

 **NIWAP** 

Special Immigrant Juvenile Status – Best Practices for Drafting State Orders

Webinar
May 14, 2019



Introductions



Judge Ramona Gonzalez
La Crosse County Circuit Court
Wisconsin



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Learning Objectives

By the end of this webinar you will be better able to:

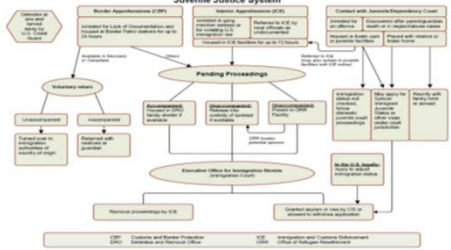
- Understand the role that state courts play in the SIJS adjudication process
- Articulate the ways in which SIJS enhances the courts options that promote child welfare and best interests
- Identify children before the court in a wide range of state proceedings who might be SIJS eligible
- Craft orders on care and custody decisions under state law containing findings that permit children to pursue SIJS with federal immigration authorities

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Special Immigrant Juvenile Status

Figure 1. General Process for Juvenile Aliens Involved with the Immigration and Juvenile Justice System



Source: CJA Presentation of Chart Book National Juvenile Justice Network, "Undocumented Immigrant Youth: Guide for Advocates and Service Providers," Policy Brief #16, 2, November 2008.

SIJS Findings in Juvenile Court

- Child is dependent on a juvenile court
- Reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law
- Child's best interest would not be served by being returned to his or her country of origin
8 U.S.C. § 1101(a)(27)(J)

A Juvenile Court

- A "juvenile court" is defined as a court "having jurisdiction under State law to make judicial determinations about the custody & care of juveniles."
- 8 CFR § 204.11(a).
- Dependency, guardianship, probate and delinquency courts are examples of juvenile courts

Dependency

- Court dependents include children:
“legally committed to, or placed under the custody of, an agency or department of the State, or an individual or entity appointed by a State or juvenile court.”
8 U.S.C. § 1101(a)(27)(I)(i).
- Placements in foster homes, group homes, with relatives or with guardians qualify.

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Dependency

- A juvenile is dependent upon the District Court if he “[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)

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Dependency

“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 the court in foster care or, as here, in a guardianship situation.”
In re Menjivar, 29 Immig. Rptr. B2-37 (1994)

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SIJS and USCIS

- The requisite findings in a juvenile court permit application to USCIS to become a special immigrant juvenile and eventually adjust status to lawful permanent resident
- SIJ and LPR status are not automatic based on juvenile court findings
- Many grounds of inadmissibility still apply

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Congressional Goals of Special Immigrant Juvenile Status (SIJS)

- Humanitarian protection that provides a path to lawful permanent residence
- Created by Congress in 1990 to help and protect foreign born children living in the United States
 - who have been abused, abandoned, or neglected by at least one parent

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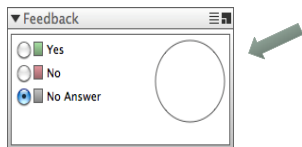
Why Congress Wanted Input From State Court Judges

- Included a role for state court judges as experts in child best interests, custody, child welfare matters.
- State court expertise that are an inherent part of court's decision-making when courts:
 - Adjudicate facts of child abuse, neglect and abandonment
 - Issue orders regarding child care, custody and placement that further the best interests of children

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HAVE YOU BEEN INVOLVED WITH A CASE IN WHICH A COURT ISSUES IMMIGRANT CHILD SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS?



SIJS State Court Findings Required for the Child to file

- State Court SIJS findings are a statutorily required prerequisite for an eligible child to file the SIJS immigration case
- DHS uses the state court order as evidence in adjudicating the immigration application
- Without state order, child is unable to file
- The state court order does **not** award SIJS
 - **ONLY DHS can grant SIJS and other forms immigration relief**

Case Scenario

Clara met Eduardo a naturalized U.S. citizen when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl, Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara. He also abused Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved." Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

Would Lupe and Miguel qualify for Special Immigrant Juvenile Status?

Feedback

- Yes
- No
- No Answer

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All of the Following are Potentially Eligible for SIJS

- Minor children who are:
 - Abused, abandoned or neglected
 - In the U.S.
 - In the home country
 - Living with their
 - Non-abusive parent
 - Guardian
 - Adoptive parent
 - State foster care
 - Federal foster care - Office of Refugee Resettlement (ORR)

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State Courts Regularly Make Custody & Placement Determinations

- Who will be the custodian/guardian of the child?
- With whom will the child live?
- Will the child be committed to the custody of the state or private agency for care, treatment, or rehabilitation

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Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Custody and child support
- Divorce
- Legal Separation
- Adoption

Courts with jurisdiction under state law to make judicial determinations regarding the custody, placement, care or dependency of children = juvenile courts for SIJS immigration purposes

Apply State Law

- Apply state law without regard to where abuse, abandonment or neglect occurred
 - In the U.S. or abroad
- Jurisdiction
 - UCCJEA - Temporary Emergency Jurisdiction
- Follow state court procedures
 - Including regarding service and notice
- Definitions: abuse, abandonment, neglect
 - Includes child endangerment, domestic violence as child abuse, forced marriage
- Formal charges not required

SIJS Findings: Applying State Law

- Describe how the actions of the parent fit the state law definition of abuse, neglect, or abandonment
- State best interest laws apply to
 - Custody or Placement
 - Not returning child to her home country
 - Non-viability of reunification
- Where are best interest factors in state law?
 - Child welfare statutes
 - Custody statutes
 - Case law

SIJS: State and Federal Roles

State Courts With Jurisdiction Over Children

- Issue orders providing evidence to help DHS adjudicate SIJS application
- Make findings of fact **under state law** on
 - Custody, dependency, placement, care of a child
 - Child suffered abuse, abandonment, or neglect by at least one parent
 - Parental reunification
 - Child’s best interests

DHS Adjudicators

- Adjudicate application filed by child
- Review evidence, including the state court’s order, to determine if the child is eligible for SIJS
- Determine if state court order was sought primarily
 - To provide the child relief from harm caused by abuse, abandonment or neglect; OR
 - For immigration purposes

When a state court issues SIJS findings, is the state court granting the child immigration relief?



“One *or* Both Parents” Requirement



A child can receive SIJS findings if he was abused, abandoned or neglected by one parent and is living with the other parent.

What are the elements of a good SIJS court order?

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STATE COURT ORDER
 STATE OF MICHIGAN
 In the County of Monroe Probate Court
 106 E. First Street
 Monroe, Michigan 48161

In the Matter of the Guardianship of, FILE NO.: 201x-0xxx-GM
 XXXXX XXXXXX XXXXX,
 A Minor Child.

ORDER FOR SPECIAL FINDINGS ON THE ISSUE OF SPECIAL IMMIGRANT JUVENILE STATUS

The Court makes the following special findings regarding Minor Child XXXXX XXXXXX XXXXX:

1. That XXXXX XXXXXX XXXXX has been declared dependent upon the juvenile court;
2. That reunification with one or both of XXXXX XXXXXX XXXXX's parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law; and
3. That it is not in XXXXX XXXXXX XXXXX's best interest to be returned to his country of origin.

Date _____ Judge: _____

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Best Practice for Court Order

- Make factual findings regarding
 - Facts of abuse, abandonment and/or neglect
 - Separately regarding each parent
 - About facts occurring abroad and/or in the U.S.
 - Apply and cite state law
 - Articulate trauma impact on child helpful
 - Connect the dots
 - Explain why court is issuing order and findings are needed for
 - child protection, healing, stability
 - because of the abuse/abandonment/neglect the child suffered
 - Why order is in the child's best interest

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Jurisdiction

After hearing this Motion for Special Findings on the Issue of Special Immigrant Juvenile Status and based on the allegations in the motion, this Court makes the following Order for Special Findings of Fact and Rulings of Law:

1. Jane Doe, a native and citizen of Haiti born on January 11, 2006, is an unmarried minor under the laws of the State of Michigan.
2. This Court has jurisdiction pursuant to MCL § 712A.2(b) to make determinations concerning the care and custody of Jane Doe. This Court has legally placed Jane in the care and custody of her legal guardians, John and Mary Smith.

Viability of Reunification

3. Reunification of Jane with one or both of her parents is not viable. Jane Doe's mother, Gertrude Pierre, neglected her when she failed to protect her from abuse and placed her with a woman to be a servant when she was seven years old. MCL § 722.622(k)(f). Jane's mother also abandoned her by voluntarily relinquishing custody of her and by failing to attempt reunification or provide any financial support. MCL § 712A.19b(3)(a)(ii). Jane's father, Jean Doe is deceased.

Viability of Reunification

- Does not require termination of parental rights
- Does not mean no contact with parent – Visitation can occur
- Granting the abusive parent custody is not envisioned by the court as a viable option
- Changes in circumstances can occur
 - But not granting full legal/physical custody to abusive parent

Best Interest

4. This Court further finds that it is not in the best interests of Jane to return to Haiti, her country of nationality, as defined by MCL § 722.23. Unable to provide Jane with a safe, supportive, and stable life, Jane's mother gave her to a woman to be a servant. Jane suffered abuse. Now, Jane is both emotionally and financially supported by her legal guardians, John and Mary Smith, and is able to attend school and receive any needed medical care. It is therefore in Jane's best interest to remain in the United States where she has found stability and safety, of which she would be deprived if returned to Haiti.

Factors impacting best interests and viability

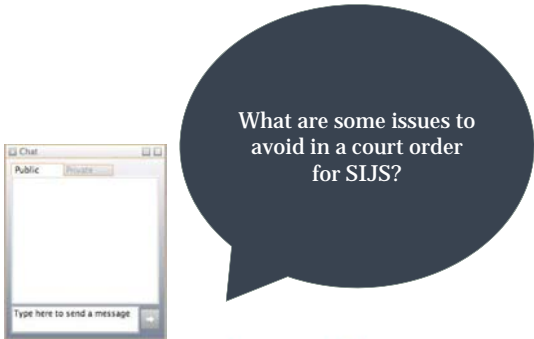
- Risk of danger to the child
- Family violence, abuse, neglect, abandonment
- Trauma the child has suffered
- State laws that preclude or discourage placement with abusive parent
- The child's physical, emotional, safety and mental health, and educational needs
- Help the child is receiving
- Child's wishes and fears
- Parent's fitness and caregiving capacity
- Family support system

Home country not in child's best interests

1. Identify each potential custodian in U.S. and home country, if applicable
2. Apply state best interests factors to each placement
3. State the factual findings that support chosen placement
4. Make findings that illustrate why under state best interest factors court is not choosing placement in child's home country
5. Compare the support, help, services child receives in U.S. vs. home country

In the Clara and Eduardo Scenario in which of the following cases could the court NOT issue SIJS findings for Lupe as part of the court's order?

- A. A protection order case in which the court grants Clara custody
- B. A custody case brought by Clara
- C. The criminal prosecution of Eduardo
- D. A child welfare case in which the court made findings of Eduardo's abuse and placed the children with Clara



What are some issues to avoid in a court order for SIJS?

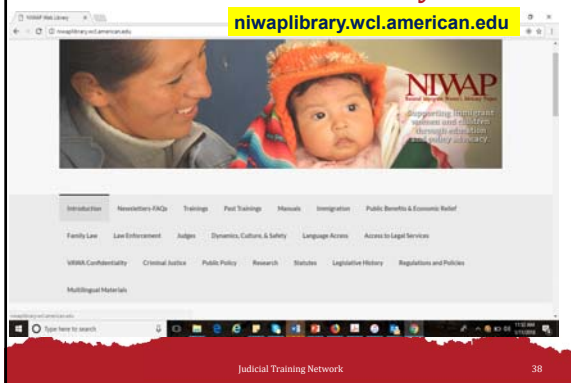
ISSUES TO AVOID WHEN DRAFTING ORDERS

- Vague language
- Not enough details and facts
- Lack of citation of state law authorities
- Reasons why court is making findings

Resources Available to Assist Courts

- SJI Funded Materials for Judges in the NIWAP Web Library
 - Bench book on SIJS
 - U visa certification toolkit for judges
 - Bench cards for family court judges
- State by state directory of programs with expertise serving immigrant victims

NIWAP Web library



Technical Assistance and Materials

- Power Point presentations and materials for this webinar will be email to you after this presentation
 - Judicial Training Manual at
 - <http://niwaplibrary.wcl.american.edu/sji-materials/>
 - **NIWAP Technical Assistance:**
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