

NATIONAL IMMIGRANT JUSTICE CENTER

A HEARTLAND **ALLIANCE** PROGRAM

Special Immigrant Juvenile Status Overview *Ascend Justice, December 9, 2019*

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www.immigrantjustice.org



SIJS: Protecting Vulnerable Children

Special Immigrant Juvenile Status

WHAT: A form of immigration relief available to immigrant children who have suffered abuse, neglect, or abandonment by a parent.

WHO: Available to immigrant children living in the United States.

BENEFITS:

- Protection from deportation
- Leads to permanent residency (green card) and eventually citizenship.*

*NOTE: a child granted SIJS may *never* petition for either parent!

Statutory Authority

Federal Laws

- INA § 101(a)(27)(J): definitions
- INA § 245(h): adjustment
- TVPRA § 235(d)(6): age-out protections

Regulations

- 8 CFR 204.11
- Proposed: 76 FR 54978 (Sept. 6, 2011)
(re-opened for comment Oct. 2019)

USCIS Guidance

- USCIS Policy Manual Vol 6, Pt. J (SIJS)
- Vol 7, Pt. F, Ch. 7 (SIJS-based AOS)

Statutory Requirements

INA § 101(a)(27)(J)

- Under 21 years of age;
- Unmarried;
- Present in the United States;
- A “juvenile court” has:
 - Declared the child dependent on the court or **placed them under the custody** of a state agency, department, individual or entity;
 - Determined that child’s **reunification with *one or both parents* is not viable due to abuse, neglect, abandonment, or a similar basis** under state law;
 - Determined that it would **not be in the child’s best interest to return** to her home country; and
- The Secretary of Homeland Security consents to the grant of SIJ status

Federal & State Law Interaction

A “juvenile court” is any court with “*jurisdiction under State law to make judicial determinations about the custody and care of juveniles.*” 8 C.F.R. § 204.11(a):

Domestic
Relations/
Parentage

Guardian-
ship

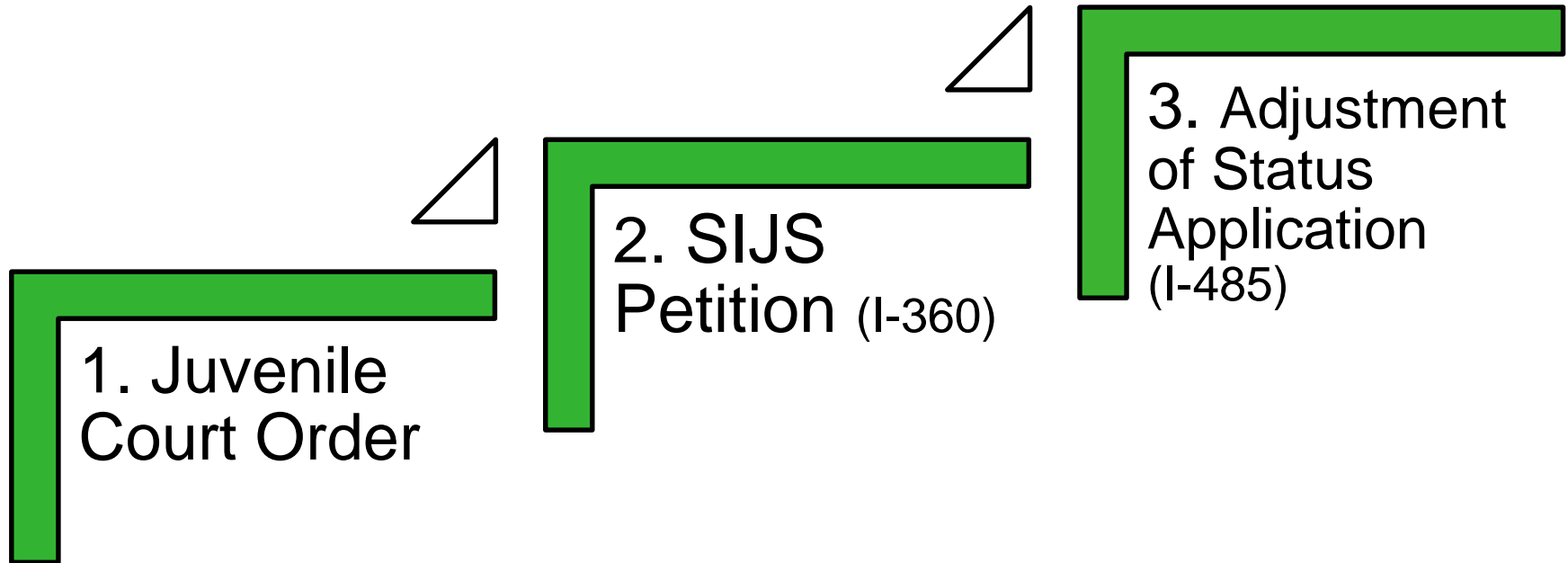
Adoption

Juvenile
Delinquency

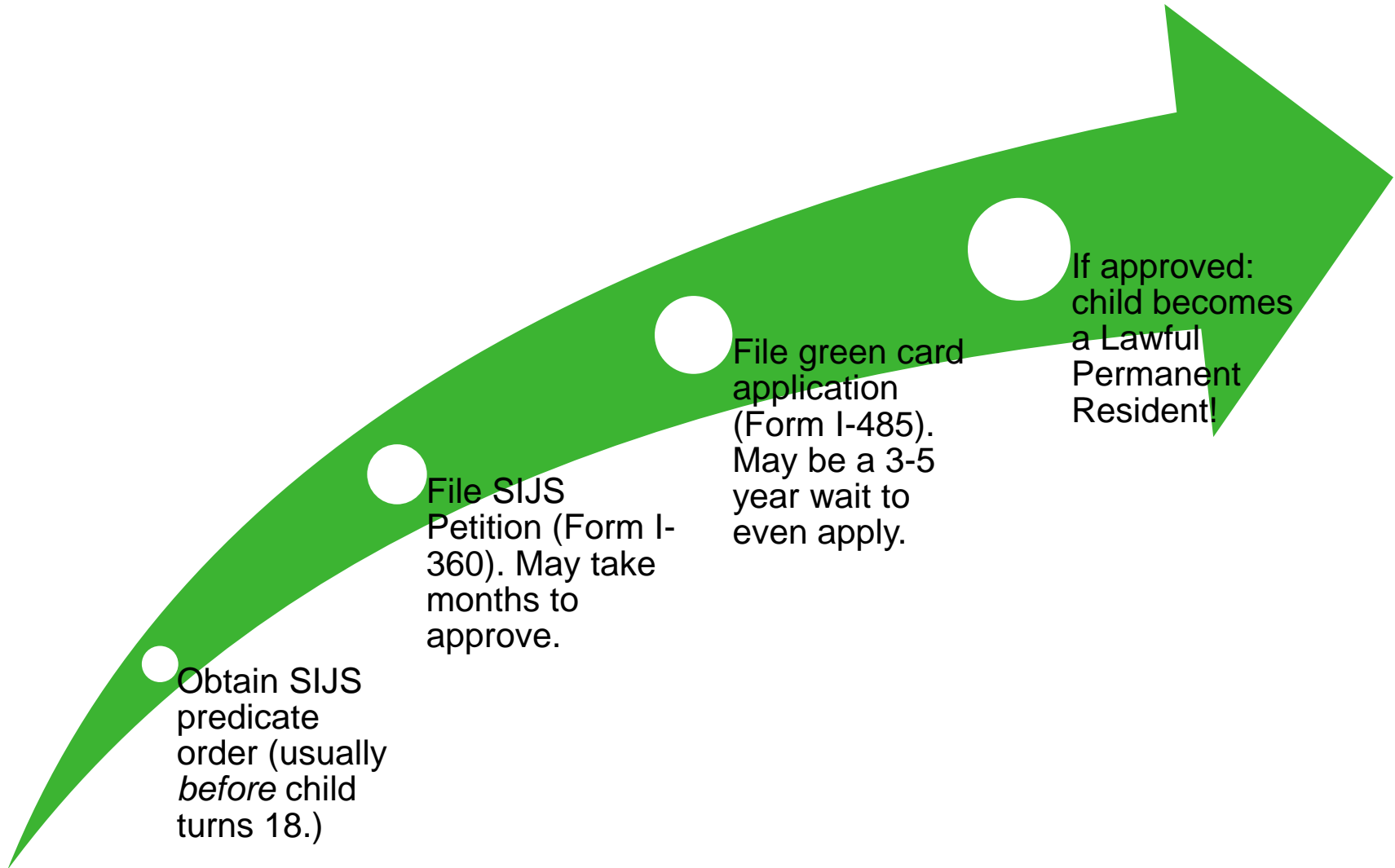
Child
Welfare

- **Although SIJS is available to anyone under 21, the Illinois age of majority is 18!** This means state court orders must usually be entered before 18.
- Juvenile delinquency & child welfare courts may extend jurisdiction until 21.

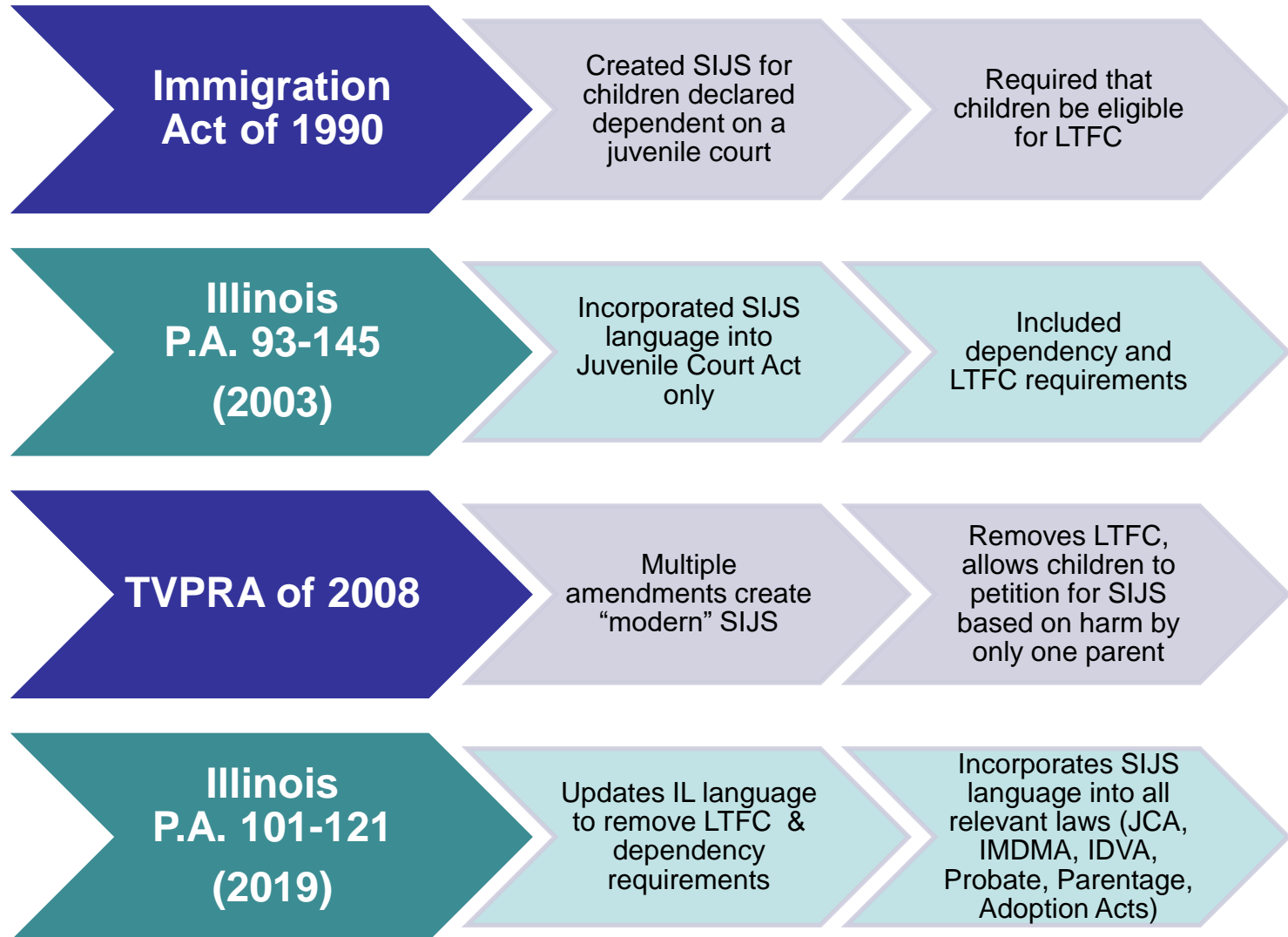
SIJS: Three Step Process



IMMIGRATION TIMELINE



History of SIJS in Illinois



Illinois' New Law on SIJS

- Thanks to House & Senate champions Representatives Gong-Gershowitz and Castro!
- P.A. 101-121 was signed into law by Gov. Pritzker on July 23, 2019
- NOW in effect.



Illinois P.A. 101-121

- Brings Illinois law into line with federal law.
- Amends 6 Illinois laws:
 - Juvenile Court Act
 - Probate Act
 - IL Marriage and Dissolution of Marriage Act
 - Parentage Act
 - Adoption Act
 - Illinois Domestic Violence Act

Major changes:

- Judges are *required* to enter SIJS findings if supported by the evidence.
- Clarifies definitions of abuse, abandonment, and neglect.
- “Abandonment” now includes where one or both parents have died or cannot be found.

Abuse, Abandonment, Neglect

Prior to 2019

Different definitions found in different laws.

Abuse: has the meaning ascribed to that term in subsection (1) of Section 103 of the Illinois Domestic Violence Act of 1986. (IDVA, IMDMA)

Abandonment: left without provision for reasonable and necessary care or supervision. 750 ILCS 36/102(1) (UCCJEA)

Neglect: any minor under 18 years of age who is not receiving the proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being. 705 ILCS 405/2-3 (JCA)

Or

Failure to perform parental “caretaking functions” enumerated at 750 ILCS 5/600(c). (IMDMA)

NOW

Same definitions in every relevant law.

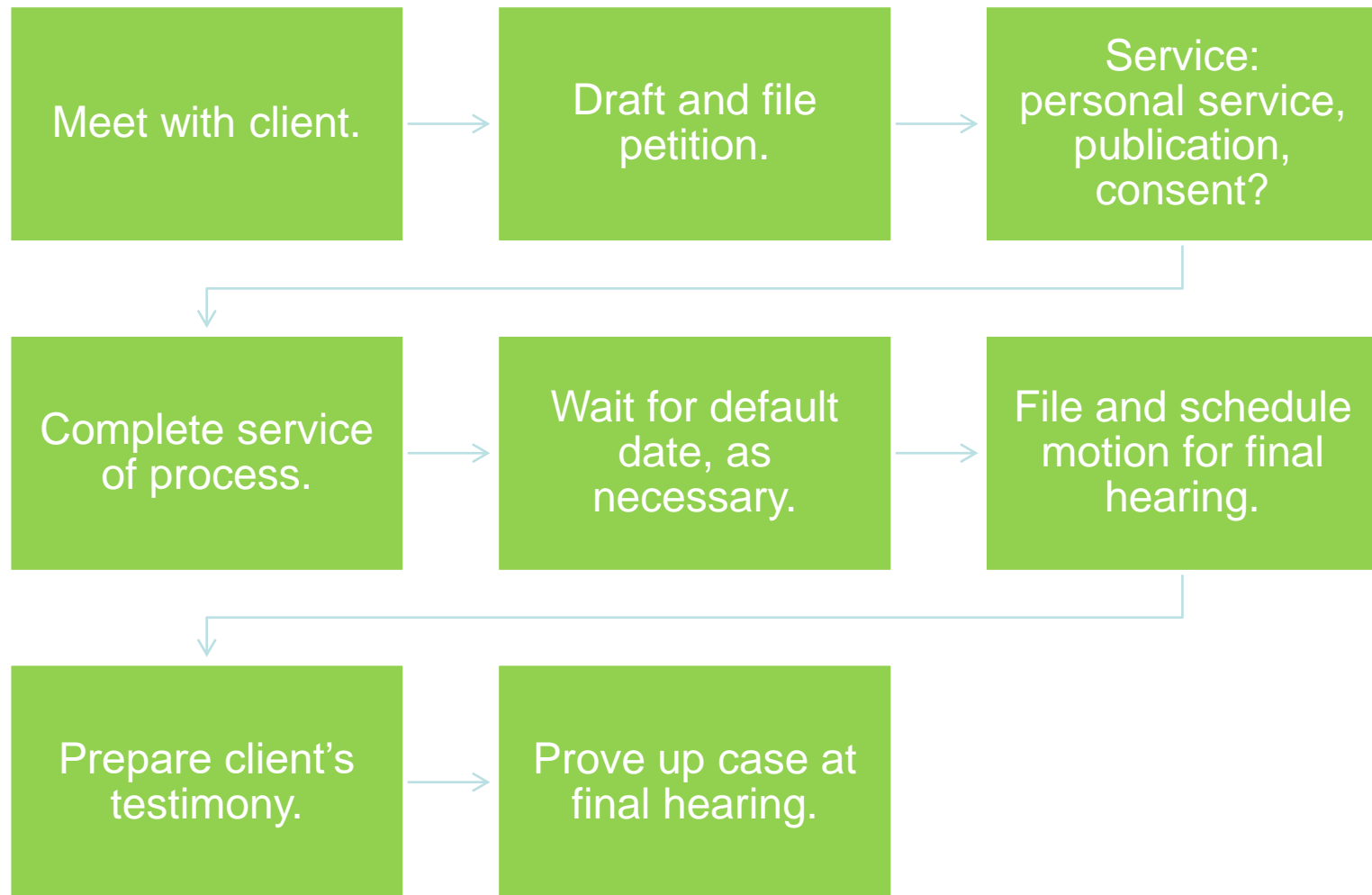
Abuse has the meaning ascribed to that term in subsection (1) of Section 103 of the Illinois Domestic Violence Act of 1986.

Abandonment includes, but is not limited to, the failure of a parent to maintain a reasonable degree of interest, concern, or responsibility for the welfare of the child or when one or both of the child's parents are deceased or cannot be reasonably located.

Neglect includes the meaning ascribed to the term in paragraph (a) of subsection (1) of Section 2-3 of the Juvenile Court Act of 1987 and the failure to perform caretaking functions as defined in subsection (c) of Section 600 of the Illinois Marriage and Dissolution of Marriage Act.

The State Court Process

Steps to Obtain a Predicate Order



What kind of case do I file?

- An SIJS predicate order may be obtained as the result of a case in which a court places the child in “custody” of a person or agency
- The most common types of cases are custody and guardianship cases. but can also include OPs with custody findings, adoptions, and juvenile dependency and delinquency cases.
- The custody order must be final! “Temporary custody” with SIJS findings will not be sufficient.

Meet With Client

- Your client is the petitioning parent or guardian.
 - If necessary, meet with child separately to preserve trust and confidentiality.
- Review all information with the client before filing anything in court!
- Work with an **interpreter** to ensure client understands entire contents of petition and process.
- Discuss risks with family members *before* filing in state court.

Draft the Petition

Pleadings look like standard family court pleadings, but should:

- ✓ Allege facts sufficient to support parental abuse/abandonment/neglect and not in child's best interest to return to home country
- ✓ Include a request for SIJS findings in the prayer for relief
- ✓ Avoid any mention of parent/sponsor's involvement in child's journey to the United States

“Magic Language”

Language in the petition should mirror the **absolutely necessary findings** you want in the final order:

1. Child’s **reunification with one (or both) parents is not viable**
2. ...due to **abuse/neglect/abandonment***, or a similar basis under state law;
3. It would **not be in the child’s best interest to return to her home country**

*must include a citation to the appropriate IL definition

Abuse, Abandonment, Neglect

In your petition and order, cite to the appropriate **definitions** and provide supporting **facts**:

“Respondent **neglected** the minor children by failing to perform caretaking functions pursuant to 750 ILCS 5/600(c), in that s/he

- Failed to provide food, shelter, or economic support for the past 8 years;
- Had substantially no relationship with the minor child since she was three years old;
- Etc...”

Cite state law and also list the specific facts supporting the finding of harm!

Service

The next step is service* on the respondent(s).

- If your respondent parent(s) sign a consent and waiver of service, OR are deceased, you can request your final hearing now.
- Otherwise, determine how service will be made...

*Only notice, not service of process, is required in guardianship cases.

After you file the petition, it is your responsibility to move the case forward!

Service

Service in IL

Personal service on Individuals
735 ILCS 5/2-203

Consent & Waiver
735 ILCS 5/2-213

Service by Publication
735 ILCS 5/2-206

Service by special order of court
735 ILCS 5/2-203.1

Service out of IL

Personal service outside state
735 ILCS 5/2-208

Consent & Waiver

Service by Publication

Submission to Jurisdiction
735 ILCS 5/2-209

Service in a foreign country

Fed. R. Civ. P. 4(f): “reasonably
calculated to give notice”

Consent and Waiver

Service by Publication

Hague Convention or
Inter-American Convention on
Letters Rogatory and Additional
Protocol

Most Common Service Options

1. Personal Service

- By sheriff if in Illinois
- By other individual appointed by the court if outside Illinois

2. Publication

- if respondent's whereabouts are unknown

3. Consent & Waiver

- respondent signs, making service unnecessary



Even an abusive or neglectful parent may be willing to sign a consent and waiver of service. Discuss this possibility with your client first.

Service vs. Jurisdiction

Service and jurisdiction are different!

- **Service** ensures you have properly notified the opposing party about the case
- If that person has never been to Illinois, the court may not have **personal jurisdiction** over them, even if they were properly served (remember *International Shoe*?)
- The court has **subject matter jurisdiction** over the custody of a child who resides in IL (see slides on UCCJEA)
- You may or may not need the court to take personal jurisdiction over the respondent, depending on your case
- There are a number of bases upon which a court may assert personal jurisdiction over a nonresident
- Consent and waiver of service allows a respondent to submit to **jurisdiction** and waive **service** in one document.

Jurisdiction

IL Parentage Act of 2015

- **750 ILCS 46/603** Subject matter and personal jurisdiction

Uniform Interstate Family Support Act

- **750 ILCS 22/201** Jurisdiction Over Nonresident

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

- **750 ILCS 36/105** International Application Of Act
- **750 ILCS 36/108** Notice To Persons Outside State

Jurisdiction & Parentage in Illinois

Highlights from 750 ILCS 46/603:

(b) A court needs **personal jurisdiction** to declare an individual the parent!

(c) A court may exercise **personal jurisdiction over a nonresident individual**, under certain circumstances outlined in 750 ILCS 22/201, including:

- if the individual submits to jurisdiction
- if the child resides in IL as a result of the “acts or directives” of the individual
- any other basis consistent with the constitution

(d) Lack of jurisdiction over one individual **does not preclude the court from making an adjudication of parentage binding on another individual** over whom the court has personal jurisdiction.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

- The exclusive method of determining subject matter jurisdiction in multi-jurisdictional child custody cases is the UCCJEA.
- Under the UCCJEA, a court must “**treat a foreign country as if it were a state of the U.S.**” for the purpose of determining jurisdiction.
- “Home State” means the State in which a child lived with a parent or a person acting as a parent for **at least six consecutive months** immediately before the commencement of a child-custody proceeding.
- Under the clear guidelines of the UCCJEA, personal jurisdiction over an absent parent is not a prerequisite to the exercise of child **custody** jurisdiction. Many state courts have held that personal jurisdiction over the absent parent is not a constitutional requirement for **custody** jurisdiction.
- Distinction between parentage and “custody” matters.

Motion for Default

- File Motion for Default to be scheduled 30 days after personal service or publication
- Final hearing can be requested immediately if proceeding by consent, or if respondent is deceased.

Communication with the Immigration Attorney



- *Communication and collaboration with your client's immigration attorney is the single most important way to ensure that your client's needs are met.*
- Have the immigration attorney **review and approve final order** before presenting to court.
- Always cross-check facts and content of documents!

Final Hearing

- Know your judge! Check standing orders for any special requirements and ask other practitioners for feedback
- If judge is uncomfortable with SIJS findings, bring memo of law* and prepare to argue in court:
 - Illinois precedent *In Re Nina L.* explains SIJS and state authority
 - P.A. 101-121 **requires** judges to consider motions for SIJS findings. SIJS findings must be entered if supported by the evidence.
- Push back on questions about sponsor's immigration status
 - it's not relevant and may now be prohibited under IL law (P.A. 101-0550)

*NIJC provides sample memoranda of law

Final Hearing

- *Short* direct exam of client addresses (“proves up”) each allegation in petition.
- Prepare client to testify:
 - Explain questions ahead of time (don’t ask questions in court you don’t already know the answer to!)
 - Judge may ask questions
 - Young children are not allowed in court. Older teens should wait in the hallway in case judge wants to speak with them
- If all goes well, judge will enter the final judgment with SIJS findings you’ve drafted (bring multiple copies!)

The Immigration Process

Filing Form I-360

Should be filed *before* child turns 18.

Minimum required evidence:

- Forms I-360 & G28
- Predicate order with SIJS findings
- Copy of child's birth certificate with translation

TVPRA Protections:

- Section 235(d)(6) provides age-out protections once SIJS petition is on file.
- Section 235(d)(2) requires **adjudication of I-360 within 180 days**

USCIS Guidance

USCIS has the final say to approve or deny a petition based on whether they think it is bona fide or not.

INA § 101(a)(27)(J)(iii)

**BUT, “There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law.” 6 USCIS PM J.2.D.4.*

Previous RFEs have been issued mostly regarding citations to state law. Per the reopened SIJS regulations this fall, seems there will be a new focus on motive.

USCIS Guidance 1: *Purpose*

USCIS wants to see that SIJS was **not “sought primarily for the purposes of obtaining [permanent resident] status...rather than for the purpose of obtaining relief from abuse or neglect or abandonment.”**

- Avoid language that suggests child is seeking the state court order solely to get SIJS or immigration status
- Mixed motives are okay.
- Other possible benefits to custody order: school enrollment, access to health insurance, passport, clarification of parental rights.
- “Relief from abuse/neglect/abandonment” – might be helpful to include that exact language in final order

USCIS Guidance 2: *Factual Basis*

The state court order must contain evidence of the factual basis for each conclusion, rather than simply reciting the magic language.

NO!

“Maria’s reunification with one or both parents is not viable due to abuse, abandonment, or neglect,”

YES!

“Maria’s reunification with her father is not viable due to his abandonment of her as follows: he left the family when Maria was three years old; he never provided economic or emotional support for Maria; and Maria has not seen him since she was seven years old.”

USCIS Guidance 3: *Paternity*

USCIS requires:

“If the findings are based on a father not listed on the petitioner’s birth certificate, **a determination that the claimed father is the father under state law should be established** in the juvenile court order.”

Pro Bono Attorneys:

- Where possible, obtain an order establishing paternity, or at least referencing the father by name.
- Even if the court will not specifically establish paternity, you should still be able to get a custody order! Work with an immigration attorney to determine the best alternate language to include.

USCIS Guidance 4: *Best Interest*

“Magic language” req. #3: Not in child’s best interest to return to home country

- It is not enough to simply state that it is in her best interest to remain with her caretaker in the U.S.
- The order must show that there is no appropriate placement in home country.

** Remember, this is NOT an asylum case, just a best interest determination!*

Example of acceptable language:

“It is not in the child’s best interest to return to Honduras because she lacks an appropriate caregiver there, and her life would be in danger due to gang activity targeting young people.”*

My I-360 Was Approved – Now What?



- SIJS approval doesn't do much on its own – must apply for lawful permanent residence (Form I-485)!
- Children from Mexico, Guatemala, El Salvador & Honduras are subject to EB-4 visa delays to filing and adjudication of I-485s.
- Compare monthly Visa Bulletin “dates for filing” and “final action dates” to child's priority date (date of I-360 filing).
- Work permit only available once I-485 is on file!

Adjustment of Status

Per INA 245(h) & 8 CFR 245.1(e)(3):

- Many grounds of inadmissibility are inapplicable to SIJs, including unlawful presence, EWI, public charge, & misrepresentations.
- Other grounds are waivable, including health, prostitution, prior immigration violators, and smuggling.
- Non-waivable grounds include most criminal conviction & terrorism grounds, as well as drug trafficking.



- ILRC has an excellent [chart](#) summarizing SIJ admissibility issues.
- Juvenile adjudications do not constitute convictions for immigration purposes! *Matter of Devison-Charles*, 22 I&N Dec 1362 (BIA 2000)

SIJS and Removal Defense

- Chicago immigration courts are still granting long continuances and placing approved SIJs on the “status docket.”
- SIJs may adjust before USCIS or IJ unless “arriving aliens,” in which case only USCIS has jurisdiction.
- Age-out protections should apply if I-360 was timely filed, even if child turns 21 before they’re able to file I-485. (This was in *Perez-Olano* settlement which has sunset, but remains in USCIS Policy Memo: 7 USCIS PM F.7.E.3.)
- Child may not get married until adjustment complete!

SIJS and Removal Defense

Elsewhere in the country SIJs are sometimes ordered removed. Arguments:

- Approved SIJS means “not in best interest to return!”
- Unlike U visas, SIJs may not apply from home country – there’s a physical presence requirement.
- Approved SIJS → parole for purposes of 245(a) → charge of “present w/o admission or parole” cannot be sustained! (CLINIC has [resource/sample MTT](#) on this)

Questions?



For more information contact:

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Thank you!

