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DOMESTIC VIOLENCE COMMITTEE PRESENTS  
**WHAT FAMILY COURT PRACTITIONERS  
SHOULD KNOW ABOUT SPECIAL  
IMMIGRANT JUVENILES**

(Part One)



BY ELINOR JORDAN, VERONICA THRONSON AND BELINDA OROZCO

One day, you may see a pleading or meet a prospective client asking you to consider a form of humanitarian immigration relief called Special Immigrant Juvenile Classification (“SIJ”).<sup>1</sup> This is an opportunity for state courts to assist youth who have experienced abuse, neglect, and abandonment by a parent, and who also have endured a harrowing journey to the United States. The Trafficking Victims Protection Reauthorization Act expanded SIJ to assist more children, which has prompted an increase in motion practice in Michigan courts. Each year, approximately 20,000 SIJ cases are filed across the United States.<sup>2</sup> These cases reveal the physical abuse, forced and unsafe labor, educational neglect, sexual exploitation, and

medical or nutritional deprivation that children from around the world sometimes suffer. This article will help you understand the relevant law and policies to effectively respond when these children enter your courtroom or practice.

### What is Special Immigrant Juvenile Classification?

States and charities invest significant resources to ensure that abused, abandoned, and neglected children are protected and given an opportunity to succeed. But before the early 1990s, many such children faced almost inevitable deportation because they lacked a path to obtain lawful immigration



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status.<sup>3</sup> In short, as minors turned 18, these children would exit the child welfare system and enter the deportation system, sometimes being returned to countries they barely remembered. In other cases, children and youth arriving in the U.S. without a parent or legal guardian lack authorized immigration status. These youth are not able to work legally, be eligible for federal benefits including federal financial aid, access many state or local benefits, or enjoy a sense of stability and certainty about their lives. Congress created and expanded SIJ to address this harsh injustice.<sup>4</sup>

The SIJ statute creates a partnership between state courts and the Department of Homeland Security's United States Citizenship and Immigration Services ("USCIS"), in which each entity plays a specialized, indispensable role to classify eligible children. First, state courts make factual findings in matters involving the care or custody of children, known as the SIJ special findings, or the predicate order. Second, USCIS determines the child's eligibility for immigration status.<sup>5</sup> The special findings for SIJ have been routinely issued for immigrant children as part of a variety of state court cases—from delinquency proceedings to foster care placements.

The special findings required for SIJ are (1) the child has been "declared dependent on a juvenile court;" (2) the child's "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;" and (3) the child's "best interests" would not be served by returning to his or her country of origin.<sup>6</sup>

For purposes of immigration law, a juvenile court is defined as a "court located in the United States having jurisdiction under State law to make judicial determinations about custody and care of juveniles."<sup>7</sup> In this way, Congress expressly entrusted decisions regarding children's best interests to state courts because of local courts' expertise in this area of law.<sup>8</sup>

This delegation to state courts was carefully considered. The rule comments declare that "it would be both impractical and inappropriate for the [federal government] to routinely adjudicate judicial or social service agency administrative determinations as to the juvenile's best interest."<sup>9</sup> In recognizing the expertise of local courts, the "SIJ statute affirms the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests."<sup>10</sup> Several Michigan state courts specialize in making determinations that impact the care or well-being of children found in this state.<sup>11</sup> USCIS internal guidance explains the narrow, specific role that the SIJ statute asks state courts to play, explaining simply that the determinations "may be made in a single juvenile court order or in separate juvenile court orders. The order(s) should use language establishing that the specific judicial determinations were made under state law."<sup>12</sup>

In short, the SIJ framework is about federalism: it allows state courts to retain their role in dependency and best in-

terests, while carving out appropriate immigration treatment for specific children. Some state court judges have expressed concern about their role in the SIJ framework, thinking it is a federal issue. However, Michigan state courts have jurisdiction to issue the SIJ findings.<sup>13</sup> Further, state courts are not being asked to decide if the immigrant child should have lawful status in the U.S.—that is an issue for the federal government to determine. Instead, state courts are merely being asked to provide determinations about a vulnerable child, similar to findings these courts make daily. Moreover, even a grant of SIJ from USCIS does not automatically grant lawful permanent residence or citizenship. Instead, SIJ provides eligible abused, neglected, or abandoned immigrant youth access to a path to lawful permanent residence. Federal decision makers review the immigrant youth's applications at various stages and assess factors such as their moral character and any grounds of inadmissibility. Inadmissibility refers to the vetting process that prevents most noncitizens who may pose a risk based on their criminal, public health, or national security backgrounds from becoming lawful permanent residents. Importantly, some attributes that would make many noncitizens "inadmissible" are waived or waivable for special immigrant juveniles, such as public charge (associated with use of certain public benefits), entering the United States without inspection, and other grounds related to poverty or youthful status.<sup>14</sup>

### Which Courts Can Make SIJ Determinations?

For SIJ purposes, a juvenile court "means 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."<sup>15</sup> There are multiple appropriate venues in Michigan to consider these requests, including the Family Division of the Circuit Courts<sup>16</sup> in divorce, child custody, guardianship, paternity, adoption, child welfare, and juvenile delinquency; the probate court in guardianship. Other courts of general jurisdiction that find themselves making decisions impacting the dependency or custody of a juvenile could also play this critical role.

The Trafficking Victims Protection Reauthorization Act and recent rulemaking clearly expanded SIJ to allow state court judges to issue the determinations when finding the child dependent on the court or placing the child in the custody of an individual, agency, or entity.<sup>17</sup> Indeed, dependency is created where there is a "court-ordered custodial placement" or "court ordered dependency on the court for provision of child welfare services and/or other court ordered or court-recognized protective or remedial relief."<sup>18</sup> Accordingly, judges are able to make the SIJ determinations in a wide range of cases, not just in child welfare cases, where the child is already considered "dependent" on the court. For example, judges could make the special determinations in a juvenile delinquency case if a youth is committed to the care and custody of the pro-



bation department, even if they continue living at home; as part of a case seeking a personal protection order, particularly where custody to the nonoffending parent is included in the order, in any matter where custody or guardianship is awarded to a relative or other third party caregiver, or in a declaratory or *nunc pro tunc* order after any of these types of proceedings has occurred.<sup>19</sup>

## When should the determinations be made?

While the federal immigration authorities are able to designate an otherwise eligible youth for SIJ so long as they apply before their twenty-first birthday, Michigan courts meeting the juvenile court definition often are not able to take initial jurisdiction after a child turns eighteen. For this reason, practitioners and court actors may anticipate a good deal of anxiety for a youth who is up against this deadline to enter the court's jurisdiction. In turn, it is helpful for courts to be aware that practitioners may face difficulty in completing service of process as it is ordinarily undertaken in local cases. For instance, a parent who has long-since abandoned a child or whom the child fears due to a history of physical or sexual violence, may be difficult to reach. International service also poses unique concerns where service by publication may be complicated by a plethora of potential obstacles. In cases where a child's eighteenth birthday is quickly approaching, it is critically essential for courts to consider alternative forms of service that are often more effectively calculated to apprise the parent of the proceedings (e.g., a message on social media or "WhatsApp"). Furthermore, it is helpful when courts recall that for the purposes of the SIJ determinations, the parent has no substantive rights at issue as the application only pertains to a benefit that could support the child. The Michigan Court of Appeals has applied ordinary civil service-of-process rules to cases involving the SIJ special findings and has indicated that no additional service is contemplated beyond what is ordinarily required by the court rules.<sup>20</sup>

## Resources

- **Michigan Immigrant Rights Center** [MichiganImmigrant.org](https://michiganimmigrant.org)
- **Michigan State University College of Law Immigration Law Clinic** [Law.MSU.edu/clinics/immigration.html](https://law.msu.edu/clinics/immigration.html)
- **Michigan Judicial Institute Child Welfare Proceedings Bench Book** [Courts.Michigan.Gov/4aadda/siteassets/publications/benchbooks/cpp/cpp.pdf](https://courts.michigan.gov/4aadda/siteassets/publications/benchbooks/cpp/cpp.pdf)
- **American University's National Immigrant Women's Assistance Project (NIWAP)** [NIWAPlibrary.wcl.american.edu/sijs-manual-table-of-contents](https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents)
- **U.S. Citizenship and Immigration Services** [uscis.gov/policy-manual/volume-6-part-j-chapter-3](https://uscis.gov/policy-manual/volume-6-part-j-chapter-3)

- **ABA Immigrant Children's Advocacy Network** [AmericanBar.org/groups/probono\\_public\\_service/projects\\_awards/unaccompanied\\_minors/](https://americanbar.org/groups/probono_public_service/projects_awards/unaccompanied_minors/)
- **ABA Child Welfare and Immigration Project** [AmericanBar.org/groups/public\\_interest/child\\_law/project-areas/immigration/](https://americanbar.org/groups/public_interest/child_law/project-areas/immigration/)
- **ABA Children's Immigration Law Academy** [CILAcademy.org/](https://CILAcademy.org/)
- **National Association of Counsel for Children (NACC)** Law and Practice Manual or "Red Book" contains a chapter about Special Immigrant Juveniles. [NACCchildlaw.org/page/RedBook](https://naccchildlaw.org/page/RedBook)

## About the Authors

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## Endnotes

- 1 See 8 USC 1101(a)(27)(J); *In re Velasquez*, No. 360057, 2022 Mich App LEXIS 6799 (Ct App Nov. 10, 2022).
- 2 See Table 8 SIJ Regulations, 87 FR 13066 March 8, 2022 <https://www.federalregister.gov/documents/2022/03/08/2022-04698/special-immigrant-juvenile-petitions>.
- 3 Hlass, *States and Status: A Study of Geographical Disparities for Immigrant Youth*, 46 COLUM HUM RTS L REV 266, 300 (2014) (hereinafter "Hlass").
- 4 See *In re DAT*, 2015-Ohio-1560 ¶ 7 (Ohio App, 2015).

- 5 See *In re JJXC*, 318 Ga App 420, 425; 734 SE2d 120 (2012).
- 6 8 USC 1101(a)(27)(J).
- 7 8 CFR 204.11(a).
- 8 See Department of Justice, *Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court*, 58 Fed Reg 154, 42843 (August 12, 1993) (codified at 8 CFR Pts 101, 103, 204, 205 & 245); see also Michigan Judicial Institute, *Child Protective Proceedings Benchbook* (February 23, 2022), pp 4-65 to 4-66, available at <<https://mjieducation.mi.gov/documents/benchbooks/14-cpp/file>> (accessed April 4, 2022) (describing this delegation of decision making to state courts); National Immigrant Women's Advocacy Project, *Special Immigrant Juvenile Status Benchbook* (March 31, 2018), Ch II, pp 1-3, available at <<https://niwaplibrary.wcl.american.edu/wp-content/uploads/SIJS-Bench-book-complete-with-correct-cover-page.pdf>> (accessed April 4, 2022) (hereinafter "SIJ Benchbook") (same).
- 9 58 Fed Reg at 42847.
- 10 *Perez-Olano v Gonzalez*, 248 FRD 248, 265 (D Cal, 2008).
- 11 See, e.g., MCL 722.27a (charging the Circuit Court, Family Division with making a best-interest determination to decide parenting time).
- 12 USCIS Policy Manual, SIJ, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3>.
- 13 *In re LFOC*, 319 Mich App 476; 901 NW2d 906, 911 (2017).
- 14 INA 245(h)(2)(A)-(B) attorneys advising those who may apply for SIJ should familiarize themselves with the grounds of inadmissibility as they apply to SIJs because their application would have significant impact on the child's case going forward. Consult the USCIS policy manual for further details, USCIS Policy Man. Vol. 7 Part F Chapter 7 (C).
- 15 8 CFR 204.11(a).
- 16 See, e.g., *In re LFOC*, 319 Mich App 476; 901 NW2d 906, 911 (2017) (holding that the Family Division had jurisdiction to make special determinations); see also *In re BMGZ*, 319 Mich App 28 (2021) (vacated by *In re BMGZ*, 971 NW2d 230 (Mich. 2022) (vacating a decision in which the appellate court had ruled that a step-parent adoption did not create dependency)).
- 17 See generally 8 CFR 204.11.
- 18 8 CFR 204.11(d)(5)(ii).
- 19 See, e.g., *In re LFOC*, 319 Mich App 476; 901 NW2d 906, 911 (2017); see also *In re BMGZ*, 319 Mich App 28 (2021) (vacated by *In re BMGZ*, 971 NW2d 230 (Mich. 2022)).
- 20 *In re Velasquez*, No. 360057, 2022 Mich App LEXIS 6799 (Ct App Nov. 10, 2022).



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