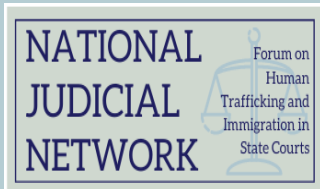


# National Judicial Network Forum on Human Trafficking and Immigration in State Courts

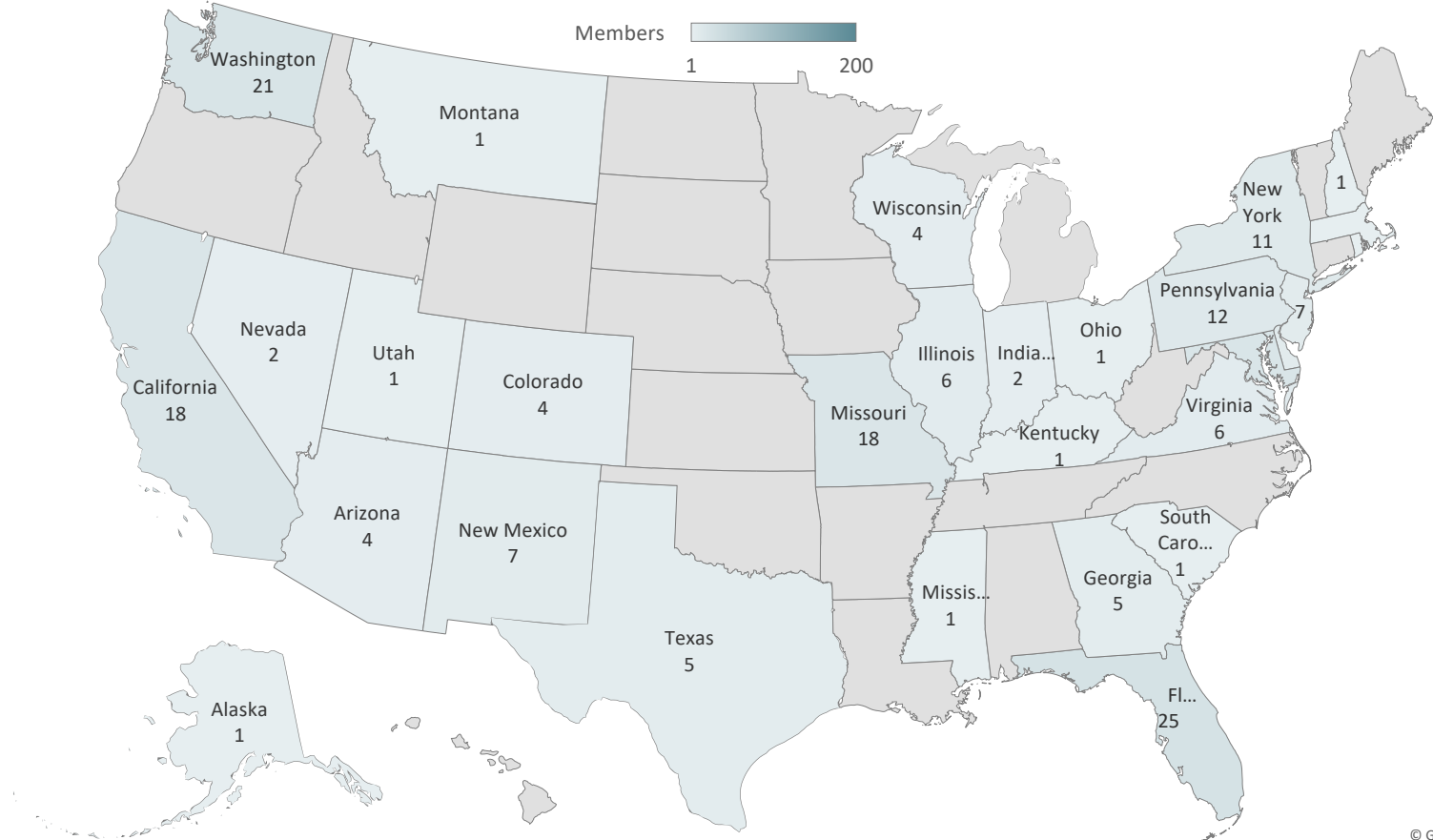
## **End of the Year Update: Federal Laws & Policies and Latest Data Important for Courts Hearing Cases Involving Immigrant Victims of Domestic Violence, Sexual Assault, Child Abuse and Human Trafficking**

December 8, 2022

This publication was developed under grant number SJI-22-T-037 from the State Justice Institute.  
The points of view expressed are those of the authors and do not necessarily represent the official  
position or policies of the State Justice Institute.

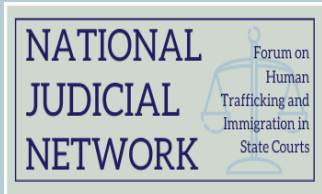


# State Representation in The National Judicial Network as of December 8, 2022



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Commissioners – 7    Ret. Judges – 9    Project Partners – 5  
Magistrates – 15    Judges – 161    Tribal Judges - 3



# Announcements

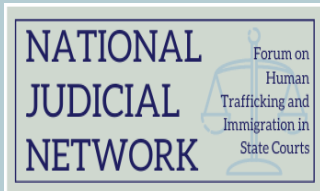
- Please don't forget to complete the evaluation at the end of the session! We will also send the link in a separate email after the session.
  - <https://www.surveymonkey.com/r/8M2B83Q>
- All NJN peer-to-peer sessions are recorded and made available to NJN members shortly after the session date on a password-protected webpage and via email.

# Listserv Launch via Groups.io

- The NJN has launched its new Listserv through the platform groups.io which will facilitate communication among The Network.
- All members should have received an email with a link to join the email group [nationaljudicialnetwork@groups.io](mailto:nationaljudicialnetwork@groups.io) this week.

# Upcoming Sessions & Topics

**January 10, 2023 (Webinar) - Protecting Against Vicarious Trauma and Empathic Distress: Tools and Strategies for Providers Working with Survivors of Trafficking and Torture**



# Today's Facilitator



**Leslye Orloff**  
*Adjunct Professor,  
Director, NIWAP,  
American University,  
Washington College of Law*

# Today's Topics

- Update on 2021 and 2022 federal government policies that impact state court's who encounter immigrant victims of domestic violence, sexual assault, stalking, human trafficking or child abuse, abandonment, or neglect
- 2023 Training Opportunities
  - New Curriculum from NCJFCJ and NIWAP
  - June 8-9, 2023

# National Judicial Institute on Domestic Violence (NJIDV) Topics and Training Modules - Part I

- Immigrant Realities and Dynamics of Domestic and Sexual Violence Experienced by Immigrants
- Immigration Relief for Immigrant Crime Victims
- U and T Visa Certification by Judges
- Special Immigrant Juvenile Status and the Role of the State Courts
- VAWA Confidentiality, Discovery and Immigration Enforcement Limitations
- Negative Consequences of not Providing Language Access

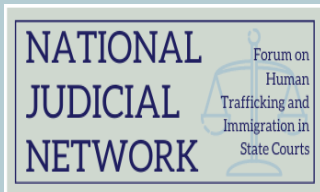


# NJIDV Training Modules and Topics - Part II

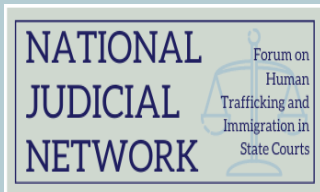
- Custody Cases Involving Immigrant Victims and Children in Immigrant Families
- Civil Protection Order Cases With Immigrant Victims
- Economic Support for Immigrant Survivors
- Divorce and Affidavits of Support
- Public Benefits and Services Eligibility for Immigrant Survivors and their Children
- Impact of Immigration on Survivor's Families – Intersection of Immigration and Criminal Law

# We Can Bring These to Your State

- National Judicial Network, National Council of Juvenile and Family Court Judges and NIWAP
  - Can work with you to plan a training
- NJN/NCJFCJ judicial faculty and experts
- The combination of modules you need
- Designed to meet your needs



# 2021-2022 Policy Highlights Relevant for State Courts Working With Immigrant Victims



# Judicial Leadership Opportunity

## HHS Child Eligibility Letters

- Foreign born under 18-year-old minors, including unaccompanied children
- Victims of severe forms of human trafficking (sex or labor trafficking)
- Requests for Assistance (RFA)
  - Can be filed by any person on behalf of an immigrant child who May have experience forced labor or commercial sex

# HHS Child Eligibility Letters

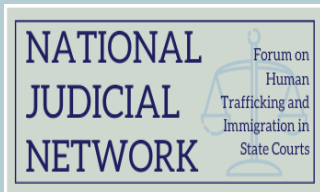
- TVPA requires report to Office on Trafficking in Persons with 24 hours of having credible information that an immigrant child “may be a victim of trafficking”
- HHS reviews Requests For Assistance (RFAs) and connects potential victims of trafficking with state and federal benefits and services
- Must file child’s RFA before age 18
- Receive interim assistance 90 days
- Eligibility letters give child trafficking victims access to benefits and services to the same extent as refugees indefinitely
  - Access to benefits throughout the time the child is applying for continued presence, T visa or U visa

# Obtaining HHS Eligibility Letters for Child Trafficking Victims That Grant Public Benefits Access

Issuance of Child Eligibility Letters on or after Applicant's 18th Birthday if Application Received Prior to 18th Birthday (May 11, 2016)

<https://niwaplibrary.wcl.american.edu/pubs/hhs-otipchildeligibilityletters18thbirthday>

- Child Eligibility Letters <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters>
- Report Trafficking Concerns and Request Assistance on Behalf of a Foreign National Minor <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters/request-assistance>
- HHS: Instructions Requests for Assistance for Child Victims of Human Trafficking (Current as of 2022) [https://niwaplibrary.wcl.american.edu/pubs/rfa\\_instructions](https://niwaplibrary.wcl.american.edu/pubs/rfa_instructions)
- How Child Eligibility is Determined <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters/determining-child-eligibility>
- Trafficking Prevention and Protection Resources for Working with Unaccompanied Children <https://www.acf.hhs.gov/otip/victim-assistance/child-eligibility-letters/resources>



# ICE Parental/Guardian Interests Directive July 2022

- Requires affirmative and ongoing inquiries about and identification of parents/legal guardians of minor children and incapacitated adults
- Status as a caregiver parents/legal guardian impacts
- Decision to detain, initial placements, transfers of parents
- Rights to family visitation & child welfare services/programs
- ICE to comply with and facilitate court ordered visitation
- Unless parent is the abuser, ICE required to accommodate efforts to make arrangements for children
- If court orders custody or return of child, ICE will in most cases release parent/guardian
- ICE required to bring parents/guardians to court and establish communication with courts.

# Victim and Witness Protected from Removal DHS Memo 2011 Confirmed 6/18 & 1/21

- Goal: “Minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”
- “Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”
- Crime victims and witnesses should receive “release from detention and deferral or a stay of removal.”



# How Does Information about Protected Areas from Immigration Enforcement Help in Family Courts Cases?

## **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 Policy 10/27/21 At or Near:**

- Schools and universities
- Medical or mental health care facilities
- Places of worship, religious events, weddings, funerals
- Places where children gather
- Social services: e.g., crisis, domestic violence, child advocacy, food banks, victim services, shelters, supervised visitation, family justice centers...
- Disaster/emergency response offered including family reunification
- Ongoing parade, demonstration, rally

# ICE Removal Data

## 2013

- Convicted criminals 82%
- Repeat immigration violators 7.8%
- Ordered removed and failed to depart 1.6%
- Other immigrants 7.7%

<https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>

## 2017

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

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

## 2020

- Criminal convictions/ pending criminal charges 92%

<https://niwaplibrary.wcl.american.edu/pubs/ice-ero-report-2020>

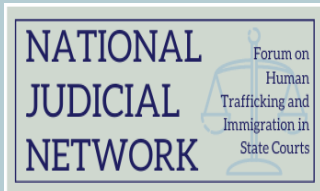
# Civil Immigration Enforcement Priorities (DHS Memo, Sept. 30, 2021)

- 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 November 1, 2020
- *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
  - Serious prior criminal record; Use of dangerous weapons

# Civil Mitigating Factors In Favor of Declining Enforcement DHS Enforcement Priorities 9.30.2021 and Trasvina ICE 5.27.21 Memo

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

“The fact an individual is a removable noncitizen therefore should not alone be the basis of an enforcement action against them. We will use our discretion and focus our enforcement resources in a more targeted way. Justice and our country's well-being require it.” Alejandro Mayorkas (DHS Memo, Sept. 30, 2021)



# 2022 Regulations Confirm

- Court's conclusions of law regarding non-viability expected to be in effect
  - When the court order is issued
  - When the child files for SIJS and
  - When the SIJS application is adjudicated
    - 180-day adjudication timeframe
  - 8 C.F.R. § 204.11(c)(3)(ii) and (g)(1)
- Approved SIJS applications will be automatically revoked only when:
  - Issuance of a court order reunifying the child with the parent who perpetrated the abuse, abandonment, neglect or similar harm
  - Judicial proceedings determine that it is in the child's best interested to be returned to the child's or their parent's home country
  - 8 C.F.R. § 204.11(j)(1)

# Continuing Jurisdiction of Juvenile Court

- Order establishing eligibility “must be in effect on the date the petitioner files the petition and continue through the time of adjudication of the petition.”
- 8 C.F.R. § 204.11(c)(3)(ii) Codifies and expands exceptions to continuing jurisdiction requirement:
  - Adoption: child “was adopted, placed in a permanent guardianship, or another child welfare permanency goal was reached, other than reunification with a parent.”
  - Age: child “was the subject of a qualifying juvenile court order that was terminated based on age, provided the petitioner was under 21 years of age at the time of filing the petition.”
- Also potential exception when child moves to another state’s jurisdiction

# Age of the Child, Age Out Protections and Effect of Marriage

- When the state court issues SIJS orders:
  - Child of an age that the court has jurisdiction
    - “State law is controlling as to whether a petitioner is considered a “child” or any other equivalent term for a juvenile subject to the jurisdiction of a state juvenile court for custody or dependency proceedings” 6 USCIS-PM J.2.B
  - Child unmarried
- When the child files SIJS application
  - Under 21
  - Unmarried
- When USICS adjudicates the child’s SIJS application
  - Can be over age 21 – age out protections
  - Unmarried
- After SIJS application is granted and when child files for lawful permanent residency
  - Can be over age 21 – age out protections
  - Can be married – New regulations allow marriage after approval of SIJS



# Q & A

# Thank You for Your Participation throughout the Year!

- Don't forget to complete the session evaluation
  - <https://www.surveymonkey.com/r/8M2B83Q>
- We will be sending out more information about NJN training opportunities in 2023 and the updated outreach letter for you to circulate within your networks.