

UNIVERSITY *of* WASHINGTON | SCHOOL OF LAW

WASHINGTON LEADERSHIP INSTITUTE

WASHINGTON STATE BAR ASSOCIATION



**WASHINGTON STATE COURT
SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)
BENCH BOOK AND RESOURCE GUIDE**

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Washington State Court SIJS Bench Book and Resource Guide

The Washington Leadership Institute (WLI)

The mission of the Washington Leadership Institute (WLI) is to recruit, train, and develop minority and traditionally underrepresented attorneys for future leadership positions in the Washington State Bar Association and legal community. The WLI Advisory Board strives to recruit fellows for each class who reflect the full diversity of our state, which includes race, ethnicity, gender, sexual orientation, disability, and geographic location.

The WLI Class of 2015 Fellows prepared the following Special Immigrant Juvenile Status (SIJS) Bench Book as their Community Service Project. This Community Service Project was designed to meet the 2015 Fellows' goal of providing a useful resource or tool that would have statewide impact, that was relevant to immigrant communities, and that could be developed in cooperation and conjunction with non-profit organizations. The Fellows also sought to meet a need identified by judicial officers who requested an SIJS Bench Book.

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The Washington State Task Force on Unaccompanied Children

Following the completion and initial circulation of this guide in October, 2015, WLI identified the Washington State Task Force on Unaccompanied Children (“WA UC Task Force”) as an entity equipped to permanently house the Bench Book, for purposes of updating and circulating future editions. The WA UC Task Force is comprised of attorneys from non-profit organizations, law firms, government offices and the private bar with expertise in immigration law, family law, and juvenile law, among others. The group was initially formed in February, 2015 in response to the unprecedented number of unaccompanied immigrant children arriving to the U.S., including

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Washington State, beginning in 2014. The Task Force members have extensive collective experience and knowledge relating to SIJS. Any edition of the Bench Book released subsequent to October, 2015 reflects updates provided by the WA UC Task Force.

**To share suggestions or legal updates for improvement of the bench book, please email:
UCTaskForceChair@outlook.com.**

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Overview

For over 25 years, Special Immigrant Juvenile Status (SIJS) has provided an avenue towards lawful status for certain foreign-born children living in the United States who have suffered parental maltreatment.¹ Once granted SIJS, children are able to achieve safety and stability in many areas of their lives and focus on healing from the damage caused by their parent(s). SIJS has consistently been a protection available to a broad range of children, including those already involved in state child protective systems as well as those who recently arrived to this country but experienced parental maltreatment prior to entering the U.S. It is equally available to children who have resided most of their lives in the U.S. and those who have immigrated more recently. Eligible children who have been detected by immigration authorities and who may be facing deportation can also seek SIJS as a remedy to deportation. The most recent amendments to the federal SIJS statute in 2008² broadened the category of children eligible to include those who are unable to reunify with *one or both* parents due to abuse, neglect, abandonment or similar basis under state law. Thus, some children who have one fit parent, and even if residing with that fit parent, may qualify.

Washington State courts, in a variety of proceedings, including dependency, offender, and family law, commonly enter orders that serve to protect children's safety, stability and welfare. When Congress created SIJS, it recognized that state courts are best suited to make the SIJS findings relating to child protection and best interests of the child. These are matters that are within the state court's traditional expertise. Therefore, children seeking SIJS, and the protections which it provides, must first turn to a state court to obtain an order that makes the required factual findings before pursuing their petitions with the U.S. Citizenship and Immigration Services (USCIS).

In recent years, SIJS has garnered increased attention, including among juvenile and state courts, due to an influx of unaccompanied children arriving to the U.S., many of whom are SIJS-eligible and seek findings by a state juvenile court, as is required to establish eligibility. Between 2011 and 2014, the number of children who entered the U.S. alone and were detected by immigration authorities nearly doubled each year.³ In 2014, an unprecedented nearly 70,000 such children entered the U.S. Although the numbers dipped slightly in 2015 due to increased enforcement efforts in Mexico, the numbers thus far in FY2016 have spiked again and approximately 54,000 unaccompanied children had been apprehended through August, 2016.⁴

¹ 8 U.S.C. § 101(a)(27)(J) (1990).

² William Wilberforce Protection Reauthorization Act of 2008; P.L. 110-457 ("TVBRA").

³ <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>, last visited October 2, 2016.

⁴ *Id.*

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As a result of this influx, Washington – like all states -- has seen an increase in unaccompanied, undocumented children living with parent(s) or caregivers.⁵ From 2014 through July 2016, over 1,000 such children have been released to relatives or non-relative caregivers state-wide.⁶ Others have been released to other states but then have moved to Washington State to be with other caregivers. In addition, Office of Refugee Resettlement funds shelter care and foster care programs for over 120 unaccompanied children at any given time in Washington and many of these children are also SIJS eligible. Although SIJS encompasses a wide range of children and not only unaccompanied children such as those described above, Washington courts have undoubtedly been impacted by these numbers.

With the welfare of the children eligible for SIJS in mind, this bench book and resource guide was created to assist Washington State courts in identifying SIJS eligible children and responding to requests for SIJS findings. Other stakeholders working with potentially SIJS eligible children may also find this book and guide useful.

⁵ Children who are deemed unaccompanied when detected by immigration authorities are referred to the U.S. Department of Health and Human Services' Office of Refugee Resettlement's Division of Children's Services (ORR/DCS). Most children who enter ORR/DCS care are eventually released to parent(s), relatives, or non-relative caregivers pending the outcome of their immigration matters.

⁶ <http://www.acf.hhs.gov/orr/programs/ucs/state-by-state-uc-placed-sponsors>, last visited August 29, 2016.

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1. Introduction

1.1 What is Special Immigrant Juvenile Status?

Special Immigrant Juvenile Status (“SIJS”) is a federal immigration classification (or in immigration terms, an “immigrant visa”) that enables certain eligible children to apply for lawful permanent resident status. The statutory basis for SIJS is the Immigration and Nationality Act (“INA”) at § 203(b)(4),⁷ which allocates a percentage of immigrant visas to individuals considered “special immigrants,” and § 101(a)(27)(J)⁸ which defines Special Immigrant Juveniles.

Whereas SIJS immigrant visa status *in and of itself* does not confer permanent lawful status in the U.S., it provides a basis on which, once granted, a child⁹ can seek lawful permanent resident status (i.e., a “green card.”). The determinations of SIJS eligibility by immigration authorities is thus a separate determination from eligibility for lawful permanent residence. For many undocumented children, SIJS is the only path available for lawful permanent residency and without it, a child may become subject to removal from the U.S.

To obtain SIJS and subsequently seek to become a lawful permanent resident, a child must go through the following process:

1. Obtain predicate findings from a state court judge containing certain factual findings that can be used to support an SIJS petition,
2. Petition U.S. Citizenship and Immigration Services (USCIS) for SIJS, and
3. If the SIJS petition is approved, submit an application for lawful permanent residence (a “green card”). In immigration terminology, applying for lawful permanent residency is called applying for adjustment of status to that of a lawful permanent resident. An applicant can apply for lawful permanent residence by submitting an application to USCIS or the Immigration Court. Although in some cases, a child may file his/her SIJS petition and application for lawful permanent residence concurrently, they are adjudicated separately.

⁷ See 8 U.S.C. 1152.

⁸ See 8 U.S.C. § 1101.

⁹ The terms “child,” “juvenile,” and “youth” are used interchangeably throughout this guide. It should be noted that whereas these terms are most often defined under Washington State law as an individual under 18 (see RCW 26.44.020; RCW 12.34.030(2)), in the federal immigration context, “child” is defined as an individual under 21 years of age and individuals under 21 are eligible for SIJS. See Immigration and National Act 101(b)(1); INA 101(a)(27)(J); 8 CFR 204.11(c).

As discussed more fully in Section 2.4, state courts play a critical role in the SIJS process. Although SIJS can only be conferred by the competent federal immigration authority—U.S. Citizenship and Immigration Services (USCIS)—a child *must first* obtain a predicate order from a state court with specific findings.

1.2 What are the benefits of SIJS?

The most important benefit of SIJS is that it establishes a basis to seek lawful permanent resident status. Whereas many types of visas require that a person remain in a visa status for several years before applying for lawful permanent residence (for example, the U-visa for crime victims), SIJS grantees may apply for permanent residence immediately.¹⁰ A lawful permanent resident (LPR) has the right to live and work permanently in the United States, to travel in and out of the country, and also receive important government benefits. For example, some LPR children may be eligible for federal financial aid to go to college. SIJS can also benefit counties which may be able to access federal foster care matching funds (Title IV E) when a child gains SIJS; counties cannot access these funds for undocumented children. Also, after five years of holding permanent resident status, LPRs can apply for U.S. citizenship.

In many cases, SIJS grantees who are in removal (deportation) proceedings and who plan to seek adjustment of status administratively through USCIS may use SIJS status as a basis for terminating removal proceedings. Additionally, SIJS grantees who have submitted an application for adjustment of status are eligible for employment authorization pending a final adjudication of that application.

1.3 Considerations for children applying for SIJS

One important consideration for children applying for SIJS is that a child who receives lawful immigration status through SIJS is barred from sponsoring their parents in obtaining lawful status.¹¹ Congress enacted this rule to prevent parents who have abused, neglected or abandoned their child from benefiting from their parental maltreatment. The bar applies to both parents even if one was a safe, protective parent. The child also cannot be married and must remain unmarried until LPR status is obtained.

Once a child obtains SIJS, their application for adjustment of status to lawful permanent resident will be reviewed separately and be subject to various grounds of inadmissibility. Children are excused from several grounds of inadmissibility such as provisions relating to public charge or entry without a proper visa. Some grounds of inadmissibility may be waived for humanitarian

¹⁰ The ability to apply for lawful permanent resident status may be subject to yearly visa availability.

¹¹ INA section 101(a)(27)(J)(iii)(II).

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purposes, family unity, or when it is in the public interest. There are other grounds of inadmissibility that are not waivable such as convictions of certain crimes and drug trafficking.¹²

Juvenile court adjudications are not convictions for immigration purposes. However, if a juvenile offender matter is declined to an adult court, or if a child is sixteen or seventeen years old and appears in municipal or district court, any subsequent findings may have serious, automatic immigration consequences. For example, certain offenses can make a child ineligible for LPR status. There are also conduct-based grounds for removal and inadmissibility that apply regardless of age.¹³ Even if certain offenses do not trigger automatic negative immigration consequences, all criminal and/or juvenile offenses, including unadjudicated charges, are considered as a matter of discretion by immigration authorities in determining whether to grant LPR status.

A child may be eligible for other immigration pathways for legal status in addition to SIJS that preserves the ability to sponsor family members in the future, or the ability to petition for visa status for siblings, or to avoid certain grounds of inadmissibility. In general, an eligible child may seek relief from multiple remedies at the same time. For these reasons, it is important for the child to consult with an immigration attorney.

There are additional age related considerations that are discussed in Section 2.3.

¹² INA §212(a)(2)(A), (B), and (C)15 and (3)(A), (B), (C), and (E).

¹³ *See, e.g.*, 8 U.S.C. § 1182.

2. Understanding SIJS

2.1 Who is eligible for SIJS?

For a child to be eligible to apply for SIJS, a state court must find:¹⁴

1. The child is under age 21;
2. The child is unmarried;
3. The child is declared dependent by a juvenile court, or legally committed to or placed in the custody of a state agency or department, or placed in the custody of an individual or entity appointed by a State or juvenile court;
4. Reunification of the child with either **one or both** parent(s) is not viable due to abuse, neglect, abandonment, or similar basis under state law;¹⁵ and
5. It is not in the child’s best interests to return to his/her country of nationality or country of last habitual residence.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) amended the eligibility requirements and expanded the group of children eligible for SIJS. These changes allow for SIJS findings to be made in a broader range of state court proceedings including those where children are placed in the custody of an individual or entity by a state or juvenile court. In addition, the TVPRA eliminated the prior requirement that a child must be “deemed eligible for long-term foster care” and replaced it with a requirement that the state court find that reunification with *one or both* parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.¹⁶ The TVPRA’s inclusion of “similar basis under state law” recognizes that state statutes may use different terminology than “abuse” “neglect” or “abandonment” as a similar basis to find that it is not viable for a child to be reunified with a parent. The addition of the “one or both parent(s)” language allows for what is commonly referred to as One-Parent SIJS.

2.2 One-parent SIJS and case law

Due to the TVPRA amendments, a child who is residing with one parent but is unable to reunify with the other parent due to abuse, neglect, abandonment or other similar state law basis may qualify for SIJS. One-parent cases can arise in a wide range of state court proceedings such as family law, dependency or offender proceedings where a child is safely being cared for by one-parent or has a healthy, safe relationship with one parent, and state court SIJS findings are obtained against the other parent.

¹⁴ INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

¹⁵ Federal law does not require that the abuse, neglect, abandonment or similar basis to have occurred in the U.S.

¹⁶ P.L. 110-457.

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Several published opinions have upheld the plain language meaning of “one or both parents” finding that the inability to reunify with one parent is sufficient for a court to enter SIJS findings. See *Matter of Mario S.*, 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012)(father was deported for domestic violence and child placed with mother after discharge from state custody); *Marcelina M.-G. v. Israel S.*, 112 A.D. 3d 100, 973 N.Y.S.2d 714 (N.Y. Fam. Ct. 2013)(mother petitioned for custody and father neglected and abandoned the child); and *In Re Israel O.*, 233 Cal.App. 4th 279 (2015)(father abandoned child and child placed with mother as a condition of probation). These courts found the plain language interpretation consistent with the legislative intent to protect children from further parental abuse or maltreatment.¹⁷

In contrast, a 2012 Nebraska case *In re Interest of Erick M.*, interpreted the federal statute differently and held that the “one or both” language required a finding that reunification with both parents is not viable. The child in that case was involved in a delinquency proceeding. The father had abandoned him and there were no allegations of parental maltreatment against the mother. The court found and the appellate court affirmed that because the court did not find that reunification was not viable with both parents, that the reunification requirement was not met.

Several of the previously cited cases declined to follow *Erick M.* Although federal regulations have not been amended to directly address this issue, USCIS in practice has approved one-parent SIJS petitions and their guidance materials indicate that eligible children may include those living with a safe parent.¹⁸

2.3 What is considered a state juvenile court for SIJS purposes?

The federal regulations pertaining to SIJS define “juvenile court” broadly as “a court located in the United States having authority under state law to make judicial determinations about the custody and care of juveniles.”¹⁹ There is no requirement for a specific type of state court proceeding in which the abuse, abandonment, or neglect finding may be made. Predicate findings could be made, for example, during dependency, offender, family law, or any other court proceeding where the care and custody of the child is at issue. For this reason, it is helpful for state courts to be on the alert for children who qualify for SIJS and may benefit from state court predicate findings.

¹⁷ See *Marcelina M.-G. v. Israel S.*, 112 A.D. 3d 113, 973 N.Y.S.2d 714 (N.Y. Fam. Ct. 2013); *Matter of Mario S.*, 954 N.Y.S.2d 851-2 (N.Y. Fam. Ct. 2012); *In re Israel O.*, 233 Cal.App. 4th 290-1 (2015).

¹⁸ See USCIS’ brochure, *Immigration Relief for Abused Children, Special Immigrant Juvenile Status*, Information for Juvenile Court Judges and Child Welfare Professionals, https://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/PED.SIJ.1015_Brochure_M-1114B_Revised_05.19.16.pdf

See also *In Re Israel O.*, 233 Cal.App. 4th 279 (2015)(the appellate court found USCIS’ interpretation and approval of applications to include children residing with a non-abusive parent was persuasive and consistent with the purpose of the SIJ statute.

¹⁹ 8 C.F.R. 204.11(a).

2.4 What is the role of state courts in SIJS?

State courts play an important role in the SIJS process because to become eligible to petition U.S. Citizenship and Immigration Services (USCIS) for SIJS status, a child *must first* obtain a predicate order with specific findings from a state court. Only once the child has obtained these required findings from a state court may the child apply for SIJS. (See Section 3, below, for detailed discussion of the various state court proceedings in which findings may be made.)

The state court's role is separate and distinct from that of USCIS. Congress specifically deferred to state courts and their expertise to make factual findings of abuse, neglect, abandonment, and/or similar maltreatment, and a child's best interest, but reserved the process of adjudicating SIJS to federal immigration authorities. SIJS can only be conferred by the competent federal immigration authority with the consent of the Department of Homeland Security (DHS).²⁰ With the consent function, DHS (specifically, USCIS) determines whether an SIJS application is *bona fide*, meaning sought for the purpose of relief from abuse, abandonment, neglect or similar maltreatment. It is important to note that for many SIJS applicants, gaining an immigration benefit is their only way to obtain relief from abuse, abandonment, or neglect. Several appellate courts throughout the U.S. have examined the state courts' role in SIJS and affirmed the state courts' role as limited to making the predicate findings.²¹ The state court's role is limited in that the court is not to determine a particular child's motivation for seeking an SIJS order or the likelihood of the petition being granted (which is for USCIS to determine) but rather to make the five findings as described above.²²

²⁰ INA § 101(a)(27)(J)(iii), 8 U.S.C. § 1101(a)(27)(J)(iii) (grant of SIJ status requires consent of Department of Homeland Security); *Special Immigrant Juvenile Status Provisions* 1 (Mar. 24, 2009), <http://1.usa.gov/1L8AI8E> (last visited May 19, 2015) (clarifying "consent" requirement).

²¹ *E.g. Leslie H v. Superior Court*, 224 Cal. App. 4th 340, 345 (2014) (holding the superior court erred in denying to issue SIJS predicate order on basis of "policy conclusion" where federal statute limited court to "limited, fact-finding role"); *also, H.S.P. v. J.K.*, 223 N.J. 196, ---A.3d---, at * 11(2015) (holding a New Jersey state court's "solo purpose is to make those factual findings [under 8 C.F.R. 204.11] and not to adjudicate the children's application for SIJ status"). *In re Dany G.*, 223 Md. App. 707, 715 (2015) ("Without a predicate order, the child cannot apply for SIJ status. If the underlying juvenile court filing is properly before the court, state courts are required to make these factual findings."); *In re J.J.X.C.*, 318 Ga. App. 420 (2012) ("The SIJ statute affirms the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests.") (citing *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 265(III)(A)(1)(a) (C.D. Ca. 2008); *Simbaina v. Bunay*, 221 Md. App. 440, 451-52 (2015) (noting that "the federal statute directs our State courts to perform a 'nonjudicial function' by issuing advisory factual findings with regard to a child's SIJ status.").

²² In *Matter of Mario S.*, 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012), the appellate court stated that the juvenile court's role is limited to making factual findings, and not to determine the juvenile's motivation in seeking SIJS, whether the child would pose some unknown threat to safety, or whether USCIS may or may not grant the application for adjustment of status as a Special Immigrant Juvenile.²²

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Thus, it is recommended that state courts use the AOC's published model state court order, provided as Appendix B and limit findings to those relating to SIJS eligibility.

2.5 Important age-related considerations

Obtaining the SIJS predicate order can be time sensitive. For the purpose of immigration relief, an SIJS applicant must file his/her application with USCIS while still under state court jurisdiction, OR after jurisdiction has terminated, so long as jurisdiction ended on account of age.²³ Although a child is eligible to apply for SIJS until reaching 21 years of age, a child must obtain the predicate order prior to the state court's jurisdiction ending, which typically occurs upon the child's 18th birthday. Therefore, the court should try to issue the predicate findings prior to the child turning 18 years of age or if authorized, maintain jurisdiction until the findings can be made. In addition, the state court's jurisdiction must continue while the SIJS petition is being adjudicated by USCIS unless jurisdiction ended due to the child turning 18.

There are limited circumstances in which a court's jurisdiction continues beyond a child's 18th birthday, thereby extending the time under which a state court can issue an SIJS predicate order. Examples include: where a youth between ages 18-21 is in extended foster care²⁴ and in juvenile offender matters for which state juvenile court jurisdiction is extended until the youth's 21st birthday.²⁵

It is possible for delays in a state court predicate finding to cause a child to age-out and no longer be qualified to apply for SIJS. This could result in a loss of long-term safety and stability, the ability to seek legal status in the U.S., loss of a legitimate path to U.S. citizenship, or even deportation. For this reason, state courts should make SIJS-related predicate findings in a timely manner, before the child turns 18 and the state court loses jurisdiction.

2.6 What is the scope of DSHS involvement?

The Washington State Department of Social and Health Services (DSHS) becomes involved in a child's case only if the child is involved in a state prosecuted dependency matter or Child in Need of Services (CHINS) petition. For a dependent child in the State's custody, DSHS or any other party may make a motion for SIJS findings. DSHS may or may not take a position on whether SIJS findings should be made by the court. Regardless, DSHS support is not required for the court to make the SIJS predicate findings.

²³ See *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 265 (C.D. Cal. 2008).

²⁴ RCW 13.343.030; RCW 26.44.020; Jurisdiction may also be extended past the youth's 18th birthday in juvenile offender matters; however, in inquiry into a juvenile offender's immigration status should be avoided

²⁵ RCW 13.40.300; RCW 13.40.030.

In Washington, children have no right to assistance of counsel at public expense when solely seeking SIJS predicate findings, nor when applying with USCIS for SIJS. However, children are provided counsel in juvenile offender proceedings at public expense, as well as dependency counsel in some cases. An undocumented child's offender or dependency counsel is often the first and last lawyer he or she will ever see. As such, it is often the only opportunity to avoid triggering negative immigration consequences such as removal, and also to identify avenues to obtain lawful immigration status.

2.7 Children in federal immigration custody

A child who is apprehended by federal immigration authorities and who is determined to be an "Unaccompanied Alien Child"²⁶ will be transferred to the custody of the Division of Children's Services (DCS) within the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services. Most children are thereafter released to family members or friends who agree to care for the child while the child's removal proceedings are pending. Release of a child to an adult by ORR does not create a legal relationship between the two. Once a child has been released to a sponsor, the child is no longer in federal custody and ORR retains no legal authority over the placement of that child. SIJS-eligible children may seek SIJS predicate findings from a state court while in ORR custody. Under federal law, in such cases, the juvenile court jurisdiction is limited to making factual findings; that is, the state court cannot change the child's custody status without the child obtaining consent from ORR.

In Washington State, ORR subcontracts with local programs to care for unaccompanied children in ORR custody throughout the Puget Sound region. As referenced elsewhere in this guide, many children who have previously been in ORR custody are released to caregivers or family members throughout the state. For more information about ORR's program for unaccompanied children, see ORR's website at <http://www.acf.hhs.gov/orr/programs/ucs>.

3. In what state court proceedings does SIJS arise?

Because federal law defines "juvenile court" as any "court located in the United States having authority under state law to make judicial determinations about the custody and care of juveniles,"²⁷ SIJS findings may be issued in any proceeding in which the court has such authority

²⁶ The Homeland Security Act of 2002 defines "Unaccompanied Alien Child" as a child who has no lawful immigration status in the United States; has not attained 18 years of age, and with respect to whom; 1) there is no parent or legal guardian in the United States; or 2) no parent or legal guardian in the United States is available to provide care and physical custody.

²⁷ 8 C.F.R. 204.11(a).

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under state law. The TVPRA amendments clarified that eligible children include not only children declared dependent, but also those committed to or placed under the custody of a state agency/department, or an individual or entity appointed by the court.²⁸ In Washington, examples of the types of proceedings when SIJS findings may arise include, but are not limited to, juvenile dependency, offender, family law and CHINS proceedings. The definition of “juvenile court” under federal law for SIJS purposes differs from the Washington State definition of juvenile courts,²⁹ and accordingly, Washington State courts that may not be “juvenile courts” under state law may still have jurisdiction to make SIJS findings.³⁰ For example, for purposes of making SIJS predicate findings, family law courts in Washington qualify as “juvenile courts” under the federal definition.

The court can assist children by asking both counsel and the child in each case whether a discussion of immigration status has occurred (without asking whether the child actually has status). If counsel or the child is unable to bring a motion for predicate findings that support an SIJS application, a community-based resource such as TeamChild, Kids in Need of Defense (KIND), Northwest Immigrant Rights Project (NWIRP), Columbia Legal Services (CLS), or a local Volunteer Lawyer Program may be able to help. These organizations may be in a position to interview the child for SIJS eligibility (as well as other services) and gather the necessary information that can then be presented by an attorney from their organization to the court.

3.1 Common proceedings in which SIJS may arise.

Below are some examples in state court proceedings where SIJS findings might be made, though this list is not exhaustive:

- **Dependency**³¹
- **Guardianship**³²
- **Adoption**³³
- **Offender Matters**³⁴
- **Family Law Proceedings, including:**
 - **Dissolution of Marriage/Legal Separation**³⁵

²⁸ 8 U.S.C. § 1101(a)(27)(J).

²⁹ RCW 13.04.021

³⁰ *Cf. B.F. v. Superior Court*, 207 Cal. App. 4th 621, 627-28, 143 Cal. Rptr. 3d 730, 734 (2012) (Holding that the federal regulation, and not state law, defines “juvenile court” for purposes of making SIJS findings, and that definition includes, in relevant part, any court in the United States that has the authority “to make judicial determinations about the custody and care of juveniles.”).

³¹ RCW 13.34. For attorneys needing to file a private dependency (as opposed to seeking an order in an ongoing dependency), KIND has developed *Guidance for Representing Children in Dependencies* (November 2013) for pro bono attorneys. For more information contact the Seattle KIND office.

³² RCW 11.88 and 13.36.

³³ RCW 26.33.

³⁴ RCW 13.40.

- **Paternity/Parentage Determinations**³⁶
- **Petition for a Parenting Plan**³⁷
- **Parenting Plan Modifications**³⁸
- **Nonparental Custody**³⁹
- **Domestic Violence Protection Order**⁴⁰.
- **BECCA Proceedings, including:**
 - **At Risk Youth (ARY) Petitions**⁴¹
 - **Child in Need of Services (CHINS)**⁴²
 - **Truancy**⁴³

3.2 SIJS considerations in particular types of proceedings.

With the passage of the TVPRA in 2008, the types of state court proceedings where SIJS findings could be obtained expanded greatly. There may be unique SIJS considerations that arise in different types of proceedings. Although the basis for abuse, abandonment or neglect may not be a part of the record for some state court proceedings, a party may supplement the record to support such findings by, for example, submitting a declaration from the child with the Motion for SIJS Findings which documents the facts supporting a finding of abuse, abandonment, neglect or similar basis under state law. The following section addresses some of the considerations that may be relevant.

a. SIJS considerations in dependency proceedings

Dependency proceedings are one of few proceedings in which the court is directly charged with making findings about abuse, neglect, abandonment, and other maltreatment of a child.⁴⁴ Any person may file a petition showing that there is a dependent child and requesting that the juvenile court address placement of the child.⁴⁵

³⁵ RCW 26.09.

³⁶ RCW 26.26.

³⁷ RCW 26.27

³⁸ RCW 26.09.260-280.

³⁹ RCW 26.10

⁴⁰ RCW 26.50.

⁴¹ RCW 13.32A.191-270.

⁴² RCW 13.32A.

⁴³ RCW 28A.225.

⁴⁴ Some examples of typical dependency findings include those related to domestic violence, child abuse, emotional abuse, child neglect, child abandonment, or other considerations. *See* RCW 13.34.030.

⁴⁵ RCW 13.34.040(1).

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In the context of state law, a “dependent child” is one who: (1) has been abandoned;⁴⁶ (2) is abused or neglected by a person legally responsible for the care of the child;⁴⁷ (3) has no parent, guardian, or custodian capable of adequately caring for the child such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development;⁴⁸ or (4) is receiving extended foster care services.⁴⁹ These findings are critical to SIJS determinations.⁵⁰ However, for purposes of SIJS predicate findings, a formal finding of dependency pursuant to the RCWs is not required and a court may be in the position to make SIJS findings in an earlier stage of proceedings. For federal SIJS purposes, a child is considered “dependent” upon the court whenever a determination is made about the care and custody of a child.⁵¹ Thus, it is feasible that a child could be considered dependent for SIJS purposes during the shelter care phase of proceedings, where the court has made a custody or placement decision regarding the child.

Apart from determining whether a child is dependent, the court also assesses whether reunification with the child’s parents is appropriate. This can also include making the required SIJS finding that it is not in the best interest of the child to return to his/her home country.⁵² In Washington State, the court may make dependency findings as to each parent separately, on different timelines. In some cases, a child may be reunified with one (or both) parents before the dependency is dismissed. As discussed previously in Section 2.2, a child does not have to be dependent as to both parents to qualify for SIJS predicate findings.⁵³ SIJS is available where “reunification with *one or both* of the immigrant’s parents is not viable due to abuse, neglect, or abandonment, or a similar basis under state law”⁵⁴ Even a child who has been reunified with a fit parent may qualify if the relevant findings are made as to the other parent.

Termination of parental rights is not required for predicate findings that reunification is not viable for purposes of an SIJS application. Further, whether reunification is viable, in the context of a dependency case, may change over time. It is the role of the state court to determine whether reunification is viable at the time the matter is before the court, not to determine whether reunification might ever be viable in the future.

⁴⁶ RCW 13.34.030(1).

⁴⁷ RCW 26.44.020(1) and RCW 9A.16.100 (unreasonable use of force to correct or restrain a child).

⁴⁸ *In re Dependency of Schermer*, 161 Wn.2d 927 161 Wn.2d 927, 169 P.3d 452 (2007). A finding under RCW 13.34.030 (6)(c) is considered to be a similar basis under state law for SIJS purposes.

⁴⁹ RCW 13.34.030(6).

⁵⁰ 8 C.F.R. § 204.11(a) and RCW 13.34.030.

⁵¹ An early case decided by the Administrative Appeals Office of U.S. Citizenship and Immigration Services provides that “[t]he acceptance of jurisdiction over the custody of a child by a juvenile court... makes the child dependent upon the juvenile court[.]” *In re Menjivar*, 29 Immig. Rptr. B2-37 (1994).

⁵² INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

⁵³ 8 C.F.R. § 204.11(a); TVPRA § 235(d).

⁵⁴ TVPRA § 235(d). (emphasis added).

b. SIJS considerations in guardianship proceedings

If a child has a caregiver, other than a parent, that caregiver may ask to be appointed guardian of the child. Guardians can be guardians of the person, or guardians of the estate, or both. A guardianship can be obtained through a probate proceeding under RCW 11.88, or through proceedings relating to a dependent child under RCW 13.34, or RCW 13.36. A guardianship under RCW 13.34 or 13.36 may grant the guardian physical custody of the child and other rights and duties to provide for the care of the child.⁵⁵ This is to be distinguished from a probate guardianship of the person under RCW 11.88. One Washington case has held that the probate statutes do not confer the right to custody of a child upon a guardian.⁵⁶ This differs from statutes of other states that do grant the right of custody. For purposes of obtaining SIJS findings, a guardianship that grants physical custody of a dependent child to the guardian under RCW 13.34 or 13.36 would be an appropriate proceeding to enter SIJS findings. Given case law regarding probate guardianships, it is unclear whether SIJS findings could be obtained. A nonparental custody proceeding should be considered as an alternative proceeding for entering SIJS findings.

c. SIJS considerations in adoption proceedings

Adoption is a proceeding where a person other than the biological parent(s) becomes the permanent legal parent of the child.⁵⁷

Some, but not all, adoptions are of children who have been in foster care. In those instances where SIJS will be sought, the better practice is to seek SIJS predicate findings during a dependency or termination of parental rights proceeding, since evidence of abuse or neglect is already part of the record. Once an adoption is finalized and parental rights have been granted to the adoptive parents, the opportunity for the appropriate SIJS findings about the former parents may no longer be available. Although some children who are adopted by U.S. citizens may be able to obtain lawful status through their parents, there are some limitations to that option which may make SIJS the best and fastest option for the child to obtain lawful status.

d. SIJS considerations in offender matters

Offender matters are proceedings in which a child has been charged with a criminal offense. Children under the age of 18 years, and those between 18 and 21 years for whom juvenile court

⁵⁵ RCW 13.34.232 and RCW 13.36.050.

⁵⁶ See *In re Guardianship of Marshall*, 46 Wash. App. 339, 344 (1986).

⁵⁷ RCW 26.33.

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jurisdiction has been extended, are tried in juvenile court. There are limited statutory exceptions to juvenile court's exclusive jurisdiction.⁵⁸ Regardless of which court has subject matter jurisdiction under state law, that court is considered a "juvenile court" under SIJS standards.⁵⁹ Importantly, any state court hearing a child offender matter may make and enter findings as that court makes determinations regarding the custody of the child – whether release, commitment to detention, commitment to probation, etc. Although the basis for abuse, abandonment or neglect may not be a part of the record for offender proceedings, a party may supplement the record to support such findings.

In offender proceedings, it may be appropriate to mention SIJS—simply and briefly—during the standard colloquy in which the judge inquires as to whether defense counsel has met his or her *Padilla* requirements by informing the defendant of immigration consequences to a guilty plea.⁶⁰ Of course, the child's attorney (or other party) can ask the court for SIJS predicate findings. See Section 1.3 regarding juvenile court adjudications and possible immigration consequences.

e. SIJS considerations in certain family law proceedings

The opportunity to make SIJS predicate findings can arise in family law proceedings where the court is entering a parenting plan, including, but not limited to, dissolution of marriage, legal separation, petition to establish a parenting plan, parentage determinations, and parenting plan modifications. The court will determine a parenting plan based on the best interest of the child.⁶¹ As a result, SIJS predicate findings may be entered. For example, a petition to establish a parenting plan might be an appropriate vehicle for SIJS findings if a child is living with one fit parent, but there has been abuse, neglect, or abandonment by the other parent. Because federal law allows a similar basis to abuse, neglect or abandonment under state law, SIJS findings may also be based on other parenting limitations pursuant to RCW 26.09.191 including a history of domestic violence by a parent, or a parent's long-term emotional impairment or substance abuse that interferes with parenting.

An action for nonparental custody is a proceeding in which a person who is not a parent of the child asks the court for legal and physical custody of that child. In order for a petitioner to have standing to bring the matter, statute requires that the child not be in the physical custody of his/her parents, or the petitioner must allege that parents are unsuitable custodians.⁶² In addition, case law requires that in order to gain legal custody of the child, the nonparent must prove that (a) the parent is unfit; or (b) placement with an otherwise fit parent would detrimentally affect

⁵⁸ RCW 13.04.030.

⁵⁹ 8 CFR § 204.11(a).

⁶⁰ See generally *Padilla v. Commonwealth*, 559 U.S. 356, 130 S. Ct. 1473 (2010).

⁶¹ RCW 26.09.

⁶² RCW 26.10.030.

the child's growth and development.⁶³ Further, the nonparent must show actual detriment to the child, not just that a different custody arrangement is in the child's "best interest."⁶⁴ Facts that support findings under the legal standard often dovetail with those necessary to obtain SIJS findings.

f. SIJS considerations in Domestic Violence Protection Order proceedings

A request for a Domestic Violence Protection Order (DVPO) is a proceeding where a victim of domestic violence seeks relief on behalf of themselves and/or their minor family or household members.⁶⁵ The court may restrain an abusive parent from having contact with a child and determine with whom the child should reside for the duration of the DVPO. Because residential provisions for the child may be entered based on domestic violence, there may be an opportunity to make SIJS predicate findings. In such cases, the child may also be eligible for other immigration relief which does not involve state courts, such as through a Violence Against Women Act (VAWA) self-petition, or a U-visa on the basis of being a crime victim who provides assistance to law enforcement. However, the possible eligibility for alternative relief is not relevant to the SIJS findings inquiry.

g. SIJS considerations in non-offender (Becca⁶⁶) matters

Non-Offender matters arose from The "Becca Bill" enacted by the Washington State Legislature⁶⁷ to:

1. Protect children who are endangering themselves (at risk youth⁶⁸);
2. Keep families together through assessment and treatment services (child in need of services, "CHINS"⁶⁹);
3. Provide tools for schools, parents, and juvenile courts to keep children in school (truancy⁷⁰); and
4. Hold children and parents accountable to the Court.

Children involved in Becca proceedings are entitled to counsel. A juvenile court has jurisdiction to make judicial determinations about the care and custody of children and to retain jurisdiction

⁶³ *In re Custody of Shields*, 157 Wn.2d 126, 136 P.3d 117 (2006).

⁶⁴ *Id.*

⁶⁵ RCW 26.50

⁶⁶ "Becca" is commonly used when referencing non-offender matters.

⁶⁷ RCW 13.32A.

⁶⁸ RCW 13.32A.030(3).

⁶⁹ RCW 13.32A.030(5).

⁷⁰ RCW 28A.225.

in Becca cases for an extended period of time. In Becca cases, where the court has placed a child in the custody of an individual or entity, or legally committed to or placed with a state agency, SIJS findings can be requested from the court, wherein the court would consider the viability of reunification with the child’s parents and whether it is in the best interests of the child to remain in the U.S.

4. Service of Process on Parents Residing Abroad

A child seeking SIJS findings may have one or both parents living out of state or even abroad, which may implicate laws around service of process in a foreign country. Service of process in a foreign country is a complex and evolving body of law. The following section is intended to provide general information as a starting point for further research, not a thorough discussion of all circumstances and applicable rules or laws.

Unless other statutes or rules govern service of process in a particular type of proceeding, Civil Rule 4 addresses service of process in a foreign country. CR 4(e)(1) provides: “*Generally*. Whenever a statute or an order of court thereunder provides for service of a summons...upon a party not an inhabitant of or found within the state, service may be made under the circumstances and in the manner prescribed by the statute or order, or if there is no provision prescribing the manner of service, in a manner prescribed by this rule.” CR 4(i) identifies various alternative provisions for service in a foreign country, including, but not limited to, personal service, any form of mail requiring return receipt, or as directed by order of the court.⁷¹ CR 4(i)(G) also states that “the method of service must comply with applicable treaties, if any, and be reasonably calculated, under all circumstances, to give actual notice.” CR 4(i)(G) which provides for service “as directed by order of the court” may allow for service of process by alternative means including publication pursuant to CR 4(d) or by other methods which the court deems consistent with due process requirements.

Where the country of a parent or other party who must be served is subject to an international treaty regarding service of process, such treaty would apply. The most commonly applicable service of process treaties are discussed below: the Hague Service Convention, and the Inter-American Convention on Letters Rogatory and Additional Protocol (IACAP). When a treaty does not apply, the court should apply Civil Rule 4(i) as it relates to service of process in foreign countries. In cases where a parent agrees to accept service or joins in the requested petition, the treaties would not apply.⁷²

⁷¹ CR 4(i)(C), CR 4(i)(D), CR 4(i) CR4(G).

⁷² CR 4(g)(5); see 1993 Advisory Committee Notes to FRCP 4(d); Hoffman-La Roche, Inc. v. Invamed, Inc., 183 F.R.D. 157, 159 (D.N.J. 1998); Article 5 of the Hague Service Convention. See also WA Civil Rule 4(g)(5).and Civil Rule 4(i)(2).

4.1 The Hague Service Convention

The “Hague Service Convention,” governs service of process on persons in a foreign country if that country is a party to the Convention.⁷³ As of this writing, approximately seventy-two nations are signatories to the Hague Service Convention, including the United States, Mexico, and Venezuela.⁷⁴ The treaty does not apply when the address of the party is unknown.⁷⁵

Where the Hague Service Convention applies, it supersedes any state law (including Washington State court rules and statutes) on service of process by virtue of the supremacy clause of the United States Constitution.⁷⁶ The purpose of the convention is to provide actual and timely notice to parties of foreign lawsuits.⁷⁷ Under the convention, nation states designate a central authority appointed to receive service of process from foreign parties.⁷⁸ The designated authority must then “actually serve the defendant or arrange to have the defendant served” in a manner consistent with that nation’s laws.⁷⁹ Some alternative methods of service in certain cases may comply with the Hague Convention.⁸⁰ The Convention lists other acceptable methods of service (i.e. other than through a central authority); however, some signatory countries have objected to other methods of service. Thus, whether an alternative method of service such as those authorized in CR(4)(i) complies with the Hague Convention depends on the country, whether it has objected to methods of service other than through a central authority, as well as governing case law. The U.S. State Department website provides helpful information including practical information regarding the central authorities designated by signatory countries.

4.2 The Inter-American Service Convention and Additional Protocol (IACAP)

IACAP is a pair of international agreements which governs service between the U.S. and many Central and South American nations.⁸¹ Countries must be a party to both agreements for a treaty

⁷³ Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Service Convention”), Nov. 15, 1965, 20 U. S. T. 361, T.I.A.S. No. 6638. For a detailed discussion of the Hague Convention’s applicability and requirements see Jonathan Fountain, *Service of Process Abroad*, NEVADA LAWYER (Oct. 2008), available at <http://bit.ly/1LMxn1J>.

⁷⁴ The full text and a list of signatory nations are available at <http://bit.ly/1czIQ6H> (last visited July 5, 2015).

⁷⁵ Article 1 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Service Convention”), Nov. 15, 1965, 20 U. S. T. 361, T.I.A.S. No. 6638.

⁷⁶ *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988) (citing U.S. CONST. ART. VI); see also *Broad v. Mannesmann*, 141 Wn.2d 670, 674-75 (2000) (acknowledging holding).

⁷⁷ See *Broad*, 141 Wn.2d at 676.

⁷⁸ See *id.* at 677-78.

⁷⁹ See *id.* at 678-79.

⁸⁰ See Fountain, *supra* n.46 at ¶¶8-9.

⁸¹ Inter-American Convention on Letters Rogatory, 1438 UNTS 288; OASTS No. 43; 14 ILM 339 (1975); Additional Protocol to the Inter-American Convention on Letters Rogatory of January 30, 1979, 1438 UNTS 332; OASTS No. 56; 18 ILM 1238 (1979).

relationship to exist. The full text and list of signatories is available on the Organization of American States' website.⁸² The U.S. Department of State, Bureau of Consular Affairs' website provides a summary of IACAP applicability and requirements.⁸³ Like the Hague Service Convention, the IACAP governs service of process in civil matters between signatory nations and supersedes any state law to the contrary.⁸⁴ Also, like the Hague Service Convention, IACAP signatory nations designate a central authority to whom service of process should be directed. One major difference is that documents served under the authority of the IACAP may require a signature by the clerk of the court of origin and a seal of approval from the U.S. "Central Authority" which is a contractor of the U.S. Department of Justice.⁸⁵ There is also a specific IACAP form.⁸⁶ Federal case law has held that the IACAP provides one permissible, but non-exclusive, method of service.⁸⁷ Therefore, the IACAP does not prohibit other methods deemed permissible under international or domestic law and methods of service under CR 4(i) may be permissible.

5. Concluding Thoughts

Washington courts hold an important role in making care and custody determinations for children in a wide range of civil proceedings. The federal immigration system relies on the expertise of state courts in making these determinations and entering the predicate findings for SIJS. This unique interplay with the state courts and federal immigration system allows vulnerable eligible children to seek critical humanitarian protection through SIJS.

⁸² Organization of American States, *Multilateral Treaties* http://www.oas.org/dil/treaties_subject.htm (last visited July 5, 2015) (listed under "Judicial Cooperation," "Rogatory Letters").

⁸³ U.S. Department of State, Bureau of Consular Affairs, *Inter-American Service Convention and Additional Protocol*, <http://1.usa.gov/1H0FUsi> (last visited 06/08/2015).

⁸⁴ *C.f. Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988) (citing U.S. Const. art. VI as providing federal government authority to regulate international relations); *also* *Broad v. Mannesmann*, 141 Wn.2d 670, 674-75 (2000) (acknowledging *Schlunk* holding).

⁸⁵ U.S. State Department, IACAP website.

⁸⁶ U.S. State Department, ICACAP website.

⁸⁷ See *Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 643 (5th Cir. 1994).

APPENDIX A
SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)
BENCH CARD

What is SIJS?

- a visa status available for certain immigrant children who are unable to reunify with one or both of their parents for reasons of abuse, neglect, abandonment, or some similar basis under state law. Such status enables certain eligible children to apply for lawful permanent resident status (“green card”).¹

Who is eligible?

- all children who meet the eligibility requirements, regardless of whether or not a child is in removal proceedings, in federal immigration custody or even known to immigration authorities prior to submitting the SIJS petition.

What are the eligibility requirements?

- The child must be present in the U.S. and show that:²
 - The child is under 21 years of age;
 - The child is unmarried;
 - The child has been declared dependent on a juvenile court located in the United States or 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;
 - 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**;
 - 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 country of last habitual residence.

What is the process to obtain SIJS?

- Obtain predicate factual findings from a state “juvenile” court, specifically, any court with authority under state law to make determinations about the custody or care of juveniles.
- File an application for SIJS visa status with U.S. Citizenship and Immigration Services
 - If the SIJS visa is approved, the child may file an application for Lawful Permanent Residence (a “green card”) with U.S. Citizenship and Immigration Services, or in some cases, with the Immigration Court

What is the state court’s role in SIJS cases?

- The state court is not being asked to make any immigration decisions. Congress simply requires that findings of fact related to child protective issues such as “abuse,” “neglect,” “abandonment,” and “best interests,” be made by the adjudicators who are the most qualified to do so.

¹ See 8 U.S.C. 1152 and 8 U.S.C. § 1101.

² 8 USC section 1101(a)(27)(J), as amended by section 235 of the Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008.

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- The predicate order is simply a finding of fact. It does not confer any immigration status or immigration benefit to a child, nor is it a court opinion on whether a child should be granted immigration status. Only USCIS, upon specific application by the child, can determine whether or not a child qualifies for an immigration benefit such as SIJS.

In what types of state court proceedings may SIJS findings be entered?

- SIJS findings can be requested and issued in any type of proceedings in which a court has authority under state law to make judicial determinations about the **care and custody** of juveniles.³ In Washington, this includes, but is not limited to: dependency proceedings; offender (delinquency) proceedings; family law proceedings such as nonparental custody, dissolution, or parenting plan proceedings; CHINS or ARY proceedings, etc.

Can SIJS findings be made if the child is living with a non-offending parent?

- Yes, the TVPRA of 2008 made changes to the eligibility requirements. The federal statute's plain language currently requires that the inability to reunify must be with **one or both** of the child's parents.⁴ Case law in other jurisdictions has upheld this interpretation.⁵

What is the relevance of a child turning 18 years of age?

- Children are eligible to apply for SIJS until their 21st birthday, but only if they first obtain the predicate order from state court. In many proceedings, a state court may only have jurisdiction over a child until the age of 18.

Does a child's parent/s benefit from SIJS?

- A child who gains lawful status through SIJS may never petition for lawful status for either of his/her parent(s), regardless of whether the SIJS findings were only made as to 1 parent.
- Many SIJS-eligible children also qualify for other forms of immigration relief. A child may apply for multiple forms of relief simultaneously. Some other forms of immigration relief might offer benefits that SIJS does not and thus might be preferable to qualifying children (i.e. the ability to petition for siblings or parents).

Is there a model SIJS Eligibility Findings and Order form?

- Yes. The WA AOC has adopted an order that can be found at: <http://www.courts.wa.gov/forms/?fa=forms.static&staticID=14>, under Juvenile Court Forms, Miscellaneous, Form JU11.0500. See attached form.

Adapted from "Special Immigrant Juvenile Status: Frequently Asked Questions for State Court Judges," The Vera Institute of Justice.

³ 8 C.F.R. 204.11(a).

⁴ 8 USC 1101(a)(27)(J) as amended by 235 of the TVPRA of 2008; 8 CFR 204.11. The regulations have not yet been amended to reflect the statutory changes; thus, to the extent that the regulations reflect the old statute or contradict the statutory amendments, such regulations are no longer valid.

⁵ See *Matter of Mario S.*, 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012); (*Marcelina M.-G. v. Israel S.*, 112 A.D. 3d 100, 973 N.Y.S.2d 714 (N.Y. Fam. Ct. 2013); and *In Re Israel O.*, 233 Cal.App. 4th 279 (2015).

APPENDIX B

SUPERIOR COURT OF WASHINGTON COUNTY OF _____	NO:
In re:	Findings and Order Regarding Eligibility for Special Immigrant Juvenile Status (FOSIJS)

The Court, having reviewed the supporting material on file, including motion papers and supporting affidavits, all the pleadings and prior proceedings in this matter, and/or hearing testimony and argument, if any, enters the following:

I. Findings:

- 1.1 This court has jurisdiction under State law to make judicial determinations about the custody and care of juveniles. _____ (child's name) was found to be within the jurisdiction of this court and remains under this court's jurisdiction.
- 1.2 This child is under 21 years of age.
- 1.3 This child is unmarried.
- 1.4 This child was:
 - declared dependent by a juvenile court on (date) _____; or
 - legally committed to or placed in the custody of a state agency or department, on (date) _____; or
 - placed under the custody of an individual or entity appointed by a State or juvenile court, on (date) _____.

1.5 Reunification of the child with one or both of his or her parents was found not to be viable on (date) _____. This finding was based on a finding of abuse, neglect, or abandonment, or similar basis under Washington state law, in that:

(Provide brief description of supporting facts:)

1.6 It is not in this child's best interest to return to his or her previous country of nationality or country of last habitual residence, (name of country or countries) _____ or to the country or countries of his or her parent(s) (name of country or countries) _____. It is in the child's best interest to remain in the United States.

II. Order

One certified copy of this order will be provided to the child or his/her attorney at public expense.

Dated: _____

Judge/Commissioner

Presented by:

Signature

Print Name/Title WSBA No
Attorney for _____

APPENDIX C

Case Examples

Micah is sixteen years old and living with his grandmother after fleeing family violence in his home country of El Salvador. In El Salvador, his parents and other neighbors would physically beat him because he was perceived as gay. Micah's grandmother is asking the court for legal custody of Micah through a Non-Parental custody action.

Sara's father has never been a part of her life since she was a child in Mexico. Her mother lives and works almost three hours away to send money back to the family. Her aunts took care of Sara but they did not provide her any food or pay for any of her needs. One of her older cousins had been molesting her for almost four years. After attempting to commit suicide, Sara decides to leave and flee to the U.S. where she believes her older brother lives. She is picked up by Border Patrol, transferred to the custody of the Office of Refugee Resettlement (ORR) and is moved to a long-term foster care program in Washington. With the assistance of a pro bono attorney, Sara self-petitions for dependency.

Sita has been in the U.S. since the age of three and lives with her father who has been separated from her mother. Sita has no family, support system or means of survival in her birth county, Bangladesh. Her mother has a substance abuse problem and abandoned the family when Sita was ten years old. When Sita initially lived with her mother, she would be left home alone for days, locked in a closet and with little food. As a teenager, Sita was arrested for shoplifting, charged with theft and is placed under the supervision of the probation department. Under probation's supervision, she continues to reside with her father.

Abdul was born in Nigeria. His mother moved to the U.S. when Abdul was still a child, leaving him with his father. She would work and send back money. His father physically abused Abdul and eventually abandoned the family. His new step-mother continued with the abuse until Abdul ran away to the U.S. at the age of twelve in the bilge of a cargo ship. He is reunited with his mother in Washington, who is seeking a parenting plan to protect Abdul from any further harm.

Angelica and her brother were brought to the U.S. by their mother when Angelica was five years old. Angelica's father had abandoned the family while they were still in Honduras. For the past nine years, her mother's boyfriend has been molesting Angelica. She finally told her mother who then forced her out of the family's home. Angelica has been staying with friends and as a result, a school counselor learned of the abuse. The counselor reported the abuse to Child Protective Services. A dependency was filed and Angelica's mother has failed to comply with reunification services and her parental rights will be terminated.

Maria's father was murdered in Guatemala when she was three years old. Her mother had no means of supporting the family in Guatemala and so she moved to Washington State. Maria was left in the care of an older sister and her boyfriend who beat her with a belt when they were

dissatisfied. When Maria was thirteen, she ran away and lived on the street for two years where she was sexually assaulted by older men numerous times. Eventually she made her way to the United States and found her mother. After living with her mother for a year, Maria started to use drugs to help her block out the bad memories. She stopped attending school and stayed at friends' homes several days at a time. Her mother sought help from the court by filing a Child in Need of Services (CHINS) Petition.

APPENDIX D

Additional Resources

ABA Working Group on Unaccompanied Minor Immigrants, *Webinar: Primer on State Court Judge's Role in SIJS Classification, and Presenters Answer Your Questions on SIJS* (2015), available at http://www.americanbar.org/groups/child_law/what_we_do/projects/immigration/sijs-training.html.

Angie Junck, Sally Kinoshita & Katherine Brady, Immigrant Legal Resource Center, *Immigration Benchbook for Juvenile and Family Court Judges* 11-26 (Jul. 2010).

Angie Junck, Alison Kamhi & Rachel Prandini, Immigrant legal Resource Center, *Special Immigrant Juvenile Status and Other Options for Children and Youth*, 4th edition.

Columbia Legal Services, *Quick Guide: SIJS & Washington State Proceedings*, available at <http://columbialegal.org/advocacy/children-and-youth-project#immigrantyouth>.

Guide for State Courts in Cases Involving Unaccompanied Immigrant Children, published by the National Center for State Courts, Center for Public Policy Studies, State Justice Institute available at http://www.sji.gov/wp/wp-content/uploads/15-167_NCSC_UICGuide_FULL-web1.pdf. (2015).

Immigrant Legal Resource Center, *Immigration Options for Undocumented Immigrant Children* (Jul. 2013).

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