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A Call for Trained, Trauma-Informed Attorneys to Represent and Support Unaccompanied Children in Removal Proceedings by Petitioning for Special Immigrant Juvenile Status

Will Sheehan*

INTRODUCTION

For many young people arriving in the United States alone, the path forward is uncertain, daunting, and mysterious. A trained, trauma-informed attorney can be a positive guide for a young person to understand, strengthen, and orient their path. Pro bono mentorship opportunities exist through organizations like the Safe Passage Project as well as educational programs through state bar associations, providing opportunities to train attorneys on Special Immigrant Juvenile Status (SIJS) and working with young people in a trauma-informed way. Unaccompanied children who present themselves at the United States border are released from custody to sponsors in all fifty states. These children do not have a recognized right to government-appointed counsel in their immigration removal proceedings. Without an attorney, the young

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person must defend themselves from deportation in an unfamiliar, adversarial setting, often in a language that they do not understand. Many meet the requirements for a humanitarian form of relief—SIJS—which provides young people with a pathway to citizenship and a form of relief to terminate their removal proceedings in immigration court. Attorneys can and should train themselves in content and approach to provide free, trauma-informed counsel to these young people as they navigate the complex United States immigration system. This Article argues that trauma-informed training for pro bono attorneys is essential to ensure the fair and compassionate representation of unaccompanied young people seeking SIJS. This Article explains (1) who unaccompanied children are, (2) their journey to new homes in the United States, (3) the SIJS process, (4) the benefits of SIJS, and (5) the necessary training for attorneys to provide competent, and trauma-informed advocacy for SIJS-eligible youth.

I. WHICH YOUNG PEOPLE COME

Many young people from around the world fleeing danger and persecution at home enter the United States and are apprehended by the U.S. Customs and Border Patrol (CBP) every year. In 2022, 152,880 unaccompanied children were encountered by CBP, and in 2023, 137,992 unaccompanied children were encountered.¹ Unaccompanied children, or UACs, are defined by statute as children who lack lawful immigration status in the United States, who are under the age of eighteen, and who are either without a parent or legal guardian in the United States or without a parent or legal guardian in the United States who is available to provide

1. Carlos Alvarez & Jascha Wagner, *Crimen en la Frontera: Exploring Texas-Mexico Border Crimes Using a Geospatial Analysis*, 17 J. STRATEGIC SEC. 49, 49 (2024); Bethany Blankley, *Nearly 4 Million Illegal Border Crossers in Fiscal 2023*, CTR. SQUARE (Oct. 26, 2023), https://www.thecentersquare.com/national/article_d23be832-73fa-11ee-802f-736610e94161.html [https://perma.cc/BSK7-7T6M]. CBP encounter: “Any encounter of a removable noncitizen by Customs and Border Protection (CBP) Office of Field Operations (OFO) or U.S. Border Patrol (USBP), including the arrest of a removable noncitizen by USBP under Title 8 authority, a determination of inadmissibility for a person requesting admission at a port of entry (land, sea, or air) under Title 8 authority, or an expulsion from the United States to prevent the spread of the COVID-19 disease pursuant to Title 42 authority.” *Glossary*, OFF. OF HOMELAND SEC. STAT., <https://ohss.dhs.gov/glossary#C> [https://perma.cc/9QJE-KWXB] (last visited Jan. 18, 2025).

care and physical custody.² CBP reports that 110,672 unaccompanied children had been encountered in the 2024 fiscal year.³ The children come from countries which include: China, Guatemala, Venezuela, Turkey, Mexico, and Canada.⁴ In fiscal year 2023, approximately 76% of unaccompanied children referred to the Office of Refugee Resettlement (ORR) were over fourteen years old, of which 61% were boys.⁵ In fiscal year 2023, 19% of the unaccompanied children were zero to twelve, 12% were thirteen to fourteen, 34% were fifteen to sixteen, and 35% were seventeen years old and older.⁶ The breakdown of their countries of origin was roughly as follows: Guatemala (42%); Honduras (28%); El Salvador (9%); Mexico (8%); and other countries (13%).⁷

Longstanding socio-political and economic forces driving migration, in addition to recent factors including the COVID-19 pandemic, natural disasters, and federal policies like Migrant Protection Protocols,⁸ have greatly impacted migration patterns and the experiences of these young people.⁹ Additionally, young people may be escaping persecution by family members, members of their community, or their governments.

Consider José,¹⁰ a thirteen-year-old boy from Guatemala who decided to flee his home due to fear of gangs and domestic violence. José's mother was killed by Barrio 18 gang members when José was

2. 6 U.S.C. § 279(g)(2).

3. *Nationwide Encounters*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/newsroom/stats/nationwide-encounters?language_content_entity=en [https://perma.cc/WU9V-LUWH] (last modified Mar. 13, 2025).

4. *Unaccompanied Children: Fact Sheets and Data*, ADMIN. FOR CHILD. & FAMS. (Dec. 23, 2024), <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data> [https://perma.cc/K55S-XD7V].

5. *Id.*

6. *Id.*

7. *Id.*

8. *See generally Migrant Protection Protocols*, U.S. DEP'T OF HOMELAND SEC. (Jan. 24, 2019), <https://www.dhs.gov/archive/news/2019/01/24/migrant-protection-protocols> [https://perma.cc/8L9Z-7WRR].

9. RYAN MATLOW ET AL., GUIDANCE FOR MENTAL HEALTH PROFESSIONALS SERVING UNACCOMPANIED CHILDREN RELEASED FROM GOVERNMENT CUSTODY 9 (2021), https://youthlaw.org/sites/default/files/attachments/2022-03/2021_Guidance-for-Mental-Health-Professionals-Serving-Unaccompanied-Children-Released-from-Government-Custody.pdf [https://perma.cc/EMJ9-NKLW].

10. José is a fictional character used in this Essay as an example of how unaccompanied children interact and work through the immigration process.

ten years old. Following her death, José's father abused alcohol and forced José to drop out of school and work in the fields by their home to make money to support the family. José's father hit him with a belt weekly when he drank too much. Wishing for safety and peace, José traveled to the United States with dreams of attending school and living with his maternal aunt in Staten Island, New York. For one month, José traveled alone by foot and by bus over 1,300 miles from Zunil, Guatemala to the Mexico-United States border with just his backpack containing his birth certificate, a photograph of his mother, some food, and one change of clothes.

II. JOURNEY TO A NEW HOME

When a child arrives at the United States border alone and without legal documentation, that child is typically detained by CBP in a holding facility and then transferred to a shelter operated by ORR.¹¹ An unfortunate side note in this process is the thousands of reports related to abuse of children in CBP custody.¹² Before referring the child, the CBP agent will serve the unaccompanied child with a Notice to Appear (NTA) in immigration court.¹³ The NTA, or Department of Homeland Security Form I-862, is the charging document that, once filed in immigration court, starts removal proceedings under Section 240 of the Immigration and Nationality Act (INA) against an individual, or the "respondent."¹⁴ Under the statutory requirements of INA Section 239, classified as Title 8, Section 1229 of the United States Code, and the regulatory requirements at Title 8, Sections 1229 and 1230.1 of the Code of Federal Regulations, the NTA should include the respondent's identifying information, the nature of the proceedings, the charges of removability and supporting allegations, the date and place of

11. AM. IMMIGR. COUNCIL, IMMIGRATION DETENTION IN THE UNITED STATES BY AGENCY 2 (2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detention_in_the_united_states_by_agency.pdf [<https://perma.cc/ZM2H-F8HS>].

12. GLOB. HUM. RTS. CLINIC, UNIV. CHI. L. SCH., NEGLECT AND ABUSE OF UNACCOMPANIED IMMIGRANT CHILDREN BY U.S. CUSTOMS AND BORDER PROTECTION 2 (2018), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1001&context=ihrc>.

13. IMMIGRANT LEGAL RES. CTR. (ILRC) ATT'YS, THE NOTICE TO APPEAR (NTA) 1 (2020), https://www.ilrc.org/sites/default/files/resources/nta_practice_advisory.pdf [<https://perma.cc/HA5S-FZ3G>].

14. *Id.*

removal proceedings, advisal of certain rights and responsibilities, and a certificate of service.¹⁵

Once placed in ORR custody, ORR evaluates the release of unaccompanied children to parents, guardians, relatives, or individuals designated by the child's parents, referred to as "sponsors."¹⁶ Alternatively, a young person is transferred to foster care from ORR custody if there are no family members or friends to sponsor the child.¹⁷ "The ORR care provider, the ORR-funded facility that cares for the unaccompanied child, interviews the child as well as other family members and friends who may be residing in the United States and may be able to assist in identifying qualified custodians."¹⁸ ORR then releases the child to a sponsor in the following order of preference: (1) parent; (2) legal guardian; (3) an adult relative, brother, sister, aunt, uncle, grandparent or first cousin; (4) an adult individual or entity designated by the parent or legal guardian, through a signed declaration or other document that ORR determines is sufficient to establish the signatory's parental/guardian relationship; (5) a licensed program willing to accept legal custody; (6) or an adult individual or entity seeking custody when it appears that there is no other likely alternative to long-term ORR care and custody.¹⁹ Additionally, "ORR care providers must make a recommendation to release a child to a potential sponsor after the care provider has completed the full assessment of the sponsor," which includes completed background checks and the completed collection of necessary documentation to prove both the sponsor's identity and their relationship to the child.²⁰ The three methods of transfer from ORR custody to a sponsor are (1) sponsor pick-up at the care provider

15. *Id.*

16. *ORR Unaccompanied Children Bureau Policy Guide: Section 2*, OFF. OF REFUGEE RESETTLEMENT, ADMIN. FOR CHILD. & FAMS. (Jan. 15, 2025), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2> [<https://perma.cc/J9EF-LUCT>].

17. *ORR Unaccompanied Children Bureau Policy Guide: Section 1*, OFF. OF REFUGEE RESETTLEMENT, ADMIN. FOR CHILD. & FAMS. (Jan. 16, 2025), <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1> [<https://perma.cc/YB6B-VFXE>].

18. *ORR Unaccompanied Children Bureau Policy Guide: Section 2*, *supra* note 16.

19. *Id.*

20. *Id.*

facility, (2) care provider escort to offsite transfer location, or (3) travel via the airline's unaccompanied minor escort policy for children fourteen years of age and older.²¹

The time in ORR custody depends on how fast ORR can approve a sponsor, which is sometimes weeks or months. The average length of time a young person remained in ORR care in 2023 was twenty-seven days.²² This length of time has slowly decreased since 2020, when the average time in ORR care was sixty-nine days.²³

Once living with the sponsor, the young person must be vigilant of any immigration court hearings and identify an attorney to help them with their immigration case. If a young person misses a hearing in immigration court, they risk receiving a deportation order "in absentia."²⁴

The United States does not provide legal counsel to respondents in immigration court.²⁵ This means that unaccompanied children in removal proceedings must find an immigration attorney and the means to afford representation if a pro bono option is not available. Without an attorney, a child must move forward alone to represent themselves in an adversarial setting.²⁶ Many children in this situation have a history of trauma, and the fear of attending court without an attorney adds additional stress and weight on top of adjusting to living in a new country, learning a new language, and adapting to new systems.²⁷ As more unaccompanied children arrive in the United States, there is more

21. *See id.*

22. *See Unaccompanied Children: Fact Sheets and Data, supra* note 4.

23. *See id.*

24. *See Immigration Court Practice Manual: 4.17 – In Absentia Hearing*, EXEC. OFF. FOR IMMIGR. REV., U.S. DEP'T OF JUST., <https://www.justice.gov/eoir/reference-materials/ic/chapter-4/17> [<https://perma.cc/T5VC-GJKE>] (last visited Jan. 8, 2025).

25. *See Immigration Court Practice Manual: 2.1 – Representation and Appearances Generally*, EXEC. OFF. FOR IMMIGR. REV., U.S. DEP'T OF JUST., <https://www.justice.gov/eoir/reference-materials/ic/chapter-2/1> [<https://perma.cc/8MAE-4R99>] (last visited Jan. 8, 2025).

26. *See id.*

27. *See* Michele Garnett McKenzie, *New Report Details Due Process Failures for Kids in Immigration Court*, ADVOCS. FOR HUM. RTS. (Oct. 4, 2023), <https://www.theadvocatesforhumanrights.org/News/kids-in-court> [<https://perma.cc/HT7H-PEFC>].

of a demand for quality pro bono counsel who have been trained in trauma.

At the time of writing in 2024, unaccompanied children have been released to sponsors in all fifty states, Puerto Rico, and the Virgin Islands.²⁸ In Rhode Island, 332 young people were placed with sponsors in 2024. In 2023, 559 young people were released to sponsors in Rhode Island.²⁹

After making the long and dangerous trek to the Mexico-United States border, José was apprehended by CBP officials at the Piedras Negras, Mexico/Eagle Pass, Texas port of entry. This was the first time José had ever heard someone speak a language other than Spanish or K'iche'. José was taken in a car to the Eagle Pass Detention Facility where he was interviewed by a CBP official. José showed the immigration official his Guatemalan birth certificate demonstrating that he was thirteen years old. After spending the night at the detention facility, officials transferred him to a shelter facility managed by ORR. José spent the following week sleeping in a bunk bed in a room with thirteen other boys his age. He met with someone called a case coordinator who interviewed him, and he gave her the name, address, and phone number of his Aunt Yanet who lived in Staten Island, New York.

José's Aunt Yanet was contacted by ORR, and over the following two weeks, she submitted the Family Reunification Application with a scanned copy of her permanent resident card, a copy of her husband's driver's license, the lease for her apartment in Staten Island, José's mother's death certificate to demonstrate their relationship, and proof of employment at the local hospital. Aunt Yanet and her husband provided fingerprint-based FBI history checks to ORR as well. Aunt Yanet attended a Legal Orientation Program and was told that there may be possible free legal counsel for José when he went to New York.

After three weeks in ORR custody, before boarding a bus to New Jersey, José was given two documents in English, a Notice to Appear in Immigration Court, and a list of pro bono attorneys in

28. *Unaccompanied Children Released to Sponsor by State*, ADMIN. FOR CHILD. & FAMS. (Dec. 3, 2024), <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state> [<https://perma.cc/69G8-SHNM>].

29. *Id.*

New York. Aunt Yanet picked him up, and he cried with a sense of relief.

III. A POTENTIALLY LONG PATHWAY TO CITIZENSHIP IN THE UNITED STATES

A successful SIJS petition can protect a child from deportation, provide a stable path toward a secure future in the United States, and may be an appropriate course for recently arrived unaccompanied children. The United States created SIJS as a protection for certain young people who had been declared dependent by a juvenile court because they have been abused, abandoned, and or neglected by one or both parents.³⁰

The Immigration and Nationality Act (INA) lays out that the term “special immigrant”³¹ is an immigrant who is

- (1) physically present in the United States;
- (2) under twenty-one years of age;
- (3) unmarried;
- (4) declared dependent by the juvenile court;³²
- (5) unable to reunify with one or both parents due to abuse, abandonment, neglect, or a similar basis under State law;³³ and
- (6) it was judicially determined that it was not in their best interest to be returned to their country of nationality or last habitual residence.

In addition, the INA requires the consent of the Secretary of Homeland Security to classify a Special Immigrant Juvenile. When submitting Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, to the United States Citizenship and

30. See *Special Immigrant Juveniles*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-US/eb4/SIJ> [https://perma.cc/96Y3-CXR7] (last visited Jan. 9, 2025).

31. See Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(27)(J).

32. 8 C.F.R. § 204.11(a) (2024) (defining “juvenile court” as “a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles[]”); see *id.* § 204.11(c)(1)(i); see *id.* § 204.11(c)(3).

33. In California, failure to adequately protect or supervise is held as a similar basis. See CAL. WELF. & INST. CODE § 300(b)(1); see also *Guardianship of Saul H.*, 514 P.3d 871, 886–87 (Cal. 2022). In New York, the death of a parent is held as a similar basis to abandonment, abuse, or neglect. See N.Y. FAM. CT. ACT § 115(a)(iv) (McKinney 2022).

Immigration Services (USCIS), the “preponderance of the evidence” standard applies to Form I-360 and all USCIS petitions.³⁴ First, for USCIS to consent, “the request for SIJ classification must be bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law.”³⁵ Second, for USCIS to consent, the juvenile court orders must include “[t]he factual basis for the requisite determinations” and “[t]he relief from parental abuse, neglect, abandonment, or a similar basis under State law granted or recognized by the juvenile court.”³⁶

In practice, the process to submit a USCIS Form I-360 is simple and can be broken into two parts: (1) obtaining the requisite orders in family court and (2) preparing the petition for USCIS. The process of getting the court orders from a juvenile court is different in every state. In some states, the young person must have the court order before reaching eighteen because some state courts do not have jurisdiction over young people after they turn eighteen. For example, in Rhode Island, the juvenile court order must be issued before the young person turns eighteen.³⁷

In New York, one pathway to obtain the requisite orders for SIJS is to file a guardianship of the person petition followed by a motion for special findings. At the final hearing, the young person will receive: (1) letters of guardianship, (2) a guardianship order, and (3) a special findings order. The former two demonstrate a reliance on the family court, and the latter order contains the requirements for SIJS.

The juvenile court order explains that the young person (1) is under twenty-one years of age; (2) is unmarried; (3) is declared dependent on the juvenile court; (4) reunification with one or both

34. See, e.g., *Matter of Chawathe*, 25 I. & N. Dec. 369, 376 (AAO 2010). In previous petitions, the AAO has found that SIJ findings may be “inherent in the juvenile court order” regardless of the text of the actual order. See also *Matter of —*, — I. & N. Dec. 1, 3 (AAO 2014), https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2014/MAR102014_01C6101.pdf [<https://perma.cc/K9PS-3XDJ>].

35. 8 C.F.R. § 204.11(b)(5).

36. *Id.* § 204.11(d)(5)(ii).

37. 14 R.I. GEN. LAWS § 14-1-3(3) (2022); 15 R.I. GEN LAWS § 15-12-1(a) (2022).

parents is not viable due to abuse, abandonment, neglect, or a similar basis under State law; and (5) it has been judicially determined that it is not in the child's best interest to be returned to their country of nationality or last habitual residence. The court order typically contains clear and specific language outlining the young person's fulfillment of each SIJS requirement to ensure easy adjudication by a USCIS officer. The juvenile order is usually less than two pages long.

After obtaining the order(s) from the juvenile court, the attorney should work with the young person to fill out USCIS Forms G-28 and Form I-360. Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, provides information to demonstrate to USCIS that an individual is eligible to act on behalf of the SIJS petitioner as a licensed attorney.³⁸ Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, demonstrates to USCIS that the young person is a special immigrant who is a juvenile that needs the protection of a juvenile court because they had been abused, neglected or abandoned by a parent.³⁹ At the time of publishing this Essay, the general filing fee for Form I-360 is \$515, but USCIS notes that if one is filing as a Special Immigrant Juvenile, the filing fee is \$0.⁴⁰

A cover letter should preface the forms with a brief description of the petitioner's eligibility for SIJS.⁴¹ In addition to the forms and the requisite orders from family court, the petition should also include a birth certificate or other evidence of the petitioner's age.⁴² Once everything has been gathered, the attorney can mail the

38. See *G-28, Notice of Entry of Appearance as Attorney or Accredited Representative*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/g-28> [<https://perma.cc/YFE3-NDYR>] (last updated Apr. 3, 2024).

39. See *I-360, Petition for Amerasian, Widow(er), or Special Immigrant*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/i-360> [<https://perma.cc/US63-JNCU>] (last updated June 3, 2024).

40. See *G-1055, Fee Schedule*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/g-1055?form=i-360> [<https://perma.cc/4NQG-95T6>] (last visited Jan. 17, 2025).

41. See *SIJ: Forms You May Need*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/archive/sij-forms-you-may-need> [<https://perma.cc/3X8N-LLDB>] (last updated Mar. 8, 2018).

42. See *Checklist of Required Initial Evidence for Form I-360*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/forms/filing-guidance/checklist-of-required-initial-evidence-for-form-i-360-for-informational-purposes-only> [<https://perma.cc/RAN3-K3UF>] (last updated Feb. 10, 2022).

completed packet to USCIS at the filing address applicable to them.⁴³ USCIS will issue a receipt notice to the young person and the attorney on file.⁴⁴ With this notice comes the receipt number, which provides an identifying number to track the status of the petition.⁴⁵ During this time, it is important to monitor the case status and ensure that any Notice of Intent to Deny (NOIDs) or Request for Evidence (RFEs) is received and properly responded to.⁴⁶

If USCIS approves the SIJS petition, the young person is classified as a Special Immigrant Juvenile.⁴⁷ Special Immigrant Juveniles are deemed paroled for the purpose of applying for adjustment of status once their priority date becomes current.⁴⁸

Despite Congress mandating that SIJS petitions receive final decisions by USCIS within 180 days of their filing, the law categorizes the SIJS legal residence application process as “employment based.”⁴⁹ This categorization subjects SIJS adjusters to numerical caps despite SIJS being a humanitarian status.⁵⁰ As a result of the numerical caps, Special Immigrant Juveniles’

43. See *Direct Filing Addresses for Form I-360, Immigrant Petition for Amerasian, Widow(er) or Special Immigrant*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/forms/all-forms/direct-filing-addresses-for-form-i-360-immigrant-petition-for-amerasian-widower-or-special-immigrant> [<https://perma.cc/RHE2-JR8F>].

44. *Special Immigrant Juveniles*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-US/eb4/SIJ> [<https://perma.cc/4ZQN-FKPY>] (last visited Jan. 24, 2025).

45. *Id.*

46. See generally *Chapter 6 – Evidence*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-6> [<https://perma.cc/5H3D-XDKG>] (last updated Mar. 6, 2025) (explaining that NOIDs and RFEs are issued at the discretion of USCIS, and each may have specific requirements that must be met within a short period of time).

47. See *Chapter 2 – Eligibility Requirements, Policy Manual*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2> [<https://perma.cc/TGL9-P48C>] (last updated Mar. 6, 2025).

48. See *Green Card Based on Special Immigrant Juvenile Classification*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-eligibility/green-card-based-on-special-immigrant-juvenile-classification> [<https://perma.cc/92U6-TDHK>] (last visited Jan. 24, 2025).

49. *About the SIJS Backlog*, END SIJS BACKLOG, <https://www.sijsbacklog.com/aboutsijs> [<https://perma.cc/65CY-B6CW>] (last visited Jan. 27, 2025).

50. *Id.*

petitions to adjust status are impacted by a very large backlog, and they often have to wait years to apply for green cards.⁵¹

After five years with legal permanent residence, Special Immigrant Juveniles are eligible for naturalization if they meet eligibility criteria.⁵²

“El quince de febrero,⁵³ el quince de febrero,” José repeated to himself to remember his first hearing in immigration court scheduled for February 15th. Despite calling all the offices on the list provided to him by immigration officials, José had not been able to connect with a lawyer regarding his case. The organizations he called told him that there were large waitlists, and they could hopefully schedule him for an intake interview within the following four to six months.

José attended his first hearing alone. The courthouse was confusing to navigate, and there was no clear signage in English as to where to go, much less in José’s best language, Spanish. José was given another hearing three months later after he explained to the judge that he was still trying to find an attorney. Finally, José was able to connect with a nonprofit organization that connected him with an attorney named Muhammad. Muhammad met with José, who determined that he was eligible for SIJS based on the abuse and neglect of his father and the death of his mother, which was held to a similar basis of abuse, abandonment, and neglect.

Muhammad filed a guardianship petition in New York Family Court, asking the family court jurist to designate Aunt Yanet as José’s guardian. Muhammad also filed a motion asking for the court to make special findings. After three hearings in family court, Muhammad and José obtained a guardianship order, letters of guardianship, and a special findings order. Muhammad prepared the SIJS petition and submitted it to USCIS.

51. *Id.*

52. *I am a Lawful Permanent Resident of 5 Years*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization/i-am-a-lawful-permanent-resident-of-5-years> [https://perma.cc/9LG8-FTVN] (last visited Jan. 24, 2025).

53. *Febrero*, SPANISHDICTIONARY.COM, <https://www.spanishdict.com/translate/febrero> (last visited Oct. 8, 2024); *Quince*, SPANISHDICTIONARY.COM, <https://www.spanishdict.com/translate/quince> (last visited Oct. 8, 2024).

IV. THE LIFE-CHANGING BENEFITS OF SIJS TO A YOUNG PERSON

Identifying and supporting recent arrivals before their 18th birthday and putting them on a pathway to citizenship with SIJS provides many benefits to the young person.⁵⁴ Once a young person's SIJS petition has been filed, U.S. Immigration and Customs Enforcement (ICE) typically do not take enforcement action against them.⁵⁵ "Under current ICE policy, ICE attorneys should exercise 'prosecutorial discretion' to agree to dismiss removal proceedings against young people with pending petitions for SIJS."⁵⁶

Once a young person's SIJS petition has been approved, USCIS considers a grant of deferred action while the young person waits for a visa to be available to adjust their status to legal permanent residency.⁵⁷ Most young people who are granted SIJS are also given deferred action.⁵⁸ Deferred action-based SIJS provides protection from deportation and eligibility for a work permit for four years.⁵⁹

Once a visa number becomes available, the young person can adjust their status to legal permanent residency, also known as a green card.⁶⁰ It is impossible to predict how long a young person will have to wait for a visa to be available, but at the time of publishing, it is likely to be several years.⁶¹ With legal permanent

54. See U.S. CITIZENSHIP & IMMIGR. SERVS., NATURALIZATION FOR SPECIAL IMMIGRANT JUVENILES (SIJS) FACT SHEET 1 (n.d.), https://www.uscis.gov/sites/default/files/document/fact-sheets/DO_FactSheet_NatzForSIJS_V3_508.pdf [<https://perma.cc/A5BG-8KZ4>].

55. IMMIGR. LEGAL RES. CTR., WHAT IS SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)? 3 (May 2024), [https://www.ilrc.org/sites/default/files/2024-05/What is SIJS_May 2024.pdf](https://www.ilrc.org/sites/default/files/2024-05/What%20is%20SIJS_May%2024.pdf) [<https://perma.cc/5KJZ-LC4M>].

56. *Id.*

57. USCIS to Offer Deferred Action for Special Immigrant Juveniles, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 7, 2022), <https://www.uscis.gov/newsroom/alerts/uscis-to-offer-deferred-action-for-special-immigrant-juveniles> [<https://perma.cc/55ZN-MBTJ>].

58. IMMIGR. LEGAL RES. CTR., DEFERRED ACTION & WORK PERMITS FOR YOUNG PEOPLE WITH SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) 1 (2022), https://www.ilrc.org/sites/default/files/resources/deferred_action_sijs_march_2024.pdf [<https://perma.cc/58DY-TNBT>].

59. *Id.*; USCIS to Offer Deferred Action for Special Immigrant Juveniles, *supra* note 57.

60. IMMIGRANT LEGAL RES. CTR., *supra* note 58, at 1.

61. *Id.*

resident status, the young person has permission to live and work in the United States indefinitely, they are eligible to apply for federal financial aid, and they also may be eligible for some public benefits in the state they live in.⁶² After holding a green card for five years and being at least eighteen years old, a young person can apply for naturalization to become a U.S. citizen.⁶³

One should keep in mind that SIJS petitioners cannot include any family members in their application, such as siblings or their own child.⁶⁴ Once SIJS is granted, the young person also will not be able to help either of their parents obtain immigration status, as it is barred by federal law.⁶⁵ This information should be shared from the start of the process so young people can decide if SIJS is the correct fit for their specific goals.⁶⁶

Five months after submitting José's SIJS petition, Muhammad received an approval notice from USCIS. From there, Muhammad and José worked together on a work permit application. Although José was too young to work and was focused on school, the work permit served as a form of identification for José; the work permit also came with a social security number. When José is in high school, he will have access to safe, legitimate working opportunities if he decides to pursue them.

In addition to his work permit, Muhammad sent a request for prosecutorial discretion to the ICE attorney assigned to José's case. Muhammad argued that José's case had many positive factors supporting a favorable exercise of prosecutorial discretion, including the fact that he had an approved SIJS petition. The ICE attorney agreed to join the proceedings in immigration court regarding the joint motion to dismiss. Muhammad filed the motion, and it was granted by the immigration judge. José is now out of removal proceedings and can focus on school before a visa number

62. IMMIGR. LEGAL RES. CTR., *THE RIGHTS OF LAWFUL PERMANENT RESIDENTS (FACT SHEET) 1* (2020), https://www.ilrc.org/sites/default/files/resources/understanding_your_rights_as_lpr_ilrc_sept_2020.pdf [<https://perma.cc/5WU2-86J2>].

63. *Id.* at 2.

64. *WHAT IS SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)?*, *supra* note 55.

65. *See id.*; Immigration and Nationality Act (INA), 8 U.S.C. § 1101 (a)(27)(J)(iii)(II).

66. *See generally* MODEL RULES OF PRO. CONDUCT r. 1.4(a)(2) (AM. BAR ASS'N 2023) ("A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.").

is available to him, and he can adjust his status to legal permanent residence.

V. HOW TO TRAIN ATTORNEYS – CONTENT

In terms of content, state bar associations and legal service organizations can train and mentor attorneys on unaccompanied children, removal proceedings, and SIJS. Alternatively, attorneys can participate in disciplined self-education to prepare themselves.

There are more than 1.3 million attorneys in the United States.⁶⁷ To be more precise, there were 1,331,290 active attorneys as of January 1, 2023, according to the ABA National Lawyer Population Survey.⁶⁸ The New York State Bar Association states that part of their mission is to “respond to the demands of [the] diverse and ever-changing legal profession.”⁶⁹ The Rhode Island Bar Association maintains a CLE training calendar and on-demand CLE programming.⁷⁰ Organizations like Safe Passage Project, a nationally recognized legal services organization, mentors pro bono attorneys as they work with young people in their immigration cases.⁷¹ Safe Passage Project provides mentorship through the duration of the young person’s immigration case including practice and procedure; sample applications, motions and pleadings; documentation; and other case resources. By using this “mentorship model, any capable attorney can make a major difference in an immigrant child’s life.”⁷² Similar to Safe Passage Project’s Pro Bono model, Kids in Need of Defense (KIND) recruits volunteer attorneys from law firms, corporations, law schools, and bar associations to provide them with training, mentoring, and

67. *Demographics: Growth of the Legal Profession*, AM. BAR ASS’N, <https://www.abalegalprofile.com/demographics.html> (last visited Jan. 31, 2025).

68. *Id.*

69. *About*, N.Y. STATE BAR ASS’N, <https://nysba.org/about/> [<https://perma.cc/QZ94-3D84>] (last visited Jan. 31, 2025).

70. *Home*, R.I. BAR ASS’N, <https://ribar.com/> (last visited Jan. 31, 2025).

71. *Get Involved: Volunteer*, SAFE PASSAGE PROJECT, <https://www.safeassageproject.org/get-involved/#volunteer> [<https://perma.cc/7XRT-JNBB>] (last visited Jan. 31, 2025).

72. *Id.*

other resources to represent children.⁷³ KIND has offices across the United States and in Mexico.⁷⁴ As a first entry point to getting involved, attorneys can research the immigration committees of their state bar associations in addition to legal services organizations that represent unaccompanied children.

For attorneys with more experience, disciplined self-education may be an option. Organizations, like Safe Passage Project and the ABA Children’s Immigration Law Academy, provide comprehensive manuals for attorneys to follow as they work through the SIJS process with a young person.⁷⁵ Attorneys can also contact their local juvenile court to ask if they have any resources or samples related to SIJS.

Young people new to our communities need attorneys who are well-equipped to work in the juvenile courts and support them on their I-360s, as well as attorneys that are equally trained on trauma-informed practices.

VI. HOW TO TRAIN ATTORNEYS – APPROACH

In terms of approach, state bar associations and legal service organizations can train attorneys on the basics of trauma, cultural humility, and a trauma-informed approach and technique to lawyering.⁷⁶ The American Psychological Association defines trauma as “an emotional response to a terrible event like an accident, crime, natural disaster, physical or emotional abuse, neglect, experiencing or witnessing violence, death of a loved one, war, and more.”⁷⁷ Traumatic experiences can occur in the young person’s country of origin, during their journey to the United

73. *Become a Pro Bono Attorney*, KIDS IN NEED OF DEF., <https://supportkind.org/get-involved/pro-bono-attorney-program/> [<https://perma.cc/3QQ6-4ZMM>] (last visited Jan. 31, 2025).

74. *Contact Us*, KIDS IN NEED OF DEF., <https://supportkind.org/who-we-are/contact-us/> [<https://perma.cc/S36Y-9RUS>] (last visited Jan. 31, 2025).

75. *Special Immigrant Juvenile State (SIJS) Manual for New York Practitioners*, AM. BAR ASS’N, CHILD.’S IMMIGR. L. ACAD., <https://cilacademy.org/2024/06/18/new-cila-resource-special-immigrant-juvenile-status-sijs-manual-for-new-york-practitioners/> [<https://perma.cc/E9ZJ-656B>] (last visited Jan. 31, 2025).

76. *See Trauma-Informed Representation Project*, AM. BAR ASS’N, https://www.americanbar.org/groups/domestic_violence/our-projects/trauma-informed-representation/ (last visited Jan. 31, 2025).

77. *Psychology Topics: Trauma*, AM. PSYCH. ASS’N, <https://www.apa.org/topics/trauma> [<https://perma.cc/86ZM-TVGA>] (last visited Jan. 31, 2025).

States, while crossing the border, and after exiting government custody.⁷⁸ Beyond the trauma of the journey to the United States and the treatment by immigration officials, SIJS-eligible youth also have experienced trauma through one or both of their parents.⁷⁹ Thus, it is critical to provide specific information and training around trauma.⁸⁰

A. *A, B, Cs of Trauma-Informed Meeting Set-Up*

In terms of approach, attorneys can consider the A, B, Cs of a trauma-informed meeting. “A” stands for accessible. Attorneys should explain cases and concepts in an accessible way. They can consider the age and personality of the young person. Attorneys should use language so that the young person will be able to understand and present things in a way that they can comprehend. “B” stands for breaks. Attorneys should build breaks into their meetings to ensure that the young person is not being overwhelmed. At the beginning of meetings, the attorney should let the young person know how long the meeting will be. Every ten to twenty minutes, the attorney should ask the young person how they are feeling and if they wish to continue working on the case content. “C” stands for choice. Attorneys should allow the young person to make choices whenever possible. The systems that recently arrived young people encounter in the U.S., especially the immigration system, can be dehumanizing and allow for very little expression of personal agency.⁸¹ To counteract this, attorneys can make young people feel more comfortable by providing them with options from which they can choose. For example, meetings can be held over video conference or phone call rather than in an office.

78. MATLOW ET AL., *supra* note 9, at 11.

79. *What is SIJS – Special Immigrant Juvenile Status*, K & G L., LLP, <https://www.kgimmigrationlaw.com/EN/special-immigrant-juvenile-status-SIJS.html> (last visited Jan. 31, 2025).

80. See Rebecca Howlett & Cynthia Sharp, *Strategies for a Trauma-Informed Law Practice*, AM. BAR ASS'N (Oct. 26, 2021), <https://www.americanbar.org/groups/gpsolo/resources/ereport/archive/strategies-trauma-informed-law-practice/?abajoin=true>.

81. See David M. Markowitz & Paul Slovic, *Social, Psychological, and Demographic Characteristics of Dehumanization Toward Immigrants*, 117 PROC. NAT'L ACAD. SCI. 9260, 9260 (2020).

In this Article's case example, Muhammad will want to consider José's age and what happened to him in Guatemala when setting up meetings; he will want to build breaks into their meetings and consistently offer José choices. Muhammad knows that José was forced to drop out of school, and he is just now learning English. Muhammad also knows that José was physically abused by his father. Muhammad should consider this and explain José's case to him in a calm, quiet voice in Spanish. Muhammad should explain concepts in four-minute chunks and consistently check in with José to ensure that he comprehends what Muhammad is explaining. Finally, Muhammad should regularly ask José to express his opinions about case strategy and cater the case to José's wishes.

B. *Storytelling and Trauma*

Understanding how trauma affects one's ability to recall information and streamlining the case information to the elements lowers the risk of re-traumatization of a young person.⁸² The SIJS process involves storytelling and sharing difficult topics to show the juvenile court jurist that the young person meets the eligibility requirements.⁸³

Re-traumatization is reliving stress reactions experienced as a result of a traumatic event when faced with a new, similar incident.⁸⁴ A current experience is subconsciously associated with the original trauma, reawakening memories and reactions that can be distressing.⁸⁵ When working through a young person's story, an attorney should only ask questions that are necessary and center their questions on the facts required for proving the SIJS case to avoid excessive questions that have the potential to re-traumatize.⁸⁶ To maintain transparency and share expectations,

82. See Howlett & Sharp, *supra* note 80.

83. Bernard P. Perlmutter, *Judges Behaving Badly . . . Clinics Fighting Back: The Struggle for Special Immigrant Juveniles in State Dependency Courts in the Age of Trump*, 82 ALB. L. REV. 1553, 1624–26 (2018).

84. SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., TIPS FOR SURVIVORS OF A DISASTER OR OTHER TRAUMATIC EVENT: COPING WITH RETRAUMATIZATION 1 (2017), <https://library.samhsa.gov/sites/default/files/sma17-5047.pdf> [<https://perma.cc/NJQ9-3QMW>].

85. DEBRA KAMINER & GILLIAN EAGLE, TRAUMATIC STRESS IN SOUTH AFRICA 130 (Lara Jacob ed., 2010).

86. See Howlett & Sharp, *supra* note 80.

an attorney can consider showing a redacted sample juvenile court petition so that the young person can consider what kind of information needs to be shared.⁸⁷

C. Suggesting and Building Community While Working Through a Legal Case

As a reliable adult checking in with a young person regularly, attorneys have the unique position of being able to plant and nurture seeds to identify and foster community. Communities, whether they are religious, athletic, academic, or more, provide structure and social opportunities to unaccompanied youth that are new to an area. Community involvement can help people heal from trauma by providing opportunities to express collective trauma, form meaningful relationships, and feel connected to a larger community.⁸⁸

Attorneys should listen to and learn from the young person they are working with to identify potential communities to share with the young person. For example, if a young person shares that they are very interested in soccer, the attorney could spend time researching accessible soccer leagues in the young person's area. This small action demonstrates to the young person that the attorney listens and is invested in the young person's success outside of their immigration case.

Muhammad understands the importance of his own communities, including faith, family, athletic, and social relationships, and continues to learn what is important to José as he works with him. José shared that he is involved in his soccer team at school and that he attends church every weekend with his Aunt Yanet. Muhammad checks in on how his soccer team is doing each meeting and affirms José in his chosen communities.

Trauma-informed care is a journey, not a destination. As attorneys continue to work with people who have experienced trauma, they should consider how to make the person feel

87. *Id.*

88. Lauren Weisner, *Individual and Community Trauma: Individual Experiences in Collective Environments*, ILL. CRIM. JUST. INFO. AUTH. (July 15, 2020), <https://icjia.illinois.gov/researchhub/articles/individual-and-community-trauma-individual-experiences-in-collective-environments> [https://perma.cc/TZQ6-A8VK].

comfortable, recognized, and respected throughout each interaction.

While a trauma-informed immigration attorney must understand and empathize with the challenges each young person has faced, it is critical to connect clients with mental health experts where additional support is needed.⁸⁹ When working through a young person's story to prepare their legal case, an attorney may accidentally confuse their skills with that of a therapist.⁹⁰ Where an attorney's expertise resides in the law, a trained therapist resides in therapy. When appropriate, an attorney should refer the young person to accessible mental health services to support them as they work through their case.

VII. TREAD CAREFULLY, BUT WITH CONFIDENCE

This Article is meant to encourage and galvanize attorneys and future attorneys to work with unaccompanied youth, but time considerations should be thoroughly planned to ensure the best care. The SIJS process provides a pathway to citizenship for young people, but it is a very long path. The process for the initial SIJS petition—first in juvenile court obtaining the requisite orders, then submitting the petition to USCIS—may take some time.⁹¹ For example, in New York Family Court, practitioners are finding significant delays due to the overburdened court system.⁹² Courts in states like Rhode Island are also still feeling the rippling effects of the COVID-19 pandemic.⁹³

89. See Talia Kraemer & Eliza Patten, *Establishing a Trauma-Informed Lawyer-Client Relationship (Part One)*, 33 AM. BAR ASS'N CHILD L. PRAC. 197, 198 (2014).

90. See generally *id.* at 197.

91. Von Wooding, *Special Immigrant Juvenile Status (SIJS): Eligibility, Process*, COUNS. STACK: BLOG (June 22, 2024), <https://blog.counselstack.com/special-immigrant-juvenile-status-sijs-eligibility-process/> [<https://perma.cc/8SLG-KTUZ>].

92. N.Y. STATE SENATE, THE CRISIS IN NEW YORK'S FAMILY COURTS 3 (2024), <https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-02/2.12-family-court-hearing-report-w-graphics-1.pdf> [<https://perma.cc/7MSZ-A46B>].

93. Amanda Hernández, *Shortage of Prosecutors, Judges Leads to Widespread Court Backlogs*, R.I. CURRENT (Jan. 26, 2024, 5:15 AM), <https://rhodeislandcurrent.com/2024/01/26/shortage-of-prosecutors-judges-leads-to-wide-spread-court-backlogs/>.

At the time of publication, attorneys should plan for about a year from initial intake to an approved SIJS petition.⁹⁴ This timeframe considers meeting with the young person, conducting an intake, working through family court, obtaining the orders, and submitting Form I-360. An attorney should be extremely clear with the young person about whether their representation includes appearances before the immigration court. It is reasonable to think that your attorney is representing you for all immigration matters if they are working on one aspect of your immigration case. Having a clear retainer that lists every aspect the attorney is working on for the client is not just ethical but also trauma-informed. If the attorney retains the young person for additional services, more time should be considered in case planning. For example, if the attorney wants to work with the young person through getting a work permit, or up to the point of obtaining legal permanent residence for the young person, additional time may be needed. The United States immigration system is inherently time-consuming and confusing, so this should be considered a long-term project with regularly scheduled check-ins with the young person.

Providing the young person with an estimated timeframe for the process and regularly updating them is the best practice in trauma-informed care.⁹⁵ As part of the introductory meeting and throughout the entire SIJS case, the attorney should inform the young person with an estimate of how long certain processes usually take and when they should expect to hear from the attorney. The attorney should have regularly scheduled check-ins even when there is not an update to provide stability and uniformity for the young person.

94. Leslye E. Orloff & Katelyn Deibler, *Special Immigrant Juvenile Status (SIJS) Timeline with Background Checks*, AM. UNIV. WASH. COLL. L., NAT'L IMMIGRANT WOMEN'S ADVOC. PROJECT 1 (June 12, 2021), <https://niwap.library.wcl.american.edu/wp-content/uploads/3G-SIJS-timeline-3.29.19-leo-Edna-PRINTED.pdf> [<https://perma.cc/2N6B-W548>].

95. See CHRISTOPHER MENSCHNER & ALEXANDRA MAUL, CTR. FOR HEALTHCARE STRATEGIES, INC., KEY INGREDIENTS FOR SUCCESSFUL TRAUMA-INFORMED CARE IMPLEMENTATION 6 (2016), https://www.samhsa.gov/sites/default/files/programs_campaigns/childrens_mental_health/atc-whitepaper-040616.pdf.

VIII. A CALL FOR OTHER IMPACTFUL ENGAGEMENT

SIJS provides a pathway to citizenship for many young people, but the process is far from perfect and needs advocates for improvement. First and foremost, the call to end the SIJS visa backlog is paramount to getting SIJS-eligible young people legal permanent residence faster.⁹⁶ *The End SIJS Backlog Coalition* works to educate about the harmful impacts of visa caps on vulnerable immigrant children.⁹⁷ Learning from young people about how these lengthy delays affect their lives and then advocating for the end of the SIJS backlog improves the SIJS process.⁹⁸

Additionally, as discussed earlier in this Article, young people who are granted SIJS are not able to petition for either of their parents to get immigration status, as there is a bar under federal law.⁹⁹ There are many instances where only one parent abused, abandoned, or neglected the young person, and the young person is very close and well cared for by the other parent. SIJS should be improved so that young people who are granted SIJS can petition for a parent to get immigration status.

Finally, advocates can contact their local governments and ask to be connected to organizations that work with recently arrived unaccompanied children. If taking on their immigration case is not the right fit, attorneys can get involved with local organizations to offer language support, job placement services, tutoring, and more.¹⁰⁰ At the most basic level, attorneys should listen to the experiences of immigrants and recent arrivals and be open to learning from their perspectives.

96. Laila L. Hlass et al., *The Double Exclusion of Immigrant Youth*, 111 GEO. L.J. 1407, 1486 (2023).

97. *About the SIJS Backlog*, *supra* note 49.

98. *Id.*

99. Javeria Ahmed, *No Parents Allowed: The Problems with Special Immigrant Juvenile Status*, 24 CARDOZO J. EQUAL RTS. & SOC. JUST. 131, 132 (2017).

100. Kel Smith-Holbourn, *Volunteer to Support Immigrants: Pro Bono Attorneys and Interpreters Needed*, IMMIGR. IMPACT (Oct. 25, 2024), <https://immigrationimpact.com/2024/10/25/volunteer-support-immigrants-pro-bono-attorneys-interpreters/> [<https://perma.cc/7EVK-6NZE>].

CONCLUSION

Attorneys should consider building upon their skills by learning the content of and a trauma-informed approach to Special Immigrant Juvenile Status to welcome and work with recently arrived young people in their area. State bar associations and legal service organizations provide training and resources for attorneys to identify and work with SIJS-eligible youth.¹⁰¹ José's journey in this Article demonstrates how one young person may move through the immigration process. One can only imagine how different José's journey would have been without a trauma-informed pro bono attorney. Unlike our fictional character José, the thousands of children who enter the United States as unaccompanied children are real. They have their own unique experiences and dreams of peace, stability, and safety. They, like you, deserve to craft a fulfilling and safe life for themselves filled with love and joy. Special Immigrant Juvenile Status provides a pathway to legal status for eligible young people and alleviates some stress, worry, and fear as they build and rebuild their lives in the United States.

101. See *Training*, AM. BAR ASS'N, https://www.americanbar.org/groups/public_interest/child_law/project-areas/immigration/sijs-training/ (last visited Jan. 31, 2025).