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# Special Immigrant Juveniles: In Brief

**name redacted**

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## Summary

Abused, neglected, or abandoned children who also lack authorization under immigration law to reside in the United States (i.e., unauthorized aliens) raise complex immigration and child welfare concerns. In 1990, Congress created an avenue for unauthorized alien children who become dependents of the state juvenile courts to remain in the United States legally and permanently. Any child or youth under the age of 21 who was born in a foreign country; lives without legal authorization in the United States; has experienced abuse, neglect, or abandonment; and meets other specified eligibility criteria may be eligible for special immigrant juvenile (SIJ) status. Otherwise, unauthorized residents who are minors are subject to removal proceedings and deportation, as are all other unauthorized foreign nationals.

The SIJ classification enables unauthorized juveniles who become dependents of the state juvenile court to become lawful permanent residents (LPR) under the Immigrant and Nationality Act (INA). If an LPR meets the naturalization requirements set in the INA, he or she can become a U.S. citizen.

When Congress enacted provisions in the Trafficking Victims Protection Reauthorization Act of 2008, it altered the eligibility criteria for SIJ status as part of a package of amendments pertaining to unaccompanied alien children. Now, the recent increase in unaccompanied alien children arriving in the United States has cast a spotlight on SIJ status because these unaccompanied children may apply for, and some may obtain, LPR status through this provision.

There has been a tenfold increase in the number of children requesting SIJ status between FY2005 and FY2013. In terms of approvals, the numbers have gone from 73 in FY2005 to 3,432 in FY2013. While the data do not differentiate among those unauthorized children who arrived unaccompanied by their parents and those who were removed from their parents because of abuse, abandonment, or neglect, many observers point to the similarity in the spiking trends of both categories.

This report provides a brief explanation of the statutory basis of SIJ status and how it has evolved. It also presents statistics on the number of children who have applied for and received SIJ status since FY2005. The report concludes with a discussion of the applicability of SIJ status for unaccompanied alien children.

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**A**bused, neglected, or abandoned children who also lack authorization under immigration law to reside in the United States (i.e., unauthorized aliens) raise complex immigration and child welfare concerns. In 1990, Congress created an avenue for unauthorized children who become dependents of the state juvenile court<sup>1</sup> to remain in the United States legally and permanently as lawful permanent residents (LPR) under the Immigrant and Nationality Act (INA).<sup>2</sup> If an LPR meets the naturalization requirements set in the INA, he or she can become a U.S. citizen.<sup>3</sup>

### Who is a Special Immigrant Juvenile?

Any child or youth under the age of 21 who was born in a foreign country; who lives without legal authorization in the United States; has experienced abuse, neglect, or abandonment; and who meets other specified eligibility criteria may be eligible for the lawful permanent resident classification of special immigrant juvenile (SIJ).<sup>4</sup>

The Special Immigrant Juvenile was originally conceived for a small number of children of unauthorized alien parents who were declared dependent by state juvenile courts.<sup>5</sup> Although the unauthorized alien resident population in the United States has grown substantially since 1990,<sup>6</sup> the number of SIJs who became LPRs remained under 1,000 per year until FY2008.<sup>7</sup> In that year, Congress enacted provisions in the Trafficking Victims Protection Reauthorization Act of 2008 that altered the eligibility criteria for SIJ status as part of a package of amendments pertaining to unaccompanied alien children. Now, the recent increase in unaccompanied alien children arriving in the United States has cast a spotlight on SIJ status because these unaccompanied children may apply for, and some may obtain, LPR status through this provision.<sup>8</sup>

This report provides a brief explanation of the statutory basis of SIJ status and how it has evolved. It also presents statistics on the number of children who have applied for and received SIJ status

<sup>1</sup> A dependent of state juvenile courts generally is a child whose parents are deceased or unable to care for them. The specific definition of “dependent” varies from state to state. At the dependency hearing the court decides on the “care and custody” of the child because the parent is unable or unwilling to provide safe care for the child. For further information on the role of the juvenile courts, see [http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information\\_for\\_Juvenile\\_Courts\\_-FINAL.pdf](http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information_for_Juvenile_Courts_-FINAL.pdf).

<sup>2</sup> A LPR is any person not a citizen of the United States who is residing in the United States under legally recognized and lawfully recorded permanent residence as an immigrant under the Immigration and Nationality Act. See CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*, by (name redacted); and CRS Report R43366, *U.S. Naturalization Policy*, by (name redacted).

<sup>3</sup> CRS Report R43366, *U.S. Naturalization Policy*, by (name redacted).

<sup>4</sup> INA §101(a)(27)(J)(ii), 8 U.S.C. §1101(a)(27)(A)(ii); 8 C.F.R. §204.11(c)(6).

<sup>5</sup> For background on family law and what it means to be declared dependent by state juvenile courts, see CRS Report RL31201, *Family Law: Congress’s Authority to Legislate on Domestic Relations Questions*, by (name redacted); and see CRS Report R43458, *Child Welfare: An Overview of Federal Programs and Their Current Funding*, by (name redacted).

<sup>6</sup> CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by (name redacted).

<sup>7</sup> According to Table 7 in the U.S. Department of Homeland Security, *Yearbook of Immigration Statistics* (multiple years), there were 287 in FY1998, 348 in FY1999, 659 in FY2000, 556 in FY2001, 521 in FY2002, 470 in FY2003, 634 in FY2004, 679 in FY2005, 912 in FY2006, and 796 in FY2007. <http://www.dhs.gov/yearbook-immigration-statistics>.

<sup>8</sup> Matt O'Brien, “Children, families fleeing Central America find refuge in the Bay Area,” *San Jose Mercury News*, August 3, 2014; Ana Compoy, “Immigrant Children Face a Long Journey Upon Arrival,” *The Wall Street Journal*, July 11, 2014; and, Gram Slattery, “Child migrants 101: What does it take to win US asylum?,” *The Christian Science Monitor*, July 15, 2014.

since FY2005.<sup>9</sup> The report concludes with a discussion of the applicability of SIJ status for unaccompanied alien children.<sup>10</sup>

## Evolving Criteria for SIJ Status

Children of unauthorized aliens who had been abused, neglected, or abandoned have long posed complex immigration and child welfare concerns. Prior to the statutory provisions added to the Immigration and Nationality Act (INA) in 1990, unauthorized minors who were declared dependent on the state juvenile courts were akin to stateless individuals in that there was no home where they could return. They were perceived as a particularly vulnerable group within the child welfare system, given the unique difficulties they faced as they transitioned into adulthood. For example, because they were not legally present in the United States, they could not be employed when they reached a legal working age. They would be subject to removal proceedings and deportation to a country where they might have little attachment or familiarity.

The Immigration Act of 1990 (P.L. 101-649) added the SIJ provision<sup>11</sup> (among other major revisions) to the INA in response to growing concerns over foreign children in the United States who were homeless, orphans, or victims of abusive family situations.<sup>12</sup> The provision enabled unauthorized alien children who become dependents of the state juvenile courts to remain in the United States legally and permanently.<sup>13</sup> As originally enacted in 1990, the language establishing SIJ status was fairly simple. To be eligible for SIJ, the foreign national was an individual

(i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.<sup>14</sup>

It was a small provision included in a major overhaul of immigration law with little fanfare.<sup>15</sup>

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<sup>9</sup> The Office of Legislative Affairs in U.S. Citizenship and Immigration Services has made unpublished data from FY2005 through the first 8 months of FY2014 available.

<sup>10</sup> CRS Report R43599, *Unaccompanied Alien Children: An Overview*, by (name redacted), (name redacted), and (name redacted); CRS Report IN10107, *Unaccompanied Alien Children: A Processing Flow Chart*, by (name redacted); CRS Report R43628, *Unaccompanied Alien Children: Potential Factors Contributing to Recent Immigration*, coordinated by (name redacted); CRS Report R43623, *Unaccompanied Alien Children—Legal Issues: Answers to Frequently Asked Questions*, by (name redacted) and (name redacted); CRS Report R43664, *Asylum Policies for Unaccompanied Children Compared with Expedited Removal Policies for Unauthorized Adults: In Brief*, by (name redacted); and CRS Report R41731, *Central America Regional Security Initiative: Background and Policy Issues for Congress*, by (name redacted) and (name redacted).

<sup>11</sup> In addition to SIJs, the LPR visa category of Special Immigrant encompasses several other subcategories, such as ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, foreign physicians who require a national interest waiver, and Iraqi and Afghan translators.

<sup>12</sup> §153 of Immigration Act of 1990, P.L. 101-649 (codified, as amended, at INA §101(a)(27)(J), 8 U.S.C. §1101(a)(27)(J)); 8 C.F.R. §204.11(c).

<sup>13</sup> Even when the SIJ becomes an LPR or a U.S. citizen, he or she is not permitted to seek to confer an immigration benefit to their natural or prior adoptive parents. INA §101(a)(27)(J)(iii)(II).

<sup>14</sup> §153 of the Immigration Act of 1990, P.L. 101-649.

<sup>15</sup> The committee reports and conference documents for the legislation that became P.L. 101-649 (S. 358 and H.R. 4300) did not discuss this provision.

Seven years later, in response to a perception that some unauthorized aliens might have been relinquishing parental rights so that their children could become SIJs, Congress added language amending the INA to ensure that the SIJ benefit was not “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.”<sup>16</sup> The 1997 act expressly amended the definition of a “special immigrant juvenile” to include only those juveniles deemed eligible for long-term foster care based on *abuse, neglect, or abandonment*. In addition, provisions in the 1997 act required that a juvenile who was in the custody of the federal government obtain specific consent from the Department of Justice<sup>17</sup> to permit a juvenile court, which otherwise would have no custody jurisdiction over the juvenile alien, to exercise jurisdiction for purposes of a dependency determination.<sup>18</sup>

In 2008, Congress amended the SIJ provisions in the INA to broaden their applicability. The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA, P.L. 110-457), among other things, amended the SIJ eligibility provisions to (1) remove the requirement that a juvenile court deem a juvenile eligible for long-term foster care and (2) replace it with a requirement that the juvenile court find reunification with one or both parents not viable.<sup>19</sup> According to U.S. Citizenship and Immigration Services (USCIS)<sup>20</sup> legal guidance issued in 2009, an eligible SIJ would include the following.

[An unauthorized child] who has been declared dependent on a juvenile court; whom a juvenile court has legally committed to, or placed under the custody of, an agency or department of a State; or who has been placed under the custody of an individual or entity appointed by a State or juvenile court. Accordingly, petitions that include juvenile court orders legally committing a juvenile to or placing a juvenile under the custody of an individual or entity appointed by a juvenile court are now eligible.<sup>21</sup>

The TVPRA of 2008 also revised the “specific consent” provisions in the INA, transferring the authority from the U.S. Department of Homeland Security (DHS) to the U.S. Department of

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<sup>16</sup> U.S. Congress, House Committee on Appropriations, *Making Appropriations for The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for Other Purposes*, Conference Report to Accompany H.R. 2267, 105-405, 105<sup>th</sup> Cong., 1<sup>st</sup> sess., November 13, 1997, p. 130.

<sup>17</sup> The Homeland Security Act of 2002 (P.L. 107-296) transferred most of the immigration enforcement duties from the Department of Justice’s Immigration and Naturalization Service to the newly-created Department of Homeland Security.

<sup>18</sup> Memorandum #3—*Field Guidance on Special Immigrant Juvenile Status Petitions* from William R. Yates, Associate Director for Operations, U.S. Citizenship and Immigration Services, May 27, 2004.

<sup>19</sup> §235(d) of TVPRA of 2008, P.L. 110-457; 8 U.S.C. §1232. The governing regulations, nonetheless, have retained the requirement that a juvenile court deem a juvenile eligible for long-term foster care. 8 C.F.R. §204.11(c). USCIS proposed new SIJ regulations on September 6, 2011, but have not promulgated them. U.S. Citizenship and Immigration Services, “Special Immigrant Juvenile Petitions,” 76, *Federal Register* 54978-54986, September 6, 2011.

<sup>20</sup> U.S. Citizenship and Immigration Services (USCIS) is the government agency in the Department of Homeland Security (DHS) that oversees lawful immigration to the United States. The three major activities that dominate the functions of USCIS are: the adjudication of immigration petitions, the adjudication of naturalization petitions, and the consideration of refugee and asylum claims and related humanitarian and international concerns. USCIS also processes a range of immigration-related benefits and services, such as employment authorizations and change-of-status petitions.

<sup>21</sup> *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, Letter from Donald Neufeld, Acting Associate Director, Domestic Operations, and Pearl Chang, Acting Chief, Office of Policy, to USCIS Field Leadership, March 24, 2009, (hereafter Neufeld and Chang guidance on *TVPRA of 2008 Special Immigrant Juvenile Status Provisions*, 2009) [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/TVPRA\\_SIJ.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf).

Health and Human Services (HHS), the federal department that also has custody of unaccompanied alien children. Subsequently, USCIS field guidance required that juveniles in the custody of HHS obtain “specific consent from HHS to juvenile court jurisdiction where the juvenile court order determines or alters the juvenile’s custody status or placement.”<sup>22</sup>

## Expedited Processing of Petitions

The process of becoming an SIJ and ultimately an LPR includes multiple steps, as the child petitions for SIJ status after the juvenile court decision and then applies to adjust to LPR status.<sup>23</sup> In response to concerns that the process was taking too long, the law requires USCIS to adjudicate SIJ petitions within 180 days of filing.<sup>24</sup> The law also states that the foreign national may not be denied SIJ status if he or she “ages out” because the determination is based upon the individual’s age when the petition was filed.<sup>25</sup> To promote efficiency, the otherwise mandatory personal interview may be waived for juveniles under 14 years of age who are seeking SIJ status, or when it is determined that an interview is unnecessary.<sup>26</sup>

A juvenile seeking SIJ status must demonstrate that an administrative or judicial proceeding has resulted in a determination that it would not be in the juvenile’s best interest to be returned to the child’s or the parent’s previous country of nationality or country of last habitual residence.<sup>27</sup> To pre-empt USCIS adjudicators from reconsidering the court’s determination of abuse, abandonment, or neglect, the field guidance states that the adjudicators “should focus on eligibility for adjustment of status and should avoid questioning a child about the details of the abuse, abandonment or neglect suffered.”<sup>28</sup> The law makes clear that a juvenile seeking SIJ status, at any stage of the SIJ process, cannot be required to contact the individual (or family members of the individual) who allegedly abused, abandoned, or neglected the juvenile.<sup>29</sup> USCIS also must complete background checks, including biometric information clearances and name-checks of the

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<sup>22</sup> Neufeld and Chang guidance on *TVPRA of 2008 Special Immigrant Juvenile Status Provisions*, 2009, [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/TVPRA\\_SIJ.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf).

<sup>23</sup> These steps include obtaining specific consent, determination of the state juvenile court, filing an I-360 petition to become an SIJ, and filing an I-485 petition to become an LPR. For further information, see USCIS, *Special Immigrant Juveniles (SIJ) Status*, at <http://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status>; and USCIS, *Eligibility Status for SIJ*, at <http://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij>.

<sup>24</sup> §235(d)(2) of TVPRA of 2008, P.L. 110-457.

<sup>25</sup> §235(d)(6) of TVPRA of 2008, P.L. 110-457.

<sup>26</sup> 8 C.F.R. 245.6.

<sup>27</sup> Neufeld and Chang guidance on *TVPRA of 2008 Special Immigrant Juvenile Status Provisions*, 2009, [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/TVPRA\\_SIJ.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf); and “Response to Recommendation 47, Special Immigrant Juvenile (SIJ) Adjudications: An Opportunity for Adoption of Best Practices,” Letter from Lori Scialabba, Deputy Director of USCIS, to January Contreras, USCIS Ombudsman, July 13, 2011, <http://www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Formal%20Recommendations/cisomb-2011-response47.pdf>.

<sup>28</sup> The guidance states that abuse, abandonment or neglect are matters handled by the juvenile court, applying state law. Neufeld and Chang guidance on *TVPRA of 2008 Special Immigrant Juvenile Status Provisions*, 2009, [http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/2009/TVPRA\\_SIJ.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf).

<sup>29</sup> §287(h) of INA.



juvenile. Juveniles seeking SIJ status are exempted from many of the inadmissibility grounds of the INA.<sup>30</sup>

## Eligibility for Federal Assistance

Generally, foreign nationals in the United States without authorization, including unauthorized children, are barred from most federal public assistance benefits and programs. The exceptions are a narrow set of specified emergency services and programs, which include Medicaid for an emergency medical condition, immunizations and testing for and treatment of symptoms of communicable diseases, emergency disaster relief, and services or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelters.<sup>31</sup> Only LPRs with a substantial work history or military connection are eligible for the full range of programs, as are asylees, refugees, and other humanitarian cases (for at least five to seven years after entry).<sup>32</sup>

Those unauthorized juveniles who qualify as “unaccompanied alien children” are placed in the custody of the Department of Health and Human Services’ (HHS) Office of Refugee Resettlement (ORR).<sup>33</sup> Unaccompanied alien children are defined as those who lack lawful immigration status in the United States, are under the age of 18, and are either without a parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody.<sup>34</sup> The unaccompanied alien children are cared for through a network of state-licensed ORR-funded care providers that provide classroom education, mental and medical health services, case management, and socialization and recreation. In May 2014, ORR reported that ultimately about 85% of the unaccompanied children in their custody are reunited with their families and that the average time in ORR care is about 35 days.<sup>35</sup>

The TVPRA of 2008 makes those juveniles granted SIJ status who had been in the custody of HHS or already receiving certain services provided by the ORR eligible for the Unaccompanied Refugee Minors’ (URM) Program in ORR.<sup>36</sup> Subject to the availability of appropriations, ORR is

<sup>30</sup> These exempted inadmissibility grounds are: §212(a)(4) (public charge); §212(a)(5)(A) (labor certification); §212(a)(6)(A) (aliens present without inspection); §212(a)(6)(C) (misrepresentation); §212(a)(6)(D) (stowaways); §212(a)(7)(A) (documentation requirements); and §212(a)(9)(B) (aliens unlawfully present) of INA. The only unwaivable grounds of inadmissibility for SIJ petitioners are INA §212(a)(2)(A)-(C) (conviction of certain crimes, multiple criminal convictions, and controlled substance trafficking (except for a single instance of simple possession of 30 grams or less of marijuana)), and §212(a)(3)(A)-(C), and (E) (security and related grounds, terrorist activities, foreign policy, and participants in Nazi persecution, genocide, torture or extrajudicial killing).

<sup>31</sup> For further discussion, see CRS Report RL34500, *Unauthorized Aliens’ Access to Federal Benefits: Policy and Issues*, by (name redacted).

<sup>32</sup> For further discussion, CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview and Trends*, by (name redacted).

<sup>33</sup> For more information about ORR, see CRS Report R41570, *U.S. Refugee Resettlement Assistance*, by (name redacted).

<sup>34</sup> 6 U.S.C. §279(g)(2); 8 C.F.R. §236.3(b)(1).

<sup>35</sup> Administration for Children and Families, *Office of Refugee Resettlement, Unaccompanied Alien Children Program*, U.S. Department of Health and Human Services, Fact Sheet, May 2014.

<sup>36</sup> Unaccompanied Refugee Minors (URM) program was established in the 1980s in response to thousands of children in Southeast Asia without a parent or guardian to care for them. Today, the U.S. State Department identifies children overseas who are eligible for resettlement in the United States and who lack a parent or a relative able to provide for their long-term care. URM program provides refugee foster care services and benefits when these children arrive in the United States. CRS Report RL34414, *Unaccompanied Refugee Minors*, by (name redacted).

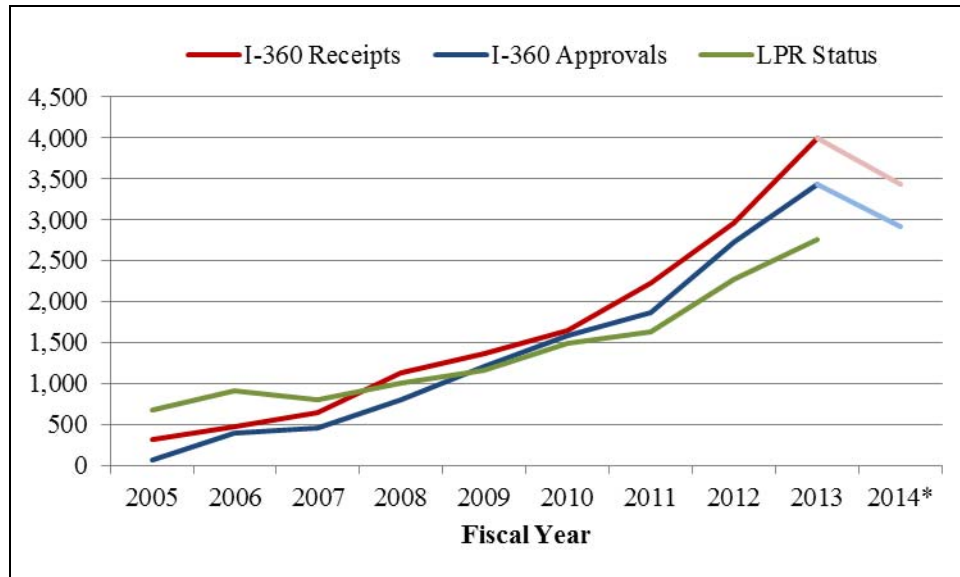


required to reimburse the state where the SIJ child resides for the state's foster care expenditures on behalf of the child.<sup>37</sup> Children who receive SIJ status are *not* eligible for federal foster care through Title IV-E of the Social Security Act.<sup>38</sup>

## Trends since FY2005

**Figure 1** shows a tenfold increase in the number of children filing I-360 petitions requesting SIJ status, spanning from 311 in FY2005 to 3,994 in FY2013. In terms of the number of I-360 petitions approved, the numbers have increased from 73 in FY2005 to 3,432 in FY2013. Data on the subsequent adjustments from SIJ status to LPR status typically lag, but they also show similar trends.<sup>39</sup> Partial I-360 data for FY2014 (through May 2014) indicate that the upward trend is continuing.

**Figure 1. Petitions (I-360) Received and Approved for Special Immigrant Juvenile Status and LPR Status Granted**  
FY2005 through FY2014 (partial)



**Source:** CRS presentation of unpublished I-360 data from Office of Legislative Affairs, U.S. Citizenship and Immigration Services; LPR data come from Table 7 in the U.S. Department of Homeland Security, *Yearbook of Immigration Statistics* (multiple years).

**Notes:** Data for FY2014 cover October 1, 2013, through May 31, 2014, or two-thirds of the fiscal year. LPR data for FY2014 are not available.

<sup>37</sup> §235(d)(4) of TVPRA of 2008, P.L. 110-457.

<sup>38</sup> For an explanation of Title IV-E foster care eligibility, see Administration for Children and Families, *Child Welfare Policy Manual*, U.S. Department of Health and Human Services, 8.4B TITLE IV-E, General Title IV-E Requirements, Aliens/Immigrants, [http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=45](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=45); and CRS Report R42792, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act*, by (name redacted).

<sup>39</sup> Many juveniles do not file the I-485 petitions to adjust to LPR status until their I-130 petitions are approved.

The LPR visa category of “Special Immigrants” encompasses several other subcategories<sup>40</sup> and is statutorily limited to 7% of 140,000 (i.e., 9,800 foreign nationals) annually.<sup>41</sup> Thus far, the total number of Special Immigrants admitted or adjusted each year has not reached the numerical limit. The natural or prior adoptive parents of the SIJ are not eligible for any immigrant benefits that LPRs and naturalized citizens may otherwise seek for their immediate relatives.<sup>42</sup>

## Issues Involving Unaccompanied Children

As noted at the onset, the surge in unaccompanied alien children arriving at the Southwest border of the United States has heightened congressional interest in SIJ status.<sup>43</sup> While the data presented in **Figure 1** do not differentiate among those unauthorized children who arrived unaccompanied by their parents and those who were removed from their parents because of abuse, abandonment, or neglect, many observers point to the similarity in the spiking trends of both categories.<sup>44</sup> An emerging issue is whether the increase in unaccompanied alien children since FY2008 is resulting in an increase in SIJ requests since FY2008.

A recent survey of unaccompanied alien children found “abuse in the home” reported as one of the main reasons they fled.<sup>45</sup> In addition, the Vera Institute of Justice conducted screenings of 11,719 unaccompanied children in ORR custody in FY2012 and found 3,724 children who might have been eligible for SIJ status.<sup>46</sup> That an unaccompanied alien child is reunited with at least one parent or family member in the United States, some argue, does not prevent the child from seeking SIJ status based upon the abuse, neglect, or abandonment of the other parent.<sup>47</sup> Some immigration and child welfare advocates assert that the number of children receiving SIJ status

<sup>40</sup> These subcategories include ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, and Iraqi and Afghan translators.

<sup>41</sup> The visa category is also subject to the per-country limits in the INA. For further discussion of the numerical limits, see CRS Report R42048, *Numerical Limits on Employment-Based Immigration: Analysis of the Per-Country Ceilings*, by (name redacted); and CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*, by (name redacted).

<sup>42</sup> INA §101(a)(27)(J)(iii)(II).

<sup>43</sup> The number of unaccompanied alien children apprehended by DHS Customs and Border Protection grew threefold from 8,041 in FY2008 to 28,833 in FY2013.

<sup>44</sup> While the trend lines and rates of increase are similar, the SIJ data do not approach the magnitude of the unaccompanied alien children numbers. The number of unaccompanied alien children increased from 8,041 in FY2008 to 47,017 during the first eight months of FY2014.

<sup>45</sup> The study found that 40% of the girls and 16% of the boys reported “abuse at home” as a reason for migrating. Children interviewed were part of the increase in unaccompanied children beginning in FY2012. Almost all were interviewed while in the custody of the Office of Refugee Resettlement, the agency within the U.S. Department of Health and Human Services to which they are referred after apprehension. Children were identified by a random selection process that accounted for age, nationality, sex, and date of U.S. arrival. Caution must be used in generalizing a single study to the entire population of unaccompanied children. U.N. High Commissioner for Refugees (UNHCR), *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, March 12, 2014. For more on the study’s methodology, see pp. 18-22.

<sup>46</sup> Administration for Children and Families, *Office of Refugee Resettlement Report to Congress FY2012*, U.S. Department of Health and Human Services, p. 75 [https://www.acf.hhs.gov/sites/default/files/orr/fy\\_2012\\_orr\\_report\\_to\\_congress\\_final\\_041014.pdf](https://www.acf.hhs.gov/sites/default/files/orr/fy_2012_orr_report_to_congress_final_041014.pdf).

<sup>47</sup> New York Unaccompanied Immigrant Children Project Family Court Working Group, Findings from a Survey of Lawyers Representing Immigrant Youth Eligible for Special Immigrant Juvenile Status in NYS Family Court, Feerick Center for Social Justice, Fordham University School of Law, March 2014, [http://law.fordham.edu/assets/Newsroom/NYUICP\\_Family\\_Court\\_Working\\_Group\\_Report\\_March\\_2014\\_FINAL.pdf](http://law.fordham.edu/assets/Newsroom/NYUICP_Family_Court_Working_Group_Report_March_2014_FINAL.pdf).

barely “scratches the surface of potentially eligible children,” basing their conclusion on the assessment that many of the unaccompanied alien children arriving in the United States are eligible for SIJ status.<sup>48</sup>

While some call for giving unaccompanied alien children generous access to the SIJ process, others assert that such a practice would be an unintended consequence of the 2008 TVPRA changes to SIJ status.<sup>49</sup> This conclusion is based upon the opinion that the 2008 TVPRA amendments were not intended to provide SIJ status to unauthorized alien children reuniting with family in the United States. As noted above, ORR reports that ultimately about 85% of the unaccompanied children in their custody are reunited with their families,<sup>50</sup> an outcome that some argue makes the reunited children ineligible for long-term foster care as well as SIJ status. Some advocating for lower immigration and increased restrictions on immigration are also calling for legislation to revise the SIJ criteria so reunification with either or both parents is not viable.<sup>51</sup>

## Author Contact Information

(name redacted)  
Specialist in Immigration Policy  
[redacted]@crs.loc.gov, 7-....

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<sup>48</sup> Lisa Frydman, Elizabeth Dallam, and Blaine Bookey, et al., *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, Center for Gender & Refugee Studies and Kids in Need of Defense, February 2014, p. 38; Deborah Lee, Manoj Govindaiah, and Angela Morrison, et al., *Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, American Immigration Lawyers Association, Practice Advisory, February 19, 2009.

<sup>49</sup> David Inserra, *Children Illegally Crossing the U.S. Border: Responding Requires Policy Changes*, The Heritage Foundation, Issue Brief #4248, July 15, 2014.

<sup>50</sup> Administration for Children and Families, *Office of Refugee Resettlement, Unaccompanied Alien Children Program*, U.S. Department of Health and Human Services, fact sheet, May 2014.

<sup>51</sup> Dan Cadman, *Carter-Aderholt: A Better House Border Surge Bill*, Center for Immigration Studies, August 1, 2014. Thus far, H.R. 5137 (Chaffetz-Goodlatte) and H.R. 5143 (Carter-Aderholt) would amend the INA so reunification with either or both parents is not viable to obtain SIJ status.

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