

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If you received a guardianship order from the California Probate Court after you reached the age of 18 and before you reached the age of 21 and then filed or will file for Special Immigrant Juvenile (SIJ) classification, you may be part of a federal class action settlement:

J.L., et al. v. Cuccinelli, et al.,
United States District Court for the Northern District of California
Case Number 18-cv-04914-NC

MORE INFORMATION: <http://www.publiccounsel.org/SIJS-CA>; <https://lccr.com/jl>

IMPORTANT

PLEASE READ THIS NOTICE CAREFULLY

THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION LAWSUIT AND, IF YOU ARE A CLASS MEMBER, CONTAINS

IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO OBJECT TO THE SETTLEMENT

A federal court has authorized this notice. This is not an advertisement. You are not being sued or restrained.

This notice is to inform you of a proposed settlement of a class action lawsuit in the United States District Court for the Northern District of California, against Kenneth T. Cuccinelli, Acting Director of the U.S. Citizenship and Immigration Services (“USCIS”); Kevin McAleenan, Acting Secretary of the U.S. Department of Homeland Security; Robert Cowan, Director of the National Benefits Center, U.S. Citizenship and Immigration Services; the U.S. Department of Homeland Security; and USCIS (collectively, “Defendants” or the “Government”).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	By doing nothing, you remain in the Class and benefit from the terms of the Settlement Agreement. There are no rights to “opt out” or exclude yourself from the Settlement Agreement. The proposed Settlement Agreement will bind Class Members.
COMMENT OR OBJECT BY DECEMBER 6, 2019	Write to the Court about why you do, or do not, like the proposed Settlement.
ATTEND A HEARING ON DECEMBER 18, 2019	Ask to speak to the Court about the fairness of the Settlement if you filed a request to do so by December 6, 2019. <i>(The date and time of the Final Approval Hearing are subject to change by Court Order and without further notice to the Class. See Question Nos. 6 and 9 below.)</i>

- These rights, options, and the deadlines to exercise them are explained in this notice.
- The Court overseeing this case still must decide whether to approve the Settlement.

1. What is this notice, and why should I read it?

This notice is to inform you of a proposed Settlement of a class action lawsuit titled *J.L., et al. v. Cuccinelli, et al.*, Case No. 18-cv-04914-NC, brought on behalf of the Class, and pending in the United States District Court for the Northern District of California. You do not need to live in California to benefit under the Settlement. The Court has granted preliminary approval of the Settlement and has set a Final Approval Hearing to take place on December 18, 2019, at 1:00 p.m. in the United States Courthouse, Courtroom 5, 4th Floor, located at 280 South 1st Street, San Jose, California 95113, to determine whether the Settlement is fair, reasonable, and adequate. **Note:** This date and time are subject to change by Court Order and may change without further notice to the Class.

This notice describes the proposed Settlement. Your rights and options – **and the deadlines to exercise them** – are explained in this notice. Your legal rights are affected regardless of whether you act.

2. What is a class action lawsuit, and what is this lawsuit about?

In a class action, one or more people, called Class Representatives, sue for themselves and for people who have similar claims. The people who brought the case – and all the Class Members like them – are called Plaintiffs. The people or entities they have sued are called Defendants, or the Government here. This case is a federal case. The case name is *J.L., et al. v. Cuccinelli, et al.*, Case No. 18-cv-04914-NC. The Court in charge of this case is the United States District Court for the Northern District of California, the Honorable Nathanael Cousins presiding.

This class action involves claims by the Plaintiffs that the Government imposed a new requirement on eligibility for SIJ classification and, as a result, did not approve the SIJ petitions of petitioners who received guardianship orders from a California Probate Court under California Probate Code § 1510.1 (“§ 1510.1”) when they were between the ages of 18 and 20, on the ground that a California Probate Court does not have jurisdiction or authority to “reunify” the petitioner with his or her parents. A federal court has temporarily ordered the Government to stop imposing the alleged new requirement on SIJ petitioners who received such guardianship orders after they turned 18 and before they turned 21. However, before the Court made a final determination in this lawsuit regarding whether the Government’s conduct is lawful or unlawful, Plaintiffs and the Government reached this Settlement. This Settlement does not seek any money from the Government on behalf of the Class, except to reimburse Plaintiffs’ attorneys for their fees and costs spent in bringing this lawsuit.

3. How do I know whether I am part of the Class covered by this Settlement?

The Court has certified the following Class: “Children who have received or will receive guardianship orders pursuant to California Probate Code § 1510.1(a) and who have received or will receive denials of their SIJ petitions on the grounds that the state court that issued the SIJ Findings lacked jurisdiction because the court did not have the authority to reunify the children with their parents.” Thus, you are part of the Class covered by the Settlement and participating in this lawsuit if you received a guardianship order from the California Probate Court pursuant to § 1510.1 after your 18th birthday and before your 21st birthday and you subsequently filed an SIJ petition that: (1) has not been adjudicated; **OR** (2) you received (a) a Notice of Intent to Deny (“NOID”), (b) a Request for Evidence (“RFE”), or (c) a Notice of Intent to Revoke (“NOIR”), where at least one of the grounds in the NOID, RFE, revocation, or NOIR was that the Probate Court lacked jurisdiction to issue the SIJ Findings accompanying that guardianship order because it could not reunify you with a parent; **OR** (3) you received (a) a denial or (b) a revocation of your SIJ petition solely on the ground that the Probate Court lacked

jurisdiction to issue the SIJ Findings accompanying that guardianship order because it could not reunify you with a parent. Per the terms of the Settlement, you also become part of the Class if you have received or will receive a § 1510.1 guardianship order from the Probate Court after your 18th birthday and before your 21st birthday and you file an SIJ petition by December 15, 2019, which must be before your 21st birthday.

If the Settlement does not receive final approval by the Court, or if the Parties terminate it, the Settlement will be void, and the lawsuit will continue as if there had been no Settlement.

4. Why is there a Settlement?

The Court has not decided in favor of either side in this case. The Government denies all allegations of wrongdoing. The Government is settling in order to avoid the substantial expense, inconvenience, and distraction of further protracted litigation, including trial and appeal. Plaintiffs and their attorneys believe that the Settlement is in the best interests of the Class because it provides an appropriate recovery for Class Members now while avoiding the expense and delay of pursuing the case through trial and any appeals.

5. What does the Settlement provide?

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at <http://www.publiccounsel.org/SIJS-CA>; at <https://lccr.com/jl>; by contacting Class Counsel (*see* page 7 for contact information); by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; or by visiting the office of the Clerk of Court for the United States District Court for the Northern District of California, San Jose Division, between 9:00 am and 4:00 pm, Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT PROCESS.

Pursuant to the Settlement Agreement, the Government will no longer require that a state court have the authority to place a Person¹ in the custody of his or her parent(s) and/or the authority to order the reunification of a Person with her or her parent(s) in order to make a qualifying determination of whether the Person's reunification with one or both parents is not viable on the basis of abandonment, abuse, or neglect, for the purposes of eligibility for SIJ classification (hereinafter, the "Reunification-Authority Requirement"). Accordingly, pursuant to § 1510.1 and California Civil Procedure Code § 155, the Probate Division of the California Superior Court is a "juvenile court" for the purpose of making custodial placements and/or legal commitments; issuing findings regarding whether abandonment, abuse, neglect, or a similar basis under state law renders reunification between a person under the age of 21 and his or her parent not viable; and issuing findings regarding best interests pursuant to California law, as required under 8 U.S.C. § 1101(a)(27)(J) (the "SIJ Statute"). A Person is not disqualified from SIJ classification provided that (1) state law confers upon a state court the jurisdiction to declare the Person dependent, legally commit the Person to an individual or entity, or place the Person under the custody of an individual or entity regardless of age; and (2) the Person is unmarried and under the age of 21 when he or she petitions for SIJ classification. Further, a "child" as defined by § 1510.1 is not disqualified from SIJ classification, despite having reached California's age of majority before obtaining a custodial placement and/or legal commitment as required for SIJ classification eligibility,

¹ "Person" means an individual considered a "juvenile," "child," "minor," or equivalent term subject to the jurisdiction of a juvenile court under the law of the state in which he or she resides.

because the California Probate Court has jurisdiction over such “child” as a “juvenile” for purposes of SIJ classification under § 1510.1. Collectively, these terms comprise the “Settlement Terms.”

The Settlement Agreement requires USCIS to adjudicate SIJ petitions for Class Members in accordance with the SIJ Statute, the Settlement Terms, the Adjudicatory Terms (provided below), and 8 U.S.C. § 1232(d)(6) in accordance with the following timeline, which begins on the date this proposed Settlement receives final approval from the Court (the “Effective Date”):

- (1) Within 7 days of the Effective Date, USCIS will adjudicate the SIJ petitions for the Named Plaintiffs.
- (2) Within 30 days of the Effective Date, USCIS will reopen and readjudicate the SIJ petitions for all Class Members identified on the Class List² who previously received a denial of their SIJ petition or a revocation of their SIJ classification.
- (3) Within 60 days of the Effective Date, USCIS will adjudicate the SIJ petitions for all Class Members identified on the Class List who were in removal proceedings as of October 16, 2019.
- (4) Within 90 days of the Effective Date, USCIS will adjudicate the SIJ petitions for all Class Members identified on the Class List who previously received an RFE, a NOID, and/or a NOIR.
- (5) Within 180 days of the Effective Date, USCIS will adjudicate the SIJ petitions for all remaining Class Members.

Any individual who has filed an SIJ petition as of December 15, 2019, and believes he or she is part of the Class but does not receive Class Notice by mail should notify Class Counsel within 120 days from the Effective Date of the Agreement. Such potential Class Member must provide their name, A-number, and I-360 receipt number (if available) to Class Counsel, who will then evaluate and assess whether they believe the individual falls within the definition of the Class. If the individual falls within the Class, their SIJ petition will be adjudicated in accordance with the timelines set forth above, but such timeline will begin on the date Defendants’ Counsel receives Class Counsel’s request for that individual, not on the Effective Date.³

Pursuant to the Settlement Agreement, Defendants have agreed to the following terms for adjudicating Class Members’ SIJ petitions (the “Adjudicatory Terms”):

- (1) For any Class Member who has already received an RFE, a NOID, a NOIR, or a denial or revocation of his or her SIJ petition, USCIS shall not issue a new RFE, NOID, NOIR, denial, or revocation for any grounds not previously raised in the earlier RFE, NOID, NOIR, denial, or revocation. This provision does not preclude USCIS from issuing RFEs, NOIDs, denials, or revocations based on new grounds that did not exist at the time the earlier RFE, NOID, denial, or revocation was issued.

² “Class List” means USCIS’s system-generated list, dated October 1, 2019, of individuals who were between 18 and 21 years old on the date of filing of their SIJ petition and included a California residence on their petition. The list of possible Class Members may be both overinclusive and underinclusive.

³ Please note: The above processing times may be tolled in certain circumstances to ensure that the petitioners are afforded the full response times as required by 8 C.F.R. § 103.2. Specifically, (1) if an RFE is issued, the petitioner has 87 days to respond; (2) if a NOID is issued, the petitioner has 33 days to respond; or (3) if the case must be referred for adjudication of background checks or to the Fraud Detection and National Security Division, it would require time for that process to be completed.

- (2) The SIJ petitions of Class Members who have been issued RFEs, NOIDs, NOIRs, denials, or revocations based solely on the Reunification-Authority Requirement will be adjudicated in accordance with the Settlement Terms and will be favorably adjudicated, if otherwise approvable.
- (3) USCIS's ability to issue RFEs, NOIDs, NOIR, denials, or revocation based on changes to factual circumstances, which occurred after the date of the previously issued RFE, NOID, NOIR, denial, or revocation in accordance with the terms of this Agreement is not limited by this Agreement. For the Class Members described in 1 and 2 above, USCIS will only issue an RFE, NOID, NOIR, denial or revocation that is based on information post-dating the issuance of said RFE, NOID, NOIR, denial, or revocation. USCIS will not issue any general RFEs asking that a Class Member affirmatively identify any change in circumstance that is not evidenced in a separate immigrant petition postdating receipt of the Class Member's SIJ petition or otherwise indicated in information available to USCIS. Any change that postdates the previous RFE, NOID, NOIR, denial, or revocation (whether or not published in any publication or document provided to USCIS adjudicators) in SIJ policy, legal guidance, regulation, or regulatory interpretation that would make any Class Members ineligible for SIJ classification specifically based on the SIJ petitioner's age shall not apply to Class Members.
- (4) If any Class Member failed to respond to an RFE or a NOID based solely on the Reunification-Authority Requirement, the petition will be readjudicated in accordance with the Settlement Terms.
- (5) For any Class Member who has not already received an RFE, a NOID, a NOIR, a denial, or a revocation, or approval of his or her SIJ petition, USCIS shall adjudicate the petition in accordance with the law and the Settlement Terms. Consistent with its best practices, the Government will make every effort to list all grounds for such issuance in the first RFE, NOID, or NOIR.
- (6) USCIS shall not issue a Notice to Appear to any Class Member based on the denial of an SIJ petition solely on the Reunification-Authority Requirement until USCIS has fully adjudicated the I-360 in accordance with the Settlement Terms.

The Settlement Agreement also contains the following terms that apply to **Class Members in Removal Proceedings**:

- (1) Should any Class Member who has received a final order of removal intend to move to reopen his or her removal proceedings and/or seek to rescind his or her order of removal, the Class Member shall notify Class Counsel, who will notify the Defendants. Within five (5) business days of being informed by Class Counsel, USCIS shall request that Immigration and Customs Enforcement ("ICE") join or not oppose such motion to reopen and/or rescind. If ICE refuses to do so, the Defendants shall inform Class Counsel within five (5) business days of ICE's refusal.
- (2) Should a Class Member receive a final order of removal before his or her SIJ petition has been reopened or adjudicated in accordance with the Settlement Terms, including the Adjudicatory Terms, within five (5) business days of being informed of such order by Class Counsel, USCIS shall request that ICE refrain from executing the removal order. If ICE refuses to do so, the Defendants shall inform Class Counsel within five (5) business days of ICE's refusal.

The Settlement Agreement further contains the following terms applying to **Class Members who have submitted Applications to Register Permanent Residence or Adjust Status (I-485s) and/or Applications for Employment Authorization (I-765s)**:

- (1) USCIS shall promptly reopen all I-485s and all I-765s based on the I-485 applications that were denied in conjunction with the denial of Class Members' SIJ petitions for all Class Members. The USCIS shall,

within 45 days of final adjudication of the Class Members' SIJ petitions, reopen all I-485s and/or I-765s as set forth below:

- a. For Class Members whose I-485s or I-765s were denied due to a denied SIJ petition, where the I-485 is immediately approvable: When an underlying SIJ petition is reopened and approved and the petitioner had filed an I-485 that was denied on the basis of a denied underlying petition, USCIS will reopen the I-485 and, if immediately approvable, will approve the case within five (5) business days of approving the I-360 and will take no action on the denied I-765.
- b. For Class Members whose I-485s or I-765s were denied due to a denied underlying SIJ petition, where the I-485 is not immediately approvable: When an underlying SIJ petition is reopened and approved and the petitioner had filed an I-485 that was denied on the basis of a denied underlying petition, USCIS will reopen the I-485 and if not immediately approvable, USCIS will reopen and readjudicate the I-765 within five (5) business days of approving the SIJ petition.
- c. For Class Members whose I-485s or I-765s were denied due to a denied SIJ petition, where the I-485 is not immediately approvable and the EAD has been terminated or has expired: When an underlying I-360 is reopened and approved and the petitioner had filed an I-485 that was denied on the basis of a denied underlying petition and the I-765 had been previously approved but the EAD terminated at the time of the I-485 denial or is presently expired, USCIS will reopen the I-485 within five (5) business days of approving the I-360 and, if not immediately approvable, will reopen and issue an RFE for a no-fee I-765, and will immediately adjudicate the I-765 upon the receipt of the RFE response.

6. What are my rights as a Member of the Class?

If you believe you are a Member of the Class and you have a final removal order or are in removal proceedings, you should contact Class Counsel **immediately**. (See page 7 for contact information.)

If you **are** satisfied with the proposed Settlement, you do not have to do anything.

If you **are not** satisfied with the proposed Settlement, you **may object** to the Settlement by submitting your objection in writing to the Court. Specifically, you can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the proposed Settlement. If the Court denies approval, this lawsuit will continue. If that is what you want to happen, you must object. You do not have the right to opt out of the Settlement.

Any **objection** to the proposed Settlement must be in writing. All written objections and supporting papers must (a) clearly identify the case name and number (*J.L., et al. v. Cuccinelli, et al.*, Case No. 18-cv-04914-NC); (b) include the Class Member's Name; (c) include the Class Member's current address and telephone number, or the current address and telephone number of the Class Member's legal representative; and (d) include an explanation of why the Class Member objects to the Settlement, including the grounds therefor, any supporting documentation, and the reasons, if any, for requesting the opportunity to appear and be heard at the Final Approval Hearing. All written objections and supporting papers must then be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, San Jose Division, or by filing them in person at any location of the United States District Court for the Northern District of California. All written objections must be filed or postmarked on or before December 6, 2019. **Note:** Failure to comply with all requirements of this section shall constitute grounds for striking an objection or denying a request to be heard, if applicable.

If you file a timely written objection that complies with the above-mentioned requirements, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. The Final Approval Hearing is scheduled for December 18, 2019 at 1:00 p.m. in the United States Courthouse, Courtroom 5, 4th Floor, located at 280 South 1st Street, San Jose, California 95113 to determine whether the Settlement is fair, reasonable, and adequate, and to consider the request by Class Counsel for attorneys' fees. **Note:** This date and time are subject to change by Court Order and may change without further notice to the Class. If you appear through your own attorney at the Final Approval Hearing, you are responsible for hiring and paying that attorney.

If, after the hearing, the Court rejects the Settlement Agreement, the Parties will continue to litigate this dispute in front of the Court. If that happens, there is no guarantee that (1) the Court will rule in favor of the Class Members; (2) a favorable Court decision, if any, would be as favorable to the Class Members as this Settlement; or (3) any favorable Court decision would be upheld if the Government filed an appeal.

7. Who represents the Class?

Class Representatives: The Court has appointed Plaintiffs J.B.A., J.L., M.D.G.B., and M.G.S. to serve as the class representatives.

Class Counsel: The Court has decided that the law firm of Manatt, Phelps & Phillips, LLP; Public Counsel; and the Lawyers' Committee for Civil Rights of the San Francisco Bay Area are qualified to represent you and all Class Members in this case. These lawyers are called Class Counsel. They are experienced in handling similar cases. If you have any questions about this case, you may call 213-385-2977 x 185 to speak with one of the lawyers handling the case, or email CASIJClassAction@manatt.com. More information about Class Counsel, their practice, and their lawyers' experience is available at www.manatt.com, www.publiccounsel.org, and www.lccr.com.

Class Counsel will seek final approval of the Settlement on behalf of all Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

8. What is the effect of final Settlement approval?

If the Court grants final approval of the Settlement, Plaintiffs agree that they will dismiss with prejudice their claims in the action against the Government.

The Court will retain exclusive jurisdiction over the Settlement Agreement for the purpose of enforcing any of its provisions and terms, and the Court's retention of jurisdiction shall be noted in the dismissal of this action. The Court's exclusive jurisdiction to enforce the Settlement Agreement shall terminate automatically one year following the Court's order approving Defendants' certification that they have fully adjudicated the Class Members' petitions in compliance with the Agreement, as documented by Defendants' Compliance Reports to Plaintiffs and the Court. Plaintiffs reserve the right to request that the Court extend its exclusive jurisdiction over the Agreement should Defendants breach this Agreement after the Court's order approving Defendants' certification.

9. When and where will the Court hold a hearing on the fairness of the Settlement?

The Final Approval Hearing is scheduled for December 18, 2019, at 1:00 p.m. in the United States Courthouse, Courtroom 5, 4th Floor, located at 280 South 1st Street, San Jose, California 95113 to determine whether the Settlement is fair, reasonable, and adequate, and to consider the request by Class Counsel for

attorneys' fees. **Note:** This date and time are subject to change by Court Order and may change without further notice to the Class.

At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed Settlement. If you have filed an objection to the Settlement, the Court has the right to require your attendance at the Final Approval Hearing. You will be contacted by the Court or by Class Counsel if the Court requires your appearance. If you intend to appear at the Final Approval Hearing through your own attorney, your attorney will need to file a notice of intent to appear with the Court. If you appear through your own attorney at the Final Approval Hearing, you are responsible for hiring and paying that attorney.

10. Where do I get additional information?

This notice provides only a summary of the matters relating to the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at <http://www.publiccounsel.org/SIJS-CA>; at <https://lccr.com/jl>; by contacting Class Counsel (*see* page 7 for contact information); by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; or by visiting the office of the Clerk of Court for the United States District Court for the Northern District of California, San Jose Division, between 9:00 am and 4:00 pm, Monday through Friday, excluding Court holidays.

If you would like additional information, you can contact Class Counsel (*see* Question No. 7 above).

PLEASE DO NOT CONTACT THE COURT OR THE JUDGE WITH QUESTIONS ABOUT THE SETTLEMENT.