

Immigrant Victims of Human Trafficking, Identification, Immigration Relief and the Court's Role

- Judge Rosemary Collins (Ret.),
- Commissioner Loretta Young, and Leslye E. Orloff
- National Council of Juvenile and Family Court Judges
- Pittsburgh, Pennsylvania
- March 14, 2022

Introductions

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

National Judicial Network



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Learning Objectives

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

- Identify children, youth, and adult victims of human trafficking 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

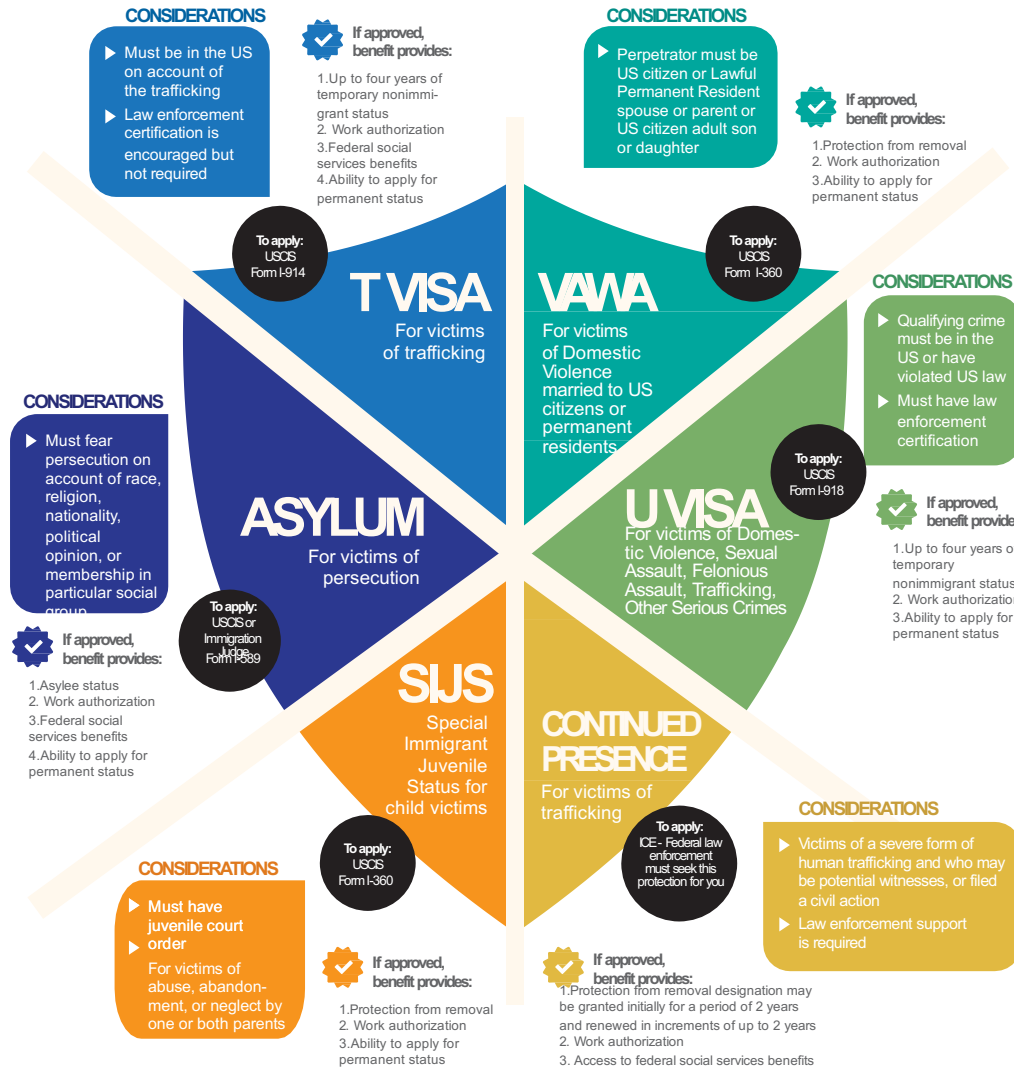
Familial Trafficking

- 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
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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%

Protections For Immigrant Victims



DHS.GOV/BLUE-CAMPAIGN

Immigration Relief Available for Immigrant Victims of —

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

DHS Enforcement Priorities 9.30.2021

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

DHS Enforcement Priorities 9.30.2021 and

Trasvina ICE 5.27.21 Memo: *Mitigating Factors*

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

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)**

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

Clara met Eduardo, a lawful permanent resident, when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara, who was raising her 12-year-old daughter, Juanita. Juanita's father abandoned her when she was an infant.

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

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

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

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

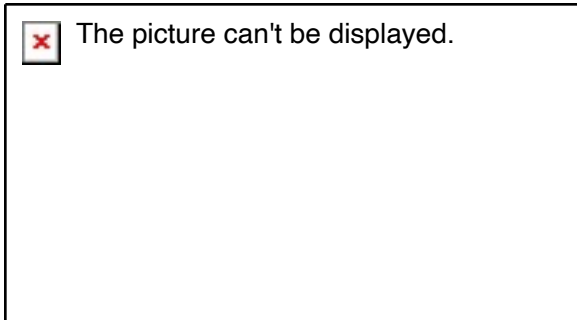
Lupe's and Juanita's neglect cases were assigned to Commissioner Young and both children were adjudicated neglected children. The Commissioner granted Clara's request for sole legal and physical custody of both children and continued the case for monitoring.

Juanita then ran away from home and was taken in by "friends", who trafficked her, forcing her to engage in sex with men in exchange for money. After being in run-away status for a year, Juanita returned to her mother.

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

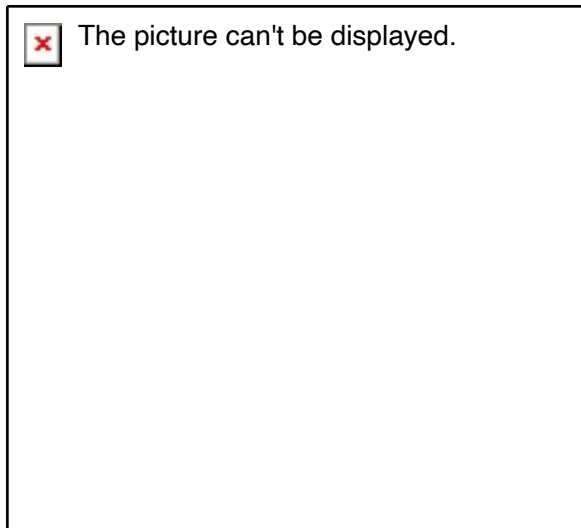
What forms of immigration relief would Clara qualify for:

Using your clickers please check:



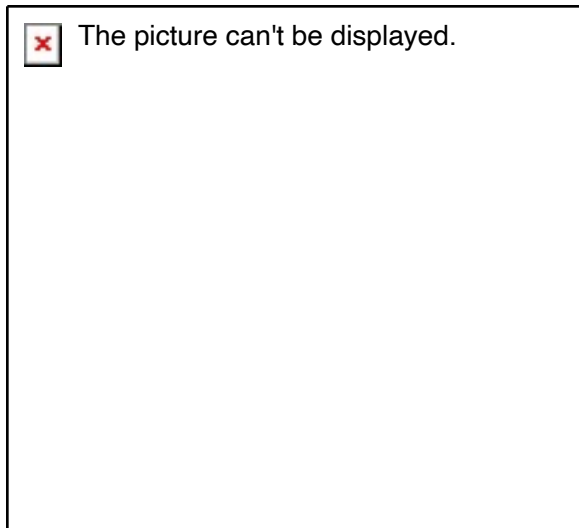
- A. U visa
- B. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above

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



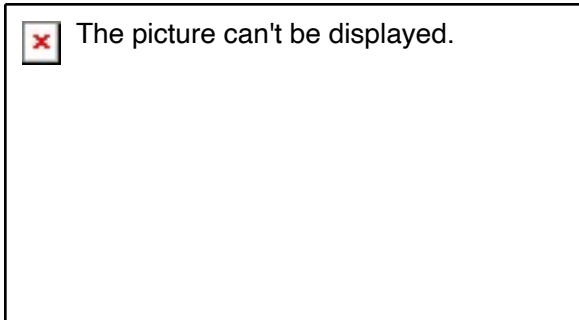
- A. VAWA self-petition
- B. U visa
- C. Special Immigrant Juvenile Status (SIJS)
- D. T visa

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

What forms of immigration relief would Clara qualify for:



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

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

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?



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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 (HSI) victim witness
- State Department Diplomatic Security Service
- State Human Trafficking Coordinating Council Members can assist

Immigrant Victims of Human Trafficking and the T Visa

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Three Federal Elements of Trafficking

1
PROCESS-ACT
Recruiting
OR
Harboring
OR
Obtaining a
Person

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2
MEANS
By Force
OR
OR
Fraud
OR
Coercion

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3
PURPOSE - END
For the purpose of
Involuntary Servitude
OR
Debt Bondage
OR
Slavery
OR
Sex Trade

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>

- 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

- 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

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

Difference Between Sex and Labor Trafficking for Children

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

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

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

- Condition of servitude in this context:
 - An expectation that the victim's life fulfills the orders of the trafficker (such as a demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and constant availability to labor regardless of health or energy)

Coexisting Involuntary Servitude & Domestic Violence

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

- Civil Cases

- Truancy
- Protection Orders
- Child Support
- Custody & Guardianship:
Children residing with unrelated adults
- SIJS

- Criminal Cases

- Minor violations, shoplifting, loitering, runaways, criminal trespass
- Drug charges: possession, distribution
- Traffic stops of adults with passengers
- Domestic violence cases

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

- 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

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

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, including child welfare
- Enhance victim access to justice by continuing to hone your skills to be able to detect trafficking and protect vulnerable victims

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

- Power Point presentations and materials for this conference: <http://niwaplibrary.wcl.american.edu/JJ2022>
- All SJI and OVW funded judicial training materials: <http://niwaplibrary.wcl.american.edu/sji-jtn-materials/>
 - **NIWAP Technical Assistance**
 - Call (202) 274-4457
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