

IN SESSION

FALL 2023

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How Immigration Laws and Policies Impact State
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of Human Trafficking, Domestic Violence, Child
Abuse, or Sexual Assault

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NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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FOR CHILDREN AND
FAMILIES IN THE
JUSTICE SYSTEM

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HOW IMMIGRATION LAWS AND POLICIES IMPACT STATE COURTS — WHEN CHILDREN AND LITIGANTS ARE VICTIMS OF HUMAN TRAFFICKING, DOMESTIC VIOLENCE, CHILD ABUSE, OR SEXUAL ASSAULT

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Over the past three decades Congress created multiple forms of humanitarian immigration relief for victims of crime and abuse, including children, perpetrated in

the U.S. by predators who target immigrants. Congress understood that communities are safer when perpetrators of recidivist crimes are held accountable and all citizen and noncitizen victims have the access to justice they need to heal, rebuild shattered lives, and thrive.

This article highlights current Department of Homeland Security (DHS) policies and guidance useful for state courts in their work with immigrant victims.

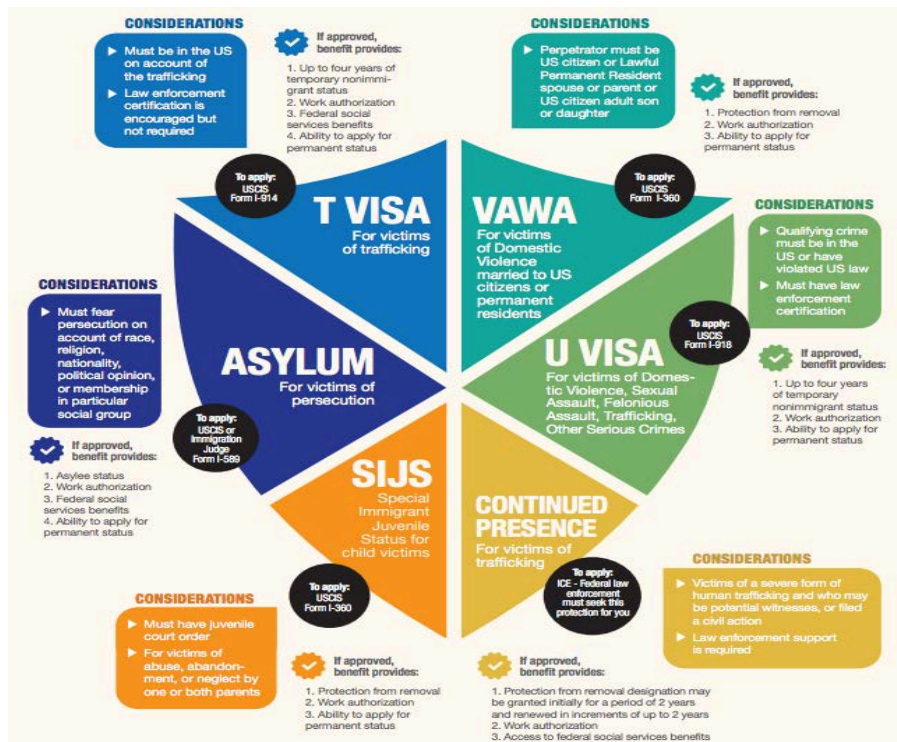
When a state court judge identifies a child or adult who is an immigrant and a victim of domestic violence, child abuse, neglect, or abandonment, sexual assault, stalking, or sex

or labor trafficking the victim will qualify for one or more of the following VAWA and the TVPA created forms of immigration relief:

- T visas and continued presence for human trafficking victims;
- VAWA self-petitions for victims of spouse, child or elder abuse perpetrated by citizens or lawful permanent residents;
- Special Immigrant Juvenile Status (SIJS) for abused, abandoned, or neglected children who were subject to maltreatment by a parent;
- U visas for victims of domestic violence, sexual assault, stalking, human trafficking, and many other violent crimes.

Promoting immigration relief for crime victims is a key part of DHS and the federal government's efforts to welcome, integrate, and promote fairness. Their goal was to eliminate fear and barriers that prevent immigrants from accessing services and support that they are legally eligible to receive.

Crime victim based forms of immigration relief include access to work authorization, protections



against deportation, prohibitions barring immigration officials from using information provided by perpetrators to harm victims, and federal VAWA confidentiality protections that impact discovery in state, family, civil, and criminal court proceedings.

Congress relied on state court judges' expertise on best interests, child welfare, and crime victimization by explicitly creating a role for state court judges in SIJS, U visa and T visa immigration cases. When judges issue SIJS judicial determinations and U and T visa certifications, those judges report significant increases in immigrant victims turning to courts for help in their communities.

Research has also found that when immigrant survivors gain protection from deportation and work authorization there are dramatic improvements in willingness to report crimes and seek help from the courts.

The following DHS policies are of particular relevance for state court judges deciding cases involving immigrant children, crime victims and families.

DHS CIVIL IMMIGRATION ENFORCEMENT PRIORITIES:

Provides courts information essential for child custody, guardianship, and placement decisions. Immigrants with criminal convictions have high rates of removal historically and currently. Undocumented immigrants who are crime victims and/or who are caregiving parents or other caregivers of children, disabled and older adults are protected from deportation.

State court judges are critical to crime victim access to justice when they identify victims and caretakers and:

- Issue court orders granting custody or guardianship awards and making findings of crime victimization, and
- Refer noncitizen child sex and labor trafficking victims under 18 years old to the Office of Trafficking in Persons (OTIP) for issuance of child trafficking victim eligibility letters.

PARENTAL/GUARDIAN INTERESTS DIRECTIVE:

Requires immigration enforcement officials to screen for and not detain caretaker parents or guardians of children and incapacitated adults, including particularly those with court orders. DHS is required to bring detained parents/guardians to court and establish communication with courts.

CIVIL IMMIGRATION ENFORCEMENT AT OR NEAR COURTHOUSES:

Secretary Mayorkas ended immigration enforcement at courthouses to halt the “chilling effect on individuals’ willingness to come to court or work cooperatively with law enforcement.” “Ensuring that individuals have access to the courts advances the fair administration of justice, promotes safety for crime victims, and helps to guarantee equal protection under the law.” No immigration enforcement can take place at courthouses including all buildings used for court-related business.

DHS has issued regulations, policies, publications, new case processing procedures, and guidance that significantly improve implementation of VAWA’s and the TVPA’s immigration protections. DHS has also issued [training tools](#) and has set up [points of contact](#) in local Immigration and Customs Enforcement (ICE) offices which can be helpful to courts particularly in cases involving human trafficking victims and getting detained parents to court. Key aspects of these policy updates include:

T VISA POLICIES AND T VISA CERTIFICATION RESOURCE GUIDE:

This describes how labor trafficking conditions of servitude occur within domestic violence and family relationships. Judicial findings useful to DHS describe how familial traffickers controlled the victim’s liberty and secured work or commercial sex through the use or threat of

physical restraint, physical injury, psychological abuse, or abuse of the legal process. DHS also defines harboring by perpetrators of sex and labor trafficking to include behaviors courts commonly encounter including: isolation of the victim; limitations on the victim’s ability to interact with others; restrictions on the victim’s movement; and consequences of acting outside of the trafficker’s orders or without the trafficker’s explicit permission.

SPEEDING UP ACCESS TO PROTECTION FROM DEPORTATION AND WORK AUTHORIZATION FOR VICTIMS:

By opening DHS’s new humanitarian HART Service Center and providing deferred action to immigrant children who receive SIJS approvals and U visa applicants granted bona fide determinations the time waiting for legal remedies is being decreased.

U VISA CERTIFICATION RESOURCE GUIDE:

Describes U visa eligible criminal activities to include child abuse, elder abuse, hate crimes, video voyeurism, and aggravated robbery and confirms that federal law authorizes judges to sign U visa certifications based on detection of criminal activity in civil, family, or criminal cases. Certifications may be signed either by the judge who heard the case, or another judge based on a review of court records. Judges sign certifications as an administrative function of the court.

SPECIAL IMMIGRANT JUVENILE STATUS FINAL RULE:

This rule confirms that any state court that issues orders about dependency, placement, and/or custody and care of children is a court able to make SIJS judicial determinations. For SIJS under immigration law a child is “dependent” on the court when a court order governs where and with whom the child lives. SIJS regulations require that judges apply state best interests, age of majority, and state law definitions of

Judicial Education Resources

[Bench Card on Immigration Relief for Battered Spouses, Children, and Immigrant Crime Victims](#)

[Special Immigrant Status Bench Book](#)

[U Visa Certification and T Visa Declaration Toolkit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers](#)

[DHS Enforcement Priorities, Courthouse Enforcement and Sensitive Locations Bench Card](#)

[How to Get a Detained Person to Court for Family Court Cases Involving Children or Incapacitated Adults](#)

[Answers to Questions from State Court Judges on the 2022 Special Immigrant Juvenile Status \(SIJS\) Regulations](#)

[SPARC Judicial Officer Guide: Responding to Stalking](#)

abuse, abandonment, and neglect to the facts of the case whether parental maltreatment occurred in the U.S. or abroad. The court's non-viability of reunification with the child's abusive parent determination must remain in effect from the court order through adjudication of the child's SIJS application (six months after the child files). The SIJS approval will be revoked if a court order reunifies the child with their parent who perpetrated the maltreatment before the child becomes a lawful permanent resident based on the approved SIJS application.

VAWA SELF-PETITIONING IMPLEMENTING POLICIES:

These policies implement VAWA 2000, 2005, and 2013 amendments with important clarifications. Divorce does not cut off abused stepchildren of U.S. citizens and lawful permanent residents from their VAWA self-petition protections. Adopted children who have been abused may self-petition without being required to have lived with their abusive adoptive parent for two years. It is helpful to DHS adjudicators when state court orders include detailed findings documenting a

marriage, parent-child relationships, residence together, children's ages, parentage, incidents of abuse, coercive control, and extreme cruelty.

GUIDANCE ON ADOPTION OF NONCITIZEN CHILDREN (INTERCOUNTRY ADOPTIONS):

DHS and the Department of State collaborated on the development of tools to help state court judges ensure that orders issued by state courts in adoptions cases followed the correct rules so that DHS is able to grant legal immigration status, including a path to citizenship for adopted children. For example, requirements must be met in a specific order for adoptions of children from Hague Convention countries to ensure that adopted children are not left without a path to legal immigration status and citizenship.

To learn more from judicial peers and experts judges, tribal judges, commissioners, magistrates, hearing officers, and other judicial officers, you are invited to **Join the National Judicial Network (NJN):** Forum on Human Trafficking and Immigration in State Courts.

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