

***Legal Protections for
Immigrant Children Who Are
Victims of Human Trafficking***

**National Council of Juvenile and
Family Court Judges
December 2, 2021**

Disclaimer

Funding for this webinar was provided by the NoVo foundation.

Points of view or opinions expressed in this presentation are those of the presenter(s) and do not necessarily represent the official position or policies of the NoVo foundation.

Faculty



Judge Susan Breall
San Francisco Superior
Court



Leslye E. Orloff
Adjunct Professor and Director
National Immigrant Women's
Advocacy Project, American
University Washington College of Law

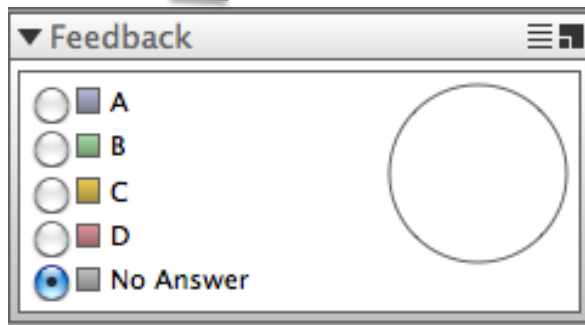
Learning Objectives

By the end of this training participants will be able to:

- Identify immigrant child trafficking survivors who qualify for immigration
- Sign U and T visa certifications in cases of trafficked children and their protective non-abusive parents
- Issue state court findings for children filing for Special Immigrant Juvenile Status

Who Has Joined Us on This Webinar?

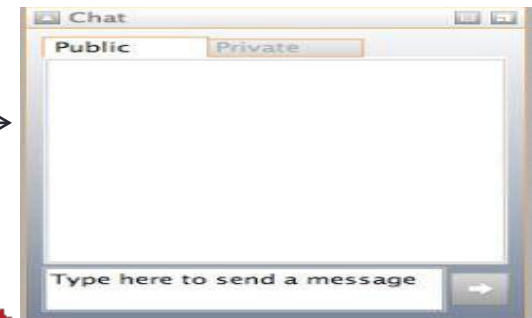
Answer on
the left



A screenshot of a 'Feedback' window. The window has a title bar with a dropdown arrow and the text 'Feedback'. Below the title bar, there are five radio button options: 'A' (blue square), 'B' (green square), 'C' (yellow square), 'D' (red square), and 'No Answer' (blue circle). To the right of these options is a large empty circle.

- A. Judge
- B. Court/Judicial Education Staff
- C. Child Protective Services
- D. Children's Attorney/Advocate
- E. Other

Other write
in chat box



A screenshot of a 'Chat' window. The window has a title bar with the text 'Chat'. Below the title bar, there are two tabs: 'Public' and 'Private'. The 'Public' tab is selected. Below the tabs is a large empty text area for messages. At the bottom of the window, there is a text input field with the placeholder text 'Type here to send a message' and a send button.

Type in the chat box

What countries do children victims or parents come from whom you see in your courts come from?



US Demographics (2019)*

- ❖ Total foreign born population – 44,932,901
- ❖ Foreign born make up 13.7% of the U.S. population.
 - 51.6% naturalized citizens
 - 30.3%% legal permanent residents
 - 18.1% temporary legal status or undocumented immigrants
 - 44.4% rise in immigrant population from 2000 to 2019
- ❖ 22% of people in the U.S. speak a language other than English at home & 46.4% of foreign born persons are limited English proficient
- ❖ Length of time immigrants have lived in the U.S.
 - 50.7% entered before 1999
 - 24.6% entered 2000 - 2009
 - 24.8% entered since 2010
- ❖ 25.8% of children under age 18 have one or more immigrant parents
 - 87.9% of these children are native-born U.S. citizens

**Source: Migration Policy Institute Data Hub (July 2020) and Lawful Permanent Resident estimates MPI and DHS (2019)*

Judge Breall: Why would immigration relief improve outcomes for trafficked children in state courts?



Benefits of Legal Immigration Status When Trafficked Children and/or Their Parents Qualify

- Protection from deportation
 - Both children and protective non-abusive parent
- Legal work authorization & driver's licenses
- VAWA confidentiality protections
- Turn to civil and criminal justice systems for help at higher rates
 - E.g., call police, get civil protection orders, seek custody
- Access to public benefits and services grow as victims move through the immigration process
 - Join us December 9, 2021 3:00 to 4:30 p.m.

NIWAP's Evidence Based Research Findings

- Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Survivors and Their Children After Employment Authorization and Legal Immigration Status (June 8, 2021)

<https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report>

After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- Increased justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 22% help other victims report abuse and seek help/justice
- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
 - 74% decline in immigration related abuse
 - 78% decline in threats to snatch/cut off access to children
 - 65% decline in efforts to use immigration status of the victim to gain advantage in family court

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).

Who is Reporting Human Trafficking to the U.S. Human Trafficking Hotline (2019)?

- Female 82%, Male 12%, Gender Minorities 6%
- Adults 73%; Minors 27%
- Citizens/lawful permanent residents 43%
- Immigrants 57%
- Type of trafficking
 - Sex trafficking only 71.7%
 - Labor trafficking only or a combination of labor and sex trafficking 16%

Polling Exercise: Myths and Realities

For over half of sex trafficked children a family member is involved in their trafficking



True



False

Familial Trafficking

- For 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>

Immigration Related Abuse

- Threats to have the victim or their protective parent deported if trafficking or abuse is reported
- Failing to file/withdrawing a victim child's immigration case
- Telling victim that police will deport them if they call for help

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%

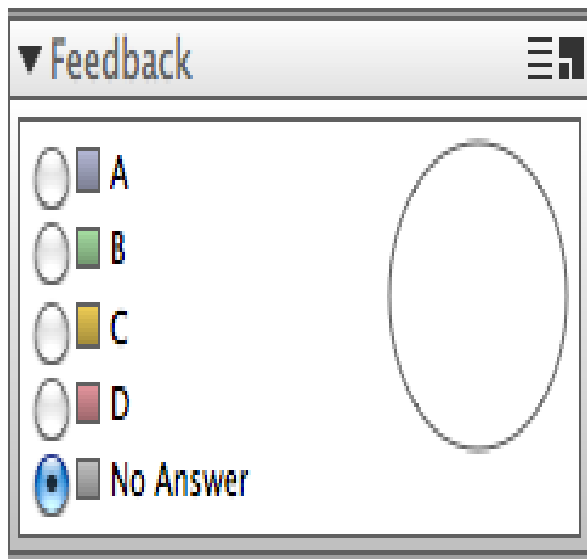
Krisztina E. Szabo, David Stauffer, Benish Anver, *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rodrigues et al. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial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

DHS VAWA Confidentiality Computer System

- Directs use of “red flag” “384” computer system to identify victims with pending/approved victim-based immigration cases
- Protects against immigration enforcement, removal, release of information and reliance on information from the perpetrator (& family or agents)
 - All spouse abuse/child abuse cases
 - Crime victim cases: human trafficking, domestic violence, sexual assault, stalking, other violent crimes
 - Courthouse enforcement statutorily prohibited against victims and barred against anyone by DHS policy absent head of field office approval
 - Discovery implications

For Judges on the Call – Have you ever: Check all that apply

(court staff on the webinar please respond based on what judges you
have worked for have done)



- A. Signed a U visa certification
- B. Signed a T visa declaration
- C. Issued SIJS findings

Immigrant Children Who Are Victims of Human Trafficking, Domestic Violence, Child Abuse, Child Neglect or Child Abandonment Are Eligible for Immigration Relief

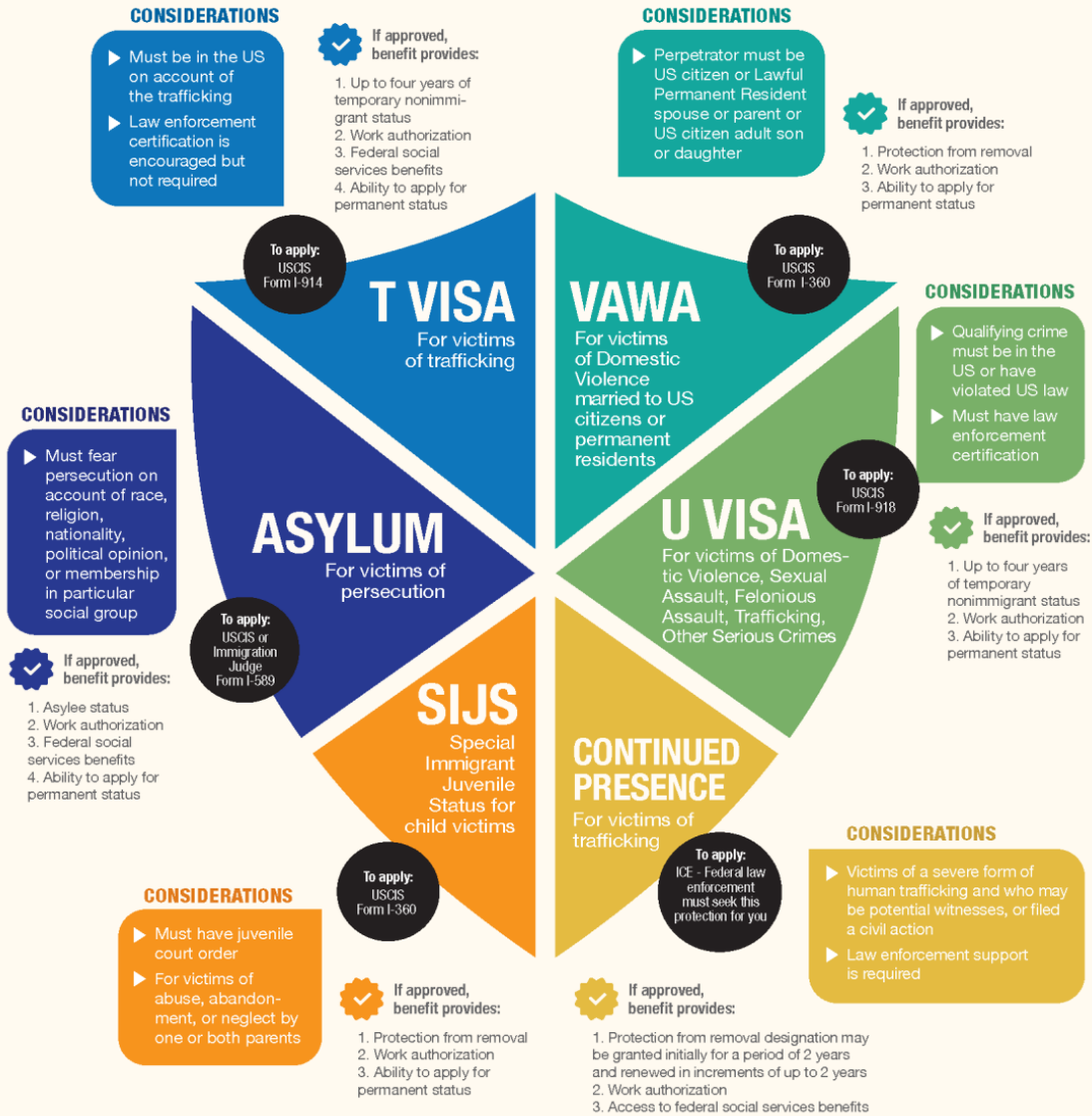


All Immigrant Victims of These Criminal Activities Will Qualify for Immigration Relief

- 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

PROTECTIONS FOR IMMIGRANT VICTIMS



Protections for Immigrant Protective Parents

- Crime victim protections for immigrant parents whose children are abused
 - Children and step-children
 - Qualify whether or not they were also victimized
 - Child may be a citizen or an immigrant also seeking immigration relief
 - Promotes parents ability to actively protect children

What are best practices for judges in cases of immigrant commercially sex trafficked children??



Judicial Role

- Be Trauma Informed
- Make detailed findings
 - Family relationships: Marriage and Parent child relationship
 - Battering, extreme cruelty, child abuse, elder abuse, child abandonment, neglect, sexual assault, stalking
 - Residence together
 - Apply and cite state law
- Role Congress created for state court judges
 - U/T visa certification
 - Special Immigrant Juvenile Status findings
- Judges can play a leadership role

Best Practices: Child Welfare Agencies and Prosecutors' Offices

- Identify children and parents eligible for victim based immigration protections
- In children's best interests to
 - Refer victims to programs in expertise helping immigrant victims (NIWAP Directory)
 - Appoint immigration counsel
 - Provide/obtain U visa certifications and T visa declarations
 - Ask courts for SIJS findings
- Ensure that immigration status of both parent and child is not adversely impacting the decision-making process in placement recommendations or reunification planning

Forms of Immigration Relief for Child Trafficking Victims

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 = 12-18 months (2021)**
- **Judicial role**
- DHS, Recognizing Human Trafficking in the Courts Room (2015)
<https://niwaplibrary.wcl.american.edu/pubs/dhs-recognizing-human-trafficking-victims-in-the-courtroom>

U Visa Requirements and Process

- 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 deferred action =**
 - 4–6 years (shortening with 2021 bona fide process)
- **Judicial role**

U Visa Certification and T Visa Declaration Toolkit for Federal, State, and Local Judges (2021)
<https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2>

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under state law age of majority at SIJS finding
- Under the age of 21 when child files SIJS case
- 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 (2021)**
- **Judicial role**
- Special Immigrant Juvenile Status Bench Book (2018)
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>

VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - Parent (Children abused under age 21 have up to age 25 to file)
 - Spouse 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
- **Timeline to work authorization = 4–18 months (2019)**
- **Judicial role**
- Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Crime Victims (2013) <https://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimsimmrights10-11-13>

Case Scenario – Clara, Eduardo, Juanita, Lupe – Part 1

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 12-year-old daughter, Juanita. Juanita's father abandoned her when she was an infant.

After becoming pregnant, Clara gave birth to a baby girl, Lupe. Eduardo decided to bring Clara, Juanita, and Lupe to the U.S. to live with him. When they arrived in the U.S., Eduardo took Clara's, Juanita's, and Lupe's El Salvadorian passports and became physically and sexually abusive of Clara. Within a year following their arrival in the U.S. Eduardo forced both Clara and Juanita to work for his family's business and never paid them for their labor.

One night when Juanita was 14 and Lupe was 2, Eduardo flew into a rage and beat Juanita and Lupe severely with a belt. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors called the police for help, and Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and sexual assault of Clara and child abuse/aggravated assault of both children. The police took Clara to the hospital, and the children were placed in foster care.

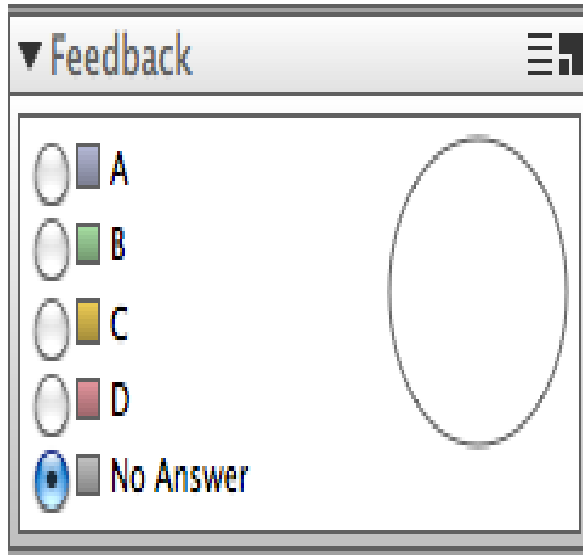
Case Scenario – Clara, Eduardo, Juanita, Lupe – Part 2

Eduardo was convicted of sexual assault and attempted murder of Clara, and child abuse/aggravated assault of both children and sentenced to a long prison term.

Lupe's and Juanita's neglect cases were assigned to Judge Breslow and both children were adjudicated neglected children. The judge granted Clara's request for sole legal and physical custody of both children and continued the case for monitoring. Juanita then ran away from home and was taken in by "friends", who trafficked her, forcing her to engage in sex with men in exchange for money. After being in run-away status for a year, Juanita returned to her mother.

What forms of immigration relief would Clara, Juanita and Lupe qualify for?

What forms of immigration relief would Clara qualify for: (check all that apply)



Feedback

A

B

C

D

No Answer

A large empty oval is positioned to the right of the radio button options, indicating where the user's selection would be recorded.

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

What forms of immigration relief would Juanita qualify for (check all that apply).

Feedback

A

B

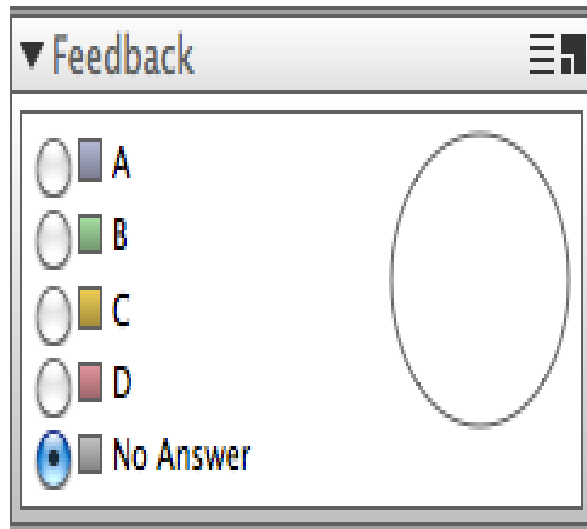
C

D

No Answer

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

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



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

DHS Enforcement Priorities 9.30.2021

- Terrorism, espionage, or threat to national security
- Threat to border security if
 - Apprehended while attempting to unlawfully enter the U.S.; or
 - Apprehended inside the U.S. after unlawfully entering after 11/1/20
- Current threat to public safety due to serious criminal conduct
 - Individual assessment based on totality of the circumstances
 - Gravity and sophistication of the offense, conviction, sentence
 - Nature and degree of harm; Use of dangerous weapons
 - Serious prior criminal record

DHS Enforcement Priorities 9.30.2021 and Trasvina ICE 5.27.21 Memo: *Mitigating Factors*

- Crime victim , witness, party in legal proceedings
- Eligible for humanitarian or other immigration relief
- Advanced/tender age/pregnancy
- Poor health or serious medical condition
- Length of time in U.S.;
- Person is likely to be granted temporary or permanent immigration relief
- Military or public service by immigrant or family member
- Impact on family in U.S. of loss of caregiver/provider
- History of work in the U.S.
- Pursuit or completion or education in the U.S.
- Time since offense, rehabilitation, conviction vacated or expunged

What forms of human trafficking did Juanita experience?



Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Process -Act

- **Recruits**
- **Entices**
- **Harbors**
- **Transports**
- **Provides**
- **Obtains**
- **Advertises**
- **Maintains**
- **Patronizes**
- **Solicits**
- **Benefits, financially or by receiving anything of value**

Means

- **Force**
- **Fraud**
- **Coercion**

- **Proof of force, fraud, or coercion not required for sex trafficked children under 18.**

Purpose-End

- **Commercial Sexual Activity**

- **A commercial sex act is any sexual act for which something of value is given or received**
 - Money
 - Drugs
 - Food
 - Shelter
 - Clothing
 - Transportation

Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Process-Act

- Recruits
- Harbors
- Transports
- Provides
- Obtains
- Benefits, financially or by receiving anything of value

Means

- Force
- Restraint
- Threats of harm
- Abuse or threatened abuse of the legal system
- Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint
- **No federal exception for minors**

Purpose-End

- Involuntary servitude
- Peonage
- Debt Bondage
- Slavery

Coercion

22 U.S.C. § 7102(3)

- Threats of serious harm to or physical restraint against any person; *OR*
- Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; *OR*
- The abuse or threatened abuse of the civil, criminal, or administrative legal process
 - DHS, CPS, IRS, police, divorce, custody, courts

Serious Harm

18 U.S.C. § 1589(c)(2)

- Any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

POLL: Which of the following could be a process through which a trafficker picks their victim?

- A. Dating App
- B. International marriage broker
- C. Guardianship of a minor
- D. Trafficker locks the victim in the house or workplace
- E. All of the above

Process/Acts of trafficking

- Does not require crossing a border
- Recruitment through
 - Marriage
 - Dating App – Marriage broker
 - Adoption
 - Guardianship
- Promise of shelter, housing
- Victim isolated, physically held, locked in
- Make victim financially dependent

Traffickers Have Many Ways of Accessing Victims

Boy-friending:

- Pretending to have personal romantic interest in the victim, dating the victim to gain attachment
- Telling the victim they will “take them places”, “take care of them”, professing their love
- AND THEN it changes similar to domestic violence - the trafficker starts mentally and physically abusing and manipulating
- Victim is brainwashed feel they cannot leave
- Some continue to try to “win” abuser over by pleasing

Social Media, Mass Blasts:

- “Hey, Cutie! Saw ur pic on FB and ur r so beautiful. Want to talk or meet up sometime?”
- Search FB for posts that scream loneliness, no support system, been recently disappointed or just broke up
- Using dating sites to find victims, carrying on conversations designed to uncover victim’s vulnerability to exploit

Face to Face:

- Scouring bus stations, train depots for runaways and loners
- Approaching single victims or groups with modeling offers or other ways to make money together
- Hitchhikers, lone walkers, kids leaving school early

Means: Force, Fraud, Coercion

- Actual and treats of physical/sexual abuse
 - To victim, children, or family member
- Threats of deportation, take passport, immigration papers, IDs
- Cut victim off from her children
- Make victim homeless, deprived of food
- Financial, psychological, reputational harms
- Force the victim to commit crimes
 - Prostitution, commercial sex, drug offenses, identity theft, credit card fraud, auto theft....
- **GOAL: make victim stay/rob victim of choice**

When can being forced to work
by a spouse, intimate partner,
parent to step-parent constitute
labor trafficking?

Coexisting Involuntary Servitude & Domestic Violence

- Condition of involuntary servitude induced by
 - Means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not do or continue the work, that person or another person would suffer serious harm or physical restraint, or abuse of legal process (& threats)
 - Can occur in intimate partner, spousal, parent child and roommate relationships
 - Can include domestic servitude and sexual exploitation
- Threats of abuse
 - Physical, mental, emotional, sexual, intimidation, coercive control
- Lead to compelled or coerced labor or services or force, fraud or coercion
- Domestic labor can constitute forced labor amounting to involuntary servitude
 - Involving force, fraud or coercion
 - Goal of securing forced labor = condition of servitude

Will the fact that Juanita ran away from home and is not willing to name her trafficker or cooperate investigating her trafficker impact her ability to receive a T visa?

Difference Between Sex and Labor Trafficking for Children

- Exemption from assisting in investigation or prosecution of their traffickers
 - Both sex and labor trafficked children are:
- Child sex trafficking victims exempt
 - from having to prove force, fraud, or coercion
- Child labor trafficking victims:
 - Required to prove labor traffickers used force, restraint, harm, abuse, or coercion
 - Some state law exceptions

Judge Breall: Could keeping a noncitizen sex trafficked child in custody have unintended consequences?

What information does the T visa declaration request?

T Visa Declaration

- Identify type of trafficking (sex, child sex, labor)
- Describe the victimization
- Identify relationship with the crime detected, under investigation, being prosecuted, conviction or sentencing and dates
- Comments on potential for retaliation or revenge from trafficker if victim is removed from U.S.
- Dates of trafficking
- Statutory citations to crimes
- Information about victims involvement in case(s) against trafficker
- Names and relationship of any family members involved in the human trafficking

Why are judges not seeing requests for T visa certification?

Continued Presence

- Temporary immigration status should be requested for any
 - Victim of human trafficking *who may be a potential witnesses*
 - Sex and/or labor trafficking
 - Based on a totality of the circumstances
- Victim (and certain family) remain lawfully in the U.S. during investigation into human trafficking-related crimes and during civil actions filed by victims against their traffickers
 - Granted for two (2) years; can be renewed
 - Recipients receive work authorization, public benefits and services
- **Judges should contact federal authorities** DHS authorizes to file continued presence applications for trafficking victims
- If approved DHS-HSI notifies HHS to issue certification letter
- USCIS Center for Countering Human Trafficking, Continued Presence Resource Guide (July 2021) <https://niwaplibrary.wcl.american.edu/pubs/continued-presence-resource-guide-2021>

Who files Continued Presence Application

- State, tribal, territorial, or local government agencies work with their local HSI office or another federal law enforcement agency partner to submit a completed application.
- Agencies authorized to file include:
 - HSI, FBI, EEOC, DOL, DOJ
 - U.S. Attorneys, Civil Rights & Criminal Divisions
 - U.S. Marshalls, State Diplomatic Security Service
- Requires leadership, relationships, planning

What federal agencies do you have relationships in your community?



U Visas Promote Trust and Access to Justice

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
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- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

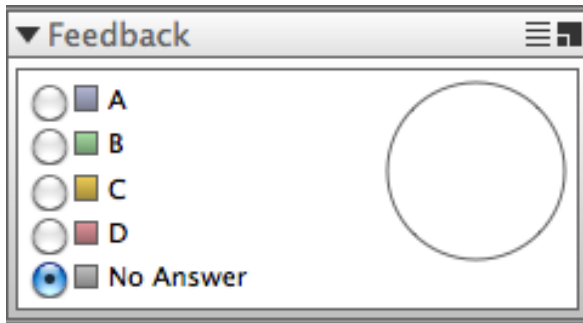
Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity

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

Why would victims seek U visa certification from state courts?

- A. Only justice system contact a custody, protection order, divorce, 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



Which Judicial Officers Can Certify?

- Federal, state, & local
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
 - Others with delegated decision-making authority
- Judge will need to amend the form

Who Else Can Certify?

- Federal, state, and local
 - Child abuse agencies
 - Elder abuse agencies
 - Police
 - Sheriffs
 - State police
 - FBI, HSI, ATF
 - Prosecutors
- Federal or State Departments of Labor (DOL)
- Equal Employment Opportunity Commission (EEOC)
- Other government agencies with civil, criminal or administrative investigative authority

Signor = Head of agency or designee

There is **NO** statute of limitations on signing a certification.

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.

What helpfulness
do judges
observe?



What Helpfulness do Judges See?

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

Family/Civil Case Examples: Evidence of Helpfulness

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


Criminal Case Examples: Evidence of Helpfulness

- Evidence in case that the victim:
 - Called 911
 - Participated in a criminal investigation
 - Identified perpetrator at line up
 - Testified before a grand jury or at trial
 - Appearance in a case
 - Attended criminal court hearings in the case
 - Victim impact statement
 - Testimony at sentencing
- U Visa Helpfulness Checklist (2019)
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>


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



Why might the timing
of certification be
important?



What are U visa
certification best
practices for judges
and state courts?

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 order is a required filing prerequisite
- The state court order reflects judge's expertise on children's best interests
- State court findings do **not** grant immigration status

State Court SIJS Findings Applying State Law


- The court has jurisdictions to issue orders regarding care, custody, or placement of an immigrant child (under age of majority and unmarried) 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

Home country not in child's best interests

- Identify each potential custodian state law requires the court to consider in U.S. and home country
- Apply state best interests factors to each placement
- Court order states the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
- Then, if needed, address other country conditions
 - Gangs, other harmful factors

Finding: Reunification Not Viable

- Reunification with a parent is not viable due to abuse, neglect, abandonment, or similar state law basis
- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Means granting the abusive parent custody is not envisioned by the court as a viable option
- Changes in circumstances can occur
 - But not granting full legal/physical custody to abusive parent



Are there unintended
consequences of
reunification services
with SIJS eligible
children?

Family Court Cases That Include Decisions About Care & Custody of Children

- Dependency/Delinquency
- Civil protection order cases
- Custody cases
- Divorce cases
- Paternity and child support cases
- Adoption cases
- DHS states: All are of the above = *Juvenile courts*
 - Juveniles = all children
- SIJS Bench Book has chapters on each case type
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>

In the Clara and Eduardo Scenario in which of the following cases could the court NOT issue SIJS findings for Lupe as part of the court's order?



- A. A protection order case in which the order grants Clara custody
- B. A custody case brought by Clara
- C. The criminal prosecution of Eduardo
- D. A child welfare case in which the court made findings of Eduardo's abuse and placed the children with Clara

SIJS Timing

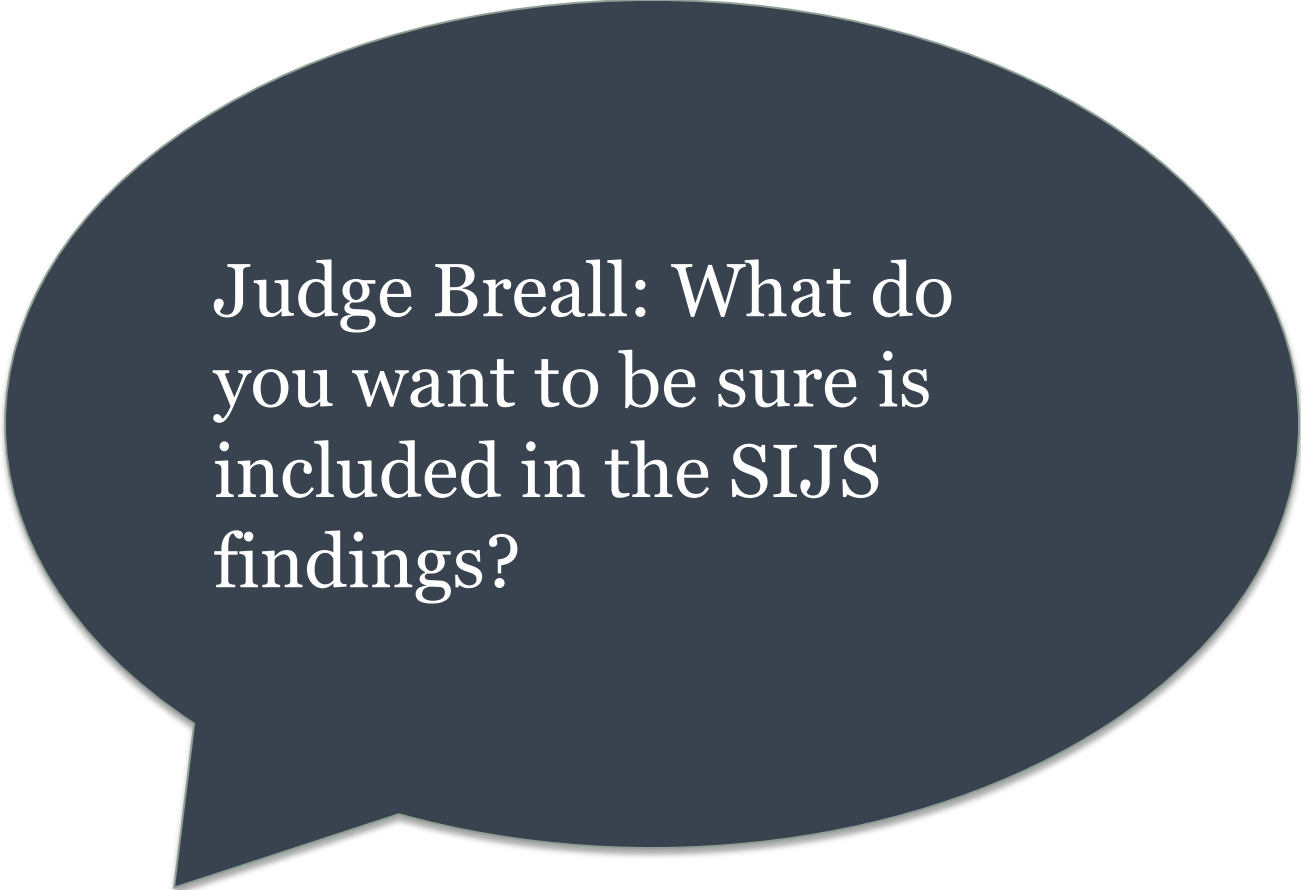
- Court has jurisdiction to issues orders until the child reaches age of majority
- Must obtain SIJS findings from state court while still a “child” the court has jurisdiction over
 - Defined by state law
- Then child has until they turn age 21 to filed SIJS case with DHS minors
- SIJS is an option any time an abused, abandoned or neglected and child is not a
 - Citizen or lawful permanent resident

Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state law under which the court is exercising jurisdiction.
- Follow your state court procedures and note that you do so to demonstrate that the court made an informed decision.

Family Law Services of Process and Jurisdiction Requirements Charts

- By proceeding for all states:
 - Adoption
 - Child abuse and neglect
 - Custody
 - Divorce
 - Paternity and Child Support
 - <https://niwaplibrary.wcl.american.edu/family-law-service-jurisdiction-charts>
- Comparisons among case types by state
<https://niwaplibrary.wcl.american.edu/all-state-family-law-jurisdiction-and-service-of-process-charts>
- SIJS Bench Book Chapter on Service of Process
<https://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs>



Judge Breall: What do you want to be sure is included in the SIJS findings?

Best Practice Court Orders That Connect the Dots

- Explain why the orders and each of the findings the court is issuing are:
 - Based on state statutes
 - Needed for child protection, healing, stability
 - In the child's best interests
 - Because of the abuse/abandonment/neglect the child suffered

DHS Adjudications in SIJS Cases

- Adjudicates 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*
 - Only for immigration purposes

NIWAP Technical Assistance, Materials, and Training

- Power Point and materials for this webinar
 - <https://niwaplibrary.wcl.american.edu/cse-immigration-ncjfcj>
- Judicial training manuals, toolkits, bench card and materials 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
- If you are a judicial officer -- *Please Join the National Judicial Network*
 - <https://www.surveymonkey.com/r/VGY9VJM>

Thank you for your
participation!