



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 S.H.R.* (2021) 68 Cal. App. 5th 563 (review granted)¹ (holding that the denial of a petition for SIJS findings is appealable; that the burden of proof for SIJS findings is “proof by a preponderance of the evidence”; that S.H.R.’s parents did not abandon or neglect him; that even if SHR’s parents abandoned or neglected him, S.H.R. failed to show that reunification with one or both parents is not viable due to abandonment or neglect; and that it was proper for the lower court to dismiss the guardianship petition as moot because Cal. Prob. Code Section 1510.1 allows for a guardianship of a youth over the age of 18 only if it is sought in connection with an SIJS petition).
- *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).

¹ Pending review at the California Supreme Court, this opinion has no binding or precedential effect, and may be cited for potentially persuasive value only. See Cal. R. Ct. 8.1115(e)(1). Counsel for S.H.R. requested expedite consideration in this case in light of S.H.R.’s impending 21st birthday, so it is possible that the Supreme Court will issue a decision in this case in 2022.

- *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 Special Immigrant Juvenile Status).
- *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 the issue of 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 home country 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 Special Immigrant Juvenile findings from the juvenile court).