

July 29, 2014

# State Courts and the Protection of Immigrant Crime Victims and Children

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## Introductions

- **Judge Janine Saxe (host)**
  - **Fairfax County Juvenile and Domestic Relations District Court**
- **Leslye Orloff**
  - **National Immigrant Women's Advocacy Project**
- **Mariam Ahmedani**
  - **USCIS Office of the Chief Counsel**
- **Rosemary Hartmann**
  - **U.S. Citizenship and Immigration Services, Department of Homeland Security**
- **Scott Whelan**
  - **U.S. Citizenship and Immigration Services, Department of Homeland Security**

## Sponsor

- **This Training was developed under grant number SJI-12-E-169 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute**

## Learning Objectives:

- **Understand the intersections between state court proceedings and immigration law**
- **Recognize facts that indicate a party qualifies for legal immigration status**
- **Know how accurate immigration law information affects just and fair outcomes in state courts**
- **Learn about findings in state court cases that are helpful to an immigrant crime victim's immigration case**
- **Obtain U visa certifications from law enforcement or judges**

## Will include Overview of...

- **U and T visas**
  - Eligibility
  - Certification process
- **VAWA self-petitions**
- **Intersection of Family and Immigration Law**
  - VAWA confidentiality and state court discovery
  - Protection order
  - Custody
  - Detention of immigrant parents
- **Special Issues regarding SIJS Children**
  - Dependency
  - Delinquency
  - Economic Assistance

# Virginia Demographics (2012)\*

- ❖ **Total foreign born population – 947,320**
- ❖ **11.6% of the state’s 8.1 million people is foreign born**
  - **48% naturalized citizens**
  - **~30.6% legal permanent residents**  
(DHS: [http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_pe\\_2012.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_pe_2012.pdf) )
  - **~21.4%% undocumented and Temporary Visa holders**
- ❖ **66.1% rise in immigrant population from 2000 to 2012**
- ❖ **High proportion of new immigrants**
  - **24.8% entered in the 1990s**
  - **45.7% entered 2000 or later**
- ❖ **22.4% of children in the state under age 18 have 1 or more immigrant parents**
  - **85.7% of children with immigrant parents in the state are U.S. citizens**

<http://www.migrationinformation.org/datahub/state.cfm?ID=VA>

## Virginia – Countries/Regions of Origin (2012)\*

- ▶ **Latin America – 35.1%**
  - ▶ Mexico (6.3%)
  - ▶ El Salvador (9.3%)
  - ▶ Other Central America (7.1%)
  - ▶ South America (9.3%)
  - ▶ Caribbean (3.2%)
- ▶ **Europe – 10.6%**
- ▶ **Africa – 10.0%**
- ▶ **Asia – 42.1%**
  - ▶ India (7.5%)
  - ▶ Other South Central Asia (7.3%)
  - ▶ Korea (5.7%)
  - ▶ Philippines (5.9%)
  - ▶ Vietnam (4.5%)
  - ▶ China/Taiwan (4.4%)
  - ▶ Western Asia (3.8%)

\*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=VA>  
(February 2014)

# How can immigration protection help courts?



## DHS' Dual Roles

- **Multiple purposes of immigration law**
  - Provide path to permanent residency & citizenship for
    - **non-citizen crime victims**
    - **Children**
      - SJIS – abused, battered, abandoned, neglected
      - DACA
      - Children included in victim's applications
  - Remove undocumented immigrants from the U.S.

# DHS Priorities for Enforcement and Victim Protection

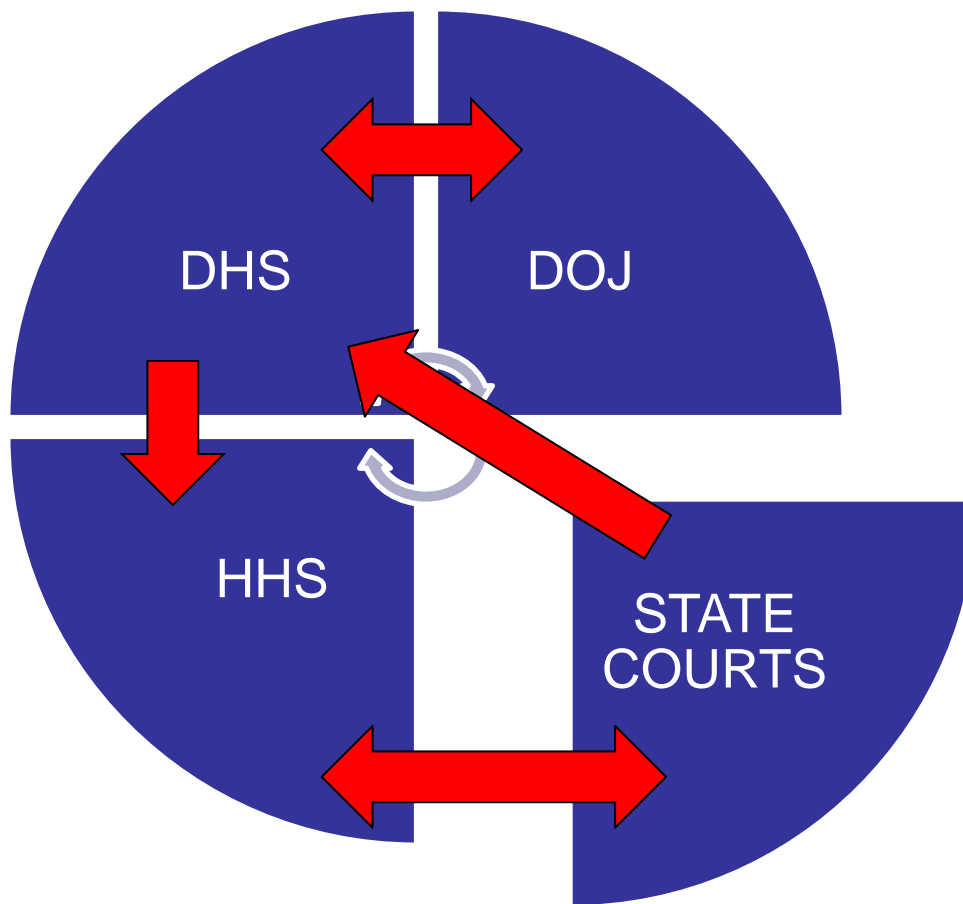
## DHS Memos – Guidance

- **DHS victim witness memo**
- **Humanitarian release**
- **384 DHS computer system (VAWA, T-visas, U-visas)**
- **Memorandum on DHS detention priorities**
- **DHS law enforcement Q & A on T and U visas**
- **U-visa DHS Resource Guide**

## Court's Role

- **Identify potentially eligible immigrants**
- **Distribute information - DHS brochures**
- **U.S. Attorney General's Letter on**
  - **Language Access to Courts**
- **Know how to obtain accurate information about current immigration laws, policies and practices**
  - **Technical assistance through NIWAP's SJI grant**
  - **Materials available at [www.niwap.org/go/sji](http://www.niwap.org/go/sji)**
- **Make findings that provide immigrant victims, parents and children helpful evidence**
  - **Family relationships (Marriage – parent child relationship)**
- **Findings of fact about: battering, extreme cruelty, child abuse, elder abuse, child abandonment, neglect**

# Relationships that benefits victims and children



# 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

**T visa : Victims of severe forms of human trafficking**

## Asylum

## U visa

- Victims of criminal activity
- Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
- Substantial harm from criminal activity

## Special Immigrant Juvenile (SIJ)

- Juveniles that have been abused, battered, abandoned or neglected

## 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

Materials overview of remedies -

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits>

# T – U – VAWA

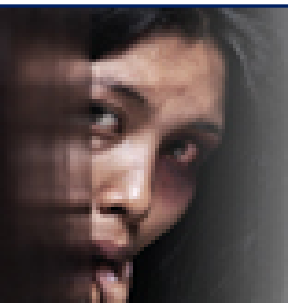
Immigration Relief for Victims of Human Trafficking and Other Criminal Activity



# T & U Visas: Purpose and Overview

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- Provides temporary status to aliens severely victimized by trafficking in persons or other qualifying criminal activities
- Law Enforcement Agency (LEA) tool
- Created to:
  - strengthen the ability of law enforcement to investigate and prosecute trafficking in persons crimes; and
  - facilitate encourage the reporting of crimes by trafficked, exploited, victimized and or abused aliens who may not be in lawful immigration status.



Don't be afraid to  
**ASK FOR HELP**

Immigration relief is available for victims  
of human trafficking, domestic violence  
and other crimes

# T & U Visas: Purpose and Overview

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- T or U nonimmigrant status (T visa/U visa) is granted with an approved Application for T Nonimmigrant Status (Form I-914) or Petition for U Nonimmigrant Status (Form I-918)
- USCIS has sole jurisdiction for over the T or U nonimmigrant status visa adjudication
- Benefits:
  - Grants temporary status for up to 4 years (with the possibility to apply to become a lawful permanent resident)
  - Allows temporary status for certain family members
  - Provides employment authorization (work permit)
- Annual statutory cap of 5,000 for the T visa
- Annual statutory cap of 10,000 for the U visa



# Basic T Visa Requirements

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- Victim of a severe form of trafficking in persons
- Physically present in the United States on account of trafficking
- Compliance with any reasonable requests for assistance in the investigation or prosecution of acts of the trafficking (or was unless is under the age of 18 at the time of the trafficking or unable to cooperate with request due to physical or psychological trauma)
- Demonstration of extreme hardship involving unusual and severe harm upon removal (separation of family, medical issues, economic issues)

# T Visa Form I-914, Supplement B

## Declaration of Law Enforcement (optional)

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- This form is optional. The victim is still eligible for a T visa if an application does not include this form.
- Submitted with the application by the victim
- Should be completed entirely by the law enforcement agency
- If providing any additional documents with the declaration, law enforcement should indicate with a note of “see attachment” or “see addendum”
- Signed by the law enforcement agency at its discretion. There is no requirement to sign the declaration.

# Basic U Visa Requirements

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- Victim of a qualifying crime
  - the crime must have occurred in the U.S. or violated U.S. law
- Possesses credible, reliable relevant information about that crime
- Has been, is being, or is likely to be helpful in an investigation or prosecution of that crime
- Suffered substantial physical or mental abuse based on that crime

# U Visa: Qualifying Criminal Activity

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- Includes attempt to commit, conspiracy to commit, or solicitation to commit any of the crimes on the statutory list, and other similar activities
- General crime categories
- Substantially similar crimes may also qualify  
→ Sexual Exploitation and Video Voyeurism
- USCIS will make the determination of whether criminal activity on certification is “qualifying” for visa purposes

# U Visa: Qualifying Criminal Activities

Abduction	Murder
Abusive Sexual Contact	Obstruction of Justice
Blackmail	Peonage
Domestic Violence	Perjury
Extortion	Prostitution
False Imprisonment	Rape
Felonious Assault	Sexual Assault
Female Genital Mutilation	Sexual Exploitation
Fraud in Foreign Labor Contracting	Slave Trade
Hostage Taking	Stalking
Incest	Torture
Involuntary Servitude	Trafficking
Kidnapping	Unlawful Criminal Restraint
Manslaughter	Witness Tampering

# U Visa: Helpfulness

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- The alien has been, is being, or is likely to be helpful in the investigation or prosecution of the criminal activity
- Alien has not, since the initiation of cooperation, refused or failed to provide information and assistance reasonably requested
- *Ongoing* requirement with reasonable requests from law enforcement if necessary
- Exception for those under 16 or incompetent/incapacitated (same as for possession of information requirement)

# Who is a victim?

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- Generally, it is the individual acted upon during the crime
- Includes certain family members when the crime is murder/manslaughter
- Includes parents as “indirect victims” when the victim is under the age of 21

# Form I-918, Supplement B LEA Certification Required

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- Provides USCIS with basic information about the claimed criminal activity
  - Does **not** grant any benefit
- Is required evidence that **must** be submitted to be eligible for a U visa
- Signed by the law enforcement agency at its discretion. There is no requirement to sign the declaration.
- Additional evidence needed to support an approval (i.e., the certification is not conclusive evidence)
- Submitted with the petition by the alien/victim
- Should be completed entirely by the law enforcement agency
- Law enforcement may provide any additional documents with the certification, and should indicate on the I-918, Supplement B, with a note of “see attachment” or “see addendum”



# Supplement B Overview

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- Who can sign?
  - Any Federal, State, or local law enforcement office or agency that has the responsibility and authority for the detection, investigation, or prosecution, conviction, or sentencing of qualifying criminal activity. Includes agencies with criminal investigative jurisdiction in their respective areas of expertise, including but not limited to such as child and adult protective services, the Equal Employment Opportunity Commission, and the Department of Labor.
- Is signing a Form I-914/I-918 Supplement B mandatory?
  - **No.** It is signed at the discretion of the LEA based on their own local policies. Many agencies develop policies that are the most efficient for them depending on size, jurisdiction, frequency of requests, etc.

# Certifying Official

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- Who qualifies?
  - The head of the certifying agency or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue T or U nonimmigrant status certifications on behalf of that agency; or
  - A Federal, State or local judge.

# Notes

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- A conviction, prosecution, or arrest are not necessary for a victim to be eligible for possible immigration relief.
- If a defendant is acquitted or convicted for a different crime, the victim may still be eligible for immigration relief.
- USCIS conducts full background checks on every applicant, including searches based on fingerprints, name/DOB, and immigration records.
- Law enforcement may notify ICE/USCIS of any known or suspected criminal activity associated with the victim and if the victim ever refuses to be helpful in the investigation or prosecution.

# Other Issues – I-914B and I-918B

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- You may receive a follow-up request for a certification from the victim in the future to support a “green card” application.
- You may complete new I-914B/I-918B, provide a letter, or re-sign and newly date a copy of the previous I-914B/I-918B if you, as the LEA designated official, chooses to assist the alien again in this process.

# Withdrawing or Disavowing Certification

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- Certifying agency may withdraw or disavow the certification **at any time.**
- **Must notify Vermont Service Center** (email or send to VSC—see contact slide).
- Determination to withdraw or disavow **at the discretion of the certifying agency.**
- Law enforcement agency's own policy will dictate what will trigger this action.

# Withdrawing or Disavowing Certification

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- Written notification should include
  - Agency's name and contact information  
(if not included in the letterhead)
  - Name and DOB of the individual certified
  - Name of the individual who signed the certification and the date it was signed
  - Reason the agency is withdrawing/disavowing the certification
  - Signature and title of the official who is withdrawing/disavowing the certification
  - Attach a copy of the certification the agency signed  
(if a copy was retained by the agency)

# DHS Contact Information

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## **USCIS Vermont Service Center**

802-527-4888 (hotline)

[LawEnforcement\\_UTVAWA.vsc@uscis.dhs.gov](mailto:LawEnforcement_UTVAWA.vsc@uscis.dhs.gov)

USCIS—Vermont Service Center

ATTN: Crime Victims Unit

75 Lower Welden Street

St. Albans, VT 05479

## **DHS Blue Campaign**

[www.dhs.gov/bluecampaign](http://www.dhs.gov/bluecampaign)

[BlueCampaign@dhs.gov](mailto:BlueCampaign@dhs.gov)

## **USCIS Policy**

U Visa

[Scott.P.Whelan@uscis.dhs.gov](mailto:Scott.P.Whelan@uscis.dhs.gov)

202-272-8137

T Visa

[Rosemary.M.Hartmann@uscis.dhs.gov](mailto:Rosemary.M.Hartmann@uscis.dhs.gov)

202-272-8981

VAWA

[Michelle.L.Young@uscis.dhs.gov](mailto:Michelle.L.Young@uscis.dhs.gov)

802-527-3012

# Law Enforcement Certification

## Form I-918 Supplement B

Department of Homeland Security  
U.S. Citizenship and Immigration Services

Form I-918 Supplement B  
U Nonimmigrant Status Certification

**START HERE - Please type or print in black ink.**

Part 1. Victim information.			For USCIS Use Only.	
Family Name	Given Name	Middle Name	Returned	Receipt
Other Names Used (Include maiden name/nickname)			Date	
Date of Birth (mm/dd/yyyy)			Date	
Gender <input type="checkbox"/> Male <input type="checkbox"/> Female			Resubmitted	
Name of Certifying Agency			Date	
Name of Certifying Official			Date	
Title and Division/Office of Certifying Official			Reloc Sent	
Name of Head of Certifying Agency			Date	
Agency Address - Street Number and Name			Date	
City			Date	
State/Province			Date	
Zip/Postal Code			Remarks	
Daytime Phone # (with area code and/or extension)				
Fax # (with area code)				
Agency Type <input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local				
Case Status <input type="checkbox"/> On-going <input type="checkbox"/> Completed <input type="checkbox"/> Other				
Certifying Agency Category <input type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other				
Case Number				
FBI # or SID # (if applicable)				

**Part 3. Criminal acts.**

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<input type="checkbox"/> Trafficking
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	

Form I-918 Supplement B (08/31/07)



# I-918 Supplement B, U Nonimmigrant Status Certification

START HERE - Please type or print in black ink.

**Part 1. Victim information.**

Family Name: Orloff      Given Name: Leslye      Middle Name: E

Other Names Used (Include maiden name/nickname): \_\_\_\_\_

Date of Birth (mm/dd/yyyy): 08/28/1956      Gender:  Male  Female

**Part 2. Agency information.**

Name of Certifying Agency: Washington, D.C.

Name of Certifying Official: \_\_\_\_\_      Title and Division/Office of Certifying Official: Superior Court Judge.

Name of Head of Certifying Agency: Judge Lora Livingston

Agency Address - Street Number and Name: 555 Indiana Avenue NW      Suite #: \_\_\_\_\_

City: Washington      State/Province: DC      Zip/Postal Code: 20005

Daytime Phone # (with area code and/or extension): 202-555-5555      Fax # (with area code): 202-555-5556

Agency Type:  Federal  State  Local

Case Status:  On-going  Completed  Other \_\_\_\_\_

Certifying Agency Category:  Judge  Law Enforcement  Prosecutor  Other \_\_\_\_\_

Case Number: H-62632-11      FBI # or SID # (if applicable): \_\_\_\_\_

**Part 3. Criminal acts.**

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<input type="checkbox"/> Trafficking
<input checked="" type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input checked="" type="checkbox"/> Other: (if more space needed, attach separate sheet of paper)
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named Crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	<u>stalking</u>

**For USCIS Use Only.**

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	

**LEAVE BLANK**

Remarks

**Part 4. Helpfulness of the victim. (Continued.)**

5. Other, please specify.

Mrs. Orloff called 911 for help during a domestic dispute. Upon arrival she provided information about the incident to the officer on scene and allowed the officer to take photographs of the injury to her neck. She came to court seeking a protection order, which was granted.

**Part 5. Family members implicated in criminal activity.**

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim?  Yes  No

2. If "Yes," list relative(s) and criminal involvement. *(Attach extra reports or extra sheet(s) of paper if necessary.)*

Full Name	Relationship	Involvement
William Orloff	Husband	Defendant

Based on Probable Cause and my issuance of a protection order

**Part 6. Certification.**

I am the head of the agency listed **Part 2** or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. ~~Based upon investigation of the facts,~~ I certify, under penalty of perjury, that the individual noted in **Part 1** is or has been a victim of one or more of the crimes listed **Part 3**. I certify that the above information is 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 the U.S. Citizenship and Immigration Services, 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/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Judge Lora Livingston

Date (mm/dd/yyyy)

January, 2014

## Certifying judges will need to amend form

- **Judges may amend the language of the form to accurately reflect the basis upon which the judge is signing the certification.**
  - Probable cause, findings, rulings
  - Include the type of proceeding and
  - If orders were issued attach a copy of the order
- **Judges can should amend current form --examples:**
  - “Based upon my having probable cause .... I certify”
  - “Based upon my issuance of a civil protection order ...I certify”
  - “Based on my having presided over the criminal case ... I certify”
  - “Based upon my findings in a [custody/divorce] case of [domestic violence/child abuse] ... I certify”



# Questions and Answers on U Visa Certification

# **VAWA Self-Petition Battered Spouse Waiver**

## Battered Spouse Waivers

- **Two year conditional residency**
- **Waives the joint filing requirement and two year wait for full lawful permanent residency**
- **Requires proof of**
  - **Good faith marriage to U.S. citizen or permanent resident**  
*and*
  - **Battered or subjected to extreme cruelty**
    - **To spouse, child, step-child**
- **Court's role:**
  - **Findings of fact regarding relationship and abuse in divorce or custody proceedings**
  - **Issuance of protection order**
  - **Distribute DHS Brochure on immigration options**



## VAWA Self-Petitioning Requirements

- **Subjected to Battery or Extreme Cruelty**
- **By a U.S. Citizen or Permanent Resident**
  - **Spouse/former spouse**
    - **(can include undocumented children in DHS application)**
  - **Parent/current step-parent**
  - **Adult son/daughter (over 21)**
- **With Whom self-petitioner resided**
  - **No time period required**
- **Good Moral Character**
- **Good Faith Marriage**

# VAWA victims get following protections

Materials VAWA Immigration and Benefits Bench Card -

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/Public-Benefits-Bench-Card.pdf>

- **Deportation: Protection from deportation shortly after filing.**
- **Immigration Benefits for Children:**
  - VAWA self-petitioners' children receive immigration benefits
  - VAWA cancellation parole into US visa process required
- **Public Benefits: As qualified immigrants (≈ 3 months)**
- **Employment authorization:**
  - Citizen abuser (≈ 7 months);
  - Lawful permanent resident abuser (currently ≈ 7 months)
- **VAWA confidentiality: protections against the release of information and reliance on abuser provided information**
- **Lawful permanent residency**
  - Citizen perpetrator apply upon approval (apply immediately)
  - Lawful permanent resident perpetrator (≈ 8 mo; Mexico 2 yr)



# VAWA Confidentiality and Its Implications for State Courts

Materials VAWA Confidentiality Bench Card -  
<http://iwp.legalmomentum.org/reference/additional-materials/vawa-confidentiality>

## VAWA Confidentiality

- **DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers and crime perpetrators and their family members (all victims)**
- **Enforcement locational prohibitions (all victims)**
- **DHS cannot disclose information to anyone about an immigrant victim's case**
  - (except in limited circumstances)
  - (protects applicants for victim related immigration benefits)

# Enforcement at following 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 of information

- **Bars disclosure of**

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

- **Effect:**

- States courts should deny discovery in family court cases

## VAWA Confidentiality Violations

- **DHS Office of Civil Rights and Civil Liberties**
- **Each violation sanctions**
  - **Disciplinary action and/or**
  - **\$5,000 fine for the individual**
- **Dismissal of the immigration proceeding against the non-citizen**

# Protection Orders, Divorce, and Custody

## Protection Order, Divorce, and Custody Cases

- **Under immigration law victims of battering or extreme cruelty have access to immigration relief: Includes:**
  - Any state crime committed against a family member sufficient for issuance of a protection order including sexual abuse, threats, attempts *AND/OR*
    - Emotional abuse,
    - economic abuse,
    - Using children
    - deportation threats and immigration related abuse,
    - intimidation,
    - social isolation,
    - degradation,
    - possessiveness,
    - harming pets
    - coercive control

## Coercive control

- **Setting the stage**
  - Creating vulnerabilities
  - Exploiting existing vulnerabilities
  - Wearing down resistance
  - Facilitating attachment
- **Coercive demand**
- **Credible threat**
- **Surveillance**
- **Delivery of consequences**



## Protection Order, Divorce and Custody Cases

- **Remedies for abused immigrant spouses, former spouses, children, step children, parents and step-parents include**
  - VAWA self-petition,
  - U visa,
  - T visa,
  - battered spouse waiver,
  - DHS victim release/witness protections,
  - Humanitarian Release
  - VAWA defenses in deportation (removal) cases

## Protection Order, Divorce, Custody Proceedings

- **Impact of court orders on the immigration case**

- Findings regarding abuse
- Findings regarding the type of family relationship including that the parties are/were married

- **When recognized under state law includes**

- Same sex marriages
- Common law marriages

- **Benefits of specific written orders**

## Protection Order, Divorce, Custody Proceedings

- **Deny inappropriate discovery requests**
  - Preserve federal VAWA confidentiality
- **VAWA confidentiality prevents**
  - **discovery of victim related immigration case through family court discovery**
  - **that includes:**
    - **The existence of any victim related immigration case**
    - **any information contained in the case, and**
    - **any action taken on the case by DHS**
  - **Limitations on criminal discovery as well**

# Special Note Re: Divorce

- **Effect of divorce on immigration cases**
  - timing is everything
- **Perpetrators use divorce to cut off victim's access to legal immigration status**



# Protection Orders

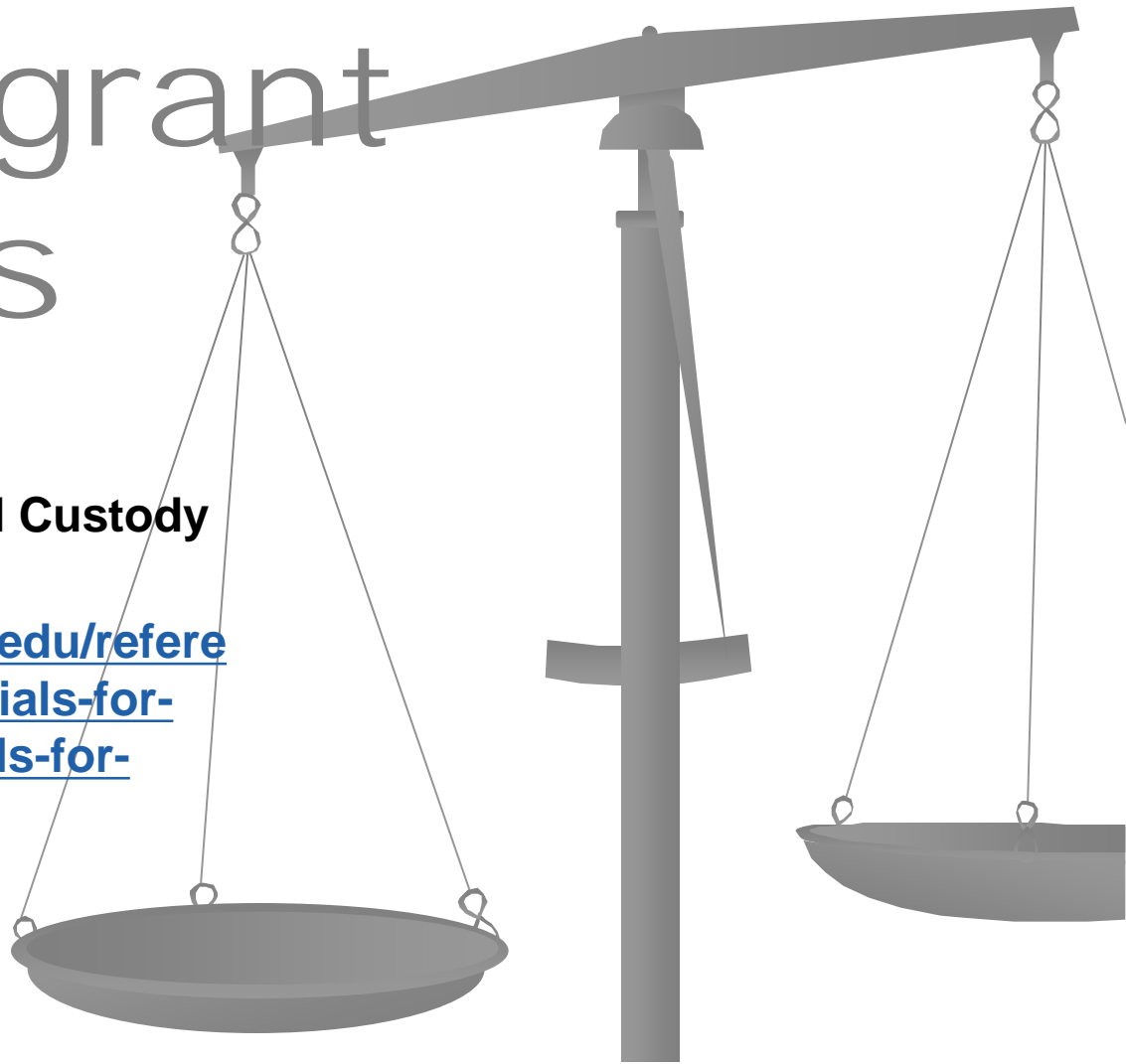
## Protection Orders

- **When issuing protection orders, the court must not consider the immigration status of either party**
- **Issue jurisdictionally sound protection orders**
  - Physical, sexual and emotional abuse
    - **Of immigrant, their child or step-child**
  - Existence of parent/child or spousal relationship
  - Include creative remedies
  - Protection order issuance no effect on immigration status
    - **Violation of the anti-abuse provisions of a protection order = deportable offense**

# Custody of Children in Immigrant Families

**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>



## Child Custody

- **Parents have a Constitutional right to custody regardless of immigration status, detention or removal**
  - **Absent unfitness.**
- **When considering the “best interest of the child” the following are NOT factors**
  - Immigration status
  - English language proficiency
- **Immigration information**
  - **distracts the judge from focusing on best interest factors listed in the statute**
- **Grant custody to non-abusive parent**
  - **Including when non-abusive parent is a foreign born**



## 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
- **Parents & child victims qualify for VAWA/T/U/SIJS related immigration relief**

# ABA Center on Children & The Law

- **“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.”**

# Facts

- **Lack of legal immigration status does not mean**
  - Deportation is eminent
  - Parent is likely to flee U.S.
  - Victim parent does not qualify for immigration relief
  - The parent has no livelihood
- **Legal immigrants/naturalized citizens are more likely to flee with children**
  - When have been threats of kidnapping children
  - When they are dual nationals
  - Because they can travel freely to and from U.S.

# Facts

- **Custody not affect parent’s ability to file for or gain immigration benefits for their children**
- **Undocumented parents can**
  - **file for and receive “child only” public benefits**
  - **Receive and be ordered to pay child support**
- **Victims filing for VAWA/U/T**
  - **Gain work authorization**
  - **Access to some public benefits (VAWA/T)**
    - **State funded health care for children (VAWA/T/U/SIJS)**
    - **State funded health care pregnant women (VAWA, T, waitlist approved Us)**



# Detention of Immigrant Parents

# How Immigrant Parents End Up In DHS Custody

- **Abusers/crime perpetrators report them**
- **Employers or co-workers report them**
- **Traffic stops**
- **Immigration enforcement at the worksite**
- **Reports by CPS, welfare workers, health care providers, others**
- **Victims call the police for help and police**
  - **Make a dual arrest, Arrest the victim**
  - **Language access issues**
- **Secure Communities program leads to reporting all arrested persons to DHS**

## Parental Interest Directive Aug 2013

- **Factors that prevent detention of parents – DHS screens for**
  - Parent or legal guardian of citizen or legal permanent resident child
  - Primary caretaker of a minor child
  - Encourages prosecutorial discretion
    - **Immigrant parents generally are a low priority for removal**
- **If parent detained**
  - Placement near children and family court
  - New DHS procedures to bring parents to family court to participate in cases involving children
  - Facilitate visitation
  - Help children travel with deported parent –obtain passports for children
  - Bring deported parents back to the US for custody and parental rights cases

# **SIJS - Child Dependency, Abuse, Neglect, Delinquency, and Probate Court Cases**



## Special Immigrant Juvenile Status

- **Eligibility requires that a court with jurisdiction over care, custody, or dependency issued**
- **Court order, finding, declaration**
  - Awarding custody
  - Regarding child placement
  - Placing a child with –
    - An individual (e.g. non abusive parent, grandparent, kinship care)
    - Agency
    - Department
- **PLUS – finding that reunification with at least one parent is not viable due to**
  - Abuse, abandonment, neglect, or a similar basis under state law
- **PLUS – Finding that not in the child’s best interest to be returned to their home country**

## Types of proceedings SJIS findings

- **Custody**
- **Divorce**
- **Legal Separation**
- **Motions for a declaratory judgment**
- **Dependency**
- **Delinquency**
- **Termination of parental rights**
- **Guardianship**
- **Paternity**
- **Child support**
- **Criminal cases**

Procedural Issues: May require consolidation of cases to attain ability to make needed findings

Materials: SIJS Examples Provided By Case - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/SIJS-Proceedings-Chart.pdf/view>

# Children and Courts

## ● Probate

- Guardianship cases can make SIJS findings
- Can place children without regard to the immigration status of the custodian or guardian
  - **DHS Parental Interest Directive**

## ● Juvenile Court

- Immigration definition of criminal convictions
- Discovery and VAWA confidentiality
- Opportunities for juvenile to access treatment, services and state or federally funded benefits may vary
  - **Based on the immigration status of the child or their parents**

## ● Child Abuse and Neglect

- Discovery and VAWA confidentiality
- Opportunities for juvenile to access treatment, services and state or federally funded benefits may vary
  - **Based on the immigration status of the child or their parents**

## Consider:

- **Providing parties (children and parents) basic information about immigration options by distributing the DHS pamphlet**
- **Making findings that help children and crime victim parents attain legal immigration status through**
  - VAWA, U visa or Special Immigrant Juvenile Status
- **Increases courts options to help children and custodial parents, guardians and kinship care**
  - Greater access to state and federal public benefits
  - Can obtain drivers licenses
  - Legal work authorization
  - Protection from deportation

## What Children with SIJ Status Receive

- **Protection from deportation and removal**
- **Legal permanent residency**
- **Government issued ID**
- **Legal work authorization**
- **Eligibility for driver's license**
- **As lawfully present children – health care, education benefits and in some states state funded benefits**
- **Eligible for citizenship after five years**
- **SIJ's may NEVER file family petition for natural parents**

## Resources and technical assistance

- **NIWAP offers technical assistance for courts and judges**

- Provides access to up to date correct information
- Provide consultations
- Link to resources
- Call (202) 274-4457
- E-mail [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- Web-library <http://niwaplibrary.wcl.american.edu/>

Covers: immigration , family, benefits, language access

Contains: DHS memos related to immigrant victims and children  
Research, VAWA legislative history

- **Materials for this training**

- [www.niwap.org/go/sji](http://www.niwap.org/go/sji)

[www.niwap.org/go/sji](http://www.niwap.org/go/sji)

- **Bench Cards on—**
  - Immigrants and protection orders
  - DHS enforcement priorities and victim protections
  - Public benefits and services
  - Immigration rights of crime victims
  - Custody Issues and Immigrants
  - Economic options
- **U visa certification toolkit for judges**
- **Visa chart – by immigration status**
  - Who can sponsor children
  - Work authorization
  - Benefits access
- **Immigration remedies comparison charts**
- **Legal and Social Science Bibliographies on Immigrant Crime Victims**

# Questions





# Evaluations



# Thank you!

