An Act Relative to Special Juveniles

Senate Bill No. 740; House of Representatives Bill No. 1418

Sponsors: Senator Cynthia Creem; Representative Louis L. Kafka

Testimony Presented to Joint Committee on the Judiciary
Massachusetts State House, Room A-2

Wednesday, June 24, 2015

Testimony Before Joint Committee on the Judiciary
Senate Bill No. 740; House of Representatives Bill No. 1418
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SENATE DOCKET, NO. 61   FILED ON: 1/13/2015

SENATE . . . . No. 740

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to special juveniles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	*First Middlesex and Norfolk*
Jay D. Livingstone	*8th Suffolk*
William N. Brownsberger	*Second Suffolk and Middlesex*
Daniel J. Ryan	*2nd Suffolk*
Kevin G. Honan	*17th Suffolk*
Evandro C. Carvalho	*5th Suffolk*
Elizabeth A. Malia	*11th Suffolk*
Daniel Cullinane	*12th Suffolk*
Mayor Martin J. Walsh	*Boston City Hall* *□1 City Hall Plaza - Suite 500* *□Boston, MA 02201*
Byron Rushing	*9th Suffolk*
Jason M. Lewis	*Fifth Middlesex*
Paul R. Heroux	*2nd Bristol*
Timothy J. Toomey, Jr.	*26th Middlesex*
Marjorie C. Decker	*25th Middlesex*
Sal N. DiDomenico	*Middlesex and Suffolk*
Carolyn C. Dykema	*8th Middlesex*

Benjamin B. Downing	*Berkshire, Hampshire, Franklin and Hampden*
James B. Eldridge	*Middlesex and Worcester*
Sonia Chang-Diaz	*Second Suffolk*
Linda Dorcena Forry	*First Suffolk*
Frank A. Moran	*17th Essex*
Benjamin Swan	*11th Hampden*
Chris Walsh	*6th Middlesex*

SENATE DOCKET, NO. 61 FILED ON: 1/13/2015

SENATE . . . . No. 740

By Ms. Creem, a petition (accompanied by bill, Senate, No. 740) of Cynthia S. Creem, William N. Brownsberger, Daniel J. Ryan, Evandro C. Carvalho and other members of the General Court for legislation relative to special juveniles. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *684* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to special juveniles.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Said chapter 119 of the General Laws, as so appearing, is hereby further
2 amended by adding the following new section:--Section 39DD. (a) For the purposes of this
3 section, the term "dependent on the court" shall mean subject to the jurisdiction of the court for
4 the findings, orders, and referrals enumerated in this section but shall not constitute a finding of
5 legal incompetence.

6 (b) The divisions of the probate and family court department shall hear petitions of
7 persons, who have attained the age of 18 but remain under the age of 21, seeking a determination
8 that, as a result of abuse, neglect, or abandonment that the petitioner suffered as a child, it is in
9 the best interest of the petitioner not to return to the petitioner's or the petitioner's parent's
10 previous country of nationality or country of last habitual residence.

11 (c) Upon reviewing the petition and any supporting affidavits, the court shall issue
12 findings of fact which (1) declare the petitioner dependent upon the court as defined in this
13 section; (2) determine whether the petitioner suffered as a child from abuse, neglect or
14 abandonment as those terms are defined in 110 CMR 2.00, chapter 119 or in section 3 of chapter
15 210 of the General Laws; (3) determine whether reunification with one or both parents is not
16 viable due to the abuse, neglect, or abandonment; and (4) determine whether as a result of the
17 abuse, neglect or abandonment, it is not in the petitioner's best interest to be returned to the
18 petitioner's or the petitioner's parent's previous country of nationality or country of last habitual
19 residence.

20 The health and safety of the petitioner shall be of paramount, but not exclusive, concern
21 in the above determinations. When considering the health and safety of the petitioner, the court
22 shall consider whether the petitioner's present or past living conditions will adversely affect his
23 physical, mental, moral or emotional health.

24 (d) The petitioner under this section may also request orders necessary to protect against
25 further abuse, including, but not limited to, filing a complaint for an abuse prevention order as
26 set out in chapter 209A of the General Laws.

27 (e) The court may refer the petitioner to a probation officer for assistance and such officer
28 shall have the authority to make referrals to an appropriate public or private organization or
29 person for psychiatric, psychological, educational, occupational, medical, dental or social
30 services. The petitioner may not be compelled to participate in the referrals.

31 (f) The court shall hear the petition and issue the findings of fact under this section before
32 the petitioner attains the age of 21.

33 (g) Nothing in this section shall be construed to prevent the divisions of the probate and
34 family court department or the juvenile court department from issuing similar findings of fact to
35 those in subsection (c) in any proceedings related to a child.

HOUSE DOCKET, NO. 517 FILED ON: 1/13/2015

HOUSE . . . . No. 1418

The Commonwealth of Massachusetts

PRESENTED BY:

Louis L. Kafka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to special juveniles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Louis L. Kafka	*8th Norfolk*
Mayor Martin J. Walsh	*Boston City Hall* *One City Hall Square* *Boston, MA 02201*
Benjamin Swan	*11th Hampden*
Kevin G. Honan	*17th Suffolk*
James J. O'Day	*14th Worcester*
Frank I. Smizik	*15th Norfolk*
Ellen Story	*3rd Hampshire*
Elizabeth A. Malia	*11th Suffolk*
Michael D. Brady	*9th Plymouth*
Gailanne M. Cariddi	*1st Berkshire*
Chris Walsh	*6th Middlesex*
Tom Sannicandro	*7th Middlesex*
William Smitty Pignatelli	*4th Berkshire*
Antonio F. D. Cabral	*13th Bristol*
Ruth B. Balser	*12th Middlesex*
Linda Dorcena Forry	*First Suffolk*

Timothy J. Toomey, Jr.	*26th Middlesex*
Peter V. Kocot	*1st Hampshire*
Byron Rushing	*9th Suffolk*
Michael J. Barrett	*Third Middlesex*
Jason M. Lewis	*Fifth Middlesex*
Danielle W. Gregoire	*4th Middlesex*
Gloria L. Fox	*7th Suffolk*
Lori A. Ehrlich	*8th Essex*
Jonathan Hecht	*29th Middlesex*
Jay R. Kaufman	*15th Middlesex*
Kay Khan	*11th Middlesex*
Marcos A. Devers	*16th Essex*
Daniel Cullinane	*12th Suffolk*
Evandro C. Carvalho	*5th Suffolk*
Frank A. Moran	*17th Essex*
Marjorie C. Decker	*25th Middlesex*
Denise Provost	*27th Middlesex*
Mary S. Keefe	*15th Worcester*
David M. Rogers	*24th Middlesex*
Daniel M. Donahue	*16th Worcester*
Paul R. Heroux	*2nd Bristol*
James B. Eldridge	*Middlesex and Worcester*

HOUSE DOCKET, NO. 517 FILED ON: 1/13/2015

HOUSE . . . . No. 1418

By Mr. Kafka of Stoughton, a petition (accompanied by bill, House, No. 1418) of Louis L. Kafka and others relative to petitions to the Juvenile Court or Probate Court on behalf of certain special juveniles. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1414* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to special juveniles.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Said chapter 119 of the General Laws, as so appearing, is hereby further
2 amended by adding the following new section:--

3 Section 39DD. (a) For the purposes of this section, the term "dependent on the court"
4 shall mean subject to the jurisdiction of the court for the findings, orders, and referrals
5 enumerated in this section but shall not constitute a finding of legal incompetence.

6 (b) The divisions of the probate and family court department shall hear petitions of
7 persons, who have attained the age of 18 but remain under the age of 21, seeking a determination
8 that, as a result of abuse, neglect, or abandonment that the petitioner suffered as a child, it is in

9 the best interest of the petitioner not to return to the petitioner's or the petitioner's parent's
10 previous country of nationality or country of last habitual residence.

11 (c) Upon reviewing the petition and any supporting affidavits, the court shall issue
12 findings of fact which (1) declare the petitioner dependent upon the court as defined in this
13 section; (2) determine whether the petitioner suffered as a child from abuse, neglect or
14 abandonment as those terms are defined in 110 CMR 2.00, chapter 119 or in section 3 of chapter
15 210 of the General Laws; (3) determine whether reunification with one or both parents is not
16 viable due to the abuse, neglect, or abandonment; and (4) determine whether as a result of the
17 abuse, neglect or abandonment, it is not in the petitioner's best interest to be returned to the
18 petitioner's or the petitioner's parent's previous country of nationality or country of last habitual
19 residence.

20 The health and safety of the petitioner shall be of paramount, but not exclusive, concern
21 in the above determinations. When considering the health and safety of the petitioner, the court
22 shall consider whether the petitioner's present or past living conditions will adversely affect his
23 physical, mental, moral or emotional health.

24 (d) The petitioner under this section may also request orders necessary to protect against
25 further abuse, including, but not limited to, filing a complaint for an abuse prevention order as
26 set out in chapter 209A of the General Laws.

27 (e) The court may refer the petitioner to a probation officer for assistance and such officer
28 shall have the authority to make referrals to an appropriate public or private organization or
29 person for psychiatric, psychological, educational, occupational, medical, dental or social
30 services. The petitioner may not be compelled to participate in the referrals.

31 (f) The court shall hear the petition and issue the findings of fact under this section before

32 the petitioner attains the age of 21.

33 (g) Nothing in this section shall be construed to prevent the divisions of the probate and

34 family court department or the juvenile court department from issuing similar findings of fact to

35 those in subsection (c) in any proceedings related to a child.

GREATER BOSTON
LEGAL SERVICES
...and justice for all

June 23, 2015

The Honorable William N. Brownsberger, Senate Chair
The Honorable John V. Fernandes, House Chair
Members, Joint Committee on the Judiciary Committee
State House, Room A-2
Boston, Massachusetts 02133

RE: *An Act Relative to Special Juveniles*
Senate Bill 740 and House Bill 1418

Dear Senator Brownsberger, Representative Fernandes, and Members of the Joint Committee on the Judiciary:

We, Anne Mackin and Nancy Kelly, write to offer testimony in support of *An Act Relative to Special Juveniles,* Massachusetts Senate Bill No. 740 and House of Representatives Bill No. 1418.

We are currently employed as attorneys in the Immigration Unit at Greater Boston Legal Services. Our work group has represented immigrant children for more than twenty years. Over the last six years we have worked with over two hundred and fifty immigrant children who have either been in removal proceedings before the Immigration Court or who otherwise needed a means to stabilize their legal status in the United States. We have represented children from countries all over the world including various African nations, Brazil, Guatemala, Honduras, El Salvador and Haiti. We have also met children and young adults whom we have not been able to assist because, due to their age (18 – 21), they could not access immigration relief that might have otherwise been available to them.

Summary of the Issue

Especially relevant to this legislation is immigration relief for children and young adults whom the United States Citizenship and Immigration Service (U.S.C.I.S.) calls "unaccompanied children". Federal Immigration law provides a mechanism for unaccompanied children who have been abused, neglected or abandoned to seek Legal Permanent Resident ("LPR") status in the United States. To access this option, the unaccompanied child[1] must first obtain certain

[1] U.S.C.I.S. interprets the use of the term "child" in section 235(d)(6) of the TVPRA 2008 to refer to the definition of child found at section 101(b)(1) of the INA, which states that a child is an unmarried person under 21 years of age. The SIJ definition found at section 101(1)(27)(J) of the INA does not use the term "child", but

findings from a State Court. With those findings, the unaccompanied child may seek designation as a "Special Immigrant Juvenile" ("SIJ"). If that designation is approved by U.S.C.I.S., then the child may apply to become a permanent resident of the United States. Under federal Immigration law, young people have the right to seek "SIJ" classification and then permanent resident status as a "SIJ" until they are twenty-one years of age. However, under current Massachusetts law, the Probate and Family Court has jurisdiction over the "child" only until age 18. So, if a young adult between the ages of 18 and 21 has never received a court assessment and order about her/his situation prior to age 18, s/he has no statutory mechanism available to access the immigration benefit under federal law to which s/he is legally entitled until age 21. It is this gap which Senate Bill 740 and House of Representative Bill 418 seeks to address.

Federal Legislative Background

In the Immigration Act of 1990, Congress first created the classification of "special immigrant juvenile," which provided lawful permanent resident status to undocumented children whose parents were unavailable to provide for their care and protection, and who were therefore eligible for long-term foster care. 8 U.S.C. §1101(a)(27)(J). Congress amended this statute in 1997 to require that a child be deemed eligible for long-term foster care due to abuse, neglect or abandonment. However, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (hereinafter, "the TVPRA") (Pub. L. 110-457, 122 Stat. 5044 (2008)) further amended the eligibility requirements by eliminating the need to find a child eligible for long-term foster care. Now, the State Court with authority over the juvenile, must simply find that the child's "reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." A copy of the amended statute and the implementing regulations, 8 C.F.R. § 204.11 (which have not yet been changed to comport with the TVPRA), are attached as "Group Exhibit A".

As a prerequisite to applying to the U.S.C.I.S. for SIJ classification, there must be specific findings by a state court having competent jurisdiction to make determinations about the care and custody of juveniles.[2] The required findings are that:

1) the immigrant has been declared dependent on a juvenile court located in the United States or the court has legally committed or placed the immigrant in the custody of an individual or entity appointed by a State or juvenile court located in the United States;

2) reunification with one or both parents is not viable due to abuse, abandonment or

---

U.S.C.I.S. has previously incorporated the child definition at section 101(b)(1) of the INA into the regulation governing SIJ petitions. See Memorandum regarding "Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions" to Field Leadership from Donald Neufeld, U.S.C.I.S. Acting Associate Director, Domestic Operations and Pearl Chang, Acting Chief, Office of Policy & Strategy, dated March 24, 2009, # HQOPS 70/8.5, page 3, included in Group Exhibit A.

[2] The statute makes reference to a "juvenile court". See 8 USC §1101(a)(27)(J)(i). The Regulations provide that a juvenile court is a "court located in the United States having jurisdiction under State law to make judicial determinations about the care and custody of juveniles". 8 CFR §204.11. Thus, it is within the power of the Probate and Family Court to make preliminary determinations required by the provision of the immigration laws regarding juvenile status.

neglect, or a similar basis found under State law; and

3) it is not in the child's best interest to be returned to his/her country of origin.

I.N.A. § 101(a)(27)(J); 8 U.S.C. 1101(a)(27)(J); 8 C.F.R. § 204.11(a).

Once these findings are made, the child then has the option to seek designation as a "SIJ" and ultimately permanent resident status. The INA includes statutory admissibility criteria which are considered for every permanent resident application, including review of health issues, immigration history, and any involvement in the criminal justice system, both in the U.S. and abroad. Only the U.S.C.I.S. and the Department of Justice make immigration status determinations for persons seeking permanent resident status through the SIJ process.

Process of Obtaining Lawful Permanent Residence As a Special Immigrant Juvenile

The process of obtaining lawful permanent residence through this avenue consists of three steps. First the child must obtain the special findings from state court. Second, with the requested findings, the child may file an application with the U.S.C.I.S. for classification as a "special immigrant" under the provisions relating to juveniles. If that petition is approved, the child may then file an application for adjustment of status before the U.S.C.I.S. or the Immigration Court of the Executive Office for Immigration Review.[3] If the application for adjustment of status is approved, the child is granted lawful permanent resident status and allowed to remain in the United States indefinitely.[4] The child may then continue her/his schooling and otherwise participate productively in the community.

Neither the statute nor the regulations governing Special Immigrant Juvenile status contemplate participation by the Department of Homeland Security (hereinafter, "DHS") in the process before the state Court. Rather, the statute clearly places specific determinations within the hands of state courts entrusted with the welfare of juveniles and defines the role of the DHS as ultimately consenting to the grant of Special Immigrant Juvenile status. See 8 U.S.C. 1101(1)27(J)(iii).

[3] If an applicant is not an arriving alien and is in removal proceedings, jurisdiction over an application for adjustment of status rests with the Immigration Judge. *Succor v. Ashcroft*, 394 F. 3d 8 (1st Cir. 2005). If an applicant is an arriving alien or is not in removal proceedings, jurisdiction over an application for adjustment of status rests with the U.S.C.I.S. Id.

[4] The special findings requested in these cases will enable the child to apply to the U.S.C.I.S. for Special Immigrant Juvenile classification pursuant to 8 U.S.C. § 1101 (a)(27)(J). The requested findings do not, in and of themselves, entitle the child to such status or to lawful permanent residency within the United States. Rather, these findings are preliminary determinations requisite to the filing of an application with the U.S.C.I.S. for Special Immigrant Juvenile status. This status, if granted by the U.S.C.I.S., will enable the child to become a lawful permanent resident of the United States, and the U.S.C.I.S. retains discretionary authority to deny or approve the application.

Why Senate Bill 740 and House of Representatives Bill 1418 Should be Enacted into Law

It is patently unfair that a young adult is barred from seeking the immigration benefit of permanent resident status as a Special Immigrant Juvenile – a benefit that is available to her/him until age 21 under federal law – simply because that young adult did not reach a Probate and Family Court prior to her/his 18th birthday. Since the Probate and Family Court loses jurisdiction over a Massachusetts resident as a "child" at the age of 18, there currently is no other statutory cause of action available for the young adult between 18 and 21 to get her/himself before the Probate and Family Court to request the findings required to access the immigration benefit. Even though that young adult may have suffered abuse, abandonment, neglect or other similar harm under Massachusetts state law, and that person's history did not change at age 18, the Probate and Family Court currently has no statutory mechanism to hear the case and make the findings required once the young adult is 18.

Albeit in a somewhat different context, the Massachusetts Supreme Judicial Court ("SJC") has explicitly found that the Probate and Family Court may retain jurisdiction over a child for dependency purposes even after that child has reached the age of eighteen. In Eccleston v. Bankosky, 438 Mass. 428, 780 N.E. 2d 1266 (Mass. 2003) the SJC held that pursuant to its equity powers under M.G.L. c. 215, §6, the Probate and Family Court could impose a post-minority order on a child's financially able noncustodial parent or parents, insofar as the child was found not to be emancipated. The Court cited several Massachusetts statutory provisions which specifically allow post-minority support and noted:

> The Legislature has also enacted laws to ensure that children who have "aged out" of foster care on reaching the age of eighteen years receive postminority support to enable them to pursue opportunities for education, rehabilitation, and training. See G.L. c. 119, § 23.
>
> Id., 438 Mass. 428 at 436, 780 N.E. 2d 1266 at 1273-1274, (2003)

The Court opined further:

> In enacting such statutes, the Commonwealth has recognized that merely attaining the age of eighteen years does not by itself endow young people with the ability to be self-sufficient in the adult world. Statutes providing for postminority support advance the Legislature's purposes to maintain children "as completely as possible" from parental resources, see G.L. c. 119A, § 1, to protect minor children of nonintact families from parental "underinvestment", see note 16, *supra*, and to encourage a skilled, educated workforce.
>
> Yet there is a small category of children of nonintact families whose needs for post-minority support the Legislature has not specifically addressed. It is the category to which Caitlyn belongs: namely, children who, prior to turning eighteen years old, have become wards of the State

> because their parents are found unfit to care for them and who, after reaching eighteen years of age, continue to make their domicil with a custodial adult who voluntarily provides for them. As to such children, insofar as they are found to be "unemancipated" (that is, financially dependent), the equity powers granted to Probate and Family Court judges in G.L. c. 215, § 6, are broad enough to permit a judge to impose a post-minority support order on the child's financially able noncustodial parent or parents.

Id., 438 Mass. 428 at 436, 437, 780 N.E. 2d 1266 at 1274, (2003)

The legislation proposed in Senate Bill 740 and House of Representative Bill 1418 seeks far less than the child requested in the Eccleston v. Bankosky matter cited above. There are no funds required and no state agency enforcement is involved. The young adults who could benefit from the legislation simply seek the right and a mechanism to have their situation heard and assessed by the Court with the expertise to hear matters of abuse, abandonment and neglect. Should the Court see fit to do so, the proposed statute authorizes the Court to make referrals to appropriate public and private organizations for services that might otherwise benefit the young adult. These referrals are both discretionary and at no cost to the Court.

It is our experience that there are numerous children in Massachusetts who have come here on their own, fleeing unsafe or abusive situations in their home country, as well as children who were brought here by family members at a young age and who have made Massachusetts their home. Indeed, for some, this is the only home they know. Among those who have been here for a long time, many have done well, accomplished much, and for some, when they reach 18, there is nothing they can do to attain a permanent, valid legal status. This means that they cannot legally work or further their education.[5] They are forced to live in the shadows. Whether a young adult has been here for many years or is a recent arrival, many are living on their own and cannot be re-united with their families due to abuse, abandonment or neglect. However, they may never have known about the option to seek U.S.C.I.S. designation as a Special Immigrant Juvenile and may not have ever gone to Probate and Family Court prior to their 18th birthday. It is unjust that but for the fact there is no statutory avenue through which they can go to Probate and Family Court to present themselves and their histories, they lose what may be their only chance to permanently legalize their status in the United States, despite the fact that U.S.C.I.S. and Department of Justice recognize their eligibility to apply for legal status until age 21.

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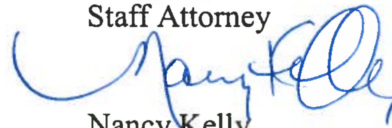
[5] On June 15, 2012, President Obama declared that certain children who had been in the United States prior to their sixteenth birthdays, who have been in the United States since June 15, 2007, and met certain other criteria, could be considered for a temporary immigration benefit called Deferred Action for Childhood Arrivals ("DACA"). This allowed young people who met the designated criteria to be exempt from any government action to deport them for two years from their date of deferred action approval and granted them permission to work. This was an Executive Order from the President, NOT a change in the law. The Executive Order was renewed in 2014, allowing DACA recipients to extend their status for a second two years. While President Obama attempted to extend the reach of the DACA program through an Executive Order issued in November, 2014, that program has not been implemented due to federal court litigation which ruled in a temporary restraining order to enjoin the program. Even for those who applied under the original program, there currently is no path available to DACA designees to obtain legal permanent residence in the United States based on their classification as a DACA recipient.

If this bill were to be enacted into law, it could create a life-changing opportunity for young adults who are craving the chance for an education and lives as productive residents of our Commonwealth. They have much to offer and only need the chance to seek legalization of their status in what they see as their permanent home. As a matter of equity and justice, we therefore request that the committee approve Senate Bill 740 and House Bill 1414 for enactment into law.

Respectfully submitted,

Anne Mackin
Staff Attorney



Nancy Kelly
Managing Attorney

GROUP EXHIBIT A

1. 8 U.S.C. § 1101 Definitions; see "Special Immigrant" definition on page 3, 8 U.S.C., § 1101(a)(27)(J)
2. 8 U.S.C. § 1255. Adjustment of status of nonimmigrant to that of a person admitted for permanent residence. See page 4, (h), application to "special immigrants"
3. 8 C.F.R. § 204.11 (pages 5 – 6)
4. Memorandum regarding "Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Provisions" to Field Leadership from Donald Neufeld, U.S.C.I.S. Acting Associate Director, Domestic Operations and Pearl Chang, Acting Chief, Office of Policy & Strategy, dated March 24, 2009, # HQOPS 70/8.5, page 3.

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V) subject to section 1184(q) of this title, an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of a petition to accord a status under section 1153(a)(2)(A) of this title that was filed with the Attorney General under section 1154 of this title on or before December 21, 2000, if—

(i) such petition has been pending for 3 years or more; or

(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 1153(a)(2)(A) of this title; or

(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 1255 of this title, pursuant to the approval of such petition, remains pending.

(16) The term "immigrant visa" means an immigrant visa required by this chapter and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this chapter.

(17) The term "immigration laws" includes this chapter and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion, or removal of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76)[50 App. U.S.C.A. 454(a)], or under any section of this chapter, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(24) Repealed. Pub.L. 102–232, Title III, § 305(m)(1), Dec. 12, 1991, 105 Stat. 1750.

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court martial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.

(27) The term "special immigrant" means—

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 1435(a) or 1438 of this title, apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who—

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States—

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of Title 26) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D) an immigrant who is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided*, That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3602(a)(1) of Title 22) enters into force [October 1, 1979], who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty [April 1, 1979], and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force [October 1, 1979], has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who, on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone Government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977 [April 1, 1979], who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) of this section before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after October 24, 1988, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under

paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after October 24, 1988, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after October 25, 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(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; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on October 1, 1991) for a period or periods aggregating—

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO–6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998 [2]

(M) subject to the numerical limitations of section 1153(b)(4) of this title, an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Gover-

(1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a) of this section.

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.

(3) Paragraph (1) and section 1154(g) of this title shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p) of section 1184 of this title with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(f) Limitation on adjustment of status

The Attorney General may not adjust, under subsection (a) of this section, the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186b of this title.

(g) Special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(K) of this title, such an immigrant shall be deemed, for purposes of subsection (a) of this section, to have been paroled into the United States.

(h) Application with respect to special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(J) of this title—

(1) such an immigrant shall be deemed, for purposes of subsection (a) of this section, to have been paroled into the United States; and

(2) in determining the alien's admissibility as an immigrant—

(A) paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 1182(a) of this title shall not apply; and

(B) the Attorney General may waive other paragraphs of section 1182(a) of this title (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 1101(a)(27)(J) of this title shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

(i) Adjustment in status of certain aliens physically present in United States

(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States—

(A) who—

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of—

(i) a petition for classification under section 1154 of this title that was filed with the Attorney General on or before April 30, 2001; or

(ii) an application for a labor certification under section 1182(a)(5)(A) of this title that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on December 21, 2000;

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equalling $1,000 as of the date of receipt of the application, but such sum shall not be required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 1160 or

(c) Filing requirements—

(1) Application form and time limits. A petition to classify an alien under section 203(b)(2)(A) of the Act as a scientist from the eligible independent states of the former Soviet Union or the Baltic states must be filed on Form I–140, Immigrant Petition for Alien Worker. The petition may be filed by the alien, or by anyone on the alien's behalf. Such petition must be properly filed with all initial evidence described in paragraph (e) of this section by September 30, 2006 or before the limit of 950 visas has been reached, whichever is earliest. To clarify that the petition is for a Soviet scientist, the petitioner should clearly print the words "SOVIET SCIENTIST" in Part 2 of Form I–140 and check block "d", indicating the petition is for a member of the professions holding an advanced degree or an alien of exceptional ability.

(2) [Reserved by 74 FR 26937]

(d) Priority date. The priority date of any petition filed for this classification is the date the completed, signed petition (including all initial evidence as defined in paragraph (e) of this section and the correct fee) is properly filed with the USCIS.

(e) Initial evidence. The petition must be accompanied by:

(1) Evidence that the alien is a national of one of the independent states of the former Soviet Union or one of the Baltic States as defined in paragraph (b) of this section. Such evidence may include, but is not limited to, identifying page(s) from a passport issued by the former Soviet Union, or by one of the independent or Baltic states; and

(2) A letter from the Department of State, Bureau of Nonproliferation that verifies that the alien possesses expertise in nuclear, chemical, biological, or other high-technology field or who has prior or current work experience in high-technology defense projects which are clearly applicable to the design, development, or production of ballistic missiles, nuclear, biological, chemical, or other high-technology weapons of mass destruction and endorses the applicant as having exceptional ability in one or more of these fields. Such endorsement shall establish that the alien possesses exceptional ability in the relevant field.

(f) No offer of employment required. Neither an offer of employment nor a labor certification is required for this classification.

(g) Consultation with other United States Government agencies. USCIS may consult with other United States Government agencies, such as the Departments of Defense and Energy or other relevant agencies with expertise in nuclear, chemical, biological, or other high-technology defense projects. USCIS may, in its discretion, accept a favorable report from such agencies as evidence in addition to the documentation prescribed under paragraph (e) of this section.

(h) Aliens previously granted permanent residence. No alien previously granted lawful permanent residence may request or be granted classification or any benefits under this provision.

(i) Decision—

(1) Approval. If the petition is approved and the beneficiary is outside the United States the applicant will be notified of the decision and the petition will be forwarded to the National Visa Center. If the beneficiary is in the United States and seeks to apply for adjustment of status, the petition will be retained by USCIS.

(2) Denial. If the petition is denied, the petitioner will be advised of the decision and of the right to appeal in accordance with 8 CFR part 103.

(j) Rejection. Petitions filed under this provision on or after September 30, 2006 or after the limit of 950 visas has been reached will be rejected and the fee refunded.

[58 FR 30701, May 27, 1993; 60 FR 54030, Oct. 19, 1995; 62 FR 6708, Feb. 13, 1997; 70 FR 21131, April 25, 2005; 74 FR 26937, June 5, 2009]

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

(a) Definitions.

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) Petition for special immigrant juvenile. An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant. The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not re-

quired to be a citizen or lawful permanent resident of the United States.

(c) Eligibility. An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or

(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

(d) Initial documents which must be submitted in support of the petition.

(1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) Decision. The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

[58 FR 42849, 42850, Aug. 12, 1993; 74 FR 26937, June 5, 2009]

§ 204.12 How can second-preference immigrant physicians be granted a national interest waiver based on service in a medically underserved area or VA facility?

(a) Which physicians qualify? Any alien physician (namely doctors of medicine and doctors of osteopathy) for whom an immigrant visa petition has been filed pursuant to section 203(b)(2) of the Act shall be granted a national interest waiver under section 203(b)(2)(B)(ii) of the Act if the physician requests the waiver in accordance with this section and establishes that:

(1) The physician agrees to work full-time (40 hours per week) in a clinical practice for an aggregate of 5 years (not including time served in J-1 nonimmigrant status); and

(2) The service is;

(i) In a geographical area or areas designated by the Secretary of Health and Human Services (HHS) as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area, and in a medical speciality that is within the scope of the Secretary's designation for the geographical area or areas; or

(ii) At a health care facility under the jurisdiction of the Secretary of Veterans Affairs (VA); and

(3) A Federal agency or the department of public health of a State, territory of the United States, or the District of Columbia, has previously determined that the physician's work in that area or facility is in the public interest.

(b) Is there a time limit on how long the physician has to complete the required medical service?

(1) If the physician already has authorization to accept employment (other than as a J-1 exchange alien), the beneficiary physician must complete the aggregate 5 years of qualifying full-time clinical practice during the 6-year period beginning on the date of approval of the Form I-140.

(2) If the physician must obtain authorization to accept employment before the physician may lawfully begin working, the physician must complete the aggregate 5 years of qualifying full-time clinical practice during the 6-year period beginning on the date of the

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy and Domestic Operations
Washington, DC 20529-2140

U.S. Citizenship and Immigration Services

HQOPS 70/8.5

Memorandum

TO: Field Leadership

FROM: Donald Neufeld /s/
Acting Associate Director
Domestic Operations

Pearl Chang /s/
Acting Chief
Office of Policy & Strategy

DATE: March 24, 2009

SUBJECT: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions

1. Purpose

This memorandum will inform immigration service officers working Special Immigrant Juvenile (SIJ) petitions about new legislation affecting adjudication of petitions filed for SIJ status.

2. Background

On December 23, 2008, the President signed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (2008). Section 235(d) of the TVPRA 2008 amends the eligibility requirements for SIJ status at section 101(a)(27)(J) of the Immigration and Nationality Act (INA), and accompanying adjustment of status eligibility requirements at section 245(h) of the INA. Most SIJ provisions of the TVPRA 2008 take effect March 23, 2009, although some provisions took effect on December 23, 2008, the date of enactment of the TVPRA 2008.

3. Field Guidance

Eligibility for Special Immigrant Juvenile Status

AILA InfoNet Doc. No. 09041670. (Posted 4/16/09)

The TVPRA 2008 amended the definition of a "Special Immigrant Juvenile" at section 101(a)(27)(J) of the INA in two ways. First, it expanded the group of aliens eligible for SIJ status. An eligible SIJ alien now includes an alien:

- 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. For example, a petition filed by an alien on whose behalf a juvenile court appointed a guardian now may be eligible. In addition, section 235(d)(5) of the TVPRA 2008 specifies that, if a state or an individual appointed by the state is acting *in loco parentis*, such a state or individual is not considered a legal guardian for purposes of SIJ eligibility.

The second modification made by the TVPRA 2008 to the definition of special immigrant juvenile concerns the findings a juvenile court must make in order for a juvenile court order to serve as the basis for a grant of SIJ status. Previously, the juvenile court needed to deem a juvenile eligible for long term foster care due to abuse, neglect or abandonment. Under the TVPRA 2008 modifications, the juvenile court must find that the juvenile's *reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.* In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care and replaced it with a requirement that the juvenile court find reunification with one or both parents not viable. If a juvenile court order includes a finding that reunification with one or both parents is not viable due to *a similar basis found under State law*, the petitioner must establish that such a basis is similar to a finding of abuse, neglect, or abandonment. Officers should ensure that juvenile court orders submitted as evidence with an SIJ petition filed on or after March 23, 2009, include this new language.

A petitioner is still required to demonstrate that he or she has been the subject of a determination 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.

Age Requirements

Section 235(d)(6) of the TVPRA 2008 provides age-out protection to SIJ petitioners. As of December 23, 2008, if an SIJ petitioner was a "child" on the date on which an SIJ petition was properly filed, U.S. Citizenship and Immigration Services (USCIS) cannot deny SIJ status to anyone, regardless of the petitioner's age at the time of adjudication. *Officers must now consider the petitioner's age at the time of filing to determine whether the petitioner has met the age requirement.* Officers must not deny or revoke SIJ status based on age if the alien was a child on

the date the SIJ petition was properly filed if it was filed on or after December 23, 2008, or if it was pending as of December 23, 2008. USCIS interprets the use of the term "child" in section 235(d)(6) of the TVPRA 2008 to refer to the definition of child found at section 101(b)(1) of the INA, which states that a child is an unmarried person under 21 years of age. The SIJ definition found at section 101(a)(27)(J) of the INA does not use the term "child," but USCIS had previously incorporated the child definition at section 101(b)(1) of the INA into the regulation governing SIJ petitions.

Consent

The TVPRA 2008 also significantly modifies the two types of consent required for SIJ petitions.

Consent to the grant of SIJ status (previously express consent)

The TVPRA 2008 simplified the "express consent" requirement for an SIJ petition. *The Secretary of Homeland Security (Secretary) must consent to the grant of special immigrant juvenile status.* This consent is no longer termed "express consent" and is no longer consent to the dependency order serving as a precondition to a grant of SIJ status.

The consent determination by the Secretary, through the USCIS District Director, is an acknowledgement that the request for SIJ classification is bona fide. This means 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." See H.R. Rep. No. 105-405, at 130 (1997). An approval of an SIJ petition itself shall be evidence of the Secretary's consent.

Specific consent

The TVPRA 2008 completely altered the "specific consent" function for those juveniles in federal custody. The TVPRA 2008 vests this function with the Secretary of Health and Human Services (HHS) rather than the Secretary of the Department of Homeland Security as previously delegated to Immigration and Customs Enforcement (ICE). In addition, Congress simplified the language to refer simply to "custody," not actual or constructive custody, as was previously delineated. However, the requirement remains that an SIJ petitioner need only seek specific consent if the SIJ petitioner seeks a juvenile court order determining or altering the SIJ petitioner's custody status or placement. If an SIJ petitioner seeks to obtain or obtains a juvenile court order that makes no findings as to the SIJ petitioner's custody status or placement, the SIJ petitioner is not required to have sought specific consent from HHS. Therefore, on or after March 23, 2009, *officers must ensure that juveniles in the custody of HHS obtained specific consent from HHS to juvenile court jurisdiction where the juvenile court order determines or alters the juvenile's custody status or placement.* USCIS will provide HHS guidance regarding adjudications of specific consent as soon as it is available.

Due to the complex nature and changing requirements of specific consent determinations, USCIS Headquarters (HQ) is temporarily assisting in making the determination on specific consent

requirements. As outlined in the February 20, 2009 guidance email, Field Officers are instructed to forward certain documents to HQ for those SIJ petitions that may involve specific consent that are filed prior to March 23, 2009. HQ will notify the Field Office of the decision on specific consent. The Field Office will then complete adjudication of the petition. This temporary guidance providing HQ assistance with specific consent determinations will remain in effect until further notice.

Expeditious Adjudication

Section 235(d)(2) of the TVPRA 2008 *requires USCIS to adjudicate SIJ petitions within 180 days of filing.* Field Offices need to be particularly aware of this new requirement and take measures locally to ensure timely adjudication. Officers are reminded that under 8 CFR 245.6 an interview may be waived for SIJ petitioners under 14 years of age, or when it is determined that an interview is unnecessary. Eliminating unnecessary interviewing of SIJ petitioners may help in expeditiously adjudicating petitions. Necessary interviews should be scheduled as soon as possible. During an interview, an officer should focus on eligibility for adjustment of status and should avoid questioning a child about the details of the abuse, abandonment or neglect suffered, as those matters were handled by the juvenile court, applying state law. Under no circumstances can an SIJ petitioner, at any stage of the SIJ process, be required to contact the individual (or family members of the individual) who allegedly abused, abandoned or neglected the juvenile. This provision was added by the Violence Against Women Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (2006) and is incorporated at section 287(h) of the INA. Officers must ensure proper completion of background checks, including biometric information clearances and name-checks.

Adjustment of Status for Special Immigrant Juveniles

The TVPRA 2008 amends the adjustment of status provisions for those with SIJ classification at section 245(h) of the INA, to include four new exemptions. Approved SIJ petitioners are now exempted from seven inadmissibility grounds of the INA:

- 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).*

On or after March 23, 2009, none of the above listed grounds of inadmissibility shall apply to SIJ adjustment of status applicants.

Officers are reminded that this list of exemptions is in addition to the waivers available for most other grounds of inadmissibility for humanitarian purposes, family unity, or otherwise being in the public interest. The only unwaivable grounds of inadmissibility for SIJ petitioners are those listed at 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).

4. Use

This guidance is created solely for the purpose of USCIS personnel in performing their duties relative to adjudication of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantial or procedural, enforceable at law by any individual or any other party in removal proceedings, in litigation with the United States, or in any other or form or matter.

5. Contact Information

This guidance is effective immediately. Please direct any questions concerning these changes through appropriate supervisory channels to Rosemary Hartmann, Office of Policy and Strategy or Tina Lauver, Office of Field Operations.

Distribution List:
Regional Directors
District Directors
Service Center Directors
Field Office Directors
National Benefits Center Director

AILA InfoNet Doc. No. 09041670. (Posted 4/16/09)

Help Survivors of Child Abuse

Support An Act Relative to Special Juveniles

Senator Cynthia Stone Creem and Representative Louis L. Kafka

S740; H1418

Background

Congress created a "special immigrant juvenile" ("SIJ") classification in 1990 to help abused, abandoned, or neglected children access a path to lawful permanent residence. In 2008, President Bush signed an amendment that enhanced the rights of children who seek "SIJ" classification and simplified the process. Under this law, the U.S. Citizenship and Immigration Services (USCIS) relies upon state courts for child abuse, abandonment and neglect assessments, while the federal government retains exclusive authority to determine whether an immigrant qualifies for permanent resident status.

Today

Immigrant youth under age 21 may apply to the USCIS for SIJ classification, but only if a state court determines that they have been abused, abandoned, or neglected by their parent(s). In Massachusetts, immigrant youth over age 18 are prevented from accessing state courts to seek this required assessment. *An Act Relative to Special Juveniles* would remedy a problematic jurisdictional gap for 18 – 21 year old youth by providing them access to the Massachusetts Probate and Family Court for this unique purpose.

Why Support An Act Relative to Special Juveniles?

- *Reconcile state and federal law*: This bill would remove a Massachusetts obstacle that prevents abused, abandoned, or neglected 18 – 21 year old youth from accessing state courts and a federal benefit.

- *Promote equal treatment and access to state courts for victims of child abuse, abandonment, and neglect*: Currently, only those youth who remain in Department of Children and Families ("DCF") custody after 18 have access to the state courts in Massachusetts. This bill establishes equal access to state courts until age 21 for *all* victims of child abuse. Other states, including New York and Florida, already provide a path to court for these youth. It's time for Massachusetts to do the same and help these abused, abandoned, and neglected youth.

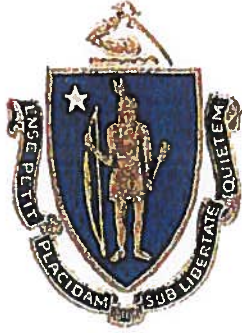
- *No cost to the state*: This bill does not require any appropriation of funds. The court system can absorb the limited additional caseload created by the bill without compromising the integrity of present services, resources, or staff.

- *Small Change*: Opening the Probate and Family Court's door to 18 – 21 year olds through this small jurisdictional change would not overwhelm the Probate and Family Courts. In 2013, there were approximately 220 youths in all of Massachusetts who, with state court findings, applied to USCIS for designation as a Special Immigrant Juvenile. If this legislation is enacted, it is estimated that annually there would be about 50 new cases statewide by 18 – 21 year olds seeking this relief from abuse, abandonment, or neglect.

- *Huge Impact*: The impact of childhood trauma doesn't end simply because a survivor turns 18. While the number of individuals this bill would help is small, it would make a tremendous difference in their lives. It would allow children to achieve stability in their lives after the loss of family protection and support. If ultimately granted permanent residence by USCIS, these youth could pursue education beyond high school, work legally, and make positive contributions to the Commonwealth.

PLEASE CHANGE A LIFE AND SUPPORT THIS BILL! THANK YOU!

For more information, please contact Greater Boston Legal Services, Anne Mackin, 617-603-1628, amackin@gbls.org, or Massachusetts Immigrant and Refugee Advocacy Coalition, Shannon Erwin, 617-350-5450, ext. 222, serwin@miracoalition.org. 6/24/15



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF THE TRIAL COURT
John Adams Courthouse
One Pemberton Square, Floor 1M
Boston, Massachusetts 02108
617-878-0203

Paula Carey
Chief Justice of the Trial Court

June 23, 2015

Senator William N. Brownsberger
Senate Chair, Joint Committee on the Judiciary
State House, Room 504
Boston, MA 02133

Representative John V. Fernandes
House Chair, Joint Committee on the Judiciary
State House, Room 136
Boston, MA, 02133

RE: Support for H1418, "An Act relative to special juveniles", sponsored by Representative Louis L Kafka and S740, "An Act relative to special juveniles", sponsored by Senator Cynthia S. Creem

Dear Senator Brownsberger and Representative Fernandes,

I write again to express the Trial Court's support of H 1414 – An Act relative to special juveniles. Since 1990, federal law has recognized the "special immigrant juvenile" status for persons who have been abused, neglected or abandoned by their parents, such that the persons cannot be returned to their parents. "Special immigrant juvenile" status is available until the person reaches the age of 21.

If enacted, this bill will not provide any additional rights to the person or create financial obligations for the Commonwealth. What the bill does is provide an avenue for the people who are between the ages of 18 and 21 to seek the status that the federal government created in 1990. Unless this bill is passed, no court in Massachusetts has jurisdiction to make the necessary determinations required by federal law for those persons who are between the ages of 18 and 21.

As I have noted in prior letters of support for this bill, I was consulted by the drafters of this legislation when I was the Chief Justice of the Probate and Family Court and made suggestions to the language before the final version was submitted to the Legislature during the prior session.

I remain in full support of this legislation.

Very truly yours,

Paula M. Carey
Chief Justice of the Trial Court

THE COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT
ADMINISTRATIVE OFFICE
JOHN ADAMS COURTHOUSE
ONE PEMBERTON SQUARE
MEZZANINE
BOSTON, MA 02108

Angela M. Ordoñez
CHIEF JUSTICE

TEL: (617) 788 6600
FAX (617) 788 8995

June 19, 2015

Senator William N. Brownsberger
Senate Chair, Joint Committee on the Judiciary
State House, Room 504
Boston, MA 02133

Representative John V. Fernandes
House Chair, Joint Committee on the Judiciary
State House, Room 136
Boston, MA, 02133

RE: Support for H1418, "An Act relative to special juveniles", sponsored by Representative Louis L Kafka and S740, "An Act relative to special juveniles", sponsored by Senator Cynthia S. Creem

Dear Senator Brownsberger and Representative Fernandes,

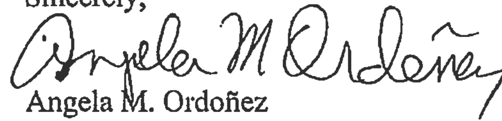
Today I write again to emphasize the Probate and Family Court's support of H1418 and S740, both bills entitled "An Act relative to special juveniles."

Federal law enacted in 1990 by President George H.W. Bush, and amended in 2008 by President George W. Bush, recognizes the "special immigrant juvenile" status for persons who have been abused, neglected or abandoned by their parents, such that the persons cannot be returned to their parents. The law provides that the status is available until the person reaches the age of 21. However, due to jurisdictional issues at the state court level, persons between the ages of 18 and 21 face immense challenges in seeking the necessary judicial determinations. These bills would eliminate the challenges by providing the Probate and Family Court with the specific jurisdiction to hear these cases. This expansion of jurisdiction would not burden the Probate and Family Court, as it already hears these cases for persons up until the age of 18 and is familiar with the law.

This bill creates an avenue for persons who are between the ages of 18 and 21 to seek the status that the federal government created. Unless this bill is passed, no court in Massachusetts has specific jurisdiction to make the necessary determinations required by federal law for those persons who are between the ages of 18 and 21.

I remain in full support of this legislation and hope that these bills will be acted upon favorably.

Sincerely,



Angela M. Ordoñez
Chief Justice
Probate and Family Court

cc. Senator Stanley C. Rosenberg, President of the Senate
Representative Robert A. DeLeo, Speaker of the House
Senator Karen E. Spilka, Chair, Senate Ways & Means
Representative Brian S. Dempsey, Chair, House Ways and Means
Senator Cynthia S. Creem
Representative Louis L. Kafka

June 23, 2015

The Honorable John Fernandes
House Chairman
Joint Committee on the Judiciary
State House, Room 136
Boston, MA 02133

The Honorable William Brownsberger
Senate Chairman
Joint Committee on the Judiciary
State House, Room 504
Boston, MA 02133

Re: HB.1418 and SB.740 An Act Relative to Special Juveniles

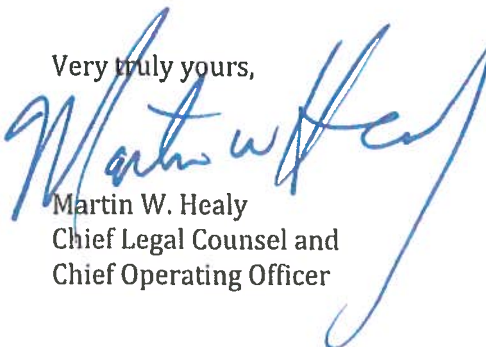
Dear Chairmen Fernandes and Brownsberger:

I write on behalf of the Massachusetts Bar Association in support of House Bill No. 1418 and Senate Bill No. 740, An Act Relative to Special Juveniles filed by Representative Louis L. Kafka filed by Senator Cynthia Stone Creem, respectively. In March, 2014, our House of Delegates, comprised of 82 attorneys from across the state, voted *unanimously* to support this legislation.

The proposed legislation would reconcile both state and federal law by allowing "special immigrant juveniles" (SIJ) who have been abused, abandoned or neglected as children a path to lawful, permanent residence. Immigrant youth under age 21 may apply to the United States Citizenship and Immigration Services for a SIJ classification but only if a state court determines they have been abused by their parents. However, in the Commonwealth, immigrant youth over age 18 are prevented from accessing our state courts to seek the required assessment. The bill would remedy the problematic jurisdictional gap for 18-21 year old immigrant youth by providing them access to the Commonwealth's Probate and Family Courts.

We respectfully request you give this bill a favorable report. Thank you for your consideration of our views.

Very truly yours,



Martin W. Healy
Chief Legal Counsel and
Chief Operating Officer

cc: Joint Committee on the Judiciary

Ascentria
CARE ALLIANCE

Ascentria Services for New Americans
Immigration Legal Assistance Program
11 Shattuck Street, Worcester, MA 01605
774.243.3100 | ascentria.org
Formerly Lutheran Social Services of New England

June 23, 2015

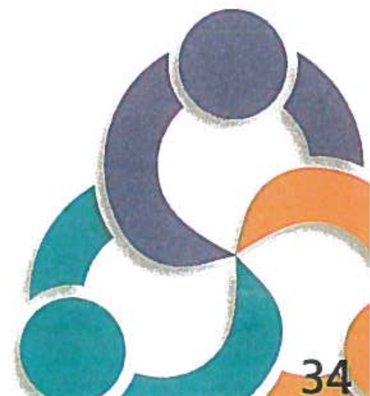
Re: H1418 and S740

Dear Sir or Madam,

I am the Managing Attorney at the Immigration Legal Assistance Program ("ILAP") of Ascentria Care Alliance, and I write this letter on behalf of ILAP in support of H1418 and S740. These bills will provide a pathway for 18 through 20 year-old immigrant children who have been abused, abandoned, or neglected by their parents and are otherwise eligible for Special Immigrant Juvenile Status except for their ability to obtain dependency orders before the Massachusetts Probate and Family Court.

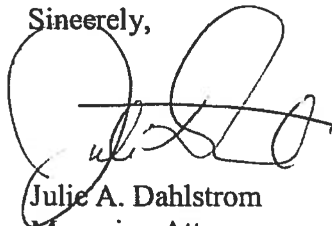
The ILAP program provides *pro bono* legal representation to survivors of domestic violence, human trafficking, and persecution as well as unaccompanied children. In our programs, we see probably one or two children per month ages 18 to 20 who have no clear forms of relief but who are in the United States alone and/or are seeking safety from parental abuse, neglect, or abandonment. These children's immigration options are limited because neither the probate nor juvenile court has clear jurisdiction to issue dependency orders, and yet their fear of return to their countries is real and they remain unemancipated, often dependent upon older siblings or relatives for support. The majority of such children are in the Massachusetts public school system, but they face limited options for post-secondary education as their lack of status impedes their ability to qualify for affordable college options.

By way of example, our program met with a girl whose parents had abused her both in her country of origin and in the United States. Her parents refused assistance from the Massachusetts Department of Children and Families. The girl did not feel safe disclosing the full extent of the abuse to social workers because of her lack of immigration status until she was able to leave the family at age 18. She is now dependent upon charity and is unable to obtain the dependency order in probate court to qualify her for Special Immigrant Juvenile Status, which would place her on a pathway to self-sufficiency and a safer living environment. Another common scenario is when a high school guidance counselor refers a case of a child to our program who is nearly 18 or over 18 because the child wants to attend college. As many schools and communities are unaware of Special Immigrant Juvenile Status, it is only when the child finds immigration status to be a hurdle to post-secondary-education that he or she seeks assistance, at which point there is often no option for relief or no capacity within our program to take the case on such short notice.



While the Immigration and Nationality Act ("INA") provides the opportunity for children like these to obtain status up to the age of 21, our Probate and Family Court lacks jurisdiction to allow children to obtain the prerequisite order of dependency and best interest assessment to obtain federal protection. Our current waitlist of children seeking legal assistance and on the cusp of turning 18 presents an impossible task. Providing an option for these children to obtain dependency orders from the Probate Court up to the age of 21 would stabilize these children's lives as well as relieve a tremendous burden on our already short-staffed legal services programs which simply cannot serve every child that needs our help when approaching the age of 18. For these reasons, we ask you to support the bill and the children that will benefit from it.

Sincerely,



Julie A. Dahlstrom
Managing Attorney
Ascentria Care Alliance
11 Shattuck Street
Worcester, MA 01605
Tel.: (508) 579-2072
Email: jdahlstrom@ascentria.org

THE CAMBRIDGE RINDGE AND LATIN SCHOOL

Opportunity • Diversity • Respect

June 22, 2015

To Whom It May Concern:

I am a teacher of English language learners at Cambridge Rindge and Latin School. I teach both English as a Second Language and what is called "Sheltered English Immersion" World History, a history course designed for students who are learning English. I am a National Board Certified Teacher for English as a New Language at the secondary level. I have eight years of experience teaching ESL in Massachusetts and another three years as a Peace Corps Volunteer in Mozambique. I am writing in support of HB1418 and SB740, which are critical bills to help young people who have suffered abuse, abandonment, or neglect by their parents.

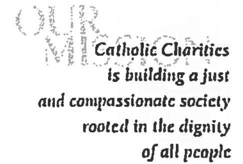
In my line of work, I meet young people every year who are facing incredibly difficult circumstances such as these. Quite often they are dedicated to their education, but are forced to abandon it because they have been unable to access resources and support. Or they may not even seek out resources because they fear legal consequences for their immigration status. I have students this year—a brother and sister—who work full time to support themselves. As a result, they are often absent from school and are unable to complete important assignments. They are not progressing as they could nor as they should. And they know it. They are ashamed of their situation and don't see a way out of it. HB1418 and SB740 would help struggling young people like this. Special Immigrant Juvenile Status would provide them with much needed support.

This status would also allow many young people to access a college education. Many students give up as they progress through high school when they realize that there is no reasonable way for them to attend and pay for college. These are bright, hardworking young people who have the potential to contribute so much to the Commonwealth and their communities. The ability to obtain Special Immigrant Juvenile Status would be a pathway to a better life for these young people who would then become positive, contributing members of our society.

I strongly support HB1418 and SB740 and urge their passing.

Sincerely,

David R. M. Saavedra
National Board Certified Teacher
dsaavedra@cpsd.us
(617) 349-6630



June 22, 2015

Senator William N. Brownsberger
Chair, Joint Committee on the Judiciary
State House, Room 136
Boston, Massachusetts 02133

Rep. John V. Fernandes
Chair, Joint Committee on the Judiciary
State House, Room 243
Boston, Massachusetts 02133

RE: An Act Relative to Special Juveniles
Senate Bill 740 and House Bill 1418

Dear Members of the Joint Committee on the Judiciary:

Catholic Charities of the Archdiocese of Boston wholeheartedly supports Bills S740 and H1418. We urge you to vote in favor of these bills, which would allow a vulnerable group of 18-21 year old immigrant youth who were abused, neglected or abandoned by their parents and who are otherwise eligible for classification as a Special Immigrant Juvenile to finally have a pathway to seek the necessary predicate orders from Massachusetts Probate and Family Court.

For the past five years, Catholic Charities has administered a Legal Orientation Program for Custodians of unaccompanied minors (LOPC) in collaboration with the Vera Institute and the Executive Office for Immigration Review (EOIR). We have seen and heard stories from hundreds of children fleeing abuse, violence, poverty and torture from their home countries. Once the minors are released from government shelters into the custody of the sponsors, they are faced with the daunting task of navigating a complex immigration system alone. Through our LOPC program, we provide legal information to custodians of minors in order to assist the children under their care through the legal process. Because they have very little support systems, education and financial resources available to them, often it takes months for the minors to secure legal representation, at which point some have already turned 18 years old. Unfortunately, since there is currently no statutory avenue available for 18-21 year olds through which they can go to Probate and Family Court to present their stories and obtain the requisite predicate orders, those whose only remedy is through classification as a Special Immigration Juvenile, lose the only opportunity they have to legalize their status.

Refugee and Immigration Services
275 West Broadway • South Boston, MA 02127 • Tel: 617-464-8100 • Fax: 617-464-8151 • www.ccab.org

OUR MISSION Catholic Charities is building a just and compassionate society rooted in the dignity of all people

Our Immigration Legal Services Unit has represented many children with their Special Immigrant Juvenile cases. We see how life-changing it is for our clients when they are classified as Special Immigrant Juveniles. One of my clients, a young girl from Guatemala, was only two weeks away from turning 18 when I met her. She was abused by her father and abandoned by her mother in Guatemala. She came to the United States to escape the abuse and reunited with her older brother in Lynn. We were fortunate to have a hearing scheduled before her 18th birthday and obtained special findings, in spite of this short time frame. She was recently approved for classification as a Special Immigrant Juvenile and is now on the path of becoming a lawful permanent resident. I am proud to say that today she is almost fluent in English, works part-time and is planning on continuing her education to become a lawyer.

For immigrant youth between the ages of 18-21, it is truly heartbreaking to tell them that there is currently no way for them to access the Probate and Family Court in Massachusetts, even though under federal law they would be able to qualify for classification as a Special Immigrant Juvenile until the age of 21. It is time that we fix our laws by expanding the jurisdiction of the Massachusetts Probate and Family Court to hear cases of 18-21 year olds. For all the above reasons, we kindly request that you approve Senate Bill 740 and House Bill 1418.

Sincerely,

Mariam Liberles
Supervising Attorney
Catholic Charities Archdiocese of Boston
275 West Broadway
South Boston, MA 02127
617-464-8104

Cc: Stanley C. Rosenberg
Senate President
State House, Room 332
Boston, Massachusetts 02133

Robert A. DeLeo
Speaker of the House
State House, Room 356
Boston, Massachusetts 02133

Catholic Charities
is building a just
and compassionate society
rooted in the dignity
of all people

Sen. Karen E. Spilka
Chair, Committee on Ways & Means
State House, Room 312
Boston, Massachusetts 02133

Rep. Brian S. Dempsey
Chair, Committee on Ways & Means
State House, Room 243
Boston, Massachusetts 02133

Senator Cynthia S. Creem
State House, Room 312A
Boston, Massachusetts 02133

Rep. Louis L. Kafka
State House, Room 185
Boston, Massachusetts 02133

Refugee and Immigration Services
275 West Broadway • South Boston, MA 02127 • Tel: 617-464-8100 • Fax: 617-464-8151 • www.ccab.org

CENTRAL WEST JUSTICE CENTER

An affiliate of Community Legal Aid

ELLEN VANSCOYOC
Senior Supervising Attorney
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OFFICES:
PITTSFIELD
SPRINGFIELD
WORCESTER

June 17, 2015

The Honorable William N. Brownsberger, Senate Chair
The Honorable John V. Fernandes, House Chair
Members, Joint Committee on the Judiciary
State House
Boston, Massachusetts 02133

RE: An Act Relative to Special Juveniles
Senate Bill 740 and House Bill 1418

Dear Senator Brownsberger, Representative Fernandes, and Members of the Joint Committee on the Judiciary:

I write in support of Senate Bill 740 and House Bill 1418, *An Act Relative to Special Juveniles*. The proposed legislation would remedy a gap between state and federal law, allowing abused, neglected, and abandoned immigrant youth in Massachusetts to access a crucial federal immigration protection.

I have worked as an immigration attorney at the Central West Justice Center, an affiliate of Community Legal Aid, and at Community Legal Aid's predecessor organization, the Legal Assistance Corporation of Central Massachusetts, for the past seven years. Our organization provides free civil legal aid to low-income residents of Central and Western Massachusetts. As part of our practice, we represent survivors of child abuse and domestic violence seeking humanitarian protection under federal immigration law, including young people applying for Special Immigrant Juvenile Status, a federal designation providing a path to lawful permanent residency for abused, neglected, and abandoned immigrant children.[1]

In the course of my work, I have represented many inspiring and resilient young people who, with the help of the Special Immigrant Juvenile Status law, have overcome histories of appalling abuse and neglect in their home countries to build positive, productive lives as lawful permanent residents of the United States. Many choose to pursue careers in the helping professions, giving back to their communities. After receiving her permanent residency through

[1] *See* 8 U.S.C. § 1101(a)(27)(J) and 8 U.S.C. §§ 1255(a) & (h).

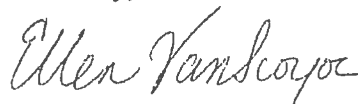
Special Immigrant Juvenile Status, one of my former clients went on to study to become a professional interpreter. While completing her studies and working, she also took a younger abandoned child into her home and cared for her. Another former client received a football scholarship to attend college in California. He is now majoring in human services, hoping to become a police officer or a social worker.

Having seen how life-changing it can be for a young person to receive permanent residency through Special Immigrant Juvenile Status, it is heartbreaking to tell a young person that she will not have this opportunity due to a gap between federal and state law. Although federal law allows young people to apply for Special Immigrant Juvenile Status until the age of 21, Massachusetts residents between the ages of 18 and 21 currently have no statutorily-established procedural mechanism through which they can present their histories to a state judge and obtain the necessary findings regarding abuse, neglect, or abandonment. Effectively, an eighteen-year-old high school senior in Massachusetts, unlike her counterpart in New York, may find herself barred from accessing federal Special Immigrant Juvenile Status protection.

For a variety of reasons, many abused and neglected young people do not seek legal advice regarding their immigration status or other protection issues until after their eighteenth birthdays. Many do not realize that they need legal assistance until they seek to apply to colleges or jobs and realize that they do not have the required documentation. Some have been misled by parents regarding their immigration status. Others, given their histories of mistreatment and betrayal by caretakers, fear reaching out to adults for help. These barriers to seeking help are often compounded by social isolation and lack of access to transportation, particularly in more rural areas.

By adopting Senate Bill 740 and House Bill 1418, the legislature would ensure that Massachusetts youth are not barred from a federal protection with lifetime consequences merely because they fail to access legal aid prior to their eighteenth birthdays. I urge the legislature to enact this humane and commonsense reform.

Sincerely,



Ellen VanScoyoc, Esq.

CHILDREN'S LAW CENTER
OF MASSACHUSETTS
298 Union Street
Lynn, MA 01901
T: 781-581-1977
F: 781-598-9364

June 22, 2015

The Honorable William N. Brownsberger, Chair
The Honorable John V. Fernandes, Chair
Joint Committee on the Judiciary
State House, Room 504 and Room 254
Boston, Massachusetts 02133

RE: An Act Relative to Special Juveniles, Senate Bill No. 740, by Senator Cynthia Creem; An Act Relative to Special Juveniles, House Bill No. 1418, by Rep. Louis L. Kafka

Dear Chairman Brownsberger, Chairman Fernandes, and Members of the Joint Committee on the Judiciary:

We are Jay McManus, Jessica Berry, and Claire Valentin, Executive Director, Deputy Director, and Staff Attorney, respectively, at the Children's Law Center of Massachusetts (CLCM), writing in support of Senate Bill 740 and House Bill 1418.

Based in Lynn, the CLCM is a non-profit that has offered free legal assistance and related services to low-income children of the Commonwealth, from newborns to 22 years, for close to four decades.

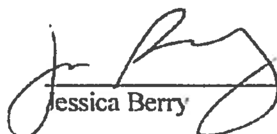
We advocate for youth between the ages of 18 and 22, many in the care of the Department of Children and Families (DCF), who are victims of abuse and neglect, have suffered severe trauma, and/or are functionally parentless. Our advocacy emphasizes *access* to all available laws and services to ensure that these children are provided the opportunity to reclaim and rebuild their lives. Among such clients are those "special juveniles" made the focus of the S740 and H1418.

We view these bills as important extensions of longstanding efforts in Massachusetts to secure full access to justice for all of its residents. There is no defensible basis for denying litigants – abused and neglected youth in particular – access to the Commonwealth's justice system. Elimination of the jurisdictional bar to such access, per S740 and H1418, would foster equal treatment among abuse victims regardless of whether or not they are in DCF custody. It would also bring the Commonwealth in line with other states and the federal government, which afford legal relief for traumatized youth through age 21, without placing undue costs or work burdens on our courts.

On behalf of the staff of the Children's Law Center of Massachusetts, we strongly urge the Committee to give its utmost consideration to SB740 and HB1418.

Thank you very much.

Jay McManus


Jessica Berry

Claire Valentin

United Way

June 23, 2015

The Honorable William N. Brownsberger, Chair
The Honorable John V. Fernandes, Chair
Joint Committee on the Judiciary
State House, Room A
Boston, Massachusetts 02133

RE: An Act Relative to Special Juveniles
Senate Bill 740 and House Bill 1418

Dear Senator Brownsberger, Representative Fernandes, and Members of the Joint Committee on the Judiciary:

I am writing to urge the Joint Committee on the Judiciary to approve Senate Bill 740 and House Bill 1418, "An Act Relative to Special Juveniles." I am Corinn Williams, Executive Director of the Community Economic Development Center of Southeastern Massachusetts located in New Bedford, MA.

The CEDC is a 501(c) (3) charitable corporation in 1997. CEDC is an established and trusted support center for New Bedford's newest immigrant community who are primarily from Central America. CEDC is an accredited organization approved by the U.S. Department of Justice/ Board of Immigration Appeals to provide immigration services and information. CEDC has assisted many New Bedford residents who have agreed to sponsor a foreign youth who has been abused, neglected or abandoned in their home countries. These young people have taken dangerous risks to come to the United States in large part because they are fleeing the wave of violence engulfing Central America. Many of these youth report death threats, extortion and sexual assault. Relatives and friends in New Bedford have opened their homes to offer safety and support to these youth as sponsors. CEDC as an organization helps the sponsor and juvenile after they are reunited, to provide immigrant integration support to direct them to educational and legal resources in our community.

We have come to know some of these youth who have become eligible for Special Immigrant Juvenile Status. This designation gives many of these youth who have been traumatized by violence the ability to continue their education, participate in community life and to pursue their dreams.

Special Immigrant Juvenile Status under federal immigration law is available to unmarried children under the age of 21. In Massachusetts family court jurisdiction that is

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required as part of the legal guardianship of the minor ends at age 18. Many young people between the ages 18-21 cannot apply for Special Immigrant Juvenile Status. Also, because low-cost legal resources are very limited in New Bedford, and the tremendous backlog at federal Immigration court, many youth have not secured legal representation prior to their 18th birthday. We have worked with many potential sponsors who cannot help their loved one because of this inconsistency in the law between federal and state. In some cases these young people have been deported back to Central America facing imminent violence and possible death.

By passing Senate Bill 740 and House Bill 1418, the legislature would be closing this justice gap for youths who have been abused, abandoned, and neglected, as other state legislatures have already done. These reforms would merely align state law with existing federal law and with Congress' intent to provide protection to youths up to the age of 21. These bills will ensure that eligible youths would be able to benefit from this important protection. I strongly urge the Committee to consider and pass these bills.

Sincerely,

Corinn Williams
Executive Director

cc:

Stanley C. Rosenberg
Senate President
State House, Room 332
Boston, Massachusetts 02133

Robert A. DeLeo
Speaker of the House
State House, Room 356
Boston, Massachusetts 02133

Senator Karen E. Spilka
Chair, Committee on Ways & Means
State House, Room 312
Boston, Massachusetts 02133

Representative Brian S. Dempsey
Chair, Committee on Ways & Means
State House, Room 243
Boston, Massachusetts 02133

Senator Cynthia S. Creem
State House, Room 312A
Boston, Massachusetts 02133

Representative Louis L. Kafka
State House, Room 185
Boston, Massachusetts 02133

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June 23, 2015

The Honorable William N. Brownsberger, Senate Chair
The Honorable John V. Fernandes, House Chair
Members, Joint Committee on the Judiciary Committee
State House, Room A-2
Boston MA 02133

Re: *An Act Relative to Special Juveniles*
Senate Bill 740 and House Bill 1418

Dear Senator Brownsberger, Representative Fernandes, and Members of the Joint Committee on the Judiciary:

Community Legal Services And Counseling Center supports the passage of S.740/H.1418, a bill that addresses the legal process needs of certain immigrant youth between 18 and 21 years of age who have been abused, abandoned or neglected by a parent.

Congress passed a law designed to help abused, neglected or abandoned children under age 21 access a path to lawful permanent residency through Special Immigrant Juvenile Status (SIJS). The federal law requires that the determination of abuse, neglect or abandonment be made by state courts. The decision whether to grant this special status, however, remains with the federal government, and the U.S. Citizenship and Immigration Service looks to the assessment of the state courts in its determinations.

The problem for 18-21 year olds in Massachusetts is that there is no regular mechanism at law to get these youth before the court. The guardianship statutes, for example, allow issues regarding children under 18 to be brought before the probate and family court, but a guardianship terminates when the child is 18.

This bill would fix this problem by expanding the jurisdiction of the Massachusetts Probate and Family Court to hear cases involving the 18-21 year olds. Both the present and former Chief Justice of the Probate and Family Court have supported this bill.

Although we are talking about a small number of cases, the impact on the lives of these children is life-changing. The bill gives the children a chance to appear in court and obtain special findings that will enable them to seek an existing federal remedy. And if they are granted SIJ status, the children would be allowed to work, they would no longer have to face the ambiguity of an uncertain status, they could move forward with their lives and learn to leave their trauma behind.

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CLSACC has represented many immigrant youth in special immigrant juvenile cases over the years. Although these children have experienced abandonment, abuse or neglect, our clients have proven themselves resilient, hardworking and determined to make a contribution to this country.

This is an important bill. We ask that you report it favorably out of Committee. Thank you.

Respectfully submitted,

Ellen Wilbur
Legal Director

JUSTICE CENTER OF SOUTHEAST MASSACHUSETTS LLC

Subsidiary of South Coastal Counties Legal Services, Inc.
Serving Southeastern Massachusetts, Cape Cod & Islands

June 22, 2015

The Honorable William N. Brownsberger, Chair
The Honorable John V. Fernandes, Chair
Joint Committee on the Judiciary
State House, Room A
Boston, Massachusetts 02133

RE: An Act Relative to Special Juveniles
Senate Bill 740 and House Bill 1418

Dear Senator Brownsberger, Representative Fernandes, and Members of the Joint Committee on the Judiciary:

My name is Emily Leung and I am a staff attorney at the Justice Center of Southeast Massachusetts, a subsidiary of South Coastal Counties Legal Services, located in Brockton, Massachusetts. I am writing to urge the Joint Committee on the Judiciary to approve Senate Bill 740 and House Bill 1418, "An Act Relative to Special Juveniles."

The Justice Center of Southeast Massachusetts and its parent organization, South Coastal Counties Legal Services, provides civil legal aid to low-income and elderly individuals in the Southeastern region of Massachusetts. As part of our practice, we offer representation to immigrants in our service area on a wide-range of issues, including working with immigrant juveniles who are eligible and applying for Special Immigrant Juvenile Status. Special Immigrant Juvenile Status is designed to protect foreign youths who were abused, neglected, or abandoned and cannot be reunited with their parent or parents.

In my practice, I work with many such youths who are often fleeing horrific violence, abuse, and negligence in their home countries. A designation of Special Immigrant Juvenile Status puts them on a path to permanent residence status and towards a successful and stable life. Many of my young clients report feeling much safer and calmer in the U.S. They also tell me how happy they are to be able to continue with or enroll in school for the first time, walk the streets without fear, and live without hunger.

Being granted Special Immigrant Juvenile Status can have a life-changing effect on a young person's life, but currently there is a justice gap that exists for those youths who are between the ages of 18 to 21. Under immigration law, a child is defined as an unmarried individual under the age of 21 and Special Immigrant Juvenile Status is intended to assist individuals up to the age of 21. However, under this process youths must obtain orders from state juvenile and family courts, which only have jurisdiction over them until they are 18 years old. Therefore, many individuals, including potential clients I have met with, cannot benefit from this life-changing process due to their age.

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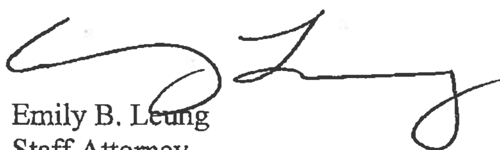
Often times, youths fail to step forward prior to their 18th birthdays, or fail to secure legal representation prior to their 18th birthdays, therefore preventing them from receiving the protection they are statutorily entitled to and deserve. A multitude of barriers exist that prevent many youths from stepping forward in time, including their lack of knowledge of immigration law, language barriers, and the effects of the trauma and abuse that they have suffered.

By passing Senate Bill 740 and House Bill 1418, the legislature would be closing this justice gap for youths who have been abused, abandoned, and neglected, as other state legislatures have already done. These reforms would merely align state law with existing federal law and with Congress' intent to provide protection to youths up to the age of 21. These bills will ensure that eligible youths would be able to benefit from this important protection. I strongly urge the Committee to consider and pass these bills.

Sincerely,



Emily B. Leung
Staff Attorney
Justice Center of Southeast Massachusetts
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cc:

Stanley C. Rosenberg
Senate President
State House, Room 332
Boston, Massachusetts 02133

Senator Karen E. Spilka
Chair, Committee on Ways & Means
State House, Room 312
Boston, Massachusetts 02133

Senator Cynthia S. Creem
State House, Room 312A
Boston, Massachusetts 02133

Robert A. DeLeo
Speaker of the House
State House, Room 356
Boston, Massachusetts 02133

Representative Brian S. Dempsey
Chair, Committee on Ways & Means
State House, Room 243
Boston, Massachusetts 02133

Representative Louis L. Kafka
State House, Room 185
Boston, Massachusetts 02133

KeySteps INC.
The English High School
144 McBride Street
Jamaica Plain, MA 02130

June 22, 2015

The Honorable William N. Brownsberger, Chair
The Honorable John V. Fernandes, Chair
Joint Committee on the Judiciary
State House, Room 136 and Room 243
Boston, MA 02133

RE: An Act Relative to Special Juveniles, Senate Bill No. 740.
An Act Relative to Special Juveniles, House Bill No. 1418.

Dear Senators and Representatives:

My name is Jenny Dunne and I am writing in support of the above-named bills presently before the Judiciary Committee.

I am a Master's level clinician employed by KeySteps Boston, a social service agency that places counselors in Boston Public High Schools to provide counseling, case management and support services. For the past eight years I have been based out of Boston International High School in Dorchester. Our school serves newly arrived immigrant youth who are learning English while working towards their high school graduation. Due to the population that Boston International serves I have become very familiar with immigrant youth and the trauma and troubles they face before, during and after emigration to the United States. I have worked with many youth who are saddled with the additional challenge of not having legal status in the United States. Often times I become aware of this issue as students begin to transition out of high school and seek opportunities to work or continue their education in a higher education institute. At this time the limitations of their legal status becomes glaringly obvious, and their hard work and sacrifices seem to have been made in vain.

Some of our students come from very difficult situations in which they have been severely neglected, abused or abandoned by their parents. For example I had one young woman whose family left her in custody of a family friend to come to the United States. While living with this "friend" she was treated as an indentured servant and was often not given appropriate nourishment or clothing. Upon running away from this situation she ended up sleeping in an area park where she was raped repeatedly. Due to these rapes she contracted Hepatitis and became pregnant. But due to her legal status she was afraid to seek assistance and waited until she was legally an adult, age 18, to disclose her troubles.

Students who might qualify for an immigration status because of their past history are frequently too afraid to disclose their situation or don't realize that telling their life story might help them. And many, like the student I worked with, do not begin to talk about their life stories until after

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they are 18 when most of their opportunities to present themselves to the Probate and Family Court are no longer an option.

The amount of students that are considered part of this population and have suffered this specific type of abuse or neglect is small. However, for the youth that this opportunity applies to the approval of this bill can be life changing. I strong support Senate bill No. 684 and House Bill No. 1414 and request that the Judiciary Committee members vote in favor of this proposed legislation.

Respectfully submitted,

___Jenny G. Dunne___________________

Jenny Dunne, M.Ed.

KeySteps Boston
Boston International High School
100 Maxwell Street
Dorchester, MA 02124
617-265-7417
jdunne@keystepsboston.org

June 24, 2015

Re: SB 740 and HB 1418

Dear Sir or Madam:

I am President of Kids In Need of Defense (KIND), a national organization that provides pro bono representation for unaccompanied children who have fled to the U.S. for protection from violence and other grave harm, including abuse, abandonment, and neglect. KIND's office in Boston represents children in the Commonwealth as well as other New England states. I write on behalf of our organization in support of Senate Bill 740 and House Bill 1418, which will provide a pathway for the 18- to 20-year-old children referred to us who have been abused, abandoned, or neglected by their parents to seek protection through Special Immigrant Juvenile Status (SIJS) to which they are otherwise entitled under federal law.

Federal law allows unaccompanied children to apply for SIJS until their 21st birthday, but Massachusetts state law poses barriers to young people ages 18-20 from obtaining the predicate order from the Massachusetts Probate and Family Court necessary to apply for SIJS. These young people need and are eligible for the protection of SIJS and rely upon the adults in their lives for support. They are in every way identical to their slightly younger peers except for, due to the legal technicality of their age, they do not require a custody adjudication. This technicality under state law is the barrier to their finding stability through SIJS.

It is common for KIND Boston to receive referrals from high school guidance counselors for children in the 18-to-20 age range. Because children are often afraid to talk about their undocumented status, the issue may not be raised until that child is applying to college and needs financial aid or other benefits to which his or her undocumented status is a barrier. KIND has at least two 18-20-year old clients in this situation, one who just graduated from East Boston High School and another who just graduated from the Cambridge Rindge & Latin School. These are exactly the type of students the Commonwealth wants to keep in its community, and yet these youths' lives are on hold while they wait to see if they can change their immigration status to one that will allow them to access higher education despite being indigent.

These two graduates are examples of a larger community of aspiring teens that need the protection of the Commonwealth. Many are bright and eager students who do not take the gift of education for granted. They are pursuing their education to become contributing members of society, yet struggling to find stability in the face of impending deportation. Just like their schoolmates, they remain dependent on the adults in their lives for protection and support. The abuse, abandonment, and neglect which has led them to seek safety in the Commonwealth and the protection they have found here make them eligible for SIJS if not for the particular barrier they face in the Probate and Family Court.

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www.supportkind.org

The determination of these two students and of many more of their peers have allowed them to overcome serious violence and neglect in their countries of origin. That determination will also allow them to succeed in their futures if the Probate and Family Court is given the tools provided by SB 740 and HB 1418 to grant the order necessary for the children to seek protection and stabilize their future. For these reasons, we ask you to support these bills and the children of the Commonwealth that will benefit from them.

Sincerely,

Wendy Young
President

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June 24, 2015

Senator Brownsberger
Senate Chair, Joint Committee on the Judiciary
State House Room 413C
Boston MA 02133

Representative Fernandes
House Chair, Joint Committee on the Judiciary
State House Room 136
Boston MA 02133

MIRA Coalition Testimony in Support of S.740 and H.1418, "An Act relative to special juveniles," Sponsored by Senator Creem and Representative Kafka

Honorable Chairs and Members of the Joint Committee on the Judiciary,

Thank you for the opportunity to submit testimony on this important matter. On behalf of the MIRA Coalition, we respectfully submit testimony in support of S.740 and H.1418, "An act relative to special juveniles" (hereafter "the Special Juvenile Bill"), sponsored by Senator Creem and Representative Kafka.

The Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA) is the largest organization in New England advocating for the rights, opportunities and integration of immigrants and refugees in Massachusetts and nationwide. MIRA involves an active membership of approximately 140 organizations in Massachusetts and New England, including community-based organizations, social service organizations, ethnic associations, schools, refugee resettlement agencies, health centers and hospitals, faith-based institutions, unions and law firms, as well as thousands of individual members, contributors and allies.

MIRA strongly supports the Special Juvenile Bill because it would correct a procedural obstacle which has prevented survivors of parental abandonment, abuse and neglect from applying for an immigration status the federal government has long intended they receive. In the face of seemingly intractable Congressional differences over immigration reform, one commonsense and uncontroversial point of widespread agreement is that persons for whom Congress has specifically provided a pathway to status should be permitted and encouraged to apply for that status, rather than to remain or become undocumented and live in the shadows.

To make clear why the Special Juvenile Bill is needed, it is necessary to explain an immigration status known as "Special Immigrant Juvenile" (hereafter "SIJ") Status. In 1990, Congress created the SIJ classification in order to provide a path to "lawful permanent resident" status (often informally called "green card" status) for abandoned, abused and neglected youth for whom reunification with one or both parents was not viable.[1] Pursuant to federal law, youth must first obtain an assessment from a state family court of her history of abandonment, abuse or neglect by one or both parent(s) before she may apply to the federal government for SIJ classification. U.S. Citizenship and Immigration Services (hereafter "USCIS"), the federal agency charged with adjudicating applications for immigration status, relies on state courts' assessments and subsequently determines whether a youth qualifies for SIJ Status. USCIS cannot adjudicate an application for SIJ Status in the

[1] 8 U.S.C. 1101(a)(27)(J) and 1255(h).

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absence of a predicate state court assessment of abuse. Under federal immigration law, SIJ classification is available to qualifying immigrant youth under the age of 21.

In Massachusetts, many youth ages 18-20 are prevented from accessing the Probate and Family Court to seek an assessment of their histories of abandonment, abuse or neglect because a child typically must be under 18 to fall under Probate and Family Court jurisdiction. This jurisdictional limit was not meant to keep the SIJ application process out of reach for youth ages 18 – 20, yet that has been its unintended consequence. Effectively, aside from youth in DCF custody, there is a gap in protection for youth ages 18 – 20 who have survived abuse, neglect or abandonment and who would be able to apply to the federal government for SIJ Status but for the absence of predicate court findings. The Special Juvenile Bill would close this protection gap by raising the Probate and Family Court jurisdictional cut-off to age 21 *solely in cases where these predicate assessments are sought*, thereby aligning state jurisdiction with the federal age limit to apply for SIJ Status.

Through our member organizations, MIRA has learned of several occasions where youths with histories of abuse learned of the existence of SIJ Status too late to access Probate and Family Court and were tragically unable to apply. Unfortunately, many children are not identified as victims of abandonment, abuse or neglect until near the time of high school graduation, often by a social worker, medical professional or trusted high school guidance counselor. Youth who learn of their potential eligibility too late are frequently left undocumented and unable to qualify for needed services or to afford a higher education due to a lack of immigration status.

As you know, living with a history of abuse or abandonment is difficult even for citizens. Childhood trauma can pervade many aspects of an individual's life. The harmful effects of abuse are compounded when combined with a lack of immigration status which leaves one categorically ineligible for many benefits and services as well as highly anxious and reluctant to seek any help that may be available. Thus, application for SIJ Status is, for those who qualify, often the first step in a life-long process of healing from abuse.

Were the Special Juvenile Bill enacted, adjudication of eligibility for SIJ Status would continue to remain the sole responsibility of the federal government. The Probate and Family Court does not have, and would not gain, the ability to determine any person's eligibility for an immigration benefit. Instead, the Probate and Family Courts' limited role in the SIJ adjudication process would remain as under current law: to assess a youth's history of abuse and determine whether reunification with one or both parents were viable.

Based on estimates from USCIS data, we believe the youth who would seek Probate and Family Court assessments as a result of the technical correction provided by the Special Juvenile Bill would number only approximately 40 per year and would therefore not burden the Courts. While 40 is a small number of persons, the impact on those individuals' lives cannot be overstated. SIJ Status means the difference between life as an undocumented person perpetually living in the shadows and vulnerable to severe exploitation and life as a documented, work authorized resident on a pathway to recovery and citizenship. Accordingly, while the effect this Bill would have on the Probate and Family Courts would be nominal, its effect on a few dozen youth per year would be life-changing.

As the federal Congress continues to stall immigration reform, a needless hurdle to application for a status that *already exists* is indefensible. No one for whom Congress has already created a path to citizenship should live her life undocumented. SIJ classification is a long-standing and uncontroversial federal immigration remedy. Closing Massachusetts's jurisdictional gap for the limited purpose of allowing abuse survivors to access our state courts would ensure that individuals who already qualify for SIJ Status are simply able to demonstrate that eligibility – and to begin to heal.

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For all of the above reasons, MIRA strongly recommends a swift favorable report for the Special Juvenile Bill. Should you have any questions about our testimony, please contact our State Policy Director, Shannon Erwin, at serwin@miracoalition.org or (617)350-5480 ext. 222.

Thank you for considering our testimony.

Respectfully submitted,

Eva Millona
Executive Director

Shannon Erwin
State Policy Director

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TESTIMONY IN SUPPORT OF SENATE BILL 740 & HOUSE BILL 1418 RELATING TO SPECIAL JUVENILE SURVIVORS

Iris Gomez, Esq. and Susan Elsen, Esq.
Massachusetts Law Reform Institute

June 22, 2015

This long-awaited legislation would, if enacted, remove a legal impediment to the ability of a small number of abused, abandoned, and neglected immigrant youth to equitably access state court judicial remedies, in order to permanently regularize their legal status and secure the social and economic opportunities they need and deserve.

Federal law provides a process by which abused, abandoned and neglected youth under the age of 21 may obtain permanent legal status in the United States. However, Massachusetts law does not provide a mechanism for some 18-21 year olds to avail themselves of their right to seek this protection. This bill would provide the needed mechanism. Current Massachusetts statutory law restricts state probate and family court jurisdiction over abused, abandoned, and neglected 18-21 year olds to those who have become involved with the Massachusetts Department of Children and Families and voluntarily accede to ongoing state custody.[1]

S.740/H.1418 corrects this jurisdictional flaw – deterring unnecessary recourse by young immigrant survivors to the already overburdened Department of Children and Families in situations where there are appropriate alternatives, while restoring a measure of equity to the state court system overall. Enactment of this legislation would, importantly, also open a pathway for these survivors to obtain state judicial findings that are a prerequisite for seeking permanent legal status under a Special Immigrant Juvenile law Congress specifically enacted for their benefit.[2] Under the special federal juvenile law, before an abused, abandoned, or neglected child under the age of 21 may apply for permanent immigration status, a state court must have first determined that there was abuse, abandonment, or neglect, among other findings. No federal agency has comparable legal authority to enter the required findings. Consequently, access to the traditional state court forum for such matters is a preliminary threshold that these young immigrant survivors must cross in order to permanently stabilize their legal status in the United States. Over 20 states currently provide some mechanism for continuing or initiating state court jurisdiction after age 18, and several specifically provide a mechanism for doing so until age 21.[3]

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[1] *See generally, M.G.L.* Ch. 119, §39 *et. seq.*
[2] 8 U.S.C. 1102(a)(27)(J) and 1255(h).
[3] *See, for example,* N.Y. Fam. Ct. Act § 661(a).

Permanent residence (popularly known as a "green card"), brings multiple social benefits that support strategic policy choices like this one that would remove an artificial legal barrier unnecessarily obstructing access to such status. Stabilizing an abuse victim's permanent legal status has been shown to improve recovery from trauma and abuse and facilitates the permanency planning that youth especially need to develop healthy and productive lives.[4] Regularizing status, moreover, demonstrably increases wage-earning potential[5] and improves health[6], thereby contributing to the prevention and reduction of poverty, which is especially significant among children from immigrant families.[7]

Over the long run, these socioeconomic benefits inure not only to the young immigrant survivors whose lives are improved, but also to the communities in which they are allowed to grow and prosper and, consequently, to the socioeconomic stability and prosperity of the Commonwealth overall.

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[4] *See, generally*, *Child Welfare for the Twenty-first Century: A Handbook of Practices, Polices and Programs*, edited by Gerald P. Mallon and Peg McCartt Hess (Columbia University Press 2005).

[5] *See* Congressional Budget Office, *Cost Estimate Report on S. 744 Border Security, Economic Opportunity, and Immigration Modernization Act* (June 18, 2013), *available at:* https://cbo.gov/publication/44225.

[6] *See* Oropesa, R.S., Nancy S. Landale, Marianne M. Hillemeier, Family legal status and health: Measurement dilemmas in studies of Mexican-origin children, *Social Science & Medicine* 138 (2015) 57-67.

[7] *See* Migration Policy Institute, *Frequently Requested Statistics, available at:* http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states/ (showing that approximately a third of children from immigrant families live in poverty.)

June 22, 2015

Dear Sir or Madam,

I am an ESL teacher at Phoenix Charter Academy (PCA) in Chelsea, Massachusetts. I am writing this letter in support of HB 1418 and SB 740, in order to assist older youth, 18-20, who were abused, neglected, or abandoned.

In working at PCA, I have worked with numerous 18-20 year old immigrant students who fit into the categories of being abused, neglected, or abandoned. These students are deeply invested in their education and academic success, but their academic achievement is harmed by the lack of access to resources needed to balance work, school, and other life obligations, or to attend college.

Many of these students came to the U.S. to escape extreme violence in their home countries. While in the U.S., many students are abandoned by family and forced to care for themselves. Some find themselves homeless, and without assistive resources. One of my students stated that his family abandoned him, forcing him to work in order to obtain the funds to care for himself, which prevented him from high achievement in school. In other cases, my students are subject to neglect or abuse. They are afraid to seek assistance for fear that it may impact their immigration status. For instance, one student was the victim of domestic abuse. For many months, she had nowhere to go, and, as a result, remained in the unsafe environment with her abuser. She, like many other students, was afraid to seek assistance or take legal action for fear that her legal status would be a barrier, or, that in turn, she would face legal action due to her status. I believe that HB 1418 and SB 740 would give young people in similar situations access to necessary resources.

These bills would encourage talented, intelligent, and dedicated students to attend college. These students are often the most hardworking and driven students in our school. These students make honor roll and win a high number of academic awards. They are the students that teachers refer to as leaders in their classrooms. However, many of these gifted and motivated students become disillusioned with school when they realize that there are barriers that will prevent them from attending college. If these students could obtain Special Immigrant Juvenile Status, they would be able to attend college and positively contribute to society.

I strongly support HB 1418 and SB 740. Many18-20 year-old students in Massachusetts would benefit from the bill and, as a result, positively contribute to the Commonwealth.

Sincerely,

/s/ Rachel Weislow

Rachel Weislow, J.D.
ESL Teacher
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Date: June 18, 2015

I, Anne Herzberg Eden, write to offer testimony in support of Massachusetts Senate Bill 740; House Bill 1418, *An Act Relative to Special Juveniles.*

As a school counselor who works exclusively with English Language Learners at Somerville High School, I have extensive experience working with immigrant youth as well as their families and guardians. Prior to my work at Somerville High School, I worked in Tucson, Arizona at a high school and with adjudicated youth in a diversion program as well as with children in Department of Children and Families (DCF) custody at the Walker Home and School in Needham, MA. Although school counselors do not usually have a deep understanding of the various immigration issues, the specific makeup of my caseload has required that I do my research when it comes to options open to students in various situations and be able to connect them to the appropriate resources in the community whenever necessary.

For each of the past eight years, I have been working with approximately 250 high school students in Somerville who, coming from over 25 different countries, all are in various stages of learning English and are all working towards a high school diploma. As a district employee, I help students with academic, personal/social, and post-secondary planning needs, all without asking them about their particular immigration story. Each year, more and more students would open up to me about their particular stories and how they were shaped – both for good and bad – by their pasts. Once students realized that my office (set within the Welcome Center of Somerville High School) was not only a welcoming place but a safe place to talk about immigration status and to ask questions about things that they could not ask their government or Career Technology Education teachers, my office became not only a place where my students came to ask questions, but where they brought their friends and friends' friends to ask questions.

What has become most evident to me in my work with immigrant students is that although they trust me with their questions, I cannot possibly have the expertise to answer all of them accurately – nor should that really be the job of a high school counselor. Reaching out into the community, I found organizations like GBLS, CLA, SIM, MIRA, IIIC and others that could help me help my students connect with those knowledgeable enough to answer their specific questions. Like in many situations in life, I had not realized what I had not known and it had probably prevented some of my students from obtaining the legal aid that they needed. Even now that I do know more about many of types of relief available for students in certain situations, I still struggle to connect many deserving students with legal representation before the deadlines that they have to meet.

Many of my students at Somerville High School are older than traditional high school students because of the years of schooling lost either to moving or due to situations relating to political unrest, family tragedy, poverty, as well as a host of other issues common to migrant youth. Many students do not even register for school upon coming to the US because they do not learn right away that they are eligible to do so.

Often, I see students who have been living or working here for one or two years before someone they meet asks them why they are not attending school. Once registered, these students are often quite behind but also more motivated to succeed than younger students. They are often on their own and have lived through trying situations. By the time I come to hear about the situations that might allow them legal relief, they are too old to apply for it.

Another reason that many of my students who would qualify for relief through the SIJ option are not able to receive it is that they do not find legal representation before they turn 18. Many are scared of letting the school know that they have been abandoned or mistreated for fear that the school will have to turn them in to the authorities and many have told me that they have feared deportation. Once they are 18, they may feel that they can be here alone as adults and so they come forward to let someone at our school know about their situations. Other students do reach out before the age of 18 to try to consult with a lawyer but because of the lack of resources available for free, they often cannot afford to have a consultation or they call repeatedly to one of the immigration attorneys in the area that specialize in working with youth in the area only to realize that their calls are not returned in time.

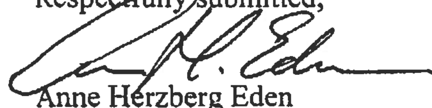
What I and many professionals who work with immigrant youth are left with is the knowledge that we often cannot help students find their way to an attorney and in front of a judge before the age of 18 and that because we live in Massachusetts and not one of the states that allows SIJ cases through the age of 21, our equally hard-working and deserving students are out of luck. I would like nothing more than for my students who have survived difficult journeys, dangerous situations, abusive or neglectful environments, and who are not able to plead their case by the age of 18 to have the same opportunities as those in other states that are able to apply through the age of 21. Although these students are seen as adults in many parts of their lives, they attend our public schools, have often lost much of their childhoods, and need our support if they are to be successful and productive members of our communities.

Despite their many struggles, my students wake up day after day with the hope that they still have a chance to succeed and they inspire me daily with their courage and perseverance. I am quite certain that allowing young adults who qualify for SIJ status to apply through their 21st year will give more deserving students an opportunity to come forward and to tell their stories for the opportunity for a path for a future here in this country. It will allow educators and mental health professionals such as me to have more time to get students the legal representation that they need and to do so in a safe and supportive way – without overly restrictive time pressure. It will allow students living with aunts/uncles, older brothers/sisters, grandparents, family friends, and distant relatives an opportunity to turn their painful pasts into hope for the future.

I strongly support Massachusetts Senate Bill 740; House Bill 1418. Approval of these bills would allow a previously overlooked/ineligible group of young adults a path towards a bright future in our country and full participation in our community and society.

I would have liked to testify in person, but I cannot attend due to previously-scheduled professional obligations. Nonetheless, I am pleased to submit this written testimony in support of this important proposed change in the law.

Respectfully submitted,



Anne Herzberg Eden

Testimony in Support of Senate Bill 740 and House Bill 1418
An Act Relative to Special Juveniles
June 24, 2015

Dear Honorable Members of the Joint Committee on the Judiciary:

I urge you to support An Act Relative to Special Juveniles, a small change with a big impact. If passed, these bills will drastically change the trajectory of the lives of one of our most vulnerable populations – victims of child abuse. They will provide hope in hopeless situations. Specifically, this important and long awaited legislation simply allows youths under the age of 21 to access our state Probate and Family courts to obtain certain court orders regarding child abuse. With these orders in hand, youths who were abused, abandoned or neglected by those who were entrusted with their care can apply for a permanent residency in the United States. Once at the mercy of their perpetrators, these survivors can now gain control of their lives, their future. Small change, big impact.

Presently, this access to our state court and these findings is limited to youths under 18 years old and to youths, who have an opportunity to voluntarily place themselves back into state care. However, there are a minority of youths, who were similarly abused but went undetected by our child welfare system and who meet all the criteria for these court orders and immigration status. Yet, there is no state mechanism in place for them to obtain these orders necessary for the immigration benefits application. In essence, the state is blocking these youths from an important life changing federal benefit. It is time to remove this blockade and give these youths an opportunity for a better life.

Since 1990, the federal government has recognized that abused, neglected, or abandoned youths need and deserve special protection. As such, they created the Special Immigrant Juvenile Status (SIJS), an immigration status that leads to a "green card" and potentially citizenship. Supported by both sides of the political aisle, SIJS laws have expanded over the years to ensure that youths under twenty-one years of age can access this benefit. In fact, the last amendment to the legislation unanimously passed through Congress and was one of the last pieces of legislation signed into law by George W. Bush before he left office. Federal officials support SIJS because they understand the ramifications of allowing victims of child abuse to remain in the shadows without hope of improving their circumstances. Victims of abuse without an immigration status too often succumb to exploitation or further victimization while in the United States. With SIJS, these youths can pursue their dreams of going to college, living independently, and being in control of their own destinies.

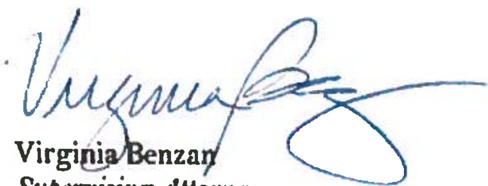
These bills are consistent with the spirit and intent of federal immigration law to protect victims of child abuse, abandonment and neglect. Drafted with the office of Chief Justice Paula Carey during her appointment as Chief Justice of the Probate and Family Court, these bills offer a small technical change to the law. To make these SIJS orders, Probate and Family Court judges as skilled fact-checkers and experts in identifying child abuse and neglect, will undergo the same type of analysis and considerations as it would in any other case of an

abused, neglected, or abandoned child. These bills do not require them to do more than what they already do except their findings must be explicit and in writing. The federal government relies on their expertise in the "best of the interest of the child" matters. Although the federal government gives great deference to state courts on its findings of facts, immigration officials independently investigate, review, and adjudicate a SIJS petition and subsequent "green card" application. In fiscal year 2014 (October 1, 2013 – September 30, 2014), US Citizenship and Immigration Services approved less than 5000 SIJS application nationwide. Furthermore, each year, the federal government caps the number of SIJS visas it will issue. The visa category, which also includes four other immigration statuses, is limited to 9,800 visas nationwide per fiscal year. Though mundane and innocuous, these bills provide an invaluable opportunity for a discreet segment of the population and fulfill the goal of the federal law to protect victims of child abuse.

Though SIJS is available for victims of child abuse until they turn twenty-one (21) years old, Massachusetts limits, for the most part, those who can apply for SIJS to victims of child abuse 18 years old and younger. It is simply unjust. Many youths do not know their immigration status or do not attempt to address their immigration needs until they want to apply for college, employment or a driver's license. These desires usually surface around their 18th birthday. If they meet all of the SIJS criteria but did not obtain the court orders before their 18th birthday, they are foreclosed from even applying for SIJS despite the availability on the federal level to their 21st birthday. As you can imagine, this unnecessarily creates frustration and a sense of defeat. Instead of pursuing and receiving the benefits of higher education and authorized employment, these victims of abuse often slip back into the shadows of the undocumented becoming more vulnerable to exploitation and further abuse.

As an immigration attorney for the past ten years and now director of the Immigration Clinic at Suffolk University Law School, I cannot express the anguish an attorney feels turning away a young person with so much promise because of state bureaucracy. I respectfully urge the Commonwealth to make this small change to the law to protect and assist all victims of child abuse and allow them an opportunity to turn their trauma into triumph.

Sincerely,



Virginia Benzan
Supervising Attorney
Immigration Clinic
Suffolk University Law School
My testimony does not represent the views of Suffolk University

HELPING SURVIVORS OF CHILD ABUSE REBUILD THEIR LIVES

June 2015

Dear Honorable Senators and Representatives,

RE: Support for S. 740 and H. 1418, an Act Relative to Special Juveniles

We, the undersigned organizations, urge you to support an Act Relative to Special Juveniles, sponsored by Senator Cynthia Creem and Representative Louis Kafka. We represent a broad cross-section of religious, immigration, asylum/refugee, human rights, civil liberties, child welfare, youth and community groups from across the state. This bill would implement a critically needed change in state court access for youths who have suffered from abuse, neglect or abandonment.

Federal immigration law provides immigrant youths who have been abused, neglected, or abandoned with an opportunity to become lawful permanent residents ("green card holders") through classification as a "Special Immigrant Juvenile." To qualify as a special immigrant juvenile ("SIJ"), an immigrant must provide the federal government with a number of required documents to establish eligibility, including specific state court orders and findings regarding the abuse and the best interest of the youth. Federal law permits classification as a special immigrant juvenile up until age 21.

Despite the availability under federal law of SIJ status until a youth's 21st birthday, state law currently bars certain youths aged 18 – 21 from obtaining the predicate state court orders necessary to apply for SIJ status. This bill simply creates a path to state court for these youths, thereby giving them a means to apply for the status for which the federal government deems them deserving, and a chance to build viable and productive lives.

Every month, Massachusetts legal service providers must turn away or undertake complicated legal cases for youths, who might have been able to apply for SIJ status had they found legal assistance before they reached their 18th birthday. But, having been brought to the U.S. against their will, or having fled abuse or abandonment on their own, many of these youths are often unable to find legal assistance in time. Now, they feel victimized not only by the abuse, abandonment or neglect but by the circumstances that lost them their one chance at legal status - and left them consigned to the shadows of society and the continued threat of exploitation.

Massachusetts should do the right thing to ensure that every youth eligible for SIJ can apply. Though the numbers of youths who would be impacted by this bill are modest, their stories are deeply compelling and demonstrate that they deserve this commonsense reform. An Act Relative to Special Juveniles will guarantee that every youth who has suffered from abuse, abandonment, or neglect will have an opportunity to rebuild his or her life as a full participant of our society.

We urge you to support this legislation to improve access to state court and preserve the liberty and safety of some of our most vulnerable youths.

Sincerely,

Supporters of An Act Relative to Special Juveniles

American Civil Liberties Union of Massachusetts

Ascentria Care Alliance

Elizabeth Badger
Kids in Need of Defense (KIND)

Jetta Bernier, Executive Director
Massachusetts Citizens for Children

Berkshire Immigrant Center

Boston University School of Law Asylum and Human Rights Clinic

Gabriel Camacho
Project Voice Regional Director
American Friends Service Committee

Casa Myrna Vazquez, Inc.

Catholic Charities Archdiocese of Boston

Catholic Social Services of Fall River

Central West Justice Center

Centro Presente

Chelsea Collaborative

Children's Law Center of Massachusetts

Community Legal Services and Counseling Center

Greater Boston Legal Services

Judith E. Diamond, Clinical Associate Professor of Law.

Stephanie E. Goldenhersh, Clinical Instructor, Harvard Legal Aid Bureau *for identification purposes only*

Harvard Legal Aid Bureau

Anne Herzberg Eden, Guidance Counselor Somerville High School *for identification purposes only*

Mary Holper, Associate Clinical Professor, Boston College Law School, *for identification purposes only*

Jobs with Justice

Justice at Work

Justice Center of Southeast Massachusetts, LLC

Kids In Need of Defense (KIND)

Elsa Martinez
Assistant Director, Eastern Massachusetts
uAspire (formerly ACCESS)

Massachusetts Association of Hispanic Attorneys

Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)

Massachusetts Law Reform Institute

MataHari Women's Worker Center

Samantha Morton, Executive Director
On behalf of Medical-Legal Partnership Boston, Boston Medical Center

MetroWest Legal Services

National Immigration Project of the National Lawyers Guild

Office of New Bostonians, City of Boston

Political Asylum/ Immigration Representation Project (PAIR)

Jane Rocamora, Attorney
Harvard Immigration and Refugee Clinic of Greater Boston Legal Services *for identification purposes only*

Rita Resende, Esq., Clinical Law Fellow
Immigration Law Clinic; University of MA School of Law - Dartmouth *for identification purposes only*

Spanish American Center (Leominster)

Irene Scharf, Professor
University of Massachusetts School of Law *for identification purposes only*

8 Wellington Court, #2
Dorchester, Massachusetts 02121
June 24, 2015

The Honorable William N. Brownsberger, Senate Chair
The Honorable John H. Fernandes, House Chair
Members, Joint Committee on the Judiciary Committee
State House, Room A-2
Boston, Massachusetts 02133

RE: *An Act Relative to Special Juveniles*
Senate Bill 740 and House Bill 1418

Dear Senator Brownsberger, Representative Fernandes, and Members of the Joint Committee on the Judiciary:

My name is Franklin Santiago. I am writing this letter to request that you approve *An Act Relative to Special Juveniles* in Massachusetts. I benefitted from the Special Immigrant Juvenile provision of the federal immigration law and have been a legal permanent resident in the United States for about two years. That has totally changed my life and given me a future.

I was born in the Dominican Republic. When I was young I lived with my siblings and both of my parents. My father left our family when I was about five years old to live in the United States. After he left he was in touch with us occasionally by phone. My mother took care of my siblings and me.

When I was about nine years old, my mother told me that my father wanted me to come to the United States to live with him. We spoke and he confirmed that he wanted me to come here to be with him. I was thrilled to be able to receive his invitation and arrived on May 8, 2005.

After I arrived in Boston I lived with my father and his new partner. Unfortunately, about a year after I arrived my father decided to return to the Dominican Republic, leaving me at age eleven, with a family friend here in the United States. He stayed in touch with me for about a year and a half after he left, but then he stopped calling or sending any money for my support. I feel that he abandoned me twice, once when I was five and again when I was eleven, even after he invited me to come be with him. I don't know where he is now and have not spoken to or heard from him in over three years. He has dropped out of my life. I am in touch with my mother but she has been unable to help me or provide me with any type of financial support.

The person with whom my father left me took very good care of me. I think of her as my mother. She has two children and I think of them as my brother and sister. Together we are a family.

Several years ago through a friend I came to know a social worker who talked with me once in a while. Shortly before my 18th birthday I got brave enough to mention to her my problem of not having a legal status in the United States. She recommended that I get legal help. It was not until then that I learned that there might be a way to resolve my situation and get a legal status in the United States.

I was very lucky and was able to go to the Probate and Family Court just before my 18th birthday. Our family friend who has been raising me officially became my legal guardian. The judge agreed that my father abandoned me and that it is in my best interest to stay in the United States. The judge's decision allowed me the chance to apply for classification as a Special Immigrant Juvenile and for permanent residence in the United States. My applications were approved in 2013.

In the summer of 2013, with my new green card, I was able to get a job right away. I worked for the NAACP in a summer jobs program and then I had a part-time job at Walgreen's. Now I work thirty-two hours per week in housekeeping at Faneuil Hall. I am happy to be able to take care of some of what I need myself.

I graduated in 2014 from Charlestown High School and am now a student at Bunker Hill Community College. I love it. My dream is to become a marine biologist and that is what I am studying at Bunker Hill. I am very concerned about what is happening with the ocean and the dead zones caused by chemicals in the water. I hope one day to have my own business to address this and other pressing environmental issues.

If I had not met the social worker who advised me to get legal help, I never would have had the chance to even try to get legal permanent resident status in the United States. As it was, we had to work quickly to get to Court before I turned eighteen. Having a green card has changed my life and has opened the door for my future. I know other young adults like me who also might qualify for a green card the way I did. They just weren't so lucky to get help before they turned 18.

I hope the Judiciary Committee will vote in favor of Sen. Bill 740 and House Bill 1418 so that other 18 – 21 year olds who might qualify for permanent residents as "special juveniles" will have the opportunity to go to Probate and Family Court, explain their situation to a judge, and have a chance for a real future, too. I feel like the United States is my home and I know they do as well.

Thank you for your consideration.

/s/ Franklin Santiago
Franklin Santiago