

Special Issues in Family/Children's Court for Cases Involving Immigrants

Judge Rosemary Collins (Ret.) and Leslye E. Orloff
New Mexico DV Commissioner/Hearing Officer
Seminar

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OVW Disclaimer

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Introductions

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

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
- 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

Join the National Judicial Network (NJN)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJN
 - Opportunity to engage in discussions with other judges, magistrates, commissioners, hearing officers
 - 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

DYNAMICS OF DOMESTIC & SEXUAL VIOLENCE EXPERIENCED BY IMMIGRANTS

Polling Exercise: Myths and Realities

Abusers of immigrant spouses are more likely to be lawful permanent residents and immigrants than U.S. citizens.



True



False

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

Polling Exercise: Myths and Realities

In over 70% of abusive marriages U.S. citizen or lawful permanent resident husbands refuse to file or withdraw immigration papers they filed to sponsor their abused immigrant spouse for lawful permanent residency.



True



False

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)

Polling Exercise: Myths and Realities

Foreign born girls are twice as likely as U.S. born girls to have experienced sexual assault by the time they are in high school.



True



False

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).

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 when victims called police for help
 - VAWA self-petitioners 17% (2017); U visa 36% (2017)
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7%

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)

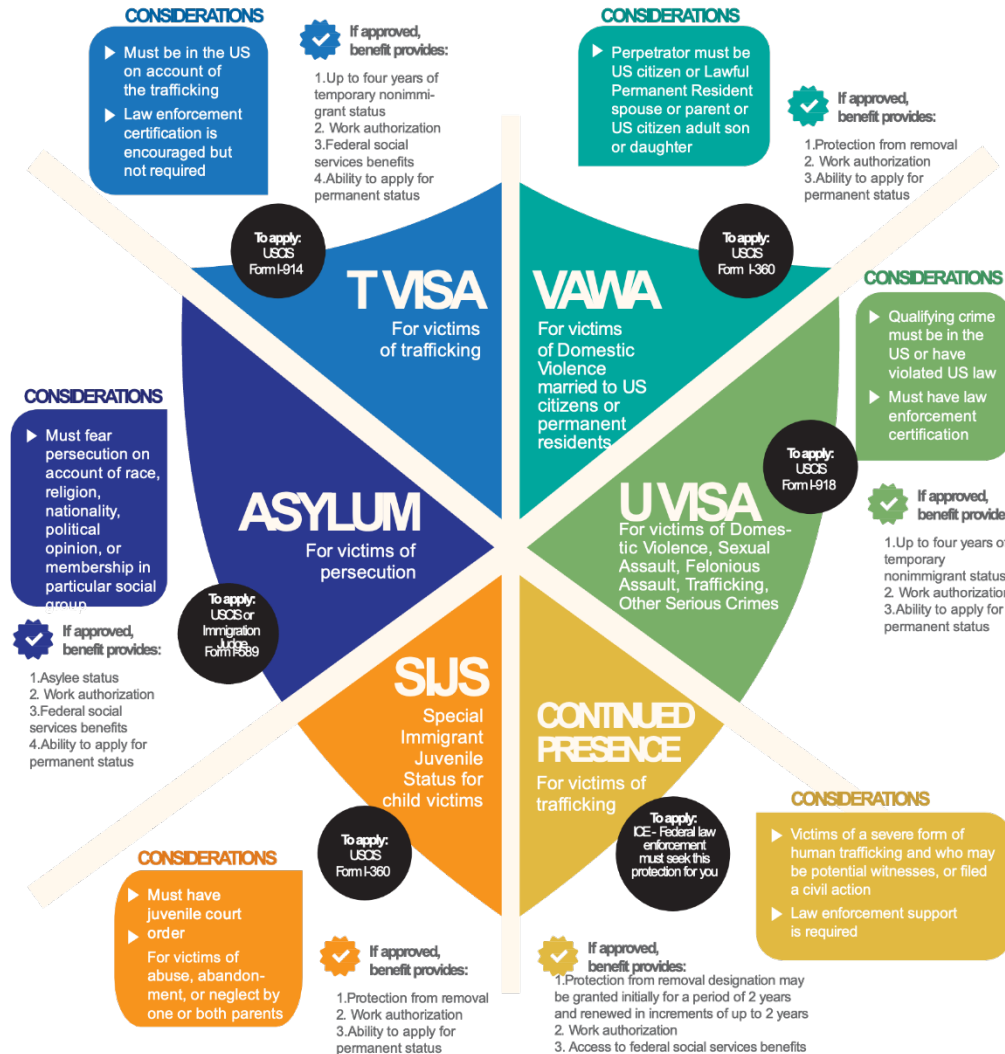
Immigration Related Abuse

- 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)

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

PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

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

Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Ability get immigration relief for children
- Financial independence from perpetrator
 - Legal work authorization (6 months to 5 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

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)

Immigration Law Definition of Domestic Violence (Battering or Extreme Cruelty)

Battering

- Physical violence against
 - Spouse/intimate partner
 - Child
- Use of a weapon
- Sexual abuse & assault
- Stalking
- Other acts defined as domestic violence under state law
- Attempts or threats to do any of these actions

Coercive Control = Extreme Cruelty:

- Strategies designed to retain control or establish domination through fear, dependence, deprivation, isolation, immigration related abuse
- Deprivation of basic necessities
- Controlling regulating, monitoring the victim
- Compelling through force, intimidation threats to abstain or engage in conduct against victim's will

Extreme Cruelty:

- Withholding medicine or medical care
- Adultery with a minor
- Financial abuse, seeking to destroy victim's credit
- Accusations of infidelity
- Using children as a tool
- Emotional abuse causing physical or psychological harm

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

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

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

What are Severe Forms of Human Trafficking?

- **Sex Trafficking:** in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- **Labor:** The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

(Federal Law—“Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000/)

Familial Trafficking

- Over 62.7% of sex trafficked children their trafficker is a family member
 - Parent, grandparent, aunt, uncle, cousin, sibling
 - With 45.8% parent or guardian
- Up to 34% of sex trafficked children are trafficked by an intimate partner

- Cole, J., & Sprang, G. Sex trafficking of minors in metropolitan, micropolitan, and rural communities. *Child Abuse & Neglect* (2014), <http://dx.doi.org/10.1016/j.chiabu.2014.07.015>

Time to Legal Work Authorization and Formal Protection Against Deportation

- Battered spouse waiver (Continues) Abused spouses of US citizens with 2-year conditional permanent residency
- VAWA self-petition (3-32 months) Abused spouses/children of US citizens and lawful permanent residents
Abused parents of US citizens over 21 years of age
- VAWA cancellation of removal (1 year) Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Special Immigrant Juvenile (SIJS) (6 -8 months) Children abused, abandoned or neglected by one or both parents
- U visa (4-5 years) Has been, is being, is likely to be helpful
Substantial harm from criminal activity
- T visa-Continued Presence (19 months) Victims of severe forms of human trafficking
- Work Authorization -Abused Spouses of Work Visa Holders (6-12 months)
A, Eiii, G and H visas

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

▼ Feedback

A

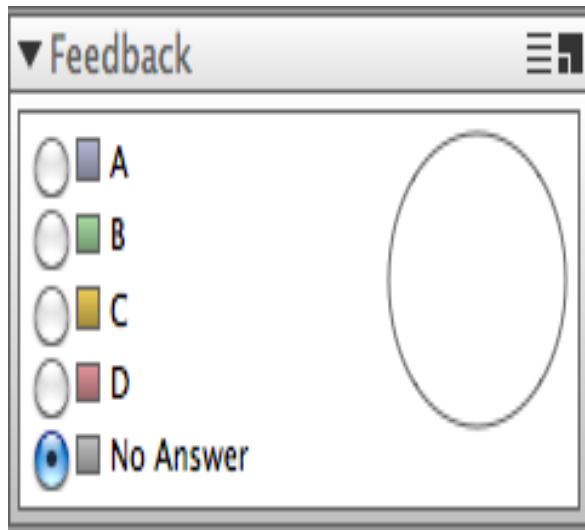
B

C

D

No Answer

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



Feedback

A

B

C

D

No Answer

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

What forms of immigration relief would Miguel qualify for:

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

Feedback

A

B

C

D

No Answer

Knowledge of Immigration Issues is Important in Family/Children's Court Matters

- ▶ Addressing immigration status issues early can
 - ▶ Improve outcomes in family/children's court cases
 - ▶ Prevent or delay family/children's court orders that cut off a party and her children from immigration relief
- ▶ Family/Children's court actions can assist with
 - ▶ Helpful evidence for an immigration case
 - ▶ Obtaining from family/children's court judicial officers
 - ▶ SIJS findings for abused immigrant children
 - ▶ Certifications in immigrant crime victim's U or T visa case
 - ▶ Creative protection order remedies

Impact of State Court Orders on the Immigration Case

- Specific written orders are helpful to immigration adjudicators and immigrant parties
- Court orders contain evidence of
 - Abuse, abandonment, neglect, domestic violence, sexual assault, extreme cruelty
 - Family relationships including
 - Marriage
 - Parent-child relationship
 - Step-parent/step-child relationship
- Helpful to apply and cite state law

With Deferred Action and Work Authorization Trust Improves

- 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

Orloff, Magwood, Campos-Mendez, & Hass, Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status (June 2021)

2013 and 2017 Research Found Increased Justice System Participation

- VAWA Self-Petitioners
 - 62% participate in criminal investigations and prosecutions
 - 63% seek civil protection orders
 - 60% turn to the courts for child custody orders
- U Visa Victims
 - 70% participate in active criminal prosecutions and investigations
 - 29% willing to cooperate if their criminal cases went forward
 - 67% seek protection orders
 - 64% seek custody orders

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); Leslye Orloff, et. al., *U Visa Victims and Lawful Permanent Residency* 5 (September 6, 2012)

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) Overview

- Humanitarian immigration relief for unmarried children who cannot be reunified with one or both parents who
 - abused, abandoned or neglected the child either abroad or in the United States
- State court findings are required as evidence
 - The court applies state best interests laws in making a child custody or placement decision and includes in the court order SIJS findings
 - The state court order does **not** provide immigration status
 - The order is *one required piece of evidence* in a federal immigration adjudication process

State Court SIJS Orders: Apply State Law

- The court has jurisdiction to issue orders regarding the care, custody, or placement of an immigrant child (under age of majority, unmarried, in U.S.) with
 - An individual (e.g. non-abusive parent, grandparent, guardian, 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
- Reunification of the child is not viable with a parent due to at least ONE PARENT'S abuse, abandonment, or neglect

See Immigration and Nationality Act § 101(A)(27)(J)

Importance of Judicial Officer's Role on SIJS

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

2022 Regulations

“Judicial Determination”

- A “judicial determination” is a conclusion of law made by a juvenile or family court. 8 C.F.R. § 204.11(a)
- “There is nothing in the Immigration and Nationality Act (INA) that allows or directs ...courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.” 6 USCIS-PM J.1.A (footnote 2)
- Note: regulation no longer uses the terms “SIJS finding” or “predicate order”

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 juvenile and family court procedures and note that you do so to demonstrate that the court made an informed decision.

Best Practices For State Court Orders

- Make specific detailed findings of fact and
- Based on those findings make conclusions of law
- “USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence or make independent determinations about best interests of the juvenile and abuse, neglect, abandonment or a similar basis under state law.”
- 6 USCIS-PM J.2

Variety of Different Scenarios Where Child in US May be SIJS Eligible

- Children in the care or custody of a family member or other caregiver who have been abused, neglected, abandoned or subject to similar maltreatment by a parent prior to their arrival in the U.S or while in the U.S.;
- Children in federal custody with HHS, Office of Refugee Resettlement, Unaccompanied Children's Program; or
- Children in the state child welfare system in the custody of a state agency (e.g. foster care), or in the custody of a person or entity appointed by a state or juvenile court. 6 USCIS-PM J.1.A

Raise your hand if you have encountered
an immigrant child who could be SIJS
eligible in the court cases you hear?



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
- Declaratory judgments
- Adoption

SIJS Bench Book
Quick Reference
Guides by case type

Custody or Dependency Determination Required

- A custody determination or a declaration of dependency is required
 - Best practice: include detailed findings of fact and state the custody determination or declaration of dependency as the court's conclusion of law
- Where the child is placed is not controlling
- Placement must be in the U.S.
- Placement examples:
 - Guardianship, custody with non-abusive parent, foster care, kinship care, state or private agency

Findings/Conclusions of Law That Return to Home Country Not in Child's Best Interests

- Identify each potential custodian in U.S. and home country.
- Apply state best interest 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 support, help, services child needs in U.S vs. home country.

Findings/Conclusions of Law: Reunification Not Viable

- Order must include conclusion of law that reunification with the parent is not viable.
- Make specific findings- what ground (abuse, abandonment, neglect) applies to which parent.
 - Only mistreatment by one parent required.
 - Does not require termination of parental rights.
 - 8 C.F.R. § 204.11(c)(1)(ii)
- 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
- Use state law. Do not cite to INA or regulations!

2022 Regulations Confirm

- Court's conclusions of law regarding non-viability expected to be in effect
 - When the court order is issued
 - When the child files for SIJS and
 - When the SIJS application is adjudicated
 - 180-day adjudication timeframe
 - 8 C.F.R. § 204.11(c)(3)(ii) and (g)(1)
- Approved SIJS applications will be automatically revoked only when:
 - Issuance of a court order reunifying the child with the parent who perpetrated the abuse, abandonment, neglect or similar harm
 - Judicial proceedings determine that it is in the child's best interest to be returned to the child's or their parent's home country
 - 8 C.F.R. § 204.11(j)(1)

Age of the Child, Age Out Protections and Effect of Marriage

- When the state court issues SIJS orders:
 - Child of an age that the court has jurisdiction
 - “State law is controlling as to whether a petitioner is considered a “child” or any other equivalent term for a juvenile subject to the jurisdiction of a state juvenile court for custody or dependency proceedings” 6 USCIS-PM J.2.B
 - Child unmarried
- When the child files SIJS application
 - Under 21
 - Unmarried
- When USCIS adjudicates the child’s SIJS application
 - Can be over age 21 – age out protections
 - Unmarried
- After SIJS application is granted and when child files for lawful permanent residency
 - Can be over age 21 – age out protections
 - Can be married – New regulations allow marriage after approval of SIJS

2022 Regulations State: Mixed Motives For Seeking SIJS Orders Will Not Impede USCIS Approval

- An SIJS application is bona fide when obtaining relief from parental abuse, neglect, abandonment, or similar basis under state law was “a primary reason” seeking court orders. 8 C.F.R. § 204.11(b)(5).
 - Changed from “sole purpose”
- There may also be an immigration related motive
 - 6 USCIS-PM J.2.D.

Best Practice for Court Order

- Make factual findings regarding
 - Child's age and parentage
 - 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 only
 - Helpful to articulate trauma impact on the child
 - Why court order is in the child's best interest
- Explain how the order and each of the findings are:
 - Based on state statutes
 - Needed for child protection, healing, and stability
 - In the child's best interests
 - Designed as a remedy for abuse, abandonment, or neglect

SIJS Resources

- SIJS Bench Book
- SIJS regulations annotated compilation with full regulatory history
- SIJS Case Law Chart – All states
- *In Re Guardianship of Saul H. case overview tool*
- Family Law Jurisdiction and Service of Process Charts
- Best Interests of the Child State Comparisons by Factors Covered
- State Public Benefits Charts and on-line Map to see SIJS children's eligibility by state by type of benefit

U Visas Promote Trust and Access to Justice:

U Visa Certification By Judges,
Hearing Officers, Magistrates,
Commissioners and other Judicial
Officials

Bipartisan Legislative Intent

- We want crimes reported to police and courts
- Improved community policing helps everyone
- No one should be a victim of crime
- Offenders prey upon the most vulnerable in our communities, often immigrants
- Without victims reporting crimes, we won't know about the most dangerous offenders
 - Domestic violence
 - Sexual Violence
 - Stalking

U Visa Requirements

Victim (Certification)

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in US or violated US 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.	

Examples of Similar Criminal Activities

- **Nature & elements of offense substantially similar**
 - Hate crimes,
 - Child, elder, or disabled adult abuse,
 - Aggravated robbery,
 - Video voyeurism

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

Which Judicial Officers Can Certify?

- Federal, state, & local
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
 - Others with delegated decision-making authority (Hearing Officers)

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 or hearing officer for certification?

- 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. Police did not investigate and case never sent to prosecutor
- D. Judge or Hearing Officer observed victim's attendance and participation in criminal or family court case

POLL

Large Group Discussion: U Visa Judicial Officer Leadership Opportunity

- In some communities law enforcement or prosecution officials do not certify
- When this occurs courts can be the only option
- What role could judges or other judicial officers play?

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

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

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

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>

Multiple Choice Question:

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



- 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

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.

Materials on Webpage in NIWAP Library

- U Visa Certification Toolkit for Judges
- Tip Sheet for Courts on U Certification
- San Francisco U Certification Protocol
- Immigration Remedies Identification Tool for Courts
- Article: Understanding the Judicial Role in U Visa Certification
 - Comparing DHS regulations, policies, publications and court cases
- *Chevron* handout
- And much more...

Divorce, Custody, and Protection Orders in Cases of Immigrant Domestic Violence Victims

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

Is Immigration Status Relevant to Custody?

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



Myth vs. Fact:

Parents without Legal Immigration Status

Myth

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

Fact

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

Immigrant victims involved in custody cases will qualify for immigration protections:

- 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 both sex and labor trafficking

Multiple Choice Exercise:

Which parents are the *most* likely to be removed from the U.S.?



- A. Immigrants with orders of removal
- B. Undocumented immigrant victim parents
- C. Immigrants with criminal convictions
- D. Immigrants with notices to appear in immigration court

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>

2020

- Criminal convictions/pending criminal charges 92%

<https://niwaplibrary.wcl.american.edu/pubs/ice-ero-report-2020>

2022 Priorities

- Terrorism/threat to national security
- Entered US after 11//1/20 unlawfully
- Current public safety threat – based on totality of circumstances

“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)

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*

Protection Orders

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

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

Use Creative Remedies to...

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

Victims Who Stay: No Unlawful Contact Protection Orders

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

Findings of Certain Protection Order Violations = Deportable Offenses

- Even if no criminal prosecution or conviction
- Deportable Offense =
 - An immigrant “enjoined under a protection order issued by a court and whom **the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.**”
 - 8 U.S.C. § 1227(a)(2), INA § 237(a)(2)(E)(ii) (emphasis added).
- Issue Padilla warnings
- Determine primary aggressor

Family Law Resources

- Bench Cards on
 - Divorce and Immigrant Victims
 - Issues that Arise in Immigrant Victims Custody Cases
 - Protection Orders for Immigrant Victims

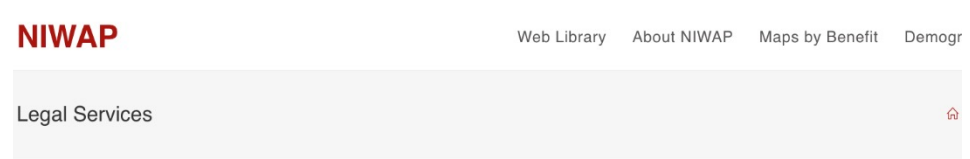
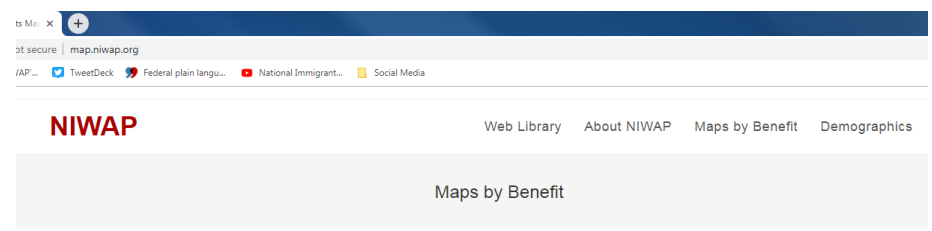
Publicly Funded Benefits and Services

Access for All

Both documented and undocumented immigrant survivors can access:







- Legal Services
- Family Court (Divorce)
- Language Access
- Police Assistance
- Protection Orders
- Child Custody and Support
- Have Their Abusers
Criminally Prosecuted
- Assistance for Crime
Victims
- Shelter
- Transitional Housing
- VOCA compensation
- Emergency Medical Care
- Public Health Clinics
- COVID-19 testing/treatment
- WIC & Soup kitchens
- Obtain Public Benefits for
Their Children

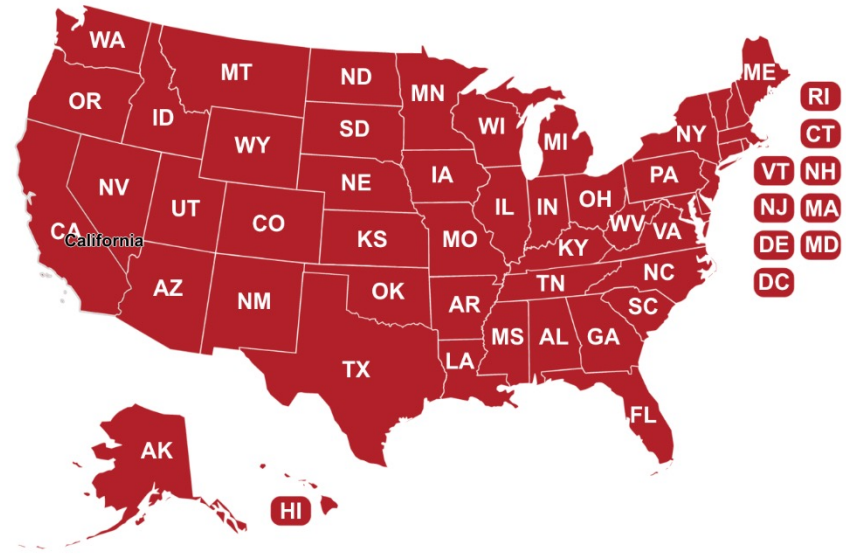
Interactive Public Benefits Map



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 & Professional Licenses
- Earned Income Tax Credit
- Emergency Medicaid
- Federal Education Benefits
- FEMA Assistance & Restricted Programs
- Food Stamps
- Forensic Costs Coverage
- Income Tax Credits
- Legal Services
- Medicaid
- Post-Assault Healthcare
- Prenatal Care
- Purchasing Health Insurance on the Exchanges
- Shelter/Transitional Housing
- State Education Benefits
- Supplemental Security Income
- Unemployment
- VOCA compensation
- Weatherization & Energy Assistance
- WIC

Resources Available to Assist Courts

- SJI Funded Materials for Judges and Hearing Officers in the NIWAP Web Library
 - Bench book on SIJS
 - U visa certification toolkit
 - Bench cards for family court cases
 - Divorce, custody, protection orders, economic relief
 - Public benefits bench cards, charts, online map tool

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/NM-HearingOfficers2022/>
- Judicial Training Manual at <https://niwaplibrary.wcl.american.edu/sji-njn-materials>
- **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

Contact

Leslye E. Orloff, Adjunct Professor
Director, National Immigrant Women's Advocacy Project
(NIWAP, pronounced new-app)
American University, Washington College of Law
202.274.4457
orloff@wcl.american.edu; info@niwap.org
wcl.american.edu/niwap