



GUIDANCE FOR SIJS STATE COURT PREDICATE ORDERS IN CALIFORNIA

What You Need to Know Now

By Katie Annand, Andrea Del-Pan, & Rachel Prandini

I. What is Special Immigrant Juvenile Status (SIJS)?

Special Immigrant Juvenile Status is a unique, hybrid form of immigration relief that requires the involvement of state courts before a child is eligible to apply for Special Immigrant Juvenile Status with U.S. Citizenship & Immigration Services (USCIS). It provides an avenue for undocumented children to obtain legal status when they cannot be reunified with one or both parents due to abuse, neglect, or abandonment and it is not in their best interest to return to their home country.ⁱ Youth who are successful in obtaining SIJS are then eligible to apply for adjustment of status to that of a lawful permanent resident (a green card holder).ⁱⁱ However, before a youth may apply for the special status, a state court must first make three specific findings (often referred to as the “state court predicate order” or SIJS findings). The three findings are:

1. That the child has been declared dependent on a juvenile court or legally committed to or placed under the custody of a state agency or department or an individual or entity appointed by a state or juvenile court;
2. That reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
3. That it is not in the child’s best interest to be returned to his or her country of nationality or last habitual residence.

These three findings must be made before a child can even apply for SIJS before USCIS. In California, these findings are most commonly made in probate guardianship, family court custody, dependency, or delinquency proceedings.

II. What Should be Included in the State Court Predicate Order?

As stated above, the three eligibility findings for SIJS must be included in the state court predicate order. In addition, it is now best practice to also include a short statement of the factual basis for each finding, as well as citations to any state law provisions that the court relied upon in making the findings. Although Congress has

tasked state courts with making these factual findings of eligibility because of their expertise in child welfare matters, USCIS has increased scrutiny of SIJS state court predicate orders in recent years. In light of USCIS's increased scrutiny, advocates are advised to include this additional information in the state court predicate order. Per USCIS's own Policy Manual:

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. In order to exercise the statutorily mandated DHS consent function, USCIS requires that the juvenile court order or other supporting evidence contain or provide a reasonable factual basis for each of the findings necessary for classification as a SIJ. The evidence needed does not have to be overly detailed, but must confirm that the juvenile court made an informed decision in order to be considered "reasonable." USCIS generally consents to the grant of SIJ classification when the order includes or is supplemented by a reasonable factual basis for all of the required findings.ⁱⁱⁱ

In California, a uniform Judicial Council Form is available and should be used for all SIJS findings made in state courts. The Form FL-357 (family court)/GC-224 (probate court)/JV-357 (delinquency or dependency court) is available for free on the California Judicial Branch's website (<http://www.courts.ca.gov>). The form is appropriate for use in family court custody proceedings (such as a parentage, petition for custody, divorce, or domestic violence restraining order), probate guardianship proceedings, juvenile dependency proceedings, and juvenile delinquency proceedings. The form includes the three findings required to demonstrate eligibility for SIJS and offers space to include information about the facts supporting each finding. Advocates are encouraged to use these areas to set forth a brief summary of the facts supporting each finding. An example of a completed form FL-357 from family court parentage proceedings is provided in **Appendix A**. An example of a completed form GC-224 from probate guardianship proceedings is provided in **Appendix B**. Similar considerations should be taken into account when preparing state court predicate orders in dependency and delinquency proceedings.

III. How Much Information Should be Included to Demonstrate the Factual Basis?

USCIS states that the factual basis "does not have to be overly detailed," but must demonstrate that the juvenile court made an informed decision. To balance USCIS's desire for information about the factual basis with the client's interest in protecting their sensitive information (some of which may be confidential under state law^{iv}), many advocates have had success in providing two to four sentences worth of information to support each of the three required findings. Based on current USCIS guidance, including the state law code sections supporting the findings (see Section IV, below) is also recommended. See examples of predicate orders including this level of detail in **Appendices A & B**. We further recommend consulting with local practitioners in your jurisdiction to learn any specific state court judges' preferences.

IV. What Provisions of California Law Can Support a Request for SIJS Findings in State Court?

In order for a child to be eligible for SIJS, a juvenile court must find that reunification is not viable with one or both of the child's parents due to abuse, neglect, abandonment, or a similar basis under state law. Because state courts are tasked with making this determination, they must rely on state law definitions of abuse, neglect, abandonment, and any similar bases. In California, the following definitions may be relied upon by advocates (in addition to further fleshing out of these concepts through case law):

- **Abuse:** Physical harm inflicted nonaccidentally (Welf. & Inst. Code § 300(a)); Victim of sexual trafficking (Welf. & Inst. Code § 300(a)); Sexual abuse (Welf. & Inst. Code § 300(d)); Act of cruelty (Welf. & Inst. Code § 300(i)); Abuse defined – bodily injury, sexual assault, etc. (Fam. Code § 6203); History of abuse (Fam. Code § 3011(b)); History of sexual abuse (Fam. Code § 3030(a)); Domestic violence (Fam. Code § 6211); Criminal child abuse (Penal Code §§ 11165.1, 11165.3, 1116.4, 273.5)
- **Neglect:** Conduct of parent resulting in serious emotional damage (Welf. & Inst. Code § 300(c)); Harm as a result of failure or inability to supervise or protect (Welf. & Inst. Code § 300(b)); Neglect/cruel treatment (Fam. Code § 7823(a)); Criminal child neglect (Penal Code § 270, 11165.2)
- **Abandonment:** Child left without provision for support (Welf. & Inst. Code § 300(g)) [including death of parent(s)]; Child left in the care of one parent, with failure by other parent to provide support for 1 year, or without communication from the other parent, with intent to abandon (Fam. Code § 7822(a)(2)-(3);(b)); “Abandoned” defined as child left without provision for reasonable and necessary care or supervision (Fam. Code § 3402(a)); Death, inability or refusal to take custody, or abandonment (Fam. Code § 3010(b)); Criminal child abandonment (Penal Code § 270)
- **Similar basis under state law:** Death (leaves the child “without any provision for support” - Welf. & Inst. Code § 300(g)); Finding that placement with a parent would be detrimental to the child’s health, safety, or welfare (Fam. Code § 3041); Inability to protect (Welf. & Inst. Code § 300(b)); Other emerging arguments

Further, the juvenile court must find that it is not in the child’s best interest to be returned to their country of origin. Here again, the court must look to state law regarding what is in the child’s best interest (though they can and should consider conditions and available caretakers in the country of origin). In California, the “best interest” of the child is defined by reference to the child’s health, safety, and welfare. See Fam. Code § 3020(a).

As mentioned above, it is advisable to include the state law provision(s) the court relied upon in making each finding in the predicate order, as demonstrated in **Appendices A & B**.

ⁱ 8 U.S.C. § 1101(a)(27)(J).

ⁱⁱ Note that a visa must be available in order for the child to adjust status. For further information, see ILRC, *Update on Special Immigrant Juvenile Status: What is Visa Availability* (Feb. 2017), <https://www.ilrc.org/update-special-immigrant-juvenile-status-what-visa-availability>.

ⁱⁱⁱ USCIS Policy Manual, Volume 6 – Immigrants, Part J – Special Immigrant Juveniles, Chapter 2(D)(5), available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter2.html#S-D>.

^{iv} For example, information and documents from the juvenile case file in juvenile dependency and delinquency proceedings are confidential under California law and cannot be shared with a third party without juvenile court permission. See Cal. Welf. & Inst. Code §§ 827, 831. For more information about confidentiality of juvenile records in California and its impact on immigration cases, see ILRC, *Confidentiality of Juvenile Records in California: Guidance for Immigration Practitioners in Light of California’s New Confidentiality Law* (Apr. 2017), <https://www.ilrc.org/confidentiality-juvenile-records-california-guidance-immigration-practitioners-light-california’s>.

APPENDIX A

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NO.: BAR NO. NAME: ATTORNEY NAME FIRM NAME: FIRM NAME STREET ADDRESS: Address CITY: CITY STATE: CA ZIP CODE: ZIP TELEPHONE NO.: PHONE FAX NO.: FAX E-MAIL ADDRESS: EMAIL ATTORNEY FOR (name): MINOR	FOR COURT USE ONLY <h2 style="margin: 0;">CONFIDENTIAL</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: ADDRESS MAILING ADDRESS: CITY AND ZIP CODE: CITY AND ZIP BRANCH NAME: COUNTY County Family Court	
CASE NAME: MINOR v. CUSTODIAL PARENT	
SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER: CASE NUMBER

1. Child's name: MINOR Date of birth: DOB
2. The petition or request for Special Immigrant Juvenile (SIJ) findings was heard
 - a. Date of hearing: DATE Time: TIME Dept.: DEPT. Room:
 - b. Judicial officer (name): JUDGE's Name
 - c. Persons and attorneys present (names):
 Minor Petitioner MINOR
 Petitioner's Attorney, ATTORNEY
 Respondent Parent, CUSTODIAL PARENT

The court has reviewed the evidence and finds the following:

3. Notice of the underlying proceeding was given as required by law.
4. a. The child was declared a dependent of the juvenile court of the county of (specify):
 on (date): and remains under the court's jurisdiction.

OR

- b. The child was
 - (1) placed under the custody of an individual (name, unless confidential): CUSTODIAL PARENT
 - (2) placed under the custody of an entity (name):
 - (3) committed to a state agency or department (name):
 appointed by this court or another California court on (date):
 The custody or commitment order remains in effect.

Supporting legal conclusions or factual findings, if necessary:

The COUNTY County Family Court, a juvenile court within the United States, considering the evidence presented, finds that it is in the MINOR'S best interest to be placed under the custody of CUSTODIAL PARENT. See Cal. Fam. Code §§ 3011, 3020. CUSTODIAL PARENT provides for the health, safety and welfare of the minor, while MINOR'S father abandoned the minor a decade ago and has not provided any financial or emotional support since that time.

Cite to Family Code provisions for best interest and custody standards, and include case-specific facts about why the custodial placement was made under state law.

Continued on Attachment 4.

CASE NAME:	CASE NUMBER:
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Check all that apply.

5. Reunification of the child with the mother the father the other legal parent is not viable under California law because of parental abuse, neglect, abandonment, or a similar legal basis (*specify*):

as established on (*date*): DATE _____, for the following reasons (*for each parent with whom reunification is not viable, state the reasons that apply to that parent*):

This Court finds that MINOR cannot be reunified with her father FATHER'S NAME due to abandonment. Cal. Fam. Code § 3402; Cal. Welf. & Inst. Code § 300(g). MINOR'S father has not provided economically for MINOR for over ten years. He does not communicate with her. MINOR'S father has failed to pursue or foster a father-daughter relationship. Therefore, under California state law, MINOR's father abandoned MINOR.

Include name of offending parent. Cite to any relevant California code provisions defining abandonment, abuse, neglect, or a similar basis (see Practice Advisory for a list of possible California state law provisions), and include case-specific facts about why the minor cannot reunify with the parent due to abandonment, abuse, or neglect.

Continued on Attachment 5.

6. 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*): HOME COUNTRY for the following reasons:

This Court finds that it is not in the best interest of MINOR to return to HOME COUNTRY under California law. Cal. Fam. Code § 3011. MINOR'S health, safety, and welfare are at risk should she return to HOME COUNTRY. MINOR is not safe in HOME COUNTRY because of widespread violence and impunity and her lack of a stable or reliable adult caretaker in HOME COUNTRY. Moreover, uprooting and separating MINOR from her mother, siblings, and school would be detrimental to her emotional wellbeing and future. It is not in MINOR'S best interest to return to HOME COUNTRY.

Cite to Family Code provision for best interest standard, and include case-specific facts about why it is not in the minor's best interest to return to her home country, such as conditions in the home country, any harm or threats the minor experienced in the home country, the availability of a caretaker in the home country, as well as the availability of a caretaker in the U.S. and conditions and services available to minor here.

Continued on Attachment 6.

Date:

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

APPENDIX B

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NO.: BAR NO. NAME: ATTORNEY NAME FIRM NAME: FIRM NAME STREET ADDRESS: ADDRESS CITY: CITY STATE: CA ZIP CODE: ZIP TELEPHONE NO.: PHONE FAX NO.: FAX E-MAIL ADDRESS: EMAIL ATTORNEY FOR (name): MINOR	FOR COURT USE ONLY <h2 style="margin: 0;">CONFIDENTIAL</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: ADDRESS MAILING ADDRESS: CITY AND ZIP CODE: CITY AND ZIP BRANCH NAME: PROBATE	
CASE NAME: GUARDIANSHIP OF MINOR	
SPECIAL IMMIGRANT JUVENILE FINDINGS	CASE NUMBER: CASE NUMBER

1. Child's name: MINOR Date of birth: DOB
2. The petition or request for Special Immigrant Juvenile (SIJ) findings was heard
 - a. Date of hearing: DATE Time: TIME Dept.: DEPT. Room: ROOM
 - b. Judicial officer (name): JUDGE'S NAME
 - c. Persons and attorneys present (names):
 MINOR'S NAME
 GUARDIAN'S NAME
 ATTORNEY'S NAME

The court has reviewed the evidence and finds the following:

3. Notice of the underlying proceeding was given as required by law.
4. a. The child was declared a dependent of the juvenile court of the county of (specify):
 on (date): and remains under the court's jurisdiction.

OR

- b. The child was
 - (1) placed under the custody of an individual (name, unless confidential): GUARDIAN'S NAME
 - (2) placed under the custody of an entity (name):
 - (3) committed to a state agency or department (name):
 appointed by this court or another California court on (date):
 The custody or commitment order remains in effect.

Supporting legal conclusions or factual findings, if necessary:

GUARDIAN is appointed the guardian of MINOR under section 1514 of the California Probate Code, and as his guardian has "the care, custody, and control of, and has charge of the education" of MINOR pursuant to section 2351(a) of the California Probate Code. It is in MINOR's best interest that GUARDIAN be his legal guardian because the guardianship is necessary and convenient and the guardianship best promotes his health, safety, and welfare. See Cal. Prob. Code § 1514. GUARDIAN is MINOR'S aunt who has been caring for him the past year, and absent the guardianship there was no one in the United States with the authority to make important educational, medical, and other decisions on his behalf.

Cite to Probate Code provisions for guardianship standards, and include case-specific facts about why the guardianship was made under state law.



Continued on Attachment 4.

CASE NAME:	CASE NUMBER:
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Check all that apply.

5. Reunification of the child with the mother the father the other legal parent is not viable under California law because of parental abuse, neglect, abandonment, or a similar legal basis (*specify*):

as established on (*date*): DATE _____, for the following reasons (*for each parent with whom reunification is not viable, state the reasons that apply to that parent*):

MINOR'S parents MOTHER'S NAME and FATHER'S NAME left her in the care of her paternal grandparents who neglected her and failed to provide for her basic needs. During the time minor lived with her grandparents she was not enrolled in school. She was also forced to work in unsafe conditions beginning at the age of six. She was not provided adequate food or clothing and was often hungry and cold. Under California law, this constitutes neglect under Section 300(b) of the California Welfare & Institutions Code. Further, the parents have not provided any financial or emotional support to MINOR in the last eight years, and have made no effort to foster a parent-child relationship. Under California law, this constitutes abandonment under Section 300(g) of the California Welfare & Institutions Code.

Include name of offending parent(s). Cite to any relevant California code provisions defining abandonment, abuse, neglect, or a similar basis (see Practice Advisory for a list of possible California state law provisions), and include case-specific facts about why the minor cannot reunify with the parent(s) due to abandonment, abuse, or neglect.

Continued on Attachment 5.

6. 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*): HOME COUNTRY for the following reasons:

This Court finds that it is not in the best interest of MINOR to return to her HOME COUNTRY under California law. Cal. Fam. Code § 3011. MINOR's health, safety, and welfare are at risk should she return to HOME COUNTRY. She is at risk of further neglect by her grandparents. Further, her parents abandoned her so she has no suitable adult caretaker in HOME COUNTRY. It is in her best interest to remain in the United States where she is thriving in school and her physical and emotional needs are being met by her legal guardian.

Cite to Family Code provision for best interest standard, and include case-specific facts about why it is not in the minor's best interest to return to her home country, such as conditions in the home country, any harm or threats the minor experienced in the home country, the availability of a caretaker in the home country, as well as the availability of a caretaker in the U.S. and conditions and services available to minor here.

Continued on Attachment 6.

Date:

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

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