

California Supreme Court Provides Direction to State Courts Issuing Special Immigrant Juvenile Status (SIJS) Predicate Orders – *In Re Guardianship of Saul H.*

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On August 15, 2022, the California Supreme Court published its opinion in *In re Guardianship of Saul H.*,¹ clarifying the standards that state courts must follow when ruling on requests to make predicate orders needed for an immigrant child’s petition to the federal government for Special Immigrant Juvenile Status (SIJS). Congress created the SIJS form of immigration relief to allow qualifying immigrant children to remain in the United States where a state court finds “it would not be viable to reunify the child with one or both parents because of ‘abuse, neglect, abandonment, or a similar basis found under State law’ and “it would not be in the [child’s] best interest to be returned” to the child’s home country.² The *Saul H.* court overturned a state probate trial court decision refusing to issue the predicate SIJS orders for an immigrant child who had demonstrated it was not viable for him to reunify with his parents who has abused and neglected him. . NIWAP, represented by Manatt, Phelps & Phillips, LLP, filed an Amicus Brief in this case.

In his native El Salvador Saul H. was sent to work in the fields by his parents at the age of 10 to help support his family.³ When Saul was 15, his parents removed him from school after gang members approached him, tried to recruit him, and threatened to kill him and his family when he refused to join.⁴ Saul started working to help provide for his family when he was approached and threatened again by a gang member.⁵ Saul saved up money and left El Salvador for the United States at the age of 16, against the wishes of his parents.⁶

In California, Saul lived with his relative and started going to school again.⁷ At 18, Saul petitioned the probate court to appoint his relative as his legal guardian and also petitioned for issuance of a predicate order that he needed to support his application to the federal government for SIJS.⁸

Despite the uncontroverted evidence that it would not be workable to send Saul back to El Salvador to reunify with his parents,⁹ the probate court denied his request for SIJS findings.¹⁰ Saul appealed and the Court of Appeal affirmed,¹¹ but the California Supreme Court reversed, with all justices concurring in the judgment.¹²

In its opinion, the California Supreme Court provides very helpful clarification and direction that will assist trial courts and appellate courts in California, as well as state courts nationally, in carrying out their congressionally assigned role of making factual findings and issuing predicate orders that immigrant children need in order to apply to the federal government for SIJS immigration relief. The following chart summarizes the holding:

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	SIJ predicate findings	Reunification not viable when “abuse, neglect, abandonment, or a similar basis found under state law”	Returning to home country is not in the child’s “best interest”
A STATE COURT MUST:	Issue the findings if “there is evidence to support” them. ¹³ Allow a child to “obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law” based on “a primary reason” — not the only reason and not even <i>the</i> primary reason — the child seeks SIJ predicate findings.” ¹⁴	Interpret “not viable” to mean not “workable or practical to force the child to return to live with the parent.” ¹⁵ In a California case, interpret “similar basis found under state law” to mean the child “faces ‘a substantial risk [he] will suffer[] serious physical harm or illness as a result of’ his parents’ ‘failure or inability to adequately supervise or protect him,’” or similar laws of other states. ¹⁶	Apply state law when deciding if forcing the child to return to his home country is in his “best interest.” ¹⁷
A STATE COURT MUST NOT:	“[I]gnore or discredit facts shown by a child’s declaration based on surmise or on evidence outside the record or draw speculative inferences against the child.” ¹⁸ Make determinations on the child’s status under federal immigration law. ¹⁹	Base its findings on “whether a child’s parents are blameworthy.” ²⁰ Rely on “extra-record evidence or speculate about prevailing conditions in other countries” when determining if mistreatment qualifies as “abuse,” “neglect,” “abandonment,” or a “similar basis.” ²¹	Ignore consideration of a child’s wishes regarding return to his home country when deciding if to do so is in his best interest, if state law gives special weight to a child’s wishes. ²²
A STATE COURT SHOULD:	Considered whether the predicate facts are established even if the only evidence is a declaration by the child who is the subject of the petition. ²³ Make a record of its reasons if it rejects the child’s factual assertion and makes a factual finding contrary to the assertion. ²⁴	“Rely on any applicable definition [in state law] of abuse, neglect, abandonment, or similar basis to find nonviability of reunification.” ²⁵ “[C]onsider the history of the child’s relationship with the parent and whether the child would be exposed to harm if returned to live with the parent.” ²⁶ Interpret “similar basis” to include “mistreatment” that does not qualify as “abuse,” “neglect,” or “abandonment” under state law. ²⁷	Conduct a “case-specific, holistic comparison of the child’s circumstances in [his current state of residence] to the circumstances in which the child would live if repatriated, including the capacities of current or potential caregivers — who may or may not be the child’s parents — in each location.” ²⁸
A STATE COURT SHOULD NOT:	Disqualify a child for seeking findings for immigration purposes. A child can have dual or mixed motivations for seeking the juvenile court’s determinations. ²⁹	Apply narrow definitions of “neglect” and “abandonment” when determining if reunification is not viable. ³⁰	

¹ *In re Guardianship of Saul H.*, No. S271265, 2022 WL 3349241 (Cal. Aug. 17, 2022).

<https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>.

² *Guardianship of Saul H.*, at 3 (citing 8 U.S.C. § 1101(a)(27)(J)(ii)).

³ *Guardianship of Saul H.*, at 1.

⁴ *Guardianship of Saul H.*, at 1.

⁵ *Guardianship of Saul H.*, at 1.

⁶ *Guardianship of Saul H.*, at 1.

⁷ *Guardianship of Saul H.*, at 1.

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- ⁸ *Guardianship of Saul H.*, at 1.
- ⁹ *Guardianship of Saul H.*, at 31.
- ¹⁰ *Guardianship of Saul H.*, at 1.
- ¹¹ *Guardianship of Saul H.*, at 2 (citing Court of Appeal decision).
- ¹² *Guardianship of Saul H.*, at 1, 2.
- ¹³ *Guardianship of Saul H.*, at 16 (citing CAL. CODE CIV. PROC. § 155(b)(1) (2015)).
- ¹⁴ *Guardianship of Saul H.*, at 2, n.4 (citing 8 C.F.R. § 204.11(b)(5) (2022), italics added).
- ¹⁵ *Guardianship of Saul H.*, at 20, 23 (citing *Romero v. Perez*, 205 A. 3d 903, 915 (Md. 2019)).
- ¹⁶ *Guardianship of Saul H.*, at 26.
- ¹⁷ *Guardianship of Saul H.*, at 29 (citing 8 U.S.C. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2)(ii) (2022)).
- ¹⁸ *Guardianship of Saul H.*, at 14.
- ¹⁹ *Guardianship of Saul H.*, at 17.
- ²⁰ *Guardianship of Saul H.*, at 28.
- ²¹ *Guardianship of Saul H.*, at 28.
- ²² *Guardianship of Saul H.*, at 30 (citing *In re Aljamie D.*, 84 Cal. App. 4th 424, 432 (Cal. Ct. App. 2000)).
- ²³ *Guardianship of Saul H.*, at 12.
- ²⁴ *Guardianship of Saul H.*, at 14.
- ²⁵ *Guardianship of Saul H.*, at 28.
- ²⁶ *Guardianship of Saul H.*, at 28.
- ²⁷ *Guardianship of Saul H.*, at 28.
- ²⁸ *Guardianship of Saul H.*, at 29.
- ²⁹ *Guardianship of Saul H.*, at 16, n. 4.
- ³⁰ *Guardianship of Saul H.*, at 24.