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Protection for Immigrant Youth

Judy Harris Kluger and Amelia T.R. Starr

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Special Immigrant Juvenile Status is a valid and long-standing immigration remedy created to protect the most vulnerable members of society—undocumented, abused, abandoned and neglected immigrant children—and is uniquely dependent on state courts' expertise in child welfare matters. Its scope is far narrower than recent news reports suggest; of the more than one million applications for lawful immigration status to federal immigration authorities nationwide each year, special immigrant juvenile status petitions represent less than one percent of the applications received.

Recent news reports have alleged a pattern of fraud in which unknown numbers of South Asian youth were instructed by unethical attorneys to lie about their personal histories in Queens Family Court in order to obtain legal status in the United States. Unfortunately, these reports have called into question an urgently needed

immigration protection. They have also questioned the role and authority of the Family Court in these matters, and created an aura of suspicion around immigrant children and youth who are validly seeking protection from Family Court.

Initially created by Congress in 1990, the purpose of the special immigrant juvenile status remedy is to protect abused, abandoned, and neglected children and youth from mistreatment by one or both of their parents, while deferring to the intervention of a state court with expertise in matters regarding the care and custody of children and youth. To qualify for the status, a state court with jurisdiction over child welfare and custody matters must make certain specific findings regarding an immigrant child or youth under the age of 21. These include determinations that reunification of the child with one of both of his or her parents is not viable due to abuse, abandonment, neglect or similar mistreatment, as well as that it would be in the child's best interest to remain in the United States.

The specific determinations by the state court are consolidated in a court order which is then submitted to federal immigration authorities, along with a larger application requesting special immigrant juvenile status. Federal immigration authorities then independently assess the validity of the child's claim, conduct background security checks, and exercise their own discretion in determining whether or not to grant lawful immigration status to the young person.

Immigration law does not contain child welfare standards and immigration authorities are not child welfare experts. For these reasons, special immigrant juvenile status intentionally defers to state courts—here, in New York, that is primarily the Family Court—to use their legal expertise, authority and discretion to make the requisite findings. In addition to receiving extensive training regarding state child welfare law, New York Family Courts are fully empowered by the Family Court Act to thoughtfully weigh evidence presented to them,

consider the best interests of the child, and make credibility determinations. The Family Court also has the authority to order safety background checks and assessments through the State Central Registry for Child Abuse and Neglect, the New York State Department of Criminal Justice Services, the Administration for Children's Services, and the Department of Probation. A Family Court judge concerned about fraud can use judicial authority to deny the petition involved.

Special immigrant juvenile status is a much-needed protection for vulnerable immigrant children and youth. At Sanctuary for Families we represent immigrant children who have been beaten, sexually abused, exposed to severe acts of domestic violence, neglected, and left abandoned by their own family members. Many of our clients have recently escaped extreme violence in their home countries; others have been here since they were infants. Like all children in New York, they have the right to seek protection from the Family Court to stabilize their lives and solidify legal relationships with caring guardians and family members, so that they may finally have safety and permanency.

Sanctuary for Families represents 18-year-old Laura from Honduras, who came to the United States fleeing severe physical and emotional abuse by her mother, abandonment by her father, and targeted recruitment and rape by a gang. Laura is now safely in the care of a relative who desperately wants to be her legally-appointed guardian, in order to provide Laura with the love and support she needs to fully recover from years of trauma.

Sanctuary also represents 16-year-old Elsa from Guatemala, who suffered severe beatings and emotional abuse by her father. Now safely reunited with her mother, a victim of domestic violence at the hands of Elsa's father, Elsa seeks the protection of the Family Court so that she may remain in her mother's custody and not have to return to her abusive father.

A recent report by the Fund for Modern Courts, *The Intersection of Immigration Status and the New York Family Courts*, released after two years of research as well as interviews with judges, practitioners and advocates across the state, demonstrates the vital role of the New York State Family court in Special Immigrant Juvenile Status as well as other issues that impact federal immigration rights of litigants in Family Court.

Laura, Elsa, and so many other children and youth like them desperately need the protection of Family Court to adjudicate their petitions for guardianship and custody. They have valid claims and the strong, persuasive evidence necessary for a Family Court judge to grant them the safety and permanency they deserve. Fortunately, many Family Court judges have adjudicated cases involving undocumented immigrant children and youth, who also needed the requisite order to apply for Special Immigrant Juvenile status. The Family Court's intervention in these cases has made it possible for these abused, abandoned, and neglected children and youth to obtain lifesaving protection from immigration authorities. We commend these judges for their commitment to protecting all children and youth, including those who lack immigration status, and are grateful for their willingness to exercise their full legal authority and expertise to make considered and deliberate decisions in the best interests of the immigrant children who appear in their courtrooms.

Judy Harris Kluger is executive director of Sanctuary for Families.

Amelia T.R. Starr is a board member of the Fund for Modern Courts .