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CILA Children's Immigration Law Academy

Special Immigrant Juvenile Status (SIJS) Manual for Texas Practitioners

March 2023

Children's Immigration Law Academy (CILA)
A Project of the American Bar Association
Funded by the Vera Institute of Justice
www.cilacademy.org

Last updated 6/8/2023

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CILA authors would like to acknowledge and thank the following Texas attorneys for their expertise and their generosity of time in reviewing, providing feedback on, and/or editing this manual in the hopes that it will benefit practitioners across the state: Diana Goyco, Imelda Maynard, Victoria Mora, Corey Sagduyu, Elissa Steglich, and Jacob Wedemeyer.

****This is not legal advice. This resource is for informational purposes only and should not substitute your own research and analysis.****

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Table of Abbreviations

Term	Definition
AAO	Administrative Appeals Office
DFPS	Department of Family and Protective Services
DHS	Department of Homeland Security
DWOP	Dismissal for Want of Prosecution
HHS	Health and Human Services
INA	Immigration and Nationality Act
JBCC	Judicial Branch Certification Commission
JMC	Joint Managing Conservatorship
LPR	Lawful permanent resident
NILA	National Immigration Litigation Alliance
ORR	Office of Refugee Resettlement
RFE	Request for Evidence
SAPCR	Suit Affecting the Parent-Child Relationship
SCRA	Service Under the Servicemembers Civil Relief Act
SIJS	Special Immigrant Juvenile Status
SMC	Sole Managing Conservatorship
TRCP	Texas Rules of Civil Procedure
TVPRA	William Wilberforce Trafficking Victims Protection Reauthorization Act
UCCJEA	Uniform Child Custody Jurisdiction and Enforcement Act
USICE	United States Immigration and Customs Enforcement
USCIS	United States Citizenship and Immigration Services

I. Introduction

A. About CILA

The Children's Immigration Law Academy (CILA) is an expert legal resource center created by the American Bar Association (ABA). CILA's mission is to empower advocates who guide immigrant youth through complex legal procedures, to do so with courage, competency, compassion, and creativity. CILA builds capacity for those working to advance the rights of immigrant youth seeking protection through trainings, technical assistance, resource development, and collaboration.

CILA serves nonprofit, pro bono, and private sector legal advocates who work with children in immigration-related proceedings. CILA began operations in Houston, Texas in late 2015 in response to the thousands of children from Central America who entered the United States at our Southern border. Many children were fleeing prolific violence and abuse in their home countries and seeking humanitarian protections offered under U.S. law. Through our work, we hope to ensure more immigrant youth are represented and to provide the resources and expertise needed to support those who endeavor to represent them. In furtherance of this goal, in 2022, CILA expanded its technical assistance program nationwide and offers more trainings and working groups to a national audience.

Complementary and critical to our capacity-building efforts for legal advocates, CILA's social services program aims to increase capacity for social workers and social services providers serving immigrant youth at legal services organizations in Texas and beyond, thereby ensuring stability in the lives of youth so that they may meaningfully participate in their immigration cases.

Should you or someone you know wish to make a donation to further our work, please visit: https://www.americanbar.org/groups/departments_offices/fund_justice_education/donate/com-imm-cila/.

Trainings: CILA provides regular training opportunities for individuals who are working with children in immigration proceedings. CILA offers trainings covering a wide range of topics related to representing immigrant youth and emerging practice issues for advocates of all experience levels. In addition, through a partnership with the National Immigration Litigation Alliance (NILA), CILA has a series of trainings focused on appellate and litigation strategy. Videos of many of our trainings are available to view on the CILA website. We regularly train new legal staff at nonprofits who work with detained children and have expanded our efforts to provide training for social services staff.

Pro Bono: CILA hosts an online platform, *Pro Bono Matters for Children Facing Deportation*, to connect pro bono attorneys and law students with pro bono opportunities from around the country. Legal service providers post a wide range of opportunities, from short-term projects to direct representation through the conclusion of removal proceedings. Available opportunities can be found at: https://cilacademy.org/pro-bono/pro-bono-matters/. CILA's trainings and resources available online additionally support the work of pro bono attorneys and law students. Moreover, CILA has a webpage dedicated to pro bono coordinators to provide creative models for pro bono engagement and to get expert tips regarding running a pro bono program. CILA has a pro bono focused nationwide working group and listserv, Pro Bono Coordination for Child Immigration, that meets quarterly by video conference.

Resources: CILA has a vast array of resources available to assist legal service providers, attorneys, and legal staff with their work to help immigrant youth.

- CILA's Website: Resources can be found on CILA's website in the Resources - *Online Library* and Resources – *Together for Children's Rights Updates* pages. Additional online materials can be accessed with a password.
- Champions for Immigrant Youth: CILA shares monthly updates via a newsletter to our listservs with legal updates, resources, opportunities to connect and learn, as well as celebrations of the work of advocates. Advocates can sign up to receive the newsletter by joining a CILA listserv (information below) or completing this survey.

CILA Working Groups & Listservs: CILA hosts six working groups which meet virtually and create spaces for advocates from around Texas and the nation to connect with each other, share on-the-ground trends, and receive updates on major changes in the law. We host a quarterly meeting for six different issue areas: (1) Special Immigrant Juvenile Status (SIJS), (2) Houston SIJS, (3) children's asylum law, (4) detained unaccompanied children, (5) social services, and (6) pro bono coordination. Attorneys and staff at legal service providers, pro bono attorneys, and private attorneys are all encouraged to participate in one or more of the working groups. CILA also hosts four listservs on different topics: (1) Houston SIJS, (2) Texas children's immigration, (3) social services, and (4) pro bono coordination. To learn more about our working groups or to join one of CILA's listservs, visit CILA's *Community* webpage.

Technical Assistance: CILA provides individualized technical assistance to legal advocates across the nation relating to specific case questions and issues. Requests can be made on CILA's website: https://cilacademy.org/request-assistance/. CILA also provides individualized technical assistance related to the psychosocial service needs of children and youth. Requests for assistance may relate to best practices for working with children and victims of trauma, assistance in identifying psychosocial needs, and available resources to assist in meeting those needs. Social services technical assistance can be made on CILA's website: https://cilacademy.org/social-work-program/request-assistance-social-service/.

B. About This Manual

CILA created this manual for practitioners in the state of Texas who are representing children or youth[1] who may qualify for Special Immigrant Juvenile Status (SIJS). This manual is intended for practitioners in the field and pro bono attorneys working on behalf of immigrant youth. Our hope is that this manual helps practitioners who are new to the field and those who may be working on their first SIJS case. In this toolkit, we provide foundational information about Texas state law and practical tips to guide you.

While the process of obtaining lawful permanent resident (LPR) status as a special immigrant juvenile is three-fold—seeking a state court order from state court, filing an I-360 SIJS petition to U.S. Citizenship and Immigration Services (USCIS), and filing an I-485 application to apply for lawful permanent residence either with USCIS or an immigration judge—this manual will only cover information relevant to obtaining the state court order from Texas state court judges.

[1] The terms child (or children) and youth are generally used interchangeably throughout this manual.

Each case brings a unique set of facts and circumstances, and information related to the specific judge and local state court practice is always essential to consider in case preparation. This resource points to Texas state law on substantive and procedural matters for issues commonly seen in SIJS cases in Texas. Many of the issues raised in this manual are issues that CILA regularly addresses through CILA's technical assistance services. If you have a case-specific question, reach out to CILA for technical assistance.

II. Federal Requirements for Special Immigrant Juvenile Status (SIJS)

A. What is SIJS?

Every year, thousands of children arrive to the United States for a myriad of reasons. Many of these children travel to the United States fleeing unsafe conditions, violence, poverty, and sometimes a combination of these circumstances in their countries of origin. U.S. immigration law provides various forms of humanitarian protections—legal relief to provide a path to lawful permanent residence for these children and other victims of violence. Special Immigrant Juvenile Status is one of these humanitarian forms of immigration relief that is available specifically to foreign-born children who enter the United States.

In 1990, Congress created SIJS as part of the Immigration and Nationality Act (INA). SIJS is a form of legal relief available to children who experienced abuse, abandonment, and/or neglect by one or both of their parents. Because many children leave their countries and come to the United States due to a lack of a proper caregiver, severe neglect, or circumstances based in familial abuse, SIJS is an important legal remedy for children to seek protection in the United States.

SIJS provides a basis upon which a child can petition for classification as a special immigrant juvenile with USCIS and eventually apply to become a lawful permanent resident (LPR). An LPR can both live and work permanently in the United States, travel outside of the United States, qualify for certain public benefits, and eventually apply for citizenship. A child who becomes a green card holder after being granted SIJS can petition for qualifying family members through family-based immigration.[2] But unlike other forms of immigration relief, parents are prevented from obtaining immigration status based on the child's status. A child who receives a green card and naturalizes through the SIJS process cannot later apply for their parents to receive a green card, even if the parent was not abusive and acted as their custodian.[3]

B. Who are the Youth Seeking SIJS?

SIJS is available to youth regardless of whether they have had any contact with the immigration enforcement system. Many youth who seek SIJS are those who have been determined to be "unaccompanied children" and are currently in immigration detention or have been released. It is important to note, however, that contact with the immigration enforcement system is not required for SIJS. A youth may have been brought to the United States at a young age, for example, and experience abuse, abandonment, or neglect while living here. It is also important to keep in mind that not all unaccompanied children are eligible for SIJS, as is the case of they never experienced abuse, abandonment or neglect by either parent.

[2] INA 101(a)(27)(J).
[3] *See* INA 101(a)(27)(J)(iii)(II); 8 CFR 245.1(e)(3)(vi).

Federal law defines an "unaccompanied child" as someone (1) who is not yet 18 years old, (2) who does not possess lawful immigration status, *and* (3) who does not have a parent or legal guardian in the United States *or* who does not have a parent or legal guardian in the United States available to care for them.[4] The assessment of whether or not a youth is considered an "unaccompanied child" by the immigration enforcement system is typically made at the time of apprehension. The law provides for certain protections for unaccompanied children in recognition of their vulnerability as children. For example, those youth under 18 years of age are housed and cared for in detention facilities managed by the Office of Refugee Resettlement (ORR), a federal agency within the Department of Health and Human Services (HHS), instead of United States Immigration and Customs Enforcement (ICE), which is part of the Department of Homeland Security (DHS).[5]

As CILA's focus is on the legal representation of unaccompanied children, this manual includes some specific details that relate only to unaccompanied children detained and released by ORR who may be eligible for SIJS. While these sections of the manual may only apply to unaccompanied children, most of this manual covers general Texas case law and procedure applicable to any child seeking SIJS in Texas, regardless of whether they have ever been determined to be "unaccompanied."

C. Immigration and Nationality Act (INA) and Amendments to the INA & SIJS

SIJS was first established in 1990 to protect children who were declared dependent on a U.S. juvenile court and eligible for long-term foster care.[6] However, since 1990 there have been a number of key changes via amendments to the INA and related regulations.

Amendments to the SIJS statutes and regulations during the 1990s expanded and then limited the scope of SIJS and introduced new requirements such as requiring express consent from the federal government to the juvenile court order (originally by the Attorney General, later by the Secretary of the Department of Homeland Security once that agency was established in 2002).[7] The Violence Against Women and Department of Justice Reauthorization Act of 2005 also added some protections for SIJ petitioners as it prohibited compelling them to contact their alleged abuser at any stage of applying for SIJS.[8]

Significant changes to SIJS occurred in 2008 when Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), which went into effect in March 2009. Under the TVPRA, SIJS-eligible children include children in the state's foster care system, children in the custody and care of ORR, children living with a non-parent caregiver, and children living with one parent. The TVPRA further removed a requirement that a juvenile court deem a child eligible for long-term foster care, requiring instead that the juvenile court find that reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a

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[4] An unaccompanied child is defined at 6 U.S.C. § 279(g)(2) as "a child who—(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody."

[5] *See* 8 U.S.C. § 1232(a)(4).

[6] Immigration Act of 1990, Pub. L. 101-649 (Nov. 29, 1990).

[7] *See* Pub. L. 102-232 (Dec. 12, 1991); Pub. L. 103-416 (Oct. 25, 1994); Pub. L. 105-119 (1997); 1998 Appropriations Act, Pub. L. 105-119 (Nov. 26, 1997).

[8] Pub. L. 109-162 (2006).

similar basis under state law.[9] Additional protections in the TVPRA include prohibiting denials merely because a petitioner is 21 years old when the petition is adjudicated, mandating that USCIS adjudicate SIJS petitions within six months of filing, and making it easier to satisfy the requirement for DHS consent.[10]

CILA's resource, "Overview of New Special Immigrant Juvenile Status Regulations" (May 9, 2022) provides more information about the statutory and regulatory changes over the years. The USCIS Policy Manual, which attorneys working with unaccompanied children should become familiar with and consistently reference, also includes information on the statutory history of SIJS. The updated requirements for SIJS are now set forth in the INA at Section 101(a)(27)(J). The SIJS regulations were recently updated in 2022 and can be found in 8 C.F.R. § 204.11.

D. Legal Requirements for Obtaining SIJS

To be eligible for SIJS, the statute and the federal regulations at 8 C.F.R § 204.11 require that the SIJS petitioner:

- Be under the age of 21 when the petition is filed;
- Be unmarried through the filing and adjudication of the SIJS petition;
- Be physically present in the United States;
- Be the subject of a qualifying state court order with the required judicial determinations;[11] and
- Obtain consent from DHS.[12]
    - In this case, consent comes from USCIS, the agency within DHS that adjudicates immigration petitions and applications.
    - *Note:* If the child is in ORR custody and seeks a juvenile court order that alters their custody or placement status, consent from HHS (specifically, ORR) is also required.[13]

CILA's explainer, "Overview of New Special Immigrant Juvenile Status Regulations" (May 9, 2022) also discusses the legal requirements for obtaining SIJS in more detail.

E. SIJS is a Three-Step Process: From State Court to Green Card

The overall process of obtaining SIJS for an immigrant child can be divided into three major steps.

First: You must obtain a valid state court order from the appropriate juvenile court of the state, and this state court order must make specific judicial determinations.

Second: After obtaining the state court order, you must file a Form I-360 petition with USCIS through which the youth petitions for SIJS. At this stage in the case, the youth is called the "SIJS

[9] TVPRA 2008 § 235.
[10] *Id.* § 235(d)(2).
[11] 8 C.F.R. § 204.11(a); *see also* INA at Section 101(a)(27)(J).
[12] 8 C.F.R. § 204.11(b).
[13] *Id.* § 204.11(d)(6).

petitioner." After USCIS approves the SIJS petition, then the SIJS petitioner is a special immigrant juvenile but not yet a LPR, and they do not hold any protective status against deportation. Depending on nationality and current visa availability, the petitioner may be able to apply to become a LPR concurrently or it can take anywhere from months to years before they are eligible because they can only apply to adjust status when a visa becomes available. The special immigrant juvenile is assigned a priority date, and when this priority date is current, this indicates that a visa is available, and the special immigrant juvenile can then apply to adjust status. In 2022, to alleviate difficulties that special immigrant juveniles experience in waiting for a visa to become available, USCIS announced and later rolled out grants of deferred action, available to special immigrant juveniles with an approved I-360 petition waiting for a visa to become available. With these grants of deferred action, special immigrant juveniles can apply for work authorization, under the (c)(14) category.

Third: When a visa is available for the special immigrant juvenile, then they can apply to adjust status to that of a LPR. It is important to note that, while adjusting status is the last step in obtaining SIJS, this may not be the end of the entire immigration process for the youth. SIJS allows the youth to become a LPR who can live and work permanently in the United States and apply for citizenship of the United States once they are eligible.

This manual will only address the first step of the SIJS process: obtaining the state court order with certain judicial determinations from the appropriate state court in Texas.

For more information about the three-step SIJS process, please reference Section XII which contains links to additional resources, or go to www.cilacademy.org to access CILA's SIJS-related written materials and recorded trainings.

PRACTICE TIP: A child can pursue SIJS determinations in state court while they are in removal proceedings in immigration court. In that situation, the attorney and child must attend any hearings in immigration court and should advise the immigration judge of any ongoing proceedings in state court. You may also consider filing a joint motion to dismiss proceedings or a unilateral motion to terminate with the immigration court, if that is determined to be best for the case.

III. Assessing a Case

A. General Considerations

Determining whether the child qualifies for SIJS is the first step in assessing a client's case. SIJS is a humanitarian protection available to youth who need intervention from a state court because of abuse, neglect, or abandonment by a parent. The question of whether the child has experienced abuse, neglect, or abandonment or a similar basis under state law must be determined by a state court with jurisdiction over the care and custody of children. It is important to understand what

you must prove under state law and what judicial determinations are required so the youth can seek SIJS before USCIS.

A resource such as CILA's "Special Immigrant Juvenile Status (SIJS) Case Theory and Evidence Matrix" (Apr. 14, 2020) will help you stay organized when working with a client, investigating key facts, and determining relevant evidence. Additionally, if you are new to working with children and youth in immigration matters, CILA has created a resource to help get you started. The resource titled, "Tips for Working with Migrant Children and Trauma-Informed Lawyering" (Jan. 2023) provides tips for practitioners new to working with children on a legal case. The resource can be found on CILA's *Additional Resources* webpage. Contact CILA at cila@abacila.org for password information.

The chart below provides information on the legal requirements for SIJS and considerations and questions to ask your client to determine their eligibility. Be sure to consult the SIJS statute, 8 U.S.C. § 1101(a)(27)(J), and the USCIS Policy Manual regarding SIJS. This is the first step when working on the case.

Please note the questions in column three are presented as a checklist and not in the order they should be asked. CILA and the ABA's Commission on Immigration created a *Pro Bono Program Resources & Templates Toolkit* (July 25, 2022) with multiple example documents including an example "Children's Cases General Intake Form" (pp. 49-55) and an example "Pro Bono Initial Interview Questions" form (pp. 74-81) that can assist you when conducting a screening and gathering facts in an initial client interview.

SIJS Eligibility Requirements & Client Questions

Legal Requirement	Considerations	Client Questions
Physically present in the United States	• Must be physically present through adjudication of the I-360.	
Unmarried	• Must be unmarried through adjudication of the I-360.	• Are you married? • Have you ever been married? • Did that marriage end? How?
Under 21 on the date of filing the I-360 petition	• Must be under 21 on the date of filing the I-360, not the I-485.	• What is your date of birth? Age?
If in ORR custody, may also require specific consent from the Secretary of HHS	• Is the youth in the custody of ORR? • Does the order alter the custody state or placement of the youth?	
Valid state court order with certain judicial determinations		
Issued under state law	• What is the state law basis for each of the determinations?	• Where do you currently live? Complete address (to determine county)?

Legal Requirement	Considerations	Client Questions
	• Does the court have subject matter jurisdiction? • Who will file the lawsuit? • Who do you need to serve notice on and how? • Do you need personal jurisdiction over anyone?	• When did you start living there? • Who do you live with? One parent? Both parents? Another relative or family friend? • Where are your biological parents? • Who is listed on the birth certificate? • Are the people listed your biological parents? • Were they married? If so, when?
Continuing jurisdiction of state court	• Will the state court order remain in place until the age of majority?	• Right now, do you plan to stay with this parent/sponsor?
Judicial determination about custody or dependency		
• Custody	• Who is granted custody? • What is the legal basis for granting custody?	
• Dependency	• What is the state law basis for dependency? • What is the type of suit used? • What intervention regarding care/custody or child welfare services is the court providing?	
Judicial determination about parental reunification		
• Abuse, neglect, and/or abandonment (or similar basis under state law)	• What are the grounds—abuse, neglect, and/or abandonment? • What is the state law basis? For example, if the ground is abuse, is the citation of the statute for abuse identified in the order?	• Who did you live with in your home country? • Who took care of you? • How often do you talk to/see your mom? • How often do you talk to/see your dad? • Did you have enough food/clothes in your home country? If no, why? • Who paid for your food, clothes? Other needs? • Did anyone at home ever harm you or try to hurt you (*e.g.*, yell at you, hit

Legal Requirement	Considerations	Client Questions
		you, touch you without your permission)? Who? • Did anyone at home ever call you names? Who? • Did you go to school? If no, why? Did you want to go to school? • Did you work? Did you help your caretaker at work? If so, what kind of work did you do? How frequently? Did you have to work? • Did anyone ever harm or threaten you?
• By a parent	• Which parent(s) perpetrated the abuse/ abandonment/neglect? • Is each parent listed on the birth certificate? • Is there an adjudication of parentage, if necessary?	
• Making reunification not possible	• Which parent(s) mistreated the youth? • How is the mistreatment connected to non-viability of reunification? • What rights does the offending parent retain?	
Judicial determination about best interest (regarding placement of youth)	• What is the state law basis for best interest finding? • What are the critical factors for determining best interest? • Why is the person/institution with custody the best person to care for youth? • What is your home country or country of last habitual residence or your parent's home country or country of last habitual residence? (Consider what is applicable for your individual claim.)	• Are you afraid to live in your home country? Why? • Whom are you afraid of? • Could you return safely to your country? If so, with whom would you live? • Is there anyone in your home country who could take care of you? • Who would you live with? • How do you feel about that person? • What would your life be like? • Would you attend school? Work? • Which relatives live in your home country?

Legal Requirement	Considerations	Client Questions
Warrants USCIS consent (i.e., approval of I-360)		
Bona fide state court order	• Does the order protect the youth and provide relief from abuse, neglect, abandonment, or a similar basis under state law? • What relief does it grant (e.g., child support, custody)?	
State court order (or other evidence submitted to state court) shows factual basis for legal determinations made under state law	• Is there a factual basis for the placement of the youth? • Is there a factual basis to support the ground (abuse, neglect, abandonment, and/or similar basis under state law)? • Is it clear which parent the ground applies to? Is this supported by a factual basis? • Is there a factual basis for the best interest determination?	

Keep in mind, when you are ready to file for SIJS with USCIS, CILA has created two resources that will help guide you, including a "Form I-360 Guidance" (Mar. 2023) and a "I-360 Contents Checklist and Where to File Handout" (Mar. 2023). Both resources are available on CILA's *Additional Resources* webpage; if you need the password, contact CILA at cila@abacila.org.

B. When a Child Appears to Qualify for Dual Relief

Many children who may qualify for SIJS may also qualify for other forms of immigration relief. It is important to screen for all forms of legal relief and to discuss options with your client before beginning the SIJS process. The type of relief may impact, among other things, the youth's future ability to travel and eligibility for benefits in the United States. Some potential forms of relief to screen for include:

- U Nonimmigrant Status (U Visa) for victims of certain crimes;
- T Nonimmigrant Status (T Visa) for victims of severe forms of trafficking in persons;
- Violence Against Women Act (VAWA), which protects adults and children regardless of gender and allows self-petition for a battered spouse, child, or parent abused by a U.S. citizen or LPR and derivative actions for children; and

- Asylum, Withholding of Removal, and protection under the Convention Against Torture (CAT).

While these other types of relief are beyond the scope of this manual, additional resources are available on CILA's website covering these forms of relief. For instance, CILA has posted webinars with related materials on "Identifying and Filing T-Visa Claims for Youth Clients: The Flags You May Be Missing" (May 20, 2021); "Family-Based Immigration and VAWA for Unaccompanied Children" (Sept. 2022); and "Introduction to Asylum for Unaccompanied Children" (Mar. 1, 2022). Moreover, the *CILA Pro Bono Guide: Working with Children and Youth in Immigration Cases* (Oct. 2021) provides information on all of these forms of relief.

Youth who may qualify for SIJS may also fear a return abroad and consider pursuing asylum. The following chart sets forth some key differences between SIJS and asylum that may impact what form of relief youth ultimately decide to pursue.

	SIJS	Asylum
Pathway to lawful permanent residency	Yes, but subject to waitlist	Yes, 1 year after grant of asylum
Derivative applicants allowed	No	Yes
Travel to country of origin allowed	Yes	No
Parental benefits	No	Yes
Work authorization	Yes, if deferred action is granted	Yes, while asylum application is pending

Keep in mind that youth may decide to pursue multiple forms of relief, depending on the facts of their case and their ultimate goals.

C. Detained Youth

When assessing a case, there are additional considerations for youth in ORR custody. This section provides a general overview of the release process and identifies some barriers that detained youth may face to seeking SIJS determinations in Texas state courts.

Dependency cases in Texas state court: As discussed above, one of the key components of SIJS is obtaining a state court order that addresses the child's custody or dependency on the court.[14] For detained youth, a Texas judge typically cannot address custody because the youth is already in the custody of ORR (a federal agency). Should an actual change in the custody or placement of the youth be sought, the statute requires specific consent from HHS.[15] In fact, the USCIS Policy Manual states that, "Youth in HHS Office of Refugee Resettlement (ORR) custody seeking SIJ classification may not be able to alter their custodial placement via a juvenile court and instead may seek a dependency determination from a juvenile court." Thus, the qualifying state court order for a child detained by ORR will need to include a determination that the child is dependent

[14] INA § 101(a)(27)(J)(i).
[15] INA § 101(a)(27)(J)(iii)(I). Instructions detailing when specific consent is required and the process for seeking it, as well as the form for requesting specific consent, can be found on ORR's website. *See* Office of Refugee Resettlement, "Key Documents" (Apr. 4, 2023), available at https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program.

on the court.[16] There are limited options in Texas for filing cases in family court that address dependency instead of custody. This is explained in more detail in Section IV.A. Practitioners working with detained youth in Texas may choose to rely on Chapter 37 of the Texas Civil Practice and Remedies Code to seek a declaratory judgement with dependency-based SIJS determinations. Declaratory judgments are discussed in Section X.

Release from ORR custody: The average length of stay for a child in ORR custody in 2021 was 37 days, but sometimes it takes longer for ORR to identify and vet sponsors for children.[17] ORR must release unaccompanied children in their custody to a "safe, efficient, and timely manner" to a child's "parent, guardian, relative, or individual designated by the child's parents, referred to as 'sponsors.'"[18] Potential sponsors have to go through an application process, which may include interviews, an assessment of suitability, identity verification, and verification of the relationship between the child and the sponsor before ORR will release the child to the sponsor. Once ORR has released a child to the care and custody of their sponsor, the federal government does not retain custody of the child in any capacity, even in cases where ORR provides post-release services. Released youth can pursue legal relief related to their immigration case while in their sponsor's care and while living in the community.

If possible, it is best to start state court proceedings after the youth is released from ORR custody. But some youth may not have this option or may need to file obtain a qualifying order sooner if they are close to turning 18 years old. As explained in Section V.B, certain jurisdictional issues make pursuing SIJS relief in Texas much more difficult for children once they turn 18. Detained youth usually receive a "Know Your Rights" presentation from a legal service provider and will speak with someone from the legal services provider about whether they qualify for legal relief. The legal service provider may become aware of a youth's need to obtain a qualifying order while still detained in ORR custody and pursue it.

IV. Overview of Suits Affecting the Parent-Child Relationship (SAPCR)

A. What is a SAPCR, and Why Does it Matter for SIJS in Texas?

A state court order with a determination of either custody or dependency is a prerequisite for obtaining SIJS. In Texas, custody is referred to as "conservatorship." In obtaining the state court order, a child qualifying for and seeking SIJS must first ask a state court judge, in the state where the child is living, to make certain judicial determinations[19] (previously referred to by USCIS as "findings"). The child must obtain the state court order from the appropriate state "juvenile court" before they can file their SIJS petition with USCIS. The federal regulations define a "juvenile court" as defined 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."[20]

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[16] USCIS Policy Manual, Vol. 6, Pt. J, Chapter 3.
[17] *See* Office of Refugee Resettlement, "Unaccompanied Children: Facts Sheet and Data" (Jan. 20, 2023), available at https://www.acf.hhs.gov/orr/about/ucs/facts-and-data.
[18] *See* Office of Refugee Resettlement, "ORR Unaccompanied Children Program Policy Guide: Section 2: 2.1 Summary of the Safe and Timely Release Process" (Dec. 23, 2022), available at https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2#:~:text=ORR%27s%20policies%20require%20the%20release,able%20to%20provide%20for%20the.
[19] 8 C.F.R. § 204.11(a).
[20] *Id.*

The state court order must contain a determination of either custody or dependency. The concept for custody is well established in Texas, and a Suit Affecting the Parent-Child Relationship (SAPCR) seeking a custody determination is the most commonly used vehicle to obtain the necessary determinations for SIJS. SAPCRs seeking dependency orders are more rare because a statutory definition of dependency no longer exists in the Texas code. But dependency is still cited as a basis for the family court's jurisdiction in Texas Government Code § 24.601, and practitioners especially in cases involving detained youth have pointed to this citation and used legislative history to make the argument for dependency under the rules of statutory construction.[21] In all cases, understanding SAPCRs is key in representing SIJS-qualifying youth in the state of Texas.

Under Texas Family Code § 101.032, a SAPCR can seek to (1) appoint a managing or possessory conservator of a child, (2) order child support, (3) establish the parent-child relationship, (4) terminate the parent-child relationship, or (5) receive possession of or access to a child. In other words, a SAPCR is a legal proceeding in which a family law judge will make determinations regarding custody, visitation, child support, medical support, and/or dental support of the child(ren) subject(s) of the suit. For SIJS purposes, in Texas, the SAPCR serves as a legal proceeding to obtain the state court order that is required before filing the SIJS-based I-360 petition with USCIS.

EXAMPLE: Child and Mother come to the United States from Country Z, after Child's father abused, neglected, and abandoned Child in Country Z. Child and Mother move to Harris County, Texas and speak with an attorney who informs Child that they qualify for SIJS. Attorney informs Child that the first step in obtaining SIJS is to obtain a state court order from the Harris County District Court. Attorney initiates a SAPCR proceeding in Harris County.

In most lawsuits, the parties are classified as the plaintiff and the defendant. However, the parties to a SAPCR proceeding are generally referred to as the petitioner and the respondent. The petitioner in a SAPCR is not to be confused with the SIJS petitioner, and the respondent in a SAPCR is not to be confused with the respondent in immigration court proceedings.

In the SAPCR, the petitioner is the one who petitions the court to make the above-mentioned determinations regarding the child (or children) subject(s) of the suit. The respondent is the other

[21] In Texas, "[s]tatutory construction is a question of law for the court to decide." *Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002). Under Texas Government Code § 311.011, statutory words and phrases "shall be read in context and construed according to the rules of grammar and common usage," and any "that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." Courts can look to the legislative history in Texas for the meaning of "dependency" in Texas Government Code § 24.601. The Revised Civil Statutes of the State of Texas, adopted at the Regular Session of the 32nd Legislature 1911, defined the term "dependent child" or "neglected child" as a child "who is dependent upon the public for support or who is destitute, homeless or abandoned; or who has not proper parental care or guardianship." 2 Ver. S. Civ. St., Title 38, Art. 2184 (Vernon's 1914). The term dependency was also included in the 1974 Texas Family Code, which provided that a child could be found "dependent" on the court through a "showing that the child is apparently without support and is dependent on society for protection." Vol. 1, Family Code, Ch. 17, § 17.04, (West 1974). A 1979 amendment to that section further clarified that a child could be found dependent "if the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that there is a danger to the physical health and safety of the child." Tex. Fam. Code § 17.04(c) (West 1979).

party in the case, against whom the determinations are made. Sometimes, there are multiple respondents in a SAPCR case.

EXAMPLE: Child, Mother, and Father resided outside of the United States, in Country X. When the family lived together, Father abused Child and later left the household failing to remain in contact with the Child. After leaving, Father no longer provided support to the Child or Mother. Child and Mother came to the United States and moved to Texas, where an attorney spoke with Child and informed Child that they qualify for SIJS. The attorney now represents Child in their immigration proceedings and Mother in the SAPCR.

For the SAPCR, Mother is the petitioner; Child is the child subject of the suit; and Father is the respondent.

After Child obtains the state court order from the SAPCR and then petitions for SIJS with USCIS, Child will then be referred to as the petitioner for SIJS. If the Child is in removal proceedings, they will be referred to as the respondent in immigration court.

B. What Judicial Determinations Must be Addressed in a SAPCR?

In order to obtain SIJS, the youth petitioning as a special immigrant juvenile must be the subject of a qualifying state court order with certain required judicial determinations.[22] In Texas, that typically means seeking a SAPCR order that addresses the required judicial determinations.

The first determination required by the regulations and USCIS is that the state court have jurisdiction under state law over the custody or dependency and care of the youth.[23] For youth under age 18, it is typically best practice in a SAPCR to obtain a custody determination, rather than a dependency determination. Because a child support order for a youth over age 18 will not address custody, a dependency determination is required.

The second determination required under the immigration regulations deals with parental reunification.[24] In the context of SIJS and the SAPCR, a state court must determine that reunifying the youth with one or both parents is not possible nor appropriate given the allegations of abuse, neglect, abandonment, and/or a similar basis under state law. This may be a specific determination made by the judge or implied from the judge's other determinations such as the judge's denial of parental conservatorship due to their prior abuse, neglect, or abandonment.

The third determination listed in the regulations is that it would not be in the youth's best interest to return to their or their parent's country of nationality or last habitual residence, which in many cases will be the child's previous placement.[25]

[22] 8 C.F.R. § 204.11.
[23] *Id.* § 204.11(c)(1)(i).
[24] *Id.* § 204.11(c)(1)(ii).
[25] *Id.* § 204.11(c)(2)(i). Note that this determination can also be made in "administrative proceedings by a court or agency." *Id.*

PRACTICE TIP: While these judicial determinations are essential for SIJS cases, that does not necessarily mean that the entire SAPCR proceeding should be structured around these issues. Ideally, the case is structured around the claims for conservatorship, parentage, child support, termination, and/or adoption and the SIJS determinations can be requested in connection with seeking the different types of relief. For example, the case may seek to rebut the conservatorship presumptions by having the judge make a determination that the parent abused or neglect the child and that being with the parent is not in the child's best interest.

C. Key Texas State Law Definitions for SIJS Determinations

Texas judges, when asked to make the SIJS determinations described in Section IV.B should look to state statutes and regulations defining these terms.[26] This section provides a general overview of some relevant statutory definitions in Texas as a starting point for your own research. It also highlights some potentially useful cases but is not meant to be an exhaustive list of all available case law on these topics.

i. Abuse

Under Texas Family Code § 261.001(1)(A)-(M), which is in the section of the code addressing the investigation and report of child abuse, abuse means, for example:

- Causing or permitting the child to be in a situation that causes "mental or emotional injury" resulting in "an observable and material impairment in the child's growth, development, or psychological functioning";
- Engaging in or failing to make a reasonable effort to prevent "physical injury that results in substantial harm to the child" or the "genuine threat of substantial harm";
- Engaging in or failing to make a reasonable effort to prevent "sexual conduct harmful to a child's mental, emotional, or physical welfare";
- Causing, permitting, encouraging, engaging in, or allowing child trafficking;
- Causing, permitting, encouraging, engaging in, or allowing child pornography;
- Using a controlled substance and the use results in a physical, mental, or emotional injury to the child; or
- "Forcing or coercing a child to enter into a marriage."

Texas Family Code §153.004(g) adopts this definition of abuse for conservatorship and custody proceedings as well. In addition, other Texas statutes identify situations in which abuse may occur. For instance, Texas Family Code § 161.001(b)(1)(D)-(E) also allows for terminating parental rights when the parent:

- "knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child," or

[26] *E.g.*, *In Interest of P.M.T.*, No. 11-14-00346-CV, 2015 WL 3799519, at *2 (Tex. App.—Eastland June 10, 2015, no pet.) (applying the Texas Family Code's definition of abandoned to a SIJS case).

- "engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child."

The code also addresses "family violence," which could be looked to in the context of abuse or as a "similar basis" to abuse depending on the context. In the code provisions governing protective orders and family violence, Texas Family Code § 71.004(1) defines "family violence" to include acts by a family or household member against another family or household member that are "intended to result in" or are "a threat that reasonably places the member in fear of" physical harm, bodily injury, assault or sexual assault.

Another potentially applicable definition occurs in the sections discussing general provisions that apply to SAPCRs. Under Texas Family Code § 101.009, danger to the physical health or safety of a child occurs when the child is exposed to "loss or injury that jeopardizes the physical health or safety of the child without regard to whether there has been an actual prior injury to the child."

There is generally a dearth of case law in Texas applying these statutory definitions in SIJS cases; however, case law discussing these definitions in other contexts may still be persuasive in a SIJS case and that case law has identified some factors that may be relevant when presenting cases involving SIJS determinations. For instance, when determining if parental rights should be terminated, Texas courts look to parental conduct both before and after the child's birth.[27] Child endangerment cases in Texas also make clear that the child need not be present for all violent or negligent conduct directed at another parent or family member, which may allow for attorneys to argue that this conduct is relevant in SIJS cases as well.[28]

ii. Neglect

In the provisions governing the investigation of a report of child abuse or neglect, Texas Family Code § 261.001(4)(A)(i) defines neglect as "an act or failure to act by a person responsible for a child's care, custody, or welfare evidencing the person's blatant disregard for the consequences of the act or failure to act that results in harm to the child or that creates an immediate danger to the child's physical health or safety and." Neglect is further defined by Texas Family Code § 261.001(4)(A)(ii)-(iii) as, for example:

- placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or an immediate danger of harm to the child;

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[27] *Interest of H.G.*, No. 07-21-00278-CV, 2022 WL 1215469, at *6 (Tex. App.—Amarillo Apr. 25, 2022, pet. denied).

[28] *See, e.g.*, *Dir. of Dallas Cnty. Child Protective Services Unit of Tex. Dep't of Human Services v. Bowling*, 833 S.W.2d 730, 733 (Tex. App.—Dallas 1992, no writ); *Interest of L.M.N.*, No. 01-18-00413-CV, 2018 WL 5831672, at *16 (Tex. App.—Houston [1st Dist.] Nov. 8, 2018, pet. denied) ("Violent or abusive acts directed toward one child can endanger other children that are not the direct victims of the abuse in question and support termination of parental rights as to the other children, even if the other children were not yet born at the time of the conduct."); *Interest of R.G.F.*, No. 04-20-00158-CV, 2020 WL 6293442, at *3 (Tex. App.—San Antonio Oct. 28, 2020, no pet. h.) (mem. op.) (conduct, such as parent's abusive and threatening behavior toward other parent, exposes child to injury and poses risk to well-being of child, even if past conduct did not occur in child's presence).

- failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting an immediate danger of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
- failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or
- placing a child in or failing to remove the child from a situation in which the child would be exposed to an immediate danger of sexual conduct harmful to the child.

This statute also defines neglect to include certain scenarios in which a child is unable to return home, and Texas Family Code §153.004(g) adopts and applies these same definitions of neglect to conservatorship proceedings.

Texas case law discussing neglect often overlaps with situations involving abuse. But there are situations in which the facts may support a finding of neglect but not necessarily abuse.[29]

Failing to financially support a child can also be a potential ground for terminating parental rights. Under Texas Family Code § 161.001(b)(1)(F), Texas courts may terminate the parent-child relationship if the parent "failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition."

iii. Abandonment

Texas Family Code § 152.102(a) generally applies to SAPCR proceedings and defines "abandoned" as being "left without provision for reasonable and necessary care or supervision." Likewise, Texas Penal Code § 22.041(a) defines "abandon" as "leav[ing] a child in any place without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability."

Under the provisions governing child protective investigations in Title 40 of the Texas Administrative Code, abandonment is also a subset of the statutory definitions of neglect in Texas Family Code §261.001(4) and includes leaving a child in a situation where the child would be exposed to an immediate danger of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child.[30]

PRACTICE TIP: *Abandonment* is closely tied to the definition of *neglect* under Texas Family Code § 261.001(4)(A)(i)(A)(i), and neglect in most cases will be the stronger argument under Texas law. Whenever you seek a determination related to abandonment you should consider also seeking a determination related to neglect because the facts supporting a finding of abandonment under Texas law should support a finding for neglect as well. (The inverse of this may not be true—some cases may present facts related to neglect but not abandonment.)

[29] *E.g.*, *In re A.A.A.*, 265 S.W.3d 507, 516 (Tex. App.—Houston [1st Dist.] 2008, pet. denied) (affirming finding of neglect when a parent did not make efforts to find out about a child's location or condition after being released from custody).
[30] Tex. Admin. Code § 707.4653(a).

When defining abandonment under Texas law, it may also be helpful to look to the circumstances for terminating parental rights under Texas Family Code § 161.001. Some voluntary acts can form the basis for terminating parental rights, such as voluntarily leaving the child alone or in the possession of someone else for a period of time with an intent not to return or voluntarily leaving the child without providing for adequate support.[31] In cases involving the termination of parental rights, Texas courts have also found that abandonment can occur even if the parent did not act with ill intent—"the *mens rea* described is simply an intent not to return, not the reprehensible motive implicit in the 'conscious disregard or indifference' standard."[32]

But voluntarily leaving a child may not be enough for a court to make abandonment determinations in a SIJS case. For example, one appellate court, when affirming the trial court's decision to not make SIJS determinations, reasoned in part that a mother who voluntarily gave her child up for adoption to better the child's life did not meet the statutory definition of abandonment.[33]

Similarly, death of a parent alone is not sufficient to support a finding of abandonment or neglect for SIJS purposes. The USCIS Policy Manual Volume 6, Part J, Chapter 3 makes clear that:

> The fact that one or both parents is deceased is not itself a similar basis to abuse, neglect, or abandonment under state law. A legal conclusion from the juvenile court is required to establish that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law.

While some Texas courts have refused to make SIJS determinations related to deceased parents, others have found that reunification with a deceased parent was not viable due to abandonment or neglect. In cases involving deceased parents, consider first if the child suffered abuse, neglect, or abandonment *before* the parent's death. Conduct before death can form the basis for seeking an SIJS determination.

Another option is to look at whether the child was looked after and cared for *after* the parent's death. For instance, the Administrative Appeals Office (AAO)[34] decision *Matter of Y-A-M-O* (Feb. 28, 2019) discusses how a Texas judge determined that the parents' failure to make reasonable and necessary arrangements for the child after their death met the definition of abandonment under Texas Family Code § 152.102 because they left the child "without provision for reasonable and necessary care or supervision." Another AAO decision, Matter of J-Y-R-P- (Aug. 29, 2018), held the Texas court lost jurisdiction when the child turned 18 but, in doing so, acknowledged that the state court made valid SIJS determinations for reunification with a deceased parent being impossible based on how "Section 261.001(4) of the Texas Family Code defines neglect under Texas law and states that neglect includes 'the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return.'"

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[31] Tex. Fam. Code §§ 161.001(b)(1)(A)-(C).
[32] *In Interest of R.D.S.*, 902 S.W.2d 714, 720 (Tex. App.—Amarillo, 1995, no writ).
[33] *In the Interest of P.M.T.*, No. 11–14–00346–CV, 2015 WL 3799519 (Tex. App.— Eastland June 10, 2015, no pet.) (mem. op., not designated for publication).
[34] The AAO is the appellate body charged with conducting administrative review of appeals from unfavorable USCIS officers' decisions regarding immigration benefits.

Other AAO decisions from outside of Texas highlight how cases involving deceased parents can be highly fact dependent, and USCIS will generally require state court orders to tie any determinations related to a deceased parent to specific state statutes and laws:

- In Re: 18431575 (AAO Sept. 14, 2022), at 2: A New York case finding the petitioner met their burden to show the state court made the requisite determinations when it "demonstrate[d] that the death of a parent constitutes a similar basis under state law preventing reunification with that parent" by citing to *Matter of Luis R. v. Maria Elena G.* 120 A.D.3.d 581 (N.Y. App. Div. 214) in addition to sections 661 (a) and 1012(f)(i) of the New York Family Court Act and sections 371 and 384-b(5) of the New York Social Services Law.
- In Re: 17813928, (AAO Aug. 26, 2022), at 4: A Michigan case holding, "While we acknowledge that the death certificates provided a reasonable factual basis for the court's findings that reunification with the Petitioner's parents was not viable, the evidence in the record does not establish that the court determined the death of a parent is a similar basis under Michigan State law to that of abuse, neglect, or abandonment."
- In re: 14451884 (AAO May 11, 2022), at 3: A Colorado case holding that the state court did not make sufficient judicial reunification determinations because the order did not cite a specific Colorado statute even though it stated reunification was not viable because both parents are deceased and "[i]n this case, the Court wishes to clarify that parental death constitutes abandonment or the equivalent thereof."

iv. Similar Basis Under State Law

The SIJS regulations include a sort of "catch all" provision under which reunification with a parent may not be possible due to a "similar basis under state law."[35] Similar basis is a concept that would come up when the petition is filed with USCIS. While it is not usually discussed in the underlying state court proceeding, attorneys must include the necessary determinations and legal citations in their state court orders to make the arguments before USCIS. If the "similar basis" provision does apply to your case, keep in mind that USCIS will require some evidence of how the basis of the state court's determination is legally similar to abuse, neglect, or abandonment under state law, or that the state court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under state law.[36]

This similar basis provision is more likely to apply in other states that use different terminology than abuse, neglect, or abandonment in their child welfare laws.[37] In Texas, the laws define and use the terms abuse, neglect, and abandonment, and the courts are hesitant to expand the definitions of abuse or neglect beyond what is recognized in the statutes.[38] Nevertheless, attorneys in Texas should consider raising similar basis in their cover letter to USCIS as an alternative argument, especially in cases involving more complicated fact patterns.

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[35] 8 U.S.C. § 1101(a)(27)(iv)(J)(i).
[36] USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3.
[37] *Id.*
[38] *In re Berryman*, 629 S.W.3d 453, 461 (Tex. App.—Tyler 2020, no pet.) ("And while we recognize that the definitions of abuse and neglect may encompass conduct in addition to that statutorily defined, we will not extend those definitions so broadly as to encourage governmental overreach.").

Family violence and exploitation cases, for instance, may fall within the definition of abuse, neglect, or abandonment, or it could be viewed as a similar basis under Texas law. Family violence is treated just like abuse, neglect, or abandonment as a basis for denying conservatorships or terminating parental rights.[39] Likewise, exploitation is included in the Texas Family Code section on investigating reports of child abuse or neglect and defined as the "illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy."[40]

v. Non-viability of Reunification

Non-viability of parental reunification is a key element of SIJS.[41] USCIS requires the final order from the state court to include a judicial determination that "reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state laws."[42] As with the best interest determination, the focus is on non-viability of reunification with a parent due to specific evidence of abuse, neglect, and/or abandonment, not general country conditions. The determination need only be made against one parent.

While Texas law does not specifically instruct judges about how to make this determination of non-viability of reunification, certain aspects of the family code offer guidance. For example, conservatorship cases require the court to consider if a parent should be allowed access to or possession of a child, and a restriction or denial of that access or possession inherently means that reunification with the parent is affected. Conservatorships are discussed in more detail in Section VI.A. Thus, in many cases the evidence of abuse, neglect, and/or abandonment will overcome the applicable presumptions in a conservatorship case *and* show that reunification with the parent is not viable.

PRACTICE TIP: Best practice is to seek express determinations from the state court related to reunification. However, a Texas judge may not be willing to make an express determination on reunification and practitioners shared situations in which judges have crossed the proposed determination on reunification out of the proposed order. If that happens in your case, do not panic! Remember that the ultimate issue is whether the child can be with the parent, which is a core part of any conservatorship matter even if the Texas Family Code uses different terminology. You can argue to USICS that a finding from the judge that the petitioner overcame the parental presumptions (described in Section VI.A) because of abuse, neglect, and/or abandonment is inherently a determination that reunification with the parent is not viable due to abuse, neglect, and/or abandonment.

vi. Best Interest of the Youth

The state court judge will also need to make a determination about whether returning to the youth's or parent's "previous country of nationality or country of last habitual residence" is in the youth's "best interest."[43] According to the USCIS Policy Manual Volume 6, Part J, Chapter 2, the

[39] *See* Tex. Fam. Code §§ 161.001, 153.004(b).
[40] *Id.* § 261.011(3).
[41] *See* 8 U.S.C. § 1101(a)(27)(J)(i); USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.
[42] USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2 (footnote omitted).
[43] 8 U.S.C. § 1101(a)(27)(J)(ii).

state court must make an "individualized assessment" that considers "the factors that it normally takes into account when making best interest determinations." USCIS stresses that the youth's "safety and well-being are typically the paramount concern," and it provides an example of a state court finding that it is in the youth's best interest to remain with a caregiver in the United States.[44] It is therefore important to discuss with the youth if they have family in their home country or anyone that could provide a safe, stable, or nonviolent environment.

PRACTICE TIP: The best interest inquiry in SIJS state court proceedings differs greatly from the country conditions analysis necessary with an asylum claim. In SIJS cases, the best interest analysis should focus on case specific factors and be tied to the parental conduct and the child's previous placements—not general country conditions factoring into a fear of return.

Consistent with this guidance from USCIS, Texas state court judges look to factors used to decide the best interest of the child in other circumstances when making SIJS determinations. Under Texas Family Code § 263.307(b), the state court judge considers the following factors, inter alia, to determine whether remaining with a parent is in the best interest of the child:

> (1) the child's age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude, frequency, and circumstances of the harm to the child; (4) whether the child has been the victim of repeated harm after the initial report and intervention by the department; (5) whether the child is fearful of living in or returning to the child's home . . . ; (7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home; (8) whether there is a history of substance abuse by the child's family or others who have access to the child's home . . . ; [and] (11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time.

Similarly, the Texas Supreme Court has instructed judges to consider the following non-exhaustive list of *Holley* factors in child custody cases to determine the child's best interest:

> (1) desires of the child; (2) emotional and physical needs of the child now and in the future; (3) emotional and physical danger to the child now and in the future; (4) parental abilities of the individuals seeking custody; (5) programs available to assist these individuals to promote the best interest of the child; (6) plans for the child by these individuals or by the agency seeking custody; (7) stability of the home or proposed placement; (8) acts or omissions of the parent which may indicate that the existing parent-child relationship is improper; and (9) any excuse for the acts or omissions of the parent.[45]

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[44] USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.

[45] *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976); *see also In re N.A.S.*, 100 S.W.3d 670, 672 (Tex. App.—Dallas 2003, no pet.) (noting that a state judge has "wide latitude" to determine the best interest of the child, the Texas Family Code "family code does not define or set out the relevant factors to be considered when determining whether an action is in the best interest of a child," and collecting cases applying this non-exhaustive list of considerations from *Holley* in child custody matters).

In addition, Texas Family Code § 153.002 requires the best interest of the child to be the "primary consideration of the court" when making custody decisions. The absence of any of the *Holley* best interest factors in a particular case does not prevent a judge from acting; it is possible for a judge to determine that something is in the best interests of the child based on just one factor.[46] When considering the child's best interest, Texas courts may presume that preserving the parent-child relationship is in the child's best interest.[47] But there may be a competing presumption too that prompt and permanent placement of the child in a safe environment is in the child's best interest.[48]

PRACTICE TIP: Because the best interest determination is central to any SIJS case, it is important to discuss with the client at the outset of the case the details about their life in their home country as well as their current situation in the United States. Topics to cover should include their safety in the home; their schooling and work history; any harm or threats by household, family members, or anyone else; their access to physical and mental health services; and if any family members (willing and able to care for them) still live in their home country.

V. Threshold Issues When Bringing a SAPCR

Before filing a SAPCR petition, it is important to assess the case to ensure it meets the basic criteria required for the court to hear the case. Four key legal issues to screen for in any SAPCR are: (1) standing, (2) subject matter jurisdiction, (3) personal jurisdiction, and (4) venue.

A. Standing to Initiate a SAPCR

A party must have the legal right, or standing, to bring a lawsuit in Texas family court. A petitioner with standing should initiate the SAPCR. Texas Family Code § 102.003 declares that those with the right to file a SAPCR include a parent, alleged father, child, sibling (but only for access to a child), grandparent, licensed placing agency, Department of Family and Protective Services (DFPS), foster parent, relative within 3rd degree of sanguinity, or a nonparent with "actual care, custody and control."

i. Parent

According to Texas Family Code § 101.024, a "parent" is defined as the mother, "a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father." A parent of a youth will always have standing to bring a SAPCR, unless the parent child relationship has been terminated.[49]

ii. Non-parent

Standing for a non-parent to bring a SAPCR has additional requirements. Generally, an adult, who is not a foster parent to the child, may bring a SAPCR in family court if they have had "actual care,

[46] *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002); *Yonko v. Dep't of Family & Protective Servs.*, 196 S.W.3d 236, 243 (Tex. App.—Houston [1st Dist.] 2006, no pet.).
[47] *Interest of H.A.J.R.*, No. 04-21-00220-CV, 2021 WL 5088734, at *3 (Tex. App.—San Antonio Nov. 3, 2021, pet. denied) (citing *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006)).
[48] *Id.* (citing Tex. Fam. Code § 263.307(a)).
[49] Tex. Fam. Code § 101.024(a).

control, and possession" of the child in question for six months.[50] One of the issues encountered occasionally with SIJS related SAPCRs is that the non-parent petitioner has not had the child for the requisite six months when the SAPCR needs to be filed. In that situation, it is helpful if the petitioner is a relative of the child. The Texas Family Code allows grandparents and relatives within the "third degree of consanguinity" to have standing without time restrictions in certain circumstances.[51]

EXAMPLE: People are related within degrees of consanguinity when one is a descendant of the other or if they share a common ancestor.

According to Title 19 of the Texas Administrative Code § 100.1113, relatives within the third degree by consanguinity are the person's:

- Parent or child (relatives in the first degree);
- Brother, sister, grandparent, or grandchild (relatives in the second degree); and
- Great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

Relatives within the third degree of consanguinity have standing if the child's parents are deceased at the time the SAPCR petition is filed.[52] Grandparents and other relatives within the third degree on consanguinity have jurisdiction to file a SAPCR requesting managing conservatorship if they can prove that either "the child's present circumstances would significantly impair the child's physical health or emotional development" or that "both parents, the surviving parent, or the managing conservator or custodian" of the child consented to the SAPCR.[53]

The Texas Family Code has other standing provisions for cases such as paternity suits and child support only suits. These specific standing requirements will be discussed in the sections related to those suits.

iii. Child

A child as defined under Texas Family Code § 101.003(a) is "a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes." Generally, a child cannot bring a lawsuit on their own.[54] The Texas Family Code

[50] *Id.* § 102.003(a)(9).
[51] *Id.* §§ 102.003(a)(13), 102.004.
[52] *Id.* § 102.003(a)(13).
[53] *Id.* § 102.004.
[54] *Vandewater v. Am. Gen. Fire & Cas. Co.*, 890 S.W.2d 811, 814 (Tex. App.—Austin 1994), rev'd, 907 S.W.2d 491 (Tex. 1995) ("A minor is not sui juris; generally he may not sue or be sued except as the rules of procedure provide."); *Byrd v. Woodruff*, 891 S.W.2d 689, 704 (Tex. App.—Dallas 1994, writ dism'd) ("A minor does not have the legal capacity to employ an attorney or anyone else to watch over her interests. Rule 44 of the rules of civil procedure authorizes appearance by a next friend."); *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005) ("In addition to standing, a plaintiff must have the capacity to pursue a

gives the "right" to file a lawsuit for a child to their parents.[55] Texas Family Code § 102.003(a)(2) requires a "representative authorized by the court" to bring the SAPCR for the child. In addition, the Texas Rules of Civil Procedure (TRCP) say that a child can file suit through a next friend;[56] which is considered one of the types of authorized representatives allowed under the Texas Family Code.

There is a lack of guidance, in case law or elsewhere, as to who can be an authorized representative when the child is bringing the SAPCR case on their own. Generally, bringing a suit with the child as a petitioner should only be done when an adult caregiver will not gain standing before the child reaches the age of 18, or when the child lacks an adult caregiver willing to serve as a petitioner. While an attorney can theoretically serve as the authorized representative, keep in mind that various ethical concerns may arise. Representing children, especially unaccompanied children, can often present unique circumstances that require practitioners to look to their jurisdiction's ethical rules for guidance. We encourage a case-by-case assessment of any underlying ethical considerations.

PRACTICE TIP: In the petition, under the section for "Parties," it should make clear that the suit is being brought on behalf of a child, by and through their authorized representative. Although local practice may vary, in some jurisdictions, practitioners include a motion for the judge to appoint the authorized representative with the petition. It is also recommended to show that the person being appointed as the authorized representative is over the age of 18 and of sound mind, and that the child has consented to them being their representative.

B. Subject Matter Jurisdiction

Jurisdiction requires that a court have the power to hear a case and grant the relief requested. In Texas, general district courts, family district courts, and some county courts have jurisdiction to hear cases related to family law issues.

In rem jurisdiction, or subject matter jurisdiction, allows these courts to resolve certain issues such as a child custody determination. A child custody determination is defined as "a judgment, decree, or other order of a court providing for legal custody, physical custody, or visitation with respect to a child."[57] The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) outlines how a court establishes jurisdiction over a child custody determination.[58]

i. Home-State jurisdiction

A Texas court has jurisdiction over a child custody determination if Texas is the child's home state.[59] The UCCJEA defines the child's home state as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the

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claim. For example, minors and incompetents are considered to be under a legal disability and are therefore unable to sue or be sued in their individual capacities; such persons are required to appear in court through a legal guardian, a "next friend," or a guardian ad litem.").

[55] Tex. Fam. Code § 151.001(a)(7).

[56] Tex. R. Civ. P. 44.

[57] Tex. Fam. Code § 152.102(3).

[58] *Id.* § 152.201.

[59] *Id.* § 152.201(a)(1).

commencement of a child custody proceeding."[60] A "person acting as a parent" is someone, other than a parent, who has physical custody of a child and either has legal custody of the child or claims a right to legal custody of the child.[61]

ii. Significant-Connection Jurisdiction

If the child has no home state, a Texas court can exercise jurisdiction if the child and the child's parent or a person acting as a parent has significant connections with the state and there is substantial evidence available in the state regarding the child's care, protection, training, and personal relationships.[62] If the child did not live with a parent or person acting as a parent in the child's home state, and currently lives with a parent in Texas, this provision may be a good alternative if the six-month residency requirement to establish home state jurisdiction cannot be met. Refer to CILA's resource on "Jurisdiction Requirements under the UCCJEA in Texas" (Oct. 20, 2022) to learn more about this topic.

iii. Default Jurisdiction

A Texas court may have jurisdiction by default. Texas can exercise jurisdiction over a child custody determination if all other states have declined jurisdiction because Texas is a more appropriate forum or no other state has jurisdiction under the previous provisions of Texas Family Code § 152.201(a).[63]

iv. Emergency Jurisdiction

A Texas court can exercise emergency jurisdiction in some circumstances. If the child is present in Texas and the child has been abandoned or the court must intervene to protect the child because the child, the child's sibling, or the child's parent is subjected to or threatened with mistreatment or abuse, the court can exercise its emergency jurisdiction.[64] Note that the statute requires the child to be present in Texas, not necessarily a resident of Texas. An emergency custody order is temporary, but it may become final if no previous child custody determination is required to be enforced, no child custody proceeding has been or is commenced under the UCCJEA, the order states that it will become final, and Texas becomes the child's home state.[65]

v. What Happens When the Youth Turns 18

Texas courts have recognized that their authority to make judicial determinations for SIJS relief depends on the youth remaining a "child" under Texas law. *In Interest of B.A.L.*, No. 01-16-00136-CV, 2017 WL 3027660, at *6 (Tex. App.—Houston [1st Dist.] July 18, 2017, no pet.); *In re J.L.E.O.*, No. 14-10-00628-CV, 2011 WL 664642, at *2 (Tex. App.—Houston [14th Dist.] Feb. 24, 2011, no pet.). Texas Family Code § 101.003 defines a child as a "a person *under 18 years of age* who is not and has not been married or who has not had the disabilities of minority removed for general purposes" (emphasis added). Thus, while federal law makes SIJS available to anyone under 21 years of age, Texas law limits the ability of youth over 18 years of age to obtain the necessary determinations from state court except in limited circumstances.

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[60] *Id.* § 152.102(7).
[61] *Id.* § 152.102(13).
[62] *Id.* § 152.201(a)(2).
[63] *Id.* §§ 152.201(a)(3)-(4).
[64] *Id.* § 152.204(a).
[65] *Id.* § 152.204(b).

As explained in Section VI.C, child support cases apply a broader definition of "child" that includes youth over 18 years of age who are still in school. *See* Tex. Fam. Code § 101.003(b); Tex. Fam. Code § 154.001(a). USCIS has previously found that child support orders for youth over 18 years of age did not meet the requirements for SIJS, and the Fifth Circuit, the federal appellate court in Texas, upheld this decision in *Budhathoki v. Nielsen*, 898 F.3d 504 (5th Cir. 2018). Importantly, however, the child support orders in that case failed to include a dependency declaration. *See In Re: 13258678*, AAO, at 4 (Nov. 24, 2021). Moreover, even *Budhathoki* left open whether the Texas law provides jurisdiction for "courts to make such rulings for individuals who have passed their eighteenth birthday." 898 F.3d at 515.

Based on these cases, best practice in Texas is to have the state court hear your case and enter the final order before the youth turns 18 years of age. Section IX.A also discusses potential options to expedite a case if the youth is about to turn 18. Child support orders may also be sought after a youth turns 18, but they require personal jurisdiction over at least one parent, the youth to remain in high school, and for the judge to be open to including a dependency declaration. Section VI.C provides additional guidance on this type of child support order.

C. Personal Jurisdiction

Having personal jurisdiction allows the court to impose a personal obligation on a party in the proceeding.[66] In SAPCRs, a court requires personal jurisdiction over the respondent to make a parentage adjudication and to impose child support.[67] Texas courts generally have jurisdiction over residents in Texas. The court can acquire personal jurisdiction over a nonresident respondent if: (a) the person was personally served in the state, or (b) the person submits to the jurisdiction of the state by consent, by entering a general appearance, or by filing a responsive document.[68] Conduct outside of the litigation process can also be used to establish jurisdiction over a nonresident. Under Texas Family Code § 102.011, a court may have jurisdiction in a SAPCR proceeding over someone who resided in Texas with the child, conceived the child in Texas, provided child support while living in Texas, or acknowledged or registered paternity of a child born in Texas.[69] There is also a catch-all provision for the court to consider exercising jurisdiction over someone based on other contacts with Texas so long as it is "consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction."[70]

D. Venue

Generally, Texas Family Code § 103.001(a) indicates that an original SAPCR should be filed in the county where the child resides. If there is a question as to where the child resides, it is the county where the child is in the actual care, control, and possession of an adult, whether the adult is their parent, a court appointed guardian or custodian, or any other adult. [71] The only exceptions to this

[66] *See Schlobohm v. Schapiro*, 784 S.W.2d 355, 356 (Tex. 1990).
[67] Tex. Fam. Code §§ 160.604(a), 154.001(a).
[68] *Id.* §§ 102.011(b)(1)-(2).
[69] *Id.* § 102.011(b)(3)-(7). Texas Family Code § 159.201 contains similar bases for exercising jurisdiction over nonresident respondents in child support or parentage actions.
[70] Tex. Fam. Code § 102.011(b)(8).
[71] *Id.* § 103.001(c).

rule come into play when the SAPCR forms part of a divorce proceeding or if another court has continuing, exclusive jurisdiction over the child.[72]

The residency and domicile requirements found in Texas Family Code § 6.301 apply only to divorce proceedings and do not have a similar counterpart in the SAPCR provisions.[73] In addition, as long as the venue was proper when the SAPCR petition was filed, the case can continue in the original venue unless a party other than the petitioner makes a motion to change venue, even if the child moves.[74]

VI. Claims in a SAPCR

In addition to satisfying the threshold issues discussed above, each SAPCR case must consider the relief you intend to seek along with the SIJS determinations. The types of claims in a SAPCR include claims to establish parentage, claims seeking custody (called conservatorships in Texas), claims for child support, and claims to terminate parental rights, often brought in connection with a claim for adoption. A SAPCR proceeding may also be used to modify a prior custody or child support order. Some cases may only involve a single legal issue. For instance, a mother may only want a conservatorship claim to establish sole custody of the child. Or perhaps a parent already has sole custody of the child and wants to just bring a claim for child support. But most SIJS cases involve multiple claims in a single case. It is common, for example, for the mother to seek a conservatorship, establishment of parentage, and child support in the same case.

PRACTICE TIP: As you prepare your case, keep the interplay of claims in mind and be sure to discuss the different issues with your client. Most suits requesting SIJS judicial determinations are a combination of claims. Always remember too that every case will need to include a request for SIJS determinations regardless of the types of claims being brought. For cases involving custody issues, the request for SIJS determinations will likely flow naturally from the custody issues presented in the case. Cases that involving a single issue like child support or parentage will likely need to include a request for a dependency determination.

A. Conservatorship

Conservatorships in Texas are used to determine custody and address who can make decisions for a child and who has rights of possession of and access to the child. Conservatorship proceedings are typically initiated by the person seeking custody of the child, but it is also possible for a child to initiate a suit through an authorized representative, as discussed above. If a determination regarding conservatorship is made in a suit, there is no need to separately request a judicial determination regarding dependency.[75]

While parties can request a jury to decide if a particular person should be appointed as conservator for a child, most parties let the judge make this determination, and the judge always decides on the scope of the conservator's rights and duties.[76] When seeking custody, it is also

[72] *Id.* §§ 103.001(a)(1), 103.001(a)(2).
[73] *McManus v. Wilborn*, 932 S.W.2d 662, 665 (Tex.App.—Houston [14th Dist.] 1996, orig. proceeding).
[74] Tex. Fam. Code § 103.002(a).
[75] *See* 8 C.F.R. § 204.11(a); INA at Section 101(a)(27)(J).
[76] Tex. Fam. Code §§ 105.002(c)(2)(A)-(C), 153.072.

important to consider the different types of conservatorships (discussed below), as well as the legal presumptions, that may apply to protect parental rights.

PRACTICE TIP: Conservatorship cases often include requests for child support, including mental and dental support. In practice, regardless of whether you are requesting child support, judges will require an order for medical and dental support in accordance with Texas Family Code § 154.181 and 154.182.

i. Public Policy Factors

In all conservatorship proceedings, the court must consider the child's best interest and the public policies of Texas to:

(1) Assure children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;

(2) Provide a safe, stable, and nonviolent environment for the child;

(3) Encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.[77]

The court must consider the child's best interest when determining whether to appoint someone as a conservator. For SIJS cases, the court must also find that it is not in the child's best interest to return to their prior country.

ii. Types of Conservatorships

The three types of conservatorships are: (1) sole managing conservator, (2) joint managing conservator, and (3) possessory conservator. A managing conservator, whether sole or joint, must be a parent, competent adult, DFPS, or a licensed child-placing agency.[78]

A sole managing conservatorship (SMC) involves the appointment of one person or entity to make decisions for a child.[79] A joint managing conservatorship (JMC) involves two or more people sharing the rights and duties of a parent, even if the exclusive right to make certain decisions is awarded to only one person.[80] Managing conservators generally have the rights to make legal, financial, educational, residential, and medical decisions for the child.

Possessory conservatorships involve someone seeking possessory rights to a child that will apply at certain times specified by the court.[81] The court when appointing a possessory conservator will specify their rights and duties.[82] Possessory conservators are often given the basic rights and duties recognized for parents, including the rights to:

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[77] *Id.* § 153.001(a); *see also Lenz v. Lenz*, 79 S.W.3d 10, 14 (Tex.2002) (explaining how the code "pronounc[es] our public policy for all suits affecting the parent-child relationship").
[78] Tex. Fam. Code. § 153.005(b).
[79] *Id.* § 153.132.
[80] *Id.*§ 101.016.
[81] *See id.* § 153.006.
[82] *Id.* §§ 153.073, 153.006.

- Receive information from the managing conservator about the child's health, education, and welfare
- Confer with the managing conservator about the child's health, education, or welfare; access to the child's educational records
- Consult with school officials about the child and attend the child's school activities
- Access the child's medical records, speak with the child's medical professionals, and consent to emergency medical treatment if it involves the immediate health and safety of the child
- Be designated as an emergency contact in the child's records
- Manage the child's estate to the extent it was created by the child's parent or their family

It is possible for a court to appoint both a managing conservator and possessory conservator in the same case.

EXAMPLE 1: Child and Mother live in San Antonio and left Guatemala because the child's father was abusive to the mother. Mother may bring a SAPCR to seek sole managing conservatorship and ask the court not to appoint the father as a possessory conservator.

EXAMPLE 2: Child lives in Austin with his grandmother and grandfather, who have been taking care of him for over a year. Child's parents live in Mexico and have not provided any support for years. Grandparents can file a SAPCR to seek joint managing conservatorship and ask the court not to appoint the parents as possessory conservators.

iii. Presumptions for Managing Conservatorships

In addition to the general policy considerations, custody decisions are guided by legal presumptions that favor parents as managing conservators. In Texas, both parents shall be appointed as joint managing conservators or one parent shall be appointed as sole managing conservator unless that appointment would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development.[83] There is a rebuttable presumption that it is in the best interest of the child for at least one parent to be appointed as a managing conservator of the child.[84] A parent seeking to limit the custody rights of another parent or a non-parent seeking to limit the custody rights of one or both parents will need to overcome these parental presumptions.

PRACTICE TIP: The same facts that support a determination of abuse, neglect, or abandonment can provide evidence for rebutting the parental presumptions.

[83] *Id.* § 153.131(a).
[84] *Id.* § 153.131(b). Under Texas Family Code § 101.024, a "parent" is defined as (1) the mother, (2) a man presumed to be the father, (3) a man legally determined to be the father, (4) a man adjudicated to be the father by a court of competent jurisdiction, (5) a man who has acknowledged his paternity under applicable law, or (6) an adoptive mother or father.

1. Rebutting Presumptions

a. Parent Petitioner

Texas Family Code § 153.131(b) provides that, unless there is a finding of a history of domestic violence or sexual abuse, it is presumed that the appointment of both parents of a child as joint managing conservators is in the best interest of the child. A parent seeking sole managing conservatorship will need to rebut this presumption.

Child's Best Interest: The presumption may be rebutted by presenting evidence that appointing both parents as joint managing conservators is not in the child's best interest. Texas Family Code § 153.134 sets forth factors for the court to consider when determining if a joint managing conservatorship is in the child's best interest, including the physical, psychological, and emotional needs of the child, abilities of the parents to prioritize the child's welfare, parent's participation in child rearing, how close the parents live to each other, and the child's preference if they are over 12 years old.

Family Violence: A finding of family violence or neglect removes the presumption that appointing both parents as joint managing conservators is in the best interest of the child.[85] The Texas Family Code does not allow both parents to be appointed joint managing conservators if there is credible evidence of a history or pattern of past physical or sexual abuse by one parent directed against the other parent, a spouse, or a child.[86] Likewise, evidence of a history or pattern of child neglect bars the appointment of both parents as joint managing conservators.[87] A history of family violence can be established by a single incident.[88] And evidence about the cause of a parent's violent conduct, such as who initiated the confrontation, may not be relevant to determining the existence of a history or pattern of domestic violence.[89] In cases involving a history of family violence, the parent who was not the perpetrator may be appointed as the sole managing conservator.

b. Non-Parent Petitioner

Non-parents face a higher burden in overcoming the parental presumptions. Under Texas Family Code § 153.131(a), a parent must be appointed as managing conservator, unless the court finds that "appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development." Texas courts similarly have a history of protecting parental rights and presuming that appointing a

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[85] Tex. Fam. Code § 153.131(b).
[86] *Id.* § 153.004(b).
[87] *Id.*
[88] *Baker v. Baker*, 469 S.W.3d 269, 274 (Tex. App.—Houston [14th Dist.] 2015, no pet.) ("Even if Father disputed all of these actions, the trial court could have found a history of physical abuse based solely on the punching incident. Section 153.004(b) indicates that a history can be established by just a single incident."); *In re Marriage of Stein*, 153 S.W.3d 485, 489 (Tex. App.—Amarillo 2004, no pet.) ("[W]e deduce that, although a single act of violence or abuse may not constitute a pattern, it can amount to a history of physical abuse.").
[89] *See Peña v. Peña*, 8 S.W.3d 639, 639 (Tex.1999) (per curiam) (disapproving of the court of appeals statement that it needed to consider details such as "'who initiated the arguments, whether the hittings were provoked in any manner, or what other factors may have contributed to either or both incidents'" because "[t]hese considerations are not relevant to determining whether there was physical abuse or a history or pattern of domestic violence under the statute").

parent as a conservator is in the best interest of the child.[90] But a non-parent petitioner may overcome these parental presumptions with evidence of (1) significant impairment, (2) family violence, or (3) voluntary relinquishment.

Significant Impairment: A non-parent may overcome the parental presumptions by proving a preponderance of the evidence that appointment of the parent as managing conservator would significantly impair the child's physical health or emotional development.[91] Proving significant impairment is treated as a heavy burden that requires evidence of specific actions or omissions showing that awarding custody to the parent would harm the child.[92] When making this determination, Texas courts consider evidence of abuse, neglect, or abandonment.[93]

Family Violence: Evidence of a history of family violence involving the parent can rebut the parental presumptions.[94] The Texas Family Code defines "family violence" to include abuse by a member of a family or household toward a child of the family or household.[95] Section IV.C and the discussion above on overcoming presumptions as a parent petitioner provide additional information on family violence under Texas law.

Voluntary Relinquishment: Under Texas Family Code § 153.373, a non-parent can rebut the presumption that a parent should be managing conservator if the court finds that (1) the parent or parents voluntarily relinquished the child to a nonparent, a licensed child-placing agency, or the DFPS for one year or more and (2) the appointment of the nonparent, agency, or DFPS as managing conservator is in the best interest of the child. Because voluntarily relinquishment is a

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[90] *E.g.*, *In re B.B.M.*, 291 S.W.3d 463, 467 (Tex. App.—Dallas 2009, pet. denied) ("The strong presumption that the best interest of a child is served by appointing a natural parent as managing conservator is deeply embedded in Texas law.") (citing *Lewelling v. Lewelling*, 796 S.W.2d 164, 166 (Tex. 1990)); *Interest of K.D.S.P.*, No. 05-22-00456-CV, 2022 WL 17090187, at *8 (Tex. App.—Dallas Nov. 21, 2022, no pet. h.) (recognizing "a presumption that parents are fit and able to make decisions regarding their children unfettered by government intrusion").

[91] Tex. Fam. Code § 153.131(a).

[92] *In re T.R.B.*, 350 S.W.3d 227, 233–34 (Tex. App.—San Antonio 2011, no pet.) (requiring "evidence of specific actions or omissions of the parent that demonstrates that awarding custody to the parent would result in physical or emotional harm to the child"); *Interest of R.R.A.*, 654 S.W.3d 535, 554 (Tex. App.—Houston [14th Dist.] 2022, pet. filed) ("Evidence of a parent's 'specific actions or omissions' that demonstrate the award of custody to the parent would have a detrimental effect on the child is sufficient proof to rebut the parental presumptions in § 153.131; but the evidence must do more than raise mere suspicion or speculation of possible harm."); *In re B.B.M.*, 291 S.W.3d at 469 ("When a nonparent and a parent are both seeking managing conservatorship, the 'close calls' go to the parent.").

[93] *Interest of K.D.S.P.*, 2022 WL 17090187, at *7 ("Acts or omissions that constitute significant impairment include, but are not limited to, physical abuse, severe neglect, abandonment, drug or alcohol abuse, or immoral behavior by the parent."); *In re C.R.T.*, 61 S.W.3d 62, 67 (Tex.App.—Amarillo 2001, pet. denied) ("Acts of nonsupport, physical abuse, severe neglect, abandonment, drug and alcohol abuse, or immoral behavior can all impair the child's health.").

[94] *See* Tex. Fam. Code §§ 153.131(b), 153.004(a)-(b); *Interest of C.F.*, 565 S.W.3d 832, 846 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) ("Due to the parental presumption, the trial court was required to appoint Mother as the boys' managing conservator unless it found that (1) appointment of Mother as managing conservator would significantly impair the boys' health or development; or (2) there is a history of family violence involving Mother.").

[95] Tex. Fam. Code § 71.004(2).

separate basis for rebutting the presumption, the court need not find significant impairment or family violence if these elements are satisfied.

2. Effect of Rebuttal

If the parent or non-parent offers evidence rebutting the parental presumptions, the presumption disappears—meaning that the court will not treat it as evidence in determining custody.[96] The petitioner will still need to show by a preponderance of the evidence that their appointment as managing conservator is in the best interest of the child.

iv. Presumptions for Possessory Conservatorships

Texas Family Code § 153.191 recognizes an additional presumption that parents who are not named as a managing conservator must be appointed as a possessory conservator. This presumption will arise when one parent is appointed the sole managing conservator or a non-parent is appointed as a managing conservator.

The court need not appoint the parent as a possessory conservator if it finds that (1) appointment of the parent as possessory conservator would not be in the child's best interest and (2) allowing the parent to have possession or access would endanger the child's physical or emotional welfare.[97]

Even if the court denies a possessory conservatorship to the parent, the parent can still be ordered to perform parental duties such as paying child support.[98] If the presumption is not rebutted, the court will look to Subchapter F of the Texas Family Code to define the scope of the possessory conservatorship. That chapter includes a standard possession order that courts presume to be in the best interest of a child.[99]

v. Annual Report for Non-Parent Conservators

After being appointed as a managing conservator, a nonparent should file with the court an annual report on the child's welfare pursuant to Texas Family Code § 153.375. The report should include the child's whereabouts and physical condition.

B. Parentage

Identifying or determining the child's parentage is necessary for the court to establish parental rights and duties to a child. Identifying a child's legal parents is also an important part of the SAPCR litigation process, including service of the citation, identifying the necessary parties, and figuring out how legal burdens will apply in the case.[100] Parentage issues often arise in SIJS cases and many SAPCRs include a claim to establish parentage with a custody claim. A case seeking to establish parentage without an accompanying claim for custody must address dependency in order to satisfy the SIJS requirements.

A proceeding to adjudicate parentage falls under the Uniform Parentage Act or Chapter 160 of the Texas Family Code. Texas law will apply to determine parentage regardless of where the child

[96] *Martinez Jardon v. Pfister*, 593 S.W.3d 810, 827 (Tex. App.—El Paso 2019, no pet.).
[97] Tex. Fam. Code § 153.191.
[98] *Id.* § 153.075.
[99] *Id.* § 153.252.
[100] *Id.* §§ 102.008, 102.009.

was born.[101] Most cases involve paternity issues, but a SAPCR may also be used to establish maternity.[102] As long as a child has no presumed, acknowledged, or adjudicated father, there are no restrictions on the timing of a parentage suit.[103]

i. Standing and Personal Jurisdiction Required for Establishing Parentage

The following are some additional considerations to take into account when assessing the threshold issues for bringing a claim to establish parentage.

Standing: Texas Family Code § 160.602(a) delineates who has standing in a parentage suit:

> (1) the child;
>
> (2) the mother of the child;
>
> (3) a man whose paternity of the child is to be adjudicated;
>
> (4) the support enforcement agency or another government agency authorized by other law;
>
> (5) an authorized adoption agency or licensed child-placing agency;
>
> (6) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, is incapacitated, or is a minor;
>
> (7) a person related within the second degree by consanguinity to the mother of the child, if the mother is deceased; or
>
> (8) a person who is an intended parent.

This list differs slightly from the criteria described above for who generally has standing to bring a SAPCR.

Personal jurisdiction: Because an adjudication of parentage imposes certain duties on an individual,[104] a parentage determination requires the court to have personal jurisdiction over the respondent.[105] Put another way, the court cannot make a parentage adjudication about someone without having jurisdiction over that person.[106] Texas Family Code § 159.201 sets forth the bases for the court to exercise personal jurisdiction in a parentage or child support action, which are substantially similar to the ones described in Section V.C for bringing any SAPCR. The main difference is that Texas Family Code § 102.011 allows the court to exercise jurisdiction in most SAPCR proceedings if someone has acknowledged or registered paternity of a child born in Texas,

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[101] *Id.* § 160.103.
[102] *See id.* §§ 160.201(2), 160.106.
[103] *Id.* § 160.606. If the child has a presumed father, Texas Family Code § 160.607 requires a parentage suit to be brought by the child's fourth birthday unless "the presumed father and the mother of the child did not live together or engage in sexual intercourse with each other during the probable time of conception" or the presumed father believed he was the biological father based on a misrepresentation.
[104] *Id.* § 151.001.
[105] *Id.* § 160.604(a).
[106] *Id.*

whereas § 159.201(7) requires a person to have "asserted parentage of a child in the paternity registry maintained in this state by the vital statistics unit," not just acknowledged paternity.

ii. Maternity

In most cases, the identity of the child's biological mother is apparent through gestation, with the individual giving birth to the child and then being listed as the child's mother on the birth certificate. Giving birth to the child is also one way to establish the parent-child relationship between a child and a woman under Texas Family Code § 160.201. Maternity can also be established through adoption or adjudication by the court.[107] Under Texas Family Code § 160.106, the provisions below governing how to determine paternity apply to determining maternity as well.

PRACTICE TIP: USCIS requires a birth certificate from SIJS petitioners to establish the SIJS petitioner's age. However, SIJS cases may involve a birth certificate that incorrectly lists another relative like the child's grandmother as the mother. If the child's birth certificate is inaccurate, you may be able to amend the birth certificate and send USCIS an amended birth certificate. Alternatively, you can clarify birth certificate issues with the court and ask the court to adjudicate the issue and establish who is the child's mother. For example, if the birth certificate lists the grandmother, you can include her as the acknowledged mother and the biological mother as the alleged mother. Potentially, the alleged mother could sign a waiver and a maternity acknowledgement. Then, the judge can adjudicate the biological mother as the mother.

iii. Paternity

Establishing the parent-child relationship between a child and a man can be complicated. In Texas, paternity can be established by: (1) operation of law through an unrebutted presumption, (2) legal acknowledgment of paternity signed by both parents, or (3) adjudication by a judge. It is also possible that the child's father is unknown, or that the parent-child relationship between the father has not been established so a man is considered to be an alleged father.

This section will describe these five different types of legal fathers—presumed, acknowledged, adjudicated, alleged, and unknown—and will provide examples to help you understand the differences among the legal classifications. Understanding these differences may assist with identifying the respondent in the pleadings or determining how to complete service and notice of the suit to everyone necessary.

1. Presumed

Under Texas Family Code § 160.201(b)(1), the father-child relationship is established between a man and a child through an unrebutted presumption of the man's paternity of the child. There are multiple ways, under the Texas Family Code, through which a man is presumed to be a child's father.

[107] *Id.* § 160.201.

Birth During Marriage: Under Texas Family Code § 160.204, a man is presumed to be a child's father if he is married to the child's mother, and the child is born during the course of the marriage.

> EXAMPLE: Child, Mother, and Father lived in Country Z together. Mother and Father married one year before Child was born, and Father and Mother are both listed as Child's parents on Child's birth certificate. Father is Child's presumed father because Child was born during the marriage.

Birth Shortly After Termination of Marriage: A man is also presumed to be the father under Texas Family Code § 160.204 if he is married to the child's mother and the child is born before the 301st day after the date the marriage is terminated by death, annulment, declaration of invalidity, or divorce.

> EXAMPLE: Mother and Father get married on January 1, 2021. Some months after the marriage, they decide to get divorced. The couple officially divorced on October 1, 2021, but Child is born on December 1, 2021. Because Child was born within 301 days of the official date of termination of the marriage—before 301 days *after* October 1, 2021—Father is the Child's presumed father.

Birth During or Shortly After an Attempted Marriage: Texas law also considers situations in which a man and woman may act as if they are married even if they technically are not considered to be married under the law. Texas Family Code § 160.204 presumes a man is the father if he married the child's mother in apparent compliance with law before the child's birth, even if the attempted marriage is or could be declared invalid, *and* the child is born during the invalid marriage *or* before the 301st day after the date the marriage is terminated by death, annulment, declaration of invalidity, or divorce.

> EXAMPLE: Mother and Father get married, in good faith, on January 1, 2020. However, unbeknownst to the couple, the marriage was invalid. Child is born on November 1, 2020. Soon after Child is born, Mother and Father seek to end their "marriage," speak with an attorney, and learn that the marriage was void. In March 2021, they obtain a declaration of invalidity of the marriage to void the marriage. Even though the marriage was invalid, Father is Child's presumed father because Child was born during the period of the invalid marriage.

Marriage and Voluntary Assertion After Birth: A man is presumed to be the father if (1) he married the child's mother after the child was born, regardless of whether the marriage is or could be declared invalid, (2) he voluntarily asserted his paternity of the child, *and* (3) one of the following conditions is satisfied: (a) this voluntary assertion is in a record filed with the vital statistics unit; (b) he is voluntarily named as the child's father on the child's birth certificate; or (c) he promised in a record to support the child as his own.[108]

[108] *Id*. § 160.204.

EXAMPLE: Mother and Father are in a relationship and not married. Child is born, and both parents are listed on Child's birth certificate. Mother and Father decide to get married after Child was born. Because Father married Mother after Child was born and voluntarily listed himself as Child's father on the birth certificate, Father is Child's presumed father.

Residing with Child: A man is presumed to be the father if (1) during the first two years of the child's life, he continuously resided in the household with the child, and (2) he held himself out to be the child's father publicly.[109]

EXAMPLE: Mother and Father are in a relationship and not married. Child is born. Mother, Father, and Child live together for five years. During this time, Father tells others that he is Child's father. Because Father lived with Child continuously for two years and held himself out publicly as Child's father, Father is Child's presumed father (even if he is not listed on the child's birth certificate).

2. Acknowledged

Under Texas Family Code § 160.301, a man is the acknowledged father of a child if the man (1) claims to be the child's biological father, (2) signs an acknowledgment of paternity, and (3) properly files the acknowledgment with the state of Texas.

A man seeking to acknowledge his paternity can execute the acknowledgment of paternity in Texas, and Texas Family Code § 160.302 contains the specifications for a valid acknowledgment of paternity. Under Texas Family Code § 160.302, a valid acknowledgment of paternity must be in a record; and signed, or otherwise authenticated, under penalty of perjury by the mother and the man seeking to establish paternity. The acknowledgment must also include, for example:

- Whether the child has a presumed father and, if so, their identity;
- The results of any genetic testing or a statement that there was none;
- An acknowledgment that the equivalent of a judicial adjudication of the paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances.[110]

For the full list of requirements for acknowledgments of paternity under the Texas Family Code, please refer to 160.302.

It is important to note that Texas Family Code § 160.312 directs the vital statistics unit to "prescribe forms" for the acknowledgement of paternity to "facilitate compliance." As a result, the Texas Office of the Attorney General trains and certifies entities to assist parents to fill out and file the acknowledgment of paternity form as follows:

> (a) A man claiming to be the biological father and the mother may establish paternity before or after the birth of their child by voluntarily acknowledging paternity through a certified entity providing such services. The mother and father

[109] *Id.*
[110] *Id.* § 160.302.

must read the Acknowledgment of Paternity form. In addition, both must listen to or view a video presentation of the rights and responsibilities of a parent, and alternatives to and legal consequences of acknowledging or denying paternity. Both the mother and father, separately or together, must then complete an Acknowledgment of Paternity form with the assistance of the certified entity.

(b) Both mother and father must present to the certified entity a valid driver license or another document (preferably a photo I.D.) to verify identity.

(c) The certified entity is responsible for filing the Acknowledgment of Paternity form with the Texas Department of State Health Services, Vital Statistics Unit, and providing all signatories with a copy of the form.[111]

The Texas Office of the Attorney General will only accept an acknowledgement of paternity from one of the certified entities, so "both parents must work with an [acknowledgment of paternity]-certified entity" if they want to file an acknowledgment of paternity per the Texas Family Code.[112]

EXAMPLE: Mother and Father were in a relationship and separated before Child was born. Father is not listed on Child's birth certificate. Years later, Father decides he would like to be listed as Child's father on the birth certificate. Mother and Father work together to complete the Acknowledgement of Paternity with an AOP-certified entity. Father is now Child's acknowledged father.

A family court in Texas gives full faith and credit to an acknowledgment of paternity executed in another state and in compliance with the laws of that state.[113] This full faith and credit clause also extends to acknowledgments of paternity executed in other countries.[114]

Foreign countries often have similar provisions to the Texas Family Code relating to paternity, including laws pertaining to acknowledgments of paternity. CILA and Justice in Motion collaborated to provide foreign law affidavits that explain paternity laws in Honduras, Guatemala, and El Salvador. You can read more about our collaborative effort for expert affidavits in CILA's blog post, "CILA and Justice in Motion Collaborate on Expert Affidavits" (Dec. 3, 2020). Take a look at our expert affidavits from attorneys and family law experts in Honduras, Guatemala, and El Salvador to learn more about paternity laws and paternity affidavits in these countries and see if these will assist you in your case: "Honduras Paternity Affidavit Package" (Dec. 2020), "El Salvador Paternity Affidavit Package" (Dec. 2020), and "Guatemala Paternity Affidavit Package" (Dec. 2020).

3. Adjudicated

Under Texas Family Code § 160.102, an adjudicated father is a man who the court has determined and adjudicated to be the child's father. In Texas, common situations involving court adjudication of a child's parentage include when a stepparent adopts their stepchild or when a child's natural parentage is unclear and genetic testing then establishes paternity. When the court

[111] Tex. Admin. Code § 55.404.
[112] Tex. Att'y Gen., "Acknowledgment of Paternity (AOP)," available at https://www.texasattorneygeneral.gov/child-support/paternity/acknowledgment-paternity-aop.
[113] Tex. Fam. Code § 160.311.
[114] *Id.*

adjudicates a man as the child's father, the adjudicated father receives full parental rights to the child.

> EXAMPLE: Child and Mother live in Texas. Person Z alleges that they are Child's biological father—though this has not been previously confirmed by genetic testing, Person Z is not named on the child's birth certificate, and Person Z has never lived with the child. Person Z takes a genetic test, which confirms that they are Child's biological father. Person Z seeks to adjudicate parentage. Based on the genetic results, the court renders an order adjudicating that Person Z is Child's father.

4. Alleged

Under Texas Family Code § 101.0015, an alleged father is a man who may be the child's biological father, but his paternity has yet to be proven by a DNA paternity test. The alleged father may or may not be listed on the child's birth certificate as the child's father, but an alleged father was not married to the child's biological mother.

> EXAMPLE: Child and Mother are in Texas, initiating a SAPCR suit, and seeking to identify potential respondents to the SAPCR. Child does not have a father listed on their birth certificate. However, Mother alleges that Person X, a past partner, is Child's biological father. Person X has not denied that they are Child's father, but they have not taken a paternity test. Person X is Child's alleged father.

5. Unknown

The identity of a child's father may be completely unknown. While the Texas Family Code does not define an unknown father, Texas Family Code § 161.002 references situations where paternity cannot be established due to unknown identity and location of the child's father. In this situation, the petitioner can list "Unknown Father" as the respondent in the SAPCR.

> EXAMPLE: Child and Mother are in Texas, initiating a SAPCR suit, and seeking to identify potential respondents to the SAPCR. Child does not have a father listed on their birth certificate. Mother does not know who Child's biological father is. Mother does not know their name, their location, their contact information, or any additional information that could lead Mother to learn the identity of Child's biological father. Child's biological father is unknown.

C. Child Support

Texas Family Code § 151.001(a)(3) establishes that parents have a duty to support their children. Generally, in Texas, either parent can be ordered to pay child support for a child until the child turns age 18 or graduates from high school—whichever happens later.[115] Most judges require SAPCR orders to contain child support if there is personal jurisdiction over the respondent as an order for child support is deemed to be in the child's best interest. A suit for child support may also be filed independently. If seeking child support and no custody determination, for the order to be valid for SIJS purposes, a determination regarding dependency will also need to be made.

[115] Tex. Fam. Code § 154.001(a)(1).

i. Personal Jurisdiction Required for Child Support

Personal jurisdiction is necessary for a court to order a parent to pay child support.[116] According to the Texas Family Code § 154.001(a)(1), "[t]he court may order either or both parents to support a child." Section 101.024 defines "parent" as "the mother, a man presumed to be the father, a man legally determined to be the father, a man who has been adjudicated to be the father by a court of competent jurisdiction, a man who has acknowledged his paternity under applicable law, or an adoptive mother or father."

Requirements for personal jurisdiction can be found in the Texas Family Code § 160.604, which refers back to Texas Family Code § 159.201. Section 159.201 of the Texas Family Code provides the reasons why the court can exercise personal jurisdiction over a nonresident to establish a child support order.[117] The court may exercise personal jurisdiction over someone who is not a resident of or domiciled in Texas in several situations, including:

- the person was personally served in the state;
- the person submitted to the jurisdiction by consent or filing a waiver;
- the child resides in Texas due to the actions or directives of the individual;
- the individual resided with the child in Texas;
- the individual resided in this state and provided prenatal expenses or support for the child;
- the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- the individual asserted parentage of a child in the paternity registry maintained in this state by the vital statistics unit; or
- there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction. [118]

If the respondent is not in Texas, it might be easiest to obtain a waiver from them. Waivers are discussed in detail in Section VII.B. Whether the judge can order child support will depend on the specific facts in the case and whether the court can extend its long-arm jurisdiction over the respondent to establish personal jurisdiction.

ii. Age 18 and Older, in School

Under the Texas Family Code § 101.003, generally a child is a person under the age of 18; however, "[i]n the context of child support, 'child' includes a person over 18 years of age for whom a person may be obligated to pay child support." Moreover, the Texas Family Code provides that a court may order either parent to pay child support until the child is age 18 or graduates from high school, whichever occurs later.[119]

The Texas Family Code § 154.002 provides additional information for a child that receives child support through their high school graduation. The section states, "The court may render an original support order, or modify an existing one, providing child support past the 18th birthday of

[116] *Id.*§§ 160.604(a), 154.001(a); *see also Kulko v. Superior Ct. of Cal.*, 436 U.S. 84 (1978).
[117] Tex. Fam. Code § 159.201(a); *see also id.* § 102.011(b).
[118] *Id.*
[119] *Id.* § 154.001(a)(1).

the child" if the child is enrolled full time in an accredited secondary school for high school leading to a high school diploma.[120] The statute references the Education Code, so advocates must ensure that the school meets the requirements in the statute.

Notably, the request for a child support order through high school may be made while the child is under or over the age of 18.[121] This can be useful if you encounter a youth that is 18 or older, but still in school. The INA allows a youth to file an I-360 petition up to the age of 21. The conservatorship provisions of the Texas Family Code can only be used to determine the custody of a youth under the age of 18,[122] but obtaining an order using the child support provisions will allow an SIJS petition to be filed for a youth in school up to age 21.

There are some additional things to consider when bringing a standalone child support suit for an 18 and over youth still in school. As an initial matter, there must be a presumed, acknowledged, or adjudicated father in your case, otherwise the request for child support needs to be accompanied by a parentage adjudication. If you are able to bring a standalone child support suit, for non-disabled children, the standing provisions under Texas Family Code 102.003 should be followed. However, only a parent, managing conservator, or the Texas Attorney General can be an obligee for current child support. As with all SAPCR cases, the child has standing, and if they are now 18 there is no longer a requirement for an authorized representative, such as a next friend, to bring the suit on their behalf. It is also worthwhile noting that, as the necessity for a conservator stops when the child turns 18, you cannot ask for someone to be appointed conservator in a child support suit for an 18 and over youth still in school. Therefore, the petition and order for your 18 and over child support suit should include language about dependency to fulfill USCIS's requirements.

PRACTICE TIP: Including child support in a Texas state court order can benefit youth over age 18, since there is a mechanism to seek child support for a youth who is over age 18 and still in high school. This may help advocates make arguments to USCIS in a SIJS petition cover letter or in a response to a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) that based on state court law, the youth is still a "child" and that the court has continuing jurisdiction over the "child" for child support purposes.

This non-exhaustive list includes non-precedent decisions from the AAO on this issue:

- In Re: 6221893 (AAO Apr. 24, 2020).
- In Re: 4839829 (AAO May 28, 2020).
- In Re: 739572 (AAO June 1, 2020).
- In Re: 11882420 (AAO Apr. 16, 2021).

iii. Determining Child Support Amount

Child support is usually determined based on an individual's income and resources. Texas Family Code §§ 154.061, *et seq.* sets forth how to calculate the net resources of the parent potentially being ordered to pay child support. These calculations take into account things like taxes, union

[120] *Id.* § 154.002.
[121] *Id.* § 154.002(b).
[122] *Id.* § 101.003.

dues, medical insurance, and nondiscretionary retirement plan contributions.[123] The Texas Family Code requires a party to produce documents to determine the parent's resources so child support can be calculated, including income tax returns, a financial statement, and current pay stubs.[124] Texas Family Code § 154.0655(c) also states without evidence of the obligor's resources, the court can consider other relevant background circumstances including their residence, employment, job skills, literacy, barriers to employment, job opportunities in their community, and the prevailing wage in their community—to name a few of the specific factors listed.

However, in many cases, it may be difficult to obtain evidence regarding the respondent's income or resources. Therefore, it may be necessary to rely on the wage and salary presumptions in Texas Family Code § 154.068. Section 154.068(a) states:

> In the absence of evidence of a party's resources, as defined by Section 154.062(b), the court shall presume that the party has income equal to the federal minimum wage for a 40-hour week to which the support guidelines may be applied.

Poverty guidelines are updated periodically in the Federal Register by HHS.[125] Practically, this provision is frequently used by advocates in SIJS cases.

The Texas Family Code includes charts in § 154 to guide child support calculations based on the respondent's resources.[126] These guidelines consider if the obligor's monthly net resources is currently lower than $9,200, lower than $1,000, or exceeds $9,200.[127] It is important to know that a judge can deviate from the general child support guidelines if the evidence rebuts the presumption that using the guidelines is in the best interest of the child.[128] The Texas Family Code lists many factors that should be considered in determining whether using the guidelines is unjust or inappropriate in the child's particular circumstances.[129] For example, factors include the age and needs of the child, the parents' ability to financially contribute, and the amount of time of possession of and access to the child, to name a few factors that are listed.[130]

Additionally, along with issuing a child support order, judges will issue an order for medical and dental support in accordance with Texas Family Code § 154.181 and 154.182.

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[123] *Id.* § 154.062.
[124] *Id.* § 154.063.
[125] *See* Annual Update of the HHS Poverty Guidelines, 80 Fed. Reg. 3424 (Jan. 19, 2023), available at https://www.federalregister.gov/documents/2023/01/19/2023-00885/annual-update-of-the-hhs-poverty-guidelines.
[126] *See* Tex. Fam. Code §§ 154.125, 154.129.
[127] *Id.* § 154.125; *see also* Announcement of Adjustment Required by Texas Family Code § 154.125, Tex. Reg., TRD-201902012 (June 29, 2019), available at https://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=R&app=9&p_dir=&p_rloc=364552&p_tloc=&p_ploc=&pg=1&p_reg=364552&ti=&pt=&ch=&rl=&issue=07/12/2019&z_chk=4025719.
[128] Tex. Fam. Code § 154.123(a).
[129] *Id.* § 154.123(b).
[130] *Id.*

PRACTICE TIP: Be aware of how child support issues are viewed locally and by the judge you will appear before in your client's case. Talk to other local practitioners to learn about the judge's approach to child support issues and their expectations, so you are prepared.

D. Termination of Parental Rights and Adoption

SAPCRs also include suits to terminate parental rights[131] and for adoption.[132] Termination of parental rights can be voluntary or involuntary and another person or governmental entity can seek to terminate parental rights, or the parent can file a suit to terminate his or her own rights. Termination and adoption actions are often brought together because the court must terminate parental rights before an adoption can be granted and because courts are often reluctant to terminate parental rights without being able to appoint someone else to take over parental rights and duties. But a termination suit without an accompanying request for adoption may arise when, for instance, DFPS seeks to terminate parental rights.

When seeking SIJS determinations, termination may be considered in cases involving parental abuse of the child or if the father is unknown. It is also possible to terminate the rights of an alleged father without service or citation by publication if their location and identity are unknown after the petitioner's exercise of due diligence.[133] Consider as well that Texas Family Code § 161.002 may be pled as an alternative remedy: The petitioner requests that someone be adjudicated the father of the child or, in the alternative, that the rights of an unknown father be terminated based on a determination of abuse, neglect, or abandonment. Most termination cases involving an alleged or unknown father also include a request for adoption. Without an accompanying request for adoption, termination is considered an extreme remedy that many judges are particularly reluctant to grant when the known or unknown parent(s) reside(s) in a foreign country.

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[131] *Id.* §§ 161.001 *et seq.*

[132] *Id.* §§ 162.001 *et seq.*

[133] *Id.* §§ 161.002(b)(2), (c-1). Note that service may be required if the father's identity is discovered during the proceedings. *In re J.M.*, 387 S.W.3d 865, 872 (Tex. App.—San Antonio 2012, no pet.) ("[S]ubsection (b)(2) does not authorize an order terminating the parental rights of an alleged father when his identity and location are known to the Department at the time of the final hearing and order."); *In Interest of P. RJ E.*, 499 S.W.3d 571, 576 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) ("If the Department knows the alleged father's identity and location, names him in the lawsuit, and obtains a judgment against him, due process requires it to obtain personal service on him."). A father who later becomes known may also be able to challenge the termination order. *See, e.g.*, *Interest of S.W.*, No. 02-20-00160-CV, 2021 WL 4783153, at *5 (Tex. App.—Fort Worth Oct. 14, 2021, no pet.) (reversing denial of a bill of review in a conservatorship case involving a trial court order terminating parental rights of an unknown father and a man later coming forward and claiming to be the father).

EXAMPLE 1: A child fled an abusive father in Honduras and joined his mother and her new husband in the United States. The mother and stepfather can file a SAPCR seeking to terminate the abusive father's parental rights and to have the stepfather adopt the child.

EXAMPLE 2: A child lives with her aunt in Texas; her mother has died, and she never met her father. Her aunt may bring an action under Texas Family Code § 161.002(c-1) to terminate the parental rights of the child's unknown father and in the same petition seek to adopt the child under Texas Family Code § 162.001.

To terminate parental rights, the court must find by clear and convincing evidence that (1) one of the grounds in Texas Family Code § 161.001 for terminating the parental relationship exist,[134] and (2) the termination is in the best interest of the child.[135] Some of the grounds for termination that may be applicable in SIJS cases are discussed above in the sections on Texas law related to abuse, neglect, and abandonment. Section IV.C and Section VI.A provide additional information on how to determine the best interest of the child.

Texas Family Code § 162.001, *et seq.*, sets forth the requirements for petitioning to adopt a child, and they may vary depending on the petitioner's relationship to the child and marital status. Review these sections closely to ensure that all requirements are being met if the petitioner is seeking an adoption in connection with terminating parental rights.

Ad litem: Unlike conservatorship cases, in termination cases the court must appoint an attorney ad litem or amicus attorney for the child, unless it finds that the interests of the child are adequately represented by another party whose interests do not conflict with the interests of the child.[136] By contrast, the appointment of an attorney ad litem is discretionary in conservatorships or other proceedings affecting the best interest of the child.[137]

PRACTICE TIP: Before bringing a termination suit, develop a plan for who could serve as an attorney ad litem for the child and include a request for the court to appoint that person in the petition.

E. Modifying a Prior Order

If there has been a prior domestic conservatorship, possession, or child support order concerning the youth you are working with, and that order does not include the determinations that USCIS requires to approve an SIJS petition, you will need to modify that order to meet the requirements for SIJS. You will need to show that one of the grounds to modify the order described below apply in the case. Given that seeking to modify a prior order is essentially a new lawsuit, many of the other elements of a SAPCR case discussed in this manual will also need to be addressed in a suit for modification. The petition must demonstrate the petitioner has standing. For modifications, this means the petitioner can be someone who was a party to the prior SAPCR and was "affected by"

[134] Tex. Fam. Code § 161.001.
[135] *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002) (explaining that "there are two prerequisites for termination of parental rights under section 161.011 of the Texas Family Code").
[136] Tex. Fam. Code § 107.021(a-1).
[137] *Id.* § 107.021(a).

the order from that suit, or they can also be anyone who would have standing to bring an original SAPCR suit.[138] Interested parties must also be given notice of the modification suit, which requires service of citation.[139] In addition, the petitioner will need to establish jurisdiction.

i. Jurisdiction to Modify

In order for a court to modify an existing order, it first must have continuing, exclusive jurisdiction over the matter.[140] Below are suggestions to keep in mind depending on whether you are working with an order issued in Texas, or one issued in another state or country.

Texas Orders: If the youth and their conservator are living in the same county where they lived when the prior order was issued, you should file a suit to modify the order[141] with the same court that issued the order, which has continuing, exclusive jurisdiction over the case. However, if the youth has moved counties within Texas, the modification must be filed with the original court that issued the order. Then a motion may be filed with that court asking for a transfer to the county where the youth now resides.[142] If the prior order was obtained in another state, under Texas Family Code §§ 156.001 and 152.201(a), a similar procedure would be followed as discussed below for a foreign order.

Foreign Orders: If there is an order from another country concerning the custody of a child, it is important to acknowledge and act in accordance with the UCCJEA regarding the foreign order. According to Texas Family Code § 152.105, a "foreign country" will be treated the same as another state in the United States for purposes of the UCCJEA. As long as the custody order from the other country was issued under law and circumstances similar to those in Texas, that order will be recognized and enforceable.[143] This means that the parties to the custody proceeding in the other country received proper notice of the suit and all other jurisdictional requirements were met. However, the Texas court does not need to recognize the custody order if the "child custody law of a foreign country violates fundamental principles of human rights."[144]

Under Texas Family Code § 152.203, also requires the court in the foreign country to determine it no longer has continuing, exclusive jurisdiction, that Texas is a more convenient forum, or for the Texas court to determine "that the child, the child's parents, and any person acting as a parent do not presently reside in the other [country]." Securing confirmation that the foreign court is willing to relinquish jurisdiction of a custody case can be challenging. Practically speaking, judges from different states in the United States may set up a meeting or call to discuss the most convenient forum when jurisdictional issues arise in the United States. However, this is difficult to do with a court in another country, where the court most likely operates using a different language. There is

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[138] *Id.* § 156.002.
[139] *Id.* § 156.003.
[140] *Id.* § 156.001.
[141] Many Texas practitioners refer to this as a "Motion to Modify" but you are actually initiating a new suit when asking for a modification. *See Hudson v. Markum*, 931 S.W.2d 336, 338 n.5 (Tex.App.—Dallas 1996, no writ).
[142] Tex. Fam. Code § 155.201(b). The child needs to have resided in the new county for six (6) months or longer. *Id.* Section 155.203 lays out how the court should calculate the six months. The procedure the court should follow is outlined in Texas Family Code §155.204.
[143] Tex. Fam. Code § 152.105(b).
[144] *Id.* § 152.105(c).

some helpful case law suggesting that if contacting the other court is not feasible or if the original court does not respond, the Texas court is still able to move forward.[145]

PRACTICE TIP: Make sure to review a copy of any document that the client refers to as a prior order before deciding how to proceed with filing the SAPCR. Some clients may believe they have a prior foreign order, but the document was actually signed before a notary and not a judge. The notarized documents may in fact be "cartas de poder" ("powers of attorney") and will not be treated as foreign orders in Texas courts.

ii. Grounds for Modification

Modifications to existing orders are governed by Chapter 156 of the Texas Family Code, which applies to both conservatorship and possession orders and child support orders.[146] To modify an order for conservatorship and/or possession, the petitioner must show that the modification is in the best interest of the child and that one of the grounds for modification is satisfied. The grounds for modification include:

- "[T]he circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since" the original order was issued.[147]
- The youth is 12 or older "and has expressed to the court in chambers as provided by Section 153.009" the desire to change "the person who is the child's preference to have the exclusive right to designate the primary residence of the child."[148]
- "[T]he conservator who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child to another person for at least six months."[149]
- There are also provisions that take into account when a conservator has been convicted of child abuse or family violence or when a conservator dies.[150]

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[145] For instance, in *In the Interest of T.B. and A.B.*, the trial court applied the two-prong UCCJEA test and determined that Texas was a more appropriate forum than the Florida court that issued a prior custody order. 497 S.W.3d 640, 644-49 (Tex. App.—Ft. Worth 2016, pet. denied). However, the father fighting the Texas court's exercise of jurisdiction argued that the Texas court still could not hear the mother's SAPCR because the Florida court did not sign a written order declining to exercise jurisdiction or agreeing that Texas was a more appropriate forum. *Id.* at 649-50. The Florida court did not respond for over six months to the parties or the Texas court, and the father's motion to exercise jurisdiction remained pending for over a year. *Id.* at 650. Based on these "unique facts," the Texas appellate court held that there was "an implied determination by the Florida court to decline to exercise its home-state jurisdiction and an implied determination by the Florida court that Texas is a more convenient forum for litigation of Mother's modification SAPCR," and thus the case was distinguishable from others in which a court had entered orders implying or expressly stating that it intended to exercise continuing jurisdiction. *Id.* at 650-51.

[146] Suits to modify support orders are somewhat outside of the scope of this manual. More details can be found in Subchapter E of Chapter 156 of the Texas Family Code.

[147] Tex. Fam. Code § 156.101(a)(1).

[148] *Id.* § 156.101(a)(2).

[149] *Id.* § 156.101(a)(3).

[150] *See id.* §§ 156.104, 156.1045, 156.106.

With regard to seeking modification based on a material and substantial change under Texas Family Code § 156.101(a)(1), Texas family courts have determined that "[w]hether a material and substantial change occurred is a question of fact. This fact specific determination is not controlled by a set of rigid guidelines, but instead, is made according to the circumstances as they arise."[151] It is also important to make sure that those circumstances were not present or foreseeable when the original conservatorship or possession order was issued.[152]

PRACTICE TIP: There is Texas case law discussing what is and is not a material and substantial change for modification purposes. Search for case law that analyzes circumstances similar to the circumstances in your case.

VII. Service

In Texas, service of process is defined as the "formal delivery of a writ, summons, or other legal process or notice."[153] Service of process is a civil procedure requirement. To sue a respondent, the petitioner must serve the respondent and ensure that service was performed correctly and in accordance with the law. In Texas, it is required that the respondent receive notice of the suit against them, as the respondent needs notice to possibly secure legal representation, prepare for court, and/or prepare a defense to the suit. The citation is legal notice to each person that the case has been filed, and the petitioner is responsible for serving the citation on all necessary persons.[154]

In legal films and television, the media often depicts service of process as a simple "you have been served" moment, where an often confused and bewildered respondent receives notice that they are being sued. However, service of process is not that simple. There are nuances to ensuring that service of process occurs in compliance with the law, and there are also different methods for achieving service of process—especially in situations where the whereabouts or identity of the respondent are unknown.

This section will go over the different methods of serving the respondent(s) in a SAPCR, including instances in which the respondent is located abroad. View the BRR Inns of Court resource "How To Serve the Respondent Successfully (Decision Tree)" (Mar. 2019) posted on CILA's *Additional Resources* webpage for more information on conducting service and to help you determine options for service. For password information, contact CILA at cila@abacila.org.

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[151] *Nellis v. Haynie*, 596 S.W.3d 920, 925–26 (Tex. App.—Houston [1st Dist.] 2020, no pet.) (internal citations and quotation marks omitted); *see also Epps v. Deboise*, 537 S.W.3d 238, 243 (Tex. App.—Houston [1st Dist.] 2017, no pet.) ("Determination of a substantial and material change is not controlled by a set of guidelines; instead, it is fact specific."); *Lenz v. Lenz*, 79 S.W.3d 10, 19 (Tex. 2002) (stating that SAPCRs "are intensely fact driven").

[152] Tex. Fam. Code § 156.101(a)(1); *see, e.g.*, *Epps v. Deboise*, 537 S.W.3d 238, 246 (Tex.App.—Houston [1st Dist.] 2017, no pet.); *In re J.R.P.*, 526 S.W.3d 770, 779 (Tex.App.—Houston [14th Dist.] 2017, no pet.).

[153] *See* Form 2401, Service of Process Forwarding Request, Tex. Sec'y of State (rev. Jan. 2023), available at https://www.sos.state.tx.us/statdoc/forms/2401.pdf (citing Black's Law Dictionary).

[154] *See* Tex. R. Civ. P. 99.

A. Who to Serve

Understanding who must be served is as important as understanding how to effectuate service. Under Texas Family Code § 102.009(a), the citation must be served on (or a waiver of citation must be obtained from) a number of individuals, including, but not limited to, any:

- Presumed, acknowledged, and/or adjudicated parent (unless their parental rights have been terminated);
- Alleged or unknown father (unless certain conditions set forth in the code are met);
- Person required by law or court order to provide support for the child;
- Person having possession of or access to the child under a court order;
- Man who has filed intent to claim paternity;
- Prospective adoptive parent;
- Guardian of the child's person or estate; and/or
- Previously appointed managing conservator or possessory conservator (these terms are explained in Section VI.A on conservatorships),

Parents, alleged fathers, and unknown fathers are the persons most likely to be parties to a suit and require service of citation. After identifying the necessary parties, determine how you are going to effectuate service for each person using one of the options discussed in Section VII.

B. Waiver of Service of Citation

The Texas Rules of Civil Procedure allow for the service of citation to be waived by the "defendant" in any civil suit.[155] While Texas Rule of Civil Procedure 119 lists some conditions, the requirements in Texas Family Code § 102.0091 are controlling for SAPCRs per Texas Family Code § 102.0091(e). A waiver of citation cannot be executed before the SAPCR petition is filed with the court. The respondent, or other person entitled to citation under § 102.009, must be provided with a copy of the petition filed. If the individual's best language is not English, a translation of the petition may be needed as well. The waiver must include an acknowledgement of receipt of the petition, and must contain the full and complete address, phone number, and form of identification and identification number of the person executing the waiver.[156] The waiver itself must be signed in front of a notary and cannot be a digital signature. Most courts, however, will allow the petitioner to electronically file a scanned copy of the document with the original signature.[157]

The waiver document that the respondent will sign in front of a notary should be in the respondent's best language, so that they know what they are signing. This will be translated back into English for submission to the court after it is signed. Alternatively, the respondent can sign both versions of the waiver (in English and in their best language if it is not English).

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[155] Tex. R. Civ. P. 119. The TRCP uses the term defendant, but in family law matters this person or persons is referred to as the "respondent(s)."
[156] Tex. Fam. Code §§ 102.0091(a), (c).
[157] *Id.* §§ 102.0091(b), (d).

PRACTICE TIP: Waivers can be very helpful tools in the litigation process but beware of common mistakes to avoid. First, make sure the waiver is signed after the petition is filed and accepted by the district or county clerk. The waiver will be rejected if it is executed too early. Second, make sure the waiver includes all the necessary information. For addresses in foreign countries, include as much detail as possible, such as the respondent's neighborhood, town, department, and/or country. The court may reject a waiver that is too vague and simply lists the name of the town or name of the country in place of an address.

C. Service of Process in a Foreign Country

A common issue that arises in SIJS cases is that the respondent lives in a foreign country. The respondent will need to be served in accordance with one of the service options listed in the Texas Rules of Civil Procedure. For the reasons explained below, the available methods of service are typically the same as the methods of service for a respondent living in the United States. These are discussed in more detail below. However, you will need to determine if the respondent lives in a country that is a signatory to the Hague Service Convention because that can complicate service, as explained in this section. El Salvador, Guatemala, and Honduras are not signatories to the Hague Service Convention, but other countries like Mexico and Venezuela are.

Service under the Texas Rules of Civil Procedure: Texas Rule of Civil Procedure 108a(a) lists the options for how to serve a respondent in a foreign country. Those options include "any manner provided by Tex. R. Civ. Pro. 106(a)." The traditional methods of service—hand delivery to the respondent or by certified mail, return receipt requested—are likely to be the easiest way to serve the respondent if their location is known. These are described in more detail in Section VII.D. Substituted service methods described in Section VII.F may be the best option if the respondent's location is unknown or the respondent does not accept service by hand-delivery or certified mail. Keep in mind that you will need to file a motion and obtain the court's permission before attempting substituted service. Texas Rule of Civil Procedure 108a(a) emphasizes that whatever method of service is used should give actual notice of the proceedings to the respondent living in a foreign country with enough time for them to answer the petition. Note that a respondent living abroad can also execute a waiver of service using the process described in Section VII.A above.

Other options for service in a foreign country include any method "prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction," as directed by a foreign authority in response to a letter rogatory, "pursuant to the terms and provisions of any applicable international agreement," or "by other means not prohibited by international agreement or the foreign country's law, as the court orders."[158] These methods of service tend to be more complicated processes that involve foreign courts or authorities. For instance, a letter rogatory involves asking the Texas court to issue a letter addressed to a court in the foreign country where the respondent resides that seeks the foreign court's assistance with effecting service on the respondent.[159] The letters rogatory process is only available if the respondent lives in a country that has signed the Inter-American Convention on Letters

[158] Tex. R. Civ. P. 108a(a)(1), (3)-(6).
[159] The website for the U.S. Department of State, Bureau of Consular Affairs contains additional information on the "Preparation of Letters Rogatory," available at https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/obtaining-evidence/Preparation-Letters-Rogatory.html.

Rogatory.[160] Only when a country has signed the Additional Protocol does a treaty relationship exist.[161] Note that although available, the process is not required just because the respondent lives in a country that is a signatory to this treaty. The Fifth Circuit has made clear that "the Inter–American Convention on Letters Rogatory does not foreclose other methods of service among parties residing in different signatory nations, if otherwise proper and efficacious."[162]

Service under the Hague Service Convention: Service becomes more complicated if the respondent lives in a country that is a signatory to the Hague Service Convention.[163] However, the Hague Service Convention applies only if the respondent's location is known.[164] The list of signatory countries is subject to change, so be sure to review the most up to date information. As of December 2022, signatory countries include Mexico, Brazil, Canada, Nicaragua, and Venezuela. The Hague Convention maintains a website entitled "14: Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters" that should have a full list of signatory countries.

If the respondent lives in a country that is a signatory to the Hague Service Convention and their location is known, you must complete service in accordance with the Hague Service Convention. Importantly, it is still possible for a respondent to waive service of process, and a waiver is likely to be your best option because the process for service under the Hague Service Convention is complicated and time consuming. If the respondent does not waive service, then service under the Hague Service Convention generally involves completing an official Request for Service Abroad form and sending it to the designated Central Authority for processing, along with certified and translated copies of the petition and the citation.[165] Guidelines are available online. The process of submitting the request and waiting for a response can take a long time and may involve additional steps.

Resources: The practice tip below contains resources and organizations that may be able to assist with service of process in a foreign country. In addition, CILA's "Highlight on Resources and Services to Support Pro Bono Attorneys" (Apr. 15, 2021) provides information on organizations that can assist attorneys with service in foreign countries. The websites of U.S. embassies and

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[160] The Organization of American States posts lists of signatories to the Inter-American Convention on Letters Rogatory and Additional Protocol, available at https://www.oas.org/juridico/english/treaties/b-36.html, and https://www.oas.org/juridico/english/sigs/b-46.html.

[161] Additional information is available online at U.S. Department of State, Bureau of Consular Affairs, "Inter-American Service Convention and Additional Protocol," available at https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Service-of-Process/Inter-American-Service-Convention-Additional-Protocol.html.

[162] *Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 647 (5th Cir. 1994).

[163] The "Hague Service Convention" is being used as shorthand for the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, which was established in 1965 with the goal to create a uniform process for service of process among signatory countries.

[164] Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, art. 1, Nov. 15, 1965, 20 U.S.T. 361 ("This Convention shall not apply where the address of the person to be served with the document is not known.").

[165] The Hague Conference's website makes available a list of the Central Authorities at https://www.hcch.net/en/instruments/conventions/authorities1/?cid=17.

consulates overseas may also provide information about foreign attorneys who have expressed a willingness to assist U.S. clients.

PRACTICE TIP: Service of process in another country can be time consuming and difficult to navigate, especially due to difficulties in identifying exact addresses and untangling the rules and laws of foreign countries. Luckily, there are organizations who can help. The organizations may be able to assist with obtaining waivers, translating documents, interpretation, notarization, mailing service returns or other legal documents, and hand-delivery of service.

Justice in Motion (a New York-based organization) connects attorneys with their network of defenders in Mexico, Guatemala, El Salvador, Nicaragua, and Honduras. These defenders are professionals who can help with service, and other issues that may arise with obtaining signatures, requesting public records, finding evidence, or investigating claims. Justice in Motion's services are performed at a fee that covers the defenders' time and associated costs, such as travel. For more information, visit Justice in Motion's website www.justiceinmotion.org or contact legalaction@justiceinmotion.org.

Keep Families Together, an initiative of the Cyrus R. Vance Center for International Justice, is a free international resource that provides various services to immigration providers worldwide. Their services include drafting statements and affidavits, facilitating DNA tests to establish parentage, serving respondents with legal documents, requesting records, and finding expert testimony to assist with foreign family law matters. To learn more about Keep Families Together, visit https://www.vancecenter.org/keep-families-together/.

D. Traditional Methods of Service

Generally, when an original petition is filed in court under the Texas Family Code, service of citation should be completed according to the Texas Rules of Civil Procedure.[166] Texas Rule of Civil Procedure 106 describes how the service of citation must be served. There are two different methods of service of citation: (1) personal service or (2) service by registered or certified mail.

PRACTICE TIP: Both of these service methods require that the petitioner know the identity and location of the respondent with sufficient accuracy that they can be found either by the individual attempting service in person or by the mail carrier. For domestic cases, many practitioners use process servers to effectuate service in these instances.

If choosing personal service, the petitioner must have a copy of the citation, with the date of delivery, and a copy of the petition delivered to the respondent in person.[167] The petitioner or their attorney can request a copy of the citation, and some county or district clerks provide online forms like this one from Harris County to e-file the request for issuance of citation. However, neither the attorney, petitioner, nor anyone else with an interest in the case can effectuate this in-person service.[168] When requesting a copy of the citation, you may be asked to indicate the type of service and where the clerk should send copies of the citation.

[166] Tex. Fam. Code § 102.009(c).
[167] Tex. R. Civ. P. 106(a)(1).
[168] *Id.* 103.

When using registered or certified mail, the same documents should be sent to the respondent's mailing address by registered or certified mail with return receipt requested.[169] If the location of the respondent is known, serving via personal service may be preferred. Some practitioners have reported judicial reluctance to accept the return receipt of the registered or certified mail as proof of service. If this happens, be sure to preserve the issue for appeal as proper service via certified or registered mail should be accepted pursuant to Texas Rule of Civil Procedure 106.

E. Working with Process Servers

Texas Rule of Civil Procedure 103 indicates that citation can be "served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court." The Texas Supreme Court has tasked the Judicial Branch Certification Commission (JBCC) with the certification of process servers in Texas. To become a process server in Texas, one must complete a civil process service educational course, submit an application for the certification, pay a fee of $200, and pass a criminal history background check with Texas DPS and the FBI.[170]

In general, a private process server will deliver to the respondent in person the initial court papers, complete a Return of Service form that indicates when and where the respondent was served, and then file the Return of Service with the court as proof the respondent was served. The process server normally needs to hand the citation to the respondent, but if the individual refuses to take the papers, there are limited circumstances under which the citation can be left.[171] Should the process server be unsuccessful in serving the citation, they should file a return with the court in the form of an affidavit detailing their attempts at service and why it failed. This affidavit can be used in a request for substituted service.

The JBCC has an online system for certifications that can be searched to find a list of certified process servers.[172] A brief survey of Texas process servers on Google indicates that prices for process servers vary, but for a straightforward service of citation with up to 4 attempts to serve process, servers charge from $85 to $100.

F. Substituted Service

Substituted service under Texas Rule of Civil Procedure Rule 106(b) is a process by which the court allows the petitioner to serve the respondent using alternate means, such as social media or email.

A request for substituted service must be made by written motion and supported with a sworn statement that explains any known location of the respondent and any attempts to serve the

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[169] *Id.* 106(a)(2).
[170] Initial Certification, Process Server Certification, Judicial Branch Certification Commission (JBCC) (last updated Feb. 22, 2023), available at https://www.txcourts.gov/jbcc/process-server-certification/initial-certification/.
[171] *See* State of Texas Judicial Branch Certification Commission Process Servers Certification Curriculum, available at https://www.txcourts.gov/media/1083873/Final-JBCC-Standardized-Process-Server-Curriculum-August-7-2015.pdf.
[172] Process Server Certifications, Judicial Branch Certification Committee (JBCC), available at https://www.txcourts.gov/jbcc/process-server-certification/frequently-asked-questions/.

respondent using one of the traditional methods of service under Texas Rule of Civil Procedure 106(a). *See* Section VII.D. Unsuccessful service attempts can involve being unable to deliver the documents to a known location or the respondent refusing to provide their physical address and the petitioner is otherwise unable to locate it after a diligent search.

In these circumstances, Texas Rule of Civil Procedure Rule 106(b)(1) recognizes that the court can authorize substitute service by "leaving a copy of the citation and of the petition with anyone older than sixteen at the location specified in the statement." Rule 106(b)(2) also gives the court broad discretion to authorize other methods of service including "electronically by social media, email, or other technology." Service by social media means a respondent could be served through WhatsApp, Facebook, Instagram, Twitter, or LinkedIn.[173] The key is whether the method of service will be "reasonably effective to give the defendant notice of the suit."[174] The court will ultimately decide whether to allow substituted service based on the facts and circumstances of a particular case. Note that you cannot serve someone using substituted service without express court authorization.

EXAMPLE: Child's father, Respondent, lives in Honduras. Attorney represents Child's grandmother, Petitioner in the SAPCR. Petitioner reached out to Respondent via social media and asked about signing the waiver and providing his address. Respondent acknowledged the messages but refused to sign the waiver or provide an address. Petitioner contacted family members and persons who might know Respondent. None of them could provide Respondent's address. Attorney could not find Respondent's address after conducting a diligent search of available databases. Because Respondent is unwilling to provide his address, and it cannot be located after a diligent search, Attorney decides to pursue service via social media since they have evidence that Respondent owns an account and actively uses it.

Attorney files a motion for service by social media under Rule 106(b) with exhibits containing the necessary evidence and a proposed order granting the requested relief. The exhibits attached to this motion include an affidavit from Petitioner that documents the Petitioner's request for Respondent's address and his refusal to provide it and also lists Respondent's username on social media and describes how they contacted Respondent for years through this account and that the account is still active. The court grants the motion and allows service to move forward via social media. Attorney obtains the signed order and requests service from the constable, who effectuates service and files the return of service with the court.

You can be creative when crafting the request for substitute service. A court will likely be more receptive to requests that have more assurances that the respondent will receive proper notice, such as by contacting them on multiple platforms. The motion for substituted service should clearly explain how the proposed service by social media or other means will give the respondent adequate notice and attach evidence supporting the request. The evidence can be declarations, copies of communications, or other documents demonstrating that the respondent owns the relevant accounts and actively uses them.

[173] Texas Rule of Civil Procedure 106 was recently revised to include references to social media. The revisions conform to Texas Civil Practice and Remedies Code § 17.033, which also recognizes substituted service through social media presence.
[174] Tex. R. Civ. Proc. 106(b)(2).

If the court grants the motion for service by social media, the attorney and petitioner do not serve citation upon the respondent. Rather, the court orders an authorized person, such as a process server or constable, to serve the respondent. After completing service, the authorized person must submit a certificate of service, and the petitioner should ensure this gets filed with the court.

PRACTICE TIP: Service by social media and email are relatively new concepts in Texas. With that in mind, a judge may be hesitant to grant a motion for service by social media or email, especially if it is not accompanied by sufficient evidence that the social media account or email address belongs to the respondent and is active. The judge may instead request that you attempt to serve the respondent in another way.

For more information about service by social media, please visit CILA's blog post, "Service of Citation by Social Media" (July 9, 2021), which discusses service by social media in Texas and nationwide.

G. Citation by Publication

Citation by publication is a form of service where, until recently, an advertisement was placed in a local newspaper to give notice to a respondent that their rights are at stake. Recent amendments (Senate Bill 891) now require a posting on the Public Information Internet Website in every case where citation by publication is necessary, sometimes in conjunction with publication in a newspaper. Citation by publication is a last resort in custody suits and should only be used after diligent efforts to locate the respondent or any other party subject to the suit.[175]

i. When to Seek Citation by Publication

As the attorney, you should gather as much information as possible about the identification and whereabouts of a respondent you are required to serve. If you know the location and identity of the party, you must attempt to follow the regular rules of service of citation by locating and personally serving them or following the rules of substituted service and/or the Hague Convention or other rules of international service. If attempts to serve the party through the traditional mechanisms fail, you may file a Petitioner's Motion for Service of Citation by Publication pursuant to Texas Rule of Civil Procedure 106(b).

Alternatively, if after a diligent search the identity and/or address of the residence of a respondent is unknown, you can proceed with citation by publication pursuant to Texas Rule of Civil Procedure 109 by making a request directly with the district clerk which includes an affidavit by "a party to the suit, his agent or attorney." Practitioners have utilized a due diligence affidavit from the attorney, a non-attorney acting as authorized representative, or an adult party indicating, in accordance with the rule, that the residence of the respondent is unknown, that the respondent is a transient person, that due diligence has not led to the location of the party, in addition to other assertions required by the rule. Some practitioners have provided a due diligence affidavit from the child that is the subject of the suit. Citation by publication of an unknown person (if the identity of the child's father is unknown, for example) is also authorized in a country otherwise

[175] *See id.*; *see also In re E.R.*, 385 S.W.3d 552, 555 (Tex. 2012) (citation by publication was unjustifiable in termination suit where state knew the mother's identity, was in regular contact with her, and had at least one in-person meeting with her after it sued to terminate the legal rights to her children).

subject to the Hague Service Convention.[176] Although a court order is not required for service by publication under Rule 109, the judge will ultimately decide whether the search was diligent enough at the final hearing. For this reason, some courts may have a local rule requiring a motion and order for citation by publication to avoid a party incurring the cost of publishing a citation only to ultimately be told that diligence is lacking.

ii. How to Seek Citation by Publication

A Petitioner's Motion to Request Service of Citation by Publication should be accompanied by an Affidavit for Citation by Publication (typically from the petitioner) and an Order on Petitioner's Motion for Service of Citation by Publication. [177] Depending on the county, you will also need to prepare a Civil Process Request Form or a letter to indicate you are requesting service by publication and the publication/manner in which you wish to publish. For citation by publication in a newspaper, you should ensure that a copy of the SAPCR petition is attached by selecting it as a service "add-on."

When seeking citation by publication, it is important to consider where it is appropriate to publish. Texas Rule of Civil Procedure 116 provides for publication in both a newspaper and on the Public Information website, except when certain circumstances apply. These circumstances relate to having a Statement of Inability to Afford Payment of Court Costs filed, the cost of the publication exceeding a certain amount, or the fact that the county in which publication is required does not have "any newspaper published, printed, or generally circulated in the county." If any of these circumstances is present, newspaper publication is not required.

In the absence of any of these circumstances, citation must be served by publication in a newspaper and on the Public Information Internet Website pursuant to Texas Rule of Civil Procedure 116(b)(1). This is confirmed in Texas Family Code § 102.010:

> (a)…citation may be served to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown by publication on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation published in the county in which the petition was filed.

In addition, on the issue of selecting an appropriate newspaper, Texas Rule of Civil Procedure 116(c)(3) provides that suits that do not involve the title to land or the partition of real estate must be published in the county where the suit is pending. However, because Texas Rule of Civil Procedure 108a(a) requires service in foreign countries to be "reasonably calculated, under all of the circumstances, to give actual notice of the proceedings to the defendant," some judges may require publication in a newspaper abroad.

Public Information Internet Website Publication Mechanics: For posting a citation on the Public Information Internet website, attorneys must coordinate with the district clerk. Only a clerk or other authorized user may post the citation. The clerk may charge a posting fee but should not

[176] *See* Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, art. 1, Nov. 15, 1965, 20 U.S.T. 361 ("This Convention shall not apply where the address of the person to be served with the document is not known.").
[177] *See* Tex R. Civ. Proc. 106(b)(2).

charge a second issuance fee if an issuance fee has already been charged for preparing a citation for publication in a newspaper. For more information, see the Texas courts' FAQ.

When a citation is entered into the system, it immediately appears for viewing by the public at https://topics.txcourts.gov/CitationsPublic. Upon the conclusion of the posting period, the return of service is automatically sent to the email address of the authorized user (typically the district or county clerk) that posted the citation or notice, or to the last email address signed to make edits of changes to a posting. That user should then send a copy of the return to the filer, as well place a copy of the return in the case file.

Newspaper Publication Mechanics: If publishing locally in Texas, once you file the affidavit for citation by publication documents and complete the Civil Process Request form (or in some counties, a letter indicating the service you are requesting), the district or county clerk will send the citation and copy of the SAPCR petition (including any attachments) to the sheriff/constable's office. The sheriff/constable will send the information to the publication, and they will publish the citation or "ad." You will then receive an invoice for the cost of the ad. For the Daily Court Review in Houston, the full price is currently $86. In the past, some publications have reduced fees by 50% to 100% if it is noted that there is a Statement of Inability to Afford Payment of Court Costs on file. If publishing in a newspaper abroad is required (sometimes it is requested by a judge), the process often requires some additional steps.[178] See the CILA resource at the end of this section on some Central American newspapers if you are looking to publish there.

Locally, after the invoice is paid, the court and the attorney on file will receive a publisher's affidavit evidencing placement of the ad. It should say "In the Interest of X, a Minor Child" just like in your suit and state that it's a SAPCR (Suit Affecting Parent Child Relationship). The ad is required to run only on one day[179] and the citation gives the party until the Monday after 20 days to respond to the suit.[180] The Texas Family Code § 102.010(b) further provides that citation by publication shall be published not later than the 20th day before the date set for hearing.

Texas Rule of Civil Procedure 116(d) provides that the citation must be published on the Public Information Internet Website Publication for at least 28 days before the return of service is filed. However, Texas Rule of Civil Procedure 110 indicates that when there is a more specific statute that includes rules on citation by publication, that statute controls over Texas Rules of Civil Procedure 116. This rule is referenced in the Texas courts FAQ. As discussed above, Texas Family Code § 102.010(b) indicates that once the citation is published in the newspaper and/or the Public Information Internet website, there can be a hearing in your SAPCR case after 20 days. Texas Family Code § 102.010(c), which provides an example of what the citation must look like and

[178] You will likely need to pick up the citation from the clerk and translate it into Spanish (or the language of the country where it will be published). You will also need to contact the newspaper directly and obtain a PDF copy of the publication after it is published. Finally, you'll need request a publisher's affidavit akin to the affidavit that a sheriff/constable would sign and provide it to the sheriff/constable to be served on the district clerk. There is no prescribed form for a publisher's affidavit; it should comply with Texas Rule of Civil Procedure 117(a) (return of citation by publication by newspaper) specifying when and how the citation was published and accompanied by a printed copy of the citation and the associated translation when applicable.
[179] Although Texas Rule of Civil Procedure 116(c)(2) provides that the citation must be published once each week for four consecutive weeks, Texas Family Code § 102.010 only requires publication one time. Pursuant to Texas Rule of Civil Procedure 110, in such cases, the Family Code statute governs.
[180] *See* Tex. Fam. Code § 102.010.

include, seems to confirm this proposition: "If you or your attorney do (does) not file a written answer with the clerk who issued this citation by 10 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you." [181] For additional helpful details on citation by publication, see CILA's "Update to Rules Regarding Citation of Service By Publication" (Aug. 14, 2020). If you are required to publish in a foreign country, see CILA's resource "Information on publications to facilitate service of citation by publication in Central America" (July 7, 2020).

iii. Appointment of an Attorney Ad Litem

Pursuant to Texas Rule of Civil Procedure 244, after citation by publication is issued and no answer or appearance is made by the respondent, the court is required to appoint an attorney ad litem for the unknown or missing parent. In practice, after the Monday after the 20-day response period, you can then file a Motion to Appoint Attorney Ad Litem, plus Order Appointing Ad Litem, although some courts may accept and consider the motion before the end of the response period if there are urgent circumstances.

Rule 244 provides that the court shall allow the attorney ad litem a reasonable fee for their services. Practice varies by court, but legal service providers have had some success filing motions and/or requesting that the judge appoint a pro bono attorney ad litem that the legal service provider has recruited to assist. You can contact the potential pro bono ad litem when you are getting close to filing or as soon as possible after filing the petition to give them plenty of notice about the case, and so they can tell you whether they are available. However, generally they will not begin their investigation until the judge signs the order appointing them.

Note that depending on the judge, they may appoint your pro bono attorney ad litem or the judge may appoint one from the court's appointment list. If the judge appoints an independent attorney ad litem, he/she may charge a fee for their work. You can try to work with the independently appointed attorney ad litem to see if they are willing to waive their fee or agree to a reduced fee because it is a pro bono case. However, there is no guarantee, and the petitioner will be responsible for the fee (even though they have an affidavit of an inability to pay court fees on file).

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[181] Given that the 28-day requirement in Texas Rule of Civil Procedure 116 is inconsistent with Texas Family Code § 102.010, practitioners have reported a point of confusion with the timing requirements for the Public Information Internet website in particular, despite Texas Rule of Civil Procedure 110. Some practitioners have also reported that the district or county clerk will not issue the return of citation until after 28 days. Timing can be critical in cases involving individuals nearing 18 years of age, as the rules may be interpreted to require 28 days of publication online per Texas Rule of Civil Procedure 116(d), plus the requirement in Texas Rule of Civil Procedure 107 that a return be on file for 10 days before issuance of a default judgment. CILA encourages practitioners to advocate that Texas Family Code § 102.010(b) covers both publication of the citation in newspapers and in the Public Information Internet website, therefore the 20 day time limit applied to both. This argument can be bolstered by referencing Texas Family Code § 102.010(a), which allows "citation may be served . . . by publication on the public information Internet website maintained as required by Section 72.034, Government Code, and in a newspaper of general circulation published in the county in which the petition was filed." This indicates that both the Public Information Internet website and newspaper are considered to be "publication" and, therefore, when Texas Family Code § 102.010(b) refers to "[c]itation by publication shall be published not later than the 20th day before the date set for the hearing" this includes both methods of citation by publication.

The job of the attorney ad litem is to interview the petitioner and other family members available about the last contact with the absent party. The ad litem will likely need a copy of the SAPCR filed and citation by publication motion/affidavits filed. That is all the information that needs to be provided. If the ad litem cannot find the party after conducting their own investigation, they will report to the court and enter a general denial asking that the relief requested be denied. This is standard practice and for the protection of the absent party's interests. Rule 244 requires that a statement of evidence be approved and signed by the judge, and the attorney ad litem will prepare the statement summarizing their efforts to locate the party. The statement of evidence is limited in scope to the party's location and will not attempt to dispute any factual allegations about abuse, neglect, or abandonment.

VIII. Documents & Filings in SAPCRs

A. Filing Checklist

This section includes a typical filing checklist for a SAPCR from the start of the case through the prove-up phase. Please note that your filing checklist will likely differ if the respondent is served through alternative or substituted methods of service or if the case results in a default judgment. We provide this sample checklist for informational purposes only. We encourage you to exercise due diligence in your case and to always review the filing requirements for your jurisdiction.

Filing Checklist for a SAPCR	
Initial Filings	
Petition - Standing Order (if applicable)	*The Standing Order should be attached to the petition or included in the same PDF as the petition.
Statement of Inability to Afford Payment of Court Costs (and Attorney's Pro Bono Certificate or Legal Aid Certificate, if applicable)	*A sworn statement from the petitioner may be filed in lieu of the Statement of Inability to Afford Payment of Court Costs. *Review Texas Rule of Civil Procedure 145. Supporting evidence like a statement from the attorney is filed at the same time but need not be labeled as an exhibit.
UCCJEA Affidavit	The UCCJEA Affidavit may be filed as an attachment to the petition or separately as a notarized affidavit.
Service Documents (depends on the method of service, file as applicable)	
Signed and Notarized Waiver(s) of Service	*Remember to ensure the waiver includes the mailing address of the party executing the waiver. Review Texas Family Code 102.0091(c).
Request for Issuance of Citation	*Some jurisdictions provide forms online.
Return(s) of Service	*Review Texas Rule of Civil Procedure 107, along with Texas Rule of Civil Procedure 108a(2) if the respondent lives in a foreign country.
Motion for Substituted Service with supporting documents	See Section VII.F.
Motion to Request Service of Citation by Publication with supporting documents	See Section VII.G.

Default Judgment Documents (if applicable)		
Non-Military Affidavit	*Required by the Servicemembers Civil Relief Act (SCRA)	
Certificate of Last Known Address		
Supporting Evidence		
Index of Exhibits	*Exhibits should be labeled P1, P2, etc. (P = Petitioner) *Exhibits should be presented to the court in a logical manner that matches the determinations in the proposed order. The petitioner's declaration, if included, is typically the first exhibit.	
Exhibits (include as applicable)		
Petitioner's declaration	*Include certificates of translation for any declarants that require translations.	*As noted elsewhere, the petitioner's declaration may not be necessary if the petitioner will testify at the hearing.
Child's declaration	*Include certificates of translation for any declarants that require translations.	*Can corroborate testimony of the petitioner.
Child's ORR Verification of Release (VOR) Form (with photo ID)		
Child's birth certificate	*Any certificates from foreign countries should include a certified translation.	*Can help establish parentage.
Parent marriage certificates or death certificates	*Any certificates from foreign countries should include a certified translation.	*Can help establish parentage or death of a parent.
School enrollment docs/report cards/ school awards or other relevant evidence to show child is doing well in current placement		*Can help establish that the child is a good placement in school, as required for the case.
Country Condition Reports	*Do not treat this like an asylum filing. Some practitioners, however, do include *short*, *targeted* reports like a 2-page travel warning from the Department of State website or a 2-page crime and safety report.	
Final Order		

Proposed Order	*Before filing, review the proposed order alongside the USCIS Policy Manual to make sure that the order contains the necessary judicial determinations. *Make sure that you have filed your proposed order with enough time for the court to accept the order. If you are pressed for time, you can call the clerk after filing to see if they will allow you to email the proposed order directly to them.
Bureau of Vital Statistics Form	*Most SAPCRs must be reported to the State Vital Statistics Unit (VSU). The form should be available on the district or county clerk's website and is processed through the court.

B. How to File the SAPCR and Supporting Documents

Filing the petition with the court initiates the case. As explained in Section V, the case should be filed in the court that has jurisdiction to hear the SAPCR. After a case is filed, the case is assigned a docket number and judge. This section focuses on electronic filing because it is mandatory for attorneys filing civil cases and family law matters, including SAPCRs, in all district and county courts.[182] Electronic filing is also mandatory for attorneys filing probate or criminal cases in the Supreme Court, Court of Criminal Appeals, Courts of Appeals, probate, district, and county courts. While not required, non-attorney filers are encouraged to electronically file as well. For more information on which courts require mandatory electronic filing, take a look at this chart from the eFileTexas.gov website, which shows the active district, county, probate, and justice courts.

i. Who May File

Petitioners may appear *pro se* or be represented by counsel in Texas state court. Under Texas Rule of Civil Procedure 8, the attorney whose signature first appears on a party's initial pleadings will be considered the attorney in charge for that party, which means that all communications from the court will be sent to them. Unlike immigration court, an attorney need not file a separate motion to appear as counsel of record in Texas state court. In general, attorneys must be licensed in Texas to appear in Texas state court or follow the rules set forth by the court and pay a fee to appear as a nonresident attorney.[183] As explained in Section VIII.E, a filing is typically necessary to change the attorney of record in a case.

ii. Electronic Filing

Documents for a court case in Texas are filed via eFileTexas.gov, an electronic filing system run by a state contractor (Tyler Technologies). This electronic filing system is used to submit documents and pay court fees. It can also be used to serve parties if they are registered for e-service. No paper copies are required when electronically filing.

[182] Order Requiring Electronic Filing in Certain Courts, Misc. Docket No. 12-9208 (Tex. 2012), available at https://www.txcourts.gov/All_Archived_Documents/SupremeCourt/AdministrativeOrders/miscdocket/12/12920600.pdf.
[183] *See* Tex. Gov. Code §§ 81.102, 82.036, 82.0361.

To use the e-filing system, an attorney must register to set up an account. The registration process requires inputting their name, email address, and bar number. Before registering, ask your organization or firm if they have an existing account because an attorney can register individually or with their organization or firm.

PRACTICE TIP: In the digital age of electronic filing and virtual hearings, it is common to obtain documents and signatures from clients via email, Adobe, or other electronic means. Attorneys often obtain electronic signatures via Adobe and receive proof of the signature authentication from Adobe. However, when a document is electronically signed and authenticated via Adobe and then e-filed on eFileTexas.gov, sometimes the site rejects the filing due to the protected nature of the authenticated document. Be sure to make sure that electronically signed documents are compatible with the filing format on eFileTexas.gov.

After registering for an account, attorneys can initiate a case by filing the petition. For the first document filed in a case, the attorney will need to input general information about the case including the names of the parties and the type of case. The attorney will also have to indicate whether they are seeking a waiver of the filing fees. Filing fees and waivers are discussed in the next section. After the initial filing is complete, the case will be assigned a docket number that can be used to file additional documents in the case. The system generates an "envelope" for each document filed in the case.

PRACTICE TIP: Documents filed on eFileTexas.gov are labeled as "submitted" right after the filing process ends. But "submitted" does not mean that the clerk has accepted the document. Typically, it takes the clerk a few days to "accept" a document that has been electronically filed.

The attorney will receive an email notification once the document is accepted. The email should contain a link to access a file-stamped copy of the document. Some practitioners have reported that it may take a few days for the file stamp to appear even after receiving the link. The link expires within a certain time frame, typically 30 days! Be sure to check your email regularly after e-filing and download the documents as soon as possible. If you do not download the document before the link expires, you can still obtain a file-stamped copy of the document by submitting a record request to the district or county clerk. You should also check the clerk's website to see if a copy is available to download without a request.

iii. Filing Fees & Seeking a Waiver

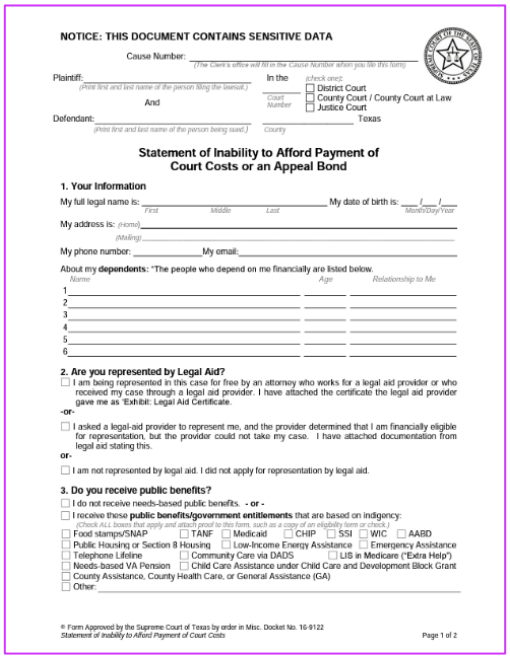
Initiating a suit involves paying filing fees to have the documents processed by the court. Fees in Texas state courts typically range from $50 to $400, depending on the type of legal case and documents being filed. Fees can also vary by county, so it is best to visit the district or county clerk's website or to contact the district or county clerk's office in the specific county to understand what fees to expect. Filing fees must be paid electronically on eFileTexas.gov even if the attorney collects fees from their clients in the form of cash or checks.

When electronically filing documents on eFileTexas.gov, the system will usually ask the filer (after they input the case information and upload the document) if they intend to seek a waiver. The filer may select the waiver option if they upload the necessary documents, including the petitioner's Statement of Inability to Afford Costs and any available supporting evidence (discussed below). So

long as the fee waiver remains unchallenged, the filer should be able to continue filing documents in the case without paying any fees.

Under Texas Rule of Civil Procedure 145(b), a party who cannot afford payment of court costs can seek to waive the filing fees by submitting a Statement of Inability to Afford Payment of Court Costs or another sworn document containing the same information. Most cases use the Statement of Inability to Afford Payment of Court Costs approved by the Texas Supreme Court.

PRACTICE TIP: On December 23, 2020, the Texas Supreme Court proposed amendments to the Statement of Inability to Afford Payment of Court Costs form, proposing that a bilingual version of the form should be available. On October 20, 2022, the Supreme Court ordered that the final, bilingual version of the form immediately replace the prior version. Be sure that you are using and filing the right version of the form to prevent rejection and delay in filings. Here is a side-by-side comparison of the older version versus the newer one, and you can access the newer version here.



NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: _____
(Print first and last name of the person filing the lawsuit.)

And

Defendant: _____
(Print first and last name of the person being sued.)

In the _____ Court Number
(check one):
☐ District Court
☐ County Court / County Court at Law
☐ Justice Court
_____ County, Texas

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond

1. Your Information

My full legal name is: _____ My date of birth is: ___/___/___
First Middle Last Month/Day/Year

My address is: (Home) _____
(Mailing) _____

My phone number: _____ My email: _____

About my **dependents**: "The people who depend on me financially are listed below.

	Name	Age	Relationship to Me
1.			
2.			
3.			
4.			
5.			
6.			

2. Are you represented by Legal Aid?

☐ I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as "Exhibit: Legal Aid Certificate."

-or-

☐ I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

-or-

☐ I am not represented by legal aid. I did not apply for representation by legal aid.

3. Do you receive public benefits?

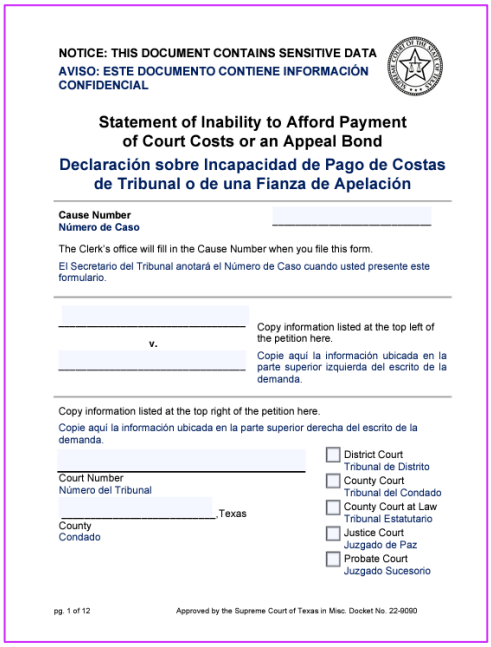
☐ I do not receive needs-based public benefits. **- or -**

☐ I receive these **public benefits/government entitlements** that are based on indigency:
(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)

☐ Food stamps/SNAP ☐ TANF ☐ Medicaid ☐ CHIP ☐ SSI ☐ WIC ☐ AABD
☐ Public Housing or Section 8 Housing ☐ Low-Income Energy Assistance ☐ Emergency Assistance
☐ Telephone Lifeline ☐ Community Care via DADS ☐ LIS in Medicare ("Extra Help")
☐ Needs-based VA Pension ☐ Child Care Assistance under Child Care and Development Block Grant
☐ County Assistance, County Health Care, or General Assistance (GA)
☐ Other: _____

© Form Approved by the Supreme Court of Texas by order in Misc. Docket No. 10-9122
Statement of Inability to Afford Payment of Court Costs Page 1 of 2

Outdated version



NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA
AVISO: ESTE DOCUMENTO CONTIENE INFORMACIÓN CONFIDENCIAL

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond

Declaración sobre Incapacidad de Pago de Costas de Tribunal o de una Fianza de Apelación

Cause Number
Número de Caso _____

The Clerk's office will fill in the Cause Number when you file this form.
El Secretario del Tribunal anotará el Número de Caso cuando usted presente este formulario.

_____
v.
_____

Copy information listed at the top left of the petition here.
Copie aquí la información ubicada en la parte superior izquierda del escrito de la demanda.

Copy information listed at the top right of the petition here.
Copie aquí la información ubicada en la parte superior derecha del escrito de la demanda.

_____
Court Number
Número del Tribunal

_____ Texas
County
Condado

☐ District Court
Tribunal de Distrito
☐ County Court
Tribunal del Condado
☐ County Court at Law
Tribunal Estatutario
☐ Justice Court
Juzgado de Paz
☐ Probate Court
Juzgado Sucesorio

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2022 Bilingual version

The form requests contains about the petitioner, including their residential address, their legal representation, and the details of their financial situation, such as any debts, government benefits (public housing, food stamps, etc.), income, monthly expenses, and rental or mortgage fees. While the attorney may assist with filling in the form, the petitioner must sign the document, and by doing so declares under oath that information is accurate. The form provides two sample signature blocks, one with a notary block and one without. As explained in the form, the statement will need to be signed in front of a notary if the petitioner does not want to list their address because of privacy or safety concerns.

In addition to the sworn statement from the petitioner, Texas Rule of Civil Procedure 145(d) requires the petitioner to submit any available evidence of their inability to afford payment of court costs. That evidence may include a statement from the child if they are filing through an authorized representative that addresses (as appropriate) their status as an unaccompanied child, whether they are in ORR custody, and any income, money, property, or expenses. The attorney will likely also need to submit a statement as evidence that the petitioner is not paying legal fees. Below are sample certificates for a pro bono attorney or a legal services provider that may be used as a guide for drafting the attorney's statement.

SAMPLE 1: Attorney's Pro Bono Certificate

I, [Attorney Name], am the pro bono attorney of record in this cause for Petitioner, [Petitioner's Name]. I am providing free legal services, without contingency, due to Petitioner's indigence. I am providing these services through the _____, a 501(c)(3) nonprofit organization that provides civil legal services to persons living at or below 200% of the federal poverty guidelines, published annually by the United States Department of Health and Human Services. Tex. R. Civ. P. 145(e)(2)(C). Petitioner was screened by [name] to determine Petitioner's inability to pay court costs and prepared the concurrently filed Statement of Inability to Afford Payment of Court Costs.

This Pro Bono Certificate is furnished pursuant to Texas Rules of Civil Procedure 145. I declare under penalty of perjury that the foregoing is true and correct.

Signed in _____County, State of Texas on the ____ day of _____, 20____.

[Attorney Name]
Texas Bar No.
Email address

SAMPLE 2: Legal Aid Certificate

[Nonprofit organization] represents Petitioner [Petitioner's name]. [Nonprofit organization] provides free legal services, without contingency because of the party's indigency.

[Nonprofit organization] is funded by the Texas Access to Justice Foundation and is a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services.

This Certificate is furnished pursuant to Texas Rules of Civil Procedure 145. I declare under penalty of perjury that the foregoing is true and correct.

Signed in _____County, State of Texas on the ____ day of _____, 20____.

[Attorney Name]
Texas Bar No.
Email address

C. Drafting the Petition

The petition is the filing that begins the litigation process.[184] Once the SAPCR petition is filed, the court assigns a docket number, and the petitioner can begin the service process. Filing a petition that is accurate and complete will help ensure that the filing is accepted and prevent delays in resolution of the case because the petition needs to be amended.

i. What to Include in and with the Petition

All pleadings filed in Texas must give fair notice of the claims, defenses, and relief sought.[185] Texas Family Code § 102.008 further requires that a SAPCR petition reflect very specific information. The required information includes:

1. Jurisdictional statement (which should address subject matter jurisdiction and personal jurisdiction);
2. Child's name and date of birth;
3. Petitioner's name and relationship to the child;
4. Names of parents (including alleged father or a statement that the father's identity is unknown);
5. Names of any managing conservator, guardian, or possessory conservator;
6. Description of child's property and statement of value;
7. Description of requested court action and statutory grounds for the request; and
8. Statement about any related protective orders or applications for one.

Other statutory provisions may require additional information. Any petition should typically include allegations related to the petitioner's standing, venue, a discovery control plan for the case, and whether the petitioner objects to assignment of an associate judge.[186] Texas Civil Practice & Remedies Code § 30.014 may further require the petitioner to include the last three digits of their driver's license and social security number, if they have been issued one.

A SAPCR petition in a SIJS case should also include:

- Respondent's information: Include information about the respondent(s) in your SAPCR, along with how the petitioner intends to serve the respondent(s).
- Allegations related to the type of SAPCR: The Texas Family Code requires additional information to be included in the petition depending on the relief sought and types of claims, such as parentage, custody, and/or child support. It is important when drafting to review all applicable code provisions and ensure that the essential information for each claim is included. The allegations should address each element of the claim and any presumptions that may apply.

[184] *See* Tex. Fam. Code § 102.002.
[185] Tex. R. Civ. Proc. 45(b); 47(d).
[186] *See* Tex. R. Civ. P. 190.3; Tex. Fam. Code § 201.005(c).

- Request for SIJS judicial determinations: Because the petitioner is generally limited to obtaining relief that is explicitly requested in the petition, the SAPCR petition must contain a specific request for the judicial determinations necessary for obtaining SIJS.[187]

PRACTICE TIP: In drafting the petition, focus on the statutory requirements under Texas law including what is needed to prove the requested SIJS determinations. Do not include citations to the INA or regulations. Doing so may raise a red flag for USCIS.

Local Rules: Before filing, always check the local rules of the court and the judge for any additional information that should be included in the petition or upon initiating the suit.

Format: A petition in a SAPCR is generally styled as "In the interest of ___, a child."[188] Texas Rule of Civil Procedure 45 contains specific formatting requirements for any pleadings not filed electronically. Always review the local rules. These may provide formatting requirements and can vary by court or judge. Dallas County, for instance, lists additional requirements in Local Rule 11.01.

Attachments: Petitioners in Texas are no longer required to file a civil case sheet with all original petitions.[189] However, the local rules of the court or judge may still require additional documents to be filed or served with the petition. A common example is requiring a copy of the district court's standing order to be attached to the petition.[190]

PRACTICE TIP: Unlike applications for relief filed in immigration court, exhibits are not typically filed with the petition in a SAPCR. The UCCJEA affidavit and any local order required by the court will likely be the only documents filed with the petition. Exhibits are subject to the Texas Rules of Evidence, should be filed in advance of the prove-up hearing, and should be formally admitted into evidence at the prove-up hearing. Keep in mind too that anything attached to the petition must be served on the respondent(s).

[187] In rare circumstances, a judge may grant relief not explicitly requested by the parties such as when the issue was tried by consent of the parties. *E.g.*, *In re A.B.H.*, 266 S.W.3d 596, 600 (Tex. App.—Fort Worth 2008, no pet.) ("Consent may be found only where evidence regarding a party's unpleaded issue is developed under circumstances indicating both parties understood the issue was in the case, and the other party failed to make an appropriate complaint.").
[188] Adoption proceedings are usually styled "In the Interest of a Child" and have additional pleading requirements under Texas Family Code § 162.002.
[189] *See* Order Repealing Texas Rule of Civil Procedure 78A and Appendix A to the Texas Rules of Civil Procedure, Misc. Docket No. 18-9163 (Tex. 2018), available at https://www.txcourts.gov/media/1442977/189163.pdf.
[190] *E.g.*, Dallas County Family District Courts General Order (2021), available at https://www.dallascounty.org/Assets/uploads/docs/district-clerk/downloadable_forms/family/F2021.01.pdf; Liberty County, Texas Standing Order Regarding Children Property, and Conduct of the Parties (2014), available at https://www.co.liberty.tx.us/upload/page/4835/docs/County%20and%20district%20Clerk/Standing%20Order.pdf.

UCCJEA: The UCCJEA is a federal law that applies to Texas custody proceedings and is meant to ensure uniform jurisdiction and enforcement provisions.[191] In compliance with the UCCJEA, Texas Family Code § 152.209 requires each party to provide additional information in many cases. The information required includes:

- Child's present address;
- Child's address history for the last five years;
- Whether the petitioner has been involved in any other custody proceedings related to the child in Texas or another state;
- Whether the petitioner is aware of any pending proceedings that could affect the outcome of the case, including any other proceedings for enforcement or related to domestic violence, protective orders, termination of parental rights, or adoption;
- Whether there is anyone who is not already a party to the proceeding that has physical custody of the child or claims of rights to physical custody, legal custody, or visitation with the child; and
- Statement, if applicable, that the child needs an order from the court to prevent further harm to the child by virtue of the child's circumstance.[192]

This information is required in every case unless all parties reside in Texas or there are allegations that disclosing the information would jeopardize the health, safety, or liberty of a party of child.[193] If required, the best practice is to provide this information in an affidavit attached to the petition. But if including the information with the petition is not an option or raises privacy concerns, then a notarized affidavit with the information can be separately filed before the final hearing. Failing to timely provide the information may cause the court to refuse to continue with the proceeding.[194] Some judges have also required that the UCCJEA affidavit be written in the petitioner's native language and then submitted with a certified translation.

ii. Confidentiality and Filing Under Seal

For both the petition and the UCCJEA affidavit, there are ways to proactively protect the petitioner's and the child's personal information from being publicly disclosed. Texas Family Code § 102.008 does not require that the petitioner or child's address be included in the petition.

Under Texas Rule of Civil Procedure 21(c) certain information—including driver's license or social security numbers, a minor's name, birth dates, and home addresses—is considered "sensitive data" that must be redacted in any court filings, unless including the information is otherwise required by law. Rule 21c sets forth how to make the redactions and requires the party to notify the clerk if a filing contains sensitive data. With respect to SAPCRs, the minor or child's name should not be redacted, as it is required to be included in the petition pursuant to Texas Family Code § 102.008(b)(2).

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[191] *See* Tex. Fam. Code §§ 152 *et seq*.
[192] *Id.* § 152.209.
[193] *Id.*
[194] *Id.* § 152.209(b).

Texas Family Code § 152.209(e) can also protect private information from disclosure in an attachment like the UCCJEA affidavit so long as the petition includes allegations that disclosure would harm the health, safety, or liberty of the petitioner or child. Specifically, Section 152.209(e) provides that:

> If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

Note too that pursuant to Texas Family Code § 105.006(c) you can also ask that certain information not be disclosed in the final order, including address information.

A request to file the UCCJEA affidavit or any other document under seal can be made in a separate motion filed with the document that contains the confidential information. The motion to file under seal should include a proposed order and allegations setting forth the legal and factual bases for sealing the document. It should also make clear if the petitioner is seeking to protect any information from any other party. Note that Texas Family Code § 152.209(e) does allow for the petitioner to request that information not be disclosed to opposing parties.

Before making any requests to file sealed or redacted documents, be sure to review the local rules as the court or judge may have additional requirements for how to make these types of requests. Understanding the mechanics of how to electronically file documents under seal is especially important to ensure confidential information is not accidentally disclosed on the public docket.

PRACTICE TIP: Include specific allegations about why information needs to be protected from disclosure to a respondent. Opposing parties by default would still have access to documents filed under seal. Similarly, the court could allow a party to file a redacted document on the public docket but require that an unredacted copy be served on the opposing party.

D. Exhibits and Supporting Documents

This section goes over exhibits and supporting documents that are often filed in support of the SAPCR. Again, exhibits should not be filed as attachments to the petition. Exhibits are subject to the Texas Rules of Evidence and must be admitted into evidence at the prove-up hearing to be considered by the judge.

Something to keep in mind as you collect exhibits and supporting documents for the SAPCR is that you will most likely require the assistance of an interpreter and/or translator. As you obtain documents that are not in English, you will need to have these documents translated into English, with the certificate of translation attached. Under Texas Rule of Evidence 1009, which applies to written translations of foreign documents, "a translation of foreign language documents shall be admissible upon the affidavit of a qualified translator setting forth the qualifications of the translator and certifying that the translation is fair and accurate." Note that Rule 1009 does not require that the translator be certified; rather, the translator certifies that the translation itself is correct. For more information about the Texas family court requirements for translation of foreign

language documents, see CILA blog post, "Translation Requirements In Texas Family Courts" (Sept. 5, 2019).

i. Child's Birth Certificate

Though a birth certificate is not typically filed in a SAPCR, the child's birth certificate can be an important document in a SAPCR seeking SIJS determinations. It can be helpful to establish parentage and age. If the child does not have their birth certificate at the time of representation, then you should advise the child to try to obtain their birth certificate from their home country if they are able to do so. Moreover, because USCIS requires that the SIJS petitioner "submit documentation of age in the form of a valid birth certificate, official government-issued identification document, or other document that in USCIS' discretion establishes the petitioner's age,"[195] it would be helpful to the case in the long-run to obtain the child's birth certificate early on in your representation. However, if the client is unable to obtain their birth certificate, another form of documentation to show the child's age—such as the Verification of Release from ORR—could suffice to establish the child's age for the SAPCR.

When you are representing a child qualifying for SIJS and pursuing the SAPCR as part of SIJS, the child's birth certificate will have been issued in another country. This means that, if the birth certificate is not already in English, under Texas Rules of Evidence Rule 1009, you will need to have the birth certificate translated to English and attach a certificate of translation when you file the birth certificate with the court and/or introduce it into the record. Furthermore, when you electronically file the birth certificate with the court, you will need to ensure that the document is clear and legible so that the court will not reject the filing.

ii. Petitioner's and Child's Declaration(s)

The assessment of whether to file a declaration from the petitioner and/or child will vary on a case-by-case basis. Declarations can be very helpful for laying out the facts for the judge. But they can also be used to impeach anyone who testifies at the prove-up hearing. The best practice, therefore, may be to prepare the petitioner to testify at the hearing. You can also consider filing a declaration from the child (if they are not the petitioner). The choice to include a child's declaration should factor in the child's age, maturity, and knowledge of the facts giving rise to the SAPCR.

The declaration, whether a child or petitioner's, should establish the identity of the declarant (full name, date of birth, current residence, and for the child, current caregiver). The content can vary depending on the types of claims in the case and the declarant's knowledge. In general, a declarant in a SIJS case is likely to cover the details of the parental abuse, neglect, or abandonment, why the child cannot reunify with the parent, and/or why returning to their previous placement is not in their best interest.

[195] USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3; *see also* 8 C.F.R. § 204.11(d)(2) ("Documentary evidence of the petitioner's age, in the form of a valid birth certificate, official government-issued identification, or other document that in USCIS' discretion establishes the petitioner's age.").

Some additional drafting tips for a declaration from the petitioner or child include:

- Do not eliminate the declarant's voice or tone from the declaration. If you are preparing the child's declaration, it should read and sound like the voice of a child.
- After you have drafted the declarations, read them back to the petitioner or child in their native language and confirm that the details and information presented are accurate.
- Consistency matters as to the testimony and declarations that will form the record. If you see any inconsistencies between the child's declaration and petitioner's anticipated testimony and/or declaration (if one is required), discuss this with the child and the petitioner before filing with the court.
- Have a colleague or another attorney review the declaration(s).
- Include a certificate of translation at the end of each declaration, if translated into English.

PRACTICE TIP: Something to keep in mind when you are working with the petitioner or the child in drafting declarations is that the subject matter may be difficult for the child or petitioner to discuss—as the SAPCR will deal with circumstances surrounding abuse, neglect, and/or abandonment. Reference CILA's "Tips for Working with Migrant Children and Trauma-Informed Lawyering" for some guidance. The resource can be found on CILA's *Additional Resources* webpage. Contact CILA at cila@abacila.org if you need the password to access the webpage.

E. Other Motions & Substituting Counsel

Uncontested SIJS cases often do not require motion practice or filings beyond the petition, proposed final order, and materials for the prove-up hearing. But it is possible that issues may arise that require additional motion practice, especially to address some administrative matters (motions related to service have been discussed in Section VII, for example). Any motions filed in family court should comply with the filing requirements of the Texas Rules of Civil Procedure as well as the court and judge's local rules. Be sure to check all of these rules for any applicable requirements, especially any related to formatting, filing, service, or meet and confers.

Withdrawing or substituting the counsel of record is one example of when you may need to file additional motions. While a motion is generally not needed to appear in Texas family court, it is required to change counsel or withdraw from a case. Under Texas Rule of Civil Procedure 10, an attorney must file a written motion and show good cause to withdraw as counsel of record. Rule 10 details the steps that need to be taken before a court will grant a request to withdraw and what information must be included in a motion to withdraw and/or substitute counsel.[196] The requirements depend on whether another attorney is taking over the case.

- Substitution: Changing the attorney of record may be done by a notice to designate a new attorney in charge under Texas Rule of Civil Procedure 8 or a motion for withdrawal and substitution of counsel that includes (1) the new attorney's name, contact information, and State Bar of Texas identification number for that attorney; (2) explanation that the party

[196] Tex. R. Civ. P. 10.

has approved the substitution; and (3) statement that the withdrawal is not sought for delay. Other parties in the case must be notified of the change and the new attorney should become the designated attorney of record once the motion is granted.

- No Substitution: If another attorney is not taking over the case, additional safeguards apply to protect the party. A motion to withdraw must be served on the party and should explain (1) why the attorney is seeking to withdraw; (2) how the party was notified of the withdrawal; (3) whether the party approves of the withdrawal; and (4) how the party was informed of his or her right to object. Even if the motion is granted, the withdrawing attorney must notify the party of any upcoming settings or deadlines and the court can impose additional conditions on granting the request to withdraw.

F. Drafting the Proposed Order

Drafting the proposed order is an important step in SAPCRs seeking SIJS determinations. As explained in Section II, a youth applying for SIJS must be the subject of a qualifying state court order with the required judicial determinations.[197] In assessing a SIJS application, USCIS will evaluate whether the request is bona fide, or that the primary reason for seeking the state court order was to obtain relief from parental mistreatment.[198] For a state court order to be valid, it must be issued under state law.[199] Additionally, the child must remain under the jurisdiction of the court through the adjudication of the petition.[200] Therefore, the proposed order must be rooted in state law, but understanding the SIJS requirements of federal law is crucial to ensuring that the order will meet USCIS requirements when the youth submits their SIJS application.

PRACTICE TIP: While it is important to know the SIJS requirements for the final order, the order itself should only cite to state law, not immigration law.

How to file the proposed order: The proposed order is typically filed before the prove-up hearing or the request for an order by submission, proceedings which are explained in more detail in Section IX. Most jurisdictions allow electronic filing of the proposed order, but the court may take days to accept the document. It may be best to contact the court clerk or coordinator and ask to email the judge a copy of the proposed order, especially as some jurisdictions prefer to have the proposed order emailed no later than the morning of the prove-up hearing.

What to include in the proposed order: Consider both state and federal law when drafting the proposed order. For state law, the proposed order should address the relief sought for each of the claims in the SAPCR. In addition, Texas Family Code § 105.006(a) lists what must be in a final order in a SAPCR, including certain information about the parties. Some of this may be sensitive data that the petitioner does not want to disclose. Texas Family Code § 105.006 states that the court may order that information contained in the final order not be given to the other party if it is likely to cause harm, which can be especially important if privacy is critical for the child's safety.

[197] 8 C.F.R. § 204.11(a); INA § 101(a)(27)(J)(i).
[198] 8 C.F.R. § 204.11(b)(5).
[199] *Id.* § 204.11(c)(3)(i).
[200] *Id.* § 204.11(c)(3)(ii).

Section VII.C further discusses the protection of confidential or sensitive information and how that may impact the filing process.

For federal law, the state court order must include judicial determinations about:

> (1) "custody or dependency in accordance with state law" and the basis for the state court to make this determination;
>
> (2) "parental reunification with one or both parents" and that it "is not viable due to abuse, neglect, abandonment, and/or a similar basis under state law"; and
>
> (3) the best interest on the child, specifically, that is not in their "best interest to be returned to their or their parent's country of nationality or last habitual residence."[201]

Each of these judicial determinations should be supported by a factual basis and citations to state law.[202] USCIS places the burden on the petitioner (which in this context is the youth seeking SIJS) to provide the factual basis for the court's determinations.[203]

PRACTICE TIP: Ask local practitioners if they have examples of proposed orders previously signed by your judge. Some state court judges may be reluctant to sign orders that contain too many facts. Best practice is to include only the essential facts in the proposed order that provide support for the necessary judicial determinations. Detailed facts can be provided in declarations and/or testimony but need not all be reflected in the order. Indeed, because orders are generally public, including too much detail is unnecessary and may be harmful.

The USCIS Policy Manual Volume 6, Part J, Chapter 3 provides information on the necessary documentation and evidence for SIJS cases. This section may be particularly useful to read when drafting the order and preparing the state court case to ensure that the requisite information is included in the order or otherwise in the record.[204] Keep in mind that references to petitioner by USCIS are references to the child or youth seeking SIJS. The USCIS Policy Manual Volume 6, Part J, Chapter 3 states, "The order or supporting evidence should specifically indicate:

- What type of relief the court is providing, such as child welfare services or custodial placement;

[201] 8 C.F.R. § 204.11(c). The USCIS Policy Manual states that "the court must have the authority to make determinations about dependency and/or custody and care of the petitioner as a juvenile under state law." USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3.
[202] 8 C.F.R. § 204.11(d).
[203] 8 C.F.R. § 204.11; *see also* USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3.
[204] According to the USCIS Policy Manual Volume 6, Part J, Chapter 3, "[e]xamples of documents that a petitioner may submit to USCIS that may support the factual basis for the court include: Any supporting documents submitted to the juvenile court, if available; The petition for dependency or custody or other documents which initiated the juvenile court proceedings; Court transcripts; Affidavits summarizing the evidence presented to the court and records from the judicial proceedings; and Affidavits or records that are consistent with the determinations made by the court."

- With whom the child is placed, if the court has appointed a specific custodian or guardian, (for example, the name of the person, or entity, or agency) and the factual basis for this finding;
- Which of the specific grounds (abuse, neglect, abandonment, or similar basis under state law) apply to which of the parent(s) and the factual basis for the court's determinations on non-viability of parental reunification; and
- The factual basis for the determination that it is not in the petitioner's best interest to return to the petitioner's or the petitioner's parents' country of nationality or last habitual residence (for example, addressing family reunification with family that remains in the child's country of nationality or last habitual residence)."

The USCIS Policy Manual Volume 6, Part J, Chapter 2 also provides information on SIJS eligibility requirements and details related to each judicial determination that should be included in the final order or covered by the state court. Reading this section in full before drafting the state court order will further help ensure that your drafted order includes all information that you need for the SIJS petition. Some important portions of the USCIS Policy Manual Volume 6, Part J, Chapter 2 are quoted below.

(1) Judicial determination about ***custody or dependency*** in accordance with state law:
   - "Dependency proceedings may include abuse, neglect, dependency, termination of parental rights, or other matters in which the court intervenes to provide relief from abuse, neglect, abandonment, or a similar basis under state law."
   - "When the court places the petitioner under the custody of a specific person, the court order should identify the person by name."

(2) Judicial determination that ***parental reunification*** with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law:
   - "The record should contain the factual basis for this determination, and must establish that the court made a determination regarding the petitioner's parentage."
   - "If the juvenile court order names the petitioner's parents, or the record is supported by other evidence of parentage that was considered by the court, such as the birth certificate, USCIS generally considers this requirement to be met."
   - "If a parent is unknown, the record should reflect that the parent is unknown."
   - "If the record does not establish that the court made a determination regarding the petitioner's parentage, USCIS may request additional evidence."

(3) Contain a ***best interest determination*** that it would not be in the child's best interest to be returned to their or their parent's country of nationality or last habitual residence:
   - "The standards for making best interest determinations may vary between states, and the court may consider a number of factors related to the circumstances of the child and the circumstances and capacity of the child's potential caregiver(s). The child's safety and well-being are typically the paramount concern."
   - "For example, if the court places the child with a person in the United States under state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home,

bonded with the child, and is the best person available to provide for the child, this would likely constitute a sufficient factual basis in support of a qualifying best interest determination to warrant DHS consent."

KEY ELEMENTS OF STATE COURT ORDER: Here are some sample questions to help guide you as you draft your order, to help you stay organized. These questions are included in CILA's "Key Elements of State Court Pleadings and Order Handout" (Mar. 2023) found on CILA's *Additional Resources* webpage. Contact CILA at cila@abacila.org for password information.

Does your order accurately name the child and his/her date of birth?	
Does your order accurately name the child's parents?	
Does your order accurately indicate whether a record of the prove-up hearing was made?	
Does your order establish the state law basis for the court's jurisdiction? (subject matter and/or personal jurisdiction)	
If necessary, does your order acknowledge or adjudicate parentage?	
Does your order indicate the child is placed in an individual or entity's custody (conservatorship)? If not, does your order address dependency?	
Does your order indicate that reunification with one or both parents is not viable?	
Does your order name the parent or parents in which reunification is not viable with?	
Does your order state, as to each mal-treating parent, why reunification is not viable? Does it specify whether it was abuse, neglect, abandonment, or a combination of more than one? Does your order provide facts supporting a finding of abuse, neglect, and/or abandonment?	
Does your order indicate it is not in the child's best interest to return to the home country?	
Does your order identify the home country?	
Does your order explain the basis for the best interest determination by discussing the child's placement options in home country v. the United States?	
Does your order provide citation to the state law upon which each legal determination is made?	
If your order is related to a SAPCR, have you reviewed Texas Family Code Section 105.006 to make sure your order meets all other requirements?	

IX. Proceedings & Hearings in SAPCRs

This section discusses some common issues and proceedings that may arise in your case. Keep in mind that SAPCR proceedings do not all move at the same pace. Completing service of the citation can be the longest part of a case. If service is difficult, it can take months. But if the necessary parties are readily identifiable and accessible, it can go quite quickly. After service, the speed of the case will depend on whether the case is contested and how quickly it can be heard by the judge. The judges' and courthouse's calendars will impact hearing availability. In general, uncontested cases move faster than contested cases because there are fewer issues to resolve.

A. Hearings

This section discusses some logistical and administrative issues that may arise whenever there is a hearing in a SAPCR. Keep in mind, as always, that practice may vary by jurisdiction.

i. Interpreters

Under Texas Government Code § 57.002, Texas courts "shall appoint a certified court interpreter or a certified CART provider for an individual who has a hearing impairment or a licensed court interpreter for an individual who can hear but does not comprehend or communicate in English if a motion for the appointment of an interpreter or provider is filed by a party or requested by a witness in a civil or criminal proceeding in the court." The court's local rules may include instructions for how to request language interpreters. For example, Bexar County Local Rule 3(G)(3) states that Spanish language interpreters are available daily with no prior request needed, but a request for any other language services should be made two weeks in advance of the hearing. The court clerk or coordinator should be able to provide information about language interpreters.

In practice, attorneys have reported needing to take an active role to ensure that language interpreters are available on the day of the hearing. Many find that they need to bring and pay for their own interpreters. The statewide Office of Court Administration (OCA) Language Access Department may be able to assist with scheduling language interpreters.

> PRACTICE TIP: For certain indigenous languages, there may not be an interpreter available in Texas that meets the requirements to be a "certified court interpreter" under Chapter 57 of the Texas Government Code. If this issue arises, search online to see if the district or county court has a Limited English Proficiency (LEP) Plan that allows for use of a non-certified interpreter under these circumstances. Here is an example of an LEP Plan for El Paso County.

ii. Scheduling

The process for requesting a hearing can vary by court and even by judge. Check the court's website and the local rules for scheduling processes. If the website or local rules do not specify a process, the petitioner may need to contact the court clerk or coordinator to set a hearing. Keep in mind that even if a hearing is scheduled for a specific time, you will likely be on a docket with other cases scheduled for a hearing at the same time. This means that you may have to wait for your case to be called by the judge.

In some jurisdictions, uncontested cases may be heard on special dockets that do not require contacting the court to schedule an individual hearing. Uncontested cases include cases seeking a default judgment. Information about the uncontested dockets can be found on the court's website or in the local rules. Harris County, for example, posts information about the daily virtual uncontested docket with instructions to contact the court clerk or coordinator the day prior to appearing. If an uncontested docket is available, the petitioner typically does not need to separately contact the court to set an individual hearing in their case.

Always plan to arrive to the courthouse early enough to accommodate for practical matters, such as traffic, parking, locating the courthouse, and checking in with the court clerk or coordinator, if necessary.

iii. Continuances

Judges have different processes for how to request a continuance and some view these requests more favorably than others. Some judges allow the hearing to be rescheduled at least once without needing to file any written request, unless the hearing relates to a notice of dismissal for want of prosecution (see Section IX.C). If this is allowed, the attorney may reschedule by simply contacting the court clerk or coordinator in advance and asking to move or "pass" the hearing.

However, other judges may require a written request, especially if the case is contested or there have been multiple requests to change the hearing date. If a written request is needed, the filing can be styled as a motion for a continuance and should be filed with the court and served on all parties in accordance with the Texas Rules of Civil Procedure and local rules of the court.[205] A motion for a continuance typically includes a short case status update, explanation for why the continuance is needed, and reassurance that the delay will not harm any party. If the motion is granted, a new hearing may automatically be set by the court, or the parties may need to contact the court clerk or coordinator to obtain a new setting.

PRACTICE TIP: Even if not required by the court, try to confer with the other parties (such as the attorney ad litem representing a missing party) in advance of requesting a continuance because unopposed motions are typically more likely to be granted.

iv. Virtual Hearings

Virtual hearings are becoming more common in Texas state courts. The court's website typically provides information about whether virtual hearings are used in their jurisdiction and the process for requesting and participating in a virtual hearing. Virtual hearings in Texas typically remain open to the public and most are broadcast live on a YouTube channel.

Typically, the court coordinator will send you a link to join the hearing, along with a login and virtual setting instructions. Instructions for virtual hearings can vary greatly by county. Closely review the instructions and revisit them as you log in for the hearing. Plan to log into the designated Zoom or Webex account a few minutes early to test the internet connection, sound settings, and the camera image. You may receive specific instructions for how to set your screen name. If not, best practice is to include identifying details such as the docket number or the name of the attorney labeled as "Attorney for Petitioner, X."

Like in-person hearings, virtual hearings are often set on a docket with other cases. You must be ready at the designated time, even if your case is not immediately called by the judge. You may be in the same virtual room as the judge while the other cases are heard, or you may be placed in a separate waiting room until your case is called and the court coordinator moves you to the virtual room with the judge.

v. Court Reporters

Decide in advance of the hearing if you want to have a court reporter transcribe the proceedings. For default judgments, the proceeding must be transcribed. Best practice is to have a court reporter at the prove-up hearing to preserve the evidentiary record. The judge may ask about the court reporter at the start of the hearing, but you will likely need to raise the issue before the

[205] *See generally* Tex. R. Civ. P. 251-54.

hearing or at the start of the hearing and formally request for a court reporter to be present. If possible, confirm with the court clerk or coordinator in advance of the hearing that a court reporter will be available.

vi. Requests to Expedite

One of the most challenging timing issues is when a child is about to age out before the court has a chance to hear the case. Each family court judge has an assigned clerk that typically handles scheduling. An online scheduling system, such as this one in Travis County, may also be available to assist with scheduling hearings in certain jurisdictions.[206] Information about online scheduling systems, directions for how to schedule hearings, or the clerk's contact information should be available on the court's website.

Judges tend to have flexibility with scheduling their dockets and may have time to hear a case on short notice if, for instance, the parties in another matter have signed a waiver of citation, do not file an answer, or fail to appear. Some judges may also have dockets like the uncontested docket that do not require an individual hearing setting for a court to hear a particular case. Outside of these dockets, however, judges discourage practitioners from showing up unannounced and will likely not agree to hear an unscheduled case.

Telephone is usually the preferred method of contact for the court clerk or coordinator, although some are more responsive via email. Calling the court clerk or coordinator and asking politely for a hearing to be set before the child ages out is often the easiest way to get a hearing quickly. If calling does not immediately resolve the issue, consider filing a motion for preferential setting in accordance with Texas Family Code § 105.004. The motion can explain how the delay in setting a hearing will harm the child because of his or her age and may be enough to convince the judge to set an earlier hearing.

B. Default Judgments

A default judgment applies when the respondent is properly served but fails to respond to the petition. Like other final judgments, it is an order from the court granting or denying the relief requested by the petitioner. The petitioner must complete service of process before requesting a default judgment. Keep in mind too that default judgments may not be appropriate in all uncontested cases. For instance, orders entered against deceased parents are not considered default judgments.

The procedures governing how to request and obtain the default judgment come from a mix of the Texas Family Code, Texas Rules of Civil Procedure, and local rules of the court.[207] Importantly, the request for default judgment must be timely, meaning the relevant deadlines have expired. In addition, the petitioner must be able to show that all parties were properly served, the court has jurisdiction to hear the case, and that the facts support the relief requested. The processes of developing an evidentiary record through exhibits and a prove-up hearing, explained in Section VIII,D and Section IX.E apply to default judgments. Similarly, the hearing considerations discussed above apply to default judgment requests. When requesting a default judgment, be sure to check

[206] *See also* Travis County Family Court Procedures for Settings and Docket Call (effective June 17, 2020), available at https://www.traviscountytx.gov/images/courts/Docs/travis_county-family-court-procedures-settings-docket-call.pdf.
[207] The Texas Rules of Civil Procedure generally apply in family court cases. *See* Tex. R. Civ. P. 2.

the local rules and/or ask the court coordinator if the judge will require a written request for default.

Timing: A court may enter a default judgment when (1) proof of service is on file with the court for 10 days;[208] and (2) the deadline for the respondent to answer the petition expires.[209] Because these processes can run in parallel, it is best practice to file proof of service as soon as possible. In rare circumstances, other deadlines in the Texas Family Code can also impact the timeliness of a default request.[210] If any deadline falls on a holiday, the answer is due on or before 10:00 a.m. the next Monday.

The respondent's deadline to answer will depend on the method of service. Texas Rule of Civil Procedure 99(b) provides that when the respondent is served by process server, certified mail, or substituted service, their deadline to answer the petition typically falls "on or before 10:00 a.m. on the Monday next after the expiration of twenty days after the date of service thereof."

For service by publication, Texas Family Code §102.010 suggests a default judgment may be taken 20 days after service of the citation and petition, whereas Texas Rule of Civil Procedure 114 suggests the respondent's answer would be due by 10:00 a.m. on the first Monday after the expiration of 42 days after the issuance of citation.[211] Texas Rule of Civil Procedure 110 may be helpful for practitioners advocating that the 20-day period should apply.

PRACTICE TIP: Online calculators and charts exist for calculating the dates by which a respondent would need to answer in Texas. While these charts and calculators can be helpful, exercise due diligence and independently double-check all deadlines.

Service Under the Servicemembers Civil Relief Act (SCRA): Completing proper service before making a default judgment request requires compliance with the Servicemembers Civil Relief Act (SCRA), a federal law codified in 50 U.S.C. § 3931(b)(4), that is designed to protect active military members. The petitioner can comply with the SCRA by filing a certified affidavit explaining whether or not the respondent is in the U.S. military and what steps were taken to verify the respondent's military status. Note that additional steps may be needed if the respondent is or might be in the military. The SCRA website maintains an online database that can be used to verify military status if certain identifying details are available. Courts require that a Non-Military Affidavit signed by the petitioner be filed before a default judgment is rendered. Some courts require that a certificate

[208] Tex. R. Civ. P. 107.
[209] *See* Tex. R. Civ. P. 124, 239; *In re Hathcox*, 981 S.W.2d 422, 426 (Tex. App.—Texarkana 1998, no pet.) ("A default judgment rendered before a defendant's answer is due is void and must be reversed.").
[210] *E.g. In re Hathcox*, 981 S.W.2d at 426 (finding default judgment invalid because the request did not comply with the Texas Family Code requirements for when the court can hold that a hearing on a motion for enforcement joined with another claim).
[211] While the interplay between Texas Rule of Civil Procedure 114 and Texas Family Code §102.010 is not settled law. practitioners have successfully used the 20-days notice period in SAPCR proceedings when moving for a default judgment. Texas Rule of Civil Procedure 114 does explicitly control over Texas Rules of Civil Procedure 15 and 99, which use similar language about a 20-day notice period. The Fort Worth Court of Appeals has also recognized that the 42-day language from Texas Rule of Civil Procedure 114 applied a in SAPCR suit without acknowledging the sample language in Texas Family Code § 102.010. *In re D.C.*, 128 S.W.3d 707, 712 (Tex. App.–Ft. Worth 2004, no pet.).

from the SCRA website verifying the respondent's military status be filed along with the Non-Military Affidavit.

Certificate of Last Known Mailing Address: Under Texas Rule of Civil Procedure 239a, before requesting a default judgment, the petitioner must sign and file a written statement notifying the clerk of the respondent's last known mailing address.

C. Dismissals

After a SAPCR has been filed, but before it has been resolved by final order of the judge, it may be dismissed. Dismissal might be initiated by the court or by the petitioner as further detailed below.

i. Dismissal for Want of Prosecution (DWOP)

DWOP stands for Dismissal for Want of Prosecution. You may receive notice of the state court's intention to DWOP your case, and if so, must respond to avoid dismissal. Texas Rule of Civil Procedure 165a requires that the court provide notice of its intent to dismiss and the date and time of the dismissal hearing.

Rule 165a states that a case may be dismissed upon "failure of any party seeking affirmative relief or his attorney to appear for any hearing or trial of which the party or attorney had notice," as well as "failure of the party or his attorney to request a hearing or take other action specified by the court" within 15 days after the mailing of the DWOP notice. Rule 165a(2) provides that a case may also be dismissed if not disposed of within the time standards promulgated by the Supreme Court under its Administrative Rules.

Practitioners seeking SIJS determinations in state court have sometimes received notices of the court's intent to DWOP the case when, for example, there has been a delay in service. If you have a case with such a delay, be mindful of Rule 165a and watch for any notice from the court so that you do not miss the DWOP hearing. Nevertheless, if you do miss the DWOP notice and hearing and your case is dismissed, Rule 165a does speak to the ability to file a timely motion to reinstate.

ii. Nonsuit

Quite different from a state court's DWOP power is a party's voluntary dismissal or "nonsuiting" of a case. Texas Rule of Civil Procedure 162 provides that a plaintiff may dismiss a case, or take a nonsuit, "at any time before the plaintiff has introduced all of his evidence other than rebuttal evidence" and that notice "shall be served in accordance with Rule 21a on any party who has answered or has been served with services of process without necessity of court order." Sometimes a child's circumstances may change and nonsuiting the case may be a helpful option. For example, the child may no longer wish to have the state court grant a non-parent any rights over them as a conservator, perhaps because of a change in circumstances. To voluntarily dismiss a case, a party can file a written motion or notice of nonsuit or make an oral announcement in court. There are no formal requirements, nor must a reason be stated for nonsuiting. A nonsuit is effective when it is filed. The court generally has no discretion to refuse to dismiss the suit, and its order doing so is ministerial.[212]

[212] *Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon*, 195 S.W.3d 98, 100 (Tex. 2006).

D. Pre-Trial Conferences

Some family courts in Texas require a pretrial conference before the prove-up hearing for a SAPCR seeking SIJS determinations. For instance, under Local Rule 14 of the 507th Family District Court in Harris County, a pretrial conference is required in SIJS cases and the parties must contact the court coordinator to schedule the conference at least 60 days prior to the trial setting in the case. If a pretrial conference is scheduled, be prepared to provide a case status update and explain how all necessary prerequisites will be completed before the prove-up hearing. Judges are likely to use the pretrial conference to ensure that the petitioner is prepared to present the necessary evidence at the prove-up hearing. Best practice is to contact the court clerk or coordinator in advance of the hearing to see if the petitioner is required to attend.

E. Prove-Up

The "prove-up" hearing is typically the last hurdle in a SAPCR and the final hearing in the SAPCR case. It is the opportunity for the petitioner's attorney to present their evidence and to advocate for the judge to grant the proposed SAPCR order because it is in the best interest of the child. You should present evidence for each of the elements of the case.

The evidence in a SIJS case in Texas typically includes the documents in the filing checklist in Section VIII.A and testimony at a prove-up hearing from the petitioner. The proposed order should also be filed in advance of the prove-up hearing, as it is possible that the judge will review and sign the order at the prove-up hearing. Section VIII provides important information related to the filing and drafting of documents. Section IX.A covers the mechanics of the hearing, including scheduling, interpretation, court reporters, and appearing virtually.

i. Preparing for the Prove-Up Hearing

Because of the tight time parameters on most prove-up hearings, advance preparation is essential. Generally, the preparation will include:

- Drafting concise questions for the petitioner
- Going over what to expect at the hearing with the petitioner (and any other witnesses)
- Practicing questions with the petitioner (and any other witnesses)
- Reviewing exhibits with the petitioner and ensuring they understand what documents will be presented
- Preparing supporting exhibits and reviewing the process for moving those exhibits into evidence at the hearing under Texas Rules of Evidence Article IX[213]
- Filing the proposed order with the necessary SIJS determinations (best practice is to file after completing the preparations with the client and in compliance with any deadlines required by the judge)

CILA provides other resources for how to prepare for a hearing, such as "CILA's Bite-Sized Tip 5: 'Preparing your client for a court hearing is key'" (Sept. 16, 2022) and "How to Prepare for an

[213] Texas Law Help provides a useful resource on "Gathering and Presenting Evidence" (Oct. 11, 2022) that is available online at https://texaslawhelp.org/article/gathering-and-presenting-evidence.

Individual Hearing: Different Practitioners' Perspectives" (Dec. 5, 2022). While these resources are focused on hearings in immigration court, some of the general tips related to preparing a client to testify and organizing your notes before the hearing would apply equally in state court.

> PRACTICE TIP: Every judge is different, and it is important to remember that when you are preparing for the prove-up. After being scheduled for the prove-up, be sure to ask the court clerk or coordinator about timing. You can ask the court to set a 20-minute hearing, or however much time you anticipate needing to ensure that your case is fully heard. But the judge may have a preference for shorter hearings, especially if you are on a busy docket. Asking for the time limit ahead of time will help you know how many questions to prepare for the prove-up. Even if you receive a time limit, be prepared to be flexible on the day of the hearing.

Documents: Before the hearing, you should file the proposed order and any other necessary documents with the court. The sections above include a filing checklist and additional details about each of documents typically filed in SIJS cases. Identify in advance any exhibits you intend to use with the witnesses and research the process for how to present those exhibits to the judge at the hearing, including moving the exhibits into evidence under the Texas Rules of Evidence. Best practice is to bring copies of your filings and exhibits to the hearing.

Hearing Logistics: Part of your preparation will be ensuring that things run smoothly on the day of the hearing. That includes making any necessary arrangements in advance for interpretation, court reporters, or appearing virtually.

Witnesses: Preparation includes deciding who will testify at the hearing. This is a strategic decision that will depend on the circumstances and facts of the case and should be discussed with the petitioner. The petitioner is often the only witness to testify at the prove-up hearing. If the petitioner does not testify, they will likely need to file a supporting declaration, as discussed in Section VIII.D. Typically, a child does not testify at the prove-up hearing unless they are the petitioner. Most judges will not wish to speak to the child at the prove-up hearing or even allow them in the courtroom. However, this can vary by court and the facts of the case. It may be helpful to check with other attorneys regarding local practice. If the child is expected to or intends to be present at the hearing, be sure to prepare them in advance for what to expect at the hearing. Keep in mind too that it is possible for the judge to ask the child questions at the hearing even if they do not intend to testify.

Drafting Questions: Your questions for the petitioner will depend on the type of SAPCR. Make sure the questions allow the petitioner to provide key information for each element of the claim and to overcome any applicable presumptions. You should also include questions that prove the parental abuse, neglect, and/or abandonment. Ideally, these issues will be addressed in relation to seeking the relief sought in the SAPCR, such as establishing paternity or granting conservatorship. In creating your list of questions to ask the petitioner, be sure to address their basic biographic information, their relationship to the child/children, the respondent's relationship to the child, and why the court should grant the relief sought in the SAPCR, including rebutting any applicable presumptions.

PRACTICE TIP: Some judges allow the attorney to ask the petitioner leading questions at the prove-up hearing for the sake of time and efficiency. This is especially common in uncontested matters. Leading questions typically allow the petitioner to simply answer "yes" or "no." The sample Q&A below gives an idea of how to ask questions in a leading manner.

Practicing Questions: Prepare with the petitioner ahead of time and do a "practice" prove-up to give the petitioner a sense of how the hearing will be conducted in terms of time and substance. During the practice session, review what to expect at the hearing with the petitioner and confirm how they plan to attend the hearing either in person or virtually. When practicing with the petitioner, if possible, use an interpreter in the practice session if one will be required at the hearing. This will help the petitioner understand how the questioning will work and allow the attorney to better estimate how long the questioning will take.

EXAMPLE: The following is a sample set of questions for the attorney to ask the petitioner at the prove-up hearing. In this sample, the petitioner is the child's mother. The questions would need to be tailored to the facts and circumstances of your case. This is also not an exhaustive list and should be edited according to the time constraints/facts in your case. Furthermore, note that some of these questions are leading, and the assigned judge to your case may not permit leading questions.

1. Can you (petitioner) please state your full name for the court?
2. How long have you lived in _____ county?
3. You are the mother of _____, the child (the subject of this suit)?
4. Is the child living with you?
5. How long has the child being living with you in _____ county?
6. How old is the child?
7. Who is the child's father?
8. Where is the child's father?
9. You and the respondent, the child's father, married in ____, correct?
10. The child, ____, was born during the marriage?
11. Respondent's name is listed on the child's birth certificate as the child's father, correct?
12. Are you still married to the respondent?
13. You divorced or (separated), when the child was 1 year old, correct?
14. Before coming to the U.S., where did the child live?
15. Did she live with her father?
16. Who did she live with?
17. Since arriving in the U.S., has the respondent provided you with any financial assistance for the child's food, clothing or shelter?
18. Since arriving in the U.S., has the respondent tried to contact you or the child to have a relationship with the child or inquire about her care and wellbeing?
19. You testified that before child arrived in the U.S., she lived with her grandmother, correct?
20. When the child lived with her grandmother, did the respondent provide the grandmother with money for the child's food, clothing or shelter?
21. Did the respondent provide the child directly with money for her food clothing or shelter?

22. Who was the person who provided or sent money to the child for her food, clothing or shelter? (the petitioner)
23. When the child lived with her grandmother, did the respondent try to contact the child or have a relationship with her?
24. Prior to living with her grandmother, the child lived with you in [home country] since her birth until the age of 13, when you came to the U.S., correct?
25. When you lived with the child in [home country] during that time period, did the respondent provide you with money for the child's food, clothing or shelter?
26. Did the respondent provide the child with food, clothing or shelter?
27. You lived in the same household with the respondent until the child was 1 year old, correct?
28. Why did you separate?
29. How has the child been emotionally affected by the absence of the respondent in her life?
30. Does she want a relationship with him?
31. Why not?
32. If she were to return to [home country] would he take her in and care for her?
33. Why do you believe that?
34. Do you believe it is in the child's best interest to return to [home country]?
35. Why not?
36. Why can't the child return to live with her grandmother?
37. Do you have any other family members who can care for her in [home country]?
38. Are there any other dangers in [home country] that make you concerned for her safety and wellbeing?
39. Is the child in school? What school? What grade?
40. Are you employed?
41. Do you earn enough to support her?
42. Are you asking this court to grant you sole managing conservatorship of the child?
43. Are you asking this court to decline to appoint the respondent as a managing or possessory conservator to do his history of neglect and abandonment?
44. Are you asking this court to decline to grant the respondent possession and access to the child due to his history of neglect and abandonment?
45. Are you asking this court to find that it is not in the child's best interest to return to [home country] because the child will lack a proper caregiver there to provide care and support?
46. All relief and findings you are requesting in this matter are for the protection of the child and in her best interest, correct?

ii. Presenting Your Case at the Prove-Up Hearing

This section goes over what to expect during the prove-up hearing. Keep in mind that each case can differ depending on the judge and the time presented.

Introductions: Once your case is called, begin by introducing yourself as the petitioner's attorney, your client, and anyone else with you (including an interpreter if you brought one). You should state as well how you will be proceeding and how much time you anticipate needing for the prove-up. Be sure to allow for enough time to present the case to the judge. The prove-up hearing is often brief, and the ideal timing may be around 15 to 20 minutes.

Case Overview: Once your case is called for prove-up, provide the court with basic information about the case including the relief sought and when the proposed order was filed and accepted by the court. The court typically also wants information on service of process, including how the respondent was served (date, where) and whether they responded to service. If the respondent signed a waiver of service, state that it was filed with the court and include the date of filing. The court may have other questions for the attorney about the nature of the case or case status.

Testimony: The most important part of the prove-up hearing is usually the testimony from the petitioner and any other witnesses. When questioning a witness, state the questions clearly for the record and leave enough time for the petitioner (or other witness) and interpreter to answer/interpret for the record. The judge may have questions for the petitioner/witness as well.

For in-person hearings, the witness and the attorney in most family courts will stand before the judge's bench while the witness is being sworn in and answers questions. For virtual hearings, decide in advance if the petitioner will appear for the hearing from your office and sit beside you on camera or in another room.[214] The interpreter in a virtual hearing should appear on camera as well, though they may be in a separate room or with the judge if they were provided by the courthouse. Some courts have also used a simultaneous interpreting feature on Zoom that you may want to familiarize yourself with in advance of the hearing.

Moving Documents into Evidence: At some point in the hearing, ensure that your exhibits are part of the evidentiary record in the case. The Texas Rules of Evidence guides the process for the admission of exhibits as evidence. Even if the document's admissibility is uncontested, it is good practice to confirm on the record that the judge received and accepted the exhibits. Make sure to research the process for submitting exhibits in advance of the hearing as it can vary by court. Virtual hearings can have different procedures as well, which may involve sending a link for the attorney to upload documents in advance of or during the hearing.

Closing Remarks: Before the hearing ends, thank the judge for hearing the case and make any clarifications that may be needed for the record. The judge may sign the proposed order at the hearing or take the case under consideration. As soon as the judge signs the order, you should obtain a court-certified copy of the signed Final Order to send with the I-360 Petition to USCIS.

iii. Orders by Submission

Some judges waive the requirement of a prove-up hearing and decide the case on submission. If you request an order by submission, you must submit a petitioner's affidavit or an affidavit of testimony in your exhibit packet that states the facts of the case. The judge will consider this written testimony as evidence along with any other exhibits submitted in support.

Practitioners or clients may prefer to have the SAPCR considered on submission because it eliminates the time and logistics of having the prove-up hearing. However, having a case considered by submission is not always possible or recommended. How to proceed in your case depends on the specific facts, the assigned judge, and the child's age and risk of the child aging out of the system before receiving a decision. Moreover, not all judges allow orders by submission.

[214] In cases involving detained youth, the youth may need to appear via Zoom from the ORR shelter.

Check your assigned court's standing order and website or call the court clerk or coordinator to see if order by submission is a possibility in your case.

If you are able to and decide to have the case considered by submission, file all of the required documents and then contact the court clerk or coordinator to have the case placed on the judge's submission docket. The judge will independently review the filings on the submission docket and determine whether to grant the proposed order. For status updates, you can call the court clerk or coordinator to see if a ruling has been made in your case or to ask them to email a copy of the signed order.

iv. Final Order

Generally, a SAPCR case will end with the issuance of a final order, and the court "acquires continuing, exclusive jurisdiction" when it renders the final order.[215] You must obtain a court-certified copy of the signed Final Order to send with the I-360 Petition to USCIS. Always provide your client with a copy of the final order of the court as well and review the order with them to make sure they understand it and know what they need to do to follow the order.

Section VIII.F contains important information about drafting and filing the proposed order. The Texas Family Code § 105.006(a) also includes information regarding the contents of what should be included in a final order for a SAPCR. It is important to include everything that is needed and advocate for everything that you want in the order. You will want to ensure any "asks" are clear to the court. As explained above in Section VIII.F., it is essential to include a state law basis for everything sought in the order. Make sure that the final order includes everything you need to pursue SIJS with USCIS and that the judge did not make any material changes to the order.

F. Post-Order Processes

For many SIJS cases, the state court proceedings end once the petitioner receives the final order. Although the SAPCR remains open until the child ages out of the system, it may not be necessary for the petitioner or child to ever return to court. But if the petitioner or child want to contest or make changes to the Final Order, they can seek, as appropriate, clarification, modification, a judgment nunc pro tunc, or an appeal.

i. Clarifications

After obtaining the final order with the SIJS determinations, it may be necessary to return to family court for additional clarification about the relief granted and/or determinations. This issue most often arises when USCIS issues a Request for Evidence (RFE) in the immigration proceedings and requires the child to obtain additional determinations from the state family court. If this occurs, a party may file a motion for clarification of an order under Texas Family Code § 157.421 to make non-substantive changes to the final order.

The motion for clarification should explain how the existing order is "not specific enough to be enforced by contempt" and specify what clarification is needed. Ideally, a proposed order setting forth the requested changes should be attached to the motion as well. Because the motion is filed in the existing SAPCR proceeding, the judge who originally entered the order will most likely

[215] Tex. Fam. Code § 155.001(a).

decide the clarification issues. If the judge grants the motion for clarification, a new Final Order with the clarifications should be entered and can then be provided to USCIS.

PRACTICE TIP: *Clarification vs. Modification:* When deciding how to respond to a RFE from USCIS, keep in mind that clarifications apply to non-substantive changes to the final order, whereas modifications involve substantive changes. A request for modification should be made by written motion in compliance with Texas Family Code §§ 156.001-156.409.

ii. Nunc Pro Tunc Judgments

Having an order free of mistakes and errors is essential for when you are sending the final order of the SAPCR to USCIS--as you do not want problems or delays to arise in the case when it is being adjudicated by USCIS. If you have obtained the signed final order and soon afterwards discover that there is a clerical mistake in the final order, you can file a motion for judgment nunc pro tunc to correct the mistake. A judgment nunc pro tunc only corrects clerical errors in a judgment, not judicial errors or omissions, as the nunc pro tunc corrects differences in the written order so that the order matches the judgment of the court.

Under Rule 316 of the Texas Rules of Civil Procedure, a motion for judgment nunc pro tunc can be filed to correct clerical mistakes in the record of any judgment. This motion can be filed by any party involved in the proceeding. The motion must include the header with the cause number, court, caption, and title, and it must include the signature block of the party who files the nunc pro tunc. The body of the motion must clearly describe the error in the judgment, the correction requested, and the reason for the correction. In filing the nunc pro tunc, best practice is to include the granted proposed order in the filing.

iii. Appeals

The appellate process may be used after entry of the final order if a party disagrees with the outcome of the SAPCR proceeding.[216] An appeal may be necessary if the family court did not grant the relief requested. The details of how to file and proceed with an appeal are beyond the scope of this manual. In general, however, the filing process and applicable deadlines are governed by the Texas Rules of Appellate Procedure.[217] Note that an accelerated appellate process applies to cases involving the termination of a parent-child relationship.[218] Even if a party appeals, the Final Order usually remains in effect while the appellate process is pending.[219] The trial court may also make necessary orders for the safety and welfare of the child while the appeal is pending.[220]

PRACTICE TIP: Because deadlines to appeal begin to run as soon as the final order is entered, it is important to review and discuss the final order with the client and to decide whether an appeal is necessary soon after the final order is entered.

[216] *Id.* § 109.002(b).
[217] *Id.* § 109.002(a).
[218] *Id.* § 109.002(a)(1).
[219] *Id.* § 109.002(c).
[220] *Id.* § 109.001(a).

X. Declaratory Judgments

A. When to Consider Filing a Declaratory Judgment Suit

Declaratory judgments are an alternative to seeking SIJS determinations with a SAPCR and should be considered when a court is unable to make custody determinations for the child. They are most often used when a child is still in ORR custody. A declaratory judgment suit for a dependency order may be brought under the Texas Rules of Civil Procedure based on the inclusion of "dependency" in the jurisdiction of Texas' family courts under Texas Government Code § 24.601(b)(4). While the code currently does not define dependency in this context, prior versions of the code can be used for establishing the court's jurisdiction to enter a dependency order for a child.

PRACTICE TIP: When deciding whether to bring a declaratory judgment proceeding, remember that the threshold issues described above (in a SAPCR) for jurisdiction, standing, and venue will still apply.

Declaratory judgments were used frequently in the past. But USCIS began to deny SIJS petitions based on Texas declaratory judgements after the 2016 amendments to the USCIS Policy Manual. Now the USCIS Policy Manual states:

> *Declaratory Judgments*
>
> A declaratory judgment generally determines the rights of parties without ordering anything to be done. In the context of juvenile court determinations, a declaratory judgment may state facts but not order custody, dependency, or make legal reunification or best interest determinations. However, a declaratory judgment may be sufficient to merit DHS consent **if accompanied by or includes a qualifying court-ordered custodial placement or a declaration of dependency on the court for the provision of child welfare services and/or other court-ordered or recognized protective remedial relief.**[221]

The language bolded at the end makes clear that declaratory judgments may still be accepted by USCIS when accompanied by a request for additional protective or remedial relief pursuant to applicable child welfare provisions or any other relevant state law. For instance, the state court may order counseling services, school enrollment, or other services under Chapter 264 of the Texas Family Code.

Even with this recent amendment to the USCIS Policy Manual, USCIS continues to deny I-360 petitions based on declaratory judgments when children are no longer in ORR custody and no protective or remedial relief was ordered by the court.[222] CILA is aware of one case where the AAO appeal was sustained for an I-360 petition for a released child based on a Texas declaratory

[221] USCIS Policy Manual Vol. 6, Pt. J, Ch. 3 (emphasis added) (footnote omitted).
[222] *E.g.*, *In re: 15503467*, USCIS Admin. Appeals Off. (Jan. 13, 2022), available at https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2022/JAN132022_01C6101.pdf.

judgment order that mandated counseling services for a child living with his brother.[223] Bringing a declaratory judgment suit may be considered the best option for a released youth if, for instance, there is no one to serve as conservator of the child.

For youth in ORR custody, USCIS recognizes that relief may include the child's placement in the custody of ORR. Indeed, the regulations provide as follows:

> (5) Evidentiary requirements for DHS consent. For USCIS to consent, the juvenile court order(s) and any supplemental evidence submitted by the petitioner must include the following:
>
> > (i) The factual basis for the requisite determinations in paragraph (c) of this section; and
> >
> > (ii) The **relief from parental abuse, neglect, abandonment**, or a similar basis under State law granted or recognized by the juvenile court. Such relief may include:
> >
> > > (A) The court-ordered custodial placement; or
> > >
> > > (B) **The court-ordered dependency on the court for the provision of child welfare services and/or other court-ordered or court-recognized protective or remedial relief, including recognition of the petitioner's placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement.**[224]

The USCIS Policy Manual has similarly been updated in recognition of the limited options available for children in ORR custody:

> Youth in HHS Office of Refugee Resettlement (ORR) custody seeking SIJ classification may not be able to alter their custodial placement via a juvenile court and instead may seek a dependency determination from a juvenile court. In circumstances in which a youth in ORR custody receives a qualifying dependency determination under state law, **USCIS may consider evidence of the court's recognition of the ORR placement to be the protective remedial relief provided in conjunction with the dependency determination**. USCIS recognizes that, generally, placement in federal custody with ORR affords protection as an unaccompanied child under federal law and removes a state juvenile court's need to provide a petitioner with additional relief from parental maltreatment under state law.[225]

As a result, for children in ORR custody the state court order does not need to order additional relief and may address the need for dependency and the relevant SIJS determinations. Indeed,

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[223] *In re: 9435908*, USCIS Admin. Appeals Off. (Mar. 16, 2021), available at https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2021/MAR262021_03C6101.pdf.
[224] 8 C.F.R. § 204.11(d)(5)(ii) (emphasis added).
[225] USCIS Policy Manual Vol. 6, Pt. J, Ch. 3 (emphasis added) (footnotes omitted).

several AAO opinions adopted this view even before new SIJS regulations and amendments to the USCIS policy manual went into effect.[226]

When using a declaratory judgment suit to obtain SIJS determinations, keep in mind that the final order must contain the necessary judicial determinations discussed above and should include the state court's basis for making a dependency determination under Texas law. In a declaratory judgment suit, it is also important to serve all persons who may be affected by the court's order. Specifically, the child's parents should be served if judicial determination regarding parental reunification are requested in the pleading.[227]

B. Bringing a Declaratory Judgment Suit as Next Friend

As explained above, children in Texas generally cannot bring a lawsuit on their own. Because declaratory judgments are not brought under the Texas Family Code, a child will need to have a "next friend" assist with filing suit under Texas Rule of Civil Procedure 44. The next friend does not have to be a parent or guardian. In many circumstances, an attorney may consider serving as next friend for a client but should contemplate the ethical implications of serving as both the child's next friend and attorney in the same case. Best practice may be for someone else to assist with bringing the suit and serve as next friend to the child.

XI. Conclusion: What Happens After State Court?

The purpose of this manual is to provide a guide for the state court proceedings that will need to occur to obtain SIJS relief for your client. These state court proceedings are a core part of the SIJS process, but they are not the entire process. In all SIJS cases, youth must submit an I-360 petition after obtaining the final order from the state court. The I-360 petition must be filed before the youth turns 21. However, it is best to file the I-360 petition as soon as possible after receiving the final SAPCR order for purposes of the youth's priority date, which is the date the petition is properly filed with USCIS. Having an earlier priority date can allow the youth to apply for their green card months earlier than if this process is delayed. This is an equally important part of the SIJS process and, as described above, may lead to additional filings in state court based on USCIS's review of the final order.

Section XII highlights some additional resources that can assist with these next phases of the SIJS process. Keep in mind too that for some youth there may be other ongoing proceedings that can impact the state court proceedings as well. Youth in removal proceedings will have ongoing proceedings in immigration court, while others may be applying for alternative forms of legal protection with USCIS.

SIJS is a valuable resource for youth. We hope this manual provides guidance for how to navigate the state court proceedings in Texas. Practitioners in Texas may also submit technical assistance requests on CILA's website if you have case-specific questions as you work on your client's case. We thank everyone for your time and effort in helping youth obtain this humanitarian protection.

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[226] *E.g.*, *In re: 9499637*, USCIS Admin. Appeals Off. (May 13, 2021), available at https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2021/MAY132021_01C6101.pdf.

[227] *See* Tex. Civ. Practice & Remedies Code § 37.006(a); Tex. R. Civ. Proc. 21(a).

XII. Additional Resources

While this manual provides an overview of how to navigate state court in Texas, practices may differ because judges are allowed to exercise their discretion in certain areas and to use their judgment in interpreting statutes and policies. We encourage you to reach out to other SIJS practitioners in your locale to learn more about trends and experiences specific to certain courts and state court judges.

The CILA team hosts trainings and creates space for practitioners to collaborate and have community in working groups, including in a Houston-specific SIJS working group and another working group focused on SIJS issues, that both meet on a quarterly basis via video conference. Additionally, the CILA team writes resources and answers technical assistance questions. Please reach out to CILA and view our materials available on the CILA website to learn more and to guide you in your practice working with youth. Resources available on CILA's *Additional Resources* webpage are password protected. https://www.txcourts.gov/media/1455531/texas-rules-of-civil-procedure.pdf. For password information, please contact CILA at cila@abacila.org.

For more information about SIJS, please refer to these additional CILA resources:

SIJS Generally:

- CILA's explainer on the changes to the SIJS regulations, "Overview of New Special Immigrant Juvenile Status Regulations" (May 9, 2022).
- CILA's SIJS overview cheat sheet, "Special Immigrant Juvenile Status (SIJS) Overview" (Nov. 2, 2022).
- CILA's "Special Immigrant Juvenile Status (SIJS) Case Theory and Evidence Matrix" (Apr. 14, 2020).
- CILA's overview of SIJS and changes brought forth in 2022, "The ABCs of SIJS" (June 10, 2022).
- CILA's webinar with guest speaker Victoria Mora of the Refugee and Immigrant Center for Education and Legal Services (RAICES) and related template bank for Texas practitioners, "SIJS in Texas 101: An Overview of State Court Proceedings for Special Immigrant Juvenile Status" (Feb. 23, 2022).
- CILA's recorded training, "Special Immigrant Juvenile Status& SIJS-based Adjustment 101" (Mar. 28, 2023).

Working with Clients:

- CILA and the ABA's Commission on Immigration's *Pro Bono Program Resources & Templates Toolkit* (July 25, 2022) includes multiple example documents such as an example "Children's Cases General Intake Form" (pp. 49-55) and an example "Pro Bono Initial Interview Questions" form (pp. 74-81) that can assist you when conducting a screening and gathering facts in an initial client interview.
- CILA's "Tips for Working with Migrant Children and Trauma-Informed Lawyering" (Jan. 27, 2023) provides tips for practitioners new to working with children on a legal case.

Jurisdiction:

- CILA's overview of the jurisdiction requirements under the Uniform Jurisdiction Enforcement Act (UCCJEA), "Jurisdiction Requirements Under the UCCJEA in Texas" (Oct. 20, 2022).

Service of Process:

- BRR Inns of Court resource on CILA's website "How To Serve the Respondent Successfully (Decision Tree)" (Mar. 2019)
- CILA's explainer on service by social media, "Service of Citation by Social Media" (July 9, 2021).
- CILA's explainer on citation by publication, "Update to Rules Regarding Citation of Service by Publication" (Aug. 14, 2020).
- CILA's explainer on service by publication in Texas SIJS cases, "When And How To Use Service Of Citation By Publication In Texas SIJS Cases" (May 17, 2019).
- CILA's resource chart for service by publication in Central America, "Information on publications to facilitate service of citation by publication in Central America" (July 7, 2020).
- CILA and Justice in Motion's collaborative effort to provide paternity affidavits in Guatemala, El Salvador, and Honduras, "CILA and Justice in Motion Collaborate on Expert Affidavits" (Dec. 3, 2020).
  - "Guatemala Paternity Affidavit Package" (Dec. 2020).
  - "El Salvador Paternity Affidavit Package" (Dec. 2020).
  - "Honduras Paternity Affidavit Package" (Dec. 2020).
- For more information on Justice in Motion and other organizations that can assist attorneys with service in other countries, in addition to other case issues, take a look at CILA's "Highlight on Resources and Services to Support Pro Bono Attorneys" (Apr. 15, 2021).

SAPCR: Filing and Preparing for the Hearing:

- CILA's blog post on information for Texas family court requirements for translation of foreign language documents, "Translation Requirements In Texas Family Courts" (Sept. 5, 2019).
- CILA's checklist document "Key Elements of State Court Pleadings and Order Handout" (Mar. 2023)
- CILA's bite-sized tips on preparing for hearings, "CILA's Bite-Sized Tip 5: 'Preparing your client for a court hearing is key'" (Sept. 16, 2022).
- CILA's resource on preparing for an individual hearing in immigration court includes some general tips that may apply to SAPCR hearings, "How to Prepare for an Individual Hearing: Different Practitioners' Perspectives" (Dec. 5, 2022).

Next Steps After Obtaining State Court Order:

- CILA's guidance on filling out the I-360 Petition for SIJS, "Form I-360 Review Guidance" (Mar. 2023).
- CILA's checklist for the I-360 Petition and description on where to file the I-360, "I-360 Contents Checklist and Where to File Handout" (Mar. 2023).

Visa Availability (Post I-360 Approval):

- CILA's resource on visa availability for SIJS petitioners, "Visa Availability Reference Guide" (Oct. 13, 2022).