

The North Carolina Courts and Special Immigrant Juvenile Status (SIJS)

SPEAKERS

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Agenda

- 1) Immigration Basics
- 2) SIJS: Definition, Elements under Federal Law & Regulations
- 3) NC State Law: Substantive Legal Bases for Requisite Findings, Proceeding Types for Findings, Mechanisms for Obtaining Findings
- 4) Child Custody Jurisdiction (UCCJEA, PKPA), International Service of Process, other Procedural Issues in State Court
- 5) Other Considerations – Language Access and Cultural Competence, Ethical Issues
- 6) Additional Questions and Answers, Hypotheticals

Special Immigrant Juvenile Status

What we hope you will learn during this session:

- What are characteristics of typical SIJS-eligible children given the current trends, and how to screen for potential eligibility.
- Understand the basic pieces of the immigration system and the particular process to receive a SIJS-based green card (and to stop deportation/"removal" if that's already underway).
- The two essential findings a Juvenile (or other) Court must make to support a juvenile's eligibility for SIJS.
- The basic outline of how to pursue SIJS relief for the juvenile

Immigration Problems

A child who's not a citizen or permanent resident (green card holder) - from anywhere in the world:

- Visa Overstays
- EWI's (Entry without inspection)
- Applicants for Asylum, Arriving Aliens, Parolees, Recipients of Deferred Action (DACA), Others
- If problem not solved, the child may be ordered "removed" (formerly "deported")

Immigration Solutions

- Special Immigrant Juvenile Status (“SIJS”) is preferable to many other forms of relief (e.g. DACA) and may be available where family-based visas would not succeed due to various legal bars
- No More “Prosecutorial Discretion” under Trump, apparently, so only statutory-based relief should be relied-upon
- Very time sensitive if child is near aging-out of juvenile court (here, 18 years old)
- Immigration law is complicated; it’s important to be screened by a competent immigration attorney

Examples: Children Who May Benefit

- Children who have been abandoned or with unfit parents, whose adoptions by Citizens or LPR's would not directly overcome technical/legal bars under immigration law.
- Unaccompanied Minors (UAC's) fleeing Crisis in Central America's "northern triangle" (Guatemala, Honduras, and El Salvador)
- Young DACA-type "Dreamers" who may have no other path to permanent residency (and DACA may end)
- Children of immigrants whose status does not normally allow for family petitions, but the child's best interests require placement with that immigrant

Department of Homeland Security (“DHS”):

- **U.S. Customs and Border Patrol (“CBP”):** Apprehends aliens at/near the U.S. border
 - **U.S. Immigration and Customs Enforcement (“ICE”):** Apprehends aliens in the interior; manages detained & non-detained aliens without lawful status; represents the government in seeking orders of removal in immigration court
 - **U.S. Citizenship and Immigration Services (“USCIS”):** Administers benefits/visas for non-citizens within the U.S.
 - *USCIS’s Administrative Appeals Office (“AAO”): The final administrative authority within USCIS for many kinds of appeals, including denials of Special Immigrant Juvenile Status*

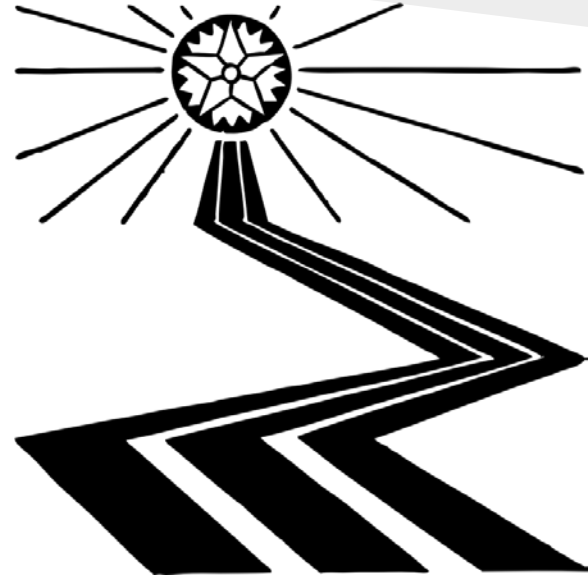
Department of Justice (“DOJ”):

- **Executive Office for Immigration Review (“EOIR”)**: Immigration Courts fall under EOIR. Immigration Judges (“IJ”) adjudicate certain claims; may grant status or issue removal orders.
- **Board of Immigration Appeals (“BIA”)**: Reviews decisions of EOIR; appeals from the BIA lie with the Circuit Courts of Appeal.



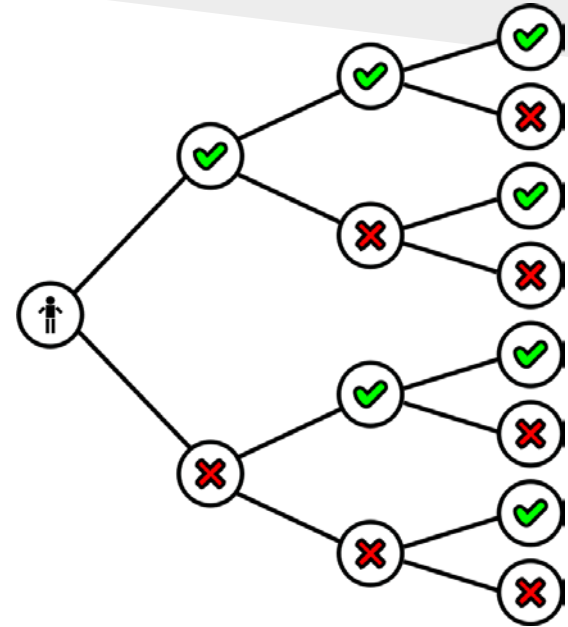
Immigration Court Process

- Issuance of “Notice to Appear” and Notice of Hearing
- Pleadings
- Seek a form of immigration relief
- Adjudication of case



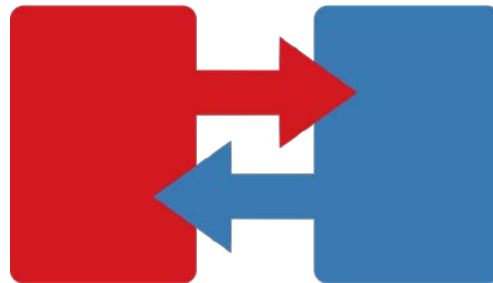
Methods of Case Disposition

- Relief is granted by Immigration Judge (IJ)
- Order of removal
- Case is administratively closed
- Respondent takes Voluntary Departure
- Case is terminated (dismissed)



Special Immigrant Juvenile Status (“SIJS”)

- A form of humanitarian protection for immigrant children who have been abused, abandoned, and/or neglected
- Created by Congress in 1990, modified several times through bipartisan legislation, including the 2008 TVPRA
- Unique Federal-State legal structure



Special Immigrant Juvenile Status (“SIJS”): In plain words:

A **child in the U.S.** who does not have lawful immigration status, who can demonstrate to the federal immigration agency USCIS that:

- s/he has been abused, abandoned or neglected by a parent (and therefore cannot reunify with that parent), *and*
- an adult or agency in the U.S. has been awarded custody of him/her, OR s/he is dependent on a state court, *and*
- his/her best interests are not served by returning him/her to country of origin

can request permission to remain in the U.S.

How is SIJ status granted, by whom?

USCIS adjudicates petitions for SIJS and either grants or denies Special Immigrant Juvenile Status (see 8 C.F.R. § 204.11)

- 204.11(b): Explains that a **petition for special immigrant juvenile status** for the child must be filed with USCIS, using Form I-360
- 204.11(d): Outlines the **documents which must be submitted to USCIS in support of the petition**, which include:
 - documentary evidence of the alien's age (birth certificate, passport, etc.), and
 - a state court order including the findings described previously
- 204.11(e): **Explains that USCIS will issue a decision on the petition.** The petitioner will be notified of the decision, and, if the petition is denied, of the reasons for the denial and of the petitioner's right to appeal the denial.

State Court Order: Specific Findings of Fact

Two specific factual findings are necessary to enable the Minor Child or his representative to petition the U.S. Citizenship and Immigration Services (“USCIS”) for a classification of Special Immigrant Juvenile Status (“SIJS”).

First factual finding USCIS will look for

The **first** required finding is that that “reunification with *one or both* of the [Minor Child’s] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under [North Carolina] law.”
8 U.S.C. § 1101(a)(27)(J)(i).



Second factual finding USCIS will look for

- The **second** required finding is that it is not in the best interest of the Minor Child to be returned to his/her previous country of last habitual residence. 8 U.S.C. § 1101(a)(27)(J)(ii).



What does USCIS look for in the state court order?

- (1) Reunification w/ one or both parents not viable due to abuse, abandonment, neglect, or similar
- (2) Not in child's best interest to return to country of origin
- (3) Child has been placed in the custody of an individual or entity, or is **dependent** on the court

* *“Dependent”* - a child is considered “dependent” on a state court when the court accepts jurisdiction of a case in which it is asked to make a determination as to her care or custody; when the child's custody is anything other than the child remaining in the custody of two natural parents.

Something USCIS does *NOT* look for -

Eligibility for foster care NOT necessary

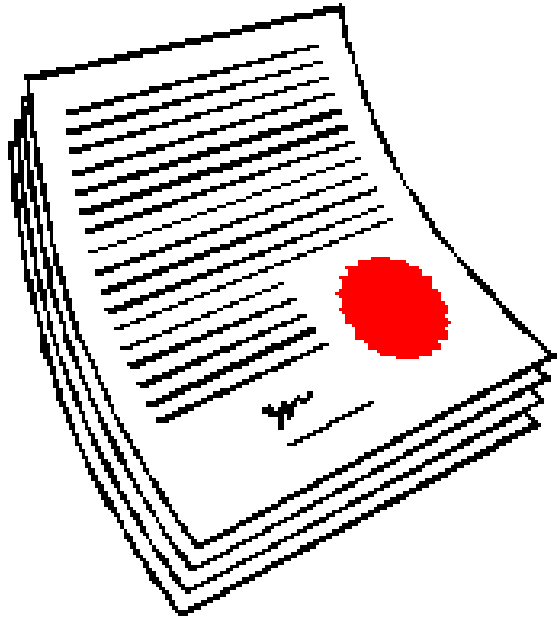
- The original statute provided relief to children who had been “deemed eligible for long-term foster care.”
Immigration Act of 1990, 1990 Pub. L. No. 101-649,
104 Stat. 4978 § 358 (Nov. 29, 1990).
- In 2008, the TVPRA **replaced** “eligible for long-term foster care...” with a finding that “reunification with one or both parents is not viable due to abandonment, abuse, neglect or a similar basis.”

TVPRA: “one or both” parents

2008 TVPRA revisions: a child is now eligible for SIJS where “reunification with 1 or both parents is not viable due to abuse, abandonment, neglect or a similar basis.” *What does this mean?*

- State courts routinely read this to mean that a child is eligible for SIJS where there has been abuse, abandonment, neglect or similar preventing reunification with *one* parent, **even if the child has reunified with the other parent.**
- This interpretation is in keeping with **plain language** of the statute.
- **Consistent with the legislative history of the SIJS law:** The TVPRA expanded SIJS eligibility and specifically removed earlier language limiting SIJS to cases where reunification with both parents was not an option.
- **Child still needs protection and immigration relief:** The child may be fleeing an abusive parent in the home country and migrated in an effort to reunify with the other parent. Unless the child has an independent right to immigration relief, he or she could be deported to the abusive parent.

Recap: What role does a NC state court order play in the SIJS process?



Any qualifying court's order placing the Minor Child in the custody of "an individual or entity" will be taken into consideration by USCIS in that agency's determination as to whether the Minor Child qualifies for Special Immigrant Juvenile Status.

The Immigration Details

- USCIS must complete the process of adjudicating an I-360 (Special Immigrant) petition within six months. If not, there are remedies, including suit in federal court or contacting the USCIS Ombudsman's office.
- Anyone can file the I-360 on behalf of the child
- An Approved I-360 is sufficient to stop removal/deportation proceedings if they were active, AND as a basis to reopen an existing removal order.
- If the Application for Adjustment of Status (I-485) is filed at the same time as the I-360, then should be adjudicated at the same time or shortly afterwards. The I-485 may also be adjudicated by an immigration court if the proceedings were not terminated.
- I-360 and I-485 adjudications are non-prejudicial, so possible to re-try.
- But failure may lead to a new immigration court proceedings.

Crucial Details – Deadlines!

- State Court Order must be valid at time of filing for SIJS (unless only reason for invalidity was due to “aging-out”)
- 18 years old is normal age-out date; any state court order issued after that may be void
- Frequent problems with applications submitted after aging-out
- Because federal law defines a child as under-21, certain proceedings could be possible after 18, if developmentally-disabled and incapable of self-support
- Drop-dead deadline: the SIJS filings including adjusting status (green card) must all be underway before 21, or will be barred

Inadmissible/Deportable?

If the juvenile has criminal or gang involvement, particularly if controlled-substance related charges, if has trafficked others, has been a prostitute or pimp, or has serious mental health issues, consultation with an immigration attorney may be necessary to determine if waivers are available and appropriate.

RED FLAG: If such a child is not already in removal proceedings, USCIS may refer child to ICE to start them!

Visa Quotas

- All “Special Immigrant” visas are in the EB-4 category, which has an annual # limit, and each country also has a # limit.
- I-360 Approvals give a “priority date”, like a place in ‘the line’ relating back to the filing date, for use in oversubscribed countries: Guatemala, Honduras, El Salvador, and Mexico are ‘oversubscribed’ (India will also be oversubscribed soon)
- Cannot file the I-485 until the *priority date* is ‘current.’
- The monthly DOS “Visa Bulletin” tells which dates are old enough to apply, progressing as the year moves on.

What is USCIS doesn't like what it sees?

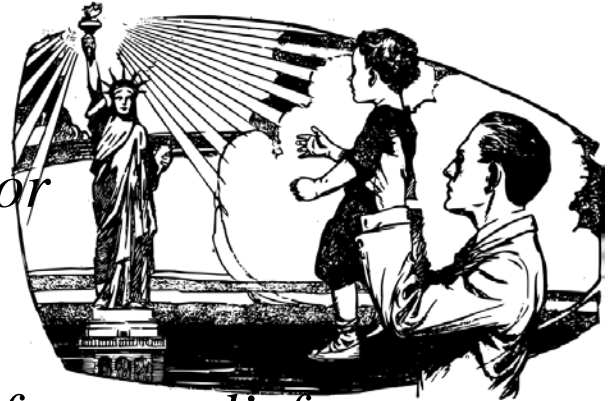
- **RFE** - Request for Evidence - USCIS wants more evidence
- **NOID** - Notice of Intent to Deny - sometimes follows RFE, the attorney will have to convince USCIS they're about to make a mistake
- **Denial** - Dismissal of the Petition or Application - Non-prejudicial
 - May ask for agency reconsideration, and appeal denials to the AAO
 - May move to reopen if new evidence shortly after the decision
- **Later Revocations** - controversial practice where USCIS reviews case later and believes it made a mistake in granting a benefit - may have to appeal or sue in federal court under APA

Outcome for the child: Green Card

- Results: the adjustment of status (I-485) if approved, allows the child to remain in the United States notwithstanding his or her prior legal status.
- This means a green card & Lawful Permanent Resident

The Alternative: probably no options to get lawful status the rest of their lives (absent unusual circumstances, changes in the laws, or marriage to a US Citizen);

*Within months of becoming an adult, would
Accrue 'unlawful presence' time and bars to future relief*



Green Card

Lawful permanent residents have access to:

- Work authorization
- SSN & Driver's License – Other public benefits

No immigration benefits for Parents.

- No fear of apprehension & removal
- Later, may sponsor certain other relatives
- In 5 years, may naturalize

Immigration Status = Permanence & Stability

Outcome for the child (cont.)

If the child completes the immigration process and obtains lawful status, it would have an extremely positive impact on the child's well-being, including physical and emotional safety, education, medical care, and almost every aspect of the child's life.



FEDERAL AGENCIES

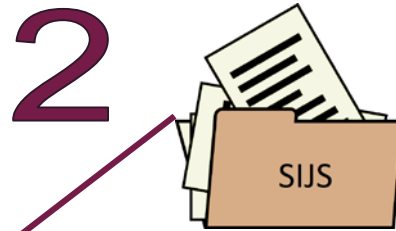
**EOIR - Immigration Court
Charlotte, NC**

The Immigration Judge primarily make deportation (“removal”) decisions and can grant additional time to seek immigration relief

Once SIJS is obtained from USCIS, the respondent’s attorney can seek to terminate any removal proceedings (like dismissing the government’s case without prejudice) in order to allow USCIS to adjudicate the adjustment of status.

**USCIS- Immigration Agency
(National Benefits Center)**

These Immigration Officers adjudicate various benefits, including SIJS and lawful permanent residency (a green card)



With the predicate order and other documents, USCIS will adjudicate the SIJS (Form I-360) Petition

USCIS will also adjudicate the Application to Adjust Status (Form I-485) *if there are no ongoing removal proceedings**

**Also subject to visa quotas*



N.C. State Courts

“Family”/Juvenile Proceedings in the District Court In Each County

Family/Juvenile Court Judge (or other Judicial Official), makes best interests determinations about the custody of a Juvenile, and renders an order (the “Predicate Order”) with certain required findings.



The Predicate Order has to award custody of the juvenile to someone other than both parents together, and has to make conclusions based on relevant findings about two other things:

It would not be in the child’s best interests to return to his/her home country
The child cannot reunify with one or both parents due to abuse, neglect, abandonment, or similar bases



NC STATE LAW

- **Public Policy**
- **Child Custody Determinations and Other Courts/Proceedings where Child Custody determinations may be made**
- **SIJS-related Findings of Fact**
- **Subject Matter Jurisdiction (UCCJEA)**
- **Personal Jurisdiction & Service of Process**

North Carolina Public Policy

- Every child needs & deserves a Guardian or Custodian who has full legal authority to act in their best interests, during each and every day of their childhood.

§ 35A-1201(6) North Carolina recognizes that:

Minors, because they are legally incompetent to transact business or give consent for most purposes, need responsible, accountable adults... Parents are the natural guardians of the person of their minor children, but unemancipated minors, when they do not have natural guardians, need some other responsible, accountable adult to be responsible for their personal welfare and for personal decision-making on their behalf.

Which Courts can make SIJS findings?

- USCIS will consider an order from **ANY** state court that is empowered to make determinations about child care and custody.
- Federal law refers to these as **“juvenile courts”** - NOT the same as what we in NC call “juvenile court” - the federal regulation explicitly states that when it refers to a “juvenile court,” it means **“any court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.”** 8 CFR 204.11
- A recent UNC School of Gov’t [Blog Post on NC Courts that may make SIJS findings](https://goo.gl/AbjQqg) is available at: <https://goo.gl/AbjQqg>

What is Child Custody?

- Child custody is a “bundle” of rights and responsibilities relating to the care, custody, and control of a minor child.
- Prior to any court involvement or other binding legal action, the natural parents share equal custody rights
- Child custody may be shared by multiple individuals/entities, and some, all, or none of whom may be the biological parents.
- Child custody consists of both legal custody (decisionmaking authority) and physical custody (physical care, visits, delegated care)
- **Mere physical custody or possession (caretaking) of a child does not constitute the kind of legal custody required for SIJS.**

What kinds of custodians exist under NC Law?

- A biological parent or an adoptive parent (Ch 48)
- A general guardian or guardian of the person (Ch 35A or 7B)
- A custodian appointed by a court (Ch 50 or, rarely Ch 7B)

What categories are not custodians?

- *Caretakers*
- *Individuals appointed by ORR as voluntary ‘sponsors’*
- *Individuals with (revocable) powers of attorney over the child*

Summary of Courts/Proceedings

(making child custody determinations)

Who is seeking “care and custody”?

- Parent vs. parent
- Third party (anyone) vs. parent(s)
- CPS/DSS

- DJJ (i.e. “the state”)

- DSS, OR certain individuals with standing to file
- Anyone (when parents are deceased)
- Anyone wishing to adopt (including step-parents)

Appropriate Action/Special Proceeding

- Ch. 50 “Family Court”
- Ch. 50 “Family Court”
- Ch. 7B Juvenile Abuse-Neglect-Dependency Court
- Ch. 7B Juvenile Delinquency Court
- Ch. 7B Termination of Parental Rights
- Ch. 35A Guardianships

- Ch. 48 Adoptions

Chapter 50 Child Custody Actions

- Often this is one parent versus another, showing that only one should have the right to legal custody
- 50-13.1 allows non-parents to petition for custody of a minor child, *so long as* they have standing with respect to the particular child, and can show unfitness of the parents*
- 50-13.2(a) codifies that a best interest standard applies (“the court *shall* consider *all relevant factors*... and *shall make findings accordingly*... which support **the determination of what is in the best interest of the child.**”)



Chapter 50 Child Custody Actions

- GS § 50-13.8 provides for custody of individuals past 18 where they are physically or mentally incapable of self-support.
- GS § 50-13.5 provides for the detailed procedure, including grounds for *ex parte* or temporary orders prior to service of process
- (d)(2) states that the court may enter orders prior to service of process in appropriate cases.
- A temporary or *ex parte* order for custody solidifying status quo may normally be ordered without statutory impediment.
 - To change the living arrangements *ex parte*, the child must be exposed to a substantial risk of bodily injury/sexual abuse or a substantial risk of abduction/removal from the State (to evade the jurisdiction of North Carolina courts).
- *A Temporary Order will likely not be sufficient for SIJS*

Juvenile Court Actions:

7B Article 1-10, Juvenile Abuse/Neglect/Dependency Actions (“DSS Court”)

- Only a County Department of Social Services (“DSS”) may initiate a juvenile petition regarding a child who meets the statutory criteria of Abuse, Neglect, or Dependency
- DSS involvement is based on a confidential Child Protective Services (“CPS”) report.
- Court may award custody or guardianship to non-parents.
- If a one-parent home, SIJ may still be appropriate.*
- Court File is confidential: Before release of predicate order or other documents, must obtain a court order under G.S. 7B-2901

7B Article 11, Termination of Parental Rights (“TPR”)

- N.C. Gen. Stat. § 7B-1103 the action may be brought by DSS, a GAL for the child, a guardian, one parent against another, a long-term custodian or caretaker, or anyone who has filed a petition to adopt the child.
- The TPR is a more severe deprivation of rights than a mere custody determination, and involves significantly more procedural hurdles than other actions

7B Article 15-27, Juvenile Undisciplined/Delinquent Actions

- These actions qualify under the federal statute, where the court makes an award of custody of the minor.
- Note that certain crimes may eliminate the possibility of obtaining legal immigration status - USCIS will carefully examine and evaluate these before granting status

Guardianship Proceedings

N.C. Gen. Stat. Ch. 35, Art., 6

- These informal “special proceeding” are handled by the Clerk’s office.
- In all instances the Clerk must determine the facts in order to determine the best interests of the minor child, and “ the clerk shall in every instance base the appointment of a guardian or guardians on the minor's best interest.” G.S. § 35A-1224
- This is an option available for orphans, i.e. where the minor has no “natural guardian.”
- The clerk may appoint a *general guardian* who will have all the custodial rights of a parent (not the same constitutional protections).*

Adoption Proceeding

N.C. Gen. Stat. Ch. 48

- There are many procedural barriers, and if the parents contest there would need to be a TPR filed.
- These informal “special proceeding” are handled by the Clerk’s office, not judges, and follow their unique procedure (if facts are contested, may be transferred to District Court and heard by a judge).
- Most “powerful” of all awards of custody - virtually irreversible, bestows constitutional rights on adoptive parents, terminates rights of biological parents
- Adoptions rely on social work reports, and are only to be granted after the clerk makes factual determinations regarding the best interests of the minor child, *see e.g.* § 48-2-603(a) and § 48-2-606(a).

Findings of Fact in Civil and Juvenile Matters

N.C. Gen. Stat. § 1A-1 (Rules of Civil Procedure)

Applies to All Ch. 50 actions & Juvenile A/N/D-TPR Actions*

(*except where a provision of 7B supersedes the rules)

Rule 52. Findings by the court.

(a) Findings. -

(1) In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment.

Findings of Fact in Special Proceedings or Estates?

Adoption:

§ 48-2-603(a). Hearing on, or disposition of, petition to adopt a minor.

...the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee

§ 48-2-606. Decree of adoption. (a) A decree of adoption must state at least: ... (7) That the adoption is in the best interest of the adoptee.

Guardianship:

§ 35A-1223. Hearing before clerk on appointment of guardian.

The clerk shall receive evidence necessary to determine... the minor's assets, liabilities, and needs, and who the guardian or guardians shall be. The hearing may be informal and the clerk may consider whatever testimony, written reports, affidavits, documents, or other evidence the clerk finds necessary to determine the minor's best interest.

Finding Facts: The Declaratory Judgment Act

Declaratory Judgments: Speaking broadly, any NC court may interpret any question of law or matter in dispute between the parties already before it. Therefore, those courts have an additional mechanism with which to answer the questions required about the child's best interests and viability of reunification with parent(s).

Per N.C. Gen. Stat. Ch. 1, Art. 26: Any division and any court of record within the General Court of Justice may, in an action pending before it solely for a declaratory judgment or for other matters wherein it has jurisdiction over the parties, may make a determination of facts and law applicable to settling a controversy between the parties.

Declaratory Judgment Act

N.C. Gen. Stat. § 1-254 Courts given power of construction of all instruments. Any person... *whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.*

N.C. Gen. Stat. § 1-264 Liberal construction and administration. This Article is declared to be remedial, its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and it is to be liberally construed and administered.

NC caselaw: specific findings are regarding various best interests and other factors

Relevant, non-cumulative information must be received by the Court, and it must consider (and make findings sufficient for appellate review) all important aspects of the child's circumstances, particularly those relating to parental misconduct and the child's safety. *See, e.g.:*

- *In re Shue*, 311 N.C. 586, 319 S.E.2d 567 (1984)
- *Dixon v. Dixon*, 67 N.C. App. 73, 312 S.E.2d 669 (1984)
- *Thomas v. Thomas*, 757 S.E.2d 375 (N.C. App. 2014)
- *Carpenter v. Carpenter*, 737 S.E.2d 783 (N.C. App. 2013)
- *In re Kowalzek*, 37 N.C. App. 364, 246 S.E.2d 45 (1978)

N.B. If any 3rd party is seeking custody against a parent, there must be *clear & convincing* findings of parental unfitness or acts inconsistent with protected status to justify custody to a non-parent.

Statutory Guidance: Definitions of Abuse, Neglect, Abandonment, etc.

Child Welfare Proceedings (A-N-D and TPR) have specialized definitions regarding

- **N.C. Gen. Stat. § 7B-101** defines “**Abused Juvenile,**” “**Neglected Juvenile,**” and “**Dependent Juvenile.**”
- **N.C. Gen. Stat. § 7B-1111** Contains definitions for Abandonment and other grounds sufficient for a termination of parental rights
- No reason that the Court cannot find other bases not listed, or use other definitions of these terms, so long as clear about it being a deviation in usage for purposes other than the adjudication of the matter; particularly, may use other bases available in Ch. 50

NC Definitions of “Reunification” and [not] “Viable”

- Courts must normally use the **plain meaning** or dictionary definition where there is no definition in the statute/regulations, which is the case with these terms for SIJS. (See, e.g., *In re D.A.M.*, A12-0427, 2012 WL 6097225 (Minn. Ct. of App. Dec. 10, 2012), concluding that Congress did not intend any specialized definitions for these terms).
- No NC caselaw exists on these terms in the SIJS context*
- “Viable” in this context means “**Practicable**” or “**Likely to succeed.**”
- Reunify with a parent means something like to be in their care, custody, and control.

Factors for [Not in] the Juvenile's Best Interests to Return to Home Country

- Doesn't need to be any of the reasons the juvenile and/or family thought about when they came here
- Availability of safe, appropriate, willing caretaker
- Availability of needed mental health services or any special medical needs
- Availability and quality of education
- Country Conditions and Safety concerns - usually easy to show with academic and news articles, but individualized facts and proof is best
- Is the person/agency here with custody able/willing to return if the child is removed? Could the judge even pick anyone else?

**Subject-Matter Jurisdiction:
Uniform Child Custody Jurisdiction
and Enforcement Act (“UCCJEA”):
N.C. Gen. Stat. § 50A-101 et seq.**

Applicable to all child custody proceedings of any sort, and governs subject-matter jurisdiction

Why is jurisdiction in NC?

- Jurisdiction does not arise unless and until North Carolina meets the definition of a “Home State,” which under **NCGS § 50A-102 and -201** generally occurs after six months of residence by the child in NC.
- The court may have temporary emergency jurisdiction under § **50A-204** when the child is present in North Carolina and has been abandoned or threatened with abuse or mistreatment (which may ripen into non-temporary jurisdiction with passage of time).

Foreign countries treated like other states

The UCCJEA (incorporated into N.C.G.S. at Chapter 50A) treats foreign countries as though they were other states for purposes of these definitions.

§ 50A-105 International application of Article:

(a) A court of this State shall treat a foreign country as if it were a state of the United States...

[with exceptions for human rights issues jurisdictions that are non-reciprocal]



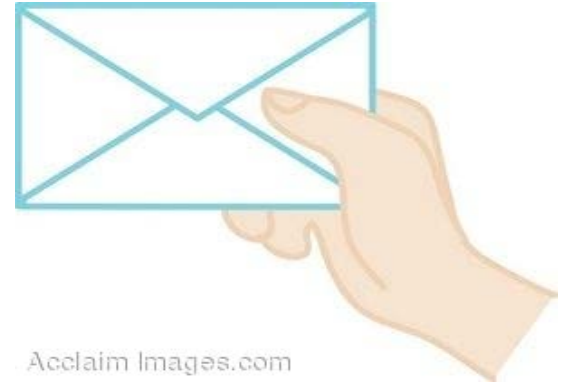
PERSONAL JURISDICTION - INTERNATIONAL SERVICE OF PROCESS

- N.C. Rules of Civil Procedure for International Service of Process or Service of Process by Publication:

- N.C. Gen. Stat. § 1A-1

Rules of Civil Procedure

- Rule 4(j1) publication
- Rule 4(j3) international
- Also note requirements for proof of service in § 1-75.10 before a ‘default’
- **Rule 4(j5) acceptance of service goes a long way...** And providing this document is not exclusive of attempts to serve personally and server executing an affidavit of service of process; in other words, it doesn’t hurt to ask...



The UCCJEA also addresses Service of Process & Personal Jurisdiction

Notice (Service) to persons outside State: § 50A-108 (a) “Notice required for the exercise of jurisdiction when a person is outside this State may be given in a manner prescribed by the law of this State for service of process or by the law of the

state in which the service is made. *Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.*”

§ 50A-201(c) Physical presence of, or *personal jurisdiction over, a party or a child is not necessary* or sufficient *to make a child-custody determination.*



PERSONAL JURISDICTION - INTERNATIONAL SERVICE OF PROCESS

- Why Serve if a parent is abroad?
 - If there is a parent abroad, you need to establish personal jurisdiction and obtain service (and comply with due process) in order to *permanently* alter those constitutionally-protected rights
 - But UCCJEA and 50-13.5 contemplate *valid* orders (at least temporary) without service, presumably because children exist, grow, and live their childhood independent of whether their parents' rights are intact.
- Effects of Non-compliance with Service Treaties: Potentially would not be enforceable in the other country.
- Effects of Non-compliance with NC Rules regarding service: Potentially could be voided through litigation in NC.

PERSONAL JURISDICTION: International Service of Process

It may be easier than you think!

- Step 1: Visit the Department of State Website and look up the country
- Step 2: If they *are* a signatory to a treaty, further analysis will be required
- Step 3: If they *are not* a signatory, or there is a loophole in the treaty, or if the treaty is not mandatory and the benefits would not be worth the effort, then *just proceed under the NC Rules*.



The screenshot shows the website TRAVEL.STATE.GOV, U.S. DEPARTMENT OF STATE · BUREAU OF CONSULAR AFFAIRS. The main heading is 'LEGAL CONSIDERATIONS'. Below it are three tabs: 'U.S. Citizenship Laws & Policies', 'International Judicial Assistance' (which is selected), and 'International Treaties & Agreements'. A breadcrumb trail reads: 'Travel > Legal Considerations > International Judicial Assistance > Country Information'. There are links for 'Print' and 'Email'. The main heading for the page is 'Country Information'. Below this is a search box labeled 'Find Judicial Assistance Information For:' with the placeholder text 'Enter a country or area' and a 'GO' button. At the bottom is a world map with the United States highlighted in a darker blue.

Hague Service Convention

- Governs service in many countries. Our neighbors, Canada and Mexico, are parties.
- There are nuances, *including that it does not apply where no valid address is known.*
- Requires translating documents, filling out some cover sheets, and sending to a “central authority” which attempts proper service.
- May take several months (or longer).
- There is an older NC Administration of Justice Bulletin at: <https://goo.gl/xLWNTV>.
- Can allow for service by mail, but many countries object and disallow that method.



Inter-American Service Convention and Additional Protocol

- Governs service in certain Western Hemisphere Countries
- The US only considers parties those states who adopted the original Convention AND the Additional Protocol
- Northern Triangle Countries: Guatemala **is** a signatory; Honduras is **not** a signatory; and El Salvador **appears to be** a signatory (but DOS has given conflicting opinions).
- Uses similar forms, has similar requirements, and utilizes the same “Central Authority” to effectuate service as the Hague.*

**However, the clerk's office is required to issue and certify these forms, unlike the Hague.*

- Unlike the Hague, this is not the ‘exclusive’ means of service - i.e. this treaty does not prohibit other means, at least to be valid within NC

SUMMARY/TIPS FOR SERVING THE RESPONDENT

With a US address

- Personal Service
- Certified Mail with Return Receipt Requested

With an International Address/phone #

- Personal Service
- Courier Service (FedEx, USPS, etc)

Reliable, incomplete address info

- Publication in local paper

No reliable address or info

- Publication in the county where the custody case is filed

ETHICAL CONSIDERATIONS

- Litigants (the State Court?) Reporting Parties to ICE
- Preparing Acceptance of Service vs. Answer/Waiver, and other documents
- Representing those with limited competency - Children
- Federal Supremacy and the Confidentiality of Juvenile Proceedings

NC State Bar Ethics Opinion

- **2009 FEO 5 January 22, 2009** indicates that attorneys may not report opposing parties to Immigration and Customs Enforcement (“ICE”, an agency of the federal Department of Homeland Security)

NC State Bar Ethics Opinion

- **CPR 296 July 15, 1981** (*see also* **CPR 121 July 15, 1977**): indicates that attorneys may prepare an *acceptance of service document* for an opposing party, but **not** a *waiver of the right to answer* or an *answer* or other responsive pleading

NC State Bar Ethics Opinion

- **2015 FEO 1:** indicates that attorneys may not prepare filings for the unrepresented opposing party if doing so is tantamount to giving legal advice to that person; however, it may be acceptable to prepare consent orders after certain disclosures and opportunity for input from the over side, and if there is no ‘overreach.’

NC Rule of Professional Conduct

In these SIJS-related Immigration Proceedings, the Child is the client. Nevertheless, a parent or guardian/custodian is expected to sign on behalf of children under 14 years of age.

- **Rule 1.14 Client with Diminished Capacity:** indicates that attorneys should treat their child-clients, to the extent possible, in the same manner they would adults, and respect their wishes and the confidentiality of their information.
- Note 4 indicates that the nature of the proceedings may affect to whom the lawyer looks for decision making for minors.

OPEN FLOOR:

**ADDITIONAL QUESTIONS AND
ANSWERS**

The North Carolina Courts and Special Immigrant Juvenile Status (SIJS)

IMPORTANT LINKS:

- [Today's Presentation Outline \(with Relevant Statutes, Opinions, and other materials available via further links\) - https://goo.gl/PKNncc](https://goo.gl/PKNncc)
- [SIJS Whole-Process Checklist, with links, forms, go-by's, and further detailed checklists - https://goo.gl/66zVHF](https://goo.gl/66zVHF)
- [This Slideshow/Presentation - https://goo.gl/D4Slo4](https://goo.gl/D4Slo4)
- www.LODJH.com - Derrick's website has permanent links to many SIJS resources

The outline and checklist are very comprehensive, with links therein to a bevy of other templates, links to all the relevant forms, to legal sources, sample filings, etc.

How You Can Help

There is a great need for competent State Court practitioners to assist with SIJS cases.

Non-Profits seeking Pro-Bono and Low-Bono Referrals:

→ *USCRI*

→ *LSSP*

→ To find other ways to help, please feel free to Contact Either of the Presenters
(information on next slide)

{Development of a new, formal statewide referral program is in process}

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Hypotheticals for Discussion

Hypotheticals for Discussion:

Example A - Francisco Sosa

Francisco Sosa is a ten year old and native and citizen of El Salvador. He currently lives with his mother, Ana, in Red Springs, North Carolina. Francisco's mother was never married to his biological father, Jose. Francisco lived with both of his parents in San Salvador, El Salvador until the age of three when his father moved out of the family home. Initially, Francisco's father would stop by one or two times each week to visit and drop off money. The visits gradually decreased and eventually stopped altogether. Francisco has not seen his father or had any contact with him since he turned five years old. When Francisco was seven years old, his mother came to the U.S. and left him in the care of his maternal grandmother. A few months ago, Francisco's maternal grandmother became ill. She is no longer able to work and cannot care for Francisco. Francisco asked his grandmother and mother for information about his father's whereabouts, but they do not have an address or phone number for him.

Having no relatives in El Salvador willing and able to care for him, Francisco left El Salvador and made his way to the United States, hoping to reunite with his mother. Francisco was apprehended in Arizona and released into his mother's care. His first master calendar hearing is scheduled for June 2, 2017.

Hypotheticals for Discussion:

Example B - Clarisa Orellana

Clarisa is fourteen years old and was born in Guatemala. Her mother died during childbirth and she was raised by her father, Rigoberto. When Clarisa turned ten years old, Rigoberto moved his girlfriend, Maurilia, into the family home. Maurilia forced Clarisa to drop out of school so she could complete household chores. Clarisa was responsible for all the cleaning, cooking, and laundry. When the household chores were not completed to Maurilia's standards, she would hit Clarisa with a belt or slap her across the face. Maurilia frequently cursed at Clarisa, and told her that she was lazy and worthless. Clarisa's father, Rigoberto, did nothing to prevent Maurilia from harming his daughter. He often told Clarisa this was good for her because she would need all of these skills when she became an adult and got married. On at least two occasions, Rigoberto also hit Clarisa for talking back to Maurilia.

Clarisa dreamed of coming to the United States to live with her aunt, Gabriela. Gabriela was her mom's younger sister with whom Clarisa was very close during her early childhood. When Clarisa was eight, her aunt moved to the United States. When Clarisa turned thirteen years old, she decided she could no longer stand living with her father and his girlfriend. She fled Guatemala for the United States. She was apprehended in Texas and released to her aunt. She now lives with Gabriela in Charlotte, NC. Her first master calendar hearing was December 10, 2016 and her second master calendar hearing is scheduled for April 30, 2017.