS, they must be identified as eligible for protection and generally have a lawyer to represent them in a state court proceeding. Due to the limited supply of low cost and pro bono legal services, many indigent children are placed on waiting lists[310] or are unable to find representation.[311] After securing representation, children face varying state court processes with different timelines for securing a hearing

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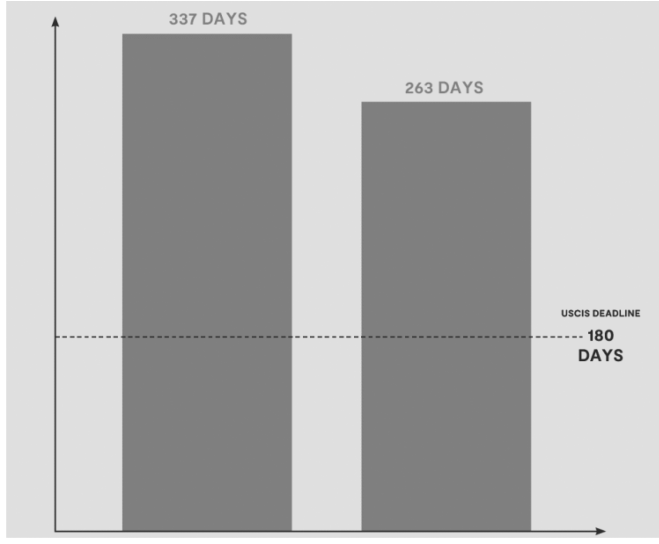
[307] False Hopes, *supra* note 16, at 31, 37.
[308] *Double Exclusion*, *supra note* 19, at 1478.
[309] False Hopes, *supra* note 16, at 30.
[310] *See Double Exclusion*, *supra* note 19, at 1410 (Ariel notes waiting for some time on waitlist).
[311] *Minor Protections*, *supra* note 40, at 276.

date.[312] Once the state court has issued a judgement placing the child within the care of a person or entity and made the required best interests findings, the child may submit the state court order, alongside the SIJS petition and other evidence to seek classification as a Special Immigrant Juvenile.

By statute, USCIS must take at the most 180 days to decide SIJS cases.[313] However, this waiting period became incredibly protracted in recent years[314] with advocates challenging the legality of these extended times.[315] From March 1, 2018, to February 28, 2023, the average adjudication time of cases that were ultimately approved was 337 days. More recently, while this wait time has decreased—to an average of 263 days for cases approved between October 1, 2022, and February 28, 2023—it still far exceeds the maximum time set forth in the statute of 180 days. According to USCIS published data as of March 31, 2024, the wait time has shortened dramatically with only 3.7% of petitions beyond the 180-day mandate.[316]

Figure 9. Mean Processing Time (in days) of Approved I-360 Petitions[317]



[312] Keyes, *supra* note 40, at 38.
[313] 8 U.S.C. §1232(d)(2).
[314] *Double Exclusion*, *supra* note 19, at 1478.
[315] Casa Libre/Freedom House v. Mayorkas, No. 2:22-cv-01510-ODW, 2023 WL 4872892 (C.D. Ca. July 31, 2023).
[316] *I-360 SIJS Congressional Report FY2024*, *2nd Quarter,* U.S. Citiz. & Immigr. Servs., https://www.uscis.gov/sites/default/files/document/reports/i360_sij_congressional_fy2024_q2.xlsx [https://perma.cc/3VBE-WPLB] (last visited Mar. 23, 2025) (541 of 14,522 cases were 180 days or more).
[317] SIJS dataset (on file with author).

After a child is approved for SIJS, they are confronted with more uncertain waiting periods. The wait for visa availability can be excruciatingly long. For example, as of March 1, 2023, youth who have already been waiting nearly five years are obtaining visas, but for those youth entering the backlog the wait time may extend much longer.[318] The exact amount of waiting is impossible to predict, since it relates to the annual amount of visas that will be allocated in any given year, how many youth have petitioned for SIJS, as well as how many SIJS youth will take the next step of using immigrant visas, and the number of other immigrants in the fourth employment category.[319] Although it is beyond the scope of this paper, even when a SIJS youth exits the backlog and is eligible to apply for LPR status due to available immigrant visas, there is often a yearslong wait to receive a decision on their LPR application.[320]

SIJS youth have described the waiting and aging process in bleak terms. One youth who grew up in Spain and Ecuador expressed, "without knowing when you will be able to obtain your green card, it is difficult to think about the future, when you do not know when that future will arrive."[321] Like Claude's experience, SIJS youth have reported having to drop out of college or not even apply once they realized current Department of Education guidance precludes SIJS youth from applying for federal financial aid until they have LPR status.[322] Other youth report being excluded from work development programs, as well as specific professions, such as the army or police force, which may require LPR status or U.S. citizenship.[323] Ultimately, the prolonged waiting can cause emotional distress and mental health challenges. One youth from Bangladesh reported, "With the wait, I can't do anything right now. When I realize this, I get frustrated, I can't sleep well at all . . . it makes you depressed every single night."[324]

IV. Slow Death of Childhood in the Backlog

The SIJS backlog is preventing tens of thousands of immigrant young people from moving toward LPR status. Instead, youth are trapped in an indeterminate, yearslong liminal status. Immigrant youth seeking SIJS are already at risk of having experienced multiple Adverse Childhood Experiences, such as abandonment, abuse, neglect by a parent, as well as border trauma, racism,

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[318] *Visa Bulletin for March 2023*, U.S. Dep't of State (Feb 9, 2023), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-march-2023.html [https://perma.cc/LVM6-BWHN]. This is part of broader trends of growing backlogs. *See* David J. Bier, *Immigration Wait Times from Quotas Have Doubled: Green Card Backlogs Are Long, Growing, and Inequitable*, Cato Inst. (June 18, 2019), https://www.cato.org/publications/policy-analysis/immigration-wait-times-quotas-have-doubled-green-card-backlogs-are-long#projected-future-wait-times [https://perma.cc/5A8F-JLRF].

[319] *See infra* Section II.B.

[320] *Double Exclusion*, *supra* note 19, at 1479; *see also Check Processing Times*, U.S. Citiz. & Immigr. Servs., https://egov.uscis.gov/processing-times/ [https://perma.cc/329T-GFKS] (last visited July 20, 2024) (resource for checking case processing times for I-485 applications).

[321] False Hopes, *supra* note 16, at 36.

[322] *Id.* at 32–33.

[323] *Id.* at 34–35.

[324] *Id.* at 36.

and other forms of discrimination.[325] The SIJS backlog, and its attendant prolonged waiting and uncertainty, occurs at a pivotal developmental stage for young people. Young people are often seeking to graduate from high school, enter higher education, seek independent living and begin career trajectories. Through incorporating ACEs research and slow violence theory, the "slow death of childhood" conceptualizes the ripple effects of harms and lost opportunities for SIJS youth impacted by the backlog, and calls for action to address these harms.

Slow death of childhood also explains how despite the magnitude and depth of harms immigrant youth face, the SIJS backlog is largely invisible to the broader public. There has been minimal coverage in the news,[326] nor much attention given from the national association of immigration attorneys.[327] The slow death of childhood for SIJS backlog-impacted youth occurs "gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all."[328] In this way, the SIJS backlog works to slowly wear down immigrant communities by stripping young people of opportunities and subjecting them to extended liminal legal status, with potential short- and long-term economic, social, and health outcomes.

This section applies the slow violence theory to the case study of SIJS youth impacted by the backlog arguing that the immigration system, specifically the backlog and attendant impacts, can contribute to the slow death of childhood for immigrant youth trapped within it. First, the visa bulletin, perpetual waiting, prolonged liminal status, and threat of court systems in the SIJS backlog can be understood as banal, routinized violence. Incorporating developments with the ACEs framework suggest that youth who have been suspended in the liminal status of the SIJS backlog may have long-term impacts into adulthood. Second, the slow death of childhood theory makes visible how the scale and scope of the SIJS backlog and its uneven distribution over time and space are not just a collection of individual harms but collectively may work to have a broader impact of "wearing down of community." Third, the slow death of childhood theory demands scrutiny to determine who is responsible for the harm, particularly the state's role. Here, slow death theory draws attention to the government's role in creating and exacerbating harm through setting visa limits, illegally restricting visas for seven years Honduran, Guatemalan, and Salvadoran children, not providing any remedy to those children, and its failure to robustly address the wide-ranging harms of

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[325] *See* discussion *infra* Part I.B.

[326] Jasmine Aguilera, *A Years-Long Immigration Backlog Puts Thousands of Abused Kids in Limbo*, Time (Dec. 16, 2021), https://time.com/6128025/abused-immigrant-kids-sijs-backlog/ [https://perma.cc/SM23-FA97]; *see* Silva, *supra* note 1.

[327] Despite its annual sessions featuring over 100 workshops on various aspects of immigration law, SIJS is generally not featured, particularly not the backlog. *See generally 2024 AILA Annual Conference and Webcast on Immigration Law*, Am. Immigr. Laws. Ass'n (2024), https://www.aila.org/aila-files/567183D1-956D-463A-A76B-D7A9A9F6A531/AC24-Program.pdf [https://perma.cc/7393-9K9K].

[328] Nixon, *supra* note 32, at 2 (stating Nixon is building upon the phenomena of slow environmental violence articulated by Rachel Carson in *Silent Spring*).

the backlog. Ultimately, these conclusions reveal considerable harms that have largely gone unnoticed, and they serve as a call for action.

A. Banal, Routinized Harm

Slow violence exposes how routinized, banal violence against certain communities can accumulate and be normalized into catastrophic harm.[329] Seemingly minor and common issues may have profound repercussions depending on the community and context.[330] The SIJS backlog forces youth to remain for an uncertain number of years in a liminal immigrant status, which may contribute to everyday harms they experience. More broadly, immigrants have described being subject to insecurity in work, family and school and exposed to criminalization efforts at federal, state and local levels of government because of their legal status.[331] As part of a study involving more than 200 interviews, scholars Cecilia Menjívar and Leisy Abrego have articulated that immigrant lives reveal a kind of "legally sanctioned social suffering."[332] As a result of this insecurity, many immigrants live with a hyperawareness of their lack of legal status and precarity in the US with rumors of immigration stories and deportation omnipresent in daily life.[333]

For the community of youth impacted by the SIJS backlog, lack of permanent immigration status is a clear stress factor. After hearing about the wait times of the SIJS backlog from their lawyer, one youth stated "basically I don't think about the future anymore because I don't want to have false hope." [334] Another youth described the stress associated with the SIJS process as "unbearable."[335]

Young people in the SIJS backlog either have a pending SIJS petition or have been granted SIJS, but that status does not automatically confer immediate benefits. SIJS youth impacted by the backlog might be subject to deportation, are considered ineligible for federal financial aid under current interpretation, and are ineligible for a myriad of public benefits and social programs where a particular immigration status is required. Like other undocumented immigrants, backlog-impacted SIJS youth may face exclusions from daily life in trying to access health care, find jobs, attend school, and seek a place to live, with fears of deportation in the background.[336] There was a particularly notable improvement for youth impacted by the SIJS backlog made in May 2022, when the Biden administration instituted a new deferred

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[329] Fedock et al., *supra* note 53, at 1079.

[330] *Id.* ("As our findings suggest, seemingly minor, common issues—such as flooding toilets, broken phones, and long waiting lists—generated profound and severe consequences (such as losing contact with children) for incarcerated mothers.").

[331] Cecilia Menjívar & Leisy J. Abrego, *Legal Violence: Immigration Law and the Lives of Central American Immigrants*, 117 Am. J. Soc. 1380, 1413 (2012).

[332] *Id.*

[333] Barak, *supra* note 75, at 79.

[334] False Hopes, *supra* note 16, at 14.

[335] *Id.*

[336] Barak, *supra* note 75, at 79–80.

action program for those granted SIJS, that allowed them to access work permits.[337] Despite this success, some youth have not be granted deferred action and permission to work, and others have had to wait many months for their work permit.[338] Youth are not permitted to apply for work authorization concurrently with their SIJS petition causing unnecessary delay. Not being able to legally work to support basic survival can create desperation.[339]

Another stress point for children impacted by the backlog is that their liminal status may last for an indeterminate amount of time because of the visa availability formula, which depends on multiple variables that change over time. The prolonged and indeterminate waiting may create a sense of hopelessness. Along this vein, in a study of immigration court backlogs, immigrants described the daily waiting and anxiety associated with court as "the hardest part."[340] As proceedings become prolonged without a clear end date, immigrants reported the process felt "indefinite," putting their lives on hold.[341] Researchers studied the impact of waitlists for social programs and opportunities for people who are incarcerated and how wait times may contribute to slow violence as the waiting lasted close to the full length of the incarceration.[342] The perpetual waiting led to "long-term psychological effects of uncertainty, disappointment from the lack of actualized opportunities, and anxiety."[343] One formerly trafficked youth testified that the waiting in the SJIS backlog has taken a toll: "it's physically impossible for me to do anything right now. Even if you know, I have a little job or whatever and I'm trying to do everything that I can, but it's really hard, it's really really hard. And it's so unfair."

As part of waiting, young people alongside their lawyer may check visa availability to determine if they may be moving closer to the end of their time in the backlog. One young person described feeling rising anxiety while checking the visa bulletin constantly, sometimes multiple times a week to see if they will be permitted to finally submit their LPR application.[344] Other youth have described feeling "speechless," "stuck," "awful," and "depressed" when learning about the wait times described in the visa bulletin.[345]

The indeterminate waiting in liminal status comes at a particularly crucial point in their life, childhood and adolescence. Adverse Childhood Experience research has shown that stress accumulated in childhood may contribute to negative long-term health, as well as harm economic and academic opportunities.[346] SIJS youth in the backlog by definition have been abandoned,

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[337] *USCIS to Offer Deferred Action for Special Immigrant Juveniles*, U.S. Citiz. & Immigr. Servs. (Mar. 7, 2022), https://www.uscis.gov/newsroom/alerts/uscis-to-offer-deferred-action-for-special-immigrant-juveniles.

[338] *Frequently Asked Questions About USCIS's SIJS Deferred Action Policy*, End SIJS Backlog – Nat'l Immigr. Project NLG 5 (June 28, 2023), https://nipnlg.org/sites/default/files/2023-06/2023_USCIS-SIJS-DA-policy.pdf [https://perma.cc/8GXU-BB5D].

[339] Barak, *supra* note 75, at 105.

[340] *Id.* at 97.

[341] *Id.* at 98. Some immigrants reported indeterminate wait times as a top concern. *Id.* at 143.

[342] Fedock et al., *supra* note 53, at 1077.

[343] *Id.*

[344] *Double Exclusion*, *supra* note 19, at 1413.

[345] False Hopes, *supra* note 16, at 31.

[346] *See* discussion *infra* Part I.A.

abused or neglected by a parent, and they may have experienced multiple other ACEs. Although ACEs impact people across a variety of backgrounds, there are higher patterns of trauma with children and families of color,[347] and immigrant children specifically are at an elevated risk of being exposed to violence.[348] Notably, the SIJS backlog is comprised of mostly of Latina/o immigrant children, most of whom are court-involved. For these reasons, they may face elevated risks of having already experienced multiple ACEs while they experience the prolonged uncertainty and related harms of the SIJS backlog.

B. Obfuscation of a Massive and Growing Backlog

A key component of slow violence, distinguished from spectacular violence, is that the extent and form of harm may be hard for the public at large to detect.[349] Some scholars have specifically touched on how bureaucratic processes may "actively produce obfuscation and ignorance about how toxicity and harm are unequally distributed."[350] Government agencies in particular may employ regulatory processes or other strategies that contribute to concealing how resources and harm are distributed unevenly.[351]

For the SIJS backlog, the government's resistance to releasing information about the backlog can be understood as a form of obfuscation. Not knowing the size, scale and geographic shape of the backlog prevents the public from understanding the scope of the backlog. It also prevents understanding of how the backlog is unevenly distributed across cities and states.

For decades, the agency did not include statistics about the outcomes of SIJS petitions at all,[352] until it was forced to as part of litigation settlement.[353] Then the agency only published total petition numbers and outcomes, but did not include anything regarding the size of the backlog, nor case processing times.[354] When researchers and child advocates sought this information, after

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[347] Goldstein et al., *supra* note 92, at 1862.

[348] Jodi Berger-Cardoso, *Running to Stand Still: Trauma Symptoms, Coping Strategies, and Substance Use Behaviors in Unaccompanied Migrant Youth*, 92 Child. & Youth Servs. Rev. 143, 143 (2018); India J. Ornelas & Krista M. Perreira, *The Role of Migration in the Development of Depressive Symptoms Among Latino Immigrant Parents in the USA*, 73 Soc. Sci. Med. 1169, 1169 (2011).

[349] Nikhil Anand et al., *Enduring Harm: Unlikely Comparisons, Slow Violence and the Administration of Urban Injustice*, 46 Int'l J. Urb. Reg'l Rsch. 651, 653 (2022).

[350] *Id.*

[351] *Id.* at 654

[352] Under the Homeland Security Act, the agency should annually report on applications and petitions and approval and denial rates. Homeland Security Act of 2002 § 478(a)(2)(B). Yet annual reports did not include this information for SIJS petitions. *See Yearbook of Immigration Statistics*, Off. of Homeland Sec. Stat., https://www.dhs.gov/ohss/topics/immigration/yearbook [https://perma.cc/J4P9-37LM] (last visited July 20, 2024); *Reports and Studies: Annual Statistical Reports*, U.S. Citiz. and Immigr. Servs., https://www.uscis.gov/tools/reports-and-studies [https://perma.cc/48BJ-D98M] (July 12, 2024).

[353] Settlement Agreement at 10, Perez-Olano v. Holder, No. CV-05-3604 (C.D. Cal. May 4, 2010), https://www.uscis.gov/sites/default/files/document/notices/Signed_Settlement_Agreement.pdf [https://perma.cc/SE7L-K649].

[354] Case processing for all special immigrants can be found on USCIS Tools website, but it includes religious workers and other specialized workers not subject to the same statutory

being prompted by Congressional members for more detailed information, the agency initially refused to fulfill a request for expedited processing regarding SIJS data.[355] In 2023 Congress acted to force USCIS to publish SIJS data regarding case processing times, requests for evidence and other critical information.[356]

Additionally, the bureaucratic functioning of the visa bulletin can be understood as a form of obfuscation, shrouding the timelines that youth are experiencing. The complexities of the formula used to calculate the visa bulletin alongside the publication of final action dates are not transparent and do not allow people impacted by the system to understand where they are in line, nor imagine how long they will have to wait.[357] In fact, the government has internally made such seismic errors itself with visa calculations that it has had to backtrack, leading the advocacy director of the largest immigration lawyer association to say: "It's no wonder people have so little faith in their government, when they can't even count their visas."[358] The fact that the agency in 2023 published that it had been mistakenly applying the caps resulting in the wrongful restriction of visas from children from certain countries is evidence of how highly technical application of complex rules can create ambiguity for who and how exclusion occurs. Furthermore, the bureaucratic language itself—the backlog, priority dates—may mask the urgency and gravity of the harm.

This prolonged uncertainty may have profound mental health implications for youth. In the words of an impacted youth, "without knowing when you will be able to obtain your green card, it is difficult to think about the future, when you do not know when that future will arrive."[359] SIJS youth have reported not being able to sleep, being depressed, feeling scared and anxious related to being in the backlog.[360] This is consistent with research that has shown that uncertainty of a negative experience may cause more stress than situations where a negative experience is certain.[361]

Slow violence theory when applied to the SIJS backlog also helps reveal the systemic nature of harm to a swath of society. Since the SIJS backlog began in May 2016, it has impacted tens of thousands of young people. As of the end of February 2023, the last datapoint in this study, only SIJS youth whose

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deadline as special immigrant juveniles. *See Check Processing Times*, *supra* note 320 (resource for checking case processing times for I-485 applications).

[355] *Double Exclusion*, *supra* note 19, at 1442.

[356] *See* Consolidated Appropriations Act 2023, H.R. 2617, which became Pub. L. No. 117-328; Consolidated Appropriations Act 2024, H.R. 2882, which became Pub. L. No. 118-47.

[357] Dalia Castilla-Granados, Rebecca Scholtz and Rachel Prandini, *Breaking Down the Visa Bulletin: What SIJ Advocates Need to* Know, Immigrant Legal Resource Center 1, 4 (Apr. 2024), https://www.ilrc.org/sites/default/files/2024-04/Breaking%20Down%20the%20Visa%20Bulletin-%20What%20SIJS%20Advocates%20Need%20to%20Know.pdf [https://perma.cc/R56R-H5TL].

[358] Julia Preston, *Miscalculation on Visas Disrupts Lives of Highly Skilled Immigrants*, N.Y. Times (Oct. 1, 2015), https://www.nytimes.com/2015/10/02/us/incorrect-count-on-visas-disrupts-lives-of-highly-skilled-immigrants.html [https://perma.cc/A9LX-SSE2].

[359] False Hopes, *supra* note 16, at 36.

[360] *Id.*

[361] *E.g.*, Archy O. de Berker, Robb B. Rutledge, Christoph Mathys, Louise Marshall, Gemma F. Cross, Raymond J. Dolan, & Sven Bestmann, *Computations of Uncertainty Mediate Acute Stress Responses in Humans*, 7 Nature Commc'ns 1, 7 (2016).

SIJS applications were filed before May 15, 2019, were permitted to seek LPR status. This means that there were 105,214 immigrant youth with approved and pending SIJS petitions who are impacted by the backlog, without any way to know when their liminal status will be lifted.

Slow violence theorists have called attention to how temporal and spatial dispersion may hide violence in plain sight. Geography scholars focused on children's environments have described how understanding space and place is dynamic, complex and involves understanding the experience of individuals in a space who may be "'haunted by the ghosts of other stories' and people and places and memories and experiences and imaginings.'"[362] In the context of school bullying, research has described how non-violent spaces transform into violent ones only visible to those experiencing the harm.[363] Furthermore, space and time "appear to hide some forms of proximal violence in plain sight by cloaking certain behaviours, deemed to be the infantilised action by young people, into the unreal spatiotemporal periphery."[364] Along these lines, SIJS youth may experience accumulated trauma and violence while waiting in the backlog related to their geography, which may be more hostile to immigrants, may have less access to representation, and other stressors. Some of these may exist independently of applying for SIJS but contribute to their stress, while others may stem from the SIJS process. For example, in some regions, there have been higher rates of administrative notices like requests for evidence and notices of intent to deny, and these additional evidentiary burdens and processing may cause stress to petitioners. It is therefore crucial to pay attention to "hidden" geographies of which localities backlog impacted youth live in, and further research is needed to understand the different stressors that exist geographically, and how these stressors and risks may be unevenly distributed across time and space.[365]

C. Government Role in the Violence

A contribution of slow violence theory is to draw attention to how those responsible might not have been held accountable in part because of obfuscation of the harm. This phenomenon may further contribute to inertia to redress wrongs as political administrations are less inclined to address harms left behind from a predecessor.[366]

In the SIJS backlog, the slow death of childhood theory overcomes the obfuscation of administrative actions to reveal the harm of seemingly banal aspects of the backlog, and importantly, expose the role of government and the various parts different branches and divisions have played. First, U.S.

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[362] John Horton & Peter Kraft, *What Else? Some More Ways Of Thinking And Doing 'Children's Geographies*,' 4 Childs. Geographies 69, 84–85 (2006).

[363] Lohmeyer, *supra* note 59, at 262.

[364] *Id.* at 264.

[365] *Id; see also* Barry Percy-Smith & Hugh Matthews, *Tyrannical Spaces: Young People, Bullying and Urban Neighbourhoods*, 6 Loc. Env't 49, 50 (2001).

Nixon, *supra* note 32, at 228.

[366] *Id.*

government foreign policy decisions have been traced to furthering instability, violence, and repression in countries with the largest trend of child migration seeking SIJS, including El Salvador, Guatemala and Honduras.[367] Secondly, the SIJS backlog itself is the result of government action. The backlog stems from poor statutory drafting that set rigid numerical limits of immigrant visas in 1990, without allowing for flexibility for changing needs over time. Furthermore, Congress classified SIJS youth in the employment-based system's fourth category for no apparent reason, and this category, along with the fifth employment category, has the smallest number of annual visas available, compounding the factors leading to the backlog. Thirdly, for the seven-year period beginning in 2016, the Department of State wrongfully restricted visas from children from Honduras, Guatemala, and El Salvador because the agency misinterpreted how to apply country caps and then took no remediation steps to address the harm caused by their mistake.[368] Additionally USCIS's delays in adjudication—especially violating the 180-day limit—are another example of government's role in the slow death of childhood for immigrant youth. Furthermore, dramatic increases in delays and denial rates for SIJS petitions from USCIS can be traced to political decisions of particular presidential administrations.[369]

The government's role in maintaining and prolonging the legal liminality of youth is directly related to their inability to access federal financial aid and higher education, work authorization, the regulated labor force, and a host of social programs and opportunities. Youth may also be subjected to removal proceedings during this waiting period. This dismantling of opportunities while investing in immigration policing may be part of a larger carceral project to dismantle the welfare state and reallocate resources to policing and enforcement. [370] In this way, slow death shows how an institution purportedly dedicated to protecting people "offers a type of commitment that obfuscates life at the bottom, which reveals how social, political, cultural, and economic systems engender exactly those ills."[371]

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[367] Nora Hamilton & Norma Stoltz Chinchilla, *Central American Migration: A Framework for Analysis*, 26 Latin Am. Rsch. Rev. 75, 105 (1991)*; see also*, Karen Musalo, *El Salvador: Root Causes and Just Asylum Policy Responses*, 18 Hastings Race & Poverty L.J. 114, 178 (2021); Sarah Sherman-Stokes, *Reparations for Central American Refugees*, 96 Den. L. Rev. 585, 598 (2019).

[368] *Employment-Based Preference Immigrant Visa Final Action Dates and Dates for Filing for El Salvador, Guatemala, and Honduras*, 88 Fed. Reg. 18252 (Mar. 28, 2023); U.S. Dep't of State, Employment-Based Fourth Preference (EB-4) Announcement, (Mar. 28, 2023), https://travel.state.gov/content/travel/en/News/visas-news/employment-based-fourth-preference-eb4-announcement.html [https://perma.cc/X6C6-DCUA].

[369] For example, during the Trump administration, the agency issued notice of new interpretation of SIJS which coincided with spikes in denials and delays. *See Double Exclusion*, *supra* note 19, at 1445–49.

[370] Dorothy Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. Rev. 1474, 1478 (2012); *see also*, S. Lisa Washington, *Fammigration Web*, 103 B.U. L. Rev. 117, 178 (2023).

[371] Lee, *supra* note 71, at 2335.

Conclusion

The concept of "slow death of childhood" shows the slow-moving and far-reaching violence children may be exposed to as they navigate the immigration legal system, using the example of the SIJS backlog. Slow death may occur in other parts of the immigration system with potentially some analogous impacts, such as when individuals are granted a liminal status,[372] like the DACA program and Temporary Protected Status. However, the slow death of childhood represents a distinct harm, as it reflects how trauma in childhood may lead to specific and outsized impacts to health and life trajectories based on findings from ACEs research.

Childhood trauma has powerful ripple effects throughout life, literally rewiring young people's brains and genetics, shortening lives, impacting susceptibility to disease and is connected to poor outcomes across a spectrum of behavioral and social measures. This loss of opportunity alongside prolonged uncertainty and pain is the slow death of childhood. This violence chips away at young people during a pivotal developmental crossroads, at times colliding with other Adverse Childhood Experiences, as part of the slow death of childhood. Unpacking the SIJS backlog as a form of slow death draws light on causality, even when temporal displacement makes harms seem invisible, mundane, or even random.[373] The slow death of childhood theory explains how actions draped in bureaucratic mundaneness leading to widespread suffering of more than 100,000 youth has remained largely invisible to large portions society. It suggests government action and inaction including setting rigid numerical limits, placing SIJS immigrant visas in the employment-based system, unlawfully restricting visas for youth from certain countries, politicizing the adjudication process and forcing protracted waiting may create a seemingly unwinnable system for youth.

For these reasons, slow violence scholarship is not merely an exercise in descriptive precision. Instead, it is a call to action. By conceptualizing the large-scale and long-term impact of the SIJS backlog, the slow death of childhood theory urges policymakers and child advocates to develop more holistic and comprehensive responses to child migration, understanding that the accumulated and prolonged stress and trauma may have generational impacts. Measures like abolishing the SIJS backlog[374] are necessary but not sufficient to address the impact of slow violence against children. Similarly, ensuring access to well-trained pro bono legal services providers across rural and metropolitan areas is critical but not sufficient to address the stressors children face in navigating legal systems. The gravity of ensuring expeditious processing of SIJS petitions and work authorization becomes clearer, but again these prescriptions are not themselves adequate responses.

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[372] Jennifer M. Chacón, *Producing Liminal Legality*, 92 Denv. L. Rev. 709, 719 (2016); Nina Rabin, *Legal Limbo as Subordination: Immigrants, Caste, and the Precarity of Liminal Status in the Trump Era*, 35 Geo. Immigr. L.J 567, 575 (2021).

[373] Nixon, *supra* note 32, at 221.

[374] This would require legislative action to remove the SIJS program from employment system bound by annual caps.

The slow death of childhood demands transparency and accountability in the SIJS programs and immigration legal system more broadly for how children and young people experience the systems. USCIS should regularly publish detailed data on SIJS petitions and SIJS-based LPR applications, and immigration courts should publish data regarding juvenile dockets. More research is needed to understand the health risks associated with court exposure, protracted waiting times, liminal status in the immigration system and how that might relate to children's ethnicity and race, gender, age, and where they live.

The slow death of childhood implores the legislators and administrators who define the law and establish policies to create spaces to hear from those directly impacted by the SIJS backlog. Youth are the ones best positioned to explain the panoply of health, economic, and educational harms they are facing, as well as what solutions will meaningfully address their needs.[375] SIJS ultimately cannot create real permanency for young people if the program requires a yearslong limbo of living life in suspended motion. SIJS cannot fulfill its promise as a humanitarian protection for children if the process itself becomes an Adverse Childhood Experience, with the potential for toxic stress and in extreme cases, premature death. Furthermore, if the program's success—through more eligible children accessing SIJS—means that future children must wait for longer and longer periods of time in precarity, then this victory is hollow. Ultimately, the slow death of childhood serves as an appeal to scholars, advocates, and government officials to seek meaningful ways to end slow violence and consider how to support immigrant youth in their efforts to flourish.

[375] *See* Rice, *supra* note 62, at 180 ("Personal testimonies of living amid contamination and rhetorically giving form and character to diffuse and attritional assaults can serve as resistance and empowerment.").