

# Immigration Today: SIJS, VAWA, T Visas and U Visas

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Annapolis, Maryland

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# Introductions

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



# Thank you to SJI

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# Learning Objectives

By the end of this training you will be better able to:

- Identify children and crime victims eligible for immigration relief
- Sign U visa and T visa certifications based on an understanding of the role Congress created for state court judges in U and T visa certification
- Make Special Immigrant Juvenile Status (SIJS) findings in cases of immigrant children who have suffered abuse, neglect or abandonment by a parent
- Issue rulings on discovery in family, criminal and civil cases consistent with federal VAWA confidentiality laws

Type in the chat box

**What  
countries  
do victims  
and  
children in  
your courts  
come from?**



**NIWAP**

# Maryland (2019)\*

- ❖ Total foreign born population – 929,431
- ❖ 15.4% of the country's ~6 million people are foreign born
  - 51.9% naturalized citizens
  - 25% legal permanent residents
  - 23.1% temporary visa holders or undocumented immigrants
- 79.3% rise in immigrant population from 2000 to 2019
- ❖ Length of time immigrants have lived in the U.S.
  - 43.2% entered before 1999
  - 28.5% entered 2000 - 2009
  - 28.3% since 2010
- ❖ 30.1% of children under age 18 have one or more immigrant parents
  - 85.4% of these children are native-born U.S. citizens

*\*Source: Migration Policy Institute Data Hub (August 2021) and Lawful Permanent Resident estimates MPI and DHS (2021)*

# Maryland– Countries/Regions of Origin & Limited English Proficiency (LEP)(2018)\*

- ▣ Latin America – 39.6%
  - ▣ Mexico (3.4%)
  - ▣ South America (7.5%)
  - ▣ Central America (24.8%)
- ▣ Asia – 32.3%
  - ▣ China/Taiwan (6.1%)
  - ▣ Korea (3.2%)
  - ▣ South Central Asia (12.3%)
  - ▣ Vietnam (2.4%)
  - ▣ Philippines (3.7%)
- ▣ Europe – 8.4%
  - ▣ Eastern Europe (3.6%)
- ▣ Africa – 18.5%
- ▣ Middle East – 3.1%
- ▣ Canada – 0.9%
- ▣ Oceania – 0.4%
- ▣ Language spoken
  - ▣ 19.4% of people in the state who speak a language other than English at home
  - ▣ 39.5% of foreign born persons are LEP - speak English less than “very well”

\*Source: [Migration Policy Institute Data Hub](#) (August 2021)

# Top Maryland-Languages Spoken at Home (2019)\*

- Spanish (492,491)
- Chinese, including Mandarin, Cantonese (70,479)
- French (including Cajun) (56,182)
- Yoruba, Twi, Igbo, Other West African Languages (51,083)
- Amharic, Somali, or Other Afro-Asiatic Languages (38,482)
- Korean (30,866)
- Tagalog (including Filipino) (28,954)
- Vietnamese (24,690)
- Russian (21,885)
- Hindi (21,162)
- Arabic (17,699)
- Urdu (17,819)
- Swahili or other Central or East African Languages (17,354)
- German (16,378)
- Nepali, Marathi or Other Indic Languages (16,041)

\* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MD> (August 2021)



# Maryland-LEP (2019)\*

- Limited English Proficiency (Speak English less than very well)
  - ☐ Naturalized citizens - 26.7%
  - ☐ Noncitizens -53.5%
- Limited English Proficiency by language spoken at home
  - ☐ Vietnamese (52.9%)
  - ☐ Nepali, Marathi, other Indic (52%)
  - ☐ Korean (50%)
  - ☐ Spanish (45.3%)
  - ☐ Chinese (including Mandarin, Cantonese) (45.2%)
  - ☐ Amharic/Somali (35.2%)
  - ☐ French/Cajun (30.7%)
  - ☐ Russian (30.5%)

\* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MD> (August 2021)

# **Dynamics Of Domestic Violence Experienced By Battered Immigrants**

# Polling Exercise: Myths and Realities

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



True



False

# Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
  - Lifetime as high as 49.8%
  - Those married to citizens and lawful permanent residents – 50.8%
  - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

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

# Polling Exercise: Myths and Realities

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



True



False

# Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
  - 72.3% never file immigration papers
  - The 27.7% who did file had a mean delay of **3.97 years.**

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." International Review of Victimology 7 93113

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

\*Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)

# Polling Exercise: Myths and Realities

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



True



False

# Sexual Assault Rates Among Immigrant Women

- High school-aged immigrant girls
  - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
  - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).



# Department of Homeland Security

- DHS Dynamics Video



# 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)

# When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
  - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence
  - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)

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

# Purpose of Crime Victim Protections

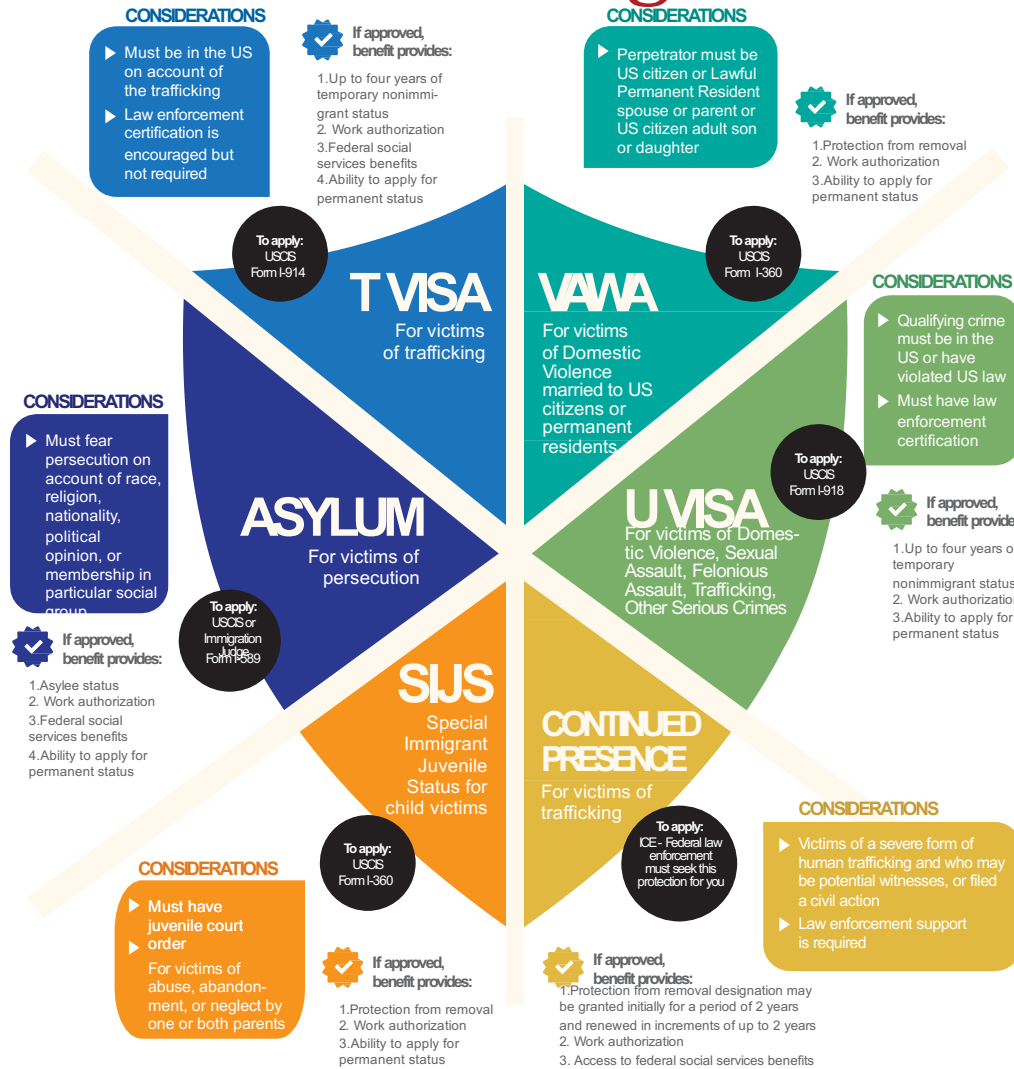
Congress enacted VAWA self-petitioning (1994), the U and T visas (2000) & Special Immigrant Juvenile Status (SIJS) (1990, 2008) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes and seek help from police, prosecutors, and courts without fear of deportation
- Improve access to justice in family/criminal/civil courts for immigrant victims of
  - Domestic & sexual violence, stalking, human trafficking, and child/elder abuse
- Enhance victim safety
- Keep communities safe

# Immigration Relief Available for Immigrant Victims of —

- Domestic violence
    - Child abuse
  - Sexual assault
  - Rape
  - Incest
  - Prostitution
  - Torture
  - Felonious assault
  - Manslaughter
  - Murder
  - Female genital mutilation
  - Kidnapping
  - Abduction
  - Trafficking
  - Involuntary servitude
  - Slave trade
  - Being held hostage
  - Fraud Foreign Labor Contracting
  - Peonage
  - False Imprisonment
  - Blackmail
  - Extortion
  - Witness tampering
  - Obstruction of justice
  - Perjury
  - Stalking
  - **Parent perpetrated**
    - **Child abuse**
    - **Child neglect**
    - **Child abandonment**
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

# Protections For Immigrant Victims



DHS.GOV/BLUE-CAMPAIGN

# Story: How Immigration Relief for Victims Improves Community Safety

# 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 formal protection = 4–18 months (2019)**



# 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 formal protection = 6 – 36 months (2019)**

# 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 formal protection = 4–6 years(2019)**

# 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.D. 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 formal protection = 3–12 months (2019)**

# Protections for Abused Children and Family Members

- VAWA self petitioner = Abused Child, Parent of abused child, Abused parent
  - Family included: applicants' children and an under 21 year old child can include their parent
- U and T visa applicant = Child victim or their parent
  - Family included:
    - Under 21: spouse, children, parents, unmarried siblings under 18
    - Over 21: spouse and children
- Special Immigrant Juvenile Status = child victim
  - Family included: None

# Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
  - Legal work authorization (3-48 months from filing)
  - Issuance of federally recognized ID
  - More benefits access than undocumented victims
- VAWA confidentiality

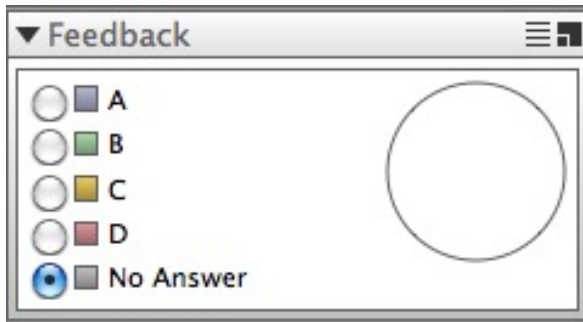
# Case Scenario (Handout)

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.

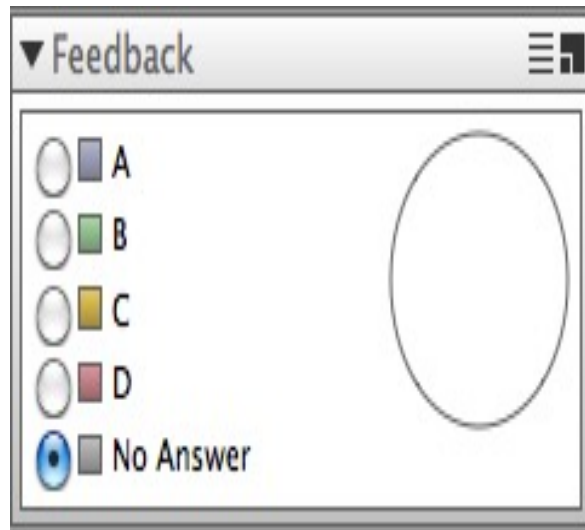
# What forms of immigration relief would Clara qualify for:

Using your clickers please check:

- 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).

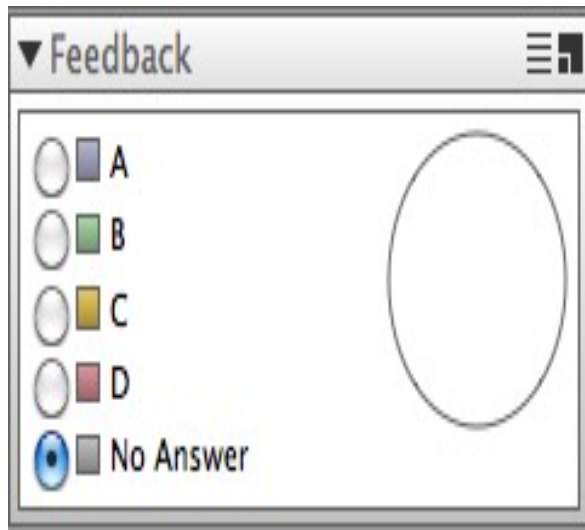


The image shows a screenshot of a survey question interface. At the top, there is a header bar with the text "Feedback" and a menu icon. Below the header, there is a list of radio button options: "A" (blue square), "B" (green square), "C" (yellow square), "D" (red square), and "No Answer" (blue circle). To the right of the options is a large empty oval shape, likely a placeholder for a response or a visual aid.

- 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 screenshot of a software window titled "Feedback". The window contains a list of radio button options on the left and a large empty oval on the right. The options are: A (blue square), B (green square), C (yellow square), D (red square), and No Answer (blue circle with a white dot). The "No Answer" option is selected.

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

# Polling Exercise: Myths and Realities

After filing for Violence Against Women Act (VAWA) or U visa immigration relief immigrant victims are more likely to turn to the justice system for help.



True



False

# 2013 and 2017 Research Found Increased Justice System Participation

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

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rodrigues et al. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 3, 2018); Leslye Orloff, et. al., *U Visa Victims and Lawful Permanent Residency 5* (September 6, 2012)

# After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Protection From Deportation

- 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

# 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
  - Applying VAWA confidentiality laws in ruling on discovery
- Make rulings on discovery consistent with VAWA confidentiality
- Distribute DHS-produced “Know Your Rights” information at your courthouse

# Judicial Role When Immigration Status is Raised in State Court Proceedings

- Know where to access legally correct information about
  - Immigration laws and policies
  - Benefits eligibility for immigrant victims
- Be able to identify adults and children eligible for victim based immigration relief
- Refer victims to programs in your state with expertise serving immigrant victims and children
- More training on these topics Judicial College of MD training August 22, 2022

# 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

# Importance of Judge's Role on SIJS

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



# SIJS State Court Findings Required for the Child to File for SIJS

- 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 for SIJS: Apply State Law

- 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, guardian, adopting parent) *OR*
  - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
- Reunification of the child is not viable with a parent due to at least ONE PARENT'S abuse, abandonment, or neglect

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

# State Courts Regularly Make Custody & Placement Determinations

- Who will be the custodian/guardian of the minor
- With whom will the child live
- Whether the minor will be committed to the custody of the state or private agency for care, treatment, or rehabilitation

# Court Order May Place the Child in the Care or Custody of:

- An individual
  - Non-abusive parent
  - Grandparent
  - Kinship care
  - Guardian
  - Foster or adopting parent
- State agency
- Private agency
- Foster care system

# Large Group Free Think Exercise

- What are all the types of courts and court proceedings in which courts issue orders addressing the custody or placement of children?

# Types of Proceedings with Jurisdiction to Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Custody and child support
- Divorce
- Legal Separation
- Declaratory judgments
- Adoption

SIJS Bench Book:  
Quick reference  
guides by case type

# 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

# Timing of SIJS Findings

- 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



## Large Group Multiple Choice:

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

# 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.

# State Law Definitions Apply: Abuse, Neglect, Abandonment

- Apply state law without regard to where abuse, abandonment or neglect occurred
- Describe how the actions of the parent fit the state law definition of abuse, neglect, or abandonment
- Formal charges of abuse, neglect or abandonment against a parent are not required

# Make Findings of Neglect or Abuse Rather Than Similar Basis for:

- Child Endangerment
  - All state statutes more than neglect and may also fall within definition of abuse
- Forced marriage
  - All state statutes = abuse
- Domestic violence
  - When child abuse falls within state domestic violence statute definitions

# 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

# Clara and Eduardo Case Scenario

Clara met Eduardo a lawful permanent resident when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

# Small Group Activity: Clara and Eduardo Scenario

- Identify factors you would address in the SIJS findings you issue for Lupe
- Use ---
  - Your state’s best interest factors; and
  - Handout: “Factors the Can Demonstrate That it is Not in a Child’s Best Interests to be Returned to Their Home Country”

## Factors to consider...

- Risk of danger to the child
- Family violence, abuse, neglect, abandonment, sexual violence
- Trauma child has suffered and child's physical, emotional, safety, mental health needs
- Help the child is receiving
- Family support system
- Emotional well being



# Factors to consider...

- Child's educational needs
- Child's wishes and fears
- Parent's fitness, caregiving capacity, mental and physical health and moral fitness
- Parent's demonstrated capacity to provide stability continuity of care
- Delegation of parental responsibilities to third parties
- State laws that preclude or discourage placement with abusive parent

# Finding: Reunification Not Viable

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

# Approach

- Apply state law definitions to determine if harm meets definitions of abuse, neglect, or abandonment
- Apply state best interest factors to
  - Custody, placement, commitment
  - Determination if in child's best interests to return to placement in home country
- Make factual findings regarding
  - Facts of abuse, abandonment and/or neglect
  - Separately regarding each parent
  - Articulating trauma impact on child helpful
  - Why reunification with a parent is not viable

# Handout Discussion

- Example
  - Role of court staff
  - Findings/Recommendations Sheet

# 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

# Issues to Avoid When Drafting Orders

- Vague language
- Not enough details and facts
- Lack of citation of state law authorities
- Be sure to include reasons why court is making findings

# What SIJS Children Receive

- Ability to apply for lawful permanent residency (LPR)
- Legal employment authorization
  - Facilitates access to state issued driver's licenses and identification cards
- Eligible for citizenship after 5 years as LPRs
- As LPRs, eligibility for post secondary educational grants and loans, public and assisted housing
- Food stamps (only until the immigrant child turns age 19)

**Parents of recipients of SIJS may NEVER obtain any immigration benefit based on the relationship to the child**

# Immigrant Victims of Human Trafficking and the T Visa



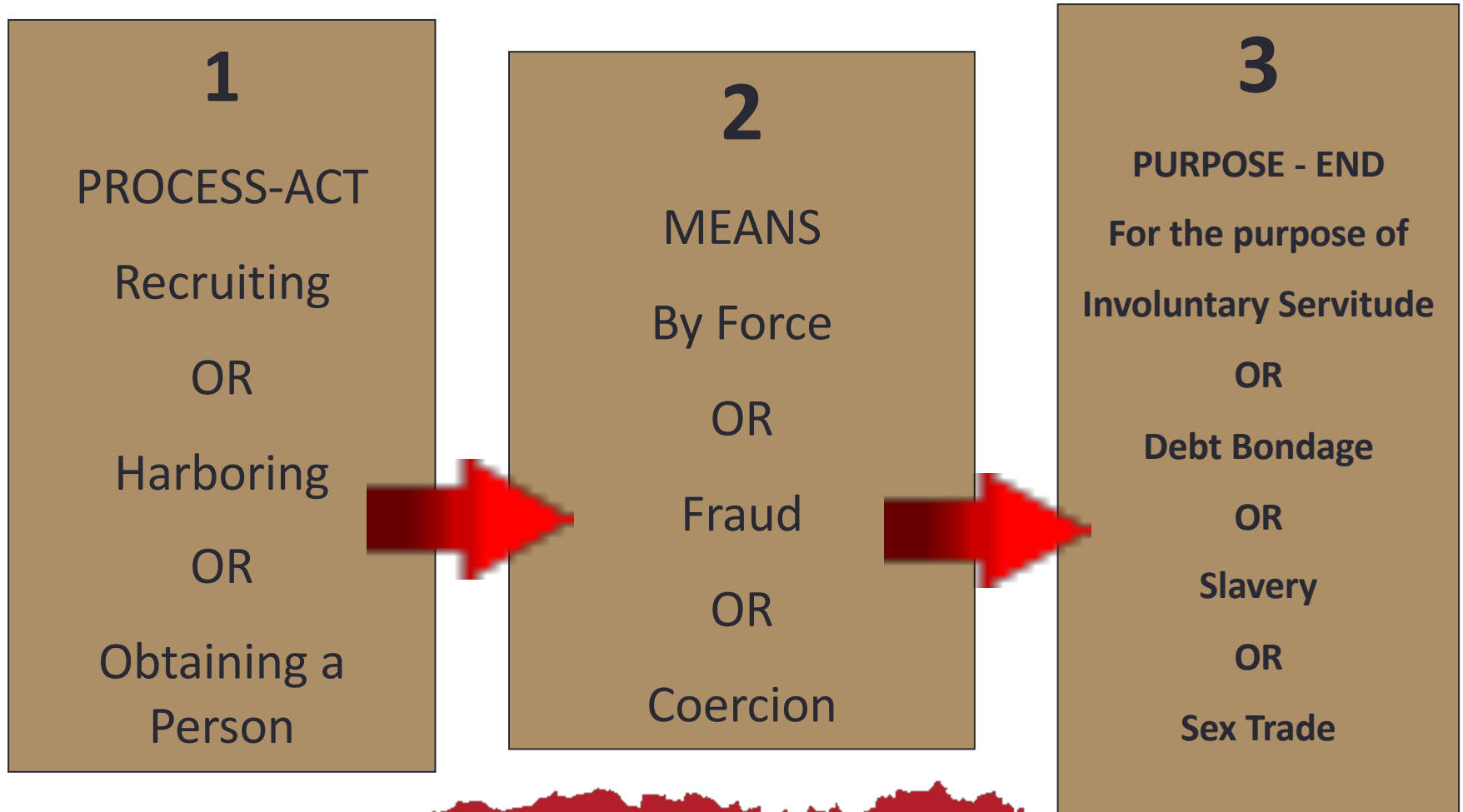
# Familial Trafficking

- Over 62.7% of sex trafficked children their trafficker is a family member
  - Parent, grandparent, aunt, uncle, cousin, sibling
  - With 45.8% parent or guardian
- Up to 34% of sex trafficked children are trafficked by an intimate partner
  
- Cole, J., & Sprang, G. Sex trafficking of minors in metropolitan, micropolitan, and rural communities. *Child Abuse & Neglect* (2014), <http://dx.doi.org/10.1016/j.chiabu.2014.07.015>

# 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%

# Three Federal Elements of Trafficking



# 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.

# Large Group Discussion: Where do you think trafficking happens?



# Top Venues/Industries for Sex Trafficking

- Illicit Massage/Spa Businesses
- Pornography
- Residence based commercial sex
- Hotel/motel based
- Escort services
- Online advertising venue unknown
- Street-based

National Human Trafficking Hotline (2015-2019)

<https://humantraffickinghotline.org/states>

# Major Labor Trafficking Venues

- Regulated & unregulated industries
- Low-wage industries
- Hidden & public
- Sexual & non-sexual services
- Gender differences by venue
- 4% trafficked in multiple venues
- Private Residence/Domestic Servitude 37%
- Agriculture 19%
- Restaurants 14%
- Hospitality 10%
- Construction 10%
- Carnivals/Fairs 7%
- Factories 4%
- Assisted Living 3%
- Strip Clubs 2%
- Massage Parlors 1%

Colleen Owens et al., Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States (2014), <https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states>

# 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

# Means: Traffickers Use of Fraud

- Victim is promised on thing and ends up trafficked
  - Enters into a marriage result – domestic servitude
  - Applied for a job in a bar result – brothel
  - Job in a factory result – locked in to factory each day forced to work until employer lets them leave
  - Job as a nanny result forced to work unpaid hours

# End/Purpose: Commercial Gain

- Involuntary servitude
- Commercial sex
- Debt bondage
- Slavery
- Peonage – use of labor bound in servitude because of a debt
  - Example owes debt to the trafficker for their housing, food, clothing, transportation



# Christina: Small Group Activity

- Create a list of elements of human trafficking in the Case of Christina
- Report back

# Forms of Immigration Relief for Human Trafficking Victims

- T Visa
- Continued Presence
- U visa
- SIJS
- VAWA self-petition

# T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
- 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
- **Judicial Role: Signing T Visa certifications**

# Continued Presence

- Temporary immigration status for any victim of human trafficking *who may be a potential witnesses*
  - Sex and/or labor trafficking
- Victim (and certain family) remain lawfully in the U.S. during investigation or prosecution into human trafficking
- Granted for 2 years, can be renewed
  - Receive work authorization, public benefits and services
- **Judges should refer victims to federal authorities** who are authorized to file continued presence applications for trafficking victims with DHS

Why would a judge refer a victim for continued presence?



**Large Group Discussion:**  
You have identified that Clara and Miguel may be eligible for continued presence to which federal authorities might you refer them?

# Federal Agencies Authorized to Request Continued Presence

- DOJ:
  - FBI, US Attorneys, Civil Rights or Criminal Division
  - U.S. Marshalls Service
- Department of Labor
- EEOC
- Department of Homeland Security
  - Homeland Security Investigations (HIS) victim witness
- State Department Diplomatic Security Service
- State Human Trafficking Coordinating Council Members can assist

# U and T Visas: Benefits Comparison

## U Visa

- Up to 60 month wait:
  - Health care exchange access (states may subsidize)
  - Work authorization
  - Driver's license
  - Formal deportation protection
  - All other benefits not available until 5 years after lawful permanent residency (unless state funded)

## T Visa and Continued Presence

- 4-6 month wait:
  - Subsidized health care
  - Work authorization
  - Driver's license
  - Formal deportation protection
  - TANF
  - Food stamps
  - FAFSA
  - Public and assisted housing
  - Many other state and federal benefits

*Services necessary to protect life and safety available to all*



# Large Group Discussion and Report Back

- In what types of cases have you encountered human trafficking victims?
- From the perspective of a trafficking victim where might your life intersect with the court system?

# Spotting the Trafficker

- Civil Cases
  - Truancy
  - Protection Orders
  - Child Support
  - Custody & Guardianship:  
Children residing with unrelated adults
- Criminal Cases
  - Minor violations, shoplifting, loitering, runaways, criminal trespass
  - Drug charges: possession, distribution
  - Traffic stops of adults with passengers
  - Domestic violence cases

– SIJS

# Human Trafficking in the Work Place

- Divorce proceedings before family court including custody dispute child is foreign born
- Husband is a US citizen
- Victim works for a business owned by her husband's family
  - Locked into the work place daily no ability to leave
    - Arrives at home different times
    - Husband claims victim is fooling around
  - Sexually assaulted by foreman
  - Forced to work and is not paid

# Protection Orders

Initial Petition  
seemed  
“ordinary”

*Cross-Claim and  
Answer told the  
story and raised  
the red flags*

- Foreign national married to US citizen with one child
- Child US citizen
- Mom’s status “pending”
- Dad was the trafficker seeking return of economic losses

# Child Support

Obligor before  
the Court on  
Arrears

Why didn't you  
pay?

- I took job as solar salesman
- Took me to Midwest
- Promised wages never paid, conditions horrid
- When I tried to leave, they followed and threatened me until I returned
- I finally got a ride with someone at gas station

# Large Group Discussion

- What are some red flags you have seen that could alert the court that a child or person before the court may be a human trafficking victim?

# Common Red Flags/Vulnerabilities– Human Trafficking

- Signs of abuse, malnourishment, exhaustion, or fearfulness
- Person is not being paid, being paid very little, or is working excessive hours or in dangerous working conditions
- Person is not allowed to leave home or premises, or is closely supervised and restricted in movement
- Person does not have access to personal documents such as ID, passport, immigration papers, or social security card
- Presently homeless, unemployed, in abusive relationship
- Drug addiction – traffickers use drugs to control victims
- Sexual abuse by trusted individual or caretaker

## Red Flags – Child Sex or Labor Trafficking

- Chronically truant, runaway, homeless, lacking familial support
- No knowledge of their whereabouts or the community
- Multiple cell phones,
- Excess cash or expensive goods/services they cannot afford (new jewelry, manicure)
- Signs of branding (tattoos, jewelry)
- Lying about age/false IDs
- Provocative clothing, sex toys, multiple condoms
- New older boyfriend or “uncle” coming to court



# Trafficker is a Wolf in Sheep's Clothing

- The majority of victims are not kidnapped or taken against their will initially
  - Are tricked into believing the trafficker is there to help them in their time of need or moment of despair
- Traffickers are master manipulators
  - Are adept at identifying psychological and physical needs of victims and using those needs to draw the victim in
- Traffickers will groom a victim until they trust, depend, and even love them before gradually and incrementally wear victims down, make them dependent, feel worthless, dependent then make greater demands
- Victims will be kept under control by physical force or psychological tactics such as shame, humiliation, guilt, fear

# Large Group Discussion

- What can you do as a judge to help trafficking victims you encounter in court?

# Appropriate Judicial Response Menu:

- Child abuse hotline
- Utilize your victim advocates to reach out, make referrals to agencies and assist with exploring options and services
- Sign U and T visa certifications and make SIJS findings
  - Refer to programs with expertise serving immigrant victims
- Side bar with prosecutor and defense attorney
- Involve trafficking unit or special prosecutor
- Contact your state's Human Trafficking Council
- “Do Nothing” is not an option

# What ELSE Can Judges Do???

**Remember – YOU have the power to do GOOD**

- Distribute “Know Your Rights” publications written by DHS in your courtroom and self-help center
- Step Up! Play a leadership role in your Court. Discuss projects with your Court Administration to create work groups, task forces, and committees to partner with other key agencies.
- Enhance victim access to justice by continuing to hone your skills to be able to detect trafficking and protect vulnerable victims

# U Visa and T Visa Certifications by Judges

# Congress and DHS Made Judges U and T Visa Certifiers

- U visa certifications mandatory
  - To file a U visa application eligible victims must obtain a U visa certification
- T visa certifications provide helpful evidence that help T visa applicants prove
  - Human trafficking victimization and
  - Cooperation in investigations or prosecutions of traffickers

# 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 Regulations Definitions

Although terms are used interchangeably

- As a matter of law (U visa regulations)
  - Helpfulness in the “investigation or prosecution” always means
    - “Detection, investigation, prosecution, conviction, or sentencing”
  - “Crime” always means
    - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
  - Improving stability for crime victims



# 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 Statistics

11/2011

% of U Visas	Criminal Activity
<b>76.1% = Domestic Violence, Sexual Assault, Child/Elder Abuse, Human Trafficking</b>	
9.9%	Felony Assault, Murder, Manslaughter
8.47%	Kidnapping, Being Held Hostage, Unlawful Criminal Restraint, Torture
5.3%	Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation

# U-visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
  - Bona Fide determinations provides ability to stay in the U.S. with work authorization and protection from deportation
- The U-visa grants a temporary 4 year stay
  - Wait to visa currently 14 years
- Limited state funded benefits
- Lawful permanent residency after 3 years if
  - Cooperation or not unreasonably refuse to cooperate
  - Plus humanitarian need, family unity or public interest
- U.S. citizenship after 5 years of lawful permanent residency + proof of good moral character

# Large Group Discussion: Who Can Sign a U visa Certification?



# U and T Visa Certification May be Signed by any Judicial Official

- Judicial officers who can sign U visa certification:
  - Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.

# Who Can Certify?

- Federal, state, and local
  - Law enforcement
  - Prosecutors
  - Judges, Magistrates, Commissioners, Judicial Officers
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies with criminal, civil, administrative investigative power

# Large Group Discussion

## Why might a victim come to a judge for certification?

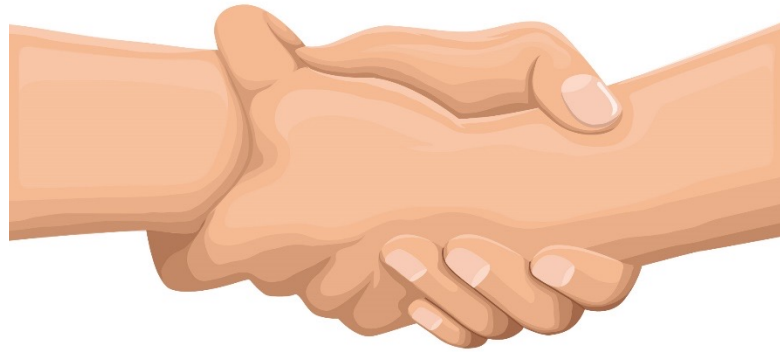


# Why victims seek certification from courts

- Only justice system contact = victim sought
  - Protection order
  - Custody
  - Divorce
  - Filed a civil case (e.g. tort,
- No language access when victim called police for help
- Police did not investigate and case never sent to the prosecutor



# Detecting Helpfulness



# What Evidence of “Criminal Activities” and “Helpfulness” Could be Present in These 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

# Small Group Discussion

## What are examples of helpfulness that judges might see in family and criminal cases?



# 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

# 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

## 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

# Not Required

- Conviction
- Charges filed
- Offender arrested
- Testimony at trial
- Necessary witness
- Within statute of limitations
- Offender is identified
- Offender alive



Victim-  
centered  
approach

# 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



# Helpfulness vs. Cooperation/Assistance

## For Certification Before Filing the U Visa

- Has been helpful *Or*
- Is being helpful *Or*
- Is likely to be helpful

TO.....

- Detection *Or*
- Investigation *Or*
- Prosecution *Or*
- Conviction *Or*
- Sentencing

## After Filing the U visa & for Permanent Residency

- Ongoing obligation to provide cooperation or assistance
  - Reasonably requested by law enforcement or prosecutors
- **Exception:** may show that refusal to cooperate or assist was not unreasonable

## Eduardo and Clara Scenario Additional Facts:

- While Clara was in the hospital she met a victim advocate who worked with a legal services attorney and after Clara's release from the hospital she got her children back and helped Clara file for a protection order
- You heard Clara's protection order case and issued Clara a protection order against Eduardo
- A week after the protection order was issued Clara's legal aid attorney sends you a letter requesting that you sign a U visa certification

## Multiple Choice Question:

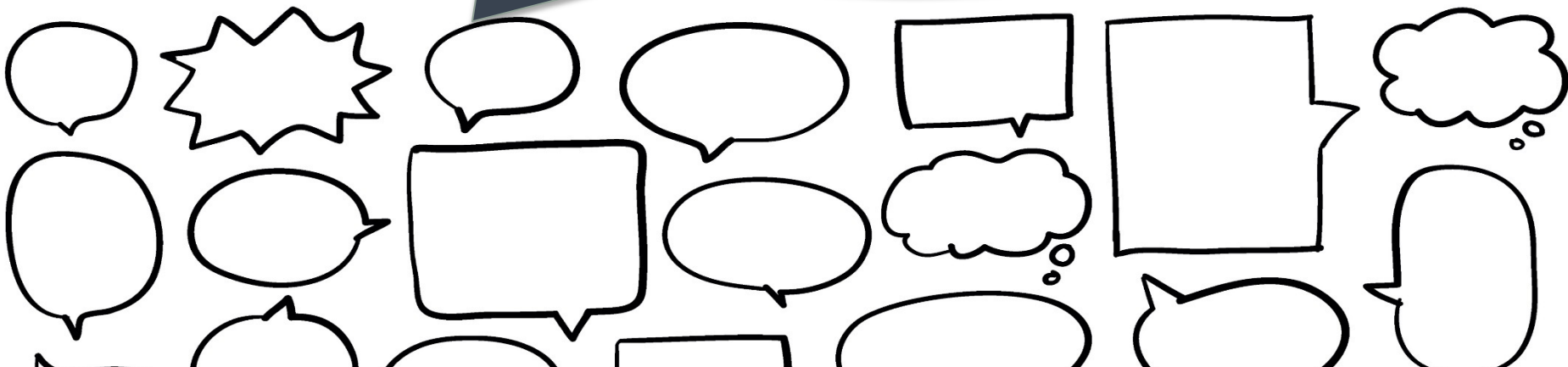
What evidence of helpfulness might you include on the U or T visa certification form?

- A. The fact that Clara sought and you issued a protection order
- B. Testimony Clara provided at a contested hearing
- C. You learned in the CPO case that Clara spoke to police at the crime scene and gave information for the police report
- D. All of the above



# Large Group Discussion

**Ethical Considerations:** What are the ethical considerations regarding U visa or T visa certification by judges that you have encountered, have been asked about or have questions about?



# Minnesota Judicial Ethics Opinion U Visa Certification (June 26, 2015)

- Judge may sign certifications when
  - “adequate basis for the averments made in the certification”
- Certification after the criminal or civil case is completed does not raise impartiality issues
  - In open cases should disclose certification to the parties
- Certification describes immigrant victim’s past/present helpfulness -- Does not vouch for character
- In civil and criminal cases, whether to sign a U visa certification is a an issue of law that does not implicate judicial ethics codes

Full Opinion Available at: <http://www.bjs.state.mn.us/file/advisory-opinions/opinion-2015-2-final.pdf>  
Hon. Pendleton also published a training update based on the opinion at <http://pendletonupdates.com/>

# Inaccuracies in North Carolina Ethics Opinion Not Addressed by Minnesota

- Investigation or prosecution =
  - Detection , investigation, prosecution, conviction, or sentencing
- U visa ≠ preferential status
- Judges certify on past or present (not future) helpfulness
- Judges generally sign after having made findings and the case is concluded

## 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.

# VAWA Confidentiality in State Court Proceedings



# VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS, DOJ, and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone
  - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

# VAWA Confidentiality Prongs Chart

## Non-Disclosure

Protects victims **who have filed** a protected case with DHS

- \*VAWA self-petitions
- \*Battered spouse waiver
- \*VAWA Cancellation/Suspension
- \*U and T Visas
- \*Abused Spouses of work visa holders work authorization applications

## Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators and their agents

### **Protects:**

- \***All victims abused by spouse or parent**
- \***All victims in the process of applying for U or T visas**

## Location Prohibitions

### **Protects:**

**All Victims**

### **Requires:**

No action at protected locations  
OR  
Notice to Appear must state how they complied with VAWA confidentiality

Violation = \$5,000 fine and/or disciplinary action

# DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers that the immigrant is a victim
- Sanctions \$5,000 fine and/or disciplinary action

# Why is VAWA Confidentiality Important for State Courts?

- Promotes access to justice and just and fair outcomes in state courts
- Perpetrators may attempt to use state court discovery to obtain federal VAWA confidentiality protected information
- Prohibited immigration enforcement locations include courthouses

# Sensitive Locations Protected From Immigration Enforcement

## **VAWA Confidentiality**

- Victims protected at courthouses in connection with civil/family/criminal cases related to
  - Domestic violence, sexual assault, trafficking, stalking
- Shelters, rape crisis centers
- Supervised visitation centers
- Family Justice Centers
- Programs serving victims

## **DHS Policies (ICE & CBP)**

- Schools
- Medical treatment & health care facilities
- Places of worship
- Religious or civil ceremonies e.g. weddings and funerals
- Public demonstrations e.g. march, rally, parade

# Large Group Discussion

## Why in the course or our work does this matter to us?



# Large Group Discussion

- Have you ever had a case where a party sought to discover information about or information from a party's or child's immigration case?



# Protecting Information About a Survivor's Immigration Case

- Prohibits disclosure of any information about
  - The existence of a VAWA, T or U visa application
  - Information contained in the A file
- Helps survivors of extreme cruelty, human trafficking, sexual assault and other U visa listed cases;
- Disclosure prohibited to all persons, not just the perpetrator;
- Protections apply from the time of filing permanently unless:
  - Case denied on the merits
  - All appeal options have been exhausted



# Disclosure Exceptions

- Limited disclosure in narrow circumstances
  - Disclosure to law enforcement or national security officials
    - Solely for a legitimate law enforcement or national security purpose; and
    - In a manner that “protects the confidentiality of such information”

# *Hawke v. Dep't of Homeland Security*

(N.D. CA, 2008) – VAWA Self-Petition Case

(Judicial review exception)

- VAWA Confidentiality Protects cases:
  - All cases unless denied on the merits
- Judicial exception applies to appeals of victim's immigration case
  - Does not apply to civil or criminal court proceedings
- 6<sup>th</sup> Amendment right to compulsory process does not permit access to absolutely privileged information
- “Primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer”

# Exceptions to Disclosure

- All DHS instruction 002-02-001
  - Only “in a manner that protects the confidentiality of such information”
  - “Please note, defense counsel in state cases may sometimes attempt to make the entire A-file discoverable; however the entire file is not discoverable in its entirety under this exception”

# Federal VAWA Confidentiality Implementing Regulations

- 8 C.F.R. 214.14 (3)(2)
  - “Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367”
- Chevron v NRDC (S. Ct. 1984)
  - Considerable weight and deference required of federal regulations

# Demaj v Sakaj (D. Conn, 2012) – U Visa/Custody Case

- Although relevant to credibility and impeachment
- Family court discovery barred as contrary VAWA confidentiality purpose --
  - Prevent disclosure of documents & information in a protected case file to alleged criminals
  - Stop perpetrator's actions to interfere with & undermine a victim's immigration case
- Seeking to obtain protected information through discovery in a custody case = interference with the victim's immigration case barred by the federal statute
- VAWA confidentiality applies to protect the case file contents, including in cases when
  - The victim discloses in state court that DHS has approved her protected immigration case

# EEOC v Koch (5<sup>th</sup> Circuit)

- In civil discovery court must consider
  - How discovery of U visas might intimidate victims outside of the case before the court
  - Compromising the U visa program and law enforcement investigations and prosecutions more broadly
  - Koch: limited discovery crafted to maintain anonymity may be allowable
  - That is not possible in a family or criminal court case

# State v. Marroquin-Aldana – Criminal Case

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- “Insufficient justification” to disclose additional documentation when the defense had the certification form
- Provided defense opportunity to cross-examine victim and call credibility into question
- Court noted the “high level of protection” given to documents filed with immigration

# People v. Alvarez Alvarez- Criminal Case

No. G047701, 2014 WL 1813302, at \*5 (Cal. Ct. App. May 7, 2014),  
review denied (July 16, 2014)

- “The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status...which was completely irrelevant to this case.”
- The trial court was well within its discretion in excluding reference to the U visa





Ask a Team – Quiz Bowl  
Eduardo and Clara: Discoverable or Not?

# Case Scenario

Clara met Eduardo a lawful permanent resident when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9-year-old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

# Eduardo seeks discovery of:

- Information contained in the victims VAWA self-petition case file in any state court case

# Eduardo seeks discovery of:

- Clara's immigration case file
  - Criminal case
  - Family court case

# Eduardo seeks discovery of:

- The U visa certification in a
  - Criminal Case
  - Family case

# Eduardo seeks discovery of:

- Information about the existence of Clara's VAWA self-petition or U visa case in a
  - Protection order or custody proceeding
  - Criminal prosecution

# SJI Funded Resources: Menu of Topics

- Supporting this training
  - Victim protection based forms of immigration relief: (VAWA, U and T Visas, SIJS)
  - U and T Visa certification by state court judges
  - Special Immigrant Juvenile Status findings best practices
  - VAWA confidentiality limitations on courthouse immigration enforcement and state court discovery (family, civil, criminal)
- Other important topics relating to immigrant victims
  - Using legally correct information to address immigration allegations in custody, divorce, protection order, child/spousal support & child welfare cases
  - Public benefits access for immigrant victims
  - Health care, housing, TANF, SNAP, Education and more
  - Improving access to justice for immigrant and LEP persons

# Technical Assistance and Materials

- Power Point presentations and materials for this conference:  
<http://niwaplibrary.wcl.american.edu/MJC2021>
- All SJI and OVW funded judicial training materials:  
<http://niwaplibrary.wcl.american.edu/sji-jtn-materials/>
  - **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)