

New Regulations, Policies, and Court Rulings: The Impact on State Courts Issuing Special Immigrant Juvenile Status (SIJS) Orders

Webinar

October 4, 2022

National Judicial Network
Forum on Human Trafficking and
Immigration in State Courts

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Thank You to SJI

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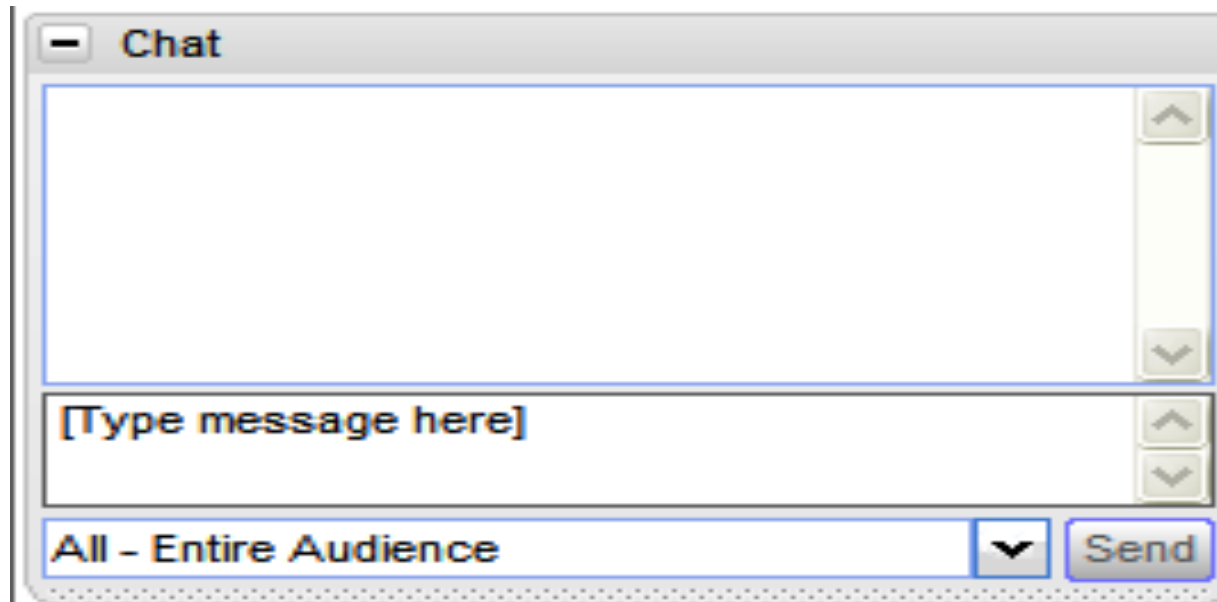
*Judge-in-Residence,
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Who is joining us today?

- A. Judge or other judicial officer
- B. Court staff and law clerks
- C. Family Law Attorney
- D. Immigration Attorney
- E. Other: please let us know in the chat!

POLL

Please type your questions in the chat. Throughout the presentation, presenters will attempt to address most questions, and NIWAP will provide written responses following the webinar to unanswered questions to all participants.



Learning Objectives

At the end of this webinar, you will better able to:

- Identify children eligible for Special Immigrant Juvenile Status (SIJS) protections in your family and juvenile court cases
- Issue SIJS findings of fact and conclusions of law that eligible children must obtain from a state court to be able to file for SIJS
- Understand how up-to-date SIJS laws, policies, regulations and case law impact state courts' role in protecting vulnerable children

Special Immigrant Juvenile Status (SIJS) – Overview With Updates Based on 2022 Regulations and USCIS Policy Manual

SIJS Requirements

- Child is dependent on a juvenile court or legally committed to or placed under the custody of an agency or department of State, or an individual or entity appointed by a State 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)

SIJS Eligibility

- Under 21 years of age on date of filing SIJS petition with DHS.
- Unmarried through adjudication of SIJS petition.
- Physically present in the U.S. though adjudication of SIJS petition.
- Jurisdictionally valid juvenile/family court order with required findings and conclusions of law regarding:
 - Dependency or custody
 - Parental reunification
 - Best interest
- Eligible for DHS consent.

How do the 2022 SIJS Regulations and Policy Manual define the “juvenile court” and “judicial determination” that juvenile and family courts must make for SIJS eligible children ?



“Juvenile Court”

- “A court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.”
- 8 C.F.R. § 204.11(a).

“Judicial Determination”

- A “judicial determination” is a conclusion of law made by a juvenile or family court. 8 C.F.R. § 204.11(a)
- “There is nothing in the Immigration and Nationality Act (INA) that allows or directs ...courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.” 6 USCIS-PM J.1.A (footnote 2)
- Note: regulation no longer uses the terms “SIJS finding” or “predicate order”

In light of this definition in the 2022 SIJS Regulations, what are best practices for state court judges issuing SIJS orders?



Best Practices For State Court Orders

- Make specific detailed findings of fact and
- Based on those findings make conclusions of law
- “USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence or make independent determinations about best interests of the juvenile and abuse, neglect, abandonment or a similar basis under state law.”
- 6 USCIS-PM J.2

SIJS Findings and Conclusions of Law Made By State Juvenile or Family Court

- The state court uses state laws to make child custody or placement decision and memorializes these as SIJS findings of fact & conclusions of law.
- The state court order reflects judge's expertise and application of state law – **it does not provide immigration status.**
- The order is just one required piece of evidence in a federal adjudication process.

Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state statute, court rule, or other authority under which the court is exercising jurisdiction.
- Follow your state juvenile and family court procedures and note that you do so to demonstrate that the court made an informed decision.

Can you describe the three most common examples of circumstances where a child may be eligible for SIJS?



Variety of Different Scenarios Where Child in US May be SIJS Eligible

- Children in the care or custody of a family member or other caregiver who have been abused, neglected, abandoned or subject to similar maltreatment by a parent prior to their arrival in the U.S or while in the U.S.;
- Children in federal custody with HHS, Office of Refugee Resettlement, Unaccompanied Children's Program; or
- Children in the state child welfare system in the custody of a state agency (e.g., foster care), or in the custody of a person or entity appointed by a state or juvenile court. 6 USCIS-PM J.1.A

Proceedings Where Care and Custody of Children Arise

- Dependency proceedings
- Delinquency proceedings
- Civil protection order cases
- Custody cases
- Divorce cases
- Guardianship cases
- Paternity and child support cases
- Adoption/Termination of parental rights cases
- Declaratory judgment cases
- **SIJS Bench Book Quick Reference Guides**

Can judges include SIJS findings as part of temporary orders they issue?



SJIS Findings as Part of Temporary Orders

- SIJS findings can be included as part of temporary orders in a range of cases including
 - Divorce
 - Custody
 - Child welfare proceedings
- Allows child to file SIJS case sooner
- USCIS will want to see the final order if it is issued before the SIJS case is adjudicated
- The child's attorney needs to submit the final order as soon as it has been issued
 - Should not wait for a request for further evidence
- The order must not substantively change with regard to SIJS determinations between the SIJS filing and SIJS adjudication

In what types of proceedings might an immigrant child in federal custody come before the court to obtain SIJS orders?



Immigrant Children In HHS Custody

- Can seek SIJS findings through
 - Any proceeding that will lead to a determination of the care and custody of a child
 - Declaratory Judgement proceedings
- In that proceeding the state court will
 - Formally recognize the child's placement with HHS and
 - Issue SIJS Orders
- HHS consent is not required unless the state could alter the child's custody status or placement
- 8 C.F.R. § 204.11(d)(6)(iii).

Custody or Dependency Determination Required

- A custody determination or a declaration of dependency is required
 - Best practice: include detailed findings of fact and state the custody determination or declaration of dependency as the court's conclusion of law
- Where the child is placed is not controlling
- Placement must be in the U.S.
- Placement examples:
 - Guardianship, custody with non-abusive parent, foster care, kinship care, state or private agency

Findings/Conclusions of Law That Return to Home Country Not in Child's Best Interests

- Identify each potential custodian in U.S. and home country.
- Apply state best interest factors to each placement.
- States in court order the factual findings that support chosen placement.
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country.
- Compare the support, help, services child needs in U.S vs. home country.

Findings/Conclusions of Law: Reunification Not Viable

- Order must include conclusion of law that reunification with the parent is not viable.
- Make specific findings- what ground (abuse, abandonment, neglect) applies to which parent.
 - Only mistreatment by one parent required.
 - Does not require termination of parental rights.
 - 8 C.F.R. § 204.11(c)(1)(ii)
- Viability of reunification does not necessitate no contact with parent – visitation can occur.
- Means granting the abusive parent custody is not envisioned by the court as a viable option
- Use state law. Do not cite to INA or regulations!

Definition and Examples of “Similar Basis”

- Legitimate underlying child welfare reason for state court jurisdiction to issue child custody/placement order.
- According to regulations, “the petitioner must provide evidence of how the basis is legally similar to abuse, neglect, or abandonment under State law.” 8 C.F.R. § 204.11(d)(4).
- Death of parent(s)
 - Whether death of a parent is similar to abuse, neglect, abandonment, or similar basis is a question of state law
 - 6 USCIS-PM J.3.A.1
- Michigan example of similar basis:
 - A child who is “without proper custody or guardianship”
MICH. COMP. LAWS § 712A.2(4)(b)(1)
- California similar basis:
 - Child faces substantial risk they will suffer serious physical harm or illness as a result of the parent’s failure or inability to adequately supervise or protect the child. *In Re Guardianship of Saul H.* California Supreme Court

2022 Regulations Confirm

- Court's conclusions of law regarding non-viability expected to be in effect
 - When the court order is issued
 - When the child files for SIJS and
 - When the SIJS application is adjudicated
 - 180-day adjudication timeframe
 - 8 C.F.R. § 204.11(c)(3)(ii) and (g)(1)
- Approved SIJS applications will be automatically revoked only when:
 - Issuance of a court order reunifying the child with the parent who perpetrated the abuse, abandonment, neglect or similar harm
 - Judicial proceedings determine that it is in the child's best interested to be returned to the child's or their parent's home country
 - 8 C.F.R. § 204.11(j)(1)

Does the court have to have continuing jurisdiction over the child until the child's SIJS application is adjudicated?



Continuing Jurisdiction of Juvenile Court

- Order establishing eligibility “must be in effect on the date the petitioner files the petition and continue through the time of adjudication of the petition.”
- 8 C.F.R. § 204.11(c)(3)(ii) Codifies and expands exceptions to continuing jurisdiction requirement:
 - Adoption: child “was adopted, placed in a permanent guardianship, or another child welfare permanency goal was reached, other than reunification with a parent.”
 - Age: child “was the subject of a qualifying juvenile court order that was terminated based on age, provided the petitioner was under 21 years of age at the time of filing the petition.”
- Also, potential exception when child moves to another state’s jurisdiction

Can you describe how the age of the child and marriage can impact SIJS eligibility at various stages of a child's SIJS case?



Age of the Child, Age Out Protections and Effect of Marriage

- When the state court issues SIJS orders:
 - Child of an age that the court has jurisdiction
 - “State law is controlling as to whether a petitioner is considered a “child” or any other equivalent term for a juvenile subject to the jurisdiction of a state juvenile court for custody or dependency proceedings” 6 USCIS-PM J.2.B
 - Child unmarried
- When the child files SIJS application
 - Under 21
 - Unmarried
- When USICS adjudicates the child’s SIJS application
 - Can be over age 21 – age out protections
 - Unmarried
- After SIJS application is granted and when child files for lawful permanent residency
 - Can be over age 21 – age out protections
 - Can be married – New regulations allow marriage after approval of SIJS

Is it OK that part of
the motive for
seeking SIJS order is
to help a child gain
immigration relief?



2022 Regulations State: Mixed Motives For Seeking SIJS Orders Will Not Impede USCIS Approval

- An SIJS application is bona fide when obtaining relief from parental abuse, neglect, abandonment, or similar basis under state law was “a primary reason” seeking court orders. 8 C.F.R. § 204.11(b)(5).
 - Changed from “sole purpose”
- There may also be an immigration related motive
 - 6 USCIS-PM J.2.D.

Helpful for Court Orders to:

- Contain a factual basis demonstrating that the court order was sought to protect the child and that the court actually provided relief from abuse, neglect, abandonment or similar basis under state law.
 - 6 USCIS-PM J.3.A.2.
- Explain how the court orders
 - Further the child's best interests
 - Protect the child from future harm
 - Provides the child remedies for harm caused by parent(s)

California Supreme Court Case: *In Re Guardianship of Saul H.: Facts*

- 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. 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. Saul started working to help provide for his family when he was approached and threatened again by a gang member. Saul saved up money and left El Salvador for the United States at the age of 16, against the wishes of his parents.
- In California, Saul lived with his relative and started going to school again. 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.
- Despite the uncontroverted evidence that it would not be workable to send Saul back to El Salvador to reunify with his parents, the probate court denied his request for SIJS findings. Saul appealed and the Court of Appeal affirmed, but the California Supreme Court reversed, with all justices concurring in the judgment.

California Supreme Court Case: *In Re Guardianship of Saul H.*

- State courts must:
 - Issue SIJS Orders if “there is evidence to support” them.
 - Allow a child to “obtain relief from parental abuse, neglect, abandonment, or similar basis” based on “*a* primary reason” need not be the only reason the child seeks the order. Courts must not disqualify a child with dual or mixed motivations.
 - Interpret “not viable” to mean not “workable or practical to force the child to return to live with the parent” who mistreated the child
 - Apply state when deciding if forcing the child to return to their home county is in their best interest.

In Re Guardianship of Saul H. - 2

- State courts must not:
 - Base findings on “whether a child’s parents are blameworthy.”
 - 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
 - “[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.”
 - 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.”
 - Must apply state law definitions to facts occurring abroad
 - Try to make determinations on the child’s status under US immigration laws

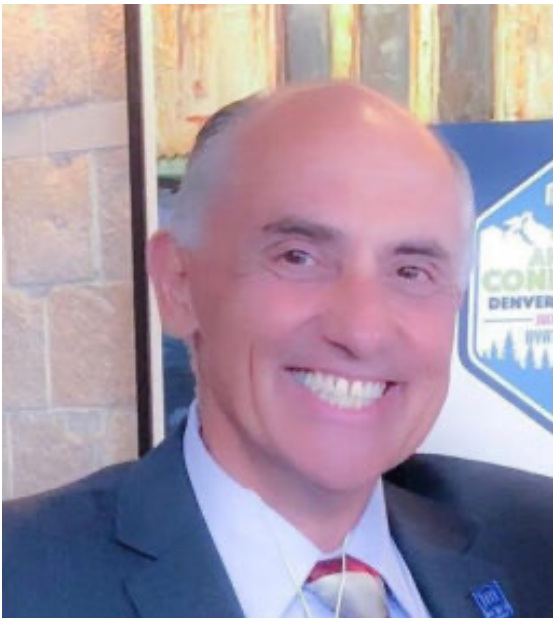
In Re Guardianship of Saul H. - 3

- 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.
 - Make a record of its reasons if it rejects the child’s factual assertion and makes a factual finding contrary to the assertion.
 - “Rely on any applicable definition [in state law] of abuse, neglect, abandonment, or similar basis to find nonviability of reunification.”
 - “[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.”
 - 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.”

Important Points to Note When Reading SIJS Case Law

- Cases that are valid for important legal issues
 - May contain legally incorrect information on other issues that were superseded by 2008 statutory amendments or the 2022 regulations
- Examples:
 - References to “long-term foster care” (6 USCIS-PM J.1.A)
 - No requirement of abuse by both parents 8 C.F.R. § 204.11(c)(1)(ii)

What are some examples of the kinds of details judges should routinely include in SIJS orders?



Best Practice Points to Address in SIJS Orders

- Make findings as to
 - The age of the child
 - The child's parentage naming each parent specifically
 - That the parent's identity is unknown
 - E.g. in the case of rape
 - Details of the remedies and relief the court order is providing to protect the child or remedy harm suffered
 - Including with whom the child is placed and why
 - Include no-contact and other protective orders where appropriate
 - Consistent with VAWA bars on UCIS requiring children to contact their abusive parents or their family members applies both to the SIJS application and lawful permanent residency. 8 C.F.R. § 204.11(e) and 8 C.F.R. § 245.1(e)(3)(vii).
- Cite state law
 - Best interest
 - Jurisdiction
 - Definitions of abuse, abandonment, neglect, similar basis

Must SIJS orders be contained in a single court order or could there be separate court orders? Pros and cons?



What happens after a
child's SJIS case is
approved?



SIJS Approval and Lawful Permanent Residency

- The requisite findings in a juvenile court permit petition to USCIS to become a Special Immigrant Juvenile and adjust status to a Lawful Permanent Resident (LPR).
- SIJS and LPR status are not automatic.
 - Can apply concurrently if priority date is current and youth is not in removal proceedings.
 - Otherwise, it is a two-step process.
 - LPR status may be adjudicated by USCIS or by an immigration judge.
- Many grounds of inadmissibility may apply to those with SIJS.
- Cannot file immigration applications for their natural or adoptive parents

The SIJS Backlog and Deferred Action for SIJS

- Due to an annual per-country limit on the number of employment-based visas in the category that applies to SIJS approved cases children from Guatemala, Honduras, El Salvador and Mexico must wait to apply for lawful permanent residency until there is a visa available.
- “Deferred action is an act of prosecutorial discretion that defers proceedings to remove a noncitizen from the United States for a certain period of time.”
- Effective May 6, 2022, USCIS will automatically consider “deferred action for a noncitizen with SIJ classification if the person cannot apply for adjustment of status solely because an immigrant visa number is not immediately available.” Generally, “persons granted deferred action are eligible for work authorization if they can demonstrate economic necessity for employment.” 8 C.F.R. § 274.12(c)(14).
- DHS authorizes deferred action in SIJS cases for 4 years with renewals possible 6 USCIS-PM J.4.G.3.

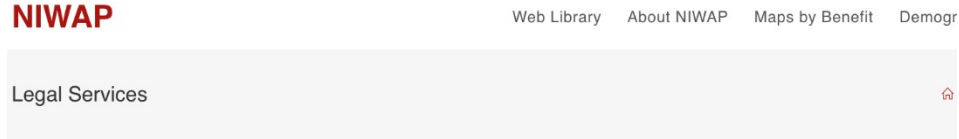
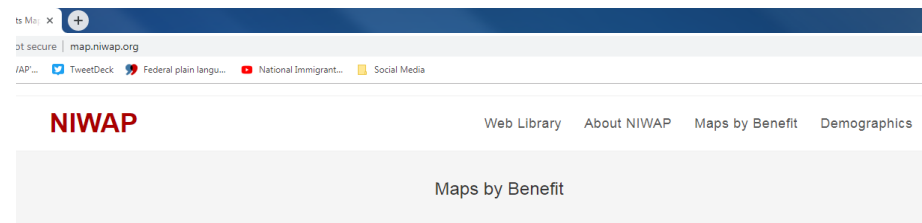
Note SIJS and Implications of Travel

- SIJS applicant children must be physically present in the US at the time they:
 - File their SIJS application;
 - When their SIJS application is adjudicated;
 - When SIJS approved children apply for lawful permanent residency; and
 - When the SIJS lawful permanent residency application is approved
 - 6 USCIS-PM J.2.A and 7 USCIS-PM F.7.C.

How can a judge or lawyer determine what public benefits and services SIJS children are eligible for in each state?



Look Up Eligibility Differences for Public Benefits by Immigration Case Type in Your State: Public Benefits Map



These maps break down available public benefits based on immigrant's state and immigration status.

We are still working on this site, so if you cannot click on your state, check back soon for completed maps.



Cash Assistance (TANF)

Temporary Assistance for Needy Families (TANF) provides cash assistance to low income families with children.

[Go to Map](#)



Child Care

Child Care services may be provided through public benefits.

[Go to Map](#)



Children's Health Insurance Program

Medical assistance is available to children through the Children's Health Insurance Program (CHIP).

[Go to Map](#)



Driver's License

State-specific requirements to be issued a driver's license.

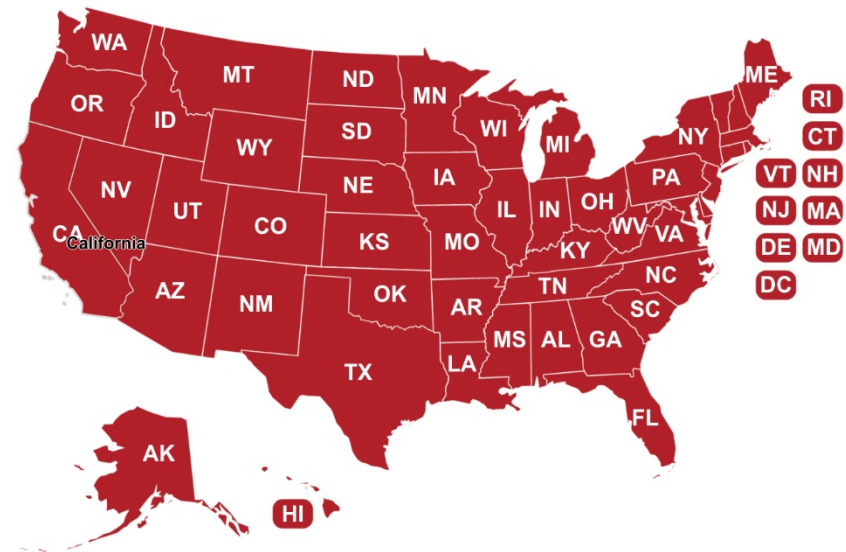
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Earned Income Tax Credit



Emergency Housing & Safety Programs



<http://map.niwap.org/>

Q & A



Thank You for Joining Us!

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<https://niwaplibrary.wcl.american.edu/njn-webinar-new-regulations-policies-sijs-orders-oct-2022>
- If you are a judicial officer, join the National Judicial Network!
 - <https://www.surveymonkey.com/r/VGY9VJM>
- Upcoming Webinar:
 - **October 14th** – What Judges, Attorneys, and Prosecutors Need to Know about How VAWA Confidentiality Impacts Discovery in Cases Involving Immigrant Survivors

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 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

SIJS Resources

- SIJS Bench Book
- SIJS regulations annotated compilation with full regulatory history
- SIJS Case Law Chart – All states
- *In Re Guardianship of Saul H. case overview tool*
- Family Law Jurisdiction and Service of Process Charts
- Best Interests of the Child State Comparisons by Factors Covered
- State Public Benefits Charts and on-line Map to see SIJS children's eligibility by state by type of benefit

Session Evaluation

- Please don't forget to complete the evaluation at the end of the session!
- Link to the survey:
 - <https://www.surveymonkey.com/r/LDZ2TZ2>
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