**IN THE CIRCUIT COURT FOR BALTIMORE COUNTY**

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In the Matter Of **\***

**XXXX \***

\*

PETITION FOR GUARDIANSHIP OF \* Case No.

THE PERSON OF AN INFANT MINOR \*

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**SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER'S REQUEST FOR**

**SPECIAL IMMIGRANT JUVENILE ELIGIBILITY FINDINGS**

[REDACTED] (hereinafter “Petitioner”) files this petition for guardianship on behalf of [REDACTED], her nephew who currently is residing with her and is under her care. [REDACTED] is a 16 year old boy from Honduras who was living with both parents in home country. His father physically abused both the child and his mother, who was unable to protect him from abuse. Therefore, he fled his home and travelled to the United States to join his aunt, [REDACTED] who now petitions this court to award her guardianship of [REDACTED] so that she may continue to provide the appropriate care for this child. Additionally, [REDACTED] requests that this court makes the following findings of fact in relation to the child, which will allow him to apply for “Special Immigrant Juvenile Status” and remain in the United States

**INTRODUCTION**

In 1990, Congress enacted the special immigrant juvenile status (“SIJS”) provisions of the Immigration and Nationality Act (“INA”). 8 U.S.C. §§1101(a)(27)(J)(i) & 1255(a). Through these provisions, Congress created a mechanism for abused, abandoned, and neglected children to apply for lawful status in the United States. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”) amended the former provisions, which included a requirement that a child be deemed eligible for long-term foster care, and expanded the definition of eligibility for Special Immigration Juvenile Status. H.R. 7311, Pub. L. No. 110-457, §235(d)(1)-(3), 112 Stat. 5044 (2008) (Attached hereto as Exhibit ).

Previously the regulations included a long-term foster care requirement allowing only unaccompanied children for whom reunification with **both** parents was not viable to apply for SIJS, usually by seeking eligibility orders in state juvenile court dependency proceedings. Under the TVPRA amendments, however, Congress expanded SIJS jurisdiction and eligibility for immigrant children, specifying, inter alia, that children who faced abuse, abandonment, neglect or a similar basis found under state law at the hands of “**one or both**” parents could be eligible for SIJS. [emphasis added] (See Ex. B). By amending the SIJS provisions of the INA, Congress explicitly expanded coverage to include children who have suffered some form of abuse, neglect, or abandonment at the hands of one parent, but who reside with the other parent. This provision also allows children who may not be eligible for long-term foster care but may be living with a non-parent to obtain protection through the process of having a guardian appointed or for children who may be living with one parent but suffered abuse, abandonment or neglect at the hands of the other parent to obtain protection through the process of a custody determination.

SIJS is essentially a three part process: first, a “state or juvenile court” must make factual findings which establish the child’s eligibility for SIJS; second, the child must submit those findings along with an SIJS visa application to the USCIS; third, if the SIJS visa is granted, the child is eligible to apply for Lawful Permanent Resident (“LPR”) status either before the Immigration Court or USCIS, and to remain in the United States rather than being deported. 8 U.S.C. § 1255(a), (h).

In order to be eligible for SIJS classification pursuant to 8 U.S.C.A. §§1101(a)(27)(J)(i) and 8 C.F.R. § 204.11(a), (c), (d)(2)(i) (Attached hereto as Exhibit ), a state court must enter an SIJS predicate order making the following factual findings; that:

1. The child is under the age of 21 and is unmarried; 8 C.F.R. § 204.11(c)(1) & 8 C.F.R.§204.11 (c)(2);
2. The child is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court; 8 C.F.R. § 204.11(c)(3);
3. The "juvenile court" has jurisdiction under Maryland law to make judicial determinations about the custody and care of juveniles. 8 U.S.C.A. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(a), (c) [amended by TVPRA 2008];
4. That reunification with one or both of the juveniles’ parents is not viable due to abuse, neglect or abandonment or a similar basis under state law under 8 U.S.C. § 1101(a)(27)(J) [amended by TVPRA 2008]; and
5. It is not in the "best interest" of the juvenile to be returned to her parents' previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C.A. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(a), (d)(2)(iii) [amended by TVPRA 2008].

Factual findings by this Court will not entitle the child to status in the United States. Rather, the Court’s findings are merely a prerequisite to filing an application for immigration relief. 8 C.F.R. §204.11(d)(2). Without the required court order, the child cannot file the SIJS visa application with USCIS. USCIS is the ultimate adjudicator of these petitions, retaining discretionary authority to approve or deny petitions for an SIJS visa. If USCIS approves an application, the child will be eligible to adjust to LPR status. That means that the child will receive his “green card” and be able to live and work in the U.S. Prior to granting LPR status, an immigration court or USCIS will adjudicate the child’s admissibility, looking at his background to ensure he is in no way barred from immigrating lawfully.

This Supplemental Memorandum of Points and Authorities outlines the eligibility criteria and is submitted in support of XXXXX (“XX”)’s request for an order making the necessary factual findings to enable him/her, as a minor, to petition the USCIS for SIJ status pursuant to Section 101(a)(27)(J) of the INA as amended by the TVPRA. We respectfully request, on behalf of the minor child, that this court issue an order making the necessary factual findings because *[Give brief summary of child’s eligibility for SIJS, i.e the child’s father was both physically and verbally abusive to the child, forcing the child out of the home. The child’s mother is unable and unwilling to leave the child’s father and therefore has been neglectful towards him. Because the child’s parents have forced him out of the home and have failed to provide for him, reunification with his parents is not viable. As there is no responsible adult to provide for his care in his home country, it does not appear to be in his best interests to return to Honduras.]* He is therefore eligible to seek Special Immigrant Juvenile Status before USCIS. In addition, as defined by both the federal statutes and regulations, and by Maryland statute, this Court is empowered to issue the requested findings.

**STATEMENT OF FACTS**

*Relevant background of the case and the abuse, neglect or abandonment suffered. Cite to affidavit prepared by child.*

1. **XX IS UNDER THE AGE OF 21 AND IS UNMARRIED**

For immigration purposes, a “child” is defined as someone who is unmarried and under the age of 21. 8 U.S.C.A. §1101(b)(1). XX fulfills these requirements; his/her accompanying birth certificate states that he/she was born on DATE, making him/her X years old. (See birth certificate) In addition, in XX’S accompanying affidavit she/he affirms that she/he is single and unmarried. (See affidavit).

1. **XX IS DEPENDENT UPON THE COURT OR HAS BEEN PLACED IN THE CARE OR CUSTODY OF AN AGENCY OR AN INDIVIDUAL APPOINTED BY THE COURT THROUGH THESE GUARDIANSHIP PROCEEDINGS [Alternatively Custody]**

When a juvenile court accepts jurisdiction to decide the care and custody of a child, the child is “dependent” on the court for immigration purposes. The federal regulations recite that a juvenile is dependent upon the court if she/he “has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.” 8 C.F.R. § 204.11(c)(6). Additionally, the TVPRA makes clear that any immigrant “placed under the custody” of “an individual or entity” appointed by a “state or juvenile court,” may be considered for SIJS. (See Ex. ). Thus,children for whom a court has appointed a guardian are dependent upon the Court and eligible for SIJS. The Immigration and Naturalization Service (“INS”) specifically addressed this issue in an administrative decision published by the Administrative Appeals Unit ("AAU"), a unit whose decisions are binding on the USCIS nationwide. In *Matter of Menjivar,* File A 70 117 167, INS Administrative Appeals Unit (Dec. 27, 1994) (attached hereto as Exhibit ) the AAU considered whether a child was eligible for SIJS if, rather than being committed to state custody, the child was appointed a guardian in guardianship proceedings. The AAU stated:

The court's placement of the beneficiary in a guardianship situation does not preclude a finding that the beneficiary is dependent on the juvenile court . . . The acceptance of jurisdiction over the custody of a child by a juvenile court, when the child's parents have effectively relinquished [sic] control of the child, makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care, or, as here, *in a guardianship situation. Id.* (emphasis added).

XX requests that this court place him under the guardianship of *…[Reiterate who will be given guardianship of the minor and why it is necessary].*

When a child is living in the State of Maryland without a legal guardian he/she faces significant obstacles enrolling in school, seeking medical treatment and obtaining vital services. Similarly, if a child is living with one parent and has a non-cooperative parent elsewhere, the child could face problems obtaining a passport, or in some instances, accessing medical care. The State of Maryland has given this Court the ability to remedy such a situation by allowing a willing caretaker to petition for guardianship. MD. CODE ANN., FAMILY LAW § 5-320 (2013). Alternatively, the State of Maryland has given this Court the ability to grant one parent sole custody.

The TVPRA makes clear that any immigrant “placed under the custody” of “an individual or entity” appointed by a “state or juvenile court,” may be considered for SIJS. (See Exhibit)**.** In a USCIS interoffice memorandum, Donald Neufeld, acting Associate Director for Domestic Operation, provided guidance to the USCIS field adjudicators on the processing of SIJS petitions. In reference to USCIS officers adjudicating SIJS claims, he advised that:

Petitions that include juvenile court orders legally committing a juvenile to or placing a juvenile under the custody of an individual or entity appointed by a juvenile court are now eligible. For example, a petition filed by an alien on whose behalf a juvenile court appointed a guardian now may be eligible.

Interoffice Memorandum from Donald Neufeld, Acting Assoc. Dir. For Domestic Operations, USCIS, to Field Leadership (March 24, 2009) at 2, (attached hereto as Exhibit .)

Under Maryland law guardianship may be appointed:

If neither parent is serving as guardian of the person and no testamentary appointment has been made, on petition by any person interested in the welfare of the minor, and after notice and hearing, the court may appoint a guardian of the person of an unmarried minor. If the minor has attained his 14th birthday, and if the person otherwise is qualified, the court shall appoint a person designated by the minor, unless the decision is not in the best interests of the minor. MD. CODE ANN., EST. & TRUSTS § 13-702 (2013).

In addition, Maryland law defines “abuse,” “abandonment,” and “neglect” as follows:

“Abuse” 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. MD. CODE ANN., FAM. LAW § 5-701 (2013);

“Abandoned” means left without provision for reasonable and necessary care or supervision. MD. CODE ANN., FAM. LAW § 9.5-101 (2013); and

“Neglect” means the intentional failure to provide necessary assistance and resources for the physical needs or mental health of a minor that creates a substantial risk of harm to the minor's physical health or a substantial risk of mental injury to the minor.” MD. CODE ANN., CRIM. LAW § 3-602.1 (2013).

*[Include description of how the child has been abused/abandoned/neglected and why the court should issue a Guardianship or Custody Order]*

III.**THIS COURT HAS JURISDICTION OVER XX BECAUSE IT IS A “JUVENILE COURT” AS THAT TERM HAS BEEN DEFINED IN IMMIGRATION LAW**

The INA has specifically delegated to the state "juvenile courts" the authority to make special findings of fact regarding children eligible for SIJS. 8 U.S.C.A. § 1101(a)(27)(J)(i) (2010). The immigration regulations define a "juvenile court" as "a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a) (2010). In addition, the TVPRA amendment of 2008 expanded state court jurisdiction such that any state court with jurisdiction over the “custody and care” of juveniles has jurisdiction to make SIJS findings. This definition means a juvenile court for immigration purposes is **any**court with jurisdiction to make such determinations, and is not limited to courts with the title "Juvenile Court." Thus, under the INA and implementing regulations, this Court is empowered to make the requested findings because it has original jurisdiction over the custody or guardianship of XX. MD. CODE ANN., EST. & TRUSTS § 13-702 (2013); MD. CODE ANN., FAM. LAW § 1-201 (2013). It is important to note, the juvenile court described in the INA and implementing regulations **does not** make any immigration decisions, but rather makes factual findings concerning the best interests of the child. USCIS has routinely approved SIJS petitions involving children under the jurisdiction of such state courts through abuse and neglect proceedings, custody proceedings, guardianship proceedings, and delinquency proceedings.

This Circuit Court has jurisdiction over this guardianship proceeding, because it has the authority under the Maryland Estates & Trusts Code to make findings regarding the care and custody of XX for guardianship purposes. MD. CODE ANN., EST. & TRUSTS § 13-702 (2013). *[ALTERNATIVE: This Circuit Court has jurisdiction over this custody proceeding, because it has authority under the Maryland Uniform Child Custody Jurisdiction and Enforcement Act to make an initial child custody determination. MD. CODE ANN., FAM. LAW § 9.5-201(2013).]* This Court has original jurisdiction over all cases, matters, and proceedings involving a child whose parents are not serving as his/her guardians. Further, an equity court, such as this Court, "has jurisdiction over . . . custody or guardianship of a child except for a child who is under the jurisdiction of any juvenile court and who previously has been adjudicated to be a child in need of assistance." MD. CODE ANN., FAM. LAW § 1-201(2013). Therefore, the *[Insert Court]* County Circuit Court sitting as a Juvenile Court is not the correct court because it only has exclusive jurisdiction in certain cases, none of which involve guardianship proceedings such as this case. MD. CODE ANN., CTS. & JUD. PROC. § 3-801 (2013).

The jurisdiction of this Court for guardianship [or custody] purposes is not to be confused with situations where a “child is in need of assistance” (“CINA”) as defined by the Maryland Courts & Judicial Proceedings Code. The Juvenile Court has exclusive original jurisdiction to hear CINA cases if the local department files a CINA petition as a result of a complaint made by someone that has knowledge of facts which may cause a child to be subject to the jurisdiction of the [Juvenile Court],” and if the local department “concludes that the [Juvenile Court] has jurisdiction over the matter and that the filing of a petition is in the best interests of the child.” Id. §§ 3-801, 3-803, 3-809. However, no complaint has been made to the local department and no petition has subsequently been filed in the Juvenile Court by the local department. Instead, XX’s proceedings involve a guardianship petition and a request to make special immigrant juvenile findings. Similar requests have been granted by other Maryland Circuit Courts. *[Give current and relevant example – see sample redacted predicate order]*

XX’s case is properly before this Court because it has jurisdiction over this guardianship proceeding under the authority of the Maryland Estates & Trusts Code to make findings regarding the care and custody of XX for guardianship purposes. MD. CODE ANN., EST. & TRUSTS § 13-702. *[XX’s case is properly before this Court because it has jurisdiction over this custody proceeding under the authority of the Maryland Uniform Child Custody Jurisdiction and Enforcement Act to make an initial child custody determination. MD. CODE ANN., FAM. LAW § 9.5-201(2013).]*

1. **XX’S REUNIFICATION WITH ONE OR BOTH OF HIS/HER PARENTS IS NOT VIABLE DUE TO ABUSE, NEGLECT OR ABANDOMENT**

XX is seeking to be placed under the guardianship of his current caretaker, his aunt. Reunification with both of XX’s parents is not viable due to abuse and constructive abandonment by the child’s father as well as his mother’s failure to protect, which is akin to neglect. Abuse is defined as “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.” MD. CODE ANN., FAM. LAW § 5-701 (2013). In XX’s case, his father’s repeated physical beatings with instruments such as wires and boards caused him visible physical injuries as well as lingering mental and emotional suffering. In addition, XX’s mother was neglectful as that term is defined by Maryland law. “Neglect” means the intentional failure to provide necessary assistance and resources for the physical needs or mental health of a minor that creates a substantial risk of harm to the minor's physical health or a substantial risk of mental injury to the minor.” MD. CODE ANN., CRIM. LAW § 3-602.1 (2013). XX’s mother failed to protect him from his father’s repeated abuse by failing to physically intervene, remove XX from the household or seek outside help from law enforcement. XX’s parents were not able to properly care for him and returning to their care would only result in further abuse and neglect towards XX.

1. **IT IS NOT IN XX’S BEST INTEREST TO BE RETURNED TO *[INSERT COUNTRY]***

In appointing YY as XX’s guardian, this Court would effectively conclude that it is in XX’s best interest to remain in the United States. In issuing final regulations relating to SIJS, the INS commented, "the [Immigration] Service does not intend to make determinations in the course of deportation proceedings regarding the 'best interest' of a child for the purpose of establishing eligibility for special immigrant juvenile classification." See 58 Fed. Reg. 54,42847 (Aug. 12, 1993). "The final rule states that the decision concerning the best interest of the child may only be made by the juvenile court or in an administrative proceeding authorized or recognized by the juvenile court." *Id.* Thus, USCIS has effectively stated that it will not "look behind" a state court's decision as to the best interest of a child.

*[Description of why child is eligible, why he left his country of origin and how life has changed for him in the U.S.; what advantages does he have living here; is he going to school, learning English, have a medical condition that is being treated? Example - XX came to the United States because he was forced out of his home in Honduras by his abusive father. His mother is unwilling to leave his father and therefore, there is no one able or willing to care for him in Honduras.*

*In Middle River, Maryland, XX lives in a supportive environment with his aunt who has been ensuring that XX is provided for and attends school. XX is studying diligently, making friends, and learning English. Most importantly, XX is being cared for by on older family member who wants the best for her nephew.]* It is therefore in XX’s best interest to remain in the United States under the guardianshipof YY.

While issuing an order making Special Immigrant Juvenile Status Eligibilty findings will not ensure that this child is not removed from his home country, it will allow him to apply for an immigration benefit and potentially remain in the United States. If, based on the record, this court feels that it is in the child’s best interest to remain in the United States with the petitioner, the Court should issue findings which *may* prevent this child’s removal to his home country.

**CONCLUSION**

XX is seeking the protection of the United States by applying for SIJS, which in turn would allow him to apply for Legal Permanent Resident (LPR) status. XX meets the criteria for a Special Immigrant Juvenile under INA § 101 (a)(27)(J); 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(a), (d)(2)(i) , as amendedby the TVPRA of 2008, Pub. L. No. 110-457, §235(d)(1)-(3), 112 Stat. 5044. *[Insert information regarding the situation which makes the child eligible i.e. XX was abused by his father in his home country of Honduras, and forced to leave the home]*

For purposes of eligibility for SIJS, XX is a child under the age of 21 who is unmarried, who is properly under the jurisdiction of a “juvenile court” as defined by federal law, who is being placed in the custody of an individual by this court, who cannot reunify with one or both of his parents on account of abuse, neglect, or abandonment. It is not in his best interests to be returned to his previous country of nationality or country of last habitual residence, Honduras. It is in XX’s best interests to remain in the United States. Under both the INA and regulations and Maryland statute, this Court is empowered to issue the requested findings applying the facts of XX’s case to the immigration requirements, which will enable XX to petition for SIJS. Without this Court's findings, XX will not be able to apply for immigration relief and may face deportation. For the foregoing reasons,werespectfully request this Court to issue an order making the requisite findings of fact to permit XX to petition the USCIS for SIJS.

Dated this day of \_\_\_\_\_\_\_\_\_\_\_, 2013.

Respectfully submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney Name

Contact Information