

Violence Against Women Act Protections, Confidentiality, and U Visa Certification

Mississippi Trial and Appellate
Judges Conference

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Faculty

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- Pre/post tests are part of this presentation for the grant evaluation

Learning Objectives

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

- Sign U visa certifications understanding the role Congress envisioned for judges and be able to sign U and T visa certifications
- Decide discovery motions in family court cases consistent with VAWA confidentiality
- Recognize facts that indicate a party qualifies for crime victim related forms of legal immigration status

The Project

- “Judicial Training Network”
- Partnership between:
 - W.K. Kellogg Foundation
 - National Immigration Women’s Advocacy Project (NIWAP)
 - Michigan State University Law Faculty (MSU)
 - Mississippi Judicial College
 - Seashore Mission, Inc. El Pueblo Immigration Legal Services
- States participants: Michigan, Mississippi, New Mexico, Missouri, Louisiana and Florida

State's Judicial Leadership Team

- Identifies judicial training needs, topics, opportunities
- Helps plan and deliver trainings
- Serve as Judicial Resource Officers to provide one-on-one technical assistance to judges throughout the state
- Develops strategies for addressing access to justice issues for immigrant children, crime victims and litigants

Provide Training for State Court Judges

- Provide training for state court judges
 - On immigration issues that arise in state family court cases
 - With a particular focus on cases involving
 - Immigrant children
 - Immigrant crime victims
 - Children with one or more immigrant parents
- In-person and on line training
- Curriculum developed with support from the State Justice Institute

Menu of Topics

- Victim protection based forms of immigration relief: (VAWA, U and T Visas, SIJS)
- VAWA confidentiality limitations on courthouse immigration enforcement and state court discovery (family, civil, criminal)
- Using legally correct information to address immigration allegations in custody, divorce, protection order, child/spousal support & child welfare cases
- U and T Visa certification by state court judges
- Special Immigrant Juvenile Status findings best practices
- Public benefits access for immigrant victims
 - Health care, housing, TANF, SNAP, Education and more
- Improving access to justice for immigrant and LEP persons

Judicial Resource Officers Provide Judge-to-Judge Technical Assistance

- One-on-one technical assistance to judges
 - Respond to requests from judges who need assistance with cases they are hearing
 - Have questions they would like answered
- Judicial resource officers
 - Give judges with legally correct information
 - Provide judges training materials
 - Have back-up and training from a national team of judicial and immigration law experts
 - Request legal research and new publications to address emerging needs

Improving Access to Justice

- NGO Partners
 - Identify programs throughout the state with expertise serving immigrant and LEP children, crime victims and their families
 - Identify barriers to accessing the courts
 - Collect stories that assist with training and document needs
 - Meet with judicial leaderships teams collaborating in access to justice efforts
 - Provide state based legal and immigration expertise

Mississippi Demographics (2016)*

- ❖ Total foreign born population – 58,766
 - ❖ 2% of the state's 3 million people are foreign born
 - 40% naturalized citizens
 - ≈17.5 lawful permanent residents and temporary status
 - ≈42.5% undocumented
- <http://www.migrationpolicy.org/data/ unauthorized-immigrant-population/state/MS>
- ❖ 47.3% rise in immigrant population from 2000 to 2016
 - ❖ 5% of children in the state under age 18 have 1 or more immigrant parents
 - 88.9% of children with immigrant parents in the state are U.S. native.

*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MS>
(Feb. 2018)

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Mississippi: Countries/Regions of Origin and Limited English Proficiency (2016)*

- ▶ Americas – 47.9%
 - ▶ Mexico (30%)
 - ▶ South America (4.2%)
 - ▶ Canada (3.1%)
- ▶ Asia – 31.2%
 - ▶ China (6.7%)
 - ▶ India (6.1%)
 - ▶ Philippines (6%)
 - ▶ Vietnam (5.5%)
 - ▶ Japan (2.4%)
- ▶ Europe – 8.9%
 - ▶ Germany (2.5%)
 - ▶ United Kingdom (1.7%)

▶ Africa – 5.4%

▶ Middle East – 3.2%

Limited English Proficiency

(Speak English less than very well)

▶ Naturalized citizens 26.9%

▶ Non-citizens 51.8%

Languages Spoken at Home

❖ Spanish (67,256)

❖ Vietnamese (5,951)

❖ French (3,983)

❖ Mandarin or Cantonese (3,740)

❖ German (3,116)

❖ Tagalog (2,837)

❖ Arabic (2,114)

*Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MS> (Feb. 2018)

When litigants and their children learn about and pursue immigration relief legally available to them how might this improve access to justice in family courts?



Department of Homeland Security

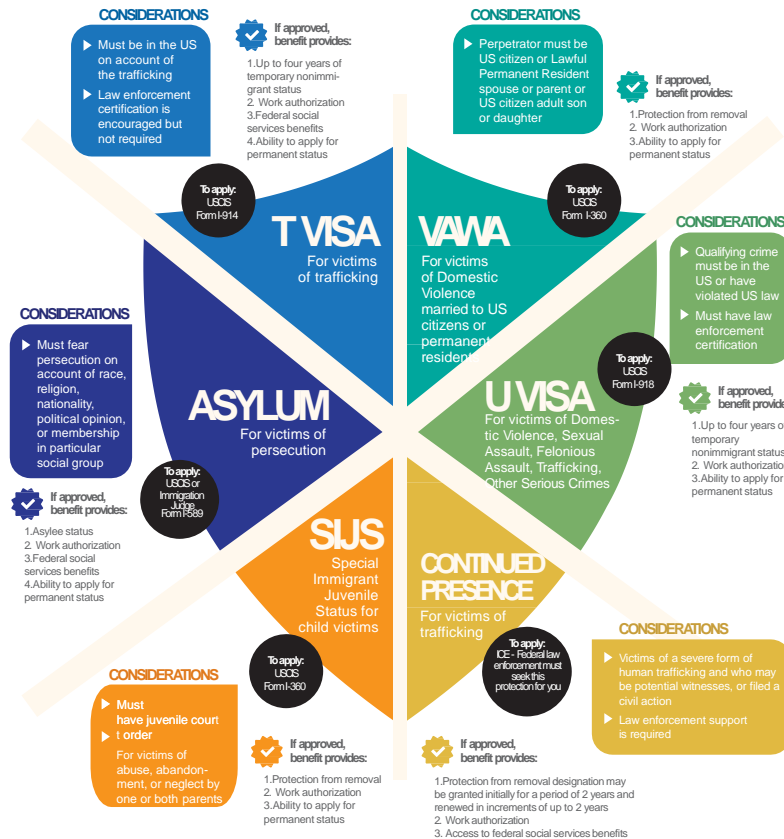


Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%
 - VAWA petitioners arrested at crime scene instead of the abuser 15.4%
 - U visa victims 26.7%

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014)

PROTECTIONS FOR IMMIGRANT VICTIMS



GOV/BLUE-CAMPAIGN

For victim information call 1-888-488-6888 or text INFO or HELP to BeFree (233-7293)

Immigrant Victims and Children Who File for Immigration Relief Receive

- Protection from deportation
- Legal work authorization and access to driver's licenses upon
 - Approval or wait list approval
- Access to some federal public benefits
 - Varies by immigration case type and state
- VAWA confidentiality protection upon filing VAWA, T or U visa case

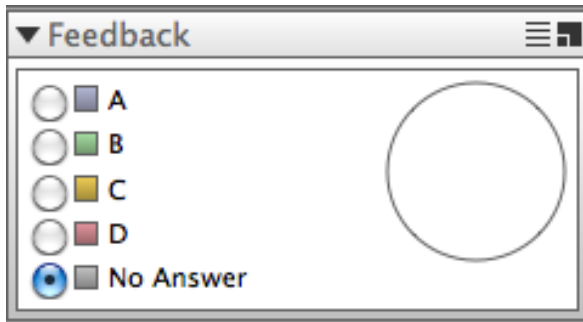
Case Scenario (Handout)

Clara met Eduardo, a naturalized U.S. citizen, when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara, who was raising her 9-year-old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel, and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel, and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt to Miguel and Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors called the police for help, and Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital, and placed the children in the care of the state.

What forms of immigration relief would Clara qualify for:

Using your clickers please check:

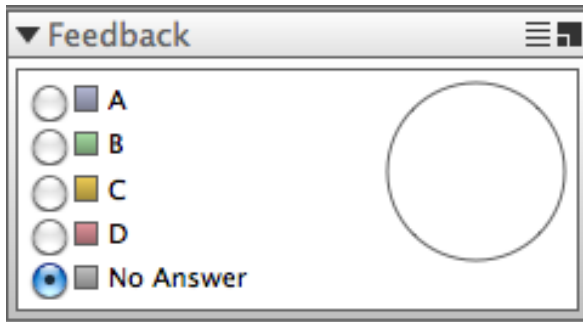
- A. U visa
- B. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above



What forms of immigration relief would Lupe and Miguel qualify for:

and Miguel qualify for:

Using your clickers please check:



- A. Both can VAWA self-petition
- B. Both qualify for a U visa
- C. Lupe qualifies for a T visa
- D. All of the above

VAWA Confidentiality in State Court Proceedings

Bipartisan VAWA Confidentiality Legislative History in VAWA 2005

- “In 1996, Congress created special protections for victims of domestic violence against disclosure of information to their abusers and the use of information provided by abusers in removal proceedings...”
- These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims

VAWA Confidentiality Protections

- **Abuser-Provided Information:** DHS, DOJ, and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (their family members or associates)
- **Location Prohibitions** to enforcement unless DHS complies with specific statutory and policy safeguards – includes no courthouse immigration enforcement against immigrant crime victims
- **Non-Disclosure:** DHS, DOJ and the State Department cannot disclose VAWA confidentiality protected information to anyone including through civil, family, and criminal court discovery of information about or contained in the file of any protected case:
 - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, and attorneys about immigration law protections for
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivor

VAWA Confidentiality Violations

- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Violations also include making a false certification in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)



Locational Prohibitions

- No enforcement
 - “[A]bsent clear evidence that the alien is not entitled to victim-based benefits”
 - Actions taken must “be handled properly given that they may ultimately benefit from VAWA’s provisions”
 - Officers are to follow a specific process aimed at protecting victims that includes obtaining advance permission from a supervisor or ICE general counsel for enforcement actions at statutorily protected sensitive locations
- John P. Torres and Marcy Forman, Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005 (January 22, 2007)

VAWA Sensitive Location Prohibitions

- Enforcement actions are not to be taken unless the action specific procedures designed to protect victims are followed:
 - 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



VAWA confidentiality is likely violated when a DHS official comes to the courthouse in response to a “tip” from the perpetrator and arrests a victim who has come to court.....

- A. Seeking a protection order
- B. For a child custody case
- C. For an eviction case when the perpetrator stopped paying court ordered rent
- D. As a State’s witness in a criminal case
- E. All of the above

January 2018 ICE Courthouse Enforcement Policy: Targeted Immigrant Limitation

- Civil immigration enforcement at courthouses will only occur when
 - ICE officers have information that leads them to believe that a targeted immigrant will be present at a courthouse
- To be targeted an immigrant must
 - Have criminal conviction(s)
 - Be gang members
 - Be a threat to national security or public safety
 - Have been ordered removed and failed to depart, or
 - Have re-entered the country illegally after being removed

January 2018 Policy: Persons Who are Not Targets

- Will not subject to immigration enforcement persons who are not targets including
 - Witnesses
 - People accompanying others to court
 - Victims

January 2018 Policy:

Avoid Non-Criminal Proceedings

- Avoid enforcement in courthouses or areas within a courthouse that are dedicated to non-criminal proceedings
 - Applies to courts and cases
 - Family cases
 - Civil cases
- Requires Field Office Director/Special Agent in Charge Approval
 - Will involve screening for VAWA confidentiality protected victim's cases

Steps Courts Are Taking

- Restrict activities that interfere with courtroom operations
- Enforcement restricted to non-public areas of the courthouse*
- Courts ask ICE to coordinate with court security staff and use of non-public entrances & exits*
- Some courts do not allow ICE into courtrooms
- No enforcement in civil and family proceedings absent written authorization from ICE Field Office Director or Special Agent in Charge*
- No interruptions during court proceedings or until case is completed
- No enforcement against victims, witnesses, family members, people accompanying others to court*
- Call courthouse security if ICE fails to comply with court orders

VAWA Confidentiality and Discovery

Protecting Information About a Survivor's Immigration Case

- Prohibits disclosure of any information about
 - The existence of a VAWA, T or U visa application
 - Information contained in the A file
- Helps survivors who have suffered
 - Battering or extreme cruelty
 - Human trafficking
 - Sexual assault, stalking and other U visa listed crimes
- Disclosure prohibited to all persons, not just the perpetrator

Hawke v. Dep't of Homeland Security

(N.D. CA, 2008) – VAWA Self-Petition Case

- VAWA Confidentiality Protects cases:
 - All cases unless denied on the merits
- Judicial exception applies to appeals of victim's immigration case
 - Does not apply to civil or criminal court proceedings
- 6th Amendment right to compulsory process does not permit access to absolutely privileged information
- “Primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer”

Federal VAWA Confidentiality Implementing Regulations

- 8 C.F.R. 214.14 (3)(2)
 - “Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367”
- Chevron v NRDC (S. Ct. 1984)
 - Considerable weight and deference required of federal regulations

Demaj v Sakaj (D. Conn, 2012) -U

Visa/Custody

- Although relevant to credibility and impeachment
- Family court discovery barred as contrary VAWA confidentiality purpose --
 - Prevent disclosure of documents & information in a protected case file to alleged criminals
 - Stop perpetrator's actions to interfere with & undermine a victim's immigration case
- Seeking to obtain protected information through discovery in a custody case = interference with the victim's immigration case barred by the federal statute
- VAWA confidentiality applies to protect the case file contents, including in cases when
 - The victim discloses in state court that DHS has approved her protected immigration case

EEOC v Koch (5th Circuit)

- In civil discovery court must consider
 - How discovery of U visas might intimidate victims outside of the case before the court
 - Compromising the U visa program and law enforcement investigations and prosecutions more broadly
 - Koch: limited discovery crafted to maintain anonymity may be allowable
- That is not possible in a family or criminal court case

State v. Marroquin-Aldana – Criminal Case

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- “Insufficient justification” to disclose additional documentation when the defense had the certification form
- Provided defense opportunity to cross-examine victim and call credibility into question
- Court noted the “high level of protection” given to documents filed with immigration

People v. Alvarez Alvarez- Criminal Case

No. G047701, 2014 WL 1813302, at *5 (Cal. Ct. App. May 7, 2014), review denied (July 16, 2014)

- “The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status...which was completely irrelevant to this case.”
- The trial court was well within its discretion in excluding reference to the U visa

U Visa Certification By Judges

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

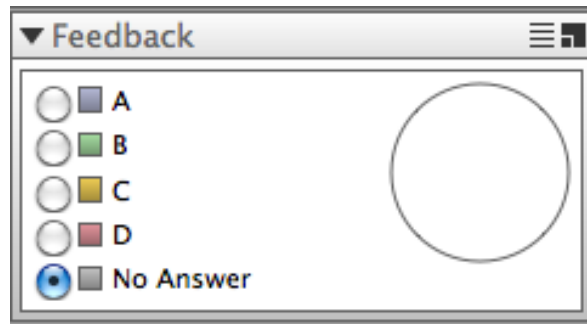
U Visa Qualifying Criminal Activity

- 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

Why would victims seek U visa certification from state courts?

Using your clickers please check:



- A. Only justice system contact a custody, protection order, civil employment or child welfare case
- B. No language access to police when victim called for help
- C. Judge observed victim's attendance and participation in criminal case
- D. All of the above

According to DHS, a U/T 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 in the detection, investigation, prosecution, conviction or sentencing

Helpfulness Requirement Met

Even When:

- Victim reports a crime and there's no further investigation or prosecution
- Perpetrator absconds or is deported
- Perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order or custody but domestic violence is not being criminally prosecuted

Criminal Case Examples: Evidence of Helpfulness

- Evidence in case that the victim:
 - Called 911
 - Participated in a criminal investigation
 - Identified perpetrator at line up
 - Testified before a grand jury or at trial
 - Appearance in a case
 - Attended criminal court hearings in the case
 - Victim impact statement
 - Testimony at sentencing

Family/Civil Case Examples: Evidence of Helpfulness

- Filed and/ or appeared at hearing for full protection order
- Plead and or testified about abuse or sexual assault in a court case (e.g. protection order, divorce, custody, small claims, housing, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal or EEOC investigation
- Serving the perpetrator with notice of a
 - temporary protection order
 - A case in which the pleadings contain allegations of facts that constitute domestic violence, sexual assault or other U visa criminal activities

U-visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
 - Waitlist approval backlog 110,000 visas
- The U-visa grants a temporary 4 year stay
- Work authorization (≈ 28-48 months)
- Limited state benefits
- 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

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 or ruling in [name type of proceeding]
- 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.