

# When Federal Immigration Laws and State Family Laws Intersect: What State Family Court Judges Need to Know

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Honolulu, Hawaii  
September 6, 2023

# Introductions

- Judge Rosemary Collins (Ret.)
  - Presiding Judge Family Court Rockford, Illinois
- Leslye E. Orloff,
  - Adjunct Professor and Director
  - NIWAP American University, Washington College of Law

# Join the National Judicial Network (NJJN)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJJN (245 judges – 43 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 court cases including protection orders, custody, divorce, and support
- Recognize facts that indicate a party qualifies for crime victim related forms of legal immigration status
- Be able to sign U and T visa certifications, understanding the role that Congress created for judges
- Make appropriate findings in state court cases that immigrant children filing for Special Immigrant Juvenile Status must obtain from a state court
- Know how Violence Against Women Act (VAWA) confidentiality laws impact discovery



**What  
countries  
do victims  
and  
children in  
your courts  
come from?**



# Hawaii (2019)\*

- ❖ Total foreign born population –273,012
- ❖ 19.3% of the state’s ~1.4 million people are foreign born
  - 52% naturalized citizens
  - 28% legal permanent residents
  - 20% temporary visa holders or undocumented immigrants
- 28.6% rise in immigrant population from 2000 to 2019
- ❖ Length of time immigrants have lived in the U.S.
  - 54% entered before 1999
  - 22.1% entered 2000 - 2009
  - 24.0% since 2010
- ❖ 29.1% of children under age 18 have one or more immigrant parents
  - 85.0% of these children are native-born U.S. citizens

*\*Source: Migration Policy Institute Data Hub (August 2021) and Lawful Permanent Resident estimates MPI and DHS (2022)*

# Hawaii- Countries/Regions of Origin & Limited English Proficiency (LEP)(2019)\*

- ❖ Asia – 76.2%
  - ❖ Philippines (46%)
  - ❖ China/Taiwan (8%)
  - ❖ Japan (7.8%)
  - ❖ Korea (6%)
- ❖ Oceania – 12%
- ❖ Europe – 4.6%
- ❖ Latin America – 4.4%
- ❖ Canada – 1.9%
- ❖ Africa – 0.6%
- ❖ Middle East – 0.3%
- ❖ Language spoken
  - ❖ 26.6% of people in the state who speak a language other than English at home
  - ❖ 49.3% of foreign born persons are LEP - speak English less than “very well”

*\*Source: Migration Policy Institute Data Hub (August 2021)*

# Hawaii-Languages Spoken at Home (2019)\*

- ❖ Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (130,506)
- ❖ Tagalog (including Filipino) (57,709)
- ❖ Japanese (41,621)
- ❖ Chinese (including Mandarin, Cantonese) (32,658)
- ❖ Spanish (30,522)
- ❖ Korean (19,204)
- ❖ Vietnamese (8,982)
- ❖ Thai, Lao, or Other Tai-Kadai Languages (4,445)
- ❖ French (including Cajun) (3,307)
- ❖ German (3,016)
- ❖ Portuguese (1,524)
- ❖ Russian (1,360)
- ❖ Italian (1,134)
- ❖ Hindi (711)
- ❖ Arabic (661)
- ❖ Hebrew (594)
- ❖ Nepali, Marathi, or Other Indic Languages (570)

\* Source <https://www.migrationpolicy.org/data/state-profiles/state/language/hi> (August 2021)

# Hawaii-LEP (2019)\*

- ❖ Limited English Proficiency (Speak English less than very well)
  - ❖ Naturalized citizens – 45.1%
  - ❖ Noncitizens - 55.4%
- ❖ Limited English Proficiency by language spoken at home
  - ❖ Vietnamese (69.3%)
  - ❖ Korean (61.3%)
  - ❖ Chinese (including Mandarin, Cantonese) (60.9%)
  - ❖ Tagalog (including Filipino) (47.2%)
  - ❖ Thai, Lao, or Other Tai-Kadai Languages (45.1%)
  - ❖ Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (45%)
  - ❖ Japanese (44.1%)
  - ❖ Russian (35.6%)
  - ❖ Spanish (24.9%)
  - ❖ Portuguese (24.7%)

\* Source <https://www.migrationpolicy.org/data/state-profiles/state/language/HI> (August 2021)

# **DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS**

# Department of Homeland Security

- DHS Dynamics Video





# Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
  - 72.3% never file immigration papers
  - The 27.7% who did file had a mean delay of **3.97 years.**

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." *International Review of Victimology* 7 93113

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

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



# Connection Between Abuse and Control Over Immigration Status

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

Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses

# Sexual Assault Rates Among Immigrant Women

- High school aged immigrant girls
  - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
  - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).

# Immigration Related Abuse

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

\*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

## When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
  - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence
  - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rodrigues et al. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 3, 2018)

# 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

# Story: How Immigration Relief for Victims Improves Community Safety

## 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
  - 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 immigration status of the victim to gain advantage in family court

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



# U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

## Immigration Protections for Noncitizen Victims of Crime and Abuse

### T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

### VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply: USCIS Form I-914

**T VISA**  
For victims of human trafficking

To apply: USCIS Form I-360

**VAWA**  
For victims of domestic violence and abuse

### ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

To apply: USCIS Form I-589

**ASYLUM**  
For victims of persecution

**SIJ**  
Special Immigrant Juvenile classification for child victims under 21 years of age

### SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

To apply: USCIS Form I-360



If approved, benefit provides:

- Asylum status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

To apply: USCIS Form I-918

**U VISA**  
For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes

### U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



If approved, benefit provides:

- Ability to apply for permanent residency
- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



# 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
- **Parent perpetrated**
  - **Child abuse**
  - **Child neglect**
  - **Child abandonment**

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

# Types of Qualifying Criminal Activity

- Conviction of criminal activity is not required
  - Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes
- 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 be similar to felonious assault depending on the evidence and state law definition

# 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

# VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- 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



# “Battery or Extreme Cruelty”

- Includes
  - All forms of abuse covered under state civil protection order statute or criminal laws
  - Includes threats, attempts, and coercive control
  - Plus – Forms of abuse that are extreme cruelty
    - No physical harm or crime required – examples
    - Emotional abuse; Economic abuse; Using children; Deportation threats and immigration-related abuse; Intimidation; Social isolation; Degradation; Possessiveness; Harming pets

# 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**

## Protections for Abused Children and Family Members

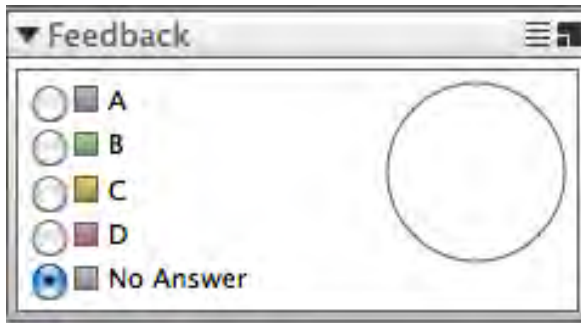
- VAWA self petitioner = Abused child, stepchild, parent or parent of abused child can apply for family:
  - Over 21: applicants' children/stepchildren
  - Under 21: Can include their parent and their children
- U and T visa applicant = Victim/parent of abused child can apply for family:
  - Over 21: spouse and children/stepchildren
  - Under 21: spouse, children, stepchildren, parents, unmarried siblings under 18
- Special Immigrant Juvenile Status = child victim
  - Family included: None

# Clara and Eduardo Case Scenario

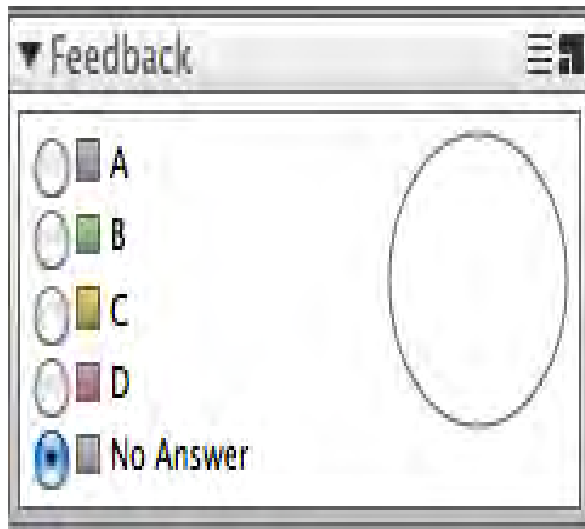
Clara met Eduardo a lawful permanent resident when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe 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 call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

# What forms of immigration relief would Clara qualify for:

- A. U visa
- B. Included in Lupe's VAWA self-petition
- C. T visa
- D. All of the above



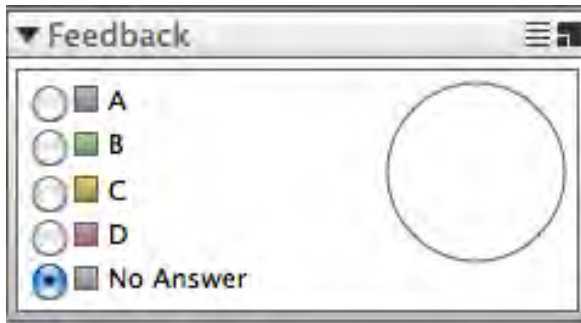
# What forms of immigration relief would Lupe *NOT* qualify for:



- 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



# Time to Deferred Action and Work Authorization Clara, Miguel, and Lupe

- VAWA self-petition (requires marriage)
  - Eduardo U.S. Citizen
    - 3 months work authorization
    - 34 months deferred action
  - Eduardo Lawful Permanent Resident – 34 months
- T Visa – 18 months
- SIJS – 6 months
  - For Lupe as victim of child abuse by Eduardo
  - For Miguel if abandoned by natural father
- U visa – 60-62 months



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

# 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

# Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	
	These are general categories, and not specific crimes or citations to a criminal code.	

## What are the The U Visa Criminal Activities in the 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 call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

# 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

- Only justice system contact a custody, protection order, civil 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

# Small Group Activity

- What helpfulness do judges observe?
  - Develop a list in small groups
  - Report back

# What Helpfulness do Judges See?

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

# Family/Civil Case Examples: Evidence of Helpfulness

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

# 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>

## Part 6. Certification

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

1. Signature of Certifying Official (sign in ink)



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

3. Daytime Telephone Number

4. Fax Number

Judges can amend the form

Examples: Based upon ...

- My findings of fact or ruling in [name type of proceeding]
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case

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

Certification provides evidence to DHS.

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

# 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



# Know About OTIP Letters

- The Office of Trafficking in Persons (OTIP) at HHS issues
  - Certification Letters to foreign national adults
    - Bona fide T applicants and Continued Presence (CP)
  - Eligibility Letters to foreign national children
    - No DHS application required, may have (CP)
- OTIP Letters provide access to public benefits, as refugees, for life
- Must be accepted by Federal and State agencies

# HHS Child Eligibility Letters

- TVPA requires government officials to report to Office on Trafficking in Persons with 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
- Must file child’s RFA 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

# 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 order is a required 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.
- 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)
- Child's best interest would not be served by being returned to his or her country of origin.

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

# Finding: 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

# 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

# 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.

# ISSUES TO AVOID WHEN DRAFTING ORDERS

Vague language

Not enough details and facts

Lack of citation of state law authorities

Reasons why court is making findings

# PROTECTION ORDERS



# NIJ Funded CPO Study Found

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

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

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



# True or False?

Issuance 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

# Best Practices

- Issue Padilla advisals in protection order cases
- In cases in which parties seek protection orders against each other
  - When one party is pro se and the other is represented consider appointing counsel for the unrepresented party

# Large Group Discussion

- What are the dangers of issuing a protection order against a domestic violence victim?

# Effect of Protection Order Issued Against Victims

- Increases perpetrator's power and coercive control
- Harmful to victims and their children
- Can lead to the perpetrator gaining custody of children
  - Impact of domestic violence on child's brain development
- This can pose serious safety concerns for victims

# Effect of Protection Order Issued Against *Immigrant Victims*

- Victim is one step away from deportation
- A violation of a protection order is a deportable offense
  - Findings enough – conviction not required
- Perpetrators who are successful in convincing courts to issue protection orders are often also successful in obtaining findings that the victim violated the order
- Undermines access to victim based immigration relief which requires proof of good moral character
  - VAWA self-petition, VAWA cancellation, Naturalization

# Importance of Self-Defense and Primary Aggressor Determinations

- Importance of determining was there an offense
- Was as person acting in self-defense
- Who is the primary aggressor in the relationship
  - When the party against whom a protection order is sought may be the victim
  - This is particularly important for immigrant victims

# Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes, opportunity to offer relief designed to help:
  - Curb future abuse, harassment
  - Interfere with abuser/perpetrators ability to exert power and/or coercive control
  - Offer victim remedy-relief for past abuse
  - Help victim overcome victimization and build new post abuse life
- Nexus with victimization
- Opportunity for courts to counter immigration related abuse and order culturally helpful remedies



# 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

# Small Group Creative Protection Order Exercise

- Meet in small groups to develop list of creative protection order remedies helpful for immigrant victims specifically
- Split room in 2 –competition to see which side runs out of remedies first
- Judge Collins rule on whether proposed remedies are immigrant specific

# 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

# 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



# 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.”

# Myth vs. Fact:

## Parents without Legal Immigration Status

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



# 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 his children.

# U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

Immigrant Victims Involved in Custody Cases Will Qualify for One of These Remedies

## T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

## VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply: USCIS Form I-914

**T VISA**  
For victims of human trafficking

To apply: USCIS Form I-360

**VAWA**  
For victims of domestic violence and abuse

## ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

To apply: USCIS Form I-589

**ASYLUM**  
For victims of persecution

## SIJ

Special Immigrant Juvenile classification for child victims under 21 years of age

## SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

To apply: USCIS Form I-360

## U VISA

For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes



If approved, benefit provides:

- Ability to apply for permanent residency



If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

To apply: USCIS Form I-918

## U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



# Who Is Likely to be Removed?

## Year

## Criminal Convictions Pending Criminal Charges:

## Other Immigration Violations:

- |           |         |         |
|-----------|---------|---------|
| • FY 2016 | • 91.7% | • 8.3%  |
| • FY 2017 | • 89.2% | • 10.8% |
| • FY 2018 | • 87.1% | • 12.9% |
| • FY 2020 | • 92%   | • 8%    |

# Department of Homeland Security Victim Witness 2011 Memo – still effective

Goal: “Minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”

- “Absent special circumstances or aggravating factors, it is *against* ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”
- Crime victims and witnesses should receive “release from detention and deferral or a stay of removal.”

“The fact an individual is a removable noncitizen therefore should not alone be the basis of an enforcement action against them. We will use our discretion and focus our enforcement resources in a more targeted way. Justice and our country's well-being require it.”

Alejandro Mayorkas (DHS Memo, Sept. 30, 2021)

# Civil Immigration Enforcement Priorities (DHS Memo, Sept. 30, 2021)

- Terrorism, espionage, or threat to national security
- Threat to Border Security if
  - Apprehended while attempting to unlawfully enter the U.S.; or
  - Apprehended inside the U.S. after unlawfully entering after November 1, 2020
- *Current* threat to public safety due to serious criminal conduct
  - Individual assessment based on totality of the circumstances
  - Gravity and sophistication of the offense, conviction, sentence
  - Nature and degree of harm
  - Serious prior criminal record; Use of dangerous weapons



# Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities (Sept. 30, 2021) and  
Trasviña ICE OPLA (May 27, 2021) Memos

- *Crime victim, witness, party in legal proceedings*
- *Person is likely to be granted humanitarian or other immigration relief (temporary or permanent)*
- *Impact on family in U.S. of loss of caregiver/provider*
- *Advanced/tender age/pregnancy*
- *Poor health or serious medical condition*

# Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities (Sept. 30, 2021) and  
Trasviña ICE (May 27, 2021) Memos

- Lengthy presence in U.S.;
- Military or public service by immigrant or family member
- History of work in the U.S.
- Pursuit or completion of education in the U.S.
- Time since offense, rehabilitation, conviction vacated or expunged



# Examples: Mitigating Factors

- Post Nov. 1, 2020 entrants who are
  - Victim of domestic or sexual violence in the U.S.
  - SIJS eligible child
- Victim arrested for domestic violence
  - Victim called police, no qualified interpreters
  - Victim arrested, to get out of jail plead guilty
- Victim arrested for stealing baby food when fleeing abuser

# ICE Parental/Guardian Interests Directive July 2022

- Requires affirmative and ongoing inquiries about and identification of parents/legal guardians of minor children and incapacitated adults
- Status as a caregiver parents/legal guardian impacts
  - Decision to detain, initial placements, transfers of parents
  - Rights to family visitation & child welfare services/programs
    - ICE to comply with and facilitate court ordered visitation
  - Unless parent is the abuser, ICE required to accommodate efforts to make arrangements for children
  - If court orders custody or return of child, ICE will in most cases release parent/guardian
  - ICE required to bring parents/guardians to court and establish communication with courts.

# 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

# Large Group Discussion

- How might you apply this information in the custody cases you hear?

# Visitation

# 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

# Large Group Discussion

- What impact could knowledge about protected locations have on your visitation orders?

# VAWA Confidentiality in State Court Proceedings



# Why is VAWA Confidentiality Important for State Courts?

- Promotes access to justice and just and fair outcomes in state courts
- Perpetrators may attempt to use state court discovery to obtain federal VAWA confidentiality protected information
- Prohibited immigration enforcement locations include courthouses

# 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)
- **Location Prohibitions:** Enforcement 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, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

# DHS VAWA Confidentiality Computer System

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

# VAWA Confidentiality Violations

- Each violation
  - Disciplinary action and/or
  - \$5,000 fine for the individual
- Violations also include making a false certifications in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)
- ICE required to certify compliance to immigration judge = violations can be basis for dismissal



# *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
- 6<sup>th</sup> 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”

## 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 (5<sup>th</sup> 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

# 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:
  - Employment
  - Asylum
  - 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
- 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 in Mixed Immigration Status Families

What are the immigration related issues you have seen in child support cases?

# Child Support & Immigration: The Parent Paying Child Support

- Payment of child support through the court provides a non-citizen parent with a history of child support payments
- This is helpful evidence of good moral character for either parent's immigration cases
  - Cancellation of removal
  - Naturalization
  - Obtaining relief in immigration court
    - Can be used to show hardship to family members



# Immigration Issues Arising in Child Support Cases

- 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
- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related crimes of moral turpitude

# Importance of Wage Withholding

- Courts have found employers who willfully violate wage withholding orders liable to the custodial parent for the amount of child support ordered withheld.
  - State v Filipino, Conn. Super. LEXIS 266 (2000)
  - Belcher v Terry, 420 S.E.2d 909 (1992)
  - Child Support Recovery Srvs., Inc. ex rel S.C. v. Inn at the Waterfront, Inc., 7 P3d 63 (Alas. 2000)

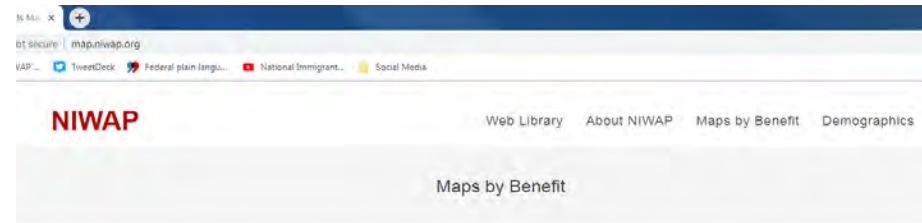
# Large Group Discussion

When judges know which immigrant victims, children or family members can access which benefits, how might this impact state court orders?

# 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

# 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.

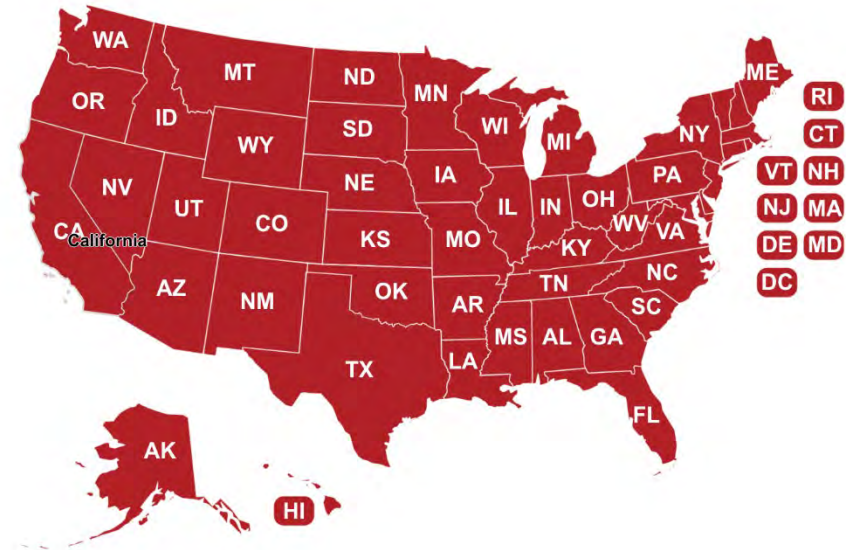
[Go to Map](#)



### 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 Map Demonstration

# Benefits in Hawaii

- TANF
  - VAWA, Continued Presence (CP), T visas
  - SIJS (3 yrs) and U visa (25+ yrs) lawful permanent residents
- Child care
  - TANF same as above
  - Child Care Development Fund – no restrictions
- SNAP
  - CP, T visas
  - Child VAWA self-petitioners and SIJS child-LPRs
- Education
  - Federal: VAWA, CP, T visa applicants, SIJS-LPRs
  - In-State tuition & scholarships: If in U.S. 3 yrs. + 12 months residence in HI no immigrant restrictions



# Benefits in Hawaii

- **Health Care**
  - Exchanges: VAWA, CP, T visa, U visa bona fide, SIJS applicants
  - State Premium Subsidies: Under 100% FLP & lawfully present
    - VAWA, CP, T visa, U bona fide, SIJS applicants
  - CHIP: Until 19 - VAWAs, CP, T visa, U visa bona fide, SIJS applicants
  - Full scope adult Medicaid if pregnant, seniors, disabled, or after federal 5 year bar if: VAWA, CP, T visa, U visa bona fide; SIJS
  - Breast and cervical cancer screening no immigrant restrictions
- **SSI (most limited):** CP, T visa, VAWA, SIJS, and U visa lawful permanent residents (5 year bar+ 40 quarters work)
  - HI: Seniors & persons with disabilities Aid to Aged, Blind, Disabled
    - VAWA, CP, T visa, and SIJS and U visa Lawful permanent residents
- **Hawaii Driver's License** with proof of identity and HI residency
  - Federally recognized – work authorization
    - VAWA approved, T visa bona fide, CP, U visa waitlist, SIJS –LPRs, DACA

# Benefits in Hawaii

- Housing
  - Transitional – all victims + homeless + abused children
  - Public and Assisted: VAWA applicants, CP, T visas, SIJS – LPRs
- LIHEAP
  - Weatherization and Hawaii Electric Light's Special Medical Needs and Ohana Energy Gift Programs – No Immigrant Restrictions
  - LIHEAP – VAWA, CP, T visa, SIJS LPRs
- FEMA
  - Emergency assistance: everyone
  - Individual Households Program: VAWA, T visa, CP
  - Individual & Family Grant Program: VAWA, T visa, CP, SIJS & U Visa-LPRs
  - US Small Business Administrations Loans: VAWA, T visa, CP
  - Disaster Unemployment Assistance: VAWA, T visa, CP, SIJS & U visa-LPRs
  - Emergency Food Stamps: T visa, CP, SIJS & U visa-LPRs (after 40 quarters of work credit)

# Large Group Discussion

- What can you do as a judge to help an adult or child immigrant victim you encounter in court?

# Appropriate Judicial Response Menu:

- Connect victims with programs with expertise serving immigrant victims in your jurisdiction
- Sign U and T visa certifications and make SIJS findings
  - Refer to programs with expertise serving immigrant victims
- Assign counsel to unrepresented victims
- Issue court orders with findings of crime victimization, abuse, extreme cruelty, coercive control and stalking factors
- “Do Nothing” is not an option

# What ELSE Can Judges Do???

**Remember – YOU have the power to do GOOD**

- Distribute “Know Your Rights” publications written by DHS in your courtroom and self-help center
- Step Up! Play a leadership role in your Court. Discuss projects with your Court Administration to create work groups, task forces, and committees to partner with other key agencies.
- Enhance victim access to justice by continuing to hone your skills to be able to detect trafficking and protect vulnerable victims

# Resources Available to Assist Courts

- SJI Funded Materials for Judges in the NIWAP Web Library
  - Bench book on SIJS
  - U and T visa certification toolkit for judges
  - Bench cards for family court judges
    - Custody
    - Protection Orders
    - Divorce
    - Economic Relief
  - Public benefits map and charts

# Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/CJIHonoJulu2023>
- Judicial Training Manual at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials/>
  - **NIWAP Technical Assistance**
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)

# Evaluation