

NAVIGATING THE CHALLENGES OF SPECIAL IMMIGRANT JUVENILE STATUS IN  
GEORGIA FAMILY COURTS

*Jennifer Giles, Esq.\**

**I. INTRODUCTION**

Special Immigrant Juvenile Status is a pathway for undocumented minors to seek legal status in the U.S. when they cannot return to their home country due to abuse, neglect, or abandonment. At base, the federal law governing Special Immigrant Juvenile Status is aimed at protecting vulnerable immigrant youth. However, the federal process relies in part upon state law and state court process. Georgia state courts application of state law regarding this federal process leads to unique challenges in minors obtaining the required state orders as directed by federal law governing Special Immigrant Juvenile Status. Key issues with state court application of the law involve jurisdictional questioning, judicial reluctance and inconsistent applications of the law. Thus, Georgia's currently judicial practices regarding Special Immigrant Juvenile Status improperly limit a minor's access to relief and create barriers that undermine the purpose of federal immigration law which is to protect at-risk youth.

In the pages that follow, I will discuss the basic framework for a minor to obtain a status adjustment based on the federal Special Immigrant Juvenile process. I will then examine Georgia-specific issues with application of the federal law.

**II. THE FEDERAL FRAMEWORK OF SPECIAL IMMIGRANT JUVENILE  
STATUS (SIJS)**

*A. Statutory Authority: Immigration and Nationality Act*

Under the Immigration and National Act (INA), an immigrant minor may be able to obtain legal status by petitioning the U.S. Citizenship and Immigration Services (USCIS) for Special Immigrant Juvenile Status (SIJS).<sup>1</sup>

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\* Associate Professor of Law at Atlanta's John Marshall Law School. This article is adapted from materials prepared for the 2025 John Marshall Law Journal's Domestic Relations Law CLE Symposium.

<sup>1</sup> INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J).

SIJS was established in 1990 by Congress<sup>2</sup> and provides an immigration remedy for immigrant minors who find themselves in the U.S. without legal status and without one or both parents. The SIJS classification initially provided humanitarian protection for abused, neglected, or abandoned alien children eligible for long-term foster care.<sup>3</sup>

Since 1990, Congress has enacted other laws that have modified the SIJS requirements for immigrant minors. In 1994, Congress enacted The Immigration and Nationality Technical Corrections Act, which expanded SIJS eligibility to children who are not only dependent on a juvenile court to children who have been placed in the custody of a state agency or department.<sup>4</sup>

Of most relevant note (and the most current), the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) amended the SIJS process to what it is today. The TVPRA, among other changes, removed the need for a court to deem a child eligible for long-term foster care and replaced it with a requirement that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.<sup>5</sup> The TVPRA also expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court; thus, a child no longer just had to be placed in the custody of a state entity or department.<sup>6</sup>

Additionally, there was an updated Policy Manual issued on October 26, 2016 by USCIS which provided revised standards for evaluating SIJS.<sup>7</sup>

In its current form, in order to petition USCIS pursuant to SIJS, an immigrant minor must first petition a state juvenile court to make certain findings of fact in a predicate order (Predicate Order).<sup>8</sup> Those state court findings must include the following:

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<sup>2</sup> USCIS Policy Updates for Special Immigrant Juveniles: A Practice Advisory for State Court Practitioners.

<sup>3</sup> U.S. Citizenship and Immigration Services, *Chapter 1 - Purpose and Background*, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-1> (last visited Jan. 6, 2026).

<sup>4</sup> See Pub. L. 103-416 (October 25, 1994).

<sup>5</sup> See Pub. L. 110-457 (December 23, 2008).

<sup>6</sup> *Id.*

<sup>7</sup> U.S. Citizenship and Immigration Services, *Part J - Special Immigrant Juveniles*, <https://www.uscis.gov/policy-manual/volume-6-part-j> (last visited Jan. 6, 2026).

<sup>8</sup> 8 U.S.C. §1101(a)(27)(J)(i); 8 C.F.R. § 204.11.

1. The child is dependent upon the juvenile court in accordance with state law governing such declarations of dependency, or has been committed to the custody of a state agency, department, individual or entity;
2. Reunification with one or both immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
3. It is not in the best interest of the child to be returned to the country of nationality or last habitual residence.<sup>9</sup>

These factual findings do *not* automatically entitle a Special Immigrant Juvenile to any lawful status or to lawful permanent residence in the United States. Because even after obtaining the Predicate Order, an immigrant minor must still petition the USCIS for an adjustment to legal immigration status.<sup>10</sup> Thus, there is interplay between state courts and federal immigration law.

#### *B. Roadmap of SIJS Cases*

Once an immigrant minor finds themselves in the United States, one of the ways in which a minor can obtain legal immigration status is through SIJS. Sometimes, the immigrant minor is detained by immigration authorities at a border crossing into the United States; yet other times, an immigrant minor has come to the United States with a parent or sibling and then finds themselves in the United States without a parent when that parent returns to their home country. If the immigrant minor has been detained by immigration authorities at the border, immigration authorities typically place the immigrant child with a relative (sibling, aunt/uncle, one parent) who is already in the United States. In situations where the child has arrived with a parent or sibling, they are typically left with a relative who is already in the United States, but who has no parental rights to the child.

However the immigrant child arrives in the United States, the immigrant child is faced with potential deportation proceedings unless legal status is obtained. It is highly likely that the relative with whom the immigrant child is placed has no legal ability to make decisions for the child which can impact a caregiver's ability to enroll a child in school or obtain medical care for the child.

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<sup>9</sup> See 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(a), (c), (d)(2).

<sup>10</sup> See *In re J.J.X.C.*, 318 Ga. App. 420 (2012).

*C. Role of USCIS vs. Role of State Courts: Federal Immigration Relief Built on State Court Findings.*

For a minor child who is seeking an immigration status adjustment pursuant to SIJS, there must be a Predicate Order issued by a “state juvenile court”<sup>11</sup>, which is 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>12</sup> In Georgia, this could mean the juvenile courts, superior courts, or potentially the probate courts.<sup>13</sup> Congress tasked the states with making these determinations because of state courts “responsibility to protect children under their jurisdiction and their expertise...in making decisions about the welfare and best interests of children.”<sup>14</sup> In fact, the USCIS Policy Manual states that “USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law.”<sup>15</sup>

On the other hand, the immigration decision in these cases falls squarely in the purview of federal immigration courts based on their expertise with immigration law. The Trafficking Victims Protection and Reauthorization Act of 2008 simplified but still required that DHS review and consent to the SIJS classification.<sup>16</sup> Thus, although USCIS defers to the state juvenile courts on matters of state law, the ultimate decision on a child’s immigration status remains with USCIS.<sup>17</sup>

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<sup>11</sup> 8 U.S.C. § 1101(a)(27)(J)(i).

<sup>12</sup> 8 C.F.R. § 204.11(a).

<sup>13</sup> This article does not discuss the process in Georgia probate courts, but focuses on Georgia juvenile and superior courts.

<sup>14</sup> *A Guide for State Court Judges and Lawyers on Special Immigrant Juvenile Status*, Cristina Ritchie Cooper, March 1, 2017, [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practice\\_online/child\\_law\\_practice/vol-36/mar-apr-2017/a-guide-for-state-court-judges-and-lawyers-on-special-immigrant/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practice_online/child_law_practice/vol-36/mar-apr-2017/a-guide-for-state-court-judges-and-lawyers-on-special-immigrant/)

<sup>15</sup> U.S. Citizenship and Immigration Services, *Chapter 2 - Eligibility Requirements*, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2> (last visited Jan. 6, 2026).

<sup>16</sup> *Id.*

<sup>17</sup> USCIS has sole jurisdiction over petitions for special immigrant juvenile (SIJ) classification. *See* 8 CFR 204.11(h).

### III. GEORGIA'S LEGAL LANDSCAPE: WHERE STATE PRACTICE COLLIDES WITH FEDERAL PURPOSE

#### A. Introduction

In the intersection of state and federal law, there exists tension where a child's future hinges on a state court's interpretation of overlapping legal systems. In Georgia, this tension is brought to the forefront when courts that are tasked with resolving family and custody matters under Georgia law are asked to issue predicate findings required by federal immigration law for SIJS. The result is a legal landscape where different courts, operating under different mandates, come to differing conclusions regarding immigrant minors. Juvenile courts, with their limited but exclusive jurisdiction over dependency matters, tend to move more smoothly within the SIJS framework. Superior courts, however, often struggle with questions of jurisdiction, evidentiary standards, and even the purpose of SIJS-related requests resisting what can be perceived as federal overreach into state-controlled determinations regarding children. What follows explores the evolving legal framework in Georgia as its courts navigate requests for Predicate Orders under SIJS.

#### B. Georgia Juvenile Courts

##### i. Jurisdiction in Georgia Juvenile Courts

Pursuant to the Georgia Constitution, Georgia juvenile courts are courts of limited jurisdiction and only have jurisdiction as provided by law.<sup>18</sup> In relevant part, Georgia juvenile courts have exclusive jurisdiction over any child who is alleged to be a "dependent child".<sup>19</sup> A "dependent child" is defined as follows:

"Dependent child" means a child who:

- (A) Has been abused or neglected and is in need of the protection of the court;
- (B) Has been placed for care or adoption in violation of law; or
- (C) Is without his or her parent, guardian, or legal custodian.<sup>20</sup>

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<sup>18</sup> GA CONST. art. VI, § 3, para. 1.

<sup>19</sup> O.C.G.A. § 15-11-10(1)(C). There are other areas of exclusive jurisdiction, however, the relevant area for this article is "a dependent child".

<sup>20</sup> O.C.G.A. § 15-11-2(22).

Because juvenile courts are solely vested with jurisdiction for and accustomed to cases involving dependent children, there is typically little or no issue with obtaining the Predicate Order needed for the SIJS process. In fact, the power granted to juvenile courts aligns exactly to the required first Predicate Order finding for SIJS: “[t]he child is dependent upon the juvenile court in accordance with state law governing such declarations of dependency...”

There is even further alignment between federal SIJS findings and juvenile court. Under O.C.G.A. § 15-11-2(22), a dependent child can also be a child who is “abused” or “neglected”. This not only satisfies the first SIJS required finding of dependency but also satisfies a portion of the second SIJS required finding that “reunification with one or both immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.<sup>21</sup> Therefore, essentially, if the juvenile court finds a child dependent you have already satisfied the first and a portion of the second requirements of the Predicate Order factual findings.

Of benefit in juvenile court with SIJS cases, there is case law dating back to 2012 that clearly states that a juvenile court is required to make the Predicate Order findings. In *In the Interest of J.J.X.C.*, the juvenile court found the child dependent but failed to make the reunification and best interests findings required for the Predicate Order.<sup>22</sup> Instead, the opinion notes that the juvenile court appears to have struck these findings from the proposed order.<sup>23</sup> The opinion goes on to explain that this is an unusual setting where a state court is having to decide an issue relevant only to federal immigration law but that without the findings the child’s immigration status hangs in the balance.<sup>24</sup> Thus, the Georgia Court of Appeals held that the court had to make the requested SIJS findings in its order.<sup>25</sup>

In 2023, the Georgia Court of Appeals solidified this position in two reported cases. In *In the Interest of R.E.Z.B.*, the Georgia Court of Appeals clarified dicta that called *J.J.X.C.* into question.<sup>26</sup> Specifically, the dicta stated: “[t]his opinion should not be read to express any view on whether [the

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<sup>21</sup> 8 U.S.C. §§ 1101(a)(27)(J)(i) - (ii)

<sup>22</sup> 318 Ga. App. 420 (2012).

<sup>23</sup> *Id.* at 425.

<sup>24</sup> *Id.* at 426.

<sup>25</sup> *Id.* (reaffirmed in 2018 in the unpublished opinion of *In the Interest of J.C.*, 344 Ga. App. XXVII (Case No. A17A1496)).

<sup>26</sup> 370 Ga. App. 236, 237 (2023).

child] is entitled to the SIJ findings.”<sup>27</sup> In a second opinion in 2023, which is in line with *J.J.X.C.*, the Georgia Court of Appeals held “that the juvenile court has a duty to consider the SIJ factors and to make findings regarding those factors.”<sup>28</sup>

As such, it is settled over the course of about a decade that the juvenile courts have jurisdiction to make the Predicate Order findings or find that the evidence does not support those findings. This leads to analysis of the second required SIJS finding involving reunification.

#### ii. Reunification Finding of Fact

The second required finding of fact for an SIJS Predicate Order requires that the court find that an immigrant child cannot be reunited with one or both of their parents because of abuse, neglect, abandonment, or a similar basis.<sup>29</sup> Again, the Georgia Juvenile Code aligns with the federal immigration requirements.

The Georgia Juvenile Code provides detailed definitions of abuse, neglect and abandonment, a finding of any of which can lead to a successful immigration status adjustment. Under the Juvenile Code:

“Abuse” means:

- (A) Any nonaccidental physical injury or physical injury which is inconsistent with the explanation given for it suffered by a child as the result of the acts or omissions of a person responsible for the care of a child;
- (B) Emotional abuse;
- (C) Sexual abuse or sexual exploitation;
- (D) Prenatal abuse; or
- (E) The commission of an act of family violence as defined in Code Section 19-13-1 in the presence of a child. An act includes a single act, multiple acts, or a continuing course of conduct. As used in this subparagraph, the term “presence” means physically present or able to see or hear.<sup>30</sup>

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<sup>27</sup> *In re M.J.H.*, 366 Ga. App. 872, 876 (2023).

<sup>28</sup> *In re R.E.Z.B.*, 370 Ga. App. 236, 238 (2023).

<sup>29</sup> 8 U.S.C. § 1101(a)(27)(J)(i).

<sup>30</sup> O.C.G.A. § 15-11-2(2).

“Neglect” means:

- (A) The failure to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for a child’s physical, mental, or emotional health or morals;
- (B) The failure to provide a child with adequate supervision necessary for such child’s well-being; or
- (C) The abandonment of a child by his or her parent, guardian, or legal custodian.<sup>31</sup>

“Abandonment” or “abandoned” means any conduct on the part of a parent, guardian, or legal custodian showing an intent to forgo parental duties or relinquish parental claims. Intent to forgo parental duties or relinquish parental claims may be evidenced by:

- (A) Failure, for a period of at least six months, to communicate meaningfully with a child;
- (B) Failure, for a period of at least six months, to maintain regular visitation with a child;
- (C) Leaving a child with another person without provision for his or her support for a period of at least six months;
- (D) Failure, for a period of at least six months, to participate in any court ordered plan or program designed to reunite a child’s parent, guardian, or legal custodian with his or her child;
- (E) Leaving a child without affording means of identifying such child or his or her parent, guardian, or legal custodian and:
  - (i) The identity of such child’s parent, guardian, or legal custodian cannot be ascertained despite diligent searching; and
  - (ii) A parent, guardian, or legal custodian has not come forward to claim such child within three months following the finding of such child;
- (F) Being absent from the home of his or her child for a period of time that creates a substantial risk of serious harm to a child left in the home;

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<sup>31</sup> O.C.G.A. § 15-11-2(48).

- (G) Failure to respond, for a period of at least six months, to notice of child protective proceedings; or
- (H) Any other conduct indicating an intent to forgo parental duties or relinquish parental claims.<sup>32</sup>

To help illustrate how juvenile courts interpret the above definitions, there are various cases that the Georgia Court of Appeals has relied upon in issuing their decisions regarding SIJS and Predicate Orders.

In a second appeal stemming from the case of *In the Interest of M.J.H.*, the trial court found that testimony did not support a finding of neglect and therefore reunification with the child's mother was viable.<sup>33</sup> The child's testimony showed that he continued to maintain a bond with his mother and sent money back to her in Guatemala and that he was not scared of the gangs in his country but rather did not want to return to Guatemala because he "hadn't finished all [his] plans for the future."<sup>34</sup> However, of additional note, is the trial court's finding that reunification with the child's father (who had passed away) was not viable due to abuse, neglect, abandonment, or a similar basis. Interestingly, although the Court of Appeals found the trial court had not committed reversible error due to an abuse of discretion standard of review, the Court stated in dicta that they had "reached a different conclusion on the matter".<sup>35</sup>

Other cases relevant to SIJS matters, and on which the Georgia Court of Appeals relies in SIJS decisions, show that poverty alone is not enough for a finding of neglect.<sup>36</sup> Although this case was a termination of parental rights and not a Predicate Order matter, it is informative in SIJS matters since poverty is almost always a consideration in SIJS cases. Evidence of poverty can certainly be introduced but it needs to be accompanied by other showings, such as a lack of proper parental control which includes such things as failure to protect from harm or abuse.<sup>37</sup>

Not only does the Georgia Juvenile Code align well with the phrasing of the first two SIJS requirements (dependency and reunification), but case law dating back for about twenty years lends support to requests for SIJS findings in dependency cases. What remains is the final SIJS requirement of

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<sup>32</sup> O.C.G.A. § 15-11-2(1).

<sup>33</sup> 371 Ga. App. 383 (2024).

<sup>34</sup> *Id.* at 389.

<sup>35</sup> *Id.*

<sup>36</sup> *In re C.J.V.*, 323 Ga. App. 283 (2013).

<sup>37</sup> *In re L.A.T.*, 291 Ga. App. 312 (2008); *In re A.R.*, 287 Ga. App. 334 (2007).

the best interests of the child, which the juvenile courts are well-positioned to address.

### iii. Best Interest Finding of Fact

Under the best interest finding of fact in 8 U.S.C. § 1101(a)(27)(J)(ii), it must be shown that it is not in the immigrant child's best interest to be returned to their country of nationality or last habitual residence. The best interest requirement fits squarely within the purview of juvenile courts.

O.C.G.A. § 15-11-26 sets out a list of twenty factors a juvenile court can consider when determining the best interests of a child. The list is a non-exhaustive list as the final factor listed includes "[a]ny other factors considered by the court to be relevant and proper to its determination."<sup>38</sup>

Because the best interest factors are all-encompassing, this finding of fact is oftentimes met simply by meeting the "dependency" requirement and the "reunification" requirement of SIJS. Those findings already include references to abuse, neglect and abandonment which touch on various best interest factors set out in O.C.G.A. §15-11-26. Additionally, under the best interest factors, a juvenile court shall consider the "least disruptive placement" for a child, the "child's wishes and long-term goals", and "[a]ny recommendation by a court appointed custody evaluator or guardian ad litem".<sup>39</sup>

A recent Georgia appellate court decision requires a juvenile court to make the best interest finding (or specifically deny it if there is insufficient evidence).<sup>40</sup> In *R.E.Z.B.*, the juvenile court refused to make the best interest finding and instead concluded that the court "lack[s] jurisdictional authority to decide whether a child may physically locate in a particular geographical area."<sup>41</sup> The juvenile court had relied on dicta from a prior 2023 appellate case that stated that the Georgia Court of Appeals was not expressing any view on whether a child is entitled to SIJS findings.<sup>42</sup> The Court clarified that this statement was merely dicta and relying upon *In the Interest of J.J.X.C.* reminded the juvenile court that it has "a duty to consider the SIJ factors and to make findings regarding those factors."<sup>43</sup>

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<sup>38</sup> O.C.G.A. § 15-11-26(20).

<sup>39</sup> O.C.G.A. § 15-11-26(13), 16, and (19).

<sup>40</sup> *In re R.E.Z.B.*, 370 Ga. App. 236, 238 (2023).

<sup>41</sup> *Id.* at 237.

<sup>42</sup> *Id.*; See also *In re M.J.H.*, 366 Ga. App. 872 (2023).

<sup>43</sup> *R.E.Z.B.*, 370 Ga. App. at 236.

In an even more recent case, a juvenile court failed to make the best interest finding concluding that “decisions concerning where a child may physically locate, under Georgia law, are left within the sole discretion of the child’s appointed custodian; not a juvenile court judge.”<sup>44</sup> The Court of Appeals notes that in at least two other recent appeals with this same issue, prior precedent supports that it is the duty of the juvenile court to make the finding.<sup>45</sup> The Court explains that “the SIJ statute affirms the institutional competence of state courts as the appropriate forum for child welfare determination regarding abuse, neglect, or abandonment, and a child’s best interests.”<sup>46</sup> The Court goes on to state that a juvenile court is not rendering immigration decisions by making the Predicate Order findings as that decision rests solely with the federal government.<sup>47</sup>

A few months after *H.D.G.H.*, the Georgia Court of Appeals issued yet another ruling on the best interest issue. In *In the Interest of M.E.P.S.*, the juvenile court found that it could not make the best interest finding for similar reasons present in *H.D.G.H.*<sup>48</sup> However, the juvenile court’s order in *M.E.P.S.* relied upon a 2006 deprivation case that addressed the ability of a juvenile court to control placement of a child after granting legal custody to the Department of Family and Children Services.<sup>49</sup> However, the Court of Appeals distinguished cases involving SIJS and again ruled that the juvenile court can indeed make the best interest finding explaining that “a factual finding is not a physical custody placement”.<sup>50</sup>

In sum, the juvenile courts are well-situated to make determinations concerning the best interests of a child, which align with the purposes of the required SIJS findings. The Juvenile Code mimics the language of the SIJS Predicate Order findings. However, for an immigrant child and his or her caretaker to avail themselves of juvenile court, the caretaker cannot be a parent to the child.<sup>51</sup> If a child is with a parent in the United States, the parent must proceed to Superior Court, where the process does not necessarily go as smoothly as in juvenile court.

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<sup>44</sup> *In re H.D.G.H.*, 371 Ga. App. 34, 35 (2024).

<sup>45</sup> *Id.* at 36.

<sup>46</sup> *Id.* (relying upon *In re R.E.Z.B.*, 370 Ga. App. at 238).

<sup>47</sup> *Id.* (relying upon *In re R.E.Z.B.*, 370 Ga. App. at 238; and, *In re J.J.X.C.*, 318 Ga. App. at 424-25).

<sup>48</sup> Interestingly, both *H.D.G.H.* and *M.E.P.S.* arise from the same juvenile court.

<sup>49</sup> 372 Ga. App. 5, 8 (2024).

<sup>50</sup> *Id.*

<sup>51</sup> O.C.G.A. § 15-11-2(22)

### *C. Georgia Superior Courts*

Georgia superior courts have jurisdiction over, among other areas, “all causes, both civil and criminal, granted to them by the Constitution and laws”.<sup>52</sup> Therefore, in Georgia, outside of the limited exclusive jurisdiction granted to juvenile courts, the superior courts have jurisdiction to make decisions regarding child custody.<sup>53</sup> Therefore, if an immigrant child is released to a parent who is in Georgia, in order to obtain the Predicate Order, the parent/immigrant child has to go through superior court. Because the immigrant child is with a parent, the immigrant child cannot be deemed dependent under the limited exclusive jurisdiction of Georgia juvenile courts; and, therefore, cannot seek a remedy in juvenile court.

Although Georgia superior courts are accustomed to cases involving child custody issues, those issues typically come up in divorce, legitimation, or custody modification cases that do not request the specific Predicate Order findings. Cases brought by a parent of an immigrant child seeking a custody order that include the Predicate Order findings of fact are not as common in Superior Courts, even if these cases still involve issues of divorce, legitimation, or custody.

Various issues have arisen with how Superior Courts interpret the required findings in the Predicate Order. Issues include jurisdictional issues, incomplete required findings, and questioning of the intent behind the requests for the required findings.

#### i. Court Jurisdiction Disputes

Some judges incorrectly interpret the language of the immigration code believing SIJS cases must go through juvenile courts. The INA does indeed state that an immigrant child has to petition a “juvenile court” for the Predicate Order.<sup>54</sup> Based on Georgia law, a juvenile court is not a superior court. However, getting beyond the mere use of the term “juvenile court”, a “juvenile court” is defined as follows: “a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.”<sup>55</sup> Examples of state

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<sup>52</sup> O.C.G.A. § 15-6-8(1).

<sup>53</sup> O.C.G.A. § 19-9-23(a); O.C.G.A. § 19-9-61.

<sup>54</sup> 8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11.

<sup>55</sup> 8 C.F.R. § 204.11(a).

courts that may meet this definition include juvenile, family, dependency, orphans, guardianship, probate, and youthful offender courts.<sup>56</sup>

Based on the federal definition, the superior courts are in fact classified as a “juvenile court” under 8 C.F.R. § 204.11. Outside of the limited exclusive jurisdiction granted to Georgia juvenile courts, the Georgia superior courts fall within the SIJS “juvenile court” definition as “a court...that has jurisdiction under State law to make judicial determination about the...custody and care of juveniles.”<sup>57</sup>

Even though a Georgia superior court could not in fact declare an immigrant child dependent (since that power lies with the Georgia juvenile courts), a Georgia superior court can in fact exercise its power over the custody and care of juveniles that may be in a “dependent condition” under Title 19 of the Georgia Code since Title 19 falls squarely in the purview of Georgia superior courts. O.C.G.A. § 19-10-1(a) uses the word “dependent” when describing a child who has been abandoned by their parent(s). That provision states as follows: “A child abandoned by its father or mother shall be considered to be in a *dependent* condition when the father or mother does not furnish sufficient food, clothing, or shelter for the needs of the child” (emphasis added).

However, dependency of a child is not the only way to satisfy the first required SIJS finding in a Predicate Order. In fact, the USCIS Policy Manual clarifies that there are two ways to satisfy the first required finding of fact in a Predicate Order: 1) the immigrant child is dependent on the court; or, 2) “legally commits or places the petitioner under the custody of either a state agency or department, or a person or entity appointed by a state or juvenile court”.<sup>58</sup> Based on this definition<sup>59</sup>, a state court’s issuance of a custody order complies with the first required SIJS finding. Child custody is the sole topic dealt with in Chapter 9 of Title 19 of the Georgia Code, the parent-child relationship is the sole topic dealt with in Chapter 7 of Title 19 of the Georgia Code, and Title 19 is solely within the powers of Georgia superior courts. Therefore, the Georgia superior courts certainly have jurisdiction to make the

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<sup>56</sup> USCIS Policy Memo, Volume 6, Part J, Chapter 2.C.

<sup>57</sup> 8 C.F.R. § 204.11.

<sup>58</sup> USCIS Policy Memo, Volume 6, Part J, Chapter 2.C; *see also* 8 C.F.R. 204.11(c)(i)(A)-(B).

<sup>59</sup> The satisfaction of the first SIJS requirement through a custody order became law in 1994, four years after Congress initially established the SIJS classification for immigrant children. Prior to 1994, an immigrant child had to be declared dependent or eligible for long-term foster care. *See* <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-1>.

first required SIJS finding of fact in a Predicate Order as provided in 8 C.F.R. 204.11(c)(i).

ii. Incomplete Findings – The Remaining Two SIJS Findings

Getting beyond the initial jurisdictional question, there are two remaining SIJS findings necessary for an immigrant child to be able to proceed with a potential adjustment of status: 1) reunification with one or both immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and, 2) it is not in the best interest of the child to be returned to the country of nationality or last habitual residence.<sup>60</sup>

Pursuant to the SIJS finding regarding reunification, a court can support this finding if the court finds abuse, neglect, abandonment, or some similar basis. Title 19 of the Georgia Code, which falls within the jurisdiction of the superior courts, is rife with definitions of these terms, and as you will see below the definitions of one term include other terms as set out in the SIJS requirements.

In regard to abuse, O.C.G.A. § 19-7-5 provides a broad definition. Under this definition, abuse can present as physical injury, neglect, emotional abuse, sexual abuse, prenatal abuse, an act that presents an imminent risk of serious harm, and trafficking.<sup>61</sup> O.C.G.A. § 19-13-1 also defines abuse between a child and a parent as any felony, or commissions of the offenses of battery, simple batter, simply assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

Title 19 further provides means by which the superior court can find abandonment. O.C.G.A. § 19-10-1(a) provides a definition of abandonment as “when the father or mother does not furnish sufficient food, clothing, or shelter for the needs of the child.” Similarly, O.C.G.A. § 19-9-41(1) provides a definition of abandonment as a child that is “left without provision for reasonable and necessary care or supervision.” And O.C.G.A. § 19-7-5(b)(1), defines abandonment with a laundry list of items falling under “showing an intent to forgo parental duties or relinquish parental claims...”

Superior courts are also no strangers to neglect of children. In fact, the definitions of abuse, abandonment and neglect in the Georgia Code are somewhat circular. O.C.G.A. § 19-7-5(b)(11) defines neglect as: (1) a failure

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<sup>60</sup> 8 U.S.C. § 1101(a)(27)(J)(i)-(ii).

<sup>61</sup> O.C.G.A. § 19-7-5(b)(5).

to provide parental care or control, subsistence, education required by law, or other care or control of the child; (2) failure of a parent to adequately supervise a child for their well-being; and, (3) abandonment of a child by a parent.

A final way in which the reunification requirement of the SIJS finding can be satisfied is through “other similar basis”. This could be viewed as a catch-all SIJS finding in the event that state law does not adequately cover a child’s situation. “A “similar basis” may include other terms that are used regarding harm to children or the effect of the parent’s death on the child, if not considered abandonment under state law, among other possibilities.”<sup>62</sup>

The third finding required by SIJS concerns the best interests of the child to return to their country of nationality or last habitual residence. Title 19 has an extensive list of best interest factors. O.C.G.A. § 19-9-3(a)(3) directs superior courts to consider seventeen factors when determining the child’s best interests, and O.C.G.A. § 19-9-3(a)(4) takes those factors further when domestic violence is present with a parent-child relationship. Thus, the third SIJS factor falls well within the purview of superior courts.

In practice, many of these cases can be done via consent between parents and superior courts are accustomed to consent orders which finalize cases. There is nothing prohibiting the use of SIJS-related consent orders in either Georgia law or Federal law when that consent order is a Predicate Order. In fact, the only requirements are that the consent order contains the required findings of fact that USCIS must see in a Predicate Order. However, some superior courts have altered consent orders to remove some of those required findings and others still have completely disregarded consent orders and issued their own orders in SIJS cases.

Removal of the required SIJS findings complicates the child’s immigration process and could mean that a child is not even permitted to apply for an immigration status adjustment with USCIS. Georgia laws supports entry of these consent orders unless the consent order is against the child's best interests. In fact, O.C.G.A. § 19-9-5(a) provides as follows:

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<sup>62</sup> A Guide for State Court Judges and Lawyers on Special Immigrant Juvenile Status, Cristina Ritchie Cooper, March 1, 2017; [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practice\\_online/child\\_law\\_practice/vol-36/mar-apr-2017/a-guide-for-state-court-judges-and-lawyers-on-special-immigrant/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practice_online/child_law_practice/vol-36/mar-apr-2017/a-guide-for-state-court-judges-and-lawyers-on-special-immigrant/).

In all proceedings under this article between parents, it shall be expressly permissible for the parents of a child to present to the judge an agreement respecting any and all issues concerning custody of the child. As used in this Code section, the term “custody” shall include, without limitation, joint custody as such term is defined in Code Section 19-9-6. As used in this Code section, the term “custody” shall not include payment of child support.

Taking this even further, O.C.G.A. § 19-9-5(b) requires a judge to ratify a consent order on custody:

The judge shall ratify the agreement and make such agreement a part of the judge’s final judgment in the proceedings unless the judge makes specific written factual findings as a part of the final judgment that under the circumstances of the parents and the child in such agreement that the agreement would not be in the best interests of the child.

And O.C.G.A. § 19-9-5(c) states: “In his or her judgment, the judge may supplement the agreement on issues not covered by such agreement.”

Therefore, Based on the reading of O.C.G.A. § 19-9-5, not only is a judge required to sign off on a consent order (unless finding that the order is not in the best interest of the child) but a judge is also seemingly prevented from altering or removing the Predicate Order findings contained in a consent order because a judge cannot supplement the agreement unless it is silent on an issue.

### iii. Bona Fide SIJS Intent

Apart from the statutory requirements detailed above in SIJS cases, superior courts have also at times scrutinized whether SIJS petitions are filed solely for immigration benefits, further complicating outcomes. Under the SIJS classification in the INA states that “the primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law.”<sup>63</sup> According to the USCIS Policy Manual, “[i]n order to consent to the grant of SIJ classification, USCIS must review the juvenile court order(s) and any

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<sup>63</sup> 8 C.F.R. § 204.11(b)(5).

supporting evidence submitted to conclude that the request for SIJ classification is bona fide”.<sup>64</sup>

Superior courts have used this language to deny various SIJS-related orders reasoning that if the order being sought by a child and petitioner was truly only to address abuse relief, then the SIJS findings would not appear anywhere in the order. However, nowhere in the INA and the USCIS Policy Manual does it state that the state courts are tasked with determining whether the request for a Predicate Order is solely for immigration purposes.

In fact, the “bona fide” requirement under the INA and CFR specifically refers to USCIS as the entity that gives its consent to a Predicate Order.<sup>65</sup> According to 8 C.F.R. § 204.11(b)(5) “USCIS may withhold consent if evidence materially conflicts with the eligibility requirements in paragraph (b) of this section such that the record reflects that the request for SIJ classification was not bona fide.”<sup>66</sup> The eligibility requirements referenced include that the child is under 21 years of age at the time of filing the SIJS petition, that the child is unmarried, that the child is physically present in the United States, and, that the child is the subject of a juvenile court order.<sup>67</sup> This juvenile court order is the same as the Predicate Order issued by a state court based solely on state law.<sup>68</sup> Moreover, state law does not contain a requirement that the state courts review cases under this “bona fide” standard.

As such, based on the language of the federal law, the bona fide review is left to USCIS and USCIS does not question a state court’s findings in a Predicate Order.<sup>69</sup> USCIS is solely looking to ensure that the requirements of 8 C.F.R. § 204.11(b)(5) are met. USCIS in fact states in its Policy Manual that “USCIS recognizes that there may be some immigration motive for seeking the juvenile court order.” The Policy Manual continues to explain that USCIS consent may only be withheld if evidence in front of USCIS “materially conflicts with the eligibility requirements for SIJ classification.”<sup>70</sup>

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<sup>64</sup> USCIS Policy Manual, Volume 6, Part J, Chapter 2.D.

<sup>65</sup> 8 C.F.R. § 204.11(b)(5).

<sup>66</sup> *Id.*

<sup>67</sup> 8 C.F.R. § 204.11(b)(1)-(4).

<sup>68</sup> 8 C.F.R. § 204.11(c).

<sup>69</sup> USCIS Policy Manual, Volume 6, Part J, Chapter 2.D.

<sup>70</sup> *Id.*

#### iv. Superior Court Precedent

Until recently, there was not Georgia case law concerning superior courts that could be used to support the request for the SIJS findings in a custody order. Although there is over a decade of law stemming from Georgia juvenile courts requiring that juvenile courts make the requested SIJS findings, precedent concerning superior court was lacking until 2024. This caused a myriad of outcomes in superior courts that led to much uncertainty for a child seeking to remain with his or her parent in the United States.

Although not a reported case, a 2024 appellate case dealt with the issue of Georgia superior courts making the SIJS findings in a Predicate Order. In *Mendoza v. Mendoza Garcia*, a case involving a child seeking an SIJS Predicate Order, the superior court refused to make the Predicate Order findings of fact (reunification and return to country of origin), in spite of specific written and oral requests by the petitioner and inclusion of those findings in the petitioner's proposed order.<sup>71</sup> The trial court further refused to make those findings even after Petitioner filed a motion for reconsideration again asking the court to make the findings.<sup>72</sup> The Georgia Court of Appeals stated as follows: "[t]he trial court's final order...does not contain any findings relevant to SIJ status, and given the language in the trial court's order denying Mendoza's motion for reconsideration, it is apparent that the court simply chose not to address the issue." The Georgia Court of Appeals, relying on *In the Interest of J.J.X.C.*, 318 Ga. App. 420 (2012), ruled that "the trial court had a duty to enter findings of fact relevant to SIJ status..."<sup>73</sup> The case was remanded to the trial court to make the findings of fact.<sup>74</sup>

The saga of *Mendoza* did not end with the 2024 ruling from the Georgia Court of Appeals. Upon remand, the trial court issued an Order on Remand that made one of the two remaining required findings of fact. In that Order, the trial court found that it was in the child's best interest to not return to his country of nationality and that the child had been abandoned by his father. However, the trial court refused to find that reunification was not viable. Part of the trial court's reasoning in denying making the reunification finding was that the SIJS findings were being requested solely for immigration purposes.<sup>75</sup> Thus, utilizing parts of the INA regarding bona fide

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<sup>71</sup> *Mendoza v. Mendoza Garcia*, A23A1735 (Ga. App. 2024).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 4.

intent that arguably should not be utilized by state courts. The case was appealed a second time based on the Order on Remand.

During the second *Mendoza* appeal, the Georgia Court of Appeals issued a decision, which is the first reported case law regarding SIJS findings in Georgia superior courts. The Court ruled, referencing their first decision in *Mendoza*, that the superior court has an affirmative duty to make the requested SIJS findings.<sup>76</sup> Additionally, the Court of Appeals goes on to state that they agreed with the trial court's decision in the Order on Remand insofar as the trial court questioned the credibility of the petitioner; however, the Court of Appeals stated that it is erroneous to rely upon the petitioner's subjective motivation in filing the petition for custody with SIJS findings (finding, more specifically, that reliance upon potential immigration-based reasons for requesting an SIJS order is not an appropriate consideration for state courts).<sup>77</sup> The Court of Appeals cited to decisions regarding the Georgia juvenile courts as well as decisions from Florida, Vermont, and Massachusetts to support its finding regarding the subjective intent of a petitioner in SIJS cases.<sup>78</sup> "We note that the petitioner's motivation in these cases is relevant to the child's SIJ application, but the ultimate determination of the petitioner's motivation is to be made by the federal agency, not the state trial court" (citing to *In re J.J.X.C.*, 318 Ga. App. 420, 424 (2012)).<sup>79</sup> The Court goes on to state that "the purpose of the petition should not have influenced the trial court's consideration of whether reunification was viable or what was in the child's best interest."<sup>80</sup>

In spite of this helpful binding precedent, there are still potentially different outcomes for a child depending on if they proceeded through juvenile court or superior court. The Court of Appeals in *Mendoza* discussed these differences. One of the enumerations of error in *Mendoza* included an argument that it is illogical to find that a parent has abandoned a child while finding simultaneously that the child and that parent could be reunified. The Court stated that this argument would have been successful if it had been appeal arising from juvenile court because under a dependency action in juvenile court abandonment is defined in Title 15 as an "intent to forgo parental duties or relinquish parental claims."<sup>81</sup> However, because the *Mendoza* appeal came from a custody case in superior court, the

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<sup>76</sup> *Mendoza v. Mendoza Garcia*, 374 Ga.App. 730, 733-34 (2025).

<sup>77</sup> *Id.* at 735.

<sup>78</sup> *Id.* at 734-35.

<sup>79</sup> *Id.* at 734.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 735.

abandonment definition under Title 19 requires a finding that a child was “left without provision for reasonable and necessary care or supervision” by a parent.<sup>82</sup> The Court reasoned that the abandonment definition in Title 19 (superior court) differs from the abandonment definition in Title 15 (juvenile court) because the Title 19 definition does not equate to a parent “affirmatively giv[ing] up [his/her] role as a parent.”<sup>83</sup>

Thus, there now exists in Georgia one reported case (two cases including the unreported first *Mendoza* appeal) coming out of the superior courts that require superior courts to make the SIJS findings.

#### IV. CONCLUSION

The Special Immigrant Juvenile Status framework embodies Congress’s intent to provide humanitarian protection to vulnerable immigrant youth who cannot safely reunify with one or both parents. By design, this federal immigration remedy depends on the expertise of state courts to make child welfare determinations. Yet, as shown through Georgia’s judicial practices, this reliance on state law and procedure has created inconsistent and sometimes prohibitive barriers to relief. The uneven application of the SIJS process across Georgia’s juvenile and superior courts creates uncertainty for children.

Georgia juvenile courts, guided by the Juvenile Code and nearly a decade of appellate precedent, have largely recognized their role in issuing predicate findings necessary for SIJS petitions. These courts’ alignment with the task given to them by the INA reflects the natural fit between child welfare adjudication and the SIJS statutory purpose. However, the same clarity has not historically extended to Georgia’s superior courts. Questions of jurisdiction, definitional inconsistencies across the Georgia Code, and misapplications of the “bona fide” intent requirement have led to unpredictable results and, at times, denial of relief to otherwise eligible minors.

The Georgia Court of Appeals’ 2024 decision in *Mendoza* represents a critical corrective step. By affirming that superior courts have both the authority and the duty to make SIJS predicate findings and clarifying that federal immigration motives should not influence a state court’s analysis, *Mendoza* realigns Georgia practice with the federal purpose underlying SIJS.

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<sup>82</sup> *Id.* at 736.

<sup>83</sup> *Id.*

Still, despite this binding precedent, the dual system in Georgia—where a child’s access to relief can depend on whether their caregiver is a parent or nonparent—will likely continue to produce differing outcomes. Thereby leaving most vulnerable immigrant children without a viable path to lawful immigration status or, more generally, stability.

Moving forward, consistency and clarity are essential. Georgia courts must uniformly recognize their role within the cooperative federalism structure of SIJS: to make factual child-welfare findings under state law without encroaching on federal immigration determinations. Continued judicial education, procedural guidance, and, perhaps, legislative clarification could bridge the current divide between the differing outcomes. Aligning Georgia’s practices with federal intent will ensure that the SIJS process functions as Congress designed—to protect, not exclude, immigrant children who have already endured abuse, neglect, or abandonment.