

In the Supreme Court of the United States

NELIDA MARIBEL DIAZ JUAREZ AND NALBERTA BRAVO DIAZ,
Petitioners,

v.

COMMONWEALTH OF KENTUCKY, CABINET OF HEALTH AND FAMILY SERVICES
Respondents.

APPLICATION TO FURTHER EXTEND TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI FROM OCTOBER 11, 2019 TO NOVEMBER 8, 2019

To the Honorable Justice Sotomayor, as Circuit Justice for the Sixth Circuit
and the Commonwealth of Kentucky:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30,
petitioners Nelida Maribel Diaz Juarez and Nalberta Bravo Diaz respectfully request
that the time to file a petition for a writ of certiorari in this case be further extended
for 28 days to and including November 8, 2019. The Supreme Court of Kentucky
rendered its opinion on June 13, 2019. The petition accordingly was initially due on
September 11, 2019. On September 4, 2019, your Honor granted a timely first
application for an extension of time (enclosed as App. A, *infra*) of 30 days to October
11, 2019. Petitioners are filing this application for a second extension more than ten
days before that date. *See* Sup. Ct. R. 13.5. This Court has jurisdiction under 28
U.S.C. § 1257 to review this case.

BACKGROUND

As explained in the first application, this case presents an important question about federal immigration law that has divided state courts of last resort. Over the dissent of two justices, the Supreme Court of Kentucky held that federal law does not require state courts to make special immigrant juvenile status findings, but that family courts in Kentucky are permitted to make such findings when they deem it to be in the best interests of a child.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for a writ of certiorari should be further extended for 28 days, to November 8, for several reasons.

First, although petitioners endeavored to prepare the petition by October 11, the press of other matters has made preparation of the petition impossible, and warrants an additional extension of time. In addition to this petition, counsel for petitioners is currently preparing a certiorari-stage amicus brief in *Capital Associated Industries, Inc. v. Stein*, No. 19-281 (due October 3), a merits amicus brief in a capital case in the Supreme Court of Nevada (*State v. Vanisi*, No. CR98-0516, also due October 3), an opposition to a motion to dismiss in federal district court (*United States ex rel. Silbersher v. Janssen Biotech Inc., et al*, No. 19-cv-12107-KM-JBC (D.N.J), due October 14), a petition for a writ of certiorari (due October 25), oral argument on a dispositive motion in federal district court (*United States ex rel. Silbersher v. Allergan PLC*, No. 18-CV-03018-JCS (N.D. Cal.), also October 25), an

amicus brief in the D.C. Circuit (*Blumenthal v. Trump*, No. 19-5237, due October 29), and providing advice in two other, non-public matters.

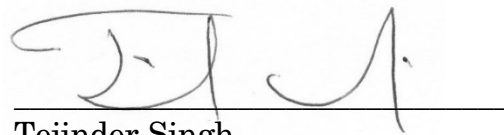
Second, no prejudice is likely to result from the extension. Whether the extension is granted or not, the petition could still be considered during this Term—and, if the petition were granted, the case could be heard and decided during this Term.

Finally, as explained in the first application, the petition is likely to be granted. This case presents an important question that affects tens of thousands of immigrants, and as the Supreme Court of Kentucky acknowledged, various state approaches to this federal legal issue diverge in outcome-determinative ways.

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari should be extended for 28 days to and including November 8, 2019.

Respectfully submitted,



Tejinder Singh
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Ave.
Suite 850
Bethesda, MD 20814
(202) 362-0636
tsingh@goldsteinrussell.com

Dated: September 30, 2019

APPENDIX A

App. No. ____

In the Supreme Court of the United States

NELIDA MARIBEL DIAZ JUAREZ AND NALBERTA BRAVO DIAZ,
Petitioners,

v.

COMMONWEALTH OF KENTUCKY, CABINET OF HEALTH AND FAMILY SERVICES
Respondents.

APPLICATION TO EXTEND TIME TO FILE PETITION FOR A WRIT OF
CERTIORARI FROM SEPTEMBER 11, 2019 TO OCTOBER 11, 2019

To the Honorable Justice Sotomayor:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rules 13.5, 22, and 30, petitioners Nelida Maribel Diaz Juarez and Nalberta Bravo Diaz respectfully request that the time to file a petition for a writ of certiorari in this case be extended for 30 days to and including October 11, 2019. The Supreme Court of Kentucky rendered its opinion on June 13, 2019. *See App. A, infra.* Absent an extension of time, the petition would be due on September 11, 2019. Petitioners are filing this application more than ten days before that date. *See Sup. Ct. R. 13.5.* This Court has jurisdiction under 28 U.S.C. § 1257 to review this case.

BACKGROUND

This case presents an important question about federal immigration law that has divided state courts of last resort. Under federal law, an immigrant under the age of 21 can obtain special immigrant status if she is:

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

8 U.S.C. § 1101(a)(27)(J); *see also* 8 C.F.R. § 204.11 (regulation implementing these requirements). Special immigrant juvenile status, also known as “SIJS,” is a path to permanent legal residency.

This provision of federal law is unusual in that SIJS is granted by the federal government, but the required factual findings must first be made by state courts or administrative agencies.

In this case, petitioner Nalberta Bravo Diaz filed a dependency petition in Kentucky Family Court on behalf of petitioner Nelida Maribel Diaz Juarez, who at

the time was under the age of eighteen.* In connection with the petition, Nalberta and Nelida sought the required SIJS findings. The Family Court determined that it lacked jurisdiction to make those findings, and the Court of Appeals reversed, holding that Family Courts are required to make such findings upon request.

In a divided decision, the Supreme Court of Kentucky reversed that decision. The court held that the federal statute does not require state courts to make SIJS findings, App. A, at 8, but that family courts in Kentucky are permitted to make such findings when they deem it to be in the best interests of a child, *id.* at 9-10. The court noted that its decision is consistent with recent decisions from several other states. *Id.* at 4-6. It acknowledged, however, that numerous other states require SIJS factfinding, either by statute, or by judicial precedent. *See id.* at 10 & n.4-5. Applying this rule, the court held that no SIJS findings were required in this case. *See id.* at 10.

Two justices dissented, explaining that “without the requisite SIJS findings by a Kentucky court, undocumented immigrant children in Kentucky will be unable to proceed with an application for SIJS and may possibly face deportation. It is not an exaggeration to say that that child’s immigration status hangs in the balance.” App. A, at 13 (Minton, C.J., dissenting) (quotation marks omitted). “To ensure compliance with the judiciary’s duty to dispose of juvenile cases according to the child’s best

* Although Nelida is now older than eighteen, she has recommitted to the custody of the Kentucky Cabinet of Health and Family Services until the age of twenty-one and remains under the jurisdiction of the Family Court.

interest and to ensure that Kentucky does not shirk its duty in cooperative federalism,” the dissent would “require Kentucky’s courts always to engage in SIJS factfinding when an undocumented immigrant child is before the court in an action involving a custodial arrangement.” *Id.* at 17.

The Supreme Court of Kentucky rendered its opinion on June 13, 2019, and gave it a “final date” of July 9, 2019. App. A, at 1.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for a writ of certiorari should be extended for 30 days, to October 11, for several reasons.

First, petitioners only recently retained undersigned counsel for the filing of a petition for a writ of certiorari before this Court. Additional time is necessary for counsel to review the record in the case as well as the decisions of other state courts of last resort in order to prepare a clear and concise petition for the Court’s review.

Second, no prejudice would result from the extension. Whether the extension is granted or not, the petition will be considered during this Term—and, if the petition were granted, the case could be heard and decided during this Term. Moreover, this Application is being filed out of an abundance of caution based on the belief that the deadline is September 11, but it may already be later. As noted above, the Supreme Court of Kentucky gave its decision a “final date” of July 9, 2019. It is not clear whether the judgment was “entered” before that date. If the due date is already later, then clearly no prejudice would result from an extension.

Third, the press of other matters makes the submission of the petition difficult absent an extension. Petitioners' counsel is currently responsible for numerous pending matters in the courts of appeals and this Court. These include:

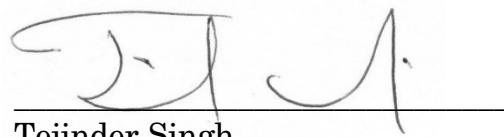
- Oral argument in *Shatsky v. Palestine Liberation Organization*, No. 17-7168 (D.C. Cir.), on September 9, 2019;
- A petition for a writ of certiorari due on September 27, 2019; and
- A certiorari-stage amicus brief due by September 30, 2019.

Finally, the petition is likely to be granted. This case presents an important question that affects tens of thousands of immigrants, and as the Supreme Court of Kentucky acknowledged, the various states' approaches to this federal legal issue diverge in outcome-determinative ways.

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari should be extended for 30 days to and including October 11, 2019.

Respectfully submitted,



Tejinder Singh
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Ave.
Suite 850
Bethesda, MD 20814
(202) 362-0636
tsingh@goldsteinrussell.com

Dated: August 30, 2019

APPENDIX A

CORRECTED: JULY 17, 2019
RENDERED: JUNE 13, 2019
TO BE PUBLISHED

Supreme Court of Kentucky **FINAL**
2018-SC-000592-DGE **DATE** 7/9/19 Kim Radmon, DC

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES

APPELLANT

ON REVIEW FROM COURT OF APPEALS
V. CASE NUMBER 2018-CA-000494
CAMPBELL CIRCUIT COURT NOS. 17-J-00422 and 17-J-00422-001

N.B.D.

APPELLEE

OPINION OF THE COURT BY JUSTICE D. LAMBERT

REVERSING

The Cabinet for Health and Family Services (hereinafter Cabinet) seeks reversal of the Court of Appeals, which held that the Campbell Family Court erred in declining to conduct a Special Immigrant Juvenile (hereinafter SIJ) hearing at the disposition phase of a dependency, neglect and abuse case regarding N.M.D.J. (hereafter N.), an unaccompanied Guatemalan child. After thorough review, we reverse the Court of Appeals.

I. Facts

N. was born in Guatemala in 2001 and will turn eighteen in July 2019. She is now the mother of two infant children, having one child born in 2017 in Arizona and one child born in 2018 in Kentucky. Only N.'s case is before us.

It is believed that her biological parents remain in Guatemala. They did not participate directly in the dependency case filed below but were appointed counsel. N. was also appointed counsel but neither her counsel, nor the counsel for the parents have participated in the appellate process. N.B.D. is the mother of N.'s boyfriend (M.). M. is likewise a minor and the father of N.'s two children.

N.B.D., an adult resident of Newport, Kentucky, filed a dependency petition in the Campbell County Family Court (the petition was signed June 20, 2017, but not filed until August 16, 2017) alleging the following:

N. is an unaccompanied minor from Guatemala who is in removal proceedings with DHS¹. She was released to her cousin's custody. The cousin lives out of state. N. had a child on January 24, 2017. Her cousin made her pay for everything for her and the child. My son, M., is the father of the child. N. could not pay to live with her cousin and she came here to live with me and my son. She is afraid to return to Guatemala. She and M. were on vacation in Mexico when they were kidnapped. The kidnappers held them in a house. There was a lot of blood in the house. I paid \$3000 for their release. When they released them, they put covers on their heads and took them to the U.S. border and told them not to return to Guatemala. They had both M. and N.'s (Petition ends abruptly at this point).

As N.B.D. requested, temporary custody of N. was placed with her at the first court appearance. The Court also ordered the Cabinet to become involved to offer services to N. After a couple of pretrial appearances, an adjudication hearing was set for December 20, 2017. At the end of the adjudication

¹ Department of Homeland Security.

hearing, the court found that the child was dependent as there was no legal custodian present and set the disposition hearing for January 31, 2018.

Meanwhile, N. gave birth to her second child on January 4, 2018. Two days prior to the disposition hearing, N.B.D.'s counsel filed a motion to continue the case, incorrectly alleging that the newborn was premature and that the child remained in the hospital. Counsel also stated that two experts had been retained to testify about the dangers to N. if she returned to Guatemala; and that additional time was needed by counsel to permit the experts to interview N. and "form an opinion." The Cabinet objected to a continuance and the Court overruled the motion, conducted the dispositional hearing, and adopted the recommendations of the Cabinet to continue custody of N. with N.B.D.

In addition to completing the standard form order and docket sheet, Judge Woeste entered a separate five-page order addressing his findings in more detail, including the fact that U.S. immigration authorities had detained both N. and M. in Arizona, and had temporarily placed them with a cousin in Arizona pending the immigration proceedings. He noted that N. and M. subsequently ran from that federal immigration placement to the home of N.B.D. The Court also noted that N. had testified that she had come from Guatemala with M. and while they were traveling through Mexico, they were kidnapped by a gang.

The Court then addressed the motion for a continuance, the request for the SIJ special findings, and the limits of its own jurisdiction to make SIJ findings. The Court overruled the motion for a continuance because it was the

Court's opinion that the testimony of experts regarding N.'s home country would not be relevant as the child was to stay in Kentucky in the custody of N.B.D., and therefore it was without the jurisdictional authority to undertake SIJ findings because such findings were not relevant to the core dependency, neglect, and abuse issues before the court.

II. Special Immigrant Juvenile Status under 8 U.S.C. Section 1101 (a)(27)(J) and the Role of State Courts

In *de Rubio v. Rubio Herrera*, 541 S.W.3d 564 (Mo. Ct. App. 2017), the Missouri Court of Appeals addressed the jurisdiction of Missouri courts to make SIJ findings in a dissolution case where the parents were both citizens of El Salvador and the custody of the child was granted solely to the mother. The mother wanted the court to enter an order that it would not be in the child's best interest to return to his home country with the father. *Id.* at 568-69. The *de Rubio* Court discussed the statute, saying:

The federal Immigration and Nationality Act provides a path for undocumented immigrant children who have been abused, neglected, or abandoned to gain lawful permanent residency in the United States by obtaining Special Immigrant Juvenile status. *In re Guardianship of Guaman*, 879 N.W.2d 668, 671-72 (Minn. App. 2016) (citing 8 U.S.C. § 1101(a)(27)(J); 8 CFR § 204.11). A child who obtains such status may become a naturalized United States citizen after five years. *Eddie E. v. Superior Court*, 234 Cal. App. 4th 319, 326, 183 Cal.Rptr.3d 773 (Cal. App. 2015).

This process was established in 1990, when Congress amended the Act to include the definition of "Special Immigrant Juvenile" ("SIJ") in 8 U.S.C. § 1101(a)(27)(J). *Recinos v. Escobar*, 473 Mass. 734, 46 N.E.3d 60, 63 (2016). The 1990 definition required (1)

a finding by a state court that the child is “dependent on a juvenile court” and eligible for long-term foster care, and (2) a finding that it is “not in the child's best interests to return to his or her country of origin.” *Id.* at 64. In 1997, Congress modified the definition to include a child who had been “legally committed to, or placed under the custody of, an agency or department of a State” and required that eligibility for long-term foster care be “due to abuse, neglect, or abandonment.” *Id.*

Id. at 569-70 (footnotes omitted).

On appeal, the mother argued the circuit court erred by not making the findings required for SIJ status. *Id.* at 571. The Court found no error based on the fact that Missouri does not have a statute or legal precedent **requiring** a court to issue special findings of fact to qualify a juvenile for SIJ status. *Id.* at 571-72. Nor does the federal statute itself require a state to make those findings. *Id.* at 571. The Court acknowledged that a court **is permitted** to make those findings, but the obligation to do so arises solely from a court’s duty to act in the child’s best interest. *Id.* at 573. Ultimately, the court held:

Our reading of the SIJ statute is in accordance with the analysis in [*Canales v. Torres Orellana*, 800 S.E.2d 208 (Va. Ct. App. 2017)], which is consistent with the idea that **federal law cannot mandate a state court to make findings but may rely on state courts in the proper circumstances to make such findings that are in a child's best interest** and required of the court while in the position of in loco parentis.

Id. (emphasis added).

The case cited by the *de Rubio* opinion, *Canales v. Torres Orellana*, 800 S.E.2d 208 (Va. Ct. App. 2017), came to the same well-reasoned conclusion. In

Canales, mother and father were both Honduran. *Id.* at 212. When the child was two, the mother immigrated to the United States and left the child in the care of the child's grandmother in Honduras. *Id.* Nine years after immigrating, when the child was in the United States, the mother petitioned the juvenile court to grant her sole custody and make specific factual findings that the child had been "abused" and "abandoned" by the child's father, as those are the terms used in the SIJ statute. *Id.* 212-13. The father at all times lived in Honduras and his whereabouts were unknown. *Id.* The juvenile court granted sole custody to the mother but declined to make the specific SIJ findings. *Id.* The mother then appealed to the Circuit Court. *Id.* The Circuit Court also granted the mother sole custody, but declined to make the specific SIJ findings, believing it "did not have jurisdiction to make findings as to [SIJ] petitions[,] as such authority is not set forth in the Code of Virginia." *Id.*

The Virginia Court of Appeals agreed with the circuit court, holding:

the SIJ statute does not request, much less order, state courts to make specific, separate SIJ findings; rather, it allows the appropriate *federal* entities to consider a state court's findings of fact, as recorded in a judgment order rendered under state law, when determining whether an immigrant meets the SIJ criteria. In other words, the SIJ definition only lists certain factors which, *if* established in state court proceedings, permit a juvenile immigrant to petition the United States Citizenship and Immigration Services ("USCIS") of the Department of Homeland Security for SIJ status—8 U.S.C. § 1101(a)(27)(J) does not *require* that the state court make such findings or convey jurisdiction upon them to do so.

Id. at 217.

In this case, N.B.D. requested the extra finding by the trial court to start the process of qualifying the child for Special Immigrant Juvenile status under 8 U.S.C Section 1101(a)(27)(J).

Under the Immigration and Naturalization Act, a “special immigrant” juvenile is defined as follows:

(27) The term “special immigrant” means—

[...]

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States,

and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such

parentage, be accorded any right, privilege, or status under this chapter;

8 U.S.C. § 1101 (a)(27)(J).

Nothing contained in the Immigration and Nationality Act directs a state court to take any additional steps beyond carrying out their duties under state law. In fact, the United States Citizenship and Immigration Services (“USCIS”) Policy Manual states as follows:

USCIS must review the juvenile court order to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit. The court ordered dependency or custodial placement of the child is the relief being sought from the juvenile court.

USCIS Policy Manual, Vol. 6, Part J, ch. 2 (D)(5), 2017 WL 443003

(footnote omitted).

The Policy Manual also recognizes that the federal law does not specifically direct the states to undertake a SIJ classification hearing. “There is nothing in the USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law.” USCIS Policy Manual, Vol. 6, Part J, ch.2 (D)(4), 2017 WL 443003. Rather the Manual directs state courts only to follow state laws as to when to exercise their authority, and to use their own evidentiary rules and due process guidelines in deciding whether to undertake a SIJ review. USCIS Policy Manual, Vol 6, Part J, ch. 3(A)(2), 2017 WL 443004.

III. Jurisdiction of Kentucky Courts in Dependency, Neglect and Abuse Cases

Here, N. met the first of the dependency and placement requirements, but the Court found that it did not have the authority under state statutes to make the requested additional SIJ findings. The Family Court has jurisdiction via KRS² 23A.100(2)(c) and KRS 620³ to handle dependency, neglect and abuse actions and to make findings as to the best interest of the child. Clearly, N., as an unaccompanied minor child, whose parents are believed to be residents of Guatemala, is a dependent child and is entitled to the protection and care of the Commonwealth of Kentucky via KRS Chapter 23A.100. The ultimate question presented here is whether the Family Court must make additional findings relevant to the child's SIJ classification, upon request, in every such case. We hold that the courts of Kentucky are not required to make additional

² Kentucky Revised Statutes.

³ 620.023 Evidence to be considered in determining the best interest of a child. (1) Evidence of the following circumstances if relevant shall be considered by the court in all proceedings conducted pursuant to KRS Chapter 620 in which the court is required to render decisions in the best interest of the child: (a) Mental illness as defined in KRS 202A.011 or an intellectual disability as defined in KRS 202B.010 of the parent, as attested to by a qualified mental health professional, which renders the parent unable to care for the immediate and ongoing needs of the child; (b) Acts of abuse or neglect as defined in KRS 600.020 toward any child; (c) Alcohol and other drug abuse, as defined in KRS 222.005, that results in an incapacity by the parent or caretaker to provide essential care and protection for the child; (d) A finding of domestic violence and abuse as defined in KRS 403.720, whether or not committed in the presence of the child; (e) Any other crime committed by a parent which results in the death or permanent physical or mental disability of a member of that parent's family or household; and (f) The existence of any guardianship or conservatorship of the parent pursuant to a determination of disability or partial disability as made under KRS 387.500 to 387.770 and 387.990. (2) In determining the best interest of the child, the court may consider the effectiveness of rehabilitative efforts made by the parent or caretaker intended to address circumstances in this section.

findings related to SIJ classification unless the court first determines that the evidence to be gleaned from such a supplemental hearing is relevant to the child's best interests. We agree with the family courts' assessment of the jurisdictional statutes and agree that our General Assembly has not specifically directed Kentucky's courts to make SIJ findings.⁴ Some state courts have held that their jurisdiction was sufficient without the legislature enacting more specific statutes addressing SIJ classification findings.⁵

We agree with the findings of Judge Woeste that “[s]uch a hearing is unnecessary where the Court has found that the child is dependent and that the present custodial arrangements are appropriate to serve the best interests of the child.” However, we hold that under proper circumstances, where such a placement of the child back into the country where he or she was abused, neglected or abandoned is being considered by the state court, the courts of Kentucky are empowered under KRS 620.023 and other statutes which grant authority to determine custody or placement of a child, to make additional findings to determine whether it would be in the child's best interest to return to his or her native country. In this case, where N.B.D. acknowledges in her initial petition that N. was “in removal proceedings with DHS” and the child's

⁴ Some state legislatures have amended their statutes to direct courts to make SIJ determinations. See, e.g., Fla. Stat. Ann. Section 39.5075(4) (West 2005), Md. Code Ann. Fam. Law, Section 1-201(a) and (b)(1), and N.Y. Fam. Ct. Act Section 661(a).

⁵ See, e.g., *Matter of Guardianship of Luis*, 114 N.E.3d 855 (Ind. Ct. App. 2018); *Guardianship of Penate*, 76 N.E.3d 960 (Mass. 2017); *Florida Dep't of Children and Families*, 215 So. 3d 1219 (Fla. 2017); *In re Guardianship of Guaman*, 879 N.W.2d 668 (Minn. Ct. App. 2016); *H.S.P. v. J.K.*, 121 A.3d 849 (N.J. 2015); and *In the interest of J.J.X.C.*, 734 S.E.2d 120 (Ga. Ct. App. 2012).

testimony confirms that she and M. ran from the Arizona home where they had been placed by immigration authorities, there are also grave concerns about the use of the juvenile process by N.B.D. to circumvent federal immigration law. The Supremacy Clause of the U.S. Constitution prohibits states from resolving immigration hearings.⁶ Rather, the proper place for such expert evidence in this case is not in any state court, but in federal immigration court.

For the foregoing reasons, we reverse the Court of Appeals.

All sitting. Buckingham, Keller, Lambert, and Wright, JJ., all concur. VanMeter, JJ., concurs in result only. Minton, C.J. dissent by separate opinion in which Hughes, J., joins.

MINTON, C.J., DISSENTING: I agree with the majority's recognition that Kentucky courts have jurisdiction to make Special Immigrant Juvenile Status ("SIJS") findings. But I must respectfully dissent from the majority's holding that our trial courts are not required to engage in SIJS factfinding. I fear the majority signals a reluctance on the part of our state courts in Kentucky to engage fully in the collaborative process established by federal law to protect the welfare of undocumented immigrant children. And this holding, in my view, subverts the overarching duty of our courts to guard the best interests of all children who come before us.

The United States Supreme Court "has long made clear that federal law is as much the law of the several States as are the laws passed by their

⁶ U.S. Const. art. VI, cl. 2.

legislatures. Federal and state law ‘together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent.’⁷

The jurisdictions identified by the majority that require their state courts to engage in SIJS factfinding whenever an undocumented immigrant child is before them in a dependency, neglect, and abuse (“DNA”) action, even in the absence of a state statutory mandate to do so, recognize the collaborative responsibility of their state courts to engage in SIJS factfinding.⁸

Federal law leaves to state courts the responsibility of deciding family law matters: “The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the

⁷ *Haywood v. Drown*, 556 U.S. 729, 734–35 (2009) (quoting *Clafin v. Houseman*, 93 U.S. 130, 136–37 (1876)).

⁸ See, e.g., *H.S.P. v. J.K.*, 121 A.3d 849, 852 (N.J. 2015) (“[Family courts] play[] a critical role in a minor immigrant’s attempt to obtain SIJ status[.] . . . The [family court’s] role in the SIJ process is . . . to apply its expertise in family and child welfare matters to the issues raised in 8 C.F.R. § 204.11[.] . . . This approach will provide USCIS with sufficient information to enable it to determine whether SIJ status should be granted or denied[.]”); *In re Guardianship of Guaman*, 879 N.W.2d 668, 671 (Minn. App. 2016) (“Congress charged state courts with making SIJ findings because it ‘recogniz[ed] that juvenile courts have particularized training and expertise in the area of child welfare and abuse, which places them in the best position to make determinations on the best interests of the child and potential or family reunification.’”) (quoting *In re Hei Ting C.*, 109 A.D.3d 100 (N.Y. 2013)); *Guardianship of Penate*, 76 N.E.3d 960, 966 (Mass. 2017) (“Congress delegated [SIJS factfinding] to State courts because it recognized ‘the distinct expertise State courts possess in the area of child welfare and abuse,’ which makes them best equipped to shoulder ‘the responsibility to perform a best interest analysis and to make factual determinations about child welfare for purposes of SIJ eligibility.’”) (quoting *Recinos v. Escobar*, 46 N.E.3d 60, 65 (Mass. 2016)).

United States.”⁹ Recognizing the proficiency of state courts’ handling of family law issues, while at the same time recognizing the proficiency of federal authorities’ handling of immigrant issues, the federal government, in furtherance of the idea of cooperative federalism, has entrusted to state courts the duty to make certain preliminary findings that bear on an undocumented immigrant child’s ability to seek custody in the care of an individual or entity in the United States.

As the majority recognizes, the federal government has charged, but not mandated, state courts with making certain findings pertaining to an undocumented immigrant child’s SIJS. “Only once a state juvenile court has issued [the requisite] factual predicate order may the child, or someone acting on his or her behalf, petition the [USCIS] for SIJS.”¹⁰ “The process for obtaining SIJ status is ‘a unique hybrid procedure that directs the collaboration of state and federal systems.’”¹¹ As the Court of Appeals noted in the case at hand, without the requisite SIJS findings by a Kentucky court, undocumented immigrant children in Kentucky will be unable to proceed with an application for SIJS and may possibly face deportation. It is not an exaggeration to say that that child’s “immigration status hangs in the balance.”¹²

⁹ *Ex parte Burrus*, 136 U.S. 586, 593–94 (1890).

¹⁰ *In re Enis A.C.M.*, 152 A.D.3d 690, 692 (N.Y. App. Div. 2017) (quoting *Matter of Marisol N.H.*, 115 A.D.3d 185, 188–89 (N.Y. App. 2014)).

¹¹ *Recinos v. Escobar*, 46 N.E.3d 60, 64 (Mass. 2016) (quoting *H.S.P. v. J.K.*, 121 A.3d 849 (N.J. 2015); *Matter of Marisol N.H.*, 115 A.D.3d 185, 188 (N.Y. 2014)).

¹² *In re J.J.X.C.*, 734 S.E.2d 120, 124 (Ga. Ct. App. 2012).

The requisite factual predicate to obtain SIJS is contained in 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. 204.11. The statute, 8 U.S.C. § 1101(a)(27)(J), states the following, in relevant part:

The term “special immigrant” means an immigrant who is present in the United States—

- (i) Who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; [and]
- (ii) For whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence[.]

8 C.F.R. § 204.11 states the following, in relevant part:

An alien is eligible for classification as a special immigrant . . . if the alien: . . .

- (1) [i]s under twenty-one . . . ;
- (2) [i]s unmarried;
- (3) [h]as been declared dependent upon a juvenile court . . . in accordance with state law governing such declarations of dependency . . . ;
- (4) [h]as been deemed eligible by the juvenile court for long-term foster care;
- (5) continues to be dependent upon the juvenile court and eligible for long-term foster care . . . ; and
- (6) [h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not

be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents[.]”

“[‘]Juvenile court[’] means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles[.]”¹³ In Kentucky, those courts are the circuit family courts or the juvenile session of the district court in circuits where there is no family court division of circuit court.

Under KRS 620.023(1), in a DNA action, “the court is required to render decisions in the best interest of the child[.]” The “best interest of the child” standard is the hallmark of Kentucky family law decision making, and Kentucky’s courts have a responsibility to dispose of a case according to the “best interest of the child.”

When an undocumented immigrant child appears before a Kentucky court of competent jurisdiction in a DNA action, there are essentially three potential scenarios that could occur: 1) the court engages in SIJS factfinding, determining that it is not in the child’s best interests to be returned to the custody of his or her parents or native homeland; 2) the court engages in SIJS factfinding, determining that it is in the child’s best interests to be returned to the custody of his or her parents or native homeland; or 3) the court does not engage in SIJS factfinding at all, disposing of the case as it sees fit.

¹³ 8 U.S.C. § 204.11(a).

In the first suggested scenario, the trial court engages in SIJS fact finding, determining that it is not in the child's best interests to be returned to the custody of his or her parents or native homeland. The trial court's only real option is to place the child in the custody of an individual or entity within the United States. And, because the trial court has engaged in explicit SIJS factfinding, it has ensured that the child can petition the federal government for SIJS without which the child would be subject to deportation. Deportation is—under this scenario—the exact situation that the trial court explicitly found would not be in the child's best interests. The trial court has fulfilled its duty to dispose of the child's case according to that child's best interest.

In the second scenario, the trial court engages in SIJS factfinding, determining that it is in the child's best interest to be returned to the custody of his or her parents or native homeland. Although the trial court has determined that deportation is in the child's best interest, only the federal government has the power to ensure that deportation occurs. In this manner, the trial court has nevertheless fulfilled its responsibility to dispose of the case according to the child's best interest because it has supplied the federal government with the information it needs to deport the child, the exact situation that the trial court has determined would be in the child's best interest.

A variation of the final scenario is the one presented to this Court in the case at hand. Here, as the majority notes, the trial court "found that the child is dependent and that the present custodial arrangements are appropriate to

serve the best interests of the child,” the “present custodial arrangements” being the placement of the child in the custody of the child’s boyfriend’s mother here in Kentucky. Because the trial court concluded in this way, the trial court found engaging in SIJS factfinding to be “unnecessary.”

But without the requisite SIJS factfinding that the trial court refused to engage in, this child cannot petition the federal government for SIJS to prevent deportation. This result is contrary to the trial court’s conclusion that “the present custodial arrangement[],” i.e. custody in the hands of an individual in the U.S., is in the child’s best interest. It is impossible for the trial court to assuredly say that it fulfilled its duty to dispose of the case in furtherance of the child’s best interest because the family court not only allowed but created the risk of a different outcome for this child—deportation. And that outcome is directly contrary to the trial court’s finding that placement of the child in the care of an individual or entity within the U.S. is in the child’s best interest.

To ensure compliance with the judiciary’s duty to dispose of juvenile cases according to the child’s best interest and to ensure that Kentucky does not shirk its duty in cooperative federalism, I would require Kentucky’s courts always to engage in SIJS factfinding when an undocumented immigrant child is before the court in an action involving a custodial arrangement. I would affirm the Court of Appeals and remand this case to the trial court with instructions to engage in SIJS factfinding.

Hughes, J. joins.

COUNSEL FOR APPELLANT:

**Thomas Edison Edge
Assistant Campbell County Attorney**

COUNSEL FOR APPELLEE:

**Teresa Lyn Cunningham
Burlington, Kentucky**

Supreme Court of Kentucky

2018-SC-000592-DGE

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES

APPELLANT

ON REVIEW FROM THE COURT OF APPEALS
CASE NO. 2018-CA-000494-MR
V.
CAMPBELL CIRCUIT COURT NOS. 17-J-00422 AND 17-J-00422-001

N.B.D.

APPELLEE

ORDER CORRECTING

The Opinion of the Court by Justice Lambert rendered June 13, 2019 is corrected and the attached opinion is hereby substituted in lieu of the original opinion. Said correction does not affect the holding of the original opinion rendered by the Court.

ENTERED: July 17, 2019.


Chief Justice