

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**

October 2015



## Washington State Court SIJS Bench Book and Resource Guide

### **The Mission**

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 have 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.

### **Acknowledgements and Special Thanks**

The WLI Class of 2015 Fellows would like to thank the following individuals and organizations, who were instrumental in supporting the Fellows in their development of this SIJS Bench Book:

- WLI Co-Chairs Hon. Mary I. Yu and James F. Williams,
- Ronald R. Ward, WLI Founder,
- Hon. Bobbe Bridge (Ret.), WLI Board Member,
- Dawn Bell, WLI Coordinator,
- The members of the WLI Advisory Board,
- Cindy Bricker, Senior Court Program Analyst, Administrative Office of the Courts, and
- Mary Van Cleve, Staff Attorney, Columbia Legal Services (CLS).

## Washington State Court SIJS Bench Book and Resource Guide

### Overview

*This bench book seeks to provide guidance for Washington State Court judges and commissioners seeking to navigate the state and federal laws related to Special Immigrant Juvenile Status (SIJS). The information presented may also be useful to attorneys representing clients who may qualify for SIJS and are seeking predicate findings in state court.*

*This bench book is meant to apply in the context of state court judges deciding cases guided by the policy of “the best interest of the child.” Washington law recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Consideration of the factors relevant to a child’s SIJS application are a critical part of determining the best interest of the child.*

*This bench book uses the term “youth” instead of “juvenile” or “child” throughout the guide. The rationale for this is supported by the federal law definition (below) and Washington state statutes and case law dealing with emancipation.*

*The term “youth” is also used to reflect the definitions relevant to SIJS applications in federal court; any person under the age of 21 who meets the other requirements can apply for SIJS. 8 CFR 204.11(c)(1). However, it should be noted that many SIJS applicants who appear in state courts to request a predicate finding are young children.*

*Finally, it is important to note that this guide is a work in progress. We invite additional correspondence from the bench and attorneys within the practice area to let us know what parts of the guide are useful, how it may be improved, and what may be missing.*

*To share suggestions or legal updates for improvement of the bench book, please email E. Rania Rampersad, Washington Leadership Institute, 2015 Fellow, [Rania.Rampersad@gmail.com](mailto:Rania.Rampersad@gmail.com).*

## TABLE OF CONTENTS

### **I. State Court Proceeding Checklist**

#### **1. Introduction**

- 1.1 What is Special Immigrant Juvenile Status?
- 1.2 What are the benefits of SIJS?
- 1.3 Considerations for youth applying for SIJS

#### **2. Understanding SIJS**

- 2.1 Who is eligible for SIJS?
- 2.2 What is the role of state courts in SIJS?
- 2.3 What are important deadlines for SIJS applications?
- 2.4 Do state courts have a duty to report undocumented youth?
- 2.5 What is the scope of DSHS involvement?
- 2.6 Do youth applying for SIJS have a right to counsel?
- 2.7 What are best practices when working with non-English speaking youth?
- 2.8 How are detained immigrant parents located?

#### **3. In What State Court Proceedings Does SIJS Arise?**

- 3.1 Common proceedings in which SIJS may arise
- 3.2 SIJS considerations in particular types of proceedings
  - a. SIJS considerations in dependency proceedings
  - b. SIJS considerations in terminations of parental rights
  - c. SIJS considerations in actions for nonparental custody
  - d. SIJS considerations in guardianship proceedings
  - e. SIJS considerations in adoption proceedings
  - f. SIJS considerations in offender matters
  - g. SIJS considerations in certain family law proceedings
  - h. SIJS considerations in Domestic Violence Protection Order proceedings
  - i. SIJS considerations in non-offender (BECCA) matters
- 3.3 Additional Considerations

#### **4. How to Serve Notice on Parents Residing Abroad**

- 4.1 Service through the Hague Convention
- 4.2 Service through the IACAP

**5. Concluding Observations**

**Appendix A: Sample Findings and Order**

**Appendix B: Examples of SIJS-eligible Youth**

**Appendix C: Additional Resources**

## I. State Court Proceeding Checklist

Each question below must be answered affirmatively in order to meet the threshold requirement for a youth to obtain an order making SIJS predicate findings:

- √ Is the youth under 21 years of age?
- √ Is the youth unmarried?
- √ Is the youth:
  - A dependent of the Court; or
  - Committed to or placed in the custody of a state agency/individual/entity appointed by the Court?
- √ Is reunification of the youth with one or both parents not viable because of
  - Abuse; or
  - Abandonment; or
  - Neglect?
- √ Is it in the best interest of the child not to return to his country of nationality/last habitual residence?

\*\*These predicate findings are discussed in detail in Chapter 4\*\*

When a state court is handling an SIJS matter for predicate findings, the following are important considerations:

- √ Have the parent(s) of the youth been served?
  - Personal service;
  - Service by mail;
  - Service by publication;
  - Alternative method of service in foreign jurisdiction?<sup>1</sup>
- √ If a party has requested an interpreter, is an interpreter present?<sup>2</sup>

---

<sup>1</sup> See Chapter 4 on how to serve parents who are residing abroad.

<sup>2</sup> See Section 2.7 for a discussion on working with interpreters.

## **1. Introduction**

### **1.1. What is Special Immigrant Juvenile Status?**

Special Immigrant Juvenile Status (“SIJS”) is a federal immigration classification that puts certain undocumented youth on a pathway to become lawful permanent residents. The statutory basis for SIJS is the Immigration and Nationality Act (“INA”) at § 203(b)(4),<sup>3</sup> which allocates a percentage of immigrant visas to individuals considered “special immigrants,” and § 101(a)(27)(J)<sup>4</sup> which defines Special Immigrant Juveniles.

Under the law, a youth whose “reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law,” and whose return to their country of nationality or last habitual residence is not in his/her best interest, may be able to obtain SIJS and then apply for lawful permanent residency (i.e. a green card).

To obtain SIJS, a youth must submit two applications to the federal government and meet three requirements:

1. Obtain predicate findings from a state court judge 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, apply for lawful permanent residency (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.

Although the SIJS petition and lawful permanent residence application are adjudicated separately, they are typically filed at the same time (known as an affirmative application). In a defensive application (one in which the youth is in deportation proceedings), the SIJS petition is submitted first and the adjustment of status application is submitted later. For many undocumented youth, SIJS is the only path available for lawful permanent residency and without it, a youth may become subject to removal from the U.S.

### **1.2. What are the benefits of SIJS?**

The most important benefit of applying for SIJS is the ability to immediately apply for lawful permanent resident status. A lawful permanent resident has the right to live and work

---

<sup>3</sup> See 8 U.S.C. 1152.

<sup>4</sup> See 8 U.S.C. § 1101.

permanently in the United States and to travel in and out of the country. Permanent residents are eligible for some benefits initially and more as time goes on. In particular, youth may be eligible for Title IV-E funds and federal financial aid to go to college. Also, after five years (and in some cases sooner) permanent residents can apply for U.S. citizenship. Lawful permanent resident status is permanent—a Special Immigrant Juvenile who obtains permanent residency will keep it after he or she is no longer under juvenile court jurisdiction. The only basis for terminating permanent resident status would be if the person became deportable for some reason, such as conviction of certain criminal offenses (including some juvenile offenses).

Applicants who have submitted the SIJS petition and the adjustment of status application are protected against deportation and may be granted employment authorization while their cases are pending. SIJS can also benefit counties which may be able to access federal foster care matching funds when a youth gains SIJS; counties cannot access these funds for undocumented youth.

### **1.3 Considerations for youth applying for SIJS**

SIJS can only be conferred by the competent federal immigration authority—U.S. Citizenship and Immigration Services (USCIS)—with the consent of the Department of Homeland Security (DHS).<sup>5</sup> However, state courts play an important role in the process because to become eligible to petition USCIS for SIJS status, a youth *must first* obtain a predicate order from a state court with specific findings. Washington has a court form for the state court predicate findings, and the form is provided as Appendix A of this bench book.<sup>6</sup>

---

<sup>5</sup> 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).

<sup>6</sup> The form is also available on the Washington Courts website: <https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=46>.

## 2. Understanding SIJS

### 2.1 Who is eligible for SIJS?

For a helpful one page eligibility checklist, please refer to the “State Court Proceeding Checklist” in Section I at the beginning of this bench book.

For a youth to be eligible to apply for SIJS, a state court must find:<sup>7</sup>

1. The youth is under age 21;
2. The youth is unmarried;
3. Reunification of the youth with either one or both parent(s) is not viable due to abuse, neglect, abandonment, or similar state law basis; and
4. It is not in the youth’s best interests to return to his/her country of nationality or country of last habitual residence.

The mere fact that a Washington court has entered the above findings, however, does not by itself confer SIJS. Upon receiving a predicate order making the findings listed in the sample order in Appendix A, a youth must then file a petition with federal immigration authorities in order to seek SIJS.

### 2.2 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 youth *must first* obtain a predicate order from a state court with specific findings. The Administrative Office of the Courts (AOC) published a sample state court order with the SIJS predicate findings. This sample order is provided in Appendix A of this bench book. Only once the youth has obtained these required findings from a state court may the youth apply for SIJS. (See Section 3, below, for detailed discussion of the various state court proceeding 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 to make factual findings of abuse, neglect, abandonment, 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).<sup>8</sup> With the consent function, DHS (specifically,

---

<sup>7</sup> INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

<sup>8</sup> 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).

## Washington State Court SIJS Bench Book and Resource Guide

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.<sup>9</sup> Thus, it is recommended that state courts use the AOC’s published sample state court order, provided as Appendix A, and limit findings to the abuse, abandonment or neglect issues as shown in the sample order for predicate findings.

In order to best understand how a motion for SIJS predicate findings may arise, it helps to be familiar with the common terms used in the context of state versus federal laws. The following illustrates the context for each:

<b>State Law</b>	<b>Federal Law</b>
Juvenile Court is a division of the Washington superior court having jurisdiction over children under 18 years of age; <sup>10</sup> and for children 18-20 for whom juvenile jurisdiction has been extended. <sup>11</sup>	Juvenile Court is any court having jurisdiction under State law to make judicial determinations about the custody and care of juveniles. <sup>12</sup>
Dependent [Youth] is any child who has been abandoned, abused or neglected; 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; or is receiving extended foster care services. <sup>13</sup>	Dependent [Youth] is declared dependent on a juvenile court <i>or</i> whom such court has 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. <sup>14</sup>

<sup>9</sup> *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.”).

<sup>10</sup> RCW 13.04.030; RCW 13.34.030(2)(a).

<sup>11</sup> RCW 13.40.300; RCW 13.34.030(2)(b).

<sup>12</sup> 8 CFR § 204.11(a).

<sup>13</sup> RCW 13.34.030(6).

## Washington State Court SIJS Bench Book and Resource Guide

Ultimately, if the care and custody of a youth is being determined by a state court, then that youth is a dependent (upon the state court) for purposes of SIJS predicate findings. This means not only the obvious situation of formal dependency proceedings, in which the youth is a dependent of the state court, but also in many other proceedings. (See Section 3).

There is no requirement for a specific type of state court proceeding in which the abuse, abandonment, or neglect finding may be made. 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.”<sup>15</sup> Predicate findings could be made, for example, during juvenile delinquency proceedings, during a family law proceeding involving a custody dispute, during a domestic violence case involving the youth and/or his or her parent, or during any other court proceeding where the care and custody of the youth is at issue. For this reason, it is helpful for state courts to be on the alert for youth who qualify for SIJS and may benefit from state court predicate findings.

Care should be taken, however, if the youth is the subject of a delinquency proceeding, particularly if the youth is being tried as an adult. In such cases, it will not be appropriate for the court to inquire into the immigration status of the defendant.<sup>16</sup> However, if the defendant is under 21, 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.<sup>17</sup> Of course, the youth’s attorney (or other party) can ask the court for SIJS predicate findings.

### 2.3 What are important deadlines for SIJS applications?

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.<sup>18</sup> Although a youth is eligible to apply for SIJS until reaching 21 years of age, a youth must

---

<sup>14</sup> INA § 101(a)(27)(J); *see also* Deborah Lee, et al., Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Feb. 19, 2009).

<sup>15</sup> 8 C.F.R. 204.11(a).

<sup>16</sup> See the *Immigration Resource Guide for Judges* for a discussion of discrimination and access to justice issues raised by the state court interactions with immigration issues. WASHINGTON STATE SUPREME COURT GENDER AND JUSTICE COMMISSION AND MINORITY AND JUSTICE COMMISSION, *Immigration Resource Guide for Judges*, Chapter Two: Immigration Enforcement and the Criminal Justice System (July 2013).

<sup>17</sup> See generally *Padilla v. Commonwealth of Kentucky*, 559 U.S. 356, 130 S.Ct. 1473 (2010).

<sup>18</sup> See *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 265 (C.D. Cal. 2008).

## Washington State Court SIJS Bench Book and Resource Guide

obtain the predicate order prior to the state court's jurisdiction ending, which typically occurs upon the youth's 18<sup>th</sup> birthday. Therefore, the court should try to issue the predicate finding prior to the youth turning 18 years of age.

There are limited circumstances in which a court's jurisdiction continues beyond a youth's 18<sup>th</sup> birthday, thereby extending the time under which a state court can issue an SIJS predicate order. For example: where a youth between ages 18-21 is in extended foster care;<sup>19</sup> in juvenile offender matters for which state juvenile court jurisdiction is extended until the youth's 21<sup>st</sup> birthday;<sup>20</sup> and in criminal traffic matters heard in municipal or district courts wherein youth between the ages 16-20 appear.<sup>21</sup> Although the basis for abuse or neglect may not be a part of the record for offender proceedings, a party may supplement the record to support such findings.

It is possible for delays in a state court predicate finding to cause a youth to age-out and no longer be qualified to apply for SIJS. This could result in a loss of long-term 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, preferable before the youth turns 18 and the state court loses jurisdiction.

### **2.4 Do state courts have a duty to report undocumented youth?**

Neither federal nor Washington state law requires a judicial officer to report to immigration authorities when a youth seeks a finding for use in an SIJS application. Indeed, the Washington State Supreme Court Gender and Justice Commission, and the Court's Minority Justice Commission, have questioned whether a State judicial officer *may* cooperate with a federal immigration investigation.<sup>22</sup> Such cooperation may be at odds with the rehabilitative goal of the Juvenile Justice Act. Additionally, a party may request to have the youth's files sealed under GR 15, ensuring further confidentiality. The point may be moot, as the authors of this guide are aware of no example of immigration enforcement officers seeking information from a Washington State judicial officer for use in an immigration prosecution.

---

<sup>19</sup> 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

<sup>20</sup> RCW 13.40.300; RCW 13.40.030.

<sup>21</sup> RCW 13.40.030(1)(e)(iii).

<sup>22</sup> See WASHINGTON STATE SUPREME COURT GENDER AND JUSTICE COMMISSION AND MINORITY AND JUSTICE COMMISSION, *Immigration Resource Guide for Judges*, Chapter Eight: Juveniles, Section 8.4 Policy Considerations for Washington Courts Regarding Noncitizen Youth (July 2013).

## **2.5 What is the scope of DSHS involvement?**

The Washington State Department of Social and Health Services (DSHS) will not be involved in every SIJS case. DSHS becomes involved in a youth's case only if the youth is involved in a state prosecuted dependency matter or Child in Need of Services (CHINS) petition. For dependent youth in the State's custody, DSHS or any other party may make a motion for SIJS findings.

If DSHS is involved in the youth's state court case, DSHS will make an independent assessment and may take a position regarding whether it believes the facts support an SIJS finding. Regardless of whether DSHS is a party, DSHS support is not required for the court to make the SIJS predicate finding. According to Senior Counsel for the Social and Health Services Division of the Attorney General's Office, even if DSHS becomes involved in a youth's case, the Department will not report the youth or the youth's family members to U.S. Immigration officials.

## **2.6 Do youth applying for SIJS have a right to counsel?**

In Washington, youth have no right to assistance of counsel at public expense when solely seeking SIJS predicate findings, nor when applying with USCIS for SIJS. However, youth are provided counsel in juvenile delinquency proceedings at public expense, as well as dependency counsel in some cases. An undocumented youth's delinquency 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 What are best practices when working with non-English speaking youth?**

While there is no express requirement for testimony to be taken from a youth before SIJS predicate findings can be made, if the underlying proceedings involve testimony from a youth in court, judges may need to rely upon an interpreter to communicate with the immigrant youth. Simple questions can be used to determine if a youth has a level of English language proficiency which makes the assistance of an interpreter beneficial or even necessary. The Administrative Office of the Courts suggests the following:<sup>23</sup>

1. How did you come to court today?
2. Please tell me about your country.
3. Tell me more about your country.

---

<sup>23</sup> Court Interpreter Commission, *Bench Card - Courtroom Interpreting* (Administrative Office of the Courts January 2015).

## Washington State Court SIJS Bench Book and Resource Guide

4. Describe what you see in this courtroom.
5. What is the purpose of your court hearing today?
6. How did you learn English, and what is most difficult about communicating in English?
7. You have the right to a court-appointed interpreter. Tell the court the best way to communicate with you and to let you know what is being said.

The Court Interpreter Commission offers the following suggestions for working with interpreters:<sup>24</sup>

1. Direct comments and questions to the individual being questioned, not the interpreter.
2. Avoid legalese, acronyms and legal citations.
3. Ensure that you and others speak slowly.
4. Provide documents, if possible, in advance of a hearing.
5. Allow a break for interpreters at least every 20-30 minutes.

The following are additional suggestions on communicating with non-native English speakers in the courtroom:

1. Keep sentences short.
2. Leave time for interpretation. Not all interpreters can interpret simultaneously. Even among those who can interpret simultaneously, many may fall behind if you speak quickly. This is particularly true when the interpreter is less experienced or is working in a language that is not his or her mother tongue.
3. Consider that the question “Do you understand?” is often met with an affirmative response, even if the listener does not truly understand. The listener may be deferring to authority or may genuinely believe he has understood when in fact, he has not.
4. Consider that body language varies across cultures. For example, avoiding direct eye contact with authorities may be a sign of respect, rather than dishonesty or rebelliousness.

### **2.8 How are detained immigrant parents located?**

If a parent has been detained by federal immigration authorities, it may prove extremely difficult, if not impossible, for the parent to be able to attend a youth’s state court proceeding for SIJS predicate findings. For the purposes of notification or service, there are two possible ways to try to locate a parent who is detained: by either directly contacting the local Immigration and

---

<sup>24</sup> Court Interpreter Commission, *Top Suggestions for Attorneys Working with Court Interpreters* (Administrative Office of the Courts February 2011). Cf. Katrin Johnson, *Working with Interpreters; Washington State Association of Municipal Attorneys* (Administrative Office of the Courts Spring 2010) (offering similar recommendations). The recommendations are paraphrased here, and those deemed less directly applicable to judicial officers have been omitted.

## Washington State Court SIJS Bench Book and Resource Guide

Customs Enforcement (ICE) field office or by using the Department of Homeland Security (DHS)'s online detainee locator system. In both cases, it is best to have the parent's name, date of birth, home country and/or Alien Registration Number (A-number) available. The A-Number is the nine-digit identifying number that is assigned to a person by immigration authorities. The nine-digit A-Number may be preceded by zeros.

**Field Office:** In Washington State, there is only one location for the local Enforcement and Removal Office (ERO) field office:

**Seattle Field Office**

12500 Tukwila International Boulevard

Seattle, WA, 98168

Phone: (206) 835-0650

Seattle.Outreach@ice.dhs.gov

ERO.INFO@ice.dhs.gov

**Online System:** An online detainee locator system can be found at: [locator.ice.gov](http://locator.ice.gov). To locate a parent, either have the A-number and country of birth or the parent's first and last name, country of birth and date of birth. When entering the first and last name of the parents, it is suggested to try different combinations of the full name. For example, Maria Smith-Watkins can also be entered as Maria Watkins, Maria Smith, Maria Watkins-Smith.

**Phone System:** In rare instances where an immigrant parent's A-number is known, an individual can try to determine if there are any upcoming hearings with the immigration court by calling the Executive Office for Immigration Review (EOIR) at (800) 717-8977. If the parent is detained, their immigration proceedings may be heard at the Tacoma Immigration Court, located inside the Northwest Detention Center. If the parent is not detained but is still in removal proceedings, the immigration court hearing will be under the jurisdiction of the Seattle Immigration Court.

Even upon locating a parent within the federal immigration system, ICE at this time has created no avenues or mechanisms to properly serve a detained parent with notice of upcoming state court hearings. There is also no known mechanism to provide transport to the parent for such hearings.

### 3. In What State Court Proceedings Does SIJS Arise?

SIJS findings may be issued in any state court proceeding, where the custody and care of a youth is addressed. In Washington, examples may include, but are not limited to, juvenile dependency and delinquency proceedings and family law proceedings. The federal statutory basis for SIJS allows the necessary SIJS findings to be made in a judicial proceeding by a “juvenile court located in the United States.”<sup>25</sup> However, federal regulations governing SIJS eligibility define “juvenile courts” broadly as those “located in the United States having jurisdiction under State law to make judicial determinations about *the custody and care of juveniles*.”<sup>26</sup> This definition differs from the Washington State definition of juvenile courts,<sup>27</sup> and accordingly, Washington State courts that may not be “juvenile courts” under state law may still have jurisdiction to make SIJS findings.<sup>28</sup> For example, for purposes of making SIJS predicate findings, family law courts in Washington qualify as “juvenile courts” under the federal definition.

#### 3.1 Common proceedings in which SIJS may arise.

A threshold determination for state courts is whether the custody or care of an immigrant youth is under the jurisdiction of the court. In Washington State, jurisdiction over the placement of an immigrant youth may be asserted in a variety of state court proceedings.<sup>29</sup> Below are some examples of state court proceedings where SIJS findings might be made, though this list is not exhaustive:

- a. **Dependency**<sup>30</sup> where the youth is found to be abused, neglected or abandoned, and is placed outside of the home.
- b. **Termination of Parental Rights**<sup>31</sup> where a juvenile court permanently terminates a parent’s parental rights to his/her child and places custody of the youth with someone else, usually the State.
- c. **Nonparental Custody**<sup>32</sup> where the court gives custody of the youth to a person other than the parent.

---

<sup>25</sup> 8 U.S.C. § 1101(a)(27)(J).

<sup>26</sup> 8 C.F.R. § 204.11(a) (emphasis added).

<sup>27</sup> RCW 13.04.021

<sup>28</sup> *Cf. B.F. v. Superior Court*, 207 Cal. App. 4<sup>th</sup>. 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.”).

<sup>29</sup> Some findings may also be made in administrative proceedings. 8 C.F.R. §§ 204.11(c)(6), (d)(2)(iii).

<sup>30</sup> 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.

<sup>31</sup> RCW 13.34.

<sup>32</sup> RCW 26.10.

## Washington State Court SIJS Bench Book and Resource Guide

- d. **Guardianship**<sup>33</sup> where the youth is placed with a guardian who has legal authority over the youth.
- e. **Adoption**<sup>34</sup> where a person other than the biological parent(s) becomes the permanent legal parent of the youth.
- f. **Offender Matters**<sup>35</sup> where the youth has been charged with a criminal offense and may be placed in a county detention or state juvenile rehabilitation institution, committed to probation, or released to a family member or other caregiver.
- g. **Family Law Proceedings, including:**
  - i. **Dissolution of Marriage/Legal Separation**<sup>36</sup> where the parents end the marriage and the court decides placement of the youth pursuant to the best interest of the child standard.
  - ii. **Paternity/Parentage Determinations**<sup>37</sup> where the parentage of a child of an unmarried couple is established.
  - iii. **Parenting Plan Modifications**<sup>38</sup> where a parent or legal custodian asks the court to modify the parenting plan.
- h. **Domestic Violence Protection Order**<sup>39</sup> where a victim of domestic violence seeks relief on behalf of themselves, his or her child(ren), or other household members.
- i. **BECCA Proceedings, including:**
  - i. **At Risk Youth (ARY) Petitions**<sup>40</sup> where the parent or legal guardian asks the court to help address at-risk behaviors a youth may be experiencing (e.g., runaway behavior, drug addiction).
  - ii. **Child in Need of Services (CHINS)**<sup>41</sup> where the parent, youth, or Department of Social and Health Services (DSHS) can file a petition to get placement of the youth while working on family reconciliation.
  - iii. **Truancy**<sup>42</sup> where a youth's alleged truancy from school in violation of compulsory attendance laws is addressed by a court.

The court can also assist youth by asking both counsel and the youth in each case whether a discussion of immigration status has occurred (without asking whether the youth actually has status). If counsel or the youth are unable to bring a motion for predicate findings that support

---

<sup>33</sup> RCW 11.88 and 13.36.

<sup>34</sup> RCW 26.33.

<sup>35</sup> RCW 13.40.

<sup>36</sup> RCW 26.09.

<sup>37</sup> RCW 26.26.

<sup>38</sup> RCW 26.09.260-280.

<sup>39</sup> RCW 26.50.

<sup>40</sup> RCW 13.32A.191-270.

<sup>41</sup> RCW 13.32A.

<sup>42</sup> RCW 28A.225.

an SIJS application, a community-based resource such as Team Child, Kids in Need of Defense (KIND), Northwest Immigrant Rights Project (NWIRP), or Columbia Legal Services (CLS) may be able to help. These organizations may be in a position to interview the youth 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.

### **3.2 SIJS considerations in particular types of proceedings.**

There may be unique SIJS considerations that arise in different types of proceedings. The following section addresses some of the considerations that may be relevant. It is important to note that SIJS predicate findings do not require that formal charges of abandonment, abuse, or neglect be brought against the parent(s). For purposes of SIJS predicate findings, the word “custody” refers to the physical location of the youth as used in immigration law, not the concept of legal custody in family law.<sup>43</sup>

#### **a. SIJS considerations in dependency proceedings**

Dependency proceedings are one of few proceedings in which the court is directly charged with making findings about the custody and care of youth.<sup>44</sup> Any person may file a petition showing that there is a dependent youth and requesting that the juvenile court address placement of the youth.<sup>45</sup>

In the context of state law, a “dependent child” is one who: (1) has been abandoned;<sup>46</sup> (2) is abused or neglected by a person legally responsible for the care of the child;<sup>47</sup> (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;<sup>48</sup> or (4) is receiving extended foster care services.<sup>49</sup> These findings are critical to SIJS determinations.<sup>50</sup> However, for purposes of SIJS predicate findings, a formal finding of dependency is not required as federal law requires only that a court exercise jurisdiction over the care and custody of a youth. Under this standard, a youth is dependent upon the court whenever a determination is made about the care and living arrangements of a youth.<sup>51</sup>

---

<sup>43</sup> See INA §101(a)(27)(J)(i) and (ii).

<sup>44</sup> 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.

<sup>45</sup> RCW 13.34.040(1).

<sup>46</sup> RCW 13.34.030(1).

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

<sup>48</sup> *In re Dependency of Schermer*, 161 Wn.2d 927 161 Wn.2d 927, 169 P.3d 452 (2007).

<sup>49</sup> RCW 13.34.030(6).

<sup>50</sup> 8 C.F.R. § 204.11(a) and RCW 13.34.030.

<sup>51</sup> RCW 13.04.030; RCW 13.40.300; 8 C.F.R. § 204.11(a).

Apart from determining whether a youth is dependent, the court also assesses whether reunification with the youth's parents is appropriate. In some instances a court will determine a youth is dependent as to one parent only, thus allowing the youth to be reunified with the other parent. A youth does not have to be dependent as to both parents to qualify for SIJS predicate findings.<sup>52</sup> Instead, SIJS is available where "reunification with *one or both* of the immigrant's parents is not viable due to abuse, neglect, or abandonment."<sup>53</sup> Youth representatives may seek findings of abuse, neglect or abandonment with respect to both parents whenever appropriate under the facts.

A formal 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, or to monitor future reunification efforts. It should be noted that the SIJS predicate order may not affect obligations of other parties (such as DSHS), who may still be under obligation to continue efforts to promote reunification in the future.

**b. SIJS considerations in terminations of parental rights**

In cases of serious abuse or neglect,<sup>54</sup> which may include unreasonable use of force to correct or restrain a child,<sup>55</sup> the court will decide whether to terminate parental rights for failure to correct parental deficiencies. If parental rights are terminated, the child is placed in the legal custody of another – DSHS, an individual or an agency.

A motion for SIJS predicate findings can be made at any time after a youth is under the court's jurisdiction, whether in a dependency or a termination of parental rights proceeding.

**c. SIJS considerations in actions for nonparental custody**

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 custody of that child. These actions may be contested or uncontested – the burden of proof is the same. 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

---

<sup>52</sup> 8 C.F.R. § 204.11(a); TVPRA § 235(d).

<sup>53</sup> TVPRA § 235(d). (emphasis added).

<sup>54</sup> RCW 26.44.020(1).

<sup>55</sup> RCW 9A.16.100.

## Washington State Court SIJS Bench Book and Resource Guide

would detrimentally affect the child's growth and development.<sup>56</sup> Further, the nonparent must show actual detriment to the child, not just that a different custody arrangement is in the child's "best interest."<sup>57</sup> In order for a petitioner to have standing to bring the matter, the child must not be in the physical custody of his/her 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.

### **d. SIJS considerations in guardianship proceedings**

While children placed in formal foster care are dependent on a juvenile court, so are children for whom a court has appointed a guardian. If a youth has a caretaker, other than a parent, that caretaker may ask to be appointed guardian or custodian of the youth. Guardianship is another way for a youth to enter state court proceedings and to be committed to, and placed in, the custody of an individual appointed by the court. This is a time when SIJS predicate findings can be made. Guardianship may be an option for youth released from the custody of the Office of Refugee Resettlement (ORR).

Guardians can be guardians of an estate, or guardians of a person, or both.<sup>58</sup> 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.

### **e. SIJS considerations in adoption proceedings**

Adoption is a family law proceeding where a person other than the biological parent(s) becomes the permanent legal parent of the youth.<sup>59</sup> Once an adoption is finalized and parental rights have been granted to the adoptive parents, the youth is no longer dependent on the court, and the opportunity for SIJS is no longer available.<sup>60</sup>

---

<sup>56</sup> RCW 26.10; See also *In re the Custody of Anderson*, 77 Wn. App. 261 (1995) for an explanation of the legal standard needed to win nonparental custody of a child.

<sup>57</sup> For detailed discussion on nonparental custody proceedings, see: <http://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/39241DCA-9B7A-FFE9-D906-14C3C148D712/3100en.pdf>.

<sup>58</sup> "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter. See RCW11.88(10).

<sup>59</sup> RCW 26.33.

<sup>60</sup> 8 C.F.R. § 204.11(c).

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. 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 youth to obtain lawful status.

**f. SIJS considerations in offender matters**

Offender matters (formerly known as ‘delinquency’) are proceedings in which a youth has been charged with a criminal offense. Youth under the age of 18 years, and those between 18 and 21 years for whom juvenile court jurisdiction has been extended, are tried in juvenile court. There are limited statutory exceptions to juvenile court’s exclusive jurisdiction.<sup>61</sup> Regardless of which court has subject matter jurisdiction under state law, that court is considered a “juvenile court” under SIJS standards.<sup>62</sup> Importantly, any state court hearing a youth offender matter may make and enter findings as that court makes determinations regarding the custody of the youth – whether release, commitment to detention, commitment to probation, etc. Although the basis for abuse or neglect may not be a part of the record for offender proceedings, a party may supplement the record to support such findings.

In cases heard by the juvenile court division of the superior court, the juvenile offender is referred to as the “Respondent.” Respondents do not have a right to jury trial. Rather, a Superior Court Judge or Commissioner determines whether an offense was proved beyond a reasonable doubt. The Superior Court Judge or Commissioner’s finding of “committed” or “not committed” is called a “disposition.”

Pre-adjudication Respondents may be held in a detention facility prior to disposition. A detention facility may be a county facility designed for physical confinement of children but the term also includes county group homes, inpatient substances abuse programs, juvenile basic training camps, and electronic home monitoring. Upon a finding of ‘committed,’ Respondents are termed “Juvenile Offenders.” Juvenile Offenders may be sentenced to community supervision (probation for children), a county detention facility, or confinement with the state Department of Social and Health Services.

In cases heard in municipal or district court (typically a criminal traffic offense), and cases which have been declined to adult superior court, the juvenile offender is referred to as the “Defendant.” In these cases, the juvenile offender has a constitutional right to a trial by jury. If

---

<sup>61</sup> RCW 13.04.030.

<sup>62</sup> 8 CFR § 204.11(a).

an offense is proved beyond a reasonable doubt, a finding of “guilty” is entered. Convictions in criminal courts *can* have serious immigration consequences – even misdemeanors.

Juvenile court adjudications are not convictions for immigration purposes. However, if a juvenile offender matter is declined to an adult court, or if a youth is sixteen or seventeen years old and appears in municipal or district court, any subsequent conviction may have serious immigration consequences. There are also conduct-based grounds for removal and inadmissibility that apply regardless of age.<sup>63</sup>

**g. SIJS considerations in certain family law proceedings**

The opportunity to make SIJS predicate findings can arise in certain family law proceedings including, but not limited to, dissolution of marriage and legal separation, paternity and parentage determinations, and parenting plan modifications. When a youth is involved in these proceedings, the court will determine custody and placement based on the best interest of the child.<sup>64</sup> As a result, SIJS predicate findings may be entered. For example, a parenting plan modification might be an appropriate vehicle for SIJS findings if a youth is living with one fit parent, but there has been abuse, neglect, or abandonment by the other parent.

**h. 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.<sup>65</sup> When a youth is the victim of domestic violence, or lives with a victim of domestic violence, the court may determine with whom the youth should reside. As allegations of abuse or neglect may arise in these proceedings, there may be an opportunity to make SIJS predicate findings. In such cases, the youth 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 existence of alternative relief is not relevant to the SIJS findings inquiry.

**i. SIJS considerations in non-offender (Becca<sup>66</sup>) matters**

Non-Offender matters arose from The “Becca Bill” enacted by the Washington State Legislature<sup>67</sup> to:

---

<sup>63</sup> *See, e.g.*, 8 U.S.C. § 1182.

<sup>64</sup> RCW 26.09.

<sup>65</sup> RCW 26.50.

<sup>66</sup> “Becca” is commonly used when referencing non-offender matters.

## Washington State Court SIJS Bench Book and Resource Guide

1. Protect youth who are endangering themselves (at risk youth<sup>68</sup>);
2. Keep families together through assessment and treatment services (child in need of services, “CHINS”<sup>69</sup>);
3. Provide tools for schools, parents, and juvenile courts to keep youth in school (truancy<sup>70</sup>); and
4. Hold youth and parents accountable to the Court.

Youth involved in Becca proceedings are entitled to counsel. A juvenile court has jurisdiction to make judicial determinations about the care and custody of youth and to retain jurisdiction in Becca cases for an extended period of time. The juvenile court has the authority necessary to make factual determinations required for SIJS predicate findings in the context of all Becca cases where, by a preponderance of the evidence, the court finds that:

1. Currently, reunification with one or both of the immigrant youth’s parents is not viable<sup>71</sup> due to abuse, neglect, abandonment, or “similar basis found under state law;” and
2. Currently, it is not in the immigrant youth’s best interest to be returned to his/her (or parent’s) previous country of nationality or country of last habitual residence.

### 3.3 Additional Considerations

Any party may bring a motion for the predicate SIJS findings<sup>72</sup>, and reasonable minds differ on the scope of representation for appointed counsel. Courts should consider SIJS predicate finding motions brought by any individual consistent within the context of state law and court rules.

Additionally, it should be considered that some youth may find a court hearing process very stressful, especially if they must recount painful experiences. For example, similar to victims of other forms of maltreatment, many youth have conflicted feelings about their parents or guardians and may find it difficult to publicly accuse their parent or guardian of maltreatment. The requirement that documentation of the court proceedings be served on the parent or guardian may also cause anxiety for youth. These considerations may impact the youth’s physical, mental, or emotional health.

---

<sup>67</sup> RCW 13.32A.

<sup>68</sup> RCW 13.32A.030(3).

<sup>69</sup> RCW 13.32A.030(5).

<sup>70</sup> RCW 28A.225.

<sup>71</sup> The juvenile court is not making a finding that reunification is absolutely impossible – just that it is not possible at this time.

<sup>72</sup> See 8 C.F.R. § 204.11.

#### 4. Service of Process on Parents Residing Abroad

Youth seeking an SIJS finding may have one or both parents living out of state or even abroad. An SIJS finding may have a significant impact on a parent's custodial rights and their remedies in future immigration proceedings. Courts should enforce service of process rules in order to ensure a parent receives adequate and timely notice of the lawsuit. Service of process abroad 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.

Generally, court rules and Washington statutes govern service of process outside of Washington State. Washington's CR 4 dictates the process of service; CR 4(i) specifically identifies steps for alternative provisions for service in a foreign country. For example, RCW 4.28.180, Washington's Long-Arm Statute, provides the rule for personal service out of state. "[P]ersonal service... may be made upon any party outside of the state." Such service must meet all of the content and method requirements of service within the state with the exception that the receiving party has 60 days to respond. If the receiving party is a citizen or resident of Washington, or has "submitted to the jurisdiction" of Washington courts, such service will "have the same force and effect of personal service within this state." Otherwise, the service "shall have the force and effect of service by publication."

Service to parents who are in another country, however, is a special case. In many cases, an international treaty governs the procedures for service of process. The first step is to determine whether the country is a party to one of these international treaties. The two most commonly applicable service of process treaties are discussed below: the Hague Convention, and the Inter-American Convention on Letters Rogatory and Additional Protocol (IACAP).

##### 4.1 Service through the Hague Convention

The "Hague Convention," governs service of process on persons in a foreign country if that country is a party to the Convention.<sup>73</sup> As of this writing, approximately seventy-two nations are signatories to the Hague Convention, including the United States, Mexico, and Venezuela.<sup>74</sup>

Where the Hague 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

---

<sup>73</sup> Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague 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>.

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

States Constitution.<sup>75</sup> The purpose of the convention is to provide actual and timely notice to parties of foreign lawsuits.<sup>76</sup> Under the convention, nation states designate a central authority appointed to receive service of process from foreign parties.<sup>77</sup> 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.<sup>78</sup> The Hague Convention allows for some alternative methods of service in certain cases.<sup>79</sup> However, evidence that the central authority merely forwarded the documents to the defendant has been found insufficient.<sup>80</sup>

#### 4.2 Service through the IACAP

Another major treaty is the IACAP, which governs service between the U.S. and many Central and South American nations.<sup>81</sup> The full text and list of signatories is available on the Organization of American States’ website.<sup>82</sup> The U.S. Department of State, Bureau of Consular Affairs’ website provides a summary of IACAP applicability and requirements.<sup>83</sup> Like the Hague Convention, the IACAP governs service of process in civil matters between signatory nations and supersedes any state law to the contrary.<sup>84</sup> Also, like the Hague 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.<sup>85</sup> There is also a specific IACAP form.<sup>86</sup>

---

<sup>75</sup> *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).

<sup>76</sup> See *Broad*, 141 Wn.2d at 676.

<sup>77</sup> See *id.* at 677-78.

<sup>78</sup> See *id.* at 678-79.

<sup>79</sup> See Fountain, *supra* n.46 at ¶¶8-9.

<sup>80</sup> See *Broad*, 141 Wn.2d at 678-79.

<sup>81</sup> 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).

<sup>82</sup> Organization of American States, *Multilateral Treaties* [http://www.oas.org/dil/treaties\\_subject.htm](http://www.oas.org/dil/treaties_subject.htm) (last visited July 5, 2015) (listed under “Judicial Cooperation,” “Rogatory Letters”).

<sup>83</sup> 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).

<sup>84</sup> *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).

<sup>85</sup> U.S. State Department, IACAP website.

<sup>86</sup> U.S. State Department, ICACAP website.

## **5. Concluding Thoughts**

A motion for SIJS findings can arise in any type of state court proceeding where the court has jurisdiction over a youth. As discussed above, there are many important considerations regarding treatment of youths, working with interpreters, important deadlines, notice to parents and more. However, the eligibility requirements will often be straightforward: is the youth under 21, unmarried, under the juvenile jurisdiction of the court, and abused, abandoned or neglected by one or both parents? As a result, the predicate order need not be complex. A state court form order for predicate findings, published by the AOC is provided as Appendix A of this bench book for the convenience of state court judges and commissioners.

We hope you find this bench book to be useful and welcome your feedback. To share suggestions or legal updates for improvement of the bench book, please email E. Rania Rampersad, Washington Leadership Institute, 2015 Fellow, [Rania.Rampersad@gmail.com](mailto:Rania.Rampersad@gmail.com).

**Appendix A**

**Sample Findings and Order**

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

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) \_\_\_\_\_.

Washington State Court SIJS Bench Book and Resource Guide

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 B

### Examples of SIJS-Eligible Youth

**Sita** has been in the U.S. since the age of three. She has no family, support system or means of survival in her birth county, Bangladesh. Her mother is an addict and abandoned the family when Sita was ten years old. While Sita still 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 committed to the care, custody and control of the probation department. Under probation's supervision, she continues to reside with her father.

**Micah** is sixteen years old and living with his grandmother after fleeing gang 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. The Court has appointed Micah's grandmother to be his guardian. During the hearing, it is clear that Micah's life would be in danger if he were to return to his parents and El Salvador.

**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 undocumented mother in Washington, who is seeking full custodial rights to protect Abdul from any further harm.

**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 do 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. Every time her mother came to visit, Sara tells her what is happening and wants to leave with her but Sara's mother says she can't take her. 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 near Arizona and is moved to a facility in Washington. The local Catholic Community Services that oversees the facility files for Sara's dependency.

**Myra** is seventeen years old. Her family came to the U.S. when she was two years old. Three years ago, her father was deported back to Ukraine after being convicted of domestic violence-assault against Myra and her mother. Myra was abused and neglected by her father as long as she can remember. Last year, Myra's mother died of medical complications related to an injury she sustained at work. Myra is now a dependent of Washington State and placed with a foster family through DSHS.

## Washington State Court SIJS Bench Book and Resource Guide

**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 Brazil. 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. Angelica's mother has failed to comply with reunification services and her parental rights will be terminated.

## Appendix C

### Additional Resources

Andrew I. Schoenholtz, *Developing the Substantive Best Interests of Child Migrants: A Call for Action*, 46 Val. U. L. Rev. 991 (2012), available at: <http://scholar.valp.edu/valr/vol46/iss4/1>.

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

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

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

Jonathan Fountain, *Service of Process Abroad*, Nevada Lawyer, (Oct. 2008), available at <http://bit.ly/1H1rHKZ>.

Kati Ortiz, *When your CASA youth is undocumented...Special Immigrant Juvenile Status* (Nov. 2, 2014), available at <http://slideplayer.com/slide/4455780/>.

Kids In Need of Defense, *Representing Unaccompanied Children: Training Manual for KIND Pro Bono Attorneys*, at chapter 4 (Apr. 2015), available at <https://supportkind.org/wp-content/uploads/2015/04/Representing-Children-In-Immigration-Matters-FULL-VERSION.pdf>.

U.S. Citizenship and Immigration Services, *Special Immigrant Juvenile Status: Information for Juvenile Courts*, available at <http://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status> ]\?”vided under “SIJ Resources”).

U.S. Department of State, Bureau of Consular Affairs, INTER-AMERICAN CONVENTION ON LETTERS ROGATORY AND ADDITIONAL PROTOCOL (IACAP), available at <http://travel.state.gov/content/travel/english/legal-considerations/judicial/service-of-process/iasc-and-additional-protocol.html> <http://1.usa.gov/1H0FUsi>.

Washington Defender Association’s Immigration Project, *Practice Advisory for Juvenile Defenders Representing Noncitizens* (Oct. 2011), available at <http://bit.ly/1NGuRZw>.

## Washington State Court SIJS Bench Book and Resource Guide

Washington State Department of Social and Health Services, *Understanding the Dependency Court Process* (Apr. 6, 2013), available at <http://1.usa.gov/1LMyf6D>.

Washington State Supreme Court Gender and Justice Commission and Minority and Justice Commission, *Immigration Resource Guide for Judges* (Jul. 2013), available at <http://1.usa.gov/1NGuZrR> (See the *Immigration Resource Guide for Judges* for a discussion of discrimination and access to justice issues raised by the state court interactions with immigration issues).