

Chapter IV
Application of the Best Interest of the Child Standard in
Special Immigrant Juvenile Status Cases¹

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Congressional and Immigration Policy Framework

The United States Congress created Special Immigrant Juvenile Status (“SIJS”) to provide humanitarian protection for abused, abandoned, or neglected immigrant children.² SIJS is one of several forms of humanitarian immigration relief developed since the late 1980s that provide protection and the stability of having a path to lawful permanent residence. These laws provide the essential support that immigrant crime victims, immigrant family violence victims, and abused, abandoned, or neglected immigrant children need to help them heal, develop, and thrive as healthy and productive members of our communities.³ Two of these forms of immigration relief, SIJS and the U visa,⁴ include congressionally created application procedures that involve state court judges.

When SIJS was created in 1990, the statute expressly required that the best interests of the child be applied to SIJS cases.⁵ The procedures that SIJS employs recognize that state courts that adjudicate cases involving children have particularized training and expertise with regard to applying best interests of the child factors to cases involving child custody, placement, welfare, abuse, and neglect.⁶ As such, SIJS application procedures rely on the expertise of state court

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² U.S. Citizenship & Immigration Servs., *Volume 6: Immigrants, Part J, Special Immigrant Juveniles*, in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS, 1 (2017) [hereinafter SIJS BENCH BOOK], <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³ See, e.g., Battered Spouse Waiver of 1980 (codified in the Immigration and Nationality Act (“INA”) § 216(c)(4)(C), 8 U.S.C. § 1186a(c)(4)(C) (2012)); Violence Against Women Acts, 42 U.S.C. § 13925 (1994), 42 U.S.C. § 3796 (2000), 42 U.S.C. § 1437 (2005); VAWA self-petitioning and VAWA cancellation of removal for abused spouses and children of citizens and lawful permanent residents and the abused parents of over twenty-one-year-old citizen children, Pub. L. No. 113-4, 127 Stat. 54 (March 7, 2013); U Visa for Immigrant Crime Victims, INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U); Trafficking Victim’s Protection Acts of 2000, 2003, 2005, 2008, 2011, 2013 (codified in INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T)) (creating and developing the T visa and continued presence for victims of severe forms of human trafficking); VAWA 2005’s work authorization for abused spouses of immigrant work visa holders (codified in INA § 106, 8 U.S.C. § 1106).

⁴ Judges constitute one group on the list of government officials authorized to sign U visa certifications, which are required as a prerequisite for filing for U visa immigration protections. See Pub. L. No. 106-386, 114 Stat. 1464 (2000); 8 CFR § 214.14(a)(2) (2012); DEP’T OF HOMELAND SEC., U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE: FOR FEDERAL, STATE, LOCAL, TRIBAL AND TERRITORIAL LAW ENFORCEMENT, PROSECUTORS, JUDGES, AND OTHER GOVERNMENT AGENCIES (2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

⁵ Requiring a determination regarding SIJS children that “it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence.” Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 5006 (1990).

⁶ See generally *Gao v. Jenifer*, 185 F.3d 548, 555 (6th Cir. 1999); *Eddie E. v. Superior Court*, 167 Cal. Rptr. 3d 435, 438 (Cal. Ct. App. 2013); *B.F. v. Superior Court*, 143 Cal. Rptr. 3d 730, 734 (Cal. Ct. App. 2012); *In re Erick M.*, 820 N.W.2d 639, 641-42

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judges who regularly make decisions regarding the care, custody, placement, safety, health, welfare, and a range of critical life issues⁷ affecting children and apply state best interest of the child laws to these decisions.⁸ The U.S. Citizenship and Immigration Services (“USCIS”) Policy Manual states:

While the standards for making best interests determinations may vary between states, a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child.⁹

The U.S. Department of Health and Human Services (“HHS”), Child Welfare Gateway further states that:

“Best interests” determinations are generally made considering a number of factors related to the child’s circumstances ... with the child’s ultimate safety and well-being the paramount concern.

Guiding principles of best interests determinations ... reference overarching goals, purposes, and objectives that shape the analysis in making best interests determinations.

These include:

The health, safety and/or protection of the child... The importance of timely permanency decisions.... The assurance that a child ... will be given care, treatment, and the guidance that will assist the child in developing into a self-sufficient adult.¹⁰

Each child has unique needs, life experiences, and in the case of foreign-born children applying for SIJS, trauma histories. To be effective in meeting the needs of all children, state best interest laws are complex, flexible, and adaptable so that the particular factors that take precedence for an individual child are determined on a case-by-case basis.¹¹ A child’s best

(Neb. 2012); *In re Marisol* N.H., 979 N.Y.S.2d 643, 645 (N.Y. App. Div. 2014); *In re Hei Ting C.*, 969 N.Y.S.2d 150, 152 (N.Y. App. Div. 2013); *In re Marcelina M.-G. v. Israel S.*, 973 N.Y.S.2d 714, 719 (N.Y. App. Div. 2013); *In re J.L.E.O.*, No. 14-10-00628-CV, 2011 WL 664642, at *1 (Tex. App. Feb. 4, 2011).

⁷ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 1(A): Purpose in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1* (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

⁸ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(A): Determining Eligibility, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 4* (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (directing courts to apply their state laws and procedures to cases involving requests by immigrant children for SIJS findings); *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(3): Best Interests, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 4* (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (directing USCIS to defer to the state courts on matters of state law including best interests and the state law definitions of abuse, abandonment, or neglect).

⁹ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6* (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

¹⁰ CHILD WELFARE INFORMATION GATEWAY, CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., DETERMINING THE BEST INTERESTS OF THE CHILD 2 (2016), https://www.childwelfare.gov/pubPDFs/best_interest.pdf.

¹¹ U.N. Comm. on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, ¶20 CRC/GC/2005/6 (Sept. 2005).

interest is defined by judges on an individual basis addressing the specific situation of the child and taking into consideration his personal context, situation, and needs, as well as his development,¹² including brain development, and the impact of any trauma that the child suffered.¹³

Applying State Best Interests of the Child in SIJS Cases – A Practical Guide

Which Law Applies to Which Facts

State courts are required under federal law to apply state substantive and procedural laws in all cases involving immigrant children seeking SIJS findings in state court proceedings.¹⁴ Judges apply the same state best interest of the child laws to cases involving SIJS eligible immigrant children that they apply in all cases involving children before the court. Immigrant children qualify for SIJS when they have suffered abuse, abandonment, or neglect by at least one of their parents either in the United States or abroad.

When the abuse, abandonment or neglect of the immigrant child seeking SIJS findings occurred abroad, state court judges are to apply their state’s abuse, abandonment and neglect definitions and the state’s best interests of the child law factors to the facts that took place outside of the United States.¹⁵ The process will proceed as follows:

- The court first makes findings about the facts of the abuse, the abandonment, and/or the neglect that occurred in the child’s home country perpetrated by the child’s parent or parents.
- Next, the court will determine whether under the law of the state in which the court is located, those facts constitute abuse, abandonment, or neglect.
- If the facts about the actions the child suffered constitute abuse, abandonment, and/or neglect under state law, the court will consider those facts in applying the state law on the best interest of the child in making each of the following three SIJS findings:
 - Addressing a child’s custody, placement, commitment, or parenting time
 - That is it not in the child’s best interest to be returned to his home country, and
 - That reunification with one or both parents is not viable due to abuse, abandonment, neglect, or similar basis under state law;

State Best Interest Law Factors to be Used in All Three SIJS Findings

¹² U.N. Comm. on the Rights of the Child, General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, ¶20 CRC/GC/2005/6 (Sept. 2005).

¹³ *Appendix E: Understanding the Significance of a Minor’s Trauma History in Family Court Proceedings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-e-effects-of-trauma-on-minors-fact-sheet/>.

¹⁴ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(4): Validity of Order (Issued under State Law) in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.*

¹⁵ H.S.P. v. J.K., 121 A.3d 849, 858-59 (N.J. 2015).

Under state law in all states, in proceedings that affect the custody, placement, and care of children, courts' decisions require the application of the best interest of the child legal standard to the facts of the case of the particular child before the court. In every case in which an immigrant child is seeking SIJS findings, there is an underlying state court proceeding that has a purpose governed by state law. These proceedings have a core requirements that court orders issued by the judge presiding over the case emphasize the best interests of the child by designing orders that promote the child's welfare, safety, well-being, stability, care and individual needs.

To assist courts in applying the best interests of the child factors in cases involving SIJS eligible children, this manual includes appendices on the best interests of the child laws and factors considered in all U.S. states and jurisdictions. The best interests of the child factors listed in state statutes and/or described as applicable in state case law include many common goals, themes, elements, and factors.

- Appendix Q: Best Interests of the Child Maps – Summary Matrix provides a chart for comparing state best interests of the child factors from each U.S. state and jurisdiction
- Appendix Q1 Best Interests of the Child – Factors in State Law opens with a map of states with best interests of the child statutes. This is followed by a chart tracking the full text of each state's best interest laws
- Appendices Q2-Q12 provide maps and charts grouping state best interest of the child factors in each state's laws by common significant themes and quoting the text of the factors in each state's best interests of the child laws relating to that theme. The maps provide an infographic for each of the categories of best interest listed below and are followed by a chart listing each state's statutory language related to that factor.

The charts and maps contained in the appendices will assist courts in identifying and relying upon as persuasive and useful the legal analysis and rulings of courts whose statutes contain factors that are identical or substantially similar to their state law. These tools will also be helpful to courts in states with catch-all provisions allowing the court to consider any factors that court finds relevant beyond those specifically listed in the state's best interest statute. The usefulness of these tools extends to any case in which the court is considering the best interests of the child in its decision-making.

Appendix Q¹⁶ contains charts tracking the factors that apply to state best interest of the child determinations in all states and U.S. jurisdictions. This appendix tracks by state the factors that are most commonly considered by courts as part of their best interests of the child analysis or as factors under the state's best interests of the child laws. Each of the following is relevant to all three SIJS determinations. The most commonly considered factors are:

- **Family Violence:** Child abuse, neglect, sexual assault, kidnapping, or other physical or mental harm to the child¹⁷

¹⁶ Appendix Q: Best Interests of the Child Maps—Summary Matrix, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-4 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q-best-interests-of-the-child-matrix/>.

¹⁷ Appendix Q-7: Best Interests of the Child – Family Violence, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q7-best-interests-family-violence/>

- Child’s Needs:¹⁸ The child’s physical, emotional, educational, developmental, age, religious, cultural, ethnic, linguistic, physical and mental health, welfare, safety,¹⁹ vulnerabilities, sexual orientation, and social needs²⁰
- Fitness-Caregiving Capacity: Parent’s fitness and capacity to be a caregiver to meet the child’s needs (e.g., food, clothing, medical and mental health, safety, financial support, nurturing); the level and type of involvement or non-involvement in the child’s life, the capacity to provide a consistent routine, and the involvement of a non-parent caregiver or a de-facto custodian in the child’s life²¹
- Substance abuse or mental illness of a parent or other potential caregiver²²
- Continuity and stability of the home environment, the child’s adjustment to school, home, community, continuity of care and caregivers, and the potential

¹⁸ *Appendix Q-4: Best Interests of the Child – Child’s Needs Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), http://niwaplibrary.wcl.american.edu/pubs/appendix-q4-best-interests-child_s-needs/. Children’s needs typically correlate to factors related to the child’s identity (sex, sexual orientation, national origin, religion and beliefs, cultural identity and personality). See U.N. Comm. on the Rights of the Children, General Comment No. 14, On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, ¶¶ 55-56, U.N. Doc. CRC/C/GC/14 (May 29, 2013) (“The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. . . . [W]hen considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background . . . and the decision-maker must take into consideration this specific context when assessing and determining the child’s best interests.”).

¹⁹ The NCJFCJ’s Judicial Guide to Child Safety in Custody Cases is an excellent tool designed to maximize child safety in custody and visitation cases. The Guide provides useful information for judges applying state best interest laws in issuing court orders that protect the safety of immigrant children and include SIJS findings. See JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 5 (Nat’l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf (“A child’s physical, emotional, and psychological safety are always in [the child’s] best interests. . . . [S]afety of the child is the primary factor in determining his or her best interest.”); see also U.N. Comm. on the Rights of the Children, General Comment No. 14, On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, ¶ 73, U.N. Doc. CRC/C/GC/14 (May 29, 2013) (declaring that the child’s need for safety includes the right to be protected from all forms of physical or mental violence, injury or abuse, sexual violence, and sexual exploitation); *Ratification Status for United States of America*, UNITED NATIONS HUM. RTS. OFF. HIGH COMMISSIONER,

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN (last visited Mar. 29, 2018) (showing the United States signed, but has not ratified, the U.N. Convention on the Rights of the Child (CRC) on Feb. 16, 1995).

²⁰ See also AM. BAR ASS’N, A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES 50-78 (2d ed. 2008) https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/judges_guide.pdf. This guide is a very useful resource tool for judges that provides discussions and recommendations regarding a developmental approach to best interest decision-making. Although developed for the contested custody context, the Guide is a rich resource on children’s needs and various stages of development. It contains excellent tips for in-chambers interviews of children of various ages that will be very helpful to judges taking evidence and making best interests of the child determinations in cases of children seeking Special Immigrant Juvenile Status findings in family court. The information contained in the Guide will be useful to courts both in contested cases where the abuse by a parent occurred in the United States and in uncontested cases in which the abuse may have occurred abroad, where the court’s interview of the child is an important evidentiary part of the state court cases in which SIJS findings will be issued.

²¹ *Appendix Q-9: Best Interests of the Child – Parental Cooperation and Conflict Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q9-best-interests-parental-cooperation-conflict/>.

²² *Appendix Q-12: Best Interests of the Child – Substance Abuse, Mental Illness, and Criminal History Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q12-best-interests-substance-abuse-mental-illness-crim-hist/>.

effect of change on the child.²³ This includes preservation of family integrity in cases where SIJS children are living with a non-abusive parent or family member caregiver.²⁴

- **Child’s Relationships:** The interactions and interrelationships with any person affecting the child’s best interests including parents, siblings, family members, and other caregivers²⁵
- **The child’s wishes** (taking into consideration the child’s age and capacity)²⁶ play an important role in best interest determinations. Decisions that do not take into account the child’s views or do not give their views due weight according to their age and maturity do not respect the possibility for the child to inform and influence the determination of his best interest.²⁷ Best practices include ensuring that young and vulnerable children also have the right to express and have their views equitably weighed.²⁸
- **The wishes of the parent:**²⁹ these will be particularly relevant in cases in which the SIJS applicant child is in the custody of a non-abusive parent and may not play a significant role with regard to the parent who perpetrated the abuse, neglect or abandonment of the child.
- **Catch-All Provisions:** Any other factors that the court deems relevant or that have reasonable bearing on the physical or psychological well-being of the child³⁰

²³ *Appendix Q-6: Best Interests of the Child – Continuity and Stability of Child Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q6-best-interests-continuity-stability-of-child/>.

²⁴ The Due Process and Equal Protection Clauses of the U.S. Constitution protect the integrity of the family and the parent-child relationship. See *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). These constitutional protections apply equally to all parent-child relationships, including cases in which a parent is undocumented, detained, or deported. See *In re Interest of Angelica L.*, 767 N.W.2d 74, 89 (Neb. 2009) (noting that state courts still have jurisdiction over child custody disputes even when a parent is in deportation proceedings, and federal immigration law does not trump state jurisdiction over custody).

²⁵ *Appendix Q-3: Best Interests of the Child – Child’s Family Relationships Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q3-best-interests-child-s-family-relationships/>.

²⁶ *Appendix Q-5: Best Interests of the Child – Child’s Wishes Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q5-best-interests-childs-wishes/>.

²⁷ U.N. Comm. on the Rights of the Children, General Comment No. 14, On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, ¶ 53, U.N. Doc. CRC/C/GC/14 (May 29, 2013).

²⁸ U.N. Comm. on the Rights of the Children, General Comment No. 14, On the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, ¶ 54, U.N. Doc. CRC/C/GC/14 (May 29, 2013). See also AM. BAR ASS’N, A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES 41 n.2 (2d ed. 2008), https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/judges_guide.pdf (citing *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1303 (1996)) (stating that the child’s expressed wishes are always part of the best interests determination).

²⁹ *Appendix Q-11: Best Interests of the Child – Parental Wishes Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q11-best-interests-parental-wishes/>.

³⁰ *Appendix Q-2: Best Interests of the Child – Catch-all Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q2-best-interests-catch-all/>. State best interest laws also include factors that will be most relevant in SIJS cases involving children who have been abused, abandoned, or neglected in the United States. These factors include: cooperation and conflict between the parents and joint custody. See *Appendix Q-9: Best Interests of the Child – Parental Cooperation and Conflict Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q9-best-interests-parental-cooperation-conflict/>; *Appendix Q-8: Best Interests of the Child – Joint Custody Factor*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q8-best-interests-joint-custody/>.

A review of state best interests of the child statutes found no statute that listed immigration status as a best interest of the child statutory factor. The immigration status of a parent, guardian, or caregiver is not relevant to the core primary caretaker and parenting skills determinations that are a primary focus of adjudications requiring a consideration of the state's best interests of the child laws.³¹ The American Bar Association's ("ABA") Center on Children and the Law warned courts decades ago in 1991 about the dangers for children when courts focus on immigration status rather than the child's best interests.³² The ABA emphasized that the harm is most severe to children in families where domestic violence and child abuse are present.³³

Immigration law reforms in 1996 created a growing number of "mixed status" families in which not all family members share the same immigration status or citizenship, and in many cases, where current immigration laws leave undocumented family members without options to attain lawful permanent residence.³⁴ Crime victims, abused children, and parents of abused children or step-children can qualify to obtain legal immigration status under the Violence Against Women Act's ("VAWA") immigration protections³⁵ or the SIJS program.

For all of these reasons, it is extremely important that courts issuing custody, placement, and parenting time decisions apply the same state best interest analysis to cases involving only citizens as they do to cases involving citizen and immigrant children living in immigrant families. The immigration status of a parent, child, guardian, or caregiver should not affect the courts determination regarding custody, placement, commitment, or parenting time. When immigration law and state family laws intersect, it is important for courts to know how to access legally correct information about immigration laws to avoid applying incorrect information about immigration law to cases involving immigrant children and immigrant families.³⁶

³¹ 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, 194-96 (2013).

³² See generally HOWARD DAVIDSON, ABA CENTER ON CHILDREN AND THE LAW, THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN: A REPORT TO THE PRESIDENT OF THE AMERICAN BAR ASSOCIATION (Aug. 1994), <http://library.niwap.org/wp-content/uploads/2015/FAM-Tool-ImpactDVChildren-8.94.pdf>.

³³ Veronica T. Thronson, Carole Angel, Soraya Fata, Rocio Molina, Benish Anver, Kalli Wells & Leslye E. Orloff, *Winning Custody Cases for Immigrant Survivors: The Clash of Laws Cultures, Custody and Parental Rights*, 9 FAM. & INTIMATE PARTNER VIOLENCE Q. 7, 85-90 (2016), <http://www.courts.ca.gov/documents/BTB24-PreCon1E-11.pdf>.

³⁴ David B. Thronson, *Of Borders and Best Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts*, 11 TEX. HISP. J. L. & POL'Y 45, 49-51 (2005), reprinted in 27 IMMIGR. & NAT'LITY L. REV. 637, 641-43 (2006).

³⁵ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (Jan. 5, 2006) (codified as amended in scattered sections of 8 U.S.C.); see, e.g., INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2) (2012); INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U); INA § 214(p), 8 U.S.C. § 1184(p); INA § 212(d)(14), 8 U.S.C. § 1182(d)(14). Some immigrants who have been in the U.S. for many years and who have citizen or lawful permanent resident spouses or children may qualify for cancellation of removal if placed in removal proceedings. See INA § 240A(b)(2), 8 U.S.C. § 1229b(b)(2). Cancellation of removal is a difficult form of relief to attain and requires that the immigrant has been in the United States for more than ten years.

³⁶ The National Immigrant Women's Advocacy Project, American University Washington College of Law is working together with Michigan State University College of Law Immigration Clinic to provide training materials, tools, and technical assistance for judges and court staff. Contact (202) 274-4457 or info@niwap.org. See e.g., LESLYE ORLOFF & ANDREA CARCAMO CAVAZOS, FAMILY COURT BENCH CARD ON ISSUES THAT ARISE IN CUSTODY CASES INVOLVING IMMIGRANT PARENTS, CHILD AND CRIME VICTIMS (Nat'l Immigrant Women's Advocacy Project 2013), <http://niwaplibrary.wcl.american.edu/pubs/benchcard-issues-arise-custody-cases/>; Leslye Orloff, Joyce Noche, Cecilia Olavarria, Laura Martinez-McIntosh, Jennifer Rose & Amanda Baran, *Countering Abuser's Attempts to Raise Immigration Status of the Victim in Custody Cases*, in BREAKING BARRIERS: A COMPLETE GUIDE TO LEGAL RIGHTS AND RESOURCES FOR BATTERED IMMIGRANTS (2013), <http://niwaplibrary.wcl.american.edu/pubs/ch6-1-counterabuserraisingimmstatus/>; David B. Thronson, *Of Borders and Best*

Custody, Placement and Child's Best Interests

Decisions regarding where the child will live and who will care for the child are central determinations that are a standard part of many state court cases involving children. Custody, placement, commitment, and/or parenting time determinations are made in a wide range of state court proceedings, including but not limited to, custody, divorce, protection orders, child abuse, neglect, delinquency, adoption, and declaratory judgment cases.³⁷ In all cases, the best interest of the child state laws are applied to the facts of the case before the court, and the court decides where and with whom it is in the best interests of the child to live. In making best interests of the child determinations in SIJS cases, courts should consider the same range of factors that apply to all best interests of the child determinations that the court adjudicates. All SIJS cases will include findings using state law definitions to determine that a foreign-born child was abused, abandoned, neglected, or suffered similar harm defined by state law by at least one of the child's parents. These findings will naturally play an important role in the court's application of state best interest laws to decisions regarding a child's custody, placement, commitment, or parenting time.

Trauma, Stability and Healing: The State Court Role in Building Toward Self-Sufficiency For Immigrant Teens

There are two types of case scenarios that courts commonly see involving older (ages 14 to 17) immigrant children they see less frequently in families composed solely of citizen family members. These are:

- Uncontested custody or guardianship cases brought by longtime natural custodial non-abusive parents seeking custody or guardianship of their children and the issuance of SIJS findings
- Custody or guardianship proceedings brought by or on behalf of immigrant children who are a relatively short time period away from turning the age of majority under state law

All state laws set an age of majority before which courts as a matter of law have the legal authority to issue orders that are in the child's best interests and are designed to provide the care, treatment, stability, structure, and guidance that will help children become healthy, self-sufficient adults. Many SIJS eligible immigrants are children whose mothers fled with them from homes plagued by family violence. They have been raised in a safe and nurturing home with a primary caregiving mother and may have been out of contact with the child's abusive father for many years. The mother comes to court seeking custody of her child and seeking SIJS findings based on the father's abuse, neglect, and/or abandonment of the child. Securing a formal custody award and formal findings regarding the abuse, neglect, abandonment, or similar harm the father perpetrated against the child is very important for the child's best interest for reasons that go

Interests: Examining the Experiences of Undocumented Immigrants in U.S. Family Courts, 11 TEX. HISP. J. L. & POL'Y 45, 49-51 (2005), reprinted in 27 IMMIGR. & NAT'LITY L. REV. 637, 641-43 (2006).

³⁷ See Appendix J: *Types of Proceedings in which State Courts Can Make Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-j-types-of-proceedings-sijs-findings/>.

beyond the child's need for SIJS findings. For instance, should the mother be hospitalized, deported, or die in a car accident, the custody order containing findings regarding the abuse, neglect, abandonment, or other harms perpetrated by the child's father will help prevent a future court from placing the child in the care of the father or the father's relatives who are unable to protect the child from ongoing abuse.

Children who have lived through trauma experience delays in brain and emotional development. These children benefit greatly from court orders issued in their late teens designed to settle them in stable homes with a court plan and caregivers who will guide their transition into adulthood. Court orders in these cases can establish mental health treatment plans, tutoring arrangements, provide help accessing benefits and services available to the child in the state, and put in place other support necessary to thrive and grow. In many cases, immigrant children continue living with their court ordered custodians for long after the children turn the age of majority in the state. All of the benefits immigrant children receive from these types of court orders issued under state best interests law are amplified when an older immigrant child also receives findings required to enable the child to apply for SIJS.

Not in the Child's Best Interests to Return to his Home Country

In addition to deciding what placement, custody, commitment or parenting time is in the child's best interest, immigrant children need to obtain from the court a finding that it is not in the child's best interest to return to the child's home country. The state court will use the same best interest factors and analysis to make this determination as the court used in making determinations regarding the child's custody and care, as discussed in the previous section. These findings are inherent in, linked to, and a core part of the same best interest analysis that led the court to decide that it was in the child's best interest to award custody, placement, or guardianship of the child to the particular individual located in the United States that the court chose.

USCIS in its policy manual describes the role of the state family court as follows:

“[I]t must be determined . . . that it would not be in the best interest of the petitioner to be returned to the country of nationality or last habitual residence of the petitioner or his or her parents. Accordingly, this requires a determination . . . that a placement in the child's, or his or her parents', country of nationality or last habitual residence is not in the child's best interest.

While the standards for making best interests determinations may vary between states, a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child. [12] See U.S. Department of Health and Human Services, Child Welfare Information Gateway, Determining the Best Interests of the Child. The court's finding that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that a placement in the petitioner's country of

nationality would not be in the child’s best interest. [13] See 58 FR 42843-01, 42848 (August 13, 1993). USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law.”³⁸

Best state court practice is to address each of the following issues specifically in the state court’s findings:

- Identify each of the potential persons who could provide care and take responsibility for custody of the child in the U.S. and in the child’s home country. This will include the parent who perpetrated the abuse, neglect, abandonment, or similar harm defined under state law. It should also include grandparents and other relatives in the U.S. or abroad who might serve as a placement for the child.
- Apply the state best interest factors to each placement
- State explicitly in the court order the factual findings the court made that support the placement chosen based on the child’s best interest
- Make findings of fact that illustrate why the court under the state best interests factors did not choose each of the other placements
- By demonstrating that placement in the child’s or the parent’s home country were either unavailable or unsuited under the state best interests factors, the court order in most cases is providing the factual underpinnings supporting the court's conclusion that it is not in the child’s best interests to return to the child’s home country.

What is important to understand is that the analysis the court undertakes in issuing these findings is not a comparison of the U.S and the child’s country of origin to assess the risk of harm to the child upon return. That approach, without the accompanying comparison or potential custodial placements, could fail to provide court findings sufficient to support the child’s SIJS case and could lead to the court having to provide additional information and findings in response to a request for further information from USCIS adjudicators. Instead, what is required is a comparison of the placements available to offer care and custody of the child in both countries.

In making the best interest factual findings comparing “what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child.”³⁹ The Violence Against Women Act created VAWA cancellation of removal and VAWA suspension of deportation as forms of immigration relief available in deportation proceedings designed to help immigrant victims of spousal or child abuse perpetrated by U.S. citizen or lawful permanent resident spouses, former spouses, parents, and step-parents. One of the elements of proof that victims of child and spouse abuse must prove to be granted VAWA

³⁸ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(3): Best Interests*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT SIJS BENCH BOOK 6, 10 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³⁹ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(3): Best Interests*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, 10 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

cancellation of removal or suspension of deportation by an immigration judge is that the immigrant victim's deportation would cause extreme hardship to the immigrant or their citizen or lawful permanent resident spouse, child, or parent. The immigration regulations contain a list of extreme hardship factors used to compare services and support available for immigrant victims of child and spouse abuse in the U.S. compared to the child's or parent's home country. These extreme hardship factors provide excellent examples of the types of factors that are available as part of the state's best interest laws that the court can use in the court's analysis and findings indicating that it is not in the child's best interests to be returned to the child's home country.

The VAWA extreme hardship factors are

- (1) The nature and extent of the physical or psychological consequences of abuse;
- (2) The impact of loss of access to the United States courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations, and prosecutions, and family law proceedings or court orders regarding child support, maintenance, child custody, and visitation);
- (3) The likelihood that the batterer's family, friends, or others acting on behalf of the batterer in the home country would physically or psychologically harm the applicant or the applicant's child(ren);
- (4) The applicant's needs and/or needs of the applicant's child(ren) for social, medical, mental health or other supportive services for victims of domestic violence that are unavailable or not reasonably accessible in the home country;
- (5) The existence of laws and social practices in the home country that punish the applicant or the applicant's child(ren) because they have been victims of domestic violence or have taken steps to leave an abusive household; and
- (6) The abuser's ability to travel to the home country and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant's children from future abuse.⁴⁰

In SIJS cases, as in VAWA cancellation of removal and VAWA suspension of deportation cases, "traditional" forms of extreme hardship that historically applied in non-VAWA suspension of deportation cases can also be helpful in SIJS cases. This is particularly relevant when the court can identify a strong connection between the particular type of hardship and the abuse and/or the consequences of the abuse including when the hardship is exacerbated by the abuse. Many of the traditional extreme hardship factors are identical or similar to common best interests of the child factors. Traditional extreme hardship factors are:

- (1) The age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;

⁴⁰ 8 C.F.R. § 1240.58(c) (2012).

- (2) The age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in the country of return;
- (3) The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;
- (4) The alien's ability to obtain employment in the country to which the alien would be returned;
- (5) The length of residence in the United States;
- (6) The existence of other family members who are or will be legally residing in the United States;
- (7) The financial impact of the alien's departure;
- (8) The impact of a disruption of educational opportunities;
- (9) The psychological impact of the alien's deportation;
- (10) The current political and economic conditions in the country to which the alien would be returned;
- (11) Family and other ties to the country to which the alien would be returned;
- (12) Contributions to and ties to a community in the United States, including the degree of integration into society;
- (13) Immigration history, including authorized residence in the United States; and
- (14) The availability of other means of adjusting to permanent resident status.⁴¹

Reunification Not Viable

The last of the three determinations immigrant children need to receive from state courts is the finding that reunification with at least one of the child's parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law. USCIS has made it clear that the burden of proof for a finding that reunification is not viable is lower than and different from the burden of proof necessary for findings made under state law for termination of parental rights.⁴²

It is important in making this determination to remember that in all cases in which the court is considering to be making findings that reunification with the parent is not viable will be cases in which the court has already found that the parent or parents have perpetrated abuse, neglect, abandonment, or similar offenses as defined by state law against the child. In assessing viability of reunification, there are a number of state best interest factors that should be revisited

⁴¹ 8 C.F.R. § 1240.58(b).

⁴² *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

and in particular, addressed, as factual findings related to the court's viability of reunification determination. The following factors are particularly pertinent:

- Family violence, including child abuse, child neglect, spouse abuse, sexual assault, and other crimes committed by the parent against the child, the child's siblings and/or the child's other parent;
- The child's needs, including physical, emotional, safety, and mental health needs related to overcoming the trauma the child suffered as a result of the parent's actions or inactions;
- The child's wishes, including that the child is fearful of being alone with the parent or being placed in the parent's care;
- The parent's fitness and caregiving capacity, including what level of involvement, if any, the parent has had over the course of the child's life; the parent's unwillingness to be a caregiver, the parent's substance abuse or mental illness, and the capacity the parent has demonstrated to care for the child's needs and provide a consistent routine for the child; and
- If the parent has demonstrated that the parent will or will not be able to provide the child with stability and continuity of care.

Many SIJS cases will involve child abuse, child neglect, and domestic violence. The National Council of Juvenile and Family Court Judges advises that:

"A child's physical, emotional, and psychological safety are always in his or her best interest."⁴³

Courts should conduct "a thoughtful exploration of the child's safety risks when abusive behavior has been part of the family fabric..."⁴⁴

NCJFCJ found that:⁴⁵

Numerous studies document the negative effects on children who are exposed to the abuse of one parent by the other. The studies provide evidence of the problems associated with their psychological, emotional, and cognitive functions, and longer-term development. Children who witness violence and coercive control by one parent toward the other experience at least the same level of serious effects as those who were direct targets of the abuse. The research also shows that each child's experiences, perceptions, and responses are unique. Any intervention should be tailored to that child's particular risk set and situation....

⁴³ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 5 (Nat'l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

⁴⁴ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 5 (Nat'l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

⁴⁵ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 6 (Nat'l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

Generally speaking, it is considered detrimental to a child and not in his or her best interest to be placed in sole custody, joint legal custody, or joint physical custody with the abusive parent. The most important protective resource to enable a child to cope with exposure to abuse is a strong relationship with a competent, nurturing, positive adult— most often, that adult will be the non-abusing parent. Providing for the physical, mental, and emotional safety of the child will include providing safe visitation by the abusive parent, if truly safe visitation can be arranged. You should award visitation to an abusive parent only if you find that adequate provisions for the child’s and the abused parent’s safety can be made, assuming that contact with the abusive parent is advised at all....⁴⁶

Any allegations of abuse, whether made by the at-risk parent or the child, should be taken seriously. Often when viewed through the lens of abuse and coercive control, though, the case comes into focus. It is important that abusive parents’ access to their children occurs only in safe environments or when the safety of both the child and the at-risk parent can be ensured.⁴⁷

When courts make a finding that reunification with the child’s parent is not viable, best practice in SIJS cases is to include in the court order the following:

- The best interests of the child factors that contributed to the finding, including findings of child abuse, child neglect, child abandonment and domestic violence
- The findings of fact related to the best interest factors upon which the court is basing its non-viability finding
 - It is important to address facts contributing to the court’s non-viability finding separately with regard to each parent

Most SIJS cases will fall into one of the following three scenarios. The analysis we provide for approaching non-viability findings in the SIJS scenarios below can provide a framework that courts can apply to other cases as well.

Scenario 1 – A Non-Parent is Being Awarded Custody, Guardianship, or Placement

Before the court issues an order that it is in the child’s best interest for a non-parent to get custody, placement, or guardianship of the child, the court is required under state law to eliminate each of the child’s parents as viable placements. It is also helpful to clarify in the order that it is a final court order. Best practices for court orders regarding viability in these cases is to explicitly state:

- That the court order is final

⁴⁶ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 7 (Nat’l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf. See also AM. BAR ASS’N, A JUDGE’S GUIDE: MAKING CHILD-CENTERED DECISIONS IN CUSTODY CASES 128-36, https://www.americanbar.org/content/dam/aba/images/probono_public_service/ts/judges_guide.pdf.

⁴⁷ JERRY J. BOWLES, KAYE K. CHRISTIAN, MARGARET B. DREW & KATHERYN L. YETTER, A JUDICIAL GUIDE TO CHILD SAFETY IN CUSTODY CASES 5 (Nat’l Council of Juvenile & Family Court Judges 2008), http://www.ncjfcj.org/sites/default/files/judicial%20guide_0_0.pdf.

- That the order involves no reunification plans for the parents
- The state-specific best interest factors and case-specific facts the court relied upon to make its finding that reunification with the child's parent or parents, in this case, is not viable.
- The order has no date certain on which it ends, and there is no triggering event contemplated that could occur in the future that would cause a change in the court's order

Scenario 2 – A Non-Abusive Parent is Being Awarded Custody

When the court is awarding custody or guardianship to a non-abusive protective parent in a contested or uncontested case, the court should articulate the specific state law best interest factors and factual findings upon which it is relying in making its non-viability determination. The court findings regarding non-viability of reunification with the abusive parent should include:

- Facts of child abuse, neglect, and domestic violence
- Facts and findings that placing the child in the sole or joint legal or physical custody of the abusive parent is detrimental to the child
- The court's finding that reunification with the abusive parent is not viable must be based on an articulation of the dangers the abusive parent poses to the child

Courts can reach a non-viability finding based on state law best interest factors even in cases where the court allows the abusive parent to have visitation with the child. Under immigration law, a finding of non-viability of reunification requires a different and lower standard of proof than that needed for termination of parental rights. Thus, a non-viability finding does not require that there be a no-contact order between the child and the abusive parent. The court can design visitation orders between the child and the abusive parent that protect the safety of the child and the nonabusive parent, and these will not undermine the non-viability finding. The fact that an abusive parent is allowed contact with a child through visitation does not mean that reunification of the child with the abusive parent is viable. Visitation is not akin to a reunification plan in a child welfare case. The fact that an abusive parent may be awarded supervised or unsupervised visitation with a child does mean visitation orders are in any way inconsistent or an impediment to a court finding that reunification of an abusive parent with a child is not viable.

Scenario 3 – A Child Welfare Case is Placing or Committing a Child

For immigrant children involved in dependency, child abuse, or neglect cases, a court can issue SIJS findings when the court makes a best interest adjudication that places the child in the care of the state, a family member, or another individual. The placement order should include a finding that the child has been a victim of abuse, abandonment, neglect, or a similar basis under state law, which was perpetrated by one or both of the child's parents, such that it is not in the child's best interests to return to the home country.

Although dependency courts are required by law to make reasonable efforts to reunite children with the parent who perpetrated abuse, in some cases courts find that reunification with the abusive parent is not viable. This can occur in a variety of ways:

- The facts of the abuse, abandonment, or neglect of the child are so severe that under state law, reasonable efforts may be waived;
- The court may have put in place a reunification plan but the parent is not complying;
- The nature of the parent's abandonment of the child may be such that the parent cannot be located and cannot be served with the reunification plan;
- The parent may have consistently failed to meet reunification plan requirements and target dates to the extent that these facts, combined with the harm caused by the parent, enable the courts under state best interests laws to enter a non-viability finding.

These non-viability findings can sometimes be entered in a dependency case without requiring a waiting period. When a court is issuing non-viability findings in cases of children involved in child welfare cases, the findings regarding non-viability of reunification with the abusive parent should include best interest factors such as the following:

- Detailed findings regarding the abuse, abandonment, neglect or other similar harm to the child under state law, including information about the severity of the harm caused;
- Facts about the perpetrator parent's lack of involvement in the child's life, failure to take steps to participate in a reunification plan, or lack of expressed interest in being reunited with the child.

Once the court enters a non-viability of reunification finding in the case of a SIJS child involved in a dependency case, if facts change significantly such that the court issues an order reunifying the child with the perpetrator parent, any previously approved SIJS petition granted by USCIS is automatically revoked.⁴⁸

⁴⁸ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 4(E)(3): Revocation*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.