

**Chapter V-4
Quick Reference Guide**

**SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS
IN DECLARATORY JUDGMENT CASES¹**

November 25, 2017

By: Isabel LaLuna, Alina Husain, and Leslye E. Orloff

For Courts Hearing Declaratory Judgement Cases

Court’s Authority to Issue Declaratory Judgements in SIJS Cases

- In the majority of U.S. Jurisdictions state courts have the authority under state declaratory judgement statutes to address family court matters.² Courts across the United States have used declaratory judgments in a variety of family cases including child custody, adoption, juvenile delinquency, and divorce.³

What is Special Immigrant Juvenile Status (SIJS)⁴

- 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.⁵ 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 perpetrated by a parent.⁶

¹ This publication was developed under grant number SJI-15-T-234 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

² In forty-nine states and U.S. jurisdictions, family courts have the authority under state law to issue declaratory judgments in family court cases, and thirty-nine states and U.S. jurisdictions have case law on the use of declaratory judgments in family court cases. See 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/2018/03/sijs-manual-table-of-content/>; Appendix U: SIJS and Declaratory Judgment Statutes State-by-State, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-u-state-by-state-declaratory-judgement-statutes-and-sijs-3/> (charting state declaratory judgment statutes, their use by state courts in family law matters, and the availability of declaratory judgment cases as an avenue for a court with jurisdiction over a child to issue a court order containing SIJS findings).

³ See Appendix S: Use of Declaratory Judgments in Family Law Matters, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-3 (2018), <http://niwaplibrary.wcl.american.edu/pubs/appendix-s-using-declaratory-judgment-in-family-law-matters/> (listing case law on use of declaratory judgments to address family law issues); Appendix T: Declaratory Judgment Case Law by Topic and State, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-27 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-t-declaratory-judgments-cases-bytopic-state/> (analyzing of how state court use declaratory judgments to address family law issues).

⁴ 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/>.

⁵ See 8 U.S.C. § 1101(a)(27)(J)(i) (2012).

⁶ 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

National Immigrant Women’s Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

4300 Nebraska Avenue NW · Washington, D.C. 20016

(o) 202.274.4457 · info@niwap.org · wcl.american.edu/niwap · <http://niwaplibrary.wcl.american.edu/>

- Federal law **requires** that each application for SIJS include an order from a state court.⁷ 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 Law⁸

- 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 21⁹ at the time of filing the SIJS immigration application, and submit a state court order that contains three findings¹⁰:
 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;¹¹
 - 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,¹² an agency, a department of the state, or an entity appointed

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.

⁷ This court order containing the findings that the child applying for SIJS needs is often referred to as a “predicate order.”

⁸ See Immigration and Nationality Act (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 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.

¹⁰ 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).

¹¹ Menjivar, 29 Immigr. Rep. B2-37, B2-39 (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.”).

¹² 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),

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 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 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 him heal from trauma, the social, medical, mental health and educational needs of the child, and who is best suited to care for him.¹³
 - 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;¹⁴
 - a. The federal statute¹⁵ intentionally does not define abuse, abandonment, or neglect, but rather relies upon the state court judge’s expertise in applying each

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* Menjivar, 29 Immigr. Rep. B2-37, B2-39 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/>.

¹³ 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 victim 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* 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/> (listing of these factors and how they could be applied when courts make SIJS findings).

¹⁴ 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/>.

¹⁵ 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/>).

state law’s definition of these terms.¹⁶ 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 each of the state court findings.¹⁷
 - 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 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 immigration officials can grant immigration status to the child.
- 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 Declaratory Judgment Cases

- For SIJS purposes, a state court that has jurisdiction under state law to make a judicial determination about the placement, custody, or care of a child may enter SIJS findings.¹⁸ A motion for a declaratory judgment is one of the types of state court proceedings in which state courts may encounter SIJS eligible immigrant children. This quick reference guide will be helpful for courts hearing cases related to declaratory judgments where a court is authorized under state declaratory judgment laws to determine the rights of the child, including recognizing the child’s current custody or placement, without ordering any changes to the child’s current custody orders or situation. In the vast majority of states the state declaratory judgment statute is available to be used for proceedings in which children are seeking SIJS findings.¹⁹

¹⁶ 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.

¹⁷ 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/>.

¹⁸ See 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/.

¹⁹ In California, declaratory judgments apply only to property rights. In Missouri, declaratory judgments are only applicable to persons with interests in deeds, wills, and contracts. In New Hampshire, declaratory judgments apply to people claiming legal or equitable rights or title. In two states (Hawaii and Virginia), declaratory judgments are only available when the matter is contested. For an overview of how declaratory judgments are used in family law matters, see *Appendix S: Use of Declaratory Judgments in Family Law Matters*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, *SIJS BENCH BOOK 1-3* (2018), <http://niwaplibrary.wcl.american.edu/pubs/appendix-s-using-declaratory-judgment-in-family-law-matters/>. For information on state-specific rules, based on case law, regarding the way in which declaratory judgments may be used, see *Appendix T: Declaratory Judgment Case Law by Topic and State*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, *SIJS BENCH BOOK 1-27* (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-t-declaratory-judgments-cases-bytopic-state/>. See also *Appendix U: SIJS and Declaratory Judgment Statutes State-by-State*, in NAT’L IMMIGRANT

- SIJS findings are appropriate²⁰ in cases in which the court is recognizing a prior court's order deciding custody or placement 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.
- When the case before the court contains evidence that the child has been a victim of abuse, abandonment, or neglect by one of the child's natural or adoptive parent, SIJS findings can be included as part of any state court case addressing the custody or placement of a child. Despite this fact, courts may issue orders in cases involving SIJS eligible children without required SIJS orders because neither the court nor the attorneys representing the child in the original court case recognized the child's eligibility.
- 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 child's other parent.²¹
- A declaratory judgement may be an avenue to recognize the prior custody order and issue SIJS findings. Declaratory judgments are useful when prior court orders regarding a child's custody or placement were made in a custody, divorce, protection order, or child abuse or neglect case and the court issuing the original custody or placement order did not make SIJS findings at the time the custody or placement award was issued.
- Seeking SIJS findings as part of a declaratory judgement case may provide a safe avenue to obtain SIJS orders when custody was previously determined by a state court judge in a contested custody, divorce or protection order proceeding in which the facts of the prior case included findings by the court about the abuse or neglect of the child by the abusive parent. It is not uncommon for a non-abusive parent in a contested case involving custody of an immigrant child to be unaware at the time of the contested case that the child was eligible for SIJS. When the parent granted custody later learns of the child's SIJS eligibility, declaratory judgements can provide a safer avenue to attain the needed missing SIJS findings rather than filing a motion for modification of the court's custody when no change in custody is being sought.
- The court hearing the declaratory judgement case can hear evidence and make SIJS findings about harms suffered by the child, the child's best interests and the viability of reunification with the abusive parent and issue orders together with orders recognizing prior court orders or the fact that a detained child is in federal foster care.
- In declaratory judgement cases the evidence that court relies upon to issue SIJS findings may include:
 - Findings of fact contained in prior court orders regarding the child,
 - Review of the court record in the prior proceeding, and/or

WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-u-state-by-state-declaratory-judgement-statutes-and-sijs-3/>.

²⁰ 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/>.

²¹ Prior to 2008, to be eligible for SIJS, a child had to suffer harm perpetrated by both to the child's parents. In 2008, Congress updated the law in recognition of the importance of promoting ongoing nurturing relationships between children and their nurturing non-abusive parents. 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 5-6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/>.

- Evidence presented in the declaratory judgement case.
- State court judges will receive requests for SIJS predicate findings in declaratory judgement cases based on many different fact patterns. The most common scenarios include:²²
 - **Child had previous orders:** These will be cases in which the child was the subject of previous court orders issued in a divorce, custody, protection order, dependency or other type of proceeding and is seeking a declaratory judgment that restates, in a single order, the findings included in the prior order and augments that order with additional findings required for the child to apply for SIJS. Obtaining SIJS findings through a declaratory judgment case is particularly helpful way promote safety and stability of the SIJS eligible child when the court order granting custody was issued in a family violence case or in a contested case that was fully litigated. Declaratory judgements provide an opportunity to augment the prior court orders regarding custody or placement without re-litigating or seeking to modify the terms of the custody award and the dangers that could be associated with reopening highly contested cases.
 - **Child is in federal custody:** Some SIJS eligible children have been placed by the United States Department of Health and Human Services’ (HHS) Office of Refugee Resettlement (ORR) in federal long-term foster care.²³ These are often children for whom ORR was unable to locate a safe placement outside of the foster care system. SIJS eligible children in federal foster care placements can seek declaratory judgements in which the state court formally recognizes in a court order the child’s custodial placement with the federal or state agency responsible for the child’s care and issues the required SIJS findings. No change in placement is being requested. In cases of children in ORR custody when the court order containing SIJS findings recognizes and simply restates the child’s placement²⁴ but does not “determine or alter their custody status”²⁵ HHS consent is not required.²⁶
 - **Child’s lack of standing:** Many of the state court cases in which courts have jurisdiction to determine child custody (e.g. custody, dependency, divorce) cannot be initiated by the child who will be the subject of the court’s custody orders.²⁷ As a result, some children will

²² This list is not exhaustive.

²³ The Office of Refugee Resettlement (ORR) contracts with facilities around the country to place this children who have no viable sponsor to care for the child with whom ORR can place the child.

²⁴ See 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 10 n.11 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁵ See Perez-Olano v. Holder, No. CV 05-3604 (C.D. Cal. May 4, 2010) (proposed settlement agreement), https://www.uscis.gov/sites/default/files/USCIS/Laws/Legal%20Settlement%20Notices%20and%20Agreements/Perez-Olano%20v%20Holder/Signed_Settlement_Agreement.pdf.

²⁶ “Specific consent” to the court’s jurisdiction is only required from federal government authorities (ORR) when a state court is being asked to “determine or alter” the child’s “custody status.” See Perez-Olano v. Holder, No. CV 05-3604 (C.D. Cal. May 4, 2010) (proposed settlement agreement),

https://www.uscis.gov/sites/default/files/USCIS/Laws/Legal%20Settlement%20Notices%20and%20Agreements/Perez-Olano%20v%20Holder/Signed_Settlement_Agreement.pdf; see also 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/>; U.S. Dist. Court for the Central Dist. of Cal., *Notice for Special Immigrant Juveniles*, https://www.uscis.gov/sites/default/files/USCIS/Laws/Legal%20Settlement%20Notices%20and%20Agreements/Perez-Olano%20v%20Holder/Notice_Special_Immigrant_Juveniles.pdf (last visited Mar. 30, 2018).

²⁷ An alternate approach available in several states is for the child to initiate their own guardianship action, where the state may authorize a child to file their own guardianship action. See Appendix V: Appointment of Guardianship: State Statutes, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-23 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-v-guardianship->

bring a declaratory judgment action as a mechanism to bring their own court action to have their prior court orders recognized and incorporated into a declaratory judgement containing SIJS orders.²⁸

- **Child is close to the age of majority in the state:** Declaratory judgment cases also may be filed seeking SIJS orders for children who are close to the age of majority who need to expedite access to an SIJS order. When prior court orders exist regarding the child and no changes in custody or jurisdiction are being requested, a declaratory judgement filed by the child or the child's non-abusive parent can be a swifter less cumbersome means to obtain SIJS findings expeditiously.

Procedural Considerations²⁹

- *Service of Process:* Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in a custody proceeding are governed by state law. How service is to be effected in custody proceeding 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 custody 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 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 county that is rural with little formal infrastructure.

These circumstances pose several significant obstacles to meeting the service and notice requirements for custody adjudications. Attorneys representing parties seeking custody of 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.³⁰ Swift decisions by the court on requests for alternative service are very important to

[appointment-of-guardian-chart/](#); see, e.g., Arizona, Hawaii, Idaho, Indiana, Iowa, Kentucky, Massachusetts, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, and West Virginia).

²⁸ It is important to note that the legal representation eligibility requirements of some Violence Against Women Act grant programs do not allow attorneys to represent non-abused parents or guardians of abused children filing court cases on the child's behalf. However, organizations funded by the Legal Services Corporation are authorized to undertake this representation. See Legal Servs. Corp., Office of Legal Affairs, Advisory Opinion, AO-2016-002 (revised) (July 11, 2016 (revised August 26, 2016)), <http://niwaplibrary.wcl.american.edu/pubs/lsc-ao-2016-002-revised/>. Funding restrictions may influence the types of cases lawyers representing children seeking SIJS findings can file and lead to more declaratory judgment filings in which the lawyer can directly represent the SIJS eligible child.

²⁹ 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.

³⁰ 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/>.

ensure that the court is authorized to take jurisdiction to enter custody 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.
- *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 Declaratory Judgement 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

 - “[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”

³¹ Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 2(D)(4) – Validity of Order - Continuing Jurisdiction, 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/>.

³² INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

- Location of Harm to Child: The abuse, abandonment, or neglect may have taken place in 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 declaratory judgement procedures apply to cases in which immigrant children are seeking SIJS findings including jurisdiction, evidentiary rules, and state laws regarding whether, to whom, and how service of process may need to be accomplished in declaratory judgement cases.
 - When a declaratory judgement order is final. All appealable state court orders are considered final orders.
 - Best Interests:³⁴ 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 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.

³³ See 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)(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)(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)(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 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 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/>.

- *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.³⁵
- *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*³⁶ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence*³⁷ 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 occurring³⁸
 - *Forced Marriage:*³⁹ 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 in awarding custody. 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.
- *Level of Detail in Court Order:* The order should contain sufficient detail to clearly state

³⁵ 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/>; *Appendix K: State Law Definitions of Child Abuse*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 1-33 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-k-state-law-definitions-of-child-abuse-chart/>; *Appendix L: State Law Definitions of Abandonment*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-l-abandonment-of-children-statutes-definitions/>; *Appendix M: State Law Definitions of Child Neglect*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-m-state-law-definitions-of-child-neglect-chart/>.

³⁶ 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/>.

³⁷ 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/>.

³⁸ 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/>.

³⁹ 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/>.

- 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 declaratory judgements.* In a declaratory judgement case, these findings can be simply stated:
 - *Custody, Care, Placement:*
 - *Dependency-Federal Foster Care:* Addressing the placement of the child:
 - “*Child’s name* has been placed at *name of institution* by the U.S. Department of Health and Human Service’s Office of Refugee Resettlement. Based upon the evidence before the court and the application of *insert state law code section*, this court enters a declaratory judgment confirming that the placement of *child’s name* with *name of institution* is in the child’s best interests. This court order does not modify the terms of the *child’s name’s* placement. This court makes the following findings of fact that support the court’s declaratory judgement regarding *child’s name*:
 - *Facts of abuse, abandonment, neglect or similar basis under state law suffered by the child perpetrated by child’s name’s mother*
[describe the facts of the harm caused by the mother to the child]
 - *Facts of abuse, abandonment, neglect or similar basis under state law suffered by the child perpetrated by child’s name’s father*
[describe the facts of the harm caused by the father to the child]
 - *Prior Court Order*
 - On *date*, *Judge name* after presiding over a multi-day trial in a contested custody case involving *Child’s name* found that based on the following facts it was in the child’s best interests for the child’s mother, *mother’s name*, to be granted sole physical and legal custody of *child’s name*. The findings of fact made by the court granting *child’s mother’s name* custody included the following facts:
 - [insert facts court’s findings in the contested custody case and attach the court’s written order or a transcript of the court’s order issued orally on the record as an appendix to this declaratory judgment. The facts included in the declaratory judgment should include facts found by the prior court regarding the details of:
 - The child abuse perpetrated by the child’s abusive parent
 - Domestic violence perpetrated by the child’s parent against the child’s other parent and/or the child
 - The child neglect perpetrated by the child’s abusive parent

- *This court* is issuing this declaratory judgement adopting the findings made by the court in the custody action and not changing the placement of the child.
- *Best Interests to Not Return:*
- *Dependency- Federal Foster Care:* 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--
 - *Child’s name* is currently under the care and custody of *name of institution* and this court has declared that under this state’s best interests laws *cite* and it is the child’s best interests to remain in that placement. The court has considered the totality of the evidence in this case and the findings of fact this court has made as to the [summarize the abuse, abandonment, neglect or similar harm described under state law suffered by the child. This summary should address each parent separately]. Additionally, having taken evidence on potential care givers in the *child’s name’s* home country and applied *this states’s code section* best interests of the child laws, this court has found that there are no fit and proper custodians for the child in *name of the child’s home country*. [Insert here findings as to each potential placement in the home country and why placement with the child with that person would not in the child’s best interests. For example: The child’s father and grandmother living in *name of country* are not fit and proper placements for *child’s name* because the father is the perpetrator of the abuse that *child’s name* suffered and the abuse took place in the home of the child’s paternal grandparents who took no actions to stop the abuse].
 - “*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*].
 - *Prior Court Order*
 - “*Judge’s name* issued a prior court order at the end of a contested custody case in which the court placed the child in the custody of their parent *name* who has been the primary care taker of the child and who is a fit and proper custodian. *Name* resides in the state of *State*. After having considered the findings made by the prior court in this case and the evidence presented to this court in this declaratory judgement proceeding based on the totality of the evidence [refer to the details of the abuse, abandonment, neglect found] the court finds that it is not in the child’s best interests to be returned to live in *Country*.”

- “*Child’s Name* has been placed by this court in the custody of *Parent’s Name* with whom it is in the child’s best interests to reside in *State*. It would not be in the Child’s best interest to return to *Country* where there are no caregivers the court finds are fit to care for the child.”
- “*Abusive Parent’s Name* who subjected the child to [summarize abuse or neglect]
 - *When the abuser currently resides in the child’s home country add: “Abusive Parent’s Name* resides 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*.”
- *Address any family members residing in the home country who under state law could be potential custodians for the child.* This can include a parent or grandparent or any other family member that state law would require be considered in a best interests determination for a custody under state law. As to each potential custodian state facts as to why placement with that custodian is not in the child’s best interests under state law:

Example: Respondent *father’s name* perpetrated acts of abuse against *child’s name* both in *State* and in *country of origin* prior to the family’s arrival in *State*. The abuse occurring in *county or origin* occurred in the child’s grandmother’s home and the grandmother took no action to stop the abuse. [Include findings of abuse that occurred in the home country in grandmother’s house and the steps that the grandmother took or did not take to protect the child and any participation the grandmother had in the abuse.]

 - “*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:* SIJS findings must include findings stating the court’s conclusion that 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 such as, “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.
 - *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, why visitation is denied or

restricted for the abusive parent and/or findings supporting the court order's limitation of contact of the abuser with the child to visitation]. These findings constitute abuse under *State Law Code Section*."

- *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*."