

Judges Role in Cases Of Immigrant Domestic and Sexual Violence Survivors

October 15, 2018

Webinar

Casa de Esperanza and NIWAP



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



Judge Mary F. Weir
Associate Circuit Judge
Jackson County, Missouri

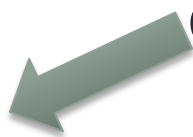
NIWAP's Technical Assistance: (202) 274-4457

Two Part Webinar Series on Protections for Immigrant Victims

- This is part I
- Part II will cover
 - **Protections for Immigrant Survivors of Domestic and Sexual Violence Under VAWA Confidentiality Laws**
 - **October 22, 2018**
 - **1-2:30 Eastern**

Let's see who is on the call with us. Please check the box that best describes you:

Answer
on the left



Feedback

A

B

C

D

No Answer

- A. Judge or court staff
- B. Lawyer representing victims in family court
- C. Domestic violence/sexual assault victim advocate
- D. Other



Chat

Public Private

Type here to send a message

Immigrant Demographics

Data from the U.S. Census, the Migration Policy Institute Data Hub, and the Department of Homeland Security Office of Immigration Statistics

US Demographics (2016)*

- ❖ Total foreign born population – 43,739,345
- ❖ 13.5% of the country's ~323.1 million people are foreign born
 - 48.6% naturalized citizens
 - ~31% legal permanent residents (DHS data)
 - ~4.4% temporary visa holders
 - ~16% undocumented (includes pending VAWA, Us, Ts, SIJS)
 - 40.6% rise in immigrant population from 2000 to 2014
 - 21.6% of U.S. population speak a language other than English at home
- ❖ 25.2% of children under 6 have one or more immigrant parents
- ❖ 25.8% of children under age 18 have one or more immigrant parents
 - 88% of these children are native-born U.S. citizens

*Source: Migration Policy Institute Data Hub (July 2018) and DHS Population Estimates (November 2016)

Children in Immigrant Families

- 85% of immigrant families are “mixed status” (including at least 1 U.S. citizen, often a child)
- 1 in 4 children is the child of an immigrant
- 18% (5 and older) speak a language other than English at home

Immigration Relief: Affect on Family Law Cases

How does filing for immigration relief help immigrant domestic and sexual violence victims in family law cases?

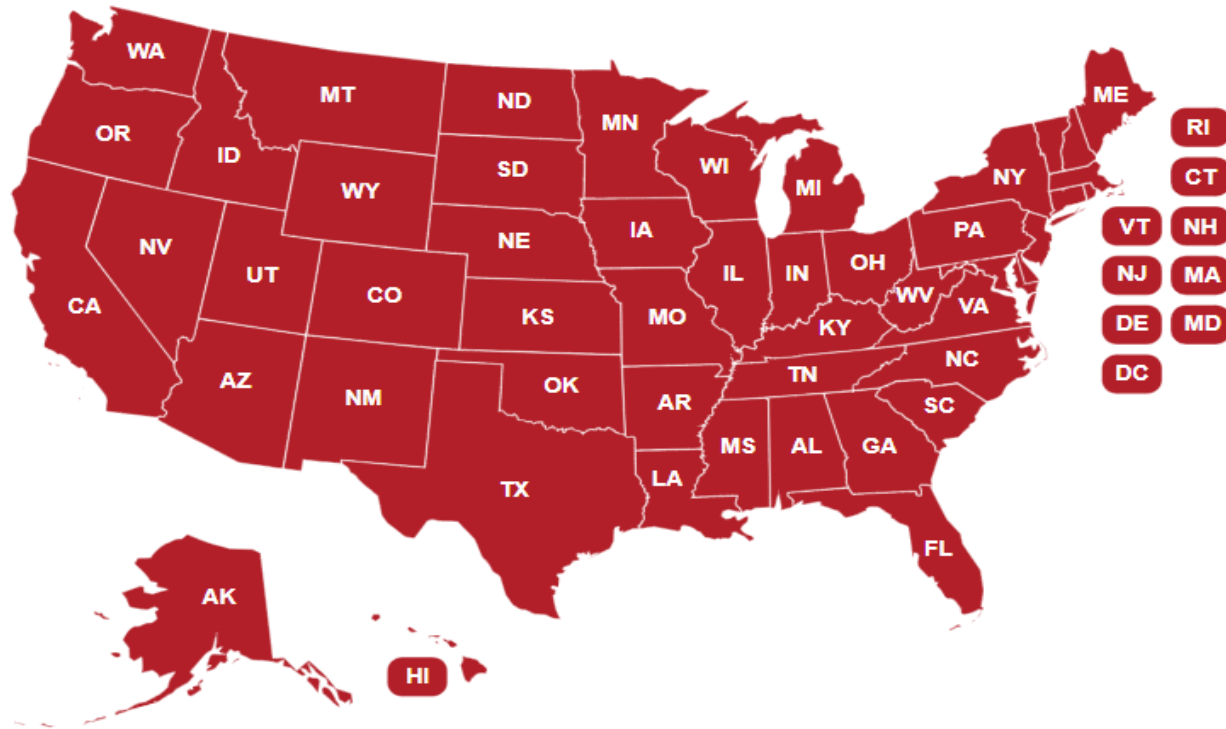


Purpose of Immigration Relief for Survivors

- Improves access to justice
- Helps build community policing and relationships
- Increases prosecution of perpetrators
- Allows victims to report crimes without fear of deportation
- Improves survivors options for stability & economic security
- Keeps communities safe

Importance of Immigration Status

- Ability to work legally
- Protection from deportation and removal
- Ability to obtain a driver's license and social security number
- Better access to housing and public services
- Break from isolation/ Gain Independence
- Ability to travel to and from the U.S. (with some exceptions)
- Path to lawful permanent residency and ultimately citizenship



Child Care services may be provided through public benefits. All immigrants are eligible for the Child Care Development Fund (CCDF) funded child care services when provided through settings subject to public educational standards, and only certain immigration statuses are eligible for TANF-funded child care. Some states have provided their own funding to allow additional immigrant survivors to be eligible for state-funded TANF child care.

Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied

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

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)

Best Practice: Screen for Immigration Related Abuse

- 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

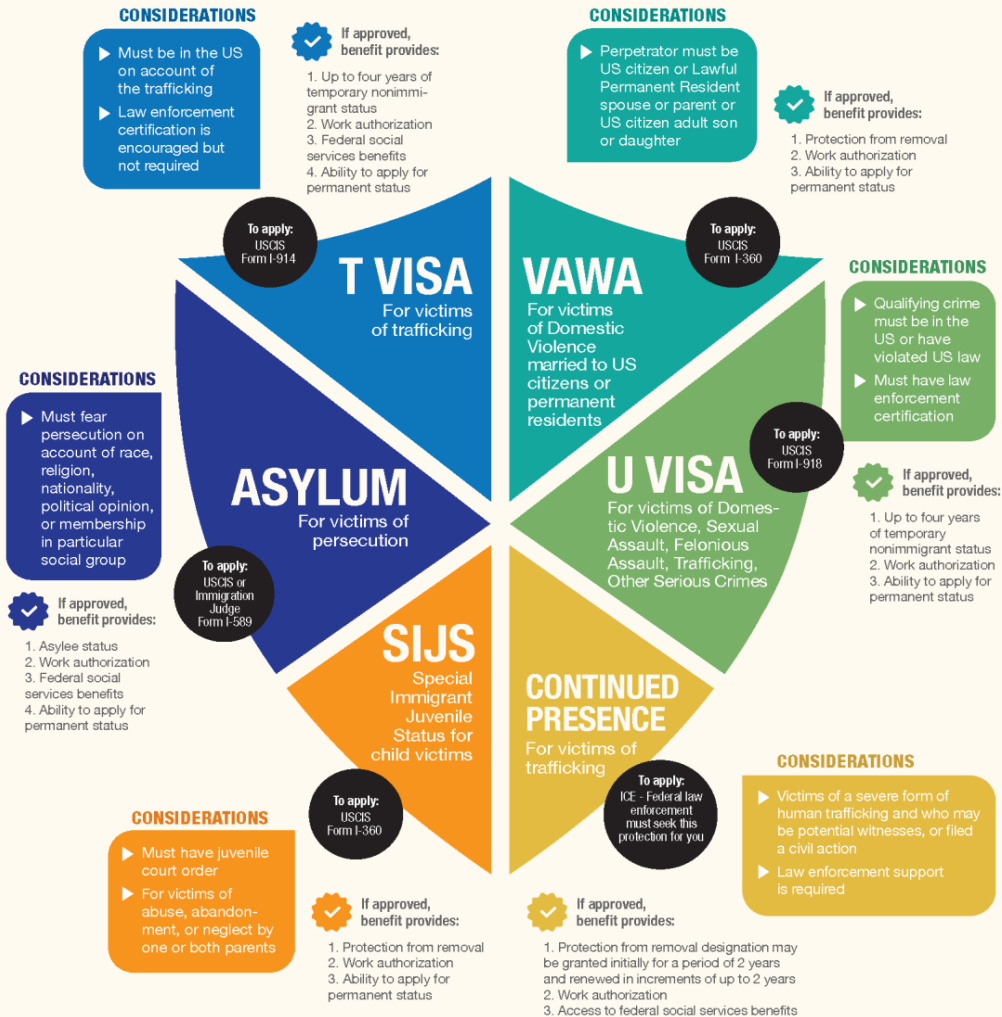
*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

Purpose of Crime Victim Protections

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Improve ability of victims to access justice from family, criminal and civil courts
- Enhance victim safety
- Keep communities safe

PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

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

Forms of Extreme Cruelty

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

U Visa Requirements

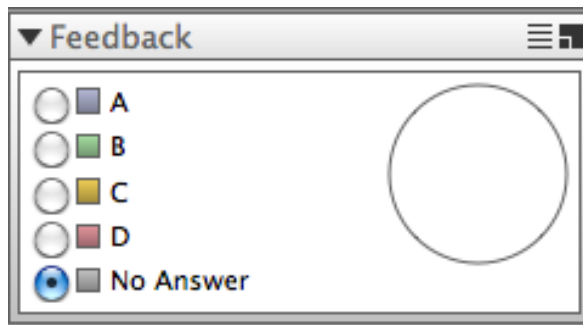
- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

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**
 - In the U.S. or abroad
- To apply must submit required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child

In what percent of your cases involving immigrant victims is there co-occurring does is your client a mother suffering domestic violence and her child is abused by the child's father?

- A. 10% or under
- B. Between 11% and 25%
- C. From 26% to 50%
- D. Over 50%



The image shows a screenshot of a survey feedback window titled "Feedback". On the left side, there are five radio button options: "A" (blue square), "B" (green square), "C" (yellow square), "D" (red square), and "No Answer" (grey square). The "No Answer" option is selected, indicated by a blue dot inside the radio button. To the right of the options is a large empty circle, likely representing a progress indicator or a placeholder for a chart.

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

Examples of When a Domestic or Sexual Violence Victim May Also Qualify for a T Visa

- Domestic violence victim required to work outside of the home and hand over her wages to her abusive partner
- Domestic violence victim required to do housework and/or have sex with her partner in order to maintain housing and financial support
- Victims' intimate partner turns out to be a human trafficker who traffics her

Early Survivor Identification, U-visa Certification & VAWA, U,T-Visa Filing

- Judges/Courts identify, provide DHS know your rights information and refer victims
- Victim Advocates/Attorneys provide key support
 - Victim can more safely cooperate in family/custody and criminal case against perpetrator
 - The earlier the immigration case is filed



U.S. Government Materials Excellent for Courthouse Distribution

- DHS “Know Your Rights” Information
 - Infographic
 - VAWA/T and U Brochure
 - SIJS Brochure
- U.S. Dep’t Of State –Rights and Protections for Foreign-citizen Fiancé(e)s and Spouses of U.S. Citizens and Spouses of Lawful Permanent Residents



Safety Planning and Action Steps for Immigrant Survivors

- Timing of immigration and family court cases
- File immigration case early
 - File with sufficient documentation of each element for to meet prima facie test
 - As well documented as possible to avoid denial
 - RFE – can provide additional evidence
- Documentation victim can carry with her
 - Letter from advocate/attorney stating that the victim is in the process of filing a VAWA, T or U visa case
 - Evidence that immigration case has been filed – A number
 - Civil protection order
- Intervene early
 - Any criminal case against the victim that is unresolved
 - Any child welfare system case – consular notification

Immigration and Customs Enforcement (ICE) June 2018 NTA Policy

- NTA= Notice to Appear
- When an application for immigration relief is denied on its merits = case referred to ICE for removal – Implemented October 1, 2018
- September 26, 2018
 - Not implemented at this time for humanitarian cases – includes VAWA, T, and U visa cases
- Best practice screen for 10 year cancellation of removal
- File strong well documented cases

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.

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

▼ Feedback

A

B

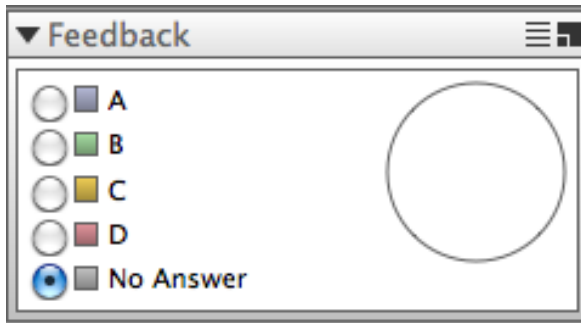
C

D

No Answer

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



Feedback

A

B

C

D

No Answer

True or False?
**Both Lupe and Miguel Qualify for Special
Immigrant Juvenile Status**

A. True

B. False

Immigration Status Raised in By Abusers in Family Court Cases



Impact of Divorce

- VAWA self-petitioners
 - 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, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Asylees
 - Employment visa holders
 - Family based visas
 - 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
- Impact on
 - Spousal support
 - Property division

Protecting Immigrant Mothers Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004)

<http://niwaplibrary.wcl.american.edu/pubs/co-occurencedvchildabuse/>

Is Immigration Status Relevant to Custody?

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



ABA Center on Children & The Law (1991)

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings...”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...”
- “When the judicial system condones these tactics, children suffer.”

Best Interest Factors

- Family Violence -Q7
- Child's needs -Q4
- Parent's fitness and capacity to be a caregiver -Q10
- Substance abuse and Mental illness -Q12
- Continuity, stability of the child and adjustment to school, home, community-Q6
- Children's Family Relationships -Q3
- Child's Wishes -Q5
- Parental Cooperation and Conflict -Q9
- Joint Custody -Q8

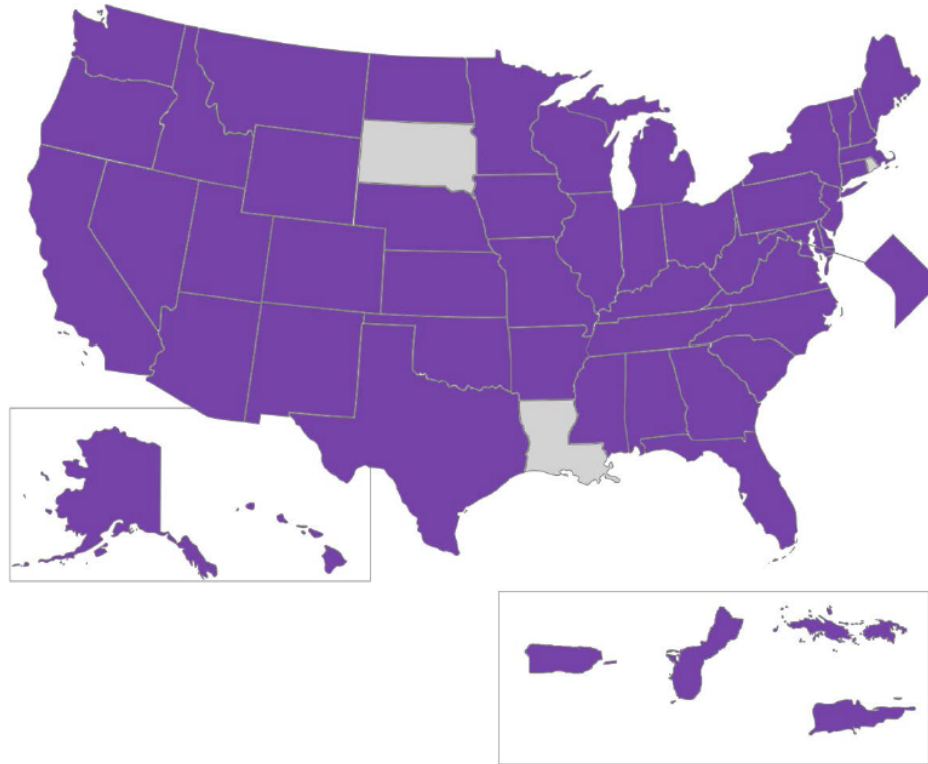
See: NIWAP and State Justice Institute, Special Immigrant Juvenile Status Bench Book: A National Guide To Best Practices For Judges And Courts (2018) Appendices Q-Q11

Best Interests of the Child - Family Violence¹

By Morgan Lewis and Bockius LLP² – December 29, 2017

Disclaimer: The Statute Analysis Map and reports can be powerful resources and training tools, but do not remove the responsibility of each and every lawyer to engage in original analysis and research, including by taking into consideration the facts relevant to a particular client’s circumstances. Reports are labeled with the date of last update. If you reach a conclusion that conflicts with the material herein, you can contribute to our knowledge by sending an email to the Morgan Lewis Knowledge Management and Training Team at knowledgemanagement@morganlewis.com.

Purple states have a relevant factor for determining a child’s best interests in a custody dispute. Please note that many states provide additional or different factors for determining a child’s best interests in other circumstances (e.g., adoption, visitation, or termination of parental rights). See “Factors in State Laws” for comprehensive information on child’s best interests statutes.



Is Immigration Status Relevant to Custody?

- May be Relevant in a contested custody case
 - When the court finds that one parent abused the other parent and/or the child and
 - The non-abusive parent has a criminal history
 - When a parent has an outstanding order of removal

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

- Domestic violence/child abuse= VAWA self-petitioning, VAWA defenses against removal in immigration court, Battered spouse waiver
- U visa = Domestic violence, sexual assault, stalking, human trafficking, other U visa crimes
- T visa and continued presence = human trafficking cases
- DHS victim/witness protections (any crime)

DHS 2017 Enforcement Priorities

- Convicted of any criminal offense
- Charged with criminal offense that has not been resolved
- Committed act chargeable as a criminal offense
- Subject to final order of removal
- Abused a public benefits program
- Fraud, willful misrepresentation to a government official
- Risk of public safety or national security

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

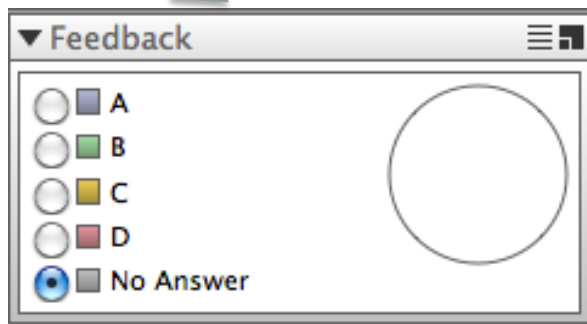
- Criminal convictions 73.7%
- Pending criminal charges 15.5%
- Outstanding notices to appear in immigration court 5.3%
- Ordered removed and failed to depart + reinstatement 2.8%
- Other immigrants 2.6%

<https://www.ice.gov/removal-statistics/2017>

In what percentage of the cases you hear/work on that involve crime victims, parents or children who would be a high priority for removal?

Answer on the left

- A. Under 10%
- B. 11- 25%
- C. 26- 50%
- D. Over 50%
- E. Other



A screenshot of a 'Feedback' window. The window has a title bar with a dropdown arrow and the word '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.

Other write in chat box



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

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 Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a Constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

Detained Parent Directive Aug. 2017

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

PROTECTION ORDERS



Protection Orders

- All are eligible for civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = will not trigger deportation
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Protection order issued against a victim can be harmful
 - To good moral character & violation leads to deportation
- 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
- Make finding about age, existence of a marriage, parent child relationship
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

U Visa Certification By Judges

U Visa for Immigrant Victims

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

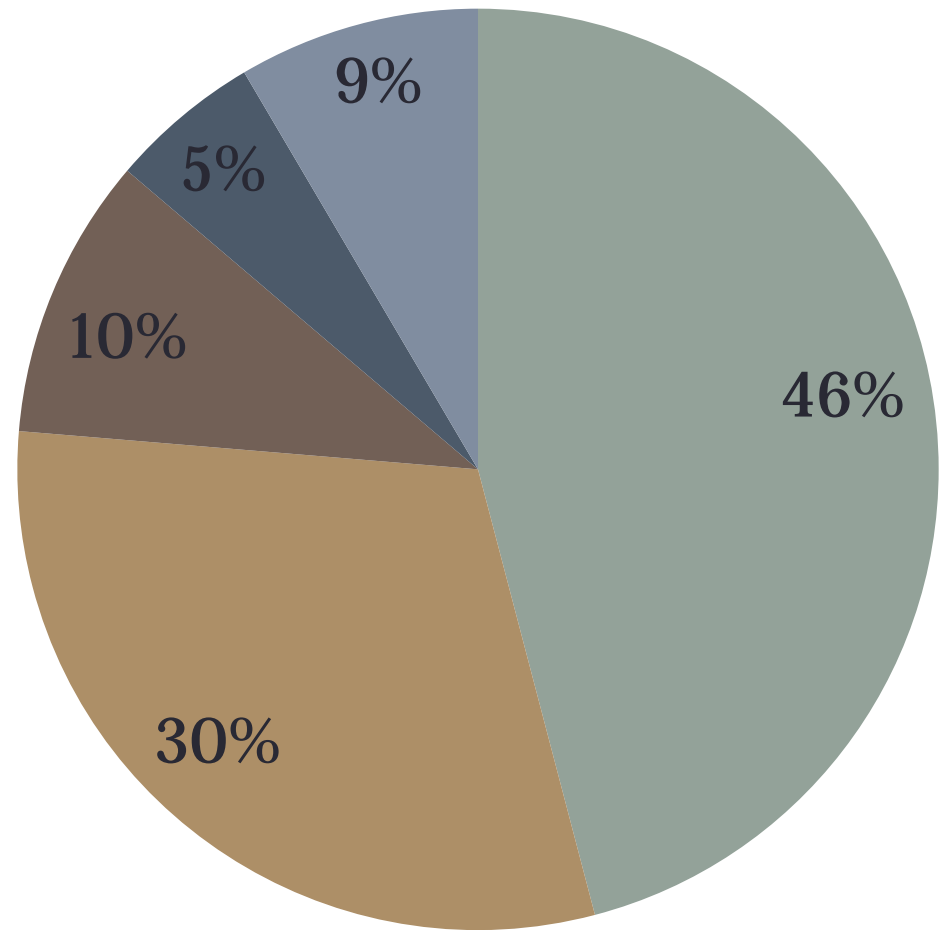
U Visa Qualifying Criminal Activity

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

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

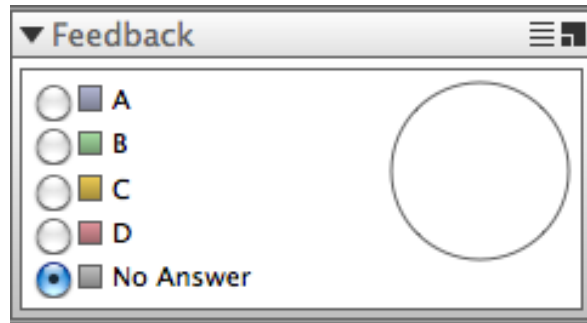
U-Visa Criminal Activities (11/2011 data)

- 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%



Why would victims seek U visa certification from state courts?

Using your clickers please check:



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

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

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing

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

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

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 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

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.

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

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

Why SIJS Findings are Necessary

- 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**

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

All of the Following are Potentially Eligible for SIJS – A Minor is:

- Abused, abandoned or neglected by a parent
 - In the U.S.
 - In the home country
- Living with their
 - Non-abusive parent
 - Can be an abused child included in their mother's U visa application
 - Guardian
 - Adopted parent
 - State foster care/Federal foster care (ORR)

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

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

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

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

“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.

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

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 full legal/physical custody is not envisioned by the court as a viable option

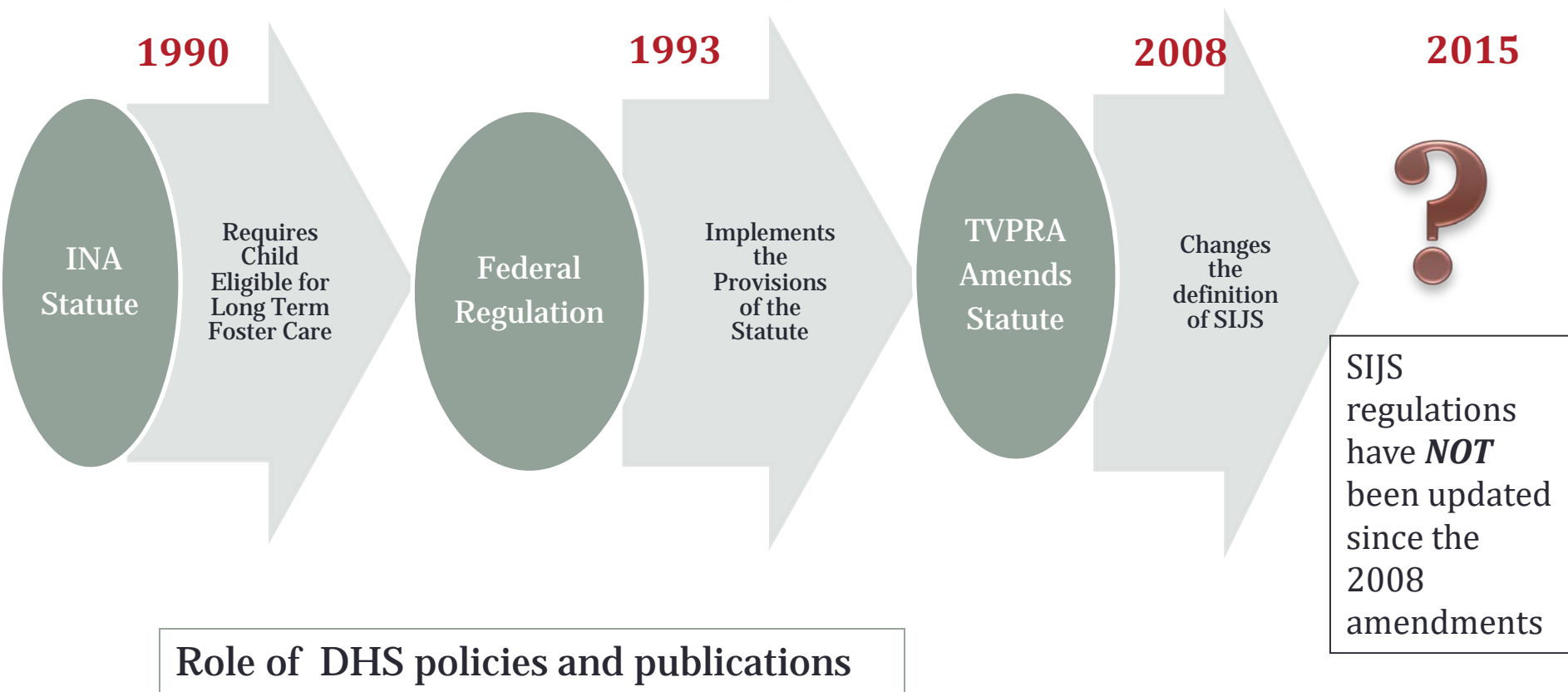
Factors impacting best interests and viability

- 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

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

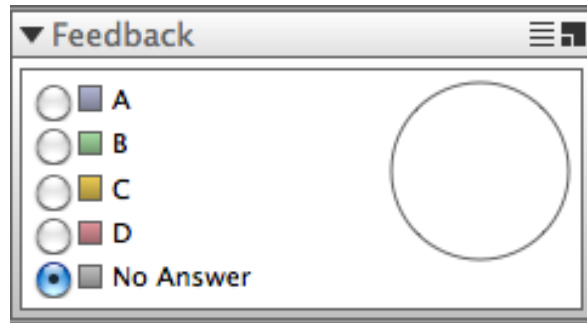
Important Note: Statute Controls over Regulations



Best Practice for Court Order

- Make factual findings regarding
 - Facts of abuse, abandonment and/or neglect
 - Separately regarding each parent
 - 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

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?
Using your clickers please check:



- 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



Technical Assistance and Materials

- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library:
www.niwaplibrary.wcl.american.edu