



California Appellate Law on Special Immigrant Juvenile Status

In recent years, California’s appellate courts have provided guidance on the state court’s role in special immigrant juvenile status (SIJS) cases. The following decisions clarify many of the common questions that these cases present in state courts, including one-parent SIJS, notice and service issues, and the role of the state court.

- *Guardianship of Saul H.* (2022) 13 Cal. 5th 827 (holding that the denial of a petition for SIJS findings is appealable; that the burden of proof for SIJS findings is a preponderance of the evidence; that the nonviability of reunification determination requires the court to consider whether it is “workable or practical” to reunify the child with a parent; that a showing of parental intent to abandon is not required in order for a court to determine that reunification with a parent is not viable due to abandonment for SIJS purposes; that “failure or inability to adequately supervise or protect” under Cal. Welf. & Inst. Code section 300(b)(1) constitutes a similar basis to neglect for SIJS purposes; that in determining whether mistreatment qualifies as abuse, neglect, abandonment, or a similar basis, courts must apply California law and may not rely on extra-record evidence or speculate about conditions in other countries; that in determining whether it would be in a child’s best interest to be returned to their country of origin, a court should make a holistic comparison between circumstances affecting the child’s health, safety, and welfare in California and the country of origin, and should make this determination even when the young person is over the age of eighteen).
- *O.C. v. Superior Court* (2019) 44 Cal. App. 5th 76 (holding that a probate court is required to issue SIJS findings based on state law and to cite to state authority for those findings in its order).
- *Bianka M. v. Superior Court* (2018) 5 Cal. 5th 1004 (holding that a court can award custody to one parent even if the other parent is outside the court’s personal jurisdiction and does not participate in the proceedings, so long as the absent parent receives notice and an opportunity to be heard, and that a child’s perceived desire to obtain SIJS findings is not a ground for declining to issue the findings).
- *Eddie E. v. Superior Court* (2015) 234 Cal. App. 4th 319 (holding that the plain language of the SIJS statute means that a petitioner can satisfy the second SIJS finding by showing an inability to reunify with one parent due to abandonment, abuse, neglect or a similar basis).
- *In re Israel O.* (2015) 233 Cal. App. 4th 279 (holding that a child may be eligible for SIJS even if a safe and suitable parental home in the United States is available).
- *Leslie H. v. Superior Court* (2014) 224 Cal. App. 4th 340 (finding that the lower court erred in denying the request for SIJS findings for a youth in delinquency proceedings based on policy considerations and that ample, uncontroverted evidence was presented to satisfy the statutory criteria).

- *Eddie E. v. Superior Court* (2013) 223 Cal. App. 4th 622 (holding that the lower court erred in declining to enter SIJS findings for the youth in delinquency proceedings, even though he had not been declared dependent on the court but rather was a ward of the court).
- *In re Y.M.* (2012) 207 Cal. App. 4th 892 (holding, *inter alia*, that concurrent jurisdiction exists between state and federal systems for a youth who was a dependent of the California juvenile court and a victim of human sex trafficking and that the lower court erred in not making findings relevant to her potential eligibility for SIJS).
- *B.F. v. Superior Court* (2012) 207 Cal. App. 4th 621 (concluding that the superior court sitting as a probate court has the authority and duty to make SIJS findings within the meaning of section 1101(a)(27)(J) and 8 Code of Federal Regulations part 204.11).

Additional California appellate court decisions that touch on SIJS while resolving other issues include:

- *In re Scarlett V.* (2021) 72 Cal. App. 5th 495 (holding that juvenile dependency court was statutorily required to issue an order containing SIJS findings because Scarlett submitted unimpeached and uncontradicted evidence to support the findings, and rejecting the lower court’s view that making SIJS findings is discretionary).
- *Alex R. v. Superior Court* (2016) 248 Cal. App. 4th 1 (holding – in a parentage case in which the child also requested Special Immigrant Juvenile findings – that a child was not required by statute, nor in order to satisfy his father’s due process rights, to serve his father with a pre-summons notice of his application for appointment of a guardian ad litem).
- *In re Christian H.* (2015) 238 Cal. App. 4th 1085 (making clear that juvenile courts and probation departments must treat undocumented youth the same as any other youth in their care or custody. The appellate court overturned the lower court for finding both that it was not in Christian’s best interest to be returned to his country of origin for purposes of SIJS, and also *de facto* ordering his deportation by ordering him to live with his mother in Honduras. Although the issues presented in this opinion do not focus directly on SIJS, Christian had requested and obtained SIJS findings from the lower court, and the appellate court addressed the issue of “specific consent,” which was raised on appeal since Christian was in the custody of the Office of Refugee Resettlement at the time).
- *In re Nelson B.* (2013) 215 Cal. App. 4th 1121 (finding that the juvenile court lacked subject matter jurisdiction over a youth who had run away from his aunt’s home in Maryland because Maryland was his “home state” under the Uniform Child Custody Jurisdiction and Enforcement Act. This decision does not discuss SIJS, but notes in a footnote that Appellant hoped to obtain SIJS findings from the juvenile court).