

**Example Template
Complaint for SIJS Delay Cases**

This does not constitute legal advice. Attorneys should fully research and consider all issues involved using their independent judgment. This is not a substitute for independent research, analysis, drafting, and consideration of local practices and rules. Individuals should seek counsel from an attorney to assist them in their case.

NOTE: REVIEW LOCAL RULES FOR THE DISTRICT COURT TO ENSURE THAT ALL PLEADING/FILING REQUIREMENTS ARE SATISFIED

**UNITED STATES DISTRICT COURT
FOR THE [XX] DISTRICT OF TEXAS**

[PLAINTIFF'S NAME, if over 18.]
[If a minor, Plaintiff's initials, by and through
his next friend, NAME OF RELATIVE—
CHECK LOCAL RULES ON THIS.]

Plaintiff,

v.

[KENNETH T. CUCCINELLI II], in his
capacity as [acting] Director of U.S.
Citizenship and Immigration Services,
U.S. Citizenship and Immigration Services;

[CHAD WOLF], in his official capacity as
[acting] Secretary, U.S. Department of
Homeland Security,
U.S. Department of Homeland Security;

[NAME], in his capacity as the Director of
USCIS's National Benefits Center,

Defendants.

Case No.:

**PETITION FOR WRIT OF MANDAMUS
AND COMPLAINT FOR INJUNCTIVE
RELIEF**

INTRODUCTION

1. Plaintiff [NAME] is a [##]-year-old noncitizen from [COUNTRY] who applied for Special Immigrant Juvenile Status (SIJS), a form of immigration relief that provides vulnerable children with a path to legal permanent residency in the United States. SIJS is available to noncitizens under the age of 21 who obtain specific factual determinations by

a state court with jurisdiction over their custody. Specifically, the state court must find that (1) reunification with one or both of the noncitizen's parents is not viable due to abuse, neglect, abandonment, or similar basis under state law, and (2) it is not in the noncitizen's best interest to be returned to their country of origin. *See* 8 U.S.C. § 1101(a)(27)(J)(i)-(ii). In [PLAINTIFF NAME]'s case, a [Texas] state court has made the requisite findings.

2. [PLAINTIFF NAME] applied for SIJS by submitting [his/her] Form I-360 petition on [DATE]. Although 8 U.S.C. § 1232(d)(2) mandates that United States Citizenship and Immigration Services (USCIS) "shall . . . adjudicate[]" a SIJS petition "not later than 180 days after the date on which the application is filed," USCIS has failed to comply with this requirement. To date, USCIS has not adjudicated [PLAINTIFF NAME]'s SIJS petition, as statutorily required, although it has been more than [X days/months] since [PLAINTIFF NAME] applied for SIJS.
3. Plaintiff therefore brings this action to compel the Defendants and those acting under them to take all appropriate action to adjudicate the Plaintiff's SIJS Petition without further delay.

JURISDICTION

4. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, the regulations implementing the INA, and the APA, 5 U.S.C. § 701 *et seq.*
5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and the Mandamus Act, 28 U.S.C. § 1361. The Court may grant injunctive relief pursuant 5 U.S.C. §§ 701 and 706 and 28 U.S.C. § 1361. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

VENUE

6. Venue in this district is proper under 28 U.S.C. § 1391(e) because Defendants are officers

or employees of the United States or agencies thereof acting in their official capacities, Plaintiff resides within this District, no real property is involved, and a substantial part of the events giving rise to the claims occurred in the District.

PARTIES

7. Plaintiff, [NAME], is a [##]-year-old citizen of [COUNTRY]. On [DATE], the [Name of Specific State Court] placed [him/her] in the custody of a [name of state agency/department/family member] and entered an SIJS order. On [DATE], [NAME] submitted [his/her] SIJS petition to USCIS.
8. Defendant [Kenneth T. Cuccinelli II] is the [acting] Director of USCIS, an “agency” within the meaning of the Administrative Procedure Act (APA). 5 U.S.C. § 551(1). In this capacity, he oversees the adjudication of immigration benefits and establishes and implements governing policies. 6 U.S.C. § 271(a)(3), (b). He has ultimate responsibility for the adjudication of SIJS petitions and is sued in his official capacity.
9. Defendant [Chad Wolf] is the [acting] Director of U.S. Department of Homeland Security (DHS), an “agency” within the meaning of the APA. 5 U.S.C. § 551(1). In this capacity, he oversees USCIS.
10. Defendant [Name of NBC Director] is the Director of the USCIS National Benefits Center, which adjudicates SIJS petitions. He is sued in his official capacity.

LEGAL BACKGROUND

11. Congress created SIJS to address “hardships experienced by some dependents of United States juvenile courts”—specifically, qualified noncitizen minors—“by providing [them] with the opportunity to apply for special immigrant classification and lawful permanent resident status, with [the] possibility of becoming citizens of the United States in the future.” Special Immigrant Status, 58 Fed. Reg. 42,843, 42,844 (Aug. 12, 1993). Initially, SIJS was available only to abused, neglected, or abandoned noncitizen minors who were eligible for long-term foster care, but over the years Congress consistently broadened the protection, including by eliminating the requirement that the petitioner be

eligible for foster care. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457 § 235(d), 122 Stat. 5044 (2008). Currently, noncitizen minors eligible for SIJS include those who: are in the custody of the U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR); were previously abused, neglected, or abandoned by a parent and are now in the custody of another family member; or are in foster care or in the custody of an appointed guardian.

12. To be eligible for SIJS under the current statute and regulations, a noncitizen minor must:
 - (1) be physically present in the United States;
 - (2) be under 21 on the date of filing the SIJS petition, Form I-360;
 - (3) remain unmarried throughout the adjudication of the SIJS petition and adjustment of status application (Form I-485);
 - (4) receive a qualifying juvenile court order;
 - (5) obtain USCIS's consent to the grant of SIJS; and, for cases in which the minor is detained in the custody of ORR, (6) obtain specific consent from the HHS Secretary. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).
13. Unlike most forms of immigration relief, which are adjudicated exclusively by federal immigration authorities, the process for obtaining SIJS involves both state juvenile courts and USCIS. First, a noncitizen must obtain a custody or dependency order from a state court. That order must: (1) be issued by a juvenile court (or other similar court, such as a family court) that has jurisdiction to make determinations about the custody and care of the petitioner; (2) be issued under state law; (3) contain a judicial determination about the custody or dependency of the noncitizen minor; (4) contain a determination that reunification with at least one of the minor's parents is not viable due to abuse, neglect, or abandonment; and (5) contain a determination that it would not be in the minor's best interest to be returned to her country of nationality or the country where she last resided. U.S.C. § 1101(a)(27)(J).
14. After obtaining the custody or dependency state order, the noncitizen must submit a Form I-360 Petition for Special Immigrant Juvenile Status to USCIS, including documentary

evidence in support of the noncitizen’s eligibility for SIJS and the state court order. 8 C.F.R. § 204.11(d). After reviewing the petition, USCIS will issue: an approval, denial, Request for Evidence (RFE), or Notice of Intent to Deny (NOID).

15. Because Congress recognized the need for expeditious adjudications of SIJS petitions, it mandated that USCIS “shall . . . adjudicate[.]” an SIJS petition “not later than 180 days after the date on which the application is filed.” 8 U.S.C. § 1232(d)(2). As recognized by the court in *Galvez v. Cuccinelli*, “Congress unambiguously intended the adjudication [of SIJS petitions] to be expeditious, providing a clear and mandatory deadline.” No. C19-0321RSL, 2020 U.S. Dist. LEXIS 184469, at *21 (W.D. Wash. Oct. 5, 2020).

FACTS

16. Plaintiff [NAME], is a [##]-year-old citizen of [COUNTRY]. [Recount immigration history and reasons why Plaintiff has been abused, neglected, or abandoned by one or both parents.].

17. [State whether Plaintiff is currently detained and, if not, with whom he/she resides and whether Plaintiff attends school, works, plays sports/instruments/participates in church youth groups/or otherwise participates in community groups].

18. On [DATE], [State Court] issued a custody or dependency order. [Describe court order and quote the court’s findings.]

19. On [DATE], [PLAINTIFF NAME] submitted [his/her] I-360, Petition for SIJS to USCIS. [Describe any RFEs/NOIDS and timely responses to RFEs/NOIDS]. To date, USCIS has failed to give a timely adjudication of Plaintiff’s Form I-360, even though the statutory deadline for adjudicating the petition passed on [DATE]. [PLAINTIFF NAME] has been waiting for a decision on [his/her] SIJS petition for more than [X DAYS/MONTHS/YEARS].

20. USCIS’s delay in adjudicating [PLAINTIFF NAME]’s SIJS petition has caused [him/her] irreparable harm. [Describe in detail the harm, including any medical or psychiatric issues the minor may have, any hardships faced because of her living situation, whether

she is eligible to immediately apply for adjustment of status and her need to do this both to gain that status and to obtain work authorization, etc.]

CAUSES OF ACTION

Count I

(Violation of the Administrative Procedure Act)

21. All the foregoing allegations are repeated and realleged as though fully set forth herein.
22. The APA, 5 U.S.C. § 555(b), mandates that an agency conclude matters presented to it within a reasonable time. The APA, 5 U.S.C. § 706(1), also provides the Court with authority to compel agency action unlawfully withheld or unreasonably delayed.
23. Defendants have unlawfully withheld agency action because they have failed to take required action by the date set by Congress. *See Forest Guardians v. Babbitt*, 174 F.3d 1178, 1190 (10th Cir. 1998) (holding that “when an entity governed by the APA fails to comply with a statutorily imposed absolute deadline, it has unlawfully withheld agency action[.]”). Because Defendants have unlawfully withheld agency action, this Court “must compel the agency to act.” *Id.*; *see also Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 & n.11 (9th Cir. 2002) (explaining that where “Congress has specifically provided a deadline for performance by the [agency],” and the agency fails to comply, the court must compel the agency to act because the firm statutory deadline for agency action “removed the traditional discretion of courts in balancing the equities before awarding injunctive relief”); *South Carolina v. United States*, 907 F.3d 742, 760 (4th Cir. 2018) (explaining that when an agency fails “to meet a hard statutory deadline” the APA “leaves no space for discretion when a court addresses an unlawfully withheld agency action”).
24. Additionally, Defendants have unreasonably delayed adjudication of Plaintiff’s SIJS petition application, considering that Plaintiff’s petition has been pending for [LENGTH OF TIME]. Pursuant to 8 U.S.C. § 1232(d)(2), Plaintiff has a clear right to have his SIJS petition decided because he falls within the zone of interest of the SIJS statute. *See*

Giddings v. Chandler, 979 F.2d 1104, 1108 (5th Cir. 1992); *Yu v. Brown*, 36 F. Supp. 2d 922, 930 (D.N.M. 1999) (holding that applicants for SIJS and for adjustment of status fell “within the zone of interest of the INA provisions”). Defendants also have a mandatory duty to adjudicate the application. *See, e.g., M.J.L. v. McAleenan*, 420 F. Supp. 3d 588, 597 (W.D. Tex. 2019) (“While the USCIS’s decision to grant or deny a U Visa petition is discretionary, the question of whether that adjudication has been unlawfully withheld or unreasonably delayed is not.”).

25. The delay in [PLAINITFF NAME]’s case is so egregious that this Court’s intervention is needed. *See Telecomms. Rsch. & Action Ctr. v. FCC (TRAC)*, 750 F.2d 70 (D.C. Cir. 1984). USCIS has failed to abide by the deadline set by Congress. *See Am. Hosp. Ass’n v. Burwell*, 812 F.3d 183, 189-90 (D.C. Cir. 2016) (noting that where “the statute imposes a deadline or other clear duty to act, the bulk of the *TRAC* factor analysis” likely should focus on “the equitable question of whether mandamus *should* issue, rather than the jurisdictional question of whether it *could*”). Further, this delay jeopardizes human health and prejudices Plaintiff because [he/she] is unable to plan for [his/her] future or live securely in the United States while living in limbo, waiting for USCIS to act. *See Asmai v. Johnson*, 182 F. Supp. 3d 1086, 1096 (E.D. Cal. 2016) (concluding that an asylee’s welfare was “damaged by this unreasonable delay and the insecurity of his immigration status”); *Geneme v. Holder*, 935 F. Supp. 2d 184, 194 (D.D.C. 2013) (same).

COUNT II

(Mandamus Act)

26. All the foregoing allegations are repeated and realleged as though fully set forth herein.
27. The Mandamus Act, 28 U.S.C. § 1361, provides the Court with the authority to compel an officer or employee of any agency of the United States to perform a duty owed to Plaintiff.

28. Plaintiff has a clear right to the relief requested because, as an SIJS petitioner, he falls within the zone of interest of the SIJS statute. *See Giddings*, 979 F.2d at 1108; *Yu*, 36 F. Supp. 2d at 930. Defendant has a clear duty to perform the act in question—adjudicate the SIJS petition “not later than 180 days after the date on which the application is filed.” 8 U.S.C. § 1232(d)(2); *see also M.J.L.*, 420 F. Supp. 3d at 595. Further, no other adequate remedy is available because there is no other means for forcing USCIS to decide Plaintiff’s petition. Lastly, the length of delay is unreasonable in light of the statutory deadline and the harm to Plaintiff’s welfare. *See TRAC*, 750 F.2d at 70. Accordingly, this Court’s intervention is needed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over this action;
2. Compel Defendants to adjudicate Plaintiff’s I-360 applications before [MONTH] __, 202_;
3. Award Plaintiff reasonable costs and attorney’s fees under the Equal Access to Justice Act; and
4. Award such further relief as the Court deems necessary or proper.

Respectfully submitted,

[MONTH] __, 202_

[ATTORNEY’S NAME]

Attorney for Plaintiff

/s/

[ATTORNEY’S NAME] [Bar No. #####]

[LAW FIRM/OFFICE]

[STREET ADDRESS]

[CITY], STATE ZIP CODE

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