

# **Advanced Training on Special Immigrant Juvenile Status**

**Presented to the  
*National Benefits Center*  
December 2018**

# OUTLINE

- History of Special Immigrant Juvenile Classification (SIJ)
- Overview of Child Welfare Law and Proceedings
- Definition of SIJ: Breaking Down the Elements
  - Juvenile Court and Jurisdiction
  - Dependency or Custody
  - Reunification
  - Abuse, Abandonment, Neglect, and Similar Basis
  - Best Interests
  - Consent

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## **OUTLINE, CONT.**

- Validity and Types of Orders
- Adjudicative Actions
- Common Case Examples
- Exercise: Reading and Understanding the Orders

# **History and Purpose of Special Immigrant Juvenile (SIJ) Classification**

## HISTORY OF SIJ

- SIJ program established in 1990 for children declared dependent upon a juvenile court in the United States and deemed eligible for long-term foster care
- Designed to provide an immigration benefit to children who required court intervention to protect from parental abuse, abandonment and neglect.



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## 2008 TVPRA

- The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) expanded SIJ to include children placed in the custody of court-appointed custodians
- This change reflects a trend in federal and state law away from long-term foster care as a permanent placement in favor of other more permanent living arrangements
- However, the program remains a benefit for children in the U.S. that need the protection of a juvenile court-ordered placement in accordance with state child welfare law
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## **WHO SEEKS SIJ CLASSIFICATION?**

May include:

- Live with a court appointed custodian (may include a parent)
- Adopted Children
  - Adoption by new parents does not prevent eligibility based on inability to reunify with a biological or prior legal parent
  - If child came to the US for the purpose of adoption, case may require additional review
- In state foster care
- Unaccompanied Alien Children

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## **UNACCOMPANIED ALIEN CHILD (UAC)**

Child under the age of 18 who has no lawful immigration status in the U.S. and for whom there is no parent or legal guardian in the U.S. available to provide care and physical custody.

6 USC 279(g)(2)

Some SIJs may be UACs, but not all UACs are eligible for SIJ classification. may be UACs but not all UACs are eligible.

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# UACs AND THE ORR PROCESS



## U.S. Customs and Border Protection

Child apprehended & screened

- Evaluated for age & other criteria
- Held for no more than 72 hours



## U.S. Immigration and Customs Enforcement

Notice to Appear (NTA) issued

- Designation as UAC
- Filed with EOIR to initiate removal proceedings



Administration for Children & Families  
Office of Refugee Resettlement

Transferred to ORR facility

- Required to place the child in the least restrictive setting



Removal proceedings conducted

- Venue transfer if necessary
- USCIS adjudicates any asylum application

## 8 USC 1232

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# UNACCOMPANIED REFUGEE MINOR (URM) PROGRAM

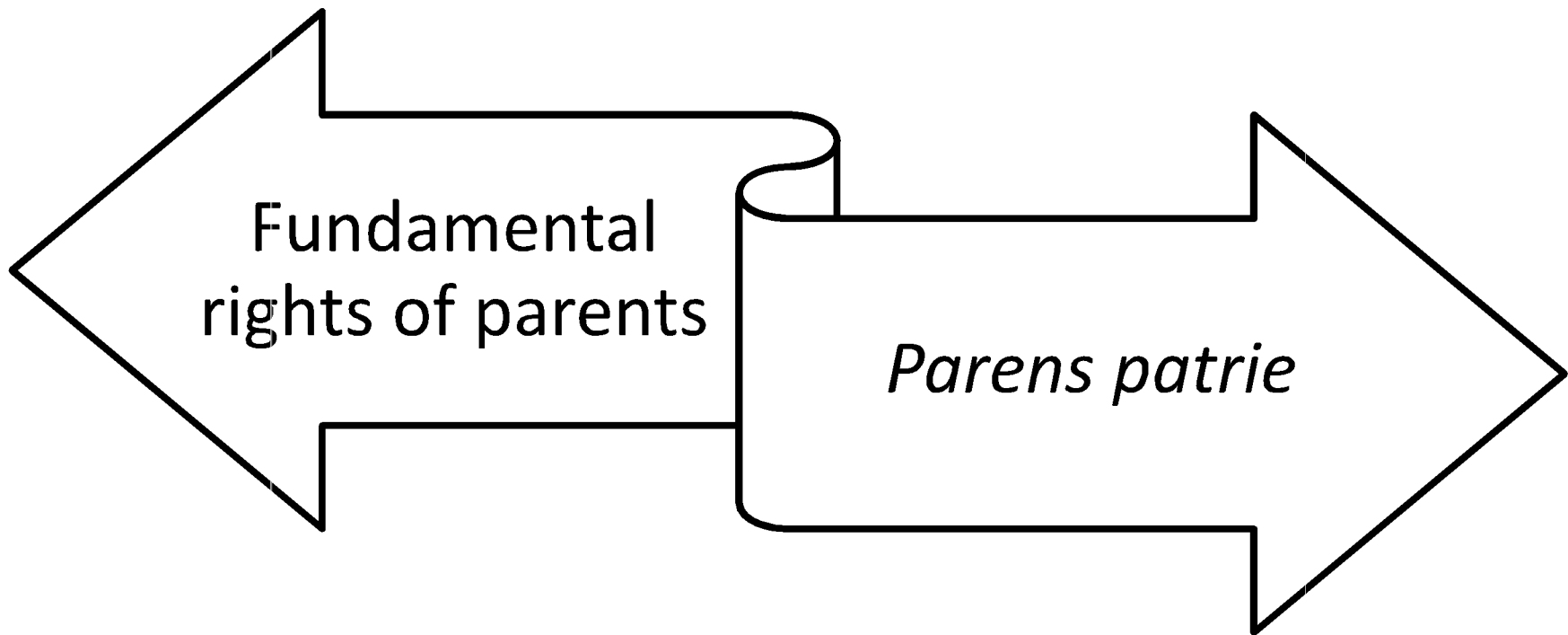
- Initially developed in the 1980s to assist refugee minors in the US without a parent or guardian to care for them in the aftermath of the Vietnam War
- Children are provided care and comprehensive services tailored to their needs as refugees up to the age of 21
- To be eligible, must be under 18, unaccompanied, and designated as a:
  - Refugee
  - Cuban or Haitian Entrant
  - Asylee
  - Victim of Trafficking
  - Special Immigrant Juvenile
  - U visa holder



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# **Basic Principles of Child Welfare Law and Proceedings**

## TENETS OF CHILD WELFARE LAW



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# CHILD WELFARE PROCESS

- Allegations of abuse or neglect made to Child Protective Services (CPS)
- If substantiated, CPS may initiate court action or many states allow private petitions, meaning the child or caregiver may file a petition directly with the court.
- Court will hold adjudicatory or fact-finding hearing
- If intervention warranted, court will hold dispositional hearing on placement
- Permanency planning - hearings and meetings held on a regular basis until a permanent placement is determined

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## PERMANENCY PLANNING

- Every child in foster care must have a permanency plan
- Under the *Adoption and Safe Families Act*, reasonable efforts to preserve and reunify families are required
- It is often during the course of the permanency planning that addressing the child's immigration status may become part of the services the court requires for the child.

## **PERMANENCY PLANNING, CONT.**

- What is foster care?
  - Temporary service provided by states for children who cannot live with their families because of abuse, neglect or abandonment
- Trend away from long-term foster care as a permanency option
  - The 2008 TVPRA amending the eligibility criteria for SIJ reflects this shift
- Potential permanency options include:
  - Reunification with the child's parent(s)
  - Legal guardianship with relative or caregiver
  - Termination of parental rights/adoption
  - Other alternative planned permanent living arrangement

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## **Definition of SIJ: Breaking Down the Elements**



## ELIGIBILITY REVIEW

- Under 21 at time of filing only (we must have received the petition prior to the date of the 21<sup>st</sup> birthday)
- Unmarried
- Present in the U.S.
- Have a juvenile court order in effect that makes certain legal rulings
- USCIS must consent to the approval, meaning that the request for SIJ is *bona fide* and the court order was not obtained primarily for immigration purposes.

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## STANDARD OF PROOF

- Definition: The level of certainty and the amount of evidence necessary to establish a given fact in a criminal or civil proceeding
- The standard of proof for SIJ petitions is **preponderance of the evidence:**
  - Is it *more likely than not* (50.1%) that the applicant is eligible for the benefit

## **BURDEN OF PROOF**

- Burden of proof refers to the duty on a party in a case to submit sufficient evidence on an issue in order to avoid dismissal of the claim.
- The SIJ self-petitioner has the burden of proof to show he/she is eligible for SIJ classification

## REQUIRED RULINGS: REVIEW

The SIJ order must be issued by a **juvenile court with jurisdiction** to issue the following legal rulings under state law:

- **Dependency/Custody:** The child is either dependent on the court or placed under the custody of an individual or entity;
  - If the SIJ Order changes custody from ORR to other custody, HHS must consent.
- **Reunification:** The child cannot be returned to the custody of one or both parents because of abuse, abandonment or neglect, or similar basis under state law; and
- **Best Interests:** It is not in the best interests of the child to be returned to a placement in their or their parent(s)' country of nationality or last habitual residence.

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# **Juvenile Court and Jurisdiction**

# STATE COURTS VS. FEDERAL COURTS

- One of the key differences between state and federal courts is the court's jurisdiction
  - **Jurisdiction** refers to the kinds of decisions a court is authorized to make/the kinds of cases it may hear
- **State and local courts** are established by a state (or by cities, counties and municipalities) and generally have jurisdiction to hear cases involving state law, such as child welfare or family law
- **Federal courts** are established under the Constitution and generally have jurisdiction to hear matters involving the Constitution, federal law, or where the United States is a party

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## JUVENILE COURTS

- U.S. court with jurisdiction to issue rulings about the care and custody of juveniles under state law.
- SIJ findings may be issued in multiple orders.
- Not limited to courts named “juvenile” courts. Common courts include: Juvenile, Family, Dependency, Orphans, Guardianship, Probate, Delinquency

*See 8 CFR 204.11(a); 6 USCIS Policy Manual J.2(D)(4), J.3(A)(1).*

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## WHO IS A JUVENILE?

- An individual must be considered a juvenile **under state law** in order to be under the jurisdiction of a juvenile court
- If a child is over the age of majority (typically 18), a court cannot act as a juvenile court with regard to that individual unless there is a provision of state law that specifically provides for it
- Some states have provisions which permit the court to grant guardianship to a person up to the age of 21 provided the individual gives their consent
- Despite these provisions, a state court may not have jurisdiction as a juvenile court for an individual child over the age of majority because it does not generally have the authority to make care and custody determinations for an adult

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## **CONTINUING JURISDICTION- OVER AGE OF MAJORITY**

- A number of states allow for continuing jurisdiction over a person who is over the age of majority (18 in most states)
- State court may be acting as a juvenile court in this context
- Examples of continuing jurisdiction:
  - Continuation of child welfare/foster care services
  - Guardianship
  - Juvenile delinquency
- In many states, the services/jurisdiction of the court must have been initiated prior to the child reaching the age of majority to continue past the age of majority

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## **Dependency or Custody**

## DEPENDENCY OR CUSTODY

The SIJ order must either contain a legal ruling that the Petitioner is **dependent** on the juvenile court or placing the Petitioner in the **custody** of an individual or entity.

INA 101(a)(27)(J)(i); 8 CFR § 204.11(a), (c)(3), (d)(2)(ii); 6 USCIS Policy Manual J.2(D)(1).

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# DEPENDENCY

- A ruling of dependency requires that the petitioner be declared dependent upon a juvenile court in accordance with *state laws* governing such declarations of dependency.
- Example of state law governing dependency: **California Welfare and Institutions Code Sec. 300**
  - Designates the conditions under which a child may be declared dependent on the court, including abuse, neglect, abandonment, or other scenario in which the parent fails to or is unable to protect the child

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## DEPENDENCY, CONT.

- Recent 5<sup>th</sup> Circuit decision, *Budhathoki v. Nielsen*:
  - “before a state court ruling constitutes a dependency order, it must in some way address custody or at least supervision.”
  - Note: Although this is only binding in the 5th Circuit, this is consistent with USCIS’ policy.
- The order should either contain a placement or supervision in connection with the dependency.
- Although physical placement is not required if there is a finding of dependency, the court must have the authority to make a custody determination in the context of the proceeding

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## **DEPENDENCY, CONT.**

- In states that don't use the term dependency, such as Texas, look to the basis for seeking the court's jurisdiction to see if it may be equivalent to dependency (e.g., child placed in out-of-home care due to parental unfitness;
- Was the court's jurisdiction sought for relief from abuse, neglect or abandonment? Is the court in some way addressing custody of the Petitioner as a juvenile under state law?

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## CUSTODY

- Placement under the custody of an individual or entity:
  - Must not temporary, emergent, ex parte or *in loco parentis*
  - Requires physical custody
  - The order must name the custodian/guardian as well as the child
  - May be with one parent if reunification with the other parent is found not viable due to that parent's abuse, abandonment or neglect

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## **CUSTODY, CONT.**

- States may use other terms for custodial relationships:
  - Guardianship
  - Conservatorship (e.g., managing conservator vs. possessory conservator in TX)
- Regardless of the term used, must in some way encompass physical custody, and reunification with one or both parents must not be viable
- If non-reunification parent granted visitation or possessory conservatorship, does not necessarily mean reunification is viable
  - Consider the terms of the visitation/possessory conservatorship

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# Reunification

## **REUNIFICATION NOT VIABLE**

- The court must find the child cannot reunify with one / both parents due to abuse, neglect, abandonment, or similar basis under state law.
- This means that the court must have the authority to order a child to return to the custody of his or her parent.
- In many jurisdictions, once a child attains the age of majority, a court's authority over custody matters ends.
  - When a court loses the authority to order custody with a parent, the court cannot make a legal ruling regarding reunification

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## **REUNIFICATION NOT VIABLE- UNTIL AGE OF MAJORITY**

- “Not viable” generally means that the court intends for this finding to remain in effect until the child ages out of the court’s jurisdiction.
  - The temporary unavailability of a parent is not sufficient.
- Full termination of parental rights is not necessary.
  - Texas Conservatorships - Managing Conservator- Possessory Conservator
- However, if a parent who mistreated a child is awarded any rights beyond visitation, the judge has not made a determination that reunification no longer viable.

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## **REUNIFICATION- WHO IS A PARENT?**

- Findings must relate to the petitioner's parent(s) under state law.
  - If the juvenile court order & other evidence establish parentage, this requirement is met.
- The term parent does not include step-parent, but does include adoptive parent.

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**Abuse, Neglect, Abandonment, or  
Similar Basis Under State Law**

## **ABUSE, ABANDONMENT, OR NEGLECT**

- Must be defined under state law
  - Court order may cite the state law
  - Language of the order may track the elements under state law, though not explicitly cited
  - The petition/motion or attorney brief provided to the court may provide basis in state law
- Supported by a factual basis
  - May be in the order
  - May be supplemented by petitions and affidavits that were submitted to and considered by the court at the time of the hearing

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## **ABUSE, ABANDONMENT, OR NEGLECT, CONT.**

- The court will determine what conduct / elements qualify as abuse, abandonment or neglect under state law and whether reunification is not viable because of it;
- Example: The court found that requiring a child to work for three hours a day, three days per week after school in Guatemala was abusive and that the parent would not regain custody as a result. USCIS will not second guess this finding because the judge determined that this conduct fell within the state law definition of abuse.

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## **SIMILAR BASIS UNDER STATE LAW**

States generally have statutes that define abuse, abandonment and neglect or a basis that is substantially similar (e.g., CT statute defining “uncared for”). *See* 6 USCIS PM J.3(A)(2), footnote 7.

- If findings are based on a similar basis, ensure there is evidence of how the basis is legally equivalent to abuse, abandonment or neglect.
- Evidence could be in the form of the juvenile court’s findings of how the basis is similar to abuse, neglect, or abandonment under state law and/or copies of the relevant laws.

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## **SIMILAR BASIS UNDER STATE LAW - EXAMPLE**

- Under Connecticut law, a child may be found “uncared for” if the child is “homeless” or if his or her “home cannot provide the specialized care that the physical, emotional or mental condition of the child requires.” *See* Conn. Gen. Stat. Ann. section 46b-120(9).
- “Uncared for” may be similar to abuse, abandonment, or neglect because children found “uncared for” are equally entitled to juvenile court intervention and protection. The goals/outcomes for children adjudged “uncared for” are the same as they are for children adjudged abused, abandoned, or neglected. *See* Conn. Gen. Stat. Ann. section 46b-120(8),(9); 121(a).

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## **NON-REUNIFICATION BASED ON DEATH**

- The fact that one or both parents is deceased is not a similar basis to abuse, abandonment or neglect under state law.
  - Examples: “reunification is not viable due to death,” or “the child cannot reunify due to a similar basis under state law due to his father’s death”
- A legal conclusion is required; death may qualify as similar basis if the court makes a determination that the death is neglect or abandonment.
  - Example: “reunification with the child’s father is not viable because he has abandoned him due to his willful failure to provide a guardian or any means of support upon his death”

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## **Best Interests**

## **BEST INTERESTS**

- A juvenile court (or administrative proceeding recognized by the juvenile court) must find it would not be in the child's best interest to be returned to a placement in the child's or his/her parent's country of nationality or last habitual residence.
- There also must be an underlying factual basis to support the legal conclusion. The factual basis may be supplemented by petitions and affidavits that were submitted to and considered by the court at the time the order was issued.

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## **BEST INTERESTS, CONT.**

- Best interest determinations may vary between states, but generally means the process courts undertake under state law to decide what types of services, actions, and orders will best serve, and who is best suited to take care of, a child.
- All States require the court to consider the child's best interest, but not all states have a statutory list of factors that the court must consider in making such a determination.

## **BEST INTEREST DETAILS**

- We defer to the juvenile court's findings.
- However, juvenile courts do not have authority to make decisions about the removal / deportation of a child from the U.S.
- A state court may consider country conditions as they impact a particular child in making the best interest determination but it should be clear that the determination is not primarily about immigration.
- A finding that the child is in a successful placement in the U.S. does not alone satisfy the best interests determination.
  - Example of a sufficient fact basis: "The court determined that it would not be in the child's best interest to return to Country X where she has no family to care for her."

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## BEST INTEREST - EXAMPLES

8. [REDACTED] is thriving in the care of her mother. Accordingly, this Court finds that it is in the best interest of [REDACTED] that she remains in the United States in the custody of [REDACTED]. If [REDACTED] were forced to return to El Salvador, her life would be in danger. She has been victimized by gang violence in the past and has been threatened by gang members. If she returns, she is likely to be targeted again and will not be able to protect herself. She also would lack a competent caregiver, to provide financial and emotional support. This Court therefore finds that it is not in [REDACTED]'s best interest to be returned to El Salvador and that it is best for her to remain in the care of her mother.

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## BEST INTEREST - EXAMPLES

It is not in the child's best interest to be returned to the child's or parent's country of nationality or country of last habitual residence  
(specify country or countries): Guatemala  
for the following reasons:

[redacted] is just four years old. It would be contrary to [redacted] best interest to return to Guatemala, where he lacks direct parental protection.

Here in the United States [redacted] is protected and cared for by his mother. She is ensuring his health, safety, and well being.

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**Consent**

## USCIS CONSENT

- In order to consent, USCIS must conclude that the request for SIJ classification is *bona fide*, meaning that the juvenile court order was sought for relief from abuse, neglect or abandonment or a similar basis under state law rather than primarily to obtain an immigration benefit.
- Immigration may be one motive for the request, but it shouldn't be the primary or sole motive.
- Similarly, orders that indicate they are for SIJ purposes can be *bona fide*. Officers should review the content of the order, rather than the title.

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## USCIS CONSENT AND FACTUAL BASIS

“The court ordered dependency or custodial placement of the child is the relief being sought from the juvenile court, and the factual basis of each of the required findings is evidence that the request for SIJ classification is bona fide.”  
6 USCIS Policy Manual J.2(D)(5).

**Factual basis:** the facts that the court relied upon when making its rulings.

- The order does not need to be overly detailed, and does not need to explain the details of the abuse; it just needs to reflect that the court considered the facts of the case and made an **informed decision** based on state law for each of the required rulings.
- Do not re-weigh factual basis to determine if it constitutes abuse, neglect, abandonment or a similar basis under state law.

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## **USCIS CONSENT AND FACTUAL BASIS**

- An RFE cannot require specific documents to establish the factual basis but should give examples of documents that may support the factual basis.
- Examples of documents that may be helpful include:
  - Supporting documents submitted to the juvenile court, if available
  - The petition for dependency or complaint for custody or other documents which initiated the juvenile court proceedings
  - Affidavits summarizing the evidence presented to the court and records from the judicial proceedings
  - Affidavits / records that are consistent with findings made by the court
  - Court transcripts
- Keep in mind - court records may be sealed, confidentiality rules may prohibit disclosure of juvenile proceedings.

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# HHS CONSENT

HHS consent is only required where:

- A child is currently in the custody of HHS/ORR
- AND
- The child asks for a juvenile court order that changes his or her HHS custody status or placement, in addition to making the required rulings.

If HHS consent is required, a petitioner or their representative requests consent via email to the Office of Refuge Resettlement, ORR, using a Request for Specific Consent to Juvenile Court Jurisdiction, C-1. If ORR consents to the request, ORR will notify the requestor via email.

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# **Validity and Types of Orders**

## VALIDITY OF ORDER- AGE AND JURISDICTION

- Generally, petitioner must be under the jurisdiction of the juvenile court at the time of filing and adjudication of the petition.
- Exceptions- if the court's jurisdiction ended and the order terminated solely because the petitioner:
  - Was adopted, or placed in a permanent guardianship; or
  - Was the subject of a valid order that was terminated based on age before or after filing the SIJ petition (*Perez-Olano* Settlement on "age out protections").
- Still must file I-360 petition prior to age 21.

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## **VALIDITY OF ORDER- CHANGE IN ELIGIBILITY FOR CLASSIFICATION**

- If the petitioner is no longer under juvenile court jurisdiction based on reason related to underlying classification, then not eligible.
- For example, if the court vacated / terminated rulings because:
  - The child married or
  - The child reunified with the unfit parent or
  - The court found it would be in the best interests to return to the country.

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## VALIDITY OF ORDER- PETITIONER MOVES TO NEW JURISDICTION

A petitioner who moves to a new jurisdiction of a different juvenile court may need to either submit evidence that the petitioner is still under the jurisdiction of the court that issued the order or submit a new court order.

***May not need new evidence:*** A juvenile court order does not necessarily terminate because of a petitioner's move to another court's jurisdiction. In general, a court maintains jurisdiction when it orders the child placed in a different state or makes a custody determination and the legal custodian relocates to a new jurisdiction.

**Note:** If the child ages out of the court's jurisdiction and then moves no new order is required because the child is now an adult.

## **VALIDITY OF ORDER- PETITIONER MOVES TO NEW JURISDICTION, CONT.**

***May need new evidence:*** If a child relocates to a new jurisdiction and is not living in a court ordered placement or with the court ordered custodian, then the Petitioner must submit:

- Evidence the court is still exercising jurisdiction over the petitioner; or
- A new juvenile court order from the court that has jurisdiction.

If the original order is terminated due to the relocation of the child, but another order is issued in a new jurisdiction, USCIS considers the dependency or custody to have continued through the time of adjudication of the SIJ petition, even if there is a lapse between court orders.

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## DECLARATORY JUDGEMENTS

- A *declaratory judgment* generally determines the rights of parties without ordering anything to be done.
- In the context of child welfare, a declaratory judgment may state facts, but not order custody or dependency or make legal reunification / best interests rulings.
- Could we ever approve a case based on a declaratory judgment? Maybe, if there is some underlying court intervention, like a SAPCR (Suit Affecting Parent Child Relationships) that awards custody and makes reunification / unfit parent findings, or a divorce decree with a custodial determination.

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## AMENDED/*NUNC PRO TUNC* ORDERS

- Amended/*nunc pro tunc* orders issued after the child reaches the age of majority will generally only be considered sufficient if it is clear that the court considered/made determinations regarding the child's dependency or placement, reunification, and best interests while he or she was under the jurisdiction of the court as a juvenile
- **Note:** *nunc pro tunc* (now for then) orders will generally be determined to be valid back to the date of the order which was corrected by the *nunc pro tunc* order. We will generally defer to the state court's determination that it has the authority to issue the order *nunc pro tunc*. See CHAP Vol. 6, Part D, Ch. 2(A)(2).

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## **ORDERS ISSUED JUST BEFORE PETITIONER REACHES AGE OF MAJORITY**

- As with any order, determine whether it is valid and contains required rulings supported by a reasonable factual basis
- Cannot withhold consent solely because an order was issued shortly before the Petitioner reached the age of majority
  - Remember, there can be dual intent, and there may be legitimate reasons why an order is sought close to the age of majority

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# **Adjudicative Actions**

## **REQUESTS FOR EVIDENCE: LIMITATIONS**

- Do not request information or documents from sources other than the SIJ petitioner or his or her legal representative.
- Exercise careful judgement when considering statements made by children at the time of initial apprehension by immigration or law enforcement.
- You may not require specific documents to establish the factual basis (but may request evidence of the factual basis for the court's rulings).
- You may not require or request an SIJ petitioner to contact the person or family members of the person who allegedly abused, neglected, or abandoned the SIJ petitioner.

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## **FIELD INTERVIEW AND/OR FRAUD REFERRAL**

- Generally, NBC will not send cases to the field for interview if the case can be adjudicated at NBC.
- We cannot send cases to the field solely to facilitate apprehension by ICE, even upon their request.
- Field interviews may be conducted to provide information necessary to the adjudication.

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## **AUTOMATIC REVOCATION**

Petition is automatically revoked as of the date of approval upon the following events (before adjustment):

- Marriage of the petitioner
- Court orders reunification of the petitioner with the unfit parent(s)
- Court determination that it is in the petitioner's best interest to return to the country of nationality or last habitual residence of the petitioner or of his or her parent(s).

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## REVOCATION ON NOTICE

May revoke upon notice at any time for **good and sufficient cause**.

- “Good & sufficient cause” means evidence in the record that indicates that the petition should have been denied at the time of approval.
- We will look at all factors when considering revocation.

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## **Common Case Examples**

## **HHS-ORR CUSTODY**

- A child in Health and Human Services, Office of Refugee Resettlement (HHS-ORR) Custody may remain in federal custody or request that the court change their custody.
- If they want their custody changed, then HHS must consent before the court can change their custody.
- If they remain in HHS custody the court can declare the child dependent on the court with continued placement with HHS-ORR.

## NEW YORK

- NY Consolidated Laws, Family Court Act – FCT Section 661(a) provides for guardianship of a person between the ages of 18 to 21 based on consent.
- The court requires the person's consent because they are now an adult.
- The person essentially is agreeing to give up certain rights that they would normally have as an adult.
- The court does not have the power and authority to rule on reunification or best interests matters because the person is an adult.
- Exception might be in cases where the court is exercising continuing jurisdiction and the original court proceedings occurred before the child reached the age of majority.

## **NEW YORK**

- NY 661(b) provides for permanent guardianship of a child where the child has been committed to an authorized agency or parents are not available for consent because they are deceased.
- For this provision, there will be an initial permanent guardianship order before the age of majority (18).
- The court may then continue to exercise its jurisdiction after the child reaches age 18. In this case, you may see a subsequent order issued under NY 661(a).

## STATES WITH OVER AGE OF MAJORITY STATUTES

- Some states have provisions which permit the court to grant guardianship to a person up to age 21 provided the person gives their consent or courts may use their equity jurisdiction, essentially a ruling based on fairness, to issue orders to children over the AOM.
- CA Civ. Pro. Section 155
- NY Family Court Act 661(a)
- MA General Law Section 41, Chapter 119
- CT statute effective July 1, 2018, provides for guardianship to age 21 based on consent of child
- MD Family Law 1-201(b)(10)

Despite these provisions, a state court generally does not have jurisdiction as a juvenile court for a child over the AOM unless it has the authority to make the reunification finding.

## TEXAS

- Texas does not use the term dependency. Generally, orders that purport to find dependency are insufficient.
- Texas courts often use the Declaratory Judgments Act to find dependency.
- The Declaratory Judgement is not an effective mechanism for making rulings which is why we typically find them insufficient for SIJ purposes.



## TEXAS

- There may be scenarios where an applicant has an underlying Suit to Affect the Parent Child Relationship (SAPCR).
- These suits may impact the placement or custody of a child and may determine whether reunification with a parent is viable.
- The child may then obtain a Declaratory Judgement for the court to make the best interest finding.

# TEXAS

- Texas generally uses the concept of conservatorship to award custody and for child protection (dependency).
- Managing Conservator- The parent awarded primary custody is the managing conservator. There can be joint managing conservators (shared custody).
- Possessory Conservator- The parent with visitation rights is the possessory conservator.
- A parent who is provided visitation rights as a possessory conservator may not be inconsistent with a non-reunification finding if that parent no longer has decision-making authority over the child.

## **Exercise: Reading and Assessing the Orders**

## READING AND ASSESSING THE ORDER

- Step 1
- Review the date the order was issued.
  - Determine the age of the child on date order was issued
  - Determine if the order was issued before or after the SIJ petition was filed
- Review to see whether the order has any special titles or notes (ex. Temporary, *Nunc Pro Tunc*, Amended)
- Review to see which U.S. state issued the order and which type of court issued the order
  - Determine whether this is a juvenile court

## **READING AND ASSESSING THE ORDER**

- Step 2
- Read the entire court order
- Assess what the court is doing in the order
  - Is the court terminating parental rights?
  - Is the court giving custody to a person or entity?
  - Is the court making a ruling which alters the placement of the child?
  - Is the court providing protection?
  - Is the court conducting fact finding?
  - Is the court continuing a prior action?

## **READING AND ASSESSING THE ORDER**

- Step 3
- Assess whether the child is dependent on the court or being placed in the custody of an individual or entity.
- If the child is in ORR custody, has the court assumed jurisdiction and noted that it is continuing placement.
- If the child is in ORR custody, is the court moving the child from ORR custody to another person or entity.
  - If so, you will need to review for consent from HHS-ORR

## **READING AND ASSESSING THE ORDER**

- Step 4
- Determine whether the court order has made a finding of abuse, abandonment, neglect, or similar basis under state law
- Determine whether the court order declared reunification not viable
- Determine whether the court order has declared that it is not in the best interest for the child to return to his/her or his/her parent's country of nationality or last habitual residence

## **READING AND ASSESSING THE ORDER**

- Step 5
- Consider the order based on the totality of the circumstances
- Note any special considerations or unique elements found in the order.
- Determine whether we should consent to the grant of SIJ classification.
  - This requires assessing whether there are any factors known to USCIS that were not known to the court which might have impacted their assessment or might lead us to conclude that the order was sought primarily for immigration purposes.



## ABOUT THIS PRESENTATION

- Authors: USCIS, National Benefits Center, Office of Policy and Strategy, Field Operations Directorate and the Office of Chief Counsel, with special thanks to the Administrative Appeals Office.
- Date of last revision: December 6, 2018.
  - This presentation is current only as of the date of last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).
- Any references in documents or text, with the exception of case law, relate to fictitious individuals.

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