

American Immigration Lawyers Association  
Teleconference on Special Immigrant Juvenile Status  
December 1, 2005

5 **AILA has hosted a series of free teleconferences to support the pro bono work of attorneys who volunteer with the National Center for Refugee and Immigrant Children. This transcript is of the December 1, 2005 teleconference on Special Immigrant Juvenile Status. The transcript has been edited for style and length.**

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**Operator [OP]:** Please stand by we're about to begin.

Good day everyone; welcome to the special immigrant juvenile status conference call. Today's call is being recorded. At this time I would like to turn the call over to Ms.  
15 Kathy Moccio. Please go ahead.

**Kathleen Moccio:** Good afternoon. Welcome to the call on Special Immigrant Juvenile Status. The format of this call will be to provide a generalized overview of special immigrant juvenile status, and, Chris Nugent has written an excellent [hypothetical](#) that is  
20 available at "aila.org" and that hypothetical will also be the basis of [the] discussion that takes place during this conference call. If you would like to [order a tape](#) of the conference call, those will be available through "aila.org," through the conference center. And with that, I would like to turn the conference over to three renowned speakers from D.C. and [they] are Chris Nugent, John Pogash, and Andrew Morton. Thank you.

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**Chris Nugent [CN]:** Thank you. It's my pleasure to welcome you to the American Immigration Lawyers Association's teleconference on SIJS, special immigrant juvenile status. I'm Chris Nugent, a senior counsel in the pro bono department of Holland and Knight, and the moderator of the teleconference. I would like to thank Michelle  
30 Impemba and Kathleen Moccio of AILA for their hard work making this teleconference possible.

We have two expert panelists on the call: John J. Pogash, who is the national juvenile coordinator for Department of Homeland Security, Immigration and Customs  
35 Enforcement, and Andrew Morton, who is a sixth year associate at Latham and Watkins. Both have rich experiences in this very exciting field of special immigrant juvenile status.

John operated the program for unaccompanied alien children when it was with the Immigration and Naturalization Service and is now responsible at DHS - ICE for  
40 adjudicating requests for consent for unaccompanied alien children in Office of Refugee

Resettlement custody to be placed into dependency proceedings as a predicate for special immigrant juvenile status.

45 Andrew is a sixth year associate and Latham and Watkins and he's been very active on the pro bono front on special immigrant juvenile status matters including litigating these issues in federal court. He was also honored with the pro bono lawyer of the year by the D.C. bar several years ago for his advocacy and services for unaccompanied alien children.

50 We strive to make this discussion as interactive as possible so as to answer everyone's questions. We will alert you to the opportunity to pose questions throughout the call. You can also email me your questions if they're burning questions on a part of the process that we're discussing to [christopher.nugent@hklaw.com](mailto:christopher.nugent@hklaw.com). I have my Blackberry here and will be able to see a burning question as it comes in and integrate it into the discussion.

60 We do have several ground rules for the call, however. We want you to be respectful with your questions in the spirit of collegiality, and also please do not refer to any specific individual cases and how they would be adjudicated by the Department of Homeland Security. Each case is adjudicated by the Department of Homeland Security on its merits on a case-by-case basis. This is not a forum to give a definitive opinion by the Department of Homeland Security on specific cases. It's not a forum for DHS to even discuss individual specific cases. Those are conversations that you can have with DHS on an individual basis. We have included a hypothetical to help guide the discussion since it's chock-full of the issues we seek to discuss.

It's really high time that SIJS is becoming an issue on the national radar screen with both practitioners and advocates.

70 I wanted to give you some brief background. Special Immigrant Juvenile Status was enacted as section 101(a)(27)(J) of the Immigration and Nationality Act as part of the 1990 immigration reform. But Special Immigrant Juvenile Status remains a very complex and under-utilized remedy for abused, abandoned, or neglected children who are deemed eligible in dependency, delinquency or other juvenile court proceedings for long-term foster care, which is a predicate for special immigrant juvenile status and to apply for permanent residence.

80 It's a hybrid area of law, which makes it even more complex -- which requires securing a best-interests order in dependency, delinquency or other juvenile court proceedings, such that it's not in the child's best interest to be returned to their country of origin as a predicate for applying with [the] Department of Homeland Security. In 1998

the statute was amended by Congress to require the Attorney General to consent to the placement of children in immigration custody for such proceedings. The amendment was intended to prevent fraudulent claims and an influx of children who were being  
85 abandoned by their families solely for the purpose of securing Special Immigrant Juvenile Status. There were some cases referred to, I think, as the parachute children, of children who were being sent to the United States for a better education and then claiming that they were abandoned and going into the juvenile court system for purposes of accessing Special Immigrant Juvenile Status.

90 But the intent of the statute is not that Special Immigrant Juvenile Status be for immigration purposes, but rather that the dependency -- the order issued by the juvenile court -- is to protect the child from abuse, abandonment and neglect. It's not for immigration benefits. The immigration benefits are an ancillary matter. And -- but  
95 despite this remedy, last year there were only 500 adjudications of Special Immigrant Juvenile Status and permanent residence nationwide. This is probably attributable to the fact that child welfare and juvenile justice case workers, practitioners and even juvenile court judges lack familiarity with the Special Immigrant Juvenile Status statute. And [as] immigration practitioners on the other hand, we lack familiarity with juvenile court  
100 proceedings and how one would be able to navigate a case through juvenile court to get the requisite order to trigger eligibility for Special Immigrant Juvenile Status.

105 Additionally, despite the existence of this statute, there are scant regulations to rely on. The Department of Homeland Security has not promulgated regulations codifying the special immigrant juvenile status statute. What currently is binding, though, for the field, is memorandum three, which is field guidance on Special Immigrant Juvenile Status petitions from, May 27, 2004. And that really outlines what you need to do in family court to have an order that will end up triggering eligibility for Special Immigrant Juvenile Status.

110 So without further [ado], I want to turn it over to our experts and maybe, I think, to begin with, it would be good to walk through what the relevant criteria of special immigrant juvenile status requires under the statute. So, John? Or Andrew? Would you like to comment on the statutory requirements for special immigrant?

115 **John Pogash [JP]:** Okay this is John Pogash. And I guess without going into too many specifics, I'd like to, Chris, if it's okay with everyone, start out with some of the broad brush and I think we could, then, work it from there and maybe get into the wheat, so to speak, and then talk about the process as well. When you're talking about Special  
120 Immigrant Juvenile Status, as Chris had mentioned earlier, it's basically for, children who are in this country and who have been neglected, abused, or abandoned. And just starting with that -- that broad-brush area, I want to jump right into the process, if you will. The

way things work with us, would be that my office -- I work inside of, obviously, DHS Immigration and Customs Enforcement Detention and Removal Operation, ICE DRO for  
125 short. If there is a juvenile that you have that is in the custody of the federal government and in immigration proceedings, and that would mean that they are either in our custody, that would be with Immigration, or they're in the custody, the physical custody, of ORR, that would be considered federal custody. For those types of cases, the consent request would have to come through me at headquarters, or one of my staff at headquarters prior  
130 to the juvenile going before a juvenile court or family court judge, on his or her way, to filing for the, SIJ petition or visa with CIS. In some, the request would consist of a letter from the attorney along with supporting documentation regarding the request, to support the allegation of neglect, abuse, or abandonment.

135 Once we receive the request at headquarters what we do is we contact the office of refugee resettlement and ask for a copy of their facility files where the juvenile is at, or has been, as well as contact our field offices and request a copy of our A file, our alien file, come in for review as well. Once we review all the information we're usually in touch with the attorney -- we're always in touch with the attorney, sometimes we request  
140 a teleconference interview with the juvenile, during which time the attorney is present during that conference call and from there we make a determination as to whether or not to grant consent or deny consent. If consent's denied it's usually a lengthy letter explaining what we looked at and how we came to our decision. And, pretty much, I guess, insofar as when -- once consent is filed, if we issue a denial, if several months  
145 later, additional evidence comes up we can reopen the case. Each case is handled on a case-by-case basis and on its own merits. And I guess that's, pretty much, the generalities, or the framework, of the how-to.

150 **CN:** Thank you. Andrew, do you have some comments on this?

**Andrew Morton [AM]:** Yeah, a couple of. First off, right at the outset, since I know my level of interest in a conference call generally lasts about seven minutes, I just wanted to, if I forget to do it later, pass along my contact information, cause I don't want to forget to do that or have people drop off. Latham and Watkins, I'm very proud to say is  
155 extremely generous with allowing me and several other lawyers to assist with SIJ cases. I've been getting involved with them at all stages, from having just initial phone calls with folks to discuss their case and find out if SIJ is appropriate to talking about what to do if consent is denied.

160 One point to make on that, real quick, since it's on my mind: when John talks about denial -- denial is never permanent. As John mentioned, if more information comes to light, or if, the denial letter brings out some issues that you feel have been interpreted incorrectly or could be reframed or could be supported with other

documentation, a denial is -- this is not the court system. I mean there is no appeal of --  
165 of a denial necessary as a first step. What I have found is that in many cases, I've just,  
gotten on the phone with John or gone down to his office and talked about the denial and  
talked about what information might persuade him to, to turn around and grant, or what  
additional documentation would be necessary. So, I just want to make that point clear  
because until you are, statutorily, or your client is statutorily ineligible for SIJ, the door is  
170 not closed.

So, with that -- but again, before I forget, my email address at Latham is,  
andrew.morton@lw.com and the direct dial is (202)637-1042. And again, I am more  
than happy to have any sorts of discussions before applying for SIJ, in the process of  
175 applying for SIJ, after it's been denied. Right now I have two pending litigation actions  
in courts of appeal to try to get SIJ decisions reversed. So, it is almost never over. And,  
it's important that anybody inclined to get involved in this process know that, and just not  
give up until the child is statutorily ineligible.

180 **CN:** To summarize, John, I would be interested in your thoughts. So you're talking  
about a process of consent by Immigration Custom Enforcement solely for children who  
are in ORR custody and in removal proceedings. This would not apply to children who  
are just, not - never have been detained and are in removal proceedings or children who  
have been detained and have been released from custody.

185 **JP:** Well, yes and no. I guess it would be -- rather than -- just maybe to clarify, I don't  
necessarily like using the term ORR or ICE custody, I like the broader brush terms,  
federal custody because it may cause less confusion. So if they're in the custody of the  
federal government, they would have to definitely come to us first, to grant consent. In  
190 addition, if a child is not in federal custody, obviously, you're right, they would not need  
to come to us first for consent, because that person could go directly to the juvenile court.  
However, let me, maybe -- by example: let's say if you have a juvenile, right now who is  
in a juvenile detention center or a juvenile shelter care facility and is being held by the  
state or the county and we have issued a detainer on that individual, at that point in time,  
195 even though they are not in the physical custody of the federal government, we have that  
detainer out there you would need to come to us, you know, for consent if you're seeking  
SIJ.

**CN:** And what about if they're in ORR funded foster care, for example, that --  
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**JP:** -- Chris --

**CN:** -- Office of Refugee Resettlement? Is that considered constructive custody?

205 **JP:** Chris, could you -- could you hold that question for one second?

**CN:** Okay.

210 **JP:** One thing I want to add is that we would consider if -- if we have a detainer on an individual that we are exercising some jurisdiction over that individual for any one of a number of reasons. And usually, or almost in all cases like that, that usually means that it is a criminal type that we have, a detainer on because they're in county custody. So that's why we would, say that you need to come to us for consent. In addition, a person who would be under a final order, who might be--, we might be removing immediately, 215 or able to remove immediately, you would need to come to us for consent as well. These are kind of like, I guess, the two exceptions to direct federal custody, because of their status, or -- or their current situation. Does that make sense, Chris?

220 **CN:** Yes, and in terms of constructive custody though, and federally funded foster care, typically, my understanding of constructive custody [is] that it does cover children in ORR foster care, perhaps, but there is an issue of whether they're in the unaccompanied refugee minor program or if it's directly ORR Department of Unaccompanied Children's services?

225 **JP:** Well if it's (unintelligible) program, the Department of Unaccompanied Children's Services and they're being held by ORR, as a result of their immigration status or lack thereof, and they're in the physical custody of ORR, whether it's a secure detention facility, a shelter care facility, a group home, or a foster home then that would be the type of case that requires consent.

230

**CN:** Okay. And, John, also in terms of -- could you explain the criteria that ICE considers for purposes of granting consent? Is it -- are they analogous criteria to memorandum three or are they sort of separate and distinct considerations?

235 **JP:** It's basically case-by-case each on its own merit.

**CN:** -- Um hmm --

240 **JP:** One thing that we do not have out there -- there is no formal guideline or formal guidance or regulation or anything regarding what people need to supply us with. And the reason we come up -- the reason we have not done that yet is every time, and I tell this to a lot of people, every time we do this, just when you think you've seen it all or heard it all there's one new novel-type case or novel situation that comes up and it gives us the ability to, you know, to make a determination either way.

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And I put that on the table because, even as we're releasing an individual, say, to a sponsor, sometimes a sponsor will come up to us, will provide a driver's license, give us a place of residence, or any number of documents to prove his or her relationship to the juvenile, sometimes the documents don't really -- some look fraudulent, some we  
250 can't -- you know, we can't discern, how factual or how correct they are, so we ask for different types of documentation, and I think if we ever came up with a checklist of things that we needed or things to do, I think we would find ourselves, limiting people, or screening people -- more people out -- screening more people out as opposed to screening people in.

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**CN:** Right. And, John and Andrew, can you talk about the age considerations regarding special immigrant juvenile status and when to apply, and how to prevent age-out issues?

**AM:** I can start off. There are a number of issues that relate to age. Probably best to start with the statute itself. I've found that there is a pretty widespread misunderstanding of what the statute says and what it doesn't say in terms of age requirements. There is nothing in the statute that actually sets forth an age except that you must apply before you're 21. A lot of people talk about having to get SIJ before your eighteenth birthday, 18 is not in the statute directly, but it is impliedly in the statute and the way that happens is that SIJ is available for children who are in dependency, -- who have been issued a  
260 dependency order from a state court and by virtue of state court jurisdiction. On a state-by-state basis the child may or may not be able to get that dependency order. In other words, in most states -- in all the states where I've had SIJ cases, the court would not take jurisdiction of a child after their eighteenth birthday.

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So, on the one hand, there is nothing in the statute that says that you have to be 18 to apply for SIJ but it does say that you have to be in the-- within the jurisdiction of the state court so what's necessary to do is look to state law to find out, whether there's going to be an age-out issue with your child or not. It's worth mentioning that the SIJ statute is fairly bizarre in that it is obviously an avenue to a federal form of relief, however it relies in large part on state law that can vary state by state and even county by county. Without getting into my view or John's view on, the wisdom of that statutory requirement, it's important to understand in the state where the child resides, what is the maximum age for juvenile court jurisdiction and what is the basis for a determination that the child has been  
275 subject to abuse, abandonment or neglect, such that a dependency order could be issued. So, that's sort of -- you know on the one hand, that's a limiting age in terms of getting a dependency order, which is a prerequisite for the SIJ relief.

Now on the other hand, the statute itself says that in order to get a grant of SIJ,  
285 you must be under 21 years-old, which means that as long as you get the initial dependency order by your eighteenth birthday, and subject to state law setting forth how

long the juvenile court can retain jurisdiction over the child, it may be possible to apply for SIJ long after the eighteenth birthday. I say that because I have seen cases or have been asked whether or not it's worthwhile to apply for SIJ when a child is a month, 2  
290 months, 3 months in advance of their eighteenth birthday, knowing that the adjudication phase can take up to 6 months or more, and the answer is absolutely, unequivocally yes. Because once you get in there and get that dependency order it's possible to apply for the SIJ relief long after the eighteenth birthday.

295 I wouldn't recommend, obviously, waiting too long, you want to get it in as soon as you can, but, to give one extreme example: we were contacted for one case on a Wednesday, with respect to a child who was turning 18 on Sunday. Had to go into federal court to seek a TRO on Wednesday; got the court to grant it on Friday morning and went to the state courthouse -- the juvenile court that afternoon, and managed to get a  
300 dependency order about an hour and a half before the court was going to close for the weekend; where the child would have been shut out. But having received that dependency order prior to the eighteenth birthday, we then had, plenty to pull together the documentation that we needed to apply for the relief.

305 So, it's important to keep in mind that based on state law, you have to get the dependency order, but based on the federal statute, as long as you're still within state court jurisdiction you can apply up until the twenty-first birthday, if state law will allow for that. So, again don't think that a child close to their eighteenth birthday is not going to be eligible for relief, but also be very aware of what the state law requirement is in the  
310 juvenile court, to make sure that when it comes time to adjudicate, the child still is within the jurisdiction of the state juvenile court.

**CN:** Thank you. So - state case law is really essential for purposes of showing abuse, abandonment or neglect. My question for John is: John, in the letters that you receive  
315 from attorneys requesting ICE consent, are there a lot of specific references as to how the child's facts and circumstances would constitute abuse, abandonment, or neglect in a state proceeding under the state jurisdiction where they are going to be applying? Or are you just seeing advocates submitting affidavits of the children's psychological examination, more of the factual evidence, as opposed to making a legal argument?

320  
**JP:** I actually see both. And in others, some more some less so, it's pretty much the wide gamut. But one thing about age, if I could just throw in here too -- and Andrew at least alluded to it, and I'll underscore it -- is that in cases where you have a kid in federal custody, when our consent is required -- my best advice to attorneys out there would be  
325 that when you first come into contact with your client, I would, during the interviewing process, I would make a determination as to what type of benefit you think that person, is going to be pursuing or is going to be appropriate for. And at that point in time, I would

not use SIJ as a last resort. I mean, obviously if you don't believe there is a claim for SIJ, than there's no sense in even pursuing it. But if you thinking: well, it could be SIJ, or it  
330 could be asylum, and I'll see what happens with asylum, I wouldn't handle it that way. I  
would start the SIJ, immediately. I get a number -- we get a number of claims where my  
client is turning 18, literally, in 5 days, it's just not going to happen because, we can't get  
information -- enough information in 5 days. We have turned some around in 4 and 5  
335 weeks. Right now I have two additional staff in here, so we -- where there was a point in  
time where these cases were taking 6, 7 months, all cases now are right -- we're down to  
under 90 days. And I think some of our oldest cases are probably only about 45 days old,  
or 60 days old right now, which is good news, but I think it is imperative to really, look at  
the time line and get things to us as soon as possible.

340 **CN:** Thank you John. And also, John, I'm wondering if a child ages out for consent  
purposes, if it has ever -- have you ever seen a case where consent has been granted nunc  
pro tunc?

**AM:** No Latin, Chris.

345

**CN:** After the fact --

**JP:** -- The fact --

350 **CN:** -- after the fact.

**JP:** I took 2 years of Latin in college. Consent granted after the fact -- I'm trying to  
think. You mean on our end. I don't believe we've ever had one. Andrew, unless you  
can remember (unintelligible) our cases, I don't think we've ever had one. Well we've  
355 had cases that have aged out, you know, while they've been in process. I think we have 2  
cases that have aged out in the past 2 years. One case we got 5 weeks before they turned  
18, and that's really getting very close. Another one, might have been about 6 weeks or  
something like that and they may have been the only 2. The other several that have aged  
out, 2 or 3 were submitted on the person's eighteenth birthday, which, I mean, that's  
360 obviously too late. And there were 3 that came in like about a week after their eighteenth  
birthday.

**CN:** -- Um hmm --

365 **JP:** I mean, we keep records on that. But -- that's sort of that -- that kind of answers your  
question and also gives a little more background.

**CN:** Thank you John. And also, I think some advocates have been pursuing mandamus actions on the age out issue, I'm not sure what the state of the law is on mandamus post-  
370 real I-D; I think it still is a possibility from conferring with advocates to prevent age-out, but I think that has been one strategy. In terms of the timing, timing is definitely essential for this and I -- John, your recommendation on that people pursue both -- all remedies contemporaneously is very helpful. I think one issue that, folks have contended with, though, that I'd be interested in you commenting on, is that the immigration court,  
375 even though they can exempt children from their case completion goals, so they don't have to move these cases as fast as detained aliens, they don't really have any procedures or mechanisms to hold the case in abeyance for consideration of special immigrant juvenile status before the child goes for asylum. I wonder if it would be, both Andrew and John's recommendation that folks should try to work with the ICE trial attorney to a stipulated motion for administrative closure or to hold the case in abeyance so that SIJ  
380 can be addressed before the asylum is addressed or do you recommend that folks pursue asylum as well as SIJ and losing asylum wouldn't have any bearing on the adjudication of the SIJ application -- the consent issue for ICE.

385 **JP:** If I could just -- one thing on the mandamus, Chris, backing up a bit, I haven't seen any, any of those actions or, anybody pursuing that avenue.

**CN:** Okay

390 **JP:** One, I guess, one attorney had, discussed possibly doing that, in the case that we had had, for -- and we had that case -- and that was one case that we had for about 7 months, and were able to get that one cleared up and it was just a matter of we got to it as quickly as we could because, in our office a lot of times we have so many cases coming in. For example, in a two week period I had about 15 cases some in, seven were aging out in like  
395 60 days. And all of those are taken care of. So, I mean, I guess when you're talking mandamus or whatever, you can only do what you can do, I guess --

**CN:** -- Um, hmm --

400 **JP:** -- and we're able to pull that together. I -- we really can't speak for the court. Number one, I'd be -- I wouldn't necessarily go down that avenue for them. I know Andrew has something to add to this as well, but I think, what, here's what I -- I'm not saying right or wrong or good, bad, or indifferent: what we do see with -- with a lot -- in at least in a couple courts across the country, if the individual -- if they're looking for a  
405 sponsor for the child to be released to, in certain courts judges may have a tendency to continue cases because in light of the fact that they may have a sponsor and cases can be continued for along period of time, where an attorney may be pursuing SIJ, I do see the judge continuing those types of cases. I -- without speaking for our trial attorneys, I don't

410 see anything wrong with going to court and discussing what your plans are and taking it  
from there to see if they agree with it or not. They would have to just like any other case.

**AM:** Yeah, as far as holding the case in abeyance or seeking a stay, we have had good  
success with, in the situation where there was a pending merits hearing or even a master  
calendar hearing for the removal proceeding, and just straight to the immigration judge  
415 and asking for a continuance pending the adjudication of the SIJ. We've only had to do it  
a few times, but the good news is that it's been granted in every case. So, I've yet to see  
an immigration judge, -- not to say that there's not plenty out there who would do it -- but  
I've yet to see an immigration judge who was sort of anxious to adjudicate a case  
420 knowing that it may be declared moot based on a grant of SIJ. Generally speaking, it's  
not exactly news that their dockets are pretty crowded, and if they can legitimately have a  
reason to continue as case and hold it over pending a different form of relief that's in  
process, -- at least in my experience -- they're more than willing to do it. So, I definitely  
would suggest that. And your suggestion, Chris, of just going straight to the trial attorney  
425 and just asking for an uncontested continuance is also a good idea. Uh, we have done  
that in every case, and I believe in all but one -- and the 2 or 3 others that the trial  
attorney said that was fine because just like the judges, their, docket's pretty crowded and  
they're more than willing to push out a case. Nobody wants to sort of put the time and  
energy into preparing for a merits hearing that's going to be declared moot based on a  
grant of a different form of relief. So, definitely a good idea to do that.

430 Uh, and again, as John mentioned, I have heard of other folks under the mistaken  
belief that SIJ is an alternative -- a mutually exclusive alternative to asylum or -- or any  
other form of relief. If you take one thing away from this phone-call it should be that that  
is absolutely, positively not the case and should be pursued when there is eligibility and  
435 in fact, my preference, in terms of seeking immigration relief is always for SIJ if there's a  
valid claim, if only because the application process is so clean and so neat and so easily  
adjudicated that, as opposed to, a complicated asylum proceeding that involves letter  
briefs or other motions practice hearings, appeals, if you have an SIJ claim, then pursue  
it, period.

440 And, you know, do not wait. Chris I think you had mentioned that -- that there's  
no harm in waiting until after the asylum proceeding is completed -- it's technically true,  
although, I have the benefit of being in a room with John, so we sort of -- I think he'll  
agree with me that it is not a good idea to wait because it starts to look like a last ditch  
445 effort to get relief. There is a very quirky aspect of the regulations is one of the most  
nonsensical phrases that I've seen, out of many, many nonsensical phrases in the Code of  
Federal Regulations, that says that the grant of special immigrant juvenile relief cannot be  
solely for the purpose of receiving an immigration benefit, it must be based on abuse,  
abandonment, or neglect. I still have no earthly idea why you would apply for special

450 immigrant juvenile if it wasn't for the -- in order to seek immigration relief; but, I guess  
what they're trying to say is that it better not look like a desperation effort that you're  
trying to push through the process when it's not really a meritorious claim there. And the  
best way to avoid being put in the position of having your petition adjudicated and result  
455 in a denial because it looks like a last ditch effort is not to wait until you're in a position  
when it's a last ditch effort.

Get the petition together and get it submitted as soon as humanly possible no  
matter where you are in the asylum process or the convention against torture, withholding  
of removal. No matter what you are seeking, if there is an SIJ claim, get the petition in as  
460 soon as possible and, more than likely, that will be adjudicated before everything else  
comes to a head and it will save you a tremendous amount of trouble and a tremendous  
amount of work if you're lucky enough to have it granted.

**CN:** Yes. I did want to flag, though, that one thing folks need to bear in mind is, *In re*  
465 *Y.C.*, which tolls the filing asylum past the one year deadline for unaccompanied  
children. But it's on a case-by-case basis. So, even if you administratively close the  
case, the children will be accruing time in the United States towards the one-year  
deadline. So it's probably preferable to file the asylum claim first with the immigration  
court before one year elapses and then seek administrative closure in the interim while  
470 the SIJ is being considered. I wanted to talk a little -- have folks talk a little bit about,  
what actually constitutes neglect, abuse or abandonment of the child based both on the  
hypothetical as well as, other issues. I mean, for example, there're -- since it is a state  
law definition, there're some states that will not consider death to be -- constitute  
abandonment, whereas other states will consider death of the parents to constitute  
475 abandonment and the definitions of abuse and neglect also differ. So I'd be interested in,  
John and Andrew's insight into what really is abuse, abandonment, or neglect.

**JP:** I have no, (pause) -- I guess I have no set list of rules or anything, regarding that --  
that's -- that I would say cast in stone. I will say that if I have a case before me and both  
480 parents are deceased, that in and of itself is probably going to result in a grant of consent.  
But remember as we go through these situations it's really the case as a whole. So there  
could be something about that case that -- and I, it's -- I can think of a number of reasons  
why -- it probably wouldn't happen that it would be -- there would be a denial, but there's  
always that 1 or 2 out there where there might be. But, I mean, cases like that are, are  
485 basically pretty clean cut 'cause in those cases if there's no one for the child to return  
home to, parents have been -- are deceased, there're usually easy cases to grant, there's  
not a lot of research. It's just a matter of getting the proper documentation there. And a  
lot of what has to do with these cases too is credibility. You may have a person say their  
parents are dead or deceased on day 1 when they enter a juvenile facility, but by week  
490 three, they have multiple contacts with parents on the phone. And then when it comes

time to do their sworn statement six -- two months later, and they file the SIJ, then all of a sudden the parents are deceased once again. So I mean, I would say if that's actually -- if that's true and it -- it's somewhat verifiable, you're going to most likely -- in 99.999 percent of the cases there will be a grant. Other types of cases, when you talk about abuse it could be physical abuse, it could be emotional abuse. Obviously the emotional abuse is more difficult to document, how -- I mean because it's always, or gen -- or almost always is after the fact because the child has come to this country and it may have been 6 months ago, or 6 weeks ago, or a year ago but that's where people have psychologicals done. And we have access to psychologicals, sometimes information comes out during that report. So, abandonment? An abandonment can be any one of a number of things. I guess as we all know -- I'm just thinking of the general or more obvious cases. We've seen cases where both parents have literally disappeared, they have just literally left the child and there was no one there to take care of them. But then on the same token -- or on the flip side of the coin, we've had cases where at age 3 the parents left the child and they were raised by grandmother and grandfather for 10 or 12 years, and basically they are the custodian and the child just decides to come here at age 14 or 15 into the United States, they're a little more difficult to adjudicate insofar as, or to consent -- insofar as to say yes, they were in fact abandoned when, practically speaking, they may not have been. I don't know if that's making much sense. A lot of these things have to do with -- when they come in, it's the credibility -- it's the consistency of the story, it's the credibility. Credibility is established as we do our research with the information that the attorney provides and the information we gather through our files which is, those are from our case agents, different notes we pick up, maybe, in asylum claims or any of a number of things or, information we pick up from the files that we get from ORR, or information we attain directly if we do a telephonic interview or an interview with the child themselves. Does that help, Chris?

**CN:** Yeah. Andrew? Do you have anything to add on that?

**AM:** Yeah -- again just to reiterate. This is a federal form of relief that is contingent on a state court determination which means that, the most accurate answer to your question about what constitutes abuse, abandonment, or neglect is going to vary across 50 states and hundreds of counties and needless to say, to the extent that I'm an expert in anything, which is questionable, it's certainly not state juvenile law of every state in the Union. That aside, there are some obvious -- you know the obvious cases are just that and as John mentioned they're going to be grants. When it comes -- when you drill down to the more difficult cases, you need to do one of two things. You either need to become familiar with the state law that's going to apply. Frankly, I've never done that, so I will offer one -- one very clear practice tip. That is, get a local attorney, a local counsel involved to handle the state court aspect of the case. I have handled a dozen or more SIJ cases and have yet to step foot into a state juvenile court or appear before a state juvenile

judge or have a look at any state statute regarding, the local interpretation of abuse, abandonment, or neglect for the purposes of obtaining a dependency order. In every case, I have asked the referring agency, to find me a local counsel, competent in juvenile law who can handle the state court proceedings and have handled it from there. The best way to do this is to work hand and hand with somebody who's familiar with the federal immigration side and somebody who's familiar with the state juvenile side, because, frankly, it's just -- at least I find, I just don't have the time. And it's not a good use of resources for me to become fluent in the juvenile law of Fairfax County, Virginia when I can go out and get a pro bono lawyer in Fairfax County, Virginia who can handle that for me. And, that is clearly the best way to go about this. So to the extent that there are folks on the phone who are interested in the federal side, find a state court lawyer. And to the extent that anybody on the line is a state practitioner, make a determination about abuse, abandonment, or neglect and then perhaps find somebody who can handle the federal side of the petition and take it from there. Because those are two very, very distinct aspects of applying for SIJ and at least I, for one, have not found it a very good use of time to try to become competent in both sides of it. So that would be my strong suggestion. One thing that I wanted to mention on abuse, abandonment, or neglect, is -- you know, speaks to the federal side, and that is that there is an issue, and this is one of many things that John and I may disagree about what constitutes abuse, abandonment, or neglect in terms of the location of the abuse. The statute itself is entirely silent about the location of the abuse. In other words, there is nothing on the face of the statute that says that in order to be eligible you have to have been abused, abandoned, or neglected in the home country. In my view, a child is equally eligible for SIJ if they are abused, abandoned or neglected en route to the United States by traffickers, smugglers, they are also eligible if they are present in the United States and abused, abandoned, or neglected by foster parents or by undocumented aliens with whom they reside in the United States. It may be a different case, it may bear on whether John grants the consent but it's just worth mentioning that there is nothing in the statute to preclude somebody from this form of relief if they are abused in one location as to the other. The only other thing that I would mention, very quickly, and will not discuss further because it's just not something that is -- that I have a lot of experiences. There are a couple of other benefits out there, specifically the t-visa and the u-visa for trafficking victims, or for victims of domestic violence, that may be available, again, as a further form of relief to be pursued, not to the exclusion of SIJ. Again, I am not a t-visa or a u-visa guy, I've never handled those forms of relief but they are out there, they may be alternatives to look into, but, having abuse occur during the journey to the United States, or once the child is present in the United States, at least on the face of the statute, should not be a bar to a determination from a state court judge that there's been abuse, abandonment, or neglect and a valid petition for SIJ being submitted to DHS.

**CN:** Thank you Andrew. We're having some different burning questions about children with delinquency matters as well as custody issues, for purposes of DHS ICE consent. One question is, if a child has been released by DHS under bond would that constitute custody by the federal government, thereby requiring ICE consent. And another question is, in terms of having a final order of removal for ICE -- for DHS ICE consent, if you're on appeal to the Board of Immigration appeals or the ninth circuit -- or the circuit court of appeals, would that be considered a final order, for which, then, DHS would have to consent to.

575

**JP:** I have to apologize. We were doing a bit of a sidebar. I guess, there may be -- are there two questions? Maybe if we start on the bond issue first --

**CN:** -- yeah --

580

**JP:** -- that's what we were kind of comparing notes here for a response, when you went into another issue and I missed that.

**CN:** Okay. So the bond issue first, John?

585

**JP:** Yeah. I think on the bond issue, basically right now -- put it this way, any juvenile that is taken into federal custody and is placed in the physical custody of ORR, when they are released, it's our policy right now where there is no bond, when the person's released. So, I guess that would be a moot point.

590

**CN:** -- um hmm --

**JP:** Although we could set bond or ORR could request us to set bond and we would at their request. On cases where there is a bond set, they're very -- they're rare.

595

**CN:** -- umm hmm --

**JP:** I'm looking at, I have Sylvia -- Sylvia Manno, here with me. She's my juvenile coordinator in Chicago, and she's here on detail, and I'm just kind of

600

Sylvia Manno: We wouldn't take a bond if ORR approves a sponsor)

**JP:** No, that's correct. What she says is, we won't take a bond if ORR approves a sponsor, but if we get a direct release that CPB did, and, they could issue a bond upon releasing the person: that one I would have to back to people on. I don't have an answer on that constructive custody. I'm inclined to say "no," but I don't know for sure. But that's one that if anybody -- I would say for purposes of today's conversation, if you have

605

that scenario, do not let that preclude you from filing for the consent request. Because  
when we get that request, it -- this might be helpful too -- when we get a request, no one -  
615 - I don't believe anyone out there, if they're on the phone now -- I don't know of any  
request that we've denied where we haven't been in communication with the attorney  
handling the case. Because these are the questions that come up, and we would discuss  
those and do the research. So don't let that preclude you from filing it 'cause if it is a no,  
then we'll tell you that definitely in time.

620

**CN:** And what about what constitutes a final order of removal for purposes of SIJ if the  
client's case is on appeal to the Board of Immigration appeals or the circuit courts?

**JP:** I don't --

625

**AM:** -- Yeah, I'm not sure what, um, what -- there's -- again, there's nothing in the  
statute and nothing in the regulation that says that a child with a final order of removal is  
ineligible for SIJ --

630

**JP:** -- but they would need to -- they would need to come to us for consent, because that  
would be --

635

**AM:** -- a final order of removal, uh, may constitute the federal constructive custody that  
John's talking about, so to the extent that a child has a final order of removal or  
635 potentially has a final order of removal while it's on appeal, the only way that that could  
bear on SIJ process would be whether or not the consent -- the prior consent is required.  
You know, I'm not sure that 50 minutes into this call is the appropriate time to do this,  
and maybe we've sort of done it by implication but it's probably important to distinguish  
-- we're talking about consent and throwing that term around, I'm not sure whether we  
640 actually explained very simply the mechanics of this for the purpose of understanding  
how that question is relevant. More or less, the SIJ process is a three step process,  
potentially, where the first step is required for children in federal custody and is not  
required for children out of federal custody, and that is this prior consent that John is  
talking about. John's office is charged with granting or denying a consent request where  
645 that consent is required, before the petition is filed and before there is an application --  
excuse me, an appearance in the state juvenile court. In the second step where you go  
into state juvenile court to seek the dependency order for children who are released, you  
can go right to state juvenile court - you don't need to talk to John's office first. So, you  
know, of course the final step is the adjudication itself, which occurs within a different  
650 branch of DHS. But there's not a lot of exciting things to talk about on that final -- in  
that final step. Most of what is involved with SIJ, both in terms of the issues where you  
may have a disagreement, and in terms of the important questions to ask to determine  
whether or not you're likely to be granted the relief occur in: whether or not step one is

655 necessary, and whether or not you have the basis for step two, the issuance of the dependency order. So, again, with, sort of, that in mind, you know, final order all it would bear on is it's not going to make any difference in terms of whether or not you can get the SIJ relief, it's only potentially going to matter whether or not you need to come to John first.

660 **JP:** And we have had 2 cases like that in the past. Where a child with a final order, consent was filed with us, in my office, so that's happened twice. But that's sort of, I guess, over -- out of 146 filings. Now maybe if I could jump in right now, it might be helpful for you all -- for some statistics, give you, kind of, a picture of how things ebb and flow in our office. From January of 2003 to date we have had 146 SIJ requests for  
665 consent come into our office. Of those 146, there are 22 that are pending. And from that number, we've had -- 63 were granted and 25 were denied. So, the grant ratio is like 2.25 or 2.5, something like that if you do your math, to one. So there are at least twice as many grants as there are denials. From that number of 146, without getting too much into the weeds, there were about 36 cases closed, and they're closed for any one of a number  
670 of reasons. It could be that the person -- the attorney decided to withdraw the consent for request, the -- a very few did age out during the process and there are a couple -- there could be any number of other scenarios.

(in the background

675 Sylvia Manno: They didn't need to (unintelligible))

**JP:** Right. They were, during the time that consent was pending, they were released, you know, to a sponsor so they didn't -- they no longer required consent.

680 **CN:** John, in terms of delinquency issues, do you see those frequently in consent requests and how -- what's the interplay between delinquency and special immigrant juvenile status?

685 **JP:** We're starting to see more, and when I say more I do not mean that the floodgates are open, we are starting to see more requests with delinquency, but they generally seem to be the cases where the kid is in the custody of the state and -- and there --they've engaged in criminal activity. You know, basically the way that we're looking at cases is it -- it's like you go into court and say "pink elephant", "I object": well, you -- you're going -- the jury is going to remember the pink elephant. I'll be honest, as I look at this.  
690 But we're basically -- we're still looking at whether or not the person has been neglected, abused, or abandoned. The delinquency -- depending on (pause) -- delinquency in and of itself is not a disqualifier. Let me say this -- with -- by -- if I could -- if you'll bear with me on an example. Let's say, John Doe comes forward and he gives me three different renditions of what may or may not have happened to him before he got here; but, he was

695 arrested by the police department for carrying a gun while he was selling cocaine. This is  
pretty close to an actual case. When he was arrested by the police department, he comes  
up with a third or fourth name, five different ages come up or places of residence, well  
now I'm really concerned about his credibility. So, depending on how the delinquency  
700 screening him out. If that's I, if I made sense explaining that. So delinquency in and of  
itself is not going to screen a person out.

**CN:** Even though delinquency can be, ultimately, inadmissibility grounds for special  
immigrant juvenile status, for example, somebody who is a known drug addict, --  
705

**JP:** -- right --

**CN:** -- or somebody who is a known prostitute or somebody who is a known drug  
trafficker.  
710

**JP:** Correct. Now and -- and I don't feel good about those cases, and depending on --  
which -- when they fall in as -- in the different ones that you mentioned that might have  
some bearing. But you know, basically, the threshold that we use up front is gonna be --  
is we consider to be lower than what the juvenile court is going to use, and especially  
715 what CIS may use in the end -- in the third step of the process. And as we look at them in  
cases where we are in doubt, or we're kind of, leaning either way, they will be the cases  
that will always, always, always grant. The cases we deny are cases that we feel very  
comfortable with. And it might be worth noting too, I guess stat-wise, at least during the  
past two or two and a half years, if my memory serves me correctly, we were -- at least  
720 cases that were finalized -- we were challenged on two cases in particular regarding  
consent. There was one case that I denied consent. We went to federal court, the judge  
ordered me to sign. Obviously I signed, I granted consent. We appealed and we won on  
the appeal -- we prevailed on the appeal. There was another case I denied, and this was a  
725 case where the mother lived four miles away from the juvenile in custody and, literally,  
would not come to get him. I denied, the judge ordered me to sign, -- we -- not this one,  
that was the other one -- but like, he ordered me to sign, I signed, but then we did -- we  
did not appeal, but then C-I-S did not grant the visa. So, what that says to me, at least for  
the most part anyway, we feel pretty comfortable, -- that we're taking at least -- that were  
giving these cases a pretty fair shake.

730  
**AM:** It's important to keep in mind that John's role in this process when he's talking  
about granting, denying, he's not talking about the SIJ petition in and of itself. John has a  
very specific role in the process and that is the initial consent to state court jurisdiction or  
denial of consent to state court jurisdiction as a precondition for even applying for SIJ  
735 relief. So when John talks about grants and denials its again it is just this initial threshold

question of whether or not in the government's view there should be a grant of jurisdiction to the state court even to seek a dependency order to file for SIJ. When I talk about -- so John's role is consent or not consent in this step one, when it's applicable. I'm trying to focus my comments as a practitioner on whether or not, seeking SIJ is likely to earn the child status when you should even seek it in the first place, when it's appropriate to file for this form of relief. So, with that said, my view on the delinquency question is a little bit different, 'cause, again, John is talking about whether delinquency would bear on his inclination to grant consent or not, for state court jurisdiction. As a practitioner, we need to keep in mind that there are certain offenses that are a bar to being granted relief. And if the underlying offense for the delinquency is a bar to a grant of relief then it is not worth anyone's time in the process to file an SIJ petition because you're gonna waste John's time, you're gonna waste the state's -- the state juvenile court, judge's time and, ultimately just get shot down at the goal line. So, what you need to do is look not at delinquency as sort of a binary, delinquent or not a delinquent, you have to get a little bit further -- more specific and find out what is the basis for the delinquency? If it's shoplifting than absolutely apply for SIJ relief if every other aspect -- if every other box is checked in terms of whether or not it is appropriate. If the underlying offense is sale of drugs or a violent felony then it's absolutely not a wise idea to bring the case or even start the process because you're not going to prevail in the end. So, you know, again, delinquency, non-delinquency is not the question. The question is: what is the underlying offense for the delinquency and is that going to be a bar to relief at the end of the day. And if it is, then stop and look for something else. And if it's not then go from there and do your best to make the case, if consent is required, make the case to John that notwithstanding, this fairly minor, charge that consent is appropriate and SIJ relief is appropriate.

**JP:** And do know as you're considering these cases too I mean obviously discuss them among your own colleagues to make a decision. And, we're always -- we get a lot of phone calls, where we discuss the process when people call in or we discuss the case in the beginning. And I said it is pretty much an ongoing thing. We're not into this letter writing back and forth, like denial, or we need more information, we stay in contact because some cases are new and novel and we want to make sure that we're screening as many people in as possible.

One thing I want to mention earlier too, that I forgot to, is that some of the cases that we've granted consent on, there have been probably half a dozen where the juvenile court, refused to exercise jurisdiction over the juvenile. And I toss these figures out there, or some of this information just to give you guys more of an idea how the process works and for the most part we feel pretty comfortable with that.

**CN:** -- And I would say John, actually, your shop probably has the most uniformity in your approach to consent, because since we're dealing with juvenile courts around the country and we're also dealing with local DHS offices where you ultimately file the I-360 and the I-485, there's wide variation in how these cases are being dealt with by local  
780 DHS offices, even notwithstanding memorandum three that was issued. Columbia University -- I think this might be on the website, if it's not, we'll get it on the website -- did a study of -- with advocates of DHS adjudications around the country of the I-360 special immigrant juvenile status application and as well as the I-485, and saw that there are indigenous issues within each jurisdiction and issues are handled very differently.  
785 Some offices, for example, will be willing to grant the I-360, but then deny the I-485 in their discretion based on a variety of factors. Under this scenario, people do have the right to appeal to the administrative appeals unit or do a motion to reconsider before the local DHS office but you see a lot of variation around the country as to what actually happens with the I-360s and the I-485s. The other issue somebody flagged in an email I  
790 think that we want to discuss is that SIJ is not necessarily the best benefit for all children, for example. SIJ -- once you're granted permanent residence the child will be forever barred from being able to immigrate his or her parents, as well as access to federal benefits is not guaranteed with SIJ, whereas with asylum, if asylum is granted, the child will be able to access Office of Refugee Resettlement benefits that would carry the child  
795 through age 21. The other trend that we're seeing is that a lot of state jurisdictions -- and John and Andrew, you might want to comment on this, a lot of state jurisdictions are not that inclined to taking these kids into their custody because they're not receiving any federal reimbursement for actually having the kids in licensed state foster care. Therefore there's been a preference to have the children in guardianship based -- situations which  
800 don't trigger any costs for the state, if there is some relative or somebody else willing to actually be the legal guardian. In this regard, John, I was wondering if you might want to discuss, have you seen legal guardianship based SIJ consent requests.

**JP:** Well, -- before -- there's one thing I just want to add too. Thanks for bringing this  
805 line of thought up because, one thing we have noticed about two and a half years ago was when we consolidated everything into headquarters, and I think one thing we've gotten is an incredible amount of consistency and I think most people would say not only is it the consistency -- well there's always someone to answer the phone, number one. There is consistency with the process and I think that a lot of the requests are getting handled a lot  
810 more quickly, more expeditiously than they were in the past. So I think that's working well. Regarding the types of requests I'm seeing now, I can't say -- I don't -- I -- see, I'm not seeing much of the guardian based ones coming in. I will say that with the cases that I see, I am on the phone quite frequently with juvenile court judges or family court judges around the country and there are certain jurisdictions where they will not hear these  
815 cases. Not only will they not grant the benefit, they'll either not hear them or they might say "no" for reasons that I -- well I'm not going to get into a lot of details, but I just don't

-- I don't see what the judge -- what the court judge saw or I see something he didn't see or she didn't see, but having said that, I think there's a lot going on with the immigration so far as county budgets and local budgets are going, that's why I really appreciate  
820 having an opportunity to talk to you all about this because as practitioners, or what I do, not the practitioner out there but maybe considered a practitioner inside the government is that as you move these cases forward, you want to make sure you are moving forward with cases where it looks like there's a benefit likely, because it -- I think we're  
825 approaching a time where, depending on how things go, you're going to see more and more backlash -- from the local because -- from the local -- to the local courts because of the economy, so you know, the better cases that go forward I think the better off in the end everyone is. But I have not seen, much of what you're talking -- er, I really -- I don't think I have seen --

830 **CN:** -- of, of --

**PG:** -- of your --

**CN:** -- Yeah, you probably wouldn't see it too, guardianship based because the children  
835 would be released to somebody and then subsequent to the release they'd establish a guardianship.

**JP:** Right.

840 **AM:** Now that -- that does raise one issue that's come up for me extremely recently, just last week. And that is a situation where -- get further to the point of how the state court judges aren't really clear how this works, for good reason. I mean let's all keep in mind, these are state court -- state juvenile judges who deal with very different issues than  
845 undocumented aliens coming in looking for federal immigration relief and often they're not clear what their role is and frankly as a practitioner, I still am not entirely clear what their role is or why they've been given it, because these are issues that are very difficult and in my view should be not before judges who don't do this on a regular basis and also should not be subject to the fifty or so jurisdictions. It doesn't seem appropriate that a federal form of relief is going to be contingent on what state a child winds up in. In any  
850 event, a case that has just come up for me, and always seems to be the case, not once but twice, for the first time this week, is that I have two clients who went before state court judges in both cases the child had been released to -- through child protective services to a responsible guardian; in one case a relative and the other case a foster parent, and because the child had been released to a responsible, loving parent, the judge said "I'm  
855 not ordering a dependency order for abuse, abandonment, or neglect because this child isn't abused, abandoned or neglected anymore." And that's a real interesting question and I'm not sure how we're gonna handle that, except that in both cases we've had to file

an appeal to try and get to a level in the judicial system at the state where a judge actually has some familiarity with SIJ. Because, in both of these cases, we're asking the judge to  
860 issue an order for abuse or abandonment, essentially on past treatment, but the judge is telling us, "You know, I don't make rulings based on past treatment, I make rulings based on present treatment and presently this child is in a great home and is in a great setting and I'm not going to issue a dependency order." And it presents us with a rather  
865 frustrating situation that these -- neither of these judges seem to appreciate that this -- these children may be in loving, caring environments now, but, that's not going to do them much good when they age out of federal immigration relief and wind up on a plane back to their home country, where they're going to be abused, abandoned, or neglected again. And, you know, I gue -- the best I can do on that scenario is if it comes up, absolutely, please let me know we'll brainstorm on what to do about it, and in the  
870 meantime, we're going to work hard to try to figure out what to do in that situation and try to figure out how to get out of that box. I don't know how I've gone five plus years of doing this without this situation ever coming up, but now that it has, it makes perfect sense. You know, you've got a kid who's placed today and therefore doesn't appear to be in need of a dependency order and a judge is unwilling to give it, leading to a situation  
875 where the kid's going to be deported because he has no other form of relief. So if you've got that case, like I said, let me know and if you've had that case or have any thoughts on that case, again, please let me know.

**CN:** Yeah, some burning questions. John, have you seen children who are in -- who are  
880 stowaways or in the visa waiver program which, technically, they're only eligible to apply for asylum in immigration court. Are they eligible for consent and SIJ?

**JP:** Well, I haven't seen any.

885 **CN:** Okay.

**JP:** I don't know why they wouldn't be eligible for SIJ, but I have not seen any.

**CN:** Okay. The other question was: how young have you seen some of these children to  
890 be?

**JP:** The youngest I've ever seen, was, I believe, seven-years-old from Southern California, we granted consent. The -- and this is I think this is just north of San Diego, the county refused to take the case. So we moved the child to Michigan. I'm not going  
895 to say we were shopping for a judge, I did not say that. But I mean we were convinced, I mean we -- but that's -- I mean everything lined up. And we knew exactly what was going on with the case, so we felt very comfortable with what we did, and it was a tough (unintelligible) so that's been the youngest I've seen. The oldest I've seen even though

900 you didn't ask the question, has been, seventeen point nine years old. And I think I've  
seen the bulk of the kids coming in right now, are generally around fifteen or sixteen.  
And there are fifteen, sixteen, and seventeen -- we don't seem to see much younger ones.  
We have had, this might be interesting, a couple brothers, sibling-type, requests that've  
come in. I think there have been four in the past year. One was a brother sister, a couple  
905 brother-sisters, and a couple brother-brother, or whatever, so we had a couple of those and  
they were, I think, ages twelve -- twelve or thirteen.

**CN:** Another burning question, John. What about children of parents who are  
incarcerated? Would they -- would there be a case to be made that they're actually being  
910 abandoned, for example, if they're going to be incarcerated for twenty years during the  
child's childhood?

**JP:** It reminds me of a case, or a similar scenario that would -- that's a case-by-case  
basis.

915 **CN:** Hmm.

**JP:** I think that's the best way to answer that, because there are certain scenarios out  
there where, well put it this way, that type of case is worth looking at. I mean, always,  
that does not screen anyone out. But it would depend on the other particulars regarding  
920 the case as well. So I mean, parents being incarcerated, I would say, in and of itself is not  
going to qualify, you know, for the SIJ. But if you start talking about the age of the child,  
what they were incarcerated for, the relationship of the child, other things like that that  
may add to the, you know what I mean to the grant or the denial. It's I guess the biggest  
925 thing to walk away here from, there's no one single event that's going to cause a denial,  
just like there's no one single event, unless it's catastrophic, and they're the obvious  
cases, we don't even do a lot of work on those, I mean, like: parents murdered, when the  
documentation is there, as unfortunate as it is that's going to be a grant.

**CN:** -- But John, what I think people are taking from this, too, is that the more  
930 documentation, objective and credible documentation in a case, the better for purposes of  
your investigation to really assess the credibility and the consistency of the allegations,  
such as a psychological evaluation of the child, as well as if the parents have died in their  
country of origin, getting the death certificates, doing due diligence in actually preparing  
and submitting these cases.

935

**JP:** I would say yes. And also in maintaining an ongoing dialogue, because sometimes  
even -- I guess the cases that seem to be best prepared with volumes or reams of  
information, you do either get cons- get inconsistencies or they can be problematic or

940 whatever. But, yeah the more documentation we get, the easier it makes our job, and it's less research we, in fact, have to do.

945 **CN:** But I think some advocates have been concerned in the past, I guess, about overseas investigations or confidentiality of the child's information that might be compromised in the process if they actually provide all of this detailed information.

950 **JP:** Well, Chris, you bring up a good point with that, because I think that the o -- regarding the overseas investigation, we used to do those off and on in the past, I -- we can do them right now because we're try -- I hesitate to do them because it can take anywhere from three to six months to get it done, and because that depends on resources, country conditions, security, any one of a number of things. So it's -- I would say we -- right now, not by policy, but just by practice we would request an overseas investigation for the more egregious type cases or for different types of reasons, maybe than what we are seeing right now. I think, on the other item that you mentioned, what was that other part?

955 **CN:** Confidential --

**JP:** -- Oh --

960 **CN:** -- ity.

965 **JP:** Confidentiality -- we, in fact, got concerned in the past with attorneys, because we do get a hold of the A-file, and we do get a hold of the kid's facility file from ORR. In the past one or two attorney's groups have gotten very concerned about that, but I will say one thing. The file -- the information that we get from the ORR file has resulted in us denying a consent. It has also resulted in us granting a consent. And the reason I say that is we get some consent requests where there's marginal information, it's the ORR ile, combined with the A-file where we actually are in a position where we can grant consent. An example of this would be some attorney's groups were concerned with us getting 970 copies of phone logs from the facility file. There have been times in the past where, I think I used this scenario earlier, and this is just practical stuff we apply every day, but one person would say that: "well, I haven't talked" -- "I haven't spoken with parents in the past six months." Well the phone logs indicate that you talked to them five times a week. Okay, so that's obviously a denial, not just on that alone, but there are other things 975 that went along with the case. Now, one case, we had access -- we pulled he phone record out, the person said -- the allegation was: "my mother and father don't like me, they refuse to talk to me, they beat me, they've done this a-b-c and d." We didn't have a lot of evidence to go by. But the phone record, they called home twice a week and got in touch with a parent and the phone call was 15 seconds long, or ten seconds long. Based

980 with everything else that we had, what I saw was: "Hi, mom. How"--"Click" or "don't  
talk to me", that actually was actually the evidence that put us over the top or weighed  
heavily saying: you know what, this story is true. So that type of information, I think, the  
more we have, the better off we are. And we're looking for consistency of information,  
985 where we're getting psychological reports are helpful, counselor's notes that are in there  
are helpful to validate the story. It can also tell another story as well, but, generally, that  
proves to be, favorable.

**CN:** Right, and on the confidentiality issue, John, in terms of ORR records that you're  
getting, do you have access to the entire file, including the clinician reports, or is it more  
990 things like phone calls or correspondence that has been sent by the child to different  
addresses.

**JP:** Well, we're not getting copies of correspondence but we will have a copy of any  
medical reports or what-have-you, like clinical reports. And we would see that as not  
995 really being an issue of confidentiality because it's the federal government's property  
they're in -- they're in custody of the federal government. And to be honest, I mean, and  
people would have to see this, you'll either take my word for it or you won't. I think,  
those things rarely hurt the case, they only help the case, because there's only so much --  
you can't grant a consent request if you don't have information to support the claim.

1000  
**AM:** And one take-away from all of this, just to restate the obvious, having worked with  
John for a lot of years, we said there's sort of no single determinative grant and no single  
determinative denial, but to the extent that there would be one, it would be credibility.  
So, it's really important to keep in mind that sometimes, admitting bad facts to retain  
1005 credibility is a better avenue, than to try and hide things or cover up things that John, in  
his diligence is going to uncover and ultimately sort of torpedo the entire case. And you  
know, it's -- anybody who's worked with a child client knows that credibility is always  
an issue and sometimes some inconsistencies can't be avoided, but I've found that the  
most important thing to bring to the table when it comes time to approach John with a  
1010 consent request is making sure that you've done the work you need to do to get the real  
story -- the true and accurate story out of the client, make sure that you ask it on a number  
of occasions and that it all matches up, and frankly, be John before you go to John, and if  
you were him, what would you be looking for as a reason to deny and if you were him,  
what would jump out at you as potentially an issue that just doesn't quite look right and,  
1015 once you get those resolved you're gonna go a long way towards being successful both  
with the grant of consent if it's required as well as persuading a juvenile court judge  
who's pretty much going to have the same analysis that John has and at the end of the  
road also convincing citizenship and immigration services that they should issue the  
green card and adjust the status. So, I couldn't stress enough that, credibility is, even  
1020 having an inconsistent story about a very, very -- a very minor fact in and of itself is

meaningless is going to turn into a larger issue and admitting something for the sake of consistency, even if it's somewhat of a bad fact, is probably going to be a better way to go.

1025 **CN:** Thanks. Before we open it up for questions, Andrew I just wanted to see if you  
wanted to flag what legislative proposals are pending in Congress that would affect  
special immigrant juvenile status. For example, when the Child Status Protection Act  
was enacted to provide age-out protection for children for immigration remedies,  
1030 unfortunately there was no carve-out for children seeking special immigrant juvenile  
status, therefore, there's this big age-out problem but I think, the Unaccompanied Alien  
Child Protection Act, Andrew, addresses some of these issues, so if you could give a little  
commentary on that, that would be helpful for folks.

**AM:** Sure, very quickly. I was a lot more involved in the earlier Unaccompanied Alien  
1035 Children Act which essentially was the legislation, ultimately incorporated into the  
Homeland Security Act a couple of years ago that split the care and custody function  
from the immigration enforcement function and established this office over in Health and  
Human Services in the Office of Refugee Resettlement, that's designed to handle the care  
and custody decisions -- the day to day decisions relating to these children, while on the  
1040 other side DHS, Immigration and Customs Enforcement, deals with adjudicating the  
claims and making the sorts of decisions that we've been talking about that are -- that  
John is charged with. The earlier bill, split those functions between the two agencies, it  
did not address a couple of the issues that we've been talking about for the last hour and a  
half, specifically the issue of who should have the consent decision and, again, I've not  
1045 been involved in the current bill that is pending, but, my understanding, and Chris, feel  
free to correct me if I'm mistaken is that the bill would do two things, one is establish  
once and for all that the consent decision, the state court jurisdiction is attendant to the  
care and custody function and should be vested with the department of Health and  
Human Services in the division of Unaccompanied Refugee Services and second that  
1050 DHS can't look behind a state juvenile court order, that once a state juvenile court order  
has established that there has been abuse, abandonment, or neglect under state law DHS  
does not have the discretion to refuse to honor that determination and they must take it as  
a given that there has been abuse, abandonment, or neglect, once a state court judge has  
reached that conclusion and adjudicated accordingly. Um, that bill is pending right now  
1055 unclear what the future of the bill is gonna be, but to the extent that anybody is interested  
that is clearly something that through AILA you can get involved in the advocacy effort  
to do what you can to get that bill enacted sometime during this session of congress.

**CN:** And one last thing on the bill, it actually would provide age-out protection for  
1060 children, it would lower the age to 18 by the time everything has to be completed, but it  
would provide age-out protection, during the pendency with, the Department of

Homeland Security. So it's a mixed bag, in the sense that people would really have to hustle to get the children through the state court and on file with DHS by age eighteen, but after age eighteen they'd be protected during the pendency of their adjudications.

1065           One last burning question for John that's been coming up. John, after the -- is your consent memorandum or correspondence and the information that you've gathered in the investigation added to the child's A file? Or is it something that is a separate file that just exists with you?

1070   **JP:** Well, what we're doing right now is the determination, either the grant or the denial is added to the A file that's -- we've been consistent with that just recently -- what we started doing is uploading information into our GEMS system -- I don't know what GEMS stands for -- but anyway, our trial attorneys have access to that, so it -- I guess you could say, technically, it's sort of added to the A-file, I mean not directly, but people have  
1075 access.

**CN:** It's accessible?

**JP:** Yeah, by our trial attorneys.

1080   **CN:** Well, we've got a few minutes left, why don't we open it up for one or two or a few questions. I think we've been able to effectively address a lot of the questions that have been coming in on email to me, so without further, please operator, you can accept some questions.

1085   **OP:** Thank you. Today's question and answer session will be conducted electronically. To ask a question, please press star one on your telephone key pad at this time. If you're using a speakerphone, please make sure the mute function is turned off to allow your signal to reach the equipment. Once again, that is star one.

1090   We'll go first to Caller 1.

**CN:** Hi, [Caller 1].

1095   **Caller 1:** There's been a dependency order entered and then they want to place the child for adoption, before, adjustment status is granted, is that possible?

1100   **AM:** It's my understanding that that's possible as long as there's a finding that the child has been deemed eligible for long term foster care. You know, if the court then subsequently allows for adoption, I -- in the -- according to the wonderful ILRC, special immigrant juvenile status manual that's available at the ILRC.org website, it looks like it could work.

**Caller 1:** Okay, thank you.

1105

**OP:** We'll go next to Caller 2.

**Caller 2:** Hi, this is [Caller 2]. I'm calling because I'm wondering who can file these dependency petitions? Here it seems like the social services would file them on a report of abuse or neglect, but they're very reluctant to take any more kids into the system because of financial reasons. So I'm just wondering, does anybody else have jurisdiction to file? Are peop- -- in other jurisdictions whose filing them?

1110

**JP:** It can vary -- that really the county or the state. Some jurisdictions you'll be going to the department of social services first and they'll be taking it forward, other jurisdictions you'll be able to go, like, to either housed in a juvenile court, or juvenile probation intake and they can be filed almost, like, by a guardian or by almost anybody. I think if the kid is basically on his own it's gonna have to be social services that comes in on their behalf.

1115

**Caller2:** And I'm thinking that social services is not going to want to file them.

1120

**CN:** But that's --

**JP:** (trying to interject)

1125

**CN:** -- why if you're able to do it as a guardianship based SIJ, that has been a growing trend because then social services doesn't have to expend any funds on the child's care if there is a willing guardian to care for them.

**Caller 2:** But you have to find one though, that could be the problem too --

1130

**CN:** -- yeah --

**Caller 2:** -- Yeah. Alright, so the lawyers can't do it on their own there has to be somebody taking -- willing to take custody of the child.

1135

**CN:** And it becomes a state constitutional matter in terms of being, whether their state constitution requires them to take all children into custody upon allegations of abuse, abandonment, or neglect.

1140

**AM:** And again, for the sake of re-iterating what I said before I absolutely do not know the answer to your question, which, again my best advice is find local counsel, who's proficient in the juvenile court system who's gonna know exactly how that court

1145 operates, and not only familiarity with the state law, but in most cases, even a familiarity with the judges, --

**Caller 2:** -- I am, that's the problem (laugh)--

1150 **AM:** (laugh)

**Caller 2:** -- and I don't --

**AM:** -- yeah --

1155 **Caller 2:** -- see it happening (laugh).

**AM:** Yeah.

1160 **Caller 2:** Sorry. Okay.

**AM:** And again, I guess I would just go back to my other comment that there is some aspect of this form of relief that is completely idiotic in my view that you're gonna reach that kind of problem, you know, a state law problem for a federal form of relief and --

1165 **Caller 2:** -- yeah --

**AM:** -- all we can do is flag those issues and continue to seek legislative change that's gonna sort of clear this stuff up.

1170 **Caller 2:** Thank you.

**OP:** We'll go next to **Caller 3**.

1175 Unidentified Speaker: ([offline]: [**Caller 3**]) Hi, our question is regarding the procedures for filing SIJ.

1180 **Caller 3:** Just to confirm that a child who is not in custody, but is in proceedings, the case is admin closed whether or not -- what is the consent requirement for that particular -  
- I came in late in the game in this teleconference. Is there ICE consent required in that situation?

**JP:** It would seem -- my knee-jerk response to that, if -- if they are not in federal custody and there is no final order of removal that you would not require consent.

1185 **Caller 3:** Because there were -- we're in the middle of the state court process for the dependency and we're -- we were curious whether or not -- (clear throat) my understanding is that we did have to serve the immigration service of these proceedings. Is that correct?

1190 **AM:** -- I'm not -- I've never done that. My -- you know, I take the view that it's, you either need prior consent or you don't. If you need prior consent and have begun the process of seeking a dependency order, it will make that dependency order prima facie invalid and sort of make your entire effort having been wasted, so if you need the consent and don't seek it before you open any proceeding in the state court, it's not gonna --  
1195 you're not gonna to be able to apply for SIJ and on the flip side if you don't need consent, then the first time that DHS will ever have to hear from you is when you have completed the I-360 special immigrant petition and the 485 adjustment of status application and submitted those along with the dependency order, to have that petition adjudicated. I don't think that there's -- actually, I will say, there's no require- -- if you don't need  
1200 consent they don't need to see or hear from you until you apply and if you do need consent, then don't bother going to state court before you get it.

**Caller 3:** So, does the immigration court judge have jurisdiction over the adjustment status once you have the dependency order and you apply and after you get the SIJ  
1205 approved?

**AM:** Immigration judges have absolutely no role in the SIJ process.

**Caller 3:** Okay.

1210 **CN:** The I-360, but for purposes of adjustment if they have been in removal proceedings, you have to adjus -- do the I-485 before the immigration judge.

**Caller 3:** -- That was our question.

1215 **CN:** CIS will not exercise jurisdiction if they have pending removal proceedings and administrative closure, unlike termination, doesn't mean termination of proceedings. It means that they're still technically in proceedings so the IJ would have jurisdiction. Another hot issue that has been cropping up in SIJ, just to flag for people, is *Matter of Shaar*. *Matter of Shaar* is board of immigration appeals decision which stands for the proposition that: if you have been granted voluntary departure by an immigration judge and then you seek to reopen your case based on special immigrant juvenile status, even during the voluntary departure period, it's not necessarily tolled and you can be found to be ineligible for adjustment of status. The AILF, American Immigration Law Foundation  
1220 has been doing a lot around this *Matter of Shaar* issue. So that's another reason, as John  
1225

has said, you want to do the SIJ even if it's going to require consent by ICE, as quickly as possible in the child's life. Because if you're going to wait until they have a voluntary departure order, you know, you're going to get into this *Matter of Shaar* terrain, and it's very difficult to navigate.

1230

**Caller 3:** Okay, well thank you very much, very helpful.

**CN:** Great.

1235 **OP:** We'll go next to [**Caller 4**] ??

(long pause)

**CN:** Hi, **Caller 4**.

1240

(long pause)

**OP:** Hang on just a second

1245 **Caller 4:** -- dependent living. The statute requires long-term care, we've had the SIJs approved but then Baltimore does not seem to be approving them and I'd like to know that maybe we're not doing it right and that there are others that are being successful? Also Baltimore seems to be holding on to them, for whatever reason, until they age out. And the adjustment is not granted prior to twenty-one. Is there a feeling -- is -- is it just  
1250 my thinking, I haven't been able to confirm, it's just kind of anecdotal but in -- in general, are you guys getting something different?

**CN:** Well that -- that's why I recommended that folks look at Columbia University's report on special immigrant juvenile status and the different patterns and practices  
1255 occurring in different jurisdictions, I don't think we want to single out any one jurisdiction here. I -- you -- and you definitely want to educate folks on memorandum three and how they're supposed to be applying the law of special immigrant juvenile status nationwide to all district offices.

1260 **Caller 4:** Okay. I'll look at that. I just wanted to throw that out, we're kinda stuck at this end, but thank you.

**OP:** Next we'll go to **Caller 5**.

1265 **Caller 5:** Hi, this is [**Caller 5**], John, I was happy to hear that you're getting some help in processing the consent requests. I just wanted to ask, again, as we're informing our

clients of the time that they would have to spend in detention pending a request, right now what is your sense of how long that consent request process will take?

1270 **JP:** We are for the time being, and of course this all depends on volume, I basically have two people working almost exclusively right now and I'm involved in the process but, you know, obviously not as much 'cause I have two people in here to really keep this thing rolling. We are, right now we are under ninety days on everything we have. And a lot of the requests are getting done within, I think, four -- six to eight weeks, I think is the average. Now, by practice, we like to finish in under ninety days, but difficult cases can take longer or volume can change that.

**Caller 5:** Thank you.

1280 **JP:** Yeah, that's about where we're at right now.

**CN:** That's dramatic progress, John.

**OP:** We'll do next to **Caller 6**.

1285

**Caller 6:** Yes, hello. I'm wondering about a case in which the juvenile was released from ICE custody to a relative who was paroled. The relative is placing the child into voluntary foster care, foster care administered by the state. What would ICE'S view of the change in, I guess, custody of the child be, and would such a child need to seek prior consent?

1290

**JP:** Well, I would think that I would need to hear a little bit more, I would send a request, or, maybe, talk, -- offline, right, another time, cause there's -- I would want to know a little more about the case, but I would be questioning if the person is released to a sponsor, to an individual, usually before there's a change if that person's going to go stay somewhere else, basically, I should be notified of that change, but that's a technicality. Going into the foster care, like I said, I would need more. I don't know what I would say -- which is -- it would depend. I mean, it's definitely -- any case is worthwhile discussing or talking about.

1300

**Caller 6:** Okay. Thank you.

**JP:** Okay.

1305 **OP:** Next, we'll go to **Caller 7**.

**Caller 7:** Yes, hello. I have a client who is in removal proceedings whose father is an LPR here and has been released into custody to the LPR father, does that preclude the child from getting special juvenile status?

1310

**JP:** Not necessarily, but I -- if there is no neglect, abuse, or abandonment, and that is the child's natural father that would be a case that would be -- I would probably be inclined to deny. I mean based on that, unless there's something else there that I don't know about right now.

1315

**Caller 7:** Okay --

**JP:** -- Because -- yeah, because it is a parent, there's a place for that person to live and someone to take care of them.

1320

**Caller 7:** Okay. Alright. Thank you.

**OP:** Next, we'll go to **Caller 8**.

1325

**Caller 8:** Hi, this is [Caller 8] from San Francisco and my question is, does the deportation of a parent who is now incommunicado, does that constitute an abandonment?

**JP:** Yes and no. I mean --

1330

**AM:** -- I can, -- one thing that I don't think has come up yet and is worth noting is that the, there is a second finding required by the state court, and this may answer your question, and that is not only does the state court have to find that the child is eligible for long-term foster care, due to abuse, abandonment, or neglect, but that it is not in the child's best interest to be returned to the home country. So, if I were to have that case, you know, the question I'd be looking at is DHS likely to say that the best thing for this child would be to follow the parent and be sent back to the home country or not. And, you know, not only does ICE have to make the finding that it would be better for the child to stay here without the parent than to go back home where -- to where the parent has been deported but the state court judge is going to ask the same question and that state court judge is the one who has to make a finding conclusively that it is not in the child's best interest to be returned home. And in that situation I think that that would be a key question.

1335

1340

1345

**Caller 8:** Okay, thank you so much.

**OP:** And next we'll move to **Caller 9**.

1350 **Caller 9:** Hi, I'm in a situation where we have a client who's been in removal proceedings and they've been stayed and we've been granted consent and we're filing a dependency petition. We're wondering once we get to filing an I-360 and the I-485 are the removal proceedings, do they have to be reopened in order to be granted an I-485.

1355 **JP:** Chris?

**CN:** So, to understand your question, the person has been already ordered removed?

**Caller 9:** No, he's, the removal proceedings have been stayed, pending the SIJS process.

1360 **CN:** Well, it depends on how you consider a stay. If it's administrative closure, you're going to have to do a joint motion with DHS to reopen the proceedings to proceed on the SIJ for purposes of the adjudication of the I-485. If the proceedings, were just continued for a year or so then you would just do a motion for a hearing on the I-485, it wouldn't have to be a motion to remove the administrative closure of the proceedings. If the  
1365 proceedings were completely terminated then you would have to do a motion to reopen.

**Caller 9:** So, if they were terminated then we have to reopen the removal proceedings, not to get the I-360, but just the I-485.

1370 **CN:** Right. The immigration court doesn't have jurisdiction over the I-360, only the I-485 if the person has been in removal proceedings.

**Caller 9:** Okay --

1375 **CN:** -- I --

**Caller 9:** -- thank you.

1380 **OP:** Next we'll move to **Caller 10**.

**Caller 10:** Hi, I was wondering whether or not it's possible for -- to apply for SIJs status and also apply for a green card at the same time, or whether they have to be granted the status first.

1385 **CN:** That's a question for USCIS. The way it works, is you file the I-360 with the I-485 with the local office and I think the predicate, though, for the grant of the adjustment is that actually the I-360 has been approved. Typically they'll approve the I-360 first, or they can -- they'll approve it consecutively at the same, virtually at the same time, when

1390 they approve the I-360, they can approve the 485, it really depends on local office procedure, for that you want to look at the Columbia University Report which flags how different offices are handling these issues.

**Caller 10:** Okay, thanks for your help.

1395 **OP:** And our next question comes from **Caller 11**.

**CN:** Hi [**Caller 11**].

1400 **Caller 11:** Actually, this is [**Another Caller 11**], [**Caller 11**] had to step out. But the question has to do with what Mr. Pogash referenced earlier with the determination of consent being added to the child's A-file. Are the other materials that are collected, such as the psychiatrist's case notes, et cetera, are those also added to the A-file or are those discarded? What happens with those materials?

1405 **JP:** Right now we have two ways, exactly today -- we have two separate files. We have a file that is maintained in my office which is, you know, currently separate from the A-file. The plan is, and although this may or may not go into action, the plan is to upload the information -- that information in my file into what's called GEMS. So, our trial attorneys or other parts, components would have access or people who have access to  
1410 GEMS, who have access to that in case they thought they needed it.

**Another Caller 11:** So when you say "upload that information", that is just the memo that you write about the consent determination or is that all of the information that was collected?

1415

**JP:** In the plans is that all the information is collected and that's just starting to happen right now. We -- right now what -- the thing that always hits the A-file right now, and the only thing that's hitting the A-file right now is the consent determination, whether it's a yeah or whether it's a nay. In the past, we had talked about getting that information  
1420 into the A-files but we simply haven't been doing that, but that's primarily related to copying files and sending stuff around the country. So I'm not saying we -- I don't know whether or not it is going to become practice, it very well may, but I don't know if it's going to happen. Do you have any concerns with that?

1425 **Another Caller 11:** Yeah. I think that there probably would be some concerns among the facilities about that --

**JP:** -- Hmm --

1430 **Another Caller 11:** -- that.

**JP:** Yeah well one thing, too, I have never seen -- when I -- and maybe depending on how people feel about this, up until, the Homeland Security Act in 2003, you know we administered all the contracts for the facilities, INS did, Legacy INS. I have never seen,  
1435 uh, any information contained in a child's facility file that impacted negatively their -- any claim for relief.

**Another Caller 11:** Hmm.

1440 **JP:** If that's, -- and I -- and even though it's the stuff I see right now, I don't necessarily see, and this is just me talking, I'm only seeing a certain subset of cases, the facility file -- I -- have yet to see anything that I would say would really adversely impact the kid's claim. Because the things that seem to me to adversely impact, even if you look at the SIJ process, you're looking at -- you're really trying to ground truth in a sense and you're  
1445 looking at what's in there and even a lot of that information doesn't necessarily negatively impact. You know what I'm saying?

**Another Caller 11:** No --

1450 **JP:** -- I guess --

**Another Caller 11:** I think that the concern would be for children that have, -- if there's information that as interpreted were to negatively impact an asylum case, for instance --

1455 **JP:** -- Well, let me interrupt you. But what would -- what do you think, and I'm asking 'cause I'm not really sure, what type of information do you think would negatively impact an asylum claim?

**Another Caller 11:** I don't -- I'm not an attorney so I can't really address that, but I do  
1460 know from the perspective of some of the foster care programs that we work with that this is a question that they would like the answer to and their -- I'm pretty sure that their, feelings would be on the side of not sharing as much information with the A-file. Further than that I can't really say right now.

1465 **JP:** Yeah, and I guess --

**Another Caller 11:** -- and I think that --

**JP:** -- that --  
1470

**Another Caller 11:** -- the concern is mostly for kids who have conflicts cases because they're pursuing asylum and SIJ at the same time --

**JP:** -- yeah --

1475

**Another Caller 11:** -- and there's all sorts of timing questions about, if the child is eligible for both, or not, and which one will lead to status before the child turns eighteen.

1480

**JP:** Yeah, and I think there are two or three separate issues. All I can tell you is, and I'm speaking as honestly as I can from reviewing this stuff, and I guess the proof will be in the pudding, so to speak, the old phrase, but I really believe, and I have been working with kids for over twenty-some years right now, the information, the more complex the case, I think the better served everyone is by having access to the information because I think some of the foster care workers' concerns, and I've worked social services too, I think that they might be too concerned a little bit or worried, because I think the reality is, I really have yet to see anything in there, you know, hurting any type of claim.

1485

**Another Caller 11:** Okay. Thanks for the clarifications

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**JP:** (attempts to interject)

1495

**CN:** Okay, as folks can see there's just a universe of issues to discuss in relation to SIJ and maybe AILA will want to organize a subsequent teleconference, probably focused more on the CIS processes, I think that would be helpful. We have had some great questions for our panelists, and easy ones, if you can provide your telephone number for folks who have queries about individual matters, both John, and Andrew, and myself, that would be great.

1500

**JP:** Yeah, this is John Pogash. My phone number is 202-732-2913, and that's my direct line.

**AM:** I'll repeat my information. Direct dial is 202-637-1042 and 202-637-1042. The email, which may be easier, is [andrew.morton@lw.com](mailto:andrew.morton@lw.com)

1505

**CN:** And mine is 202-419-2428; 202-419-2428. Well without further, I want to thank our panelists and presenters, John and Andrew for such a dynamic discussion, as well as AILA for hosting the call, and I want to thank the audience for incredible questions and insights into this process, and I -- we look forward to working together on these matters in the future. So, thank you and I think we're signing off.

1510

**OP:** And that does conclude the base conference. Again thank you for your participation.