

# Legal Protections When Child Victims are Immigrants and When Children Have Immigrant Parents

Baton Rouge, Louisiana

May 13, 2021

# Faculty



**Judge Rosemary Collins  
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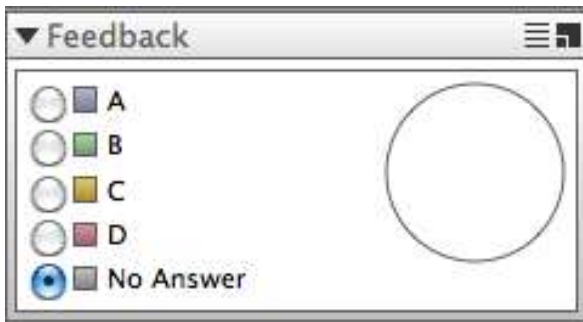
# Learning Objectives

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

- Understand how eligibility for immigration relief impacts your cases
- Promote issuance of state court findings for children filing for Special Immigrant Juvenile Status
- Sign U visa certifications in cases of abused children and their immigrant parents
- Help immigrant children access the public benefits safety net services they are legally eligible to receive

## Who Has Joined Us on This Webinar?

Answer on  
the left

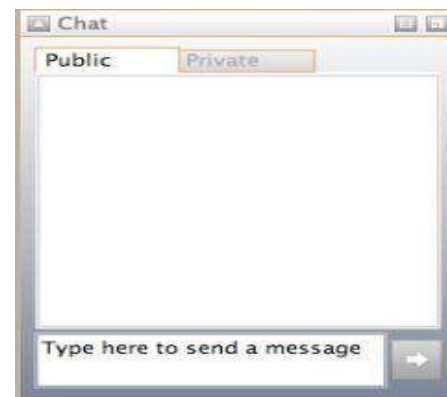


- A. Judge
- B. Court/Judicial Education Staff
- C. Attorney
- D. Victim Advocate
- E. Other

Other write  
in chat box



How have you seen immigration status come up in child welfare and children's court cases?



# Immigration Status in Child Welfare and Children's Court Cases

- One parent in the home country with child before the court
- Both parents here with the child exposed to intimate partner violence is taken out of the home, at least one parent is undocumented
- The immigration status of a child or parent is raised in court
- Parent is detained in ICE custody child placed in foster care

# **Dynamics Of Domestic Violence Experienced By Battered Immigrants and Abused Children in Immigrant Families**

# Immigration Related Abuse

- Threats to have the non-abusive parent deported if abuse of child/victim is reported
- Failing to file/withdrawing a victim parent's or child's immigration case
- Telling victim that police will deport them if they call for help
- If victim reports/cooperates they will be separated from and not see children again
- Controlling victim's ability to work/drive



# 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)

## 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)

# 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)
- Abuse rate rises to 59.5% when an immigrant's spouse/former spouse is a U.S. citizen
  - Twice the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). *Battered Immigrants and U.S. Citizen Spouses*

# 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).



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



## Benefits of Applying for & Attaining Legal Immigration Status When Children and/or Their Parents Qualify

- Protection from deportation
  - Both parent and children
- Legal work authorization
- VAWA confidentiality protections
- Driver's licenses
- Greater access to public benefits and services
- Enhanced stability
- Turn to civil and criminal justice systems for help at higher rates
  - E.g., call police, get civil protection orders, seek custody

**Many Immigrant Children and  
Immigrant Parents who are  
Victims of Domestic Violence,  
Child Abuse, Child Neglect or Child  
Abandonment Are Eligible for  
Immigration Relief**



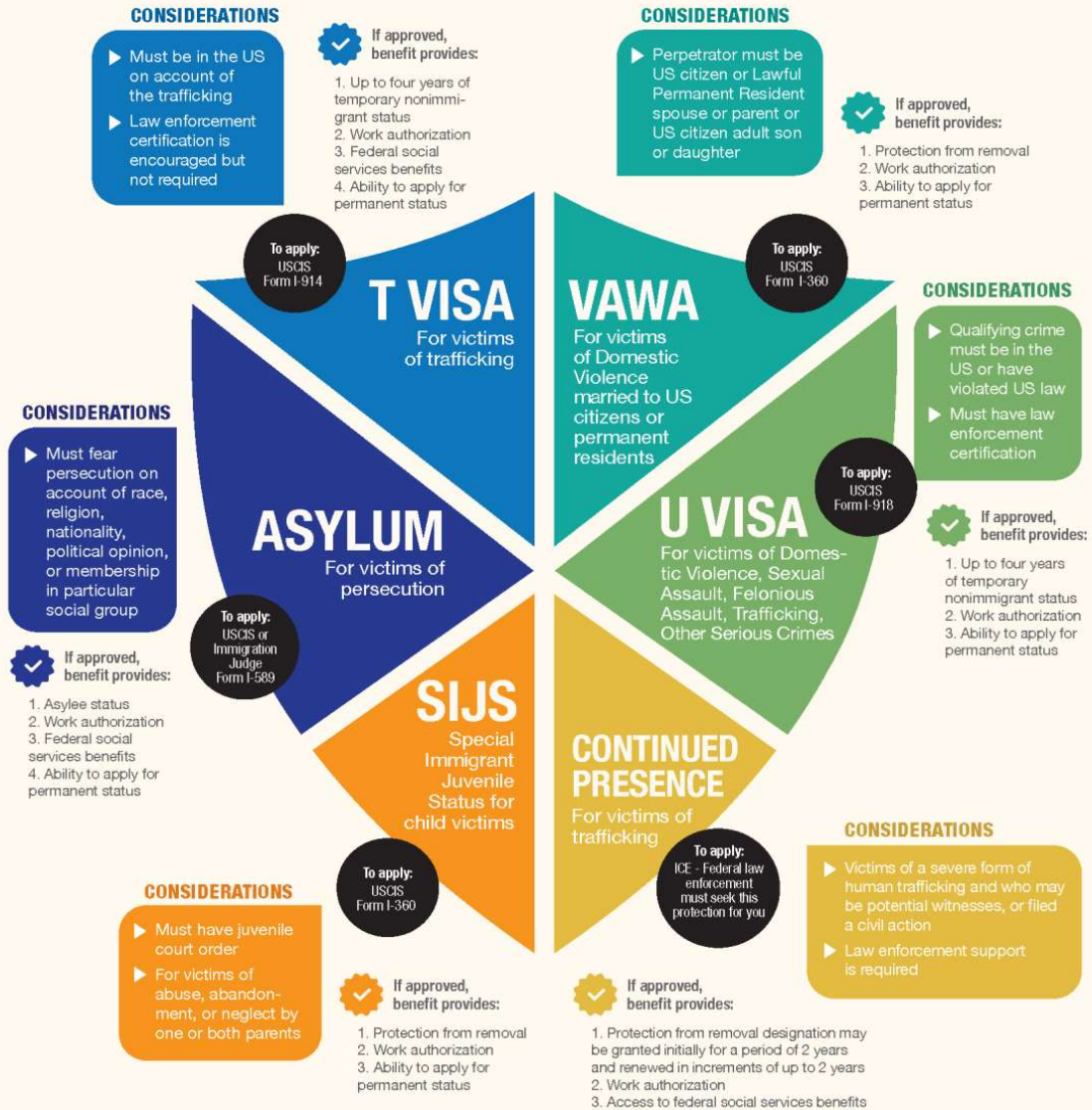
# All Immigrant Victims of These Criminal Activities Will Qualify for Immigration Relief

- 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



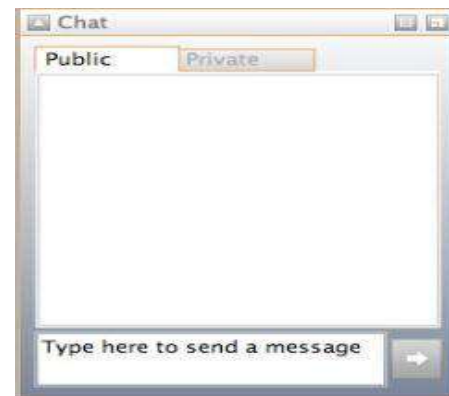
# DHS VAWA Confidentiality Computer System

- 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 perpetrator in victim’s cases
  - Spouse abuse, child abuse, elder abuse
  - Crime victims including domestic violence, sexual assault, stalking, other violent crimes
  - Human trafficking victims
  - VAWA confidentiality precludes courthouse enforcement against victims
  - ICE policy no enforcement in family/civil courtrooms and cases absent head of field office approval

# Benefits for Child and Adult Victims and Their Children

- Protection from deportation
- VAWA confidentiality protection
- Enhanced safety for survivors
- Temporary legal immigration status
- Financial independence from perpetrator
  - Legal work authorization (7- 60 months of filing)
  - Greater public benefits and services
  - E.g. Health care, child care, foster care payments, financial aid, housing, food stamps (SNAP), driver's licenses

What are best practices for judges and prosecutor's offices in cases of immigrant children or immigrant parents?



# Judicial Role

- Make detailed findings
  - Family relationships: Marriage and Parent child relationship
  - Battering, extreme cruelty, child abuse, elder abuse, child abandonment, neglect, sexual assault, stalking
  - Apply and cite state law
- Role Congress created for state court judges in
  - U/T visa certification
  - Special Immigrant Juvenile Status findings
- Distribute DHS-produced “Know Your Rights” information available at your courthouse

# Prosecutors' Office's Role For Children In Immigrant Families

- Dependency and Children in Need of Care Cases
  - Identify children and parents eligible for victim based immigration protections
  - In children's best interests for prosecutors to
    - Refer children/parents to advocates/attorneys with expertise helping immigrant victims (NIWAP Directory)
    - Provide/obtain U visa certifications and T visa declarations
    - Ask courts for SIJS findings
  - Work with the state to ensure that immigration status is not playing a role in determinations of fitness and reunification plans

# 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 Waiver if perpetrator files
- **Timeline to work authorization = 4–18 months (2019)**
- **Judicial role**



# Forms of Extreme Cruelty

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



# VAWA self-petitioning available

- Divorce should not cut off step-child's ability to self-petition
- If parent is filing to protect abused child or step-child must file within 2 years of marriage termination
- Child abuse up to age of 25 to file
- Credible evidence standard of proof

# Child Self-Petition Scenarios

- Abuser is a citizen or lawful permanent resident parent or step-parent
  - Abused child and non abusive parent both undocumented
  - Child is citizen or lawful permanent resident with undocumented non-abusive parent
  - If parent filing to protect a child
    - If marriage = self-petition
    - If no marriage VAWA cancellation

# 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
- **Timeline to approval = 6 – 36 months (2019)**
- **Judicial role**

# 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
- **Timeline to work authorization and waitlist approval =**
  - 4–6 years(2019)
  - Judicial role

# 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 = 3–12 months (2019)**
- **Judicial role**

# Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Act	Means	Purpose
<ul style="list-style-type: none"><li>• <b>Recruits</b></li><li>• <b>Entices</b></li><li>• <b>Harbors</b></li><li>• <b>Transports</b></li><li>• <b>Provides</b></li><li>• <b>Obtains</b></li><li>• <b>Advertises</b></li><li>• <b>Maintains</b></li><li>• <b>Patronizes</b></li><li>• <b>Solicits</b></li><li>• <b>Benefits, financially or by receiving anything of value</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Force</b></li><li>• <b>Fraud</b></li><li>• <b>Coercion</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Commercial Sexual Activity</b></li></ul>

# Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Act	Means	Purpose
<ul style="list-style-type: none"><li>• <b>Recruits</b></li><li>• <b>Harbors</b></li><li>• <b>Transports</b></li><li>• <b>Provides</b></li><li>• <b>Obtains</b></li><li>• <b>Benefits, financially or by receiving anything of value</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Force</b></li><li>• <b>Restraint</b></li><li>• <b>Threats of harm</b></li><li>• <b>Abuse or threatened abuse of the legal system</b></li><li>• <b>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</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Involuntary servitude</b></li><li>• <b>Peonage</b></li><li>• <b>Debt Bondage</b></li><li>• <b>Slavery</b></li></ul>

# 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 up to two-year increments
  - Recipients receive work authorization, public benefits and services
- Local judges can request that federal law enforcement or prosecutors file trafficking victims' applications with HSI
- If HSI approves notifies HHS to issue certification letter



# Case Scenario (Handout)

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:

Feedback

A

B

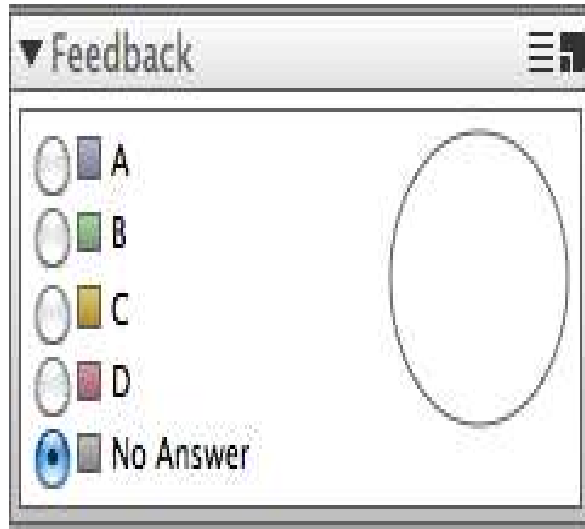
C

D

No Answer

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

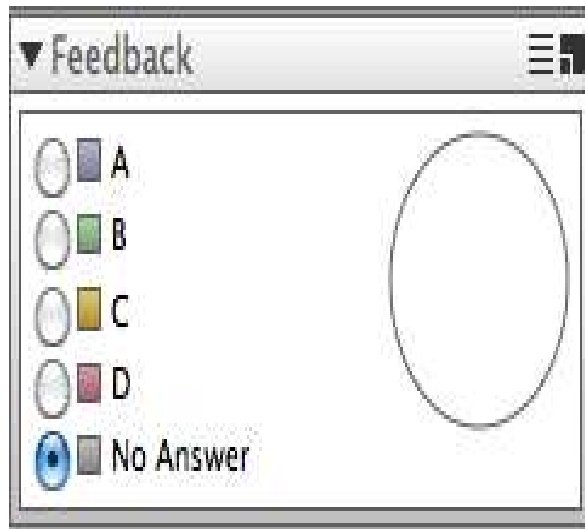
## What forms of immigration relief would Miguel qualify for (check all that apply).



A screenshot of a survey window titled "Feedback". The window contains five radio button options: A (blue square), B (green square), C (yellow square), D (red square), and No Answer (blue circle). A large empty oval is positioned to the right of the options, intended for a handwritten response.

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

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



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

# DHS Prosecutorial Discretion Not to Initiate Removal Against Crime Victims and Witnesses

(June 17, 2011)

- Continues in effect
- To minimize the effect that immigration enforcement may have on the willingness and ability to make calls to police and pursue justice:
  - Victims of crime
  - Witnesses to crime
  - Individuals pursuing legitimate civil rights complaints

# Prosecutorial Discretion in Civil Immigration

## Enforcement (January 20, 2021 & June 17, 2011)

### *Immigration Enforcement Priorities (1/20/21)*

- National security
- Border crossers caught *while attempting to unlawfully enter*
- Undocumented immigrants not physically present in the U.S. before 11/1/20
- Persons in/released from jail
  - For aggravated felony *and*
  - Pose a threat to public safety

### *Prosecutorial Discretion for no immigration enforcement*

- Crime victim or witness
- Caretakers of
  - Children, seriously ill parent, physically/mentally disabled
- Children, elderly or disabled
- Family relationships and status of family members
- Length of time in the U.S.
- Pursuit of education
  - US high school graduates, college students

## After Immigration Case is Filed Immigrant Victim's Justice System Use

- Protection orders – VAWA 47.6%, U visa 43.7%
- Filed a police report - VAWA 36.2%, U visa 50.3%
- Helped in a criminal case - VAWA 33.4%, U visa 73.1%
- Divorce – VAWA 32.1%, U visa 19.5%
- Child custody – VAWA 20.1%, U visa 17.9%
- Child support – VAWA 26.1%, U visa 10.7%

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

# U Visas as a Crime Fighting Tool

Improving the reporting,  
investigation, and prosecution of  
violent crime & improving child  
safety



# 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

# Who can apply?

- Victims of qualifying criminal activity
- Parents and guardians can apply as an “indirect victim” if:
  - the victim is a child under 21 years of age and/or
  - is incompetent, incapacitated, or deceased due to murder or manslaughter
- For child victims a “next friend” can provide helpfulness
- **Must have a U visa certification to apply**

# Who Can Certify?

- Federal, state, and local
  - Police, sheriffs, FBI, HSI, ATF...
  - Prosecutors
  - Judges, Magistrates, Commissioners
- Child and Elder Abuse investigators & attorneys
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Other government agencies

## 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
- U visa: Victim was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
- T visa: Victim complied with reasonable requests for assistance from law enforcement or prosecutors unless exempt
  - Under 18 or physical or psychological trauma

# 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

What types of cases do you see that where immigrant children and/or their parents may qualify for a U visa?

# U Visa Typical Scenarios

- Undocumented child suffered child abuse, sexual assault, other U visa criminal activity
  - Unaccompanied or with parent or guardian
  - Any perpetrator
- Documented children without path to lawful permanent residency who suffered criminal activity including
  - DACA
  - Abused children of work visa holders



# 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 findings are required as evidence
  - The court using state best interests laws makes a child custody or placement decision and includes SIJS findings
  - The state court order reflects judge's expertise and does **not** provide immigration status
  - The order is one required piece of evidence in a federal adjudication process

# 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

# SIJS: State and Federal Roles

## State Courts With Jurisdiction Over Children

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

## DHS Adjudicators

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

# Decisions about care and custody of children arise in family court proceedings

- 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
- Bench Book chapters on each case type

## 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
  - Example of factors VAWA Extreme hardship

# Finding: Reunification Not Viable

- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Order must include the finding that reunification with the parent is not viable
  - Explain reasons in court order
- Using state best interests law

# SIJS in State Courts

- Many SIJS cases are for 15-17 year old minors
  - State court order + filing before the child ages out
  - Up to age of majority set by state law
- SIJS is an option any time an abused, abandoned or neglected 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 statute, court rule, or other authority 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.



**In your cases how are you  
going to start identifying SIJS  
eligible children?**

# SIJS Typical Scenarios

- Undocumented child entered US as an unaccompanied minor
  - Placed by HHS with sponsor in Maryland
- Child reunited with a parent or extended family members in Maryland
- Any protection order or child welfare case where the child is foreign born and not a citizen or lawful permanent resident with
  - Abuse, abandonment, or neglect by 1 parent

# **Access To Benefits And Services Grows As Children And Victims Pursue Immigration Relief**



For the children you work with  
how are public benefits and  
services helpful to them?

What types of services and assistance are open to all persons without regard to immigration status?

# 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
- WIC
- Shelter
- Transitional Housing
- Emergency Medical Care
- Immunization, testing, treatment of communicable diseases
- Elementary and Secondary Education
- Obtain Public Benefits for Their Children

# Attorney General's List of Required Services



- In-kind services
- Provided at the community level
- Not based on the individuals income or resources
- Necessary to protect life and safety

# Benefits Available to All Immigrants

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Nutrition programs for those requiring special assistance





# Health Care Open to All Immigrants

- Community and migrant health clinics
  - [www.nachc.com](http://www.nachc.com)
  - [www.hrsa.gov](http://www.hrsa.gov)
  - Enter zip code
- State funded programs
- Post-assault health care paid by VOCA
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



# **Immigrant Survivors' Legal Rights to Access Federal and State Funded Benefits**

# Qualified Immigrant Access to Federal Public Benefits

- All qualified immigrants can access some federal public benefits
  - Which benefits they can access depends on:
    - Immigration status
    - When they entered the United States
    - Whether they meet heightened program requirements for some programs
    - What benefits are offered by the state

# Who are “Qualified Immigrants”?

- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- Persons who (or whose children) have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent

# Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- Public and assisted housing
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Low income and residential energy assistance programs
- Disability benefits
- \*Assistance to developmentally disabled
- Job opportunities for low income individuals
- \*Adoption assistance
- \*Foster care
- Social services block grant programs
- Supportive housing for the elderly or disabled

# Benefits in Louisiana

- Post Secondary Educational Grants and Loans - Federal
  - VAWA self-petitioners
  - Continued presence, T visa bona fide
  - U visa and SIJS with lawful permanent residency
- Louisiana Taylor Opportunity Program for Students
  - USCIS documentation *+ present in the U.S. for other than a temporary purpose, with the intention of becoming a citizen or a permanent resident*
    - Should qualify: VAWA self-petitioners, T visa bona fide, SIJS recipients, U visa holders
  - In state tuition
    - Varies by institution may require lawful permanent residency

# Benefits in Louisiana

- TANF
  - Continued Presence (CP), T visa bona-fide
  - Pre-Aug 26, 1996 entry into US or 5 year bar
    - VAWA self-petitioners,
    - U visa and SIJS lawful permanent residents (LPRs)
- Child care
  - TANF same as above
  - Child Care Development Fund – no restrictions
- SNAP
  - Continued presence, T visa bona-fide
  - 5 year bar unless children, disabled or elderly
    - VAWA self-petitioners, U visa or SIJS LPRs

# Benefits in Louisiana

- Health Care
  - Exchanges: VAWA, CP, T visa, U visa waitlist, SIJS applicants
  - CHIP *lawfully residing children until 21*
    - VAWAs, CP, T visa, U visa waitlist, SIJS applicants
  - Prenatal care for those ineligible for Medicaid due to citizenship status
  - Full scope adult Medicaid –
    - Refugees, asylees, CP, T visa bona-fide
    - 5 year bar except pre-8/22/96 entries
      - VAWA self-petitioners
      - Lawful permanent residents including U visas and SIJS



# Benefits in Louisiana

- SSI (most limited):
  - Continued presence, T visa bona-fide
  - Lawful permanent residency + 5 year bar + 40 quarters of work credit:
    - VAWAs, U visas and SIJS
- Driver's License
  - Federally recognized – work authorization
    - VAWA approved, T visa bona fide, CP, U visa waitlist, SIJS –LPRs, DACA
- Housing
  - Shelter & Transitional – all victims + homeless + abused children
  - Public and Assisted:
    - VAWA applicants, CP, T visas, U visa & SIJS – LPRs

# Benefits in Louisiana

- LIHEAP
  - Weatherization everyone
  - LIHEAP – VAWA, CP, T visa, SIJS LPRs
- FEMA
  - Emergency assistance: everyone
  - Individual Households Program: VAWA, T visa, CP
  - Individual & Family Grant Program: VAWA, T visa, CP, U visa & SIJS-LPRs
  - US Small Business Administrations Loans: VAWA, T visa, CP
  - Disaster Unemployment Assistance: VAWA, T visa, CP, U visa & SIJS-LPRs
  - Emergency Food Stamps: T visa, CP, U visa & SIJS-LPRs (after 40 quarters of work credit)

# Importance of Accompanying Immigrants in Applying for Public Benefits

- Help educate state benefits workers
- Accompanying immigrant applicants helps
  - Children and victims get what they are legally entitled to access
  - Helps undocumented parents file for benefits for their citizen or LPR children
  - State welfare worker reporting requirements

# Child Welfare Cases and Termination of Parental Rights

# 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

# A Family Reunited



# Parental Interest Directive Aug 2013

- If parents are detained:
  - Placement near children and family court
  - Bring parents to family court to participate in cases involving children
  - Facilitate visitation
  - Help children travel with deported parent – obtain passports for children
  - Bring deported parents back to the US for custody and parental rights cases



# Is Immigration Status Relevant to Custody and Placement?

- 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	Fact
Deportation is imminent	DHS policies prevent detention/removal of immigrant parents who are crime victims
Parent is likely to flee U.S. with child	US citizens and lawful permanent residents are more likely to flee with children, especially when <ul style="list-style-type: none"> <li>- There have been threats of kidnapping children</li> <li>- They are dual nationals</li> <li>- They travel freely to and from U.S.</li> </ul>
The parent has no livelihood	Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
Legally present parent must have custody in order to file for benefits for child	Custody does not affect parent's ability to file for or gain immigration benefits for his children

# Protection Orders



# Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

# 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

# Technical Assistance and Materials

- Power Point presentations and materials for this conference at <https://niwaplibrary.wcl.american.edu/louisiana-da-2021>
- **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)

# Questions

