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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Leobardo MORENO GALVEZ, et al.

Plaintiffs,

v.

Lee Francis CISSNA, Director, U.S. Citizenship
and Immigration Services, et al.

Defendants.

Case No. 2:19-cv-321

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Noted on Motion Calendar:
March 29, 2019

ORAL ARGUMENT REQUESTED

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17 *Matter of E-G-C-V*, 2016 WL 8316261 (AAO Dec. 20, 2016) 13

18 USCIS Ombudsman, Ensuring Process Efficiency and Legal Sufficiency in
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19 USCIS Policy Manual, vol. 6, pt. J (last updated Feb. 12, 2019),
<https://bit.ly/2NAGVCT> passim

20 USCIS Policy Mem. PM-602-0050.1 (June 28, 2018), <https://bit.ly/2u8zXfS> 22

21 Wash. Leadership Inst., Washington State Court Special Immigrant Juvenile Status (SIJS)
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I. INTRODUCTION

1
2 Plaintiffs Leobardo Moreno Galvez, Jose Luis Vicente Ramos, and Angel de Jesus
3 Muñoz Olivera are vulnerable immigrant youth who have applied for Special Immigrant Juvenile
4 Status (SIJS). SIJS is a form of humanitarian relief that provides abandoned, abused, and
5 neglected immigrant youth with a path to long-term legal status in the United States following
6 certain state court proceedings. 8 U.S.C. § 1101(a)(27)(J) (SIJS statute). Congress has defined a
7 “child” for purposes of SIJS to be any “unmarried person under twenty-one years of age.” 8
8 U.S.C. § 1101(b)(1). The SIJS statute requires Defendant U.S. Citizenship and Immigration
9 Services (USCIS) to defer to the findings of a state court that properly exercises jurisdiction to
10 determine the custody of a youth and finds that (1) reunification with one or both parents is not
11 viable due to abuse, neglect, abandonment, or a similar basis under state law, and (2) it is not in
12 the youth’s best interest to be returned to their country of origin (SIJS findings). 8 U.S.C. §
13 1101(a)(27)(J)(i)-(ii).

14 Federal law leaves little doubt that Plaintiffs are eligible for SIJS, as each meets the
15 statutory requirements listed above. In each case, a Washington state court (1) placed the youth
16 in the custody of a state agency or appointed a guardian, and (2) issued the requisite SIJS
17 findings. However, in 2018, USCIS inexplicably and unlawfully began imposing a new
18 requirement for SIJS eligibility: that the state court issuing SIJS findings must have the authority
19 to return a child to the custody of his or her parent(s). This ultra vires requirement categorically
20 precludes youth ages 18 to 20 from obtaining the humanitarian relief they merit, and violates the
21 Immigration and Nationality Act (INA) and Administrative Procedure Act (APA).

22 Absent action by this Court, Plaintiffs and proposed class members will continue to suffer
23 irreparable harm, including loss of the opportunity to obtain SIJS and adjust to lawful permanent
24

1 resident (LPR) status. Losing the opportunity to obtain that status will result in Plaintiffs' loss of
2 shelter, guardians, or foster parents who can best protect their welfare and help them recover
3 from the abuse, abandonment, or neglect they have experienced. In addition, Defendants' actions
4 have resulted in the ongoing civil detention of Plaintiff Jose Luis Vicente Ramos and other class
5 members, needlessly and cruelly incarcerating them despite their youth. Plaintiffs also face
6 irreparable harm from the loss of educational and professional opportunities and imminent
7 removal from the United States.

8 Accordingly, Plaintiffs now request this Court preliminarily enjoin Defendants' new ultra
9 vires requirement and ensure that USCIS adjudicates their applications in accordance with the
10 INA's plain language. Specifically, Plaintiffs ask this Court to preliminarily enjoin Defendants
11 from applying their unlawful policy, and to order Defendants to reopen and re-adjudicate the
12 SIJS petitions USCIS has denied under this policy. Moreover, to limit the harm caused by this
13 policy, Plaintiffs ask this Court to ensure Defendants adjudicate their SIJS petitions within the
14 time period prescribed by the INA.

15 II. BACKGROUND

16 A. The SIJS Statute and Deference to State Courts

17 In 1990, Congress created SIJS to provide abused, abandoned, or neglected immigrant
18 children in foster care a pathway to lawful permanent resident (LPR) status. Immigration Act of
19 1990, Pub. L. No. 101-649 § 153, 104 Stat. 4978, 5005-06 (defining "special immigrant" in part
20 as a child who "has been declared dependent on a juvenile court . . . *and* has been deemed
21 eligible by that court for *long-term foster care*" (emphases added)). Since its creation in 1990,
22 Congress has expanded the scope of SIJS eligibility beyond children and youth in foster care. In
23 1994, Congress extended SIJS relief to any juvenile "legally committed to, or placed under the
24 custody of, a[] [state] agency or department." Immigration and Technical Corrections Act of

1 1994, Pub. L. No. 103-416 § 219, 108 Stat. 4305, 4316. By doing so, Congress expanded the
2 type of proceedings in which state courts could enter SIJS findings. In 2008, Congress removed
3 placement in foster care from the definition of a special immigrant juvenile and ensured that SIJS
4 is available to all children who have “been declared dependent on a juvenile court . . . or whom
5 such a court has legally committed to, or placed under the custody of, an agency or department
6 of a State, or an individual or entity appointed by a State or juvenile court.” 8 U.S.C. §
7 1101(a)(27)(J)(i); *see also* Trafficking Victims Protections Reauthorization Act, Pub. L. No.
8 110-457 § 235(d)(1)(A), 122 Stat. 5044, 5079 (2008) (TVPRA).

9 The INA defines a child for purposes of SIJS to be “an unmarried person under twenty-
10 one years of age.” 8 U.S.C. § 1101(b)(1). Accordingly, the Immigration and Naturalization
11 Service (the predecessor agency to USCIS), and later, USCIS, have long recognized that all
12 unmarried children and youth under the age of 21 meet the age requirement for SIJS. 8 C.F.R. §
13 204.11(c)(1); *see also* USCIS Policy Manual, vol. 6, pt. J, ch. 2(C) (last updated Feb. 12, 2019),
14 <https://bit.ly/2NAGVCT> (“[A] ‘child’ is an unmarried person under 21 years of age for purposes
15 of SIJ classification.”). The 2008 TVPRA amendments also provided protections consistent with
16 this definition, ensuring USCIS could not deny a SIJS petition on the basis of age so long as the
17 petitioner was under 21 at the time of filing, regardless of the applicant’s age when USCIS
18 adjudicated the petition. TVPRA § 235(d)(6), 122 Stat. at 5080.

19 Thus, under the current SIJS statute, petitioners must be (1) under 21 years of age at the
20 time the petition is filed; (2) unmarried; (3) declared dependent on a state or juvenile court, or
21 placed in the custody of a state agency or individual appointed by such a court; and (4) the
22 subject of specific findings that (a) reunification with one or more parents is not viable due to
23 abuse, abandonment, neglect, or a similar basis under state law, and that (b) it is not in the child’s
24

1 best interest to return to his or her home country (SIJS findings). *See* 8 U.S.C. §§ 1101(b)(1),
2 1101(a)(27)(J), 1232(d)(6). Every SIJS petition submitted to USCIS must include a predicate
3 state court order containing these findings (SIJS order).

4 The SIJS statute confers all fact-finding authority on the state court. *See* 8 U.S.C. §
5 1101(a)(27)(J)(i)-(ii) (requiring state juvenile courts to make predicate SIJS findings). The SIJS
6 statute provides no authority for USCIS to second guess the state court’s determinations. While
7 the Department of Homeland Security (DHS) must provide consent for the SIJ classification, *see*
8 *id* § 1101(a)(27)(J)(iii), USCIS provides such consent once it determines there exists “a
9 reasonable factual basis for all of the required findings,” *see* USCIS Policy Manual, vol. 6, pt J,
10 ch. 2(D)(4) (instructing adjudicators to “rel[y] on the expertise of the juvenile court in making
11 child welfare decisions and . . . not reweigh the evidence to determine if the child was subjected
12 to abuse, neglect, abandonment, or a similar basis under state law”). Furthermore, following the
13 2008 TVPRA amendments, USCIS must adjudicate all SIJS petitions within 180 days after the
14 date of filing. TVPRA § 235(d)(2), 122 Stat. at 5080 (codified at 8 U.S.C. § 1232(d)(2)).

15 **B. Washington State Law Framework**

16 Washington state law explicitly empowers juvenile courts to make determinations about
17 the care and custody of children, including youth who are 18 years or older. SIJS orders are
18 issued in a variety of Washington state court proceedings, including juvenile offender
19 proceedings, dependency and extended foster care proceedings, non-parental custody
20 proceedings, divorce and other family law proceedings, and Child in Need of Services/At-Risk
21 Youth proceedings. Wash. Leadership Inst., Washington State Court Special Immigrant Juvenile
22 Status (SIJS) Bench Book and Resource Guide 15-16 (2016), <https://bit.ly/2T5sUDh>.

23 State laws expressly extends jurisdiction for Washington courts to make custody
24 determinations for youth ages 18 to 20 in three different types of proceedings, thus empowering

1 them to enter SIJS findings for such youth. First, in juvenile offender proceedings, a state court
2 may extend its jurisdiction over the adjudication of a juvenile offense and thus determine the
3 custody of a juvenile after the juvenile turns 18 “if prior to the juvenile’s eighteenth birthday . . .
4 [p]roceedings are pending seeking the adjudication of a juvenile offense and the court by written
5 order setting forth its reasons extends jurisdiction of [the] juvenile court over the juvenile beyond
6 his or her eighteenth birthday.” Revised Code of Washington (RCW) § 13.40.300(3)(a). Pursuant
7 to RCW § 13.40.300, a juvenile court in Washington State may sentence a juvenile offender to
8 be committed to a correctional facility up until the juvenile’s twenty-first birthday, and thus
9 retains authority to issue SIJS findings. *Id.* § 13.40.300(1).

10 Second, the Vulnerable Youth Guardianship (VYG) statute, enacted by the state
11 legislature in 2017, “grants the superior courts jurisdiction to make judicial determinations
12 regarding the custody and care of . . . an unmarried person under twenty-one years of age.” *Id.*
13 § 13.90.901(1)(a); *see also id.* § 13.90.010(6) (defining “[v]ulnerable youth” as “an individual
14 who has turned eighteen years old, but who is not yet twenty-one years old”). In enacting the
15 VYG statute, the state legislature sought “to provide an avenue for . . . vulnerable [immigrant]
16 youth to petition the superior courts to appoint a guardian of the person, even if the youth is over
17 eighteen years old.” *Id.* § 13.90.901(1)(e). Under the VYG statute, “parents, licensed foster
18 parents, relatives, and suitable persons” can be designated as a guardian for a vulnerable youth.
19 *Id.* § 13.90.020(2). The court determines placement with a suitable and responsible guardian
20 pursuant to specific state law requirements *Id.* § 13.90.020(3)(c)-(e). Until the youth turns 21,
21 when the VYG automatically terminates, RCW § 13.90.060(1), a state court has the authority to
22 determine the youth’s custodial placement and issue SIJS findings. *Id.* § 13.90.060.

1 Third, under the Extended Foster Care (EFC) program, Washington state courts maintain
2 jurisdiction over continued dependency proceedings for youth who were declared legally
3 dependent on the state before turning 18. *Id.* § 13.34.267(1). To participate in EFC, a youth must
4 first be determined legally “dependent” before turning 18. *Id.* § 74.13.031(11)(b). Where a youth
5 elects to participate in EFC upon turning 18, the dependency proceedings may continue until the
6 youth turns 21. *Id.* During this time, the state court maintains jurisdiction over the youth’s
7 extended foster care services and thus may issue SIJS findings. *Id.* § 13.34.267.

8 **C. Factual and Procedural Background of Plaintiffs’ SIJS Petitions**

9 1. Plaintiff Moreno Galvez

10 Plaintiff Leobardo Moreno Galvez is a 20-year-old citizen of Mexico. Moreno Galvez
11 Decl. ¶ 1. Growing up, Leobardo suffered severe physical abuse by his father. *Id.* ¶ 5. His parents
12 could not provide for his basic needs, such as food and adequate shelter. He was forced to drop
13 out of school when he was 8 years old and began working at 12 years old. *Id.* ¶¶ 4, 6-9. When he
14 turned 14, he came to the United States on his own and has since lived with relatives and friends.
15 *Id.* ¶¶ 10-11.

16 In 2016, Leobardo was placed in juvenile offender proceedings after being arrested for
17 Minor in Possession as a 17-year-old. *Id.* ¶ 12. The Skagit County Superior Court adjudicating
18 the offense extended its jurisdiction past Leobardo’s eighteenth birthday. *Id.* On October 20,
19 2016, when Leobardo was 18 years old, the Skagit County Superior Court placed him in the
20 custody of a state agency or department and entered SIJS findings. Maltese Decl. Ex. D at 1-2.

21 On December 2, 2016, Leobardo submitted his Form I-360, Petition for Special
22 Immigrant Juvenile Status to USCIS. Maltese Decl. Ex. G at 2. On August 23, 2018, USCIS
23 issued a Notice of Intent to Deny (NOID) on Leobardo’s SIJS petition, noting that “the evidence
24 you submitted does not establish that the state court had jurisdiction under state law to make a

1 legal conclusion about returning you to your parent(s)' custody." *Id.* Ex. E at 1-2. On October
2 31, 2018, USCIS issued a second NOID on the same basis. *Id.* Ex. F at 1-2. Leobardo submitted
3 timely responses to these notices. Moreno Galvez Decl. ¶ 13. On December 20, 2018, USCIS
4 denied his I-360 petition, again stating that "the evidence you submitted does not establish that
5 the state court had jurisdiction under state law to make a legal conclusion about returning you to
6 your parent(s)' custody." Maltese Decl. Ex. G at 2. This denial notice erroneously stated that "a
7 court has placed you in a guardianship." *Id.* Additionally, the denial notice stated that Leobardo
8 "[is] not lawfully present in the United States" and that if he "do[es] not depart within 33 days of
9 this letter, USCIS may issue [him] a Notice to Appear and commence removal proceedings
10 against [him]." *Id.* at 3.

11 2. Plaintiff Vicente Ramos

12 Plaintiff Jose Luis Vicente Ramos is a 20-year-old citizen of Guatemala. Vicente Ramos
13 Decl. ¶ 1. While growing up in Guatemala, Jose suffered severe parental abuse. His mother
14 threw rocks at him, punched him in the head with closed fists, and beat him with sticks and the
15 television antennae. *Id.* ¶ 2. His father was an abusive alcoholic who punched, slapped, and beat
16 him using belts and cords from electric appliances. *Id.* ¶ 3. On one occasion, his father kicked
17 him to the ground and began beating him with the butt of a rifle. *Id.* Jose fled from his home
18 when he was 17 years old and entered the United States as an unaccompanied child on July 3,
19 2016. *Id.* ¶¶ 6, 8.

20 Jose was initially placed in a shelter for unaccompanied minors but later released to live
21 with his cousin in Vancouver, Washington. *Id.* ¶ 9. In February 2018, U.S. Immigration and
22 Customs Enforcement (ICE) detained Jose and placed him in custody at the Northwest Detention
23 Center. *Id.* ¶ 11. On June 1, 2018, the Pierce County Superior Court appointed his cousin as his
24 guardian in VYG proceedings and entered SIJS findings. Maltese Decl. Ex. H at 1-2.

1 On June 11, 2018, Jose submitted his Form I-360, Petition for Special Immigrant Juvenile
2 Status to USCIS. Vicente Ramos Decl. ¶ 10. On November 2, 2018, USCIS issued a NOID on
3 the basis that “the evidence you submitted does not establish that the state court had jurisdiction
4 under state law to make a legal conclusion about returning you to your parent(s)’ custody.”
5 Maltese Decl. Ex. I at 2. On February 5, 2019, USCIS denied Jose’s SIJS petition on the same
6 basis. *Id.* Ex. J at 1-2. As noted by the denial notice, Jose is “currently in removal proceedings
7 with the Immigration Court.” *Id.* at 3. He remains detained at the Northwest Detention Center in
8 Tacoma, Washington. Vicente Ramos Decl. ¶ 11.

9 3. Plaintiff Muñoz Olivera

10 Plaintiff Angel de Jesus Muñoz Olivera is a 19-year-old citizen of Mexico. Muñoz
11 Olivera Decl. ¶¶ 1-2. When Angel was around 10 years old, his father abandoned him. Before
12 Angel’s father left the home, he used drugs and violently abused Angel’s mother, often in front
13 of Angel. *Id.* ¶ 2. Angel’s mother, in turn, would hit Angel with a belt, clothes hangers, and her
14 cell phone. *Id.* ¶ 3. In August 2017, Angel’s mother disappeared and was later discovered dead.
15 *Id.* ¶ 4. Shortly after their mother’s death, Angel and his younger brother fled to the United
16 States, fearing for their lives. They intended to seek help from a relative living in Kennewick,
17 Washington. *Id.* ¶ 5.

18 Upon presenting themselves at the border on August 30, 2017, Angel was separated from
19 his brother and detained for over three months. *Id.* ¶ 6. On November 3, 2017, the Pierce County
20 Juvenile Court appointed Angel’s relative as his guardian in VYG proceedings and entered SIJS
21 findings. Maltese Decl. Ex. K at 1-2. Angel then submitted his Form I-360, Petition for Special
22 Immigrant Juvenile Status to USCIS on November 15, 2017. Muñoz Olivera Decl. ¶ 10. To date,
23 USCIS has not adjudicated his application.

1 **D. USCIS Policy on SIJS Orders Issued to 18- to 20-Year-Old Youth**

2 In the summer of 2017, USCIS radically changed its adjudication practices for SIJ
3 petitions submitted by youth who obtained predicate SIJS orders after turning 18 but before
4 turning 21. Instead of adjudicating SIJS petitions within 180 days as the law requires, *see* 8
5 U.S.C. § 1232(d)(2), USCIS began holding, delaying the adjudication of, and ultimately denying,
6 the SIJS petitions filed by youth 18 and older. Casey Decl. ¶ 11. In February 2018, Defendant
7 DHS issued new guidance to USCIS stating that “in order for a court order to be valid for the
8 purpose of establishing SIJ eligibility, the court must have competent jurisdiction to determine
9 both whether a parent could regain custody and to order reunification, if warranted.” Maltese
10 Decl. Ex. B at 1. USCIS spokesperson Jonathan Withington publicly confirmed this position in
11 April 2018 and asserted that most state courts do not have power to enter SIJS findings for youth
12 age 18 and older:

13 Since most courts cannot place a child back in the custody of their parent
14 once the child reaches the age of majority (as determined by state and in
15 most instances that is age 18), those state courts do not have power and
authority to make the reunification finding for purposes of SIJ eligibility.

16 Maltese Decl. Ex. A at 9. USCIS has since incorporated the policy into its Consolidated
17 Handbook of Adjudications Procedures (CHAP), which is distributed to USCIS employees. *Id.*
18 Ex. C at 2-3. However, the agency has not altered the publicly available USCIS Policy Manual.
19 *See* USCIS Policy Manual, vol. 6, pt. J, ch. 2.

20 Pursuant to its new policy, USCIS now categorically denies SIJS petitions filed by youth
21 who obtained SIJS findings in Washington State after turning 18 but before turning 21. *See, e.g.,*
22 Maltese Decl. Ex. G at 2 (stating that “[*b*]ecause [*Plaintiff Moreno Galvez*] reached the age of
23 majority,” the court issuing his SIJS order did not have “authority to determine whether [his]
24 parent should regain or lose custody” (emphasis added)); *id.* Ex. J at 2 same); Stone Decl. ¶ 11;

1 Casey Decl. ¶¶ 9-10. Before its sudden imposition of this new requirement for SIJS petitions,
2 USCIS and the Administrative Appeals Office (AAO) routinely accepted the jurisdiction of state
3 courts to make SIJS findings for applicants who are 18- to 20-years-old. *See* USCIS Policy
4 Manual, vol. 6, pt. J, ch. 3(A)(1) (“Examples of state courts that may meet this definition include
5 . . . guardianship, probate, and delinquency courts.”); *see also* Amy Taxin & Deepti Hajela,
6 *Young Immigrants Seeking Refuge From Abuse Face Denials*, U.S. News (Jan. 2, 2019),
7 <https://bit.ly/2T8NAdJ> (discussing policy shift from approving the “overwhelming majority” of
8 SIJS petitions to sending “a flurry of denial notices” to petitioners age 18 and older).

9 III. ARGUMENT

10 To obtain a preliminary injunction, Plaintiffs must demonstrate that (1) they are likely to
11 succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary
12 relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest.
13 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008); *Am. Trucking Ass’ns v. City of L.A.*,
14 559 F.3d 1046, 1052 (9th Cir. 2009). Even if Plaintiffs raise only “serious questions going to the
15 merits,” the Court can nevertheless grant relief if the balance of hardships tips “sharply” in
16 Plaintiffs’ favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies*
17 *v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Here, the facts and the law clearly favor
18 Plaintiffs, and this Court should accordingly grant their request for a preliminary injunction.

19 A. Plaintiffs Are Likely to Succeed on the Merits.

20 The Administrative Procedure Act (APA) “sets forth the procedures by which federal
21 agencies are accountable to the public and their actions subject to review by the courts.” *Franklin*
22 *v. Massachusetts*, 505 U.S. 788 (1992). A court “shall” set aside agency action if it is “arbitrary,
23 capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. §
24 706(2)(A), if that action is “in excess of statutory . . . authority,” *id.* § 706(2)(C), or was reached

1 “without observance of procedure required by law,” *id.* § 706(2)(D). Here, Defendants’ new
2 requirement for SIJS applicants must be “set aside” for each of these reasons, because the new
3 policy (1) violates the INA, (2) was imposed without explanation, and (3) was issued without the
4 required notice and comment rulemaking and without publication in the Federal Register. *Id.* §
5 706(2)(A). As with formal rulemaking, final agency action achieved through an informal process
6 is subject to review under section 706 of the APA. *See, e.g., Perez v. Mortg. Bankers Ass’n*, 135
7 S. Ct. 1199, 1209 (2015) (noting that “arbitrary and capricious” review is available for agency
8 interpretive rules that do not proceed through notice and comment rulemaking).

9 1. USCIS’s new requirement contravenes the INA and APA.

10 First, USCIS’s new requirement is unlawful because it imposes an eligibility requirement
11 for SIJS that does not exist anywhere in the law, and which is inconsistent with the INA. As a
12 result, the new requirement is “not in accordance with law,” 5 U.S.C. § 706(2)(A) and is “in
13 excess of [the agency’s] statutory . . . authority,” *id.* § 706(2)(C); *see also Nw. Enviro. Advocates*
14 *v. U.S. E.P.A.*, 537 F.3d 1006, 1014 (9th Cir. 2008).

15 USCIS’s denials are inconsistent with the express language of the INA, which defines
16 “children”—and thus those eligible for SIJS—as unmarried individuals who have not yet reached
17 their 21st birthday. *See* 8 U.S.C. § 1101(b)(1). Indeed, Congress reaffirmed that youth ages 18 to
18 20 are eligible to receive SIJS by including age-out protections in the TVPRA of 2008 so that
19 DHS may not deny SIJS classification on the basis of age if the child is under 21 years old on the
20 date she files a SIJS petition. *See* TVPRA § 235(d)(6), 122 Stat. at 5080. However, as noted
21 above, USCIS’s spokesperson expressly conceded that the new requirement would prevent most
22 children over 18 from receiving SIJS. *See* Maltese Decl. Ex. A at 9.

23 Neither the SIJS statute, the USCIS Policy Manual, nor any regulation indicates a state
24 court must have authority to order the reunification of a child and her parent to be recognized as

1 a court with authority to make SIJS findings. Such a requirement is contrary to the original
2 implementing regulations, when the statute was confined to include only children eligible for
3 long term foster care. The implementing regulations confined SIJS eligibility to long term foster
4 care by requiring a finding that family reunification was no longer a viable option. *See* 8 C.F.R. §
5 204.11(a). However, Congress has since dramatically *expanded* the SIJS statute, and now
6 requires only that a state juvenile court (1) declare the dependency or determine the custody of a
7 juvenile, and (2) find that “reunification with 1 or both of the immigrant’s parents is not viable
8 due to abuse, neglect, abandonment, or a similar basis found under State law.” 8 U.S.C. §
9 1101(a)(27)(J)(i). Nowhere does the statute require the state court to have jurisdiction to return a
10 child to parental custody. Indeed, requiring such jurisdiction would be contrary to Congress’s
11 express mandate that DHS provide protection for those children who a state court concludes
12 *cannot* be reunited with family members. 8 U.S.C. § 1101(a)(27)(J)(i). Similarly, the regulatory
13 definition of “juvenile court” makes no reference whatsoever to reunifying a petitioner with his
14 or her parents, providing only that a juvenile court is one with “jurisdiction under State law to
15 make judicial determinations about the care and custody of juveniles.” 8 C.F.R. § 204.11(a). In a
16 recent order granting preliminary injunctive relief to youth in California who were denied SIJS
17 on the basis of the same USCIS policy, the district court affirmed that the agency’s new
18 “requirement is not found in either the SIJ statute or regulation.” *J.L. v. Cissna*, 341 F. Supp. 3d
19 1048, 1059 (N.D. Cal. 2018); *see also id.* (“[T]he Court cannot reasonably discern why it is
20 necessary for the state court to have the ability to compel reunification to determine that
21 reunification is not viable.” (alteration and internal quotation marks omitted)).

22 All relevant authority confirms Washington’s state courts satisfy the requirements of the
23 SIJS statute, as those courts indisputably have jurisdiction over the custody and care of 18- to 20-

1 year-old youth in judicial proceedings governed by RCW § 13.40.300 (juvenile offender), RCW
2 § 13.90.010 *et seq.* (Vulnerable Youth Guardianship) and RCW § 13.34.267 (Extended Foster
3 Care). First, in juvenile offender proceedings, Washington law empowers the juvenile division of
4 the superior court to extend its jurisdiction by written order over youth until the age of 21 (and in
5 some cases, the age of 25) if the adjudication of a juvenile offense was pending before the
6 youth’s 18th birthday. RCW § 13.40.300(1)-(3)(a). USCIS’s own appellate body has looked to
7 state law to find that juvenile courts have authority to make SIJS findings for a child over 18 in
8 the youthful offender context. *See, e.g., Matter of E-G-C-V*, 2016 WL 8316261 (AAO Dec. 20,
9 2016) (finding that Colorado law permitted extension of jurisdiction where juvenile offender
10 proceedings had commenced prior to age 18). Second, in VYG proceedings, state superior courts
11 have authority to “make judicial determinations regarding the custody and care of youth within
12 the meaning of the federal immigration and nationality act.” RCW § 13.90.901. A juvenile court
13 can thus determine placement with a suitable and responsible guardian for youth over the age of
14 18, and can also appoint a new guardian when necessary.¹ *Id.* §§ 13.90.020, 13.90.050. Finally,
15 through the EFC program, state courts maintain jurisdiction over dependency proceedings for
16 any youth over the age of 18 who is declared dependent on the court at the time of their 18th
17 birthday and meets other requirements. *Id.* §§ 13.34.267, 74.13.031(11)(b).

18 Moreover, Defendants’ new requirement is also inconsistent with the INA because it
19 defies Congress’ expansion of SIJS eligibility beyond youth in foster care. The new requirement
20 thus effectively nullifies the plain language of the INA as amended in 1994 and 2008. As the
21 denials issued to Plaintiffs Moreno Galvez and Vicente Ramos demonstrate, USCIS relies on an

22
23 ¹ Potential guardians for purposes of VYG include but are not limited “parents, licensed foster parents, relatives, and
24 suitable persons.” RCW § 13.90.020(2). Therefore, even if USCIS’s ultra vires new requirement were lawful, the
state court *does* have the authority to determine whether a parent should regain or lose custody of the vulnerable
youth as a guardian.

1 outdated regulation to support the position that a state court can make SIJS findings only if it has
2 the authority to “reunify [the youth] with one or both parents.” *See, e.g.*, Maltese Decl. Ex. G at 2
3 (citing to 8 C.F.R. § 204.11(a)’s “definitions of juvenile court and eligible for long-term foster
4 care”); *id.* Ex. J at 2 (same); *J.L.*, 341 F. Supp. at 1059-60. To justify this requirement, USCIS
5 cites 8 C.F.R. § 204.11(a)’s definition of “[e]ligible for long-term foster care,” which requires a
6 “determination . . . that family reunification is no longer a viable option.” However, the
7 regulation’s reference to foster care is no longer relevant to SIJS eligibility because the TVPRA
8 of 2008 eliminated the requirement that a child be found eligible for long-term foster care to be
9 eligible for SIJS.² *See supra* p. 3; *J.L.*, 341 F. Supp. 3d at 1059 (“The TVPRA expressly
10 removed all references to long-term foster care from the SIJ statute.”).

11 USCIS nevertheless insists that the court “must also have the power to compel
12 reunification if warranted,” *J.L.*, 341 F. Supp. 3d at 1059, relying on this obsolete language
13 defining “[e]ligible for long-term foster care,” 8 C.F.R. § 204.11(a). But “USCIS’s reliance on
14 language that has been explicitly removed by Congress casts significant doubt on the validity of
15 its interpretation.” *J.L.*, 341 F. Supp. 3d at 1060. Indeed, “[w]hen Congress acts to amend a
16 statute, we presume it intends its amendment to have real and substantial effect.” *Stone v. INS*,
17 514 U.S. 386, 397 (1995). Here, Congress decided not to make foster care the touchstone of SIJS
18 eligibility, but instead decided that a SIJS petitioner would be eligible for relief where the state
19 court determines that “reunification with 1 or both of the immigrant’s parents is not viable.” 8
20 U.S.C. § 1101(a)(27)(J)(i). Nothing about the statute mandates that the court have the power to
21 “reunify [the youth] with one or both parents.” Maltese Decl. Ex. G at 2. In short, USCIS’s new
22

23 ² USCIS has acknowledged the SIJS regulations are outdated and inconsistent with the SIJS statute. *See* USCIS
24 Ombudsman, Ensuring Process Efficiency and Legal Sufficiency in Special Immigrant Juvenile Adjudications (Dec.
11, 2015), <https://bit.ly/2Tq2Kud> (recommending USCIS “[i]ssue final SIJ regulations that fully incorporate all
statutory amendments.”).

1 “requirement is not found in either the SIJ statute or regulation.” *J.L.*, 341 F. Supp. 3d at 1059.
2 Despite this fact, the agency has ignored Congress’s effort to expand SIJS beyond foster care
3 youth and to allow SIJS findings to be made in a wider range of custodial and dependency
4 proceedings. These expansions include programs like Washington State’s juvenile offender,
5 VYG, and EFC proceedings.

6 In imposing a new requirement, USCIS also unlawfully fails to defer to the state court’s
7 findings. Congress vested state courts with exclusive authority to make SIJS findings, including
8 findings that a child cannot reunify with one or both parents due to abuse, abandonment, or
9 neglect. *See* 8 U.S.C. § 1101(a)(27)(J); USCIS Policy Manual vol. 6, pt. J, ch. 2(D); *Perez-Olano*
10 *v. Gonzalez*, 248 F.R.D. 248, 265 (C.D. Cal. 2008) (explaining that in the SIJS statute, “Congress
11 appropriately reserved for state courts the power to make child welfare decisions, an area of
12 traditional state concern and expertise”); *cf. Ankenbrandt v. Richards*, 504 U.S. 689, 702 (1992).
13 Thus, by denying Plaintiffs’ applications, USCIS has violated the SIJS statute by refusing to
14 (1) accept the state court’s finding that it has the authority to determine the care and custody of
15 the youth, and (2) defer to the state court’s determination that a child cannot reunify with at least
16 one of the child’s parents. *See, e.g.,* Maltese Decl. Ex. D at 1-2 (making SIJS findings in juvenile
17 offender proceedings); *id.* Ex. H at 1-2 (making SIJ findings in VYG proceedings).

18 2. USCIS’s new requirement is arbitrary and capricious and thus violates the APA.

19 Second, USCIS’s new policy is arbitrary and capricious, as the agency failed to give
20 “adequate reasons for its decision[]” to depart from past practice and impose a new SIJS
21 eligibility requirement. *Encino Motorcars, LLC v. Navarro, LLC*, 136 S. Ct. 2117, 2125 (2016).
22 Agency action should be set aside as arbitrary and capricious if the agency fails to explain the
23 basis of its decision, fails to consider all relevant factors and articulate a “rational connection
24 between the facts found and the choice made,” or fails to offer a “reasoned basis” for departures

1 from preexisting policies. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S.
2 29, 43 (1983) (citation omitted); *see also Encino*, 136 S. Ct. at 2125-26. In addition, USCIS has
3 an obligation to render consistent opinions and to follow, distinguish, or overrule its own
4 precedent, adequately explaining departures from prior norms and their legal basis. *Encino*, 136
5 S. Ct. at 2125-26; *see also I.N.S. v. Yueh-Shaio Yang*, 519 U.S. 26, 32 (1996); *Sec'y of Agric. v.*
6 *United States*, 347 U.S. 645, 652-53 (1954). Accordingly, agency action must be set aside unless
7 its basis is "set forth with such clarity as to be understandable." *SEC v. Chenery Corp.*, 332 U.S.
8 194, 196 (1947). This is particularly true where a prior policy "has engendered serious reliance
9 interests that must be taken into account." *Mortg. Bankers Ass'n*, 135 S. Ct. at 1209 (citation
10 omitted). Thus, reversing an existing policy requires a "more detailed justification than what
11 would suffice for a new policy created on a blank slate." *FCC v. Fox Television Stations, Inc.*,
12 556 U.S. 502, 515 (2009).

13 Here no such reasoned agency explanation exists for the agency's reversal of its prior
14 policy. At best, Defendants can argue that USCIS's explanation for its new policy is the two-
15 sentence statement its spokesperson shared with a single media outlet on April 24, 2018, months
16 after the agency began to employ its new policy. Maltese Decl. Ex. A at 9. This statement to the
17 press does not remotely meet the APA's requirement that an agency must provide a reasoned
18 basis for its actions. Indeed, "conclusory statements will not do; an agency's statement must be
19 one of *reasoning*." *Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014) (internal
20 quotation marks omitted). Even "conclusory" would be a generous way to describe the agency's
21 statement here, which offers no rationale to justify the new requirement.

22 Nor does the statement "consider reasonably obvious alternatives" and provide reasons
23 for rejecting that alternative. *Yale-New Haven Hosp. v. Leavitt*, 470 F.3d 71, 80 (2d Cir. 2006)

1 (citation omitted). Instead, USCIS wholly fails to address why, decades after SIJS was created—
2 and over a decade after the latest TVPRA amendments—the statute’s meaning has changed and
3 now requires a new element for eligibility. Moreover, the agency fails to explain its departure
4 from prior practice, ignoring important reliance interests. *See Mortg. Bankers Ass’n*, 135 S. Ct. at
5 1209. The USCIS spokesperson’s April 24, 2018, statement contains no indication that USCIS
6 considered the devastating impact of its new requirement on Plaintiffs or their caretakers and
7 communities. This categorical failure to offer any explanation for the agency’s new approach
8 leaves little doubt the agency’s action is “arbitrary and capricious.” 5 U.S.C. § 706(2)(A).

9 3. USCIS adopted the new requirement without notice and comment rulemaking, and
10 without adequate notice.

11 Finally, a court must also invalidate agency action if the agency does not follow the
12 procedures required by law. 5 U.S.C. § 706(2)(D). Here, USCIS failed to follow two key
13 procedural requirements in enacting its new policy. First, USCIS was required to follow notice
14 and comment rulemaking. Where an agency issues a rule that has the “force of law,” the agency
15 must use the notice and comment rulemaking process provided at 5 U.S.C. § 553 to enact the
16 new rule. *Hemp Indus. Ass’n v. DEA*, 333 F.3d 1082, 1087 (9th Cir. 2003). Such “[l]egislative
17 rules . . . create rights, impose obligations, or effect a change in existing law pursuant to
18 authority delegated by Congress.” *Id.* By contrast, an “interpretive rule” that does not require
19 notice and comment rulemaking “merely explain[s], but do[es] not add to, the substantive law
20 that already exists.” *Id.* Here, the agency’s new rule is a legislative one with the force of law, and
21 the APA therefore required USCIS to use the procedures in § 553. Indeed, USCIS’s new
22 requirement effected a change in existing agency law and imposed a brand new requirement for
23 SIJS eligibility that has or will result in the denials of the petitions filed by Plaintiffs and
24 proposed class members. *See id.*; *see also supra* pp. 6-10 (describing denials of Plaintiffs’

1 applications and USCIS policy change). As a result, the agency was required to follow notice
2 and comment rulemaking.

3 Second, even if USCIS’s new requirement is simply a “general statement of policy” or an
4 “interpretative rule” that does not require notice and comment rulemaking, 5 U.S.C. §
5 553(b)(3)(A), the APA provides that an agency must publish such a statement or rule of “general
6 applicability” in the Federal Register to provide notice to affected parties, *id.* § 552(a)(1)(D).
7 Violation of this notice requirement is a basis for setting aside agency action where the affected
8 individuals lacked adequate and timely notice and suffered prejudice. *See, e.g., Morton v. Ruiz*,
9 415 U.S. 199, 235-36 (1974) (overturning the Bureau of Indian Affairs’ denial of benefits for
10 failure to provide notice that benefits were no longer available to those who lived off
11 reservations); *Anderson v. Butz*, 550 F.2d 459, 463 (9th Cir. 1977) (affirming summary judgment
12 against the Secretary of Agriculture’s decision to include rent subsidies as “income” for food
13 stamp purposes when he failed to provide notice).

14 Here, USCIS provided no public notice of its policy change when it first began to deny
15 SIJS classification for children ages 18-20. *See supra* pp. 8-10. After more than a decade of
16 recognizing (1) the state courts’ ability to make SIJS findings for children aged 18 to 20, and (2)
17 juvenile court jurisdiction over such children, it was incumbent upon USCIS to notify the public
18 about its wholesale departure from its prior practice and legal conclusions. *See Morton*, 415 U.S.
19 at 232, 236 (explaining that “determination of eligibility [for benefits] cannot be made on an ad
20 hoc basis,” particularly where applicants had a “legitimate expectation” of relief).

21 Moreover, even when the agency did acknowledge its new policy, it did so through a
22 statement to a single media outlet. This form of announcement defies the APA’s unambiguous
23 mandate that “statements of general policy or interpretations of general applicability” be
24

1 published in the Federal Register. 5 U.S.C. § 552(a)(1). Instead, it is precisely the sort of
2 “unpublished ad hoc determination” that “affect[s] individual rights and obligations” that the
3 Supreme Court and the APA require agencies to publish if the agency intends to apply the
4 requirement in adjudications. *Morton*, 415 U.S. at 232. Accordingly, this Court should set aside
5 the agency’s policy for failing to abide by the procedure that the APA requires. 5 U.S.C. §
6 706(2)(D).

7 **B. Plaintiffs Will Suffer Irreparable Harm in the Absence of Preliminary Relief.**

8 Parties seeking preliminary injunctive relief must also show they are “likely to suffer
9 irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is
10 harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream*
11 *Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014). Here, USCIS’s unlawful
12 requirement and delays in adjudicating SIJS petitions have caused and will continue to cause
13 irreparable harm that cannot be remedied if this Court waits until the end of trial to grant relief.

14 First, Plaintiffs and proposed class members suffer irreparable harm by losing the
15 opportunity to adjust to LPR status. They are all statutorily eligible for SIJS and would be able to
16 adjust to LPR status but for USCIS’s new policy. 8 U.S.C. § 1255(a), (h); Casey Decl. ¶ 15.
17 Furthermore, they would become eligible for naturalization five years after being granted LPR
18 status. 8 U.S.C. § 1427(a). At least two federal courts have found that an unlawful SIJS denial
19 constitutes irreparable harm. *See J.L.*, 341 F. Supp. 3d at 1068 (finding irreparable harm in loss
20 of “eligibility for SIJ status and all attendant benefits”); *Perez-Olano*, 248 F.R.D. at 267 (finding
21 irreparable harm sufficient for a *permanent* injunction because that denial results in an inability
22 to obtain LPR status). Moreover, delaying the ability to apply for citizenship constitutes
23 irreparable harm. *See, e.g., Kirwa v. U.S. Dept. of Def.*, 285 F. Supp. 3d 21, 42 (D.D.C. 2017)
24 (citing cases).

1 Second, Plaintiff Vicente Ramos and numerous other proposed class members suffer
2 irreparable harm through their ongoing civil detention. They will continue to face such detention
3 pending the outcome of this motion and, if the Court orders the requested relief, the additional
4 time it takes USCIS to re-adjudicate their SIJS petitions. Such continued detention constitutes
5 “[a]rbitrary civil detention” that the Constitution prohibits. *Rodriguez v. Marin*, 909 F.3d 252,
6 256 (9th Cir. 2018). The class members’ detention implicates a fundamental constitutional right:
7 the right to be free from unlawful deprivation of liberty. *Zadvydas v. Davis*, 533 U.S. 678, 690
8 (2001) (“Freedom from imprisonment—from government custody, detention, or other forms of
9 physical restraint—lies at the heart of the liberty [the Due Process] Clause protects.”). And “[i]t
10 is well established that the deprivation of constitutional rights ‘unquestionably constitutes
11 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v.*
12 *Burns*, 427 U.S. 347, 373 (1976)).

13 Here, USCIS’s unlawful policy and long delays in adjudicating SIJS petitions like those
14 of Plaintiff Jose Luis Vicente Ramos have unlawfully prolonged—and will continue to
15 prolong—the detention of some class members. Casey Decl. ¶ 13. Had USCIS lawfully
16 adjudicated Jose’s SIJS petition, DHS would have released him several months ago. Instead, the
17 agency has turned a blind eye to Jose, a 20-year-old survivor of parental abuse and a brutal
18 kidnapping, who has languished in detention for over a year. Vicente Ramos Decl. ¶¶ 11-14. He
19 has spent months waiting for his SIJS petition to be adjudicated, only to find USCIS issued a
20 denial pursuant to a newly-invented requirement that violates the INA and the APA. As a result,
21 he and other detained proposed class members—who are abused, abandoned, and neglected
22 youth—face irreparable harm because of USCIS’ new, unlawful SIJS eligibility requirement.

23 Third, Plaintiffs and proposed class members suffer the loss of opportunities and benefits
24

1 that accompany SIJS. For example, Plaintiffs and proposed class members are unable to access
2 federally-funded education without SIJ classification. 8 U.S.C. § 1232(d)(4)(A); *see also, e.g.,*
3 Wennerstorm Decl. ¶ 13b (describing SIJS petitioner who, without SIJS, has lost a college
4 acceptance offer due to inability to pay tuition). USCIS’ delayed adjudication and denial of class
5 members’ SIJS petitions also eliminates a route to lawful employment authorization. *See, e.g.,*
6 Wennerstrom Decl. ¶ 13d (describing 18-year-old SIJS petitioner unable to pursue vocational
7 training because he is unauthorized to work and thus unable to afford school); Stone Decl. ¶ 15
8 (describing “lost career opportunities and other economic benefits” for a client who was denied
9 SIJS pursuant to USCIS’s new policy). The Ninth Circuit has held the “loss of opportunity to
10 pursue one’s chosen profession constitutes irreparable harm.” *Ariz. Dream Act Coal. v. Brewer*
11 (*Ariz. II*), 855 F.3d 957, 978 (9th Cir. 2017). Such harm is exacerbated for young individuals
12 such as Plaintiffs. *Ariz. I*, 757 F.3d at 1068 (finding that irreparable harm was “heightened by
13 Plaintiffs’ young age and fragile socioeconomic status”); *see also Medina v. DHS*, 313 F. Supp.
14 3d 1237, 1251 (W.D. Wash. 2018) (DACA recipient’s potential loss of opportunity to pursue his
15 profession constituted irreparable harm).

16 Additionally, Plaintiffs and the proposed class will be denied other benefits available
17 through SIJS and LPR status, such as healthcare. *See, e.g.,* 42 U.S.C. § 18001(d)(1) (specifying
18 only lawfully present individuals are eligible for coverage under the Affordable Care Act). Class
19 members over age 19 are also ineligible for health care coverage in Washington State, except in
20 cases of emergency conditions. *See Wash. Admin. Code* § 182-503-0535(2)(e)(i)-(ii);
21 Wennerstrom Decl. ¶ 12. The denial of critical services, such as healthcare, constitutes
22 irreparable harm. *See, e.g., Beltran v. Meyers*, 677 F.2d 1317, 1322 (9th Cir. 1982) (finding
23 irreparable injury when enforcement of rule “may deny [class members] needed medical care”).
24

1 Fourth, the imminent removal from the United States that many class members face
2 constitutes irreparable harm. For proposed class members like Plaintiff Moreno Galvez who are
3 not yet in removal proceedings, the denial of SIJS petitions will likely result in the initiation of
4 removal proceedings and subsequent deportation. *See* USCIS Policy Mem. PM-602-0050.1, at 7
5 (June 28, 2018), <https://bit.ly/2u8zXfS>; Maltese Decl. Ex. G at 3. For Plaintiffs Vicente Ramos,
6 Muñoz Olivera, and other proposed class members already in removal proceedings, SIJS denials
7 make it far more likely they will be removed from the United States. *See, e.g.*, Stone Decl. ¶ 14
8 (explaining that client was deported after USCIS denied his SIJS petition in October 2018). The
9 harm resulting from removal is especially pronounced for Plaintiffs and proposed class members,
10 who have all obtained findings by a state court that it would not be in their best interest to be
11 returned to their country of birth. 8 U.S.C. § 1101(a)(27)(J)(ii); *see also, e.g.*, Maltese Decl. Ex.
12 D at 2; *id.* Ex. H at 2; *id.* Ex. K at 2. Indeed, if removed from the United States, Plaintiffs and
13 proposed class members face separation from their loving guardians, foster parents, and other
14 support networks that have provided them with the care and stability needed to recover from
15 childhood abuse, neglect, or abandonment. Muñoz Olivera Decl. ¶ 12 (describing positive
16 relationship with court appointed guardian and other family members, as well as participation in
17 school and church); Stone Decl. ¶ 14 (explaining that deported client “has been separated from
18 his support system . . . and his court appointed guardian”); Wennerstrom Decl. ¶ 13c (describing
19 18-year-old SIJS petitioner who fears being separated from her supportive uncle and aunt and
20 forced into an arranged marriage); Casey Decl. ¶ 12 (class members “lack structure and
21 responsible adults to support them should they be forced to return to their home countries”).
22 Removal from the United States and consequent separation from caregivers also constitute
23 irreparable harm. *See, e.g., Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) (finding
24

1 irreparable harm from risk of deportation); *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 179 (3d
2 Cir. 2018) (finding irreparable harm because of state court finding “that it would not be in the
3 child’s best interest to be returned to his or her country of origin”); *Doe v. Trump*, 288 F. Supp.
4 3d 1045, 1082 (W.D. Wash. 2017) (finding irreparable harm because of forcible family
5 separation).

6 Finally, the denial or looming denial of their SIJS petitions subjects these already-
7 vulnerable Plaintiffs to further emotional and psychological harm. *See, e.g.*, Moreno Galvez
8 Decl. ¶ 14 (describing feeling of devastation that USCIS denied his SIJS petition and instructed
9 him to uproot his entire life and return to Mexico, where he has “nothing to go back to”); Vicente
10 Ramos Decl. ¶ 16 (reporting recent diagnoses of Posttraumatic Stress Disorder and Major
11 Depressive Disorder); Muñoz Olivera Decl. ¶¶ 13-14 (explaining impending denial of SIJS
12 petition causes him to feel “trapped” and “fearful”); Casey Decl ¶¶ 12, 14-15. Such “emotional
13 stress, depression, and reduced sense of well-being” further support a finding of irreparable
14 harm. *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701, 709 (9th Cir. 1988); *see also Inland Empire-*
15 *Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx), 2018 WL 1061408, at
16 *20 (C.D. Cal. Feb. 26, 2018) (“The Court should also consider the emotional pain to which the
17 named Plaintiffs have attested . . . which is a cognizable form of irreparable injury.”).

18 **C. The Balance of Hardships and Public Interest Also Weigh Heavily in Plaintiffs’ Favor.**

19 The final two factors for a preliminary injunction also demonstrate that such relief is
20 appropriate in this case. “These factors merge when the Government is the opposing party.”
21 *Nken v. Holder*, 556 U.S. 418, 435 (2009). Many of the same facts that demonstrate irreparable
22 harm also weigh in Plaintiffs’ favor for the balance of hardships and public interest factors. First,
23 the balance of hardships and public interest favor ensuring that Plaintiffs do not lose the
24 opportunity to obtain legal status and the accompanying benefits that status would provide. *See,*

1 e.g., *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 436 (E.D.N.Y. 2018); *Regents of Univ. of*
2 *California v. DHS*, 279 F. Supp. 3d 1011, 1047-48 (N.D. Cal. 2018). Second, there is also “a
3 public interest in preventing [noncitizens] from being wrongfully removed,” as is threatened
4 here. *Nken*, 556 U.S. at 436. Third, a strong public interest also lies in “avoiding separation of
5 families,” which is likely to occur here in the absence of an injunction. *Washington v. Trump*,
6 847 F.3d 1151, 1169 (9th Cir. 2017). Finally, Plaintiffs and proposed class members who are
7 detained have a strong liberty interest in being free from the continuing, prolonged detention that
8 has resulted from the government’s unlawful policy. *Zadvydas*, 533 U.S. at 690.

9 In addition, Defendants “cannot suffer harm from an injunction that merely ends an
10 unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Indeed, our
11 democracy is built on the rule of law, and “it would not be equitable or in the public’s interest to
12 allow [the government] to violate the requirements of federal law, especially when there are no
13 adequate remedies available.” *Ariz. II*, 855 F.3d at 978 (citation omitted). An injunction is thus
14 appropriate, as without this Court’s intervention, Defendants will continue denying Plaintiffs’
15 SIJS petitions in violation of federal law. Accordingly, the balance of hardships and the public
16 interest overwhelmingly favor ensuring that USCIS complies with the law in its treatment of
17 Plaintiffs and the proposed class members.

18 IV. CONCLUSION

19 For the foregoing reasons, Plaintiffs respectfully request the Court (1) enjoin USCIS from
20 denying SIJS petitions based on its new, unlawful policy, (2) order USCIS to reopen and re-
21 adjudicate the SIJS petitions it has denied under this policy; and (3) order USCIS to adjudicate
22 class members’ SIJS petitions within 14 days of the Court’s order if more than 180 days have
23 already passed since the petition was filed.

1 DATED this 5th day of March, 2019.

2 s/ Matt Adams
3 Matt Adams, WSBA No. 28287

4 s/ Leila Kang
5 Leila Kang, WSBA No. 48048

6 s/ Aaron Korthuis
7 Aaron Korthuis, WSBA No. 53974

8 s/ Tim Warden-Hertz
9 Tim H. Warden-Hertz, WSBA No. 53042

10 s/ Meghan Casey
11 Meghan Casey, WSBA No. 45275

12 s/ Olivia Gibbons
13 Olivia Gibbons, WSBA No. 52760

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