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March 8, 2022

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

The Honorable Kamala Harris
Vice President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
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The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
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Ms. Ur Mendoza Jaddou
Director
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, Maryland 20588

Dear President Biden, Vice President Harris, Secretary Mayorkas, and Director Jaddou,

Several abused, neglected, and abandoned immigrant youth with pending petitions for Special Immigrant Juvenile (SIJ) Status visas and non-profit legal services organizations have filed a class action lawsuit in federal court in Los Angeles (*Casa Libre v. Mayorkas*) against your administration seeking work permits for all SIJ petitioners with approvable cases. Virtually every filed case is in fact approvable because before they can file a SIJ visa petition, these juveniles must obtain state court orders confirming they have in fact been abused, neglected, or abandoned. Without work permits these immigrant youth are forced to work for unscrupulous employers uniformly violating federal employer sanctions and labor laws, and often go cold, hungry and homeless for several years while their visa petitions are pending.

We are aware that on Monday, March 7, USCIS issued a new Policy Alert that revised the guidelines for SIJ petitioners seeking work permits. Under the new guidelines, USCIS will on a "case-by-case basis" determine whether applicants with approved SIJ visa petitions "warrant[] a favorable exercise of discretion," and if so, will only then allow them to apply for work permits.

This is a small step in the right direction. However, in the lawsuit filed on March 7, the plaintiffs request (1) that SIJ visas applications be decided within six months as required by federal law, an issue not addressed in USCIS's new Policy Alert, and (2) that work permits be issued promptly to all approvable SIJ applicants, not on a "case-by-case" basis, in USCIS's "discretion," only for those with already approved petitions.

It is unclear how long USCIS will take to decide "whether the noncitizen with [approved] SIJ classification warrant[] a favorable exercise of discretion." If this takes about a year, SIJ applicants may still face a two to three year wait to get work permits. It often takes USCIS about a year to adjudicate SIJ applications. It may take several months longer to assess whether the applicant "warrants a favorable exercise of discretion," and another year or longer to adjudicate a work permit application. SIJ applicants may therefore wait for two to three years to obtain work permits. The recently filed lawsuit seeks prompt work permits for all SIJ applicants with approvable petitions, not just those with "approved" petitions.

The Immigration Act of 1990 notably created a humanitarian immigrant classification known as Special Immigrant Juvenile Status.¹ Most of these youth experienced abuse, neglect, or abandonment in their home countries, and many entered the US as unaccompanied minors. Clear-eyed about this vulnerable population's acute need for stability and permanent sanctuary, Congress granted these children and youth a straightforward path to legalization of status.

Unlike with SIJ applicants, USCIS allows a host of other visa category applicants to apply for or obtain employment authorization when or shortly after submitting their visa applications.²

We urge the administration to promptly meet with the plaintiffs and their legal representatives to address settling the legal claims in a way that is operationally feasible, humane, and efficient. Doing so would be fully consistent with Congress's desire to protect these victims of trauma and relieve them of the extreme and unusual hardships they face trying to survive for years without work permits while their visa petitions are pending.

Please direct your response to plaintiffs' counsel Peter Schey at pschey@centerforhumanrights.org. Thank you for your consideration.

Respectfully,

¹ See The Immigration Act of 1990, P.L. 101-649, §153(a)(3) at 28; 8 U.S.C. 1101(a)(27)(J).

² See, e.g., 8 CFR § 214.11(e) (T visa work permits); Memorandum from Stuart Anderson, Executive Associate Commissioner, Office of Policy and Planning, INS, *Deferred Action for Aliens with Bona Fide Applications for T Nonimmigrant Status* (May 8, 2002) (T visa work permits); USCIS, Policy Alert (June 14, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf> (U visa work permits).

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March 8, 2022

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SIJ EAD Letter to Biden administration
March 8, 2022

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ccs: Ron Klain, White House Chief of Staff
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U.S. Citizenship
and Immigration
Services

July 12, 2022

Peter Schey, Esq.
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Dear Mr. Schey:

Thank you for your March 8, 2022 letter to the Department of Homeland Security (DHS). Secretary Mayorkas asked that I respond on his behalf.

As you noted, Congress created the Special Immigrant Juvenile (SIJ) classification to provide humanitarian protection to vulnerable noncitizen youth who were determined by state juvenile courts to have been abused, abandoned, or neglected by one or both parents, and for whom it would not be in their best interest to return to their or their parents' country of nationality or last habitual residence. You further note that these youth have an acute need for stability. For these and other reasons, U.S. Citizenship and Immigration Services (USCIS) issued the deferred action policy allowing for SIJ-classified youth to be considered for deferred action and related employment authorization while they await visa availability. Deferred action and employment authorization provide invaluable assistance to these vulnerable noncitizens who have limited financial and other support systems in the United States while they await an available visa number. USCIS is also committed to ensuring that petitions for SIJ classification and related applications for adjustment of status are timely processed.

With respect to your inquiry regarding *Casa Libre v. Mayorkas*, a case that you have brought against DHS regarding employment authorization and processing times for Special Immigrant Juvenile petitioners, we must refer you to our counsel of record at the U.S. Department of Justice. DHS is unable to comment on active litigation.

Please share this response with the other organizations that cosigned your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal flourish.

Ur M. Jaddou
Director