

Family Court Cases Involving Immigrant Parents and Children

Judge Susan Breall and Leslye E. Orloff

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Introductions

- Judge Susan Breall
 - San Francisco, California
- Leslye Orloff
 - NIWAP, Immigrant Women's Advocacy Project, American University, Washington College of Law

Learning Objectives

By the end of this training you will be better able to:

- Understand the role that state courts play in the SIJS adjudication process
- Know where to access legally correct information when litigants raise immigration issues in court
- Issue just and fair orders in custody, protection order, divorce and child support cases involving immigrant children and immigrant crime victims

Congressional Goals of Special Immigrant Juvenile Status (SIJS)

- Humanitarian protection that provides a path to lawful permanent residency
- Created by Congress in 1990 to help and protect foreign born children living in the United States
 - who have been abused, or abandoned, or neglected by at least one parent

Why Congress Wanted Input From State Court Judges

- Included a role for state court judges as experts in child best interests, custody, child welfare matters.
- State court expertise that are an inherent part of court's decision-making when courts:
 - Adjudicate facts of child abuse, neglect and abandonment
 - Issue orders regarding child care, custody and placement that further the best interests of children

Why SIJS Findings are Necessary

- State Court SIJS findings are a statutorily required prerequisite to an eligible child being able to file the SIJS immigration case
- DHS uses the state court order as evidence in adjudicating the immigration application
- The state court order does **not** award SIJS
 - **ONLY DHS can provide SIJS a form of legal immigration status and permanent residency**

State Court Findings Needed for SIJS

State Law Applies To Each

- The court has jurisdiction to issue orders regarding the care, custody, or placement of an immigrant child (under age of majority and unmarried) with
 - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend, adopting parent) OR
 - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to at least ONE PARENT'S abuse, abandonment, or neglect

**Using the Handout Scenario
True or False?**

**Both Lupe and Miguel Qualify for Special
Immigrant Juvenile Status**

Using your clickers please check:

A. True

B. False

All of the Following are Potentially Eligible for SIJS

- A minor who is:
 - Abused, abandoned or neglected
 - In the U.S.
 - In the home country
 - Living with their
 - Non-abusive parent
 - Guardian
 - Adopted parent
 - State foster care
 - Federal foster care (ORR)

Department of Homeland Security Confirms

- A juvenile court according to DHS
 - The “title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.”
 - “Juveniles” = all children

State Courts Regularly Make Custody & Placement Determinations

- Who will be the custodian/guardian of the child?
- With whom will the child live?
- Will the child be committed to the custody of the state or private agency for care, treatment, or rehabilitation

Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Custody and child support
- Divorce
- Legal Separation
- Adoption

Courts with jurisdiction under state law to make judicial determinations regarding the custody, placement, care or dependency of children = *juvenile courts* for SIJS immigration purposes

Apply State Law

- Apply state law without regard to where abuse, abandonment or neglect occurred
 - In the U.S. or abroad
- Jurisdiction
 - UCCJEA – Temporary Emergency Jurisdiction
- Follow state court procedures
 - Including regarding service and notice
- Definitions: abuse, abandonment, neglect
 - Includes child endangerment, domestic violence as child abuse, forced marriage
- Formal charges not required

“One *or* Both Parent” Requirement



A child can receive SIJS findings if they were abused, abandoned or neglected by one parent and are living with the other parent.

Home country not in child's best interests

- Identify each potential custodian in U.S. and home country
- Apply state best interests factors to each placement
- States in court order the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
 - See handout

Finding: Reunification Not Viable

- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Means granting the abusive parent full legal/physical custody is not envisioned by the court as a viable option

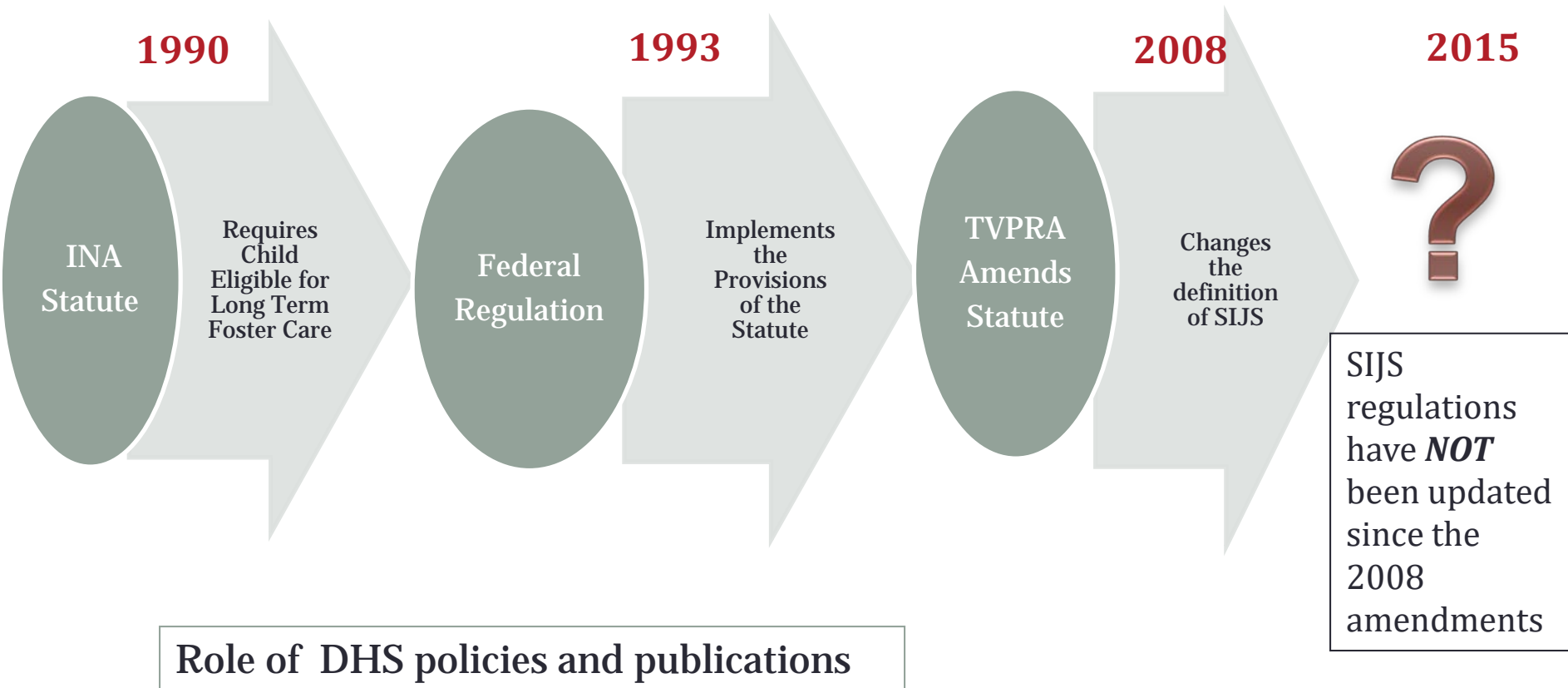
Factors Impacting Best Interests and Viability

- Risk of danger to the child
- Family violence, abuse, neglect, abandonment
- Trauma the child has suffered
- State laws that preclude or discourage placement with abusive parent
- The child's physical, emotional, safety and mental health, and educational needs
- Help the child is receiving
- Child's wishes and fears
- Parent's fitness and caregiving capacity
- Family support system

SIJS in State Courts

- Some SIJS cases involve minors who are close to the age of majority under state law
- SIJS requires:
 - State court order received before the child turns the age of majority+
 - Filing for SIJS before the child ages out
- SIJS is an option any time an abused, abandoned or neglected child is not a
 - Citizen or lawful permanent resident

Important Note: Statute Controls over Regulations



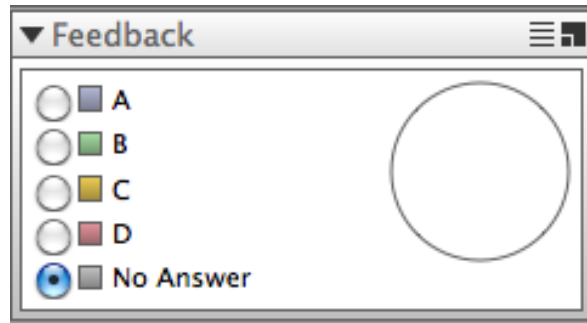
Best Practice for Court Order

- Make factual findings regarding
 - Facts of abuse, abandonment and/or neglect
 - Separately regarding each parent
 - Cite state law
 - Articulate trauma impact on child helpful
 - Connect the dots
 - Explain why the orders and findings the court is issuing
 - Are needed for child protection, healing, stability
 - Because of the abuse/abandonment/neglect the child suffered
 - Why court orders in the child's best interest

In the Clara and Eduardo Scenario in which of the following cases could the court NOT issue SIJS findings for Lupe as part of the court's order?

Using your clickers please check:

- A. A protection order case in which the order grants Clara custody
- B. A custody case brought by Clara
- C. The criminal prosecution of Eduardo
- D. A child welfare case in which the court made findings of Eduardo's abuse and placed the children with Clara



IMMIGRANT LITIGANTS IN FAMILY COURTS

Impact of Divorce

- VAWA self-petitioners
 - Must file within two years of final divorce
 - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
 - Students, persons with legal work visas, diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Asylees
 - Employment visa holders
 - Family based visas
 - Cancellation of removal

Annulment Instead of Divorce

- Annulment can lead to a marriage fraud finding that:
 - Permanently bars approval of any visa petition
 - Is a ground for deportation
 - Can lead to an unfavorable exercise of discretion by an immigration judge not to grant immigration relief
- Impact on
 - Spousal support
 - Property division

Protecting Immigrant Mothers Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004)

<http://niwaplibrary.wcl.american.edu/pubs/co-occurencedvchildabuse/>

Is Immigration Status Relevant to Custody?

- Relevant to: Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
 - Either not filing or withdrawing immigration papers
 - Threats to turn victim in for deportation
 - Part of history of violence
- Not relevant to:
 - Core primary caretaker determination
 - Evaluation of parenting skills
 - Best interests of the child determination
 - Requirements regarding custody awards to non-abusive parent



Immigrant victims involved in custody cases will qualify for one or more of the following:

- Domestic violence/child abuse= VAWA self-petitioning, VAWA defenses against removal in immigration court, Battered spouse waiver
- U visa = Domestic violence, sexual assault, stalking, human trafficking, other U visa crimes
- T visa and continued presence = human trafficking cases
- DHS victim/witness protections (any crime)

DHS 2017 Enforcement Priorities

- Convicted of any criminal offense
- Charged with criminal offense that has not been resolved
- Committed act chargeable as a criminal offense
- Subject to final order of removal
- Abused a public benefits program
- Fraud, willful misrepresentation to a government official
- Risk of public safety or national security

ICE Removal Data

2013

- Convicted criminals 82%
- Repeat immigration violators 7.8%
- Ordered removed and failed to depart 1.6%
- Other immigrants 7.7%

<https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>

2017

- Criminal convictions 73.7%
- Pending criminal charges 15.5%
- Outstanding notices to appear in immigration court 5.3%
- Ordered removed and failed to depart + reinstatement 2.8%
- Other immigrants 2.6%

<https://www.ice.gov/removal-statistics/2017>

Myth vs. Fact:

Parents without Legal Immigration Status

Myth

1. Deportation is imminent
2. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. Legally present parent must have custody in order to file for benefits for child

Fact

1. DHS policies prevent detention/removal of immigrant parents who are crime victims
2. US citizens and lawful permanent residents are more likely to flee with children, especially when
 - There have been threats of kidnapping children
 - They are dual nationals
 - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

Immigrant Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a Constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

A Family Reunited



Detained Parent Directive Aug. 2017

- If parents are detained:
 - Placement near family court when ongoing family court/child welfare cases
 - Bring parents to family court to participate in cases involving children
 - Alternate: video or teleconference participation
 - Facilitate visitation when required by family/child welfare court order
 - Help children travel with deported parent – obtain passports for children

PROTECTION ORDERS



Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Use Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

Free Think:
**What Creative Remedies in a
Protection Order Case Filed by
Clara Might You Order?**

U.S. Government Materials Excellent for Courthouse Distribution

- DHS “Know Your Rights” Information
 - Infographic
 - VAWA/T and U Brochure
 - SIJS Brochure
- U.S. Dep’t Of State –Rights and Protections for Foreign-citizen Fiancé(e)s and Spouses of U.S. Citizens and Spouses of Lawful Permanent Residents

Bench Cards and Tools

- Immigration rights of crime victims
- Custody issues and immigrants
- Immigrants and protection orders
- Public benefits and services
- Economic relief for immigrant victims and children in family law cases
- VAWA confidentiality
- Mississippi public benefits chart
- Visa chart: Who can sponsor family members

Evaluation

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwap.org/go/JTNMS2018>
- Judicial Training Manual at <http://niwap.org/go/sji>
 - **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library:
<http://niwaplibrary.wcl.american.edu>

Access to Public Benefits in Mississippi

- TANF & TANF funded childcare
 - T visas, refugees, asylees if entered prior to 8/22/96, if after eligible with 5 year limitation
 - VAWA self-petitioners, SIJS children, U visas must attain lawful permanent residency +40 quarters of work credit
- Food Stamps
 - T visas (& their children)
 - Under 18 year old children who are VAWA self-petitioners or SIJS/U visa with lawful permanent residency
- Health Insurance Exchange
 - T visas (& their children) – subsidies 7 year limitation
 - VAWA self-petitioner (& children) - no subsidies
 - SIJS applicant children – no subsidies
 - Lawful permanent residents – subsidies after 40 quarters of work

Access to Public Benefits in Mississippi

- Educational Grants/Loans (FAFSA)
 - T visas, VAWA self-petitioners (& their children)
 - SIJS children, U visas after lawful permanent residency
- In-state tuition at state universities/colleges for lawful permanent residents, refugees, asylees
- SSI
 - T visas (& their children) if lawfully residing on 8/22/96
- Public and Assisted Housing & Vouchers
 - T visas (& their children)
 - VAWA self-petitioner (& children)