KIND
KIDS IN NEED OF DEFENSE

Preparing your SIJS case: Filings/Pleadings and Preparation

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AGENDA

- Introductions
- Quick background of SIJS cases
- Overview of initial filing in SIJS cases
- General review of other filings
- Filing Tips
- Q & A

Providing Lawyers

- KIND provides pro bono attorneys to represent unaccompanied children in their removal (deportation) proceedings.
- We do this through our partnerships with major law firms and corporations which have agreed to represent children referred to KIND at no cost.
- KIND trains and mentors our volunteer attorneys so no prior immigration experience is necessary.
- KIND provides malpractice insurance.

Attorneys can make a huge difference

- Over 50% of children have no one to represent them in their removal proceedings
- Immigration Judges are almost 100 times more likely to grant legal relief to unaccompanied children with attorneys than to those without.

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Special Immigrant Juvenile Status (SIJS)

- Special Immigrant Juvenile Status is a form of immigration relief for **Abused**, **Abandoned,** or **Neglected** Children
- Hybrid process involving a state court proceeding and federal immigration process
- **Three step process** that allows the child to apply to be a Lawful Permanent Resident
- Requires an order from a juvenile court containing 5 special findings for SIJS relief (“**Predicate Order**”)

Non-Viability of Reunification

Abuse, Neglect, Abandonment or Similar Basis Under State Law:

Abuse (*FL § 5-701(b)*)

> "(i) [T]he physical or mental injury of a child under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed by: 1) a parent; 2) a household member or family member; 3) a person who has permanent or temporary care or custody of the child; 4) a person who has responsibility for supervision of the child; 5) or a person who, because of the person's position or occupation, exercises authority over the child; (ii) sexual abuse of a child, whether physical injuries are sustained or not; or (iii) labor trafficking of a child by any individual."

Neglect (*FL § 701(s)*)

> "[T]he leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate: (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or (2) mental injury to the child or a substantial risk of mental injury."

Abandonment (*FL § 9.5-101(b)*)

> "[L]eft without provision for reasonable and necessary care or supervision."

Similar Basis

Best Interest Analysis

The court will consider any facts about how being in the U.S. versus home country affects the child's well-being.

- Lack of caregivers and supportive family networks in home country versus U.S.
- Access to education, therapy, medical care, etc.
- Any specific threats to child's safety from gangs, abusive parent or relative, etc.
- General violence in home country.

- Read Montgomery County v. Sanders and Taylor v. Taylor

(1) State Court Predicate Order

1. Under 21;
2. Unmarried;
3. *Dependent* on state "juvenile court" **OR** *placed in custody* of individual/entity;
4. Reunification with <u>one or both</u> parents not viable due to abuse, neglect, abandonment **OR** similar basis; and
5. Not in the child's best interest to return to previous country of nationality or last habitual residence.

pursuant to INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J)

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Required and Recommended Forms with initial filings:

- **Request for Waiver of Prepaid Costs** (if applicable)
- **Line Entering Appearance (if office not in Maryland)**
- **Civil Domestic Case Information Report**
- **Request for Interpreter Services**

Custody Complaint Initial Filing list:

- Complaint for Custody
- Proposed Custody Order
- Plaintiff's Exhibits 1-3:
  - Exhibit 1 – Plaintiff's Declaration with certified English Translation *
  - Exhibit 2 – Minor Child's Declaration with certified English Translation *
  - Exhibit 3 – Minor Child's Birth Certificate with Certified English Translation
  - Exhibit 4 – Affidavit of Non-military service
- Motion for Special Findings of Fact and Law
- Proposed Special Findings of Fact and Law

* Optional at this stage, but required only in Montgomery County

Guardianship Petition Initial Filing list:

- Petition for Guardianship of a Minor
- Proposed Guardianship Order
- Petitioner's Exhibits 1-3:
  - Exhibit 1 – Declaration of Petitioner with certified English Translation *
  - Exhibit 2 – Declaration of Minor Child,[Child Name], with certified English Translation *
  - Exhibit 3 – Birth Certificate of [Child Name] with Certified English Translation
  - Exhibit 4- Parental Consents and Waivers (if available)
  - Exhibit 5 – Certificate of Completion Guardian Orientation and Training
- Designation of a Guardian of the Person by Minor Child (if child 14+)
- Motion for Special Findings of Fact and Law
- Proposed Special Findings of Fact and Law

Maryland Family Law Forms

- Forms and explanations found online:
  - Website: https://www.courts.state.md.us/family/family-forms

- Review of Forms
  - Required and recommended
  - Custody complaint and Guardianship Petition

Motion for Special Findings of Fact:

- Mirrors eligibility requirements
- Focuses on Maryland Law and applicability
- Longer explanations of eligibility

IN THE CIRCUIT COURT FOR Choose an item.

PLAINTIFF NAME Plaintiff Address *Plaintiff* v. DEFENDANT NAME Defendant Address *Defendant*	**Case No.: _____**

MOTION FOR SPECIAL FINDINGS OF FACT AND LAW PURSUANT TO MARYLAND ANNOTATED CODE FAMILY LAW 1-201(b)

Comes now the Plaintiff, PlaintiffName (hereinafter "PlaintiffShortName"), by and through *pro bono* counsel, AttorneyName, Esq., and requests that this court make the factual findings regarding the child at issue, ChildName (hereinafter "ChildFirstName"). In support of this motion, Plaintiff represents to the court that:

1. ChildFirstName was born on ChildDOB in City, Country. Currently, ChildFirstName is under 21 years of age and she is unmarried. ChildFirstName is presently in the United States and has been living with her mother in Maryland since 2016. Specifically, ChildFirstName has been living with her mother and family in County, Maryland for the past two years.

2. Plaintiff is filing a concurrent Complaint for Sole and Legal Physical Custody of ChildFirstName along with this motion.

3. This court has jurisdiction to make judicial determinations about the care and custody of juveniles under § 1-201 of the Maryland Family Law Article.

4. ChildFirstName is dependent on this court and, if the court grants sole legal and physical custody in accordance with the Complaint for Custody filed concurrently with this motion, ChildFirstName will have been placed under the custody of her mother, Plaintiff PlaintiffName.

5. Reunification with ChildFirstName's father, DefendantName (hereinafter "DefendantShortName"), is not viable due to [Choose Appropriate Options: abandonment as defined by § 9.5-101(b) of the Maryland Uniform Child Custody Jurisdiction and Enforcement

Act and due to neglect as defined by § 5-701(s) of the Maryland Family Law Article and due to abuse as defined by § 5-701(b) of the Maryland Family Law Article].

[Choose #6-8 below as necessary]

6. "Abandoned" as defined by section 9.5-101(b) of the Maryland UCCJEA is "left without provision for reasonable and necessary care or supervision." [Insert facts to establish abandonment]

7. "Neglect" as defined by section 5-701(s) of the Maryland Family Law Article means "the leaving of a child unattended or other failure to give proper care and attention to a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate: (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or (2) mental injury to the child or a substantial risk of mental injury." [Insert facts to establish neglect]

8. "Abuse" as defined by section 5-701(b) of the Family Law Article means: "(1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or (2) sexual abuse of a child, whether physical injuries are sustained or not." [Insert facts to establish abuse]

9. [Insert facts to demonstrate child's relationship with plaintiff parent (contact with child while in home country, continued financial and emotional support, etc.)]

10. It is not in ChildFirstName's best interest to return to her and her parent's previous country of nationality, or country of last habitual residence, Country, because [Insert facts about best interest]. There are no suitable or willing caretakers who could care for her there. [Insert facts about lack of suitable caretakers (never had caretaker, previous caretaker now ill, elderly, absent, etc.)]

WHEREFORE, the Plaintiff prays that this Honorable Court grant the following relief:

A. Special Findings of Fact and Law pursuant to Maryland Annotated Code Family Law Article Section 1-201(b);

B. Other such awards and further relief as the nature of the cause may require.

Respectfully submitted,

Order of Special Findings of Facts

- **Mirrors eligibility requirements**
- **Brief explanations of eligibility based on Maryland law**

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

[redacted] Baltimore, Maryland 21205 *Plaintiff* v. [redacted], Peten, Guatemala and [redacted] Address Unknown *Defendants*	**Case No.: _____**

ORDER OF SPECIAL FINDINGS OF FACT AND LAW PURSUANT TO MARYLAND ANNOTATED CODE FAMILY LAW ARTICLE SECTION 1-201(b)

Upon consideration of the Petition for Guardianship and subsequent pleadings, review of the facts and evidence presented, the Court hereby finds as follows:

THE COURT FINDS that the Child, [redacted], born [redacted], 2006, is under 21 years old, unmarried, a national of Guatemala, and present in the United States.

THE COURT FURTHER FINDS that this Court has jurisdiction under section 1-201(b)(5) of the Maryland Family Law Article to make judicial determinations about the custody and care of juveniles.

THE COURT FURTHER FINDS that the Child is dependent on this juvenile court or legally committed to, or placed under the custody of, an individual or entity appointed by a State or juvenile court located in the United States. To wit, this Court placed the Child in the custody

of, [redacted], in order to provide relief and protection from parental abandonment and neglect.

THE COURT FURTHER FINDS that reunification with the Child's father, [redacted], is not viable due to abandonment and neglect. "Abandoned" as defined by section 9.5-101(b) of the Maryland Uniform Child Custody Jurisdiction and Enforcement Act means "left without provision for reasonable and necessary care or supervision." "Neglect" as defined by section 5-701(s) of the Maryland Family Law Article means "the leaving of a child unattended or other failure to give proper care and attention to a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate: (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or (2) mental injury to the child or a substantial risk of mental injury." In approximately 2013, Mr. [redacted] left the family home and stopped providing for his children, knowing that his wife would be unable to support their children on her own. Mr. [redacted] has not been in communication with [redacted], nor has he provided any form of financial or emotional support since he left the family home, exposing [redacted] to substantial risk of harm.

Maryland Courts must evaluate the totality of circumstances in order to establish whether reunification is practical. *See Romero v. Perez*, 205 A.3d 903, 915 (2019). In accordance with Maryland statute and case law, this Court finds that under the totality of the circumstances, reunification with the child's father is not viable.

THE COURT FURTHER FINDS that the abandonment and neglect occurred prior to the Child's 18th birthday.

THE COURT FURTHER FINDS that it is not in the Child's best interest to be returned to his or his parents' country of nationality or of last habitual residence, Guatemala. "To determine a

child's best interest in Maryland, '[t]he fact finder is called upon to evaluate the child's life chances . . . and predict with whom the child will be better off in the future." *In re: Dany G.*, 223 Md. App. 707, 721-22 (2014) (quoting *Montgomery Cnty. v. Sanders*, 38 Md. App. 406, 419 (1977); *see Taylor v. Taylor*, 306 Md. 290 (1986). The Child lacks access to adequate education in Guatemala. Furthermore, there is no suitable caregiver in home country because his mother suffers from leukemia and has not able to provide for him financially for years. When the Child lived in Guatemala, he had to quit school and seek out work to support himself and his family. Here, in the United States, [redacted] is being properly cared for by his maternal uncle who has ensured that he is enrolled in school, receives any and all medical attention that he needs, and is otherwise providing for all of [redacted]'s needs. It is therefore, in the best interests of [redacted] to remain in the United Sates in the care and under the custody of his uncle, [redacted].

AND IT IS FURTHER ORDERED that the Clerk of the Court is hereby authorized to furnish two (2) true test copies of the Order to the Plaintiff.

DATE: _____

_____

Judge, IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

jj

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