

Types of Proceedings in Which State Courts Can Make Special Immigrant Juvenile Status Findings¹

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December 2017

In order for an immigrant child to apply immigration relief through SIJS the child needs to receive the following from a state court:

- A state or juvenile court with jurisdiction over the care, custody or dependency of a child has declared, issued a court order, or made a finding awarding custody to, or placing the child in the custody or care of an individual, an agency, or a department; and
- The court has found that reunification with one or both of the immigrant child's parents is not viable due to abuse, battery, abandonment, neglect, or similar basis found under state law; and
- It has been determined in an administrative or judicial proceeding that it would not be in the best interest of the immigrant child to be returned to his or her country of nationality or last residence.

There is no requirement for a specific type of state court proceeding in which the abuse, abandonment, or neglect, and child's best interest findings may be made. Judges may issue these orders containing SIJS findings in *any state proceeding* in which the court has the legal authority under state law to issue orders regarding the care, custody, or placement or other needs of a child. For this reason, it is helpful for state courts to be on the alert for children who qualify for SIJS and may benefit from state court predicate findings.

The table below contains a non-exclusive list provided by USCIS of state judicial proceedings in which Special Immigrant Juvenile Status (SIJS) findings may be entered.

<p><u>Custody and Child Support Proceedings²</u></p>	<p>SIJS findings can be potentially made in any family court proceedings in which a non-abusive parent, family member or any third party is being awarded custody of a juvenile who was subjected to child abuse, abandonment or neglect by one or both of the child's parent(s) or adopted parent(s). This includes but is not limited to custody determinations made when parents separate, divorce, or experience domestic violence. In child support proceedings, when courts address parenting time, visitation or custody as an issue addressed in a child support case, courts can enter SIJS orders in child support cases.</p>
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¹ This publication was also developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² See Appendix D1 - USCIS Policy Manual, Vol. 6-7 (2016); U.S. Citizenship and Immigration Services, Special Immigrant Juvenile Status: Information for Juvenile Courts (2014); Immigration Relief for Abused Children: Special Immigrant Juvenile Status: Information for Juvenile Court judges and Child Welfare Professionals (2016)

<p><u>Guardianship Proceedings</u>³</p>	<p>In the majority of states, guardianship decisions typically occur in family or probate courts and provide an alternative solution to foster care and the child welfare system. In other states, juvenile dependency or delinquency courts can make guardianship decisions. In some states, any one of these courts will have authority to issue guardianship orders.”⁴</p>
<p><u>Probate Proceedings</u>⁵</p> <p><i>Note:</i> In some states, probate proceedings are identified as <i>Orphan proceedings</i>.</p>	<p>In most states, probate courts pursuant to guardianship laws have the authority to make judicial determinations about the custody and care of juveniles.</p>
<p><u>Dependency Proceedings</u>⁶</p>	<p>In any suit affecting the parent-child relationship state courts make determinations and enter orders regarding the custody and care of children. State courts hearing child abuse and neglect cases are encouraged to use best practices for placements that are in the child’s best interest. Placements can include kinship care, placement with a non-abusive parent, relative, family friend, god parent or if no other placements are available foster care. Child abuse and neglect and other dependency proceedings are appropriate cases in which courts should consider making SIJS findings when the child before the court is not a citizen or lawful permanent resident.</p>
<p><u>Adoption Proceedings</u>⁷</p>	<p>State court adoption proceedings involve the issuance of court rulings in which the court terminates the parental rights of either or both parents or in which a birth parent voluntarily gives up parental rights and those rights are transferred to another individual. When an immigrant child is adopted and the child has been abused, abandoned or neglected the court issuing the adoption decree should consider including SIJS findings.</p>

³ See USCIS Policy Manual, Vol. 6 -7 (2016), <http://library.niwap.org/wp-content/uploads/USCIS-Policy-Manual-Vol-6-7-Part-J-SIJS-Full-Dec-14-2016.pdf>; U.S. Citizenship and Immigration Services, Special Immigrant Juvenile Status: Information for Juvenile Courts (2014)ADD PAGE CITE AND APPENDIX

⁴ Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth, 4th Edition, p. 7-10

⁵ See USCIS Policy Manual, Vol. 6 -7 (2016), <http://library.niwap.org/wp-content/uploads/USCIS-Policy-Manual-Vol-6-7-Part-J-SIJS-Full-Dec-14-2016.pdf>; U.S. Citizenship and Immigration Servs., *Special Immigrant Juvenile Status: Information for Juvenile Courts*, at 1, http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Information_for_Juvenile_Courts_-FINAL.pdf.

⁶ See USCIS Policy Manual, Vol. 6 -7 (2016) PAGE, <http://library.niwap.org/wp-content/uploads/USCIS-Policy-Manual-Vol-6-7-Part-J-SIJS-Full-Dec-14-2016.pdf>; U.S. Citizenship and Immigration Services, Special Immigrant Juvenile Status: Information for Juvenile Courts (2014); Immigration Relief for Abused Children: Special Immigrant Juvenile Status: Information for Juvenile Court judges and Child Welfare Professionals (2016)

See USCIS Policy Manual, Vol. 6 -7 (2016), <http://library.niwap.org/wp-content/uploads/USCIS-Policy-Manual-Vol-6-7-Part-J-SIJS-Full-Dec-14-2016.pdf>, Special Immigrant Juvenile Status: Information for Juvenile Courts (2014);

<u>Delinquency Proceedings</u> ⁸	State courts in juvenile delinquency proceedings may issue SIJS findings when the court issues an order confining a juvenile to state juvenile detention centers, boot camps, or other forms of supervision in which the state is responsible for the care and custody of the juvenile. This can include placement of delinquent children under the custody of probation departments, foster care and other state agencies. The court can also issue SIJS findings when the court places the child on probation places the child in the care of a non-abusive parent, relative, family friend, god parent, guardian or other less restrictive placement. Experiencing child abuse, battering, extreme cruelty, being neglected or being abandoned are traumatic events that have profound effects on child development and can contribute to juvenile delinquency. ⁹
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Below is a non-exhaustive list of other examples of state court proceedings where SIJS findings might also be made, depending on the circumstances surrounding the proceedings:

Qualifying State Proceeding for SIJS Findings?		
<u>Protection Orders</u>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>	<p>The jurisdictional basis upon which state courts are authorized under state law to issue protection orders in civil or criminal court cases require findings that family violence has occurred against a spouse, former spouse, a child, a step-child or another relationship covered by the state protection order statute. Protection orders are based on findings by the court that a crime or a form of abuse, battering, or harm listed in the state protection order statute has occurred. When the parties involved in the protection order case have children, state protection order statutes authorize courts issuing protection orders to make an award of custody in the protection order processing. State courts issuing protection orders in civil or criminal court cases may include in the protection order SIJS findings when the protection order includes custody, visitation, and/ or child support orders. The circumstances in</p>

⁸ See USCIS Policy Manual, Vol. 6 -7 (2016), <http://library.niwap.org/wp-content/uploads/USCIS-Policy-Manual-Vol-6-7-Part-J-SIJS-Full-Dec-14-2016.pdf>; U.S. Citizenship and Immigration Services, Special Immigrant Juvenile Status: Information for Juvenile Courts (2014); Immigration Relief for Abused Children: Special Immigrant Juvenile Status: Information for Juvenile Court judges and Child Welfare Professionals (2016)

⁹Appendix E - Meaghan Fitzpatrick, Alina Husain, Giselle Hass and Leslye E. Orloff, *Understanding the Significance of a Minor's Trauma History in Family Court Rulings* (September 26, 2017) <http://niwaplibrary.wcl.american.edu/pubs/effects-of-trauma-on-minors-fact-sheet>

		<p>which it would be appropriate for a protection order to include SIJS findings include but are not limited to the following:</p> <ul style="list-style-type: none"> • The child has been abused by one parent and the protection order gives custody to the non-abusive parent • One of the child’s parents has abused the other parent; the abuse occurred in the presence of the immigrant child and the court enters findings that such abuse constitutes abuse or neglect of the child; the protection order includes a custody award to the non-abusive parent and protects both the abused parent and the child from continued abuse; • An abused child files a protection order against their abusive parent and includes provisions about regarding custody or safe placement of the child, often with stay away provisions from the child’s person, residence, school and other locations the child regularly frequents; <p>An under 21 year old immigrant child files a sexual assault protection order against their sexually abusive parent.</p>
<p><u>Divorce/ Legal Separation Proceedings</u></p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>(2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>	<p>SIJS findings can be made in any family court proceedings in which a parent, family member or any other party is being awarded custody of the minor child where abuse, neglect, abandonment, or other similar grounds by one or both of the child’s parents is a factor in the placement, custody, or care determination.</p>

<p><u>Paternity and Child Support Proceedings</u></p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>	<p>The most common circumstances in which SIJS findings may be entered in are paternity and child support cases brought by a custodial parent, guardian, grandparent or other care giver of a child against a non-custodial parent who has abandoned, abused or neglected the immigrant child. This occurs in a number of cases including when the natural parent does not recognize the child as their own or when the child was born as the result of rape or incest. In these proceedings the court orders can address a number of issues including establishing paternity, addressing child custody by legally recognizing the placement with the custodial parent, and awarding child support needed for the care of the child (using the state’s child support guidelines) to the adult custodian of the child. When state courts issue child support orders and address custody or placement of the child the court should consider adding SIJS findings.</p>
<p><u>Parenting Plan Modifications</u></p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>(2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>	<p>In most states, modifications of parenting plans require a showing of a change circumstances and that the modification is in the best interest of the child. A modification can be an appropriate vehicle for SIJS findings if a child is living with one fit parent, but there has been abuse/ abandonment/ neglect/similar treatment by the other parent.</p>

<p><u>Termination of Parental Rights</u></p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>(2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Findings.</p>	<p>Judges in termination of parental rights proceedings should include SIJS findings in their court orders when one or both parents' parental rights are terminated due to abuse, abandonment, neglect, or any other similar basis under state law, which could include battering or extreme cruelty. Courts should consider issuing SIJS orders any time the child before the court has been abused, abandoned or neglected by one of both parents, is foreign born, and is not a citizen or lawful permanent resident.</p>
<p><u>Motions for Declaratory Judgment</u></p>	<p>(1) Proceeding held in a court located in the United States?</p> <p>If the answer is YES, proceed to the next question.</p> <p>2) Does Judge have the authority under state law to make judicial determinations about the custody and care of the child involved in the proceeding?</p> <p>YES, the state proceeding is qualified for SIJS Finding.</p>	<p>Immigrant children can initiate an action before a state court requesting a declaratory judgment which includes findings and orders that recognize a child's placement or custody with an individual or agency. Further when the court finds that the immigrant child before the court seeking a declaratory judgment has been abused, abandoned or neglected the court can issue orders under state law that further the child's bests interests. Examples include:</p> <ul style="list-style-type: none"> • The child is in ORR custody in a facility that will not seek state court orders on the child's behalf. The child comes to court seeking a declaratory judgment recognizing the ORR placement and includes in that order SIJS findings; • The abused immigrant child is living with their aunt who does not have custody of the child and the immigrant child needs to establish residency with the aunt to access public school, public benefits or other services requiring state residency. The court issues a declaratory judgment recognizing the child's residency with the aunt and includes SIJS orders. • The court may also issue declaratory judgments for other expedited purposes. <p>The abused, abandoned or neglected immigrant child presents testimony and</p>

		introduces supporting evidence to the court sufficient to receive a court order containing SIJS findings. In declaratory judgment proceedings an abused immigrant child is not required to serve their abusive parents with notice of the proceeding.
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