

October 18, 2013

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

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CPPS Immigration and the State Courts Initiative  
Judge Lora Livingston  
Travis County Courts

## Introductions

- **Judge Lora Livingston**
- **John Martin, Immigration and State Courts Initiative**
- **Leslye Orloff, National Immigrant Women's Advocacy Project**
- **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**

## Workshop Learning Objectives

- **Understand the intersections between state court proceedings and immigration law**
- **Know how accurate immigration law information affects just and fair outcomes in state courts**
- **Recognize facts that indicate a party qualifies for**
  - Legal immigration status
  - Protection from/low priority for removal
- **Be able to sign U visa certifications**
- **Make findings in state court cases**
  - Needed for or helpful to an immigrant crime victim's immigration case

## Will include Overview of...

- **Family**
  - Custody
  - Protection order
  - Discovery issues
  - Probate/guardianship
- **Special Issues regarding Children**
  - Dependency
  - Delinquency
  - Economic Assistance
  - Immigration Options
- **Criminal**

## Immigration Law: Responsibilities

- **Department of Homeland Security (DHS)**
- **Policies issued at the DHS level apply to all components**
  - Blue Campaign (DHS Level)
  - Office of Civil Rights Civil Liberties (DHS Level)
    - Immigration and Customs Enforcement (ICE)
    - Customs and Border Patrol (CBP)
    - U.S. Citizenship and Immigration Services (USCIS)
      - VAWA /T/U Visa Unit of Vermont Service Center
- **Department of Justice**
  - Immigration Judges
  - Board of Immigration Appeals (BIA)

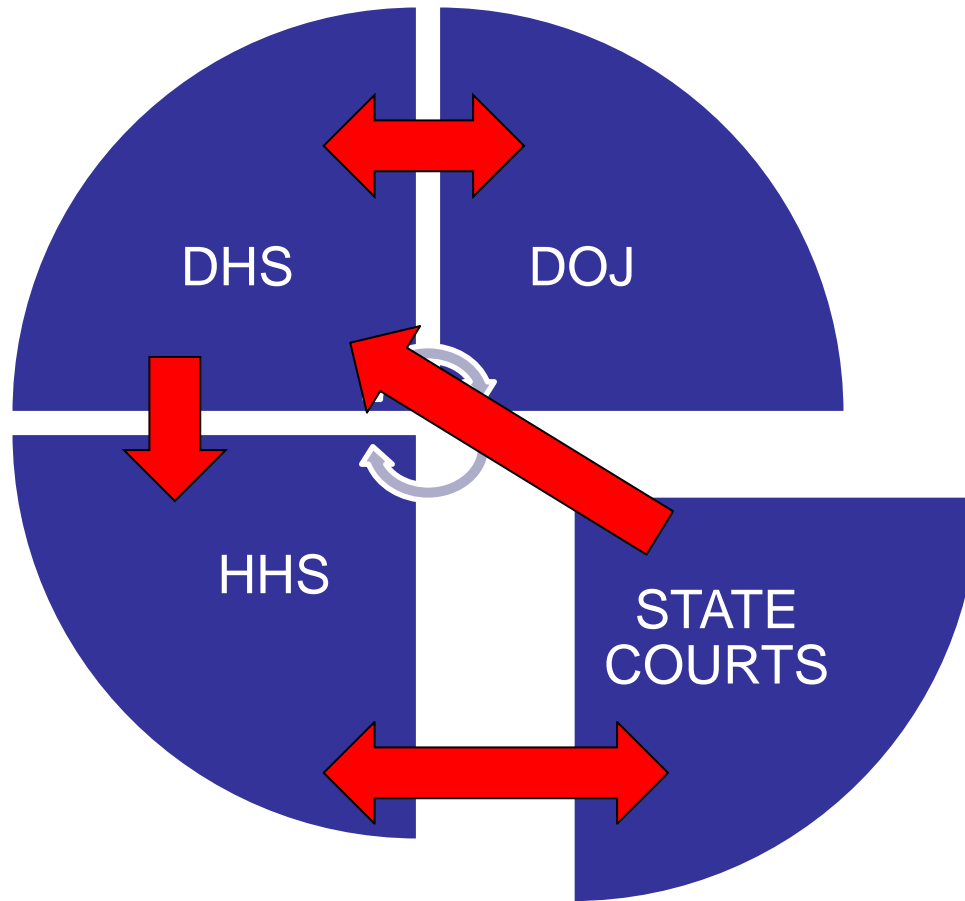
## DHS' Dual Roles

- **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 Video*

[http://niwaplibrary.wcl.american.edu  
/reference/additional-  
materials/immigration/u-  
visa/webinars/crash-trafficking-psa/](http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/webinars/crash-trafficking-psa/)

# Relationships that benefits victims and children





## Context

- **Inherent tension between state court purpose and role and immigration system roles**
- **Historically state court needs not considered in federal immigration law, policy and practice**
- **State court actions and interdependencies between state courts and immigration system often**
  - **Identify inconsistencies, lack of clarity, and other weaknesses of federal immigration law and policy**

# State Court v. Federal Immigration System

## Purpose and Roles

- **Purpose and Role of State Courts include: punishment; separating the dangerous from rest of society; rehabilitation; restoration/making victims whole; protecting the vulnerable; adjudication disputes between individuals; doing individual justice in individual cases; assuring justice and the appearance of justice; and maintaining official records.**
- **Federal Immigration Purpose and Role includes determining who should be in the US for how long and under what conditions; who should not be in the US; and who should become a US Citizen.**

## Key Points of Misalignment

- **“Sentence”**: Different definitions under immigration law and state court laws
- **State court misdemeanor convictions can be aggravated felonies under federal immigration law**
- **State criminal convictions can be crimes involving moral turpitude under federal immigration law**
- **The immigration consequences of state convictions imposed without the right to counsel in the immigration case**

## Misalignment (continued)

- **The finality of state convictions under federal immigration law**
- **Treatment of state post-conviction remedies under federal immigration law**
  - Immigration consequences of participation in a state drug court program
  - The treatment of gubernatorial pardons under federal immigration law

## Misalignment (continued)

- **Best interests of the child determination**
  - Central under state law
  - Not considered in federal immigration law
- **The effect of immigration detention on dependency and other family court cases**
- **The federal immigration consequences of state juvenile delinquency dispositions**

## Non-Citizen Violence Victims and Children

- **Special Immigration Status Options**
- **DHS brochure on immigration options for crime victims and children**
- **[www.niwap.org/go/dhs-brochure](http://www.niwap.org/go/dhs-brochure)**

# 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

Materials overview of remedies

## 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

# 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**



## 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**

## Forms of Extreme Cruelty

- **Emotional Abuse**
- **Economic Abuse**
- **Sexual Abuse**
- **Coercion**
- **Deportation threats**
- **Immigration related abuse**
- **Intimidation**
- **Social Isolation**
- **Degradation**
- **Possessiveness**
- **Harming pets**
- **Coercive control**

Materials on Battering or Extreme Cruelty and Coercive Control  
Under Immigration Law

## Coercive control

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

## VAWA Cancellation of Removal

- **Immigration court**
- **Same factors as VAWA self-petitioning**
- **Additional proof**
  - **3 years continuous presence**
  - **Extreme hardship**

# VAWA victims get following protections

Materials VAWA Immigration and Benefits Bench Card

- **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 (≈ 6 months);
  - Lawful permanent resident abuser (≈ 18 months).
- **VAWA confidentiality: protections against the release of information and reliance on abuser provided information**
- **Lawful permanent residency**
  - Citizen perpetrator apply upon approval (1 year)
  - Lawful permanent resident perpetrator (≈ 5+ years)

# VAWA Cases: Family Court's Role

- **Identify potentially eligible immigrants**
- **Provide DHS brochure**
- **Effect of divorce (timing is everything)**
- **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**
- **Grant custody to non-abusive parent**
- **Deny inappropriate discovery requests**
  - **Preserve federal VAWA confidentiality**

## 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, battery, abandonment, neglect
- **AND 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**

Materials: SIJS Examples Provided By Case

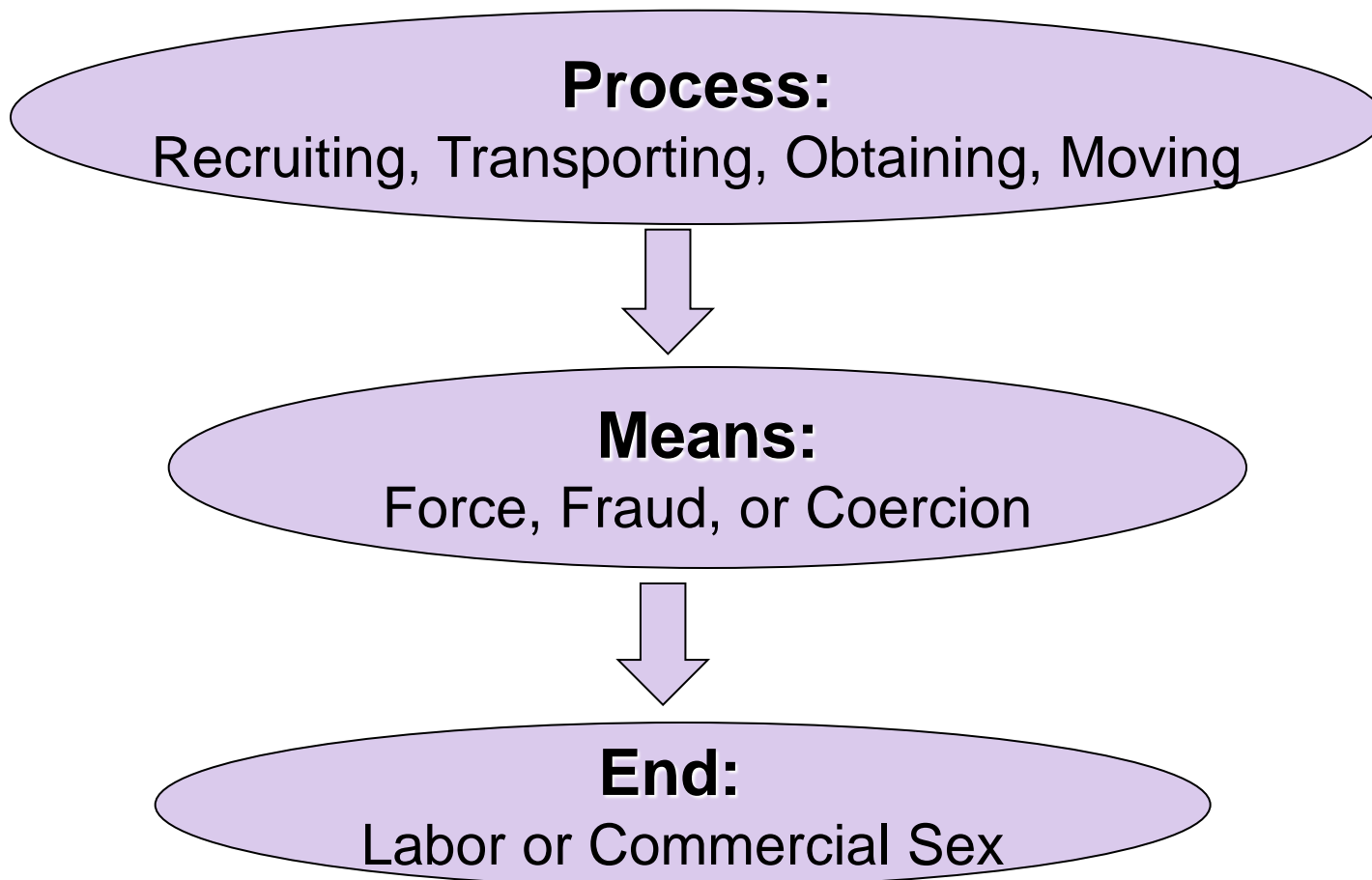
## What Children with SIJ Status Receive

- **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 (some state benefits – not in TX)**
- **Eligible for citizenship after five years**
- **SIJ's may NEVER file family petition for natural parents**

# Congress enacted VAWA self-petitioning (1994) and the T and U-visa (2000) to:

- **Allow victims to report crimes and access to justice without fear of deportation**
- **Increase prosecution of perpetrators of crimes against immigrant victims**
- **Enhance victim safety**
- **Keep communities safe**
- **Improve immigrant community relationships with justice system**

# Severe form of human trafficking for Continued Presence and T Visa



# Severe Form of Human Trafficking

- **Labor trafficking** Materials Victim Bench Card Provides More on Trafficking
  - The Process: labor was attained by recruiting, harboring, transporting, providing, or obtaining a person for labor;
  - The Means: used to procure the labor included force, fraud, or coercion
  - The End: the labor procured for a certain purpose.
    - **Involuntary servitude, peonage, debt bondage, or slavery**
- **Sex Trafficking**
  - The End: A commercial sex act; and
  - The Means: that was induced by force, fraud, or coercion.
  - Under 18 year old sex trafficking victims are only required to prove the commercial sex and are not required to prove the means

# Force, Fraud, or Coercion

- Debt servitude
- Surveillance
- Physical barriers
- Threats to safety
- Physical isolation
- Psychological isolation
- Threats to deport or report to law enforcement
- Holding passports or identity documents
- Threats to family members

## Trafficking v. Smuggling

- **Crime against a person**
- **Contains an element of coercion**
- **Subsequent exploitation**
- **Trafficked people treated as victims**
- **Unauthorized border crossing**
- **No coercion**
- **Facilitated entry by another person**
- **Smuggled people treated as criminals**

## U-Visa Requirements

- **Victim of a qualifying criminal activity**
- **Has been, is being, or is likely to be helpful in**
  - **Detection, investigation, prosecution, conviction or sentencing**
- **Possesses information about the crime**
- **Crime occurred in the U.S. or violated U.S. law**
- **Suffered substantial physical or mental abuse as a result of the victimization**

Materials: U visa toolkit, Helpfulness Tool and Reference Guide



## Who can sign a U visa Certification?

- **Any entity that detects, investigates or prosecutes criminal activity may sign a certification:**
  - **Based on probable cause = detection**
    - Judges
    - EEOC, State and federal departments of Labor
  - **Investigation or prosecution**
    - Police and Prosecutors
    - Child or Adult Protective Services
    - Federal agencies (DHS, ATF, FBI)
  - **Other state/local/federal government agencies in who**
    - detect, investigate, prosecute, convict, sentence

# Department of Homeland Security Excerpts from law enforcement roll call videos

**Video 1:  
3:13 to 8:38**

**<http://niwap.org/training/DHS-roll-call/>**

- **Domestic violence**
  - **Sexual assault**
  - **Rape**
  - **Incest**
  - **Prostitution**
  - **Torture**
  - **Female genital mutilation**
  - **Felonious assault**
  - **Manslaughter**
  - **Murder**
- ▶ **Kidnapping**
  - ▶ **Abduction**
  - ▶ **Trafficking**
  - ▶ **Involuntary servitude**
  - ▶ **Slave trade**
  - ▶ **Being held hostage**
  - ▶ **Peonage**
  - ▶ **Fraud Foreign Labor Contracting**
- ▶ **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%**
- **Kidnapping, being held hostage, unlawful criminal restraint, torture 8.47%**
- **Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation 5.3%**

# Law Enforcement Certification Form I-918 Supplement B

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

U.S. Citizenship and Immigration Services  
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)	Gender		Date Resubmitted
	<input type="checkbox"/> Male	<input type="checkbox"/> Female	Date
Part 2. Agency information.			Date Reloc Sent
Name of Certifying Agency			Date
Name of Certifying Official	Title and Division/Office of Certifying Official		Date
Name of Head of Certifying Agency			Reloc Rec'd
Agency Address - Street Number and Name			Date
	Suite #		Remarks
City	State/Province	Zip/Postal Code	
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 <b>Orloff</b>	Given Name <b>Leslye</b>	Middle Name <b>E</b>
Other Names Used (Include maiden name/nickname)		
Date of Birth (mm/dd/yyyy) <b>08/28/1956</b>	Gender <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	

**Part 2. Agency information.**

Name of Certifying Agency <b>Travis County Court</b>		
Name of Certifying Official <b>Lora Livingston</b>	Title and Division/Office of Certifying Official <b>Local Administrative</b>	
Name of Head of Certifying Agency <b>Judge Lora Livingston Judge.</b>		
Agency Address - Street Number and Name <b>1000 Guadalupe Street</b>		
City <b>Austin</b>	State/Province <b>TX</b>	Zip/Postal Code <b>78767</b>
Daytime Phone # (with area code and/or extension) <b>512-555-5555</b>	Fax # (with area code) <b>512-555-5556</b>	
Agency Type <input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> Local		
Case Status <input type="checkbox"/> On-going <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Other		
Certifying Agency Category <input checked="" type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other		
Case Number <b>H-62632-11</b>	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	<b>stalking</b>

**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 3. Criminal acts. (Continued.)**

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)	Date (mm/dd/yyyy)
	12/19/12		

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

HRS sec. 709-906 Abuse of a Family or Household Member

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States?

Yes  No

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?

Yes  No

b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

c. Where did the criminal activity occur?

Austin, TX

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

I have probable cause to believe Husband strangled Mrs. Orloff during a domestic dispute and has been following her and tracking her movements

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

As a result of Mrs. Orloff being assaulted and strangled she suffered injuries to her neck and . (attached are copies of photographs submitted to the court and the protection order I issued)

**Part 4. Helpfulness of the victim.**

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in Part 3.

Yes  No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided)

Yes  No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)

Yes  No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.)

Yes  No



**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)

October 19, 2013



## 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”

# The U-visa Application Process

- **Certification**
- **Immigrant completes and submits application**
  - **Affidavit**
  - **Proof of substantial harm**
  - **Fingerprints**
- **Decision from DHS within about 1 year**

## U-visa Facts and Benefits

- **Only 10,000 U-visas can be granted annually**
- **The U-visa grants a temporary 4 year stay**
- **Work authorization ( 1 year)**
- **Some state benefits (TX – prenatal care for adults; TX – children any form of health care)**
- **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**

# Department of Homeland Security Excerpts from law enforcement roll call videos

**Video 2:  
3:21- 4:29**

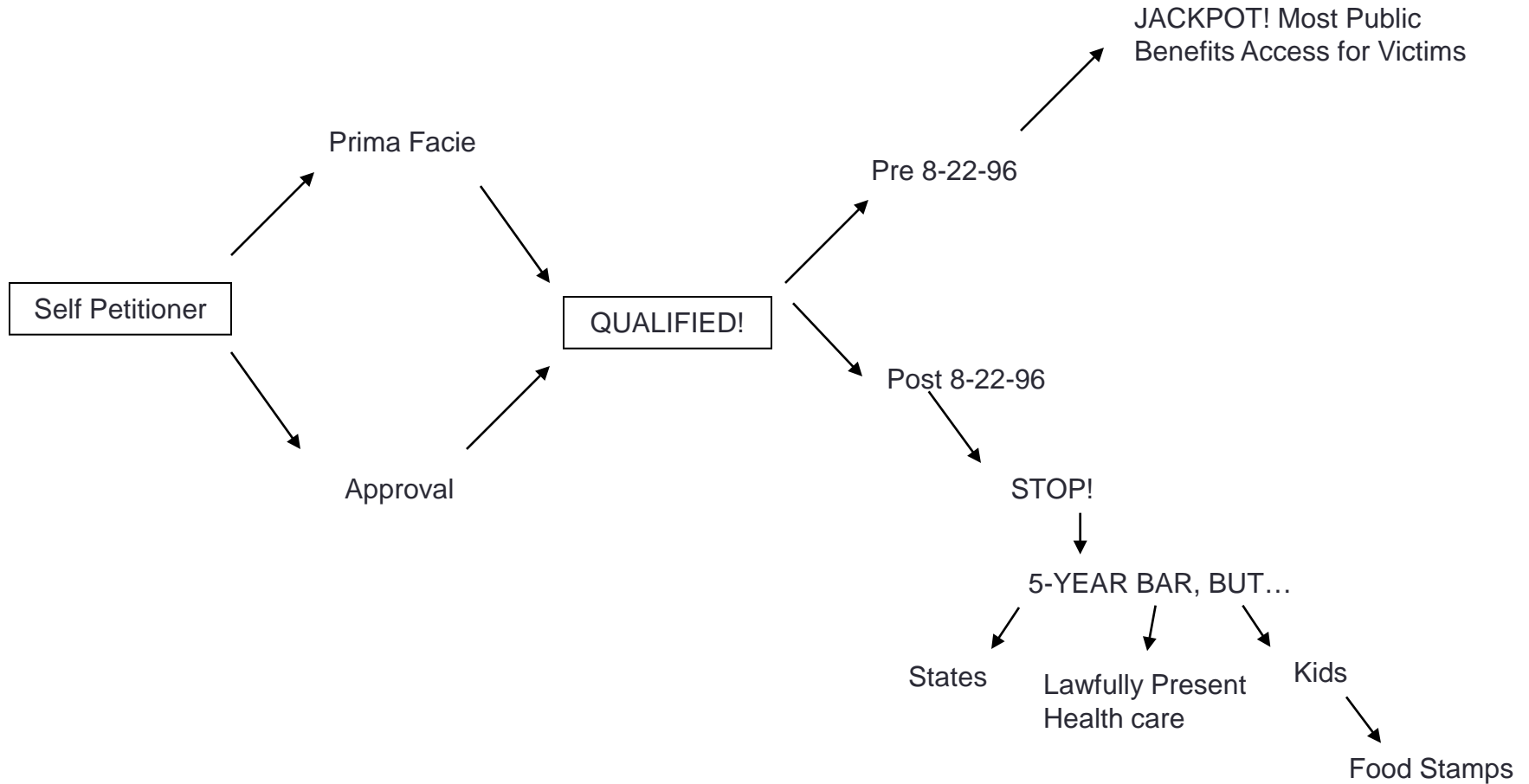
**<http://niwap.org/training/DHS-roll-call/>**

# Immigrant Benefit Classifications

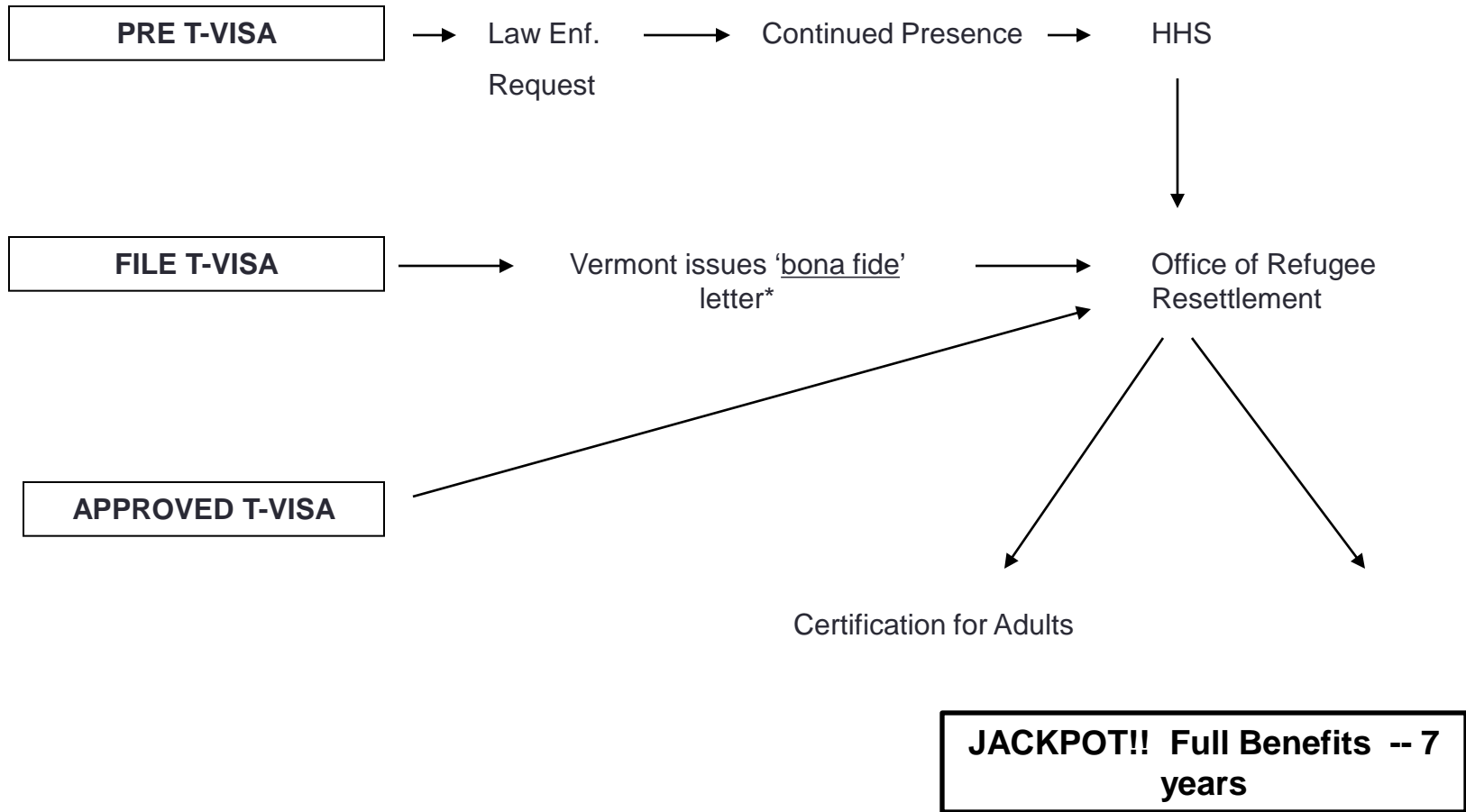
- **Access to Benefits and Services Grows As Victims Pursue Immigration Relief**
- **Citizens : Full access to benefits under US and State law**
- **Trafficking victims and Refugees: Full access 7 years**
- **“Qualified Immigrants”**
  - Access to Housing, Education, Prenatal care, child health care, child food stamps immediately
  - 5 year bar -TANF, Medicaid, Child Care, SSI, Food Stamps
- **Lawfully Residing – U visa and SIJS = Health care**
- **PRUCOL (Permanently Residing Under Color of Law)**
  - States can opt to offer state funded benefits to persons residing under color of law – Not applicable to Texas
- **Undocumented Immigrants**

# Immigrant Access to Benefits and Services

- **Wide range of services available to all non-citizens without restriction**
- **Immigrants crime victims and children get more benefits access**
  - **Once immigration cases is filed and deemed valid**
    - **VAWA cases**
    - **Trafficking victim cases**
  - **Upon approval**
    - **U visas**
    - **Special immigrant Juvenile Status**

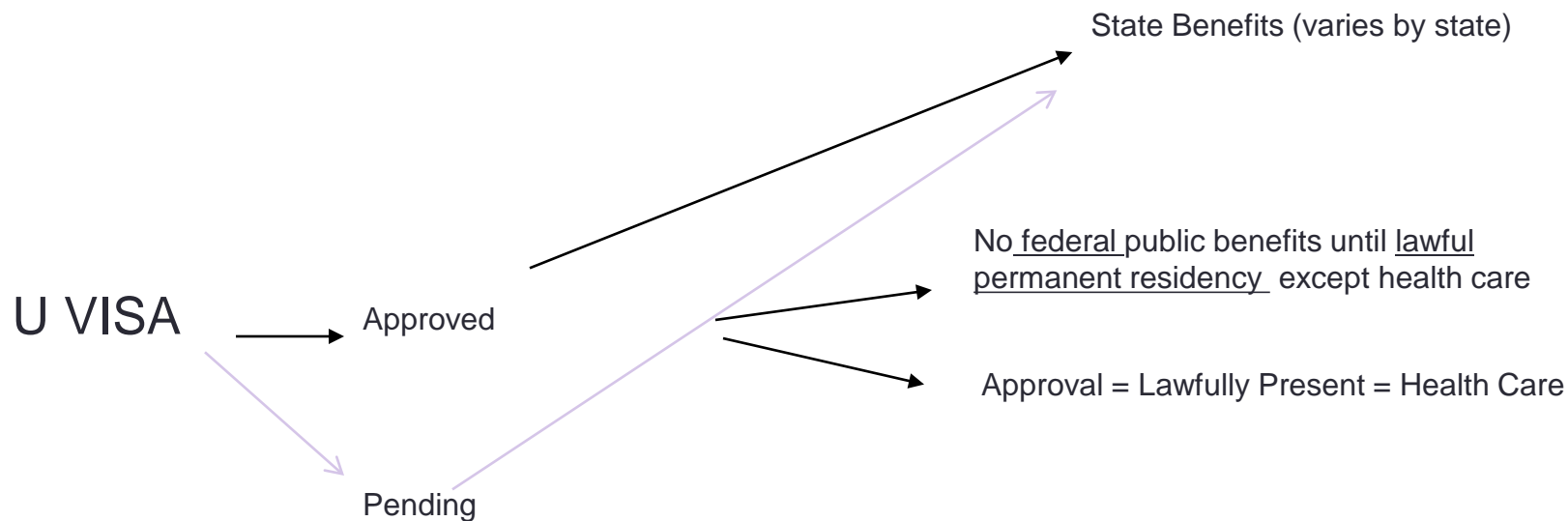


Materials U Visa Benefits Eligibility Bench Card



Materials T Visa Benefits Eligibility Bench Card





Materials U Visa benefits eligibility bench card

# U.S. Attorney General's List of Required Services

- **In-kind services**
- **Provided at the community level**
- **Not based on the individuals income or resources**
- **Necessary to protect life & safety**
- **Programs covered by this AG order are open to all persons**
- **State and local governments CANNOT impose immigrant access restrictions**

Materials Public Benefits Bench Card

# Government funded assistance available – no immigration restrictions

- **Crisis counseling and intervention**
- **Child and adult protection services**
- **Violence and abuse prevention**
- **Crime victim assistance**
- **Shelter and transitional housing for up to 2 years**
  - homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- **Medical and public health services**
  - Treatment/disease prevention
  - Mental health, disability, or substance abuse assistance necessary to protect life or safety

Government funded assistance available – no immigration restrictions

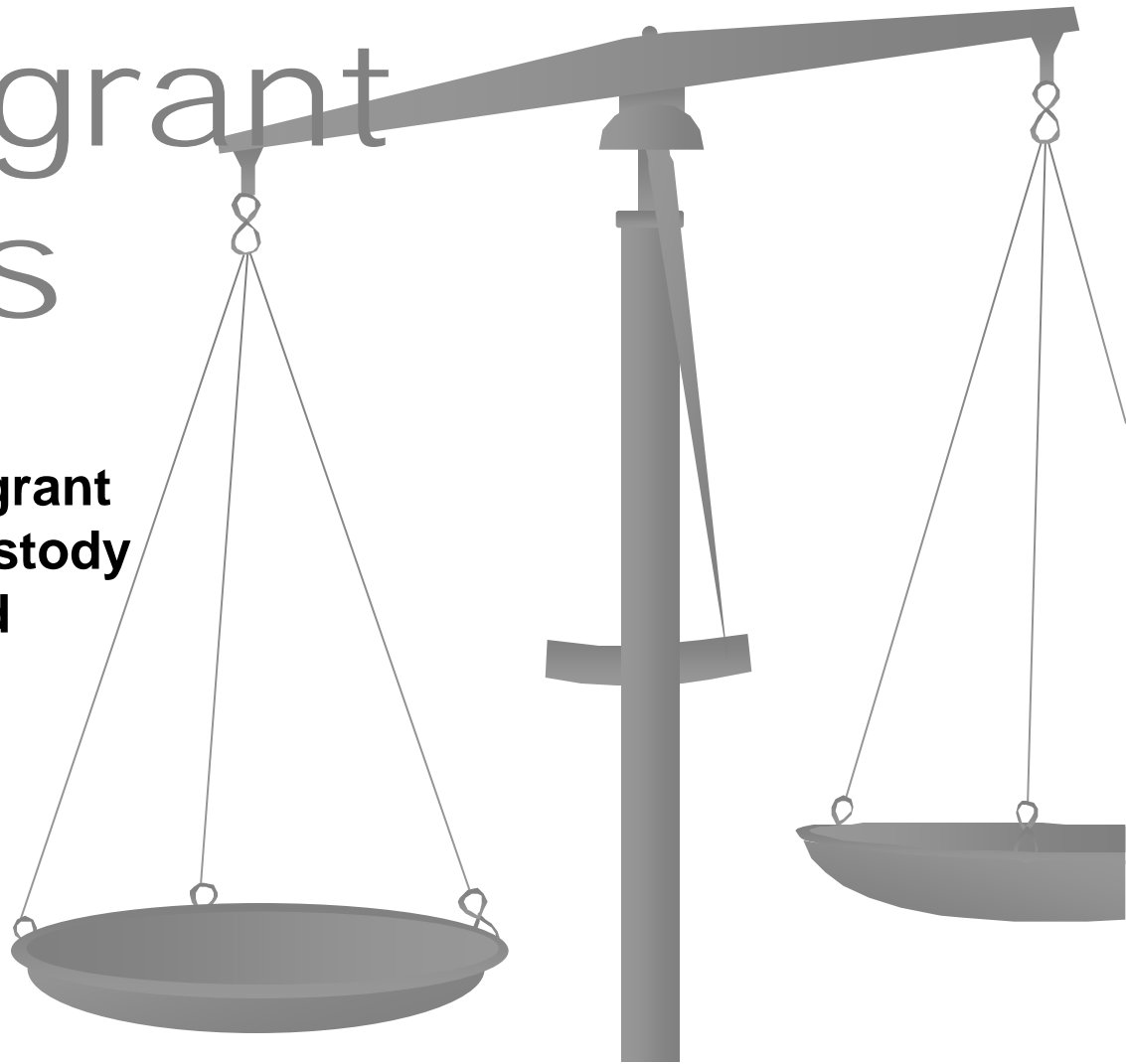
- **Help during adverse weather conditions**
- **Soup kitchens**
- **Community food banks**
- **Nutrition programs for seniors and others requiring special assistance**
- **Activities designed to protect the life and safety of workers, children, youth and community residents**

## Other Federal Benefits Available to ALL Immigrants

- **HHS funded health care HRSA.gov**
- **Elementary and Secondary education**
- **School lunch and breakfast**
- **WIC**
- **Immunizations, testing, and treatment of communicable diseases**
- **Community Services Block Grant funded programs**
  - **ESL**
  - **Vocational Training**
  - **Transitional shelters**
  - **Community gardens**

# Custody of Children in Immigrant Families

**Materials Immigrant  
Victims and Custody  
Bench Card**



## Best Interests and Immigration

- **Not factors: Immigration status or English language proficiency**
- **Requirements not to award custody to batterers**
- **Immigration information distracts the judge from focusing on best interest factors listed in the statute**
- **Immigrant victims involved in custody cases will qualify for**
  - **VAWA,**
  - **U visa**
  - **DHS victim/witness protections**
  - **Humanitarian Release**

## 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



# 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.”**

## Myths and 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
- **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.

## Myths and Facts

- **Need to be awarded custody to give child immigration benefits**
  - Parent can apply for child to have immigration benefits whether or not they have custody
  - Citizenship
- **Undocumented parent cannot receive public benefits for the child**
  - Incorrect, they can apply for “child only” benefits

## Myths and Facts

- **Undocumented parent cannot financially support child**
- **Immigrant victim would have work authorization but batterer never filed papers (Catch 22)**
- **Immigrant victim parents are likely eligible for immigration benefits that include:**
  - legal work authorization
  - some access to benefits
- **Child/Spousal support can be ordered**
- **Economic relief**
  - Housing
  - Health care

## Myths and Facts

- **Parent undocumented, detained or deported can serve as a basis for termination of parental rights?**
- **Constitutional right to custody absent unfitness**
- **Overriding presumption that parent child relationship is constitutionally protected and**
- **In child's best interest to stay with/be reunited with their parent**
- **Applies to all families without regard to**
  - **Immigration status; detention or deportation**
- **Child's best interests not comparison of natural vs. adoptive parent's cultures, countries, or financial means**

# 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**

## New DHS Policy

- **Designed to bring detained parents to court to participate in state court proceedings**
- **Particularly those involving their children**
- **Also policies designed not to detain parents caring for children**



# VAWA Confidentiality and Its Implications for State Courts

Materials VAWA Confidentiality Bench Card



## VAWA Confidentiality

- **DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers (all victims)**
- **Enforcement locational prohibitions (all victims)**
- **DHS cannot disclose VAWA information to anyone (except in limited circumstances)**
  - (protects applicants for victim related immigration benefits)

## VAWA Confidentiality and State Courts

- **Perpetrators using state court discovery to obtain VAWA confidentiality protected information**
- **Prohibited enforcement locations includes courthouses**

## 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**

Also by DHS Policy .....

- **Schools**
- **Places of worship**
- **Funerals**
- **Religious activities**

## 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**

# Prohibition on disclosure of information

## ● **Limited exceptions**

- Legitimate law enforcement or national security purposes
  - If released, limited to “a manner that protects confidentiality of the information”
- For judicial review (in immigration court only)
- Statistical data collection
- Benefit granting or public benefits purposes
- Congressional judiciary Chairs and Ranking Members for oversight without personal or locational information
- With the victim’s permission DHS may communicate with victim’s services organizations to secure assistance for the victim

## Hawke vs. DHS

208 U.S. District Lexis 87603, Sept. 29, 2008

- **Judicial review exception applies only to immigration cases reviews and appeals**
- **No exception to VAWA confidentiality that would allow civil, family or criminal courts access to VAWA confidentiality protected information**

## Hawke vs. DHS Implications

- **Civil and family court judges should not allow or facilitate access to information that**
  - Could not be obtained from DHS due to VAWA confidentiality prohibitions
- **Federal courts – DHS not ordered to turn over files**
- **Courts should deny**
  - Discovery
  - Motions seeking release of protected information
  - Cross-examination
- **Courts are**
  - Granting protective orders, motions in limine, Rule 11 sanctions
  - Denying discovery



# 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**
- **Violations include**
  - Enforcement at prohibited location
  - Seeking or using information from a prohibited source
  - Disclosing or permitting disclosure of information in or about any VAWA, T or U visa case
  - Making a false certifications to immigration court

## 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 chart**
- **Legal and Social Science Bibliographies on Immigrant Crime Victims**