

Protection of Immigrant Crime Victims and Children: State Court's Role

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Introductions

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- Materials: www.niwap.org/go/Peoria
- Judicial Education Materials: www.niwap.org/go/sji
- Web Library: <http://niwaplibrary.wcl.american.edu/>

Learning Objectives

By the end of this training you will be better able to:

- Know how accurate immigration law information results in just and fair outcomes in family court
- Recognize facts that indicate a party qualifies for:
 - Legal immigration status
 - Protection from deportation as a crime victim
- Understand the role Congress envisioned for judges signing U visa certifications
- Issue state court findings in cases of immigrant children seeking Special Immigrant Juvenile Status

Participant Goals

- What do you want to be sure to learn today?

What countries are you seeing
immigrant survivors coming
from?

Illinois Demographics (2015)*

- ❖ Total foreign born population – 1,826,156
- ❖ 14.2% of the state's 12 million people is foreign born
 - 48.2% naturalized citizens
 - ~28.4% undocumented

(<http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/MD>)
- ❖ 19.4% rise in immigrant population from 2000 to 2015
- ❖ 27.1% of children in the state under age 18 have 1 or more immigrant parents
 - 24.4% of children with immigrant parents in the state are U.S. native.

*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MD>
(Oct. 2017)

Illinois– Countries/Regions of Origin and Limited English Proficiency (2015)*

- ▶ Asia – 29.2%
 - ▶ India (8.4%)
 - ▶ China (5.1%)
 - ▶ Philippines (4.9%)
 - ▶ Korea (2.2%)
- ▶ Africa – 4.0%
- ▶ Latin America – 45.7%
 - ▶ Central America (40.8%)
 - ▶ Mexico (37.6%)
 - ▶ Colombia (0.6%)
- ▶ Europe – 20.0%
 - ▶ Poland (7.2%)
 - ▶ Germany (1.3%)
 - ▶ United Kingdom (1.0%)

Limited English Proficiency

(Speak English less than very well)

- ▶ Naturalized citizens 41%
- ▶ Non-citizens 62%

Source: LEP Adults, Ages 18 and Older, 2014.

<http://www.migrationpolicy.org/programs/data-hub/us-immigration-trends#lep> (Oct. 2017)

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=MD>
(Oct. 2017)

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Department of Homeland Security



Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied



Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years.**
- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

*Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
 - Lifetime as high as 49.8%
 - Those married to citizens and lawful permanent residents – 50.8%
 - U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

Sexual Assault Rates Among Immigrant Women

- High school aged immigrant girls
 - twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
- Latina college students
 - experience the highest incidents of attempted rape compared to White, African American, and Asian college students
- Victimization of immigrant children also high
 - child sexual abuse

Immigration-Related Abuse as a Lethality Factor

- 10 times higher in relationships with **physical/sexual** abuse as opposed to **psychological** abuse
- Lethality factor can predict abuse **escalation**
- Corroborates existence of physical and sexual abuse



Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 26.7%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4%; U visa 7.5%
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7%

Immigrant Crime Victim Protections: The Department of Homeland Security's Statutory and Regulatory Requirements to Protect Victims

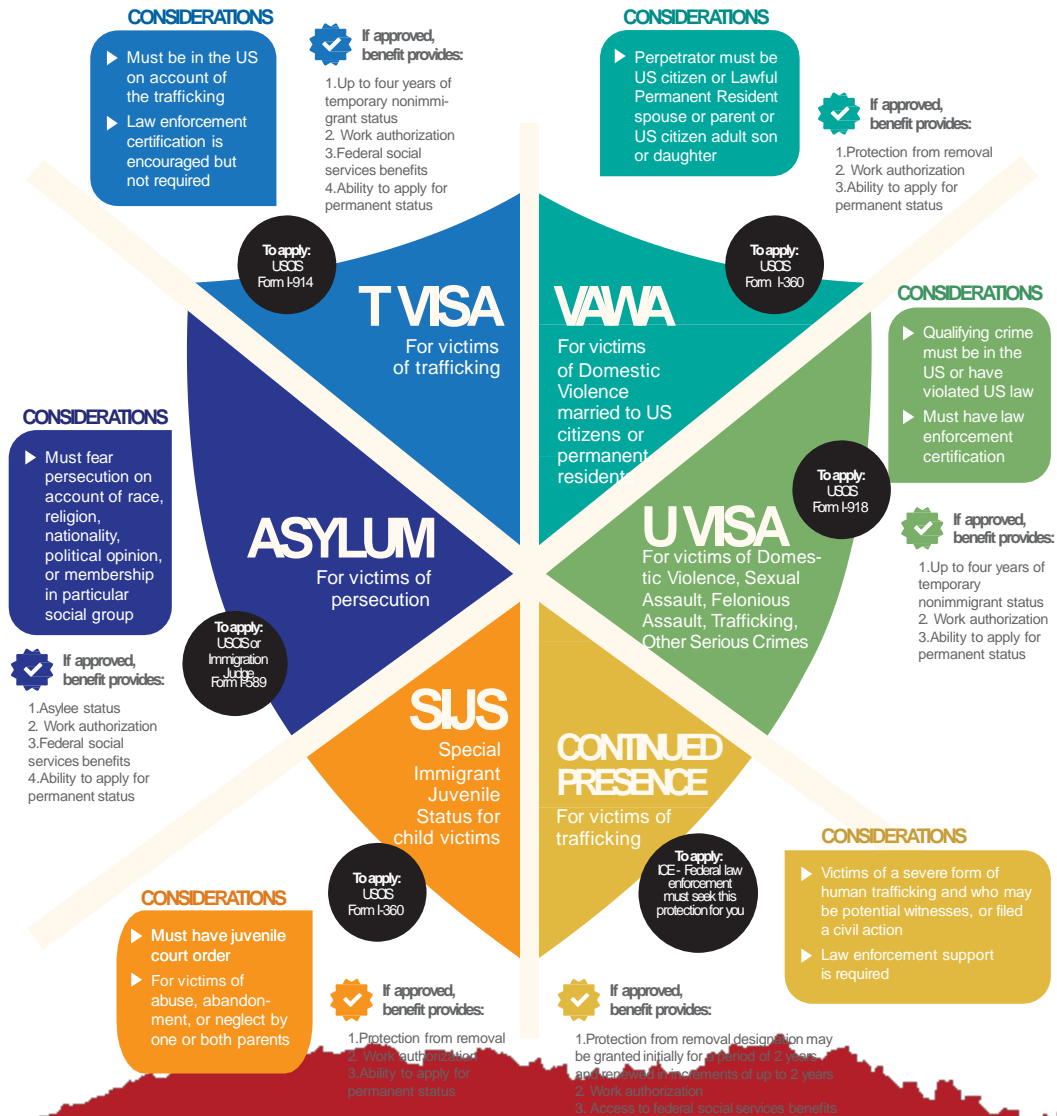
DHS Victim Protection Role

- Statute and Regulations Create
 - Immigration protections for victims of domestic violence, child abuse, sexual assault, stalking, human trafficking and other crimes
- DHS victim witness protection memo
- VAWA Confidentiality
 - 384 DHS computer system (VAWA, T visas, U visas)
- *Federal statutes include explicit role for state court judges*
 - U and T Visas
 - SIJS Findings

Violence Against Women Act – Purpose

- Federal role in stopping
 - Domestic violence
 - Sexual assault
 - Trafficking in persons
- Meeting two equally important goals
 - Increasing justice system's role in offender accountability
 - Victim assistance, protection and services
- Designed to help ALL victims
 - Immigration relief key component of legislation
 - Builds upon 1990 Battered Spouse Waiver

PROTECTIONS FOR IMMIGRANT VICTIMS



Legal Immigration Status Options for Non-citizen Crime Victims and Children

- VAWA self-petition
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver
 - Abused spouses of US citizens with two-year conditional permanent residency
- Asylum
 - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
 - Domestic violence as gender based asylum
- U visa
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity
- T visa and Continued Presence
 - Victims of severe forms of human trafficking
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
 - Deferred action for child arrivals including Dreamers
- DHS Prosecutorial Discretion
 - “low priority” for removal immigrants -- survivors, witnesses, parents, children, elderly, disabled
 - Humanitarian detention release

Access to Legal Immigration Status:

- Provides a path to economic security
 - Work authorization
 - Drivers licenses
 - Financial aid to attend university
 - Health care access
 - More access to the public benefits safety net in Illinois
- Removes fear of deportation, promotes stability and facilitates access to:
 - Courts and the justice system
 - Nurturing family relationships
 - Stable school environment
 - Mentors, role models and community support

DHS VAWA Confidentiality Computer System

- Directs use of “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims

How Immigration Affects State Courts

- Judicial role created by federal and state laws
 - U visa certification
 - Special Immigrant Juvenile Status Findings
- Impact on state court rulings
 - Federal VAWA confidentiality laws affect rulings on discovery motions
 - Legally correct or incorrect information can influence rulings in family court cases (e.g. custody)

Immigrant Children in Family Court

- May have options for legal immigration status
 - Child's own application
 - Child included in parent's application
- Immigrant children's best interests are promoted when state courts:
 - Sign U visa certifications
 - Award custody to non-abusive parents, family members, guardians
 - Issue detailed findings required for children to apply for Special Immigrant Juvenile Status
 - Distribute U.S. DHS legal rights for victims/children brochures
- Update: unaccompanied minors HHS/ORR placements

Access for All

Both documented and undocumented immigrant survivors can access:

- Legal Services
- Family Court (Divorce)
- Language Access
- Police Assistance
- Protection Orders
- Child Custody and Support
- Have Their Abusers
Criminally Prosecuted
- Assistance for Crime Victims
- Shelter
- Transitional Housing
- Receive Emergency Medical
Care
- Obtain Public Benefits for
Their Children

Benefits for Victims in Illinois

- TANF and TANF funded child care
 - VAWA prima facie
 - U visa in the process of filing
 - Continued presence and T bona fide
 - SIJS with lawful permanent residence
- SNAP
 - VAWA prima facie
 - T and U visa process of filing
 - SIJS with lawful permanent residency
- LIHEAP – Federal Weatherization Assistance
 - VAWA prima facie
 - T bona fide and continued presence with HHS certification
 - U visas and SIJS with lawful permanent residence
- Illinois ComEd Residential Hardship Program
 - Households up to 250% of federal poverty level who demonstrate hardship

Benefits for Victims in Illinois

- Health Care Exchanges
 - VAWA prima facie
 - T visa and Continued presence with HHS certification
 - U visas with wait list approval
 - SIJS applicant children
- Subsidized Health Care
 - VAWA prima facie
 - T and U visas in the process of applying
 - Subsidies without immigration restrictions
 - All children under 300% Family poverty level no immigration restrictions
 - Prenatal care
 - Kidney transplant for end stage renal disease

Benefits for Victims in Illinois

- Driver's License – Federally Recognized ID
 - At work authorization
 - Approved VAWA self-petitioner
 - T visa and continued presence – HHS certification
 - U visa waitlist approved
 - SIJS children with lawful permanent residency
- Driver's License State Issued
 - Temporary visitors license for drivers ineligible for an SSN without proof of lawful presence
- Shelter and Transitional Housing – no immigration restrictions
- Public and Assisted Housing
 - VAWA applicants
 - T visa and continued presence with HHS certification
 - SIJS children with lawful permanent residency

Benefits for Victims in Illinois

- Education – Federal FAFSA
 - VAWA prima facie
 - T visa and Continued presence with HHS certification
 - SIJS children with lawful permanent residency
- Education – Illinois provides in-state tuition, aid, and scholarships for all students including immigrants who
 - Resided with a parent or guardian while they attended an Illinois high school
 - Graduated or received a GED
 - Signs an affidavit stating they will apply for lawful permanent residency at the earliest opportunity
- FEMA Federal
 - Short-term non cash emergency disaster and 1 month of D-SNAP with no immigration restrictions

Benefits for Victims in Illinois

- FEMA Federal No immigration restrictions
 - Short-term non cash emergency disaster relief
 - 1 month of D-SNAP with no immigration restrictions
- FEMA Restricted programs
 - Individual and Household Program and Disaster Unemployment Assistance
 - VAWA prima facie
 - T bona fide and continued presence with HHS certification
 - SIJS and U with lawful permanent residency



Importance of Legislative History and Purpose in Seeking U Visa Certification

Excerpt of Speech by Rep. John Conyers, Jr.

“Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims to avoid criminal prosecution.”

Re: VAWA 2005 (12/18/2005)

Purpose of the U Visa

- Improves access to justice for immigrant crime victims
- Is a tool that helps build community policing and relationships with immigrant crime victims
- Increases prosecution of perpetrators of crimes against immigrant victims
- Allows victims to report crimes without fear of deportation
- Enhances victim safety
- Keeps communities safe

Importance for Court's of understanding VAWA and U Visa legislative history

- Published decisions by courts commonly contain legally incorrect information about the U visa program and U visa certification:
 - Legislative history
 - U visa regulations and regulatory history (Preamble)
 - DHS policies and training materials
- Supreme Court Cases on Chevron Deference
Apply

Tools on the Web: To Use in Preparing Requests to Judges for Certification

- Legislative History of VAWA (94, 00, 05), T and U Visas, Battered Spouse Waiver, and VAWA Confidentiality
- Judges U Visa Certification Toolkit
- DHS Resource Guide on U and T Visa Certification

U Visa and T Visa Overview

U Visa for Immigrant Victims

- A victim of qualifying criminal activity is eligible for a U Visa when:
 - The criminal activity occurred in the U.S. **or** violated U.S. law;
 - The victims possesses information about the crime;
 - The victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the offense; and
 - The victim has suffered substantial physical or mental abuse as a result of the victimization

U Visa Regulations Definitions

Although terms are used interchangeably

- As a matter of law (U visa regulations)
 - “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - “Crime” always means
 - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
 - Improving stability for crime victims

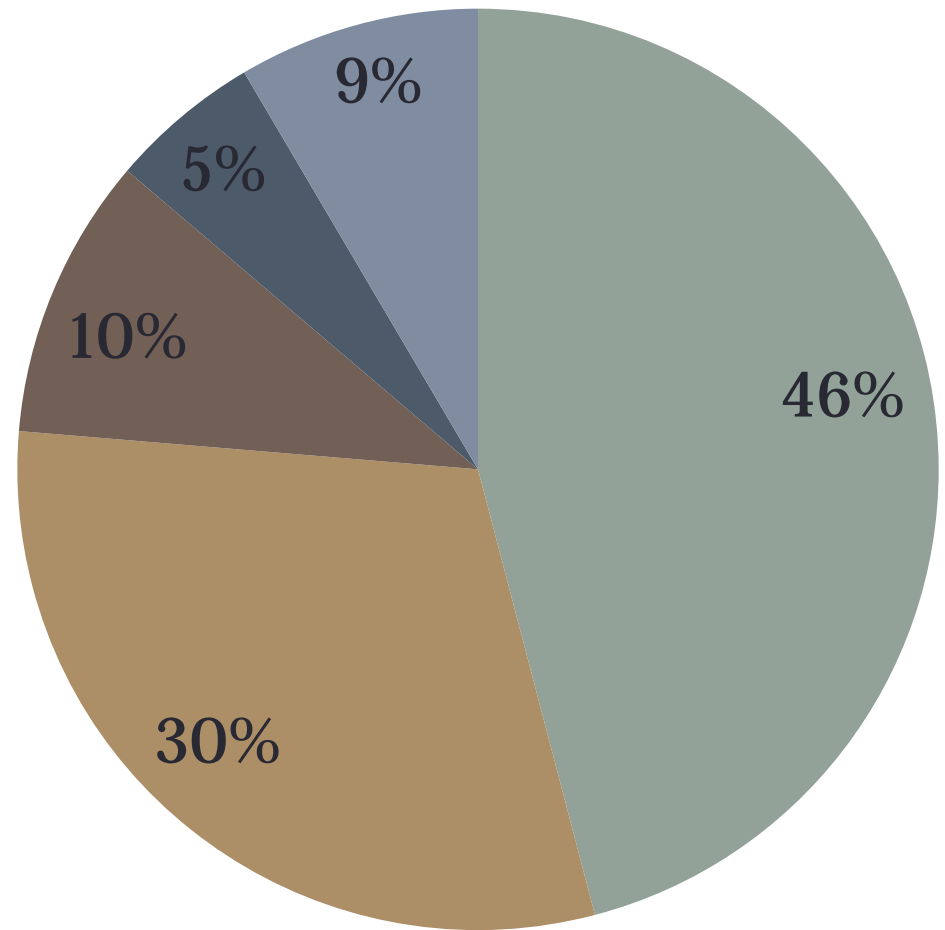
U Visa Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

U-Visa Criminal Activities (11/2011 data)

- Domestic violence- 45.9%
- Rape, Sexual Assault, Incest, Trafficking- 30.4%
- Felonious Assault, Murder, Manslaughter- 9.9%
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation- 8.47%
- Kidnapping, being held hostage, unlawful criminal restraint, torture- 5.3%



U Visa Certification: Who Can Certify?

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

Which Judicial Officials Can Sign Certifications

- “Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases” - DHS

U Visa Certification in Proceedings Involving Children and Crime Victims in Immigrant Families

- Child or non-abusive parent seeking U visa
- Proceedings
 - Protection order
 - Custody
 - Criminal case
 - Child abuse case
 - Other civil case where the court is provided evidence and making findings of abuse

According to DHS, a U Visa Certification Tells USCIS Only 3 Things:

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, or is likely to be helpful

Things to Know About Certifying

- Question is **NOT**:
 - Is/was there a prosecution?
 - Was there an arrest of the offender?
 - Do I have proof beyond a reasonable doubt?
 - Is this within the statute of limitations?
 - Was there a conviction?

Helpfulness in the Regulations

- Judges, law enforcement and other certifiers
 - May complete U visa certification if they observe or detect a victim's helpfulness
 - Can be a civil, family or criminal case
- The investigation, prosecution or case
 - Can still be ongoing
 - Can be closed
 - May have settled
 - Occurred a long time ago
 - May never have been criminally prosecuted

Examples of Helpfulness

- Calling 911 to report a crime
- Filing a police report
- Providing a statement to police, prosecutor, court
- Seeking a protection order
- Litigating the abuse as part of a custody case
- Appearing at court in a criminal case
- Serving as a witness in a prior prosecution
- Testimony in a sentencing hearing
- EEOC witness in an employment case

Evidence of Helpfulness: Examples

Includes but not limited to...

Family or Civil Case

- Filed and appeared at hearing for full protection order
- Testified about abuse or sexual assault in a court proceeding (e.g. protection order, divorce, custody, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal investigation
- Appearance in a case
- Serving the perpetrator with notice of case with underlying abuse facts

Criminal case

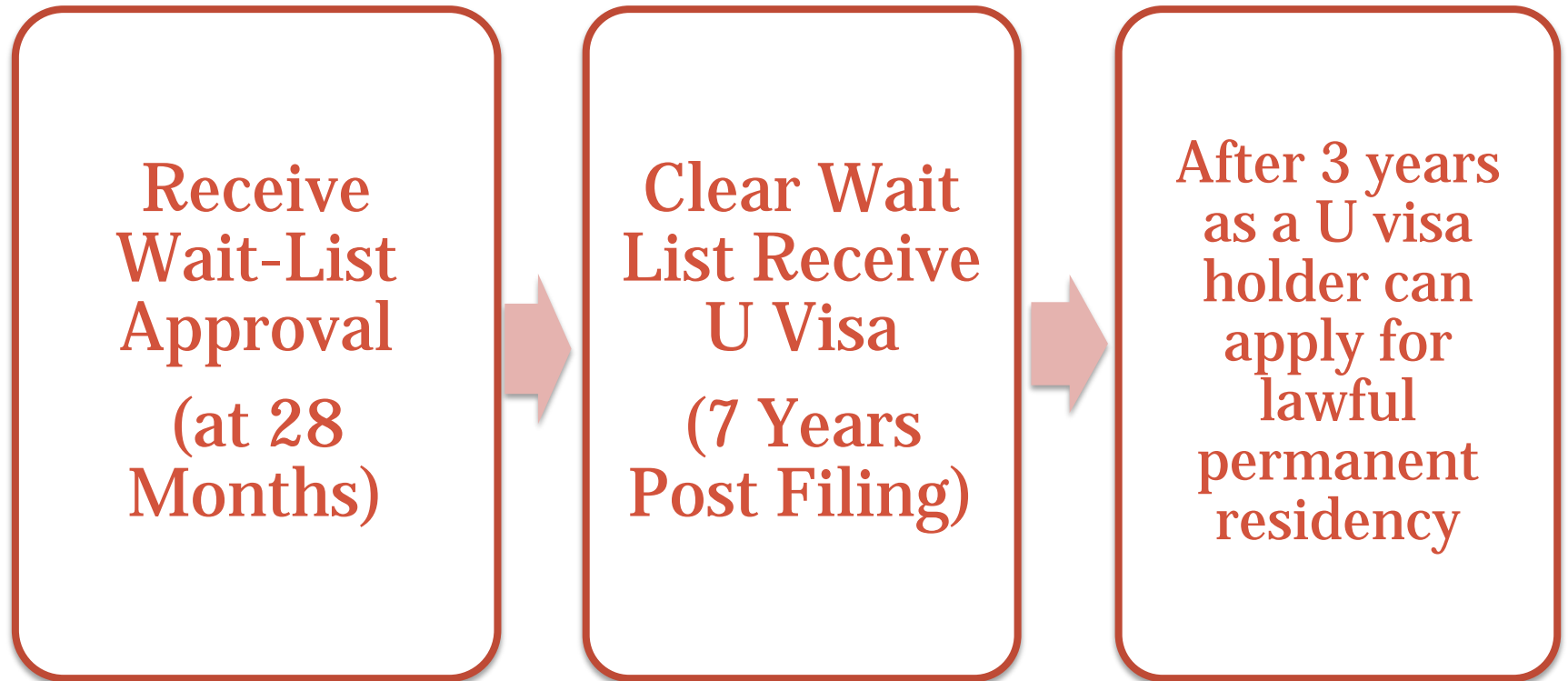
- Evidence in case that the victim:
 - Called 911
 - Participated in investigation
 - Testified before grand jury or at trial
 - Appearance in a case
 - Victim witness statement

The U-visa Application Process



Typical length of process = 28 months

The U Visa Application Process



U-visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
 - Waitlist approval backlog 62,000 visas
- The U-visa grants a temporary 4 year stay
- Work authorization (≈ 28 months)
- Benefits for family members applicants
 - Under 21: spouse, children, parents, unmarried siblings under age 18
 - Over 21: spouse and children
- Lawful permanent residency after 3 years if
 - Cooperation or not unreasonably refuse to cooperate
 - + humanitarian need, family unity or public interest
- U.S. citizenship after 5 years of lawful permanent residency+ proof of good moral character

New DHS Forms Published Make Judicial Certification Easier

- Judges' certification can occur when the judge signing the certification has
 - Probable cause
 - Made findings
 - Issued a ruling
 - Include the type of proceeding and
 - If orders were issued attach a copy of the order

Part 6. Certification

I am the head of the agency listed in **Part 2**, or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon ~~investigation of the facts~~, I certify, under penalty of perjury, that the individual identified in **Part 1** is or was a victim of one or more of the crimes listed in **Part 3**. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)

➔

2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

Judges can amend the form

Examples: Based upon ...

- My findings of fact
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case

REMEMBER: This is a certification that you believe the applicant was a victim of a crime.

Certification provides evidence to DHS.

DHS adjudicates and decides whether to grant the victim immigration relief.

Minnesota Judicial Ethics Opinion U Visa Certification (June 26, 2015)

- Judge may sign certifications when
 - “adequate basis for the averments made in the certification”
- Certification after the criminal or civil case is completed does not raise impartiality issues
 - In open cases should disclose certification to the parties
- Certification describes immigrant victim’s past/present helpfulness -- Does not vouch for character
- In civil and criminal cases whether to sign a U visa certification is a an issue of law that does not implicate judicial ethics codes

Full Opinion Available at: <http://www.bjs.state.mn.us/file/advisory-opinions/opinion-2015-2-final.pdf>
Hon. Pendleton also published a training update based on the opinion at <http://pendletonupdates.com/>

Problems With Reported Decisions

- No Chevron deference to DHS regulations
- Result in legally incorrect opinions: E.g.,
 - Judges cannot certify
 - In an open case/closed case
 - Judges do not investigate or prosecute
 - Regulations say judges certify based on detection, conviction, sentencing
 - In case heard by another judge
 - Requires a criminal case or helpfulness to the judge
 - Not recognizing that past/present helpfulness Congressionally deemed sufficient

T Visa Certification Not Mandatory

- T visa certification discretionary
- Certification provides helpful evidence
- Victim can file for a T visa without a certification

Human Trafficking

- Generally: use of force, fraud and/or coercion to exploit a person for profit.
- Federal statute: TVPA 2000
- Illinois laws:

What are Severe Forms of Human Trafficking?

- **Sex Trafficking:** in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- **Labor:** The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

(Federal Law—“Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000/)

Three Elements of Trafficking

1
PROCESS
Recruiting
OR
Harboring
OR
Obtaining a
Person

2
MEANS
By Force
OR
Fraud
OR
Coercion

3
END
For the purpose of
Involuntary
Servitude
OR
Debt Bondage
OR
Slavery
OR
Sex Trade

Trafficking

Exploitation

Smuggling

Transportation

Economic sectors where trafficking might occur

- Hotels & Restaurants
- Landscaping
- Construction
- Agriculture
- Domestic Servitude
- Commercial Sexual Activity
 - Prostitution; Pornography; Stripping
 - Massage Parlors; Nail Salons
- Criminal activity

Labor Trafficking Statistics

- 47.5% Men – 52.5% Women
- 10% Minors – 90% Adults
- 46% Single – 45% Married
- 64% had children
- 33% some college or higher
- Average age = 33
- 71% of victims entered the U.S. legally

“Understanding the Organization, Operation and Victimization of Labor Trafficking in the United States”;
Urban Institute and Northeastern University in collaboration with Freedom Network USA (2014)

T Visa Requirements

- Survivors of human trafficking who
- (1) Is or has been a victim of a severe form of human trafficking
 - End: trafficker obtains sex or labor
 - Adult victims must prove force, fraud or coercion
- (2) Are physically present in the United States on account of the trafficking,
- (3) Comply with any reasonable request for assistance with an investigation or prosecution, and
- (3) Would suffer extreme hardship involving unusual and severe harm upon removal from the United States

T Visa Victims Receive

- While Case is Pending
 - Protection from deportation and removal
 - VAWA Confidentiality
 - California trafficking victim benefits (8 months)
- Upon receiving a bona fide determination or continued presence with HHS certification
 - All federal and state public benefits
 - Health Care Exchanges
 - Work authorization

T Visa Victims Recieve

- Upon Approval
 - 4 year T visa
 - Immigration benefits for children (and unmarried siblings if applicant is under age 21)
 - May apply for lawful permanent residency after investigation/prosecution is over or 3 years, what ever time is shorter

Overview Special Immigrant Juvenile Status (SIJS)

- Humanitarian protection that provides a path to lawful permanent residency
- Created by Congress in 1990 to help and protect foreign born children living in the United States
 - who have been abused, or abandoned, or neglected by at least one parent.

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children under the age of majority under state law who have been
 - Victims of abuse, abandonment, neglect
 - By at least **one parent**
- State Court Findings Required As Evidence requires
 - State court with jurisdiction over care, custody, dependency or placement of the child
 - has issued a court order, finding, or declaration on three statutorily required issues
- The state court order does **not** award SIJS
 - **ONLY DHS can provide legal immigration status**

State Court Findings Needed for SIJS

State Law Applies To Each

1. The court issued regarding the child care, custody, dependency or placement of an immigrant child with
 - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend) OR
 - State agency, private agency, including foster care system
2. Reunification of the child is not viable with a parent due to the parent's abuse, abandonment, or neglect
3. It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries

Apply State Law

- Best Interests
- UCCJEA – Temporary Emergency Jurisdiction

SIJS: Congressional Goals

- Included a role for state court judges as experts in child best interests, custody, child welfare matters.
- State court expertise:
 - Adjudicating facts of child abuse, neglect and abandonment
 - Issuing orders regarding child care, custody and placement that further the best interests of children
- Only the DHS can issue SIJS & permanent residency
- DHS uses the state court order as evidence in adjudicating the immigration application

SIJS: State and Federal Roles

State Courts With Jurisdiction Over Children

- Issue orders providing evidence to help DHS adjudicate SIJS application
- Make findings of fact **under state law** on
 - Custody, dependency, placement, care of a child
 - Child suffered abuse, abandonment, or neglect by at least one parent
 - Parental reunification
 - Child's best interests

DHS Adjudicators

- Adjudicate application filed by child
- Reviews evidence, including the state court's order, to determine if the child applicant is eligible for SIJS
- Determine if state court order was sought primarily
 - To provide the child relief from harm caused by abuse, abandonment or neglect; OR
 - For immigration purposes

State Courts Regularly Make Custody & Care Determinations

- Who will be the custodian/guardian of the minor
- Who the minor will live with
- Who will receive child support for the child living with them
- Whether the minor will be committed to the custody of the state or private agency for care, treatment, or rehabilitation
- Issue orders directing the child's care
 - Child support, health care, applying for benefits or services for the child

All of the Following are Potentially Eligible for SIJS

- A minor who is:
 - Abused, abandoned or neglected
 - In the U.S.
 - In the home country
 - Living with their
 - Non-abusive parent
 - Guardian
 - Adopted parent
 - State foster care
 - Federal foster care (ORR)

What Kinds of Proceedings Might You See SIJS Eligible Children In?

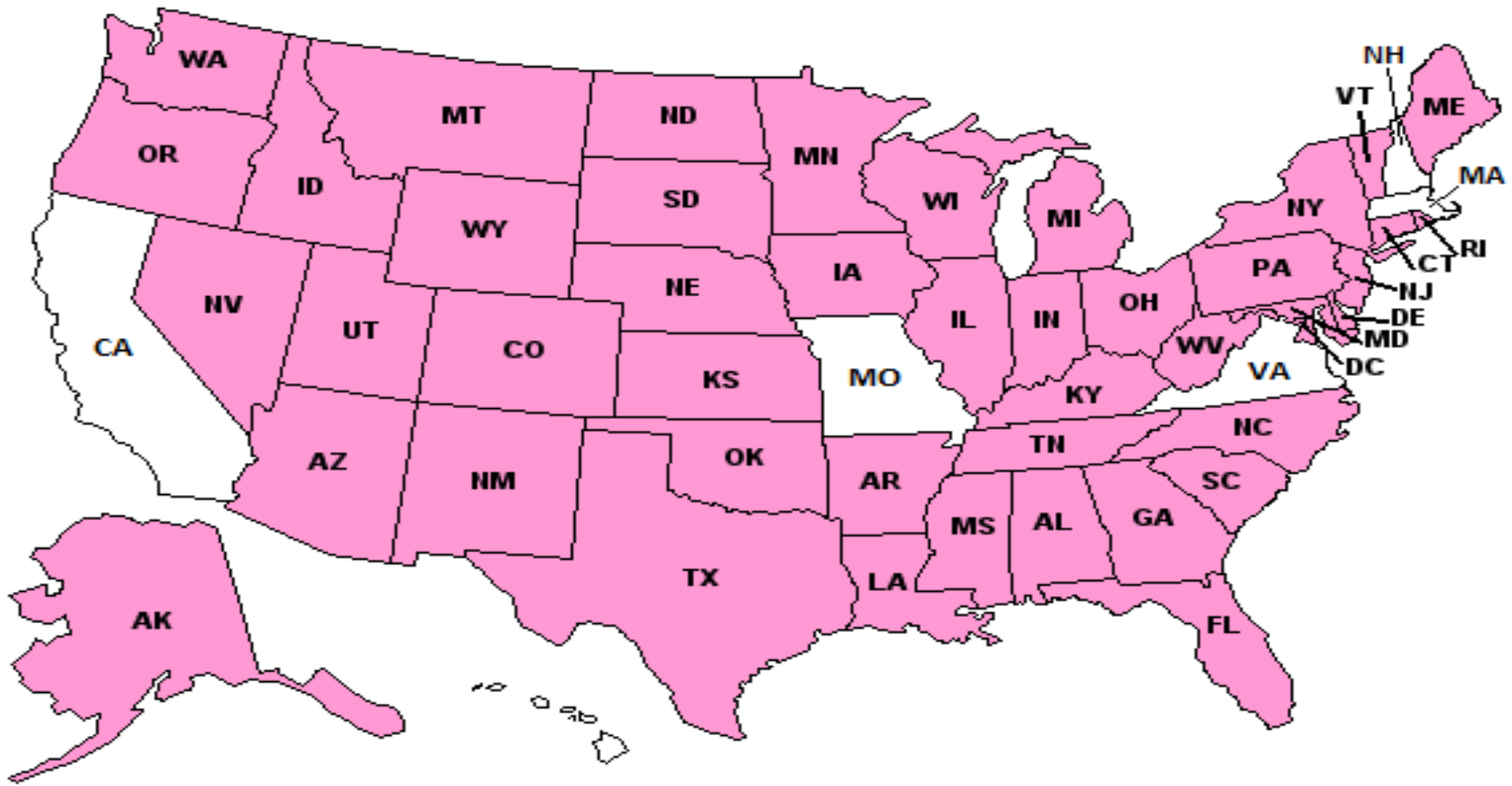
Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Child support
- Custody
- Divorce
- Legal Separation
- Adoption
- Motions for a declaratory judgment

Courts with jurisdiction under state law to make judicial determinations regarding the custody, placement, care of children = *juvenile courts* for SIJS immigration purposes

States With Declaratory Judgment Statutes That Can be Used in SIJS Cases

When under state law the court can take jurisdiction over the care or custody of a child



SIJS in State Courts

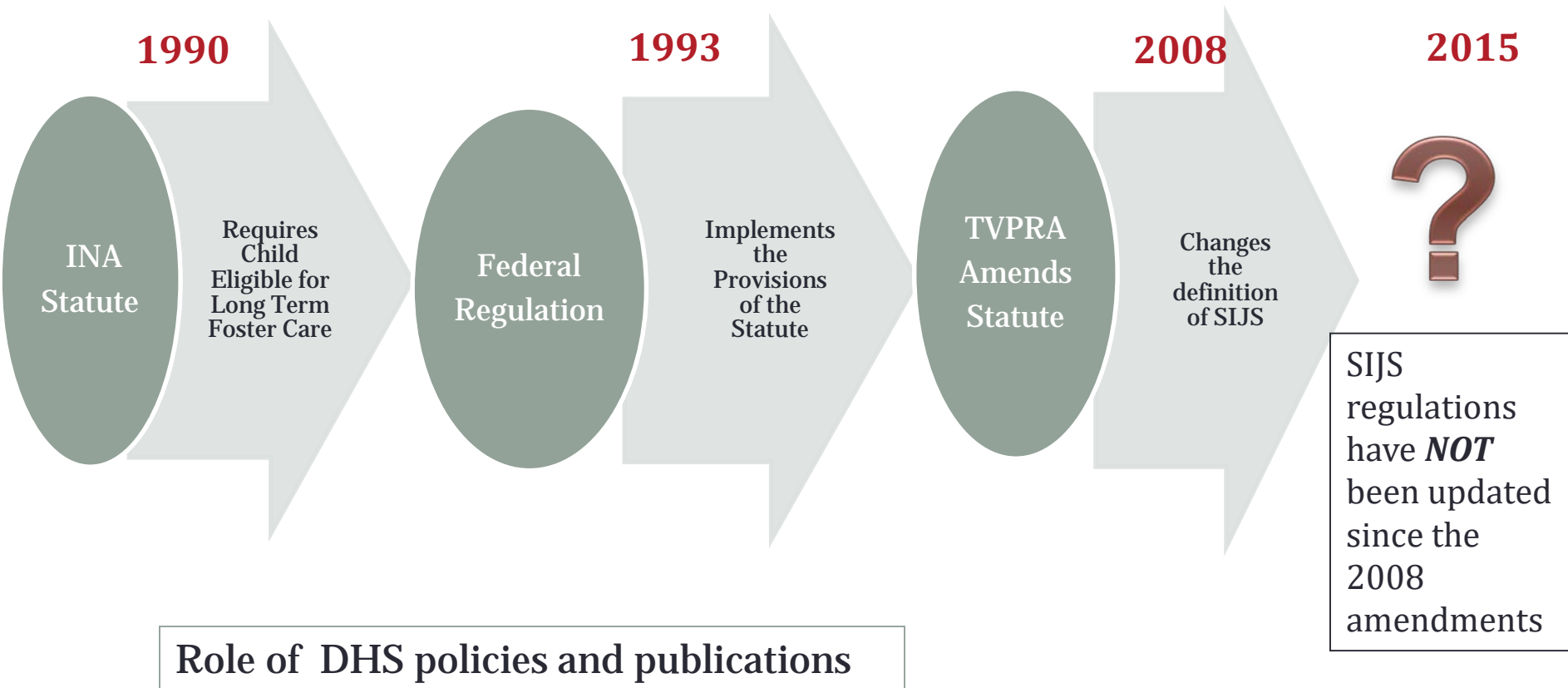
- Many SIJS cases are for 15-17 year old minors
 - State court order + filing before the child ages out
 - Up to age of majority set by state law
- SIJS is an option any time an abused, abandoned or neglected child is not a
 - Citizen or lawful permanent resident

“One *or* Both Parent” Requirement



A child can receive SIJS findings if they were abused, abandoned or neglected by one parent and are living with the other parent.

Statute vs. Regulation



Best Practice for Findings

- Issue orders that demonstrate to DHS that the court made an informed decision
 - Make factual findings regarding abuse, abandonment and/or neglect
 - Separately for each abusive parent
 - Finding that the child is in need of protection as a result of having been abused, abandoned or neglected
 - Trauma research

Criminal Issues & SIJ Eligibility

- Juvenile delinquency finding \neq conviction for immigration purposes
- Juvenile dispositions can have immigration consequences
 - Negative factors in discretionary determinations
 - Some grounds of inadmissibility or deportability do not require a criminal conviction

Is There a Waiver for SIJS Cases

- Waivable Offenses
 - Prostitution
 - Drug abuse or addiction,
 - Smuggling
- Non-Waivable Offenses
 - Moral turpitude crimes (theft and shoplifting, murder, spousal or child abuse, fraud, espionage, terrorist activities, genocide, torture)
 - Drug crimes (findings and admissions regarding drugs except simple possession of 30 grams or less of marijuana; controlled substances traffickers)
 - Multiple criminal convictions (does not include juvenile adjudications)

What Children with SIJ Status Receive

- While case is pending:
 - Protection from deportation and removal
 - As lawfully present children – health care exchanges (no subsidies)
 - Programs and services necessary to protect life and safety

What Children with SIJ Status Receive

- At approval:
 - Lawful Permanent Residency (separate but usually concurrent filing)
 - Legal work authorization
 - Brings access to state issued driver's licenses and identification cards
 - Eligible for citizenship after 5 years
 - Post secondary educational grants and loans, public and assisted housing
 - Food stamps (only until the immigrant child turns age 19)

SIJS' may NEVER file family petition for either of the child's natural parents

VAWA Confidentiality

- Enforcement locational prohibitions
- DHS cannot disclose information about an immigrant victim's case
- DHS barred from relying on information provided by perpetrators (or their family members) to initiate an enforcement action against or deny a victims case
- **Violation can result in dismissal of immigration case against victim**

Enforcement prohibited locations

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



Prohibition on disclosure:

- Information about the existence of the case
- Any information contained in the case
- Action taken on the case by DHS



Why is VAWA Confidentiality important for state courts?

- Prohibited enforcement locations include courthouses in connecting with a case involving a crime victim
- Perpetrators are using state court discovery to obtain federal VAWA confidentiality protected information that
 - DHS will not release
 - Cannot be released under federal law

**FAMILY COURT CASES INVOLVING
IMMIGRANT VICTIMS AND
CHILDREN: DIVORCE, CUSTODY AND
PROTECTION ORDERS**

A Starting Principle for Analysis

- A person's immigration or citizenship status per se
- Is irrelevant to the determination of
 - Family law rights including
 - Divorce
 - Custody
 - Protection orders
 - Child support

Knowledge of immigration issues is important in family matters

- ▶ Addressing immigration status issues early can
 - ▶ Improve outcomes in family court cases
 - ▶ Prevent or delay family court orders that cut a party and their children off from immigration relief
- ▶ Family court actions can assist with
 - ▶ Helpful evidence for an immigration case
 - ▶ Obtaining from family court judges
 - ▶ Court SIJS findings for abused immigrant children
 - ▶ Certifications immigrant crime victim's U visa case

Custody Involving Immigrant Parents and/or Immigrant Children

- Accurate information about immigration status helps judges issue fair rulings in custody cases where immigration status of a parent or child may be raised
- Tools for Judges
 - Help avoid reliance on incorrect information provided by parties about immigration status & likelihood of detention or deportation
 - Provide accurate information when needed
 - www.Niwap.org/go/sji
 - Direct technical assistance to state court judges, commissioners, magistrates, court staff
 - Bench cards, charts, training materials and webinars
 - In person SJI funded trainings in states/local jurisdictions



Divorce

Impact of Divorce

- VAWA self-petitioners
 - Must file within two years of final divorce
 - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
 - Students, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Asylees
 - Employment visa holders
 - Family based visas
 - Cancellation of removal

Annulment Instead of Divorce

- Annulment can lead to a marriage fraud finding that:
 - Permanently bars approval of any visa petition
 - Is a ground for deportation
 - Can lead to an unfavorable exercise of discretion by an immigration judge not to grant immigration relief
- Impact on
 - Spousal support
 - Property division

Custody

Protecting Immigrant Mothers, Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Materials Immigrant Victims and Custody Bench Card -<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law>

ABA Center on Children and The Law (1991)

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

Is Immigration Status Relevant to Custody?

- Relevant to: Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
 - Either not filing or withdrawing immigration papers
 - Threats to turn victim in for deportation
 - Part of history of violence
- Not relevant to:
 - Core primary caretaker determination
 - Evaluation of parenting skills
 - Best interests of the child determination
 - Requirements regarding custody awards to non-abusive parent



Myth vs. Fact:

Parents Without Legal Immigration Status

Myth

1. Deportation is imminent
2. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. Legally present parent must have custody in order to file for benefits for child

Fact

1. DHS policies prevent detention/removal of immigrant parents who are:
 - Parents of U.S. citizen/Lawful permanent resident children
 - Primary caretaker parents of minor children without regard to the child's immigration status
2. Legal immigrants/naturalized citizens are more likely to flee with children, especially when
 - There have been threats of kidnapping children
 - They are dual nationals
 - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for their children.

Immigrant Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a Constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

Parental Interest Directive Aug 2013

- If parents are detained:
 - Bring parents to family court to participate in cases involving children
 - Facilitate participation of parents in family court cases through video conferencing
 - Bring deported parents back to the US for custody and parental rights cases

PROTECTION ORDERS



NIJ Funded CPO Study Found

- With support immigrant victims will use and benefit from justice system assistance
 - 60.9% did not know about CPOs
 - 81% got CPO with help from advocate/attorney
 - 96% found them helpful
 - 68.3% of violations immigrant related

Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Effect of protection order issued against immigrant victims

- Increases perpetrators power and coercive control because the victim is one step away from deportation
- Perpetrators who are successful in convincing courts to issue protection orders are often also successful obtaining findings that the victim violated the order
- This can pose serious safety concerns for victims
 - A violation of a protection order is a deportable offense

Use Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

Resources for Courts

- Immigrants and Protection Orders Bench Card
 - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/Judges-CPO-Bench-Card.pdf/view>
- Creative Methods in Protecting Battered Immigrants
 - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/CreativePOandBatteredImmigrantleo.BA.EY_forSJI.pdf/view
- NIJ research summary: Protection Orders and Battered Immigrants: The Impact of Attorneys and Advocates
 - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/CPOandBatteredImmigrantsleo_BAFINAL6.20.14.edit.di_EY.FINALforSJI.pdf/view

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/Peoria
- Judicial Training Manual at www.niwap.org/go/sji
 - **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

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Questions



Evaluations



Thank you!