

Chapter I: Introduction to Special Immigrant Juvenile Status¹

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Overview

Special Immigrant Juveniles Status (SIJS) is a form of humanitarian immigration relief that provides for a path to lawful permanent residence (LPR) for children who are unable to be reunited with one or both parents due to abuse, abandonment, neglect, or a similar basis under state law. SIJS status provides a path to legal permanent resident status and the hope of stability and safety for vulnerable immigrant children. This bench book focuses on SIJS and the role that Congress created for state court judges in an immigrant child's application process.

Family relationships form the core of the most common routes to lawful immigration status in the United States.³ This has long meant that children's immigration status is greatly reliant on their parents' status and actions.⁴ Recognizing that immigration law failed to provide protection for vulnerable immigrant children without lawful immigration status who are separated from parents, Congress created SIJS in 1990.⁵ The first version of SIJS was developed "to provide humanitarian protection for abused, neglected, or abandoned child immigrants eligible for long-term foster care."⁶

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² This chapter was developed with the assistance of Tolulope Adetayo, Kendall Niles, and Kavell Joseph.

³ See Anita Ortiz Maddali, *Left Behind: The Dying Principle of Family Reunification Under Immigration Law*, 50 U. MICH. J.L. REFORM 107 (2016).

⁴ See David B. Thronson, *You Can't Get Here from Here: Toward a More Child-Centered Immigration Law*, 14 VA. J. SOC. POL'Y & L. 58 (2006).

⁵ Although enacted in 1990 as Section 153 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, Nov. 29, 1990, necessary technical amendments and regulations delayed implementation until late in 1993. See Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733, Dec. 12, 1991; 58 Fed. Reg. 42843-42851 (Aug. 12, 1993) (codified at 8 C.F.R. § 204.11 (2001)). Together with subsequent amendments, the provision is now codified at Immigration and Nationality Act (INA) § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (2012). *Appendix A: Statutory Provisions Related 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 (2017) [hereinafter SIJS BENCH BOOK], <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/>.

⁶ 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 – Chapter I(A) – Purpose*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 3 n.1(2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>. See also Memorandum from Donald Neufeld to Field Leadership of U.S. Dep't of Homeland Sec., *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions 2* (Mar. 24, 2009) (<http://niwaplibrary.wcl.american.edu/pubs/imm-gov-uscismemotvpra2008-03-04-09/>).

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SIJS has “evolved to include children who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.”⁷ While initially used sparingly, mostly for children in domestic foster care systems, over time Congress expanded this effective program to offer important humanitarian protection to greater numbers of immigrant children who have suffered abuse, abandonment, neglect, or similar harms perpetrated by at least one of the child’s parents. This protection includes children living with a non-abusive parent. SIJS has emerged as a prominent form of immigration relief for children arriving in the United States without lawful immigration status.⁸

Children separated from parents are very susceptible to various forms of violence, including child abuse, child sexual exploitation, incest, dating violence, domestic violence, sexual assault, and human trafficking.⁹ SIJS is one of several options that U.S. immigration law offers as possible forms of humanitarian immigration relief for immigrant children.¹⁰ Depending on the circumstances, children and youth also may be eligible for immigration relief under laws of asylum,¹¹ the Violence Against Women Act,¹² the U visa for immigrant crime victims,¹³ or the T visa for trafficking victims.¹⁴

Qualifying for immigration relief depends on where the abuse occurred, who perpetrated the abuse, and the form of abuse suffered. Some of these forms of relief have more narrow eligibility criteria, difficult application procedures, and longer case processing times than SIJS.

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 3 n.1(2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

⁸ Only 287 children were granted special immigrant juvenile status in 1998. Table 5, 1998 Stat. Y.B. Immigr. & Naturalization Serv. 32, <https://www.dhs.gov/xlibrary/assets/statistics/yearbook/1998/1998yb.pdf>. That has certainly increased, with a peak of over 14,500 applications in the first three quarters of Fiscal Year 2016. See U.S. CITIZENSHIP & IMMIGRATION SERVS., NUMBER OF I-360 PETITIONS FOR SPECIAL IMMIGRANT WITH A CLASSIFICATION OF SPECIAL IMMIGRANT JUVENILE (SIJ) BY FISCAL YEAR AND CASE STATUS 2010-2016 1, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/I360_sij_performancedata_fy2016_qtr4.pdf (last visited March 27, 2018).

⁹ Review of the President’s Emergency Supplemental Request for Unaccompanied Children and Related Matters: Hearing on S. 272 DHS Appropriations Bill before the S. Comm. on Appropriations, 113th Cong. (2014) (statements of Jeh Johnson, Sec. of Dept. of Homeland Security, and Sen. Dick Durbin).

¹⁰ See DHS Infographic: Protections for Immigrant Victims (January 12, 2017), NATIONAL IMMIGRANT WOMEN’S ADVOCACY PROJECT, <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/> (last visited Mar. 26, 2018); Alexandra Brown & Leslye Orloff, *The Department of Homeland Security’s Interactive Infographic on Protections for Immigrant Victims*, NATIONAL IMMIGRANT WOMEN’S ADVOCACY PROJECT (2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-interactive-infographic-on-protections-for-immigrant-victims-8-29-17/>.

¹¹ Asylum helps immigrant some children who fled victimization in their home country who can demonstrate a well-founded fear of persecution on account of one of five specified grounds. See INA § 208, 8 U.S.C. § 1158. Asylum cases often are more difficult than SIJS, VAWA self-petitioning, U visa, and T visa cases.

¹² Violence Against Women Act self-petitioning helps immigrant children who have been victims of forms of child abuse, child sexual assault, and neglect that fall within the definition of “battering or extreme cruelty” perpetrated by a parent, step parent, a spouse, or former spouse. See Leslye Orloff & Deborah Birnbaum, Legal Momentum & NIWAP, VAWA Self-Petitioning Flow Chart for Child Applicants (Feb. 19, 2009), <http://niwaplibrary.wcl.american.edu/pubs/vawa-flow-chart-child/>; Leslye Orloff & Deborah Birnbaum, Legal Momentum, Immigrant Women Program, VAWA Self-Petitioning Flow Chart for Adult Applicants, <http://niwaplibrary.wcl.american.edu/pubs/flowchart-vawa-selfpet-adults/> (last visited Mar. 30, 2018).

¹³ U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION OPTIONS FOR CRIME VICTIMS OF CRIMES: INFORMATION FOR LAW ENFORCEMENT, HEALTHCARE PROVIDERS, AND OTHERS (2010), <http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes/>.

¹⁴ DHS BLUE CAMPAIGN, MAKE THE CONNECTION: SUPPORTING AND STABILIZING VICTIMS OF HUMAN TRAFFICKING, <http://niwaplibrary.wcl.american.edu/pubs/bc-pamphlet-victim-support-ngo-english/>; DHS BLUE CAMPAIGN, WHAT CAN YOU DO? RECOGNIZING AND SUPPORTING VICTIMS IN THE COURTROOM, <http://niwaplibrary.wcl.american.edu/pubs/blue-campaign-trafficking-judicial/>.

Depending on the child's country of origin, generally SIJS will be the swiftest, least complex route to lawful permanent residence for a qualifying child in comparison to other immigration options.

SIJS provides a means for the child to eventually attain lawful permanent residence. Once children have received lawful permanent residence status, they can live and work permanently in the United States, become eligible for certain public benefits, and may eventually apply for U.S. citizenship. Significantly, lawful permanent residence status reduces the fear of deportation, promotes stability, expands access to public benefits and services, and facilitates nurturing relationships, stable school environments, and community support. SIJS also is a path to economic security by creating a path to employment authorization, drivers' licenses, financial aid to attend university, and access to public and assisted housing.¹⁵

SIJS is unique in several respects. First, it is the only provision in federal immigration law that expressly incorporates a best interests of the child standard into its eligibility criteria. Second, it utilizes a hybrid system of state and federal collaboration, drawing on the state child welfare and best interest expertise of state court judges to inform federal adjudication of immigration status.¹⁶ The federal statute relies upon state court judges to make the factual determinations about children's best interest because state courts have particularized expertise in the area of child care and custody.¹⁷ The statute requires state court findings, on issues that are *inherent* in state court decisions about child care, custody and placement, including the best interests of the child and viability of parental reunification.¹⁸

These findings serve as the foundation for the child's application for federal immigration relief and contribute to the federal adjudication of the child's SIJS immigration application. In this scheme, state courts do not make immigration decisions, but rather make factual determinations on issues that are relevant to the state court proceeding before the court under state law. The factual determinations needed by children filing for SIJS are findings that flow from and are a part of the state court cases that judges commonly hear where the goal under state law is to issue rulings that promote the child's best interests, child welfare and a child's health,

¹⁵ See NIWAP STATE-BY-STATE PUBLIC BENEFITS MAP (INTERACTIVE), NIWAP.ORG <http://www.niwap.org/benefitsmap/> (last visited Mar. 30, 2018).

¹⁶ Congress has created somewhat similar roles for state court judges in two other areas of immigration law: the U visa certification and the T visa declaration. For more information on the role of state judges in U visa certifications and T Visa declarations, see 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 3 (2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

¹⁷ "The reliance upon state juvenile courts anticipated in the SIJ statutory scheme signals Congress' recognition that the states retain primary responsibility and administrative competency to protect child welfare. . . . The federal government lacks the professional staff and administrative support to make assessments of individual children's mental and physical conditions and their welfare needs. Furthermore, within the judicial branch, federal courts have more limited jurisdiction over such matters. As a result, state courts have developed greater competency for administration of child welfare matters." Gregory Zhong Tian Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Children Under the Special Immigrant Juvenile Statute*, 27 HASTINGS CONST. L.Q. 597, 609, 611 (2000).

¹⁸ See Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>; Leslye E. Orloff, *Chapter II: Details about Special Immigrant Juvenile Status (SIJS) Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/>.

well-being and stability. State court orders that promote child welfare and child best interests are designed to stabilize and support children including their move toward and transition into adulthood. These findings then form the basis for subsequent federal immigration decisions.

State Court Role

State courts play a central fact finding role that aids U.S. Citizenship and Immigration Services (USCIS) in the SIJS application and adjudication process. In fact, USCIS relies on required state court findings as evidence in its process of adjudicating applications. In order to complete an application for SIJS, the applicant must submit an order from a state “juvenile” court. For the purposes of SIJS cases federal immigration law defines a state “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.”¹⁹ The definition of “juvenile court” in SIJS cases is governed by the federal immigration laws definitions and is not limited to the state law definition of “juvenile court.” The “title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.”²⁰ Thus, courts can issue SIJS findings in any case in which the court is entering orders regarding the care, custody, or placement of a child.

For a child to establish eligibility for SIJS, a state court must make three best interest and child welfare related findings:

- (1) The child has been “declared dependent on a juvenile court” or the child has been “legally committed to or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States.”
- (2) The child’s “reunification with [one] or both of the [child’s] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.”
- (3) It “would not be in the [child’s] best interest to be returned to the [child’s] or parent’s previous country of nationality or last habitual residence.”²¹

¹⁹ 8 C.F.R. § 204.11(a) (2012).

²⁰ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A) – Juvenile Court Orders and Administrative Documents*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 11 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>. See also RACHEL G. SETTLAGE, ELIZABETH A. CAMPBELL & VERONICA T. THRONSON, *Special Immigrant Juvenile Status*, in IMMIGRATION RELIEF: LEGAL ASSISTANCE FOR NONCITIZEN CRIME VICTIMS 69 (ABA 2014) (noting that Special Immigrant Juvenile findings are made routinely for “undocumented children in a variety of settings in which state courts are involved in making determination of custody, such as juvenile delinquency proceedings and the placement of unaccompanied minors”), <http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report/>; Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. J. 48, 54 (2012) (“Whether a court is a ‘juvenile court’ under the federal definition is not determined by the label that the state gives to the court, but rather by the court’s function.”). For a list of the types of case proceedings in which SIJS findings can be issued 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/>.

²¹ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

The details regarding each of these findings are elaborated upon in the chapters of this Bench Book that follow.

The SIJS findings that are included in the state court's order do not constitute an adjudication of the child's SIJS immigration case. Instead, the SIJS findings in the state court's order are a federally required part of the child's SIJS application and provide evidence that is helpful but not controlling of the federal SIJS adjudication. Adjudication of immigration status is solely in the purview of USCIS.

The fact finding role of state courts in SIJS cases includes the types of findings that are within the expertise of and are akin to the daily responsibilities of state judges who routinely decide matters regarding the custody and care of children. State court judges routinely make findings of fact regarding harms children have suffered including abuse, abandonment or neglect and consider those findings together with other factors when applying state best interests factors to decide placement, custody and care of children. The findings required in SIJS cases include and build upon these findings on issues that state courts commonly address in cases involving children who come before state courts in a wide range of state court proceedings. Making SIJS findings supports the ability of an immigrant child who has been subjected to abuse, abandonment, neglect or similar harm under state law to access the humanitarian immigration relief Congress created to help these immigrant children. Providing immigrant children with SIJS findings simultaneously fulfills state law requirements that courts act in children's best interests and is consistent with furthering the humanitarian interests of the United States. When a state court judge declines to consider requests for SIJS findings, the judge undermines the federal immigration scheme and the best interests of children, effectively cutting off children's access to needed humanitarian relief.

In a few states there are state statutes or court rules that direct state child welfare systems to screen immigrant children they encounter for the possibility that children might qualify for SIJS.²² The fact that most jurisdictions, however, do not expressly require that state child welfare systems conduct this important screening has contributed to some confusion among trial courts regarding the state court's ability to issue SIJS findings. Despite some initial resistance in a few trial courts, ultimately every state court system that has published a decision on the matter has determined, across a range of state court case types and proceedings, that making SIJS findings is an appropriate and necessary exercise of a state court's authority.²³ If there is a

²² San Diego Superior Court requires counsel to develop a working knowledge of Special Immigrant Juvenile Status, among other areas of law. SAN DIEGO, CAL. SUP. CT. R. 6.3.4, http://www.sdcourt.ca.gov/pls/portal/docs/page/sdcourt/general_information/localrulesofcourt/localrulesindex/2018_san_diego_county_superior_court_rules.pdf. See also Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 COLUM. HUM. RTS. L. REV. 266, 302 (2014) (addressing some states' explicit policies regarding immigrant children in their care).

²³ See, e.g., *In re M.C.*, N.Y.L.J., at 25, col. 3 (Fam. Ct., Suffolk Cty. Mar. 4, 2010) (noting that the juvenile court's "primary role in guardianship proceedings is to make determinations which are in the best interest of the child and in the case of a request for 'special findings,' to determine if the requisite elements of 8 U.S.C. § 1101 (a)(27)(J)(i) apply"); *In re Juvenile 2002-098*, 813 A.2d 1197 (N.H. 2002) (upholding trial court's exercise of jurisdiction to issue special immigrant juvenile findings in case where abuse occurred in Romania); *S.H. v. Dep't of Children and Families*, 880 So. 2d 1279, 1281 n.2 (Fl. Dist. Ct. App. 2004) (noting "that the court did have subject matter jurisdiction" over 16-year-old child's request for special immigrant juvenile findings based on abandonment in Guatemala); *Leslie H. v. Superior Court*, 168 Cal. Rptr. 3d 729 (Cal. Ct. App. 2014) (finding that the lower court erred in denying the request for SIJS findings in a delinquency proceeding); *In re L.F.O.C., Minor*, 901 N.W.2d 906 (Mich. Ct. App. 2017).

legitimate state law purpose for a judge to be involved in a determination related to a child's custody and care, a judge may make the required findings that allow the child to seek the immigration relief.

Significantly, in making SIJS findings, the state court applies applicable state law. For example, the federal statute intentionally does not define abuse, abandonment, or neglect, but rather relies upon state court judges' expertise in applying their state law's definitions of these terms to the facts of the case before the court. This approach promotes child welfare. There is "nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law. Juvenile courts should follow their state laws on issues such as when to exercise their authority, evidentiary standards, and due process."²⁴ The "juvenile court order must have been properly issued under state law to be valid for the purposes of establishing eligibility for SIJ classification."²⁵ This reliance on state procedures and law reinforces the distinct state and federal roles that Congress established.

Indeed, so distinct are these state proceedings that federal immigration authorities have no role at all in state juvenile court proceedings. Attorneys for the U.S. government need not, and do not, appear. The federal system has its opportunity to weigh the merits of the SIJS petition independently of state court proceedings. Obtaining an order from a state court making the requisite findings, an order often referred to as a "predicate order," is only the beginning of the process for a child navigating the immigration system and obtain lawful immigration status.²⁶ Although the state court role in the immigration process does not extend beyond these findings, it is helpful for state courts to understand how the state court's order fits into the child's immigration process. This chapter next provides an overview of the immigration process in which the child is engaged and provides context for the SIJS findings requested of the state court.

The Federal Immigration Adjudication Process

Once state juvenile court findings are made, the child's journey through the maze of immigration law to achieve lawful immigration status through SIJS can begin. Only USCIS can adjudicate the merits of whether a child meets the requirements for SIJS classification. This process is initiated by the child filing a petition for SIJS.²⁷ This application is filed together with two mandated pieces of evidence – the state court findings and proof of the age of the immigrant child applicant.²⁸ There is no fee required for this initial SIJS petition. Once children submit their

²⁴ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁵ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order*, 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/>.

²⁶ *In re M.C.*, N.Y.L.J., at 25 (noting that "the ultimate determination as to an immigrant juvenile's status rests squarely within the purview of the federal government"); *In re D.A.M.*, No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012) ("[T]hese findings by the state court do not bestow any immigration status on SIJS applicants.").

²⁷ The form is called "Petition for Amerasian, Widow(er), or Special Immigrant." U.S. CITIZENSHIP & IMMIGRATION SERVS., OMB. NO. 1615-0020, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT, USCIS FORM I-360 (2016), <https://www.uscis.gov/i-360>.

²⁸ In the absence of a birth certificate issued by the government of the child's country, which is a common occurrence, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, is charged with developing

application USCIS has 180 days to adjudicate it. However, as discussed below, the real processing times for this initial SIJS petition and the subsequent steps required by the process can be much longer.²⁹

For most immigration purposes, a child is defined as “an unmarried person under twenty-one years of age.”³⁰ While the definition of a child allows for SIJS filings up to age 21, the federal SIJS law requires that the child remain subject to the state court’s jurisdiction on the date the child’s SIJS application is filed. In many jurisdictions the definition of child is an individual who is younger than 18 years of age.³¹ Some states have extended the age at which children can enter the dependency system to permit persons between the age of 18 and 21 who meet other requirements to avail themselves of the jurisdiction of the state court and by extension, of the protections provided by SIJS.³² The age to which a child who is already in state care can remain in care or continue to receive support also varies by state.³³ USCIS considers the petitioner’s age at the time the SIJS petition is filed in determining whether a child meets the age requirement.³⁴ If the child was under the age of 21 and still under the jurisdiction of a state juvenile court under state law on the date of the filing of the SIJS application, the child meets the SIJS age eligibility requirement and USCIS cannot deny SIJS classification solely because the child may be older than 21 by the time the adjudication is complete.

The SIJS petition is just the first step of the federal adjudication process to obtain permanent lawful immigration relief for a child. If this SIJS is approved, a child then qualifies to apply for lawful permanent residence. Immigration law requires every individual seeking to enter or remain in the United States to be admissible. This involves background checks, including fingerprinting of the child. Even children with approved SIJS petitions are subject to grounds of inadmissibility that might prevent them from obtaining lawful permanent resident status. Fortunately, certain grounds of inadmissibility expressly do not apply to special immigrant juveniles and are automatically waived.³⁵ The critical issue of admissibility is discussed in detail, along with helpful lists, in Chapter VI: *Inadmissibility in Special Immigrant Juvenile Status Cases*.

To complicate matters for children in removal proceedings, USCIS has exclusive jurisdiction over the adjudication of SIJS petitions even when a child is in removal proceedings before an Immigration Judge. However, USCIS has no jurisdiction to adjudicate an immigrant SIJS child’s application for lawful permanent residence when the child has an open case before

procedures to determine the age of a child. These procedures “shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien.” William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRRA) § 235(b)(4), codified at 8 U.S.C. § 1232. See also discussion *infra* pp. 8-11.

²⁹ See Section 235(d)(2) of the TVPRRA of 2008, Pub. L. No. 110-457, 122 Stat. 5044, 5080 (Dec. 23, 2008).

³⁰ See 8 U.S.C. § 1101 (b)(1); 6 U.S.C. § 279(g)(2) (2012) (“The term ‘unaccompanied alien child’ means a child (A) who has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States, or (ii) no parent or legal guardian in the United States available to provide care and physical custody.”).

³¹ See, e.g., MICH. COMP. LAWS § 722.1102(b) (2015).

³² See, e.g., N.Y. FAM. CT. ACT § 661 (2012); MD. CODE ANN., CTS. & JUD. PROC. § 3-804 (2013). See also MASS. GEN. LAWS, ch. 215 § 6, ch. 231A §§ 1, 9 (conferring jurisdiction to enter declaratory and equitable relief in equity).

³³ For a discussion of the different jurisdictional requirements, see Laila L. Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 COLUM. HUM. RTS. L. REV. 266, 322 (2014).

³⁴ See TVPRRA 2008 § 235(d)(6) of the, Pub. L. 110-457, 122 Stat. 5044, 5080 (2008) (providing age-out protections).

³⁵ See INA § 245(h), 8 U.S.C. § 1255(h).

an Immigration Judge.³⁶ When a child is in removal proceedings, the adjudication of pieces of the child's immigration case moves back and forth between the Immigration Court and USCIS to have all elements of the case adjudicated. In these cases, once a petition for SIJS is approved by USCIS, the child's lawful permanent residence application must be filed with the Immigration Court. At this point, many Immigration Judges will terminate removal proceedings upon a motion by the child, provided there is no opposition by Immigration and Customs Enforcement (ICE) counsel.

Terminating the removal proceeding then allows the child to proceed with the process of having his application for lawful permanent residence adjudicated by USCIS. This avoids putting the child through an Immigration Court trial to have the child's case adjudicated. For a child appearing before a USCIS officer for a lawful permanent residence interview is not always easy, but it generally is less stressful than having his case adjudicated in a trial setting with an immigration judge.

The federal process is not quick, and recently has become much slower. One source of delay is the 2016 decision to consolidate all of USCIS's adjudication of petitions for SIJS in the Department of Homeland Security's National Service Center in Lee's Summit, Missouri. Since state family or juvenile court orders are required and provide evidence in each SIJS application, previously local USCIS adjudicators would develop familiarity with the court orders issued in their jurisdictions. USCIS officers also developed knowledge about the details of each state's laws regarding abuse, abandonment, neglect, and child's best interest. Local USCIS officers also were familiar with local rules regarding state court jurisdiction.

The consolidation of all SIJS adjudications nationally in one location ended the role of local adjudicators familiar with the types of proceedings and court orders that are common in their jurisdictions. The local adjudicators have been replaced by a team of national adjudicators who are grappling with the immense variation in state laws across the country. This has resulted in greater scrutiny and questioning of state court orders resulting in increased requests for evidence and denials, resulting in more appeals. This has stretched the adjudication process for some children from months to potentially years. Crafting detailed state court orders that cite and explain the state laws being applied and the factual findings the state court is making under the cited state statutes will play an important role in reducing the numbers of cases in which SIJS adjudicators need more explanation of the state laws and the court's SIJS findings. To assist courts in issuing the detailed court orders containing SIJS findings in the range of state family and juvenile court proceedings, this manual provides courts with a discussion of how SIJS requests arise in different types of state court cases in Chapter V – *Quick Reference Guides for State Courts by Type of Proceedings*.³⁷

³⁶ See 8 C.F.R. § 1245.2 (“In the case of any alien who has been placed in deportation proceedings or in removal proceedings (other than as an arriving alien), the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file.”).

³⁷ Each of the Quick Reference Guides have been created to make information about SIJS readily available to judges, as judges will encounter these SIJS issues and receive requests for SIJS findings in each of the following proceedings. Each provides an overview of SIJS federal laws and their applicability to state courts, the basic information the court would need in such a proceeding to issue SIJS findings, and scenarios that provide common examples in the following types of proceedings: custody and child support, adoption, protection orders, dependency, delinquency, guardianship, paternity, and declaratory judgments.

An additional factor that contributes to delays in immigrant SIJS children’s access to lawful permanent residence is the fact that immigration laws place caps by visa category on the number of immigrants who can receive lawful permanent residence each year.³⁸ These caps currently impact children from the countries of highest unaccompanied child migration, including El Salvador, Honduras, Guatemala, and Mexico, creating multiyear backlogs for SIJS applicants from those countries.³⁹ Some immigrant children qualify for multiple forms of immigration relief. Each program has a different application process, adjudication timeline, and eligibility requirements. There are pros and cons to each and children encountering adjudication delays need assistance of counsel to facilitate simultaneously filing for multiple forms of relief. However, children have no right to appointed counsel and most of them appear in immigration proceedings without an attorney.

How State Courts Will Encounter SIJS Eligible Children Proceedings

All children who qualify for relief under the Special Immigrant Juvenile Status program:

- Will be children who are foreign born and
- Will have suffered abuse, abandonment, neglect or similar harms defined by state statutes perpetrated by one or both of their parents.

Any time a child meets these two criterion and they are before the court, unless the child has already attained citizenship or lawful permanent residence, the child may be SIJS eligible. SIJS eligible children will have very different backgrounds, countries of origin and life experiences. Children will differ with regard to their trauma histories,⁴⁰ age, causes and manner of immigration, immigration enforcement experiences and the caregivers involved in the state court proceeding. Many SIJS eligible children will come before the court affirmatively requesting SIJS findings as a part of the state court relief they are seeking. An equal and possibly larger number of SIJS eligible children will be before the court in proceedings involving court orders regarding the custody or care of children in which the parties before the court do not recognize that the child is SIJS eligible.

When courts identify children who may be SIJS eligible children courts have the opportunity to provide U.S. Department of Homeland Security (DHS) produced “know your rights” information about SIJS to the children and their caregivers.⁴¹ The judge could ask

³⁸ See INA § 202, 8 U.S.C. § 1152.

³⁹ See *The Visa Bulletin*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (last visited Mar. 30, 2018).

⁴⁰ See *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 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-e-effects-of-trauma-on-minors-fact-sheet/>.

⁴¹ See *Appendix F: DHS Interactive Infographic on Protections for Immigrant Victims*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-f-dhs-interactive-infographic-on-protections-for-immigrant-victims/>; *Appendix H: DHS SIJS Brochure – Immigration Relief for Abused Children*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-h-dhs-sijs-brochure/>. Translations of these DHS materials are available at <http://niwaplibrary.wcl.american.edu/topic/multilingual-materials-language/>. Department of Justice requirements for language access to state courts are contained in *Appendix I: DOJ Language Access Letter to Courts*, in NAT’L IMMIGRANT WOMEN’S

whether the parties have considered whether they wish to seek SIJS findings from the court as part of its orders in the case and grant a continuance. Judges may issue SIJS findings in any type of state court proceeding in which the court has the legal authority under state law to issue orders regarding the care, custody, or placement a child.⁴² This approach serves children’s best interests by providing children access to SIJS protection and the improved access to stability, benefits, services, safety and education that SIJS provides. It also improves efficiency for the courts because this approach reduces the need for SIJS eligible children to have to return to court in another proceeding to obtain SIJS findings.

All of the children eligible for SIJS will have suffered abuse, abandonment, neglect or similar harm perpetrated by one or both of their parents either in the United States or abroad. SIJS eligible children may have immigrated to the U.S. alone or with their parents. Some children who immigrated with their parents may have been separated by immigration authorities at the border. SIJS eligible children who were stopped, detained, and released⁴³ by federal officials will have open immigration removal cases. Others will have had no contact with U.S. immigration enforcement officials. The following provides a list of common scenarios in which courts may encounter SIJS eligible children who have been abused, abandoned, neglected, or suffered similar harm by one or both of their parents;

- Child has been living with both parents in the U.S. who are before the court for
 - A civil protection order
 - Custody
 - Divorce
 - Child abuse, neglect, welfare or delinquency case
- Child is living with the child’s non-abusive parent and the parent and child are before the court for
 - Custody
 - Guardianship
 - A civil protection order
 - Child support
 - Paternity
 - Child abuse, neglect, welfare or delinquency
- Child is living with a relative, god-parent, family friend or other adult and is before the court for
 - Guardianship
 - Adoption
 - Child abuse, neglect, welfare or delinquency

ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-i-language-access-letter-to-courts/>.

⁴² 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/>.

⁴³ When immigrant children are released to caregivers by immigration authorities, the caregiver has agreed to bring the child to immigration court proceedings, and the release may include minimal review of criminal history and/or child sex offender databases. The release decision does not address and is not based upon any state’s child’s best interests factors.

- Child has been removed⁴⁴ from the care of one or both parents and the child is before the court for
 - Child abuse, neglect, or welfare or delinquency
 - Termination of parental rights
 - Adoption
- The child may be before the court as the subject of a criminal child abuse case

⁴⁴ SIJS eligible children may have been placed with a non-abusive parent, in kinship care, foster care, or any other placement.