Immigration Relief for Crime Victims

Judicial Training Network

Albuquerque, New Mexico

April 21, 2018

Introductions

- Judge Ramona A. Gonzalez

  La Crosse County Circuit Court, Wisconsin

- David B. Thronson

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Learning Objectives

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

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

Participant Goals

What do you want to be sure to learn today?

Special Immigrant Juvenile Status (SIJS)

- SIJS is a form of humanitarian immigration relief that provides for a path to lawful permanent resident status for children who are unable to be reunited with one or both parents due to abuse, abandonment, neglect, or a similar basis under state law.

- SIJS provides the hope of stability and safety for vulnerable immigrant children.

Special Immigrant Juvenile Status (SIJS)

- Path for the child to eventually attain lawful permanent resident (LPR) status
- As LPRs, can live and work permanently in the United States, become eligible for certain public benefits, and may eventually apply for U.S. citizenship
- Reduces the fear of deportation, promotes stability, and facilitates nurturing relationships, stable school environments, and community support
- Path to economic security, employment authorization, drivers' licenses, financial aid to attend university, & access to public & assisted housing

Federal Statutory Framework

- State court findings are required as evidence
  - The state court order does not provide immigration status
  - But the state court order is one of many required pieces of evidence in the federal adjudication and welfare matters
- Only the federal government can provide lawful immigration status

Federal Statutory Framework

- SIJS relies upon state court expertise:
- The required state court findings are on issues that are inherent in state court decisions about child care, custody and placement of children:
  - Adjudicating facts of child abuse, neglect and abandonment
  - Making determinations regarding child care, custody and placement that further the best interests of children

SIJS Terminology
"Juvenile Court"

- Federal statutes and regulations define a "juvenile court" as any "court located in the United States having jurisdiction under State law to make judicial determinations about custody and care of juveniles."

8 C.F.R. § 204.11

SIJS Terminology
"Juvenile Court"

- The "title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts."

USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A) – Juvenile Court Orders and Administrative Documents, https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html

State Court Findings

SIJS requires 3 best interest and child welfare related findings:

- The child has been "declared dependent on a juvenile court" or the child has been "legally committed to or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States."
- It "would not be in the [child's] best interest to be returned to the [child's] or parent's previous country of nationality or last habitual residence."
- The child's "reunification with 1 or both of the [child's] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law."

Immigration and Nationality Act § 101(A)(27)(J)

State Court Findings

- The court exercised jurisdiction over the care and custody of the child
- It is not in the child's best interest to return to their home country
- The child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law

Immigration and Nationality Act § 101(A)(27)(J)

State Law Applies

USCIS state that the "order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law."

USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles – Chapter 3(A)(2) – Juvenile Court Orders and Administrative Documents, Findings, https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html

SIJS Terminology "Dependent"

The mere "acceptance of jurisdiction over the custody of a child by a juvenile court ... makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care or, as here, in a guardianship situation."

In re Menjivar, 29 Immig. Rptr. B2-37 (1994)

State Courts Regularly Make Custody & Placement Determinations

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

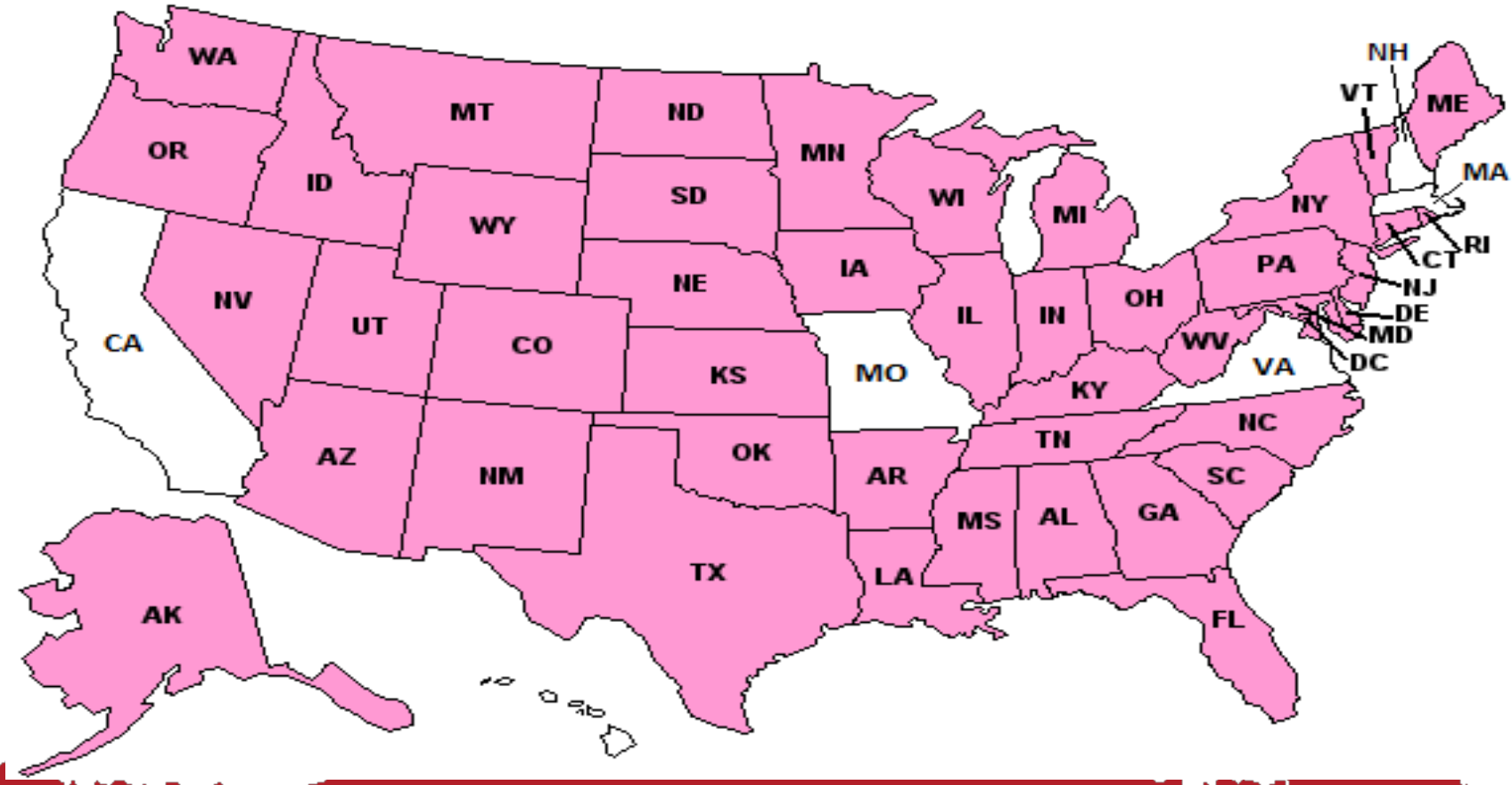
In what kinds of proceedings might you see SIJS eligible children?

Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Child support
- Custody
- Divorce
- Legal Separation
- Declaratory judgments
- Adoption

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

When under state law the court can take jurisdiction over the care or custody of a child



Common Examples Where Declaratory Judgments Can Be Used

- Cases involving children in the federal foster care system
- Already adjudicated contested custody or protection order cases where no SIJS finding was initially made

Declaratory Judgments in Family Law

- Adoption
- Child abuse
- Child custody
- Child support
- Divorce
- Foster care
- Guardianship
- Juvenile detention
- Null and void marriages
- Parental rights
- Paternity
- Support for unborn child
- Third party visitation rights
- Ward's right to marry

Best Practices for Court Order

- 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 court procedures and note that you do so to demonstrate that the court made an informed decision

Viability of Reunification

- Order must include finding that reunification with a parent is not viable due to abuse, neglect, abandonment, or a similar basis under state law
- Does not require formal termination of parental rights or a determination that reunification will never be possible
- Does not necessitate no contact with parent – visitation and communication can occur

Viability of Reunification

- Reunification is not viable if granting the parent custody is not envisioned by the court as a viable option

- Changes in circumstances can occur, but if the court is issuing a final order that does not grant custody to the parent, then reunification is not viable

Abuse, Neglect, Abandonment

There is no governing federal definition of these terms, and USCIS states the "order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law."

USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html

Abuse, Neglect, Abandonment

- Apply state law without regard to where abuse, abandonment or neglect occurred
- Describe how the actions of the parent fit the state law definition of abuse, neglect, or abandonment
- Formal charges of abuse, neglect or abandonment against a parent are not required

Where in your state statutes are there definitions of abuse, abandonment, and neglect?

Abuse

- Child Abuse Prevention and Treatment Act (CAPTA)
  - "[a]ny recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm."
- Most common types of abuse:
  - Physical abuse
  - Neglect
  - Sexual abuse and exploitation
  - Emotional abuse
  - Parental substance abuse
  - Abandonment
  - Domestic Violence

Abandonment

- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA):
  - *left without provision for reasonable and necessary care or supervision*
- as failure to provide reasonable care, support, communication, or contact with the child
- failure to perform duties as parents, or as unwillingness to take physical custody of the child or make arrangements for the child's care
- When the Parent or his/her location is unknown
- Some states require evidence of a person's intention or willingness to abandon the child
- Incarceration

Neglect

- Failure to meet child's basic needs
- Abuse or failure to prevent abuse of a child
- Abandonment
- Failure to discharge responsibilities to care for the child (i.e. Incarceration, hospitalization, mental incapacity)
- Exposure to drugs at or before birth

Similar basis under state law

- Statutory language added to give judges more leeway in states that use terminology or recognize additional state law child protection, child welfare, or child best interests bases that prevent a child's reunification with a parent.

Similar basis under state law

- Where there is a legitimate underlying child welfare reason for the state court to exercise jurisdiction over a decision regarding the care and custody of a child, the explicitly terms abuse, neglect, or abandonment are not required.

Similar basis examples

- A "destitute child" in New York
  - N.Y. SOC. SERVS. LAW § 371(3)
- A child who is "without proper custody or guardianship" in Michigan
  - MICH. COMP. LAWS § 712A.2(4)(b)(1)

Make Findings of Neglect or Abuse Rather Than Similar Basis for:

- Child Endangerment
  - All state statutes more than neglect and may also fall within definition of abuse
- Forced marriage
  - All state statues = abuse
- Domestic violence
  - When child abuse falls within state domestic violence statute definitions

"1 or both parent"

- USCIS unequivocally accepts the plain language of the statute "as a clarification that petitioners … may be reunified with one parent or other family members."
- A "qualifying court appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent's abuse, neglect, or abandonment of the petitioner."

USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles , Chapter 2(D)(2), Parental Reunification
https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html

Best Practices for Court Order

- Utilizing its own state definitions, the state court should identify the factual reasons that reunification with a parent is not viable
- Cite state law definitions of abuse, neglect, or abandonment that are the basis of these findings
- Make findings regarding each parent
- If relying on a similar basis, explain how this basis is similar to abuse, neglect, or abandonment

Best Interests

- Any time a state court makes a decision about the care and custody of a child, it takes the best interests of the child into account.
- It is precisely this experience and expertise that Congress sought to tap when it required that SIJS petitioners provide a state court determination

Where to Find a State's Best Interest Factors

- There is no federal definition of "best interests of the child," and state law controls.
- In making its findings, the court must look to the best interest definitions and factors that it utilizes under its state law:
  - Child welfare statutes
  - Custody statutes
  - Case law

Best Interest Factors

- Family Violence
- Child's needs
- Parent's fitness and capacity to be a caregiver
- Substance abuse and Mental illness
- Continuity and stability of the child
- Children's Family Relationships
- Child's Wishes
- Parental Cooperation and Conflict
- Joint Custody

Approach

- Make factual findings about harm to the child in United States or abroad
- Apply state law definitions to determine if harm meets definitions of abuse, neglect, abandonment, or similar basis under state law
- Apply state best interest factors to
  - Custody, placement, commitment
  - Determination if in child's best interests to return to placement in home country

Home country not in child's best interests

- Identify each potential custodian in United States and home country
- Apply state best interests factors to each placement
- State in court order the factual findings that support chosen placement

Home country not in child's best interests

- Make findings that illustrate why, under state best interest factors, court is not choosing placements in child's home country
- Compare the supports, help, services child needs United States v. home country

Factors to consider…

- Risk of danger to the child
- Family violence, abuse, neglect, abandonment
- Trauma child has suffered and child's physical, emotional, safety, mental health needs
- Help the child is receiving
- Family support system
- Emotional well being

Factors to consider…

- Educational resources
- Child's wishes and fears
- Parent's fitness and caregiving capacity
- Parent's demonstrated capacity to provide stability continuity of care
- State laws that preclude or discourage placement with abusive parent

Delinquency and Criminal Issues

- Juvenile delinquency finding ≠ conviction for immigration purposes
- Juvenile dispositions can have immigration consequences
  - Negative factors in discretionary determinations
  - Some grounds of inadmissibility or deportability do not require a criminal conviction

Inadmissibility Waivers and SIJS

- Waivable Offenses
  - Prostitution
  - Drug abuse or addition,
  - Smuggling
- Non-Waivable Offenses
  - Moral turpitude crimes (theft and shoplifting, murder, spousal or child abuse, fraud, espionage, terrorist activities, genocide, torture)
  - Drug crimes (findings and admissions regarding drugs except simple possession of 30 grams or less of marijuana; controlled substances traffickers)
  - Multiple criminal convictions (does not include juvenile adjudications)

What Children with SIJ Status Receive

- Ability to apply to adjust status to Lawful Permanent Resident
- Legal employment authorization
  - Facilitates access to state issued driver's licenses and identification cards
- Eligible for citizenship after 5 years as LPRs
- As LPRs, eligibility for post secondary educational grants and loans, public and assisted housing
- Food stamps (only until the immigrant child turns age 19)

Parents of recipients of SIJS may NEVER obtain any immigration benefit based on the relationship to the child

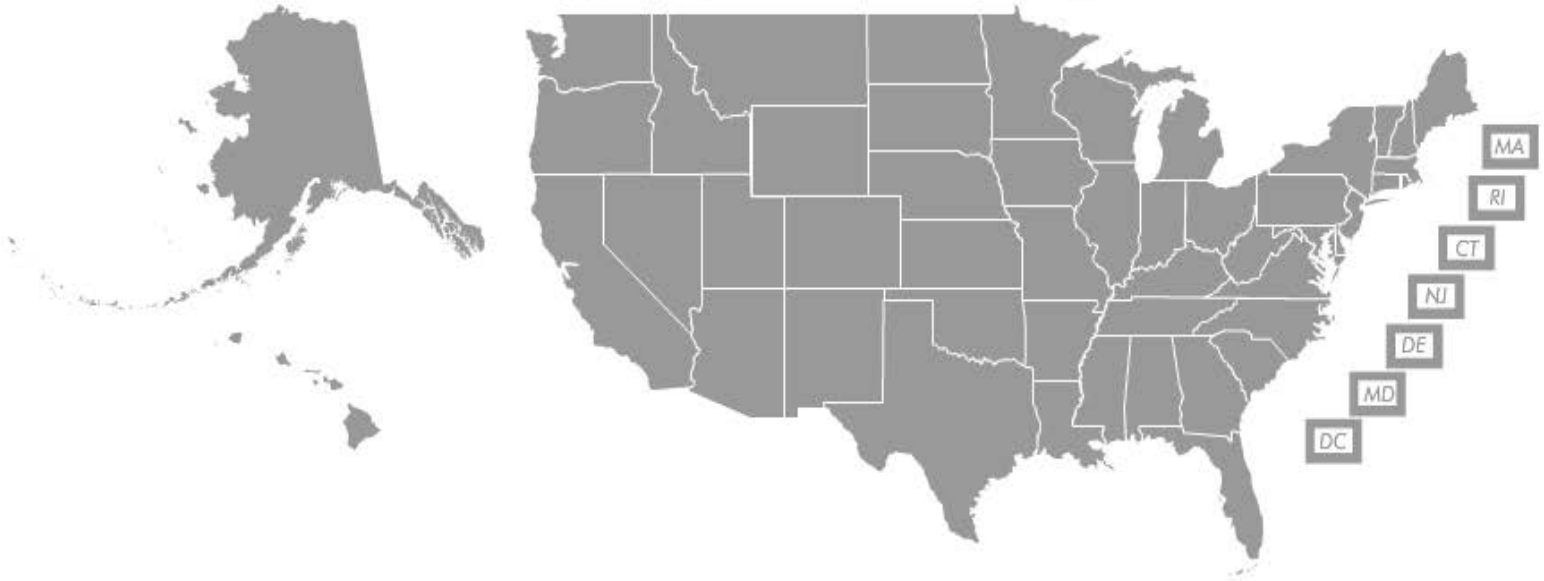
Benefits for SIJS Children

- TANF and TANF funded child care
  - Eligible upon receipt of lawful permanent residency
    - Subject to the 5 year bar unless state funded
    - Head Start and CCDF funded childcare available
- SNAP-Food Stamps
  - SIJS with lawful permanent residency until turn 19
- LIHEAP – Federal Weatherization Assistance
  - SIJS with lawful permanent residence
- Health Care Exchanges - SIJS applicant children
- Subsidized Health Care
  - SIJS children upon receiving lawful permanent residency, subject to 5 year bar unless state funded
- Education – Federal FAFSA
  - SIJS children with lawful permanent residency

Benefits for SIJS Children

- Driver's License –Federally Recognized ID
  - Federally recognized ID - SIJS children with lawful permanent residency
  - State issued driver's licenses/ID available in some states to any person
- Shelter and Transitional Housing –no immigration restrictions
- Public and Assisted Housing
  - SIJS children with lawful permanent residency
- FEMA Federal No immigration restrictions
  - Short-term non cash emergency disaster relief and 1 month of D-SNAP
- FEMA Individual and Household Program and Disaster Unemployment Assistance - SIJS with lawful permanent residency

NIWAP Demographics Map



- Demographics
- TANF
- Health Care
- Post-Assault Care
- Pre-Natal Care
- Emergency Medicaid
- Forensic Exams
- Child Care
- Driver's Licenses
- Food Programs
- In-State Tuition
- SSI
- Energy/Weatherization

If you have additional questions or need technical assistance on immigrant victim access to federal and state public benefits, contact NIWAP by e-mail at info@niwap.org or by phone at 202-274-4457.

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/JTN1
- Judicial Training Manual at www.niwap.org/go/sji
  - **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

Questions