

## Appendix J

### Types of Proceedings in Which State Courts Can Make Special Immigrant Juvenile Status Findings<sup>1</sup>

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In order for an immigrant child to apply for immigration relief through Special Immigrant Juvenile Status (SIJS) the child needs to receive an order from a state court judge with jurisdiction over the child regarding care, custody, placement, or dependency.

The role of the Court is to make factual findings based on state law about abuse, abandonment, or neglect of an immigrant child, viability of parental reunification, and best interests of the child.<sup>2</sup> Each of the determinations listed below is to be made applying the law of the state in which the court is located. The specific findings of fact the federal SIJS statutes require an SIJS eligible child to obtain are:

- A state or juvenile court 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, 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.

These findings about the abuse, abandonment, or neglect the child suffered and child's best interests can be made in any specific type of state court proceeding. The U.S. Citizenship and Immigration Services (USCIS) at the U.S. Department of Homeland Security defines the term "juvenile court" as "a court in the United States that has jurisdiction under state law to make determinations about custody and care of children."<sup>3</sup> When the case before the court involves a child who has been abused, abandoned or neglected by a parent and that child is an immigrant who is not a naturalized citizen or lawful permanent resident, the court should be aware that the child may be eligible for SIJS immigration relief and would benefit from the state court issuing SIJS findings.<sup>4</sup>

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<sup>2</sup> *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (July 1, 2014), <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>.

<sup>3</sup> *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (July 1, 2014), <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>.

<sup>4</sup> In some cases the parties will affirmatively include requests for SIJS findings on the child's behalf. In many others the parties before the court seeking orders that include custody or placement of an immigrant child will not know about SIJS or that the child is eligible. For approaches courts can take in these cases See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 9 (2017) [hereinafter SIJS Bench Book], <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

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The factual findings supporting the Court’s findings in SIJS cases will be based on facts that the court regularly obtains when making any child placement and custody decisions. The court applies the same state law’s best interest of the child that the court uses to award custody, guardianship, or to order placement of a child with natural parent, an adoptive parent, a grandparent, an immediate relative, other family members, godparents, family friends and other forms of kinship care.<sup>5</sup>

When an a child is before the court who is SIJS eligible because the child has been abused, abandoned, neglected or has suffered similar harms for which children are offered protection under states law and that one or any of these harms was perpetrated by the child’s parent, it is in the child’s best interests for the state court to issue SIJS findings. Courts will encounter cases in which a child’s parent who perpetrated the abuse, abandonment, or neglect also participated in trafficking the child. Research has found that 2 in 5 trafficking cases reported annually to federal trafficking taskforces involve child sex trafficking and over 62.7% of sex trafficked children their trafficker is a family member with 45% of traffickers being the children’s parent or guardian.<sup>6</sup>

Trafficked children are eligible for special immigration protections developed for victims of human trafficking in addition to any SIJS eligibility the child may have. Trafficking victims who are granted T visas or continued presence have significantly greater and more expeditious access to federal and state government funded public benefits and services than SIJS children receive.<sup>7</sup> Additionally, child trafficking victims can include their non-abusive parents and their under 18 year old siblings in their T visa applications<sup>8</sup> and SIJS children cannot include any of their family members in their immigration applications and can never file to sponsor any of their parents for immigration relief.<sup>9</sup> U.S. immigration laws allow for the simultaneous filing of an SIJS application and a T visa application.<sup>10</sup> When courts identify immigrant children as victims of human trafficking, the court can issue a T visa declaration<sup>11</sup> in addition to the SIJS findings.<sup>12</sup>

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<sup>5</sup> The focus of the court should be on identifying the best custodian or placement for the child. The immigration status of that individual should not be a factor. For a fuller discussion of child custody and immigration status, *see generally* Soraya Fata, Leslye E. Orloff, Andrea Carcamo-Cavazos, Alison Silber, & Benish Anver, *Custody of Children in Mixed-Status Families: Preventing the Misunderstanding and Misuse of Immigration Status in State-Court Custody Proceedings*, 47 FAM. L. Q. 191 (2013), <http://niwaplibrary.wcl.american.edu/pubs/mixed-status-fams-child-custody/>.

<sup>6</sup> Cole, J., & Sprang, G. Sex trafficking of minors in metropolitan, micropolitan, and rural communities. *Child Abuse & Neglect* (2014), <http://dx.doi.org/10.1016/j.chiabu.2014.07.015>

<sup>7</sup> *See*, NIWAP, All States Public Benefits Charts and Map (2021) <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>

<sup>8</sup> Sylvie Sheng and Leslye E. Orloff, T Visa Protections for Family Members (July 3, 2020) <https://niwaplibrary.wcl.american.edu/pubs/t-visa-family-member>.

<sup>9</sup> INA § 101(a)(27)(J)(iii)(II); 8 U.S.C. § 1101(a)(27)(J)(iii)(II).

<sup>10</sup> If the child’s SIJS case is approved and the child also is granted a T visa, the child can choose to obtain lawful permanent residency through their T visa application. The child will gain access to many public benefits once they receive a bona fide determination in the T visa case, and will receive work authorization which is a prerequisite to a drivers’ license in most states. The child is likely to receive a T visa before they will be eligible to attain lawful permanent residency through the SIJS program. As a result the T visa provides the child greater stability sooner and gives the court a broader range of services and assistance that can be court ordered for a child who is a victim of human trafficking.

<sup>11</sup> *See*, Sylvie Sheng, Alina Husain, Alisha Lineswala, Benish Anver, Karen Dryhurst, Lucia Macias, and Leslye E. Orloff, U Visa Certification And T Visa Declaration Toolkit For Federal, State And Local Judges, Commissioners, Magistrates And Other Judicial Officers (July 17, 2020) <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2>

<sup>12</sup> It is important that judges issue both SIJS findings and T visa declarations in cases of child victims of human trafficking. The requirements of the two forms of immigration relief differ considerably as do the facts of each case and the totality of the circumstances for each child. Therefore, best practice is to issue both SIJS findings and T visa declarations in cases trafficked children so the child is able apply for both with the Department of Homeland Security making the decision as to which remedy will be awarded the child.

Table 1 contains a non-exclusive list of state judicial proceedings in which SIJS findings may be entered that have been provided as examples by USCIS in their training materials and policies.

**Table 1**

<p><u>Custody</u><sup>13</sup></p>	<p>SIJS findings can be potentially made in any custody proceedings in which a non-abusive parent, family member or any third party is being awarded custody of a child who was subjected to child abuse, abandonment or neglect or a similar basis under state law 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.<sup>14</sup></p>
<p><u>Guardianship Proceedings</u><sup>15</sup></p>	<p>SIJS findings are appropriate in guardianship proceedings when the court is deciding a guardianship of an immigrant child who is not a US citizen or a lawful permanent resident to an adult who will have custody of the child based on factors that include abuse, abandonment, neglect, or other similar harms to the child, the history and dynamics of the child’s parental relationships and the best interest.<sup>16</sup></p>
<p><u>Probate Proceedings</u><sup>17</sup></p> <p><i>Note:</i> In some states, probate proceedings are identified as <b><i>Orphan proceedings</i></b>.</p>	<p>State courts issuing court orders in guardianship proceedings are authorized and encouraged to issue SIJS findings when the juvenile who is the subject of the guardianship proceeding has been abused, abandoned, neglected, or any other similar basis under state law, which may include battering or extreme cruelty.</p>

<sup>13</sup> See U.S. Citizenship & Immigration Servs., USCIS Policy Manual, Vol. 6 – Immigrants, Part J – Special Immigrant Juveniles (last updated Aug. 23, 2017), available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter1.html#S-A> (last visited Oct. 23, 2017); SIJS Bench Book, Appendix D1, *USCIS Policy Manual*, Chapter 2(D)(5): USCIS Consent, page 5 [hereinafter USCIS Policy Manual]. See *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. (2014), <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>; see also *Immigration Relief for Abused Children: Special Immigrant Juvenile Status: Information for Juvenile Court judges and Child Welfare Professionals*, U.S. CITIZENSHIP & IMMIGR. SERVS. (2016), [http://niwaplibrary.wcl.american.edu/pubs/uscis\\_sijs\\_brochure](http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure).

<sup>14</sup> See SIJS Bench Book, Chapter V-3: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Custody and Child Support*, <http://niwaplibrary.wcl.american.edu/pubs/ch-v3-custody-quick-reference-guide/>.

<sup>15</sup> See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (2014), <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>.

<sup>16</sup> See SIJS Bench Book, Chapter V-7: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Guardianship*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v7-guardianship-quick-reference/>.

<sup>17</sup> See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1, <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>.

<p><u>Dependency Proceedings</u><sup>18</sup></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, godparent 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 is not a US citizen or lawful permanent resident.<sup>19</sup></p>
<p><u>Adoption Proceedings</u><sup>20</sup></p>	<p>Child 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.<sup>21</sup></p>
<p><u>Delinquency Proceedings</u><sup>22</sup></p>	<p>SIJS finding are appropriate in juvenile delinquency proceedings when the court issues an order confining an immigrant juvenile to state juvenile detention centers, boot camps, o 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.<sup>23</sup> The court can also issue SIJS findings when it places the child in the care of a non-abusive parent, relative, family friend, godparent, guardian or other less restrictive placement. Experiencing child abuse, battering, extreme cruelty, neglect or abandonment are traumatic events that have profound effects on child development and can contribute to juvenile delinquency.<sup>24</sup></p>

Table 2 contains 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:

<sup>18</sup> See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (2014) <http://niwaplibrary.wcl.american.edu/pubs/uscis-sijs-for-courts/>; IMMIGRATION RELIEF FOR ABUSED CHILDREN: SPECIAL IMMIGRANT JUVENILE STATUS: INFORMATION FOR JUVENILE COURT JUDGES AND CHILD WELFARE PROFESSIONALS (2016) [http://niwaplibrary.wcl.american.edu/pubs/uscis\\_sijs\\_brochure](http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure).

<sup>19</sup> See SIJS Bench Book, Chapter V-6: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Dependency*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-6-dependency-quick-reference/>.

<sup>20</sup> See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (2014); IMMIGRATION RELIEF FOR ABUSED CHILDREN: SPECIAL IMMIGRANT JUVENILE STATUS: INFORMATION FOR JUVENILE COURT JUDGES AND CHILD WELFARE PROFESSIONALS (2016) [http://niwaplibrary.wcl.american.edu/pubs/uscis\\_sijs\\_brochure](http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure).

<sup>21</sup> See SIJS Bench Book, Chapter V-1: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Termination Of Parental Rights And Adoption*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-6-dependency-quick-reference/>.

<sup>22</sup> See USCIS Policy Manual, Appendix D1, Chapter 3(A)(1): Qualifying Juvenile Court Proceedings, page 11; *Special Immigrant Juvenile Status: Information for Juvenile Courts*, U.S. CITIZENSHIP & IMMIGR. SERVS. 1 (2014); IMMIGRATION RELIEF FOR ABUSED CHILDREN: SPECIAL IMMIGRANT JUVENILE STATUS: INFORMATION FOR JUVENILE COURT JUDGES AND CHILD WELFARE PROFESSIONALS (2016) [http://niwaplibrary.wcl.american.edu/pubs/uscis\\_sijs\\_brochure](http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure).

<sup>23</sup> See SIJS Bench Book, Chapter V-5: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Delinquency Proceedings*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-5-delinquency-quick-reference/>.

<sup>24</sup> SIJS Bench Book, Appendix E: Meaghan Fitzpatrick, Alina Husain, Giselle Hass and Leslye E. Orloff, *Understanding the Significance of a Minor’s Trauma History in Family Court Rulings*, NIWAP (September 26, 2017), <http://niwaplibrary.wcl.american.edu/pubs/effects-of-trauma-on-minors-fact-sheet>.

**Table 2**

	<b>Qualifying State Proceeding for SIJS Findings?</b>	
<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. 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.<sup>25</sup> The circumstances in 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"> <li>• The child has been abused by one parent and the protection order gives custody to the non-abusive parent</li> <li>• 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;</li> <li>• An abused child files a protection order against the abusive parent and the order includes provisions regarding custody or safe placement, often with stay away provisions from the child’s person, residence, school, daycare and other locations the child regularly frequents;</li> </ul> <p>An under 21 year old immigrant child files a sexual assault protection order against the sexually abusive parent.<sup>26</sup></p>
<u>Divorce/ Legal Separation Proceedings</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>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</p>

<sup>25</sup> See SIJS Bench Book, Appendix R: *Custody in Protection Orders Proceedings*, <http://niwaplibrary.wcl.american.edu/pubs/appendix-r-custody-in-protection-orders-proceedings/>.

<sup>26</sup> See SIJS Bench Book, Chapter V-2: *Quick Reference Guide: Special Immigrant Juvenile Status Findings In Civil and Criminal Protection Orders Proceedings*, <http://niwaplibrary.wcl.american.edu/pubs/ch-v2-civil-protection-orders-quick-reference-guide/>.

	<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>both of the child’s parents is a factor in the placement, custody, or care determination.</p>
<p><u>Paternality and Child Support Proceedings</u><sup>27</sup></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 his 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 custody and awarding child support.</p> <p>In child support proceedings where courts also address parenting time, visitation or custody, courts can enter SIJS orders in child support cases.<sup>28</sup></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 in 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 or similar treatment by the other parent.</p>

<sup>27</sup> See SIJS Bench Book, Chapter V-8: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Paternity and Parentage Proceedings*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v8-paternity-quick-reference-guide/>

<sup>28</sup> See SIJS Bench Book, Chapter V-3: *Quick Reference Guide: Special Immigrant Juvenile Status Findings In Proceedings Involving Custody And Child Support*, <http://niwaplibrary.wcl.american.edu/pubs/ch-v3-custody-quick-reference-guide/>

<p><u>Termination of Parental Rights</u><sup>29</sup></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 is an immigrant child who is not a US 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 has been abused, abandoned or neglected, the court can issue orders under state law that further the child’s best interests. Examples include:</p> <ul style="list-style-type: none"> <li>• The child is in Office of Refugee Resettlement (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;</li> <li>• The child is living with a relative who does not have custody and the child needs to establish residence to access public school, public benefits or other services requiring state residence. The court issues a declaratory judgment recognizing the child’s residence with the relative and includes SIJS orders.</li> <li>• The court may also issue declaratory judgments for other expedited purposes.</li> </ul> <p>The abused, abandoned or neglected child presents testimony and introduces supporting evidence to the court sufficient to receive a court order. In declaratory judgment proceedings, an abused immigrant child is not required to serve the abusive parents with notice of the proceeding.<sup>30</sup></p>

<sup>29</sup> See SIJS Bench Book, Chapter V-1: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Termination Of Parental Rights And Adoption*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-1-adoption-quick-reference/>.

<sup>30</sup> See SIJS Bench Book, Chapter V-1: *Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings In Declaratory Judgment Cases*, <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-1-adoption-quick-reference/>.