

IN THE SUPREME COURT IN THE STATE OF NEVADA

YESENIA ESMERALDA AMAYA,

Appellant,

vs.

MILTON ORLANDO GUERRERO
RIVERA,

Respondent.

Case No.: 75769

District Court No.: D562584

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CHILD CUSTODY FAST TRACK STATEMENT

1. **Name of party filing this fast track statement:** Yesenia Esmeralda
Amaya.

2. **Name, law firm, address, and telephone number of attorney
submitting this fast track statement:**

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3. **Judicial district, county, and district court docket number of
lower court proceedings:** Eighth Judicial District Court, Clark County,
17D562584.

4. **Name of judge issuing judgment or order appealed from:** Judge Mathew Harter.
5. **Length of trial or evidentiary hearing. If the order appealed from was entered following a trial or evidentiary hearing, then how many days did the trial or evidentiary hearing last?** The district court held no hearings in the proceedings below.
6. **Written order or judgment appealed from:** Decision and Order and Decision and Order on Motion for Reconsideration.
7. **Date that written notice of the appealed written judgment or order's entry was served:** April 3, 2018 and April 26, 2018.
8. **If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4),**
- a) **Specify the type of motion, and the date and method of service of the motion, and date of filing:** N/A.
- b) **Date of entry of written order resolving tolling motion:** N/A
9. **Date notice of appeal was filed:** April 27, 2018.
10. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:** NRAP 4(a)(1).
11. **Specify the statute, rule or authority, which grants this court jurisdiction to review the judgment or order appealed from:** NRAP 3A(b)(1).

12. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which involve the same or some of the same parties to this appeal: N/A.

13. Proceedings raising same issues. If you aware of any other appeal or original proceeding presently pending before this court, which raises the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings: None of which the parties are aware.

14. Procedural history. Briefly describe the procedural history of the case (provide citations for every assertion of fact to the appendix of record, if any, or to the transcript or rough draft transcript): Appellant filed a complaint for custody on December 1, 2017. AA 1. Appellant effectuated service on Respondent on December 18, 2017 and default entered on January 9, 2018. AA 7, 12. On February 28, 2018, Appellant filed a Motion for Special Immigrant Juvenile Status and two declarations in support thereof, and the clerk set a hearing on the motion on the chamber's calendar for March 30, 2018. AA 14-15, 54, 57. On March 21, 2018, the court rescheduled the hearing to April 4, 2018 at 10:00 a.m. AA 61. In a minute order filed on March 30, 2018, the court vacated the April 4th hearing and stated it would enter its decision on the Motion by April 16, 2018. AA 62. On April 3, 2018, the court denied Appellant's Motion but stated

Appellant could file a default custody order. AA 64-70. On April 12, 2018, Appellant filed a Motion for Reconsideration and the clerk again set the hearing on the Motion on the court's chamber calendar on May 25, 2018 at 11:00 p.m. AA 71, 72. Appellant filed a setting slip requesting a hearing on her motion and the clerk set it for May 1, 2018 at 9:30 a.m. AA 91.

Appellant filed the default custody order on April 18, 2018. AA 98. Prior to the scheduled hearing, the court entered its decision denying Appellant's Motion for Reconsideration on April 26, 2018. AA 104, 105-06. Appellant filed her Case Appeal Statement and Notice of Appeal on April 27, 2018. AA 107, 111.

Appellant filed an Application to Proceed in Forma Pauperis on April 18, 2018, however, the court did not grant her application until May 8, 2018. AA 94, 113.

15. Statement of facts. Briefly set forth the facts material to the issues on appeal (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript): Andrea was born November 16, 2004 in El Salvador. AA 54. Her mother is Yesenia Esermalda Amaya and her biological father is Milton Orlando Guerrero Rivera. AA 54, 57. Prior to coming to the United States, Andrea lived with her maternal grandmother. AA 54. Andrea's parents were never married and separated when she before she was born. AA 57.

After separating from Milton, Appellant moved back in with her mother. Id. Once Andrea was born, Milton did not help Appellant with formula, diapers, or other items a newborn requires. Id. Milton did not visit Andrea either, though his family would take Andrea for a few hours at a time before returning her. Id. Without any help from Milton, Appellant struggled to provide for Andrea. AA 57-58. She decided to come to the U.S. to provide a better life for daughter. AA 58. Andrea remained in the care of Appellant's mother. Id. During her journey, Milton discovered Appellant had left and demanded she return or he would take Andrea away. Id. Appellant was unable to return, and Milton took Andrea from her mother. Id.

Once in the U.S., Milton did not permit Appellant to communicate with Andrea often. Id. Eventually, Milton allowed Andrea to visit Appellant's mother. Id. Once with her mother, Appellant was able to speak to Andrea more regularly. Id. Appellant also sent her mother money for whatever Andrea needed, and also sent clothes from the U.S. to El Salvador. Id. Milton lived with his parents at the time, and worked a lot, thus, his parents raised Andrea, not him. AA 58, 54.

Andrea did not like living with her father. AA 54. He was not affectionate with her, and often hit her. AA 54; 58. Andrea remembers waking up late for school when she was six or seven-years-old and as punishment, her father whipped her with a cattle rope. AA 54-55. He beat her with the rope every two or three

days, hitting her all over her body with it. AA 55. The rope left bruises and burns on Andrea. Id. The beatings hurt Andrea and made her cry. Id.

Andrea shared the same classroom with her cousin and walked to and from school with her and her mom. AA 56. One day in class, her cousin became upset with Andrea when Andrea would not do her cousin's work. Id. When her cousin's mom picked them up after school, her cousin complained about it to her mom. Id. Her mom became angry at Andrea and left her at the school to walk by herself. Id. Andrea did not know where to go and got lost. Id. It started to get dark. Id. As Andrea continued to walk, she placed by a tree. Id. A man walked out from behind the tree and sexually assaulted Andrea. AA 56; 59. She was only eight-years-old at the time. AA 56. When he finished, he let her go. Id. Her hair was messy and her clothes were wrinkled. Id. She arrived home very late. Id. Andrea did not tell Milton what happened to her, fearing he would get angry at her or that her family would laugh at her. Id. Instead, Andrea told him that she got lost because her cousin left her at the school after Andrea would not help her. Id. Milton became angry anyways, and beat Andrea for refusing to help her cousin. Id. He said it was her fault for whatever happened to her. Id.

One day when Andrea was ten or eleven-years old, she came home from visiting her maternal grandmother's house. AA 55. She had received an iPad as a gift from Appellant and was excited to show it to her father. Id. When she showed

it to him, he told her she had to leave her home because he was going live with his wife. Id. He did not offer to take her anywhere; rather Milton told eleven-year-old Andrea to figure out where she was going to live. Id. Andrea felt like her father wanted to have another life without her in it. Id. Saddened, Andrea packed up her clothes and walked back to her grandmother's house. Id. It was dark outside and Milton did not walk with her. Id.

After kicking her out of his home, Milton never called or visited Andrea. Id. He moved to another town. AA 58. However, Andrea saw him when she visited her paternal grandparents' house. AA 55. He came back to town to visit his parents, but not Andrea. Id. While there, Milton never showed affection to Andrea or spent time with her. Id. After kicking her out, Milton did not provide for Andrea financially, help her with school, or attend important events. AA 55; 58. Appellant sent her mother \$100 a week for Andrea's needs and spoke to her over the phone frequently, and sometimes through video chat. AA 58.

Andrea came to the U.S. in December 2016 , and reunited with Appellant in February 2017. AA 59. She lives with Appellant, Appellant's husband, Rene, and her three siblings, two of which are infant twins. Id. Andrea likes to hold the twins and help feed them. Id. She enjoys being a big sister. Id. She is in the seventh grade at Robinson Middle School. AA 56. She is getting good grades and is adjusting well. AA 56; 59. Since she has been in the U.S., Milton has not called

Andrea or offered to send money to Appellant to help with Andrea's needs. AA 59.

Appellant filed a Motion for Findings on the Issue of Special Immigrant Juvenile Status (SIJS) and two declarations in support of the motion signed by Appellant and Andrea. AA 28, 54, 57. Respondent did not file an opposition to her Motion. See AA 1-107. Nonetheless, the district court denied Appellant's motion without a hearing. AA 64-70. The district court denied Appellant's motion, stating the language of Nevada Assembly Bill 142 and 8 U.S.C. § 1101(a)(27)(J) require a state court find that reunification not be viable *both* of the juvenile's parents. AA 65. To support this conclusion, the district court cites to Nevada Supreme Court case law. AA 67-70. The district court further concluded that neither Nevada Assembly Bill 142 nor 8 U.S.C. § 1101(a)(27)(J) contemplated a custody proceeding as the basis in which to petition the district court for findings on the issue of SIJS. AA 64-66.

16. Issues on appeal. State concisely the principal issue(s) in this appeal: (1) Whether Nevada Assembly Bill 142 and 8 U.S.C. § 1101(a)(27)(J) (hereinafter SIJS statutes) regarding Special Immigrant Juvenile Status require a finding that reunification is not viable with *both* parents due to abuse, abandonment, neglect, or a similar basis under state law, and (2) whether a litigant can file a Motion for Special Immigrant Juvenile Status within a child custody

proceeding, and (3) whether in a custody proceeding, a district court places a juvenile under the custody of a person appointed by the court, thereby meeting the first prong of the SIJS statutes.

17. Legal argument, including authorities:

Congress enacted the SIJS provision of the Immigration and Nationality Act in 1990. *See* 8 U.S.C. § 1101(a)(27)(J), as added by Pub L 101-649, § 153, 104 US Stat 4978). Under the statute, juveniles or those acting on their behalf, may petition the United States Citizenship and Immigration Services (USCIS) for SIJS. Under the original language of the provision, the juvenile had to obtain a predicate state order making factual findings that (1) the juvenile was dependent upon a juvenile court located in the U.S. and had been deemed eligible for long-term foster care, and (2) it would not be in the best interests of the juvenile to return to her home country. *See* Pub L 101-649, § 153, 104 US Stat 4978.

In 1997, Congress amended the SIJS statute, defining a special immigrant juvenile as someone whom a juvenile court had legally committed to, or placed under the custody of, an agency or department of a State," and added that the eligibility finding for foster care must be due to abuse, abandonment, or neglect. *See* Pub Law 105-119, § 113, 111 US Stat 2440, 2460 [105th Cong, 1st Sess, Nov. 26, 1997]. Congress wanted to ensure the statute benefited those children for whom it was created, *i.e.* abused, abandoned, and/or neglected children. *See* HR

Rep 105-405, 105th Cong, 1st Sess at 130, reprinted in 1997 US Code Cong & Admin News at 2941, 2954.

In 2008, Congress amended the SIJS requirements again under the William Wilberforce Trafficking Victims Protection Authorization Act of 2008 (TVPRA). *See* Pub L 110-457, 122 US Stat 5044 [110th Cong, 2d Sess, Dec. 23, 2008]. The TVPRA expanded eligibility to children who had been placed in the custody of an individual or entity appointed by the State or juvenile court, and removed the requirement that the juvenile be eligible for long-term foster care. *See id.* Congress replaced that foster care provision requiring a juvenile court to find that "reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law." *See id.*

SIJS exists to "protect the applicant from further abuse or maltreatment by preventing him or her from being returned to a place where he or she will likely suffer further abuse or neglect." *Matter of Sing W.C.*, 83 A.D.3d 84, 91 (N.Y. App. Div. 2011). To establish eligibility for SIJS under the current law, a juvenile court must find that:

(1) The child has been declared dependent upon a juvenile court or a juvenile court must have legally committed the child to, or *placed her under the custody of*, an agency or department of the State, or *an individual or entity appointed by the State or juvenile court*;

(2) The child's reunification with *one or both* of his parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and

(3) The child's best interests would not be served by being returned to his country of origin.

8 U.S.C. § 1101(a)(27)(J) (2006, supp. 2009); *see also* AB142. Each of these criteria was met in this case.

A. The Plain Meaning of 8 U.S.C. § 1107(a)(27)(J) and AB142 Allows for Findings Where Reunification with One Parent is Not Viable due to Abuse, Abandonment, or Neglect.

Questions of statutory interpretation are reviewed de novo. *Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d 177, 179 (2011). The words of any statute are to be interpreted according to their plain and ordinary meaning, unless it is clear that the Legislature used them differently, or the words are facially ambiguous. *See State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (“We must attribute the plain meaning to a statute that is not ambiguous.” (citing *Firestone v. State*, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004))); *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (Thomson/West 2012) (“[T]he words of a governing text are of paramount concern.”). Only if the statute is ambiguous should a court look beyond the statute’s language to legislative history or other sources to determine the intent of the statute. *Attaguile v. State*, 122 Nev. 504, 507, 134 P.3d 715, 717 (2006). An ambiguity exists when the statute’s “language lends itself to two or more *reasonable* interpretations.” *State v.*

Catania, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) (emphasis added).

After considering the plain meaning, a court should consider the statute as a whole, giving meaning to each word, phrase, and provision, avoiding interpretations that render any words superfluous or meaningless. *Haney v. State*, 124 Nev. 408, 411-12, 185 P.3d 350, 353 (2008). Courts are not to legislate under the guise of creative interpretation or construction not consistent with the plain and ordinary usage and meaning of the statutory language. *Hartford Underwriters Ins. Co. v Union Planters Bank, N.A.*, 530 US 1, 10 (2000); *Park 'N Fly, Inc. v Dollar Park & Fly, Inc.*, 469 US 189, 194 (1985). Courts are constrained to read and give effect to the law as it was written in accordance with the plain meaning of the words used by Congress, not as what they think it should have been written. *William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 99 A.D.3d 270, 275-76, 952 NYS2d 197 (2012); *Puella v Bureau of Citizenship & Immigration Servs.*, 511 F3d 324, 327 (2d Cir 2007).

A special immigrant is an immigrant who is

present in the United States (1) 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, abandonment, or a similar basis found under State law" and "for whom it has been determined in an administrative or judicial proceedings that it would not be in the

[immigrant's] best interests to be returned to [his or her] previous country of nationality or country of last habitual residence[.]

8 U.S.C. § 1101(a)(27)(J) (emphasis added).

Here, the plain language of the statute permits juveniles to apply for SIJS when a state court finds that "reunification with *1 or both*" parents is not viable.

Id. The plain language expressly contemplates SIJS-eligibility where (1) reunification with one parent is not viable and/or (2) reunification with both parents is not viable. If Congress or the Nevada Legislature intended to require that reunification is not viable with both parents it would have made that explicitly clear by simply stating "reunification is not viable with both parents."

Even looking beyond the plain language of the statute, legislative history of 8 U.S.C. § 1107(a)(27)(J) expressly supports this position. As discussed above, Congress originally required a finding that the juvenile was eligible for long-term foster care. *See* 8 U.S.C. § 1107(a)(27)(J)(i) (2006). "Eligible for long-term foster care" was defined as a determination that "family reunification is no longer an option[.]" *See* 8 C.F.R. § 204.11(a). Under this version of the statute, SIJS was only available if reunification was not viable with *both* parents. However, in 2008, the TVPRA significantly broadened eligibility by eliminating the requirement of long-term foster care and adding "reunification with 1 or both" parents is not viable to the statute. Pub L. No. 110-457, § 235(d)(1)(A), 122 Stat. 5044, 5079-80.

Other courts have arrived to the same conclusion.¹ USCIS, the agency that adjudicates petitions for SIJS, also interprets the federal statute to read abuse, abandonment, or neglect need only be perpetrated by one parent for purposes of SIJS findings. *See U.S. Citizenship & Immigration Services, Immigration Relief for abused Children*, at 1 (Apr. 2014).² Accordingly, under the current law, the statute only requires that reunification is not viable with one of the juvenile's parents.

B. The Authority Cited in the Court's April 3, 2018 Order Does Not Support the Contention that Reunification Must Not Be Viable with Both Parents.

1. *H.S.P. v. J.K.*

The District Court cites to *H.S.P. v. J.K.*, 223 N.J. 196, 121 A.3d 849 (2015) to support the its interpretation of the "1 or both" language. *See* Decision and Order, dated April 3, 2018, at 2. Specifically, it quotes the *H.S.P.* court as holding, "[A] finding that an immigrant child's 'reunification with 1 or both of the

¹ *See Eddie E. v. Superior Court*, 234 Cal.App. 4th 319, 332 (2015); *Matter of Marcelina M.-G. v. Israel S.*, 112 A.D.3d 100, 973 N.Y.S.2d 714, 722 (N.Y. App. Div. 2013) (minor placed in custody of her mother is still eligible for SIJ findings where minor had been abandoned by her father); *In re Estate of Nina L.*, 2015 IL App (1st) 152223 (2015) (finding that if Congress meant for an applicant to show reunification is not viable with both parents, it could have easily provided for that in the statute); *c.f. In re Erick M.*, 284 Neb. 340, 820 N.W.2d 639, 644 (Neb. 2012) and *H.S.P. v. J.K.*, 435 N.J. Super. 147, 87 A.3d 255, 266 (N.J. Super. Ct. App. Div. 2014).

² Available at http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Immigration_Relief_for_Abused_Children-FINAL.pdf (providing that SIJ-eligible children may "[b]e living with a foster family, an appointed guardian, or the non-abusive parent").

immigrant's parents is not viable' as would support the SIJS status, **is not established where reunification with one or both parents is viable.**" *Id.*

Plaintiff disagrees with this interpretation of the holding in *H.S.P.* for at least two reasons.

First, *H.S.P.* does not contain that above-quoted holding, either by direct quote or by paraphrase. Second, the New Jersey court explicitly declined to interpret the "1 or both" language in the SIJS statute, stating interpretation of a federal law was a task for the federal government. *H.S.P.*, 223 N.J. at 213, 1221 A.3d at 859-60. To avoid confusion amongst the family courts, the New Jersey appellate court directed the family courts to first make separate findings as to whether the reunification with one parent is not viable due to abuse, abandonment, or neglect. *Id.* Regardless of that outcome, New Jersey family courts should then make separate findings as to the other parent. *Id.* The Court rationalized that this approach would ensure USCIS had sufficient information to apply the SIJS statute to the individual juvenile's case. *Id.* Notably, nowhere in its decision did it directly or indirectly state that a "finding that an immigrant child's 'reunification with 1 or both of the immigrant's parents is not viable' as would support the SIJS status, **is not established where reunification with one or both parents is viable.**" Decision and Order, dated April 3, 2018, at 2.

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2. *In the Matter of D.S.M.*

The District Court also cites to a recent unpublished opinion by the Nevada Supreme Court (NSC) as persuasive authority to support the contention that the SIJS statute requires a finding that reunification must not be viable with either parent. Decision and Order, dated April 3, 2018, at 1-2. Plaintiff respectfully disagrees with this interpretation of *D.S.M.*'s holding.

There, the NSC affirmed a district court's decision that the juvenile's father had not abandoned him. *In the Matter of the Guardianship of the Persons of, D.S.M., a Minor*, Docket No. 72820, 2018 Nev. Unpub. (Nev. March 15, 2018), at 2. In the district court, the juvenile's aunt petitioned for the appointment of her as guardian. *Id.* at 1. In her request for SIJS findings, she asserted that the juvenile's father had abandoned him when the father was murdered. *Id.* at 2. The district court found that the father's murder did not constitute abandonment because there was no intent to forego any relationship with the juvenile. *Id.* The NSC agreed with the district court, finding that Nevada law requires a willful act on part of the parent. *Id.* In so finding, the NSC held that "because the juvenile did not demonstrate that he suffered neglect or abandonment by his father, he did not satisfy the 'reunification' requirement for SIJ status." *Id.* at 2-3. In a footnote, the NSC stated the juvenile did not allege that he could not be reunified with his

mother and he did not challenge the district court's decision that reunification with her was viable.

The NSC did not hold, state in dicta, or otherwise imply that the "1 or both" language in the SIJS statute required a juvenile to establish that reunification is not viable with either parent due to abuse, abandonment or neglect. Indeed, it does not cite to any other authority to support such an interpretation. The footnote to which the NSC cites appears in the beginning of its analysis and simply states that the juvenile did not allege that reunification was not viable with his mother. The likely and reasonable interpretation of the footnote is that when the district court found the father had not abandoned the juvenile, there was no longer a basis for making SIJS findings because the juvenile did not also allege abuse, abandonment, or neglect by his mother. Thus, the NSC's analysis ended. Nowhere in *D.S.M.* did the NSC state the "1 or both" language in AB142 or 8 U.S.C. 1107(a)(27)(J) require that reunification not be viable with *both* parents. Indeed, the very last sentence of the opinion states that the district court did not err in denying the request for findings because D.S.M. did not demonstrate his father abandoned or neglected him. *See id.* at 2-3.

C. A Child Custody Proceeding Meets the Requirements of AB142.

The Nevada Legislature specifically included a child custody proceeding as a proceeding in which a person may seek factual findings on the issue of SIJS. AB

142 states the following:

(2) The factual findings set forth in subsection 3 may be made by the district court at any time during a proceeding held pursuant to chapter 62B, 125, 159 or 432B of NRS.

(3) A person may include in a petition filed or a motion made pursuant to chapter 62B, 125, 159 or 432B of NRS a request that the court make the following findings to enable a child to apply for status as a special immigrant juvenile with the United States Citizenship and Immigration Services...

Chapters 125 of the Nevada Revised Statutes and its subchapters govern the dissolution of marriage and the custody and visitation of children. The fact Plaintiff's case was for custody and not divorce is not dispositive. NRS 125C is a subchapter of Chapter 125, which the Nevada Legislature specifically listed as a qualifying proceeding to request SIJS findings. The language of AB142 evidences the Nevada Legislature's intent to include custody proceedings.

(4) If the court determines there is evidence to support the findings set forth in subsection 3, including, without limitation, a declaration submitted by the child who is the subject of the petition, the court shall issue an order setting forth such findings. The court shall include in the order the date on which the:

(a) Dependency, commitment or *custody of the child* was ordered[.]

AB142 subsection 4 (emphasis added). The inclusion of this language suggests that a proceeding under Chapter 125C is included in subsection 3 of AB142.

The language of AB142 also supports Appellant's contention that the SIJS statutes do not require reunification with both parents not be viable. If the Nevada

Legislature intended "1 or both" to mean both parents, it would not have included Chapter 125 regarding dissolution of marriage as a qualifying proceeding to request SIJS findings. Divorce or custody proceedings involve one or both parents litigating over which retains custody of the child. Thus, the Nevada Legislature contemplated that the juvenile could remain in the custody of one parent while the juvenile court found the non-custodial parent abused, abandoned, or neglected the juvenile.

D. The Plain Language of 8 U.S.C. § 1101(a)(27)(J) Includes a Custody Proceeding to Satisfy the First Prong of the Statute.

The plain language of the SIJS statute demonstrates that a custody proceeding meets the first prong of the statute. The SIJ statute defines 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) (2009). Thus, the statute broadly contemplates the entering of SIJ findings in *any* proceeding in which the court has the authority to determine the care and custody of juveniles. Indeed, Nevada defines a "child custody proceeding" as a "proceeding in which legal custody, physical custody or visitation with respect to a child is in issue." NRS § 125A.055(1). In addition to a custody proceeding, the term also includes proceedings for "divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and

protection from domestic violence," where the issue of child custody may appear.
Id. at 125A.055(2).

Regardless of the commonality of the requested order, a child custody proceeding nonetheless falls within the ambit of AB142 and 8 U.S.C. 1107(a)(27)(J). The statutes' use of the words "committed," "placed," and "appointed" includes a custody proceeding by way of the words' plain meanings. For example, to "commit" means "to give over to another's care or use," "to entrust," or "to place officially." *Webster's II New College Dictionary* 231 (3d ed. 2005). To "place" means "to appoint to a post" or "position." *Id.* at 361. To "appoint" means "to name to fill an office or position." *Id.* at 56. When applying the ordinary sense of the words to the interpretation of the SIJS statute, the first criterion for eligibility is that the juvenile be entrusted to the care of another, that is, that the child be placed officially with someone named or appointed by the juvenile court. Here, Plaintiff filed a complaint for custody, requesting the District Court entrust her daughter to Plaintiff's care and place her officially with Plaintiff by court order. Upon review of the complaint and any other papers on file herein, the Court had the authority to grant her request and appoint or name her as the custodial parent. This is precisely the kind of proceeding the Nevada Legislature included in AB142 and Congress contemplated in 8 U.S.C. § 1107(a)(27)(J).

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E. A Custody Proceeding Conforms with the Spirit and Intent of 8 U.S.C. § 1101(a)(27)(J).

Even if it was appropriate to interpret the SIJS statute beyond its plain language, a custody proceeding is nonetheless within the intent of Congress. The initial SIJS statute, passed in 1990, limited the juvenile court's ability to enter special findings in foster care cases. *See* Pub. L 101-649, § 153, 104 U.S. Stat. 4978, 5005-5006. The requirement of long-term foster care necessarily limited the pool of children eligible for SIJS. In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA"), which clarified and amended the definition of a Special Immigrant Juvenile. Pub. L. No. 110-457, § 235, 11 Stat. 5044. The TVPRA eliminated the "eligible for foster care" language for Special Immigrant Juvenile Eligibility, and replaced it with language requiring that reunification with one or both parents not be viable due to abuse, abandonment, or neglect, or a similar basis under state law. 8 U.S.C. § 1101(a)(27)(J). This amendment not only broadened eligibility for SIJS applicants beyond those children who were eligible for long-term foster care, but by using the language of "one or both parents" Congress signified that a child need not be separated from both parents to be eligible for SIJS.

The TVPRA amendment broadened the types of proceedings within which children could petition the juvenile court for special findings. Broadening the types of proceedings in which a child can request SIJS findings demonstrates

Congress' intent to extend SIJS to a larger swath of eligible children. Thus, even if the language of the SIJS statute was ambiguous, a review of the legislative history establishes that Congress intended to the SIJS statute to be inconclusive, not exclusive. Accordingly, entering special findings in a limited guardianship case conforms with the spirit of 8 U.S.C. § 1101(a)(27)(J).

Moreover, the express consent requirement in 8 U.S.C. § 1101(a)(27)(J) discussed further below plainly evinces Congress' legislative intent. Before an application for SIJS is approved, the USCIS Director must determine that the child is seeking SIJS to obtain relief from abuse, abandonment, or neglect, or a similar basis under state law. 8 U.S.C. § 1101(a)(27)(J)(iii). Plaintiff's and Andrea's declarations demonstrate that Andrea is a child seeking relief from abuse and abandonment on behalf of her father. Indeed, because her father abandoned her and she has no one else other than her mother to care for her, it is reasonable to conclude that Andrea is precisely the kind of child Congress intended the SIJS statute to protect.

F. Andrea has Established the Remaining Requirements Under 8 U.S.C. § 1107(a)(27)(J).

As argued in Plaintiff's underlying Motion, reunification with Andrea's father is not viable due to physical abuse, neglect, and abandonment as defined under Nevada law. First, her father physically abused Andrea. He whipped her with a cattle rope every two to three days, often for no reason at all. AA 54-55.

The beatings left her bruised and burned from the rope. *Id.* She remembers it started as young as six or seven-years-old and continuing until he kicked her out of the house when she was ten or eleven-years-old. *Id.* The beatings were frequent, painful, and intentional. Her father's actions constitute abuse of a child under Nevada law.

Second, while in her father's care, Andrea was subjected to harmful behavior that was degrading, terrorizing, painful, and emotionally traumatic when she was sexually abused by a stranger on her way home from school. When Andrea returned home from the rape, her was in obvious distress; she arrived home after dark, had been crying, her hair was messy, and her clothes were wrinkled. AA 56. Andrea feared her father would get angry with her if she told him the truth, or that he and the rest of the family would laugh at her, thus, she only told him she got lost. *Id.* Instead of consoling her, her father yelled at her, hit her, and blamed her for what happened to her. *Id.* As her father, he was responsible for her welfare. When confronted with his visibly upset eight-year-old daughter who complained of getting lost, he blamed her and hit her. This constitutes terrorizing, degrading, and emotionally traumatic behavior by someone who was responsible for her welfare. Accordingly, reunification of Andrea with her father is not viable due to his neglect of Andrea under Nev. Rev. Stat. §§ 432B.020(c) and 432B.140.

Third, her father forced Andrea to leave his parents' home because he wanted to move in with his wife. AA 55. He told then-ten or eleven-year-old Andrea to "figure out" where she was going to live. Id. Once living with her maternal grandmother, her father did not call her, visit her, or provide for her care. AA 55; AA 58. Andrea saw her father when she would visit her cousins, but he did not spend time with her or meaningfully engage with her. AA 55. Her father's failure to communicate, visit, parent, and support Andrea evinces a settled purpose to forego all parental custody and relinquish all claims to Andrea. NRS § 128.012. Moreover, her father left Andrea in the care of another without contact and without providing provision for her support for a period greater than six months. Thus, under Nevada law, he is presumed to have intended to abandon Andrea. NRS § 128.021. Accordingly, reunification with Andrea's father is not viable due to abandonment.

Fourth, it is not in Andrea's best interests to return to El Salvador. There, her father beat and abandoned her. AA 54-55. She lived with her maternal grandmother before coming to the U.S. AA 55. While there, her father did not support her financially or participate meaningfully in her life. See id. Her mother provided for her care, and has continued to provide for Andrea since her arrival in Las Vegas in February 2017. AA 58. She is attending Robinson Middle School and is getting good grades. AA 58; AA 56. She lives in a stable home with her

mother, stepfather, and siblings. AA 59. She helps take care of her infant-aged siblings and enjoys being a big sister. Id. Andrea and her stepfather, Rene, get along well. Id. He acts as a father-figure to her, and Andrea even calls him "dad." Id. Andrea opened up to her mother about the sexual abuse she suffered when she was eight-years-old. Id. Appellant was devastated to hear what happened to her and she is actively looking for affordable counseling for Andrea. Id. Therefore, it is in Andrea's best interests to remain in the U.S. and not return to El Salvador.

G. The District Court Abused its Discretion in Denying Appellant's Motion for Reconsideration.

Nevada Rules of Civil Procedure, Rule 59(e) states, “[a] motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of the judgment.” Moreover, the Nevada Supreme Court stated, “NRCP 59(e) and NRAP 4(a)(4)(C) echo Fed.R.Civ.P. 59(e) and Fed. R.App. P. 4(a)(4)(A)(iv), and we may consult federal law in interpreting them.” AA *Primo Builders LLC v. Washington*, 245 P.3d 1190, 1193 (Nev. 2010), citing *Coury v. Robison*, 115 Nev. 84, 91, 976 P.2d 518, 522 (1999). The Court went on to state that “[a]mong the basic grounds for a Rule 59(e) motion are correct[ing] manifest errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice, or a change in controlling law.” Id. (Internal quotations omitted). Appeal of an order denying a motion for reconsideration is reviewed for abuse of discretion. AA *Primo Builders, LLC v. Washington*, 126

Nev. 578, 589, 245 P.3d 1190, 1197 (2010) (motion for reconsideration is reviewed for abuse of discretion when appealed with the underlying judgment).

As discussed above, the district court's April 3, 2018 order contained manifest errors of law and reconsideration of its order was necessary. The plain language of the federal and state SIJS statutes are clear and unambiguous; thus it was error to ascribe a different meaning to them. Further, the district court quoted a 2015 New Jersey case, however, the quote appears nowhere within the cited case. Even further, the New Jersey court explicitly declined to interpret the "1 or both" language. Thus it is unclear why the district court cited to it.

Moreover, the district court cited to a March 2018 unpublished decision of this Court as persuasive authority that the SIJS statutes require reunification not be viable with either parent. However, in that case, this Court specifically stated it could not consider whether the juvenile's mother abandoned him because the juvenile only alleged his father had and he did not challenge the district court's finding that his mother had not abandoned the juvenile. This Court did not interpret the "1 or both" language in the SIJS statutes. The district court's misrepresentation of the holdings of the cited cases to support its April 3, 2018 order and to deny the Motion to Reconsider constitutes an abuse of discretion. Accordingly, Appellant respectfully requests this Court reverse the district court's

April 3, 2018 order and remand to the court to issue the requested findings, as Appellant has met her burden.

18. Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest: Yes X No . if so, explain: The instant appeal involves an important question of statutory interpretation of Nevada Assembly Bill 142, enacted on October 1, 2017, and 8 U.S.C. § 1101(a)(27)(J) which Appellant believes is an issue of first impression before this Court. Additionally, cases in which motions for Special Immigrant Juvenile Status are filed involve children who have fled their countries of origin due to violence and other trauma, not limited to the abuse, abandonment, and neglect alleged in the instant motions. The Nevada and federal legislatures entrusted the state family courts with making factual findings necessary for the protected juvenile to apply for SIJS with the USCIS. Thus, the issues in these cases, as in the instant case, are issues affecting an important public interest, to wit: protecting minor children who have been subjected to violence and trauma.

DATED this 25th day of June, 2018.

LAW OFFICES OF MARTIN HART, LLC

By: /s/ Alissa A. Cooley
ALISSA A. COOLEY, ESQ.
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VERIFICATION

I hereby certify that this appellate brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in Times New Roman using Microsoft Word 2007.

I further certify that this appellate brief complies with the page or type-volume limitations of NRAP 3C(h)(2) because it is proportionally spaced, has a typeface of 14 points or more, and contains approximately 6,973 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 25th day of June, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on June 25, 2018 and mailed via U.S. mail to the following:

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/s/ Alissa A. Cooley
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