

 **NIWAP** 

Special Immigrant Juvenile Status in Practice

Annual Multi-State Training
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Introductions

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Learning Objectives

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

- Understand the role that state courts play in the SIJS adjudication process
- Articulate the ways in which SIJS enhances the courts options that promote child welfare and best interests
- Identify children before the court in a wide range of state family court cases who might be SIJS eligible
- Craft orders on care and custody decisions under state law containing findings that permit children to pursue SIJS with federal immigration authorities

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What are the questions you want to be sure get answered by the end of this session?



Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children under the age of majority under state law who have been
 - Victims of abuse, abandonment, neglect, or similar basis under state law perpetrated by at least **one parent**
- State Court Findings Are Required
 - State court with jurisdiction over care, custody, dependency or placement of the child
 - Must have issued a court order, finding, or declaration on three statutorily requisites



State Court Findings

- The court exercised jurisdiction over the care and custody of the child
- The child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law
- It is not in the child's best interest to return to his country of origin.

Immigration and Nationality Act § 101(A)(27)(J)



Federal Statutory Framework: Required Evidence

- State court findings are required as evidence:
 - The state court order does not provide immigration status
 - But the state court order is the essential piece for federal adjudication
 - Only the federal government can provide lawful immigration status



Federal Statutory Framework: Inherent Judicial Expertise

- SIJS relies upon state court expertise:
- The required state court findings are inherent in state court decisions about child care, custody and placement of children:
 - Adjudicating facts of child abuse, neglect and abandonment
 - Making determinations regarding child care, custody and placement that further the best interests of children



SIJS Terminology “Juvenile Court”

- Federal statutes and regulations define a “juvenile court” as any “court located in the United States having jurisdiction under State law to make judicial determinations about custody and care of juveniles.”

8 C.F.R. § 204.11

- “Juveniles” = all children



State Law Applies

USCIS states that the “order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law.”

USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Juvenile Court Orders and Administrative Documents, Findings,
<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html>

Small group activity

- Using the samples provided at your tables of SIJS findings, make 2 lists
 - List elements you observe in these orders of well written SIJS findings
 - List the elements of poorly written SIJS orders
 - Pick a representative to present your lists and your reasons for what you placed in the list to the group in a report back

Large group report back

- Elements of well written orders
- Elements of less well written orders
- Discussion

SIJS Fact Pattern

- Ana was born on April 5, 2004 in Guatemala. Her parents made her stop school at age 12 to work to help support them and her younger siblings. Ana liked school and did not want to quit, but her father, Fernando, frequently beat her mother, Celia, and occasionally beat Ana. She was afraid to disobey. Ana was sent on a bus from her village to Guatemala City to work for a woman named Beatrice. She worked as live-in help. Ana's work consisted of taking care of the children, cleaning their home, doing laundry and helping with cooking. She was told that she earned the equivalent of \$50 per month and that this money was sent to her parents.
- Last year, Celia came and took Ana away from her employer after Celia had suffered a particularly harsh beating by Fernando. They came to the United States and moved in with Celia's brother, who is a lawful permanent resident married to a US citizen with two US citizen children. They just learned that Fernando has arrived in the United States, supposedly looking for them.
- Last week Ana was in a store with several friends from school and the entire group was arrested for shoplifting.

Fact pattern handout in your materials

Table Exercise

- Each table will be assigned a different type of proceeding and will use the same fact pattern:
 - • Child Custody/Divorce
 - • Abuse and Neglect/Dependency
 - • Guardianship
 - • Delinquency
 - • Adoption
 - • Order of Protection
- Outline the factors, findings and issues you would address in crafting quality SIJS findings for Ana
 - Place a bulleted list on your table's flip chart



DEBRIEF

Report back on elements of a well written SIJS order

- Discussion

Large Group Discussion 



What other information would you want to know?

How would your analysis change if Celia had sent Ana to the United States alone instead of traveling with her?

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SIJS Terminology
“Dependent”

The mere “acceptance of jurisdiction over the custody of a child by a juvenile court ... makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care or, as here, in a guardianship situation.”

In re Menjivar, 29 Immig. Rptr. B2-37 (1994)

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State Court Order May Place the Child in the Care or Custody of:

- An individual
 - Non-abusive parent
 - Grandparent
 - Kinship care
 - Guardian
 - Foster or adopting parent
- State agency
- Private agency
- Foster care system

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Abuse, Neglect, Abandonment

There is no governing federal definition of these terms, and USCIS states the “order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law.”

USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html>

Where in your state statutes are there definitions of abuse, abandonment, and neglect?

Abuse

- Child Abuse Prevention and Treatment Act (CAPTA)
 - “[a]ny recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”
- Most common types of abuse:
 - Physical abuse
 - Neglect
 - Sexual abuse and exploitation
 - Emotional abuse
 - Parental substance abuse
 - Abandonment
 - Domestic Violence

Abandonment

- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA):
 - *left without provision for reasonable and necessary care or supervision*
- as failure to provide reasonable care, support, communication, or contact with the child
- failure to perform duties as parents, or as unwillingness to take physical custody of the child or make arrangements for the child's care
- When the parent or his/her location is unknown
- Some states require evidence of a person's intention or willingness to abandon the child
- Incarceration

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Neglect

- Failure to meet child's basic needs
- Abuse or failure to prevent abuse of a child
- Abandonment
- Failure to discharge responsibilities to care for the child (i.e. incarceration, hospitalization, mental incapacity)
- Exposure to drugs at or before birth

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Similar basis under state law

- Where there is a legitimate underlying child welfare reason for the state court to exercise jurisdiction over a decision regarding the care and custody of a child, the explicitly terms abuse, neglect, or abandonment are not required.

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Similar basis examples

- A “destitute child” in New York
 - N.Y. SOC. SERVS. LAW § 371(3)
- A child who is “without proper custody or guardianship” in Michigan
 - MICH. COMP. LAWS § 712A.2(4)(b)(1)
- **Child desertion** - La. Rev. Stat. § 14:93.2.1
 - Child desertion is the intentional or criminally negligent exposure of a child under the age of ten years to a hazard or danger against which the child cannot be reasonably expected to protect themselves or abandonment of such child, knowing or having reason to believe that the child could be exposed to such hazard or danger.

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State Law Definitions Apply: Abuse, Neglect, Abandonment

- Apply state law without regard to where abuse, abandonment or neglect occurred
- Describe how the actions of the parent fit the state law definition of abuse, neglect, or abandonment
- Formal charges of abuse, neglect or abandonment against a parent are not required

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Types of Proceedings With Jurisdiction To Make SIJS Findings:

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

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**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

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**Make Findings of Neglect or Abuse
Rather Than Similar Basis for:**

- Child Desertion
 - More than neglect, includes abandonment and may also fall within definition of abuse depending on the facts of the case
- Domestic violence
 - Child abuse falls within most state domestic violence statute definitions

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“1 or both parent”

- USCIS unequivocally accepts the plain language of the statute “as a clarification that petitioners ... may be reunified with one parent or other family members.”
- A “qualifying court appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent’s abuse, neglect, or abandonment of the petitioner.”

USCIS SLIS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles
Chapter 2(D)(2), Parental Reunification
<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html>

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Best Practices for Court Order

- Utilizing its own state definitions, the state court should identify the factual reasons that reunification with a parent is not viable
- Cite state law definitions of abuse, neglect, or abandonment that are the basis of these findings
- Make findings regarding each parent
- If relying on a similar basis, explain how this basis is similar to abuse, neglect, or abandonment

Best Interests

- Any time a state court makes a decision about the care and custody of a child, it takes the best interests of the child into account.
- It is precisely this experience and expertise that Congress sought to tap when it required that SIJS petitioners provide a state court determination

Factors to consider...

- Risk of danger to the child
- Family violence, abuse, neglect, abandonment, sexual violence
- Trauma child has suffered and child's physical, emotional, safety, mental health needs
- Help the child is receiving
- Family support system
- Emotional well being

Factors to consider...

- Child’s educational needs
- Child’s wishes and fears
- Parent’s fitness, caregiving capacity, mental and physical health and moral fitness
- Parent’s demonstrated capacity to provide stability continuity of care
- Delegation of parental responsibilities to third parties
- State laws that preclude or discourage placement with abusive parent

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Approach

- Make factual findings about harm to the child in United States or abroad
- Apply state law definitions to determine if harm meets definitions of abuse, neglect, abandonment, or similar basis under state law
- Apply state best interest factors to
 - Custody, placement, commitment
 - Determination if in child’s best interests to return to placement in home country

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Home country not in child’s best interests

- Identify each potential custodian in United States and home country
- Apply state best interests factors to each placement
- State in court order the factual findings that support chosen placement

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Home country not in child's best interests

- 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 United States v. home country



Viability of Reunification

- Order must include finding that reunification with a parent is not viable due to abuse, neglect, abandonment, or a similar basis under state law
- Does not require formal termination of parental rights or a determination that reunification will never be possible
- Does not necessitate no contact with parent – visitation and communication can occur



Viability of Reunification

- Reunification is not viable if granting the parent physical custody is not envisioned by the court as a viable option
- Changes in circumstances can occur, but if the court is issuing a final order that does not grant physical custody to the parent, then reunification is not viable



Approach:

1. Make findings about the facts of harm to the child in US or abroad
2. Determine applying state law if = abuse, abandonment, neglect, similar basis
3. If yes apply state best interest factors to
 - Custody, placement, commitment
 - If not in child's best interests to return to home country
 - Viability of reunification with abuser

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Best Practice for Court Order

- Make factual findings regarding
 - Facts of abuse, abandonment and/or neglect
 - Separately regarding each parent
 - Articulating trauma impact on child helpful
 - Connect the dots - Explain why the orders and each of the findings the court is issuing are
 - Based on state statutes
 - Needed for child protection, healing, stability
 - In the child's best interests
 - Because of the abuse/abandonment/neglect the child suffered

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Delinquency and Criminal Issues

- Juvenile delinquency finding ≠ conviction for immigration purposes
- Juvenile dispositions can have immigration consequences
 - Negative factors in discretionary determinations
 - Some grounds of inadmissibility or deportability do not require a criminal conviction

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What Do Children with SIJS Receive

- Ability to apply to adjust status to Lawful Permanent Resident (backlog for El Salvador, Honduras, Guatemala, and Mexico)
- Employment Authorization Document (once LPR application filed)
 - Facilitates access to state issued driver's licenses and identification cards
- Eligible to apply to naturalize after 5 years as LPRs
- As LPRs, eligibility for post secondary educational grants and loans, public and assisted housing
- Food stamps (only until the immigrant child turns age 19)

Parents of recipients of SIJS may NEVER obtain any immigration benefit based on the relationship to the child

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Resources Materials on Flash Drive

- SIJS Bench Book
 - With quick reference guides by type of proceeding
- Appendices include
 - USCIS Adjudicators manual
 - Charts tracking state law definitions of abuse, abandonment and neglect
 - Best interests of the child maps
 - Glossary of terms
 - Much more...

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Technical Assistance and Materials

- Power Point presentations and materials for this conference at
 - <http://niwaplibrary.wcl.american.edu/jtn-nola-2019/>
- Judicial Training Manual at
 - <http://niwaplibrary.wcl.american.edu/sji-materials/>
 - **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
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