

Chapter V-5 Quick Reference Guide

SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS IN DELINQUENCY PROCEEDINGS¹

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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 perpetrated 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

- 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.

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² See Leslye E. Orloff, *Chapter 1: 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 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

³ See 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 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).

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 reasons why the judge granted custody, guardianship or placement to one person

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, 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.”).

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/>.

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.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 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 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 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 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).

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 Delinquency Proceedings

- *Delinquency proceedings are appropriate and common cases in which SIJS findings can be issued:* In a delinquency case, after the judge issues a juvenile delinquency adjudication, in the orders the court issues regarding placement of the child the court can include SIJS findings.
 - 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.
 - SIJS findings can also be included in court orders when the child is ordered into a diversion program.
 - 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 their home country who are currently residing with a non-perpetrator parent in the United States who is asking that the child be placed with them. These facts could be present in a divorce, legal separation, custody, guardianship, or child welfare 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., has been deported from the U.S. or may have left the U.S. for other reasons.
 - Some children against whom juvenile delinquency cases are initiated may be children whose cases are more appropriate for the juvenile dependency system. If these children win dismissal of the juvenile delinquency case, but qualify for SIJS, the child will not have an open court case in which the court could issue SIJS orders.
 - Under the law of some states, it may be possible to convert a delinquency proceeding to a proceeding focused on child protection when there is evidence that the child was abandoned, or subjected to abuse, neglect, or other maltreatment. This approach allows the child to benefit from the court protection offered to child victims in dependency cases with court orders that also make SIJS findings.
- *The fact that the child is seeking SIJS orders does not limit the delinquency court's placement options:* SIJS children can benefit from the full range of placement options states have available in any delinquency case to identify a placement that is in the child's best interest. The determination of which placement is in the child's best interest will focus on the state best interest factors and

immigration status is not relevant to this determination.¹⁶ Placement options include in SIJS cases as in all cases:

- In home placement with the child's non-abusive parent with ongoing court supervision of the juvenile
- Out of home placement that could include:
 - Kinship care placements (e.g. grandparents, other family members)
 - Fictive kinship placements (e.g. godparents, family friends, other responsible adults)
 - Juvenile detention facility
 - State foster care
- The goals of placement and supervision of children with juvenile delinquency adjudications is to issue court orders and placements that create the structure, support and ongoing court monitoring that is needed in the child's life and support that moves him child towards reaching his full potential.
- *Making findings about the acts of abuse, abandonment or neglect perpetrated by one or both of the child's parents in delinquency orders.* The court record in a delinquency case will contain evidence (e.g. probation report, testimony) about the child's history of child abuse, child neglect and/or abandonment that may have contributed to and/or that will affect placement decisions regarding the child. This evidence is relevant to and used in the court's decision-making and orders regarding identification of a placement for the child that is in the child's best interest.
- *Making findings separately for each parent:* When issuing SIJS findings in dependency cases court will need to separately determine which acts of abuse, abandonment and/or neglect were perpetrated by each of the child's parents. Common facts will include cases in which the:
 - Child was abandoned by his father years before in the child's home country and
 - The child is abused by a person living in his mother's home in the United States
 - The child's mother abused or neglected the child in the U.S.
 - Child was abused, neglected or abandoned by both parents in the child's home country and the child has come to child welfare attention because the child was abused by the persons caring for him in the U.S.
 - Child's parents or parent are deported from the United States and child has come to child welfare attention through a report from school officials
- *Best interest factors that affect the delinquency placement, monitoring and court supervision and the SIJS finding that it is not in the child's best interest to return to the child's or the parent's home country.* Courts issue orders in delinquency cases that create structure in the lives of the children who receive juvenile delinquency adjudications. Children are ordered to receive therapy, treatment

¹⁶ When an immigrant SIJS eligible child is placed with a citizen or qualified immigrant foster parent, the foster parent can receive the Title IV-E foster care payments for the care they provide the SIJS eligible child. Title IV-E foster care payments are funds paid from the Federal Foster Care Program to provide safe and stable out-of-home care for children until the child can be safely returned to their home, placed permanently with adoptive parents, or placed in other planned arrangements for permanency. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH AND HUMAN SERVS., TITLE IV-E FOSTER CARE (last reviewed 2015), <https://www.acf.hhs.gov/cb/resource/title-ive-foster-care>. However, when both the foster parent and the SIJS eligible child are not qualified immigrants or citizens, no Title IV-E foster care payments can be made to that household. Additionally, foster parents who recently became qualified immigrants will have to wait five years after the date they became qualified immigrants to receive foster care payments. See *Title IV-E, General Title IV-E Requirements, Aliens/Immigrants: Question 9, Are Title IV-E Agencies Required to Verify the Citizenship or Immigration Status of Individuals Receiving Services or Payments Under Title IV-E?*, in CHILDREN'S BUREAU, DEP'T OF HEALTH AND HUM. SERVS., CHILD WELFARE POLICY MANUAL (2018), https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=45. The list of qualified immigrants includes, but is not limited to: lawful permanent residents, refugees, asylees, Amerasians, T visa applicants, and VAWA self-petitioners. Soraya Fata, Leslye E. Orloff & Monique Drew, *Access to Programs and Services that Can Help Victims of Sexual Assault and Domestic Violence*, in EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT 3, <http://niwaplibrary.wcl.american.edu/pubs/ch16-programaccessforsexassaultdvvictims/>.

and specialized services.¹⁷ Courts play an active role in monitoring the child’s progress in treatment, in school, and in the placement chosen by the court through scheduled status hearings. It is important for courts writing SIJS orders to list the services and requirements that the court is ordering for the juvenile and to discuss how the child’s return to his home country would interfere with the delivery of these services that under state law it is in the child’s best interest to receive.

- *Lawful permanent residence and admissibility:* Once a child’s SIJS application is approved a child is eligible to file for lawful permanent residence. The application for lawful permanent residence requires proof that the child is admissible to the U.S.
 - Although a juvenile delinquency disposition is not considered a “conviction” for immigration purposes, juvenile adjudications can have immigration consequences for immigrant children who will be filing for relief based on an approved SIJS application:
 - Juvenile adjudications can negatively affect discretionary determinations that DHS makes in the course of adjudicating the lawful permanent residence application. Criminal convictions are not required.
 - SIJS children may be able to obtain waivers of inadmissibility for certain offenses that DHS has the authority to exercise its discretion to waive. Other offenses will make a child inadmissible. For a discussion of the impact that juvenile adjudications, arrests, and criminal convictions may have on an immigrant child’s SIJS application and ability to attain lawful permanent residence, see Chapter VI – *Inadmissibility in Special Immigrant Juvenile Status Cases*. This chapter contains lists of:
 - Exemptions from inadmissibility that apply in SIJS cases;
 - Offenses for which a discretionary waiver is available;¹⁸ and
 - Offenses that are not waivable.

Procedural Considerations¹⁹

- *Service of Process:* Special Immigrant Juvenile Status imposes no additional service requirements. The rules for who must be served in a delinquency proceeding are governed by state law. How service is to be effected in delinquency proceeding is also governed by state law. The same service

¹⁷ Orders for drug counseling or random drug testing included in the court’s juvenile adjudication order could lead to Department of Homeland Security adjudicators finding that child inadmissible and denying his application for immigration relief. For children who have been crime victims and may be eligible for SIJS or another form of crime victim-based immigration relief, courts should consider including drug related services the child needs in a separate court order. 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, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/> (discussing inadmissibility and the extent to which files considered confidential or sealed in state courts are being obtained and reviewed by immigration adjudicators when immigrant children and adults file for immigration relief, including the forms of relief designed to help crime victims).

¹⁸ When the court ordered supervision and monitoring of a child who is the subject of a juvenile adjudication results in improvements in the child’s behavior, success in school, healing from trauma, and participation in their community. These improvements can become an important part of the child’s case seeking discretionary waivers from immigration officials adjudicating the child’s SIJS and lawful permanent residence applications.

¹⁹ 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.

of process requirements apply in cases involving immigrant children seeking SIJS findings as in any other delinquency 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 delinquency adjudications. Attorneys representing parties in these proceedings 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.²⁰ 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 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.

Best Practices for SIJS Findings in Delinquency Cases

- *Special Immigrant Juvenile Status Statute*²¹ 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

²⁰ 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/>.

²¹ INA § 101(a)(27)(J), 8 U.S.C. § 1101(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 United States or abroad.
- *State law governs*:²²
 - *The types of court proceedings* in which state courts can issue orders regarding the custody, placement, or recognition of an existing placement.
 - *State court delinquency procedures* including jurisdiction, evidentiary rules, parties who are to receive notice and due process.
 - *When a delinquency order is final*. Delinquency orders are final when the court adjudicates the matter and decides placement. All appealable state court orders are considered final orders. The court continues to monitor the juvenile’s progress with status hearings that can continue until the child turns the age of majority under state law.
 - *Best Interest*²³ 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 interest 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.

²² 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 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/>.

²³ 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/>.

- *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.
- *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.²⁴
- *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*²⁵ under most state statutes is similar to abuse and often requires more harm to a child than neglect
 - *Domestic violence*²⁶ 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 occurring²⁷
 - *Forced Marriage*:²⁸ 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.

²⁴ 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/>.

²⁵ 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/>.

²⁶ 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/>.

²⁷ 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/>.

²⁸ 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/>.

- Best Practice: In SIJS cases state courts apply state law to the findings of fact regarding the child and the laws applied in delinquency proceedings. State laws are also used to make each of the SIJS findings. The court order should include citations to the state laws the court order 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
 - 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 Delinquency. In a delinquency case, these findings can be simply stated:

- *Custody, Care, Placement:* Addressing the placement of the child with the petitioner for custody:
 - Example: “*Child’s name*, who has been adjudicated delinquent by this court, shall be placed in the care and custody of [insert the name and relationship of the placement e.g. child’s grandmother]. *Child’s grandmother, name*, will provide the structure and supervision *Child’s name* needs and is a fit and proper placement. *Child’s grandmother’s name*, has been and will continue to be responsible for providing for [insert examples from the facts of the *case* may include court ordered counseling and treatment, health care, schooling, addressing special needs of the child including particularly needs related to healing from trauma and abuse]. It is in the child’s best interests to be placed in the care, custody, and control the child’s grandmother.”
- *Best Interest 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 has placed the child in the custody of their grandmother *Grandmother’s name* who is a fit and proper placement. *Grandmother’s 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 separately for each parent] 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 *Grandmother’s Name* with whom it is in the child’s best interest 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. [Add detailed findings that support this conclusion].”
 - “*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 ordered that the child receive] 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 would 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*.”
 - *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*. *Non-Abusive Parent’s Name* has been awarded physical and legal custody *Name of Child* and *Abusive Parent’s Name* will be limited [insert the description of the visitation granted (e.g., overnight visitation every other weekend) and including all limitations on visitation with the child (e.g., supervised visitation, use of a visitation center to monitor visitation, supervised visitation exchange)].”