

**Chapter II:
Details About Special Immigrant Juvenile Status (SIJS) Findings¹**

**By: Leslye E. Orloff
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State Court Findings Required

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

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

This section elaborates upon these findings and provides a more in depth review of each. Since the state best interests of the child laws play an important and specific role in each of the required SIJS findings, Chapter IV- *Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Cases*, provides a detailed discussion of this role.

Dependency – Exercising Jurisdiction to Decide Matters of Care and Custody

A broad definition applies to the requirement in the SIJS statute that a child be “declared dependent on a juvenile court” or “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.” This finding is usually the most straightforward of the SIJS findings, because it simply recognizes when a court has exercised jurisdiction under state law over a child welfare or custody matter.

First, regardless of its formal title under state law, for SIJS immigration purposes any state court that makes determinations regarding the care and custody of children is a “juvenile court.”³ The “title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile,

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² Immigration and Nationality Act (“INA”) § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (2012).

³ 8 C.F.R. § 204.11(a) (2012) (defining a state “juvenile court” as any “court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles”).

family, dependency, orphans, guardianship, probate, and delinquency courts.”⁴ Stated differently, it is the function of the court to make decisions regarding children and not the court’s title that governs whether a court is a juvenile court.

Second, a child is “dependent on a juvenile court” whenever that court exercises its jurisdiction to make a decision about the care and custody of a child, regardless of the outcome of the proceeding. Simply exercising jurisdiction, i.e. any time a child is “the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court,”⁵ is sufficient to satisfy this requirement of the SIJS statute. This means that to establish “dependency,” state court proceedings require neither official state intervention, as in child welfare or child protection proceedings, nor a decision to place the child in any particular form of care. The mere “acceptance of jurisdiction over the custody of a child by a juvenile court . . . makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care or, as here, in a guardianship situation.”⁶

Decisions about the care and custody of children can arise in a variety of proceedings, including but not limited to matters involving custody determination or modification, guardianship, adoption, dependency, delinquency, child support, divorce, legal separation, parenting plan modification, civil and criminal protection orders, paternity, termination of parental rights, or declaratory judgments. Just as the name of the court does not matter, the type of proceeding that leads a state court to make decisions about the care and custody does not matter for SIJS eligibility. For example, a decision adjudicating a child delinquent and making determinations about his custody can serve to establish the requisite dependency on the juvenile court.⁷ A chart below provides further detail regarding jurisdiction in a variety of settings, and Quick Reference Guides for courts presiding over several of the common types of state court proceedings in which SIJS orders are issued will be found in Chapter V – *Quick Reference Guides by Type of State Court Proceeding*.

⁴ U.S. Citizenship & Immigration Servs., *Volume 6: Immigrants, Part J, Special Immigrant Juveniles*, in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS (2017) [hereinafter SIJS BENCH BOOK], <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>. See also Rachel G. Settlege, Elizabeth A. Campbell & Veronica T. Thronson, *Special Immigrant Juvenile Status*, in IMMIGRATION RELIEF: LEGAL ASSISTANCE FOR NONCITIZEN CRIME VICTIMS 69 (ABA 2014) (noting that Special Immigrant Juvenile findings are made routinely for “undocumented children in variety of settings in which state courts are involved in making determination of custody, such as juvenile delinquency proceedings and the placement of unaccompanied minors”); Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. 48, 54 (2012) (“Whether a court is a ‘juvenile court’ under the federal definition is not determined by the label that the state gives to the court, but rather by the court’s function.”). For a list of the types of case proceedings in which SIJS findings can be issued see *Appendix J: Types of Proceedings in Which State Courts Can Make Special Immigrant Juvenile Status Findings* in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

⁵ See 8 C.F.R. § 204.11(c)(6).

⁶ See Menjivar, 29 Immigr. Rep. B2-37 (1994), <http://niwaplibrary.wcl.american.edu/pubs/matter-of-menjivar/>.

⁷ *Leslie H. v. Superior Court*, 168 Cal. Rptr. 3d 729, 738 (Cal. Ct. App. 2012) (holding that a youth “adjudicated a delinquent, placed in juvenile hall, and committed upon release to ongoing child welfare agency supervision qualified under section 1101(a)(27)(J)(i) as a child in dependent, committed, or custodial care”). See also *In re Mario S.*, 954 N.Y.S.2d 843, 851 (N.Y. Fam. Ct., Queens Cty. 2012) (noting that “at the time the [SIJ] motion was filed and granted, the juvenile was a dependent child under New York law as he was a juvenile delinquent placed in the legal custody of a state agency and was under the continuing jurisdiction of the Family Court”); *In re D.A.M.*, No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012) (finding juvenile court dependency in delinquency proceeding).

Critically, state courts making SIJS findings must exercise jurisdiction under state law. Most states have no provision for special proceedings to adjudicate requests for SIJS findings. Rather, the findings are made as part of the orders the court issues in underlying matters in which the court is exercising jurisdiction over children pursuant to state law. The “juvenile court order must have been properly issued under state law to be valid for the purposes of establishing eligibility for SIJ classification. This includes the need for the juvenile court to follow their state laws on jurisdiction.”⁸

Further, the order should expressly state and explain the state law provisions under which the court is acting. USCIS notes that the “order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law.”⁹ Best practices are to include in the state court order a statement of the court’s jurisdiction citing the state statute, court rule, or other authority under which it is exercising jurisdiction. Similarly, courts should include in the court order state law citations to state statutes defining children’s best interests and to state law definitions of abuse, abandonment, neglect, and any other state statutes the court relies upon in issuing its orders regarding custody, care and/or placement determination. Including citations to state law is very helpful to USCIS adjudicators of SIJS cases who are responsible for adjudicating SIJS applications that include state court orders issued applying the 52 different state family laws from states and jurisdictions across the country.

Reunification – Exercising Jurisdiction to Decide Matters of Care and Custody

To qualify for SIJS, the state court must determine that “reunification with [one] or both of the [child’s] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.”¹⁰ This finding involves a number of issues that are discussed below.

Viability of Reunification – Timing

A finding for SIJS purposes that reunification is not viable does not require formal termination of parental rights or a determination that reunification will never be possible.¹¹ Still, “[l]ack of viable reunification generally means that the court intends its finding that the child cannot reunify with his or her parent (or parents) remains in effect until the child ages out of the

⁸ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 2(D)(4): Validity of Order (Issued under State Law)*, in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

⁹ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 3(A)(2): Juvenile Court Orders and Administrative Documents, Findings*, in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL 12 (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

¹⁰ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

¹¹ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification* (August 23, 2017), in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (specifying that “actual termination of parental rights is not required”).

juvenile court's jurisdiction."¹² State court orders, however, often do not expressly state the duration of the order and this is an area where federal adjudicatory inexperience with family law can create confusion during the federal adjudication process. A well-crafted state court order can ameliorate this.

Most state jurisdictions do not specifically label decisions short of termination of parental rights as "permanent" or "in effect until child reaches the age of majority." Although some jurisdictions specifically label all decisions short of termination as "temporary" the expectation is that the decision will remain in effect indefinitely and, absent changed circumstances, until the child reaches adulthood. State court orders are final and appealable once the court completes the adjudication of the original case. When a state court issues a final order regarding the custody or placement of a child, whether the order is issued after a contested hearing or in settlement of a court action, this is a final order and not temporary.

State laws consider family court orders final in custody and protection order cases and courts can make non-viability findings in cases where the order includes supervised or unsupervised visitation between the child and his abusive parent. This is because custody and visitation serve different purposes. In family violence and child abuse cases state laws designed to ensure that custody is awarded to the non-abusive parent, do not preclude visitation with the abusive parent. The fact of visitation in these and most other family court cases involving child abuse, neglect or abandonment is not inconsistent with a court ruling that reunification, which essentially means returning the child to live with the abusive parent, is not viable.

Similarly, the fact that a court allows ongoing contact through visitation does not mean that reunification is viable. This is true even where the court plans to continue to monitor the case through status hearings in domestic violence related custody cases or periodic review hearings for children in delinquency, dependency and guardianship cases. These status hearings purpose is to maintain court involvement in monitoring children and to continue issuing orders that adapt to children's needs and best interests. To change the custody or placement of a child under state laws would require notice, motion, a substantial change in circumstances and a new potentially contested adjudication.

Further, the court can find that reunification is not viable even if there are ongoing, perhaps mandated, efforts to reunify the child with a parent. For example, just because "the [government] intends to return [a child] to the custody of his mother at the end of his current placement does not, standing alone, establish that reunification with the mother is viable. Planning for the return of appellant to his mother after his placement does not answer the question of whether appellant will be able to successfully live in her care."¹³ Just because the state goal is parental reunification, this does not mean that such reunification will take place unless a number of milestones and criteria are satisfied. If the status quo of non-reunification will

¹² U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification* (August 23, 2017), in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK, 6 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (last visited Mar. 26, 2018).

¹³ *In re* D.A.M., No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012).

remain in place absent further and different decisions by the court, the court can issue orders stating that reunification is not viable.

As with all other findings, this aspect of the “order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law.”¹⁴ An order expressly noting its finality would certainly be most clear for federal adjudicators who are unfamiliar with the variations of state family law. If that is not possible, some reference to the expectation that the court anticipates its decision will remain in effect, perhaps with identification of changes that could prompt reconsideration, will help the federal adjudicator understand the scope, appealability, and expectations about the permanence of the order. More explicit state court orders may help reduce the need for federal litigation of SIJS cases or may provide a mutually understood grounding for litigation should it become necessary.

Viability of Reunification – One or Both Parents

Among the changes to the SIJS statute that Congress made in 2008 was to make the reunification language more precise. Old language that the child must be “eligible for long-term foster care” and that “family reunification is no longer a viable option” was discarded in favor of the more precise language to specify viability of reunification with “1 or both parents.”¹⁵ USCIS was slow to reveal how it interpreted this change and, prior to the issuance of guidance, some state courts struggled with whether this language was intended to apply when a child could not be reunited with one parent yet continued to live with the other.¹⁶ However, USCIS has now published guidance on this provision and states unequivocally that it accepts the plain language of the statute so that it “interprets the TVPRA changes as a clarification that petitioners ... may

¹⁴ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 3(A)(2): Findings* (August 23, 2017), in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html>; *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 12, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

¹⁵ See William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008); INA § 101(a)(27)(J); 8 U.S.C. § 1101 (a)(27)(J). See also *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK, 9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>. (“The TVPRA 2008 replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable.”).

¹⁶ *In re D.A.M.*, No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012) (“The federal statute confers SIJS eligibility when reunification with one parent is not viable. A finding of viability of reunification with appellant’s mother therefore does not dispense with the need to determine the viability of reunification with appellant’s father.”). See also *In re Mario S.*, 954 N.Y.S.2d at 851 (Although respondent was able to be returned to the custody of his mother upon his discharge from agency custody and the jurisdiction of the Family Court, he was both dependent upon the Family Court and abandoned by his biological father at the time of the motion. The fact that respondent was returned to the care of his mother should not be determinative of his application for SIJ findings.); *In re Marcelina M.-G v Israel*, 973 N.Y.S.2d 714, 722 (N.Y. App. Div. 2014) (“We interpret the ‘1 or both’ language to provide SIJS eligibility where reunification with just one parent is not viable as a result of abuse, neglect, abandonment, or a similar State law basis . . .”). See *In re Erick M.*, 820 N.W.2d 639, 648 (Neb. 2012) (rejecting a “literal reading of the statute [that] would seem to permit a state court to ignore whether reunification with an absent parent is feasible”). This Nebraska decision resulted from the court’s reliance on a regulation issued prior to the passage of the 2008 amendments that explicitly superseded the regulation. It is important to note that since the Nebraska decision was rendered, the Department of Homeland Security has issued a policy manual on SIJS that implements the TVPRA 2008 amendments and confirm that a child is eligible for SIJS when reunification is not viable with one of the child’s parents. See *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

be reunified with one parent or other family members.”¹⁷ Therefore, a “qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent’s abuse, neglect, or abandonment of the petitioner.”¹⁸

As with all other SIJS orders, when children living with one parent ask the juvenile court to take jurisdiction, they will need to establish proper state law authority for the court to act. For example, in jurisdictions where guardianships are not available or commonly used by a parent, to determinations of custody, paternity, or termination of parental rights may provide an appropriate state law vehicle for the court to exercise jurisdiction related to the care and custody of children. Stating the basis of the jurisdiction for the findings under state law helps ensure that federal adjudicators will properly understand the nature of the underlying state proceeding.

It is not unusual that children who have had no or limited contact with a parent lack formal proof of the identity of the missing parent. This is exacerbated where a parent is not listed on the child’s birth certificate. Although immigration law has its own statutory definition indicating when a parent-child relationship is recognized for immigration purposes,¹⁹ it generally defers to state law in this context, such that “the findings must be based upon the person who is the petitioner’s parent (or parents) under state law.”²⁰ Under this approach, although immigration law generally recognizes step-parents as parents, USCIS asserts that the term parent “does not encompass a step-parent unless the step-parent is recognized as the petitioner’s legal parent under state law, such as when a step-parent has adopted the petitioner.”²¹ In cases where there is ambiguity regarding the identity of a parent, the state court should set forth the state law and any factual findings that it makes regarding the parent. In such instances, “[i]f the juvenile court order establishes that the person . . . is the petitioner’s parent . . . , USCIS generally considers this requirement met.”²²

Viability of Reunification – Due to Abuse, Neglect, Abandonment, or Similar Basis

To qualify for SIJS, the non-viability of reunification with a parent must be “due to abuse, neglect, abandonment, or a similar basis found under State law.”²³ There is no governing

¹⁷ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.9, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>. See also *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles, Chapter 2(D)(2): Parental Reunification*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 9 n.6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (“USCIS generally requires . . . that the court intends that the child will not reunify with at least one parent until the child reaches the age of majority.”).

¹⁸ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

¹⁹ INA § 101(b)(1), 8 U.S.C. § 1101(b)(1).

²⁰ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6 <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²¹ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²² *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 6, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²³ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

federal definition of these terms, and USCIS states the “order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law.”²⁴ When the state law basis of the findings are clear, “USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about abuse, neglect, or abandonment.”²⁵

Abuse, Neglect, or Abandonment

Utilizing its own state definitions, the state court should identify the factual reasons that reunification is not viable and link its findings to the elements and factors found in these definitions. While each state has its own definitions of abuse, neglect, and abandonment, the underlying elements are remarkably consistent across jurisdictions. As appendices to this manual, we have included charts tracking state-by-state and highlighting the common themes in state law definitions of abuse, abandonment and neglect. These charts provide a helpful guide to judges in identifying the relevant inquiries.²⁶

Keep in mind that the court applies state law to acts of abuse, neglect, or abandonment when they took place in the state and when they took place abroad. For example, if a child was abused in Guatemala the court applies the state law definition of abuse and determines whether the treatment of the child in Guatemala would constitute abuse under state law. The court must, however, describe how the actions of the abusive parent fit the state law definition of abuse. Also, the statute requires a factual finding of abuse, neglect, or abandonment, but does not require that formal charges of abuse, neglect or abandonment be levied against a parent.²⁷ As with all the SIJS findings, these are simply articulations of the factual determinations that support the underlying care and custody decisions.

Similar Basis Under State Law

The term “similar basis under the state law” was added to the statute to give judges more leeway in states that use terminology or recognize additional state law child protection, child welfare, or child best interests bases that prevent a child’s reunification with a parent. This

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

²⁵ *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK 4, <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/>.

²⁶ The SIJS Bench Book, Appendices K-M include charts with the state law definitions of abuse, abandonment, and neglect and track common themes in these state law definitions and list the multiple state statutes defining these terms. See *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/>.

²⁷ *In re D.A.M.*, No. A12-0427, 2012 WL 6097225, at *7 (Minn.Ct. App. Dec. 10, 2012) (“[T]he SIJS statute does not require child-protection proceedings as a prerequisite for determining whether reunification is viable.”); see also Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. 48, 57 (2012) (“Importantly, the abuse, neglect, abandonment, or similar condition language does not require that formal charges of abuse, neglect, or abandonment be levied against parents.”).

addition accommodates the range of statutory language employed in various jurisdictions to determine when a state court can make decisions about custody of children, beyond the narrower categories of abuse, neglect or abandonment.²⁸ For example, a court may exercise jurisdiction to make a decision related to care and custody of “a destitute child” in New York,²⁹ a child who is “without proper custody or guardianship” in Michigan,³⁰ or a child whose parent is deceased.³¹ Where there is a legitimate underlying child welfare reason for the state court to exercise jurisdiction over a decision regarding the care and custody of a child, it need not be explicitly abuse, neglect, or abandonment.

However, the basis must be similar to abuse, neglect, or abandonment, and the court must spell out the connection. This means that in many cases even if the title of the harm caused to the child is different, it is more straightforward to simply identify the specific facts as meeting the state’s definition of abuse, neglect, or abandonment. A child without proper care or custody is certainly in a situation similar to that of an abandoned or neglected child. Depending on the precise wording of the relevant jurisdiction’s statute, it is likely that the child meets the definition of an abandoned or neglected child.³²

This effort to reconcile the facts of the child’s case to the state’s statutes can be critical. For example, the death of a parent alone may not fit neatly in the definition of abandonment under state law. But a parental death with no arrangement for future custody or which leaves the child without any provision for support may fit within neglect or other statutes under state law.³³ Identifying and articulating the connection between the legitimate need of the child and the state statute under which the court can take jurisdiction to ensure that the child receives care is critical. The court’s reasoning and authority to issue the court order which includes SIJS findings makes it possible to assert the child’s qualifications for SIJS before federal authorities.

Best Interest of the Child

Any time a state court makes a decision about the care and custody of a child, it takes the best interests of the child into account. It is this experience and expertise that Congress sought to tap when it required that SIJS petitioners provide a state court determination that it “would not be

²⁸ See William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, § 235(d), Pub. L. No. 110-457, 122 Stat. 5044 (Dec. 23, 2008).

²⁹ See N.Y. SOC. SERVS. LAW § 371(3) (LexisNexis 2018).

³⁰ See MICH. COMP. LAWS § 712A.2(4)(b)(1) (2015).

³¹ *In re Luis R.*, 990 N.Y.S.2d 851, 852 (N.Y. App. Div. 2014) (finding “reunification . . . with one or both of his parents is not viable due to the death of his father”).

³² The SIJS Bench Book appendices include a review of state laws regarding domestic violence, child endangerment, and forced marriage and compares these to state law definitions demonstrating how in each state these crimes against children also fit within the state law’s definitions of abuse, abandonment, or neglect. The charts will help courts craft orders and findings of fact demonstrating that children protected by state domestic violence, child endangerment, and forced marriage statutes are also by definition covered by state laws protecting children against child abuse, abandonment, and/or neglect. 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/>; *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/>; *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/>.

³³ See, e.g., CAL. WELF. & INST. CODE § 300(g) (West 2016).

in the [child's] best interest to be returned to the [child's] or parent's previous country of nationality or last habitual residence.”³⁴

As with the other portions of the SIJS statute, there is no federal definition of “best interests of the child,” and state law controls. In making its findings, the court must look to the best interest definitions and factors that it utilizes under its state law. While each state has its own definition, discussions, elements or factors to consider in making a best interests determination, the underlying elements follow consistent themes and often identical language across jurisdictions. Included as an appendix to this manual are maps that track the similarities among each best interests of the child laws of each U.S. state and jurisdiction.³⁵

The appendix to this manual contains information about the statutory language or case law governing best interests of the child determinations in each state. When state laws have more than one definition of best interests of the child, usually in the child welfare and child custody statutes, both are included. Appendix Q - *Best Interests of the Child Maps— Summary Matrix* opens with a summary matrix that provides a quick reference chart tracking common elements in state best interests of the child definitions. Next is a map identifying states with best interest of the child laws included in state statutes followed by the full text of each states' best interest of the child statute. Finally, Appendices Q1 to Q12 provide infographic maps for the 12 most common themes in state best interest of the child governing laws³⁶ statutes and case law and provide a map for each factor followed by the text of each state's laws discussing that factor. These infographic maps provide a quick reference that identifies when states have identical or similar best interests of the child factors, highlights the factors that are most commonly present in state law, and will facilitate access by judges, court staff and attorneys to case law decided applying similar or identical statutory best interests factors in other states. These maps and charts provide a helpful guide to judges in identifying the relevant factors to apply in SIJS, custody and child welfare cases.

Some factors which are commonly present include emotional ties and relationship between the child and parents, siblings, family and household members, or other care givers;³⁷ capacity of the parents to provide a safe home and adequate food, clothing, and medical care;³⁸ mental and physical health needs of the child;³⁹ mental and physical health of the parents;⁴⁰ and the presence of domestic violence in the home.⁴¹ It should be noted that, some states require that the socio-economic status of the birth parent or caregiver not be considered when determining the best interest of the child.⁴² For an in-depth discussion of best practices for how a court

³⁴ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

³⁵ See *Appendix Q: Best Interests of the Child Maps—Summary Matrix*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-4 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-q-best-interests-of-the-child-matrix/>.

³⁶ The vast majority of states have at least one best interests of the child statute. In a few states, the best interests of the child standard have been set by case law, and there is no statutory authority. For these states, the charts include the text from the controlling case law. Case law is only referenced in these charts for this limited purpose. The maps provide a guide that will help courts and attorneys find case law from jurisdictions that is based upon identical or substantially similar statutes.

³⁷ Connecticut, Delaware, Florida, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Michigan, North Dakota, Ohio, Oregon, Tennessee, Vermont, and Virginia.

³⁸ Florida, Georgia, Hawaii, Illinois, Maryland, Michigan, North Dakota, Texas, Vermont, and Wisconsin.

³⁹ Connecticut, Delaware, Florida, Georgia, Kansas, Maine, Michigan, Nevada, and Virginia.

⁴⁰ Delaware, Georgia, Kentucky, Michigan, North Dakota, South Dakota, Tennessee, Texas, and Virginia.

⁴¹ Delaware, Georgia, Kentucky, Michigan, North Dakota, Oregon, Tennessee, Texas, and Virginia.

⁴² California.

reaches the finding that it is not in the child's best interest to be returned to the child's or parent's home country or last habitual residence, see Chapter IV *Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Cases* of this manual discussing how state best interests laws apply to each of the SIJS findings.