# WASHINGTON STATE COURT SPECIAL IMMIGRANT JUVENILE (SIJ) CLASSIFICATION BENCH BOOK AND RESOURCE GUIDE

Prepared by Kids in Need of Defense in partnership with the Washington State Task Force on Unaccompanied Children

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This January 2024 edition of the Washington State Court Special Immigrant Juvenile (SIJ) Classification Bench Book and Resource Guide (SIJ Bench Book) was revised by Kids in Need of Defense (KIND) with funding from the City of Seattle's Office of Immigrant and Refugee Affairs, with significant drafting contributions from members of the Washington State Task Force on Unaccompanied Children (UC Task Force).[1] The Bench Book was originally created by the 2015 Fellowship Class of the Washington Leadership Institute (WLI) and was

[1] The WA UC Task Force is composed of attorneys from non-profit organizations, law firms, government offices and the private bar with expertise in immigration law, family law, and juvenile law, among others. The group was initially formed in February 2015 in response to the unprecedented number of unaccompanied immigrant children arriving to the U.S., including Washington State, beginning in 2014. WA UC Task Force members have extensive collective experience and knowledge of children's immigration matters as well as the Washington state court proceedings discussed throughout this guide.

subsequently housed with the UC Task Force, which released the previous revised edition in October 2016.

## Introduction

In 1990, Congress created Special Immigration Juvenile (SIJ) classification,[2] a humanitarian protection designed to protect certain youth who have been subject to abuse, abandonment, neglect, and/or similar maltreatment, and to enable them to apply for Lawful Permanent Residence (LPR) in the United States (U.S.).[3] Under current immigration policy, SIJ on its own confers some temporary immigration-related protections, but the greatest benefit for SIJ recipients is the ability to apply for LPR status. An LPR can live and work permanently in the U.S., travel outside the U.S., qualify for certain public benefits, apply for federal financial aid for higher education, and eventually seek U.S. citizenship. For youth who have faced parental abandonment or maltreatment, obtaining SIJ alleviates many barriers to achieving safety, long-term stability, and permanency.

SIJ is unique among immigration benefits in that establishing eligibility requires an order from an appropriate state court. Whereas applicants for other immigration benefits proceed solely before federal immigration authorities, a child seeking SIJ must first be the subject of an order reflecting certain findings and conclusions made by a state court, including a determination that reunification with at least one of the child's parents is not viable due to abuse, neglect, abandonment, or similar treatment. In creating SIJ, Congress intended to defer to state courts to make the requisite findings establishing a child's eligibility, as matters involving child welfare fall within their traditional expertise, such as custody, child protection matters, and the best interest of the child.

Children and youth with a wide range of migration histories and family circumstances can qualify for SIJ, including those who arrived in the U.S. very young or others who migrated more recently. Importantly, children and youth may only petition for SIJ until the age of 21, and the ability to seek the requisite state court findings is also dependent on the state court's jurisdiction to make such findings. Therefore, identification of SIJ-eligible youth can be time sensitive.

Washington state court judicial officers may encounter SIJ-eligible children or requests for related findings when hearing family law cases or juvenile court matters, including dependency, vulnerable youth guardianships, juvenile offender, or Becca proceedings, among others. This Bench Book is intended to familiarize state court adjudicators and other service providers with SIJ to identify eligible children and/or respond to requests for SIJ-related findings.

[2] For simplicity, we have used "SIJ" in place of "SIJ classification" wherever supported by context.
[3] INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J).

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# 1. Overview of Special Immigrant Juvenile Classification

## 1.1 Explanation of SIJ Classification and its Benefits

SIJ classification was first created by Congress in 1990 to provide a pathway to Lawful Permanent Resident (LPR) status for youth who have been subject to abuse, abandonment, neglect, and/or similar maltreatment.[4] To be eligible, a youth must have been under the jurisdiction of a qualifying state court and been the subject of several required state court findings. The SIJ petition and application for LPR status are then adjudicated separately by immigration authorities.

The federal SIJ statute has been amended several times since 1990, most significantly through the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008,[5] which broadened SIJ to include children and youth who cannot reunify with just *one* of their parents on account of abuse, abandonment, or neglect—even when they remain living with or are able to reunify with the other parent. The SIJ regulations were first promulgated in 1993, and despite several changes to the statutory authority, they were not updated until March 2022.[6] The regulations incorporated several previous legislative changes, codified long-standing policies relating to the adjudication of SIJ petitions, and further clarified certain eligibility requirements. Current federal policies relating to SIJ adjudications are reflected in the U.S. Citizenship and Immigration Services' (USCIS) website and Policy Manual.[7] Many states' appellate courts have also issued precedential decisions interpreting certain SIJ-related findings under state laws and/or addressing the state court's role or jurisdiction.[8] The SIJ requirements discussed throughout this guide derive from the federal statutory and regulatory authorities on SIJ, federal policy interpreting the SIJ requirements, and state case law where relevant.

The most important benefit of SIJ is that it establishes a basis to seek LPR status. Becoming an LPR confers numerous benefits to a young person and in turn their communities because it eliminates

**An LPR can:**

- **Live and work** in the U.S. permanently;
- **Travel in and out** of the U.S.;
- **Become eligible for federal financial aid** for higher education;
- **Qualify for in-state or resident tuition rates** at certain colleges or universities;
- **Qualify for Title IV-E** federal foster care matching funds;
- **Become eligible to apply for U.S. citizenship,** after 5 years in LPR status;
- **Be protected against immigration enforcement,** including detention and/or deportation;
- **Be able to petition for LPR status** for certain eligible family members other than a parent;
- **Become eligible for certain federal public benefits,** including Medicaid or Children's Health Insurance Program (CHIP).

[4] *See* USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 1.A., https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-1. *See also* INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J).
[5] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008), Pub. L. No. 110-457 § 235, 122 Stat. 5044, 5074 (codified at 8 U.S.C. § 1101(a)(27)(J)).
[6] 8 C.F.R. § 204.11 (2022).
[7] *See* USCIS Pol'y Manual, Vol. 6, Pt. J, https://www.uscis.gov/policy-manual/volume-6-part-j.
[8] *See, e.g.*, *Matter of Custody of A.N.D.M.*, 26 Wn. App. 2d 360, 527 P.3d 111 (2023); *B.F. v. Superior Court*, 207 Cal. App. 4th. 621, 627-28, 143 Cal. Rptr. 3d 730, 734 (2012).

barriers to safety, long-term stability, and permanency. For older youth, including youth aging out of foster care, obtaining SIJ is also a critical component to a stable and healthy transition to independence.

Many SIJ recipients must wait several years before they can apply for LPR status. This is because the U.S. government places a yearly limit on how many individuals may be granted LPR status, based on both country of origin and the underlying category of immigration classification or visa. The SIJ category is grouped with employment visa categories, where the demand exceeds the limit. This is known as the "visa backlog," and results in long delays before an SIJ-classified youth can submit an application for LPR status.[9]

Despite having been determined eligible for SIJ protection from the government, youth caught in the visa backlog are stuck in legal limbo while they wait to file for LPR status. Until 2022, SIJ recipients in this predicament had no ability to work legally and had limited protection against immigration enforcement during the waiting period. Under a new federal policy implemented in May 2022, SIJ recipients impacted by the visa backlog may now obtain a benefit called "deferred action."[10] Deferred action is an act of prosecutorial discretion that temporarily defers any immigration enforcement to remove a noncitizen from the U.S. and provides eligibility for work authorization.[11] Under the new policy, SIJ applicants receive a decision on deferred action at the time their SIJ petition is approved. A grant of deferred action allows SIJ-approved children and youth to apply for work authorization immediately, with which they obtain a photo identification and a valid Social Security number for employment purposes. SIJ beneficiaries with deferred action may continue to renew their deferred action and employment authorization until they become eligible to apply for LPR status.[12]

## 1.2 SIJ Eligibility Requirements and Process

To be eligible to petition for SIJ,[13] a youth must be physically present in the U.S. and:

[9] *See* Rachel Leya Davidson et al., *False Hopes: Over 100,000 Immigrant Youth Trapped in the SIJS Backlog*, 2023-false-hopes-report.pdf (squarespace.com) (a collaborative report of The National Immigration Project and Tulane Law's Immigrant Rights Clinic). For more information about the SIJ visa backlog, visit the End SIJS Backlog Coalition website at https://www.sijsbacklog.com.
[10] *See* USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 4.G, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4.
[11] 8 C.F.R. § 274a.12(c)(14).
[12] Unlike other types of deferred action, such as Deferred Action for Childhood Arrivals (DACA), SIJ grantees are able to become LPRs, and thus have a pathway to citizenship. In contrast, DACA on its own does not provide a pathway to permanent lawful status. Deferred action based on a grant of SIJ is an additional protection for SIJ recipients impacted by the visa backlog.
[13] *See* INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

1. **Under 21;**

2. **Unmarried;**

3. **The subject of a juvenile court order with the following findings:**
   - The youth has been either declared dependent, or legally committed to or placed under the custody of an agency or department of a state, or individual or entity;
   - Reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
   - It is not in the youth's best interest to return to youth's or parent's previous country of nationality or country of last habitual residence.

Each of these eligibility requirements is discussed more thoroughly in Chapter 2. To obtain SIJ classification and subsequently seek to become an LPR, a child must go through the following three-step process:

**Step 1**
**Obtain a predicate order from a state court containing the required findings to establish SIJ eligibility;**

**Step 2**
**File a petition for SIJ classification with U.S. Citizenship and Immigration Services (USCIS); and**

**Step 3**
**Once the SIJ petition is approved, apply for LPR status before USCIS or the Immigration Court.**

Although SIJ can only be conferred by the appropriate federal immigration authority (specifically, USCIS), a child cannot establish their eligibility without first obtaining a predicate order containing the requisite findings from a qualifying state court. State courts thus play a critical role in the process.

To become an LPR through SIJ, a young person must the submit *two separate* applications and meet *two sets of requirements* before immigration authorities; they must first apply for SIJ, and once the SIJ petition is approved, they must then apply for LPR status.[14] In some cases, the SIJ petition and the application for LPR status may be filed at the same time, although they are adjudicated separately. More often, individuals granted SIJ must wait several years before applying for LPR status because of the visa backlog.

## 1.3 The Role of State Courts

SIJ is distinct from other types of immigration benefits because it depends on state courts to make the required findings to establish eligibility. In creating SIJ, Congress deferred to state courts out of

[14] All applicants for LPR status (including SIJ-recipients) must show they are "admissible" to the United States. The immigration statute sets out various health, criminal, and immigration violation-related grounds of inadmissibility which may bar an applicant from becoming an LPR. Similar to other types of humanitarian immigration benefits, SIJ recipients are exempt from certain grounds of inadmissibility, such as that which bars applicants who are likely to become a "public charge." Some grounds of inadmissibility are also waivable.

recognition that determinations relating to a child's custody, care, and best interests are "within the traditional expertise of the state courts, and [thus] the SIJ statute, not surprisingly, assigns this fact-finding task to the state court."[15]

State courts make the necessary findings to establish a child's eligibility for SIJ, but the decision of whether a child is ultimately granted SIJ is reserved to the federal immigration authorities and made by USCIS. USCIS "relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law."[16] In determining eligibility, USCIS will review the SIJ petition (USCIS Form I-360), the juvenile court order, and other supporting evidence. Although USCIS "generally defers to [the juvenile court] on matters of state law and does not go behind the juvenile court order to reweigh evidence," the agency maintains policies that require the juvenile court order contain certain explicit legal determinations and indicate the factual basis for those findings. Best practices to ensure the juvenile court order complies with such policies are discussed further in Chapter 2.6.

[15] *Moreno-Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1216 (W.D. Wash. 2019); *see also Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 265 (D.C. Cal. 2008) (emphasizing that "[t]he SIJ statute affirms the institutional competence of statue courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests").
[16] *See* USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 2.D, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.

### 1.3.1 Definition of Juvenile Court

The SIJ regulations define a "juvenile court" as one that has "jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles."[17] A court's authority and function under state law, and not its title, determine whether it is a qualifying "juvenile court" for purposes of entering SIJ findings.[18] Additionally, state law is controlling as to whether an SIJ petitioner is considered a "child" or any other equivalent term for a juvenile subject to the jurisdiction of a juvenile court.[19] Therefore, any state court that has the authority to make determinations about the dependency, custody, or care of youth over the age of 18 will also qualify as a juvenile court for SIJ purposes. Under Washington law, superior courts have broad authority to make "determinations about the custody and care of juveniles." For example, the Revised Code of Washington (RCW) 26.12.010 authorizes superior courts to conduct family court proceedings, including issues of child custody and care. RCW 26.09.191(2)(a) provides Washington's superior courts with authority to impose restrictions on parents' residential time. Similarly, RCW 11.130.020(1) confers jurisdiction over minor guardianships to the superior court. As a division of the superior court,[20] the juvenile court is authorized to decide a range of matters related to the care and custody of children, including dependencies, termination of parental rights, out-of-home placements under the Family Reconciliation Act, and custody or placement in juvenile offender matters.[21] In certain circumstances, a juvenile court may have concurrent jurisdiction with the family or probate court over juvenile matters, minor guardianships and family law proceedings.[22] Specific considerations relating to SIJ in each of these proceedings are discussed in Chapter 4.

**Courts hearing the following matters in Washington, among others, are therefore considered "juvenile courts" under federal law for SIJ purposes:**

- **Juvenile Court Act proceedings (Title 13 RCW)**
  - Dependency or Dependency Guardianship
  - Vulnerable Youth Guardianship (VYG)
  - Becca matters, including:
    - At Risk Youth (ARY) Petitions
    - Child in Need of Services (CHINS)
    - Truancy
  - Offender matters
- **Domestic Relations (Family Law) proceedings (Title 26 RCW)**
  - Adoption
  - Dissolution, Legal Separation, Parenting Plans
  - Paternity/Parentage Determinations
  - De Facto Parentage
- **Uniform Guardianship Act Minor Guardianships (11.130 RCW)**
- **Civil Protection Orders (7.105 RCW)**

[17] 8 C.F.R. § 204.11(a).
[18] *B.F. v. Superior Court*, 207 Cal. App. 4th. 621, 627-28, 143 Cal. Rptr. 3d 730, 734 (2012) (holding that the federal regulation, and not state law, defines "juvenile court" for purposes of making SIJS findings, and that definition includes, in relevant part, any court in the United States that has the authority "to make judicial determinations about the custody and care of juveniles").
[19] *See* USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 2.B, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.
[20] RCW 13.04.021(1) ("The juvenile court shall be a division of the superior court."); *see also Matter of Custody of A.N.D.M.*, 26 Wn. App. 2d 360, 527 P.3d 111 (2023) (quoting *State v. Burke*, 12 Wn. App. 2d 943, 949, 466 P.3d 1147 (2020), "As with the 'family court' designation, our legislature 'simply authorized the characterization of the superior court, or a 'session' thereof, as a 'juvenile court' when processing certain cases").
[21] RCW 13.04.030(1)(a)-(f).
[22] RCW 13.04.021(1); RCW 13.04.030(2)-(3).

### 1.3.2 Authority of Court Commissioners to Make SIJ Findings

Under the Constitution of the State of Washington and other state laws, commissioners and judges pro tempore have the authority to perform the same duties as judges.[23] As such, judges, superior court commissioners, and judges pro tempore are also authorized to make SIJ findings. In 2023, Division I of the Washington Court of Appeals confirmed that both judges and commissioners can issue SIJ findings, holding that "whether or not a judicial officer is assigned as a family law or juvenile court judge or commissioner under state law, if that judge or commissioner is acting to 'determine the custody and care of' a child, they are then a 'juvenile court' judge for purposes of federal law."[24]

## 2. A Closer Look at the SIJ Eligibility Requirements

### 2.1 Age and Marital Status

#### 2.1.1 Establishing Age

A youth must file their petition for SIJ classification with U.S. Citizenship and Immigration Services (USCIS) before they turn 21.[25] Petitioners most commonly satisfy the requirement for documentary evidence of age by submitting a certified copy of their birth certificate. Immigration regulations also permit the use of official government-issued identification, such as a passport, official identity document (e.g., a *cartilla*, *cedula*, or *tazkira*), or "other document that in USCIS' discretion establishes the petitioner's age."[26]

Secondary evidence of a youth's age may include a juvenile court order, medical evaluation, psychological evaluation, dental exam, school records, or for example, affidavits from someone who has known the applicant since birth.[27] To use secondary evidence, one must obtain a letter from the country of origin stating that a birth certificate is unobtainable.[28] SIJ petitioners may find consulates to be helpful in obtaining these letters. If a youth has never been issued or is unable to obtain a copy of a government-issued ID, they may seek juvenile court findings related to age, which they can submit as secondary evidence in support of their SIJ petition with USCIS.

#### 2.1.2 Aging Out

Obtaining the SIJ predicate order can be time sensitive for youth who are close to "aging out" of SIJ eligibility. Aging out can happen when a youth is not identified as SIJ-eligible and/or there are barriers related, for example, to filing, service of process, or progressing through an underlying state court

[23] The Washington State Constitution gives court commissioners "authority to perform like duties as a judge of the superior court at chambers, subject to revision by such judge…and to perform such other business connected with the administration of justice as may be prescribed by law." Wash. Const. art. IV, § 23; *see also* RCW 26.12.060 (authorizing family commissioners to issue certain orders and make certain findings in Chapter 26 Family Court proceedings); RCW 13.04.021 (empowering court commissioners with the "power, authority, and jurisdiction […] to enter judgment and make orders with the same power, force, and effect as any judge," subject to revision under RCW 2.24.050).
[24] *In re Matter of Custody of A.N.D.M.*, 26 Wn. App. 2d 360, 367, 527 P.3d 111 (2023). The Court also held that local rules and administrative procedures cannot curtail the authority of commissioners: "A county's organizational decisions do not control the definition of a 'juvenile court judge' under federal law. In turn, if you are a judicial officer dealing with the 'custody and care' of a child, you are thereby authorized to make SIJS findings." Id. at 374.
[25] 8 C.F.R. § 204.11(b)(1).
[26] Id. § 204.11(d).
[27] See Id. § 103.2(b)(2)(i).
[28] See Id. § 103.2(b)(2)(ii).

action where a youth seeks to obtain the requisite eligibility findings. These delays may result in a loss of long-term safety and stability, the inability to seek legal status in the U.S., and a missed opportunity for eventual U.S. citizenship. It can also result in an increased risk of immigration enforcement, including deportation.

In general, an SIJ petitioner must file a petition with USCIS while still under the state court's jurisdiction. There are limited exceptions where state court jurisdiction has ended on account of age or solely because the petitioner was adopted, was placed in a permanent guardianship, or reached another permanency goal.[29] Although under federal law youth are eligible to petition for SIJ until reaching 21 years of age, they must obtain their state court predicate orders prior to the state court's jurisdiction ending, which, in many proceedings, occurs upon the youth's 18th birthday. In those proceedings, the court should try to issue the predicate findings before the youth turns 18, or if authorized, maintain jurisdiction until the findings can be made. In addition, the state court's jurisdiction must continue while the SIJ petition is being adjudicated by USCIS unless jurisdiction ended due to one of the circumstances listed above.

There are few proceedings in which a state court's jurisdiction may be initiated or continues beyond a youth's 18th birthday, thereby extending the time under which a state court can issue an SIJ predicate order. In 2017, the Washington State Legislature enacted the vulnerable youth guardianship (VYG) statute, which enables the court to appoint a guardian for a youth between the ages of 18 and 21 years old, who otherwise meets the eligibility criteria for SIJ, including abuse, neglect, abandonment, or a similar basis related to one or both parents.[30] Other examples where a state court's jurisdiction continues include when a youth between ages 18 and 21 is in extended foster care (EFC)[31] or in juvenile offender matters for which juvenile court jurisdiction is extended until the youth's 21st birthday.[32]

The federal SIJ statute provides an age-out protection for youth who file the SIJ petition prior to their 21st birthday but whose petition is not adjudicated until after they have turned 21.[33] USCIS has also implemented special procedures to support applicants who are at risk of turning 21 before their SIJ petition is filed, which include the ability to file in-person at a regional USCIS field office.[34]

### 2.1.3 Unmarried Until Approval of SIJ Petition

When youth file their petitions for SIJ with USCIS, they must be unmarried and remain unmarried until the petition is approved.[35] If a youth marries while the petition is pending and before approval, USCIS will deny the petition or may later revoke it.[36] Under pre-April 2022 immigration policies, if a youth married after the SIJ petition was approved, but before LPR status was granted, the SIJ petition would be revoked. A welcome shift in immigration policy went into effect on April 7, 2022, allowing youth to

[29] *See id*. § 204.11(c)(3)(ii)(A); *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 265 (D.C. Cal. 2008).
[30] 13.90 RCW.
[31] RCW 13.343.030.
[32] RCW 13.40.300; RCW 13.40.030.
[33] 8 U.S.C. § 1232(d)(6).
[34] *See* U.S. Citizenship and Immigration Servs., Special Immigrant Juveniles: Filing SIJ Form I-360 In Person Before Your 21st Birthday, https://www.uscis.gov/working-in-US/eb4/SIJ.
[35] *See* 8 C.F.R. § 204.11(b)(2) (requiring an SIJ petitioner to be unmarried at the time of filing and adjudication). A youth who was married prior to filing their SIJ petition where the marriage ended due to divorce or invalidation *prior* to petitioning for SIJ would not be barred under the regulations. They simply must be unmarried at the time of filing their petition and remain unmarried through the adjudication of the SIJ petition.
[36] 8 C.F.R. § 204.11(j)(2).

marry any time after the SIJ petition is approved.[37] This change addressed the long gap and life changes many SIJ recipients experience while they wait for years for their turn to apply for LPR status.

The unmarried requirement would not exclude youth who were subjected to forced or child marriage, as long as they are divorced or the marriage is invalidated by the date they file their SIJ petition.[38]

The chart below summarizes the age and marital status requirements for SIJ and includes some examples of proceedings in which courts have jurisdiction over youth over age 18.

| Under 21 & Unmarried Requirements | Examples of Washington Court Jurisdiction to Enter SIJ Findings for Youth 18+ |
|---|---|
| • Must be under 21 at time SIJ petition filed<br>• Eligibility is not limited to youth under 18 where state law provides for jurisdiction to enter required findings for youth ages 18 to 21<br>• Must be unmarried at time of filing SIJ petition through approval of SIJ<br>  ○ Does not preclude youth who were previously married where marriage ended prior to filing SIJ petition | • Dependent youth 18+ who are in extended foster care (EFC), RCW 13.34.267<br>• Youth 18+ who are subject to vulnerable youth guardianship (VYG), 13.90 RCW<br>• Youth 18+ under extended court jurisdiction via diversion agreement, RCW 13.40.080(5)(a) |

## 2.2 Dependency or Custody

Before a state court can issue findings on SIJ eligibility, it must first make a determination about either dependency or custody of the youth, and there must be a state law basis for that ruling.[39] For dependency determinations, the state court must declare the youth dependent upon a juvenile court "in accordance with State law governing such determinations."[40] A child may be considered "dependent" on the court for SIJ purposes even where there is no corresponding state law definition of dependency. Under USCIS policy:

> The term 'dependent child'… generally means a child subject to the jurisdiction of a juvenile court because the court has determined that allegations of parental abuse, neglect, abandonment, or similar maltreatment concerning the child are sustained by the evidence and are legally sufficient to support state intervention on behalf of the child. Dependency proceedings may include abuse, neglect, dependency, termination of parental rights, or other matters in which the court intervenes to provide relief from abuse, neglect, abandonment, or a similar basis under state law.[41]

[37] 87 FR 13066 (Mar. 8, 2022), https://www.govinfo.gov/content/pkg/FR-2022-03-08/pdf/2022-04698.pdf.
[38] *See* 8 C.F.R. § 204.11(b)(2).
[39] 8 U.S.C. § 1101(a)(27)(J); USCIS Pol'y Manual Vol. 6, Pt. J, Ch. 2.C.1, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.
[40] 8 C.F.R. § 204.11(c)(1)(i)(A).
[41] USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 2.C.1, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.

Alternatively, the court must have "[l]egally committed to or placed [the youth] under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court."[42] Custody may encompass legal *or* physical custody.[43] Because SIJ eligibility only requires a finding that reunification is not viable as to one parent, a child's court-ordered custody or placement may be with the other parent, against whom such findings have not been made.[44] The court's commitment of a youth to a state agency or department, such as Juvenile Rehabilitation, would also satisfy this requirement. The state court order should state the name of the individual or state agency or department with whom the child is placed or committed to.

Neither the required dependency nor the custody determination is limited to children who are financially dependent on the state or in state custody.[45] However, USCIS will look to whether there is some remedial or protective relief in connection with the dependency or custody, including but not limited to the determination regarding the child's custody, care, or placement; the provision of child welfare services such as psychiatric, psychological, educational, occupational, medical or social services; services providing protection against trafficking or domestic violence; or other supervision by the court or a court appointed entity.[46] Therefore, the state court order should also reference any court intervention or services ordered, including continued supervision or monitoring by the court or another entity.

For youth in the custody of the Office of Refugee Resettlement (ORR)[47] and placed locally within Washington, state courts' jurisdiction to alter their custody status or placement with ORR is limited under federal law.[48] This limitation does not otherwise impact a state court's jurisdiction over and ability to make factual or legal findings as authorized under state law. If a youth seeks to alter their custody status or ORR placement, they must first obtain the consent of ORR.[49] As explained in the USCIS Policy Manual, "Youth in HHS Office of Refugee Resettlement (ORR) custody seeking SIJ classification may not be able to alter their custodial placement via a juvenile court and instead may seek a dependency determination from a juvenile court."[50] For such youth, USCIS considers the court's recognition or acknowledgment of the youth's ORR placement to be the protective remedial relief provided, in conjunction with the dependency determination.[51] In those cases, the state court order should simply restate the child's current custody status and placement with ORR. This topic is also discussed in Chapter 3.1.

Under Washington law, examples of custody that satisfy the SIJ standards may include dependency findings under 13.34 RCW; appointment of a vulnerable youth guardian under 13.90 RCW; custodial placement with an individual in adoption, dissolution, parenting plan, civil protection order; Becca

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[42] 8 C.F.R. § 204.11(c)(1)(i)(B).
[43] USCIC Pol'y Manual, Vol. 6, Pt. J, Ch. 2.C.1, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.
[44] *Id.*
[45] *See id*. at n. 12.
[46] *Id.*
[47] *See* Chapter 3.1, *infra*, for additional information about unaccompanied children in ORR custody.
[48] 8 U.S.C. § 1101(a)(27)(J)(iii)(I); 8 C.F.R. § 204.11(d)(6).
[49] *Id.* ORR policy and related guidance refer to this requirement as ORR "specific consent" due to the governing statutory and regulatory language. *See also* Admin. for Child. & Fams., U.S. Dep't Health & Human Servs., Program Instructions – Specific Consent, https://www.acf.hhs.gov/sites/default/files/documents/orr/special_immigrant_juvenile_status_specific_consent_program.pdf. This topic is also discussed, *infra*, in Chapter 3.1.
[50] USCIS Pol'y Manual, Vol 6, Pt. J, Ch. 3.A.2, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3.
[51] See *id*. (stating that "generally, placement in federal custody with ORR affords protection as an unaccompanied child under federal law and removes a state juvenile court's need to provide a petitioner with additional relief from parental maltreatment under state law"). *See also* Section 462(b)(1) of the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 2203.

proceedings, or other proceedings where the court determines legal or physical custody. It could also include custodial placement with a state agency in dependency (DCYF Child Welfare) or juvenile offender cases (e.g., DCYF's Juvenile Rehabilitation).

The chart below summarizes key information about the "dependency or custody" requirement for SIJ and provides a non-exhaustive list of examples under Washington law.

| "Dependency or Custody" Requirement | Examples Under Washington Law |
|---|---|
| • One of the following is required:<br>  ○ a dependency determination<br>  ○ custody or placement with an individual or entity<br>  ○ legal commitment to a state agency or department<br>• Custody may encompass legal OR physical custody<br>• Custody or placement may be with a parent (where SIJ-required findings are made as to the other parent)<br>• The state court order should:<br>  ○ Cite to the state law or authority governing the determination<br>  ○ Name individual, entity, or state agency with whom custody or placement is ordered[52] | • Dependency findings, 13.34 RCW<br>• Appointment of a vulnerable youth guardian, 13.90 RCW<br>• Establishment of a minor guardianship, 11.130 RCW<br>• Custodial placement with an individual in adoption, dissolution, parenting plan, civil protection order, or Becca proceedings, etc.<br>• Custodial placement with a state agency (e.g., DCYF Child Welfare or Juv. Rehabilitation) in dependency or juvenile offender proceedings |

## 2.3 Reunification not Viable

SIJ classification is available only where "reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, or abandonment, or a similar basis found under state law."[53] The SIJ regulations clarify that this finding does not require termination of parental rights.[54]

The non-viability of reunification requirement is not further defined in the federal statute or regulations. USCIS policy provides additional guidance, reflecting its interpretation that the court's determination "generally should be in place on the date the petitioner files the [SIJ petition] and continue through the time of adjudication" or is generally expected to remain in effect until the child ages out of the juvenile court's jurisdiction.[55] The possibility that reunification could become viable in the future does not negate this finding for SIJ purposes. Additionally, it is not required that the juvenile court has jurisdiction or authority under state law to order the youth reunified with the unfit parent in order to

[52] Or in cases involving a youth in ORR's legal custody, restate the child's custody status and placement with ORR.
[53] 8 U.S.C. §1101(a)(27)(J)(i).
[54] 8 C.F.R. § 204.11(c)(1)(ii).
[55] USCIS Pol'y Manual, Vol. 6, Part J, Ch. 2.C.2 and n. 2, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.

make a qualifying determination about the viability of parental reunification (as is the case in most state court proceedings involving youth over the age of 18).[56]

The term "parent" does not encompass a stepparent unless that stepparent is recognized as the youth's legal parent under state law (e.g. through adoption).[57] USCIS will consider that the state court made a determination about parentage when the court order names the youth's parents or the record is supported by evidence of parentage considered by the court (such as a birth certificate).[58] The state court order should include a summary of the factual basis and the non-viability of reunification finding.[59]

The chart below provides key information and the "non-viability of reunification" SIJ requirement and provides a non-exhaustive list of examples under Washington law.

| "Non-Viability of Reunification" Requirement | Examples Under Washington Law |
|---|---|
| • Termination of parental rights not required<br>• Finding only needed as to one parent<br>• Non-viability of reunification must be connected to the abandonment, abuse, neglect, or similar basis<br>• State court order should include a summary of the factual basis for the finding | • Court orders a youth into protective custody and placement, RCW 13.35.060, 060, or 130<br>• Court restricts access to or placement with a parent in minor guardianship or family law proceedings, RCW 26.09.191 or RCW 11.130.215(4) |

## 2.4 Definitions of Abuse, Abandonment, Neglect, and Similar Basis

By design of the SIJ statute, USCIS defers to state juvenile courts to determine whether a youth was subjected to abuse, neglect, abandonment, or a similar basis under state law.[60] Children may qualify for SIJ whether they have been "abused, neglected, abandoned or subjected to similar maltreatment by a parent prior to their arrival in the United States, or while in the United States."[61] State courts apply the relevant state law based on states' definition of those terms. In some proceedings where SIJ findings and orders are sought, the governing statute may not include explicit definitions or cross-references to specific definitions for abuse, neglect, abandonment, or something similar. For example, the VYG statute at RCW 13.90.010(6) and RCW 13.90.901(2) uses the terms abuse, neglect, and abandonment without providing definitions or cross-references to other provisions within the chapter. Courts thus turn to Washington's statutory interpretation methods to guide their consideration of those terms.

Washington courts have a duty to construe statutes in the manner that "best fulfills the legislative purpose and intent."[62] If a statute's meaning is plain on its face, courts "must give effect to the plain

[56] See, *e.g.*, *R.F.M. v Nielsen*, 365 F.Supp.3d 350, 382 (S.D.N.Y. 2019); *J.L., et al v. Cissna*, 341 F.Supp.3d 1048 (N.D. Cal. 2018); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208 (W.D. Wash. 2019); *W.A.O. v. Cuccinelli*, No. 219CV11696MCAMAH, 2019 WL 3549898, at *1 (D.N.J. 2019) (unreported).
[57] USCIS Pol'y Manual, Vol. 6, Part J, Ch. 2.C.2, n. 18, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.
[58] *Id*. at Ch. 2.C.2.
[59] *Id.*
[60] *See id.* at Ch. 2.D.
[61] *Id*. at Ch.1.A, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-1.
[62] *State v. Garza,* 200 Wn. 2d 449, 454–55, 518 P.3d 1029, 1034 (2022) (quoting *State v. Haggard*, 195 Wn.2d 544, 547-48, 461 P.3d 1159 (2020)) (cleaned up).

meaning as an expression of legislative intent."[63] When terms are not ambiguous, courts "determine a statute's plain meaning by looking to its text, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole."[64]

Accordingly, when making SIJ findings about abuse, neglect, and abandonment in a VYG case, for example, adjudicators look to definitions of those terms in the context of the statute and related provisions, including the definitions articulated in the dependency statute at RCW 13.34.030. The dependency statute explicitly defines abandonment at RCW 13.34.030(1), and cross-references to RCW Chapter 26.44, Abuse of Children, in the domestic relations statute for the definitions of abuse and neglect.[65] These definitions clearly express the Legislature's intent on the meaning of abuse, neglect, and abandonment of children in Washington state. Since each is critical to a court's determination of the SIJ eligibility factors, they are discussed in more detail below.

### *Abuse, Abandonment, or Neglect*

Under the Abuse of Children statute at RCW 26.44.020(1), abuse or neglect of a child can range from sexual abuse, sexual exploitation, to any other injury of a child "by any person under circumstances which cause harm to the child's health, welfare, or safety," including negligence on the part of persons responsible for or providing care to the child. This definition expressly excludes conduct permitted under RCW 9A.16.100,[66] such as the reasonable and moderate physical discipline of a child by a parent or guardian "for purposes of restraining or correcting the child."[67] Conduct that would not be exempt includes, but is not limited to, hitting a child with a closed fist; throwing, kicking, or burning a child; or threatening a child with a weapon.[68] Under the dependency statute at RCW 13.34.030(1), a child has been abandoned when a youth's "parent, guardian, or other custodian 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."[69] The statute also establishes a rebuttable presumption of abandonment, even in the absence of an expressed intent to abandon, when there has been "no contact between the child and the child's parent, guardian, or other custodian for a period of three months."[70]

### *Similar Basis*

The SIJ statute and regulations do not specifically articulate what constitutes "a similar basis" to abuse, neglect, or abandonment. However, the SIJ regulations do require that when the juvenile court determined parental reunification was not viable due to a similar basis, the SIJ applicant must provide evidence of how that basis is "legally similar" to abuse, neglect, or abandonment. Such evidence can include either: (1) the juvenile court's determination as to how the basis is legally similar to abuse, neglect, or abandonment under state law, or (2) other evidence that establishes the court made a judicial determination that the legal basis is similar to abuse, abandonment, or neglect.[71] This may be determined where factual circumstances give rise to the same state court protection or interventions, or where the basis shares the same or similar elements as abuse, neglect, or abandonment as defined under state law. Some examples under Washington law include:

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[63] *Id*. (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)) (cleaned up).
[64] *Id*.
[65] RCW 13.34.030(6)(b).
[66] RCW 26.44.020(1).
[67] RCW 9A.16.100.
[68] *Id*.
[69] RCW 13.34.030(1).
[70] *Id*.
[71] 8 C.F.R. § 204.11(d)(4).

- Dependency findings under RCW 13.34.030(6)(c), where a child has no parent, guardian, or custodian capable of adequately caring for the child, constituting a danger of substantial damage to the child's psychological or physical development.
- A vulnerable youth guardianship where one or both parents cannot adequately provide for the youth such as that youth risks physical or psychological harm if returned to the youth's home pursuant to RCW 13.90.901(2).
- A determination in a minor guardianship or other proceedings that no parent is willing or able to exercise parenting functions, as defined in RCW 26.09.004(2).
- Restrictions on the parental relationship in minor guardianship or family law proceedings pursuant to RCW 11.130.215(4) or RCW 26.09.191.

The statutory definition of "parenting functions" in Washington's domestic relations law may also be instructive in considering the viability of parental reunification on a similar basis. Parenting functions means "those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child" and include the following under RCW 26.09.004(2)(a)-(f):

> (a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;
> (b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
> (c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;
> (d) Assisting the child in developing and maintaining appropriate interpersonal relationships;
> (e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and
> (f) Providing for the financial support of the child.

### *Death of Parent*

In many states, including Washington, parental death can give rise to identical court protections as parental absence due to abandonment or other circumstances. Under USCIS policy, "the fact that one or both parents is deceased is not itself a similar basis to abuse, neglect or abandonment under state law."[72] As in any case in which the non-viability of reunification finding is based on a similar basis, the state court order should reflect the court's determination that the basis is legally similar basis to abuse, neglect, or abandonment under state law.[73] In the case of parental death, "[a] legal conclusion from the juvenile court is required to establish that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law."[74]

The chart below summarizes key information about the SIJ requirement that non-viability of parental reunification be on account of "abuse, abandonment, neglect, or similar basis" and provides a non-exhaustive list of examples of Washington laws under which "similar basis" findings can be made.

[72] USCIS Pol'y Manual, Vol. 6, Part J, Ch. 3.A.1, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3.
[73] *Id*.
[74] *Id.*

| Abuse, Neglect, Abandonment, or Similar Basis Requirement | Examples of "Similar Basis" Under Washington Law |
|---|---|
| • Abuse, abandonment, or neglect as defined in State law<br>• Finding needed as to only one parent<br>• If based on "similar basis," court order should include explicit determination that basis is legally similar to abuse, neglect, or abandonment under Washington law<br>• Court order should include summary of factual basis for the finding | • Dependency findings under RCW 13.34.030(6)(c)<br>• A youth risks physical or psychological harm if returned home in a vulnerable youth guardianship under RCW 13.90.901(2)<br>• No parent is willing or able to exercise parenting functions, as defined in RCW 26.09.004(2), in minor guardianships or other proceedings<br>• Restrictions on the parental relationship in minor guardianship or family law proceedings pursuant to RCW 26.09.191 or 11.130.215(4) |

## 2.5 Best Interest Determination

To qualify for SIJ classification, it must be "determined in an administrative or judicial proceeding that it would not be in the child's best interest to be returned to the [youth's] or parent's previous country of nationality or country of last habitual residence."[75] An SIJ predicate order must therefore include a best interest finding.[76] There is no definition of "best interest of the child" found in either the SIJ statute or regulation, nor elsewhere in immigration law. USCIS policy instructs that this finding requires the court to make "an individualized assessment and consider the factors that it normally takes into account when making best interest determinations."[77]

Every state has statutes describing factors to be considered to ensure certain decisions serve the child's best interest.[78] USCIS recognizes that a child's safety and well-being are typically the paramount concern, and courts may consider "a number of factors related to the circumstances of the child and the circumstances of the child's potential caregiver(s)."[79] Best interests encompass a broader range of factors than those directly related to the parental maltreatment, and may include, for example, the availability of family or other support systems, a youth's psychological or emotional well-being, medical considerations, and educational resources available to the child in the U.S.

Best interest determinations are threaded throughout Washington's domestic relations and child welfare laws. For example, best interest assessments are required in the following matters:

[75] 8 U.S.C. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).
[76] It is also sufficient if the court order endorses or recognizes the best interest assessment made by another judicial or administrative body, such as the child welfare agency or Guardian ad Litem or Court Appointed Special Advocate. *See* USCIS Pol'y Manual Vol. 6, Part J, Ch.2.C.3, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.
[77] *Id*.
[78] *See* U.S. Dep't of Health & Human Servs., Child Welfare Info. Gateway, Determining the Best Interests of the Child, https://www.childwelfare.gov/resources/determining-best-interests-child/.
[79] *Id.*

- Parenting plans under RCW 26.09.187, parenting plan modifications under RCW 26.09.260, and relocation actions under and RCW 28.09.191;
- Changes in custodial arrangements upon findings of contempt;[80]
- Minor guardianship determinations under RCW 11.130.185(2);
- De facto parentage proceedings under RCW 26.26A.440; and
- In every stage of dependency proceedings, including in shelter care decisions, non-relative placements, and termination of parental rights proceedings.[81]

Washington judicial officers consider a broad range of criteria in assessing best interest. In custodial arrangements between parents, for example, RCW 26.09.002 provides the following instruction:

> The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.[82]

In general, a finding that a placement with an individual or agency in Washington is in the child's best interest would coincide with a finding that it is in the child's best interest to remain in that placement in the U.S.

The best interest assessment does not entail a decision about whether a child should be repatriated to their country, and such decisions are reserved for the federal immigration authorities. In *Matter of Custody of A.N.D.M.*, a case concerning an uncontested petition for parenting plan, Division I of the Washington Court of Appeals provided further guidance on how courts should engage in this analysis.[83] Specifically, it clarified that a judge should make a "straightforward inquiry about what is best for the child on the facts before the court at that place and time" and that it is improper to request an explanation or showing as to why the youth was unable to return to Honduras.[84] Ultimately, the court held that the Superior Court abused its discretion when it speculated about what might or might not happen to the youth in their home country if they returned, thereby considering factors that were neither in evidence nor helpful to the best interest of the child analysis.[85] It also held that the lower court erred for basing its decision on the youth's motivation for her departure from the home country or imposing a requirement that she "meet a certain threshold of trauma upon leaving. An abandoned child could have left her country entirely voluntarily and still meet the requirement that it was not in her best interest to return, given the facts before the court."[86]

The preamble to the SIJ regulations also highlights that the best interest determination is "not a repatriation determination . . . but rather is a determination by a state court or administrative body regarding the best interest of the child" and that "[n]othing in this part should be construed as altering the standards for best interest determinations that juvenile court judges routinely apply under relevant

[80] *In re Custody of Halls*, 126 Wn. App. 599, 607, 109 P.3d 15 (2005); *In re Parentage of Schroeder*, 106 Wn. App 343, 350-52, 22 P.3d 1280 (2001).
[81] *See, e.g.*, RCW 13.34.060(2); RCW 13.34.065(5); RCW 13.34.130(3); RCW 13.34.132(3).
[82] RCW 26.09.002.
[83] *In re Matter of Custody of A.N.D.M.*, 26 Wn. App. 2d 360, 376, 527 P.3d 111 (2023).
[84] *Id.*
[85] *Id*.
[86] *Id*.

State law.''[87] As federal courts have explained, best interest inquiries are "within the traditional expertise of the state courts, and [thus] the SIJ statute, not surprisingly, assigns this fact finding task to the state court."[88]

Federal law intends for courts to determine the best interest of the child for SIJ purposes according to established standards under state law. Both federal guidance and Washington precedent stress that courts should avoid seeking to determine whether a child could or should be repatriated. Rather, the assessment should be based on the facts presented as to what will best protect the child's safety, well-being, and stability, and other factors considered under Washington law in best interest determinations.

The chart below summarizes key information about the "best interests" SIJ requirement and provides a non-exhaustive list of Washington law governing best interest determinations.

| Best Interest Requirement | Examples Under Washington Law (Non-Exhaustive List) |
|---|---|
| • No federal statutory definition<br>• Requires individualized assessment<br>• Courts should analyze best interests using the factors typically considered when making these assessments under Washington law<br>• The state court order should include a summary of the factual basis for the determination | • Parenting plans under RCW 26.09.187, parenting plan modifications under RCW 26.09.260, and relocation actions under and RCW 28.09.191<br>• Changes in custodial arrangements upon findings of contempt[89]<br>• Minor guardianship determinations under RCW 11.130.185(2)<br>• De facto parentage proceedings under RCW 26.26A.440<br>• In every stage of dependency proceedings, including in shelter care decisions, non-relative placements, and termination of parental rights proceedings[90]<br>• *In re Dependency of J.B.S.*, 123 Wn.2d 1, 9 (1993) (discussing the best interests of the child standard)<br>• *Matter of Custody of A.N.D.M.*, 26 Wn. App. 2d 360, 376 (2023) (discussing the analysis of whether it is in a child's best interests to return to their country of origin) |

[87] Special Immigrant Juvenile Petitions; Determination of Best Interest, Vol. 87 Fed. Reg. 13,069 (March 8, 2022), https://www.govinfo.gov/content/pkg/FR-2022-03-08/pdf/2022-04698.pdf.
[88] *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1216 (W.D. Wash. 2019); *see also Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 265 (C.D. Cal. 2008) ("[t]he 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").
[89] *In re Custody of Halls*, 126 Wn. App. 599, 607, 109 P.3d 15 (2005); *In re Parentage of Schroeder*, 106 Wn. App 343, 350-52, 22 P.3d 1280 (2001).
[90] *See, e.g.*, RCW 13.34.060(2); RCW 13.34.065(5); RCW 13.34.130(3); RCW 13.34.132(3).

## 2.6 The State Court Order

An SIJ petition filed with the immigration authorities at USCIS must be accompanied by an order presenting state court findings that establish a youth's eligibility for SIJ; this order is often referred to as an "SIJ predicate order" or a "special findings order." Although there is no requirement that the findings be contained in a single court order, a separate order is preferable to ensure that all required findings and the factual basis are clear for USCIS's adjudication of the SIJ petition.

Washington state courts should use the Administrative Office of the Court's model state court order, Form JU 11.0500, Findings and Order Regarding Eligibility for Special Immigrant Juvenile Status, which is available on the Washington Courts' website under *Court Forms: Miscellaneous – including Mandatory Pattern Forms*."[91] This form provides a succinct and consistent format in which to list the findings directly related to the SIJ adjudication.

As discussed throughout this guide, all five required findings must be reflected in the SIJ predicate order, including:

- The youth is under 21;
- The youth is unmarried;
- The youth has been declared dependent on a "juvenile court" OR legally committed to or placed in custody of an individual, entity, or state agency or department;
- Reunification with one or both parents is not viable due to abuse, neglect, abandonment OR a similar basis under state law; AND
- It is not in the youth's best interest to return to their home country or their parents' country of nationality or last habitual residence.

Additionally, for USCIS to consent to the grant of SIJ, the state court order and the supplemental evidence submitted must include a "reasonable factual basis" for the SIJ findings, and it must reflect the "relief from parental abuse, neglect, abandonment or a similar basis under state law granted or recognized by the court."[92] However, an order need not include established facts or determinations in the underlying state court matter beyond those required to directly support the elements of SIJ eligibility. If the court's non-viability of reunification finding is based on a "similar basis" to abuse, abandonment, or neglect, the order should include the court's explicit determination of how the basis is legally similar to abuse, neglect, or abandonment under state law.[93]

The chart on the following page summarizes what should be included in the SIJ predicate order.

[91] *See* Washington State Court Forms, Court Forms: Miscellaneous – Including Mandatory Pattern Forms, https://www.courts.wa.gov/forms/?fa=forms.contribute&formID=46.
[92] *See* 8 C.F.R. § 204.11(d)(5); *see also* USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 3.A.2, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3#S-A-2.
[93] *See* 8 C.F.R. § 204.11(d)(4)(i).

| Contents of a State Court Order Establishing Eligibility for SIJ | |
|---|---|
| **Required Finding or Determination** | **Information To Include** |
| Under 21 & unmarried | • Youth's date of birth & marital status |
| Declared dependent OR legally committed to or placed in custody of an individual, entity, or state agency or department | • Citation to state law governing the dependency, custody, commitment or placement<br>• Name of individual, entity, state agency or department with whom child is placed or committed to<br>• Protective or remedial relief provided (e.g. custody, placement, court or agency oversight, services, etc.)<br>• For youth in custody of ORR, order should acknowledge ORR custody status/placement |
| Reunification with one or both parents is not viable due to abuse, neglect, abandonment or similar basis | • Citation to state law governing abuse, abandonment, neglect, or similar basis finding<br>• If similar basis, determination that basis is legally similar under state law and relevant citation(s)<br>• Summary of factual basis for finding |
| Not in the child's best interest to return to their home country or parents' country of nationality or last habitual residence | • Citation to state law governing best interest finding<br>• Summary of factual basis |

In some cases, USCIS may request additional information from an SIJ applicant when adjudicating the petition, for example, if it is unable to determine that a particular finding was made in accordance with state law or otherwise deems any of the findings insufficient to establish eligibility. Such a request may prompt practitioners to seek supplemental findings or amended orders from the court, including an order *nunc pro tunc.*

# 3. Other Relevant Information for Stakeholders

## 3.1 Range of Eligible Children and Youth

As covered in other sections of this guide, SIJ may be available to a wide range of children and youth residing in Washington. Children whose circumstances include any combination of the following, among others, could meet the eligibility criteria discussed in Chapter 2:

- Children and youth residing in informal care arrangements with family members or other caregivers;
- Unhoused youth;
- Children in state foster care and/or whose families are receiving services from DCYF;
- Children residing with one parent;
- Children and youth in mixed-status families[94];
- Children who have never had contact with the immigration system, as well as those who have active immigration cases, including removal proceedings;
- Youth who entered the U.S. with permission (e.g., a temporary visa) but whose permission or status has now lapsed;
- Juvenile justice-involved youth;
- Children and youth who entered the U.S. as babies or young children, with or without family members, and who have resided in the U.S. for most of their lives;
- Children or youth who migrated recently to the U.S., including those who entered the U.S. alone and were determined to be "unaccompanied children" by immigration authorities.

Depending on a child's age and family circumstances, some children may not have a clear understanding of their own immigration status, or even know that they lack lawful status, especially if they have been in the U.S. for much of their lives.

### 3.1.1 Unaccompanied Children in Washington State

SIJ-eligible youth in Washington state may include unaccompanied children who are or were previously in the custody of the Office of Refugee Resettlement (ORR). The focus on unaccompanied children in this section is not intended to diminish the breadth of circumstances and experiences that might give rise to SIJ eligibility, as described above. Instead, the intent is to provide background about the relevant legal framework and federal processes that may be useful for courts who encounter unaccompanied children in state court proceedings.

#### *Who is an Unaccompanied Child?*

Under federal law, an unaccompanied child is defined as one who: (1) is under 18, (2) has no lawful immigration status in the U.S., and (3) has no parent or legal guardian in the U.S. available to provide care and physical custody.[95] Children who meet this definition and who are encountered by any federal agency, including Department of Homeland Security, must be referred to the U.S. Department of Health and Human Services.[96] ORR is the agency within that department which assumes custody and

[94] "Mixed-status family" generally refers to a family in which different members have different kinds of immigration status.
[95] *See* 6 U.S.C. § 279(g)(2). The statute defines the term as an "unaccompanied alien child," but federal agencies and other stakeholders have adopted the term "unaccompanied child" to refer to children who meet this definition.
[96] 8 U.S.C. § 1232(b), (c).

care of unaccompanied children, and ORR contracts with state-licensed care provider programs throughout the U.S.[97] For many years, ORR has contracted such programs in Washington state.

In the years leading up to 2014, the number of children entering the U.S. alone reached unprecedented numbers and has continued to rise. In fiscal year 2023, 118,938 unaccompanied children were referred to ORR for care.[98] In turn, the number of unaccompanied children released to caregivers and living in communities throughout the U.S. has also risen. Between 2015 and 2023, ORR released an average of 712 unaccompanied children per year to relatives or caregivers throughout Washington, including 1,350 children in 2023 alone.[99] Many unaccompanied children are eligible for humanitarian forms of immigration relief, including SIJ.

### *Unaccompanied Children in ORR Care*

Federal standards governing the custody and care of unaccompanied children by ORR require that such children be "placed in the least restrictive setting that is in the best interest of the child."[100] ORR maintains different placement settings, including group shelters and community-based foster care. As soon as an unaccompanied child comes into ORR's custody, ORR is required to determine if the child has a "sponsor" in the U.S. to whom they can safely be released. A sponsor can be a parent, guardian, or other adult designated by a parent and with whom the child has a previous relationship.[101] The majority of unaccompanied children placed in ORR care are released to sponsors and reside in the community while their immigration legal case proceeds.[102] ORR maintains long-term, federally funded care programs, including foster care, to support unaccompanied children who have no relatives or other sponsor in the U.S.

In general, state law governs a state court's jurisdiction over an unaccompanied child in ORR custody for purposes of determining dependency, custody or placement, and/or entering other findings or orders regarding the child, including SIJ findings. However, for children in ORR's custody, federal regulations limit the state court's ability to alter a child's custody or placement. Under these rules, a petitioner must seek ORR's "specific consent" to the state court's jurisdiction to alter the child's placement, for example, to state-funded foster care or to the home of a family member or other caregiver.[103] This does not preclude an unaccompanied child in ORR custody from obtaining findings to establish SIJ eligibility, including findings of dependency under RCW § 13.34. Federal policy instructs that for children who are the subject of state court orders establishing SIJ-eligibility while they are in ORR custody, but whose placement was not changed or altered by the state court, the state

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[97] *See* Admin. for Child. & Fams, U.S. Dep't of Health & Human Servs., Fact Sheet: Unaccompanied Children (UC) Program, (Jan. 23, 2024), https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf.

[98] *See* Admin. for Child. & Fams, U.S. Dep't of Health & Human Servs., Unaccompanied Children: General Statistics, Referrals (Jan. 23, 2024), https://www.acf.hhs.gov/orr/about/ucs/facts-and-data#Incoming%20Referrals.

[99] *See* Admin. for Child. & Fams, U.S. Dep't of Health & Human Servs., Unaccompanied Children Released to Sponsors by State, Unaccompanied Children Released to Sponsors by State - October 2023 | HHS.gov.

[100] 8 U.S.C. § 1232(c)(2)(B).

[101] *See* Office of Refugee Resettlement, Admin. for Child. & Fams, U.S. Dep't of Health & Human Servs., ORR Unaccompanied Children Program Pol'y Guide: Section 2: Safe and Timely Release from ORR Care, https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#2.1

[102] In most cases, children are placed in removal proceedings before the Immigration Court. *See* 8 U.S.C. § 1232(a)(5)(D). Removal proceedings may be pending for months to several years. Obtaining SIJ status can provide a defense to removal from the United States and a basis to dismiss pending removal proceedings. Once children have LPR status, they are only subject to removal from the United States if they become subject to grounds of deportability, including for certain adult criminal convictions.

[103] 8 C.F.R. § 204.11(d)(6); *See also* Admin. for Child. & Fams, U.S. Dep't of Health & Human Servs., Specific Consent Requests, Program Instruction, https://www.acf.hhs.gov/sites/default/files/documents/orr/special_immigrant_juvenile_status_specific_consent_program.pdf.

court order should simply restate the child's custody status and placement with ORR.[104] USCIS recognizes that, generally, placement in federal custody with ORR affords protection to an unaccompanied child under federal law and removes a state juvenile court's need to provide a petitioner with additional relief from parental maltreatment under state law."[105]

### *Unaccompanied Children Released to a Family Member or Caregiver*

Before ORR releases a child to a sponsor, that individual must complete a "Family Reunification Application" and process, including documentation proving their relationship to the child, their ability to provide care, acceptable background check results, and in certain cases, successful participation in a home study.[106]

When ORR releases an unaccompanied child to an adult, that action does not create a legal relationship between the child and sponsor, such as a legal guardian relationship. That said, the child is no longer in the actual or constructive custody of ORR, and ORR, therefore, retains no legal authority or oversight over the placement of that child. Some children may access time-limited, ORR-funded "Post-Release Services," designed to support the child's integration into the family and community and access available services.[107] Children released by ORR are issued an ORR Verification of Release form, which contains the child's identity information verified by ORR.[108]

Washington courts may encounter both unaccompanied children who are currently in ORR custody and children who were previously in ORR care, but who are now residing with a "sponsor" deemed by ORR to be suitable to care for the child. SIJ-eligible children in ORR care will typically self-petition for dependency findings and ask the court to make relevant SIJ findings while they remain in ORR custody. When children are released to a sponsor, such as a parent, relative, or other suitable adult, they may seek to establish formal custody or a guardianship with that sponsor, including sole custody by a parent or a minor guardianship by a relative. Each of these underlying proceedings has a stabilizing effect of its own, providing the child with safety and security they would lack without court intervention, as well as the opportunity to pursue SIJ findings. The SIJ findings take that security a step further when they are later submitted to USCIS as part of an SIJ petition.

### *Unaccompanied Refugee Minors (URM) Program*

Courts and stakeholders serving youth in Washington may also encounter youth placed in ORR's Unaccompanied Refugee Minors (URM) program.[109] This program is separate from ORR's Unaccompanied Children program described above.[110] However, similar to ORR's Unaccompanied Children program, the URM program contracts with care providers in various states, including

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[104] USCIS Pol'y Manual, Vol. 6, Pt. J, Ch.2.E, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2#footnotelink-38.
[105] *Id*. at Ch.3.A.2, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3#S-A-2.
[106] *See* Office of Refugee Resettlement, Admin. for Child. & Fams, U.S. Dep't of Health & Human Servs., ORR Unaccompanied Children Program Policy Guide, Section 2: Safe and Timely Release from ORR Care, https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide.
[107] *See id*. at Section 6: Post-Release Services.
[108] Federal agencies such as the U.S. Department of Education have issued guidance on using the ORR Verification of Release form as proof of identity, residence, and age in order to enroll children in school, see Kids in Need of Defense Infographic: Expanding Unaccompanied Immigrant Children's Access to State and Municipal Identification Cards & Driver's Licenses, https://supportkind.org/wp-content/uploads/2022/08/ID-infographic-Final-1.pdf. An example of the form is viewable at Page 2 of the infographic.
[109] *See* Office of Refugee Resettlement, Admin. for Child. & Fams, U.S. Dep't of Health & Human Servs., Unaccompanied Refugee Minors Program, https://www.acf.hhs.gov/orr/programs/refugees/urm.
[110] *Id.*

Washington.[111] Although the youth populations served through each program overlap, there are key differences relating to how youth enter each program, their custody status, and program structure. Understanding the difference can be useful when assessing SIJ eligibility for youth in each program.

The URM program was originally created to serve children who entered the U.S. as refugees and without a parent.[112] Over time, Congress expanded eligibility to include other youth populations, including but not limited to children who obtain certain immigration status upon arrival to or after entering the U.S. For example, unaccompanied children who obtain SIJ while in ORR custody[113]; children who obtain a U-visa after arriving to the U.S.[114]; children who have been determined to be victims of human trafficking[115]; and Unaccompanied Afghan Minors,[116] among other categories of children, are also now eligible for URM placement. Under federal law, children placed in the URM program are entitled to the same benefits and services as children in the foster care programs of that state,[117] which in Washington includes extended foster care benefits under RCW 74.13.031(12)(a). Washington's URM program is administered through the Washington State Department of Social and Health Services (DSHS), and federal funding for such placements is contingent upon a state establishing "legal responsibility" for a child in accordance with state law and governing state court law and procedures.[118] When an eligible child is referred for local placement in URM care, the contracted agency will file a petition to assume legal custody of that child, typically in dependency proceedings. The agency then provides placement, benefits, and services in parity with those provided to foster children in Department of Children, Youth, and Families (DCYF) care.

Some children placed in URM care enter the program after having been granted SIJ while in ORR's legal custody as an unaccompanied child.[119] Others who enter the URM program on another basis (e.g. trafficking victims or those who enter the U.S. in refugee status) may also be eligible for SIJ, but have not yet obtained the requisite findings. Courts presiding over dependency proceedings of youth in URM care may receive requests for SIJ findings made on behalf of such youth.

### 3.1.2 Children in Department of Children, Youth, and Families (DCYF) Care

Foreign-born children served by or in the custody of DCYF, including Child Welfare or Juvenile Rehabilitation, may be SIJ-eligible. Specific considerations around SIJ eligibility and the required

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[111] *See* Wash. St. Dep't of Soc. and Health Servs., Unaccompanied Refugee Minors Program,.https://www.dshs.wa.gov/esa/csd-office-refugee-and-immigration-assistance/unaccompanied-refugee-minors-program.

[112] Under immigration law, refugee and asylum status derive from the same standard. Refugees are assessed for eligibility and processed abroad and enter the U.S. with refugee status. Asylees may apply for asylum at a port of entry or from within the United States. *See* U.S. Citizenship and Immigration Servs., *Refugees and Asylum*, https://www.uscis.gov/humanitarian/refugees-asylum.

[113] *See* 8 USC § 1232 (d)(4)(A). For SIJ grantees, eligibility requires that they were in ORR custody as an unaccompanied child at the time the state court order was entered.

[114] *Id.* A U visa (or U nonimmigrant status) is a humanitarian form of immigration relief for victims of certain crimes. *See* U.S. Citizenship and Immigration Servs., Victims of Criminal Activity: U nonimmigrant status, https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status.

[115] *See* 22 U.S.C. § 7105(b)(1)(C).

[116] *See* Pub. L. No.117-43, § 2502, 135 Stat. 377 (2021); *See also* Off. of Refugee Resettlement, Admin. Child. and Fams., U.S. Dep't Health and Human Servs., ORR Guide to Eligibility, Placement, and Servs. for Unaccompanied Refugee Minors: Sec. 1, https://www.acf.hhs.gov/orr/policy-guidance/orr-guide-eligibility-placement-and-services-unaccompanied-refugee-minors-urm.

[117] 45 C.F.R. § 400.116(a).

[118] *Id*. § 400.115(a).

[119] Such children are released from ORR's legal custody as unaccompanied children when the state (or in Washington, one of the contracted URM agencies) assumes legal custody.

findings for such children are discussed above in section 2 and also in 4.1.1, Dependency proceedings, respectively.

Youth in DCYF care may not have been screened for immigration needs or assessed for SIJ-eligibility. Adjudicators and other stakeholders serving such youth can therefore serve a critical role in identifying a child's need for assessment and/or consultation with an immigration attorney or legal services organization. This can be particularly critical for youth approaching their 18th or 21st birthday, whose opportunity to apply for SIJ may be time-sensitive.

In proceedings involving SIJ-eligible youth in which DCYF is a party, DCYF may seek SIJ findings on behalf of children. Because obtaining SIJ aligns with youth-serving the state agencies' mandate to protect children's best interests and promote permanency, DCYF's counterparts in many states have implemented models for serving immigrant children and families. These models include procedures to screen for immigration needs, including SIJ-eligibility, and/or assist with obtaining the requisite findings for eligible children.[120] Counsel for youth served by or in DCYF custody can also play a critical role to assist in identifying SIJ eligibility and seek the required findings of behalf of their clients.

## 3.2 Considerations Regarding Parents of SIJ-Eligible Youth

Under immigration law, parents of SIJ recipients can never receive lawful status or any type of immigration benefit through their child.[121] This applies to both of the child's parents regardless of whether the findings of abuse, abandonment, or neglect giving rise to eligibility were made as to only one of the parents. Because some other forms of immigration legal relief allow for a child to petition for status for a parent, youth who qualify for other types of legal status may elect to forego seeking SIJ in order to preserve their ability to eventually apply for lawful status for a parent in the future.[122]

A grant of SIJ or LPR status by immigration authorities does not in and of itself impact the parent-child relationship beyond the impact of the underlying state court order and findings. As discussed in more detail in section 2.3, the finding that "reunification is not viable" with one or both parents does not require a finding that reunification will never be viable, nor does it require that parental rights be terminated.[123] Furthermore, a grant of SIJ status does not preclude a state court from later reunifying a child, or otherwise reversing a custody or placement decision after a child has gained status. That said, reunifying with the abusing or mistreating parent can negatively impact the child's SIJ status. For example, a child's SIJ status can be revoked by USCIS if after SIJ has been granted a state juvenile court orders a child reunified with a parent with whom the child was previously deemed not viable, or if after SIJ is granted the state court determines it is in the child's best interest to return to their country of nationality or last habitual residence (including to reunify with a parent).[124]

Findings of abuse, abandonment, or neglect entered against a parent by a state court may have other consequences for parents, including in their own immigration cases, if applicable to the form of immigration relief they are pursuing. Unlike certain criminal convictions for child abuse, neglect,

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[120] *See*, *e.g.,* The Center of Immigration and Child Welfare, *Serving Immigrant Children & Families with Child Welfare System Involvement* (December 2023), 5-7, https://cimmcw.org/wp-content/uploads/CW-Immigration-Models-Guide.pdf

[121] 8 C.F.R. § 204.11(i). "The natural or prior adoptive parent(s) of a petitioner granted special immigrant juvenile classification will not be accorded any right, privilege, or status under the Act by virtue of their parentage. This prohibition applies to all of the petitioner's natural and prior adoptive parent(s)." *Id*.

[122] In general, LPRs may petition for LPR status for a spouse, unmarried child, or parent; however, individuals who obtain LPR through SIJ are prohibited from applying for any immigration benefit for either parent.

[123] 8 C.F.R. § 204.11(c)(1)(ii) (stating that "[t]he [juvenile] court is not required to terminate parental rights to determine that parental reunification is not viable").

[124] *See* 8 C.F.R. § 204.11(j).

abandonment, or domestic violence-related convictions (which can give rise to deportability),[125] civil court findings regarding parental abuse or a parent's inability to care for a child do not have automatic negative immigration consequences. In some cases, for example, parents choose to agree to dependency and SIJ findings because they know they are unable to care for or protect their children from harm, and they believe it is in their child's best interest to remain in the United States. Parents pursuing an immigration case in the United States should always be encouraged to consult with their own immigration counsel about the possible effects of the state court proceedings on their immigration matters.

### 3.3 Importance of Consulting with Immigration Counsel

When a child is identified as potentially SIJ-eligible, it is important for the child to be provided an opportunity to consult with immigration counsel, whenever possible. Helping a child understand the full scope of their immigration-related options, and whether to ultimately pursue SIJ, warrants a fuller immigration assessment and discussion of a youth's goals and family history and relationships. For example, a child may be eligible for other immigration pathways for legal status in addition to SIJ, including those that preserve a child's ability to sponsor a parent in the future, lead more quickly to LPR status, permit the immediate inclusion of certain family members in the visa application, or allow the child to avoid certain grounds of inadmissibility where applicable. In general, an eligible child may pursue multiple remedies at the same time, or a child may choose to prioritize one remedy over another for particular reasons. As emphasized elsewhere in this guide, even when a child has not yet received a full immigration assessment or definitively decided to pursue SIJ, obtaining the predicate SIJ order while continuing efforts to consult with an immigration provider can avoid the risk of aging out of juvenile court jurisdiction and preserve the child's option to pursue SIJ in the future. A list of Washington-based immigration legal services providers is included at Appendix D.

## 4. Washington State Court Proceedings and SIJ

As explained in section 1.3, federal law defines "juvenile court" as "a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles."[126] SIJ findings may be issued in any proceeding in which the court has such authority under state law. Amendments to the SIJ statute in 2008 clarified that eligible children include not only children declared dependent, but also those committed to or placed under the custody of a state agency or department, or an individual or entity appointed by the court, and that requisite findings are needed as to only one parent.[127] This in turn broadened the range of state court proceedings in which children can seek the requisite findings.

It is recommended that courts develop practices to assist in the identification and/or referral for immigration assessment of potentially SIJ-eligible children and youth. For example, when a youth is represented by counsel in the state court matter, the court may request that the child's attorney inquire about SIJ eligibility and/or refer the child for an immigration needs assessment, without directly or openly discussing the child's immigration status in court. For represented youth and/or those in DCYF custody, the court can request for the attorney, Guardian ad Litem, and/or caseworker to assist with identifying potentially eligible children and connecting the youth and/or their family members to and immigration legal service provider. In cases in which eligibility is straightforward or otherwise clear from the record without further assessment, it is a best practice to enter an order with the SIJ findings

[125] 8 U.S.C. § 1227(a)(2)(E).
[126] 8 C.F.R. § 204.11(a).
[127] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235, 122 Stat. 5044, 5074 (codified at 8 U.S.C. § 1101(a)(27)(J)).

while the child is under juvenile court jurisdiction, to protect against the risk that an SIJ-eligible child will miss the opportunity to seek lawful status. Efforts to connect the child with immigration counsel can continue while findings are sought or after the SIJ predicate order is entered.

The sections below address some specific considerations relevant to the most common Washington state court proceedings in which courts may encounter SIJ-eligible youth and consider motions for related findings.

## 4.1 Juvenile Court Act

### 4.1.1. Dependency Proceedings

In dependency proceedings, the court is directly charged with making findings about abuse, neglect, abandonment, and other findings relating to a parent's ability to care for the child. Most dependency cases are initiated by DCYF after it is determined that court intervention is needed to prevent harm to a child's health, welfare, or safety.[128] However, under the Washington dependency statute, "any person" may file a petition showing that there is a dependent child within the county and requesting that the court remedy the child's circumstances as authorized under the statute.[129] Therefore, in addition to state-initiated dependency cases filed by DCYF, other individuals (including the child) may file a dependency petition. In practice, these are referred to as "privately-filed" dependency petitions. Specific considerations in both state-filed and private dependency cases are addressed separately below.

A dependency finding as to at least one parent under RCW 13.34.030(6)(a), (b), or (c) generally gives rise to a child's SIJ eligibility. In the context of an open dependency matter, any party may move for the necessary SIJ findings. Although the existing record and orders may provide sufficient factual and legal basis for the SIJ findings, parties may need to supplement the record with additional evidence to support certain findings, for example, the finding that it is not in the child's best interest to return to his or her country of origin.

As explained in earlier sections, nothing in federal law impacts a state court's authority to reunify a child who has been granted SIJ with a parent, and/or otherwise reversing or modifying its prior findings relating to a child's SIJ-eligibility. However, such determinations could lead to a revocation of SIJ status, such as when the child is ordered reunified with a parent with whom the court previously determined reunification was not viable.[130]

For SIJ purposes, findings of dependency as to one parent only are sufficient since the federal statute dictates that SIJ is available where "reunification with *one or both* of the immigrant's parents is not viable due to abuse, neglect, or abandonment, or a similar basis under state law."[131] Additionally, a child is eligible if they remain living with or are returned home to one parent, and for whom findings of dependency (and other findings establishing SIJ eligibility) are made against the non-custodial parent.[132]

[128] DCYF Pol'y 4308 Dependency Petition Process, https://www.dcyf.wa.gov/4300-case-planning/4308-dependency-petition-process.
[129] RCW 13.34.040(1).
[130] 8 C.F.R. § 204.11(j).
[131] TVPRA 2008 § 235(d) (emphasis added).
[132] 8 C.F.R. § 204.11(c)(3)(ii)(a).

### *Dependency or Custody*

As discussed in section 2.2, the "dependency or custody" requirement for SIJ calls for *either* a determination of dependency *or* a custody determination, which encompasses either physical or legal custody.[133] A determination that the child meets the legal definition of a dependent child under Washington law is sufficient to meet the "dependency or custody" SIJ requirement, even where the child is not in the state's custody.[134] Generally, the court also makes custody or placement decisions, for example, when ordering a child's removal from the home and placement into protective custody under RCW 13.34.050, at a shelter care hearing under RCW 13.34.060, and/or at a disposition hearing under RCW 13.34.110. Because courts sometimes enter orders regarding placement or custody *prior to* a determination of dependency, in some cases the "dependency or custody" prong may be met even when dependency is not yet established, such as when an order for protective custody or shelter care placement is entered.

### *Non-Viability of Reunification on Account of Abuse, Abandonment, Neglect, or a Similar Basis*

Under Washington law, a "dependent child" is one who: (1) has been abandoned[135]; (2) is abused or neglected by a person legally responsible for the care of the child[136]; (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[137]; or (4) is receiving extended foster care services.[138]

Evidence of abuse, abandonment, neglect, and/or other factors considered by the court under RCW 13.34.065 or RCW 13.34.110 can also support a finding that reunification with one or both of the parent(s) is not viable. As discussed in Chapter 2.3, this determination does not require that reunification will *never* be viable; therefore, the possibility that a child may eventually be able to return to a parent in the future does not preclude the finding that reunification is not viable.[139]

Because SIJ requires that the non-viability of parental reunification findings be "on account of" abuse, neglect, abandonment, or a similar basis, there should be a connection between a youth's inability to reunify and the parental abuse, abandonment, neglect, or similar circumstances. This is straightforward in the dependency context since a determination of dependency under Washington law requires a finding of abandonment, abuse or neglect, or the lack of a capable parent, guardian, or custodian giving rise to a risk to the child. Where reunification is not viable due to circumstances *other* than abuse, neglect or abandonment, when petitioning for SIJ, the youth will have the burden to establish how that alternate basis is legally similar under state law. Therefore, the juvenile court's

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[133] 8 C.F.R. § 204.11(c)(i); USCIS Policy Manual Vol. 6, Pt. J, Ch. 2.C.1, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.
[134] 8 U.S.C. § 1101 (a)(27(J)(i); 8 C.F.R. § 204.11(c)(1) and (d)(5)(ii)(B).
[135] RCW 13.34.030(1).
[136] RCW 26.44.020(1); RCW 9A.16.100 (unreasonable use of force to correct or restrain a child).
[137] *See In re Dependency of Schermer*, 161 Wn. 2d 927, 952, 169 P.3d 452, 465 (2007) (holding that parents' inability to meet their child's special needs "posed a substantial danger to his physical and mental health"). A finding under RCW 13.34.030 (6)(c) is considered to be a similar basis under state law for SIJ purposes.
[138] RCW 13.34.030(6).
[139] As discussed in section 2.4, termination of parental rights is not required to determine that parental reunification is not viable, see 8 C.F.R. § 204.11(c)(1)(ii).

order should include an explicit determination that the basis is legally similar to abuse, abandonment, or neglect.[140]

A finding of dependency under RCW 13.34.030(c), where the child is found to have "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," is similar to abuse, neglect, or abandonment because it gives rise to identical protections under the dependency statute at RCW 13.34.030(a) or (b).[141]

### *Parental Death as a "Similar Basis"*

In order for the death of a parent to constitute a similar basis for SIJ purposes, the juvenile court must make a legal determination that the death of a parent constitutes a basis similar to abuse, neglect, or abandonment under state law.[142] The USCIS Policy Manual states:

> The fact that one or both parents is deceased is not itself a similar basis to abuse, neglect, or abandonment under state law. A legal conclusion from the juvenile court is required to establish that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law.[143]

Dependency findings as to at least one parent under RCW 13.34.030(6)(c) support a determination that death constitutes a "similar basis" to abandonment, abuse, or neglect under Washington law, since a dependency under that section gives rise to the same protections as dependency findings based on abandonment, abuse, or neglect.

Additionally, a court may find that a dependency finding under RCW 13.34.030(6)(c) (where there is no parent available, including in the case of parental death) is similar to a dependency under RCW 13.34.030(6)(b) (for abuse or neglect) where it is based on risk of danger to the child's health or safety, rather than actual injury or harm. The definitions of "abuse or neglect" encompass "negligent treatment" of a child, defined as "an act or omission that evidences a serious disregard of consequences of such magnitude as to constitute a *clear and present danger to the child's health, welfare, and safety.*[144] A dependency based on abuse or neglect does not require actual harm to a child but can be found in circumstances which show a "clear and present danger" to the child's health, welfare, and safety.[145] The "substantial danger" does not yet need to have manifested into actual harm.[146] Similarly, dependency under RCW 13.34.030(6)(c) can be based on having no parent capable of caring where there exists a "danger of substantial damage to the child's psychological or physical development," including as a result of parental death. Both findings turn on the risk to a child's

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[140] USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 3.A.1, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3 (stating that the petitioner must include evidence that the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment).

[141] *See, e.g.,* RCW 13.34.130 (requiring a disposition hearing for any child found "dependent within the meaning of RCW 13.34.030"); RCW 13.34.138 (requiring regular review hearings for "all children found to be dependent").

[142] USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 3.A.1, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3. *See also* 8 C.F.R. § 204.11(d)(4).

[143] USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 3.A.1, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3. *See also* 8 C.F.R. § 204.11(d)(4).

[144] RCW 26.44.020(12); RCW 26.44.020(15).

[145] *See In re J.F.*, 109 Wn. App. 718, 731, 37 P.3d 1227 (2001) (finding a basis for dependency where the mother's conduct established "clear and present danger" to [the child's] health, welfare, and safety even where there was no evidence of actual physical harm).

[146] *See In re Welfare of Frederiksen*, 25 Wn. App. 726, 733, 610 P.2d 371 (1979) (clarifying that "[n]othing in the statute suggests that the [State] must stay its hand until actual damage to the endangered child has resulted").

physical or psychological development or safety, whether it be based on a parent's absence —including due to death—or a parent's abuse or neglect.[147]

### *State-Initiated Dependencies*

Foreign-born children and youth served by DCYF or in the agency's custody may not have been screened for SIJ-eligibility or other immigration needs. Generally, where dependency findings have been entered as to at least one parent of a child in DCYF care, that child is likely prima facie eligible for SIJ. Stakeholders working with a child who may be SIJ-eligible should be proactive about identifying such children and referring them to an immigration legal services provider. If the child is represented by an attorney, the child's attorney can play a key role in identifying potential SIJ-eligibility, referring the child for an immigration assessment, and seeking SIJ related findings or pursuing other immigration remedies. Child welfare caseworkers or others can also play a critical role for such youth, and may assist in identifying eligible children; referring the child's case to an immigration legal services provider; providing assessments and reports, or obtaining evidence to assist the court in making findings that may establish SIJ eligibility; and collecting important documents, including proof of the child's age and identity.[148] Even when a full immigration assessment is delayed and there is uncertainty as to whether seeking SIJ may be the child's preferred option, a best practice is to seek the state court findings sooner than later in order to preserve that child's ability to seek SIJ, regardless of whether the child and/or family ultimately seeks to file an SIJ petition with immigration authorities.

### *Privately Filed Dependency Cases*

Privately filed dependency cases may be filed by a youth who seeks the protection of the court, including findings of dependency. In many cases, youth who file for dependency are already in out-of-home care and are not immediately seeking services from or placement by DCYF. Some are unaccompanied children in ORR custody locally, and others may be living with a relative or caregiver or lack stable housing.

SIJ-eligible unaccompanied children in ORR care may seek findings of dependency but remain in their ORR placement, and thus do not request that the court address placement. As discussed more thoroughly in Section 3.3, a state court's jurisdiction to alter or change a child's ORR custody status or placement is limited by federal law. In such cases, the state court order that addresses placement should restate the child's custody or placement with ORR. USCIS recognizes that "placement in federal custody with ORR affords protection as an unaccompanied child and removes a state juvenile court's need to provide a petitioner with additional relief from parental maltreatment under state law."[149]

In privately filed dependency cases, DCYF is not a party unless the agency is joined. For most privately filed dependencies involving SIJ-eligible children, DCYF is not joined to the dependency until and unless the youth elects to transition to extended foster care (EFC), as discussed below. When a youth

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[147] *See also* infra discussion on *Minor Guardianship.*

[148] *See* U.S. Citizenship and Immigration Servs., Immigration Relief for Abused Children: Information for Juvenile Court Judges and Child Welfare Professionals, https://www.uscis.gov/sites/default/files/document/brochures/PED.SIJ.1015_Brochure_M-1114B_Revised_05.19.16.pdf.

[149] USCIS Pol'y Manual. Vol. 6, Pt J., Ch. 3.A.2, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3.

lacks a placement, DCYF will usually be joined per Civil Rule 19(a)(1), as the only entity that can provide stable long-term housing options.[150]

### *SIJ and Extended Foster Care*

In Washington, youth who were dependent at the time they reached age 18 are eligible for extended foster care (EFC) services.[151] Eligibility also requires either (1) that a youth be enrolled in a secondary education or equivalency program, a vocational program, a program or activity designed to promote or remove barriers to employment, or (2) that a youth be employed for eighty hours or more per month.[152] Obtaining SIJ can help youth maintain EFC enrollment eligibility, for example, by enabling a youth to work lawfully,[153] or enabling them to enroll in certain job training programs that require immigration status, such as Job Corp.

Foreign-born youth in DCYF care or supervision may age out of dependency court jurisdiction without having been identified as SIJ-eligible. If such a youth is eligible to receive EFC services, the necessary SIJ findings can be entered in EFC dependency proceedings, either where dependency jurisdiction has continued beyond age 18 on account of enrollment in EFC under RCW 13.34.267, or where a new EFC dependency petition is filed after the prior minor dependency was dismissed. Youth in EFC are entitled to appointed counsel,[154] and youths' attorneys can play a key role in identifying SIJ eligibility and seeking the requisite findings.

Youth in privately filed cases who are still dependent when they turn 18 also become eligible for EFC services with DCYF, even if they have never been in DCYF care. If youth elect to enter the EFC program immediately upon turning 18, they may seek EFC eligibility findings from the court upon their 18th birthday and request to join DCYF in their case. Dependencies will be dismissed for youth who do not elect to enroll in the EFC program at age 18. However, such youth may later enroll in EFC up until the age of 21 by contacting DCYF through their intake line.[155] If the dependency was previously dismissed, DCYF will file an EFC dependency petition after a youth enrolls, and the dependency case remains open for the duration of the youth's enrollment in the program. Youth may exit and re-enter the program an unlimited number of times before their 21st birthday.[156] An SIJ-eligible youth who is over 18 and under EFC dependency jurisdiction can therefore request the requisite findings from the court.

## 4.1.2 Vulnerable Youth Guardianship Proceedings

In 2017, the Washington State Legislature enacted SHB 1988, codified in the Juvenile Court Act at RCW Chapter 13.90 (hereinafter "VYG statute"), to create a proceeding called a vulnerable youth

[150] *See* CR 19(a)(1), which provides that a person shall be joined as a party in the action if "in the person's absence complete relief cannot be accorded among those already parties. . . ."
[151] RCW 74.13.031(12)(b).
[152] RCW 74.13.031(12)(a).
[153] As explained in section 1.1, SIJ grantees become eligible to apply for work authorization when they receive SIJ deferred action, and also once they submit an application for Lawful Permanent Residence. *See* 8 CFR 274a.12 (c)(14); 8 C.F.R. 274a.12(c)(9).
[154] RCW 13.34.267(6)(a).
[155] *See* Wash. St. Dep't. Child., Youth, & Fams., Foster Youth Servs.- Extended Foster Care Program, https://www.dcyf.wa.gov/services/foster-youth/extended-foster-care-program.
[156] *See* RCW 74.13.336.

guardianship (VYG). The statute allows youth aged 18, 19, and 20, who are not receiving extended foster care services under RCW 74.13.031, to obtain a legal guardianship.[157] The law was created to promote safety and stability for vulnerable youth and to remedy a misalignment between state and federal law, as federal law defines a "Special Immigrant Juvenile," among other factors, as an unmarried individual under the age of 21.[158]

Before the Legislature passed the VYG statute, Washington youth ages 18 to 21, who had not previously been found dependent or who were not already under the jurisdiction of the court, had no access to a juvenile court to make SIJ findings—even though they shared the same vulnerabilities as their counterparts who were continuing to receive foster care services after turning 18 and under the extended juvenile court jurisdiction.[159] The Legislature recognized that these youths need "a custodial relationship with a responsible adult as they adjust to a new cultural context, language, and education system, and recover from the trauma of abuse, neglect, or abandonment."[160] The Legislature further recognized that, "[t]hese custodial arrangements promote the long-term well-being and stability of vulnerable youth present in the United States who have experienced abuse, neglect, or abandonment by one or both parents."[161] It also emphasized that these arrangements "serve the state's interest in eliminating human trafficking, preventing further victimization of youth, decreasing reliance on public resources, reducing youth homelessness, and offering protection for youth who would otherwise be targets for traffickers."[162]

To commence a VYG proceeding, a youth must file a petition seeking appointment of a proposed guardian.[163] A guardian must be age 21 or older, suitable, and capable of performing duties enumerated in the statute, including to ensure the youth's legal rights are not violated and adhere to any court-specified responsibilities concerning the youth's care, custody, and nurturing.[164] A guardian may be a relative, foster parent, parent, or other "suitable person." The proposed guardian must agree to the guardianship, join in the petition, and must receive notice of the petition.[165]

The petition for VYG must allege that:

1. the youth is between ages 18 and 21;
2. the proposed guardian agrees to the establishment of a guardianship;
3. the youth is prima facie eligible for SIJ classification as defined in the federal law;
4. the youth requests the support of a responsible adult; and
5. the proposed guardian is suitable and capable of performing the enumerated duties.[166]

After the filing of the petition, which is a joint petition, there will be a hearing at which both parties, the youth and the proposed guardian, have the right to present evidence and cross-examine witnesses.[167]

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[157] RCW 13.90.900.
[158] *Compare* RCW 13.90.901(1)(d) *with* 8 U.S.C. § 1101(a)(27)(J)(i).
[159] RCW 13.90.901(1)(d).
[160] RCW 13.90.901(1)(e).
[161] RCW 13.90.901(e).
[162] RCW 13.90.900. Many other states have existing laws or have enacted similar legislation enabling youth ages 18 to 21 to access state courts to seek SIJ findings, including California, Connecticut, Colorado, Illinois, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, Mexico, New York, Nevada, Oregon, Rhode Island, Vermont, and Washington, DC. *See* Project Lifeline, State-by-State Age-Out Database, https://projectlifeline.us/resources/state-by-state-age-out-database/.
[163] RCW 13.90.020.
[164] RCW 13.90.040(1).
[165] RCW 13.90.020(1),(2).
[166] RCW 13.90.020(3).
[167] RCW 13.90.030.

Since the VYG statute's implementation in 2017, most Washington courts have scheduled VYG fact-finding hearings on the dependency docket in the respective county's juvenile court.

At the hearing, a VYG must be established if the court finds by a preponderance of the evidence that:

1. The allegations in the petition are true;
2. It is in the vulnerable youth's best interest to establish a vulnerable youth guardianship; and
3. The vulnerable youth consents in writing to the appointment of a guardian.[168]

The court may make SIJ findings either when the guardianship is established or later in the proceedings. In such cases, the juvenile court has "placed [the youth] under the custody of an individual or entity" for purposes of meeting the "dependency or custody" SIJ requirement. As discussed in section 2.4, in VYG proceedings, Washington courts rely on the definitions for abuse, neglect, and abandonment found in other sections of the Juvenile Court Act at 13.34.030(6) and the Domestic Relations Act at RCW Chapter 26.44 to determine whether (1) there was abuse, abandonment, neglect, or similar basis; (2) reunification with one or both parents is non-viable; and (3) it is in the youth's best interest to return to the youth's home country or the country of the youth's parents.[169] Typically, the joint petition includes factual allegations relating to the parental relationship and the youth's inability to reunify with at least one parent as well as facts relating to where it is in the youth's best interest to reside.

A youth has standing to ask the court at any time to modify or terminate the guardianship, whether or not court oversight has been arranged in advance.[170] A VYG remains in effect until the youth's 21st birthday.[171] The VYG statute clarifies that continued oversight by the court is discretionary, and that any need for and scope of continued court oversight must be reflected in the order establishing the guardianship.[172] If ordered, such oversight may include review hearings or reports to the court regarding the youth's progress and/or need for additional services or supports. Judges considering whether to order review hearings or reports may wish to balance specific concerns they have about a given youth's vulnerabilities or well-being with the cost and burden to the youth and guardian to attend a hearing.[173] Since youth in VYGs are not minors and have reached the age of majority, some courts elect to forego regularly scheduled review hearings or opt for hearings only once a year.

Because of the self-terminating nature of a VYG, no statutorily mandated hearing or filing is required to end the VYG when the youth reaches 21 years old.[174]

### 4.1.3 Juvenile Offender Proceedings

Courts hearing juvenile offender matters under RCW Chapter 13.40 are "juvenile courts" for purposes of entering qualifying SIJ findings because they have authority under state law to make determinations about the custody or care of juveniles.[175] For juvenile justice-involved youth who lack lawful immigration status, obtaining SIJ can support key juvenile justice goals, including rehabilitation and

[168] *Id.*
[169] See RCW 13.90.010(6) (defining a "vulnerable youth" as an "individual who has turned eighteen years old, but who is not yet twenty-one years old and who is eligible for classification under 8 U.S.C. Sec. 1101(a)(27)(J)").
[170] RCW 13.90.050.
[171] RCW 13.90.060.
[172] RCW 13.90.040(1)(d) (stating that the court's order on appointing a vulnerable youth guardianship should "[s]pecify the need for and scope of continued oversight by the court, if any").
[173] Compare RCW 13.34.212(1)(a) with RCW 13.90.070.
[174] RCW 13.90.060.
[175] Compare 8 C.F.R. § 204.11(a) with RCW 13.40.040, 050, 080, and 100.

community reintegration, by expanding vocational and higher educational opportunities, leading to the possibility of work authorization, and providing the long-term stability offered by LPR status.

The "dependency or custody" SIJ requirement may be met in offender proceedings at any stage where the court addresses the youth's custody or placement, including where the youth is placed in county detention, a particular placement is ordered as a condition of release, or the youth is committed to DCYF's Juvenile Rehabilitation for confinement or parole at disposition. Information regarding a youth's parental relationships or family history relevant to other SIJ findings may be contained in a predisposition report or mental health evaluation, including those considered for purposes of determining a youth's service needs or placement.

Since there is a right to counsel for the youth in these proceedings, courts may request that a child's attorney assist the youth to assess SIJ eligibility. Where the youth appears SIJ-eligible, but the record does not contain evidence of abuse, abandonment, neglect or other information relevant to SIJ findings, a party can supplement the record, for example, with a declaration from the youth and/or family member(s), a mental health evaluation, or evidence from other service providers who have knowledge or information about the youth's circumstances.

Juvenile delinquency dispositions and criminal convictions do not impact a youth's eligibility for classification as a Special Immigrant Juvenile. However, they may affect the youth's ability to become a Lawful Permanent Resident, which requires that an individual be "admissible" to the U.S., making individuals with certain categories of criminal convictions ineligible.[176] Juvenile delinquency dispositions, which are civil adjudications by nature, are not considered "convictions" for immigration purposes and will therefore not trigger conviction-based bars.[177] However, some criminal bars are conduct and not conviction-based, and all offenses will generally be considered by USCIS as a matter of discretion in the adjudication of the application for LPR status. A youth's delinquency and/or criminal record may also impact the ability of an SIJ-grantee to obtain the discretionary benefit of Deferred Action (and the related benefit of work authorization) while they wait for their turn to apply for LPR status.

However, the state court's role is limited to considering the requested SIJ findings, and not to assess the impact of the charges or dispositions at hand on the youth's eligibility for immigration status.[178]

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[176] *See* INA § 212(a), 8 U.S.C. § 1182(a) (enumerating the grounds of inadmissibility). Some of the inadmissibility grounds may be "waived" for special immigrant juveniles; however, certain criminal and national security grounds cannot. *Compare* INA § 245(h)(2)(B), 8 U.S.C. § 1255(h)(2)(B) (regarding special immigrants) *and* INA § 212(h), 8 U.S.C. § 1182(a) (waivers of inadmissibility). For more information, see Kathy Brady & Rachel Prandini, *Practice Advisory: Special Immigrant Juvenile Status (SIJS) & the Grounds of Inadmissibility*, Immigrant Legal Resource Center (ILRC) (August 2020), https://www.ilrc.org/sites/default/files/resources/sijs_and_grounds_of_inadmissibility_8.27.20.pdf.

[177] *In re Devison-Charles*, 22 I.&N. Dec. 1362, 1366 (BIA 2007).

[178] In a persuasive case from California, *In re Israel O,* the court clarified the proper scope of the state court's analysis:

> A state court's role in the SIJ process is not to determine worthy candidates for citizenship, but simply to identify abused, neglected, or abandoned alien children under its jurisdiction who cannot reunify with a parent or be safely returned in their best interests to their home country. . . . the SIJ statute and accompanying regulations 'commit . . . specific and limited issues to state juvenile courts. The juvenile court need not determine any other issues, such as what the motivation of the juvenile in making application for the required findings might be [citations]; whether allowing a particular child to remain in the United States might someday pose some unknown threat to public safety [citation]; and whether the USCIS, the federal administrative agency charged with enforcing the immigration laws, may or may not grant a particular application for adjustment of status as a SIJ.

233 Cal. App. 4th 279, 289, 182 Cal. Rptr. 3d 548, 554 (2015) (cleaned up).

USCIS will apply its discretion on a case-by-case basis to determine whether youth should be granted deferred action and ultimately LPR status.

### 4.1.4 Becca Matters[179]

Courts may encounter foreign-born youth who are SIJ-eligible while presiding over At-Risk Youth[180] or Child in Need of Services (CHINS)[181] proceedings. The "Becca Bill" was enacted by the Washington State Legislature to provide services to at-risk, runaway, and/or truant youth and their families who are in conflict, and to "increase the safety of children through the preservation of families and the provision of assessment, treatment, and placement services for children in need of services and at-risk youth including services and assessments[.]"[182] The bill recognized that "some children run away to protect themselves from abuse and neglect in their homes" and the statute contemplates that some youth and families involved in Becca proceedings may also be subject to dependency proceedings under RCW 13.34. The chapter contains a definition of "abuse or neglect" nearly identical to the definitions found in the dependency statute at RCW 13.34.030(6)(b).[183]

In CHINS or ARY proceedings, the "dependency or custody" requirement for SIJ may be met when a youth is ordered placed in an out-of-home placement or ordered to remain placed with one of the parents (and there is a basis for SIJ findings against the non-custodial parent).[184] The court may also consider whether reunification with one or both parent(s) is viable and where it is in the youth's best interest to reside, for example, when considering the appropriate placement and/or service or treatment needs of the youth. Similarly, it may be possible for SIJ findings to be entered in the context of a truancy proceeding – for example, if the court enters an order regarding the youth's placement and there is a basis for non-viability of reunification findings against at least one parent.

As there is a right to appointed counsel for youth subject to Becca proceedings,[185] it is recommended that the court request a youth's attorney to inquire about the youth's SIJ eligibility.

## 4.2 Domestic Relations

The opportunity to make SIJ predicate findings can arise in family law proceedings under Washington's Domestic Relations statute involving foreign-born children who lack lawful immigration status. Courts hearing domestic relations matters are "juvenile courts" for SIJ purposes because they have authority under state law to make determinations about the custody and care of juveniles, including where the court must designate a custodian and enter a parenting plan or residential schedule in the child's best interests.[186] As the federal law allows for "one-parent" SIJ, children need only establish that one parent engaged in misconduct. The following discussion explains how SIJ findings may be pursued in the examples of adoption, dissolution and legal separation, and de facto parentage.

### 4.2.1 Adoption Proceedings

[179] The Family Reconciliation Act at 13.32A RCW, is commonly known as the "Becca Bill," and governs At-Risk-Youth (ARY) and Child in Need of Services (CHINS) proceedings, as well as truancy matters.
[180] RCW 13.32A.030(3).
[181] RCW 13.32A.030(5).
[182] RCW 13.32A.010.
[183] RCW 13.32A.030.
[184] See RCW 13.32A.194(1), RCW 13.32A.192(2), RCW 13.32A.140 through 190. Youth under the court's jurisdiction in ARY or CHINS proceedings would also be considered "dependent" on the court as that term is interpreted in federal SIJ policy.
[185] See, e.g., RCW 13.32A.160; RCW 13.32A.192.
[186] Compare 8 C.F.R. § 204.11(a) with RCW 26.09.184.

Many foreign-born children who are subject to adoption proceedings[187] in the U.S. are also prima facie eligible for SIJ, based on the circumstances leading to the end of the child's legal relationship with the parents. For some eligible children, obtaining SIJ may be the best or fastest option to regularize their immigration status. For others, SIJ may not be necessary or the preferred route to obtaining lawful status.[188] For example, a child who is adopted may automatically acquire U.S. citizenship through their adoptive parent or be able to obtain status through a family-based petition; however, the options for legal immigration status or citizenship can depend on the age of the child at the time of the adoption, status of the adoptive parent(s), and where the child resided in the years preceding the adoption.[189] The intersection of adoption and immigration law is complex and nuanced, so it is always best for children and their families to be referred for a full immigration assessment.

Some, but not all domestic adoptions are of children who have been in foster care through DCYF or in another state. An adoption is preceded by either a legal relinquishment of a child and/or proceedings to terminate a parent(s)' rights.[190] For eligible children, SIJ predicate findings may be obtained during the termination of parental rights proceeding, citing evidence of the abuse or neglect and non-viability of parental reunification that was the basis for termination of parental rights. Alternatively, the findings may be entered at the adoption hearing.

### 4.2.2 Dissolution, Legal Separation, and Parenting Plan Proceedings

SIJ orders may be appropriate in dissolutions, legal separations, or other situations when the court issues or modifies a parenting plan with restrictions under RCW 26.09.191(2). For example, findings of domestic violence, neglect, willful abandonment, sexual assault, or other misconduct may support an SIJ predicate order. Discretionary limitations on a parent's contact with children under RCW 26.09.191(3) may also be sufficient to issue SIJ findings when the court finds neglect, substantial nonperformance of parenting functions, long-term emotional impairment, or substance abuse that interferes with parenting, withholding the child from the other parent, and other factors found to be adverse to the best interests of the child.

All parenting plans make a residential placement in the child's best interest. As a result, in cases where a family seeks SIJ findings for a youth, a parenting plan usually establishes that it is best for the child to remain in the U.S. residing with the parent who can perform parental functions. It follows that returning to the country of origin would not be in the child's best interest. As the federal law allows for "one-parent" SIJ, children need only establish that one parent engaged in misconduct. SIJ predicate orders may also be appropriate in cases involving unmarried parents, for example, when a parent files a petition to establish or modify a parenting plan or to decide parentage.

### 4.2.3 De Facto Parentage Proceedings

A de facto parentage action under RCW 26.26A.440 may also provide an opportunity for a court to issue an SIJ predicate order. The goal of a de facto parentage proceeding is to establish parentage for

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[187] *See* 26.33 RCW. Through adoption, a person other than a child's biological parent(s) becomes the permanent legal parent of the child.
[188] Additionally, SIJ is generally not the appropriate option for children who come to the United States for the purpose of adoption, such as an inter-country adoption, which are governed by the Hague Adoption Convention. *See* USCIS Pol'y Manual, Vol. 6, Pt. J, Ch. 2.C.1, n.16, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.
[189] *See generally* U.S. Citizenship and Immigration Services, U.S. Citizenship for an Adopted Child, https://www.uscis.gov/adoption/after-your-child-enters-the-united-states/us-citizenship-for-an-adopted-child.
[190] *See* RCW 13.34.180, RCW 26.33.080-130.

a nonparent who has taken a parental role in a child's life and held the child out as his or her own. A potential de facto parent must prove a number of factors to demonstrate the existence of a solid, on-going relationship with the child and that de facto parentage is in the child's best interest.[191] Another parent of the child must also support the relationship between the de facto parent and the child.[192]

In cases where the bonded relationship between a nonparent and a child coincides with abuse, neglect, abandonment or other misconduct by another parent, the facts about the offending parent could be relevant to the adjudication of de facto parentage. For example, if a child is abandoned by a legal parent and then raised by a nonparent or stepparent, the court's assessment of the child's best interests would likely take the abandonment by the legal parent into account. Such cases may also provide an opportunity to issue SIJ findings.

## 4.3 Uniform Guardianship Act Proceedings – Minor Guardianship

An action for minor guardianship under RCW 11.130 is a probate proceeding in which a court may confer on a nonparent legal custody of a child and the powers a parent would have regarding support, care, education, health, safety, and welfare.[193] In order for the court to appoint a guardian, it must find that the guardianship is in the child's best interests and that at least one of three criteria are met: (1) the parent(s) consent; (2) all parental rights have been terminated; or (3) no parent is "willing or able to exercise parenting functions as defined in RCW 26.09.004."[194] Facts that support findings under the legal standard for a minor guardianship are often consistent with those necessary to obtain SIJ findings. When the court orders a custodial placement with a guardian that is in the child's best interests, it may also find that parental misconduct such as abuse, neglect, or abandonment, has occurred.[195]

As in the dependency context, minor guardianship law may also provide an option to issue SIJ findings for immigrant children whose parents are both deceased. While federal law enumerates findings of abuse, neglect, or abandonment for SIJS, it also allows for "a similar basis under state law" to establish eligibility. A judicial officer has the authority to determine whether an appointment of a guardian for a child of deceased parents with findings that no parent is willing or able to exercise parenting functions constitutes a "similar basis under state law" for the purpose of SIJ findings[196]

A guardianship can also be obtained through proceedings relating to a dependent child under RCW 13.34, or RCW 13.36. A guardianship under RCW 13.34 or 13.36 may grant the guardian physical custody of the child and other rights and duties to provide for the care of the child.[197] For purposes of obtaining SIJ findings, a guardianship that grants physical custody of a child to the guardian under RCW 13.34 or 13.36 would be an appropriate proceeding to enter SIJ findings.

## 4.4 Civil Protection Orders

SIJ findings may also be sought in proceedings related to civil protection orders where the perpetrator of harm or potential harm is a parent who poses a danger to a minor. Washington law provides for five

[191] RCW 26.26A.440(4).
[192] RCW 26.26A.440(4)(f).
[193] *See* RCW 11.130.235.
[194] RCW 11.130.185.
[195] RCW 11.130.215(4).
[196] USCIS Pol'y Manual, Vol. 6, Pt. J, Ch 3.A.1, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3. *See* 8 C.F.R. § 204.11(d)(4).
[197] RCW 13.34.232; RCW 13.36.050.

types of civil protection orders through which a minor may be protected from harm. These include domestic violence protection orders, sexual assault protection orders, stalking protection orders, extreme risk protection orders, and anti-harassment protection orders.[198] A parent, legal guardian, or custodian may seek one of these orders for the protection of a minor,[199] or they may seek to restrain the respondent from having contact with other minors who are members of the petitioner's household.[200] Minors between 15 and 18 years old may petition for their own protection orders.[201] In issuing a protection order involving parents with children in common, the court may make residential provisions for the minors and restrain the respondent's contact with them for the duration of the order.[202]

A protection order protecting a child by making a residential placement and restraining a parent from contact may meet the federal requirements for SIJ classification. If the findings under RCW 7.105.225(1) establish a threat or danger to a child by a parent, then the criterion that "reunification with one or both parents is not viable due to abuse . . . or a similar basis under state law" may be met. Under RCW 7.105.310, the court may order residential provisions for minor children. In doing so, the court must consider any limitations under RCW 26.09.191 and the child's best interest as in domestic relations cases. It follows that the court may make findings that it is in the child's best interests to remain with the protective parent and not return to their country of origin. A court has the authority to issue SIJ findings when granting a protection order if the same findings have already been made under RCW 7.105.225 and 7.105.310.

It is noteworthy that under *Rodriguez v. Zavala*, a protection order case, the Washington Supreme Court (*en banc*) held that even when children do not experience direct physical abuse, violence between parents counts as domestic violence to the children due to its traumatizing effects.[203] Thus in issuing a domestic violence protection order that includes minor children, the court may make SIJ findings of domestic violence without establishing direct violence against the children themselves.

## 4.5 Service of Process on Parents in a Foreign Country

In many cases involving SIJ-eligible youth, one or both parents may reside in a foreign country. Where parents are entitled to service of process, service must comply with state law and any applicable international treaties. In many cases, logistical barriers present additional challenges to receiving services, such as when a parent lives in a rural or remote area, has no address to receive mail, or even limited or no phone service. Additionally, language and literacy barriers are a consideration, including when parents speak only indigenous languages or do not read or write in any language. Service challenges also arise in cases where parents have abandoned the child, or the parent's identity or location is unknown.

As a result of these challenges, service on parents may entail a motion to the court to serve through alternative means (such as by email or end-to-end encrypted applications like WhatsApp) or to publish notice and summons. When parents are represented, petitioners and parents' counsel should be encouraged to work together to ensure that parents have actual notice and that they have been properly served.

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[198] RCW 7.105.100(1)(a, b, c, e, f).
[199] *Id*.
[200] RCW 7.105.310(1)(b).
[201] RCW 7.105.100(3).
[202] RCW 7.105.310(1)(f).
[203] *Rodriguez v. Zavala*, 188 Wn.2d 586, 596, 398 P.3d 1071 (2017). Note that this case involved the former protection order statute, 26.50 RCW, which has been superseded by 7.105 RCW. However, the principle that children are victims of domestic violence due to the traumatic effects of violence to a parent, remains undisturbed.

The following section provides a general introduction to the unique requirements for serving parents who are abroad; it is not meant to offer an exhaustive discussion of all circumstances and applicable rules or laws that may be implicated by international service in SIJ cases.

### 4.5.1 Civil Rule 4(i)–Alternative Provisions for Service in a Foreign Country

In Washington state, unless other statutes or rules govern service of process in a particular type of proceeding, Civil Rule 4 addresses service of process in a foreign country. CR 4(e)(1) provides:

> *Generally*. Whenever a statute or an order of court thereunder provides for service of a summons, or of an order in lieu of summons upon a party not an inhabitant of or not found within the state, service may be made under the circumstances and in the manner prescribed by the statute or order, or if there is no provision prescribing the manner of service, in a manner prescribed by this rule.

CR 4(i) identifies various alternative provisions for service in a foreign country, including, but not limited to, in a manner prescribed by the law of the foreign country in any of its courts of general jurisdiction,[204] upon an individual by personal service,[205] or by any form of mail requiring a signed receipt.[206] The method of service must comply with CR 4(i)(G), which allows the court to authorize services by any another means reasonably calculated to give actual notice. This can be an important option to facilitate service, for example, for parents that are unable to receive physical mail due to their remote location, but who can receive documents via WhatsApp or other applications.

The United States is a signatory to two multilateral treaties on service of process: the Hague Service Convention and the Inter-American Convention on Letters Rogatory and Additional Protocol (IACAP). Where the parent is located in a country that is also signatory to a treaty, the treaty applies. When a treaty does not apply, service is governed by specific provisions of the governing proceedings and CR 4.[207] In cases where a parent agrees to accept service or joins in the requested petition, the service pursuant to the treaties should not be required.[208]

### 4.5.2 The Hague Service Convention

The "Hague Service Convention" governs service of process on persons in a foreign country if that country is a party to the Convention.[209] As of this writing, approximately 82 nations are signatories to the Hague Service Convention, including the U.S., Mexico, and Venezuela.[210] The treaty does not apply when the address of the party is unknown.[211]

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[204] CR 4(i)(1)(A).
[205] CR 4(i)(1)(C).
[206] CR 4(i)(1)(D).
[207] CR 4(e)(1).
[208] CR 4(g)(5)(Return of Service); *RST P'ship v. Chelan Cnty.*, 9 Wn. App. 2d 169, 177, 442 P.3d 623 ("Courts universally recognize acceptance of service as an allowable, if not preferable, method of serving process. Acceptance of service is as effective as service of process on the defendant in person."); Article 5 of the Hague Service Convention. *See also* WA Civil Rule 4(g)(5) and Civil Rule 4(i)(2).
[209] Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Service Convention"), Nov. 15, 1965, 20 U. S. T. 361, T.I.A.S. No. 6638.
[210] The full text and a list of signatory nations are available at https://www.hcch.net/en/instruments/conventions/status-table/?cid=17 (last visited Dec. 30, 2023).
[211] Article 1, The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S.163.

Where the Hague Service Convention applies, it supersedes any inconsistent state law (including Washington state court rules and statutes) on service of process by virtue of the Supremacy Clause of the U.S. Constitution.[212] The purpose of the convention is to provide actual and timely notice to parties of foreign lawsuits.[213] Under the convention, nation states designate a central authority appointed to receive service of process from foreign parties.[214] 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.[215]

Some alternative methods of serving a parent, including those authorized by the court under CR 4(i)(G), may comply with the Hague Convention.[216] The Convention lists other acceptable methods of service (i.e., other than through a central authority); however, some signatory countries have objected to other methods of service. Thus, whether an alternative method of service such as those authorized in CR(4)(i) complies with the Hague Convention depends on the signatory country, and whether it has objected to methods of service other than through a central authority, as well as governing case law. The U.S. State Department website provides helpful information, including practical information regarding the central authorities designated by signatory countries.[217]

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

IACAP is a pair of international agreements which govern service between the United States and many Central and South American countries.[218] Countries must be a party to both agreements for a treaty relationship to exist. The full text and list of signatories is available on the Organization of American States' website.[219] The U.S. Department of State, Bureau of Consular Affairs' website provides a summary of IACAP applicability and requirements.[220] The IACAP governs service of process of letters of rogatory, or letters of request in civil matters between signatory nations.[221] Like the Hague Service Convention, IACAP signatory nations designate a central authority to whom service of process should be directed. One major difference is that documents served under the authority of the IACAP may require a signature by the clerk of the court of origin and a seal of approval from the U.S. "Central Authority," which is a contractor of the U.S. Department of Justice.[222] There is also a mandatory IACAP form.[223]

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[212] *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).
[213] *See Broad*, 141 Wn.2d at 676, 10 P3d 371.
[214] *See id.* at 677-78.
[215] *See id.* at 678-79.
[216] *See Fountain*, supra note 135 at ¶¶ 8-9.
[217] *See* U.S. Department of State, Bureau of Consular Affairs, *Service of Process,* https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Service-of-Process.html#:~:text=The%20United%20States%20is%20a,Letters%20Rogatory%20and%20Additional%20Protocol.
[218] 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).
[219] Organization of American States, Multilateral Treaties, http://www.oas.org/dil/treaties_subject.htm (last visited Dec. 30, 2023) (listed under "Judicial Cooperation," "Rogatory Letters").
[220] *See* U.S. Dept St., Bureau of Consular Aff., Inter-American Service Convention and Additional Protocol (IACAP), https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Service-of-Process/Inter-American-Service-Convention-Additional-Protocol.html (last visited Dec. 30, 2023)[hereinafter U.S. State Department, IACAP website].
[221] *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). *See also Broad v. Mannesmann*, 141 Wn.2d 670, 674-75 (2000) (acknowledging *Schlunk* holding).
[222] U.S. St. Dep't, IACAP website.
[223] *Id*.

Although IACAP provides for one permissible means of service, it does not prohibit other alternate means of service that are permissible under state law.[224] State signatories are not required to use the method of service provided for in the IACAP, and the IACAP does not prohibit other methods of service deemed permissible under international and domestic law.[225] Therefore, the court is not constrained by the treaty in its ability to authorize alternative means of service under CR4(i), including service by publication.

### 4.5.4 Service by Publication

SIJ-eligible children may not know the identity or the whereabouts of one or both parents, for example in the case of parental abandonment. Some children have never known these individuals and have no access to information about them, including their names or places of residence. Others might have access to some information about a parent's identity but never knew the parent's whereabouts. Publication of notice and summons may be the only available method of service in such cases.

RCW 4.28.100 and RCW 4.28.110 lay out the general rules of civil procedure on publication of notice and summons in Washington state. These rules govern publication of notice and summons for most family law cases in which children also seek SIJ findings and conclusions. In dependency cases, publication of notice and summons is governed by RCW 13.34.080 and .070, and in adoption cases, publication is governed by RCW 26.33.310. Although the rules are mostly similar, there are a few key differences worth highlighting for cases involving SIJ-eligible children, particularly with respect to requirements about where and how long to publish. Such requirements may pose substantial barriers for children who have one or more parent living outside of the United States, especially for a child who is close to aging out.

#### *Where to Publish*

In dependency cases, service can be effected by publication in a legal newspaper printed in the county where the dependency petition was filed when: (1) a parent, guardian, or legal custodian is either a nonresident of the state or their name or residence or whereabouts is unknown,[226] (2) after due diligence, the person attempting service has been unable to effect service according to RCW 13.34.070.[227] Notably, when a petitioner believes the parent, guardian, or legal custodian resides in another state or a county outside the county where the dependency petition was filed, then the notice should also be published in the county where the petitioner believes that person resides.[228] In other words, publication in a dependency case potentially requires three actions: an attempt at mailing to the last known address and simultaneous publication both in the county of the action and in "the county in which the parent, guardian, or legal custodian is *believed* to reside."[229] When a parent's identity, whereabouts, and last known residence are unknown, then service by publication in the county of filing should be sufficient.

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[224] *See Kreimerman v. Casa Veerkamp, S.A. de C.V.,* 22 F.3d 634, 643 (5th Cir. 1994) (clarifying that"[n]othing in the language of the Convention expressly reflects an intention to supplant all alternative methods of service. Rather, the Convention appears solely to govern the delivery of letters rogatory among the signatory states").
[225] *Id*. at 643-44.
[226] RCW 13.34.080(1)(a).
[227] RCW 13.34.080(1)(b).
[228] *Id*.
[229] *See* RCW 13.34.080 (emphasis added).

SIJ-eligible children seeking a dependency may face significant barriers to publishing notice and summons when the last known address of a parent is outside the U.S. and in a part of the world where residents do not receive delivery of postal services at their addresses or postage delivery is unreliable. Other obstacles arise when there is no periodical or suitable newspaper in circulation. Further, publication in some countries is prohibitively expensive, especially for children who have no access to income or financial resources.

Like dependency law, adoption law also requires publication in a legal newspaper; however, the adoption statute is clear that publication in a foreign country is not required.[230] The statute directs that publication must occur "in the city or town of the last known address within the United States and its territories," or, if no address is known, "in the city or town of the last known whereabouts within the United States and its territories."[231] Finally, the statute explicitly states that if no address or whereabouts are known or "the last known address is not within the United States and its territories," then publication should run "in the city or town where the proceeding has been commenced."[232]

In family law cases, publication "shall be made in a newspaper of general circulation," not a legal newspaper, "in the county where the action is brought."[233] Unlike in dependency or adoption cases, Washington civil procedure rules do not require or even allow service to be effectuated by publication in the newspaper of the respondent's last known location, or the newspaper otherwise most likely to give actual notice. The only publication wherein a published summons will effectuate legally sufficient service is "a newspaper of general circulation in the county where the action is brought."[234]

Different actions also have slightly different requirements regarding the time required for publication to run and this can have a significant effect on a youth's ability to timely obtain SIJ findings. In family law cases, in general, publication must run in a newspaper of general circulation in the county where the action is brought "once a week for six consecutive weeks."[235] In addition, the summons must require the defendant "to appear and answer the complaint within sixty days from the date of the first publication of the summons."[236] Thus, a party seeking a parenting plan will have to wait at least 60 days from the time of the first publication of notice and summons before SIJ findings and conclusions can be obtained as to an abandoning parent whose whereabouts are unknown.

Adoption and dependency publication timelines are shorter. In adoption cases, notice must be given "(a) [b]y first-class and registered mail, mailed at least thirty days before the hearing to the person's last known address; and (b) by publication at least once a week for three consecutive weeks with the first publication date at least thirty days before the hearing."[237] Similarly, in dependency cases, summons must be published, "once a week for three consecutive weeks, with the first publication of the notice to be at least twenty-five days prior to the date fixed for the hearing."[238] Both dependency and adoption cases require approximately a month for run of publication. Depending on the jurisdiction, publication offices may also require additional time for processing.

For children who are nearing the age of 18, these publication requirements can be particularly burdensome. As a practical matter, SIJ-eligible youth who are close to aging out may choose to forego seeking a parenting plan with their safe parent, for example, and wait to establish their SIJ eligibility

[230] RCW 26.33.310(3).
[231] *Id.*
[232] *Id.*
[233] RCW 4.28.110.
[234] RCW 4.28.110.
[235] *Id*.
[236] *Id*.
[237] RCW 26.33.310.
[238] RCW 13.34.080.

through a VYG proceeding. A youth who is soon aging out of eligibility for a dependency may benefit from seeking findings as to each parent on different timelines when they have one parent who has been found in default or who is in agreement with the dependency, and another parent who requires a run of publication of notice and summons. As explained above, for purposes of SIJ-eligibility, findings and conclusions are needed only as to one parent; therefore, in dependency cases, those findings and conclusions can be sought as to the agreeing or defaulting parent while publication is running for the unknown or abandoning parent.

### 4.6 Uniform Child Custody and Jurisdiction Enforcement Act and SIJ

Washington courts may encounter SIJ-eligible children who have been subject to child protection or custody proceedings in a foreign country, which may implicate the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), codified in Washington state law at Chapter 26.27 RCW. Under the statute, state courts treat a foreign country as if it were a state of the U.S.[239] Subject to a few exceptions, a child custody determination made in a foreign country "under factual circumstances in substantial conformity with the jurisdictional standards of this chapter" must be recognized and enforced by Washington courts.[240] Exceptions include where the child custody laws violate fundamental human rights principles. [241]

Section 26.27.201 and 26.27.221 of the Washington UCCJEA govern a court's initial jurisdiction over a child who is the subject of a foreign order, and the jurisdiction to modify an existing order. Courts do not have jurisdiction to modify a foreign order unless they have initial jurisdiction under the statute, which may include where the foreign court has declined jurisdiction on the ground that this state is the most appropriate forum.[242]

In some cases, a foreign custody order that addresses parental custody and/or parental maltreatment may include some legal determinations relevant to the child's SIJ eligibility but lack others, for example, the finding that it is in the child's best interest to remain in the U.S. Parties may therefore seek a Washington court to adopt and/or modify the order under provisions of the UCCJEA for the purposes of making supplemental findings to establish SIJ eligibility.

## Concluding Thoughts

Washington courts have an important role in making care and custody determinations for children in a wide range of civil proceedings. The federal immigration system relies on the expertise of state courts in making these determinations and entering the required eligibility findings for SIJ classification. This unique interplay between state courts and the federal immigration system is critical to ensuring that eligible vulnerable youth and children can seek humanitarian protection through SIJ.

When Washington courts encounter foreign-born children in proceedings, a youth's attorney should be encouraged to screen the children for eligibility for SIJ. If it is determined that a child is prima facie eligible for SIJ findings, the child should be referred to an immigration attorney for a full immigration assessment, as well as to assess whether petitioning USCIS for SIJ would be appropriate in the child's particular case and given the child's goals and interests. Likewise, if a child does not have an assigned attorney and DCYF is involved in the child's case, the court can also encourage DCYF to refer the child to a legal services provider to screen for SIJ eligibility. Without this concerted effort to help identify SIJ

[239] RCW 26.27.051(1).
[240] RCW 26.27.051(2).
[241] RCW 26.27.051(3),(4).
[242] RCW 26.27.051(1)(c).

eligibility, a child may forever lose SIJ as a possible pathway to safety and stability. Given the many benefits of SIJ for vulnerable youth, including the possibility of employment authorization and LPR status, as well as the stabilizing relief from abuse, neglect, abandonment, or similar mistreatment, obtaining SIJ can be life-changing for children and in turn has immeasurable impacts on their communities.

## Appendix—A
## Overview of Special Immigrant Juvenile Classification for Washington State Courts - "SIJ Bench Card

# Overview of Special Immigrant Juvenile (SIJ) Classification for Washington State Courts

Congress designed Special Immigrant Juvenile (SIJ) visa classification to protect certain vulnerable youth who cannot reunify with one or both parents because of abuse, abandonment, neglect, or similar maltreatment. This federal humanitarian protection enables SIJ-classified youth to apply for Lawful Permanent Residence (LPR) in the United States, a critical step toward securing their safety, permanency, long-term stability, and well-being. To be eligible, a youth must have been under the jurisdiction of a qualifying state court and been the subject of several required state court findings. The SIJ petition and application for LPR status are then adjudicated separately by immigration authorities.

## SIJ Eligibility Requirements & Role of State Court

In creating SIJ, Congress intentionally deferred to state courts to make certain findings, including those relating to the youth's custody or care, parental relationship, and best interests. For purposes of entering SIJ findings, federal law defines a "Juvenile Court" as any state court that has authority under state law to make determinations about a child's dependency and/or custody and care.
See 8 C.F.R. § 204.11(a)

**To file a petition for SIJ with immigration authorities, a youth must be:**

- **Physically present in the U.S., under 21, and unmarried;**
- **The subject of a juvenile court order with the following findings:**
  - **The youth has been either declared dependent, OR legally committed to or placed under the custody of an agency, department of a State, or individual or entity;**
  - **Reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and**
  - **It is not in the youth's best interest to be returned to the youth's or parent's country of nationality or country of last habitual residence.**

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

## SIJ Process

### STEP 1: Obtain State Court Order

Examples of proceedings in which SIJ findings may be entered in Washington:

- **Dependency or Dependency Guardianship** (13.34 RCW; 13.36 RCW)
- **Vulnerable Youth Guardianship (VYG)** (13.90 RCW)
- **Becca matters, including:**
  - **At Risk Youth (ARY)** (RCW 13.32A.191-270)
  - **Child in Need of Services (CHINS)** (RCW 13.32A.140-190)
  - **Truancy** (28A.225 RCW)
- **Offender matters** (RCW 28A.225.030-090)
- **Adoption** (26.33 RCW)
- **Dissolution, Legal Separation, & Parenting Plans** (26.09 RCW)
- **Paternity/Parentage determinations** (26.26A RCW, 26.26B RCW)
- **De Facto Parentage** (RCW 26.26A.440)
- **Minor Guardianship** (RCW 11.130.185-260)
- **Civil Protection Orders** (RCW 7.105.210(1)(b),(f))

### STEP 2: Petition for SIJ

A youth files a petition for SIJ classification with U.S. Citizenship and Immigration Services (USCIS), together with evidence of age, identity, and a copy of the state court order reflecting the required findings.

### STEP 3: Apply for LPR status

A youth files an application for Lawful Permanent Residence with USCIS or the Immigration Court.

**Many SIJ recipients must wait for several years before they can apply for LPR status. The U.S. government places a yearly limit on how many individuals may be granted LPR status, based on country and category. SIJ-classification is grouped with employment categories, where the demand for LPR status exceeds the limit. This predicament causes what is known as the "visa backlog" and long delays.

# Quick Reference On Required SIJ Findings
# Washington Court Pattern Form JU 11.0500

## #1 Under 21 and Unmarried

- Youth is both under 21 and unmarried
- Eligibility is not limited to youth under 18 where state law provides for jurisdiction to enter required findings for youth ages 18-21
- Must be unmarried at the time of filing the SIJ petition through approval of SIJ

*Examples in WA (SIJ findings for 18+ youth):*

- Dependent youth 18+ in EFC, RCW 13.34.267
- Youth 18+ who are subject to Vulnerable Youth Guardianship, 13.90 RCW
- Youth 18+ under extended jurisdiction via diversion agreement, RCW 13.40.080(5)(a)

## #2 Custody or Dependency

- One of the following is required: (1) a dependency determination; (2) custody or placement with an individual or entity; OR (3) legal commitment to a state agency or department
- Custody may encompass legal OR physical custody
- Custody or placement may be with a parent (where SIJ-required findings are made as to the other parent)
- Cite to the state law or authority governing the determination
- Name the individual, entity, or state agency with whom custody or placement is ordered

*Examples in WA:*

- Dependency findings, 13.34 RCW
- Appointment of a Vulnerable Youth Guardian, 13.90 RCW
- Custodial placement with an individual in adoption, dissolution, parenting plan, civil protection order, or Becca proceedings, etc.
- Custodial placement with a state agency (e.g., DCYF Child Welfare or Juv. Rehabilitation) in dependency or juvenile offender proceedings.
- Establishment of minor guardianship, 11.130 RCW

## #3 Abuse, Abandonment, Neglect, or Similar Basis Under State Law

- Abuse, abandonment, or neglect as defined in State law
- Finding needed only as to one parent
- If "similar basis," court should make explicit determination that basis is legally similar to abuse, neglect, or abandonment, under WA law
- Court order should include summary of factual basis for the finding
- State court order should include a summary of the factual basis for the finding

*Examples in WA ("similar basis"):*

- A dependency finding under RCW 13.34.030(6)(c)
- Restrictions on the parental relationship in minor guardianship or family law proceedings, RCW 26.09.191 or 11.130.215(4)
- No parent is willing or able to exercise parenting functions in minor guardianship proceedings, RCW 13.34.030(6)(c)
- The youth risks physical or psychological harm if returned home in vulnerable youth guardianship proceedings, RCW 13.90.901(2) and RCW 13.90.010(6)

## #4 Non-viability of Reunification with One or Both Parent(s)

- Termination of parental rights not required
- Finding only needed as to one parent
- Court order should include summary of factual basis
- Non-viability of reunification must be connected to the abandonment, abuse, neglect, or similar basis

*Examples in WA:*

- A court orders a child into protective custody and placement, RCW 13.34.050, .060, or .130
- A court restricts access to or placement with a parent in minor guardianship or family law proceedings, RCW 26.09.191 or RCW 11.130.215(4)

## #5 Not in Child's Best Interest to Return to Country of Nationality

- No federal statutory definition
- Requires individualized assessment
- State courts should analyze best interests using the factors they typically consider when making these determinations
- The state court order should include a summary of the factual basis for the determination

- See, e.g., best interests as contemplated under WA law:
- Family law proceedings, RCW 26.09.002; Minor Guardianships, RCW 11.130.185, .190; and Dependency proceedings, RCW 13.34.020
- *In re Dependency of J.B.S.*, 123 Wn. 2d 1, 9 (1993); *Matter of Custody of A.N.D.M.*, 26 Wn. App. 2d 360, 376 (2023)
- Etc.

## Appendix—B
## Case Examples for Possible SIJ Findings

**Minor Guardianship: Micah** is sixteen years old and living with his grandmother in Washington state. Micah migrated to the U.S. from El Salvador at age 13 after running away from his home due to family violence. In El Salvador, his parents and neighbors physically beat and taunted him from a young age because he was perceived as gay. His parents also withheld food, sometimes for days, as punishment. Micah's grandmother is asking the court for legal custody of Micah through a minor guardianship action. Micah appears SIJ-eligible based on abuse by both parents.

**Dependency: Sara** was born in Mexico and has never met her father. When Sara was growing up, her mother lived and worked in a different city, and Sara lived with her aunts. Sara's aunts didn't provide her with sufficient food or other basic needs. Sara was also molested by an older cousin in their care. Sara has an adult sister who now lives in Florida. At age 15, Sara decided to attempt to reunite with her older sister in the U.S. Upon crossing the border, she was picked up by Customs and Border Patrol, determined to be an unaccompanied child, and transferred to the custody of the Office of Refugee Resettlement (ORR). Sara's sister was unwilling to be her "sponsor" for release by ORR because she has three of her own children. ORR placed Sara in long-term foster care program in Washington state. With the assistance of a pro bono attorney, Sara self-petitioned for dependency. She appears SIJ-eligible due to abandonment by her father and because she has no parent, guardian, or custodian capable of caring for her. Sara may also be SIJ-eligible due to neglect by her mother.

**Parenting Plan: Abdul** was born in Nigeria. His mother moved to the U.S. when Abdul was still a child, leaving him with his abusive father. Abdul's mother would work and send money to Abdul and his father. Abdul's father remarried and he and his new wife continued to physically abuse Abdul. He ran away to the U.S. at the age of twelve in the bilge of a cargo ship. Abdul is now reunited with his mother in Washington, who is seeking a parenting plan to protect Abdul from any further harm. Abdul is also eligible for SIJ classification based on the abuse he experienced by his father.

**Vulnerable Youth Guardianship or Offender Proceedings: Marcos** will be 18 in a few weeks and was born in Venezuela. At age five, Marcos traveled to the U.S. with his father with a visitors' visa. They have lived in the U.S. ever since, having overstayed their visas. Marcos's mother still lives in Venezuela, but Marcos does not have a relationship with her. Marcos's father is incarcerated in the U.S. and is serving a 10-year sentence. Marcos lives with his uncle, with whom he has a close relationship. Marcos has an open juvenile offender matter due to pending theft charges. Marcos's uncle has been making sure Marcos goes to his court hearings and supporting Marcos as he works toward his goal of finishing high school. Marcos appears SIJ-eligible because he has no parent able or willing to provide care and due to possible abandonment by his mother. Marcos could seek SIJ findings through his juvenile court case or, once he turns 18, seek to have his uncle appointed his guardian through a vulnerable youth guardianship proceeding.

# Appendix—C
# Helpful Background Reading and Training Resources

ABA Working Group on Unaccompanied Minor Immigrants, Webinar: Primer on State Court Judge's Role in SIJ Classification, and Presenters Answer Your Questions on SIJ (2015), https://www.americanbar.org/groups/public_interest/child_law/project-areas/immigration/sijs-training/.

ABA Children's Immigration Law Acad. (CILA), https://cilacademy.org/ (see extensive CILA trainings and resources).

ABA CILA, For State Court Judges, https://cilacademy.org/resources/for-state-court-judges/.

Cristina Ritchie Cooper, *A Guide for State Court Judges and Lawyers on Special Immigrant Juvenile Status*, ABA Online Resources (March 1, 2017), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/mar-apr-2017/a-guide-for-state-court-judges-and-lawyers-on-special-immigrant-/

Immigrant Legal Resource Ctr. (ILRC), https://www.ilrc.org/immigrant-youth (see extensive trainings and resources).

Office of Refugee Resettlement, Admin. of Child. & Fams., U.S. Dep't of Health & Human Servs., ORR Unaccompanied Children Program Pol'y Guide, (current as of January 3, 2024), https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide.

Office of Refugee Resettlement, Admin. of Child. & Fams., U.S. Dep't of Health & Human Servs., Specific Consent Requests, https://www.acf.hhs.gov/sites/default/files/documents/orr/special_immigrant_juvenile_status_specific_consent_program.pdf.

Office of Refugee Resettlement, Admin. of Child. & Fams., U.S. Dep't of Health & Human Servs., Office of Refugee Resettlement Program (current as of March 17, 2023), https://www.acf.hhs.gov/orr/programs/refugees/urm.

Office of Refugee Resettlement, Admin. of Child. & Fams., U.S. Dep't of Health & Human Servs., Unaccompanied Refugee Minors Program Field Guidance (current as of December 27, 2023), https://www.acf.hhs.gov/orr/policy-guidance/uc-program-field-guidance.

U.S. Citizenship & Immigration Servs. (USCIS), Special Immigrant Juveniles (SIJ) Status, https://www.uscis.gov/working-in-US/eb4/SIJ/.

USCIS Pol'y Manual, Vol. 6, Pt. J, Special Immigrant Juveniles, https://www.uscis.gov/policy-manual/volume-6-part-j.

U.S. Dep't of Sate, Bureau of Consular Affairs, Inter-American Convention on Letters Rogatory and Additional Protocol (IACAP), https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Service-of-Process/Inter-American-Service-Convention-Additional-Protocol.html.

Washington Defender Assoc., Immigration Resources: Practice Advisories and other Resources, https://defensenet.org/resource-category/immigration-resources.

Washington State Department of Children Youth & Families (DCYF), Policies and Procedures, 43105. Extended Foster Care (EFC) Program (Revised date, July 1, 2019), https://www.dcyf.wa.gov/4310-transitioning-youth-successful-adulthood/43105-extended-foster-care-efc-program.

Washington State Supreme Court Gender and Justice Comm'n and Minority and Justice Comm'n, *Immigration Resource Guide for Judges* (Jul. 2013), https://www.courts.wa.gov/content/manuals/Immigration/ImmigrationResourceGuide.pdf (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).

The Cntr. on Immigration and Child Welfare, https://cimmcw.org/

## Appendix—D
## Key Legal Services Providers for Immigrant Children in Washington

*Legal Services Programs and Organizations*

**International Rescue Committee (IRC) Washington, Children's Legal Services Program.** IRC provides legal representation to unaccompanied children. 1200 South 192nd Street, Suite 101, SeaTac, WA 98148 | (206) 623-2105 |https://www.rescue.org/united-states/seattle-wa

**Kids in Need of Defense (KIND).** KIND is the leading U.S.-based nongovernmental organization devoted to the protection of unaccompanied and separated children. KIND has field offices across the U.S., including in Seattle, and several remote and international locations. *See* https://supportkind.org/. KIND's Seattle field office serves both detained and released children. 1215 Fourth Avenue, Suite 1925, Seattle, WA 98161 | (206) 338-3227 | infoseattle@supportkind.org

**Legal Counsel for Youth and Children (LCYC).** LCYC provides legal services to and protects the right of youth in multiple counties across Washington. For information*:* https://lcycwa.org/ | For help: https://lcycwa.org/needhelp

**Northwest Immigrant Rights Project (NWIRP).** NWIRP provides direct legal services, systemic advocacy, and community education. Offices in Seattle, Tacoma, Wenatchee, and Granger. 615 2nd Ave #400, Seattle, WA 98104 | (206) 587-4009 Seattle | (253) 8156-3893 Tacoma | (509) 854-2100 Granger | (509) 570-0054 Wenatchee | https://www.nwirp.org/

*Other Key Organizations Serving Immigrants in Washington*

**Asian Counseling & Referral Service (ACRS).** ACRS provides both immigration and children's services. (206) 695-7600 | info@acrs.org | https://acrs.org/

**Colectiva Legal del Pueblo.** Colectiva provides a wide variety of direct legal services to fight deportations and keep families together. 13838 1st Ave S, Burien, WA 98168 | (206) 931-1514 | info@colectivalegal.org

**Entre Hermanos.** Entre Hermanos offers free immigration clinics to the LGBTQ community. 1621 S Jackson St. Ste. 202, Seattle, WA 98144 | (206) 532-0266 | https://entrehermanos.org/

**King County Bar Association's (KCBA) Pro Bono Programs.** KCBA provides legal services to low-income residents in King County through staff and volunteer attorneys. http://www.kcba.org/For-the-Public/Free-Legal-Assistance

**King County Bar Association Neighborhood Legal Clinics: IMMIGRATION CLINIC.** Wednesdays, 5:30–7:30 PM, Senior Services 2208 2nd Ave, Seattle, WA 98121 | For an appointment, call (206) 587-4009, press 9 for the receptionist.

**Northwest Justice Project - CLEAR Intake Line.** CLEAR is an intake line for civil legal aid run by NJP in Washington State. CLEAR provides limited legal assistance for eligible clients with certain legal problems and makes referrals to the Northwest Justice Project's local offices and to other providers of civil legal aid for more extended assistance. (888) 201-1014 (King County - Call 2-1-1) | https://nwjustice.org/clear-hotline

**Refugee Women's Alliance (REWA)**. REWA provides refugees and immigrants in the Puget Sound area with services to help them become independent, including limited legal services. 4008 Martin Luther King Jr. Way S, Seattle, WA 98108 | (206) 721-0243 | https://www.rewa.org/services/

***National Qualified Representative Programs in Washington (NQRPs)***[243]

**Higuera & VanDerHoef, PLLC**. A private law firm that also serves as a National Qualified Representative Provider (NQRP). Can represent certain immigrant youth and children on the basis that they cannot otherwise represent themselves. 705 2nd Ave #610, Seattle, WA 98104 | (206) 607-6175 | https://www.higueravanderhoef.com/

**Stratton Immigration**. A private law firm that serves as a National Qualified Representative Provider (NQRP). https://www.strattonimmigration.com/

[243] *See* https://www.vera.org/projects/national-qualified-representative-program.