Special Immigrant Juvenile Status: Latest Tips, Tools, Bench Book and Best Practices for Judges

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Introductions

- Judge Ramona Gonzalez
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  - Judicial Education Materials: www.niwap.org/go/sji
  - Web Library: http://niwaplibrary.wcl.american.edu/

Learning Objectives

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

- Understand the role Congress and the U.S. Department of Homeland Security delegated to State Court Judges in Special Immigrant Juvenile Status (SIJS)
- Identify childrenbefore the court in a wide range of family court cases who are SIJS eligible
- Know how to issue SIJS findings as part of state court orders the court issues addressing custody or placement of a child

Participant Goals

- What do you want to be sure to learn today?

What countries are you seeing immigrant survivors and immigrant children you are seeing in court coming from?

PROTECTIONS FOR IMMIGRANT VICTIMS



Overview Special Immigrant Juvenile Status (SIJS)

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

SIJS: Congressional Goals

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

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children under the age of majority under state law who have been
  - Victims of abuse, abandonment, neglect
  - By at least **one parent**
- State Court Findings Required As Evidence requires
  - State court with jurisdiction over care, custody, dependency or placement of the child
  - has issued a court order, finding, or declaration on three statutorily required issues
- DHS uses the state court order as evidence in adjudicating the immigration application

SIJS Definition

- A "juvenile court" according to federal statues and regulations is
  - 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

Department of Homeland Security Confirms

- A juvenile court according to DHS
  - 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."

SIJS Terminology "Dependent"

- The mere acceptance of jurisdiction over the custody of a child by a juvenile court makes the child dependent upon the state court.
- Where the child is places is not controlling
- Placement examples
  - foster care, guardianship, custody with a non-abusive parent, kinship care

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

State Court Findings Needed for SIJS *State Law Applies To Each*

- The court issued orders regarding the care or custody, of an immigrant child with
  - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend) *OR*
  - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
  - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to the parent's abuse, abandonment, or neglect

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

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 –

- Legitimate underlying child welfare reason for state court jurisdiction to issue child custody/placement order – 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)

Where to find a state's best interest factors

- Child welfare statutes
- Custody statutes
- Case law

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

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

Apply State Law

- Apply state law without regard to where abuse, abandonment or neglect occurred
- Best Interests
  - Placement
  - Non-viability
  - Not returning child to their home country
- Jurisdiction
  - UCCJEA – Temporary Emergency Jurisdiction
- Follow your state court procedures

SIJS: State and Federal Roles

State Courts With Jurisdiction Over Children

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

DHS Adjudicators

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

Approach:

1. Make findings about the facts of harm to the child in US or abroad
2. Determine applying state law if = abuse, abandonment, neglect, similar basis
3. If yes apply state best interest factors to
   - Custody, placement, commitment
   - If not in child's best interests to return to home country
   - Viability of reunification with abuser

Court Order: Custody, Dependency, Placement

- Declaring the minor is dependent on the court*; ***OR***
- Placing the child in the custody or guardianship of:
  - An individual person;
    - Order should include in the name of the person and their relationship to the child
      - Parent, family member, friend, next friend, other
  - A state agency or department; OR
  - A private agency

**Statutory Amendment 2008, no longer requires the child is dependent on the state, the child may be placed with an individual including relatives.*

State Courts Regularly Make Custody & Placement Determinations

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

All of the Following are Potentially Eligible for SIJS

- A minor who is:
  - Abused, abandoned or neglected
    - In the U.S.
    - In the home country
  - Living with their
    - Non-abusive parent
    - Guardian
    - Adopted parent
    - State foster care
    - Federal foster care (ORR)

Home country not in child's best interests

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

Factors to consider…

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

Reunification Not Viable and Best Interests

- Order must include the finding that reunification with the parent is not viable
- Using state best interests law
  - Identify factual reasons why reunification is not viable
  - Will include explaining why the abusive parent is not being granted physical custody of the child

Viability Factors and Best Interests

- Family violence, abuse, neglect, abandonment
- Trauma child has suffered and child's physical, emotional, safety, mental health needs
- Child's wishes and fears
- Parent's fitness and caregiving capacity
- Parent's demonstrated capacity to provide stability continuity of care

Finding: Reunification Not Viable

- Does not require termination of parental rights
- Viability of reunification does not necessitate no <u>contact</u> with parent – Visitation can occur
- Means granting the abusive parent custody is not envisioned by the court as a viable option
- Changes in circumstances can occur
  - But not granting full legal/physical custody to abusive parent

In what Kinds of Proceedings Might You See SIJS Eligible Children?

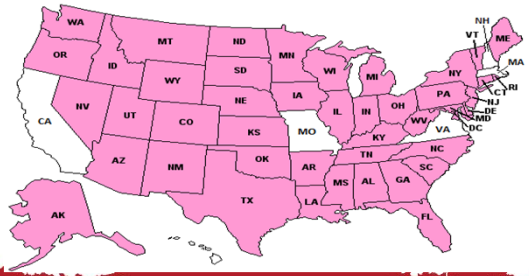
Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Child support
- Custody
- Divorce
- Legal Separation
- Adoption
- Motions for a declaratory judgment

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

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

"One *or* Both Parent" Requirement

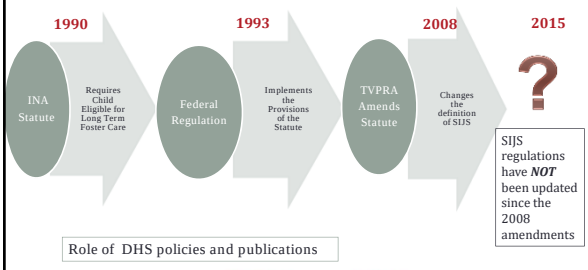


A child can receive SIJS findings if they were abused, abandoned or neglected by one parent and are living with the other parent.

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

Statute vs. Regulation



Role of DHS policies and publications

SIJS in State Courts

- Many SIJS cases are for 15-17 year old minors
  - State court order + filing before the child ages out
  - Up to age of majority set by state law
- SIJS is an option any time an abused, abandoned or neglected child is not a
  - Citizen or lawful permanent resident

Best Practice for Court Order

- Make factual findings regarding
  - Facts of abuse, abandonment and/or neglect
  - Separately regarding each parent
  - Articulating trauma impact on child helpful
  - Connect the dots
    - Explain why the orders and findings the court is issuing
    - Are needed for child protection, healing, stability
    - Because of the abuse/abandonment/neglect the child suffered
  - Why court orders in the child's best interest

Best Practice for Court Order

- Cite the state statute(s) on
  - Abuse, abandonment and/or neglect
  - Jurisdiction over the minor
- If "similar basis" explain how it is similar to
  - Abuse, abandonment and/or neglect

Delinquency and Criminal Issues & SIJ Eligibility

- 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

Is There a Waiver for SIJS Cases

- 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

- While case is pending:
  - Protection from deportation and removal
  - As lawfully present children – health care exchanges (no subsidies)
  - Programs and services necessary to protect life and safety

What Children with SIJ Status Receive

- At approval:
  - Can apply for Lawful Permanent Residency (separate but usually concurrent filing)
  - Legal work authorization leads to federally recognized ID
- When granted Lawful Permanent Residency
  - Eligible for citizenship after 5 years

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

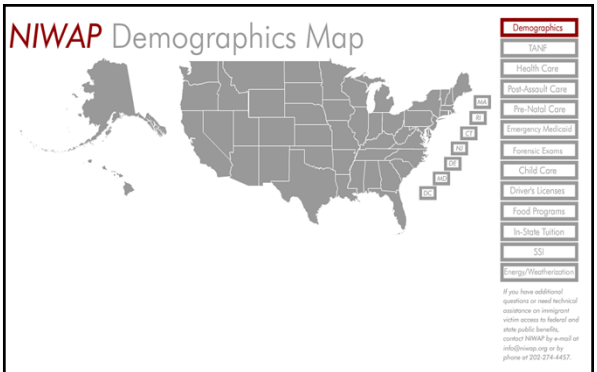
Benefits for SIJS Children

- 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

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
- Education – Federal FAFSA
  - 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



Resources

Technical Assistance and Materials

- 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
  - Bench cards, research, manuals training materials, webinars, directory

NIWAP Topics

- VAWA, U and T Visas, SIJS
- VAWA confidentiality and state courts
- U and T Visa certification by judges
- Immigration allegations in custody, CPOs, and divorce
- Special Immigrant Juvenile Status (SIJS), child abuse, and protective battered immigrant parents
- Public benefits access for immigrant victims
  - Health care, housing, TANF, SNAP, FAFSA, legal services and more

Questions



Evaluations

