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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JUVENILE COURT

The People of the State of California vs. John Henry Doe Roe AKA John Doe	Case No. FJ123456 MOTION FOR AN ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS Date: Time: Dept.: 205

Nonminor dependent John Henry Doe Roe (aka John Doe), through immigration counsel, moves this Court to sign an Order Regarding Eligibility for Special Immigrant Juvenile Status (JV-224).

I. INTRODUCTION

This Motion is submitted in support of John's request for an order making the necessary factual findings to enable him to petition the U.S. Citizenship and Immigration Services ("CIS," formerly "INS") for Special Immigrant Juvenile Status ("SIJS") pursuant to Section 101(a)(27)(J) of the Immigration and Nationality Act (the "INA"). The relevant

provision of the INA is codified at 8 U.S.C. § 1101(a)(27)(J) (attached as Exhibit A). The Code of Federal Regulations sets forth the standard for implementing the statute at 8 C.F.R. § 204.11 (attached as Exhibit B). Note that the regulations do not yet reflect the December 2008 statutory changes Congress made to SIJS via the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. No. 110-457, § 235(d)(1)-(3), 122 Stat. 5044.

Under the statute's amended form, now applicable to all SIJS cases, a Special Immigrant Juvenile is an unmarried person under the age of twenty-one who is in the United States; who has been declared dependent on a juvenile court located in the United States or whom a juvenile court has legally committed to, or placed in the custody of, an agency or department of a State or of an individual or entity appointed by a State or juvenile court; whose reunification with one or both parents is not viable due to abuse, neglect, abandonment or a similar basis found in state law; and in whose best interest it is to remain in the United States. 8 U.S.C. § 1101(a)(27)(J).

For John to be eligible to apply to CIS for SIJS, a juvenile or State court must first make several findings of fact. Under the law, the juvenile or State court does not make any immigration decisions, but rather, makes factual findings concerning the youth. The juvenile or State court—and not CIS—makes these findings because these are the courts with expertise in juvenile matters. The required findings are as follows:

1. The youth is dependent upon the juvenile court or has been legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court, within the meaning of 8 U.S.C. § 1101(a)(27)(J) (the accompanying regulations found at 8 C.F.R. §§ 204.11(a) and (d)(2)(i) do not reflect the 2008 statutory amendments);

2. The youth's reunification with one or both parents is not viable due to abuse, neglect, abandonment or similar basis found under State law within the meaning of 8 U.S.C. § 1101(a)(27)(J) (the accompanying regulations found at 8 C.F.R. §§ 204.11(d)(2)(ii) do not reflect the 2008 statutory amendments); and

3. It is not in the "best interest" of the youth to be returned to his or his parents' previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11(d)(2)(iii).

Factual findings by this Court will not entitle John to SIJS or to lawful permanent residence in the United States. Rather, the Court's findings are a prerequisite to filing a *petition* for immigration relief. *See* 8 C.F.R. § 204.11(d)(2). Without the requested court order, John cannot petition CIS for SIJS. *Id.* He must submit the order to CIS as part of his petition for SIJS. Based on his SIJS petition, he can also submit an application for lawful permanent residency. CIS ultimately will adjudicate his petition and application after an interview. CIS retains the discretionary authority to approve or to deny John's petition for SIJS and application for permanent residency. This Court's role in his petition for SIJS is limited to making the factual findings listed above and does not include the ability to "determine worthy candidates for citizenship." *Leslie H. v. Superior Court*, 224 Cal. App. 4th 340, 351 (2014). John respectfully requests that the Court issue an order making the appropriate findings of fact to enable him to petition for SIJS and apply for lawful permanent residence.

II. STATEMENT OF FACTS

John is a 20-year-old youth who was born in Usulutan, El Salvador. Declaration of John Henry Doe Roe ¶¶ 1-2 (attached as Exhibit C). John came to live in the United States with his mother when he was approximately eight years old. *Id*. ¶ 2. He has been here ever since. *Id*. He speaks English well and he has attended school here since the first grade. *Id*. His maternal grandfather is deceased, his maternal grandmother lives in the United States, and John does not know any of his other relatives in El Salvador. *Id*. ¶ 3.

John did not receive the care and guidance of a father growing up. *Id*. ¶ 4. According to John's mother, John's father's name is not on John's birth certificate because he was not willing to be listed there. *Id*. John never lived with his father. *Id*. John visited his father's house only a handful of times when John lived in El Salvador. *Id*. John has not spoken with his father since John moved to the United States approximately twelve years ago. *Id*. ¶ 5. John believes his father may still live in El Salvador, but he does not know for certain. *Id*. John's father has provided no financial or emotional support; he has not provided for John with food, clothing or shelter. *Id*. John has had to navigate life without the support of his father, and currently he has no way of contacting or communicating with his father. *Id*.

As reflected in the record of this case, John has faced challenges and made some serious mistakes in his time in the United States. As a result, on June 28, 2012 John was declared a ward of this Court and was sent to live at treatment programs administered by Rancho San Antonio and Fuente de Esperanza. *Id*. ¶ 6. Eventually, he completed counseling and other terms of his probation. *Id*. On February 18, 2015, after he signed a Voluntary Reentry Agreement, he was declared a nonminor dependent of this Court and his care was vested with the Los Angeles County Probation Department. *Id*. ¶ 7. John attends Five Keys Charter School programs and is working to obtain his high school diploma. *Id*. He continues to receive academic and independent living support services, and he hopes to graduate from high school, go to college, and pursue his dreams of becoming an auto mechanic or a chef. *Id*.

If John is returned to El Salvador, he will have no one to provide him with care and protection. He does not know any family members there who could help him. *Id*. ¶ 8. He does not know how he would support himself. *Id*. He is afraid he would be left alone and wandering the streets. *Id*. He would likely lose all hope of completing his education, and will not have access to the services he has available to him here in the United States—services that are instrumental in his rehabilitation, and are crucial to his future success. *Id*. He also fears the gangs that are plaguing El Salvador, and he worries that he might be recruited if he were to return there. *Id*. He worries that he could fall victim to the violence that is commonplace in El Salvador. *Id*.

John is seeking the protection of the United States by applying for SIJS. If the Court makes the requisite findings of fact to establish John's eligibility for SIJS, he will petition CIS for his classification as a Special Immigrant Juvenile. If CIS approves his petition, he will be eligible to adjust status to permanent residence. This means John will be able to apply for his "green card." As a lawful permanent resident, he will have the right to live and work in the United States. After five years as a lawful permanent resident, John can apply for U.S. citizenship.

III. ARGUMENT

John is in immediate need of an Order Regarding Eligibility for Special Immigrant Juvenile Status. John meets the criteria for a Special Immigrant Juvenile because he is a nonminor dependent, his father has abandoned him, and it is not in his best interests to be returned to El Salvador. Obtaining the requisite immigration order and regularizing his status in the United States will provide John with protection from deportation to a country where no one can care for him. Furthermore, legal status will facilitate John's ability to pursue higher education in the United States, to work to support himself as an adult, and to become a productive member of society.

A. THIS COURT IS A "JUVENILE COURT"AS DEFINED BY THE APPLICABLE IMMIGRATION LAWS AND IT HAS JURISDICTION AND A DUTY TO ISSUE THE SIJS ORDER UNDER CALIFORNIA LAW

In order for John to apply for SIJS, a State "juvenile court" or other State court must make certain findings of fact. *See* 8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11. Immigration regulations define the term "juvenile court" as "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). The court in *Leslie H.,* acknowledging that SIJS findings can arise out of delinquency proceedings, noted that "'[t]he SIJ statute affirms the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests.'" 224 Cal. App. at 348 (quoting *Matter of Mario S.*, 954 N.Y.S.2d 843, 849 (N.Y. Fam. Ct. 2012)); *see also* Code Civ. Proc. § 155(a).

California law grants juvenile delinquency courts the jurisdiction to place a child in the "care, custody and control" of the probation department as a Section 602 ward. *See* Welf. & Inst. Code § 727. Further, it allows certain nonminors previously declared to be 602 wards or 300 dependents to remain under the jurisdiction of the juvenile court as nonminor dependents. *See, e.g.*, *id*. § 303(b), (c) (affirming that certain nonminors remain under the court's general jurisdiction and that they may petition the court to resume dependency or resume or assume transition jurisdiction). A juvenile court, if requested by a qualifying nonminor, "must" vest the

nonminor's "placement and care" in county probation or a child welfare agency. Cal. Rule of Court 5.906(i)(2)(A)(i); *see* Judicial Council Form JV-472. These are obviously decisions regarding "custody and care of juveniles," as noted in 8 C.F.R. § 204.11(a). Thus, this Court clearly qualifies as a "juvenile court" recognized by the federal government for purposes of SIJS.

1. THIS COURT HAS A DUTY TO MAKE THE REQUESTED FINDINGS UNDER RECENTLY-ENACTED CALIFORNIA LAW

Senate Bill 873, signed into law by Governor Brown on September 27, 2014, "eliminates any ambiguity regarding the jurisdiction of the state court to make findings necessary to enable the federal government to grant these minors special immigrant juvenile status." *Governor Brown Signs Legislation to Help Unaccompanied Minors*, Office of Governor Edmund G. Brown Jr. (Sept. 27, 2014), http://gov.ca.gov/news.php?id=18734. SB 873 added Chapter 7 to Title 1 of Part 1 of the Code of Civil Procedure. Section 155 of that chapter now states: "(a) A superior court has jurisdiction under California law to make judicial determinations regarding the custody and care of children . . . which includes . . . the juvenile . . . court division[] of the superior court . . . ," clearly indicating this Court's power to make the requested findings. *See* Code Civ. Proc. § 155 (attached as Exhibit D).

In addition to having the power to make SIJS findings, this Court has a mandatory duty to do so under Section 155(b)(1), which states: "If an order is requested from the superior court making the necessary findings regarding special immigrant juvenile status pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code, and there is evidence to support those findings, which may consist of . . . a declaration by the child who is the subject of the petition, the court shall issue the order[.]" Because this Court has jurisdiction over John as a nonminor dependent under Welfare and Institutions Code Section 450, he requests a SIJS order from this Court, and there is ample evidence to support the findings, this Court has a duty to make the SIJS findings in the proposed JV-224 filed along with this Motion.

2. THIS COURT'S ROLE IS LIMITED TO MAKING SIJS FINDINGS AND IT IS CALLED UPON ONLY TO DETERMINE WHETHER JOHN MEETS THE CRITERIA FOR THE FINDINGS

The state court has a limited, though essential, role in the SIJS process as it is "charged with making a preliminary determination of the child's dependency and his or her best interests, which is a prerequisite to an application to adjust status as a special immigrant juvenile." *Mario S.,* 954 N.Y.S.2d at 849. This Court's role in the SIJS process is simply to make factual findings of eligibility for youth in their jurisdiction who meet the criteria for SIJS. The Court of Appeal recognized this limited role of superior courts in *Leslie H.* There, it considered a juvenile delinquency court's refusal to issue SIJS findings for a minor who met the SIJS criteria. The Court of Appeal made clear that once a juvenile court reviews and makes factual findings of SIJS eligibility, its role in the SIJS process is complete. *Leslie H.,* 224 Cal. App. 4th at 351. It is the federal government that then adjudicates the SIJS petition and ultimately determines whether a youth will be granted lawful permanent residency in the United States.

This role is consistent with Congress's intent to allow certain abused, abandoned or neglected children to "remain safely in the country with a means to apply for [lawful permanent resident] status.'" *Mario S.*, 954 N.Y.S.2d at 848 (citing *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011)). It would be contrary to the SIJS statute's purpose to deny SIJS findings when the youth satisfies the eligibility criteria. By enacting a statute and regulation committing this specific role to state courts, the federal government did not intend for juvenile courts to:

> determine any other issues, such as what the motivation of the juvenile in making application for the required findings might be; whether allowing a particular child to remain in the United States might someday pose some unknown threat to public safety; and whether the USCIS, the federal administrative agency charged with enforcing the immigration laws, may or may not grant a particular application for adjustment of status as an SIJ. . . . Nothing in 8 U.S.C. §1101(a)(27)(J) or the regulation indicates that the Congress intended that state juvenile courts prescreen potential SIJ applications for possible abuse on behalf of the USCIS.

Mario S., 954 N.Y.S.2d at 852-53 (internal citations omitted). No doubt, this Court has a clear, crucial, and circumscribed part to play in John's immigration process.

B. JOHN IS A SECTION 450 NONMINOR DEPENDENT OF THIS COURT WHOSE PLACEMENT AND CARE HAVE BEEN VESTED IN THE LOS ANGELES COUNTY PROBATION DEPARTMENT

John, previously a Section 602 ward, has entered transition jurisdiction as a nonminor dependent pursuant to his right to do so under Welfare and Institutions Code Section 388(e). At the hearing on his petition to reenter, this Court "vested" his "placement and care" in the Los Angeles County Probation Department. Thus, John is clearly "dependent on" this Court and has been "legally committed to, or placed under the custody of, an agency or department of a State" within the meaning of 8 U.S.C. § 1101(a)(27)(J). The fact that he is a "nonminor" under California law is not relevant for SIJS purposes, since this Court retains its jurisdiction over him and he still qualifies as a child under the SIJS regulations until he reaches age 21. *See* Welf. & Inst. Code §§ 303(b), 450; 8 C.F.R. § 204.11(c)(1).

C. REUNIFICATION WITH ONE OR BOTH OF JOHN'S PARENTS IS NOT VIABLE DUE TO ABUSE, NEGLECT, ABANDONMENT OR A SIMILAR BASIS FOUND UNDER STATE LAW

Prior to the TVPRA amendments, eligibility for SIJS also depended on a court's determination that a juvenile was *eligible for long-term foster care* due to abuse, neglect or abandonment. However, under the TVPRA modifications, a court now must find that the juvenile's reunification with one or both of his parents is not viable due to abuse, neglect, abandonment or a similar basis found under State law. *See* 8 U.S.C. § 1101(a)(27)(J)(i); Donald Neufeld, Acting Associate Director for Domestic Operations, U.S. Citizenship & Immigration Services, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, at 2 (Mar. 24, 2009) (attached as Exhibit E) ("Neufeld Memorandum"). The California Court of Appeal has confirmed in the context of delinquency proceedings that "the eligibility requirements . . . hinge primarily on a reunification determination." *Leslie H.*, 224 Cal. App. at 349 (quoting *Mario S.*, 954 N.Y.S.2d at 848-49). As outlined below, John meets this eligibility requirement.

1. REUNIFICATION WITH JOHN'S FATHER IS NOT VIABLE DUE TO ABANDONMENT

John's reunification with his father is not a viable option because his father abandoned him. He has not provided for John financially or emotionally, and he has had no communication with John for years. Under California law, a parent is considered to have "abandoned" a child when the parent has left the child "in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent, with the intent on the part of the parent to abandon the child." Fam. Code § 7822(a)(3). Failure to provide for or communicate with the child for the statutory period is "presumptive evidence of abandonment." *Id*. § 7822(b). Furthermore, a court may find that the parent has abandoned the child even if he has made "token efforts to support or communicate with the child." *Id*. In light of John's father's failure to provide for him or communicate with him, it is clear that John cannot reunite with him due to "abandonment."

2. JOHN REMAINS ELIGIBLE FOR SIJS EVEN THOUGH HIS MOTHER IS PRESENT IN THE UNITED STATES

Even if John could be reunified with his mother, he remains eligible for SIJS due to his father's abandonment. Under the 2008 TVPRA modifications, the court must find that the juvenile's reunification with one *or* both of his parents is not viable due to abuse, neglect, abandonment or a similar basis found under State law. 8 U.S.C. § 1101(a)(27)(J)(i) (emphasis added). CIS—the arm of the U.S. Department of Homeland Security ("DHS") responsible for adjudicating SIJS I-360 visa petitions—has made clear that children who reunite with one parent can be SIJS eligible. *See* Neufeld Memorandum at 2 (acknowledging statutory change). This is CIS's official position as stated to its sister agency U.S. Immigration & Customs Enforcement:

> [C]ounsel for USCIS [] has confirmed that a child who enters the United States illegally to join his/her parent in the United States may be considered "abandoned" for the purposes of an I-360. However, a child who enters the United States illegally to join both parents may not be considered abandoned.

DHS Line at 2 (May 6, 2011) (emphasis added) (attached as Exhibit F); *see also* U.S. Citizenship and Immigration Services, *Immigration Relief for Abused Children* (2014), http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20

a%20Job/Immigration_Relief_for_Abused_Children-FINAL.pdf (a SIJS-eligible child may be "living with . . . the non-abusive parent").

California courts have interpreted it this way as well. *See Eddie E. v. Superior Court*, 234 Cal. App. 4th 319, 332 (2015) ("Accordingly, we hold that the second prerequisite is to be interpreted literally: "1 or both" means one or both. A petitioner can satisfy this requirement by showing an inability to reunify with one parent due to abuse, neglect, abandonment, or a similar basis under state law."); *In re Israel O.*, 233 Cal. App. 4th 279, 291 (2014) ("We therefore conclude that an eligible minor under section 1101(a)(27)(J) includes a juvenile for whom a safe and suitable parental home is available in the United States and reunification with a parent in his or her country of origin is not viable due to abuse, neglect or abandonment."). Thus under the clear terms of the federal statute, its official DHS interpretation, and California case law, John's reunification with his mother, were it to occur, would not destroy his SIJS eligibility because John has shown that reunification with at least one parent, his father, is not viable due to "abuse, neglect, abandonment or a similar basis found under State law." 8 U.S.C. § 1101(a)(27)(J)(i).

D. IT IS IN JOHN'S BEST INTEREST TO REMAIN IN THE UNITED STATES

In making John a nonminor dependent and vesting his care in the Los Angeles County Probation Department, this Court effectively has concluded that it is in John's best interest to remain in the United States. In issuing final regulations relating to SIJS, the INS noted, "the [Immigration] Service does not intend to make determinations in the course of deportation proceedings regarding the 'best interest' of a child for the purposes of establishing eligibility for special immigrant juvenile classification." 58 Fed. Reg. 54,42847 (Aug. 12, 1993) (attached as Exhibit G). "The final rule states that the decision concerning the best interest of the child may only be made by the juvenile court or in an administrative proceeding authorized or recognized by the juvenile court." *Id.*

John came to the United States when he was approximately eight years old to reunite with his mother. Since his arrival, he has never left. Although he had a juvenile petition sustained against him, he has since rehabilitated. Indeed, as the record in this case reflects, before declaring him a nonminor dependent, this court terminated his wardship in part because

he met his rehabilitative goals. He has lived his most formative years here, and he is now on track to graduate from high school. He hopes to go on to college upon graduation. He is in a safe and stable independent living program. As a result, John is receiving academic and independent living support.

If John is returned to El Salvador, he will have no one to provide him with care, protection, and guidance and will lose access to the services that are so integral to his current wellbeing. Furthermore, there are many violent gangs in El Salvador that seek out young men for recruitment. The threat of violent crime in El Salvador is rated by the United States Department of State as "critically high." *See 2014 Travel Warning–El Salvador*, http://travel.state.gov/content/passports/english/alertswarnings/el-salvador-travel-warning.html (last visited August 14, 2015). The high crime and murder rates in El Salvador rank the country as one of the most violent in the Western Hemisphere. *See* U.S. Dep't of State, *El Salvador 2014 Crime and Safety Report* (July 2014), https://www.osac.gov/pages/ContentReportDetails.aspx?cid=15771. Furthermore, young people like John are particularly vulnerable to gang violence; if they defy the gang's authority, the punishment is severe. *See* Amanda Taub, *The Awful Reasons Tens of Thousands of Children Are Seeking Refuge in the United States*, VOX (Sept. 22, 2014), http://www.vox.com/2014/6/30/5842054/violence-in-central-america-and-the-child-refugee-crisis; *see also* Clare Ribando Seelke, Cong. Research Serv., *Gangs in Central America* (Feb. 20, 2014), https://fas.org/sgp/crs/row/RL34112.pdf. It is therefore in John's best interest to remain in the United States.

IV. CONCLUSION

This Court has jurisdiction under California law to entertain this Motion for an Order Regarding Eligibility for Special Immigrant Juvenile Status. For purposes of eligibility for SIJS, John is a Section 450 nonminor dependent and reunification with his father is not viable due to abandonment. It is not in his best interest to be returned to his or his parent's previous country of nationality or country of last habitual residence—El Salvador. It is in John's best interest to remain in the United States. This Court's findings will allow John to petition for classification as

a Special Immigrant Juvenile and then to apply for lawful permanent residency. Without this Court's findings, John may not qualify for immigration relief under the INA and could face removal to El Salvador. For the foregoing reasons, John respectfully requests that the Court issue an order making the requisite findings of fact to permit him to petition CIS for SIJS.

DATED: August 19, 2015 Submitted by: _____

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