

**Answers to Questions from State Court Judges on the
2022 Special Immigrant Juvenile Status (SIJS) Regulations**

Maryland Judicial College Training
*When Federal Immigration Laws and State Family Laws Intersect:
The Impact on State Family Court Proceedings* (August 16, 2022)

National Judicial Network Forum on Human Trafficking and
Immigration in State Courts Webinar
*New Regulations, Policies, and Court Rulings: The Impact on State Courts Issuing Special
Immigrant Juvenile Status (SIJS) Orders* (October 4, 2022)

Leslye E. Orloff and Hannah Bridges
April 4, 2023

1) Who qualifies for SIJS and what is the role of state judges in this process?

Special Immigrant Juvenile Status (SIJS) is a form of humanitarian immigration relief that provides a path to lawful permanent residence for children in the United States who are unable to be reunited with one or both parents due to abuse, abandonment, neglect, or a similar basis under state law. To qualify for SIJ classification, the child must be under the age of 21, unmarried, and physically present in the United States at the time of filing.¹ Additionally, the child must be subject to a state court order containing judicial determinations made by a state court with jurisdiction under state law to make judicial determinations about dependency and/or custody and care of children.²

The federal SIJS statute relies on state court judges to make the factual determinations about children's best interest because state courts have specialized expertise in the area of child care and custody.³ The SIJS statute requires the state court to issue judicial determinations that include findings of fact and the following three conclusions of law that are based upon the findings of fact in the case:

¹ INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J); *see also* 6 United States Citizenship and Immigration Services Policy Manual (Hereinafter USCIS-PM) J.2(A), *available at* <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

² *See* INA § 101(a)(27)(J)(i); 8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(a) (2023); *see also* 6 USCIS-PM J.2(C), *available at* <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

³ "The reliance upon state juvenile courts anticipated in the SIJ statutory scheme signals Congress' recognition that the states retain primary responsibility and administrative competency to protect child welfare. . . . The federal government lacks the professional staff and administrative support to make assessments of individual children's mental and physical conditions and their welfare needs. Furthermore, within the judicial branch, federal courts have more limited jurisdiction over such matters. As a result, state courts have developed greater competency for administration of child welfare matters." Gregory Zhong Tian Chen, *Eliau or Alien? The Contradictions of Protecting Undocumented Children Under the Special Immigrant Juvenile Statute*, 27 HASTINGS CONST. L.Q. 597, 609, 611 (2000).

National Immigrant Women's Advocacy Project (NIWAP, pronounced *new-app*)

American University, Washington College of Law

4300 Nebraska Avenue, N.W., N100B, Washington, D.C. 20016

(o) 202.274.4457 · niwap@wcl.american.edu · [wcl.american.edu/niwap](http://library.niwap.org/) · <http://library.niwap.org/>

1. The court has exercised its jurisdiction as authorized by state law to issue orders regarding the dependency, placement, and/or custody and care of an immigrant child;
2. It is not in the child's best interest to return to the home country, or last habitual residence, of the child or the child's abusive parent; and
3. Reunification with one or both of the child's parents is not viable due to either abuse, abandonment, neglect or a similar basis under state law.⁴

The findings of fact needed to support SIJS judicial determinations are already a central part of the decisions state courts routinely issue addressing dependency, placement, custody, and/or care of children. When the state judge issues these SIJS findings and conclusions of law in a court order, the judge is *not* granting immigration status to the child. Only the United States Citizenship and Immigration Services (USCIS) can adjudicate SIJS immigration cases. State judges are simply playing a fact finding role and providing evidence that is helpful for adjudication by USCIS.⁵

2) What is the process for filing an SIJS petition and how soon after the state judge issues the SIJS judicial determinations will the child begin to see the benefits of filing an SIJS petition?

Terminology and the SIJS Process

After immigrant children file an SIJS petition with USCIS, and USCIS adjudicates and grants the child's petition, the child receives Special Immigrant Juvenile (SIJ) "*classification.*" With approved SIJ classification, the child is then eligible to apply for lawful permanent residence.⁶

A child with SIJ classification will gain lawful immigration status in the United States once the child's application for lawful permanent residence is approved. What is commonly referred to by attorneys, child advocates, judges, and other professionals as SIJS is actually a two-step process involving two separate adjudications by USCIS:

- First, the child gains SIJ classification.
 - The child *petitions* for SIJ classification, and the initial SIJ application is called a *petition*.

⁴ INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J); See Leslye E. Orloff, *Chapter II: Details about Special Immigrant Juvenile Status (SIJS) Findings* at 1-9 (Dec. 19, 2017), available at <https://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings>; and Leslye E. Orloff, *Chapter V) Quick Reference Guides* (March 13, 2018) <https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents> (Discussing issuance of SIJS judicial determinations in the following types of proceedings: termination of parental rights and adoption; protection orders; custody and child support; declaratory judgements; delinquency; dependency; guardianship; and paternity and parentage proceedings).

⁵ See Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases* at 1-15 (Dec. 15, 2017), available at <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

⁶ Whether a child is able to immediately apply for lawful permanent residence, or must wait until a visa becomes available, varies by country of origin, as discussed in this question below.

- Second, the child is granted lawful permanent residence, commonly referred to as a “green card.”⁷
 - The child files an *application* for lawful permanent residence.

For this reason, SIJ regulations, policies, and communications with petitioner children will use the term “SIJ classification” for the process of approving the child’s petition instead of “SIJS,” which is commonly used by immigration practitioners and the courts. In this document, we use the term SIJS to refer to the entire process through which children gain lawful status through the Special Immigrant Juvenile Process.

The Benefits that Accrue to Children through the SIJS Process

Noncitizen children, including SIJS petitioners, with pending or approved petitions for victim-based immigration benefits receive some protection from removal and immigration enforcement. This policy was emphasized in the Immigration and Customs Enforcement (ICE) Victim-Centered Approach directive from 2021:

[A]bsent exceptional circumstances, ICE will exercise discretion to defer decisions on civil immigration enforcement action against the applicant or petitioner . . . until USCIS makes a final determination on the pending victim-based immigration benefit application(s) or petition(s), including adjustment of status for noncitizens with approved Special Immigrant Juvenile status⁸

SIJS petitioner children are most likely to get the full protections outlined in the ICE directive when they have an attorney or victim advocate who can advocate for them. This is one reason it is important for state family and juvenile courts to consider appointing counsel to represent SIJS eligible children in their SIJS petitions and their lawful permanent residence applications. The sooner the state family or juvenile court appoints counsel to the SIJS petitioner, the sooner the child will be able to file their petition and gain access to healthcare, a driver’s license, other public benefits, and lawful permanent residence.

USCIS generally issues a decision on the SIJS petition within 180 days of the receipt date of the child’s petition.⁹ As of May 6, 2022, USCIS will consider offering protection from deportation through “deferred action” for a child with SIJ classification if the child is not able to apply for lawful permanent residence because an immigrant visa is not immediately available. Approved petitions receive deferred action lasting four years. Deferred action is decided on a case-by-case basis, based on the totality of the evidence in the child’s case and a determination by USCIS that the child warrants a favorable exercise of discretion. To create a record documenting the child’s need for deferred action, it may be helpful to include any state court orders detailing the findings about the maltreatment the child has suffered; the harm to the child

⁷ This application for lawful permanent residence will be referred by immigration attorneys and USCIS as an application for adjustment of the child’s status to lawful permanent residence. Children with an approved SIJ classification then file an application to adjust their SIJ status to lawful permanent residency.

⁸ U.S. Immigration & Customs Enforcement, *ICE Directive 11005.3 – Using a Victim-Centered Approach with Noncitizen Crime Victims* at 2 (Aug. 10, 2021), available at <https://niwaplibrary.wcl.american.edu/pubs/ice-victim-centered-directive-11005-3>.

⁹ See Trafficking Victims Protection Reauthorization Act § 235(d)(2) (2008); 8 U.S.C. § 1232(d)(2); 6 USCIS-PM J.4(B), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

caused by the maltreatment; the impact of the harm on the child’s life; and the steps the court is taking to help the child heal and remedy the abuse suffered.

There is no process to apply for deferred action.¹⁰ However, once USCIS approves the SIJS for the child, the grant of deferred action is automatic. Deferred action is an act of prosecutorial discretion that protects children with an approved SIJS petition from removal.¹¹ If after the four years on deferred action the child still is not able to apply for lawful permanent residence due to lack of visa availability, the child is able to submit a deferred action renewal request.¹² Generally, “persons granted deferred action are eligible for work authorization if they can demonstrate economic necessity for employment.”¹³ Immigrant children who are granted work authorization by USCIS and meet all other state eligibility requirements (e.g. age, passing driver’s tests) are eligible for a federally recognized driver’s license. All children with work authorization are eligible for government issued identification cards in all states.

Children with approved SIJS are eligible to apply for lawful permanent residence. Some children who are not in removal proceedings may be eligible to file their lawful permanent residence applications together with their SIJS petition, which speeds up the child’s access to lawful permanent resident status.¹⁴ However, whether a child is eligible to apply for lawful permanent residence together with their SIJ petition depends on (1) the child’s country of origin, and (2) whether the Visa Bulletin issued by the United States Department of State, Bureau of Consular Affairs is “current” for category EB-4¹⁵ on the date the SIJS petition was filed.¹⁶ SIJS visas are part of the employment-based fourth preference category (EB-4). Fourth category gets 7.1% of the 140,000 visas generally available per year. SIJS children are also subject to annual country caps applicable to employment-based immigration: 7% per-country limit. Due to the large number of applications, there has been a backlog for children from Guatemala, Honduras, El Salvador, and Mexico for the past few years.

The Visa Bulletin contains several charts. To understand how long an SIJS child may need to wait with deferred action before they can apply for lawful permanent residence, look at the dates on the chart titled *Final Action Dates for Employment-Based Preference Categories*. The dates listed are the priority dates, or date the petition was filed, assigned to SIJS petitions.

¹⁰ 6 USCIS-PM J.4(G)(1), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

¹¹ 6 USCIS-PM J.4(G)(1), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

¹² 6 USCIS-PM J.4(G)(3), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

¹³ 8 C.F.R. § 274.12(c)(14).

¹⁴ Children in removal proceedings are not eligible to submit a one-step application of SIJS and Adjustment of Status application.

¹⁵ EB-4 stands for “Employment Based Visas 4th Preference.” Congress assigned SIJS petitions to this waitlist.

¹⁶ For example, on February 27, 2023, the visa waiting times for the EB-4 category were such that no child filing an SIJS petition would be eligible to file their lawful permanent residence application together with their SIJS petition.

According to the Visa Bulletin for March 2023,¹⁷ for children with approved SIJS petitions, the approximate wait times¹⁸ to file for lawful permanent residence were:

- El Salvador, Guatemala, and Honduras – 5 years
- Mexico – 2 years 8 months
- India – 2 years
- All other countries – 13 months

Once SIJS children receive lawful permanent residence, they are eligible for federal post-secondary educational grants and loans, public and assisted housing, FEMA restricted programs,¹⁹ food stamps,²⁰ the low-income home energy assistance program (LIHEAP), and in many states, additional state-funded benefits.²¹ However, to access to federal means-tested public benefits, lawful permanent residents are generally required to wait five years.²² States may still choose to provide state-funded benefits to lawful permanent residents during the five-year bar. Additionally, in 31 states, children with pending SIJS petitions are eligible for state-funded health care subsidies²³ and are able to obtain health insurance through the state healthcare exchanges.²⁴

3) How is the following statutory requirement found in 8 U.S.C. § 1101(a)(27)(J) defined?

The 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.

First, a “juvenile court” is defined in the regulations as “[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.”²⁵ This definition covers any family, juvenile, probate, or other state court that has jurisdiction under state law to issue court orders regarding the custody, placement, or dependency of the child. When a state court takes jurisdiction over a child, the

¹⁷ The current Visa Bulletin is available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html>.

¹⁸ The wait times are measured from the filing date (priority date) of the child’s SIJS petition to the date the child is eligible to file for lawful permanent residence. Some of this waiting period for filing for lawful permanent residence will overlap with the waiting period for the SIJS petition to be adjudicated. In other words, the child is on the waitlist to file for lawful permanent residence while their SIJS petition is being adjudicated so that if the SIJS petition is granted, they are already in line and waiting their turn to file for lawful permanent residence.

¹⁹ FEMA restricted assistance ends when the child turns eighteen.

²⁰ Federal food stamps eligibility ends when the child turns eighteen.

²¹ For more information on public benefits access for children with pending or approved SIJS petitions, see *Bench Card: Special Immigrant Juvenile Status (SIJS) Immigration and Public Benefits Eligibility Process* (July 13, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/sijs-benefits-eligibility-bench-card>; see also *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

²² See generally *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Pub. L. 104–208, 110 Stat. 3009–546 (1996) [hereinafter IIRAIRA].

²³ Leslye Orloff & Axelle Pesme, *State-Funded Public Benefits Comparison Chart* (June 29, 2022, updated July 7, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/state-benefits-comparison-chart>.

²⁴ *All State Public Benefits Charts and Interactive Public Benefits Map* (2022), available at <https://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts>.

²⁵ 8 C.F.R. § 204.11(a) (2023).

child is considered to be dependent on the state court under SIJS immigration laws. State courts make custody and placement determinations regarding children in a wide range of state court proceedings, including dependency, delinquency, civil protection orders, custody, divorce, guardianship, paternity and child support, adoption, and termination of parental rights proceedings.

The type or name of the proceeding is not the key issue in determining whether SIJS orders can be issued as part of that proceeding. The key issue is whether the state court, under state law, has jurisdiction in the proceeding to award custody or placement of the child or issue a dependency order to help remedy the harm the child has suffered.²⁶ If the court has this jurisdiction, then the court also has jurisdiction to issue SIJS orders.

Second, for the court's orders to be considered "qualifying juvenile court orders," such that they can be included in the SIJS petition, the regulations require the following:²⁷

The juvenile court must have exercised its authority over the petitioner as a juvenile and made the requisite judicial determinations in this paragraph under applicable State law to establish eligibility.

Whether a child was a "juvenile" when the court issued its order containing the SIJS required judicial determinations is governed by state law.²⁸ For SIJS purposes, the definition of a "child" will come from the relevant state's law providing the age up to which state courts have jurisdiction to issue orders regarding placement, care, dependency, and custody.²⁹ SIJS laws apply equally to any person that state laws define as a "child" or "juvenile."

- Best practice for state court orders:
 - Cite the state statute giving the court jurisdiction over the child's custody, placement, or dependency;
 - Include a finding about the age of the child; and
 - Cite the state statute giving the court jurisdiction over a child of that age.

4) How are "judicial determinations" defined in the SIJS regulations?

A "judicial determination" is a conclusion of law made by a juvenile court.³⁰ The 2022 SIJS regulations no longer use the terms "SIJS finding(s)" or "predicate order." These terms have been replaced with "judicial determination."

²⁶ Placement of the child may be with an individual, with a non-abusive parent, with a guardian, in kinship care or foster care, or with a state or private agency.

²⁷ 8 C.F.R. § 204.11(c)(3) (2023).

²⁸ 6 USCIS-PM J.2(B), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

²⁹ According to the Office of Juvenile Justice and Delinquency Prevention, in 2019, 34 states permitted extension beyond the upper age of original jurisdiction for juvenile courts in delinquency matters, allowing for jurisdiction over youth until they turn 21. See *OJJDP Statistical Briefing Book*, Dep't of Justice (May 21, 2021), available at https://www.ojjdp.gov/ojstatbb/structure_process/qa04106.asp.

³⁰ 8 C.F.R. § 204.11(a) (2023).

5) What are best practices for drafting SIJS judicial determinations?

It is best practice for state courts to issue SIJS judicial determinations that do and consider the following:

- Findings of Fact: Make specific, detailed findings of fact as to:
 - The child's age;
 - The child's parentage, separately with regard to each parent (including natural and adoptive parents); and
 - The forms of maltreatment perpetrated by the abusive parent, including detailed findings as to any of the following incidents that the child suffered:
 - Abuse;
 - Abandonment;
 - Neglect; and/or
 - Similar harm under state laws that offer protection for children.
 - Include in the court order the citation to state law defining these terms.
- Only one parent needs to have perpetrated that maltreatment for a child to be SIJS eligible.³¹
- In a case where both parents perpetrated one of the above listed forms of maltreatment, the court should enter separate findings as to each parent and the maltreatment they inflicted.
- Describe in what ways the child's safety and welfare were the central concern in the court's decision and order.
- If the court awarded custody or placement, explain how and why the court applied state law best interest factors. If the court has issued a dependency order, explain the forms of court-ordered relief the court is offering the dependent child. USCIS provides a helpful example:³²

“The standards for making best interest determinations may vary between states, and the court may consider a number of factors related to the circumstances of the child and the circumstances and capacity of the child's potential caregiver(s). The child's safety and well-being are typically the paramount concern. For example, if the court places the child with a person in the United States under state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a sufficient factual basis in support of a qualifying best interest determination to warrant DHS consent. The analysis would not change even if the chosen caregiver is a parent. USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law.”³³

³¹ Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13080 (Mar. 8, 2022) (to be codified at 8 C.F.R. pts. 204, 205, 245). “[I]f reunification with only one of the petitioner’s parents is not viable, the petitioner may be eligible for SIJ classification.”

³² 6 USCIS-PM J.2(C)(3), *available at* <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

³³ *See* 8 C.F.R. § 204.11(c)(2)(ii) (2023).

- Conclusions of Law: Once the court has made the factual findings described above, in order to file for SIJS based on those factual findings, children must obtain a court order that contains three conclusions of law. The outline below discusses these three conclusions and highlights best practices for applying them:
 1. Custody, Placement, or Dependency: The court order should:
 - Note the type of proceeding in which the court is issuing the custody, placement, or dependency orders;
 - Cite the state’s best interests laws that the court has considered and applied;
 - In Custody or Placement Orders:
 - List the potential custodians and/or placements that the court was required to consider under state law;
 - NOTE: State law controls whom the court must consider in making its custody and placement decisions. Federal SIJS laws do not require courts to consider relatives or other persons in the child’s home country as potential custodians or placements.³⁴
 - Discuss each potential custodian that the court considered;
 - Cite the state best interests laws the court is relying upon;
 - For each potential custodian, describe the state law best interests factors that were used and the outcome;
 - State in the court order the factual findings that support the chosen placement; and
 - Make findings that illustrate why, after considering the state’s best interests factors, the court chose not to place the child with the person(s) in the child’s home country.
 - In Dependency Orders:³⁵
 - List in the court order the services offered to help the child:
 - Heal from the abuse suffered;
 - Promote the child’s stability;
 - Overcome, address, or remediate the impact of the trauma the child has suffered;
 - Protect the child from future harm, including but not limited to:
 - Domestic violence;
 - Dating violence;
 - Child exploitation;
 - Child abuse;
 - Sexual assault;
 - Sex trafficking; or
 - Labor trafficking.

³⁴ See 8 C.F.R. § 201.11(c)(1)(i) (2023).

³⁵ These findings are also useful in cases where the court issues custody or placement orders.

- Improve health, mental health, educational, and/or vocational outcomes for the child who has suffered abuse, abandonment, neglect, or some other form of maltreatment recognized under state law by identifying:
 - Mental health treatments;
 - Forensic or psychiatric testing or treatments;
 - The child’s eligibility for health insurance and health care interventions;
 - Other provisions that courts have previously included to help the child obtain the necessary services and assistance; and
 - Ways to promote the child’s transition to adulthood, independence, well-being and their ability to thrive as an adult.
- Describe the court’s plans for oversight of the child, which can include, but may not be limited to, status hearings;
- Dependency orders for SIJS purposes do not have to include court orders changing the custody or placement of a child.³⁶

For example, the court order can do the following:

 - In all cases, describe how factors in the state’s best interests laws were applied to reach the court’s legal conclusion regarding custody, placement, or dependency of the child.

2. Child’s Best Interests Not to Return to Country of Origin: The state courts must determine whether the children’s best interests would be served by returning the child to their country of origin (or their parent’s country of origin). The USCIS Policy manual provides helpful guidance on this issue:

“While juvenile courts do not have the authority to make decisions on the removal or deportation of a child to another country, it must be determined by the juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of the petitioner to be returned to the country of nationality or last habitual residence of the petitioner or the petitioner’s parents. This requires the juvenile court to make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations, and the record should reflect the factual basis for the juvenile court’s determination.”³⁷

³⁶ The court orders including SIJS judicial determinations can be issued that recognize placements of children in federal custody including orders that recognize and do not change the child’s placement. For example, for children in an Office of Refugee Resettlement, U.S. Department of Health and Human Services placement, the court order can recognize that placement, order any other necessary services for the child, and include in that order SIJS finding of fact and conclusions of law.

³⁷ 6 USCIS-PM J.2(C)(3), *available at* <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

- If a child’s parent is unknown, such as in the case of rape, the court order should so state.
 - A description of the factual basis for the court’s determination that reunification with the parent who perpetrated the child’s maltreatment is not viable.
 - Even in cases where non-viability may seem obvious, as in the cases where the court intervened to remove a child from their parent’s home because of parental maltreatment, for purposes of SIJS orders, it is best practice for the court to explicitly state the action it took and why.⁴⁰
- Answers to Common Viability Questions:
- Non-Viability or reunification with only one parent: For the purposes of SIJS eligibility, the court need only find that reunification of the child with one parent who abused, abandoned, neglected, or perpetrated another form of child maltreatment recognized under state law is not viable. The child can be placed in the custody of the other non-abusive parent.⁴¹
 - Termination of parental rights: State courts are authorized under federal law to enter conclusions of law that reunification with the parent who perpetrated the child maltreatment is not viable without ever reaching any issues related to termination of parental rights. Non-viability is a determination separate and distinct from termination of parental rights, which is not required for SIJS purposes.⁴²
 - Jurisdiction to award custody to an unfit parent: “USCIS does not require that the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification.”⁴³
 - Viability and Visitation: Even if a court issues a non-viability conclusion of law, visitation and telephone contact can still occur between the abusive parent and the child. The conclusion of law that reunification is not viable only signifies

⁴⁰ Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13080 (Mar. 8, 2022) (to be codified at 8 C.F.R. pts. 204, 205, 245).

⁴¹ Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13080 (Mar. 8, 2022) (to be codified at 8 C.F.R. pts. 204, 205, 245). “In the event that a juvenile court determines that it needs to intervene to protect a child from one parent’s abuse, neglect, abandonment, or a similar basis under State law, that court’s determination may fulfill the parental reunification requirement. Similarly, the ability of a court to exercise its authority to place a child in the custody of a non-offending parent is also a matter of State law. Therefore, if reunification with only one of the petitioner’s parents is not viable, the petitioner may be eligible for SIJ classification.”

⁴² See 8 C.F.R. § 204.11(c)(1)(ii) (2023). “The court is not required to terminate parental rights to determine that parental reunification is not viable.”

⁴³ 6 USCIS-PM J.2. n.21., available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

that granting the abusive parent custody is not envisioned by the court as a viable option in the child’s best interests.

- How courts define viability under state law: The determination is whether reunification with the parent is “viable” due to “abuse,” “neglect,” “abandonment,” or similar basis under state law.⁴⁴ The purpose of the inquiry is to identify children whom it would not be viable — meaning not workable or practical — to return to live with the parent.⁴⁵
- Courts have relied on the dictionary definition of “viable” (“common-sense practical workability”) when instructing trial courts to determine whether “forced reunification” between a parent and a child is workable given the impact of the parent’s past conduct.⁴⁶
- In SIJS cases the terms “abuse,” “neglect,” and “abandonment” should be interpreted broadly when evaluating whether the totality of the circumstances indicates that the minor’s reunification with a parent is not viable, i.e., workable or practical, due to prior mistreatment. This approach furthers the objectives of Congress and is consistent with the state’s public policies of protecting and promoting the welfare of children.⁴⁷
- The reunification analysis calls for a realistic look at the facts on the ground in the country of origin and a consideration of the entire history of the relationship between the minor and the parent in the foreign country.⁴⁸ When the parent’s maltreatment was perpetrated in the United States, courts would similarly consider the facts on the ground at the location where the abusive parent resides and the entire history of the relationship with that parent.
- “In making this inquiry, courts should consider all relevant circumstances, including the ongoing psychological and emotional impact on the child of the past relations between the child and the parent, how forced reunification would affect the

⁴⁴ See 8 C.F.R. § 204.11(c)(1)(ii) (2023).

⁴⁵ *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 844 (2022) (citing *Romero v. Perez* 205 A.3d at 915), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>; see also *In re Guardianship of Saul H. California Supreme Court Ruling Summary* (Aug. 18, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-training-tool>.

⁴⁶ *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 848-849 (2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>; see also *Romero v. Perez*, 205 A.3d 903, 913 (Md. 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/romero-v-perez>.

⁴⁷ *Romero v. Perez*, 205 A.3d 903, 914-15 (Md. 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/romero-v-perez>; *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 848-49 (2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>.

⁴⁸ *J.U. v. J.C.P.C.*, 176 A.3d 136, 140 (D.C. 2018); *Romero v. Perez*, 205 A.3d 903, 913 (Md. 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/romero-v-perez>.

child's welfare, the parent's ability and willingness to protect and care for the child, and the parent's living conditions."⁴⁹

- Duration of the Non-Viability Determination:⁵⁰ Generally, USCIS expects that the court's orders were valid when issued, and so they remain in place from the date the child files their SIJS petition through the date the child's SIJS petition is adjudicated.⁵¹
 - There are two exceptions to the requirement that the juvenile court's orders be in effect through the time of adjudication.⁵² These exceptions apply when the court's jurisdiction ended solely because:⁵³
 - The child aged out of the court's jurisdiction, provided the child filed their SIJS petition before reaching the age of 21; or
 - A child welfare permanency goal was reached (e.g. adoption, placement in permanent guardianship, or another child welfare permanency goal was reached).

- Revocation: Approved SIJS petitions will be automatically revoked only when, prior to receiving lawful permanent resident status:⁵⁴
 - 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; or
 - A court order is issued reunifying the child with the parent who perpetrated the abuse, abandonment, neglect, or similar harm.
 - State courts issuing orders in neglect proceedings need to be aware that family reunification efforts can impact the child's SIJS eligibility. Court orders reunifying a noncitizen child with their parent(s) who perpetrated the abuse, abandonment, neglect, or similar harm will

⁴² *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 844-45 (2022), available at

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

⁵⁰ It is also important to note that the child must remain physically present in the United States and unmarried through the adjudication of the SIJS petition. After the child's SIJS petition has been approved, the child can marry without losing access to the SIJS program. See 8 C.F.R. § 204.11(b)(2) (2023); Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13078 (Mar. 8, 2022) (to be codified at 8 C.F.R. pts. 204, 205, 245).

⁵¹ See 8 C.F.R. § 204.11(c)(3)(ii) (2023); 6 USCIS-PM J.2(C), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁵² By statute, adjudication is required to be completed within 180 days of the receipt date for the child's SIJS petition. In cases where USCIS issues requests for further evidence, the case will take longer to reach a final adjudication because the 180 day clock stops and then restarts after the requested additional evidence is received. See Victims of Trafficking and Violence Protection Act of 2000 § 235(d)(2), Pub. L. No. 106-386, 114 Stat. 1464; 8 C.F.R. § 204.11(g) (2023); 6 USCIS-PM J.2(C), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>; 6 USCIS-PM J.4(B), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁵³ 8 C.F.R. § 204.11(c)(3)(ii) (2023); 6 USCIS-PM J.2(C), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁵⁴ 8 C.F.R. § 204.11(j)(1) (2023).

result in revocation of the child’s approved SIJS petition.⁵⁵

6) When a party requests SIJS findings of fact and conclusions of law for an SIJS eligible child, why should a court issue the requested orders?

In cases involving noncitizen children, when the court has found that the child suffered abuse, abandonment, neglect, or a similar harm as defined by state law, and that abuse was perpetrated by the child’s parent, the best interests of the child are furthered by the court including the required conclusions of law in the state court’s order. This is supported by and consistent with the best interests of the child laws in all states, the District of Columbia, and Puerto Rico. As the Maryland Court of Appeals noted in *Romero v. Perez*⁵⁶ in 2019, “the consequences of failing to obtain the [SIJ] status can impose severe hardships” on an SIJS eligible child.

Thus, it is not in the best interests of a child who has suffered parent-perpetrated abuse, abandonment, neglect, or similar harm for a judge to decline to include SIJS findings and conclusions of law in state court orders. The D.C. Court of Appeals in *B.R.L.F. v. Sarceno Zuniga*⁵⁷ correctly stated that “[w]hen determining whether a petitioner has established a prima facie case [for SIJ status findings], the trial court must recognize that Congress to some extent has put its proverbial thumb on the scale favoring SIJS status.” When a party requests SIJS finding of fact and conclusion of law, courts must undertake the SIJS fact-finding process.⁵⁸

7) When a noncitizen child seeks an SIJS order, does the court apply state law or federal immigration law when making judicial determinations and issuing orders in family and juvenile court cases?

Courts making judicial determinations are required to follow state laws and procedures in all cases in which SIJS judicial determinations are or may be requested for a noncitizen child.⁵⁹ The USCIS Policy manual states that “[t]here is nothing in the Immigration and Nationality Act (INA) that allows or directs juvenile courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.”⁶⁰

States laws govern and are to be applied by the court with regard to each of the following:

- The definitions of parent and child;

⁵⁵ See 8 C.F.R. § 204.11(j)(1).

⁵⁶ *Romero v. Perez*, 205 A.3d 903, 909 n.15 (Md. 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/romero-v-perez>.

⁵⁷ See *B.R.L.F. v. Sarceno Zuniga*, 200 A.3d 770, 776 (D.C. 2019).

⁵⁸ *Romero v. Perez*, 205 A.3d 903, 909 (Md. 2019), available at <https://niwaplibrary.wcl.american.edu/pubs/romero-v-perez>; see also *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 843 (2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>.

⁵⁹ 8 C.F.R. § 204.11(c)(3)(i) (2023).

⁶⁰ 6 USCIS-PM J.1(A) n.2, available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

- When and how a parent child relationship is established;
- The definitions of “abuse,” “neglect,” “abandonment,” or similar basis under state laws protecting against child maltreatment;
- The best interests of the child laws, which must be applied in in making factual findings and assessing the three SIJS conclusions⁶¹ of law;⁶²
- The personal and subject matter jurisdiction requirements for each type of proceeding in which state courts make custody, placement, or dependency determinations, and thus could issue SIJS orders;
- Which persons state law requires receive service of process, notice, and an opportunity to be heard in the proceeding before the court involving a child’s placement, care, dependency, or custody; and
- How service of process or alternative service can be accomplished.⁶³

Best Practice: Follow your state juvenile and family court procedures in order to demonstrate that the court has made an informed decision.

When state courts follow best practices and issue detailed court orders containing SIJS judicial determinations, “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.”⁶⁴

8) Is a state court judge who issues an SIJS order in a juvenile or family court proceeding granting the noncitizen child immigration status?

No. The state court order reflects judges’ expertise and application of state law – it does not provide the child with immigration status. This court order must be submitted as required evidence as part of the child’s SIJS petition. The order is just one required piece of evidence in a federal adjudication process. Only USCIS has the authority to adjudicate and approve the child’s SIJS petition and to grant the child lawful permanent residence.⁶⁵

⁶¹ See *supra* Question 1 on p. 1 & Question 5 on p. 7.

⁶² See Leslye Orloff, 4. *Chapter IV – Application of the Best Interest of the Child Standard in SIJS*, The Special Immigrant Juvenile Status Bench Book (Dec. 15, 2017), available at <https://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2>; see also *Best Interest of the Child Statutes – State-by-State Maps and Comparison Charts* (Dec. 2017), available at <https://niwaplibrary.wcl.american.edu/best-interest-of-the-child>.

⁶³ See *All State Family Law Service of Process and Jurisdiction Charts* (Oct. 20, 2021), available at <https://niwaplibrary.wcl.american.edu/all-state-family-law-jurisdiction-and-service-of-process-charts>. This resource provides details regarding services of process and jurisdiction requirements for each state. It is then broken down by the type of state court proceeding involving child custody, placement, care, or welfare.

⁶⁴ 6 USCIS-PM J.2., available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁶⁵ Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13067 (Mar. 8, 2022) (to be codified at 8 C.F.R. pts. 204, 205, 245).

9) Can noncitizen children and their caregivers have mixed motives for seeking SIJS judicial determinations from state courts?

An SIJS petition is *bona fide*, meaning that the child seeking relief is only required to show that a “primary reason” was to obtain relief from parental abuse, neglect, abandonment, or similar basis under state law. Thus, other motives likely will not impede approval of the child’s SIJS petition.⁶⁶ The child and the party seeking custody, placement, or a dependency order for the child may also have an immigration related motive for seeking court orders.⁶⁷ Courts can and should issue SIJS findings and conclusions of law in cases where one of the motivations for seeking courts orders was to obtain immigration status. Best practice for courts issuing SIJS orders include:⁶⁸

- Describing the parent-perpetrated maltreatment;
- Demonstrating that the court order was sought to protect the child;
- Discussing how the court order promotes the child’s safety and wellbeing;
- Explaining how the court order:
 - Furthers the child’s best interests;
 - Protects the child from future harm;
 - Provides the child with remedies for healing from the harm caused by the parent(s);
 - Includes protection orders, no-contact provisions, and other protective relief;
 - Such orders are consistent with the VAWA statutory bars that prohibit USCIS from requiring children to contact the perpetrator of the maltreatment. These statutory prohibitions apply to both the SIJS petition and the child’s application for lawful permanent residence.⁶⁹
- Detailing how the court order actually provides the child relief from abuse, neglect, abandonment, or similar basis for maltreatment under state law; and
- Noting that it is generally better to include the SIJS findings and conclusions of law as part of the same court order granting custody or placement of the child, ordering the child’s dependency, and/or ordering other forms of relief designed to remedy the harm that the child has suffered. This approach makes it clearer to USCIS that relief from maltreatment was a *primary reason* that the child sought orders from the court.
 - In some instances, the SIJS judicial determinations may need to be included in a separate court order. This may occur when:
 - The court already issued a custody award to the non-abusive parent at the end of a contested trial. If at the time of the court proceedings the court and the party awarded custody did not know SIJS was an option, and thus did not seek SIJS judicial determinations as part of the court’s

⁶⁶ 8 C.F.R. § 204.11(b)(5) (2023); *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 845 n.4 (2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>.

⁶⁷ Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13070, 86, 88 (Mar. 8, 2022) (to be codified at 8 C.F.R. pts. 204, 205, 245); 6 USCIS-PM J.2(D), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁶⁸ 6 USCIS-PM J.3(A)(2), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁶⁹ 8 C.F.R. §§ 204.11(e), 245.1(e)(3)(vii) (2023).

order, the SIJS findings of fact and conclusions of law may need to be included in a separate court order.

- An adoption has been finalized and SIJS findings of fact and conclusions of law were not included in the final adoption order.

10) Do noncitizen children who suffered the parental mistreatment outside the United States qualify for Special Immigrant Juvenile Status?

A noncitizen child who has suffered abuse, neglect, abandonment, or a similar form of maltreatment defined by state law that was perpetrated by the child's parent or parents is eligible for SIJS without regard to where in the world the maltreatment took place. It could have taken place in the U.S., abroad, or both.

Common scenarios in which a noncitizen child may be SIJS eligible include:⁷⁰

- “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 United States or while in the United States;
- Children in federal custody with the U.S. Department of Health and Human Services, Office of Refugee Resettlement, or Unaccompanied Children's Services Program; or
- Children in the state child welfare system in the custody of a state agency (for example, foster care), or in the custody of a person or entity appointed by a state or juvenile court.”⁷¹

11) In what types of state court proceedings can courts issue SIJS judicial determinations?

Any “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”⁷² can issue court orders containing SIJS judicial determinations. Jurisdiction to issue SIJS orders is not limited to juvenile courts. The USCIS Policy Manual explains:

The title and the type of court that may meet the definition of a juvenile court varies from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and youthful offender courts.⁷³

⁷⁰ 6 USCIS-PM J.1(A), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁷¹ 6 USCIS-PM J.1(A), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁷² 8 U.S.C. § 204.11(a).

⁷³ 6 USCIS-PM J.2(C), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

Courts can issue SIJS judicial determinations in any type of proceeding in which the court is able to issue orders regarding the placement, dependency, custody, and care of children. The most common examples of state court proceedings include:

State Court Proceedings In Which Courts Can Issue SIJS Judicial Determinations		
Adoption	Delinquency	Paternity and child support
Civil Protection Order	Dependency	Probate
Custody	Divorce	Termination of parental rights
Declaratory Judgement	Guardianship	
<i>See SIJS Bench Book Quick Reference Guides for each proceeding type.</i> ⁷⁴		

12) Can SIJS judicial determinations be included in temporary court orders?

In some instances, courts will be asked to include SIJS judicial determinations in the temporary orders issued in order to stabilize parties and offer court-ordered protections during litigation that is ongoing, complex, or of longer duration. Including SIJS judicial determinations in temporary orders allows children who have suffered maltreatment to file their SIJS petitions sooner without having to await the court’s final orders. Issuing SIJS judicial determinations in temporary orders particularly helps children who could age out of the court’s jurisdiction by the time the final court orders are issued in the case.

USCIS accepts temporary court orders containing judicial determinations as valid evidence in the child’s SIJS petition, but will want to see the final court order if it has been issued by the date the child’s SIJS petition is being adjudicated. This allows USCIS to see that the final court order in the case did not substantively change the SIJS judicial determinations made by the court in the temporary order. It is helpful to include in the state court order that the custody award or placement is with the same person or was not awarded to the parent who perpetrated the maltreatment and that there continue to be findings regarding the maltreatment in the court’s final orders.

13) In what types of proceedings will courts see noncitizen children seeking SIJS determinations in the custody of the U.S. Department of Health and Human Services (HHS)?

Children in HHS custody can seek SIJS judicial determinations in any type of a court proceeding in which the court can issue orders regarding the custody, placement, dependency, and/or care of the child, which can include declaratory judgment cases. The court orders will formally recognize the child’s placement with HHS and will include findings of fact regarding parentage, the abuse, abandonment, neglect, or other similar harm perpetrated by the parent(s) against the child. The court order will also include the three required conclusions of law. In these cases, the court is typically only formally recognizing, and not changing, the child’s placement with HHS.⁷⁵

⁷⁴ Leslye Orloff & Rafaela Rodrigues, *Chapter V – Quick Reference Guides*, The Special Immigrant Juvenile Status Bench Book (Mar. 31, 2018), available at <https://niwaplibrary.wcl.american.edu/wp-content/uploads/SIJS-Bench-book-complete-with-correct-cover-page.pdf>.

⁷⁵ 8 C.F.R. § 204.11(d)(6) (2023).

State courts should be aware that the state and federal government agencies with whom noncitizen children are placed, as well as those responsible for monitoring foster care placements, often fail to request the court orders noncitizen children need to be able to file for SIJS. Judges have an opportunity to play a leadership role in their communities and to educate child welfare agencies and others about the importance of seeking SIJS judicial determinations for noncitizen children in their care. State family and juvenile courts hearing cases involving noncitizen children should ask the parties to brief the court on the child’s SIJS eligibility and may appoint counsel to help the child file for SIJS.

14) How can state courts deciding on requests for SIJS judicial determinations avoid common errors of law, procedure, and fact finding?

The California Supreme Court in *In re Guardianship of Saul H.*⁷⁶ provided instructions to govern trial court SIJS adjudications in California and important guidance for state court judges nationwide who adjudicate SIJS cases. The court’s ruling was consistent with and cites the USCIS 2022 SIJS regulations and SIJS appellate rulings from other states. The court in *In re Guardianship of Saul H.* articulates best practices that trial courts should follow, emphasized below.

Trial courts hearing cases involving requests for SIJS judicial determinations must:

- Issue SIJS Orders if “there is evidence to support” them.⁷⁷
- Allow a child to “obtain relief from parental abuse, neglect, abandonment, or similar basis” if this is “a primary reason” for seeking relief. It need not be the *only* reason. 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 law when deciding if forcing the child to return to their or their parent’s home county is in their best interest.

The California Supreme Court reminds courts hearing cases involving requests for SIJS judicial determinations that courts must not:

- Base findings on “whether a child’s parents are blameworthy.”⁷⁸
- Ignore the children’s wishes regarding return to their home country when deciding if to do so is in their 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.”⁷⁹

⁷⁶ *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 843-46, 853-54 (2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>.

⁷⁷ *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 838, 853-54 (2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>.

⁷⁸ *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 851 (2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>.

⁷⁹ *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 847 (2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>.

- Rely on extra-record evidence or speculate about conditions in other countries when determining if mistreatment qualifies as “abuse,” “neglect,” “abandonment,” or a “similar basis” of harm.
 - The court *must* apply state law definitions to facts that occurred abroad.
- Try to make determinations on the child’s status based on U.S. immigration laws.

The California Supreme Court also recommended that courts hearing cases involving requests for SIJS judicial determinations *should*:

- Consider 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 for rejecting the child’s factual assertion and making a factual finding contrary to the assertion.
- Rely on state law definitions of abuse, neglect, abandonment, or similar basis to assess the viability of reunification.
- Consider 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.”⁸⁰

15) How do the statutory revisions and updates to SIJS law by Congress over the years impact how courts read SIJS case law?

Cases that are valid today and address important legal issues in SIJS cases may contain legally incorrect information based on prior SIJS law that was superseded by the 2008 SIJS statutory amendments or the 2022 SIJS regulations. Courts cannot rely solely on case law when issuing rulings and must also consult the current statutes, regulations, and USCIS policy guidance. When information in case law contradicts the post-2008 SIJS statutes or post-2022 regulations, courts should not rely on that case law.

Common examples of outdated law include:

- Long-term foster care: References to “long-term foster care”⁸¹ are references to prior law. In 2008, Congress significantly expanded SIJS eligibility to a much broader group of immigrant children who suffered parental maltreatment. This expansion includes, but is not limited to, children in long-term foster care.
- Maltreatment by only one parent is sufficient: There is no requirement in the law that the abuse, neglect, abandonment, or similar maltreatment must have been perpetrated against the child by both parents.⁸²

⁸⁰ *In re Guardianship of Saul H.*, 13 Cal. 5th 827, 853 (2022), available at <https://niwaplibrary.wcl.american.edu/pubs/guardianship-saul-h-ca-s-ct-s271265>.

⁸¹ 6 USCIS-PM J.1(A), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁸² 8 C.F.R. § 204.11(c)(1)(ii) (2023).

- May have an immigration related motive for seeking state court orders: Having an immigration-related motivation for seeking state court orders is authorized and allowable. A child may have “mixed motivations” for seeking court orders in support of their SIJS petitions. Relief from parental maltreatment need only be “*a primary reason*” for seeking state court orders regarding the child. There may also be an immigration-related motive for the state court case that was brought on the child’s behalf.⁸³

16) Can a child with a pending or approved SIJS petition or pending lawful permanent residence application travel abroad?

Immigrant children with an approved SIJS petition or pending lawful permanent residence application should remain in the U.S. and should not travel abroad until they have completed the SIJS process and have received their full lawful permanent residence. To qualify for SIJS, SIJS petitioners must be physically present in the U.S. when:⁸⁴

- They file their SIJS petition;
- Their SIJS petition is adjudicated;
- They apply for lawful permanent residence; and
- The SIJS lawful permanent residence application is approved.

The USCIS regulations are silent on the impact that travel outside of the U.S. might have on a SIJS applicant. Thus, it is not clear whether a child with an approved SIJS petition would be eligible for lawful permanent residence if the child left the U.S. and reentered after the date their SIJS petition was approved but before they are granted lawful permanent residence. For these reasons, SIJS petitioners should not depart the U.S. until after they have been granted lawful permanent resident status.⁸⁵

17) How could juvenile court adjudications or criminal convictions affect a noncitizen child’s eligibility for receiving lawful permanent residence through the SIJS program?⁸⁶

Children with approved SIJS petitions are eligible to apply for lawful permanent residence and must prove their admissibility to the United States. Children whose SIJS petitions have been approved are exempt from some grounds of inadmissibility.⁸⁷ Approved SIJS

⁸³ Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13070, 86, 88 (Mar. 8, 2022) (to be codified at 8 C.F.R. pts. 204, 205, 245).

⁸⁴ 6 USCIS-PM J.2(A), available at <https://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6>.

⁸⁵ In these situations, it is very important to take steps to ensure that the child consults with an immigration attorney as there are provisions in immigration law that allow for brief departures from the United States in case of emergency. The attorney will be able to explore applying for “advance parole” for the child without affecting his eligibility to obtain lawful permanent residence in the future.

⁸⁶ For a complete checklist of the inadmissibility grounds, including those related to criminal convictions for which SIJS children are exempt, those where waivers are available, and those where waivers are not available, see Leslye E. Orloff & Meera Patel, *Special Immigrant Juveniles (SIJS): Inadmissibility Factors That Do and Do Not Apply to SIJS Cases* (Dec. 26, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-factors-sijs>.

⁸⁷ INA § 245(h)(2)(A).

children are also eligible to apply for any of the inadmissibility waivers that are generally available to many other categories of immigrants⁸⁸ who may request waivers of certain grounds of inadmissibility for humanitarian or family unity purposes or when the waiver is in the public interest.⁸⁹ However, there are a limited number of inadmissibility grounds for which waivers are not available for SIJS children, which means the child would be barred from lawful permanent residence. These are limited to:⁹⁰

- Convictions of crimes of moral turpitude (except a single offense of possession of less than 30 grams of marijuana);⁹¹
- Two or more criminal convictions;⁹²
- DHS knows or has reason to believe the applicant is, or has been, an illicit trafficker in any controlled substance;⁹³
- Child entered the U.S. to engage in espionage, sabotage, violate, or evade laws prohibiting export of goods, technology, or sensitive information to overthrow the U.S. government or engage in unlawful activity (can include gangs);⁹⁴
- Terrorist activities;⁹⁵
- If the entry would have potentially serious adverse foreign policy consequences;⁹⁶ and
- Participants in Nazi persecutions, genocide, or the commission of any act of torture or extrajudicial killing.⁹⁷

With limited exceptions, most notably certain drug trafficking crimes and gang involvement, the criminal inadmissibility grounds require a criminal conviction.⁹⁸ Juvenile adjudications are not considered “convictions” for immigration purposes.⁹⁹ However, the criminal inadmissibility grounds apply to children who are convicted after being tried as an adult.

The term “conviction” as defined by U.S. immigration laws¹⁰⁰ means a formal judgment of guilt of the immigrant entered by a court or, if adjudication of guilt has been withheld, where:

⁸⁸ INA § 245(h)(2)(B); 8 C.F.R. § 245.1(e)(3)(iv)-(v) (2023); 87 Fed. Reg. 13094-95 (Mar. 8, 2022); *see also* Leslye E. Orloff & Meera Patel, *Special Immigrant Juveniles (SIJS): Inadmissibility Factors That Do and Do Not Apply to SIJS Cases* (Dec. 26, 2022), available at <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-factors-sijs>.

⁸⁹ *See* INA § 245(h)(2)(B); 8 C.F.R. § 245.1(e)(3)(v) (2023). The relationship between the SIJS applicant child and their natural or prior adoptive parents cannot be considered a factor in issuing an inadmissibility waiver based on family unity.

⁹⁰ INA § 245(H)(2)(B).

⁹¹ INA § 212(a)(2)(A).

⁹² INA § 212(a)(2)(B).

⁹³ INA § 212(a)(2)(C).

⁹⁴ INA § 212(a)(3)(A).

⁹⁵ INA § 212(a)(3)(B).

⁹⁶ INA § 212(a)(3)(C).

⁹⁷ INA § 212(a)(3)(E).

⁹⁸ What is considered a criminal conviction under immigration law is defined by the Immigration and Nationality Act and is not based on state law definitions. A judgment that might not be considered a conviction under the criminal law of the relevant jurisdiction may still be a conviction for immigration purposes.

⁹⁹ *See In re Matter of Devison-Charles*, 22 I. & N. Dec. 1362, 1365-66 (BIA 2000); *Matter of Ramirez-Rivero*, 18 I. & N. Dec. 135, 137 (BIA 1981).

¹⁰⁰ INA § 101(a)(48)(A); 8 U.S.C. § 1101(a)(48)(A).

- A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt; and
- The judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed.