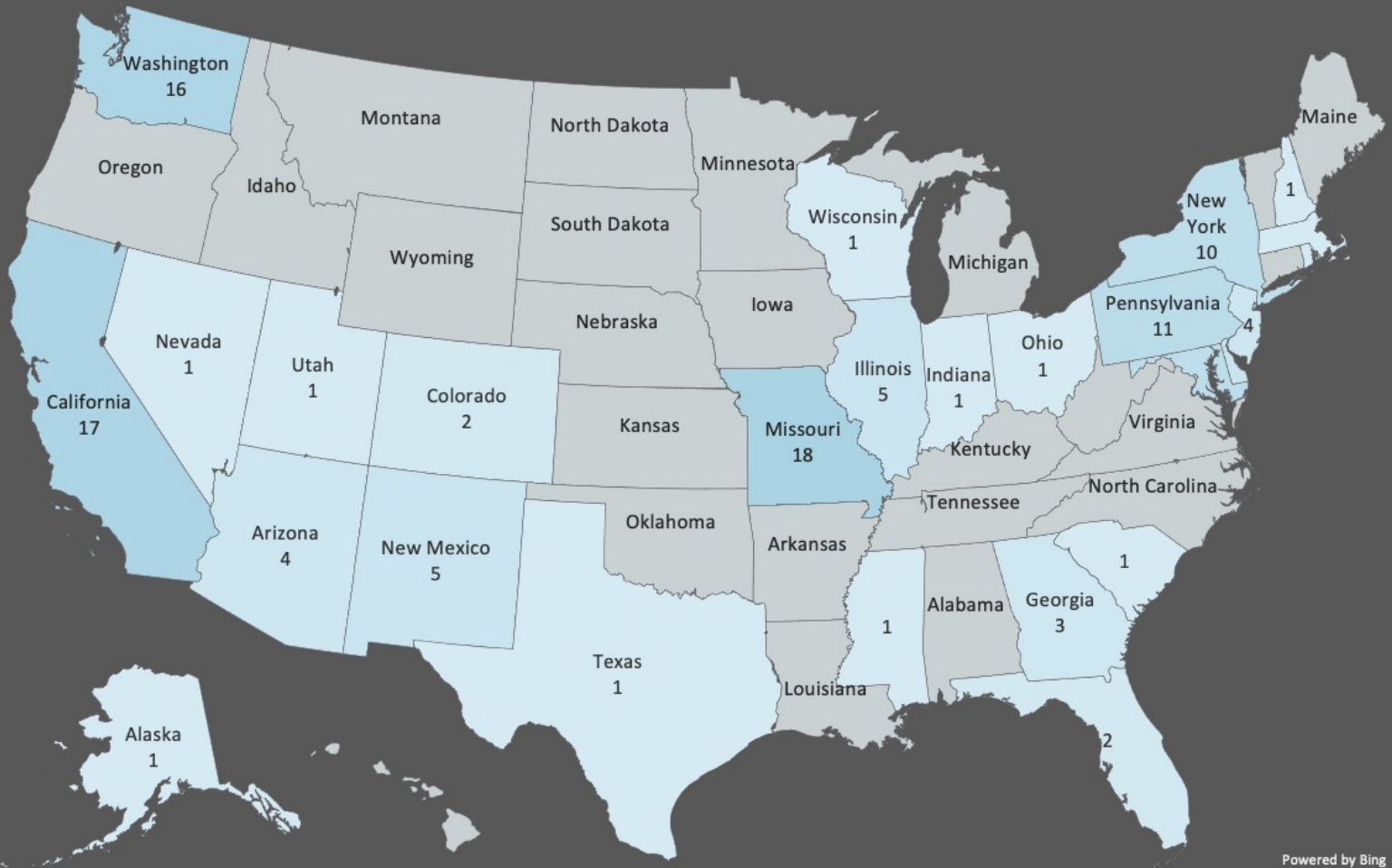


# Immigration Options for Survivors & Court's Role Webinar November 4, 2021

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

This publication was developed under grant number SJI-20-E-005 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 September 14th, 2021



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# Upcoming Peer-to-Peer Sessions

- December 7, 2021, 3:00- 4:00 pm EST
  - Human Trafficking Screening Tools for Courts – Presenters: D.C. Superior Court
- January 11 or 13, 2021 (Date TBD), 3:00 – 4:30 EST
  - National Webinar for Judges, Court & Judicial Education Staff
  - Adult Victims of Human Trafficking: Judicial Role – Facilitator Judge Toko Serita
- 2022 Peer-to-Peer Session Dates – all 3:00- 4:00 pm EST
  - February 1, 2022; March 1, 2022, April 5, 2022,
  - May 3, 2022, June 7, 2022
  - September 6, 2022, October 11, 2022
  - November 1, 2022, December 6, 2022

# Thank you to SJI & OVW

- This project was supported by Grant No. SJI-20-E-005 from the State Justice Institute. The opinions, findings, conclusions, and recommendations expressed by program faculty and in program materials are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.
- This presentation is supported by Grant No 2015-TA-AX-K043 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

The following slides are intended to be a guide today's presentation on this topic and to provide substantive material for your future reference.

Participants are encouraged to type questions in the Chat throughout the presentation that presenters will attempt to address during the webinar and NIWAP will provide written responses following the webinar to unanswered questions to all participants

# Session Evaluation

- Please don't forget to complete the evaluation at the end of the session!
- Link to the poll
  - <https://www.surveymonkey.com/r/N63R6DL>
- We will also send the link in a separate email after the session.

# Today's Facilitators



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



**Hon. Julie R.  
Breslow**  
*D.C. Superior Court*



**Hon. Susan  
Breall**  
*San Francisco Superior  
Court*



# Learning objectives:

At the end of this webinar you will better able to

- Identify potential relief for parents and children and your role in assisting the parties in accessing immigration relief
- Sign U and T visa certifications
- Issue Special Immigrant Juvenile Status findings
- Know how to access legally correct information about immigration law



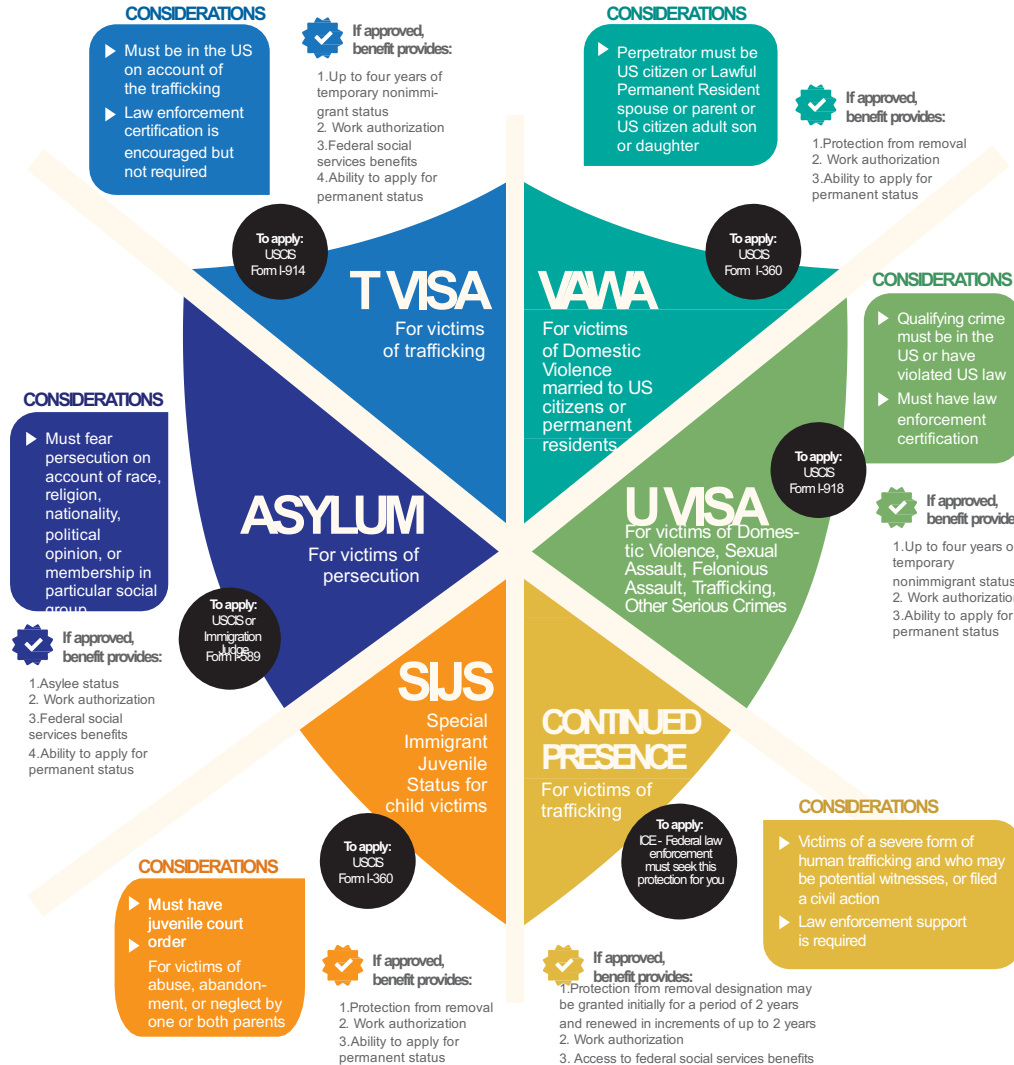
Congress created  
immigration relief  
to protect crime  
victims

# 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

# What are the Benefits for Survivors?

- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
  - Legal work authorization (3-60 months from filing)
  - Issuance of federally recognized ID and driver's license
  - More benefits access than undocumented victims
- VAWA confidentiality

# NIWAP's Evidence Based Research Findings

- Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Survivors and Their Children After Employment Authorization and Legal Immigration Status (June 8, 2021)  
<https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report>

# After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- 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

# 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<sup>15</sup>
    - 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)



# Work Authorization and Deferred Action Lead to Improvements for Children

- 6.6 fold increase in victim's involvement in their children's schools
- Increases in victim's children
  - 101% being more socially active
  - 134% pursuing their own interests

# Mental Health Benefits of Work Authorization and Deferred Action

- VAWA and U visa victims report increases in:
  - It being easier to make decisions 432%
  - Sleeping better & being calmer– 300%
  - Being more focused – 280%
  - More independent – 261%
  - Standing up for themselves 225%
  - Having more energy – 188%
  - Being less depressed 183%
  - More at ease – 162%
  - More hopeful 130%

# Economic Impact of Work Authorization and Deferred Action for VAWA Self-Petitioners and U Visa Applicants

- 300% increase in jobs that pay at least minimum wage
- 542% increase in formal sector jobs that deduct taxes
- 43% security jobs with health insurance, sick leave, vacation pay
- 43% of victims working in the informal sector pay taxes using tax IDs

# Education and English Language Impact of Work Authorization and Deferred Action

- 226% increase in victims taking ESL classes
- 167% increase in working to improve English speaking abilities
- 60% attend social events with people in the U.S.
- 35% obtain GEDs
- 38% pursue AAs and Bas
- 21% receive vocational education
- 19% advanced degrees

# Improved Community Engagement After Work Authorization and Deferred Action

- 13 fold increase in reengagement with the victim's cultural community in the US
- 80% increase in engaging with people outside of the abuser's family in the community, friends and neighbors
- 22% volunteer in their communities
- At lawful permanent residency
  - 159% increase in socializing with people from the US
  - 126% adopting US social norms

# Further Improvements at Lawful Permanent Residency For Children

- 65% children's grades improve
  - Up from 29% increase at work authorization
- 125% decrease in children's' disciplinary problems
- 80% are less aggressive

# Improvements in Health and Safety at Lawful Permanent Residency

- 77% reduction in sexual assault or attempted sexual assault at work
- 51% receive preventative health care
- 40% have fewer medical problems
- 40% find it easier to make decisions
- 47% are more familiar with and know how to access community resources



# 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 El Salvadorian 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.

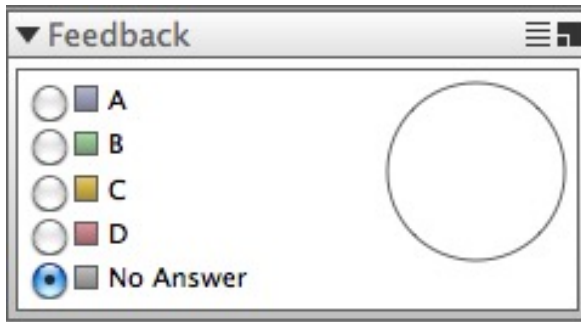
Lupe's and Juanita's neglect cases were assigned to Judge Breslow and both children were adjudicated neglected children. The judge granted Clara's request for sole legal and physical custody of both children and continued the case for monitoring.

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:

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



Feedback

A

B

C

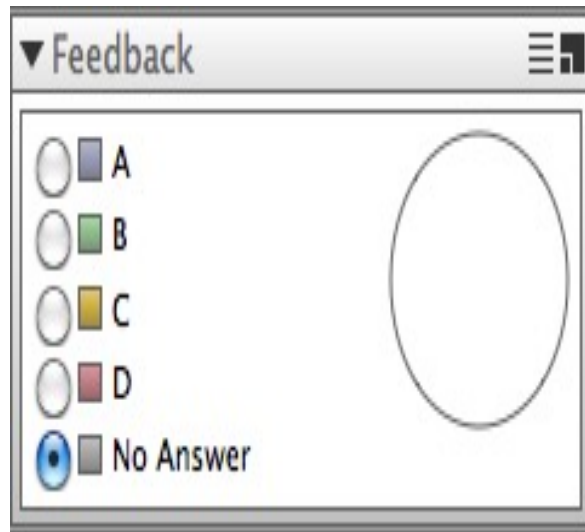
D

No Answer

# U Visa Requirements and Process

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
  - Detection, investigation, prosecution, conviction, or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- **Timeline to work authorization and deferred action =**
  - 4–6 years (shortening with 2021 bona fide process)
- **Judicial role**
- U Visa Certification and T Visa Declaration Toolkit for Federal, State, and Local Judges (2021)  
<https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2>

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



The image shows a screenshot of a survey window titled "Feedback". On the left side, there are five radio button options: A (blue square), B (green square), C (yellow square), D (red square), and No Answer (blue circle). To the right of these options is a large empty oval shape, likely a placeholder for a response or a selection area.

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

# Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, neglect, or dependency
  - By at least **one parent**
- To apply must submit required findings from a state court with jurisdiction over
  - the care, custody, or dependency of the child
- **Timeline to approval = 6 – 36 months (2021)**
- **Judicial role**
- Special Immigrant Juvenile Status Bench Book (2018)  
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>

# T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
  - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.S. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking. Exceptions
  - Under age 18
  - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- **Timeline to work authorization = 12–18 months (2021)**
- **Judicial role**
- DHS, Recognizing Human Trafficking in the Courts Room (2015)  
<https://niwaplibrary.wcl.american.edu/pubs/dhs-recognizing-human-trafficking-victims-in-the-courtroom>



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

▼ Feedback

A

B

C

D

No Answer

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

# 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
- **Timeline to work authorization = 4-24 months (2021)**
- **Judicial role**
- Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Crime Victims (2013)  
<https://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimsimmrights10-11-13>

# Battered Spouse Waiver

- Helps immigrant spouses with 2-year conditional residency (green cards)
- Whose citizen spouse filed a family visa petition for them
- Requires proof of
  - Battering or extreme cruelty to immigrant spouse or immigrant spouse's child or step-child
  - Good faith marriage
- Waives
  - Joint filing requirement with abusive citizen spouse
  - Two-year wait to full lawful permanent residence
- **Timeline to full lawful permanent residency = 12-24 months (2021)**
- **Judicial role**

# Immigrant Survivors of Abuse and Crime: Judicial Role

# Special Immigrant Juvenile Status (SIJS)

# How could Juanita or Lupe qualify for Special Immigrant Juvenile Status (SIJS)?

In what types of court proceedings might a judge encounter Lupe or Juanita and issue SIJS findings for them?

# 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**



What types of custody awards or placements could be the basis for SIJS findings?

# 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

If Clara sought custody of Juanita against Juanita's father who abandoned her, what service of process rules would apply?

# Family Law Services of Process and Jurisdiction Requirements Charts

- By proceeding for all states:
  - Adoption
  - Child abuse and neglect
  - Custody
  - Divorce
  - Paternity and Child Support
  - <https://niwaplibrary.wcl.american.edu/family-law-service-jurisdiction-charts>
- Comparisons among case types by state  
<https://niwaplibrary.wcl.american.edu/all-state-family-law-jurisdiction-and-service-of-process-charts>
- SIJS Bench Book Chapter on Service of Process  
<https://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs>

What specific findings are required when the court issues a predicate order that Juanita and Lupe would need to file an application for SIJS?

# 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)

In deciding whether a child suffered abuse, abandonment, or neglect what laws do state courts apply when the harm to the child took place outside of the United States?

# 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
- SIJS Bench Book Appendices K-M: Collected state laws defining abuse, abandonment, and neglect  
<https://niwaplibrary.wcl.american.edu/pubs/sijs-bench-book-complete>



What are best practices for making the determination that it is not in the child's best interests to return to their home country?

# Finding: 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
- Then if needed can also address other country conditions

# 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

Who must be considered as a placement option for the child?

Eduardo has been released and has court ordered supervised visitation with Lupe. Can you still make a finding that reunification is not viable with Lupe?

# Finding: Reunification Not Viable

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

What are some best practices for judges/courts for issuing SIJS findings with regard to drafting the findings and the process for issuing SIJS findings?



# U Visa Certification

# Why could Clara, Juanita, or Lupe qualify for a U visa?

# 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

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

In what types of court proceeding  
might you be asked to sign a U visa  
certification for:

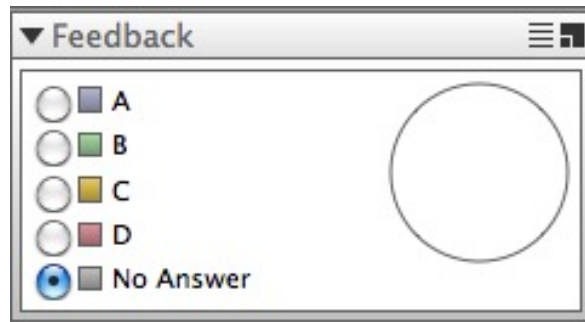
Clara  
Juanita  
Lupe?

# Judges detect “Criminal Activities” and “Helpfulness” In Wide Range of Court 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

# Why would victims seek U visa certification from state courts?

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



A screenshot of a web-based feedback form titled "Feedback". The form contains five radio button options: A (blue square), B (green square), C (yellow square), D (red square), and No Answer (blue circle). The "No Answer" option is selected. To the right of the options is a large empty circle.

# Which judges and judicial officers can sign U visa certifications?

# Which Judicial Officers Can Certify?

- Federal, state, & local
  - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
  - Others with delegated decision-making authority
- Judge will need to amend the form
- Certification based on helpfulness to courts
  - Detection(family/juvenile/civil/criminal)
    - Pleadings
    - Testimony
    - Attending court
    - Seeking orders
    - Working with police/prosecutors
  - Conviction/Sentencing (criminal)



# Who Else Can Certify?

- Federal, state, and local
  - Child abuse agencies
  - Elder abuse agencies
  - Police
  - Sheriffs
  - State police
  - FBI, HSI, ATF
  - Prosecutors
- Federal or State Departments of Labor (DOL)
- Equal Employment Opportunity Commission (EEOC)
- Other government agencies with civil, criminal or administrative investigative authority

Signor = Head of agency or designee

There is **NO** statute of limitations on signing a certification.

What are some other examples of “helpfulness” judge’s detect?



# Family/Civil Case Examples: Evidence of Helpfulness

- Filed and/ or appeared at hearing for full protection order
- Plead and or testified about abuse or sexual assault in a court case (e.g. protection order, divorce, custody, small claims, housing, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal or EEOC investigation
- Serving the perpetrator with notice of a
  - temporary protection order
  - A case in which the pleadings contain allegations of facts that constitute domestic violence, sexual assault or other U visa criminal activities

# Criminal Case Examples: Evidence of Helpfulness

- Evidence in case that the victim:
  - Called 911
  - Participated in a criminal investigation
  - Identified perpetrator at line up
  - Testified before a grand jury or at trial
  - Appearance in a case
  - Attended criminal court hearings in the case
  - Victim impact statement
  - Testimony at sentencing
- U Visa Helpfulness Checklist (2019)  
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>

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

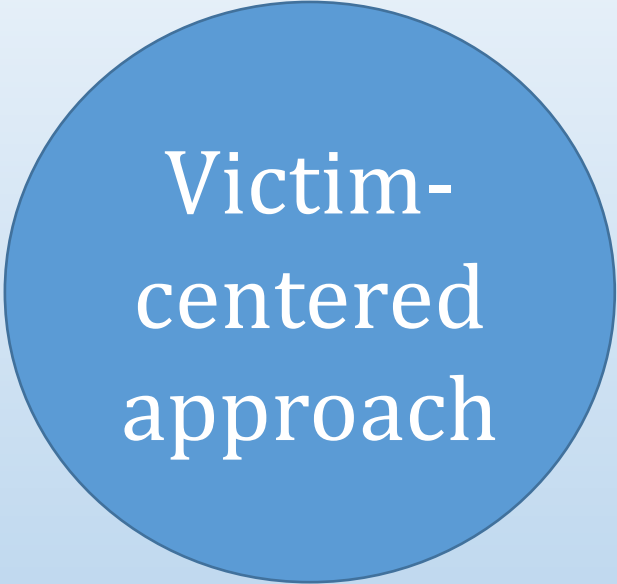
- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, **or** is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing

# Things to Know About Certification

- Judges, law enforcement and other certifiers
  - May complete U visa certification if they observe or detect a victim's helpfulness
  - Can be a civil, family or criminal case
- The investigation, prosecution or family court case
  - Can still be ongoing
  - Can be closed
  - May have settled
  - May have occurred a long time ago
  - May never have been criminally prosecuted

# Not Required

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



Victim-  
centered  
approach

# What are judicial U visa certification best practices?

- Which judges sign?
- Are there model protocols?



## 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.

# T Visa Declarations

# What forms of human trafficking did Juanita experience?

# 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

Will the fact that Juanita ran away from home and is not willing to cooperate in an investigation or prosecution of her traffickers impact her ability to receive a T visa?

# Difference Between Sex and Labor Trafficking for Children

- Both sex and labor trafficked children are:
  - Exempt from the requirement to provide assistance in the investigation or prosecution of their traffickers
- Sex trafficked children are:
  - Exempt from having to prove force, fraud, or coercion to be meet the severe form of human trafficking definition
- Labor trafficked children are:
  - Required to prove labor traffickers used force, restraint, harm, abuse, or coercion
    - May have state law exception

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



# 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

# What information does the T visa declaration request?

# T Visa Declaration

- Identify type of trafficking (sex, child sex, labor)
- Describe the victimization
- Identify relationship with the crime detected, under investigation, being prosecuted, conviction or sentencing and dates
- Comments on potential for retaliation or revenge from trafficker if victim is removed from U.S.
- Dates of trafficking
- Statutory citations to crimes
- Information about victims involvement in case(s) against trafficker
- Names and relationship of any family members involved in the human trafficking

# Familial Trafficking

- 2 in 5 trafficking cases reported annually to federal trafficking taskforces involve child sex 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
- 65% of sex trafficked children come from unstable homes or compromised parenting
- Almost 20% have a history of child abuse or neglect
- 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>

# Human Trafficking Hotline Reporting Data 2019 on Trafficking Victims

- Female 82%, Male 12%, Gender Minorities 6%
- Adults 73%; Minors 27%
- Citizens/lawful permanent residents 43%
- Immigrants 57%
- Type of trafficking
- Sex trafficking 71.7%
- Labor or sex and labor trafficking 16%

# Why are judges not seeing requests for T visa certification?

What role can judges play when they identify a victim of human trafficking who may be eligible for a T visa?

# U and T Visa Materials in NIWAP Web Library

- U Visa Certification and T Visa Declaration Toolkit for Judges
- Quick reference guide for courts on U visa certification and T visa declarations
- San Francisco U Certification Protocol
- National Model U and T Visa Certification Protocol
- U Visa Helpfulness Checklist
- Article: Understanding the Judicial Role in U Visa Certification
- Links to DHS publications, regulations, policy manuals on certification and the U and T visa programs
- And much more...
  - <https://niwaplibrary.wcl.american.edu/training-manual-for-courts-table-of-contents>



# VAWA Self-Petition for Abused Spouses and Children of U.S. Citizens and Lawful Permanent Residents

If Clara and Eduardo were married who in the scenario would qualify to file a VAWA self-petition?

Why is being able to identify immigrant spouses, children and step-children who are eligible for immigration relief as VAWA self-petitioners important for family and juvenile court judges?

# Helps judges

- Issue just and fair rulings when parties raise immigration status in a state family court case
- Know where to access legally correct information about immigration law
- Rule on discovery motions consistently with federal VAWA confidentiality requirements
- Identify victims and their children who are abused spouses and children of U.S. citizens and lawful permanent residents
  - Connect them to programs and services
- Expands benefits and services available to help immigrant victims and children

Can victims apply for multiple forms of immigration relief?

Are some better than others?

# NIWAP Technical Assistance, Materials, and Training

- Judicial training manuals, toolkits, bench card and materials at [www.niwap.org/go/sji](http://www.niwap.org/go/sji)
  - **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)
- If you are a judicial officer join the National Judicial Network
  - <https://www.surveymonkey.com/r/VGY9VJM>

# Thank You for Joining Us!

- Please evaluate this webinar
  - <https://www.surveymonkey.com/r/GMKD8ZF>
  - If you are a judicial officer join the National Judicial Network
  - <https://www.surveymonkey.com/r/VGY9VJM>
- Upcoming Webinar:
  - **January 10<sup>th</sup> week** – Best Practices in Court’s Work With Adult Sex Trafficking Victims

# Session Evaluation

- Link to the poll
  - <https://www.surveymonkey.com/r/GMKD8ZF>
  - We will also send the link in a separate email.