


**U Visa and Special Immigrant  
Juvenile Status Impact on Civil  
Cases**

Commissioner Young and Leslye E. Orloff  
National Association Of Women Judges District Four  
Conference  
Arlington, Virginia  
October 20, 2018



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**Introductions**

- Commissioner Loretta Young
  - Wilmington, Delaware
- Leslye Orloff
  - NIWAP, Immigrant Women's Advocacy Project,  
American University, Washington College of Law



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- Pre/Post tests are part of this presentation for the grant evaluation



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### 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 state courts
- Recognize facts that indicate a party qualifies for crime victim related forms of legal immigration status
- Understand the role that state courts play in the SIJS adjudication process
- Articulate the ways in which SIJS enhances the courts options that promote child welfare and best interests

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**When litigants and their children learn about and pursue immigration relief legally available to them how might this improve access to justice in family courts?**



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### Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
  - VAWA self-petitioners 38.3%
  - VAWA petitioners arrested at crime scene instead of the abuser 15.4%
  - U visa victims 26.7%

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014)



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### Immigrant Victims and Children Who File for Immigration Relief Receive

- Protection from deportation
- Legal work authorization and access to drivers' licenses upon
  - Approval or wait list approval
- Access to some federal public benefits
  - Varies by immigration case type and state
- VAWA confidentiality protection upon filing VAWA, T or U visa case



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### Case Scenario (Handout)

Clara met Eduardo a naturalized U.S. citizen 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.



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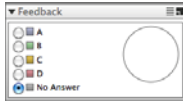
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### What forms of immigration relief would Clara qualify for:



- A. U visa
- B. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above



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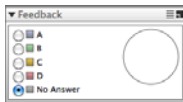
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### What forms of immigration relief would Lupe and Miguel qualify for:



- A. Both can VAWA self-petition
- B. Both qualify for a U visa
- C. Lupe qualifies for a T visa
- D. All of the above



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## U Visa Certification By Judges

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## 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

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## U Visa Regulations Definitions

Although terms are used interchangeably

- As a matter of law (U visa regulations)
  - Helpfulness in the “investigation or prosecution” always means
    - “Detection, investigation, prosecution, conviction, or sentencing”
  - “Crime” always means
    - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
  - Improving stability for crime victims

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### 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



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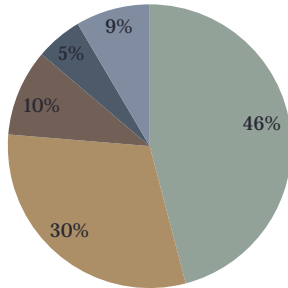
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### U-Visa Criminal Activities (11/2011 data)

- Domestic violence- 45.9%
- Rape, Sexual Assault, Incest, Trafficking- 30.4%
- Felonious Assault, Murder, Manslaughter- 9.9%
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation- 8.47%
- Kidnapping, being held hostage, unlawful criminal restraint, torture- 5.3%



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### U/T Visa Certification: Who Can Certify?

- Federal, state, and local
  - Police, sheriffs, FBI, HSI, ATF...
  - Prosecutors
  - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies



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**Types of Court Proceedings: Courts Receive Evidence of "Criminal Activities"**

- 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




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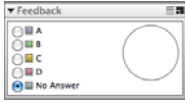
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**Why would victims seek U visa certification from state courts?**



- 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




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**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
- Victim was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing




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## 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

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## 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

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## 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

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### Eduardo and Clara Case Scenario – Handout

- Additional facts:
- While Clara was in the hospital she met a victim advocate who worked with a legal services attorney and after Clara’s release from the hospital she got her children back and helped Clara file for a protection order
- You heard Clara’s protection order case and issued Clara a protection order against Eduardo
- A week after the protection order was issued Clara’s legal aid attorney sends you a letter requesting that you sign a U visa certification
  - In what other types of state court proceedings might a judge receive similar forms of evidence that could support U visa certification?



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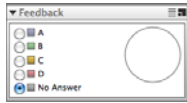
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### What evidence of helpfulness might you include on the U visa certification form?

Using your clickers please check:



- A. The fact that Clara sought and you issued a protection order
- B. Testimony Clara provided at a contested hearing
- C. You learned in the CPO case that Clara spoke to police at the crime scene and gave information for the police report
- D. All of the above



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### Minnesota Judicial Ethics Opinion U Visa Certification (June 26, 2015)

- Judge may sign certifications when
  - “adequate basis for the averments made in the certification”
- Certification after the criminal or civil case is completed does not raise impartiality issues
  - In open cases should disclose certification to the parties
- Certification describes immigrant victim’s past/present helpfulness -- Does not vouch for character
- In civil and criminal cases whether to sign a U visa certification is a an issue of law that does not implicate judicial ethics codes

Full Opinion Available at: <http://www.bjs.state.mn.us/file/advisory-opinions/opinion:2015-2-final.pdf>  
 Hon. Pendleton also published a training update based on the opinion at <http://pendletonupdates.com/>



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### U-visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
  - Waitlist approval backlog 110,000 visas
- The U-visa grants a temporary 4 year stay
- Work authorization ( ≈ 28-48 months)
- Limited state benefits
- Lawful permanent residency after 3 years if
  - Cooperation or not unreasonably refuse to cooperate
  - + humanitarian need, family unity or public interest
- U.S. citizenship after 5 years of lawful permanent residency + proof of good moral character




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### New DHS Forms Published Make Judicial Certification Easier

- Judges' certification can occur when the judge signing the certification has
  - Probable cause
  - Made findings
  - Observed or detected evidence of helpfulness
  - Issued a ruling
  - Include the type of proceeding and
  - If orders were issued attach a copy of the order




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### U Visa Certification Overview



Supplement B, U Nonimmigrant Status Certification  
 Department of Homeland Security  
 U.S. Citizenship and Immigration Services

USCIS  
 Form I-918  
 OIG No. 1615-0104  
 Expires 02/28/2019




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**Part 4. Certification**

I am the head of the agency listed on Part 1, or I am the person in the agency who was specifically designated by the head of the agency to issue a U.S. Department of Justice Certificate of Probable Cause, and I am the person who will issue the Certificate of Probable Cause on behalf of the agency. Based upon information received from the applicant, and upon information received from the agency, I hereby 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 provision regarding the above victim's ability to obtain a visa from the U.S. Consular and Immigration Service (CIS), based upon this certification. I further certify that if the victim immediately returns to court in the proceedings in connection with the pending criminal activity of which he or she is a victim, I will notify CIS.

1. Signature of Consular Official (sign on left)

2. Date of Signature (use 09/27/11)

3. District Consular 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.

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### Congressional Goals of Special Immigrant Juvenile Status (SIJS)

- Humanitarian protection that provides a path to lawful permanent residency
- Created by Congress in 1990 to help and protect foreign born children living in the United States
  - who have been abused, or abandoned, or neglected by at least one parent

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### Why Congress Wanted Input From State Court Judges

- Included a role for state court judges as experts in child best interests, custody, child welfare matters.
- State court expertise that are an inherent part of court's decision-making when courts:
  - Adjudicate facts of child abuse, neglect and abandonment
  - Issue orders regarding child care, custody and placement that further the best interests of children

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### SIJS State Court Findings Required for the Child to file

- State Court SIJS findings are a statutorily required prerequisite to an eligible child being able to file the SIJS immigration case
- DHS uses the state court order as evidence in adjudicating the immigration application
- The state court order does **not** award SIJS
  - **ONLY DHS can provide SIJS a form of legal immigration status and permanent residency**



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### 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



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### Using the Handout Scenario True or False?

**Both Lupe and Miguel Qualify for Special Immigrant Juvenile Status**

- A. True
- B. False



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### All of the Following are Potentially Eligible for SIJS

- A minor who is:
  - Abused, abandoned or neglected
    - In the U.S.
    - In the home country
  - Living with their
    - Non-abusive parent
    - Guardian
    - Adopted parent
    - State foster care
    - Federal foster care (ORR)



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### Department of Homeland Security Confirms

- A juvenile court according to DHS
  - The “title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.”
  - “Juveniles” = all children



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### State Courts Regularly Make Custody & Placement Determinations

- Who will be the custodian/guardian of the child?
- With whom will the child live?
- Will the child be committed to the custody of the state or private agency for care, treatment, or rehabilitation



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### Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Custody and child support
- Divorce
- Legal Separation
- Adoption

Courts with jurisdiction under state law to make judicial determinations regarding the custody, placement, care or dependency of children = juvenile courts for SIJS immigration purposes



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### Apply State Law

- Apply state law without regard to where abuse, abandonment or neglect occurred
  - In the U.S. or abroad
- Jurisdiction
  - UCCJEA - Temporary Emergency Jurisdiction
- Follow state court procedures
  - Including regarding service and notice
- Definitions: abuse, abandonment, neglect
  - Includes child endangerment, domestic violence as child abuse, forced marriage
- Formal charges not required



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### SIJS Findings: Applying State Law

- Describe how the actions of the parent fit the state law definition of abuse, neglect, or abandonment
- State best interest laws apply to
  - Custody or Placement
  - Not returning child to their home country
  - Non-viability
- Where are best interest factors in state law?
  - Child welfare statutes
  - Custody statutes
  - Case law



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### SIJS: State and Federal Roles

#### State Courts With Jurisdiction Over Children

- Issue orders providing evidence to help DHS adjudicate SIJS application
- Make findings of fact **under state law** on
  - Custody, dependency, placement, care of a child
  - Child suffered abuse, abandonment, or neglect by at least one parent
  - Parental reunification
  - Child’s best interests

#### DHS Adjudicators

- Adjudicate application filed by child
- Reviews evidence, including the state court’s order, to determine if the child applicant is eligible for SIJS
- Determine if state court order was sought primarily
  - To provide the child relief from harm caused by abuse, abandonment or neglect; OR
  - For immigration purposes



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### “One *or* Both Parent” Requirement



A child can receive SIJS findings if they were abused, abandoned or neglected by one parent and are living with the other parent.



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### 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
  - See handout



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### Reunification Not Viable and Best Interests

- Order must include the finding that reunification with the parent is not viable
- Using state best interests law
  - Identify factual reasons why reunification is not viable
  - Will include explaining why the abusive parent is not being granted physical custody of the child

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### Finding: Reunification Not Viable

- 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
- Changes in circumstances can occur
  - But not granting full legal/physical custody to abusive parent

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### Factors impacting best interests and viability

- Risk of danger to the child
- Family violence, abuse, neglect, abandonment
- Trauma the child has suffered
- State laws that preclude or discourage placement with abusive parent
- The child's physical, emotional, safety and mental health, and educational needs
- Help the child is receiving
- Child's wishes and fears
- Parent's fitness and caregiving capacity
- Family support system

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### SIJS in State Courts

- Some SIJS cases involve minors who are close to the age of majority under state law
- SIJS requires:
  - State court order received before the child turns the age of majority+
  - Filing for SIJS before the child ages out
- SIJS is an option any time an abused, abandoned or neglected child is not a
  - Citizen or lawful permanent resident

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### Important Note: Statute Controls over Regulations

1990: INA Statute - Requires Child Eligible for Long Term Foster Care

1993: Federal Regulation - Implements the Provisions of the Statute

2008: TVPRA Amends Statute - Changes the definition of SJS

2015: ?

Role of DHS policies and publications

SIJS regulations have **NOT** been updated since the 2008 amendments

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### Best Practice for Court Order

- Make factual findings regarding
  - Facts of abuse, abandonment and/or neglect
    - Separately regarding each parent
    - About facts occurring abroad and/or in the U.S.
    - Apply and cite state law
  - Articulate 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

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**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




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**All immigrant victims receive without regard to immigration status**

- Shelter and transitional housing
- Legal Services
- Weatherization Assistance Program
- Emergency Medicaid
- Health care from community and migrant public health clinics
- Victim services
- Help from food kitchens
- K-12 education




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**Access to Public Benefits in DC**

- TANF & TANF funded childcare
  - T visa applicants, continued presence (CP), refugees, asylees
  - VAWA self-petitioners eligible + SIJS & U visa if lawful permanent residents eligible. 5 year bar if entered on or after 8/22/96
- Food Stamps
  - T visas (& their children)
  - Under 18 year old children who are VAWA self-petitioners or SIJS/U visa with lawful permanent residency
- Public and Assisted Housing & Vouchers
  - T visas (& their children)
  - VAWA self-petitioner (& children)




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### Health Insurance and Driver's Licenses in DC

- CHIP and Medicaid subsidies
  - T visas, refugees, asylees, CP (& their children) – 7 year limitation
  - VAWA self-petitioner (& children), SIJS applicant children, and wait-list approved U visa applicants and lawful permanent residents
  - Pregnant women receive health care without regard to immigration status
- DC Health Care Alliance
  - provides health care to income eligible persons without regard to immigration status
- Driver's license
  - Limited purpose driver's license to any person
  - Federally recognized driver's license
    - U/T visa, asylees, refugee, any unexpired visa, work authorization



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### Access to Public Benefits in DC

- Educational Grants/Loans (FAFSA)
  - T visas, VAWA self-petitioners (& their children)
  - SIJS children, U visas after lawful permanent residency
- In-state tuition and state financial aid regardless of immigration status
  - For students who attended high school in DC for 3 years + graduation or GED,
- SSI
  - T visas, VAWA self-petitioners if lawfully residing on 8/22/96 and blind or disabled. Other lawful permanent residents 5 year bar + 40 quarters
- LIHEAP
  - VAWA self-petitioners, T visa, CP, refugees, asylees, SIJS/U with lawful permanent residency



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### Access to Public Benefits in MD

- TANF & TANF funded childcare
  - T visa applicants, continued presence (CP), refugees, asylees, VAWA self-petitioners, SIJS and U visa applicants.
- Food Stamps
  - T visas (& their children)
  - Under 18 year old children who are VAWA self-petitioners or SIJS/U visa with lawful permanent residency
- Public and Assisted Housing & Vouchers
  - T visas (& their children)
  - VAWA self-petitioner (& children)
- Driver's license
  - Limited purpose driver's license to any person
  - Federally recognized driver's license
    - U/T visa, asylees, refugee, any unexpired visa, work authorization



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### Health Insurance in MD

- CHIP and Medicaid subsidies
  - T visas, refugees, asylees, CP (& their children) – 7 year limit
  - Children and pregnant women and girls receive subsidies if they are
    - VAWA self-petitioners, SIJS applicant children, and wait-list approved U visa applicants and lawful permanent residents
- Montgomery County provides
  - Subsidized health care if under 250% federal poverty level for county residents without immigration restrictions
- Prince Georges County provides
  - Subsidized health care if under age 19 and 300% federal poverty level for county residents without immigration restrictions




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### Access to Public Benefits in MD

- Educational Grants/Loans (FAFSA)
  - T visas, VAWA self-petitioners (& their children)
  - SIJS children, U visas after lawful permanent residency
- In-state tuition and state financial aid regardless of immigration status
  - For students who graduated or GED from Maryland highschool
- SSI
  - T visas, VAWA self-petitioners if lawfully residing on 8/22/96 and blind or disabled. Other lawful permanent residents 5 year bar + 40 quarters
- LIHEAP
  - VAWA self-petitioners, T visa, CP, refugees, asylees, SIJS/U with lawful permanent residency




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### Access to Public Benefits in VA

- TANF & TANF funded childcare
  - T visa applicants, continued presence (CP), refugees, asylees
  - VAWA self-petitioners eligible at prima facie + SIJS & U visa if lawful permanent residents eligible.
    - 5 year bar if entered on or after 8/22/96
- Food Stamps
  - T visas (& their children)
  - Under 18 year old children who are VAWA self-petitioners or SIJS/U visa with lawful permanent residency
- Public and Assisted Housing & Vouchers
  - T visas (& their children)
  - VAWA self-petitioner (& children)




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### Health Insurance and Driver's Licenses in VA

- CHIP and Medicaid subsidies
  - T visas, refugees, asylees, CP (& their children) – 7 year limitation
  - VAWA self-petitioners (& children), SIJS applicant children, and wait-list approved U visa applicants or lawful permanent residents eligible for subsidized health care through
    - CHIP if Children up to age 19
    - Adults who entered prior to 8/22/97 = Medicaid
    - Adults who entered on or after 8/22/97: Must have lawful permanent residency + 40- quarters of work credit
- Pregnant women receive health care without regard to immigration status
- Federally recognized driver's license
  - Deferred action = approved VAWA self-petitioners, wait-list approved U visa applicants, DACAs
  - Asylees, refugee, T-visa and CP, any unexpired visa, lawful permanent residents




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### Access to Public Benefits in VA

- Educational Grants/Loans (FAFSA)
  - T visas, VAWA self-petitioners (& their children)
  - SIJS children, U visas after lawful permanent residency
- Some Virginia postsecondary institutions offer institutional aid or scholarships for DACAs
- SSI
  - T visas, VAWA self-petitioners if lawfully residing on 8/22/96 and blind or disabled. Other lawful permanent residents 5 year bar + 40 quarters
- LIHEAP
  - VAWA self-petitioners, T visa, CP, refugees, asylees, SIJS/U with lawful permanent residency




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### Judicial Training Network Menu of Topics

- Victim protection based forms of immigration relief: (VAWA, U and T Visas, SIJS)
- VAWA confidentiality limitations on courthouse immigration enforcement and state court discovery (family, civil, criminal)
- Using legally correct information to address immigration allegations in custody, divorce, protection order, child/spousal support & child welfare cases
- U and T Visa certification by state court judges
- Special Immigrant Juvenile Status findings best practices
- Public benefits access for immigrant victims
  - Health care, housing, TANF, SNAP, Education and more
- Improving access to justice for immigrant and LEP persons




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## Technical Assistance and Materials

- Power Point presentations and materials for this conference at [www.niwap.org/go/NAWI-DMV-2018](http://www.niwap.org/go/NAWI-DMV-2018)
- Judicial Training Manual at [www.niwap.org/go/sji](http://www.niwap.org/go/sji)
  - **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)



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## Evaluation



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