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## Quick Guide: SIJS & Washington State Proceedings

With the surge of migration of undocumented youth into the U.S., there is an increase in demand for attorneys to assist youth in obtaining *Special Immigrant Juvenile Status* (SIJS). However, before a youth can seek SIJS, certain state court findings are necessary. This guide is designed to help attorneys obtain those findings in Washington State.

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**What is SIJS?** SIJS is an immigration visa status available to certain immigrant youth who are the subject of abuse, neglect or abandonment or similar maltreatment by either one or both of their parents.<sup>1</sup> Once

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<sup>1</sup> See Immigration and Nationality Act (INA) §203(b)(4); INA §101(a)(27)(J); Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), P.L. 110-457 § 235.

SIJS status is obtained, a youth becomes immediately eligible to apply for lawful permanent residence.<sup>2</sup> For many immigrant youth, SIJS is the only path available for legal status and without it a youth will most likely be removed from the U.S.

**What are SIJS findings?** SIJS findings are state court findings needed as a predicate for a youth's application for an SIJS visa to the U.S. Citizenship and Immigration Services (USCIS). The necessary findings<sup>3</sup> may be obtained in a variety of state court proceedings. The findings must include **all** of the following:

1. The court has jurisdiction "to make judicial determinations about the custody and care of juveniles" and the youth remains under the jurisdiction of the state court;<sup>4</sup> and
2. The youth is declared dependent or has been legally committed to, or placed under the custody of an individual or entity appointed by a state or juvenile court located within the U.S.; and
3. It is not in the youth's best interests to be returned to his or his parents' previous country of nationality or country of last habitual residence; and
4. Reunification with one or both of the parents is not viable due to abuse, neglect or abandonment or similar basis found state law.

**What does abuse, neglect, or abandonment mean?** These terms are statutorily defined under Washington law.<sup>5</sup> While they are usually interpreted as they would be for other family law or dependency cases, those definitions are not necessarily controlling for a determination under federal law as defined at INA §101(a)(27)(J). The state court must simply opine on whether abuse, neglect or abandonment is a barrier to reunification with one of the parents. It is important to remember that the youth is only required to demonstrate that reunification is unavailable with one of the parents. Especially when a youth is an unaccompanied minor, attorneys can think more creatively about these terms. For example, it can be argued that neglect may occur when a youth arrives in the U.S. because his parents could not provide for him economically; neglect/abandonment may occur when parents instruct a youth on her own to attempt to cross unlawfully into the U.S., because the parents cannot support her; or when parents cannot provide for a youth's safety in a dangerous or gang-ridden school or town and send him alone to the U.S. While there may be cultural differences between what is abuse, neglect, or abandonment, for purposes of obtaining SIJS findings, the relevant analysis is whether the parents' behavior is abuse, neglect, or abandonment, or similar maltreatment under state law. Note: it is not a requirement that a dependency proceeding or other proceeding against a parent exists.

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<sup>2</sup> This means the youth becomes a permanent resident alien and obtains what is referred to as a "green card," which allows them to remain and work in the United States. In addition, after five years of having permanent residence status, a youth can apply for U.S. Citizenship so long as other criteria are met.

<sup>3</sup> INA § 101(a)(27)(J) amended by TVPRA of 2008 § 235(d), (g).

<sup>4</sup> For purposes of SIJS findings the word "custody" refers to the physical location of a youth as used in immigration law, not to the concept of legal custody in family law.

<sup>5</sup> RCW 13.34.030 (1) (defining abandonment); RCW 26.44.020 (defining abuse and neglect).

**What WA state court proceedings can be used to obtain SIJS findings?** It may be possible to obtain SIJS findings in a variety of state court proceedings. Under the federal regulations, a “juvenile court” is defined as “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.”<sup>6</sup> In Washington, this may be a superior or district court with jurisdiction over the youth. The key issue is whether the physical placement of an immigrant youth is under the jurisdiction of a judge in a state court proceeding. State court proceedings where SIJS findings might be made are:

1. **Dependency Proceedings**<sup>7</sup> are where a child is found to be abused, neglected or abandoned, and is placed outside of the home. The SIJS findings require that reunification is not available with at least one of the parents. There is nothing in the law that defines a timeframe in which “reunification is not viable,” so it may be enough that reunification is not *currently* viable. Even if in the goal in a dependency proceeding is to reunify the youth with his/her parents in their home country, SIJS findings may be available (e.g., during shelter care) depending on the facts and circumstances of the case. In many cases, the record will support SIJS findings; however, in some cases the record will need to be amplified.
2. **Termination of Parental Rights**<sup>8</sup> is a juvenile court proceeding where the court permanently terminates a parent’s parental rights to his/her child for failure to correct parental deficiencies and places custody of the youth with someone else, usually the State. Note: termination proceedings may also be voluntary on the part of parents, in which case the record to support SIJS findings may need to be more thoroughly developed.
3. **Nonparental Custody**<sup>9</sup> is a family law proceeding where the court gives custody of a child to a person other than the parent. The child must not be in the physical custody of his parents and the parents must be unsuitable custodians. Pleadings that support a finding that the parents are unsuitable custodians may dovetail with those necessary to obtain SIJS findings.
4. **Guardianship**<sup>10</sup> is a proceeding where a child is placed with a guardian who has legal authority over the child. Guardians can be guardians of an estate, or guardians of a person, or both. For purposes of obtaining SIJS findings, the guardianship must be of the person (e.g, the youth is physically placed with the guardian). A guardianship can be a private proceeding or a permanent plan in a dependency.

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<sup>6</sup> 8 C.F.R. § 204.11(a).

<sup>7</sup> RCW 13.34. For attorneys needing to file a private dependency (as opposed to seeking an order in an ongoing dependency) Kids In Need of Defense (KIND) has developed Guidance for Representing Children in Dependencies (November 2013) for pro bono attorneys, which may be helpful. For more information contact the Seattle office of KIND at (206) 359-6205.

<sup>8</sup> RCW 13.34

<sup>9</sup> RCW 26.10

<sup>10</sup> RCW 11.88; 13.36.

5. **Adoption**<sup>11</sup> is a family law proceeding where a person other than the biological parent(s) becomes the permanent legal parent of the child. Some, but not all, adoptions are of children who have been in foster care. In those instances, the better practice is to seek SIJS findings during a dependency or termination of parental rights proceeding, since evidence of abuse or neglect is already part of the record.
6. **Delinquencies** (“Juvenile Offender”)<sup>12</sup> are juvenile law proceedings where a minor has been charged with a criminal offense and may be placed in a county detention or state juvenile rehabilitation institution. In general, most delinquency adjudications do not bar SIJS (as would an adult conviction). Delinquency proceedings are a time limited opportunity for obtaining SIJS findings. It is important for the juvenile defense attorney, immigration attorney, and attorney seeking findings (if different), to coordinate closely.<sup>13</sup>
7. **Dissolution of Marriage/Legal Separation**<sup>14</sup> is a family law proceeding where the parents end the marriage and the court decides placement of the child pursuant to a best interest of the child standard. A parenting plan addresses with whom the child lives and visitation rights.
8. **Paternity/Parentage Determinations**<sup>15</sup> are family law proceedings where the parentage of a child of an unmarried couple is established. A parenting plan will address with whom the child lives and visitation rights.
9. **Parenting Plan Modifications**<sup>16</sup> are family law proceedings where a parent or legal custodian asks the court to modify the parenting plan. Modifications require a showing of a change in circumstances and that the modification is in the best interest of the child. A modification might be an appropriate vehicle for SIJS findings if a child is living with one fit parent, but there has been abuse/abandonment/neglect/similar maltreatment by the other parent.
10. **Domestic Violence Protection Orders**<sup>17</sup> are proceedings where a victim of domestic violence seeks relief on behalf of themselves or their minor family/household members. When a youth is the victim of domestic violence, or lives with a victim of domestic violence, courts sometimes may determine with whom the child should reside. Domestic violence protection orders usually are time limited, and when addressing custody should be merged into a larger family law proceeding, so that the custody determination (and the court’s jurisdiction) does not expire with the order.

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<sup>11</sup> RCW 26.33

<sup>12</sup> RCW 13.40

<sup>13</sup> For a great resource on obtaining SIJS in juvenile proceedings see: Junck, Angie, et al, *Practice Advisory: Obtaining Special Immigrant Juvenile in Delinquency Courts: A Toolkit for Advocates*, Vera Institute of Justice DUCS Legal Access Project (April 2012), found at: [http://www.immigrationadvocates.org/nonprofit/library/item.424598-Obtaining\\_SIJS\\_Findings\\_in\\_Delinquency\\_Courts\\_A\\_Toolkit](http://www.immigrationadvocates.org/nonprofit/library/item.424598-Obtaining_SIJS_Findings_in_Delinquency_Courts_A_Toolkit)

<sup>14</sup> RCW 26.09

<sup>15</sup> RCW 26.26

<sup>16</sup> RCW 26.09.260-280

<sup>17</sup> RCW 26.50

11. **Child in Need of Services (CHINS)**<sup>18</sup> is a juvenile court proceeding where the parent, child, or DSHS can file a petition to get placement of a child while working on family reconciliation. Because a CHINS petition must be filed in the jurisdiction where the parent lives, it is unavailable if both parents are out of the country. This proceeding may also be helpful if a youth is present in the U.S. with one parent, and an abusive parent lives outside the country. Similar to dependency petitions, SIJS findings may be available even if reconciliation is a longer term goal. Note: if the court determines that reconciliation is not viable, the petition may be dismissed, and the State ordered to file a dependency petition.
12. **At Risk Youth (ARY) Petition**<sup>19</sup> is a juvenile court proceeding where the parent or legal guardian asks the court to help address at-risk behaviors of a youth who may be experiencing (e.g., runaway behavior, drug addiction). The court may order the youth to live elsewhere during the pendency of the matter. Because ARY and CHINS proceedings can be relatively short in duration, the timeframe of the SIJS application should be closely coordinated with immigration counsel.

**What WA state court proceeding is best?** As with any case, attorneys must evaluate what kind of proceeding is best for their client. In addition, an attorney seeking findings should work closely with immigration counsel,<sup>20</sup> to make sure that SIJS is the appropriate immigration vehicle for the youth. In cases where a proceeding is underway, a request for SIJS findings can be sought incidental to or as part of the main proceeding. In other cases, a new proceeding may need to be started. In those instances, an attorney must weigh carefully and consult the client regarding the pros and cons of going forward under different proceedings. For example, where a youth is in the U.S. and unaccompanied, the attorney with direction from their client will need to weigh whether it is best for the youth to enter the foster care system (dependency petition), seek third party custody with a relative or other suitable adult (nonparent custody), or pursue another type of proceeding.

**Who is the client?** While the youth may be the client for the lawyer seeking SIJS, the attorney seeking to obtain the state court findings might be representing the party seeking custody of the youth. For example, it may be that in certain family law matters, the adult taking custody of the youth is the client. Or, in a domestic violence protection order, it may be that the client is a protected party with whom the youth lives. In addition, parents' attorneys or the State may seek the findings in dependency actions as well as attorneys for the youth.

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<sup>18</sup> RCW 13.32A.140

<sup>19</sup> RCW 13.32A.191-300

<sup>20</sup> For questions concerning immigration law, or to obtain a screening for an undocumented youth to determine if they are SIJS eligible, contact the Northwest Immigrant Rights Project (NWIRP) at <http://www.nwirp.org/gethelp/accessourservices>, or the Seattle office of Kids In Need of Defense (KIND) at (206) 359-6205.

**Can the same attorney represent the adult in the WA state court proceeding and then represent the youth in the SIJS matter?** The attorney will need to evaluate this on a case by case basis. As with all other legal representation, RPC 1.7 (pertaining to conflicts of interest) must be addressed if the attorney decides to represent both parties and any necessary waivers must be obtained. In some cases, having the same attorney represent the child in state court and immigration court may lead USCIS to allege the state court custody order was obtained solely for immigration purposes.

**What if one of the youth's parents is living in the U.S.?** If one of the youth's parents is in the U.S., then proceedings between the parents (e.g., divorce, parentage, parenting plan modifications, etc.) could form the basis for obtaining SIJS findings. If the youth is abused, neglected or abandoned, or is at risk, a dependency, At-Risk-Youth petition or CHINS petition may be appropriate.

**What if the youth is in ORR custody?** If the youth is in ORR custody (that is, the youth has not been released by ORR to a relative or other adult), then a dependency proceeding may be available. In these situations, the SIJS findings may be requested and obtained as part of the dependency proceeding. Note: Under federal law, juvenile court jurisdiction over youth in ORR custody is limited to factual findings; and a juvenile court cannot make determinations over a child's custody or placement without first seeking ORR consent.<sup>21</sup>

**What if the youth has been released from ORR custody or was never in ORR custody?** Several options may be available for a youth in this situation. For example, a private or state dependency could be filed if the youth is unaccompanied and living on his or her own. If a relative or other suitable adult is willing to take custody of the child, a nonparental custody, guardianship, or adoption petition may be available. If no adult is available, a state dependency may be appropriate.

**What if the youth is the subject of a delinquency proceeding?** If the youth is taken into physical custody by law enforcement (e.g. placed in detention) and/or under the legal custody of probation, then it may be possible to obtain SIJS findings through the delinquency proceeding.<sup>22</sup> Note: although a youth's delinquency disposition does not automatically bar them from applying for SIJS, certain delinquency findings might be a bar, specifically where there is concern about drug trafficking. As with all cases seeking SIJS, conferring with the youth's immigration attorney is advised.

**Can youth 18 and older obtain SIJS findings?** A youth may seek SIJS status until age 21. However, many state court proceedings are only available until a youth turns 18, at which time the state court would cease to have jurisdiction over the youth. Washington State retains jurisdiction over a youth until the

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<sup>21</sup> 8 USC §1101(a)(27)(J). For guidance on how to seek ORR consent, see:  
<http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services>

<sup>22</sup> See: Junck, Angie, et al, *Practice Advisory: Obtaining Special Immigrant Juvenile in Delinquency Courts: A Toolkit for Advocates*, Vera Institute of Justice DUCS Legal Access Project (April 2012), found at:  
[http://www.immigrationadvocates.org/nonprofit/library/item.424598-Obtaining SIJS Findings in Delinquency Courts A Toolkit](http://www.immigrationadvocates.org/nonprofit/library/item.424598-Obtaining%20SIJS%20Findings%20in%20Delinquency%20Courts%20A%20Toolkit)

age of 18, however, some exceptions may apply. For example, certain youth are considered dependent until 21 years of age (i.e. youth who qualify for extended foster care) and the court in certain circumstances might retain custody over a youth with special needs.

## II. CASE EXAMPLES

**Youth released by ORR into foster care:** Julia was detained at the border and taken into ORR custody. She was sent to Seattle, Washington to a youth shelter, and then placed with a private foster care agency. She has no parent available to care for her; her parents could not support her in her own country and are unwilling for her to return. They sent her to the U.S. alone to make her own way. The private agency filed a dependency petition on her behalf. A volunteer attorney filed a limited notice of appearance in the dependency to obtain an order on SIJS findings.

**Youth released by ORR to a relative or suitable adult:** Mario was detained at the border and taken into ORR custody. He was released to his uncle, who lives in Washington State. Mario's uncle filed a petition for nonparental custody, which contained a request for SIJS findings, based on Mario's parents being unable to keep him safe from gang violence in their hometown. Mario's parents were served in Guatemala and joined the petition. The judge entered an order on the SIJS findings, which was incorporated by reference into the final nonparental custody order.

**Youth released by ORR to a relative and placement disrupts:** Anna was released by ORR to her aunt. After living with her aunt for several months, the aunt decided to return to Mexico, and Anna stayed in Washington State. A teacher discovered Anna was homeless, and called CPS. Anna was taken into state foster care. Anna was in a county that does not provide attorneys for youth in foster care. A volunteer attorney entered a limited notice of appearance in the dependency proceeding for purposes of obtaining SIJS findings.

**Youth with a parent in Washington:** Orlando crossed into the U.S. after his mother told him she could not support him in El Salvador. He made his way to Washington where he knew his father was living. Orlando's relationship with his father was rocky and Orlando's father asked him to leave. Orlando has been "couch surfing" with friends he met in Tacoma. Orlando started attending a local church and met a family that was willing to provide him with a "placement" while Orlando and his father reconciled. Orlando's attorney filed a CHINS petition which included a request for SIJS findings, in the hope of reunifying Orlando with his father, but in the meantime placing him with the family.

**Youth living with a parent in U.S.:** Maria was living with her mother and father when her father abused her mother. Her parents were not legally married. Maria's mother sought a domestic violence protection order and parentage action, asking for SIJS findings in both petitions. Because the protection order provided that Maria would live with the mother, SIJS were appropriate in the domestic violence protection order. Maria's mother then sought for the findings to be incorporated into the order in the

parentage action, so even when the protection order expired, the court's jurisdiction over Maria would continue.

**Youth arrested for petty theft:** Jaime was arrested for shoplifting. His court-appointed attorney discovered that he was undocumented, and had come to the U.S. to flee violence in his home. The lawyer contacted an immigration attorney at KIND, who screened the youth as eligible for SIJS. The youth was required to spend 20 days in detention. Working together, they developed a strategy for the criminal defense attorney to obtain an order with SIJS findings at the disposition.

### III. SAMPLE LANGUAGE FOR MOTIONS, FINDINGS and ORDERS

- A. **Sample Motion for SIJS Findings:** While a request for SIJS findings may be made in the initial petition for a proceeding, more usually it is made as a motion in an ongoing proceeding. A sample motion, attached as [Appendix A](#), an example for findings requested in a nonparental custody proceeding. This can be modified and adapted for use in other proceedings.
- B. **Pattern Court Form for SIJS Findings:** Washington has a pattern court form for SIJS findings. This form can be modified and adapted for use in family law proceedings. The order, which is attached as [Appendix B](#), is also found online at <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=46>

*Visit the Children and Youth Project at: [www.columbialegal.org/childrenandyouth](http://www.columbialegal.org/childrenandyouth)*

*Follow us on twitter: [@columbiajl\\_cyp](https://twitter.com/columbiajl_cyp)*

*The Children and Youth Project uses community education, research, policy advocacy, and litigation on behalf of Washington's children and youth who are low-income, at-risk, homeless, or in foster care.*



**APPENDIX A**

**SAMPLE MOTION FOR SIJS FINDINGS IN ONGOING NONPARENTAL CUSTODY MATTER**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF \_\_\_\_\_

IN RE THE CUSTODY OF:

SAM YOUTH (d.o.b. 09-10-1997),  
Child,

AUNT CLIENT,  
Petitioner,

And  
DAD AND MOM PARENTS ,  
Respondents

No.

MOTION REQUESTING ORDER FOR  
SPECIAL IMMIGRANT JUVENILE  
STATUS FINDINGS

**I. INTRODUCTION AND RELIEF REQUESTED**

On June 1, 2014, Petitioner filed a Nonparental Custody Petition on behalf of her nephew, Sam Youth, a minor, which is under consideration by this Court. Petitioner respectfully asks the Court to enter an order for findings necessary to support an application by Sam Youth for Special Immigrant Juvenile Status (SIJS).

**II. FACTS**

1. Last year, Sam's father sent Sam, as a minor and by himself, to the United States. Aunt Client's Declaration ¶1. This trip was dangerous. Sam's parents did not adequately plan for his safety when he reached the United States. Sam had to cross two borders without

legal documents in order to arrive at the United States. He was provided little money for food and travel, and had to beg food and rides along the way, at great risk to his safety.

*Id.*

2. Sam's parents live in Town, Country. They cannot provide Sam with a safe place to live or go to school due to gang violence in their home town and Sam's school. *Id.* ¶ 2, 3.

Gang members have twice threatened to kill Sam if he did not join the Dangerous Gang and run drugs for them. *Id.* ¶ 4. It would be dangerous for Sam to return to Country, where his life is in danger.

3. Sam hopes to seek SIJS so that he can stay in the United States with his aunt, a U.S. citizen. The SIJS application requires a finding from this Court, stating that it is not in Sam's best interest to be returned to his country, and that reunification with one or both of his parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. 8 U.S.C. § 1101(a)(27)(J).

### **III. ARGUMENT**

A child has been abandoned "when the child's parent...has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities." RCW 13.34.030(1). Sam's parents abandoned him when they sent him to the United States by himself, which was risky and dangerous. Both parents also gave up their rights and responsibilities when they joined the Nonparental Custody Petition. Sam has been living with his aunt, the Petitioner, since November 2013.

It is not in Sam's best interest to be reunited with his parents since they abandoned him by sending him to the United States, and they cannot provide a safe place for him to live due to the gang violence in their home town. In addition, his parents are not available to parent him, and have neglected him because they are unable to provide a safe home for him and a safe place for him to go to school. RCW 26.44.020(1).

Petitioner respectfully requests that the Court set forth findings that Sam is abandoned and neglected, and that reunification with his parents is not in his best interest, and that this Court has continuing jurisdiction over Sam. These findings will enable Sam to seek Special Immigrant Juvenile Status.

RESPECTFULLY submitted this \_\_\_\_ day of July, 2014 by:

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Attorney, WSBA No. 12345  
1234 5th Ave.  
Somewhere, WA 09876  
Attorney for Petitioner, Aunt Client

## APPENDIX B

### SAMPLE FINDINGS AND ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS

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

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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:)*

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- 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 \_\_\_\_\_