

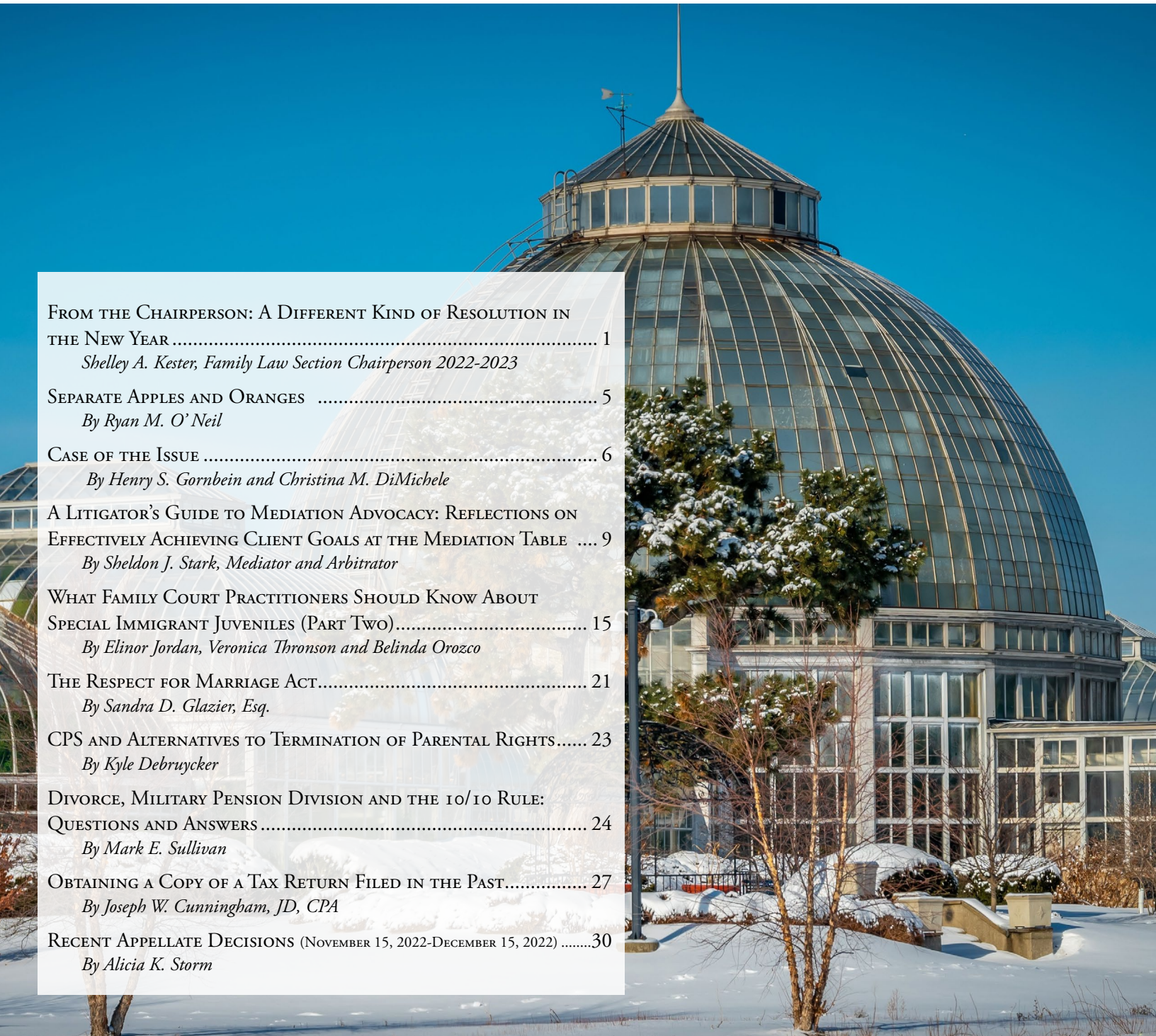
M I C H I G A N FAMILY LAW JOURNAL

A PUBLICATION OF THE STATE BAR OF MICHIGAN FAMILY LAW SECTION • SHELLEY A. KESTER, CHAIRPERSON

EDITORS IN CHIEF: ANTHEA E. PAPISTA & AMY M. SPILMAN

ASSISTANT EDITORS: DANIEL B. BATES, JAMES W. CHRYSIKOS, SHON A. COOK, JOSEPH L. HOHLER III,
MELISSA KELLEIGH, JESSICA LARSON, RYAN M. O'NEIL & SHELLEY R. SPIVACK

VOLUME 53 NUMBER 1, JANUARY 2023



FROM THE CHAIRPERSON: A DIFFERENT KIND OF RESOLUTION IN THE NEW YEAR	1
<i>Shelley A. Kester, Family Law Section Chairperson 2022-2023</i>	
SEPARATE APPLES AND ORANGES	5
<i>By Ryan M. O'Neil</i>	
CASE OF THE ISSUE	6
<i>By Henry S. Gornbein and Christina M. DiMichele</i>	
A LITIGATOR'S GUIDE TO MEDIATION ADVOCACY: REFLECTIONS ON EFFECTIVELY ACHIEVING CLIENT GOALS AT THE MEDIATION TABLE	9
<i>By Sheldon J. Stark, Mediator and Arbitrator</i>	
WHAT FAMILY COURT PRACTITIONERS SHOULD KNOW ABOUT SPECIAL IMMIGRANT JUVENILES (PART TWO).....	15
<i>By Elinor Jordan, Veronica Thronson and Belinda Orozco</i>	
THE RESPECT FOR MARRIAGE ACT.....	21
<i>By Sandra D. Glazier, Esq.</i>	
CPS AND ALTERNATIVES TO TERMINATION OF PARENTAL RIGHTS.....	23
<i>By Kyle Debruycker</i>	
DIVORCE, MILITARY PENSION DIVISION AND THE 10/10 RULE: QUESTIONS AND ANSWERS	24
<i>By Mark E. Sullivan</i>	
OBTAINING A COPY OF A TAX RETURN FILED IN THE PAST.....	27
<i>By Joseph W. Cunningham, JD, CPA</i>	
RECENT APPELLATE DECISIONS (NOVEMBER 15, 2022-DECEMBER 15, 2022)	30
<i>By Alicia K. Storm</i>	

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

(Part Two)



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”).¹ 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.² 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.

How should SIJ determinations be issued?

To issue the special determinations, the state court will need to make certain findings, so it is appropriate to seek evidence to support those findings. Some evidence may be presented in written form, such as: child’s birth certificate; marriage certificate; death certificate; statements by the child or



Kristen Roy, CFP®, CDFA®

Certified Divorce Financial Analyst

O: (734) 477-5235

kristen.m.roy@ampf.com

2800 S. State St. Suite 205
Ann Arbor, MI 48104



By working together, we can offer clients transitioning through divorce holistic advice that positions them for a better outcome.

How a CDFA Supports the Attorney

- Helps determine the potential short and long-term financial pitfalls related to the settlement proposal options
- Works closely with the attorney and client throughout the negotiation process to assess the impact of the settlement proposal
- Works through the financial aspects of the divorce freeing up the attorney’s time to focus on legal issues

Nelson, Kellmann & Associates, A private wealth advisory practice of Ameriprise Financial Services, Inc. Ameriprise Financial, Inc. does not offer tax or legal advice. Consult with a tax advisor or attorney. Ameriprise Financial Services, Inc. Member FINRA and SIPC. ©2019 Ameriprise Financial, Inc. All rights reserved.

parent or other caregiver; educational records from the child's country of nationality or from the U.S.; medical and/or mental health records from the foreign country or the U.S.; other records reflecting the abuse, neglect, or abandonment that occurred either in the country of nationality or in the U.S.; statements of relatives or friends in the country of nationality who witnessed the abuse, neglect, or abandonment or other dynamics of the family relationship, conditions of the country of nationality, or any other particular circumstances.³

Standard of Proof

The Michigan Court of Appeals has held that the standard of proof in determining whether to make the SIJ special determinations is the preponderance of the evidence.⁴ In so holding, the state appellate court reviewed other jurisdictions determinations and reasoned that, "because the SIJ statute does not state the applicable standard of proof to be applied for factual findings, we conclude that the preponderance of the evidence standard applies."⁵ Applying the general civil standard of proof allows courts the flexibility needed to account for evidentiary issues outlined above and make findings using the evidence that is available in the various forms it may take.

Procedure

In most cases, the primary source of evidence will be direct examination testimony or a signed declaration from the child or from a current caregiver or caseworker. Many children who travel to the U.S. alone will not have access to primary documents or may be forced to reach out to an abusive parent to access those records. Given that the parents do not have any right at stake in the proceedings, a lower evidentiary threshold is appropriate, and testimony should allow judges to

conduct sufficient factfinding. Where a child is placed with a non-abusive parent or in other circumstances where a parent is available, the parent may also testify or provide a signed declaration to assist the court regarding the nature of the abuse, neglect, or abandonment by the other parent, as may caregivers or others familiar with the family or child's situation. Depending on their age and development, the child may testify, although children and youth who have suffered trauma may have even more difficulty than other children recounting those experiences or a precise sequence/chronology of events during live testimony.⁶

Attorneys, supportive adults, and court staff should identify cases requiring translation services early in the process. Further, it is vital to seek out the child's best language. For instance, many young people from Southern Mexico and Central America speak an indigenous language as their first language but may also speak Spanish, though not as fluently. Children from India often speak English but may converse in another language more fluently. Given the delicate subject matter, it is best if the child testifies in their best language. Sometimes interpreters for particular dialects can be challenging to identify. Courts and attorneys should consult the resources listed below to identify strong interpreters for less common languages.

When the court has completed the determinations, it is best for its order to include more than template language pulled from the federal law on SIJ. In addition to making the requested findings, the court can provide brief, illustrative facts that reflect its informed decisions about the child in the case before the court. Attorneys should submit proposed orders to simplify the court's task of generating the order. Finally, under Michigan law, it is ideal and best practice to have an order for a judge to submit with the federal immigration



application, rather than a judicial referee-signed order that has not yet become a final order of the court. Attorneys and courts can assist in the sometimes-tight timeline for generating the necessary order if they flag this need ahead of time and seek out an order from the judge in the case.

Specific Determinations

Regarding the finding that the child is dependent on the juvenile court,⁷ federal law and policy guidance states that the juvenile court order is sufficient for SIJ eligibility where it “[d]eclares the petitioner dependent on the court, or legally commits or places the petitioner under the custody of either a state agency or department, or a person or entity appointed by a state or juvenile court.”⁸ The American Bar Association has explained that “the court need only note that it has found the child to be dependent on the court or that it has granted, at a certain point, custody (or some other form of legal caregiving, such as guardianship or adoption) to a particular person, state agency, or entity.”⁹ Such findings are made whenever a court makes an order that decides where a child will reside or spend time. These are regular decisions of the Family Division of the Circuit Courts¹⁰ in divorce, child custody, guardianship, paternity, adoption, child welfare, and juvenile delinquency; and the Probate Court in guardianship.

When it comes to the determination that reunification with one or both parents is not viable due to abuse, neglect, aban-

donment, or similar basis,¹¹ the court need only make these determinations using Michigan state law standards. Notably, the court is not to assess the child’s experience of abuse, neglect, abandonment, or similar circumstances when compared with norms or laws in the child’s home country.¹² Further, no federal definition of “abuse, neglect, or abandonment” renders reunification with a parent unviable. State courts are to use their own statutory, regulatory, or other definitions or understandings of these terms or any “similar basis under state law.”

Moreover, a child living with one parent but unable to reunify with the other because of abuse, neglect, or abandonment by her other parent is eligible for SIJ.¹³ The other parent may seek a custody order as part of a divorce or separation, paternity action or child custody matter, to prevent an abusive parent from trying to take the child, to more easily make medical or educational decisions for the child, etc.¹⁴

Given that no federal definition exists, Michigan courts may use various statutes to guide their determination—regardless of whether that court is vested with jurisdiction under the statutes that provide those definitions. For example, abuse and neglect are defined in the Child Protection Law¹⁵ and the Child Abuse and Neglect Prevention Act.¹⁶ For a definition of abandonment, Michigan courts may look to various child welfare statutes relating to children left without care or custody or with whom a parent has not had contact and has not supported for an extended period of time.¹⁷ The state court



**Pitler Family Law
and Mediation, P.C.**
Amicable Divorce Solutions

MEDIATION

Reasonable Rates
Client Friendly Office
Flexible Schedule

Oakland County Approved Domestic Mediator

PARENTING TIME COORDINATOR

AFCC Parenting Time Coordination Training, Baltimore, 2018

Randall B. Pitler · RPitler@AmicableDivorce.com
1212 South Washington Avenue, Royal Oak, Michigan 48067
(248) 584-0400 · www.AmicableDivorce.com

definitions serve as a guide for the court in making the judicial determinations. For instance, a probate court acting in a juvenile guardianship case could draw its definition of neglect or abuse from the child welfare statutes—the SIJ framework entrusts state courts with interpreting state statutes that generally deal with children’s well-being. Again, it is important to note that simply applying a definition drawn from child welfare or parental termination statutes does not convert the SIJ determinations hearing into a proceeding under those sections. In turn, courts do not need to follow the exacting procedural and evidentiary processes under those statutes to provide the predicate order to the child.

Courts may also consider whether reunification is not viable under a similar basis in state law, such as human trafficking laws or laws dealing with sexual assault or domestic violence. Practitioners should exercise caution when relying on a similar basis argument and would be well served to ensure that a straightforward argument of abuse, neglect, or abandonment is genuinely unavailable.

Common scenarios that children seeking SIJ orders in Michigan courts may present include:

- Parents not providing proper nutrition, medical treatment, or education.¹⁸
- Being required to work at a young age, instead of attending school, and engaging in dangerous work or use heavy or unsafe equipment.¹⁹
- Physical abuse, including being beaten with some frequency or intensity, or with implements such as belts, sticks, or cords.²⁰
- Having had no contact with a parent for most of their life and the parent not having provided for them in recent years, or parental death.²¹
- Sexual abuse by a step-parent or other relative, sex or labor trafficking, or opting not to take protective action or to help the child heal from such incidents.

Because these scenarios are consistent with the bases for finding abuse, neglect, or similar findings under Michigan law, they should be more than sufficient to support an order with the special determinations in support of SIJ.

Finally, the court may find that the child’s best interest would not be served by returning to her country of nationality or that of her parents. Although not all judges routinely make best interest determinations (e.g., those not serving in family, domestic relations, or dependency courts may be less familiar with the process), any state court judge can draw on existing state guidelines and resources for assessing a child’s best interest.²² The full array of Michigan’s best interest factors is well known and addresses a broad range of aspects of the child’s life.²³

The ABA has clarified that “[t]he state court need not be an expert on the conditions of the child’s country of national-

ity. To determine what is in a child’s best interest, the court need only consider and balance the information available.”²⁴ The National Center for State Courts has elaborated that courts require “some information to back the finding that it is not in the [child]’s best interest to be returned to his/her home country. The information may come from an assessment or study conducted by another agency.”²⁵ Finally, the ABA has suggested that courts consider “the opportunities the child has in the U.S. in terms of safety versus likelihood of harm, connections with nonoffending parents or caregivers, relationships with friends and other sources of support, medical and mental health well-being, educational opportunities, economic opportunities, other resources and opportunities, and other factors.

Practitioner Knowledge of SIJ Can Make a Real Difference for Children

Michigan family and probate courts have a discrete, but critical role to play in the SIJ framework. Building a basic knowledge base about SIJ will allow for efficient processing of claims—allowing children to enter a path towards citizenship and safety. Few areas of law provide such an opportunity to make a positive difference in children’s lives. The resources listed below are available to support you in assisting immigrant children and the authors would encourage members of the bar to reach out with their questions.

Resources

- **Michigan Immigrant Rights Center** MichiganImmigrant.org
- **Michigan State University College of Law Immigration Law Clinic** Law.MSU.edu/clinics/immigration.html
- **Michigan Judicial Institute Child Welfare Proceedings Bench Book** 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
- **U.S. Citizenship and Immigration Services** 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/
- **ABA Child Welfare and Immigration Project** AmericanBar.org/groups/public_interest/child_law/project_areas/immigration/
- **ABA Children’s Immigration Law Academy** 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

About the Authors

Belinda Orozco is a Supervising Attorney with Michigan Immigrant Rights Center's Kalamazoo office where she supervises the UC Released Team, a sub-practice of a team of attorneys that represent unaccompanied children.

Belinda received her B.A. from the University of Texas-Pan Am and her J.D. from Western Michigan Cooley Law School. She interned at the Access to Justice Clinic during law school and volunteered at Justice for Our Neighbors (JFON). Shortly after graduating from law school, Belinda worked at Immigration Legal Services (ILS) of the Catholic Diocese of Grand Rapids. Belinda was born and raised in the Rio Grande Valley of South Texas.

Veronica Tobar Thronson is a Clinical Professor of Law & Director of the MSU Immigration Law Clinic at Michigan State University College of Law in East Lansing, MI where she also teaches Domestic Violence Law, Family Law: Marriage & Divorce, and Immigration and Nationality Law. Thronson routinely conducts trainings for attorneys and judges and was appointed to the faculty of The National Judicial College in 2012. Since 2015 she has served as expert faculty with the National Immigrant Women's Advocacy Project at American University Washington College of Law's national Family Law Attorneys Community of Practice.

Elinor Jordan is the Training and Impact Supervisor for Michigan Immigrant Rights Center where she serves on the unaccompanied children's team representing refugee and migrant youth.

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 Cristina Ritchie Cooper, A Guide for State Court Judges and Lawyers on Special Immigrant Juvenile Status, AMER BAR ASS'N, available at: [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-/](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/) (last visited Dec. 3, 2022) (hereinafter ABA SIJ Guide).
- 4 *In re Velasquez*, No. 360057, 2022 Mich App LEXIS 6799 (Ct App Nov. 10, 2022).
- 5 *Id.* (citing *In re Murray Conservatorship*, 336 Mich App 234, 246; 970 NW2d 372 (2021)).
- 6 ABA SIJ Guide, *supra* note 19.
- 7 8 USC 1102 (a)(27)(J).
- 8 <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>
- 9 ABA SIJ Guide, *supra* 19.
- 10 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).
- 11 8 USC 1102 (a)(27)(J).
- 12 See <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>
- 13 8 USC 1102 (a)(27)(J) (specifying that reunification should not be viable with "1 or both parents").
- 14 ABA SIJ Guide, *supra* note 19.
- 15 MCL 722.622.
- 16 MCL 722.602.
- 17 For example, a court may terminate parental rights where a child is deserted, the parent cannot be identified and does not come forward within 28 days, or where a known parent has deserted the child for 91 or more days without seeking custody. MCL 712A.19b(3)(a)(i) and (ii). A court may also terminate parental rights where a parent with financial means to do so "fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g). Relatedly, a Michigan court may exercise jurisdiction over a child found within its reaches whose "custodial parent or legally responsible person has died . . . and no appropriate parent or legally responsible person is willing and able to provide care for the juvenile," MCL 712A.2(b)(3)(D), or a child who is simply "without proper custody or guardianship" or "subject to a substantial risk of harm to his or her mental well-being." MCL 712A.2(b)(1). The statute goes on to define "without proper custody or guardianship" not to include a child placed with someone "who is able to and does provide the juvenile with proper care and maintenance." MCL 712A.2(b)(1)(C). Finally, where a child has a guardian and the parent has not contacted or supported the child for two years or more, parental rights may be terminated. MCL 712A.19b(3)(i).
- 18 *In re Velasquez*, No. 360057, 2022 Mich App LEXIS 6799 (Ct App Nov. 10, 2022).
- 19 *Id.*
- 20 *Id.*
- 21 See *In re LFOC*, 319 Mich App 476; 901 NW2d 906, 911 (2017), *In re Velasquez*, No. 360057 n5, 2022 Mich App LEXIS 6799 (Ct App Nov. 10, 2022) (observing that was not viable with the child's father because he had died).
- 22 ABA SIJ Guide, *supra* note 19.
- 23 See generally, MCL 722.23.
- 24 ABA SIJ Guide, *supra* note 19.
- 25 SIJ Benchbook, NAT'L IMMIGRANT WOMEN'S ASSISTANCE PROJECT, https://www.sji.gov/wp/wp-content/uploads/15-167-NCSC_UICGuide_FULL-web1.pdf.