Summary and Practice Pointer:
***Guardianship of Saul H.*, 13 Cal. 5th 827 (2022)**[1]

On August 15, 2022, the Supreme Court of California reversed the California Court of Appeal, Second Appellate District, in *Guardianship of Saul H.*, 13 Cal. 5th 827, 514 P.3d 871 (2022).[2] In its decision, the Court found that the trial court's order denying a petition for Special Immigrant Juvenile (SIJ) findings was appealable, rather than reviewable by writ. It further found that a petitioner seeking SIJ findings must prove the facts necessary to support such findings by a preponderance of the evidence; however, such evidence can come solely from a petitioner's declaration. Further, where the preponderance standard is met, the trial court has a mandatory duty to make SIJ findings, without consideration of the petitioner's motivation in seeking them. In reviewing the element of nonviability of reunification due to abandonment or neglect, the Court found that a petitioner need not prove blameworthiness or intent on the part of the parent(s): rather, the petitioner must only show that reunification with the parent(s) is not workable or practical. The best interest determination, the Court found, is a case-specific, holistic comparison between the child's circumstances in California and circumstances in the child's home country in which a court must keep in mind the child-protective goals of federal and California law related to SIJ findings. Consistent with those laws, a child is not disqualified from obtaining a best interest finding once they turn eighteen. The Court applied its holdings to Saul's case and found that he qualified for SIJ findings. In this pointer, we provide a summary of the Supreme Court opinion and provide some practice tips for SIJ cases going forward.

Factual and Procedural Summary[3]

Saul petitioned the Superior Court of California in the Antelope Valley Probate Division of Los Angeles County for guardianship and SIJ findings in September 2019, at the age of seventeen. In support of his petition for SIJ findings, Saul submitted a declaration, presented as the following by

[1] Copyright 2022, Catholic Legal Immigration Network, Inc. The authors of this practice pointer are Joanna Mexicano Furmanska, Staff Attorney at Catholic Legal Immigration Network, Inc., and Marion ("Mickey") Donovan-Kaloust, Directing Attorney at Immigrant Defenders Law Center, and counsel for Saul H. This practice pointer is intended to assist lawyers and support staff working on SIJ cases. It does not constitute legal advice nor is it a substitute for independent analysis of the law applicable in the practitioner's jurisdiction. Attorneys should perform their own research to ascertain whether the state of the law has changed since publication of this pointer.
[2] Slip opinion posted on the California Supreme Court website here. All citations are to the reported case and may not align with pagination of the slip opinion.
[3] This factual and procedural summary does not include a broader discussion of the SIJ statutory framework under California and Federal law, which is outside the scope of this practice advisory. For a helpful primer on SIJ in California, see *Guidance for SIJS State Court Predicate Orders in California*, by the Immigrant Legal Resource Center (June 2021). The factual and procedural histories included in this practice advisory are based on counsel's own understanding of the record, rather than a recitation of the factual and procedural history sections of the Court of Appeal and Supreme Court decision.

the court: Saul was born in El Salvador in December 2001 and fled the country in June 2018. After arriving in the United States in August 2018, he moved in with his uncle in January 2019, who has since provided for his necessities. In El Salvador, Saul had been made to work summers with his grandfather in the fields from the age of ten until fifteen. He would work six to seven hours every day, which completely exhausted him. Saul did not keep the money his labor earned – it was spent entirely on necessities for himself and his family, such as food, clothing, and shoes.

When Saul was in the ninth grade in El Salvador, he was repeatedly threatened by gang members. They told him that if he did not join their gang, they would kill him or his family. Each time, his family reported the incident to the police, but nothing came of the reports, and his family did not follow up. The court noted from Saul's declaration that the "police are afraid of the gang members" in El Salvador.

Soon after, Saul's parents made him leave school and start working full time at a car wash. While still a child, he worked 10 hours a day, from 8:00 a.m. to 6:00 p.m. He was unable to graduate high school in El Salvador. He saved half the money he earned and spent the other half on the family's needs. It did not take long for the gang to come after him again, extorting Saul for his earnings. Saul felt his parents were not able to protect him. Afraid for his life, he left El Salvador in June 2018, without telling his parents, who had not wanted him to leave.

The trial court found that there was no basis for granting the petition for SIJ findings but allowed Saul time to submit further briefing. Saul submitted a supplemental brief with an attached psychological evaluation. The latter, according to the appellate court, was not admitted into evidence or considered by the trial court; accordingly, the court likewise did not consider it. In the additional filings, Saul argued that a parent allowing or forcing their child to work long, hard days on dangerous equipment constitutes neglect. The trial court denied Saul's SIJ findings petition on August 25, 2020. Saul promptly appealed and petitioned for writ of mandate or prohibition to the Court of Appeal.

After briefing and oral argument by counsel for Saul, the Court of Appeal published an opinion in which it affirmed the lower court's denial of Saul's petitions for appointment of a guardian and SIJ findings and made several key holdings. Specifically, the Court of Appeal found: (1) a trial court's order denying a petition for SIJ findings is a final, appealable order; (2) a petitioner seeking SIJ findings has the burden of proof, by preponderance of the evidence, to establish eligibility for such findings; (3) a petitioner must show evidence that the parent(s) deserted the petitioner and/or intended to abandon the child; (4) a trial court should decide whether a parent's conduct was reasonable under the circumstances in determining whether it constitutes neglect; (5) past neglect does not on its own show that reunification is unworkable at the present time; and (6) under California Probate Code ("Prob. C.") § 1510.1(a), for youth over eighteen, if a SIJ findings petition is denied, courts have no jurisdiction to grant guardianship. In making these findings, the court significantly increased the burdens on petitioners in requesting findings; accordingly, petitioner and his counsel sought and were granted review of the appellate court's decision by the California Supreme Court.

Court Decision

Appealability of Denial of SIJ Findings

For many years, practitioners seeking appellate court review of trial court denials of SIJ findings requests were not sure whether to do so by appealing the denials or filing for writs of mandate. This was because neither the California Code nor case law clearly indicated that SIJ findings constitute an order directly appealable by right. Writs of mandate are generally only reviewable in the discretion of an appellate court where no other adequate remedy exists. In a footnote, the Court affirmed the Court of Appeal's holding that an order denying SIJ predicate findings is appealable because it "completely disposes" of the petition, rendering the order "the equivalent of a final, appealable judgment." *Saul H.* 13 Cal. 5th at 841, fn. 2 (internal quotations and citations omitted). Given much previous confusion faced by practitioners when challenging denials of SIJ findings, this short footnote finally clarifies that advocates should appeal SIJ finding denials, rather than petition for writ review of such orders.

Burden of Proof and Trial Court Findings

The Court next addressed what burden of proof a petitioner must meet when presenting evidence in support of SIJ findings. The Court of Appeal had found that a preponderance of the evidence standard applies, while Saul argued in support of a substantial evidence standard. The Supreme Court found that, because no standard of proof is specified in California Code of Civil Procedure ("Cod. of Civ. Pro.") § 155 nor in federal statutes and regulations governing state-court SIJ findings, trial courts must use the default burden of proof for findings in civil cases, which is a preponderance of the evidence, which comports with the standards applied by federal authorities in adjudicating SIJ petitions and California courts conducting juvenile dependency proceedings. *Id*. at 842.

The Court went further, however, and found that, in any evidentiary inquiry relating to a request for SIJ findings, trial courts should follow certain guidance provided by the California Legislature in § 155. First, the Court found that by adding the word "solely" to the statute by amendment, the Legislature clarified that the child's declaration can, without more, be enough to prove the facts needed to support SIJ findings. *Id.* at 843. Although a trial court may require evidentiary hearings or further evidence where a child's declaration fails to establish sufficient factual support for SIJ findings, it must do so while keeping in mind the "unique features and challenges of such proceedings." *Id.* at 844.

On the other hand, superior courts "may not ignore or discredit facts shown by a child's declaration based on surmise or on evidence outside the record or draw speculative inferences against the child." *Id*. Doing so would be in contravention of the Legislature's intent to allow a child's declaration to provide sufficient evidence on which to base SIJ findings. *Id*.

Second, and relatedly, the Court notes § 155's prohibition on the trial court considering or admitting as evidence "the asserted, purported, or perceived motivation of the child seeking" SIJ findings. *Id.* at 845 (quotations omitted). This limit, the Court states, makes sense because although Congress recognized state courts' expertise in making child welfare determinations, it delegated

the authority and competence to make immigration determinations solely to the federal government. *Id*.

Third and finally, the Court recognized that § 155 and appellate precedent impose a "mandatory duty" on trial courts to issue SIJ findings where there is a preponderance of the evidence to support them. *Id.* at 845-846. There is no discretion for trial courts to deny making the findings in such circumstances. *Id.* at 846. Failure to fulfill this duty could result, the Court stated, in a decision at odds with what federal immigration authorities would otherwise ultimately find were the findings granted in state court, which would be contrary to the purposes of both federal and California law pertaining to SIJ findings. *Id.* at 846 (citation omitted).

Merits

Standard of Review

In the appellate case, the Court of Appeal had reviewed the trial court's decision for factual error rather than legal error, applying an extremely deferential standard of review. The Supreme Court agreed with Saul that this was the incorrect standard of review, finding that, because the facts in the case were undisputed and the trial court never questioned Saul's credibility, the case presented a question of law on appeal rather than one of fact, requiring de novo review. *Saul H.* at 846-847.

Nonviability of Reunification Determination

The Court of Appeal treated "nonviability" as a distinct element, requiring discrete evidence of the abuse, abandonment, or neglect on the one hand, and how that abuse, abandonment, or neglect *caused* nonviability on the other. The Supreme Court, in contrast, recognized that finding the nonviability of reunification because of abuse, abandonment, or neglect requires a holistic inquiry which should not be teased apart in this way. The Court explained that the purpose of the "nonviability" inquiry is to "identify children whom it would not be viable—meaning not workable or practical—to return to live with a parent." *Id.* at 848. The Court rejected any consideration of a stricter, "impossibility" standard and clarified that the "nonviability" inquiry does not require a showing that it is literally impossible for a child to return to their parents' care, but rather that, under the circumstances, it would not be "workable or practical" to do so. *Id.* at fn. 5.

The Supreme Court further explained that in making a "nonviability" inquiry, a court should consider "all relevant circumstances, including the ongoing psychological and emotional impact on the child of the past relations between the child and the parent, how forced reunification would affect the child's welfare, the parent's ability and willingness to protect and care for the child, and the parent's living conditions." *Id.* at 848.

With this guidance in place, the Court squarely rejected the lower courts' focus on parental "blameworthiness" in the context of SIJ findings. In particular, the Court found the probate court's reliance on the "poverty alone" rule to be misplaced. Relying on cases from the termination of parental rights context, the probate court had found that if a child's circumstances are due to poverty, that is not a basis for "judicial… intrusion," and declined to make SIJ findings. *Id.* The Supreme Court disagreed, contrasting the issuance of SIJ findings with the termination of parental rights. The latter, the Court stated, results in a "uniquely serious step … ranking among the most

severe forms of state action." *Id.* at 849 (citations and quotations omitted). The "policy considerations" involved in the termination of parental rights are thus inapplicable in the SIJ findings context in which "the parent and child are already separated, parental rights are not at stake, and courts have no authority to order services to assist impoverished parents." *Id.* Accordingly, the "poverty alone" rule does not apply and instead the focus is on the "effect of [the] harm [the child experienced] on the workability or practicality of returning the child to live with the parent." *Id.* The Supreme Court then rejected the Court of Appeal's similar "blameworthiness" focus, again clarifying that the relevant inquiry is whether reunification is "not workable or practical," not whether the harm the parents inflicted was "excusable" or the parents' reasons "reasonable" under the circumstances. *Id.* at 849-850.

Just as it rejected any requirement of "blameworthiness" on the part of the parents in the context of SIJ findings, the Supreme Court next found that the Court of Appeal erred when it applied "overly narrow" definitions of abandonment that require a showing of parental intent to abandon, imported from the criminal and termination of parental rights contexts.[4] *Id.* at 850. Instead, the Court explained that in the context of a request for SIJ findings, a court should consider whether "*any relevant definition*" of abandonment or neglect under California law would support a finding of either.[5] *Id.* (emphasis added). At least two relevant definitions of abandonment cited by Saul—California Family Code ("Fam. C.") § 3402 and certain clauses of California Welfare and Institutions Code ("WIC") § 300(g) -- do not require any showing of parental intent to abandon, the Court found. *Id.* The Court then emphasized the necessity of applying broad definitions of abandonment by listing examples of circumstances in which denial of SIJ findings due to lack of parental intent would be "unwarranted" including "when a child has been orphaned, the parent is incarcerated or suffering from mental illness, or the parent's failure to adequately care for the child leads the child to leave the home or seek other sources of provision for the child's basic needs." *Id.* Notably, despite its lengthy discussion of abandonment in the context of SIJ findings, the Court did not address Saul's individual "abandonment" claim.

Next, the Court held that the probate court erred in failing to consider whether Saul had been subjected to a "similar basis" to abuse, abandonment, or neglect in determining whether it would be "workable or practical" to return Saul to his parents' care. *Id.* at 850-851. The Court explained that the "similar basis" language was added to the SIJ statute[6] with the "intent" to "expand[] eligibility," with "[n]ew federal regulations expressly allow[ing] petitioners for special immigrant

[4] The relevant "abandonment" statutes requiring a showing of parental intent to abandon are Fam. C. § 7822(a)(2) (termination of parental rights context) and California Penal Code § 271 (criminal context). Practitioners should be mindful that citing to those statutes to support an 'abandonment' finding will generally require a separate showing of parental intent to abandon. Where parental intent is not clearly established, practitioners should cite to Fam C. § 3402 or WIC § 300(g) if the facts support findings on those bases.

[5] Saul did not put forth any arguments that his parents had "abused" him, so the Supreme Court decision does not discuss any California definitions of abuse, but presumably a similar analysis calling for the broadest approach would apply.

[6] The relevant language was added with the William Wilberforce Trafficking Victims Protection Act of 2008, Pub. L. No. 110-457 § 235(d)(1)(A) (Dec. 23. 2008) 122 Stat. 5044 ("TVPRA"). The TVPRA replaced a requirement that a child have been found "eligible for long-term foster care" with one that reunification have been determined not to be viable due to "abuse, neglect, abandonment, or a similar basis found under state law." *See* TVPRA § 235(d)(1)(A).

juvenile status to submit evidence of a state court determination as to how the basis is legally similar to abuse, neglect, or abandonment under State law for purposes of determining that reunification is not viable." *Id.* at 851. The Court thus concluded that the probate court erred in failing to consider whether Saul's reunification with his parents was not viable under this expanded ground. *Id.*

The Court then held that the probate court erred in failing to consider whether WIC § 300(b)(1), cited by Saul in his SIJ petition and proposed order, qualifies as a "similar basis" to abuse, neglect, or abandonment. WIC § 300(b)(1) provides, among other bases, a basis for a juvenile court to exert jurisdiction over a child if "the child has suffered, or there is substantial risk that the child will suffer, serious physical harm or illness as a result of failure or inability of the child's parent or guardian to adequately supervise or protect the child." *Id.* (citing WIC § 300(b)(1)).[7] The Court again reiterated that the relevant inquiry is not "parental fault or blameworthiness," but rather "whether the child is at substantial risk of serious physical harm or illness." *Id.* (internal quotation marks omitted). The Court noted that the child-protective framework of the dependency system, which the WIC lays out, "mirrors the child-protective purposes of the special immigrant juvenile status," rendering [the jurisdictional bases contained in § 300 of the WIC] a 'similar basis'" to 'abuse, neglect or abandonment" for purposes of SIJ findings. *Id.* at 851-852.

Finally, the Court considered Saul's contention that the probate court "inappropriately speculated" about conditions in El Salvador in refusing to make the SIJ findings. *Id.* at 852. The probate court had suggested, without citing any record evidence, that because the conditions Saul faced in El Salvador are common, they could not form the basis of a SIJ finding. The Court admonished the probate court for "considering extra-record information" and "making assumptions about conditions prevailing in other countries" rather than applying "state law to the facts established by the child," as specified by the SIJ statute. *Id.* Doing so, the Court pointed out, was inappropriate given the state courts' limited expertise with regard to conditions in other countries, in contrast to federal immigration authorities. In determining whether reunification is workable or practical, the Court stated, courts should not rely on such speculation. *Id.* at 853.

The Court then applied the above "analytical framework" to the "undisputed facts established by Saul's declaration." *Id.* Relying on the first clause of WIC § 300(b)(1), the Court found that Saul's reunification with his parents is not viable because of their "failure or inability to adequately protect" him from "gang violence." *Id*. While Saul had proffered facts related to child labor in dangerous conditions as a basis for a finding under WIC § 300(b)(1),[8] the Court focused its analysis on the "substantial risk" of "serious physical harm" at the hands of gang members. *Id.* The Court, having found that the parents' "failure or inability" to protect him from gang violence

[7] WIC § 300(b)(1), among other sections of the WIC, provides a basis for a California dependency court to exert protective jurisdiction over a child. Practitioners should note that some clauses of WIC § 300(b) do require a showing of parental willfulness or negligence when making arguments under § 300(b).

[8] The most detailed account of the dangerous conditions Saul faced as a child laborer was contained in a social worker's report filed with the probate court. There was dispute below about the admissibility of the report, and the Court did not reach that question because it held that Saul had presented sufficient evidence of eligibility for SIJ findings in his declaration alone. Therefore, the facts contained in the social worker's report were not considered by the Court.

was a similar basis to neglect, did not analyze the other potential factual bases for a finding of neglect.

Best Interests Determination

In addition to making a finding that reunification with the child's parent(s) is not viable, a state court must also find that it is not in the child's best interest to return to their or their parents' home country or country of origin. The Supreme Court noted that this finding is distinct from the nonviability finding in that it focuses not on the relationship between the child and their parent, but instead on the effects of sending the child back to live in their home country. The trial court's inquiry regarding best interest involves a case-specific, holistic comparison of the child's circumstances in California to the circumstances in which the child would live if repatriated to their home country, which can include a review of the capacities of caregivers in either location. *Saul H.* at 853. As with the nonviability determination, state courts must apply state law in making the best interest determination. *Id.* at 854.

California law, the Court noted, makes the "health, safety and welfare" of the child the court's "primary concern" in determining the best interest of that child. *Id.* at 854 (citing Fam. C. §§ 3020(a) and 3011(a) and Prob. C. § 1514(b)). Special weight, the Court stated, must be given to a child's wishes where the child can "form an intelligent preference." *Id.* This emphasis on the safety and well-being of the child is "consistent with the child-protective purposes of federal and California SIJ law and the criteria employed by other states." *Id.*

Neither the probate trial court nor the Court of Appeal used such an approach, the Court admonished, and the reasoning of each court was inconsistent with the standard at play. The trial court first improperly found that any benefits Saul enjoyed by living in California with his guardian were outweighed by the facts that he still had family in El Salvador, lived there most of his life and spoke the language. *Id.* (internal quotations omitted). That court also incorrectly discounted "*uncontroverted*" evidence presented by Saul of the threatening situation he faced in El Salvador in favor of anecdotal observations made by the court that some youth avoid hardships in El Salvador and grow up to be "doctors, lawyers, and other professionals." *Id.* (internal citations omitted) (emphasis added). These observations, the Supreme Court noted, were "untethered to any evidence," and thus improper. *Id.* (internal citations omitted). Even were Saul to overcome the obstacles from his past, the Court found, that does not mean that his involuntary repatriation to El Salvador would be better for his health, safety, and welfare than it would be for him to remain in California with his guardian, as he desired. *Id.* at 855.

Finally, the Court found that the probate court improperly concluded that Saul's age disqualified him from establishing that it would not be in his best interest to return to his home country.[9] *Id.* While the Court acknowledged that a child's age may be relevant to the best interest determination, it also found that a trial court may not make inferences unsupported by the evidence in the record. *Id*. Such inferences, the Court stated, ignore federal law, which defines "child" as an unmarried

[9] The Court noted that the Court of Appeal did not reach the best interest question, but "similarly relied on improper speculation in upholding the probate court's denial of a nonviability of reunification finding when it reasoned that 'as an adult' Saul may not need the 'level of support for a child.'" *Saul H.* at 855, fn. 7.

individual under the age of twenty-one, and California law, which has amended the Probate Code to provide for guardianships for youth up to the age of twenty-one in connection with petitions for SIJ findings. *Id*. (citing Prob. C. § 1510.1(a)(1)). In making this amendment, the Court noted, the Legislature intended to protect SIJ youth ages 18 through 20 who continue to be vulnerable due to their histories of abuse, abandonment, or neglect, just as their younger counterparts may, as well. *Id.*

When applying these standards to the facts present in this case, the Court found that the uncontroverted evidence showed that it was in Saul's best interest to remain in California with his guardian, rather than be returned to El Salvador. *Id.* at 856. In California, the Court found, Saul had a guardian with whom he wanted to remain and who provided him with food, safe shelter, health care, and an education. *Id.* In contrast, the Court found, Saul's parents in El Salvador were unable to provide for him or protect him from gang violence. *Id*. Saul would not be able to return to school and instead would have to work. Returning to El Salvador, the Court found, would be detrimental to Saul's health, safety, and welfare. *Id.*

Disposition

Finally, the Court reversed the Court of Appeal's decision and directed that the case be remanded to the probate court with instructions to reinstate Saul's guardianship and issue an order granting Saul's petition for SIJ findings with time to allow him to apply for SIJ status with USCIS before his twenty-first birthday. *Id.* The Court noted in a footnote that generally it merely remands to the trial court to apply the law to the facts in the case. Here, however, given the lack of dispute as to the facts and the urgent need for the findings, the Court chose to remand with directions to the probate court to simply make the findings consistent with the Court's order. *Id.* at fn. 9.

Practice Points

1. This decision affirmed Code of Civ. Pro. § 155, which provides that the child's declaration is generally sufficient evidence. If the child's declaration establishes each element by a preponderance of the evidence (meaning it is more likely than not a given element is true), it should generally be unnecessary to provide additional evidence. A court's assumptions or consideration of extra-record "evidence" are not only insufficient to controvert a child's evidence, but entirely inappropriate. If a court's decision denying SIJ findings relies on such assumptions, challenge that reliance on appeal. If the court refuses to make a finding, request that the court state its reasons for declining to do so clearly in the record for the purposes of appeal.

2. If submitting additional evidence to bolster a claim, review it carefully to ensure that there are no contradictions between the child's declaration and the supplemental evidence.

3. Ensure that any declaration or supplemental evidence is admissible and adheres to any applicable rules of evidence, rules of court, or local rules. In *Saul H.*, the probate court did not clearly indicate whether it considered a supplemental social worker's report, and the Court of Appeal declined to consider it because it was not properly admitted into evidence below. The

Supreme Court did not reach the question of whether it should be considered, because it found that Saul's declaration was sufficient to establish the elements required to make the findings. If there is any question as to whether supplemental evidence is required to establish an element by the preponderance of the evidence, ensure that it is properly admitted and considered at the trial court level.

4. If requesting findings based on a "failure or inability to protect" from gang violence, dangerous conditions, or other similar facts, request that the court explicitly state in its order that a finding under the first clause of WIC § 300(b)(1) is a "similar basis" and "legally similar" to neglect under state law. Doing so ensures the order's compliance with 8 C.F.R. § 204.11(d)(4).

    - The Supreme Court did not analyze other clauses of WIC § 300(b)(1). Practitioners may wish to argue that clauses other than the "failure to protect" clause constitute "neglect" rather than a "similar basis" to neglect.

5. Highlight for the trial court that it need not find that reunification would be impossible, merely that it is "not workable or practical" in light of all relevant factors, including "the history of the child's relationship with the parent, and whether the child would be exposed to harm if returned to live with the parent."

6. Highlight for the trial court that parental blameworthiness is not required, nor is it the focus of the inquiry. If a trial judge requires a showing of parental scienter, make arguments under a code section that does not contain a scienter element, such as WIC § 300(b)(1), WIC § 300(g) or Fam. C. § 3402, and remind the judge that the findings should be made under "any applicable definition" of abuse, neglect, abandonment or similar basis under California law.

7. Argue that, in the context of SIJ findings, the focus should be on "ensur[ing] the safety, protection, and physical and emotional well-being of children," rather than the blameworthiness of the parent, and that the SIJ framework mirrors the expansive, child protective framework of the dependency system. Show a case-specific, holistic comparison between a child's circumstances in California, and circumstances in their home country based on record evidence.

8. While presenting this holistic comparison, however, remind the court that any "speculation" about the child's home country's conditions beyond the evidence presented is inappropriate.

9. If SIJ findings are denied, appeal rather than filing a writ. If an appeal becomes necessary, argue that the facts below were uncontroverted and found credible (if true), such that the standard of review should be *de novo.*