

Protection of Immigrant Crime Victims and Children: State Court's Role

Las Vegas, Nevada

December 15, 2017

Introductions

- Judge Lora Livingston
 - Leslye E. Orloff
 - David Thronson
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- Materials: www.niwap.org/go/LasVegas2017
 - Judicial Education Materials: www.niwap.org/go/sji
 - Web Library: <http://niwaplibrary.wcl.american.edu/>

Learning Objectives

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

- Know how accurate immigration law information results in just and fair outcomes in family court
- Recognize facts that indicate a party qualifies for:
 - Legal immigration status
 - Protection from deportation as a crime victim
- Understand the role Congress envisioned for judges signing U visa certifications
- Issue state court findings in cases of immigrant children seeking Special Immigrant Juvenile Status

Participant Goals

- What do you want to be sure to learn today?

What countries are you seeing
immigrant survivors coming
from?

Nevada Demographics (2015)*

- ❖ Total foreign born population – 558,170
- ❖ 19.3% of the state’s 2.3 million people is foreign born
 - 46.8% naturalized citizens
<http://www.migrationpolicy.org/data/authorized-immigrant-population/state/NV>
 - ≈23.3% lawful permanent residents
<https://www.dhs.gov/sites/default/files/publications/LPR%20Population%20Estimates%20January%202014.pdf>
 - ≈ 29.9% temporary status or undocumented
- ❖ 38.7% rise in immigrant population from 2000 to 2015
- ❖ 37.9% of children in the state under age 18 have 1 or more immigrant parents
 - 34.8% of children with immigrant parents in the state are U.S. native.
*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/NV>
(Dec. 2017)

Nevada– Countries/Regions of Origin and Limited English Proficiency (2015)*

- ▶ Latin America – 56.2%
 - ▶ Mexico (40.4%)
 - ▶ El Salvador (4.8%)
 - ▶ Other Central America (4.5%)
 - ▶ Cuba (2.7%)
- ▶ Asia – 28.6%
 - ▶ Philippines (14.3%)
 - ▶ China (4.1%)
 - ▶ Korea (2.1%)
 - ▶ India (2.0%)
- ▶ Africa – 3.8%
- ▶ Canada – 1.6%
- ▶ Middle East – 1.5%
- ▶ Europe – 7.9%
 - ▶ Eastern Europe (3%)
 - ▶ United Kingdom 1.9%)
 - ▶ Germany (1.2%)

Limited English Proficiency (Speak English less than very well)

- ▶ Naturalized citizens 39.1%
- ▶ Non-citizens 63.8%

Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/NV> (Dec. 2017)

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=NV> (Dec. 2017)

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

What barriers and fears prevent
immigrant victims from
accessing justice system help?

Fears & Misconceptions

- ▶ Do not trust justice system
- ▶ Economic survival
- ▶ Pressures from both families
- ▶ Fear of abandoning the home/community
- ▶ Fear of losing children
- ▶ Religious factors
- ▶ Fear of unknown
- ▶ Language barriers
- ▶ Victim believes that she will be deported
- ▶ Dangers in the home country
 - ▶ Retaliation
 - ▶ Ostracism
 - ▶ Police
 - ▶ Political instability
 - ▶ Gender barriers

Department of Homeland Security



Do you know what it means when
he said I will not file papers for
her?

Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied



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.**
- 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)

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

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
 - Victimization of immigrant children also high
 - child sexual abuse

Immigration-Related Abuse

- 10 times higher in relationships with **physical/sexual** abuse as opposed to **psychological** abuse
- Preredict abuse **escalation**
- Corroborates existence of physical and sexual abuse



Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 26.7%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4%; U visa 7.5%
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7%

Immigrant Crime Victim Protections: The Department of Homeland Security's Statutory and Regulatory Requirements to Protect Victims

DHS Victim Protection Role

- Statute and Regulations Create
 - Immigration protections for victims of domestic violence, child abuse, sexual assault, stalking, human trafficking and other crimes
- VAWA Confidentiality
 - 384 DHS computer system (VAWA, T visas, U visas)
- *Federal statutes include explicit role for state court judges*
 - U and T Visas
 - SIJS Findings

Violence Against Women Act – Purpose

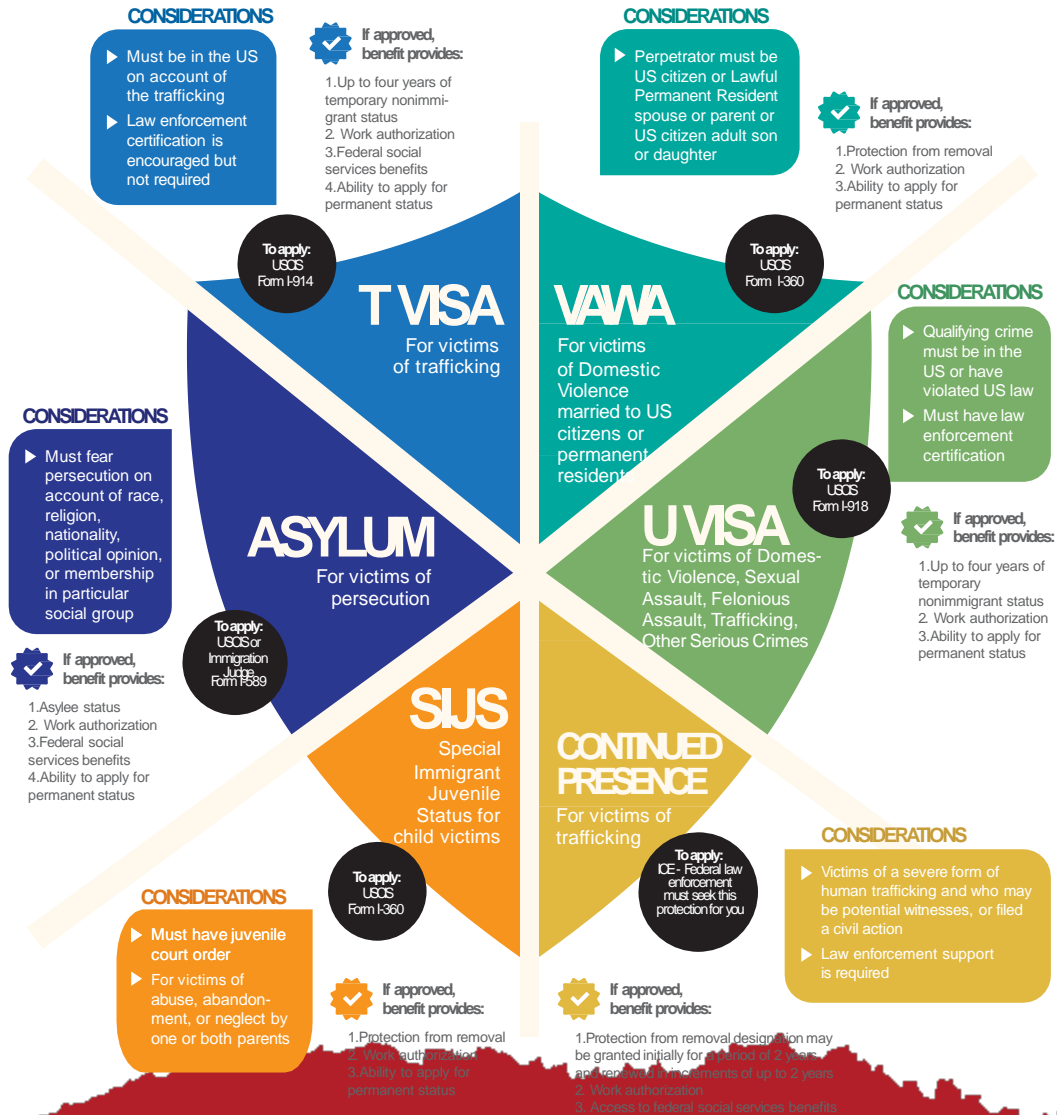
- Federal role in stopping
 - Domestic violence
 - Sexual assault
 - Trafficking in persons
- Meeting two equally important goals
 - Increasing justice system's role in offender accountability
 - Victim assistance, protection and services
- Designed to help ALL victims
 - Immigration relief key component of legislation
 - Builds upon 1990 Battered Spouse Waiver

Historical Context of VAWA Immigration Legislation

“Eliminating domestic violence is especially challenging in immigrant communities, since victims often face additional cultural, linguistic and immigration barriers to their safety. Abusers of immigrants- spouses or children are liable to sue threats of deportation to trap them in endless years of violence. Many of us have heard horrific stories of violence in cases where the threat of deportation is used against spouses and children – if you leave me, I’ll report you to immigration authorities, and you will never see your children again.” ...

*Senator Kennedy. VAWA 2005 Congressional
Testimony*

PROTECTIONS FOR IMMIGRANT VICTIMS



Legal Immigration Status Options for Non-citizen Crime Victims and Children

- VAWA self-petition
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver
 - Abused spouses of US citizens with two-year conditional permanent residency
- VAWA Visa Holder Spouse Work Authorization
 - For abused spouses of A, E iii, G or H work visa holders
- U visa
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity
- T visa and Continued Presence
 - Victims of severe forms of human trafficking
 - Respond to reasonable requests for assistance unless under 18
 - Extreme and unusual hardship
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
 - Deferred action for child arrivals including Dreamers

General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse;
 - parent; or
 - adult son/daughter (over 21)
- With Whom Self-Petitioner Resided
 - No time period required
- Good Moral Character
- Good Faith Marriage

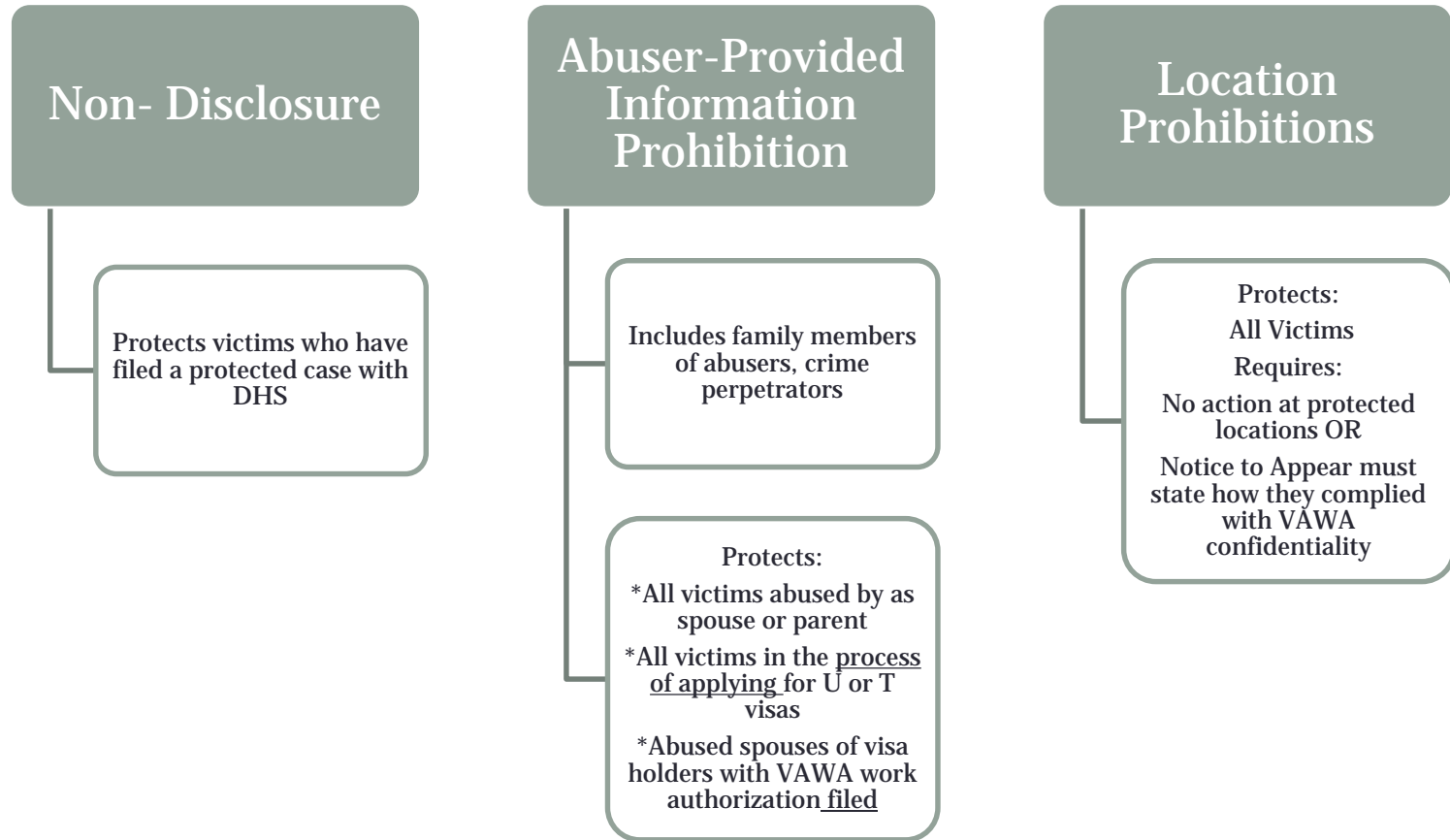
T Visa Victims Receive

- While Case is Pending
 - Protection from deportation and removal
 - VAWA Confidentiality
 - California trafficking victim benefits (8 months)
- Upon receiving a bona fide determination or continued presence with HHS certification
 - All federal and state public benefits
 - Health Care Exchanges
 - Work authorization

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



DHS VAWA Confidentiality Computer System

- Directs use of “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims

Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - A shelter
 - Rape crisis center
 - Supervised visitation center
 - Family justice center
 - Victim services program or provider
 - Community based organization
 - Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



Prohibition on disclosure:

- Information about the existence of the case
- Any information contained in the case
- Action taken on the case by DHS



VAWA Confidentiality Violations

- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Violations also include making a false certification in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)



When Does VAWA Confidentiality Protection End?

- Protections apply from the time of filing permanently unless
 - Case denied on the merits and
 - All appeal options have been completed

Why is VAWA Confidentiality important for state courts?

- Promotes access to justice and just and fair outcomes in state courts
- Prohibited enforcement locations include courthouses in connecting with a case involving a crime victim
- Perpetrators are using state court discovery to obtain federal VAWA confidentiality protected information that
 - DHS will not release
 - Cannot be released under federal law

Courts may be asked to rule on

- Motions *in liminie*
- Protective orders
 - Objections to discovery
 - Regarding questioning victims about VAWA confidentiality protected case filings in court
- Rule 11 sanctions
- Case law supporting non-disclosure

Hawke v. Dep't of Homeland Security

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

- 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
- 6th 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”

Demaj v Sakaj (D. Conn, 2012) – U Visa 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 (5th 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
- Anonymity is not possible in a family or criminal court case

State v. Marroquin-Aldana

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. AlvarezAlvarez

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

How do immigrant adult and child victims of domestic violence, sexual assault, child abuse and human trafficking benefit from access to legal immigration status?

Access to Legal Immigration Status:

- Removes fear of deportation, promotes stability and facilitates access to:
 - Courts and the justice system
 - Nurturing family relationships
 - Stable school environment
 - Mentors, role models and community support
- Provides a path to economic security
 - Work authorization
 - Drivers licenses
 - Financial aid to attend university
 - Health care access
 - More access to the public benefits safety net in Illinois

Immigrant Children in Family Court

- May have options for legal immigration status
 - Child's own application
 - Child included in parent's application
- Immigrant children's best interests are promoted when state courts:
 - Sign U visa certifications
 - Award custody to non-abusive parents, family members, guardians
 - Issue detailed findings required for children to apply for Special Immigrant Juvenile Status
 - Distribute U.S. DHS legal rights for victims/children brochures
- Update: unaccompanied minors HHS/ORR placements

Benefits for Survivors and Children

- VAWA confidentiality
- Protection from deportation
- Legal work authorization (8-36 months of filing)
 - Financial independence from perpetrator
 - Federally recognized driver's license
- Access to state and federal public benefits
- Protections for family members
- Improved outcomes for victims and their children in family court

How Immigration Affects State Courts

- Judicial role created by federal and state laws
 - U visa certification
 - Special Immigrant Juvenile Status Findings
- Impact on state court rulings
 - Federal VAWA confidentiality laws affect rulings on discovery motions
 - Legally correct or incorrect information can influence rulings in family court cases (e.g. custody)

Courts Role

- Can be first responder with an interpreter
- Provide language access
- Distribute information
- Recognize potentially eligible immigrants
 - Requests of counsel
 - Referrals to services
- Know how to access accurate information about immigration laws



U Visa and T Visa Certification by Judges

Excerpt of Speech by Rep. John Conyers, Jr.

“Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims to avoid criminal prosecution.”

Re: VAWA 2005 (12/18/2005)

Purpose of the U Visa

- Improves access to justice for immigrant crime victims
- Is a tool that helps build community policing and relationships with immigrant crime victims
- Increases prosecution of perpetrators of crimes against immigrant victims
- Allows victims to report crimes without fear of deportation
- Enhances victim safety
- Keeps communities safe

Problems With Court Decisions on U Visas in Many Jurisdictions

- Published decisions by courts commonly contain legally incorrect information about the U visa program and U visa certification:
 - Legislative history
 - U visa regulations and regulatory history (Preamble)
 - DHS policies and training materials
- Courts failed to give Chevron deference to DHS regulations

Tools on the Web: To Use in Preparing Requests to Judges for Certification

- Legislative History of VAWA (94, 00, 05), T and U Visas, Battered Spouse Waiver, and VAWA Confidentiality
- Judges U Visa Certification Toolkit
- DHS Resource Guide on U and T Visa Certification

U Visa and T Visa Overview

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)
 - “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 Certification Mandatory

- Department of Homeland Security U visa regulations require a certification
- Eligible immigrant victim cannot file a U visa case without a certification
- Certification provides required evidence
 - Is not dispositive
 - Certification does not contain all the evidence a victim must present to win approval from DHS of a U visa

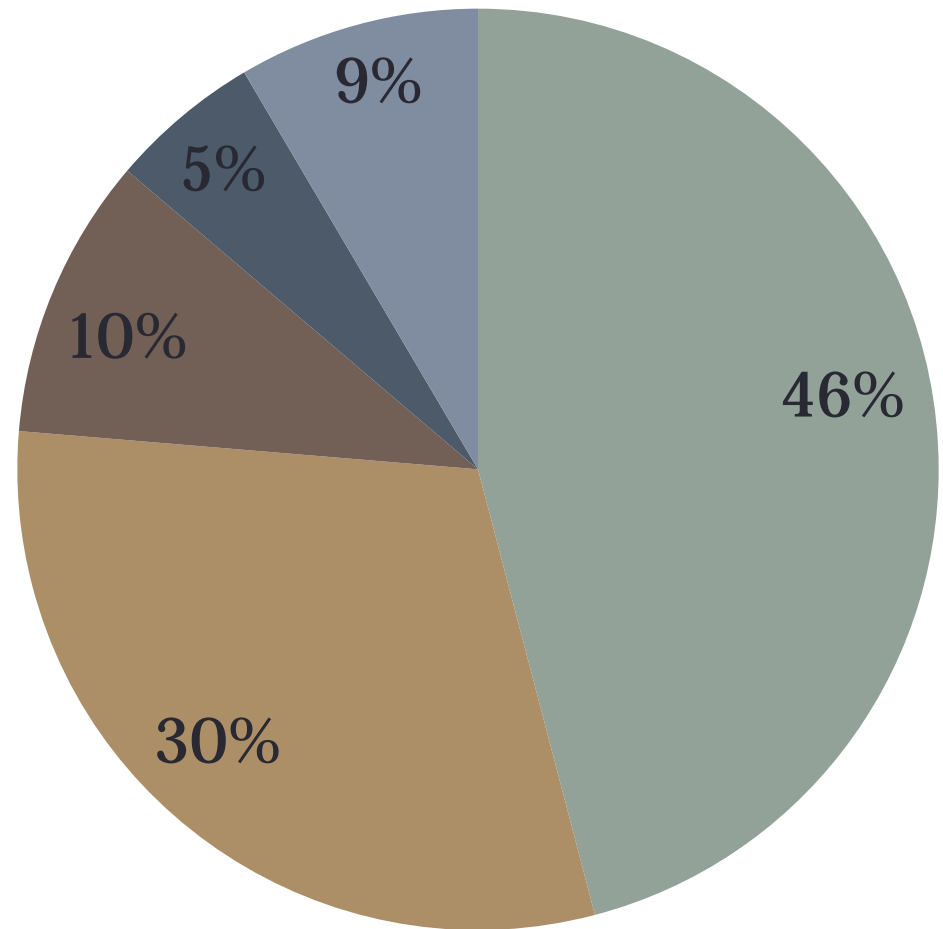
U Visa Qualifying Criminal Activity

- 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 Criminal Activities (11/2011 data)

- Domestic violence- 45.9%
- Rape, Sexual Assault, Incest, Trafficking- 30.4%
- Felonious Assault, Murder, Manslaughter- 9.9%
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation- 8.47%
- Kidnapping, being held hostage, unlawful criminal restraint, torture- 5.3%



What are the State Crimes and Qualifying Criminal Activity?

John and Jane have been separated for 2 years. During a custody exchange, John threatens Jane that he will call ICE on her if she doesn't give him full custody of the children. When she tries to leave with their child, he blocks the door and pushes her to the ground. She fell into their 5 year-old child who also got knocked to the ground. Jane tries to call 9-11 with her phone, but John grabs her neck and tries to strangle her, while taking her phone and smashing it.

Large Group Discussion

We have discussed what types of criminal activity qualify,

In what types of civil, criminal and family court proceeding might you seek these criminal activities?

Criminal Activities: Types of Proceedings

- Family
 - ✓ Civil Protection Order
 - ✓ Custody Case
 - ✓ Child Abuse, Neglect, or Termination of Parental Rights
 - ✓ Divorce Case
 - ✓ Paternity Case
- Juvenile
- Criminal
- Probate
 - ✓ Elder / Dependent Adult Abuse
 - ✓ Guardianship
 - ✓ Conservatorship
- Civil
 - ✓ Employment
 - ✓ Tort damages against a perpetrator

Proceedings Involving Children in Immigrant Families

- Child or non-abusive parent seeking U visa
- Proceedings
 - Protection order
 - Custody
 - Criminal case
 - Child abuse case
 - Other civil case where the court is provided evidence and making findings of abuse

Who Can Sign a U visa Certification?



U Visa Certification: Who Can Certify?

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

Which Judicial Officials Can Sign Certifications

- “Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases” - DHS

U Visa Certification in Proceedings Involving Children and Crime Victims in Immigrant Families

- Child or non-abusive parent seeking U visa
- Proceedings
 - Protection order
 - Custody
 - Criminal case
 - Child abuse case
 - Other civil case where the court is provided evidence and making findings of abuse

Why might a victim come to a judge for certification?

Why victims seek certification from courts

- Only justice system contact was a protection order, custody, or civil case
- No language access when called police for help
- Police did not investigate and case never sent to the prosecutor

According to DHS, a U 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

Things to Know About Certifying

- Question is **NOT**:
 - Is/was there a prosecution?
 - Was there an arrest of the offender?
 - Do I have proof beyond a reasonable doubt?
 - Is this within the statute of limitations?
 - Was there a conviction?

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 case
 - Can still be ongoing
 - Can be closed
 - May have settled
 - Occurred a long time ago
 - May never have been criminally prosecuted

Detecting Helpfulness

Small Group Exercise

Provide examples of helpfulness that court could detect in a

- Civil or Family court case
- Criminal case

Evidence of Helpfulness: Some Examples in Criminal Case

- 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 witness statement
 - Testimony at sentencing

Evidence of Helpfulness: Some Examples in Family/ Civil Case

- 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 investigation
- Serving the perpetrator with notice of case with underlying abuse facts

Hypotheticals

Small Group Activity

- Is this person eligible for a U Visa certification?
- *Stories handout*



Aditi

The evidence in the case before you includes the following:

One night Aditi who has a student visa was walking home from waiting tables and was raped by a masked assailant. She never got a good look at the perpetrator. He whispered that he knew where she lived and told her he would tell her family back home the “filthy things” she has done if she told anyone. This fear kept Aditi from reporting the rape to the police. Four months later, Aditi realized she was pregnant. When she began to miss late shifts at work and was disciplined by her boss, she finally shared with him what had happened to her. Her boss called the police. Aditi told the police everything she knew, but she was unable to assist police in making a composite. Two years later, police were able to identify the perpetrator and are building a case against him based on evidence from Aditi and several other victims. He is a wealthy business man living in Aditi’s community. Aditi is before the court in a paternity case seeking child support for her son born of the rape. Defendant is denying that the child is his.

Would you sign a U visa certification for Aditi?

Maura

The evidence in the case before you includes the following:

Maura is 17 years old and from Mexico. When Maura was 12 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 4 years in the abusive household and sexual advances from her step-father, Maura left home and moved in with her boyfriend Juan who is an MS -13 gang leader. Juan started battering Maura when she became pregnant with their child. During an incident of abuse after their child was born, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the domestic violence incidents to the police officer. She did this to protect her daughter, despite fears of gang retaliation and deportation. The police refused to charge Juan with domestic violence and instead want to prosecute Juan's gang violence with Maura as a key witness. Maura and her daughter fled to a shelter at an undisclosed location and Maura has filed for a DV restraining order against Juan.

- What forms of immigration relief might Maura qualify for?
- Is Maura eligible for U visa certification?

Alex

The evidence in the case before you includes the following:

Alex had been dating Sam for about 1 month, when Alex decided to end the relationship by texting Sam, “I enjoyed the time we spent together, but I don’t think this relationship can last. We should just be friends.” Sam responds, “But, I am in love with you, and you told me you loved me too. Please don’t do this.” Sam continued to repeatedly send texts like: “are you sleeping with someone else?” “You are a liar, you just used me.” “Slut, whore. You should be castrated.” “I’m going to tell everyone that you’re illegal, maybe ICE will come for you.” Alex asked Sam to stop the texts, but Sam continued. Two weeks later, Sam went on Facebook to rant and posted nude photos of Alex with captions like “Open for business 24/7” and “liars should die.” Sam then posted a drawing of a dead person hanged by a noose and the word “liar” on the person’s shirt. Alex filed a TPO against Sam, which was granted, as was the Civil Protection Order.

- Would you sign a U visa certification for Alex after the CPO? TPO?
- What if Alex was able to serve Sam, but he does not appear at the hearing?

Helpfulness in the Regulations

- Statute and DHS Regulations: has been helpful, is being helpful or is likely to be helpful in the
 - Detection, or Investigation, or
 - Prosecution, or Conviction or
 - Sentencing
- There is no degree of helpfulness required
- The certification may be completed once the certifier can access or has evidence of the victim's helpfulness
- The investigation or prosecution can still be ongoing

Helpfulness Requirement Met *Even When:*

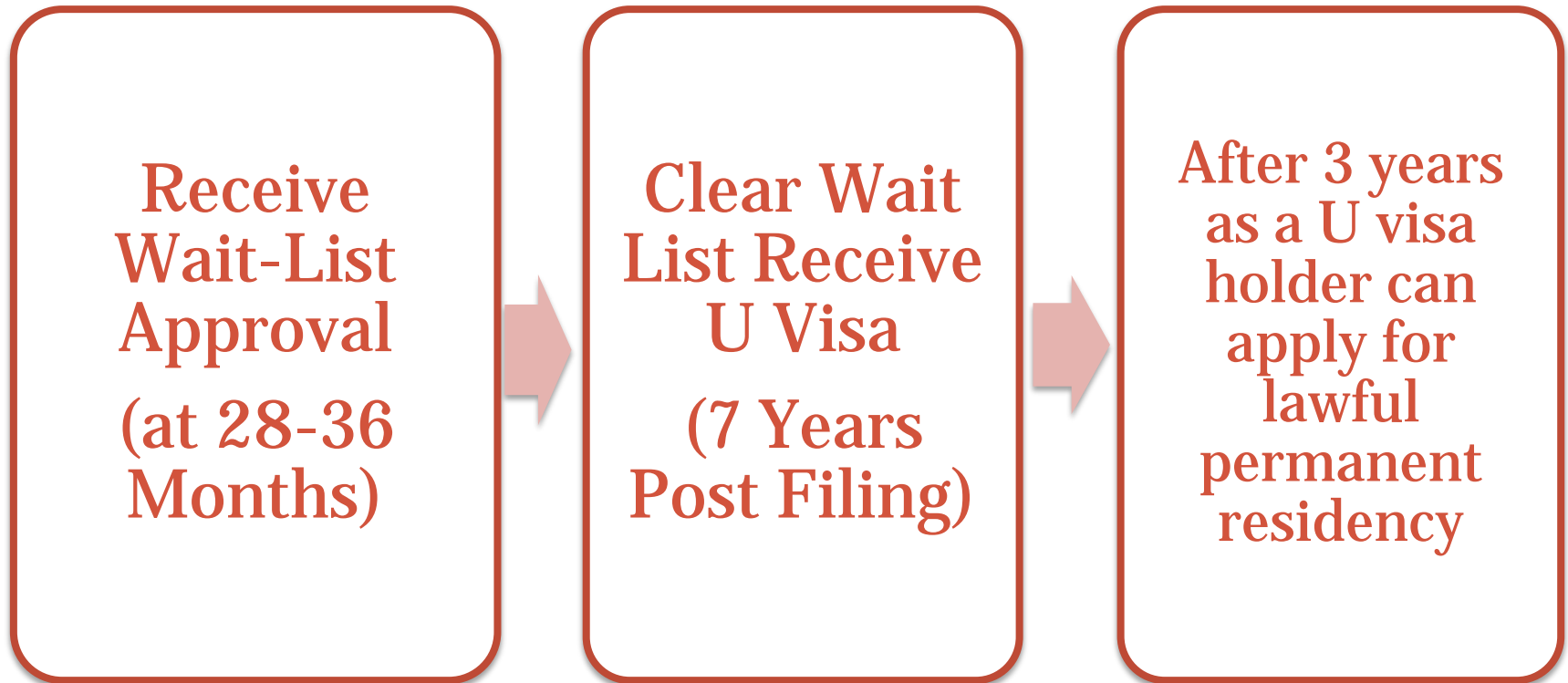
- Victim reports a crime and there's no further investigation
- Report is of past crime that the victim did not report at the time
- Perpetrator absconds or is deported
- Perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order, but domestic violence is not being criminally prosecuted

The U-visa Application Process



Typical length of process = 28 months

The U Visa Application Process



U-visa Facts and Benefits

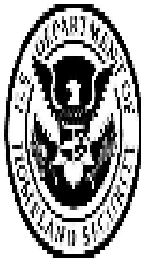
- Only 10,000 U-visas can be granted annually
 - Waitlist approval backlog 110,00 visas
- The U-visa grants a temporary 4 year stay
- Work authorization (≈ 28-36 months)
- Benefits for family members applicants
 - Under 21: spouse, children, parents, unmarried siblings under age 18
 - Over 21: spouse and children
- Lawful permanent residency after 3 years if
 - Cooperation or not unreasonably refuse to cooperate
 - + humanitarian need, family unity or public interest
- U.S. citizenship after 5 years of lawful permanent residency+ proof of good moral character

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/>

U Visa Certification Overview



Supplement B, U Nonimmigrant Status Certification

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-918
OMB No. 1615-0104
Expires 02/28/2019

Part 1. Victim Information

1. Alien Registration Number (A-Number) (if any)
▶ A-

2.a. Family Name (Last Name)

2.b. Given Name (First Name)

2.c. Middle Name

Other Names Used (Include maiden names, nicknames, and aliases, if applicable.)

If you need extra space to provide additional names, use the space provided in **Part 7. Additional Information.**

3.a. Family Name (Last Name)

3.b. Given Name (First Name)

3.c. Middle Name

4. Date of Birth (mm/dd/yyyy)

5. Gender Male Female

This is sometimes filled out by the victim's immigration attorney or advocate. (Certifier Preference)



Part 2. Agency Information

1. Name of Certifying Agency

Name of Certifying Official

2.a. Family Name
(Last Name)

2.b. Given Name
(First Name)

2.c. Middle Name

3. Title and Division/Office of Certifying Official



Examples

1. Commissioner/Judge
Sue Smith

3. Judge, Family Division

Judges will always fill this out with the contact information of the judge signing the certification.

Head of certifying agency not applicable to judicial certifications

Name of Head of Certifying Agency

4.a. Family Name (Last Name)

4.b. Given Name (First Name)

4.c. Middle Name

Agency Address

5.a. Street Number and Name

5.b. Apt. Ste. Fl.

5.c. City or Town

5.d. State 5.f. ZIP Code

5.g. Province

5.h. Postal Code

5.i. Country

Other Agency Information

6. Agency Type

Federal State Local

7. Case Status

On-going Completed

Other

8. Certifying Agency Category

Judge Law Enforcement Prosecutor

Other

9. Case Number

10. FBI Number or SID Number (if applicable)

Part 3. Criminal Acts

If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**

1. The petitioner is a victim of criminal activity involving a violation of one of the following Federal, state, or local criminal offenses (or any similar activity). (Select **all applicable** boxes)

- | | |
|---|---|
| <input type="checkbox"/> Abduction | <input type="checkbox"/> Manslaughter |
| <input type="checkbox"/> Abusive Sexual Contact | <input type="checkbox"/> Murder |
| <input type="checkbox"/> Attempt to Commit Any of the Named Crimes | <input type="checkbox"/> Obstruction of Justice |
| <input type="checkbox"/> Being Held Hostage | <input type="checkbox"/> Peonage |
| <input type="checkbox"/> Blackmail | <input type="checkbox"/> Perjury |
| <input type="checkbox"/> Conspiracy to Commit Any of the Named Crimes | <input type="checkbox"/> Prostitution |
| <input type="checkbox"/> Domestic Violence | <input type="checkbox"/> Rape |
| <input type="checkbox"/> Extortion | <input type="checkbox"/> Sexual Assault |
| <input type="checkbox"/> False Imprisonment | <input type="checkbox"/> Sexual Exploitation |
| <input type="checkbox"/> Felonious Assault | <input type="checkbox"/> Slave Trade |
| <input type="checkbox"/> Female Genital Mutilation | <input type="checkbox"/> Solicitation to Commit Any of the Named Crimes |
| <input type="checkbox"/> Fraud in Foreign Labor Contracting | <input type="checkbox"/> Stalking |
| <input type="checkbox"/> Incest | <input type="checkbox"/> Torture |
| <input type="checkbox"/> Involuntary Servitude | <input type="checkbox"/> Trafficking |
| <input type="checkbox"/> Kidnapping | <input type="checkbox"/> Unlawful Criminal Restraint |
| | <input type="checkbox"/> Witness Tampering |

Certify all that you can detect from the evidence presented or in court records

No criminal case filing required

Not limited to by the criminal charges if any filed

Dates do not have to be precise – you can use months, seasons or years.



Provide the dates on which the criminal activity occurred.

2.a. Date (mm/dd/yyyy)

2.b. Date (mm/dd/yyyy)

2.c. Date (mm/dd/yyyy)

2.d. Date (mm/dd/yyyy)

3. List the statutory citations for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

4.a. Did the criminal activity occur in the United States (including Indian country and military installations) or the territories or possessions of the United States?

Yes No

4.b. If you answered "Yes," where did the criminal activity occur?

5.a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?

Yes No

5.b. If you answered "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

6. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the petitioner named in **Part 1**. Attach copies of all relevant reports and findings.

Make copies of all court orders, photographs, police reports in court record and attach.

7. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

Be as specific as possible, highlighting visible injuries observed (even if not photographed).

If you are aware of mental injury, include as well.

Under Department of Homeland Security Regulations and form instructions

“being investigated and/or prosecuted” here means =

“detection, investigation, prosecution, conviction or sentencing”

Judges: detect, convict and sentence

Part 4. Helpfulness Of The Victim

For the following questions, if the victim is under 16 years of age, incompetent or incapacitated, then a parent, guardian, or next friend may act on behalf of the victim.

1. Does the victim possess information concerning the criminal activity listed in **Part 3**? Yes No

2. Has the victim been helpful, is the victim being helpful, or is the victim likely to be helpful in the investigation or prosecution of the criminal activity detailed above? Yes No

3. Since the initiation of cooperation, has the victim refused or failed to provide assistance reasonably requested in the investigation or prosecution of the criminal activity detailed above? Yes No

If you answer "Yes" to **Item Numbers 1. - 3.**, provide an explanation in the space below. If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**

-
4. Other. Include any additional information you would like to provide.
-

NOTE: This will be discussed in detail in the next section

Part 5. Family Members Culpable In Criminal Activity

1. Are any of the victim's family members culpable or believed to be culpable in the criminal activity of which the petitioner is a victim? Yes No

If you answered "Yes," list the family members and their criminal involvement. (If you need extra space to complete this section, use the space provided in **Part 7. Additional Information.**)

- 2.a. Family Name (Last Name)
- 2.b. Given Name (First Name)
- 2.c. Middle Name
- 2.d. Relationship
- 2.e. Involvement



The form asks about family member because DHS want assistance identifying perpetrator family members

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
- 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.

Part 7. Additional Information

If you need extra space to complete any item within this supplement, use the space below or attach a separate sheet of paper; type or print the agency's name, petitioner's name, and the Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet. If you need more space than what is provided, you may also make copies of this page to complete and file with this supplement.

1. Agency Name

Petitioner's Name

2.a. Family Name
(Last Name)

2.b. Given Name
(First Name)

2.c. Middle Name

3. A-Number (if any)

▶ A-

4.a. Page Number

4.b. Part Number

4.c. Item Number

4.d.

5.a. Page Number

5.b. Part Number

5.c. Item Number

5.d.

6.a. Page Number

6.b. Part Number

6.c. Item Number

6.d.

New DHS Forms Published Make Judicial Certification Easier

- Judges' certification can occur when the judge signing the certification has
 - Probable cause
 - Made findings
 - Issued a ruling
 - Include the type of proceeding and
 - If orders were issued attach a copy of the order

Overview Special Immigrant Juvenile Status (SIJS)

- Humanitarian protection that provides a path to lawful permanent residency
- Created by Congress in 1990 to help and protect foreign born children living in the United States
 - who have been abused, or abandoned, or neglected by at least one parent.

SIJS: Congressional Goals

- Included a role for state court judges as experts in child best interests, custody, child welfare matters.
- State court expertise:
 - Adjudicating facts of child abuse, neglect and abandonment
 - Issuing orders regarding child care, custody and placement that further the best interests of children
- Only the DHS can issue SIJS & permanent residency
- DHS uses the state court order as evidence in adjudicating the immigration application

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children under the age of majority under state law who have been
 - Victims of abuse, abandonment, neglect
 - By at least **one parent**
- State Court Findings Required As Evidence requires
 - State court with jurisdiction over care, custody, dependency or placement of the child
 - has issued a court order, finding, or declaration on three statutorily required issues
- The state court order does **not** award SIJS
 - **ONLY DHS can provide legal immigration status**

SIJS Vocabulary

- What is a juvenile court according to DHS
 - Any “court located in the United States having jurisdiction under State law to make judicial determinations about custody and care of juveniles.”
 - 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.”

Requires a decision about care and custody...

- For immigration purposes making a decision about the care and custody of a child =
 - “The child is dependent on a juvenile court”
- Could be custody, guardianship or other proceeding
- *In re Menjivar*, 29 Immig. Rptr. B2-37 (1994)

State Court Findings Needed for SIJS

State Law Applies To Each

- The court issued orders regarding the care or custody, of an immigrant child with
 - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend) OR
 - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to the parent's abuse, abandonment, or neglect

Where in your state statutes are there definitions of abuse, abandonment, and neglect?

Where are the definitions in Nevada?

- Abuse

- Physical Abuse – Nev. Rev. Stat. Ann. §§ 432B.020, 432B.090
- Sexual Abuse/ Exploitation – Nev. Rev. Stat. Ann. §§ 432B.020, 432B.110
- Emotional Abuse – Nev. Rev. Stat. Ann. §§ 432B.020, 432B.070
- Nev. Rev. Stat. Ann. § 200.508

- Abandonment

- Termination of Parental Rights - Nev. Rev. Stat. Ann. § 128.012
- UCCJEA - Nev. Rev. Stat. Ann. § 125A.

- Neglect

- Termination of Parental Rights - Nev. Rev. Stat. § 128.014
- Nev. Rev. Stat. Ann. § 200.508

Abuse

- Child Abuse Prevention and Treatment Act (CAPTA)
 - “[a]ny recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm.”
- Most common types of abuse:
 - Physical abuse
 - Neglect
 - Sexual abuse and exploitation
 - Emotional abuse
 - Parental substance abuse
 - Abandonment
 - Domestic Violence

Abandonment

- Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA):
 - *left without provision for reasonable and necessary care or supervision*
- as failure to provide reasonable care, support, communication, or contact with the child
- failure to perform duties as parents, or as unwillingness to take physical custody of the child or make arrangements for the child's care
- When the Parent or his/her location is unknown
- Some states require evidence of a person's intention or willingness to abandon the child
- Incarceration

Neglect

- Failure to meet child's basic needs
- Abuse or failure to prevent abuse of a child
- Abandonment
- Failure to discharge responsibilities to care for the child (i.e. Incarceration, hospitalization, mental incapacity)
- Exposure to drugs at or before birth

Similar basis ...

- Child endangerment
 - **Nev. Rev. Stat. Ann. § 200.508**
- Domestic Violence as Child Abuse
 - Nev. Rev. Stat. Ann. § 33.018
- Forced marriage
 - Nev. Rev. Stat. 201.300
- Other??

Apply State Law

- Apply state law without regard to where abuse, abandonment or neglect occurred
- Best Interests
 - Placement
 - Non-viability
 - Not returning child to their home country
- Jurisdiction
 - UCCJEA – Temporary Emergency Jurisdiction
- Follow your state court procedures

Where to find a state's best interest factors

- Child welfare statutes
- Custody statutes
- Case law

Best Interest Factors

- Family Violence
- Child's needs
- Parent's fitness and capacity to be a caregiver
- Substance abuse and Mental illness
- Continuity and stability of the child
- Children's Family Relationships
- Child's Wishes
- Parental Cooperation and Conflict
- Joint Custody

SIJS: State and Federal Roles

State Courts With Jurisdiction Over Children

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

DHS Adjudicators

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

Approach:

1. Make findings about the facts of harm to the child in US or abroad
2. Determine applying state law if = abuse, abandonment, neglect, similar basis
3. If yes apply state best interest factors to
 - Custody, placement, commitment
 - If not in child's best interests to return to home country
 - Viability of reunification with abuser

Court Order: Custody, Dependency, Placement

- Declaring the minor is dependent on the court*; **OR**
- Placing the child in the custody or guardianship of:
 - An individual person;
 - Order should include in the name of the person and their relationship to the child
 - Parent, family member, friend, next friend, other
 - A state agency or department; OR
 - A private agency

**Statutory Amendment 2008, no longer requires the child is dependent on the state, the child may be placed with an individual including relatives.*

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

All of the Following are Potentially Eligible for SIJS

- A minor who is:
 - Abused, abandoned or neglected
 - In the U.S.
 - In the home country
 - Living with their
 - Non-abusive parent
 - Guardian
 - Adopted parent
 - State foster care
 - Federal foster care (ORR)

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

Factors to consider...

- Risk of danger to the child
- Healing from trauma needs
- Help the child is receiving
- Family support system
- Emotional well being
- Educational resources
- State laws that preclude or discourage placement with abusive parent

Viability Factors and Best Interests

- Family violence, abuse, neglect, abandonment
- Trauma child has suffered and child's physical, emotional, safety, mental health needs
- Child's wishes and fears
- Parent's fitness and caregiving capacity
- Parent's demonstrated capacity to provide stability continuity of care

Finding: Reunification Not Viable

- Order must include the finding that reunification with the parent is not viable
- 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

In what Kinds of Proceedings Might You See SIJS Eligible Children?

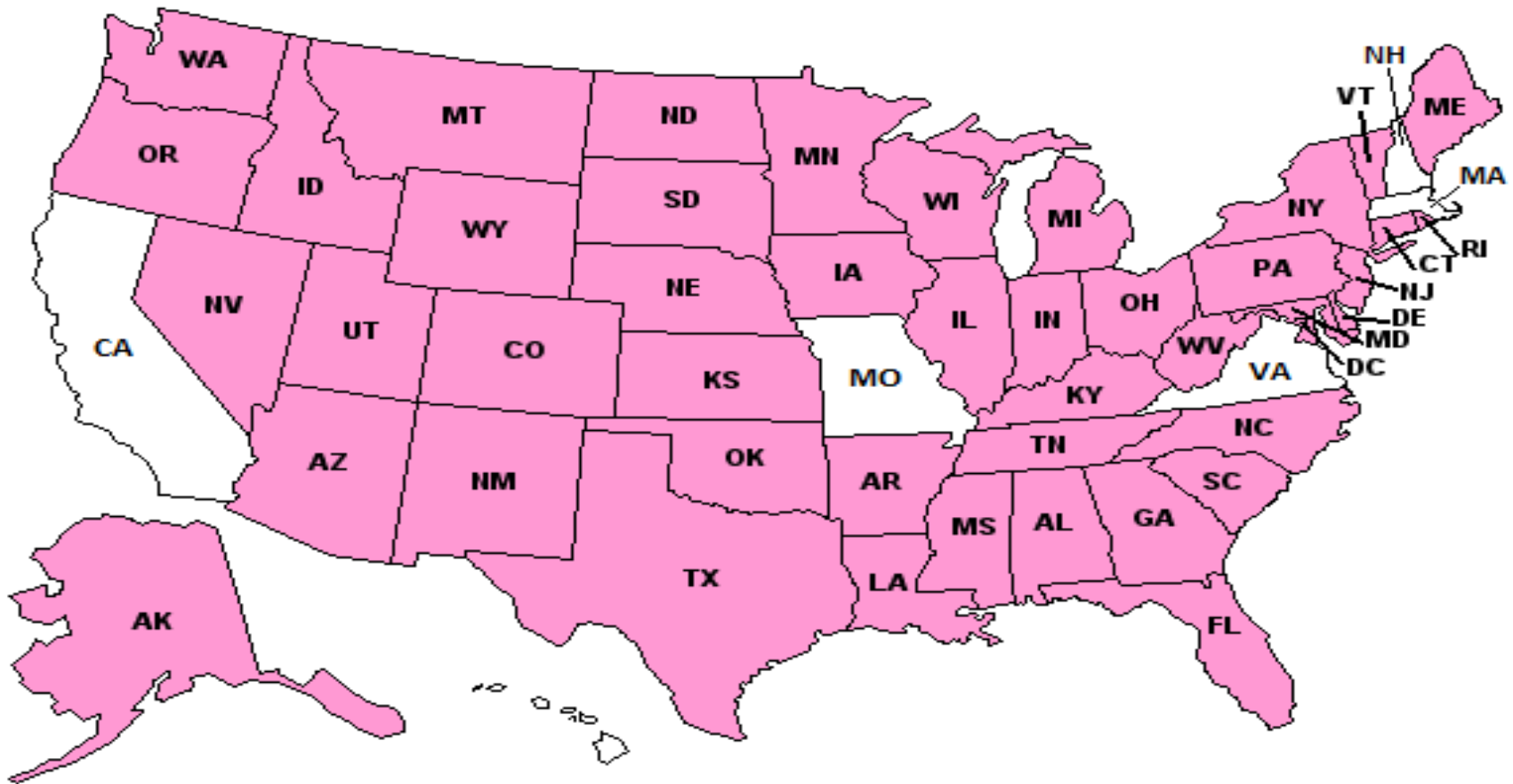
Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Child support
- Custody
- Divorce
- Legal Separation
- Adoption
- Motions for a declaratory judgment

Courts with jurisdiction under state law to make judicial determinations regarding the custody, placement, care of children = *juvenile courts* for SIJS immigration purposes

States With Declaratory Judgment Statutes That Can be Used in SIJS Cases

When under state law the court can take jurisdiction over the care or custody of a child



Common Examples Where Declaratory Judgments Can Be Used

- Cases involving children in the federal foster care system
- Already adjudicated contested custody or protection order cases where no SIJS finding was initially made

Declaratory Judgments in Family Law

- Adoption
- Child abuse
- Child custody
- Child support
- Divorce
- Foster care
- Guardianship
- Juvenile detention
- Null and void marriages
- Parental rights
- Paternity
- Support for unborn child
- Third party visitation rights
- Ward's right to marry

SIJS in State Courts

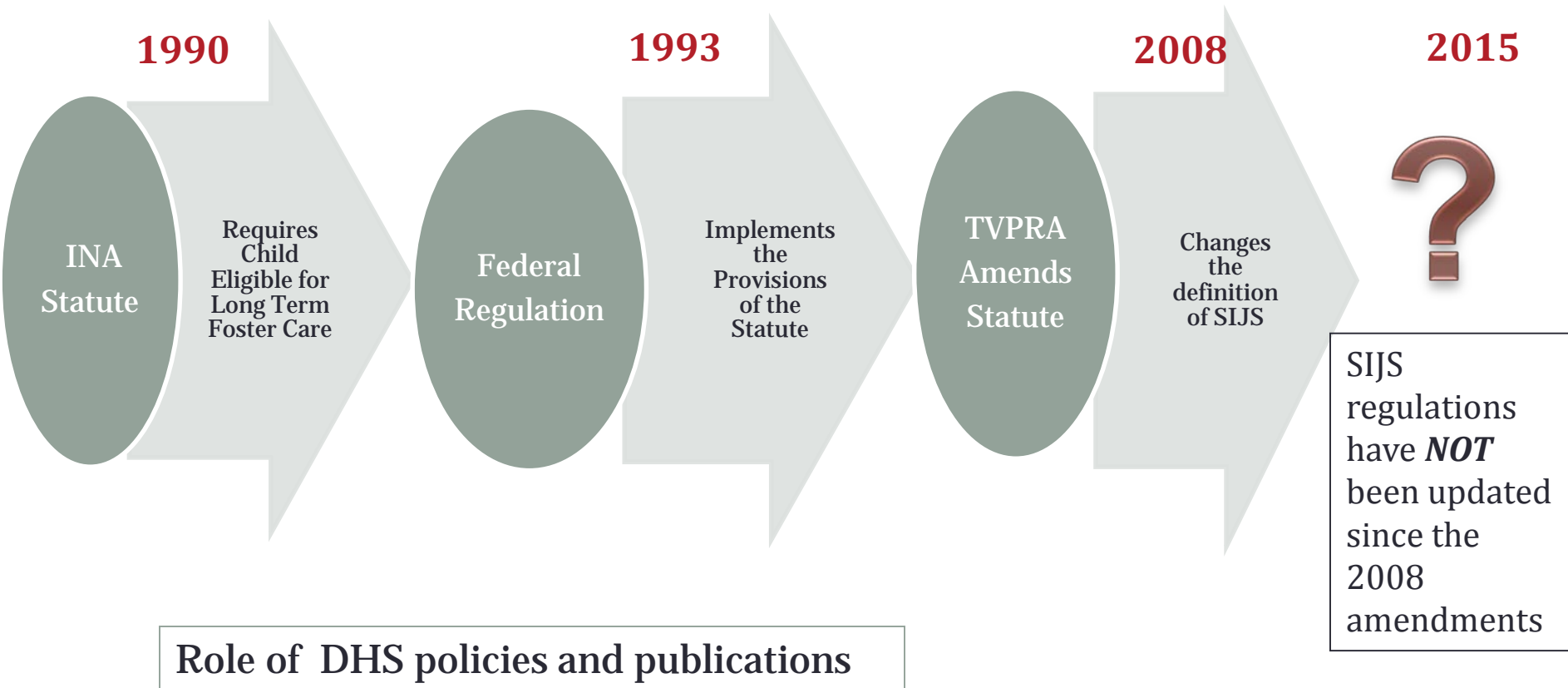
- Many SIJS cases are for 15-17 year old minors
 - State court order + filing before the child ages out
 - Up to age of majority set by state law
- SIJS is an option any time an abused, abandoned or neglected child is not a
 - Citizen or lawful permanent resident

“One *or* Both Parent” Requirement



A child can receive SIJS findings if they were abused, abandoned or neglected by one parent and are living with the other parent.

Statute vs. Regulation



Best Practice for Findings

- Make factual findings regarding
 - Facts of abuse, abandonment and/or neglect
 - Regarding each parent
- Cite the state statute(s) on
 - Abuse, abandonment and/or neglect
 - Jurisdiction over the minor
- If “similar basis” explain in court order how it is similar to one of the following
 - Abuse, abandonment and/or neglect

Best Practice for Findings

- Issue orders that demonstrate to DHS that the court made an informed decision
 - Make factual findings regarding abuse, abandonment and/or neglect
 - Separately for each abusive parent
 - Finding that the child is in need of protection as a result of having been abused, abandoned or neglected
 - Trauma research

Delinquency and Criminal Issues & SIJ Eligibility

- Juvenile delinquency finding \neq conviction for immigration purposes
- Juvenile dispositions can have immigration consequences
 - Negative factors in discretionary determinations
 - Some grounds of inadmissibility or deportability do not require a criminal conviction

Is There a Waiver for SIJS Cases

- Waivable Offenses
 - Prostitution
 - Drug abuse or addiction,
 - Smuggling
- Non-Waivable Offenses
 - Moral turpitude crimes (theft and shoplifting, murder, spousal or child abuse, fraud, espionage, terrorist activities, genocide, torture)
 - Drug crimes (findings and admissions regarding drugs except simple possession of 30 grams or less of marijuana; controlled substances traffickers)
 - Multiple criminal convictions (does not include juvenile adjudications)

What Children with SIJ Status Receive

- While case is pending:
 - Protection from deportation and removal
 - As lawfully present children – health care exchanges (no subsidies)
 - Programs and services necessary to protect life and safety

What Children with SIJ Status Receive

- At approval:
 - Lawful Permanent Residency (separate but usually concurrent filing)
 - Legal work authorization
 - Brings access to state issued driver's licenses and identification cards
 - Eligible for citizenship after 5 years
 - Post secondary educational grants and loans, public and assisted housing
 - Food stamps (only until the immigrant child turns age 19)

SIJS' may NEVER file family petition for either of the child's natural parents

Access for All

Both documented and undocumented immigrant survivors can access:

- Legal Services
- Language Access
- Police Assistance
- Protection Orders
- Child Custody
- Child and Spousal Support
- Divorce
- Criminal prosecution of their abusers
- Assistance for Crime Victims
- VOCA
- Shelter
- Transitional Housing
- Emergency Medical Care
- Public Benefits for Their Children

Attorney General's List of Required Services

Attorney General
Janet Reno



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

Benefits Available to All Immigrants

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



Federal Benefits Available to ALL Immigrants



- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid

Health Care Open to All Immigrants

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

Undocumented Immigrant Survivors Have a Legal Right to Access Shelter and Transitional Housing



Open to All Immigrants Without Regard to:

- Immigration Status
- Citizenship
- Nationality
- English Language Ability

Anti-discrimination protections apply

Benefits Available to all Immigrants Include:

- Shelter transitional housing, victim services counseling, and intervention for:
 - Victims of:
 - Domestic violence
 - Sexual assault
 - Stalking
 - Dating violence
 - Human trafficking
 - Child abuse
 - Other abuse
 - Homeless
 - Runaway or homeless youth
 - Abandoned children

When children qualify and their parents do not:

- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may only ask questions about the child's eligibility
- No questions may be asked about the immigration status of the child's parent if the parent is not applying for additional benefits for themselves

Benefits for Victims in Nevada

- TANF and TANF funded child care
 - VAWA prima facie if entered before 8/22/96 or 5 year bar
 - Continued presence and T bona fide
 - SIJS with lawful permanent residence with 5 year bar
- SNAP
 - VAWA prima facie children
 - VAWA prima facie adults if entered before 8/22/96 or 5 year bar
 - T and U visa process of filing
 - SIJS with lawful permanent residency while under 18
- LIHEAP – Federal Weatherization Assistance
 - VAWA prima facie
 - T bona fide and continued presence with HHS certification
 - U visas and SIJS with lawful permanent residence

Benefits for Victims in Nevada

- Health Care Exchanges
 - VAWA prima facie
 - T visa and Continued presence with HHS certification
 - U visas with wait list approval
 - SIJS applicant children
- Subsidized Health Care
 - VAWA prima facie children
 - VAWA prima facie adults if entered before 8/22/96 or 5 year bar
 - T visas and Continued presence with HHS certification
 - SIJS applicant children up to age 21
 - After 21 if 5 year bar is completed
 - Waitlist approved U visa children until age 21

Benefits for Victims in Nevada

- Driver's License – Federally Recognized ID
 - At work authorization
 - Approved VAWA self-petitioner
 - T visa and continued presence – HHS certification
 - U visa waitlist approved
 - SIJS children with lawful permanent residency
- Driver's License State Issued
 - 1-yr renewable driver's authorization card with proof of
 - Identity, age and residence in Nevada
- Shelter and Transitional Housing –no immigration restrictions
- Public and Assisted Housing
 - VAWA applicants
 - T visa and continued presence with HHS certification
 - SIJS children with lawful permanent residency

Benefits for Victims in Nevada

- Education – Federal FAFSA
 - VAWA prima facie
 - T visa and Continued presence with HHS certification
 - SIJS children with lawful permanent residency
- FEMA Federal No immigration restrictions
 - Short-term non cash emergency disaster relief
 - 1 month of D-SNAP with no immigration restrictions
- FEMA Restricted programs
 - Individual and Household Program and Disaster Unemployment Assistance
 - VAWA prima facie
 - T bona fide and continued presence with HHS certification
 - SIJS and U with lawful permanent residency

**FAMILY COURT CASES INVOLVING
IMMIGRANT VICTIMS AND
CHILDREN: DIVORCE, CUSTODY AND
PROTECTION ORDERS**

Immigration Law Should Not Displace Family Law Principles and Statutory Requirements

- “If the child was born in Mexico, . . . alright, and mom’s here illegally, alright there’d be no doubt in the court’s mind. Then the child is here illegally and I’d have to grant the U.S. citizen plaintiff custody.”
- *Nuñez v. Alonso*, No. 04-D-311872-C (Nev. Eighth Jud. Dist. Ct. Fam. Div. hearing Feb. 25, 2004) (rev’d).

A Starting Principle for Analysis

- A person's immigration or citizenship status per se
- Is irrelevant to the determination of
 - Family law rights including
 - Divorce
 - Custody
 - Protection orders
 - Child support

Knowledge of immigration issues is important in family matters

- ▶ Addressing immigration status issues early can
 - ▶ Improve outcomes in family court cases
 - ▶ Prevent or delay family court orders that cut a party and their children off from immigration relief
- ▶ Family court actions can assist with
 - ▶ Helpful evidence for an immigration case
 - ▶ Obtaining from family court judges
 - ▶ Court SIJS findings for abused immigrant children
 - ▶ Certifications immigrant crime victim's U visa case

Custody Involving Immigrant Parents and/or Immigrant Children

- Accurate information about immigration status helps judges issue fair rulings in custody cases where immigration status of a parent or child may be raised
- Tools for Judges
 - Help avoid reliance on incorrect information provided by parties about immigration status & likelihood of detention or deportation
 - Provide accurate information when needed
 - www.Niwap.org/go/sji
 - Direct technical assistance to state court judges, commissioners, magistrates, court staff
 - Bench cards, charts, training materials and webinars
 - In person SJI funded trainings in states/local jurisdictions



Divorce

Impact of Divorce

- VAWA self-petitioners
 - Must file within two years of final divorce
 - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
 - Students, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Asylees
 - Employment visa holders
 - Family based visas
 - Cancellation of removal

Annulment Instead of Divorce

- Annulment can lead to a marriage fraud finding that:
 - Permanently bars approval of any visa petition
 - Is a ground for deportation
 - Can lead to an unfavorable exercise of discretion by an immigration judge not to grant immigration relief
- Impact on
 - Spousal support
 - Property division

Custody

Protecting Immigrant Mothers, Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Materials Immigrant Victims and Custody Bench Card -<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law>

ABA Center on Children and The Law (1991)

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

Is Immigration Status Relevant to Custody?

- Relevant to: Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
 - Either not filing or withdrawing immigration papers
 - Threats to turn victim in for deportation
 - Part of history of violence
- Not relevant to:
 - Core primary caretaker determination
 - Evaluation of parenting skills
 - Best interests of the child determination
 - Requirements regarding custody awards to non-abusive parent



Myth vs. Fact:

Parents Without Legal Immigration Status

Myth

1. Deportation is imminent
2. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. Legally present parent must have custody in order to file for benefits for child

Fact

1. DHS policies prevent detention/removal of immigrant parents who are:
 - Parents of U.S. citizen/Lawful permanent resident children
 - Primary caretaker parents of minor children without regard to the child's immigration status
2. Legal immigrants/naturalized citizens are more likely to flee with children, especially when
 - There have been threats of kidnapping children
 - They are dual nationals
 - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief , work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for their children.

Immigrant Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a Constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

A Family Reunited



Parental Interest Directive Aug 2013

- If parents are detained:
 - Bring parents to family court to participate in cases involving children
 - Facilitate participation of parents in family court cases through video conferencing
 - Bring deported parents back to the US for custody and parental rights cases

PROTECTION ORDERS



NIJ Funded CPO Study Found

- With support immigrant victims will use and benefit from justice system assistance
 - 60.9% did not know about CPOs
 - 81% got CPO with help from advocate/attorney
 - 96% found them helpful
 - 68.3% of violations immigrant related

Protection Orders

- All are eligible for civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = will not trigger deportation
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Protection order issued against a victim can be harmful
 - To good moral character & violation leads to deportation
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

What harms, if any, would occur if the court issues protection orders against both parties?

Large Group Discussion

Effect of protection order issued against immigrant victims

- Impede the victim's ability to prove good moral character in the victim's immigration case
- Increases perpetrators power and coercive control because the victim is one step away from deportation
- Perpetrators who are successful in convincing courts to issue protection orders are often also successful obtaining findings that the victim violated the order

How Immigrant Victims End Up As Defendants In Protection Order Proceedings

- **Typical Scenarios:** Police arrive at domestic violence incident, perpetrator speaks English,
 - Perpetrator speaks to and/or interprets for the police
 - Outcome A
 - Police see victims injuries but take no action and advise the parties about protection order
 - Perpetrator files for a protection order against the victim
 - Victim is served and then also seeks a protection order
 - Outcome B
 - Perpetrator convinces the police to arrest the non-English speaking victim
- Perpetrators seek such orders against immigrant victims as a tactic to undermine the victim's immigration case

Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes opportunity to offer relief designed to help:
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrators ability to exert power and/or coercive control
 - Offer victim remedy-relief for past abuse
 - Help victim overcome victimization and build new post abuse life
- Nexus With Victimization
- Opportunity for courts to counter immigration related abuse and order culturally helpful remedies

Use Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Make finding about age, existence of a marriage, parent child relationship
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/LasVegas2017
- Judicial Training Manual at www.niwap.org/go/sji
 - **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

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Questions



Evaluations

