

Addressing Issues that Arise in Family Court Cases Involving Immigrant Survivors and Children

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Learning Objectives

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

- Implement family court litigation strategies that inform judges about the immigration related abuse and immigration remedies that protect victims;
- Counter perpetrators' attempts to use victim's immigration status to gain advantage in family court cases
- Prevent discovery of VAWA confidentiality protected immigration case file information
- Obtain U visa certifications and SIJS findings from family court judges.

Dynamics Of Domestic Violence Experienced By Battered Immigrants

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)

Abused Immigrant Spouses of U.S. Citizen Husbands

- Abuse rate rises to 59.5% when an immigrant's spouse/former spouse is a U.S. citizen
 - Twice the national average

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

- Between 2016 and 2017 there was a 391% decline in battered immigrant spouses' willingness to file VAWA self-petitions

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)

- This same research found no change in battered immigrant victim's willingness to seek protection orders

Ammar, N.H., Orloff, L.E., Couture-Carron, A., Immigrant Victims of Interpersonal Violence and Protection Orders, in Civil Court Responses to Intimate Partner Violence and Abuse (2020)

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

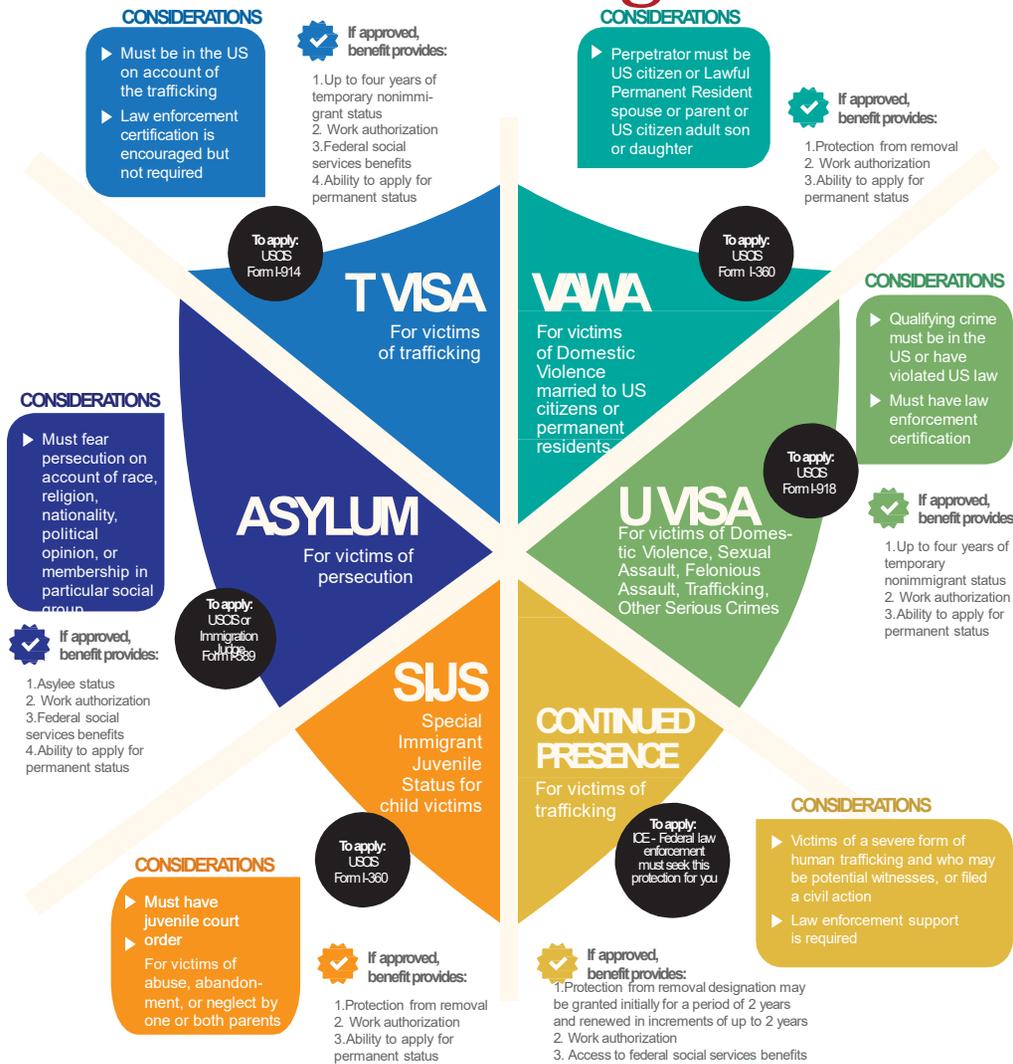
Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

Perpetrators Efforts to Trigger Victim's Removal

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

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work 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)

Protections For Immigrant Victims



DHS.GOV/BLUE-CAMPAIGN

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
- Battered Spouse Waiver if perpetrator files
- **Timeline to work authorization = 4–18 months (2019)**

Forms of Extreme Cruelty

Often basis of for cause divorce in family law

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

“Domestic Violence” Immigration Law Definition Elements

Battering Crimes

- Physical violence against
 - Spouse/intimate partner
 - Child
- Use of a weapon
- Sexual assault
- Stalking
- Attempts or threats to do any of these actions

Extreme Cruelty

- Coercive control
 - Creating vulnerabilities
 - Exploiting vulnerabilities
 - Wearing Down Resistance
 - Facilitating Attachment
 - Coercive Demand
 - Credible Threat
 - Surveillance
 - Delivery of threatened consequences

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
- **Timeline to work authorization and waitlist approval =**
 - 4–6 years(2019)

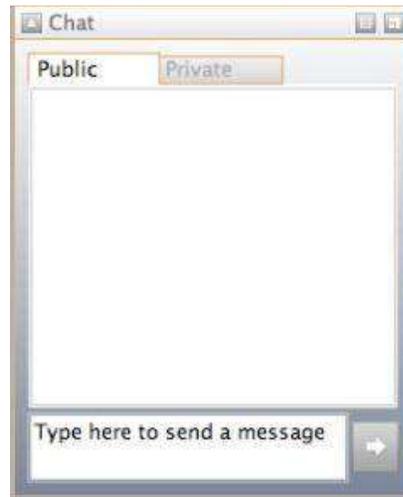
Special Immigrant Juvenile Status (SIJS)

- 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
- **Timeline to approval = 6 – 36 months (2019)**

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.S. 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
- **Timeline to work authorization = 3-12 months (2019)**

What forms of human trafficking might you find in intimate partner relationships?



Immigrant victims involved in custody cases will qualify for one or more of the following:

- Domestic violence/child abuse= VAWA self-petitioning, VAWA defenses against removal in immigration court, Battered spouse waiver, Special Immigrant Juvenile Status
- U visa = Domestic violence, sexual assault, stalking, human trafficking, other U visa crimes
- T visa and continued presence = human trafficking cases

Benefits for Survivors

- Protection from deportation
 - VAWA confidentiality
- Can include family members in application
 - VAWAs, U visas and T visas
- Access to legal immigration status
- Financial independence from perpetrator
 - Legal work authorization (3 - 48 months post filing)
 - Issuance of federally recognized ID
 - Access to some state/federal public benefits beyond programs open to all immigrants

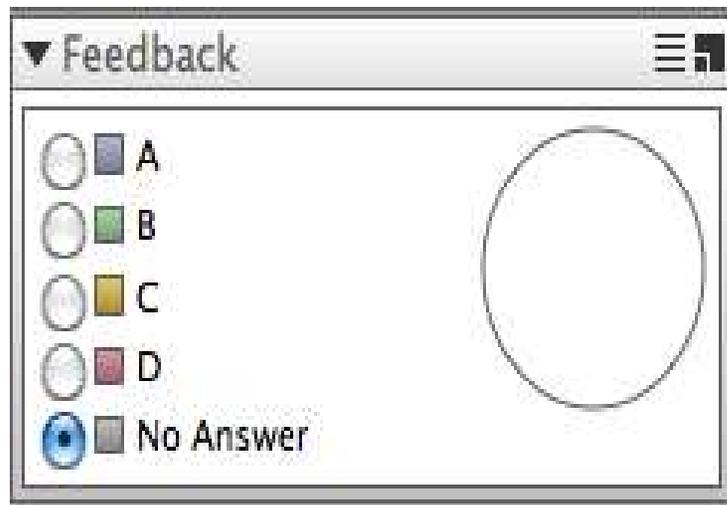
Protections for Children and Family Members

- VAWA self petitioner = Abused Child, Parent of abused child, Abused parent
 - Family included: applicants' children and an under 21 year old child can include their parent
- U and T visa applicant = Child victim or their parent
 - Family included:
 - Under 21: spouse, children, parents, unmarried siblings under 18
 - Over 21: spouse and children
- Special Immigrant Juvenile Status = child victim
 - Family included: None

Case Scenario (Handout)

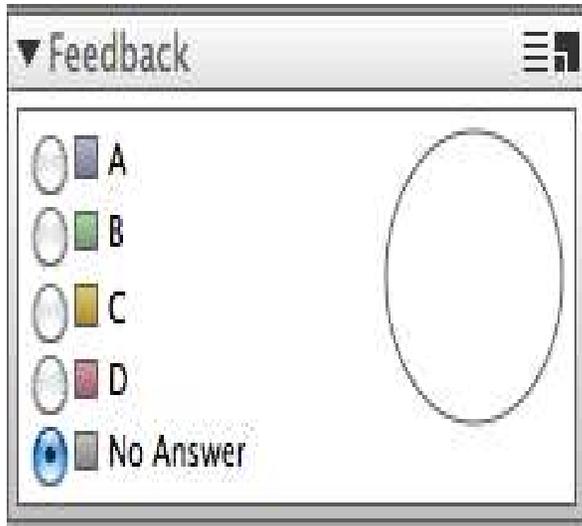
Clara met Eduardo a lawful permanent resident when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe 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. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above

What forms of immigration relief would Miguel qualify for:



- A. VAWA self-petition
- B. U visa
- C. T visa
- D. SIJS
- E. Two of the above

In Cases of Immigrant Survivors What Role Can Judges Play?

- Make detailed findings
 - Family relationships: Marriage and Parent child relationship
 - Battering, extreme cruelty, child abuse, elder abuse, child abandonment, neglect, sexual assault, stalking
 - Apply and cite state law
- Role Congress created for state court judges in
 - U/T visa certification
 - Special Immigrant Juvenile Status findings
 - Applying VAWA confidentiality laws in ruling on discovery
 - Providing economic relief to victims and children including enforcing affidavits of support
- Make rulings on discovery consistent with VAWA confidentiality

U Visa for Immigrant Victims

- A victim of qualifying criminal activity is eligible for a U Visa when:
 - The criminal activity occurred in the U.S. **or** violated U.S. law;
 - The victims possesses information about the crime;
 - The victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the offense; and
 - The victim has suffered substantial physical or mental abuse as a result of the victimization

U Visa Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

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

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

U Visa Regulations Definitions

Although terms are used interchangeably

- *Helpfulness required for certification*
 - Was helpful, is helpful, is likely to be helpful in the “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - To provide early access “crime” always means
 - “criminal activity”
- *After certification & filing ongoing responsibility to provide assistance/cooperation reasonably requested by law enforcement/prosecutors*
 - Cannot unreasonably refuse to cooperate

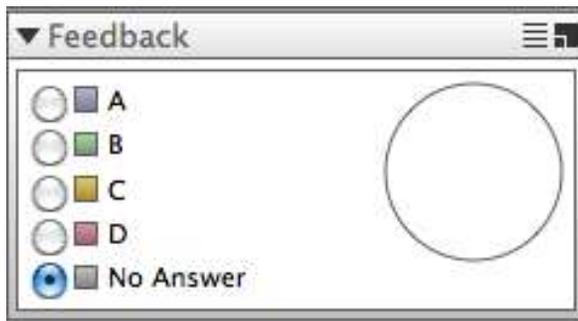
What Evidence of Helpfulness Would be Present in These Cases

- Protection order
- Divorce
- Custody
- Child welfare (abuse or neglect)

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

Why would victims seek U visa certification from state courts?



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

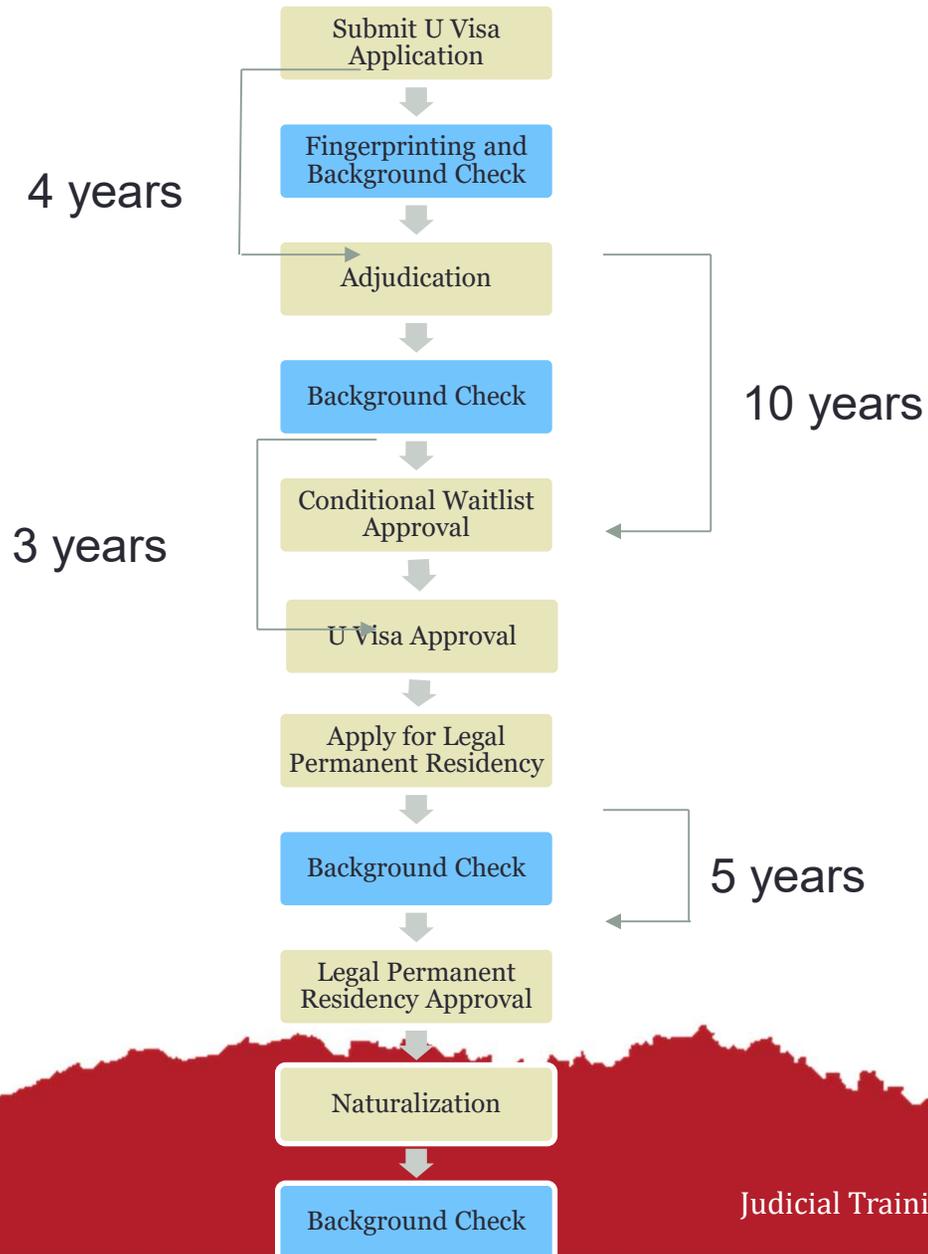
According to DHS, a U/T Visa Certification Tells USCIS Only 3 Things:

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- U visa: Victim was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
- T visa: Victim complied with reasonable requests for assistance from law enforcement or prosecutors unless exempt
 - Under 18 or physical or psychological trauma

Helpfulness Requirement Met *Even When:*

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

U Visa Process Timeline



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.

Resource

<http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Tkit-UVisaCertification-02.03.14.pdf>



NIWAP



**U VISA CERTIFICATION
TOOLKIT**
for
**FEDERAL, STATE AND LOCAL
JUDGES, COMMISSIONERS,
MAGISTRATES AND OTHER JUDICIAL
OFFICERS**



Special Immigrant Juvenile Status (SIJS)

- Humanitarian immigration relief for unmarried children who cannot be reunified with one or both parents who...
 - Abused, abandoned or neglected the child
- State court findings are required as evidence
 - The court using state best interests laws makes a child custody or placement decision and includes SIJS findings
 - The state court order reflects judge's expertise and does **not** provide immigration status
 - The order is one required piece of evidence in a federal adjudication process

Maryland Definitions

Abuse, abandonment, neglect

- Abuse Md. Fam. Law § 5-701
 - Physical child abuse
 - Sexual abuse/exploitation
 - Emotional abuse
- Neglect Md. Fam. Law § 5-701(s)
 - Child unattended or no proper care/attention resulting in
 - Harm to child’s health/welfare, mental injury or substantial risk of such harm
- UCCJEA - Md. Fam. Law § 9.5-101
 - “abandoned” means left without provision for reasonable and necessary care or supervision.

Other similar basis that include abuse or neglect

- Forced marriage
 - Md. Code Ann., Crim. Code §11- 303 = felony human trafficking
- Reckless endangerment of a child
 - Md. Code Ann., Crim. Law § 3-204
- Domestic Violence
 - Md. Code Ann Fam. Law § 4-501(b)(2)

State Court Findings Needed for SIJS

State Law Applies To Each

- The court has jurisdiction to issue orders regarding the care, custody, or placement of an immigrant child (under age of majority and unmarried) with
 - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend, adopting parent) OR
 - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to at least **one parent's** abuse, abandonment, or neglect

Decisions about care and custody of children arise in family court proceedings

- 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
- Bench Book chapters on each case type

Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state statute, court rule, or other authority 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.

Best Interest Factors

Montgomery County v. Sanders, 38 Md. App. 406 (1977)

- Fitness of the parents
- Character and reputation of the parties
 - This would include domestic violence toward a parent or child
- Parent's wishes and any agreement between them
- The potential for maintaining family relations
- Child's wishes
- Material opportunities affecting the future live of the child
- Age, health, and sex of the child
- Residences of each parent and opportunity for visitation
- Length of separation of the parents
- Any prior voluntary abandonment or surrender of custody

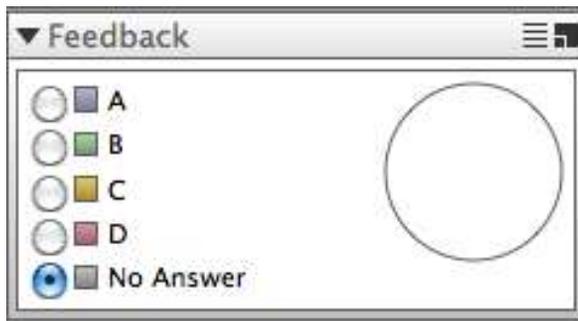
Home country not in child's best interests

- Identify each potential custodian in U.S. and home country
- Apply state best interests factors to each placement
- States in court order 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
 - Example of factors VAWA Extreme hardship

Finding: Reunification Not Viable

- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Order must include the finding that reunification with the parent is not viable
 - Explain reasons in court order
- Using state best interests law

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

Best Practice for Court Order

- Make factual findings regarding
 - Facts of abuse, abandonment and/or neglect
 - Separately regarding each parent
 - Articulating trauma impact on child helpful
 - Connect the dots
 - Explain why the orders and findings the court is issuing
 - Are needed for child protection, healing, stability
 - Because of the abuse/abandonment/neglect the child suffered
 - Why court orders in the child's best interest
- Cite Maryland statutes or case law

VAWA Confidentiality in State Court Proceedings

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 notifies staff through “384” computer system*

VAWA Confidentiality Statutes and DHS Policies and Regulations

- Protect Information About Victim's Immigration Case
- Prohibit disclosure of any information about
 - The existence of a VAWA, T or U visa application
 - Decisions made in the case
 - Information contained in the #A file
 - Disclosure prohibited to all persons, not just the perpetrator

State and Federal VAWA Confidentiality and Discovery Case Law

- Family law - VAWA and U visa case information not discoverable
- Criminal law – only U visa case certification discoverable
 - File not in prosecutors' custody or control
- Civil cases not discoverable except potentially as needed to prove damages to a specific individual
 - In chambers review judge can redact

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”

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

Immigrant Victims and Family Court Cases

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	Fact
Deportation is imminent	DHS policies prevent detention/removal of immigrant parents who are crime victims
Parent is likely to flee U.S. with child	US citizens and lawful permanent residents are more likely to flee with children, especially when <ul style="list-style-type: none"> - There have been threats of kidnapping children - They are dual nationals - They travel freely to and from U.S.
The parent has no livelihood	Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
Legally present parent must have custody in order to file for benefits for child	Custody does not affect parent's ability to file for or gain immigration benefits for his children

ICE Removal Data

2013

- Convicted criminals 82%
 - Repeat immigration violators 7.8%
 - Ordered removed and failed to depart 1.6%
 - Other immigrants 7.7%
- <https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>

2017

- Criminal convictions 73.7%
 - Pending criminal charges 15.5%
 - Outstanding notices to appear in immigration court 5.3%
 - Ordered removed and failed to depart + reinstatement 2.8%
 - Other immigrants 2.6%
- <https://www.ice.gov/removal-statistics/2017>

Who Does Information About Sensitive Locations Protected From Immigration Enforcement Help Courts?

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 Policies (ICE & CBP)

- Schools
- Medical treatment & health care facilities
- Places of worship
- Religious or civil ceremonies e.g. weddings and funerals
- Public demonstrations e.g. march, rally, parade

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

Detained Parent Directive, Aug. 2017

- If parents are detained:
 - Placement near family court when ongoing family court/child welfare cases
 - Bring parents to family court to participate in cases involving children
 - Alternate: video or teleconference participation
 - Facilitate visitation when required by family/child welfare court order
 - Help children travel with deported parent –obtain passports for children

Discussion with Attendees

- What immigration related issues have you seen arise in child custody cases?
- If the court learns as part of the case that the victim is eligible for or pursuing immigration protections how is that helpful in the custody case?

PROTECTION ORDERS



Immigration Law Definition of Domestic Violence

- “Battery or Extreme Cruelty”
- Includes
 - All forms of abuse covered in state civil protection order statute
 - All forms of abuse that constitute domestic violence under state criminal laws
 - Plus – Forms of abuse that are extreme cruelty
 - No physical harm or crime required

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
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Best practices Padilla advisals

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

Using Catch-all Provisions to Stop Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare, etc.) concerning the petitioner except
 - Police emergency
 - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities (e.g. work visa holders, I-130s)

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 can lead to federal marriage fraud charges

Spousal Support and Economic Relief in Family Court Cases

Affidavits of Support

- Each person who files a petition for a family member to immigrate to the U.S. required to sign a legally enforceable affidavit of support
- These affidavits are of increasing importance in resolving support issues in immigrant families, sometimes decades after the act of immigration is complete.

Evidence in Affidavit of Support

- 3 years of tax returns
- Evidence of current employment
 - Including self-employment
- Proof of income sufficient to sustain the immigrant(s) being sponsored at or above 125% of poverty

Affidavit of Support: Duration and Enforceability

- Promise to support family member for up to 10 years
- This responsibility lasts until the non-citizen either:
 - Becomes a U.S. citizen = Naturalizes;
 - Credited with forty (40) hours of work under the Social Security Administration - INA §213A;
 - Ceases to hold the status of an alien lawfully admitted for permanent residence and departs the U.S.;
 - Obtains in removal proceedings a new grant of adjustment of status;
 - Dies
- Courts have relied on the Affidavit of Support to set spousal and child support obligations

Enforceability of the Affidavit Support

- Courts have found the Affidavit of Support enforceable and have ordered support payments to a former spouse.
 - *See, Shumye v. Felleke*, 555 F.Supp.2d 1020(N.D. Cal.2008); *Stump v. Stump*, 2005 WL 2757329 (N.D. Ind. Oct. 25, 2005); *Cheshire v. Cheshire*, No. 3:05-cv-00453-TJC-MCR, 2006 WL 1208010, at *2-4 (M.D. Fla. May 4, 2006)
 - *Kumar v. Kumar* A145181 (Cal. App. Div. II, July 28, 2017)(enforceable and no duty to mitigate)
- As part of a family law property settlement, the sponsored immigrant may surrender his or her right to sue to enforce the Affidavit of Support.
 - 71 F.R. 35732, 35740 (June 21, 2006).

Child Support in Mixed Immigration Status Families

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 immigration cases
 - Cancellation of removal
 - Naturalization
 - Obtaining relief in immigration court
 - Can be used to show hardship to family members

Child Support & Immigration: The Parent Receiving Child Support

- Provides a custodial immigrant parent with evidence of child support that can be used as income in when applying for lawful permanent residency
 - Avoids public charge
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies

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

- Creates documented track record of payment
- Improves safety for immigrant victims
- 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)

How Might You Establish A Non-Custodial Immigrant Parent's Income for Child Support Purposes?

Proof of Non-Custodial Immigrant Parent's Income

- Undocumented workers can be ordered to pay child support based on
 - Child Support Guidelines
 - Actual earnings
 - Employer's statements
 - Evidence of earning capacity
 - Attributed income (e.g. minimum wage)
- Undocumented workers can pay state & federal taxes on income earned using an IRS issued
 - Tax ID number (ITIN)

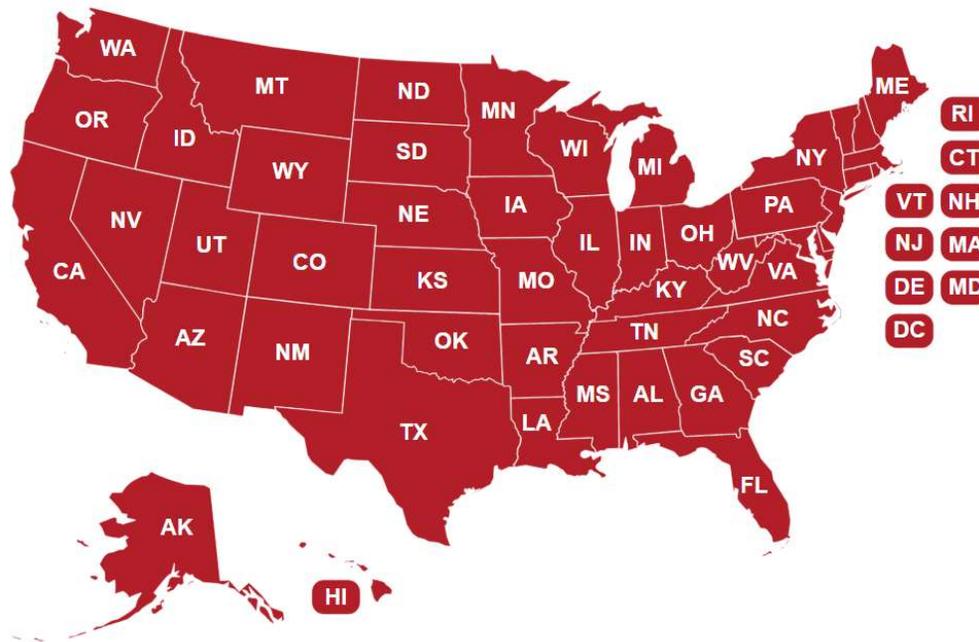
Access to Publicly Funded
Programs and Legal Services Open
to All Immigrant Domestic and
Sexual Violence Survivors

Access for All

Both documented and undocumented immigrant survivors can access:

- Legal Services
- Family Court (Divorce)
- Language Access
- Police Assistance
- Protection Orders
- Child Custody & Support
- Have Their Abusers
Criminally Prosecuted
- Public Benefits for Their
Children
- Assistance for Crime Victims
- Shelter
- Transitional Housing
- WIC/school lunch & breakfast
- Primary/Secondary education
- Immunizations
- Emergency medical care
- Care from community &
migrant health clinics
- VOCA

<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)

PROGRAM	VAWA Self Petitioner	U VISA APPLICANTS		T VISA (Bona Fide or Continued Presence)	Refugee and Asylee	Undocumented	SIJS	DACA
		Petition Filed	Wait List upon Approval					
CASH & Nutrition ASSISTANCE, and Childcare								
Supplemental Security Income (SSI)	Eligible with prima facie determination if received SSI on August 22, 1996 or lawfully residing in the U.S. as of that date and is now disabled.	Not eligible.	Eligible with conditions upon becoming a lawful permanent resident if they arrived <i>before</i> August 22, 1996.	Eligible with conditions if they arrived <i>before</i> August 22, 1996.	Eligible with conditions.	Not eligible.	Eligible with conditions.	Not eligible.
Temporary Cash Assistance (TCA) (Known as TANF federally)	Eligible if they arrived <i>before</i> August 22, 1996. Still eligible, with conditions, if arrived <i>on or after</i> August 22, 1996.	Not eligible.	Eligible with conditions.	Eligible.	Eligible.	Not eligible.	Eligible with conditions upon receiving lawful permanent residency.	Not eligible.
Child Care and Development Fund (CCDF)	Eligible.	Eligible for limited CCDF coverage.	Eligible for limited CCDF coverage. Eligible for full CCDF coverage with conditions once they become a lawful permanent resident.	Eligible.	Eligible.	Eligible for limited CCDF coverage.	Eligible for limited CCDF coverage. Upon lawful permanent residency, eligible for full CCDF with conditions.	Eligible for limited CCDF coverage.
Supplemental Nutrition	Eligible with conditions.	Not eligible.	Eligible with conditions	Eligible with conditions.	Eligible.	Not eligible.	Eligible with conditions	Not eligible.

Resources:

Healthcare for Immigrant Victims

- State by state charts
 - VOCA funded post assault health care
 - Emergency Medicare
 - Forensic Exams
 - Prenatal Care

Post –Secondary State Funded Education - MD

- Exempt from paying the out-of-state tuition rate at a community college in Maryland if:
 - Attended a public or nonpublic secondary school in Maryland for at least three years;
 - Either graduated from a public or nonpublic Maryland secondary school or has received the equivalent of a high school diploma in Maryland;
 - Registers as an entering student in a community college in Maryland not earlier than the fall 2011 semester; and
 - Provides to the community college documentation that the individual’s parent or legal guardian has filed a Maryland income tax return.

Benefits in Maryland

- TANF
 - VAWA, Continued Presence (CP), U visa waitlist, SIJS lawful permanent residents (LPRs)
- Child care
 - TANF same as above
 - Child Care Development Fund – no restrictions
- SNAP
 - VAWA children, CP, T visas , SIJS-LPRs
- Education
 - Federal: VAWA, CP, T visa applicants, SIJS-LPRs
 - State: School in MD 3 yrs. + diploma + taxes in MD
 - No immigration restrictions except T and U visa holders ineligible

Benefits in Maryland

- Health Care
 - Exchanges: VAWA, CP, T visa, U visa waitlist, SIJS applicants
 - CHIP: VAWAs, CP, T visa, U visa waitlist, SIJS applicants
 - Until 21
 - Full scope adult Medicaid: VAWA, CP, T visa, U visa waitlist approved; SIJS (LPRs only if pregnant or 5 years as LPR)
- SSI (most limited): CP, T visa
 - VAWA & SIJS LPR (5 year bar+ 40 quarters work)
- Driver's License
 - Maryland (not federally recognized) anyone with MD tax return
 - Federally recognized – work authorization
 - VAWA approved, T visa bona fide, CP, U visa waitlist, SIJS – LPRs, DACA

Benefits in Maryland

- Housing
 - Transitional – all victims + homeless + abused children
 - Public and Assisted: VAWA applicants, CP, T visas, SIJS – LPRs
- LIHEAP
 - Weatherization everyone
 - 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-LPRs
 - US Small Business Administrations Loans: VAWA, T visa, CP
 - Disaster Unemployment Assistance: VAWA, T visa, CP, SIJS-LPRs
 - Emergency Food Stamps: T visa, CP, SIJS-LPRs (after 40 quarters of work credit)

Immigrants Exempt From Public Charge

- Victims
 - VAWA, T visas and U visas exempted
 - SIJS children
- Refugees
- Asylees
- DACA
- Visa holders
- Most lawful permanent residents

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/DC-Family-2020/>
- 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