

Opportunities to Make SIJS Findings in State Court Cases

D.C. Superior Court

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Resource Library: <http://niwaplibrary.wcl.american.edu/>

<http://niwap.org/go/sji>

Learning Objectives

- Be able to identify cases before the court that involved children who qualify for Special Immigrant Juvenile Status
- Recognize the broad range of court proceedings in which state court rulings required under immigration law for a child to be SIJS eligible can be made
- Know where to access training tools and technical assistance on cases involving immigrant crime victims and children

Special Immigrant Juvenile Status

- Jurisdiction over the care, custody or dependency of a minor child
- PLUS – finding that reunification with at least one parent is not viable due to
 - Abuse, abandonment, neglect
 - VAWA 2005 Abuse includes battery
- AND Not in the child's best interest to be returned to their home country

Range of Court Orders in Which Findings Can be Made

- Court order, finding, declaration
- Awarding custody or
- Any order involving placing a child with an–
 - Agency
 - Department
 - Individual
 - Non abusive parent
 - Grandparent
 - Kinship care
 - Other

Types of proceedings SIJS findings

- Custody
- Divorce
- Legal Separation
- Motions for a declaratory judgment
- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Paternity
- Child support
- Criminal cases

Materials: SIJS Examples Provided By Case - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/SIJS-Proceedings-Chart.pdf/view>

Custody, Divorce, Legal Separation

- Court finds abuse, neglect, abandonment, battering , or extreme cruelty by one parent
- Awards custody to the non-abusive parent
- Can add SIJS findings
 - Reunification not viable with abusive parent
 - Best interest of child not to be returned to country or origin or last residence

Civil Protection Orders

- Criminal offense required
 - DC Code § 16-1003(a)
- If child is was a victim of any criminal offense = abuse
 - Petitioner could be child or parent
- Child witnessed physical or sexual assault of perpetrated by one parent against the other parent – could find = neglect of child
 - Petitioner is the child's parent

Civil Protection Orders Continued

- Court includes a custody award in the civil protection order case to
 - Non-abusive parent
 - Family member (kinship care)
- Can add SIJS findings
 - Reunification not viable with abusive parent
 - Best interest of child not to be returned to country or origin or last residence

Sexual Assault Protection Orders

- Under 21 year old immigrant child awarded sexual assault protection order
 - DC Code § 16-1001(12)
- If the order addresses
 - custody or care of the sexually abused child and
 - Abuse, neglect or abandonment by one or both parents
- Can add SIJS findings
 - Reunification not viable with abusive parent
 - Best interest of child not to be returned to country or origin or last residence

Child Support/Paternity

- Child support and/or paternity case brought by custodial parent or the state against non-custodial parent who
 - abandoned the immigrant child
 - Includes children born of rape or incest
- Court makes custody determination as well
- Can add SIJS findings
 - Reunification not viable with abusive parent
 - Best interest of child not to be returned to country or origin or last residence

Child Abuse, Neglect, Termination of Parental Rights and Adpotion Cases

- Court issues orders regarding child placement with
 - Non abusive parent
 - Any form of kinship care
 - Foster care (option but no longer required)
 - Court ordered placement required
 - Settlements that avoid court ordered placement =no SIJS
- Makes findings that at least one parent has abused, abandoned or neglected the child
- Can add SIJS findings
 - Reunification not viable with abusive parent
 - Best interest of child not to be returned to country or origin or last residence

Guardianship Cases

- If the child subject to guardianship proceedings is an immigrant and
- Court finds abuse, abandonment or neglect by one or both parents
- Can add SIJS findings
 - Reunification not viable with abusive parent
 - Best interest of child not to be returned to country or origin or last residence

Juvenile Delinquency Proceedings

- Court issues orders confining an immigrant child including
 - Juvenile detention
 - Foster care
 - Places the child under any form of court supervision including probation
- If the child experienced abuse, neglect, or abandonment by one or both parents
- Can add SIJS findings
 - Reunification not viable with abusive parent
 - Best interest of child not to be returned to country or origin or last residence

Criminal Court Cases

- When a parent of an immigrant child is convicted in a criminal case of a crime committed against the child or the child's other parent
- What mechanisms could the criminal court use to address
 - Child custody, placement
 - SJIS findings

Declaratory Judgments

- Juveniles under the age of majority
 - in D.C. (18)
- Can obtain declaratory judgments containing SIJS findings
 - Abuse, abandonment or neglect
 - By one or both parents
 - Reunification not viable with abusive parent
 - Best interest of child not to be returned to country or origin or last residence

What Children with SIJ Status Receive

- Protection from deportation and removal
- Legal permanent residency
- Government issued ID
- Legal work authorization
- Eligibility for driver's license
- As lawfully present children in D.C.
 - Health care
 - Some may get benefits open to unaccompanied refugee minors
 - Programs and services open to all undocumented persons
- Eligible for citizenship after five years
- SIJ's may NEVER file family petition for natural parents



Technical Assistance

- State Justice Institute Funded Materials for State Court Judges on Immigrant Children and Crime Victims
 - www.niwap.org/go/sji
- NIWAP' s technical assistance for judges
 - (202) 274-4457
 - niwap@wcl.american.edu
- Web Library NIWAP
 - <http://niwaplibrary.wcl.american.edu>
 - Bench Cards
 - DHS Policies, Brochures, Training Materials
 - U Visa Certification Toolkit for Judges and Magistrates
 - Tools Describing DHS enforcement priorities, ability to sponsor children, access to health care and benefits – BY IMMIGRATION STATUS
 - Legal and Social Science Bibliographies
 - DHS policies on securing attendance at state court proceedings of immigrant parents in DHS detention