

Special Immigrant Juvenile Status Explained: Obtaining Family Court Orders for Under 21 Year Old Family and Sexual Violence Survivors

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Workshop I, Session B
New Orleans, LA

Introductions

- Leslye Orloff
 - Director, National Immigrant Women's Advocacy Project
- Commissioner Loretta Young
 - New Castle County Family Court, Wilmington, Delaware
- Judge Mary Weir
 - Jackson County Court, Kansas City, Missouri

Learning Objectives:

By the end of this workshop you will be able to:

- Screen victims for Special Immigrant Juvenile Status (SIJS) eligibility and the different kinds of qualifying abuse
- Know the differences between OVW and Legal Services Corporation (LSC) representation rules for SIJS youth
- Address jurisdiction, venue, service, and applicable law issues in SIJS cases
- Obtain SIJS findings from state family courts

Large Group Discussion

What are the questions about obtaining state court findings for SIJS youth that you would like answered by the end of this workshop?

HAVE SOUGHT FINDINGS FROM STATE COURT JUDGES FOR SIJS YOUTH?



Understanding SIJS Statutory History

- Counters judicial assumptions that SIJS is only available for youth in foster care
- Essential to ensure that youth living with one non-abusive parent can still access SIJS
 - Under new one or both parent provisions

SIJS: Statutory Authority

§ 101(a)(27)(J), codified at 8 USC § 1101(a)(27)(J)

- SIJS was created by the Immigration and Nationality Act of 1990
- Congress created SIJS to:
 - Aid undocumented youth living in the foster care system
 - Provide stability through lawful permanent residency
- Amended 3 times to expand protection

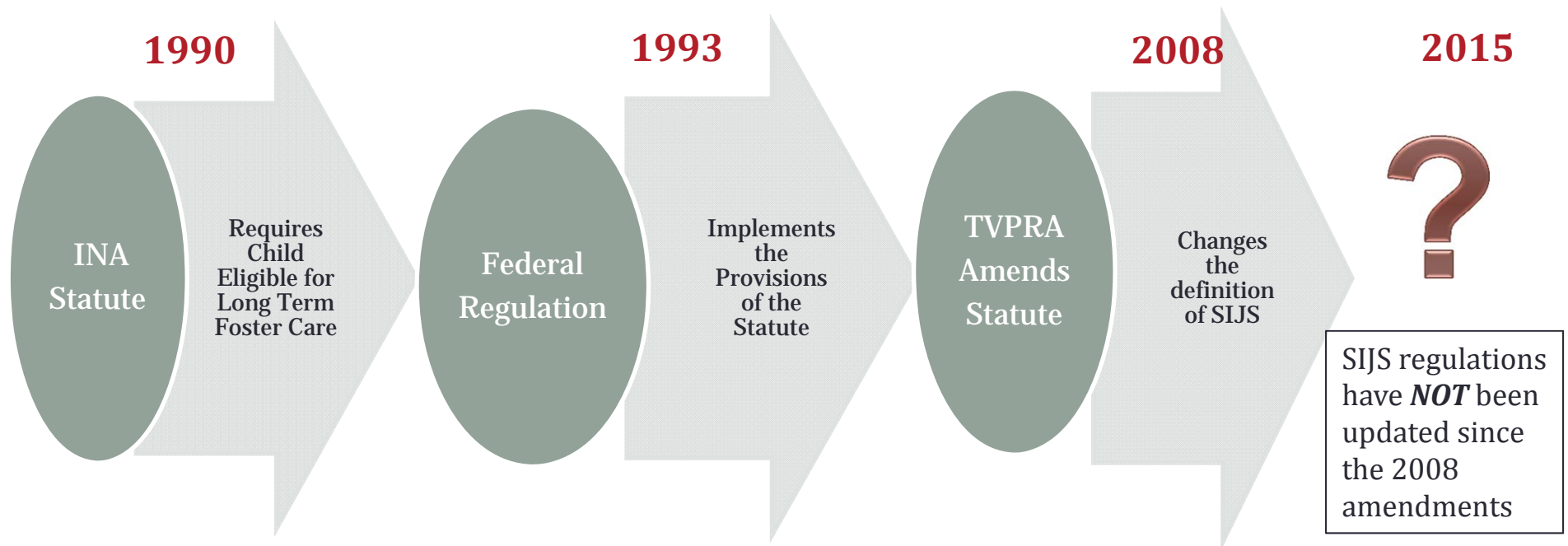
SIJS Amendments

- **1997:** Expanded SIJS to help youth who were “abused, abandoned, or neglected”
- **2005:** VAWA barred DHS from compelling youth to contact and gain consent from alleged abusive parent(s)
- **2008:** “One or Both” Parents
 - Clarified eligibility for youth living with a protective parent, including battered immigrant parents
 - Required finding that reunification not viable with *at least* one parent

2008 SIJS Amendments

- Any state court with jurisdiction to address care or custody of a child
 - Long term foster care not required
 - Any court that, under state law, has jurisdiction to address aspects of “care or custody” of a child
- State courts adjudicate “abuse, abandonment, or neglect”
 - Apply state law without regard to where abuse occurred
 - DHS no longer authorized to inquire about details of the abuse from youth applicant

Statute vs. Regulation



Special Immigrant Juvenile Status Requirements

- Under 21 (or state law age of majority) & unmarried
- Abused, abandoned, or neglected (as defined by state law) by one or both parents
 - In the U.S. or abroad
 - Must be present in the U.S. when filing for SIJS
- Have a family/juvenile court order
 - Addressing custody, care, dependency of a child
 - That reunification with at least one parent who abused, abandoned, or neglected the child is not viable
 - That it is not in the child's best interest to be returned to the child's home country
- Best interest as defined under state law
- State court findings required as evidence

Access to Legal Immigration Status

- Provides a path to economic security
 - Work authorization
 - Driver's license
- Removes fear of deportation, promotes stability and facilitates access to:
 - Nurturing family relationships
 - Stable school environment
 - Mentors, role models, and community support

Addressing Care, Custody, or Dependency

- Court must have jurisdiction under state law to make judicial determinations about the custody and care of children
- Court order finds:
 - The minor is a dependent of the court OR
 - legally places the child with a state or private agency, OR a *private person*

Addressing Care, Custody, or Dependency

- Satisfied in more than half of all family court orders
- The Court regularly make determinations on:
 - who will be the custodian of the minor;
 - who the minor will live with; or
 - whether the minor will be committed to the custody of the state or private agency for care, treatment, or rehabilitation

SIJS in State Courts

- SIJS opportunities appear frequently in family court because the Court's primary role is protecting and ensuring the safety of children and families
- Most SIJS cases are 15-17 year old minors
- Courts and attorneys should consider SIJS as an option any time a child is not a
 - Citizen or lawful permanent resident

Timing of SIJS Orders

- Should be issued before a minor turns age of majority under state law
- Under state law, some courts may have continued jurisdiction over youth between age of majority and 21
- If routinely considered in any case in which a non-citizen minor comes before a family court, fewer children will “age out” of SIJS

What Minors with SIJ Status Receive

- While case is pending:
 - Protection from deportation and removal
 - Considered “lawfully present” and eligible for
 - health care exchanges (no subsidies), education benefits
 - Programs and services necessary to protect life and safety

What Minors Granted SIJ Status Receive

- At approval:
 - Lawful Permanent Residency (separate, but usually concurrent filing)
 - Legal work authorization
 - Brings access to state issued driver's licenses and identification cards
 - Eligible for citizenship after 5 years
 - Post secondary educational grants and loans; public and assisted housing
 - Food stamps (only until the immigrant child turns age 19)

SIJS recipient may NEVER file family petition for either of the recipient's natural parents

LARGE GROUP DISCUSSION

Scenario #1: Lita

SIJS Eligibility: Attorneys and Advocates

- Screening should be conducted often
- Abuse may have occurred before the juvenile entered the United States OR after
 - Possible increased risk for victimization for immigrant juveniles reunified with family and/or step parents

List all types of state court cases in
which a child victim can seek
special findings for SIJS?

Small Group Discussion

Types of Proceedings to Request Special Findings for Immigrant Youth

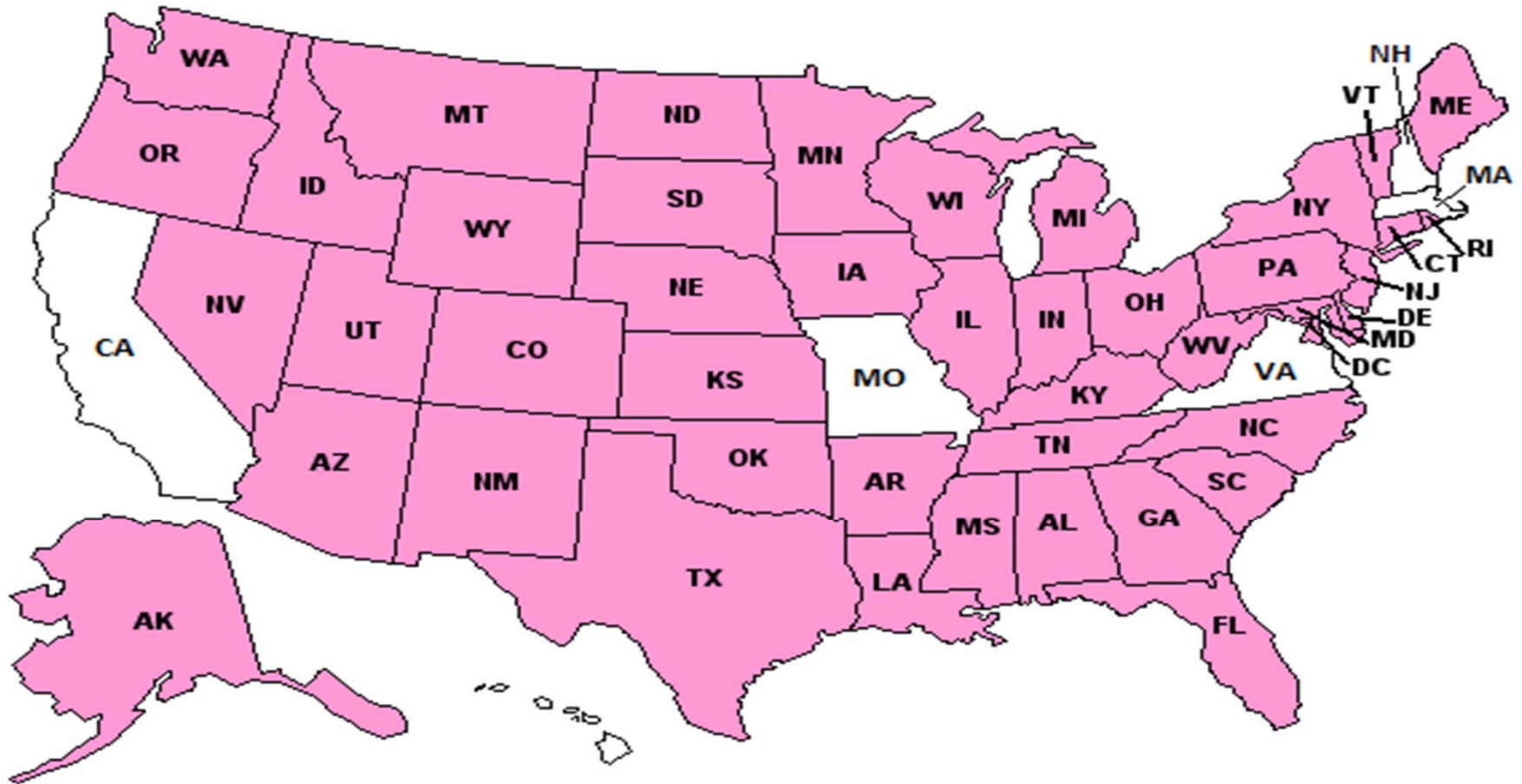
- Child abuse/neglect
- Dependency
- Children in need of supervision
- Adoption
- Termination of parental rights
- Guardianship
- Paternity
- Child support
- Custody/visitation/modification
- Protection orders
- Divorce
- Legal separation
- Delinquency
- Motions for a declaratory judgment

Procedural Issues: May require consolidation of cases to attain ability to make needed findings

Declaratory Judgments

- A declaratory judgment can be a useful tool for obtaining necessary state court findings
- 4 things you must consider based on your state's law and policies:
 - Availability of a declaratory judgment statute
 - Is the relief sought a valid state court function?
 - Is the child in federal or state custody?
 - Will a declaratory judgment further the child's benefits eligibility for public benefits in the state?

States With Declaratory Judgment Statutes That Can be Used in SIJS Cases



LARGE GROUP DISCUSSION

Scenario #2: Susan

Challenges and Misconceptions About the “One *or* Both Parent” Requirement



One Parent SIJS Cases

- “Reunification with *one or both* parents is not viable due to abuse, neglect ,or abandonment, or other similar basis in state law”
- SIJS eligible children may be living with:
 - Foster family
 - Appointed guardian
 - Non-abusive parent
- Intended to protect
 - Parents who are also survivors of domestic violence
 - The child’s relationship with non-offending parent

Scenarios

- Participants work in small groups on different scenarios
 - Table 1 = Scenario #3: Lili
 - Table 2 = Scenario #4: Etta
 - Table 3 = Scenario #5: CC
 - Table 4 = Scenario #6: Karen
- Report back and discuss scenario questions, SIJS eligibility jurisdiction, service, and best interest

Factors Considered in Deciding: Best Interest of the Child to Remain in the U.S. ?

- Best interest includes comparison of factors in the U.S. and child's home country
- Useful to provide evidence of country conditions
- Best interests defined by state law including:
 - Risk of danger to the child
 - Family support system
 - Emotional well being
 - Educational resources
 - State laws that preclude or discourage placement with abusive parent

Jurisdiction Under the UCCJEA

- Home state jurisdiction
 - 6 months in the state
 - Foreign country counts as a “home state”
- Temporary emergency jurisdiction
 - May vary by state
 - Generally may assert when the juvenile is present in the state and is abandoned or abused
 - In many states, temporary emergency jurisdiction can evolve into full jurisdiction

Ensure the State Court Order Satisfies USCIS Requirements By:

- Clearly articulating state law basis for jurisdiction over the minor in the case before the court
- Issuing rulings containing details of the court's factual findings regarding:
 - Abuse, abandonment, and/or neglect
 - Best interests
 - Include state case law citations

Ensure the State Court Order Satisfies USCIS Requirements By:

- Articulating factually how the order furthers the court's role under state law of:
 - Protecting and ensuring the safety of minors
 - Furthering children's best interests
 - Issuing orders regarding the custody, placement, and care of minors

Inadmissibility Laws That Are Applicable to SIJS Cases

Standard Inadmissibility Grounds That Do NOT Apply to SIJS applicants

- Unlawful presence
- Immigrants present without admission or parole
- Misrepresentation, including false claim to U.S. citizenship
- Stowaways
- Violations of labor certification laws
- Immigrants not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document

Waivable Offenses

- Prostitution and commercialized vice
- Failure to attend removal proceedings
- Immigrants unlawfully present after previous immigration violations
- Certain immigrants involved in serious criminal activity who have asserted immunity from prosecution

Non-Waivable Offenses Can Result in Denial of Lawful Permanent Residency to SIJS Children

- Theft and shoplifting convictions
- Findings and admissions regarding drugs (except less than 30 grams of marijuana)
- Domestic violence
- Child abuse or exploitation
- Multiple criminal convictions
- Controlled substance traffickers
- Espionage, terrorist activities, genocide, torture, or extrajudicial killing

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NOLA2015
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

Questions



Evaluations



Thank you!

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