

# **Basic Procedural Manual for Special Immigrant Juvenile Status (SIJS) Predicate Orders in Illinois**

**March 2022**

**NATIONAL  
IMMIGRANT  
JUSTICE CENTER**

**A HEARTLAND ALLIANCE PROGRAM**

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**Please Note:**

This document is a brief guide to SIJS predicate order practice in Illinois. It does not purport to discuss all aspects of immigration practice related to SIJS. Any individual considering applying for SIJS should be fully screened by a competent immigration attorney prior to attempting to obtain a predicate order. Additional sources should be consulted when more complex questions regarding current law and procedure arise.

This manual was possible due to significant drafting contributions of Lizzy Westrope, Associate at DLA Piper, and the expert advice of Rebekah Rashidfarokhi, Director of Guardianship and Immigration Programs for Children at Chicago Volunteer Legal Services.

Heartland Alliance for Human Needs & Human Rights  
National Immigrant Justice Center

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# Part 1: NIJC's Pro Bono Program

## THE NATIONAL IMMIGRANT JUSTICE CENTER

NIJC is dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers. NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Since its founding more than three decades ago, NIJC has been unique in blending individual client advocacy with broad-based systemic change.

NIJC operates in three pillars:

1. Direct legal services
2. Federal impact litigation
3. Advocacy and policy



These three pillars all work towards NIJC's mission:

NIJC is dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers.

With a staff of over 150 and the support of nearly 2,000 pro bono volunteers from leading law firms and in-house corporate counsel across the U.S., NIJC has made critical advances in the lives of thousands of immigrants, refugees and asylum seekers over the years. Every year, NIJC provides legal services to thousands of immigrants through specialized programs focusing on the specific needs of especially vulnerable populations.

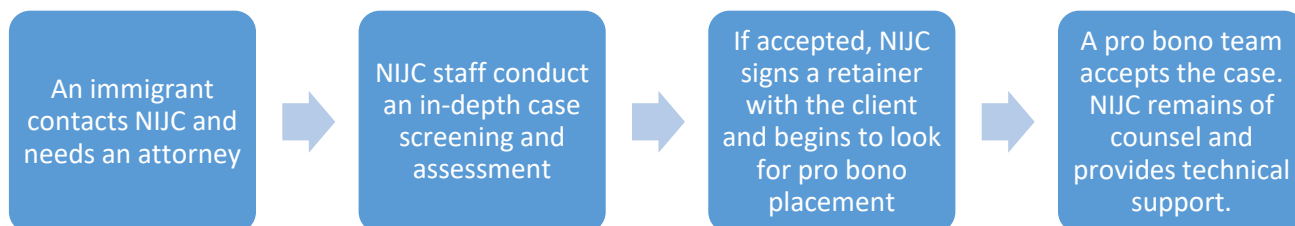
## NIJC'S CLIENTS

Because of the strength of our pro bono network, we provide direct legal services to approximately 9000 non-citizens every year. NIJC's clients are adults and children who have fled civil wars, violence, and persecution around the globe. All of NIJC's clients live at 200% or more below the Federal Poverty Guidelines. Many have experienced trauma in the form of violence along with prolonged stress and poverty. Individuals and families leave their countries for a variety of reasons and many are seeking protection, whether from persecution in their home country or injustice in the United States.

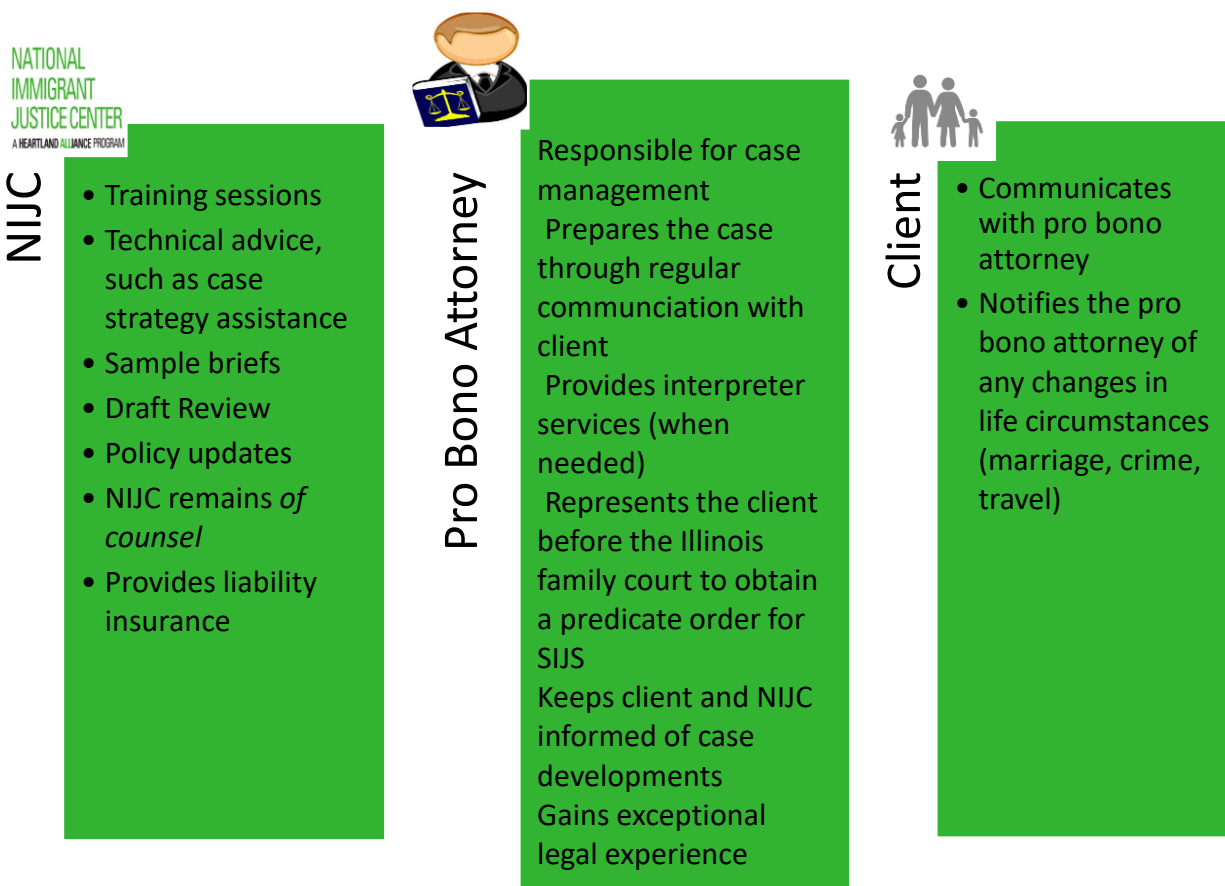
## NIJC'S PRO BONO PARTNERSHIPS

NIJC's pro bono program relies on volunteer attorneys. NIJC understands that pro bono attorneys may not have previous immigration or family law experience and so we NIJC provide the necessary training, materials, support and consultation to competently represent NIJC clients.

Prior to placing a case with a pro bono attorney, NIJC thoroughly screens each case.

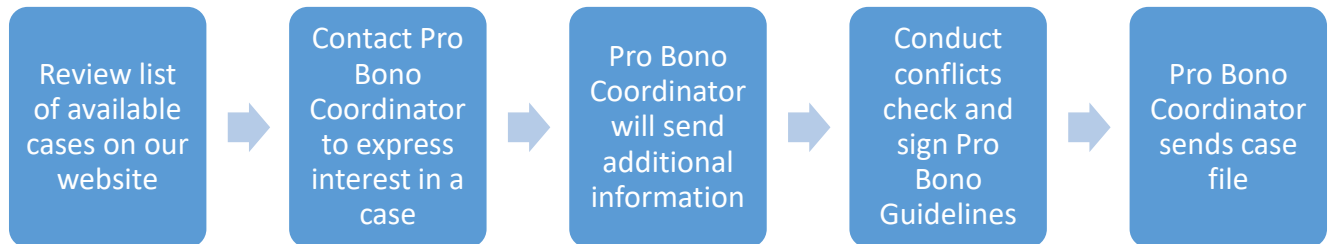


Our pro bono partnerships involves the pro bono team, the client and NIJC staff. NIJC provides significant support to pro bono attorneys so they can best represent their clients and contribute to a fair justice system.



## **TAKING A CASE**

To take an NIJC pro bono case, follow these basic steps:



Below is a list of general pro bono opportunities available at NIJC. For more information regarding additional pro bono opportunities at NIJC, please visit [www.immigrantjustice.org](http://www.immigrantjustice.org).



## **KEY CONTACTS**

Below is a list of the NIJC staff members involved with the NIJC SIJS Predicate Order Pro Bono program:

Name	Phone	Email	Role
Hillary Richardson	773.672.6601	<a href="mailto:hrichardson@heartlandalliance.org">hrichardson@heartlandalliance.org</a>	Supervising Attorney
Nora Salgado	312.235.4784	<a href="mailto:nosalgado@heartlandalliance.org">nosalgado@heartlandalliance.org</a>	Senior Attorney
Ellen Miller	312.660.1415	<a href="mailto:emiller@heartlandalliance.org">emiller@heartlandalliance.org</a>	Pro Bono Manager

# Part 2: The Basics of SIJS

## COMMON ACRONYMS

<b>AG</b>	Attorney General
<b>APR</b>	Allocation of Parental Responsibilities (formerly known as custody)
<b>CANTS</b>	Child Abuse and Neglect Tracking System
<b>DCFS</b>	Department of Children & Family Services
<b>DHS</b>	Department of Homeland Security
<b>DOJ</b>	Department of Justice
<b>EOIR</b>	Executive Office for Immigration Review
<b>FOIA</b>	Freedom of Information Act
<b>ICE</b>	Immigration and Customs Enforcement
<b>IJ</b>	Immigration Judge
<b>IMDMA</b>	Illinois Marriage & Dissolution of Marriage Act
<b>INA</b>	Immigration and Nationality Act
<b>LEADS</b>	Law Enforcement Automated Data System
<b>LPR</b>	Lawful Permanent Resident
<b>NTA</b>	Notice to Appear

## WHAT IS SIJS?

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

**Who:** Available to unmarried immigrant children living in the United States.

**Benefits:** Protects a child from deportation; leads to permanent residency (green card) and eventually citizenship

Special Immigrant Juvenile Status (SIJS) allows immigrant children who cannot reunify with a parent due to abuse, abandonment, or neglect to obtain lawful permanent immigration status. The Immigration and Nationality Act (“INA”) and implementing regulations lay out the requirements for SIJS eligibility. To qualify for SIJS, a child must be:

- Under 21 years of age;
- Unmarried;



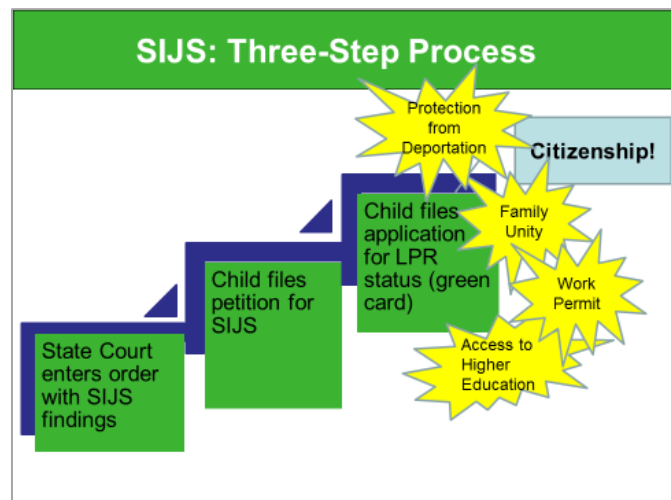
- Present in the United States; and
- A “juvenile court” has:
  - Declared the child dependent on the court or placed them under the custody of a state agency, department, individual or entity;
  - Determined that child’s **reunification with one or both parents is not viable due to abuse, neglect, abandonment**, 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

INA § 101(a)(27)(J), 8 § CFR 204.11

### **A THREE STEP SIJS PROCESS**

Obtaining lawful status for an immigrant child through SIJS is a three-step process:

1. The child must obtain a predicate order from a state juvenile court;
2. The child files their petition with USCIS to be declared a Special Immigrant Juvenile, using Form I-360;
3. If USCIS approves the SIJS petition, the child may apply for lawful permanent residence (“LPR status” or a green card), using Form I-485. Approval of Form I-485 gives the child permanent status in the United States and puts them on a path to citizenship.



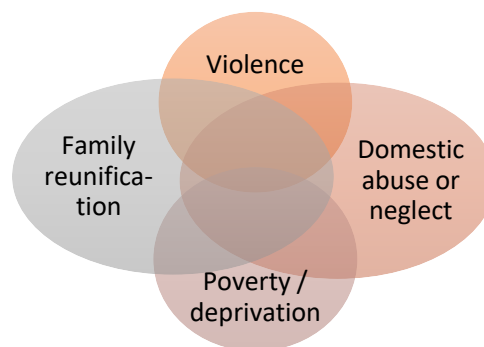
Due to visa backlogs, children from Mexico, Honduras, Guatemala, and El Salvador must often wait several years before they can proceed to Step 3 and request LPR status. NIJC’s SIJS Pro Bono Project currently engages with pro bono attorneys for the first step only of this process. Therefore, this manual will focus primarily on **Step 1 – the SIJS predicate order**.

SIJS is unique in that before a child can submit an immigration petition, they must first obtain an order with special findings, called a “predicate order,” from a state juvenile court. The involvement of state juvenile courts in the SIJS process reflects Congress’ judgment that juvenile courts - those that make decisions about the care and welfare of children - are best suited to make findings relating to a child who has been abused, abandoned, or neglected. Once the child obtains the predicate order with the required findings, they may submit a petition for SIJS to USCIS. If USCIS approves the SIJS petition, the child may

then apply for Lawful Permanent Resident status, also known as a green card. After five years as a Lawful Permanent Resident, the child may apply for U.S. citizenship.

## **WHO BENEFITS FROM SIJS?**

Immigrant children living in the U.S., who meet the above requirements, are the direct beneficiaries of this form of protection. Every child's story is different.



Some of NIJC's clients traveled to the United States alone as unaccompanied immigrant children (UICs) while others came with their parents or families. Children flee their home countries for complicated and interrelated reasons. Some were suffering from poverty and had no caregiver who could provide them with basic needs like shelter and food. Others have experienced mental, physical, or sexual abuse by their parents, caregivers, or others in the community. Overall, we believe that every child has a right to representation and a right to a safe childhood.

It is important to note that even after a child approved for SIJS becomes a U.S. citizen, *they may never submit immigration petitions for either of their parents*, even if only one parent was abusive or neglectful.

The next section will walk through the legislative history. This information may help your advocacy and ensure best representation for the client.

## **SIJS STATUTORY AUTHORITY**

<b>Federal Laws</b>	<ul style="list-style-type: none"> <li>• INA § 101(a)(27)(J): definitions</li> <li>• INA § 245(h): adjustment</li> <li>• TVPRA § 235(d)(6): age-out protections</li> </ul>
<b>Regulations</b>	<ul style="list-style-type: none"> <li>• 8 CFR 204.11, 205.1, 245.1, effective Apr. 7, 2022</li> </ul>
<b>USCIS Guidance</b>	<ul style="list-style-type: none"> <li>• USCIS Policy Manual Vol. 6, Part J (SIJS);</li> <li>• USCIS Policy Manual Vol. 7, Part F, Ch. 7 (adjustment of status for SIJs)</li> </ul>
<b>Illinois Law</b>	<ul style="list-style-type: none"> <li>• IL Public Act 101-0121 (eff. 11/25/19)</li> <li>• IL Public Act 102-0259 (eff. 08/06/21)</li> </ul>

## **SIJS LEGISLATIVE HISTORY: A LONG-DELAYED FEDERAL PROCESS**

Congress created SIJS in 1990 to protect vulnerable immigrant children without status in the United States. Initially, immigrant children seeking SIJS were required to establish that they had been declared dependent on a juvenile court, that they had been deemed eligible for long-term foster care, and that they had secured a determination that it would not be in their best interest to return to their home countries.



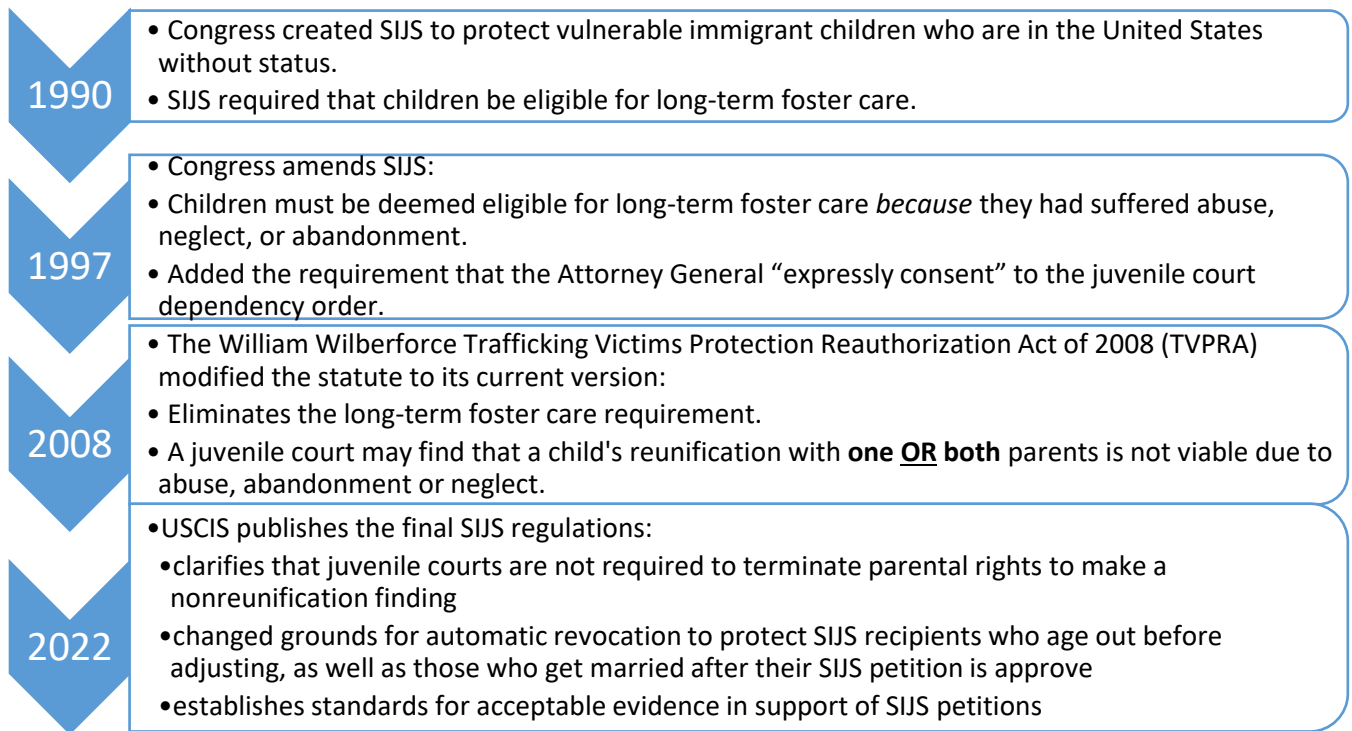
Eligibility requirements were modified in 1997 when Congress amended the statute to require that children seeking SIJS be deemed eligible for long-term foster care *because* they had suffered abuse, neglect, or abandonment. Congress also added the requirement that the Attorney General “expressly consent” to the juvenile court dependency order.

In 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) modified the statute to its current version. A child may now obtain SIJ status if they have:

- ✓ been declared dependent on a juvenile court, OR committed to the custody of a State agency/ department or an individual/entity because reunification with **one or both parents** is not viable due to abuse, neglect, abandonment, or a similar State law basis;
- ✓ it has been determined that it would not be in the child’s best interest to return to their home country; and
- ✓ the Secretary of Homeland Security consents to the grant of SIJ status.

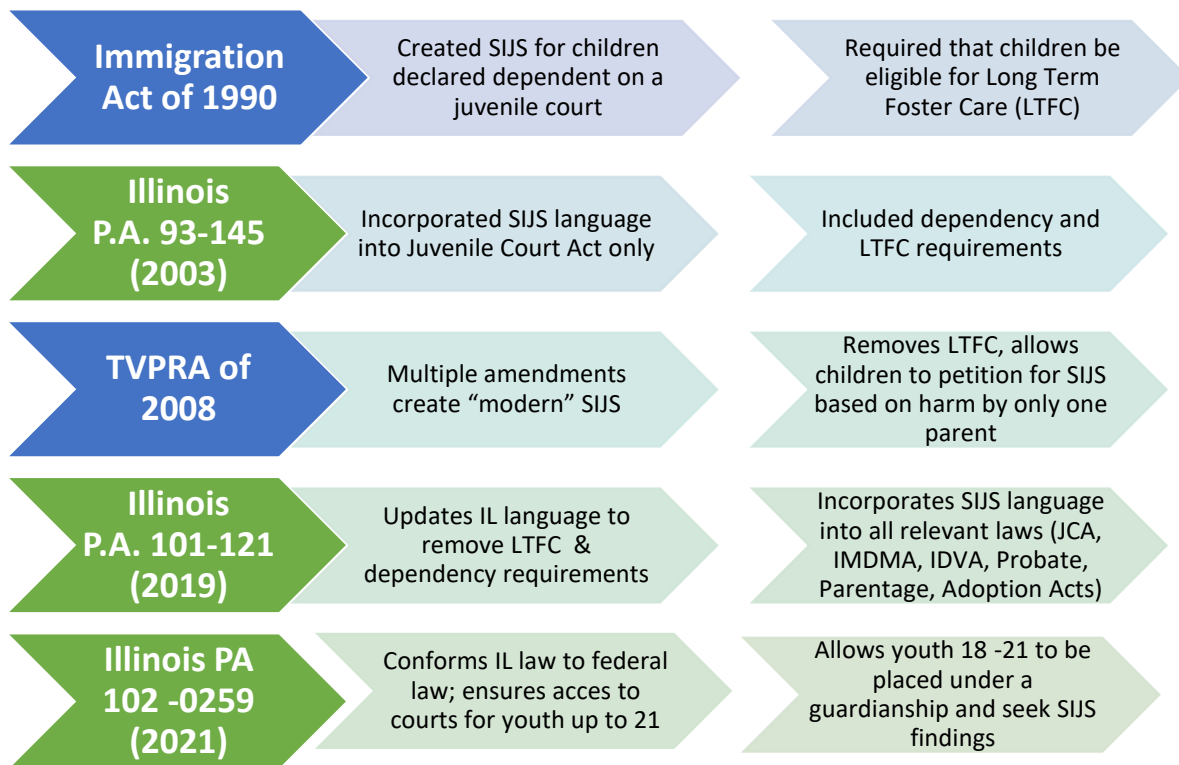
After the changes made in the TVPRA in 2008, no new regulations were published for more than a decade. This meant that while the SIJS *statute* codified at 8 U.S.C. § 1101(a)(27)(J) contained the requirements referenced above, the existing *regulations* at 8 CFR § 204.11 still contained outdated language referring to “eligibility for long-term foster care” and “dependency on the juvenile court,” which are no longer required. For many years, this created confusion among practitioners and state court judges looking for guidance.

However, on March 8, 2022, USCIS finally issued the long-awaited final rule on SIJS and related adjustment of status adjudications. That rule is published at 8 CFR 204.11, 205.1, and 245.1, and will go into effect April 8, 2022. In addition to updating the relevant requirements, the new rule codifies age-out protections for SIJS petitioners and clarifies other issues related to juvenile court jurisdiction and relevant evidence. Significantly, the rule clarifies that courts are “not required to terminate parental rights to determine that parental reunification is not viable.” It also provides guidance on the type of evidence required to establish SIJS eligibility where the juvenile court relied on a “similar basis” to abuse, abandonment, or neglect.



## **SIJS LEGISLATIVE HISTORY: ILLINOIS**

In response to federal law, Illinois laws regarding SIJS predicate orders have evolved over the years, with the most significant developments occurring in November 2019 and August 2021.



The Special Immigrant Juvenile Consistency Public Act (“P.A. 101-121”) went into effect in Illinois on November 25, 2019. P.A. 101-121 clarifies that Illinois juvenile courts have the authority to make special findings for SIJS for minors who have been abused, abandoned, or neglected by their parents. The law updated six Illinois statutes that govern cases involving children: the Probate Act, the Juvenile Court Act, the Illinois Marriage and Dissolution of Marriage Act, the Parentage Act, the Illinois Domestic Violence Act, and the Adoption Act. The law standardized the definitions of abuse, abandonment, and neglect to be applied in SIJS matters across all of these statutes. This amendment made clear that many different types of courts, including juvenile, family, and probate courts, have authority to make SIJS findings. In addition, P.A. 101-121 *requires* that a court enter an order with SIJS findings if supported by the evidence. However, these findings were still limited in most cases to children who were able to obtain these orders prior to turning 18, which is the age of majority in Illinois.

In 2021, Public Act 102-0259 was enacted in Illinois, ensuring that young people ages 18 to 21 living in Illinois can access the full range of SIJS protections available under federal law. P.A. 102-0259 allows certain vulnerable youth ages 18-21 to be placed under the guardianship of an adult, and requires the juvenile court to make special findings for SIJS if supported by the evidence. It also allows existing guardianships to be extended to the age of 21 for the purpose of seeking SIJS findings for the child. This expanded access to juvenile courts in Illinois is specific to the Probate Act, meaning that regardless of whether the youth is living with a parent or a non-parent guardian, their case

#### **NIJC Resource!**

[SIJS Update In Law:  
Extension Of Protection,  
2021](#)

would be brought as a guardianship in the probate courts. The youth must consent to the guardianship, and the statute provides that certain rights the youth may have as an 18-year-old, including the right to consent to their own medical treatment, are not abrogated by the guardianship.

## **THE SIJS PREDICATE ORDER**

Only a state court that has jurisdiction to make “judicial determinations about the custody and care of juveniles” can enter an SIJS predicate order.<sup>1</sup> The federal SIJS regulations refer to all such courts as “juvenile courts,” but the name of the court may vary by state. In Illinois, courts that meet this definition include those that determine matters of divorce, parentage, child support, minor guardianship, child welfare, juvenile delinquency, adoption, and sometimes orders of protection. NIJC will help you determine the best venue to file your client’s petition based on the specific facts and circumstances of your case.

As a pro bono volunteer, your job will be to help your client – **the parent or proposed guardian of an SIJS-eligible child** – seek an SIJS predicate order for the child through the state court process. You will help the client file a petition in the appropriate state juvenile court, represent your client at a hearing before a juvenile court judge, and ask the judge to enter an order that contains the very specific findings required for SIJS. NIJC can then use that predicate order to help the child file for SIJS with immigration authorities. The final order must include **all four required elements** in order to make the child eligible for SIJS:

- 1) a custody or dependency determination;
- 2) a finding that the child’s reunification with one or both parents is not viable;
- 3) due to abuse, abandonment, neglect, or a similar basis as defined by state law;  
and
- 4) a finding that it is not in the child’s best interest to return to their home country.

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<sup>1</sup> 8 C.F.R. § 204.11

## 1. “CUSTODY” DETERMINATION

To make the requisite SIJS findings, a juvenile court must **place the child under the custody of an individual**, or a state agency or department, or declare the child dependent on the court.<sup>2</sup> You will help your client seek a custody determination, which



can occur in guardianship, adoption, divorce, and parentage cases. Note that in Illinois, what used to be called “custody” for parents is now known as “allocation of parental responsibilities”<sup>3</sup>- it is okay for your final order to say this! Non-parents typically seek guardianship under the Probate Act, which also meets the custody requirement.<sup>4</sup> Even a final order of adoption, in which the biological parents’ rights are terminated and a new legal parent is established, meets the custody definition for this purpose. The

final order in any of these proceedings that includes special findings for SIJS is called the “SIJS predicate order.”

## 2. REUNIFICATION WITH ONE OR BOTH PARENTS IS NOT VIABLE

To meet the requirements for SIJS, your predicate order must include language stating that **the child’s reunification with their parent (or parents) is not viable**. It is important that this exact language be used; USCIS will not accept an order that says, “the child’s reunification with the parent is not recommended” or “not feasible at this time,” for example. They are quite literal about this, and you should check your proposed final order with NIJC prior to presenting it to the court to ensure the language will be sufficient.

Under Illinois law, the “reunification not viable” language is not the same thing as terminating parental rights! It is important to make this clear to your client, and to the court – the child’s parent will still be their legal parent. The intent of “reunification not viable” is simply to establish that the child is not to be returned to the custody of the abusive or abandoning parent, and that that parent does not receive any parenting time in the final order.

It is important to note that the child’s reunification need only be “not viable” with one parent, not both. Thus, if a child was abandoned by their father at birth, but lived with their mother prior to entering the United States, the child’s ongoing relationship with their mother should not prevent the child from establishing eligibility for SIJS if they obtain a state order with the required findings as to their father.

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<sup>2</sup> 8 U.S.C. § 1101(a)(27)(J)(i). In Illinois, a “dependency” determination typically only happens in child welfare proceedings, which are brought by the state’s attorney and are not addressed in this manual

<sup>3</sup> 750 ILCS 5/600

<sup>4</sup> 755 ILCS 5/11



### 3. DUE TO ABUSE, NEGLECT, ABANDONMENT, OR A SIMILAR BASIS

The predicate order must also specifically state that the reason reunification is not viable is that **the child has been abused, neglected, abandoned, or something similar under state law**. These terms are not defined in immigration law; instead, the juvenile court must cite to the definitions in its state law. As discussed above, [Illinois P.A. 101-121](#) standardized these terms for SIJS purposes across all relevant statutes. The cite that you use will depend on the statute governing your case, but the definitions are the same in each statute.

#### **Abuse**

Tracks the definition in the Illinois Domestic Violence Act at 750 ILCS 60/103(1): “physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.”

#### **Abandonment**

For all statutes except Juvenile Court Act: “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**

Refers to a long definition found in the Juvenile Court Act at 705 ILCS 405/2-3, as well as the failure to perform the parental “caretaking functions” enumerated in the Illinois Marriage and Dissolution of Marriage Act at 750 ILCS 5/600(c). Both sets of definitions are based on the failure of a parent to provide for a child’s physical, educational, and psychological needs

\*See the Appendix for a list of relevant Illinois definitions in each type of case.

### 4. NOT IN CHILD’S BEST INTEREST TO RETURN

The final requirement in an SIJS predicate order is a finding that **it is not in the child’s best interest to be returned to their home country**. Juvenile courts are familiar with the “best interest of the child” standard. However, judges may be hesitant to make this determination if they know little about the conditions in the child’s home country, or they may mistakenly assume that they are being asked to make a decision about the child’s deportation. You should remind the judge that they are only being asked to make a best interest determination as they do in all children’s cases; the immigration authorities will then decide whether this child will be deported or granted lawful status. Your pleadings



should explain that returning to the home country is not in the child's best interest based on factors *specific to the child*, not just general conditions in the child's home country. This determination can be based on the abuse, abandonment or neglect that would



continue if the child returned; a lack of support systems; emotional or mental wellbeing; medical considerations; and educational resources. For allocation of parental responsibilities cases in Illinois, the **best interest of the child** factors are enumerated at 750 ILCS 5/602.5(c) and 750 ILCS 5/602.7.

✓ **Now that you've reviewed the four required findings for an SIJS predicate order, it's time to begin working on a case in state court!**

# Part 3: The State Court Process

If you are already familiar with family and probate courts in Illinois – congratulations! You are halfway to getting an SIJS predicate order. If, like many of our pro bono partners, you have not appeared in these courts, do not fear. NIJC, along with our partner organization Chicago Volunteer Legal Services (CVLS), provides technical support via phone, email, and reference materials throughout the state court process. In addition to NIJC-specific trainings, CVLS also offers extensive volunteer resources: <https://www.cvls.org/volunteer/volunteer-resources/>.

## WHAT TYPE OF CASE DO I FILE?

The first requirement of an SIJS predicate order is that it be issued by a “juvenile court,” defined as “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.”<sup>5</sup> There are many different types of courts in Illinois that meet this definition; they include domestic relations/parentage, child welfare, guardianship, adoption and juvenile delinquency courts.

Your job as the pro bono attorney is to help your client (the parent or proposed guardian) obtain the state court predicate order needed for the child to apply for SIJS. NIJC will advise you which type of case you should file, and in what kind of juvenile court.

Allocation of Parental Responsibilities	Parentage	Guardianship	Post-18 Guardianship
<ul style="list-style-type: none"><li>• Governed by the IMDMA (750 ILCS 5)</li><li>• Filed by married or unmarried parents</li></ul>	<ul style="list-style-type: none"><li>• Governed by the Parentage Act (750 ILCS 46)</li><li>• Filed <u>with</u> a petition for APR</li></ul>	<ul style="list-style-type: none"><li>• Governed by the Probate Act (755 ILCS 5/11)</li><li>• Filed by a non-parent</li></ul>	<ul style="list-style-type: none"><li>• Governed by the Probate Act Section 11-5.5(e)</li><li>• Filed by a parent or non-parent</li></ul>

- **APR** – a petition for sole allocation of parental responsibilities (APR) is filed by a parent, in a family or domestic relations court. A petition for APR can be filed as

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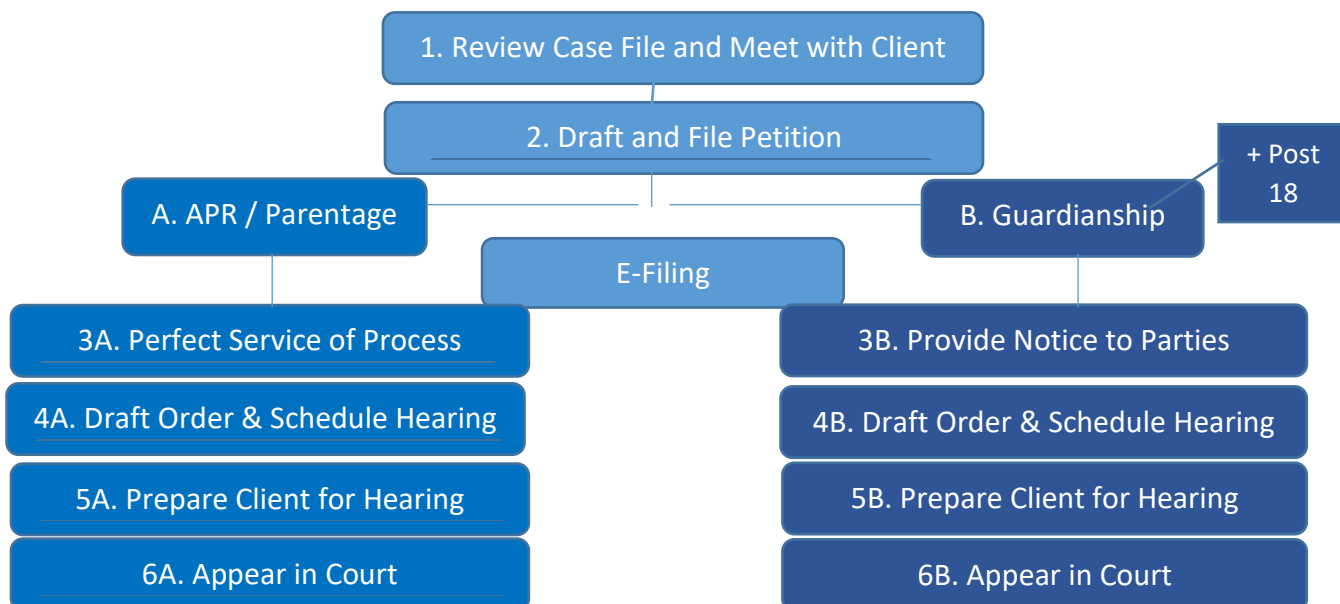
<sup>5</sup> 8 CFR § 204.11

part of a divorce, if the parents are married, or independently, if the parents are unmarried. This order must be entered before the child turns 18.

- **Parentage** - a petition to establish parentage is filed by a parent, in a family or domestic relations court. If the child's father's name is not on the birth certificate, you may need to file a petition to establish paternity along with your petition for APR. The APR judgment is necessary because a paternity determination alone does not meet the "custody" requirement for SIJS. This order must be entered before the child turns 18.
- **Guardianship** –if the petitioner is not the parent, they should file a petition for guardianship of a minor, which is filed in the probate court. This order must be entered before the child turns 18.
- **Post-18 Guardianship** – if the child is between 18 and 21 years old, the parent or proposed guardian should file a petition for post-18 guardianship under Section 11-5.5(e) of the Probate Act. This order must be entered before the child turns 21.
- **Other** – SIJS predicate orders can also be obtained in child welfare, juvenile delinquency, and adoption proceedings. This manual does not specifically address these kinds of cases, but you are welcome to reach out to NIJC if you have questions about SIJS in these contexts.

## PREDICATE ORDER CASE ROADMAP

For each type of case discussed in this manual, you should follow the general roadmap outlined below. More specific steps and procedures will be discussed in each section.



## **STEP ONE: REVIEW CASE FILE AND MEET WITH CLIENT**

Pro bono attorneys should review the case file in full, with the NIJC cover letter, as soon as possible after receiving the file. The NIJC cover letter contains important information and deadlines for the client's case, including whether the child is about to turn 18 (or 21).

NIJC attempts to obtain relevant documentation from clients and will share these documents with the pro bono attorney. For instance, the child's birth certificate is often included in the initial case file. Some of the documents may need to be translated; it is important to review and identify those documents sooner rather than later to allow ample time for translation. The pro bono volunteer is responsible for language services. Upon review of the file, pro bono attorneys may identify additional documents that would be useful in supporting the factual determinations of abuse, abandonment, or neglect. The attorney should work with the client to obtain these documents.

The client in an SIJS predicate order case is the petitioning parent or guardian. NIJC advises the client when their case has been assigned to a pro bono attorney. Often, clients have waited months for assignment to an attorney and are eager to hear from their new lawyers. NIJC requests that pro bono attorneys contact the client shortly after reviewing the case file.

**Q: At NIJC, who is the client in an SIJS predicate order case?**

**A: The parent or guardian!**

The case file will provide the client's best contact information and the client's preferred language. If the client speaks a language other than English, **the pro bono attorney will be responsible for hiring an interpreter**. Attorney-client meetings should be conducted in the client's best language.

**Working with an interpreter can be difficult! Remember that:**

- **Friends and family should NOT be used to interpret.**
- **Speak directly to the client, not to the interpreter.**
- **Allow enough time for all information to be interpreted.**

\*See our  
[Training on Working with Interpreters.](#)

At the initial meeting, the main objective is to build rapport with the client and gain a deeper understanding of the facts in the case. Attorneys can use the information from the case file to guide the discussion. Attorneys should describe the SIJS process and possible outcomes at the initial meeting. The SIJS process can be confusing for clients, so take time to explain the steps involved to your client. Explain also that you will be helping with the state court process, while NIJC will handle the immigration process.

It is important to manage the client's expectations before filing the case. Make sure the client understands that it is not guaranteed that the judge will grant the predicate order.

Even after a predicate order is issued, this is just the first step in a long path to the desired immigration outcome for the child.

Although the client is the petitioning parent or guardian, some judges want to hear briefly from the child at the final hearing, particularly if the child is a teenager. NIJC recommends that attorneys meet with the parent/guardian and the child separately, both to preserve confidentiality and privilege, and because some topics regarding parental harm and domestic violence may be difficult to discuss in front of others.

## **STEP TWO: DRAFT AND FILE PETITION**

Your petition will look slightly different depending on the type of case you will be filing – see your referral packet for samples from NIJC. The pleadings look like standard family court pleadings but should contain specific details that are important for the SIJS process. Specifically, they should:

- Allege facts sufficient to support parental abuse/abandonment/neglect
- Describe why it is not in the 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 own immigration status or involvement in child’s journey to the United States

Language in the petition should mirror the **three findings that are needed** in the final order for immigration purposes.

1. the child’s **reunification with one (or both) parents is not viable**
2. ...due to **abuse/neglect/abandonment pursuant to** [appropriate IL definition],  
AND
3. it would **not be in the child’s best interest to return to their home country.**

**NIJC will need to review your draft petition prior to filing.** You should also review the entire petition with the client prior to having them sign. If necessary, arrange for an interpreter to read the petition to the client in the client’s native language before the client signs the English version. It is important that the client verifies that everything in the petition is accurate and that the client understands what they are signing.

In addition to the petition, the client may need to sign some additional documents, depending on the type of case being filed. The documents and processes below are

based on the requirements for Cook County. Other counties in Illinois may have specific forms or procedures; you will need to check the court's website or call the clerk to ensure that you have everything you need.

### E-FILING IN ILLINOIS

E-filing is now mandatory in all Illinois courts. NIJC uses the Odyssey eFileIL service, which is available free of charge. Visit <http://efile.illinoiscourts.gov/index.htm> for more information about e-filing, including different e-file services. Instructions and training videos for the Odyssey service are available at: <https://odysseyfileandserve.zendesk.com/hc/en-us/sections/360010234812>.

#### **A Note About Fee Waivers**

Neither you nor the client should pay any filing fees. NIJC clients are considered clients of a "civil legal services provider" and are entitled to an automatic waiver of fees (**called a "CLSP"**) under 735 ILCS 5/5-105.5(b) ("When a party is represented in a civil action by a civil legal services provider or attorney in a court-sponsored pro bono program, all fees and costs relating to filing, appearing, transcripts on appeal, and service of process **shall be waived** without the necessity of a motion for that purpose." See the Appendix for a sample CLSP.

NIJC provides a sample CLSP form along with your case file. You should fill out, sign, and scan your CLSP along with your initial documents, to waive fees associated with the case. See the Appendix for more details on E-filing with a CLSP.

This next step will differ depending on the court. The first subsection will review APR and Parentage cases, the second subsection will review guardianship cases, including guardianship for youth between 18 and 21 years old. Please see the section that is relevant to your case.

### A. APR AND PARENTAGE CASES

As described above, petitions for sole allocation of parental responsibilities (APR) and parentage are both filed in the domestic relations court. A petition for APR can be filed alone, as part of a divorce, or together with a petition to establish paternity. NIJC will advise you which type of case to file.

You will need to prepare the following documents to initiate the case:

- ☐ Domestic Relations Cover Sheet (scan on top of Petition)
- ☐ Petition for Allocation of Parental Responsibilities (signed by client)
- ☐ Memorandum of Law in Support of SIJS Findings - APR (see NIJC sample)
- ☐ Affidavit of Military Service (signed by client)

- ☐ Summons or Affidavit for Service by Publication
- ☐ Civil Legal Service Provider form (CLSP)

For examples of these documents, please see the Appendix. Most can also be found on the Cook County Court's website. If you are not familiar with the e-filing systems, see the Illinois E-Filing Tips & Instructions at Appendix H. These contain more detailed instructions on creating an account, setting up a waiver account to file with the CLSP fee waiver, etc. Once you have done so and your documents are drafted and signed, you are ready to file the case.

### To E-file an APR Case in Cook County

- From your dashboard, click "Start a New Case"
- Location: Cook County Domestic Relations – Chicago.
- Category: Domestic Relations – General Proceedings
- Case Type: Petition for APR
- "Case Cross-Reference Number" is the attorney's Cook County Attorney number. *Pro bono* attorneys may use NIJC's attorney number.
- Fill out Petitioner (your client) and Respondent information
- Filing type: "efile" not "efile and serve"
- Upload and name each of your documents, choosing the type that most closely resembles your documents (e.g., "Complaint/Petition"). If your filing does not resemble any of the options, type a description in the Filing Description box and save changes. Your filing is non-confidential.
- Payment account: select your previously-created Waiver account (see E-filing Appendix).
- Under return date, click Verify to skip. Save changes, agree to submission, review summary.
- Once submitted, the Clerk's Office will send an e-mail confirming that the e-filing system has received your filings, and another one within 48 hours confirming if your filing has been accepted or rejected. If accepted, the email will include your file stamped copies,

## STEP 3A: PERFECT SERVICE OF PROCESS

In APR and parentage cases, the respondent parent must receive formal **service of process**, which refers to specific procedures to give actual or constructive notice to the other party in a case. Service may be achieved through personal or substitute service, through publication, or may even be waived if the respondent signs a consent.

1. **Personal Service** → a sheriff or other individual appointed by the court personally delivers documents to the respondent.
2. **Publication** → If respondent's whereabouts are unknown, notice of the action is published in a local newspaper.
3. **Consent & Waiver** → Respondent agrees and signs, making service unnecessary.

In other cases, the parent may be deceased, and you will need to prove that fact to the court by attaching a translated death certificate to your petition. Under these circumstances, traditional service on the deceased parent is unnecessary but the pro bono attorney should file a copy of the original death certificate and a translation of the death certificate (if applicable) as an exhibit to the petition.

### 1. Personal Service

If the parent is in Illinois and their address is known, the sheriff may serve them with a summons. Alternatively, a court may appoint an individual over 18 and not a party to the case to provide personal service.<sup>6</sup> Personal service outside the State must be in a like manner as service within the State. If the respondent has submitted to jurisdiction, personal service outside the State of Illinois has the same effect as personal service within the State. If the respondent has not submitted to jurisdiction, then personal service outside the state has the same effect as service within Illinois by publication.<sup>7</sup> We will get into the implications of this in the section on jurisdiction.

In a typical NIJC SIJS case, one or both parents are outside of Illinois, and often outside of the United States. If your client knows where the respondent parent is, you should ask if they know someone over 18 who is willing to deliver a copy of the filing to them, and then fill out an affidavit of service showing that personal service has been completed. To do this, you'll need to:

- File a Motion for Special Process Server, requesting the individual be appointed by the court to serve Respondent
- Have your entire filing, including the petition, supporting documents, and summons, translated into the Respondent's native language
- Send the translated documents to the appointed special process server to deliver to the Respondent
- Have the process server fill out an Affidavit of Special Process Server, including the date, time and address that they personally served the Respondent. This affidavit should be signed and witnessed, notarized if possible, and returned along with a copy of the person's ID document
- File the Affidavit of Special Process Server with the court to show the date process was served.

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<sup>6</sup> 735 ILCS 5/2-2-202(a)

<sup>7</sup> 735 ILCS 5/2-208



Whether personal service is completed by the sheriff or another individual, the respondent has 30 days from the date of return of service to file an appearance. If no appearance is filed within that time, you may file a Motion for Default and proceed to final hearing in the case.

## 2. Service by Publication

Service by publication is appropriate in circumstances where the respondent 1) resides or has gone out of the State; 2) on due inquiry cannot be found; or 3) is concealed



within the State, so that process cannot be served.<sup>8</sup> If any of these circumstances apply, the client must sign an Affidavit for Service by Publication showing that service is not possible. In Illinois, publication can be made in a newspaper *published in the county in which the action is pending*. This means there is no need to try to publish notice in the Respondent's home country!

After the client signs the Affidavit, you will send it along with a copy of your file stamped CLSP by e-mail to

[publicnotice@lawbulletinmedia.com](mailto:publicnotice@lawbulletinmedia.com), or you can submit your notice online via [www.publicnoticenetwork.com](http://www.publicnoticenetwork.com). You will get a response with your publication and default dates. Notice will be published at least once each week for 3 successive weeks. After 30 days have passed from your first publication, you may move for default and proceed with the case.

## 3. Consent and Waiver

In many SIJS cases, a parent may be willing to agree to sole custody to the petitioning parent and waive service of process. This is something you want to explore with your client at the outset, as it could save you the time and effort of attempting to formally serve a parent. Typically, your client would have a conversation with the respondent parent in order to find out if they will consent. You as the attorney may also call the respondent to explain the consent process, but you will need to be careful to clarify that you do not represent the respondent and cannot give them legal advice. If the respondent is willing to sign a consent and waiver form, you will draft one (NIJC has samples) and determine the best way to send it for signature.

### Practice Pointer

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

For clients who live in another country, you will need to find out whether there is a physical address where they can send and receive mail. If not, you may be able to find a person or local business with an email address or fax number who can receive and print out the consent form for the parent to sign. Typically, a document like this should be notarized to

<sup>8</sup> 735 ILS 5/2-206

establish the signer's identity; however, many of our clients cannot afford a notary, which can cost hundreds of dollars in some countries. As an alternative, ask the client to sign and return the consent form with a copy of their ID. If it's possible to have a witness sign as well, that may be helpful.

In addition to consenting to custody and waiving service, you may be able to use such a signed document from a parent to submit to jurisdiction (see below) and to acknowledge paternity, if that is an issue in your case. Check with NIJC, as multiple samples are available.

### **Other Considerations: Hague Service**

The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Service Convention") is an international agreement that outlines specific procedures that are acceptable for service of process in member countries. A full list of member countries is available on the Convention website; it is worth noting that Honduras, Guatemala, and El Salvador, where many of NIJC's clients are from, are not parties to the Hague Service Convention. Mexico is a party, and personal service to a Mexican respondent will need to comply with the Convention.



If your respondent is in a country that is party to the Hague Service Convention, you will not be able to complete personal service simply by appointing a Special Process Server as described above. Instead, you will need to follow the procedures outlined by the Convention, which involve submitting specific documents to the country's Central Authority, which will in turn arrange for service in the manner permitted in the receiving state. This process can take many months, so if there are viable alternatives, they should be explored.

For example, if the respondent's address is not known, the Hague Service Convention does not apply, and normal service via publication is permitted. Likewise, if you have a respondent who will sign a consent and waiver of service, Hague service becomes unnecessary. If you believe the Hague Service Convention may be implicated in your case, reach out to NIJC.

### **Some Notes About Jurisdiction**

Service of process and personal jurisdiction, while related, are not the same thing. Service ensures the respondent is properly notified about the case. If the respondent lives in Illinois and is personally served, service is sufficient for the court to take jurisdiction over them. If the respondent has never been to Illinois, the court may not have personal jurisdiction over them even if they have been properly served. For an Illinois court to exercise personal jurisdiction over a nonresident served outside the state, you would

need to show that the respondent has some minimum contacts with Illinois. (Remember reading *International Shoe* in law school?)

Fortunately, in most child custody matters, **personal jurisdiction over an absent parent is not required for a court to enter a custody determination**. The statute governing jurisdiction in child custody cases is the Uniform Child Custody Jurisdiction and Enforcement Act, or UCCJEA. Under the UCCJEA, if a child has lived in Illinois with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding, Illinois is considered the child's "home state," and Illinois courts have jurisdiction to enter a custody order. This means that in most cases, you should be able to obtain a custody order with the special findings for SIJS regardless of whether you have personal jurisdiction over the respondent parent.

### Uniform Interstate Family Support Act

750 ILCS 22/201

(Jurisdiction Over  
Nonresident)

- submission to jurisdiction
- resided with the child in IL OR resided in IL and provided support for the child
- the child resides in IL as a result of the acts or directives of the individual
- any other basis consistent with the constitution

In cases where you need the court to establish parentage (such as where the father's name is not on the birth certificate), you may need personal jurisdiction over the respondent. If this is an issue in your case, there may be alternate strategies, such as having the respondent sign a Voluntary Acknowledgement of Paternity (VAP) or a written submission to jurisdiction. It may also be sufficient in some cases for the court to make factual findings as to a respondent parent without formally entering an order of paternity. If neither of these is possible, there are a number of options for a court to take jurisdiction over a nonresident in a proceeding to determine parentage; reach out to NIJC to discuss the best strategies.

## STEP 4A: DRAFT PROPOSED ORDER & SCHEDULE FINAL HEARING

A "prove-up" is a short hearing before a judge when a case is *uncontested*, such as when it has been settled by agreement or default. Almost all SIJS cases proceed on default. However, once service has been perfected, attorneys should review the docket for 30 days to check for an appearance or response by the respondent. If the respondent files an appearance or response, please notify NIJC immediately.

If the respondent has not filed an appearance or response after 30 days, you will fill out a **Certificate & Motion for Default** – a form which can be found on the Cook County court website – and ask the court to schedule your final hearing.

In Cook County, the procedures to schedule a default prove-up depend on which judge's calendar you are assigned, and they are subject to change. As of this writing, the most recent standing order addressing this issue can be found [here](#). Essentially, for certain courtrooms you will need to file your Certificate and Motion for Default, and schedule your final hearing, via the eFile system. For other courtrooms, you must email your required documents to the courtroom email address of the prove-up judge. A list of current email addresses and Zoom links for Cook County Domestic Relations judges can be found on the court's website, and are linked [here](#). **As this information is frequently updated, you should check with NIJC or CVLS for the most current procedures if they are unclear.**

Upon scheduling your final hearing, if your Respondent was served by any means other than publication, you will need to file a Notice of Motion and serve them with it, along with a copy of your Certification and Motion for Default, and a copy of your proposed judgment.

#### Documents for Final Hearing

Prior to the prove-up, draft the proposed final order - called a Judgment for Allocation of Parental Responsibilities – based on NIJC's templates. In addition to the standard APR language, the final order **MUST** contain the required SIJS findings.

SIJS “MAGIC LANGUAGE!”	
1.	The child's <b>reunification</b> with their parent(s), [name], <b>is not viable</b> ;
2.	<b>...due to abuse/abandonment/neglect</b> under Illinois law (you should cite to the appropriate definition in the IMDMA or Parentage Act); plus a brief factual description and
3.	It would <b>not be in the child's best interest to return</b> to their home country [briefly state why].

It is **ESSENTIAL** to allow NIJC to review and approve the final order before presenting it to the court. You also must make sure that you are not doing anything to prejudice the client's immigration proceedings. This means that striking a balance between bare-bones and too much information about the factual bases for the SIJS findings, and also cross-check any facts set forth in your documents to ensure that they are consistent with anything presented to immigration authorities. Including too much information in your pleadings increases the possibility of inconsistencies in the immigration proceedings.

In addition to the **proposed judgment**, you will need to prepare several documents in advance of the final hearing, and **provide the judge with courtesy copies** (usually via email, several days in advance; check your judge's standing order for specifics):

- ☐ Uniform Prove-up Sheet
- ☐ Petition
- ☐ Memorandum of Law in Support of SIJS Findings
- ☐ CLSP
- ☐ Proposed Order for Free Transcript
- ☐ Order on Prove-up (28 day order)
- ☐ Summons
- ☐ Affidavit of Military Service
- ☐ Affidavit of Service of Summons or Notice of Completion of Service by Publication or signed Consent & Waiver of service
- ☐ Certificate & Motion for Default

Most of these documents are available as fillable forms on the Cook County court's website. Please see the Appendix for samples.

Finally, in your communication with the court prior to the final hearing, make sure you **request an interpreter** if necessary, and a **court reporter**. Although the court provides official interpreters, it can be beneficial to bring a private interpreter. Court interpreters are in high demand, which can mean attorneys may need to wait several hours for an interpreter to arrive. Private interpreters can also be helpful in explaining what is happening before and after court.

## STEP 5A: PREPARE THE CLIENT FOR HEARING

Prior to the hearing, you will prepare the client to testify as to the contents of the petition. It is helpful to provide the client with a copy of the petition in the client's native language prior to the meeting so the client can take the time to review it prior to the meeting.

Because the hearing is uncontested, you can ask leading questions in a yes/no format. You should practice these ahead of time so that your client feels comfortable. The client will not be subject to a cross-examination, but may need to answer the judge's questions. Sometimes the judge briefly questions the client and/or the child. The judge may clarify facts about the client's current living situation, or how the client plans to provide for the child.

### Drafting the Affidavit of Military Service

If the client personally knows that Respondent is not in the military, write "Respondent is known to reside and work as a civilian."

If the client is not sure, create an account and conduct a search on: <https://scra.dmdc.osd.mil/scra>

Then write: "Petitioner has no knowledge. Petitioner's attorney ran a search pursuant to the Service members Civil Relief Act website."

The most important thing for the client to know is that they should answer every question honestly. If the client does not understand a question, the client should say so rather than guess what the judge means.

Remember that hearsay evidence is not admissible, so if the petitioner has no personal knowledge of the abuse/abandonment/neglect to the child, look for other ways to get that evidence in (admissible documentary evidence, observations of child's behavior, occasionally testimony of an older child, etc.). The hearsay statements of a child regarding abuse may be admissible if corroborated & reliable. Please see NIJC's Sample Prove-up Script in the Appendix for suggestions regarding evidentiary issues.

## STEP 6A: APPEAR IN COURT

Hearings in Cook County are held via Zoom; check the court's website for the most recent court contact information and Zoom links. If your client is not able to easily proceed via Zoom (i.e., has a fully charged device with a reliable signal and is comfortable with the Zoom platform), you may need to plan to meet your client in person to connect to Zoom together.

When you are admitted to the virtual courtroom, the judge will ask everyone to identify themselves for the record. Next, the clerk will swear in the client. Using the Prove-Up Script (see Appendix), briefly describe why you are before the court. Judges in family courts are often used to seeing the same types of routine matters; because SIJS is different than the usual, it can initially be met with skepticism. If the judge is unfamiliar with SIJS, you may refer them to the Memo of Law that you filed, specifically the 2019 amendments that clarify judges' authority to make these findings.

Sometimes, a judge may ask why you are seeking an order of allocation of parental responsibilities or legal guardianship for a 16- or 17-year-old who is almost an adult. Although the SIJS findings are a significant reason for bringing such a case for an older child, it is important to keep in mind the other benefits that an order of custody or guardianship can bring to a child. For example, in addition to the stability of having a lawful guardian, a formal order can help facilitate school enrollment, registering for health insurance, making emergency medical decisions, and in some cases, obtaining a passport or other identification. Explaining this may help a state court judge feel more comfortable entering a custody order for an older child, and will also strengthen the "bona fides" of the child's application with USCIS, who want to see that the predicate order was not obtained *solely* for immigration purposes.

After answering any questions, the judge may have about SIJS or the requested findings, begin your direct exam using the Sample Prove-Up Script.

Young children are generally neither expected nor allowed in court; however, if the child is a teenager, you may ask your client to make sure the child is available in case the judge

wants to hear from them. This is usually just to confirm that the child is doing well and wishes to live with the petitioner. The judge should not ask the child in great detail about the abuse, abandonment or neglect.

For an example of a typical proceeding, please see the Sample Transcript of Proceedings in the Appendix.

### Possible Outcomes and Next Steps

At the end of the hearing, the judge will either (a) grant the order; (b) continue the case; or (c) deny the order. No matter the outcome, take time after the hearing to explain to the client what has happened and next steps.

It is possible the judge could continue the case. Sometimes judges order parents to complete parenting classes before granting allocation of parental responsibilities. Other times, judges may want to see more detailed briefing regarding their authority to grant the SIJS predicate order findings. If the case is continued, check with NIJC right away to discuss what happened and what next steps may be.

Fortunately, it is unusual for judges in Illinois to outright deny SIJS predicate orders. If this happens, please contact NIJC immediately and explain the outcome carefully to the client. It is important to act quickly in order to comply with any appeal deadlines.

If the judge grants the order, you will likely need to wait a couple of days for the final signed order to be emailed to you. Advise the immigration attorney immediately after the proceedings, and forward the order as soon as you receive it. Assuming the order is sufficient, ensure the client has a copy of the order, then send a copy of the original order along with the full state court file to NIJC. The immigration attorney will file the predicate order with the child's SIJS petition.

## B. GUARDIANSHIP CASES

If the child is under the age of 18 and living with a non-parent, or over 18 and living with either a parent or non-parent, the SIJS predicate order case will be filed as a probate guardianship. The order of guardianship over a minor meets the definition of a "custody" determination required by INA § 101(a)(27)(J), and the probate court entering it meets the definition of "juvenile court" at 8 C.F.R. § 204.11. Note that in Illinois, post-18 guardianships only meet these requirements for SIJS *because* they are in the "Minor Guardianships" section of the Probate Act, which explicitly states that the court retains juvenile jurisdiction over the child for this purpose. A guardianship for an adult with disabilities, for example, would not meet these requirements and therefore would not be sufficient for an SIJS predicate order.

Typically, a guardianship allows someone other than a parent to "step into the shoes" of a parent. Under Illinois law, the legal guardian has decision-making authority and legal responsibility for the child, which will allow them to secure medical treatment for the child, enroll the child in school, add the child to their health insurance, and provide shelter for



the child. The proposed guardian does not need to have lawful immigration status in the United States, but does need to live in the venue where the case is filed. The guardian does not have to be biologically related to the young person. Guardians can be family friends, teachers, religious figures, or any other responsible adult in the child's life.

To qualify to be a guardian<sup>9</sup>, an individual must:

- be 18 years old or over;
- live in the United States;
- not be "of unsound mind;"
- not be an adjudged person with a disability
- not have been convicted of a felony (subject to limited exceptions)

The client will also need to have the appropriate documentation to initiate a guardianship case:

- the child's birth certificate
- a death certificate of the parent(s), if applicable
- a photo ID for the proposed guardian (this can be a passport or consular ID; a work permit; a Chicago City Key, or a driver's license or state ID)

You should NOT file these documents. However, the judge will want to review them prior to entering an order of guardianship, so you will need to provide copies directly to the judge via email when scheduling your final hearing.

Although NIJC screens clients for all of the above requirements, you will be responsible for helping the clients gather the necessary documentation. If NIJC already has any of the required documents, they will be included in your case file. If, after meeting with your client, you believe they may have trouble meeting the requirements or obtaining documents, please reach out to NIJC. For more tips on the initial meeting with your client, refer back to Part Three, Step One, "Review Case File & Meet with Client."

Once you have met with the client and reviewed the case file, your next step is to begin drafting your petition. The Petition for Guardian of a Minor is a court form of only a couple of pages, typically available on the court's website. Your client will only be seeking Guardianship of the Person of a minor; there is almost never an estate involved for NIJC clients. Because this is an SIJS predicate order case, you will need to add some additional information to your Petition to request the specific findings for SIJS. See Part Three, Step Two, "Draft and File Petition," for tips. You can choose to either include this information in the form petition, or draft your own petition based on NIJC's Sample Petition for Guardianship with SIJS Findings. For your initial filing, you will need to prepare the following documents:

- ☐ Civil Legal Service Provider (CLSP) Form
- ☐ Probate Division Cover Sheet (in Cook County)

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<sup>9</sup> 755 ILCS 5/11-3



- ☐ Petition to Appoint Guardian of a Minor, including request for SIJS findings
  - If the minor is over 14, they should sign the Nomination of Guardian, which can be included at the end of the petition.
- ☐ Exhibit A (a list of people entitled to notice, which includes the child's parents and adult siblings)
- ☐ Signed and notarized Appearance and Consents, if applicable
- ☐ Affidavit for Service by Publication, if applicable
- ☐ Motion to Set for Hearing (To file after your Petition, once you get case number)
- ☐ Consents to CANTS and criminal history background checks
- ☐ Signed and notarized Oath and Bond of Representative – No Surety
- ☐ Memorandum of Law in Support of SIJS Findings - Guardianship
- ☐ Proposed Order Appointing Guardian with SIJS Findings

All of these documents except the Memorandum and Proposed Order are available on the Cook County Court's website, and additional samples can be found in the Appendix. You should always make sure your documents comport with the most recent requirements of the court you are working in; this may involve checking your local court's website or calling the clerk of court. Once you have drafted your documents based on the information from your client, send to NIJC to review prior to filing your case. Once the documents have been reviewed, have the client (and minor if applicable) sign where required.

To e-file a new case, make sure you have all of your initial documents prepared, signed and separately scanned in.

## *E-File the Case*

### **To E-File a Guardianship Case in Cook County**

- ☐ E-file the documents to initiate the case in probate court:
  - Probate Cover Sheet + Petition + Exhibits in one PDF,
  - CLSP in a separate PDF.
- ☐ Filing these initial documents will generate a court case number.
- ☐ Ensure all relevant parties are notified, either via return receipt mail, notarized appearance & consents, or via publication.
- ☐ File a Motion to Set for Hearing along with another copy of your CLSP and any signed, notarized Appearance and Consents you have, or any signed Affidavits for Service by Publication, if applicable.
  - You can file your Memorandum of Law in Support of SIJS Findings along with this motion
  - File the documents as a “Motion” and select “Case Management” as the type of motion. This will generate a court date.
  - You will need your file-stamped Affidavits for Publication in order to send the matter to the law bulletin for publication to run
- ☐ Schedule your hearing for approximately 14 days out if no publication is needed, or 28 days if publication is required.

If you are not familiar with the e-filing systems, see the Illinois E-Filing Tips & Instructions at Appendix H. These contain more detailed instructions on creating an account, setting up a waiver account to file with the CLSP fee waiver, etc. Once you have done so and your documents are drafted and signed, you are ready to file the case.

### **STEP 3B. PROVIDE NOTICE TO APPROPRIATE PARTIES**

In guardianship cases, formal service of process is not required, but parents and adult siblings are entitled to **notice** of the proceedings. Exhibit A to your petition should include a list of the names and addresses of everyone who must be notified. You will be required to send a Notice of Motion via certified, return receipt mail (or Fedex) to everyone on that list. Many of the relevant family members of NIJC clients live in their home countries, where this may not be feasible. If that is the case, you have two options:

1. **Appearance and Consent:** this is a form that the parent or adult sibling can sign waiving the notice requirement and consenting to the guardianship. It must be

both signed and notarized, which means it may also be difficult to obtain in countries where notaries are very expensive. This document, like any document obtained from another country, must be translated and accompanied by a certified translation.

2. **Publication:** if neither notice nor consent is feasible, or if the parent or siblings' whereabouts are unknown, you will need to proceed via publication. Your client will need to fill out and sign an Affidavit for Service by Publication, and you will email this document for publication along with a copy of your CLSP, following the instructions in Step 3A, 2. "Service By Publication." You will need to publish separate notices for each person entitled to notice.

### *Background Checks (Cook County only)*

In Cook County, all adults in the proposed guardian's home must be fingerprinted and undergo criminal background checks, in addition to a CANTS (Child Abuse and Neglect Tracking System) background check. Neither of these is filed in the e-file system, but copies of the consent forms and proof of background check must be provided to the court via email ahead of the hearing. Note that **most other counties do not require this process**; check your local court procedures.

For the criminal background check, the adult must sign a consent form, one copy of which will be provided to the court, and the other they will take to a private vendor to run their fingerprints. Note that the private vendors may charge anywhere from \$55 to \$125 per background check, and these fees cannot be waived. The court provides a list of local vendors, and your client may want to call around to find the best price.

The CANTS background check requires the adult to sign a consent form, which will be provided to the court ahead of the hearing (NOT filed).

The Appendix contains the most recent set of background check instructions and required consent forms for Cook County; however, you should always check with the court clerk to ensure you are following the current procedures. Note that if an adult is not willing to submit to a background check, it could prevent the guardianship from being granted.

## STEP 4B. DRAFT PROPOSED ORDER & SCHEDULE FINAL HEARING

Prepare a proposed final order ahead of the hearing and send to NIJC for review. See the Appendix for a Sample Cook County Probate Guardianship Order. In addition to the standard guardianship language, the final order **MUST** contain the required findings for SIJS:

SIJS “MAGIC LANGUAGE!”
<ol style="list-style-type: none"><li>1. The child’s <b>reunification</b> with their parent(s), [name], <b>is not viable</b>;</li><li>2. ...<b>due to abuse/abandonment/neglect</b> under Illinois law (you should cite to the appropriate definition in the Probate Act); plus a brief factual description and</li><li>3. It would <b>not be in the child’s best interest to return</b> to their home country [briefly state why].</li></ol>

It is **ESSENTIAL** to allow NIJC to review and approve the final order before presenting it to the court. You will need to make sure that you are not doing anything to prejudice the client’s immigration proceedings, which will require cross-checking any facts set forth in your documents to ensure that they are consistent with anything presented to immigration authorities.

Once the parents and relevant adult relatives have been notified, either by return receipt mail, consent, or by publication for 30 days, your final hearing can proceed. You will schedule the hearing through your e-file account.

Cook County Probate hearings are held via Zoom; check the court’s website for the most recent contact information. You may also consult CVLS’s website for detailed information about remote hearings in Cook County. In preparation for your final hearing, make sure all required processes are complete:

- ☐ Parents and adult siblings have a) been notified via return receipt mail and you have receipts; b) filed notarized consents; or c) been notified via publication and 30 days has passed.
- ☐ All adults in the household have completed their background checks and fingerprints have returned.
- ☐ Proposed guardian has signed & notarized the Oath and Bond; minor has signed the Nomination if over 14
- ☐ Request interpreter well ahead of hearing (email judge or coordinator, check with court clerk for who to ask)

Three to five days before your hearing, you should email **courtesy copies** of your proposed order and other relevant documents to the judge. (Check the court website for

the appropriate email address). A sample email to the judge can be found in the appendix. Your email should include PDFs of:

- ☐ Your initial filing: Cover Sheet and Petition with Exhibits; CLSP
- ☐ Memorandum in Support of SIJS Findings
- ☐ Child's Birth Certificate with translation
- ☐ Parent's Death Certificate with translation (if applicable)
- ☐ Copies of Certification by Publication [and/or certified mail return receipts, and/or Appearance and Consent forms] for parents and adult siblings;
- ☐ CANTS Consent Form for proposed guardian and adult household member (with copy of government IDs);
- ☐ Copy of criminal background fingerprint check submitted by proposed guardian and adult household member (with copy of government IDs);
- ☐ Signed and notarized Oath and Bond of Representative– No Surety by proposed guardian;
- ☐ Proposed Order for Appointment of Guardian of Minor (with SIJS findings)

## STEP 5B: PREPARE THE CLIENT FOR HEARING

Prepare the client's testimony for final hearing. For the most part, the judge will address your client directly, and ask questions to verify the contents of the petition. Children over five should plan to be present, and the judge may ask them questions as well. If the child is school-aged, the judge will want to see that the child is enrolled in school. If you will be using an interpreter, make sure the client knows to speak in short phrases and wait for interpretation. If the client does not understand a question, they should say so rather than guessing at an answer. Your client will likely be nervous; you can let them know that the hearing should be short and uncontested, and that their only job is to tell the truth.

Make sure to send the client Zoom instructions and ensure they know how to access the hearing. This includes confirming that the client has a working device and strong signal, and knows how to use the platform. If your client seems to be struggling, you may want to have them in person with you, so that you can connect to Zoom together. If you are unfamiliar with Zoom, you may wish to review CVLS's Zoom training:

<https://www.cvls.org/2020/06/18/zoom-in-the-time-of-covid/>.

## STEP 6B: APPEAR IN COURT

When you are admitted to the virtual courtroom, the judge will ask everyone to identify themselves for the record. You should introduce yourself, the client, and anyone else present for your case. You should also flag for the judge that you will be seeking certain

special findings as part of this guardianship pursuant to Section 11-5.5 of the Probate Act, and refer them to your Proposed Order and Memo of Law. Many judges at this point are already familiar with SIJS and will not have further questions; however, you should be prepared to explain SIJS and the judge's authority under Illinois law if necessary.

Sometimes, a judge may ask why you are seeking an order of guardianship for a 16- or 17-year-old who is almost an adult. Although the SIJS findings are a significant reason for bringing such a case for an older child, it is important to keep in mind the other benefits that an order of custody or guardianship can bring to a child. For example, in addition to the stability of having a lawful guardian, a formal order can help facilitate school enrollment, registering for health insurance, making emergency medical decisions, and in some cases, obtaining a passport or other identification. Explaining this may help a state court judge feel more comfortable entering a custody order for an older child, and will also strengthen the "bona fides" of the child's application with USCIS, who want to see that the predicate order was not obtained *solely* for immigration purposes.

If all goes well, the judge will grant your final order with the special findings. A copy of the order signed by judge will be sent to you via email; you should provide a copy to the client and NIJC right away. The court will also issue "Letters of Office," which will arrive in the mail (directly to client's address on file) a few weeks later.

If the judge denies or continues the case for any reason, contact NIJC right away to discuss next steps, including appeal.

## SPECIAL INSTRUCTIONS FOR POST-18 GUARDIANSHIP CASES

As discussed in Part 2 above, Illinois recently enacted legislation ensuring that vulnerable youth have access to juvenile courts for the purpose of obtaining SIJS predicate orders up until the age of 21. Public Act 102-0259 created a new subsection in the Probate Act, found at 755 ILCS 5/11-5.5(e), which specifically extends the definition of "minor" to include "an unmarried person who is less than 21 years old who consents to the appointment of a guardian or the continuation of a guardianship after the age of 18." A court entering such a post-18 guardianship will still be acting as a "juvenile court" for the purposes of 8 C.F.R. 204.11.

To file a post-18 guardianship, you will for the most part be following the same processes with the same forms described in the Guardianship section above. There are a few significant differences to keep in mind:

The child is eligible to be appointed a guardian until they turn 21. Therefore, your new "urgent" deadline is the child's 21<sup>st</sup> birthday (though if possible, the case should be completed well before that deadline).

- ☐ A petitioner in a post-18 guardianship must be over the age of 21.
- ☐ Typically, the petitioner in a guardianship case is a non-parent; this new section specifically allows *parents* to seek a guardianship for a child over the age of 18.
- ☐ The minor must sign a consent to guardianship, and there are specific provisions protecting the minor's rights to consent to their own medical treatment, along with certain other rights they may have achieved at 18. See NIJC's Sample Consent of Minor to Post-18 Guardianship.

As this is a new and somewhat unusual area of law, you may encounter confusion or pushback from judges (How can we appoint a guardian of minor to an 18-year-old? Why would this person need a guardian? Why is a *parent* seeking guardianship?)

In anticipation of some of these questions, you will want to include some additional information in your petition as to why this youth is particularly vulnerable, and ways in which a guardianship can help to address some of the harm caused by parental abuse, abandonment or neglect. This law was enacted in acknowledgement of the unique vulnerability of 18- to 21-year-olds who have suffered this harm and are in need of both the stability of lawful status, and the additional supports that an order of guardianship can provide. For example, the section specifically allows referrals for "psychological, educational, medical, or social services that may be deemed necessary as a result of parental abuse, abandonment, or neglect, or for protection against trafficking or domestic violence." Sec. 11-5.5(e)(7).

In preparing this type of case, you should thoroughly review the statute itself, as well as NIJC's sample documents, particularly the Sample Memo in Support of Special Findings for Post-18 Guardianship. If you encounter any questions or pushback from court, don't hesitate to contact NIJC right away.

## Part 4: Celebrate! NIJC on Social Media

**Congratulations! You have helped put a vulnerable immigrant child on a path to stability and safety!**

In accompanying a family through the SIJS predicate order process, you have not only opened a door to lawful status for the child; you've given them the opportunity to exercise some agency over their lives, and to experience a system that can work for them instead of against them. This is life-changing for many of our clients.

We would love to celebrate your victory and have you share your experiences with others. While we love to see client victory photos (with the client's permission, of course), please check with NIJC before posting photos of immigrant minors on social media. Please DO tag us in any media involving your NIJC case.

If you'd like to share a short video clip, photos or a blog post about your case, please contact: NIJC's Pro Bono Manager, Ellen Miller, [emiller@heartlandalliance.org](mailto:emiller@heartlandalliance.org)

### Other ways to support NIJC:

 : @NIJC

 : [facebook.com/immigrantjustice](https://facebook.com/immigrantjustice)

 : @nijc



# **Appendix of Sample Forms and Documents**

- A. SIJS Path One-Pager
- B. P.A. 101-0121 One-Pager
- C. P.A. 102-0259 One-Pager
- D. Illinois Laws Relating to Special Immigrant Juvenile Status
- E. Working with Interpreters
- F. Sample Translation of a Birth Certificate
- G. CLSP Fee Waiver
- H. Illinois E-Filing Tips & Instructions
- I. Documents for Allocation of Parental Responsibilities & Parentage Cases<sup>10</sup>
  - 1. SIJS Predicate Order Checklist- Custody
  - 2. Domestic Relations Cover Sheet\*
  - 3. Military Affidavit
  - 4. Summons
  - 5. Sample Petition for APR with Request for Special Findings
  - 6. Affidavit of Service of Summons
  - 7. Affidavit For Service by Publication
  - 8. Motion for Appointment of Special Process Server
  - 9. Sample Affidavit of Service by Special Process Server (English & Spanish)
  - 10. Sample Consent/Acknowledgement of Paternity & Waiver of Service
  - 11. Sample Memo of Law In Support of Request for SIJS Findings - APR
  - 12. Certificate & Motion for Default
  - 13. Notice of Motion
  - 14. Proposed Default Judgment of APR with SIJS Findings
  - 15. Order on Prove-Up
  - 16. Proposed Order for Free Transcript
  - 17. Sample APR Prove-Up Script
  - 18. Redacted Transcript from Cook County Hearing
- J. Documents for Guardianship Cases
  - 1. SIJS Predicate Order Checklist – Guardianship
  - 2. Probate Division Cover Sheet\*
  - 3. Sample Petition to Appoint Guardian of a Minor, including request for SIJS findings (and Nomination if minor is over 14)
  - 4. Exhibit A – Notification to Child’s Relatives
  - 5. Appearance and Consent

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<sup>10</sup> Many of the forms included here are downloaded directly from the Cook County court’s website. Always check to make sure you are using the correct and most updated form for your case and court.

6. Affidavit for Service by Publication
  7. Sample Memorandum of Law in Support of SIJS Findings - Guardianship
  8. Cook County Probate Court Background Check Instructions\*
  9. Privacy Statement Consent – Criminal History Record Information\*
  10. List of Cook County Fingerprint Vendors\*
  11. CANTS Consent Form\*
  12. Sample Courtesy Copy Email to Judge
  13. Oath and Bond of Representative – No Surety
  14. Sample Proposed Order Appointing Guardian with SIJS Findings
- K. Documents Specific to Post-18 Guardianships
1. Sample Petition for Guardianship with Motion for Special Findings Post-18 Guardianship
  2. Sample Nomination and Consent of Minor to Post-18 Guardianship (attach to Petition)
  3. Sample Memo in Support of Special Findings for Post-18 Guardianship
  4. Sample Probate Guardianship Order with SIJS Findings Post-18 Guardianship

\*Cook County only.