

Chapter V-1 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN PROCEEDINGS INVOLVING TERMINATION OF PARENTAL RIGHTS AND ADOPTION¹

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What is Special Immigrant Juvenile Status (SIJS)²

- Through the Immigration Act of 1990, Congress created Special Immigrant Juvenile Status to provide immigration relief for undocumented immigrant children who have been harmed by a parent and who are the subject of state court proceedings.³ SIJS is a form of federal humanitarian immigration protection created to promote child welfare helping vulnerable immigrant children by providing them the opportunity to apply for legal permanent residence to gain stability, heal and thrive.
- SIJS protects children who cannot be reunited with one or both parents due to have suffered abuse, abandonment, neglect or similar harms by a parent.⁴
- Federal law **requires** that each application for SIJS include an order from a state court.⁵ The court must have jurisdiction under state law to make determinations about the placement, care or custody of children.

SIJS findings do not constitute an immigration determination, rather are simply factual findings based on state law that are required to be included in the child’s immigration application.

Federal Requirement: State Courts Apply State Law⁶

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² See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS [hereinafter SIJS BENCH BOOK] 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See Immigration and Nationality Act (“INA”) § 101(a)(27)(J)(i), 8 U.S.C. § 1101(a)(27)(J)(i) (2012).

⁴ Parents for SIJS purposes are the child’s natural or adoptive parents and any other relationships recognized as parents under state law. State law, rather than federal law, applies with regard to the definition of parents for SIJS cases. Whomever state law recognizes as a parent is the parent for SIJS purposes. This includes whether or not a step-parent is considered a parent under state law. U.S. immigration law that defines “parent” to include “step-parent” does not apply to SIJS cases. For children born during a marriage, state paternity laws commonly presume the child to be the child of the husband and wife and this presumption establishes paternity. This can result in the state law establishing a parent child relationship between a child and someone who is not the natural or adopted parent of the child.

⁵ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

⁶ See INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (defining Special Immigrant Juveniles); see also 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>; NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/2018/03/sijs-manual-table-of-content/>.

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- To issue a predicate order the state court applies state laws to make each of the specific findings of fact that U.S. immigration laws require that SIJS eligible children obtain from state court judges.

Eligibility Status for SIJS

- To be eligible for SIJS a child must be: unmarried, in the United States and under the age of 21⁷ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings:⁸
 1. *Finding 1:* The court has exercised jurisdiction as authorized by state law to issue orders regarding the custody, care or placement of an immigrant child;⁹
 - a. Judges may encounter SIJS eligible children in a wide range of state court proceedings including, but not limited to divorce, custody, guardianship, dependency, adoption, child support, protection orders, declaratory judgments, domestication of a foreign order, or delinquency.
 - b. The court order must make findings regarding custody or placement of the child with an individual,¹⁰ an agency, a department of the state, or an entity appointed by the state court. The proceeding can take place in any type of state court including, but not limited to a family, probate, or juvenile court.
 2. *Finding 2:* It is not in the child’s best interest to return to the home country, or last habitual residence, of the child or the child’s abusive parent.
 - a. This finding includes a determination by the state court using the best interest factors under state law 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.
 - b. In making this finding it can be useful to include findings of fact regarding each of the state law best interest factors that the court applied in its deliberation and determination. Using the state best interest factors, the findings should include

⁷ Children must obtain findings from a state court that has jurisdiction to enter orders regarding their care and custody. Orders containing SIJS findings must be issued while the child is under the age of majority set by state law, which is often age eighteen. Some state laws may confer jurisdiction over a person who is older than eighteen.

⁸ See INA § 101(a)(27)(J) (defining Special Immigrant Juveniles); see also *Eligibility Status for SIJ*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Mar. 30, 2018).

⁹ Menjívar, 29 Immigr. Rep. B2-37 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/> (“The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child’s parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by t[h]e court in foster care or, as here, in a guardianship situation.”).

¹⁰ The original SIJS statute required that the child be dependent on the state court and eligible for long-term foster care. The statute was amended to clarify that this includes the placement of the child in the care or custody of an individual to allow children living with family or next of kin to remain in their homes. The language remains reminiscent of traditional dependency language and some courts have mistakenly interpreted that to mean they can only make SIJS findings in dependency proceedings. See 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/>) (“In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care.”); see also U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION RELIEF FOR ABUSED CHILDREN: INFORMATION FOR JUVENILE COURT JUDGES, CHILD WELFARE WORKERS, AND OTHERS WORKING WITH ABUSED CHILDREN (2014), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/ (stating that “SIJ eligible children may . . . [b]e living with a foster family, an appointed guardian, or the non-abusive parent and noting that the highlighted examples are not an exhaustive list) (emphasis added). For immigration law purposes, therefore, a juvenile is dependent upon the state court if he or she “[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6) (2012). See also Menjívar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/>.

reasons why the judge granted custody, guardianship or placement to one person and not to other potential custodians. The findings should also include a comparison of services and resources available to the child in the U.S. as compared to the home country. Examples include: what types of services, actions, and orders will best serve a child, services that help the child heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for the child.¹¹

c. Findings must be based on state law. Therefore, include state law citations. Do not cite to federal law.

3. *Finding 3*: Reunification with one or both of the child’s parents is not viable due to either abuse, abandonment, neglect, **or** a similar basis under state law;¹²

a. The federal statute¹³ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each state law’s definition of these terms.¹⁴ Some states have other provisions in state law that are a “similar basis” for protecting children and making reunification with a parent not viable. These too can serve as a basis for SIJS findings.

- The order should indicate the factual basis for the each of the state court findings.¹⁵
 - Court orders that contain detailed findings of fact regarding the harm the child suffered, that cite state laws being applied, and that discuss the application of state laws to the facts of the case help avoid both Department of Homeland Security (DHS) requests for additional evidence and delays in the adjudication of the child’s SIJS petition.
- The state court order does not confer any immigration status on the child.
- Only federal immigrant officials can grant immigration status to the child.

¹¹ A list of factors that are helpful when comparing what assistance, support, treatment, or other services would be available to help an immigrant child or immigrant crime victims in the United States, compared to an immigrant’s home country, can be found in the DHS policies and regulations discussing extreme hardship in VAWA self-petitioning and VAWA cancellation of removal cases. See SIJS Bench Book, Chapter IV: *Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases* for a list of these factors and how they could be applied when courts make SIJS findings.

¹² For more information to assist courts making findings regarding the viability of reunification and a discussion of how this standard differs from termination of parental rights, see Leslye E. Orloff, *Chapter II: Details about Special Immigrant Juvenile Status (SIJS) Findings*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 3-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/> and 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 12-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

¹³ Amendments to the INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008) supersede 8 C.F.R. § 204.11. See *Appendix A: Statutory Provisions Related to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-a-sijs-statutory-and-regulatory-provisions/> (discussing which parts of the regulations were issued prior to 2008 that were not superseded by the statute); 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/>).

¹⁴ State law definitions of “abuse,” “abandonment,” and “neglect” are to be applied to the factual findings about the abuse the child suffered wherever that abuse occurred in the world, inside or outside of the United States. If the facts of the harm the child suffered would constitute “abuse” under state law, then it is abuse for SIJS findings even when the facts of the abuse occurred in another country. State law is to be used, not the laws of the country in which the abuse occurred.

¹⁵ 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 2(D)(5) – USCIS Consent*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, 8 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

- However, without the state court order containing the three required findings the child cannot petition for SIJS.
 - The inability to file may have serious negative consequences for the child’s health, well-being, growth, education, development and the opportunity to remain in the care of nurturing caregivers. In some cases, the inability to obtain SIJS could result in the child’s deportation from the United States.

SIJS in Termination of Parental Rights (TPR) and Adoption Proceedings¹⁶

- Adoption is a frequent and appropriate state court proceeding in which children can obtain SIJS findings since adoption cases include determinations regarding custody and care of children. In adoption proceedings courts examine the history and dynamics of child abuse, neglect, abandonment or similar harms defined by state laws that a child experienced perpetrated by one or both of their parents. Courts adjudicating adoption cases apply the state best interests of the child laws to the facts they are adjudicating in all adoption cases.¹⁷
- SIJS findings are appropriate¹⁸ in cases in which the court is deciding custody of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child’s natural or adoptive parents.
- *Making SIJS findings in adoption cases:* Adoption is one case type in which state courts will encounter SIJS eligible foreign-born children. When SIJS orders are requested on behalf of the child during an adoption proceeding, the judge has the ability to make the SIJS findings based on the facts presented in the case and/or based on facts determined by a court in any abuse, neglect or termination of parental rights proceeding that may have preceded the adoption case.¹⁹
- *Adoption following TPR proceedings:* Since SIJS is relatively new to state courts it will not be unusual for an adoption court to encounter cases involving SIJS eligible immigrant children in which a prior court ordered TPR but did not issue SIJS findings in the order. In these cases, the factual basis supporting the abuse, abandonment or neglect and non-viability of reunification would be inherent in and contained in the court record and orders in the termination of parental rights proceeding. The court adjudicating the adoption of an SIJS eligible child can include SIJS required findings in the adoption order based on the facts found and the application of state laws to those facts in both the adoption and TPR proceedings.

The statutory requirements for adoption are similar in many jurisdictions and include variations of:

- The minor has been abandoned by one or both of the child’s parents,
- The child’s parent or parents have died, or
- The parent(s) cannot provide for the care of the child by reason of misconduct, mental or physical or emotional health, or physical or mental incapacity, and
- The court finds these conditions or causes cannot or will not be remedied by the parent or parent(s).

¹⁶ *In re C.G.H.*, 75 A.3d 166, 169 (D.C. 2013).

¹⁷ Adoption by U.S. citizen parents does not automatically resolve a child’s immigration status. SIJS is often the best and most appropriate way to ensure the child’s stability. SIJS may still be needed and is not necessarily superfluous just because adoptive parents may be citizens or lawful permanent residents.

¹⁸ For more information, see Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

¹⁹ *In re C.G.H.*, 75 A.3d 166.

- *One parent adoption by a step-parent or second parent:* It is common to have a child seeking SIJS orders based on the abuse, abandonment, or neglect by only one parent.²⁰ Prior to 2008, to be eligible for SIJS, a child had to suffer harm perpetrated by both of the parents. In 2008 Congress amended the law in recognition of the importance of promoting ongoing nurturing relationships between children and their non-abusive parents. In adoption proceedings, SIJS orders can be requested in a proceeding involving adoption by a stepparent or a second parent when the child continues to live with the child's non-abusive parent.
- SIJS findings are appropriate in cases in which the court is deciding custody of an immigrant child who is not a naturalized citizen or lawful permanent resident when the child has been a victim of abuse, abandonment, neglect, or other similar harms defined by state law and the perpetrator was one of the child's natural or adoptive parents.
- Immigrant children who are residing in the care of a non-abusive parent may apply for and be granted SIJS based on abuse, abandonment, or neglect perpetrated by the other parent. It is very common to have a child seeking SIJS orders based on the abuse, abandonment, neglect, or similar harm under state law by only one parent. For example, courts will encounter immigrant children who suffered abuse by a parent in the home country who are currently residing with a non-perpetrator parent in the United States who is seeking a custody order. These facts could be present in a divorce, legal separation or custody case in which the court applies the state definitions of abuse, abandonment, neglect or similar harm defined under state law and the state best interests factors to decide custody of a child when the perpetrator parent lives outside the country. The abuse of the child may have occurred outside of the U.S. or in the U.S. and the perpetrator parent has never been to the U.S., been deported from the U.S. or may have left the U.S. for other reasons.
- Common Case Scenarios: When an immigrant child is being adopted who has been abused, abandoned, neglected, or subjected to harm from or another similar basis under state law the adoption court should issue SIJS findings as part of its court order. The following are examples of common scenarios in which an SIJS eligible immigrant child will typically come before the court in an adoption proceeding requesting such findings:
 - **TPR granted in a prior proceeding:** The parental rights of one or both of the child's parents were previously ordered and child is in adoption proceedings. When parental rights of one or both of the child's parents have already been terminated the pleadings will contain allegations identifying the parties, information supporting the court's jurisdiction, a statement of the relief sought and the statutory grounds for that relief, and petitioner's satisfaction of all conditions precedent to the grant of adoption.²¹
 - **Father abandoned the child:** The child's father's parental rights were terminated by prior court order. The father played no role in the child's life. Child is in the custody of mother and stepfather whose adoption petition is being granted by the court. It is in the child's best interest to remain in the custody and care of the child's mother and adoptive stepparent father.²²
 - **Both parents voluntarily surrendered parental rights:** The child was the subject of a TPR case in which one or both birth parents *voluntarily* give up

²⁰ 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/>.

²¹ *The Petition: Pleading Requirements and Required Attachments* in JOAN HEIFETZ HOLLINGER, ADOPTION LAW AND PRACTICE (Matthew Bender 2017).

²² *In re C.G.H.*, 75 A.3d 166.

parental rights. No SIJS findings were made in the prior proceeding although the child was abandoned by one of their parents. The child was placed with a family member who is now filing for adoption of the child.

- **Both parents consent to the adoption:** In an adoption case with no prior TPR proceeding and the parents have not previously voluntarily surrendered their parental rights consent to the adoption from each parent is required. If one parent is deceased, the consent of the remaining parent is required for the adoption proceedings.²³ When parental consent has been given, the consent along with the other pleading requirements should suffice for adoption proceedings.²⁴ It is important to note that in adoption cases in which the child is seeking SIJS orders when the consenting parent is the parent who committed the abuse, abandonment, neglect or similar basis of harm to the child under state law, the parent's consent to the adoption may include information that is helpful to the court in making its rulings on abuse, abandonment or neglect and viability of reunification with the child's parent. Examples of consent:
 - **Step-parent and second parent** In a step-parent or second parent case where one parent continues to have custody of the child, the consent of the remaining parent will be required for the adoption proceedings by the step or second parent.
 - **Both parents consent to the adoption:** Immigrant child came to the U.S. by himself and is currently living in the state with the child's godparents. The child's father left the child and his mother when the child was young and has had little or no contact with the child. The child's mother found the child's father in the child's home country and both parents consent to the child's adoption by the child's godparents.
- **One or both parents object to the adoption and there was no prior TPR:** Termination of parental rights will be adjudicated as part of the contested adoption case. If such a case involves an immigrant child SIJS findings on behalf of the child should be included in any TPR or adoption order the court issues.²⁵
 - **Abusive father objects to the adoption:** Immigrant child came to the US by herself after suffering sexual abuse perpetrated by her father. The child is currently in the care of her maternal aunt who is seeking to adopt the child. Both of the child's parents are in the child's home country. The child's mother agrees to the adoption but the child's father objects to the adoption.
 - **Incarcerated father objects to the adoption:** The child's father perpetrated domestic violence against the child's mother, was convicted of the domestic violence and is serving a long prison sentence for the crime. The child's mother remarries and the child's mother and stepfather bring an action to terminate the parental rights of the father and for adoption of the child by the child's stepfather. The child's father objects to the adoption.
- **One or both of the child's parents are missing or dead:** Many of the adoption cases involving SIJS eligible children will involve cases in which one or more of the child's parents is missing and has not been involved in any significant way in the child's life.
 - **Missing parents:** In adoption cases involving SIJS eligible children with missing

²³ *Whose Consent Is Necessary in* JOAN HEIFETZ HOLLINGER, ADOPTION LAW AND PRACTICE (Matthew Bender 2017).

²⁴ *The Petition: Pleading Requirements and Required Attachments in* JOAN HEIFETZ HOLLINGER, ADOPTION LAW AND PRACTICE (Matthew Bender 2017).

²⁵ *In re L.F.O.C., Minor*, 901 N.W.2d 906 (Mich. Ct. App. 2017).

parents the court will make factual findings about the role each of the child's parents played or did not play in providing for the child's care. The court will apply state law to facts to determine whether a parent's actions or inactions constituted abandonment or neglect of the child.

- *Example:* The child's mother died when the child was 10 years old. Since that time the child has been raised by his physically abusive father living in the home of the child's paternal grandparents. At age 14 the child fled the abusive home and came to the United States where he is currently living with the child's maternal grandparents. The child's father was recruited by a gang and cannot be located. The child's maternal grandparents have filed for adoption of the child.
- **Deceased Parents:** In cases involving SIJS eligible children whose parents are deceased the court needs to review the facts of the case to determine whether prior to the parent's death the parent took actions or failed to act in ways that under state law constitute abuse, abandonment, neglect or a similar basis under state law. State statutes generally do not treat death of a parent as abandonment or neglect. However, in many states when a parent does not take steps to plan for the care of the child should the parent die or when children are found in the state without care, state laws recognize alternate basis in state neglect and/or abandonment laws for the state to intervene and care for a child. The court's SIJS orders in this case would be based, not on the fact of the death of the parent. The orders would be based instead on the fact that under state law one or more of the following constitutes abuse, abandonment, or neglect of the child:
 - The parent abused, abandoned or neglected the child before the parent died
 - The parent who died failed to make provisions for the care and custody of the child; or
 - The child was left without care of a responsible custodian.
 - *Example:* The child has a parent who abused the child and the child's mother. The child's abusive parent died. The child's mother has remarried, and the child's stepparent is seeking adoption of the child.

Procedural Considerations²⁶

- *Service of Process:* Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in an adoption or TPR proceedings are governed by state law. How service is to be effected is also governed by state law. The same service of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other adoption or TPR case.
- Many SIJS eligible children will have had little or no recent contact with the parent or parents who have perpetrated the abuse, abandonment, neglect, or similar harm defined by state law. The perpetrator parent may be still living in the home country and the child may be resettled with the

²⁶ Children seeking SIJS orders may come before the court in creative ways that the court is not necessarily accustomed to seeing, this is in part because of funding restrictions on representation of abused immigrant children and parents. Depending on an organization's funding, the organization may be limited to whether they can represent the child, the parent, a third party filing on behalf of or in relation to the child, or any combination within. Various forms of government funding are restricted to only the abused litigant, thus barring non-abused parents and third parties from filing guardianship or custody with representation from the agency receiving the funding. The abused child is eligible for representation from the agency, but, due to procedural rules, the child cannot file certain cases on their own behalf and thus the attorney is limited to what kinds of cases they can seek relief for the child.

other parent or with a grandparent, family member or caregiver in the United States. The location of the perpetrator parent may be:

- In the child's country of origin;
- Unknown to the child and other parent;
- In a region of the home country that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for adoption or TPR adjudications. Attorneys representing parties seeking adoption or TPR for an SIJS eligible child may need additional time locating the abusive parent. They may not be successful in accomplishing personal service and may need to request court orders authorizing alternative service.²⁷ Swift decisions by the court on requests for alternative service are very important to ensure that the court is authorized to take jurisdiction to enter adoption or TPR orders including SIJS findings before the immigrant SIJS eligible child turns the age of majority as defined by state law. This may include:

- Enlisting assistance with service from the parent's country's embassy or consulate;
 - Service by publication;
 - Orders that soldiers and sailors service is not required because the parent is found to be a foreign national who could not have served in the U.S. Military.
- *Guardian and Attorneys Ad Litem (GAL/AAL)*: Federal law does not impose or require any particular decision related to appointment of a *guardian ad litem*. Cases in which children are seeking SIJS should be treated in the same manner with regard to decisions to appoint guardians or attorneys *ad litem* as applies in cases of citizen children. There is no reason to appoint a GAL/AAL for a child seeking SIJS, when the court would not otherwise make such appointment in cases not involving SIJS. It is best practice to only require a GAL/AAL when the court would so order under state law in cases that do not involve immigrant parents or children or SIJS predicate findings. Appointing a GAL/AAL for SIJS cases when such appointment would not be made in a case involving citizen children causes unnecessary delay in SIJS cases, and expends limited pro bono legal resources in the community that could better serve cases involving other needy children.
 - *UCCJEA AND UCCJA*: Children coming before the court seeking SIJS findings will have very different personal stories. Some may have been in the United States for a prolonged period of time. Others may have recently made the journey to flee from abuse or reunite with family. Unaccompanied minors who have been in DHS's custody may have been moved from state to state while searching for appropriate placement.²⁸ In only a small minority of the SIJS cases might there be a prior order in another state or country. When an order was issued by a foreign country, the parent granted custody may be requesting that the court recognize the foreign court's custody award. SIJS eligible children may not have been in the state long enough for the state to have become the child's home state for jurisdictional purposes.²⁹

²⁷ For more information of service of process options see Leslye E. Orloff, *Chapter VII: Service of Process in State Court: Cases Seeking Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs/>.

²⁸ See Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

²⁹ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

- Most states have adopted the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA), which requires that a child be present in the state for 6 months to establish home state jurisdiction. Best practices in SIJS cases are:
 - Bringing the custody matter and requesting SIJS orders from the child’s home state where the child has resided for more than 6 months; or
 - In custody cases involving SIJS eligible immigrant children who have been in the state for under 6 months, taking temporary emergency jurisdiction over the child under the state’s UCCJEA or the UCCJA based upon the child’s presence in the state and upon the child having suffered abuse, abandonment or mistreatment or upon threats to the child’s non-abusive parent or the child’s sibling when³⁰
 - No prior custody order has been issued regarding the child,
 - No other state with grounds for continuing custody jurisdiction can be found, or
 - A court with continuing jurisdiction declines to take jurisdiction over the case.
- *Continuing Jurisdiction under State Law over Children 18 and Older:* Generally, the child must be under the jurisdiction of a state court order at the time he files his SIJS application. State law sets the age of majority applicable in SIJS cases. If the court has jurisdiction under state law over a child when the court issues a court order containing SIJS findings, continuing state court jurisdiction over the child is not required if the reason the court’s jurisdiction ends is because the child ages out or because the child is adopted or placed in a permanent guardianship.³¹ Some state laws allow state courts to have continuing jurisdiction over a child after the age of majority set by state law. When state law grants courts that meet certain criteria continuing jurisdiction over children who reach the age of majority, courts may issue SIJS orders in cases of children who have not turned age 21. Examples of continuing jurisdiction that would allow for issuance of SIJS orders include but are not limited to state statutes governing:
 - Care of children who are incapacitated;
 - Children still enrolled in school (K-12);
 - Adult adoption statutes; or
 - When a child is deemed a dependent of the state, including children in foster care.

Best Practices for SIJS Findings in Adoption Cases

- *Special Immigrant Juvenile Status Statute*³² requires that the immigrant child:

“[H]as been declared dependent on a juvenile court located in the United States or whom such a court has 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” AND

³⁰ *Child Custody Jurisdiction and Enforcement Act Summary*, UNIFORM L. COMMISSION, <http://www.uniformlaws.org/ActSummary.aspx?title=Child%20Custody%20Jurisdiction%20and%20Enforcement%20Act> (last visited Mar. 30, 2018).

³¹ *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 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

³² INA §101(a)(27)(J).

“[W]hose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” AND

“[F]or whom it has been determined in administrative or judicial proceedings 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”

- Location of Harm to Child: The abuse, abandonment, or neglect may have taken place in the United States or abroad.
- State law governs:³³
 - The types of court proceedings in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement
 - State court adoptions procedures including jurisdiction, evidentiary rules, parental notice, parental rights and due process.³⁴
 - Best Interests:³⁵ 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. All state best interests of the child laws are designed to provide the care, treatment, healing, safety, stability, structure, and guidance that will help children become healthy, self-sufficient adults. In making best interests of the child determinations in SIJS cases courts should consider the same breadth of factors that apply to all best interests of the child determinations the court adjudicates.
 - Abuse, Abandonment, Neglect or Similar Basis of Harm Under State Law: All SIJS cases will include findings using state law definitions to determine that an immigrant child has been abused, abandoned, neglected or suffered similar harm defined by state law by at least one of

³³ See Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 1(A) – Purpose n.1, 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/>; 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/>; 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/>; 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 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(2) – Parental Unification, 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/>; 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 6-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(1) – Dependency or Custody, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.5 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D) – Juvenile Court Order, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 10 nn.11-14 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>; 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/>.

³⁴ USCIS, *Immigration Relief for Abused Children: Information for Juvenile Court Judges, Child Welfare Workers, and Others Working with Abused Children*, available at http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/

³⁵ For a detailed discussion of the ways that state best interests of the child laws apply in state court when issuing SIJS findings 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/>.

the child's parents. For purposes of making SIJS findings, these state law definitions are applied to the facts of case when the harm occurred in the United States and when the harm occurred abroad. These findings will, by their nature, play an important role in the court's application of state best interest laws in decisions regarding a child's custody, placement, commitment, or parenting time.

- *Definitions*: State law controls the definition of the terms “abuse” “abandonment” and “neglect.” The court may use *any* state definition in state law of these terms.³⁶
- *Similar Basis Under State Law*: Judges may also issue SIJS findings when they find that reunification is not viable for harms articulated in state law that are similar to “abuse, abandonment, or neglect.” Some examples include:
 - *Child endangerment*³⁷ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence*³⁸ is defined in all states to cover child abuse through the perpetration of criminal acts or attempts or threats of criminal acts, or other statutorily defined harms against a person covered by the state domestic violence statute. In all states child abuse perpetrated by a parent is covered by the state domestic violence definition used in state protection order cases. State domestic violence laws often also provide protection for the harm that occurs to children from witnessing domestic violence perpetrated against a parent and in such cases the court under state law can make findings that the presence of domestic violence in the home precludes safe reunification with one or both parents residing in a home where domestic violence is occurring³⁹
 - *Forced Marriage*:⁴⁰ Several states have passed laws making forced marriage a crime. Forced marriage of children is considered child abuse and treated as a child abuse crime that involves criminal acts that include rape and sexual assault.
 - *Children present in the state without an adult able to meet their basic needs* under many states' laws is defined as neglect, including lack of adequate food, clothing, shelter, health care, education or supervision.
- *Best Practice*: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied to placement of the child in the custody of the adopting parents. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court relies upon in its order including the definitions of abuse, neglect, abandonment or similar harm under state law and the best interests of the child factors applied to the custody case. Do not quote or cite the federal statute as authority for the required SIJS findings.

³⁶ For further information see Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>.

³⁷ See *Appendix O: States that Define Endangerment Higher than Neglect*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-o-endangerment-chart/>

³⁸ See *Appendix N: Domestic Violence Includes Child Abuse and Child Neglect*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-n-domestic-violence-abuse-and-neglect/>.

³⁹ 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/>.

⁴⁰ See *Appendix P: Forced Marriage as Child Abuse: State Laws*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-11 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-p-forced-marriage-chart/>.

- *Level of Detail in Court Order:* The order should contain sufficient detail to clearly state
 - The factual basis under state law for the court’s jurisdiction over the child;
 - The factual basis and state laws relied upon to reach the findings and conclusions in the court’s order;
 - The citations for the state laws relied upon by the court in making findings and issuing orders; and
 - Information discussing how the court’s order furthers the child’s welfare and best interests.
- *Examples of SIJS Findings in Adoptions and TPR Orders.* In an adoption case, the findings can be simply stated:
 - *Granting the Adoption of the Child:*
 - *Prior TPR adoption by a stepfather:* “The parental rights of, *child’s father’s name*, were terminated by prior court order. *Child’s father* abandoned the family when *name of child* was 1 year old, has had minimal contact with the child since that date with no contact for over the past 13 years. *Child’s father’s name* has never provided any support for *child’s name*. *Child’s stepfather’s name* who is the stepfather of *child’s name* is seeking adoption of *child’s name*. *Mother’s name*, the child’s mother who has had responsibility for the care and custody of *child’s name* since his birth has been married *stepfather’s name* for three years and consents to the adoption. The child’s stepfather and mother married they have both have been actively involved *child’s name’s* daily care, health care, and education. The court finds it is in the child’s best interest for the child’s mother and stepfather to continue raising *child’s name* and grant the adoption of *child’s name* by his stepfather.
 - *Best Interests to Not Return:* Describing why it is in the child’s best interest not to return to the home country of the child or the child’s parent. “After considering the totality of the circumstances in this case the Court finds that--
 - “This court is granting the adoption of the child by the child’s maternal grandparent who has been the primary care taker of the child for the past two years and it is in the child’s best interests to grant this adoption. *Name* resides in the state of *State*. After having considered the totality of the evidence in the case and the findings of fact as to [refer to the details of the abuse, abandonment, neglect found regarding the child’s father and the facts demonstrating that there are not fit caregivers for the child in the child’s home country] the court finds that it is not in the child’s best interests to be returned to live in *Country*.”
 - “*Abusive Parent’s Name* who subjected the child to [summarize abuse or neglect] continues to reside in the child’s home country, *Country*, is an unfit parent. It is not in the child’s best interest to be returned to *Country*.”
 - “*Child’s Name* has been receiving the medical and mental health care and treatment *child’s name* needs to heal from the effects of [the trauma facts] the child suffered perpetrated by *parent’s name*. These services [list help, treatment, services being received by the child] are being offered in [city, state]. *Child’s name* has benefited from these services being offered since [date range] and the court finds that equivalent services needed to help *Child’s name* heal and thrive are not available in *Country or rural community in which the child work live if returned*].”

- *Viability of Reunification:* Stating reunification is not viable due to the *either* abuse, abandonment, neglect, similar basis, or a combination of these harms to the child. It is important that the court order clearly state which specific harm or harms the child suffered and which parent perpetrated that harm. In cases where both parents were perpetrators, the order should address the harms caused by each parent separately. Court orders should avoid statements that like “the child suffered abuse, abandonment or neglect perpetrated by *child’s parent*” and should explicitly state which definition under state law constitutes the harm the child suffered.
 - *Absent Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abandonment of the *Name of Child* as defined in *Code Section*. *Parent’s Name* has had no contact with *Name of Child* since approximately *Date of Last Contact* and has never/since that time has played no role in providing economic support for *Name of Child*. It is in *child’s name’s* best interests to remain in the custody of her mother and stepfather who have been responsible for providing for the care of *child’s name*. This court is granting the request to terminate the parental rights of the child’s father and is approving the adoption of *child’s name* the child’s stepfather.”
 - *Abusive Parent Example:* “Reunification with the child’s parent, *Name*, is not viable due to *Name’s* abuse of the *Name of Child*. Findings of abuse of *Name of Child* include [insert some of the key abuse findings]. These findings constitute abuse under *Code Section*. The child’s mother who has also been abused by the child’s father continues to live with the child’s abusive father in the *child’s name’s* home country. At 14 to protect *child’s name* from continuing abuse the child’s mother sent her to the United States to live their maternal aunt. The aunt has been caring for *child’s name* for the past 3 years and has helped her receive the counseling and therapy she needs to overcome the impact of the abuse she suffered and she watched her mother suffer at the hands of her father. [Insert details of the facts supporting the adoption being in the best interests of the child]. The child’s mother has consented to the adoption.