

When Federal Immigration Laws and State Family Laws Intersect: Promoting Just and Equitable Outcomes for Immigrant Survivors and Children

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2024 Oregon Judicial Conference

Bend, Oregon October 8, 2024

Thank You to SJI

This project was supported by Grant No. SJI-22-T-037 from the State Justice Institute. The opinions, findings, conclusions, and recommendations expressed by program faculty and in program materials are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

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- Forum on Human Trafficking and Immigration in State Courts
- What is the NJN (402 judges – 42 states & territories)
 - Opportunity to engage in discussions with other judges
 - Receive latest information
 - Peer-to-Peer training opportunities
 - Get your questions answered
 - Receive the information you need through
 - Webinars, trainings, and technical assistance
 - Bench cards, tools and training materials
- **We are circulating a sign up sheet**

Learning Objectives

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

- Know how accurate immigration law information results in just and fair outcomes in family and criminal court cases
- Recognize facts that indicate a party qualifies for crime victim related forms of legal immigration status
- Understand the role Congress created for state court judges in signing U and T visa certifications and issuing Special Immigrant Juvenile Status (SIJS) judicial determinations
- Know that Violence Against Women Act (VAWA) confidentiality laws impacts discovery
- Look up which immigrants qualify for which publicly funded benefits and services in Oregon

**Many Immigrant Victims of
Domestic Violence, Child
Abuse, Sexual Assault and
Other Crimes Are Eligible for
Immigration Relief**

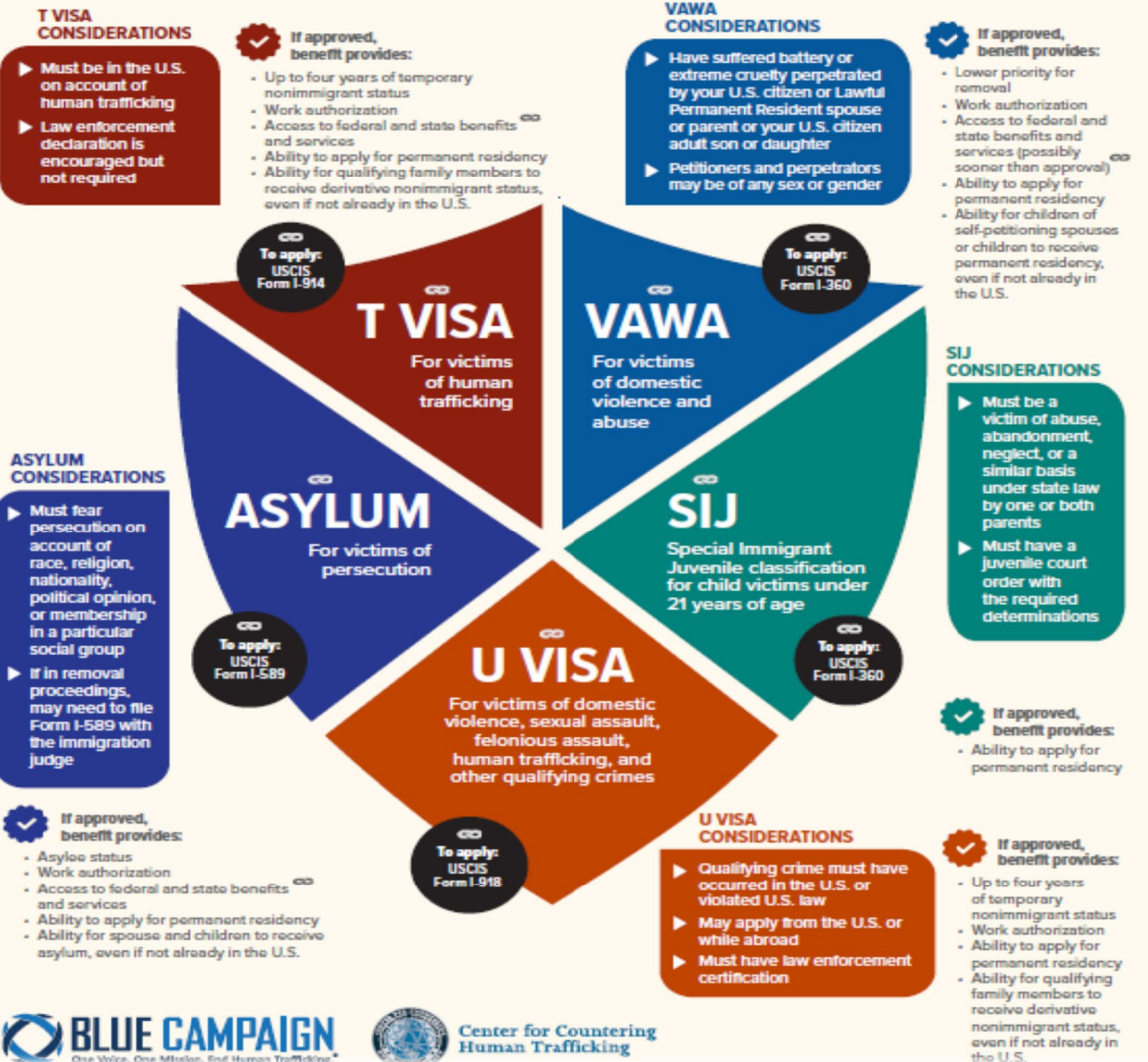
Purpose Crime Victim Based Immigration Relief

Congress enacted VAWA self-petitioning (1994), the U and T visas (2000, 2005, 2008) & Special Immigrant Juvenile Status (SIJS) (1990,2008) to:

- Enhance victim safety
- Allow victims to report crimes and seek help from police, prosecutors, and courts without fear of deportation
- Improve access to justice in family/criminal/civil courts for immigrant victims of
 - Domestic & sexual violence, stalking, human trafficking and child/elder abuse
- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Keep communities safe

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

Immigration Protections for Noncitizen Victims of Crime and Abuse



Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
 - Child abuse
 - Elder abuse
 - 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
 - Hate Crimes
 - Video voyeurism
 - **Parent perpetrated**
 - **Child abuse**
 - **Child neglect**
 - **Child abandonment**
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
 - Legal work authorization (6 months to 2 years from filing)
 - Issuance of federally recognized driver's licenses and IDs
 - Increased access to federal and state public benefits
- VAWA confidentiality
- Implication for the community

VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
 - Immigration law definition of domestic violence
- By a U.S. Citizen or Permanent Resident
 - spouse;
 - parent; or
 - Citizen adult son/daughter (over 21)
- With Whom Self-Petitioner Resided
 - No time period required
- Good Moral Character
- Good Faith Marriage
- VAWA cancellation of removal has similar eligibility requirements
- **2023 time to work authorization = 4-34 months**

Battered Spouse Waivers

- For domestic violence survivors, provides for waiver of the “condition” placed on the status of immigrant spouses of marriages less than two years old
- Waives both the joint filing requirement and two year wait for full lawful permanent resident status
- Requires proof that
 - Marriage to U.S. citizen or permanent resident entered into in good faith *and*
 - Spouse or child was battered or subjected to extreme cruelty
 - Child can include step-child

Immigration and Nationality Act § 216(c)(4)

2023 time to approval 17.5 to 29 months

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, neglect, or dependency
 - By at least **one parent**
- To apply must submit required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- **2023 time to work authorization = 6 months**

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
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- **2023 time to work authorization – 60-62 months**

T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.D. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking.
Exceptions
 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- **2023 time to work authorization = 18 months**

Updated Involuntary Servitude Definition

- A condition of servitude
 - Induced by means of any scheme, plan, or pattern
 - Intended to cause a person to believe that, if the person did not enter into or continue in such condition
 - That person or another person would
 - Suffer serious harm or physical restraint
- A condition of servitude induced by the abuse or threatened abuse of legal process.

8 C.F.R. § 214.201

Involuntary Servitude in a Domestic Violence Relationship

- Abuser/Trafficker controls victim's liberty creating conditions of servitude
- Expectation that the victim's life fulfills the trafficker's orders
 - E.g., demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and/or constant availability to labor regardless of health or energy;
- Lack of control over the victim's own wages (or not paid) despite laboring under the trafficker's demands; or
- The imposition of unequal living arrangements as part of a campaign of force, fraud, and coercion
 - E.g., unequal sleeping arrangements, living arrangements, or access to nourishment.

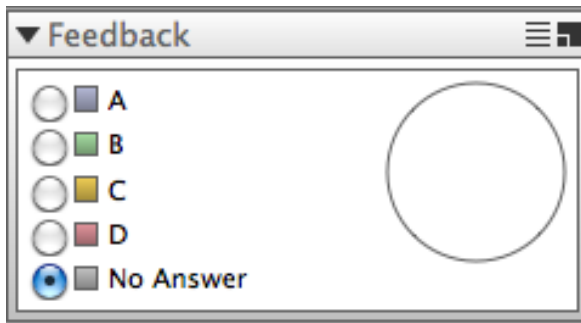
<https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>

Clara and Eduardo Case Scenario

Clara met Eduardo, a lawful permanent resident, 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 of Miguel and of 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 the 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.

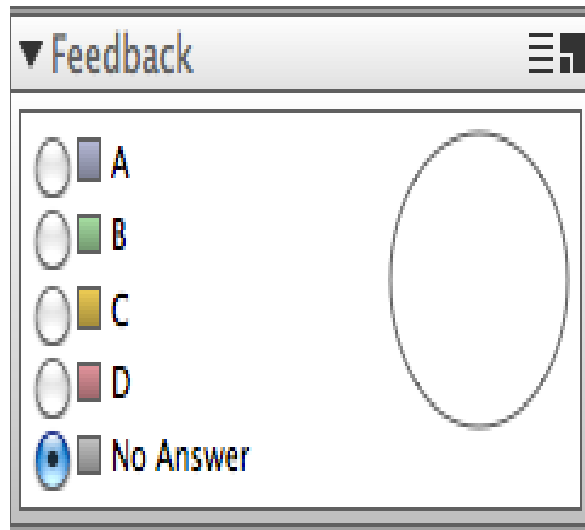
What forms of immigration relief would Clara qualify for:

- A. U visa
- B. Included in Lupe's VAWA self-petition
- C. T visa
- D. File her own self-petition



The image shows a 'Feedback' window with a title bar containing a dropdown arrow and the text 'Feedback'. Below the title bar is a list of radio button options: A (blue square), B (green square), C (yellow square), D (red square), and No Answer (grey square). The 'No Answer' option is selected, indicated by a blue dot inside its radio button. To the right of the options is a large empty circle.

What forms of immigration relief would Lupe *NOT* qualify for:



- A. VAWA self-petition
- B. U visa
- C. Special Immigrant Juvenile Status (SIJS)
- D. T visa

What forms of immigration relief would Miguel qualify for:

- A. VAWA self-petition
- B. U visa
- C. T visa
- D. SIJS

▼ Feedback

A

B

C

D

No Answer

Evidence Based Research

Evidence Based Research Has Found Increased Access to Justice

- Courts that issue U/T visa certifications and SIJS judicial determinations
 - See greater numbers of immigrant victims seeking protection orders & custody, and participating in criminal, civil, and family cases
 - Even in times of increased anti-immigrant sentiment and immigration enforcement

Rodrigues, Orloff, Couture-Carron, and Ammar, Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Recommendations, **National Center for State Courts, Trends in State Courts** (2018)

<https://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings/>

After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- Increased justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 60% seek protection orders and/or custody
 - 22% help other victims report abuse and seek help/justice
- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
 - 74% decline in immigration-related abuse
 - 78% decline in threats to snatch/cut off access to children
 - 65% decline in efforts to use the immigration status of the victim to gain an advantage in family court

VAWA Confidentiality Prongs

- **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 (and their family members)
 - DHS data base “384” system + sanctions/\$5000 fine
- **Location Prohibitions:** Enforcement of locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone
 - VAWA self-petitioners/cancellation/suspension, T & U visas, Battered Spouse Waiver, Abused Visa Holder Spouses
 - Impacts state family/civil/criminal court discovery

Hawke v. Dep't of Homeland Security

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

(Judicial review exception)

- 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”

Implications of VAWA Confidentiality

- Information about the existence of case file contents and actions taken in VAWA confidentiality protected cases generally not discoverable in state court
- In criminal cases only the U or T visa certification itself and any cover letter is discoverable
 - If court determines it is relevant and potentially exculpatory
 - This is sufficient for cross examine victim's credibility
- In civil employment cases with multiple victims where EEOC certified, redacted certifications may be discoverable
- In family cases no discovery

In the Clara and Eduardo Scenario which of the following is discoverable in a state court case?



- A. Information from Clara's VAWA self-petition file in Eduardo's criminal case
- B. Information from Clara, Lupe's or Miguel's VAWA, T or U visa immigration case files in a family court case
- C. U visa certification signed by law enforcement, prosecutors or a judge in the criminal prosecution of Eduardo
- D. U visa certification signed by law enforcement, prosecutors or a judge in a custody case between Clara and Eduardo

New Mexico Supreme Court Ramirez & Reyes-Mendoza v. Marsh S-1-SC-39966 (May 7, 2024)

- VAWA confidentiality protections preclude discovery of U or T visa applications and related materials in a criminal case from:
 - The victim or the victim’s family members
 - The victim’s immigration attorney
- The Court issued two writs of superintending control overturning judicially ordered discovery

Demaj v Sakaj (D. Conn, 2012) –U Visa/Custody Case

- 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 Visas Promote Trust and Access
to Justice:
U Visa Certification By Judges

Oregon U Visa Certification Law

147.620(1)&(10)

- All Oregon judges
- Shall respond within
 - 90 days
 - 14 days if victim in removal proceedings
- Rebuttable presumption of helpfulness
 - If the victim has not refused or failed to provide information and assistance reasonably requested
- Many only deny certification for
 - Lack of U visa covered criminal activity
 - Lack of past *OR* present *OR* likely future helpfulness
 - Lack of jurisdiction over certification request
 - Other basis for which a certification may lawfully be denied
- Reporting requirement

Oregon - ORS 147.620(1)&(10) Certification Procedures

- Defines Certifying Agencies as
 - State or local law enforcement agency
 - Prosecutor's or district attorney's office
 - The Judicial Department, with respect to a judge of a state court acting as a certifying official
 - A judge other than a judge of a state court and
 - Any other agency with responsibility for detection, investigation or prosecution of criminal activities, including but not limited those defined in 8C.F.R. 214.14.
 - Child and adult protective services
 - State labor enforcement agencies
 - State agencies with civil or criminal investigative authority
- Certifying agencies required to designate certifiers, develop written procedures, and report on certifications and denials annually

Oregon ORS 147.620 (2) & (4) Certification Procedures

- Upon the request of a victim or a victim's representative, a certifying official shall –
 - Certify on the USCIS certification form that the victim has been helpful if
 - The victim is a victim of a U visa covered criminal activity as defined by USCIS
 - The victim has been helpful, is being helpful or is likely to be helpful to the detection, investigation or prosecution of the qualifying criminal activity
 - Rebuttable presumption of helpfulness if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement

Oregon ORS 147.620 (5) Certification Procedures

- A certifying official processing a certification under this section shall:
 - Fully complete and sign the certification form
 - Include on the form specific details about
 - The nature of the qualifying criminal activity investigated or prosecuted and
 - A detailed description of the victim's helpfulness or likely helpfulness
 - If the qualifying criminal activity was committed by an adjudicated youth as defined in ORS 419A.004 the certifying official shall include only
 - The name of the adjudicated youth;
 - The case number, if applicable;
 - And A description of the qualifying criminal activity.

Oregon ORS 147.620 (6) & (7) Certification Procedures

- Certifying officials shall grant or deny certification
 - Within 90 days of the request, or
 - 14 days if the victim is in removal proceedings
- Many only deny certification for
 - Lack of U visa covered criminal activity
 - Lack of past, present *OR* likely future helpfulness
 - Lack of jurisdiction over certification request
 - Other basis for which a certification may lawfully be denied

Oregon ORS 147.620 (7)& (8) Certification Procedures

- Denials must be in writing and state: authorized reason, date, and internal case number. Denials are not appealable
- Victim receiving denial may:
 - Provide supplemental information to certifier
 - Seek certification from another certifier
- Agencies prohibited from disclosing immigration status of victim
- Certification documentation confidential unless
 - Required by state or federal law or legal process;
 - Required by ORS 135.815 (Disclosure to defendant)
 - Constitutionally required
 - Requested by a law enforcement agency and necessary for the investigation of a criminal charge, or
 - Authorized by the victim.

U Visa Requirements

Victim (Certification)

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law
- Admissible to US or granted waiver

Helpful (Certification)

- Has been, is being, or is likely to be
- Detection, investigation, prosecution, conviction, or sentencing

Harm (Victim's Application)

Substantial physical or mental harm as a result of having been a victim of criminal activity

Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
 - Child abuse
 - 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 or any similar activity**

Similar Criminal Activity

- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:
 - Hate crimes
 - Video voyeurism
 - Elder abuse/abuse of adults with disabilities
 - Child abuse
 - Robbery or aggravated robbery could include felonious assault, depending on the evidence and state law definition

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 and identifies the crime(s).

Certification provides evidence to DHS.

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

T Visa Declaration

- Identify type of trafficking (sex, child sex, labor)
- Describe the victimization
- Identify relationship with the crime detected, under investigation, being prosecuted, conviction or sentencing and dates
- Comments on potential for retaliation or revenge from trafficker if victim is removed from U.S.
- Dates of trafficking
- Statutory citations to crimes
- Information about victims involvement in case(s) against trafficker
- Names and relationship of any family members involved in the human trafficking

Judges detect “Criminal Activities” and “Helpfulness” In Wide Range of Court Cases

- Family
 - ✓ Civil Protection
 - ✓ Custody
 - ✓ Divorce
 - ✓ Paternity
 - ✓ Adoption
- Juvenile
 - ✓ Child Abuse, Neglect, or Termination of Parental Rights
 - ✓ Delinquency
- Criminal
- Probate
 - ✓ Elder / Dependent Adult Abuse
 - ✓ Guardianship
 - ✓ Conservatorship
- Civil
 - ✓ Employment
 - ✓ Tort damages against a perpetrator

Which Judicial Officers Can Certify?

- Federal, state, & local
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
 - Others with delegated decision-making authority
- Judge will need to amend the form

Who Else Can Certify?

- Federal, state, and local
 - Child abuse agencies
 - Elder abuse agencies
 - Police
 - Sheriffs
 - State police
 - FBI, HSI, ATF
 - Prosecutors
- Federal or State Departments of Labor (DOL)
- Equal Employment Opportunity Commission (EEOC)
- Other government agencies with civil, criminal or administrative investigative authority

Signor = Head of agency or designee

There is **NO** statute of limitations on signing a certification.

Why might a victim come to a judge for certification?

Why Victims Seek Judicial Certifications

- The victim's only contact with the justice system was in a custody, civil protection order, employment, or child welfare case
- No language access to police when victim called for help
- Police did not investigate and case never sent to prosecutor
- Judge observed victim's attendance and participation in criminal case

Things to Know About Certification

- Judges, law enforcement and other certifiers
 - May complete U visa certification if they
 - Observe or detect a victim's helpfulness
 - Can be a civil, family or criminal case
- The investigation, prosecution or family court case
 - Can still be ongoing
 - Can be closed or may have settled/plead
 - Offender may not have been identified or arrested
 - May have occurred a long time ago
 - No statute of limitations
 - May never have been criminally prosecuted

Victim-
centered
approach

What Helpfulness do Judges See?

- Certification based on helpfulness to courts
 - Detection(family/juvenile/civil/criminal)
 - Filing pleadings
 - Testimony
 - Attending court
 - Seeking court orders
 - Working with police/prosecutors
 - Conviction/Sentencing
 - Criminal cases
 - Contempt proceedings

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
- U Visa Helpfulness Checklist (2019)
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>

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
 - 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

Special Immigrant Juvenile Status

Raise your hand if you have issued SIJS findings in your court orders.



Special Immigrant Juvenile Status (SIJS)

- Humanitarian immigration relief for under 21 year old unmarried children who cannot be reunified with one or both parents who...
 - Abused, abandoned or neglected the child
- **State court judicial determination is a required SIJS filing prerequisite**
- Provide evidence for child's immigration case
- The state court order reflects judge's expertise on children's best interests
- State court order does **not** grant immigration status

SIJS Judicial Determinations Can Be Issued When Family Court Judge Awards Custody

- Child is dependent on a juvenile court or **legally committed *to or placed under the custody of*** an agency or department of State, or ***an individual*** or entity appointed by a State court.
- **Child's best interest** would not be served by being returned to his or her country of origin.
- **Reunification** with one or both parents **is not viable due to** abuse, neglect, abandonment, or a similar basis under state law (through adjudication by USCIS)

8 U.S.C. § 1101(a)(27)(J)

Family Court Cases That Include Decisions About Care & Custody of Children

- Dependency/Delinquency
- Civil protection order cases
- Custody cases
- Divorce cases
- Paternity and child support cases
- Adoption cases
- DHS states: All are of the above = *Juvenile courts*
 - Juveniles = all children
- SIJS Bench Book has chapters on each case type
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>

In the Clara and Eduardo Scenario in which of the following cases could the court NOT issue SIJS findings for Lupe as part of the court's order?



- A. A protection order case in which the order grants Clara custody
- B. A custody case brought by Clara
- C. The criminal prosecution of Eduardo
- D. A child welfare case in which the court made findings of Eduardo's abuse and placed the children with Clara

Return to Home country not in child's best interests

- Identify each potential custodian state law requires the court to consider in U.S. and home country
- Apply state best interests factors to each placement
- Court order states the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors, court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
- Then, if relevant, address other country conditions
 - Gangs, other harmful factors

Reunification Not Viable

- Reunification with a parent is not viable due to abuse, neglect, abandonment, or similar state law basis
- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Means granting the abusive parent custody is not envisioned by the court as a viable option
 - Duration: through adjudication of SIJS application
- Changes in circumstances can occur
 - But not granting full legal/physical custody to abusive parent

Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state law under which the court is exercising jurisdiction.
- Follow your state court procedures and note that you do so to demonstrate that the court made an informed decision.
- Service of process tool

Best Practices to Address in SIJS Orders

- Make findings as to
 - The age of the child and the evidence relied upon
 - The child's parentage, naming each parent specifically
 - That the parent's identity is unknown (e.g., rape)
 - Abuse, abandonment, neglect suffered & impact on child
 - Address each occurring abroad and/or in the U.S.
 - Details of who the court awarded custody to and why
 - Include no-contact and other protective provisions
- Cite and apply only state law as to:
 - Definitions of abuse, abandonment, neglect, similar basis
 - Best interest
 - Jurisdiction

Delinquency and Criminal Issues

- Juvenile delinquency finding \neq conviction for immigration purposes

Delinquency and Criminal Issues

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

Is There a Waiver for SIJS Cases

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

PROTECTION ORDERS



NIJ Funded CPO Study Found

With support, immigrant victims will use and benefit from justice system assistance

- 60.9% did not know about CPOs
- 81% got CPO with help from a victim advocate or attorney
- 96% found them helpful
- 68.3% of violations immigrant related

Ammar, Orloff, Dutton, and Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research Criminal Justice Review 37:337 (2012)

Immigrants and Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions
- Dangers of issuing protection orders against immigrant victims

True or False?

Violation of a protection order is a deportable offense ?



True



False

Protection Orders and Immigration Considerations

- Violation of a protection order is a deportable offense
 - Can lead to loss of lawful permanent residency and other immigration consequences for the perpetrator
 - A finding of violation of the protective provisions of a protection order in any context can trigger deportation including findings in civil contempt cases and admissions for diversion
- Victims should not be charged with violation of orders issued for their own protection orders
- Issue Padilla warnings
- Appoint counsel if one party is unrepresented and both have filed for protection orders

Use Creative Remedies to...

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

Victims Who Stay: No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions
 - No abuse
 - No unlawful contact
 - Batterer's treatment

Custody of Children in Immigrant Families

Tool: Immigrant Victims and Custody Bench Card

Protecting Immigrant Mothers Protects Children

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

Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004)

<http://niwaplibrary.wcl.american.edu/pubs/co-occurencedvchildabuse/>

Is Immigration Status Relevant to Custody?

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



Myth vs. Fact:

Parents without Legal Immigration Status

Myth

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

Fact

1. DHS policies prevent detention/removal of immigrant parents who are crime victims
2. US citizens and lawful permanent residents are more likely to flee with children, especially when
 - There have been threats of kidnapping children
 - They are dual nationals
 - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for their children.

How Does Information About Protected Areas From Immigration Enforcement Help In Family Courts Cases?

VAWA Confidentiality

- Victims protected at courthouses in connection with civil/family/criminal cases related to
 - Domestic violence, sexual assault, trafficking, stalking
- Shelters, rape crisis centers
- Supervised visitation centers
- Family Justice Centers
- Programs serving victims

DHS Policy 10/27/21 At or Near:

- Schools and universities
- Medical or mental health care facilities
- Places of worship, religious events, weddings, funerals
- Places where children gather
- Social services: e.g., crisis, domestic violence, child advocacy, food banks, victim services, shelters, supervised visitation, family justice centers...
- Disaster/emergency response offered including family reunification
- Ongoing parade, demonstration, rally

Immigrant Parents and Child Custody

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

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

Divorce and Economic Support

Impact of Divorce

- VAWA self-petitioners:
 - Spouse must file within two years of final divorce
 - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
 - Students, Work Visa Holders, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Asylum
 - Employment
 - Family relationships
 - Cancellation of removal

Annulment Instead of Divorce

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

Affidavits of Support

- Each person who petitions for a family member to immigrate to the United States must execute a legally enforceable affidavit of support. 8 U.S.C. § 1182(a)(4)(C)(ii)
 - Contractually committed to support sponsored family member at annually at 125% of Federal Poverty Guidelines
 - Sponsor submits to DHS evidence of ability to support sponsored family member
- Affidavits of Support are enforceable as contracts by the sponsored immigrant
- Support obligation lasts till immigrant spouse
 - Naturalizes, dies, earns 40 quarters of work credit, or gives up lawful permanent residency and leaves the U.S.

Child Support & Immigration

- Payment of child support through the court provides a non-citizen parent with a history of child support payments that is
 - Helpful evidence of good moral character for either parent's immigration cases
 - VAWA self-petition, Cancellation of removal, Naturalization
- Lack of legal work authorization is not a valid defense to non-payment of child support
- Can order child support, but not a job search, of an undocumented non-custodial parent
- Can order non-custodial parent to obtain an ITIN and pay taxes

Why public benefits matters to a Judge?

How judges ensure that court orders help children and families in Oregon access public benefits and services they are legally eligible to receive?

Both documented and undocumented immigrants can access:

- Family Court – e.g. divorce, custody, child support, protection orders, child welfare
- Language Access
- Police Assistance
- Have perpetrators prosecuted
- Obtain public benefits for their children
- Elementary & Secondary education
- School lunch/breakfast
- Soup kitchens, food banks, nutrition assistance
- Communicable disease immunizations, testing, treatment, treatment from public health centers
- Services necessary to protect life and safety
- Legal Services
- Assistance for Crime Victims
- Emergency Medicaid
- Emergency Shelter
- Transitional Housing
- Child and Adult protective services
- Crisis counseling and intervention
- Violence/abuse prevention services

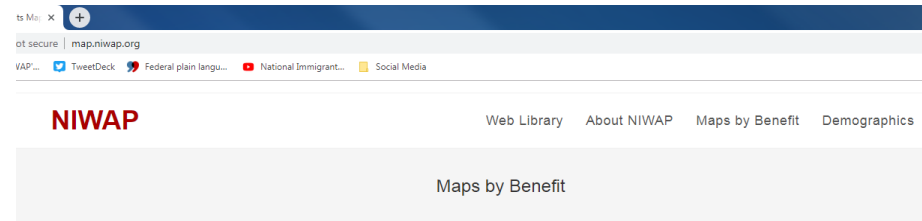
HHS Child Eligibility Letters

- TVPA requires government officials to report to Office on Trafficking in Persons within 24 hours of having credible information that an immigrant child “**may be a victim of trafficking**”
- HHS reviews Requests For Assistance (RFAs) and connects potential victims of trafficking with state and federal benefits and services
- The RFA for a trafficked child must be filed **before age 18**
- Receive interim assistance 90 days
- Eligibility letters give child trafficking victims access to benefits and services to the same extent as refugees indefinitely
 - Access to benefits throughout the time the child is applying for continued presence, T visa or U visa

Court Findings That Help With Access to Benefits Access in Oregon

- Existence of human trafficking (sex/labor)
 - Including perpetrated by spouses, intimate partners, parents, step-parents and other family members
 - Appoint - to notify OTIP of suspected child trafficking
- Issue U/T certifications and SIJS judicial determinations
- Victimization: domestic violence, child abuse, trafficking
- Connecting victims with attorneys/advocates
- Marriage, divorce, parent-child relationships including step-parent/step-child

Interactive Public Benefits Map



NIWAP

Web Library About NIWAP Maps by Benefit Demogr

Legal Services



Maps by Benefit

These maps break down available public benefits based on immigrant's state and immigration status.

We are still working on this site, so if you cannot click on your state, check back soon for completed maps.



Cash Assistance (TANF)

Temporary Assistance for Needy Families (TANF) provides cash assistance to low income families with children.

[Go to Map](#)



Child Care

Child Care services may be provided through public benefits.

[Go to Map](#)



Children's Health Insurance Program

Medical assistance is available to children through the Children's Health Insurance Program (CHIP).

[Go to Map](#)



Driver's License

State-specific requirements to be issued a driver's license.

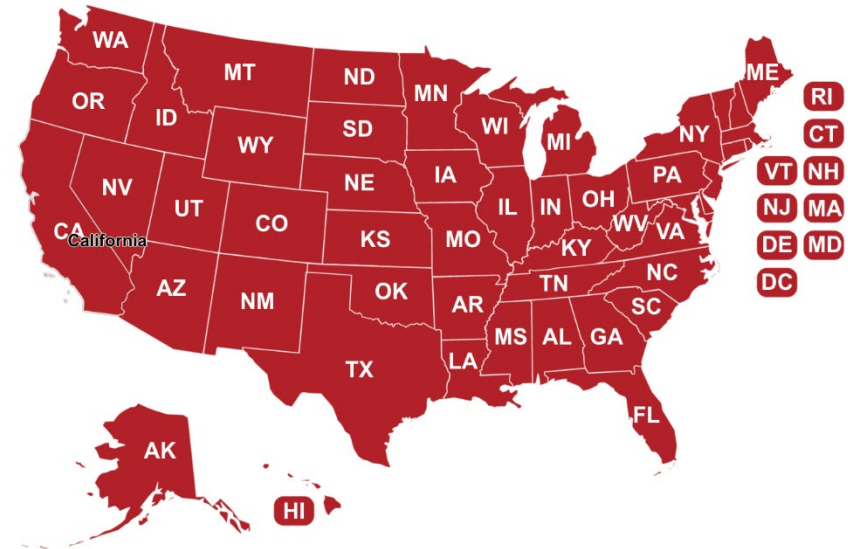
[Go to Map](#)



Earned Income Tax Credit



Emergency Housing & Safety Programs



<http://map.niwap.org/>

Maps by Benefit

- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License
- Earned Income Tax Credit
- Emergency Housing & Safety Programs
- Emergency Medicaid
- Federal Education Benefits
- FEMA Assistance
- FEMA Restricted Programs
- Food Stamps
- Forensic Costs Coverage
- Income Tax Credits
- Legal Services
- Medicaid
- Post-Assault Healthcare
- Prenatal Care
- Purchasing Health Insurance on the Exchanges
- State Education Benefits
- Supplemental Security Income
- Weatherization & Energy Assistance
- WIC
- Unemployment (coming soon)

Benefits in Oregon – Lawfully Present Immigrants Can Purchase on Exchange

- Qualified immigrants
 - VAWAs, T visa bona fide, T visas, refugees, asylees, LPRs
- SIJS applicant children
- Visa holders who have not violated the terms of their visas
- Parolees, Temporary protected status
- Deferred action (Continued Presence, U visa bona fide; DACA)
- Immigrants with pending applications for lawful permanent residency
- Asylum/Convention Against Torture applicants with work authorization
- Full list: Health Care Access for Lawfully Present Immigrants – Definitions (May 27, 2024)
<https://niwaplibrary.wcl.american.edu/pubs/lawfully-present-healthcare/>

Benefits in Oregon - Health

- **CHIP:** Until 19 – Child health care and prenatal care available under Cover All Kids to all children without regard to immigration status
- **Adults Medicaid:** T visas, T bona fide, continued presence, adults who got OTIP letters as children
 - VAWAs and Lawful permanent residents (SIJS, & U visas)
 - Pre 8/22/96 entrants eligible
 - Post 8/22/96 entrants after 5-year bar
 - Full scope health care and prenatal care available to all pregnant adults

Benefits in Oregon- TANF, Child Care, Food

- TANF - VAWA, Continued Presence (CP), T visas
 - All Domestic violence and child abuse victims eligible, no immigration restrictions
 - Lawful permanent residents (LPR) 5-year bar unless domestic violence or child abuse: SIJS (8 yrs); U visa (25+ yrs)
- Childcare
 - TANF same as above
 - Child Care Development Fund – no restrictions
- SNAP (Food stamps)
 - CP, T visas
 - Children, elderly, disabled adult:
 - VAWA self-petitioners and LPRs (e.g. U visa and SIJS)
- WIC – open to all no restrictions

Benefits in Oregon - Education

- Education
 - Federal: VAWA, Continued Presence, T visa applicants, Lawful permanent residents (e.g.. SJIS & U visas)
 - In-State tuition and enrollment fees & may be eligible for some scholarships:
 - Prior to diploma or leaving high school before receiving a diploma
 - Attended Oregon high school for 3 years; OR
 - Attended U.S. high school for 5 years; OR
 - Within 3 years of enrollment got a GED in Oregon; AND
 - Has applied for an ITIN; AND
 - Shows intention to become a citizen or LPR by showing application or statement of intent to apply as permitted under federal law

Benefits in Oregon – Housing, FEMA

- Housing
 - Transitional – all victims + homeless + abandoned/run away children
 - Public and Assisted: VAWA applicants, T visas, OTIP letters, Continued Presence (CP), Lawful permanent residents (LPRs) (e.g. SIJS and U visa)
- LIHEAP
 - Weatherization Assistance Program (WAP) - no immigrant restrictions
 - LIHEAP – VAWA, T visa, OTIP, CP, LPRs (e.g. SIJS & U visa)
- FEMA - Emergency assistance: everyone
 - VAWA, T visa, OTIP, CP, and LPRs (e.g. SIJS and U visa) eligible for:
 - Individual Households Program; Individual & Family Grant Program; US Small Business Administrations Loans; Disaster Unemployment Assistance
 - Emergency SNAP: T visa, CP, OTIP
 - Under 18 or after 5 year bar: VAWAs; & LPRs (e.g. SIJS and Us) also requires 40 quarters of work credit

Benefits in Oregon – Licenses and SSI

- **Oregon Driver's License/ID** available to all persons living in Oregon without regard to immigration status
 - Federally recognized – at work authorization
 - T visa bona fide, T visa, Continued Presence, OTIP Letter, DACA, deferred action (SIJS, VAWA, U visa bona fide/waitlist), and lawful permanent residents
- **Oregon Professional and Occupational Licenses**
 - All persons without regard to immigration status
 - With SSN or ITIN
- **SSI (most limited):** Continued Presence, T visa, OTIP Letter
 - Lawful permanent residents (e.g. VAWA, SIJS & U visa)
 - If lawfully residing on 8/22/96 and now disabled
 - Post 8/22/96 entrants 5 year bar+ 40 quarters work credit

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/BendJudges2024>
- Judicial Training Manual at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials/>
 - **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu