

# Webinar

## Immigration Protections for Children: Special Immigrant Juvenile Status and Help for Trafficking Victims

Judge John J Romero, Judge Susan Maven (Ret.)  
and Leslye E. Orloff

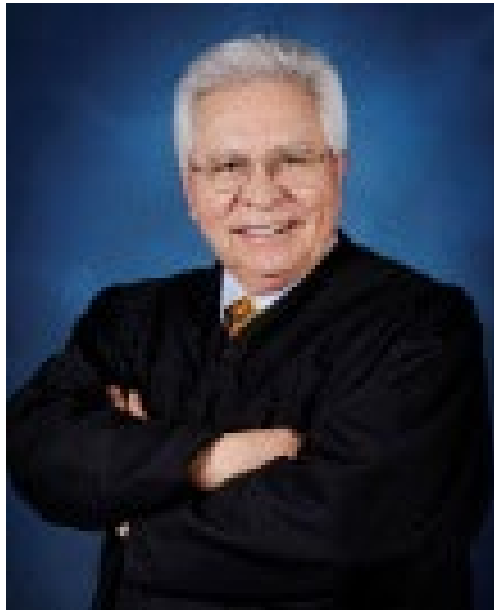
Administrative Office of the Pennsylvania Courts  
Harrisburg, Pennsylvania

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# Today's Faculty



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Law*



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Second Judicial District  
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Atlantic City, New Jersey

# Join the National Judicial Network (NJNI)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJNI (304 judges – 43 states & territories)
  - Opportunity to engage in discussions with other judges
  - Receive latest information
  - Peer-to-Peer training opportunities
  - Get your questions answered
  - Receive the information you need through
    - Webinars, trainings, and technical assistance
    - Bench cards, tools and training materials

Registration link in chat & you will receive sign up email

# **Poll:** How many years experience do you have on as a judicial officer?

**Please check the box that best describes you:**

- A. Less than 1 year
- B. 1-5 years
- C. 6-10 years
- D. Over 10 years



# **Poll:** What types of cases do you have experience with?

**Please check all boxes that apply:**

- A. Protection orders
- B. Child custody/child support
- C. Divorce
- D. Child welfare/Dependency
- E. Juvenile delinquency



# Learning Objectives

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

- Identify children eligible for Special Immigrant Juvenile Status (SIJS) protections in your family and juvenile court cases
- Issue SIJS findings of fact and conclusions of law that eligible children must obtain from a state court to be able to file for SIJS
- Understand how up-to-date SIJS laws, policies, regulations impact state courts' role in protecting vulnerable children
- Identify child victims of human trafficking eligible for OTIP and immigration protections

# Many Immigrant Victims of Domestic Violence, Child Abuse, Sexual Assault and Other Crimes Are Eligible for Immigration Relief

# U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

## Immigration Protections for Noncitizen Victims of Crime and Abuse

### T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required

### ✓ If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

### VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender

### ✓ If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply: USCIS Form I-914

**T VISA**  
For victims of human trafficking

To apply: USCIS Form I-360

**VAWA**  
For victims of domestic violence and abuse

### ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

**ASYLUM**  
For victims of persecution

To apply: USCIS Form I-589

**U VISA**

For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes

To apply: USCIS Form I-918

### U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification

### SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

### ✓ If approved, benefit provides:

- Ability to apply for permanent residency

### ✓ If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



Center for Countering Human Trafficking

National Judicial Network and NIWAP American

DHS.GOV/BLUECAMPAIGN

For victim support call 1-888-372-7888 or text INFO or HELP to BeFree (237723)

USCIS forms can be found at: [www.uscis.gov/forms/all-forms](http://www.uscis.gov/forms/all-forms)



# 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**

# Types of Qualifying Criminal Activity

- Conviction of criminal activity is not required
  - Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes
- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:
  - Hate crimes
  - Video voyeurism
  - Elder abuse/abuse of adults with disabilities
  - Child abuse
  - Robbery or aggravated robbery could be similar to felonious assault depending on the evidence and state law definition

# Benefits for Child Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
  - Legal work authorization and federally recognized IDs (6 months to 2 years from filing)
  - Increased access to federal and state public benefits
- VAWA confidentiality

# 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
- **2023 time to work authorization = 4-34 months**

# Battered Spouse Waivers

- For domestic violence survivors, provides for waiver of the “condition” placed on the status of immigrant spouses of marriages less than two years old
  - Waives both the joint filing requirement and two year wait for full lawful permanent resident status
  - Requires proof that
    - Marriage to U.S. citizen or permanent resident entered into in good faith *and*
    - Spouse or child was battered or subjected to extreme cruelty
      - Child can include step-child
- Immigration and Nationality Act § 216(c)(4)

**2023 time to approval 17.5 to 29 months**

# “Battery or Extreme Cruelty”

- Includes
  - All forms of abuse covered under state civil protection order statute or criminal laws
  - Includes threats, attempts, and coercive control
  - Plus – Forms of abuse that are extreme cruelty
    - No physical harm or crime required – examples
    - Emotional abuse; Economic abuse; Using children; Deportation threats and immigration-related abuse; Intimidation; Social isolation; Degradation; Possessiveness; Harming pets

# 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
- **2023 time to work authorization = 6 months**

# U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
  - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- **2023 time to work authorization – 60-62 months**



# 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
- **2023 time to work authorization = 18 months**

# Protections for Abused Children and Family Members

- VAWA self petitioner = Abused child, stepchild, parent or parent of abused child can apply for family:
  - Over 21: applicants' children/stepchildren
  - Under 21: Can include their parent and their children
- U and T visa applicant = Victim/parent of abused child can apply for family:
  - Over 21: spouse and children/stepchildren
  - Under 21: spouse, children, stepchildren, parents, unmarried siblings under 18
- Special Immigrant Juvenile Status = child victim
  - Family included: None

# Clara and Eduardo Case Scenario

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

# What forms of immigration relief would Clara qualify for:

- A. U visa
- B. Included in Lupe's VAWA self-petition
- C. T visa
- D. All of the above

Feedback

A

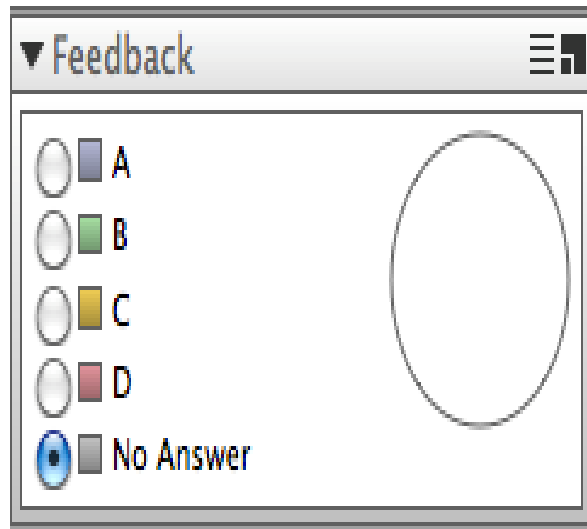
B

C

D

No Answer

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



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

# What forms of immigration relief would Miguel qualify for:

- A. VAWA self-petition
- B. U visa
- C. T visa
- D. SIJS

Feedback

A

B

C

D

No Answer

# Immigration & Public Benefits - Clara, Lupe & Miguel -PA

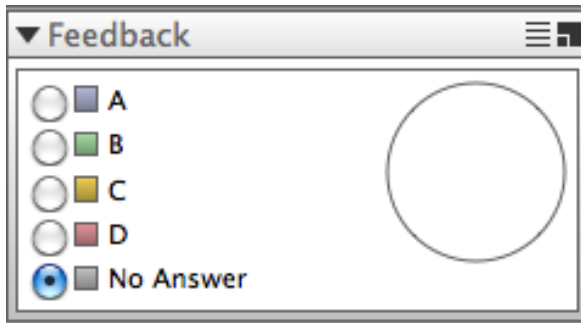
- TANF: T visa, VAWA self-petitioners, SIJS & U visa eligible upon filing
- SNAP: T visa – Clara (17 months) and children (OTIP letter - 2 mos)
  - Children: VAWA prima facie (3 months), SIJS-LPRs (≈3-6 years);
  - Clara: VAWA (5 years); U visa –LPR (≈36 years)
- Housing: T visa (OTIP letter), VAWAs, LPRs: SIJS (≈3-6 yr), U visa (≈31 yr)
- Health purchase on exchange:
  - T visa (OTIP letter) VAWAs (3 mos), SIJS filed, U visa bona fide (≈ 4-5 yrs)
- Health subsidies: Lawfully present children
  - T visa OTIP letter, VAWA (3 mos); SIJS filed, U bona fide (≈ 4-5 yrs)
  - Adults: T visas (ORR letter – 17 mos), VAWAs (3 mos), SIJS filing, U bona fide (≈ 4-5 yrs)
- Education (FAFSA): T visa (ORR letter); VAWA (3 mo)
  - LPRs: SIJS (≈3-6 yrs), U visa (≈31 yrs)

# Special Immigrant Juvenile Status (SIJS) – Overview With Updates Based on 2022 USCIS Regulations and Policy Manual



# In how many cases have you been asked to issue SIJS judicial determinations?

- A. 0
- B. Under 10
- C. 10-30
- D. 30-50
- E. 50+



Feedback

A

B

C

D

No Answer

# Special Immigrant Juvenile Status (SIJS)

- Humanitarian immigration relief for under 21 year old unmarried children who cannot be reunified with one or both parents who...
  - Abused, abandoned or neglected the child
- **State court order is a required filing prerequisite**
- Provides evidence for child's immigration case
- The state court order reflects judge's expertise on children's best interests
- State court order does **not** grant immigration status

## SIJS Judicial Determinations Can Be Issued When a State Court Judge Awards Custody, Dependency, or Placement of a Child

- Child is dependent on a juvenile or family court order or legally committed *to or placed under the custody of* an agency or department of State, or *an individual* or entity appointed by a State court.
- Reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law
- Child's best interest would not be served by being returned to his or her country of origin.

8 U.S.C. § 1101(a)(27)(J);

How do the 2022 SIJS Regulations and Policy Manual define the “juvenile court”?



# “Juvenile Court”

- “A court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.”
- 8 C.F.R. § 204.11(a).

# Family Court Cases That Include Decisions About Care & Custody of Children

- Dependency/Delinquency cases
- Civil protection order cases
- Custody cases
- Divorce cases
- Guardianship cases
- Paternity and child support cases
- Adoption/Termination of parental rights cases
- DHS states: All are of the above = *Juvenile courts*
  - Juveniles = all children
- *SIJS Bench Book has chapters on each case type*  
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>

# A Word of Caution

## When Reading SIJS Case Law

- Cases that are valid for important legal issues
  - May contain legally incorrect information on other issues that were superseded by 2008 statutory amendments or the 2022 regulations
- Examples:
  - References to “long-term foster care” (6 USCIS-PM J.1.A)
  - No requirement of abuse by both parents 8 C.F.R. § 204.11(c)(1)(ii)
- Be sure your rulings are consistent with federal statutes, USCIS regulations and USCIS policies

# Variety of Different Scenarios Where Child in US May be SIJS Eligible

- Children in the care or custody of a family member or other caregiver who have been abused, neglected, abandoned or subject to similar maltreatment by a parent either
  - Prior to their arrival in the U.S *and/or*
  - While in the U.S.;
- Children in federal custody with HHS, Office of Refugee Resettlement, Unaccompanied Children's Program; or
- Children in the state child welfare system in the custody of a state agency (e.g., foster care), or in the custody of a person or entity appointed by a state or juvenile court. 6 USCIS-PM J.1.A



# Custody or Dependency Determination Required

- A custody determination or a declaration of dependency is required
  - Best practice: include detailed findings of fact and state the custody determination or declaration of dependency in the court's conclusions of law
- Placement/custody must be in the U.S.
- With whom the child is placed is not controlling
- Placement examples:
  - Guardianship, custody with non-abusive parent, foster care, kinship care, state or private agency

# Immigrant Children In HHS Custody

- Can seek SIJS findings through
  - Any proceeding that will lead to a determination of the care and custody of a child
  - Declaratory Judgement proceedings
- In that proceeding the state court will
  - Formally recognize the child's placement with HHS and
  - Issue SIJS Orders
- HHS consent is not required unless the state could alter the child's custody status or placement
- 8 C.F.R. § 204.11(d)(6)(iii).

In the Clara and Eduardo Scenario in which of the following cases could the court issue SIJS findings for Lupe as part of the court's order?  
(check all that apply)



- A. A protection order case in which the order grants Clara custody
- B. A custody case brought by Clara
- C. The criminal prosecution of Eduardo
- D. A child welfare case in which the court made findings of Eduardo's abuse and placed the children with Clara

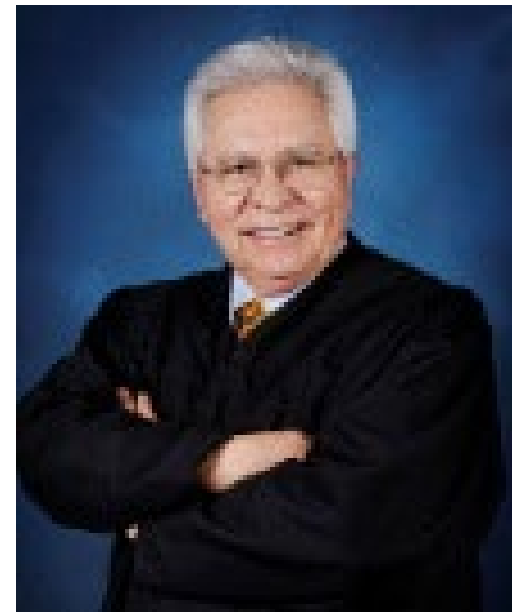
How do the 2022 SIJS Regulations and Policy Manual define the “judicial determination” that juvenile and family courts must make for SIJS eligible children ?



# “Judicial Determination”

- A “judicial determination” is a conclusion of law made by a juvenile or family court. 8 C.F.R. § 204.11(a)
  - Based on findings of fact – court order states “the factual basis for the court’s determinations” 8 C.F.R. 204.11(d)(5)(i) & (ii)
- “There is nothing in the Immigration and Nationality Act (INA) that allows or directs ...courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.” 6 USCIS-PM J.1.A (footnote 2)
- Note: regulations and policies no longer use the terms “*SIJS finding*” or “*predicate order*”

In light of this definition in the 2022 SIJS regulations what are best practices for state court judges issuing SIJS orders?



# Best Practices For State Court Orders

- Make specific detailed findings of fact and
- Based on those findings make conclusions of law
- “USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence or make independent determinations about best interests of the juvenile and abuse, neglect, abandonment or a similar basis under state law.”
- 6 USCIS-PM J.2

# SIJS Findings and Conclusions of Law Made By State Juvenile or Family Court

- The state court uses state laws to make child custody or placement decision and memorializes these as SIJS findings of fact & conclusions of law.
- The state court order reflects judge's expertise and application of state law – **it does not provide immigration status.**
- The order is just one required piece of evidence in a federal adjudication process.



# State Law Definitions Apply:

- Use state law definitions of abuse, abandonment, neglect, similarly basis under state law, and best interests factors to maltreatment
  - Occurring abroad and/or in the U.S
  - Cite state law code sections
- Describe how the actions of the parent fit the state law definition of abuse, abandonment, neglect or similar basis
- Describe best interests factors relied upon for
  - Custody, placement and not in best interests to return to home country
- Formal charges of abuse, neglect or abandonment against a parent in criminal or dependency are not required

# Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state statute, court rule, or other authority under which the court is exercising jurisdiction over the child.
- Follow your state juvenile and family court procedures and note that you do so to demonstrate that the court made an informed decision.

# Family Law Services of Process and Jurisdiction Requirements Charts and Bench Book Chapter

- 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>

# Findings/Conclusions of Law That Return to Home Country Not in Child's Best Interests

- Identify each potential custodian in U.S. and home country.
- Apply state best interest factors to each placement.
- State in the court order the factual findings that support chosen placement.
- Make findings that illustrate why under state best interest factors the court is not choosing placements in child's home country.
- Compare the support, help, services child needs in U.S vs. home country.

# Findings/Conclusions of Law: Reunification Not Viable

- Order must include conclusion of law that reunification with the parent is not viable.
- Make specific findings- what ground (abuse, abandonment, neglect) applies to which parent.
  - Only mistreatment by one parent required.
  - Does not require termination of parental rights.
  - 8 C.F.R. § 204.11(c)(1)(ii)
- 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
  - Duration: through adjudication of SIJS application
- Changes in circumstances can occur
  - But not granting full legal/physical custody to abusive parent

# 2022 Regulations Confirm

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

# 2022 Regulations State: Mixed Motives For Seeking SIJS Orders Will Not Impede USCIS Approval

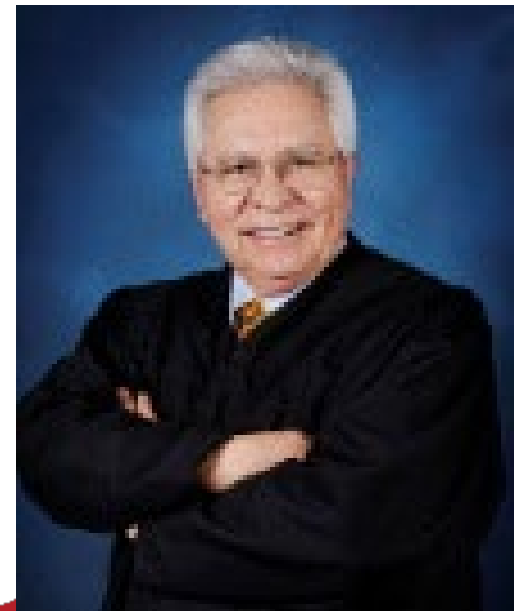
- An SIJS application is bona fide when obtaining relief from parental abuse, neglect, abandonment, or similar basis under state law was “a primary reason” seeking court orders. 8 C.F.R. § 204.11(b)(5).
  - Changed from “sole purpose”
- There may also be an immigration related motive
  - 6 USCIS-PM J.2.D.

# Helpful for Court Orders to:

- Contain a factual basis demonstrating that the court order was sought to protect the child and that the court actually provided relief from abuse, neglect, abandonment or similar basis under state law.
  - 6 USCIS-PM J.3.A.2.
- Explain how the court orders
  - Further the child's best interests
  - Protect the child from future harm
  - Provides the child remedies for harm caused by parent(s)



Can you discuss the importance of timing of when court orders contining SIJS judicial determinations are issued?



# Timing of SIJS Findings

- Some SIJS cases involve minors who are close to the age of majority under state law
  - Age 18 23 Pa. C.S. §5402
  - Exception: if adjudicated *dependent* before 18
    - Court has authority to maintain jurisdiction until age 21 42 23 Pa. C.S. §6351(f)(8.1)
    - Jurisdiction at the child's request to age for 21 Pa. C.S. §6302
    - See also PA Rules of Juvenile Court Procedure 1610 and 1611
- SIJS requires:
  - State court order received before the child turns the age of majority as defined by state law
- SIJS is an option any time an abused, abandoned or neglected child is not a
  - Citizen or lawful permanent resident

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

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

# Continuing Jurisdiction of Juvenile Court

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

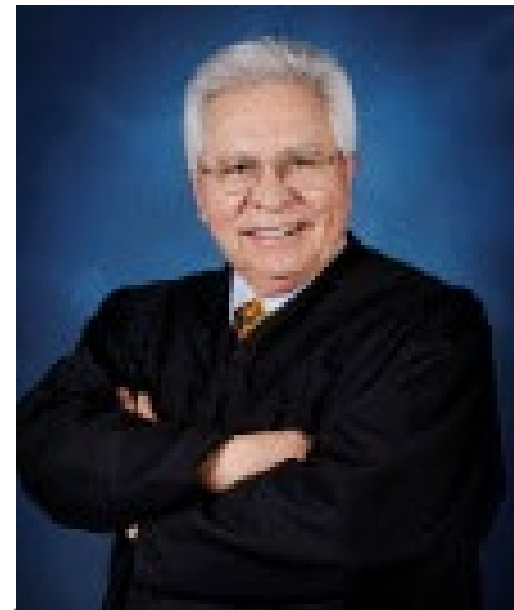
Can judges include SIJS findings as part of temporary orders they issue?



# SJIS Findings as Part of Temporary Orders

- SIJS findings can be included as part of temporary orders in a range of cases including
  - Divorce
  - Custody
  - Protection order
  - Child welfare proceedings
- Allows child to file SIJS case sooner
- USCIS will want to see the final order if it is issued before the SIJS case is adjudicated (6 months post filing)
- The child's attorney will need to submit the final order as soon as it has been issued
- The order must not substantively change with regard to SIJS judicial determinations between the SIJS filing and SIJS adjudication

What are some examples of the kinds of details judges should routinely include in SIJS orders?



# Best Practice for Court Order

- Make factual findings regarding
  - Facts of abuse, abandonment and/or neglect
    - Separately regarding each parent
    - About facts occurring abroad and/or in the U.S.
    - Apply and cite state law only
  - Articulate trauma impact on child helpful
  - Why court order is in the child's best interest
- Explain how the order and each of the findings are:
  - Based on state statutes
  - Needed for child protection, healing, and stability
  - In the child's best interests
  - Designed as a remedy for abuse, abandonment, or neglect



# Best Practices to Address in SIJS Orders

- Make findings as to
  - The age of the child and the evidence relied upon
  - The child's parentage, naming each parent specifically
  - That the parent's identity is unknown (e.g., rape)
  - Abuse, abandonment, neglect suffered & impact on child
    - Address each parent separately and
    - Incidents occurring abroad and/or in the U.S.
  - Details of who the court awarded custody to and why
  - Include no-contact and other protective provisions
- Cite and apply only state law as to:
  - Definitions of abuse, abandonment, neglect, similar basis
  - Best interest
  - Jurisdiction

# The Importance of Identifying Trafficking Experienced by Immigrant Children

# Who is Reporting Human Trafficking to the U.S. Human Trafficking Hotline (2019)?

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

# Familial Trafficking

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

# Immigration Relief Tools and Public Benefits Paths for Trafficked Children

T Visa

Available to victims of human trafficking

Continued Presence

Short-term immigration relief to newly-identified victims of trafficking

OTIP Child Eligibility Letters

If OTIP decides a child is a victim of sex or labor trafficking issues OTIP letter providing benefits access for life

# Know About OTIP Letters

- The Office of Trafficking in Persons (OTIP) at HHS issues
  - Certification Letters to foreign national adults
    - Bona fide T applicants and Continued Presence (CP)
  - Eligibility Letters to foreign national children
    - No DHS application required, may have (CP)
- OTIP Letters provide access to public benefits, as refugees, for life
- Must be accepted by Federal and State agencies

# HHS Child Eligibility Letters

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

# Comparison of T visas and SIJS

## Immigration Relief for Children - PA

### SIJS – Time to

- Subsidized health care = at filing
- Work authorization/driver's license = 6 months
- Legal immigration status = 6 years LPR
  - Cannot include family members
- Food stamps, FAFSA, Subsidized housing = 6 years

OTIP Letter provides full benefits while child awaits immigration status eligibility

### T Visa – Time to

- Subsidized health care = at filing
- Work authorization/driver's license = 17 months
- T visa = 17 months
  - Can include parents, siblings, children in application
- Food stamps, FAFSA, Subsidized housing = 17 months



# Child Trafficking , permanency , and Children in Court



# **Poll:** Have you had youth in your court who you suspect have been victims of human trafficking?

**Please check all boxes that apply:**

- A. Yes, sex trafficking
- B. Yes, labor trafficking
- C. No
- D. I do not know



# Federal Statute: Severe Forms of Human Trafficking

22 U.S.C. § 7102(11)

The term “severe forms of trafficking in persons” means--

(A) sex trafficking in which a commercial sex act is induced by **force, fraud, or coercion**, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of **force, fraud, or coercion** for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

# What Forms Do Human Sex and Labor Trafficking take?

## Sex Trafficking

- Escort Services
- Prostitution
- Strip Clubs
- Casinos
- Truck Stops
- Massage Parlors
- Pornography

Sex and Labor  
Trafficking may  
Co-occur

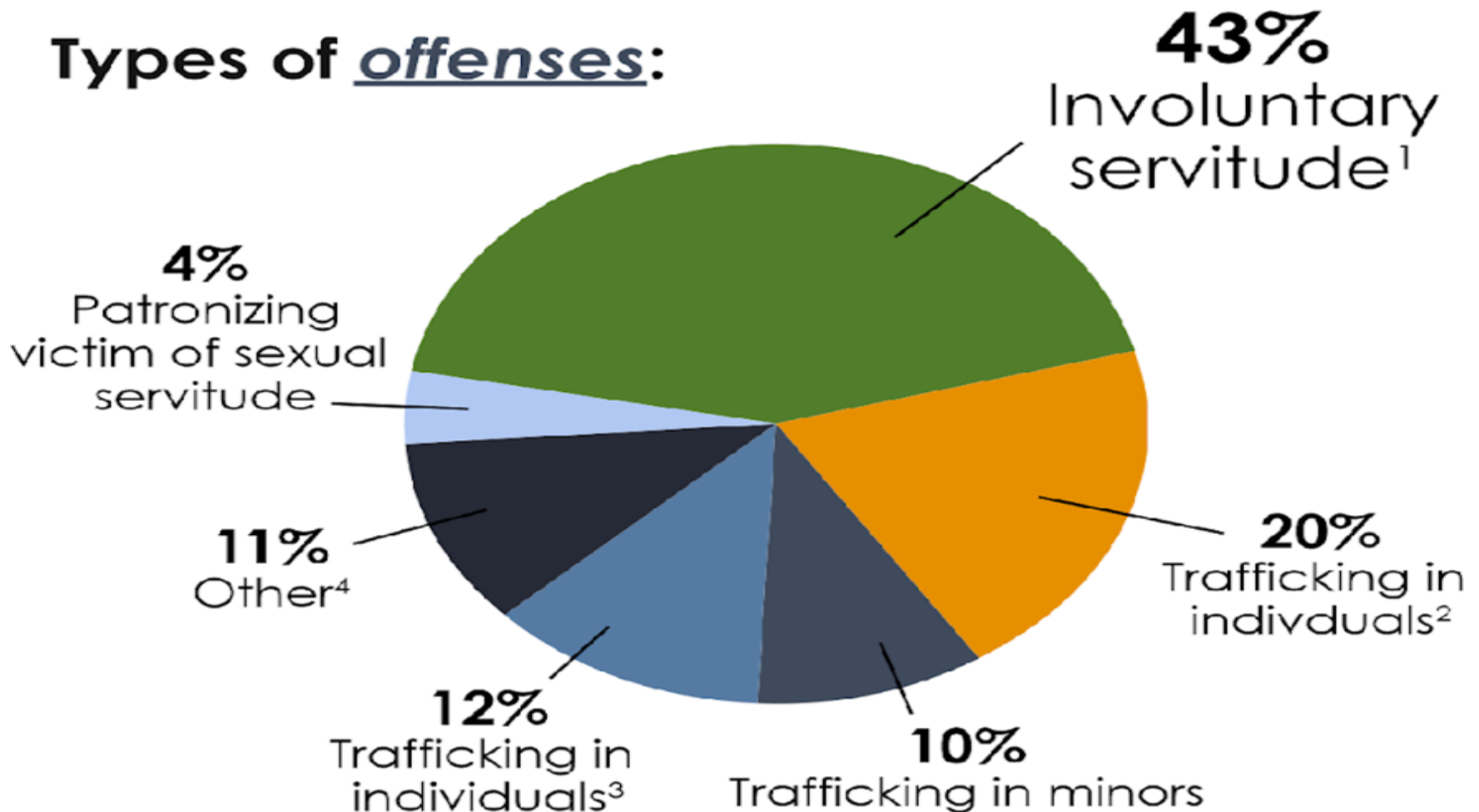
“Transport” is  
not required

## Labor Trafficking

- Street Sales
- Magazine Crews
- Hospitality Industry
- Nursing Homes
- Hair & Nail Salons
- Nannies & Housekeepers
- Construction
- Farms/Agriculture

# Types of Offenses

## Types of offenses:



<sup>1</sup> duress through force, debt coercion, physical restraint, etc.

<sup>2</sup> recruits/entices/solicits

<sup>3</sup> benefits financially

<sup>4</sup> obstruction of justice, unlawful conduct, nonpayment of wages etc.

# Commercial Sexual Exploitation of a Child (CSEC)

- Child sex trafficking is a form of child abuse that occurs when a child under 18 is advertised, solicited or exploited through a commercial sex act. A commercial sex act is any sex act where something of value – such as money, food, drugs or a place to stay – is given to or received by any person for sexual activity.
- National Center for Missing and Exploited Children

# Most Common Types of Trafficking

- **Pimp-Controlled Trafficking**
- Child is trafficked by an unrelated individual, male or female, who often develops an intentional relationship with the child which is later used as leverage in the exploitation.
- **Familial Trafficking**
- Child is trafficked by a relative or a person who is perceived by the child to be a family member such as individuals referred to as “auntie” or “uncle” but are not directly related to the child.
- **Gang-Controlled Trafficking**
- Child is trafficked by a member of a gang or trafficked by the gang. Gangs leverage their organizational structure, violence, and local, national, and international networks to instill fear and loyalty in the child victim.
- **Buyer-Perpetrated Trafficking**
- Child is being trafficked but does not have a trafficker. Instead, the buyer is directly exploiting the child’s vulnerabilities by offering money, food, and/or shelter in exchange for the sexual exploitation.

# USCIS Definition of Involuntary Servitude

- Condition of servitude induced by
  - Means of any scheme, plan or pattern
  - Intended to cause a person to believe that
  - If they did not enter into/continue such condition
  - The person or another person would suffer serious harm, physical restraint, or abuse or threaten abuse of legal process
- Trafficking can accompany or be enforced by abuse
  - Victims may act upon the trafficker's demands for labor and services due to fear or coercion and may feel that they do not have their own liberty or self-determination.



## Family Violence and Human Trafficking

- Trafficker & victim may have preexisting relationship with trafficking occurring alongside domestic violence or child abuse
- Trafficking can occur in the context of family violence and can include but is not limited to domestic servitude and sexual exploitation
- Motivation of the trafficker to subject victim to a condition of servitude
- Relationships: spousal, intimate partner, parent/child, stepparent, extended family

## Examples Trafficker Controls Victim's Liberty

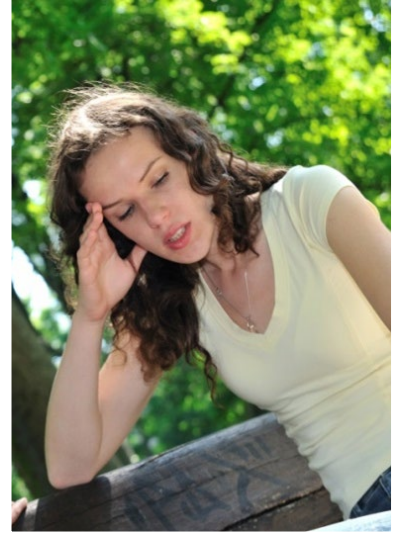
- Victim's life fulfills orders of trafficker's demands
  - Domestic labor at unreasonable level, working hours, constant availability for labor regardless of victim's health or energy
- Victim lacks control over own wages despite laboring under trafficker's demands
- Imposition of unequal living arrangements as part of campaign of force, fraud, or coercion e.g. unequal
  - Sleeping arrangements, living arrangements, access to nourishment

# In the beginning...

- Is this a child welfare issue?
- How large is this population?
- What does it mean for workload?

We quickly realized we had been serving these children and youth historically – often because of abuse and neglect, or other trauma.

They are “our kids.”



# Some youth are especially vulnerable



- Traffickers prey on children and youth with low self-esteem and minimal social support including immigrants.
- Traffickers have also been known to target youth with cognitive impairments or other disabilities.

In Florida, approximately 70% of victims were youth from **foster care**

Estimated that 70-90% of youth involved in CSEC have histories of **sexual abuse**

20% were living at home when first exploited Saewyc et al, 2008

#1 commodity traded in return for sexual activity is shelter. Of those who engaged in commercial sex activity, 48% said they did it because they **did not have a place to stay.** 2013 Covenant

40% of homeless youth are LGBTQ and **LGBTQ youth** may be up to five times more likely to be victims of trafficking

# Boys are Victims & Survivors

Less likely to present as a pimp controlled situation

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Peer introduction

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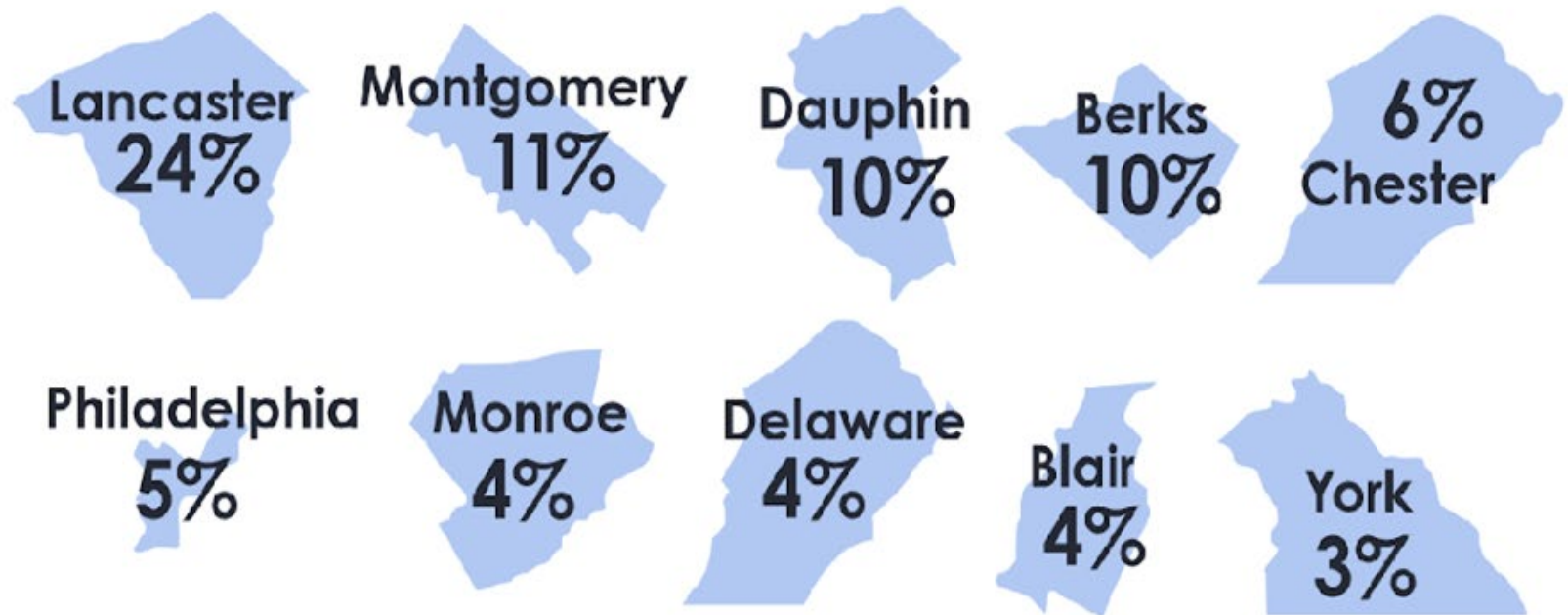
- May try to avoid the stigma of commercial sexual exploitation.
- Thus they may portray their actions as a choice – such as self-employment or entrepreneurship.

May engage in survival sex, including youth who have left home due to sexual or gender identity issues

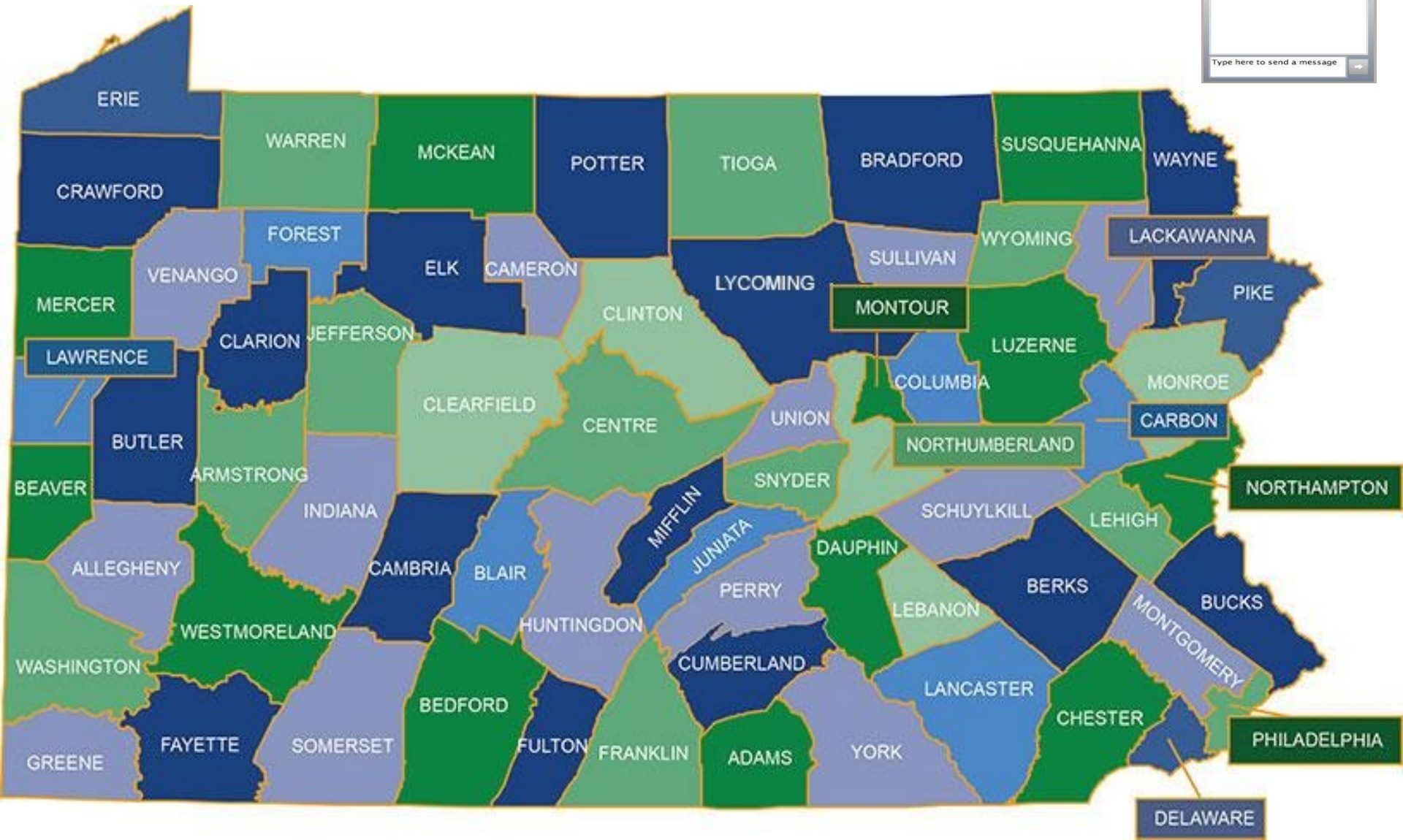


# Pennsylvania Statistics

Counties with highest number of human-trafficking offenses filed:



What is unique or characteristic about these counties that may make them attractive areas for trafficking?



# National Human Trafficking Resource Center Data Map 1/1/2015 – 12/31/2015

## NEW JERSEY

### Location of Potential Trafficking

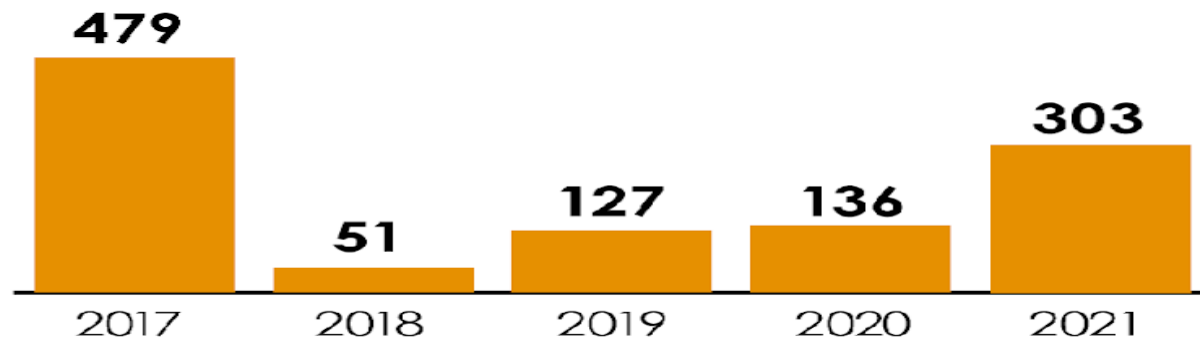




# A few PA Statistics

**259** human-trafficking cases were filed over the past five years.

**1,096** total human-trafficking offenses were filed:



All human trafficking data from 1/1/2017 to 12/31/2021. Human trafficking offenses filed and disposed as convictions as recorded in Pennsylvania's Common Pleas Case Management System (CPCMS) and Magisterial District Judge System (MDJS). Title 18, sections 3002 (A), 3012 (A, B1 - B13), 3016, 3013 (A, A1, A2), 3011 (A, A1 - A3,B) and 3014 (1,2).

# The Continuum of Abuse

**Child Sexual Abuse (CSA)**

linking of "love," sex and abuse

violation of boundaries

normalization of abuse

lack of family support

guilt, shame, low self-esteem, and self-loathing

view of self as a sexual object

runaway, throwaway, or homeless

unable to meet basic needs

unequal power dynamics of adult/child relationship

demand: billion dollar sex industry

approached by recruiters, peers, pimps, traffickers

continuing the cycle of violence

**Sexual Exploitation of Children (SEC)**

**Commercial Sexual Exploitation of Children (CSEC)**

# Consider That Language Shapes Perception

## Child Prostitute

- Voluntary and conscious choice
- A bad or troubled kid
- A criminal or delinquent
- Deserves punishment and not social services
- Minimize call for social responsibility and accountability

## Child Sex Trafficking Victim

- Not able to make a choice
- Defines what happened to the child, not who the child is
- Vulnerable to coercion, manipulation, and force
- Deserves intensive support and services
- Call for social responsibility and accountability

# Why Trafficked Youth Don't Self-Identify and Why They Remain "in the life"

- Don't see themselves as victims
- False promises of love/ protection
- Loyalty to trafficker – trauma bonding
- Fear
- Threats of jail or deportation
- Threats of violence to self, family or other youth
- Feeling no one will understand
- Shame and stigma

- Normalization of sex trafficking as survival
- Distrust of authority/service providers
- Feeling they brought this on themselves
- Need for food, shelter and clothing
- No regular means of income
- Lack of identification documents

# Red Flags- Physical Signs

- Possessing new clothes, electronics, or other unexplained “gifts”
- Signs of violence, including bruises, burns and cuts
- Unmet health needs
- Hunger/malnutrition
- Tattoos or branding (burn marks)
- Repeated STIs
- History of excessive number of sexual partners for age
- Unexplained stomach pain

*Source: Polaris Project*

# Red Flags-Behavioral Signs


- Youth unaware of their address or of the community
- Refers to boyfriend as “Daddy”
- Talks about “the game” or “the life”

- Not trusting of adults
- Fearful of authority figure, especially law enforcement
- Lack of trust, lack of eye contact and lack of interest
- Isolation from friends or family

- Accompanied by an individual (male or female) who will not leave the youth’s side
- Secretive about their whereabouts
- Missing for days
- Move about often
- Movements and communication is controlled by “boyfriend”

- Lack of health insurance/paying with cash
- No legal documentation or other individual holding ID

# JUVENILE COURT

- Trafficked youth are at increased risk for juvenile justice involvement for status offenses and other charges (i.e. violation of probation/conditions of release for running from a program, CDS, theft, assault on law enforcement )
- Judicial Response  Remand to JDC to “keep youth safe”

## IN REALITY:

- HT is the only type of abuse where the victim is **punished**
- These youth are vulnerable to coercion, and manipulation  
These youth require intensive support and services
- HT defines **what happens** to a child – not who the child is
- Trafficking victims (sex/labor) eligible for immigration relief

# TIPS EVERY STATE COURT JUDGE SHOULD KNOW WHEN ADDRESSING IMMIGRANT YOUTH IN COURT

1. Trauma impacts a child's development and health throughout his or her life and traumatic exposure, delinquency, and school failure are inter-related;
2. Youth are resilient but may need help from appropriate trauma informed services.
3. Know the program providers in your community who have expertise serving immigrant survivors and human trafficking victims
4. Avoid use of legalese. Immigrant youth who are potentially traumatized or victimized may be confused by complicated language.
5. Ensure that youth has appropriate language access. Be assured the interpreter speaks the same dialect as the youth.
6. Allow the youth to voice their needs, if age appropriate and as agreed with counsel. Offer the youth an opportunity to address the Court on the record but more privately i.e. at the bench.



# Reporting Human Trafficking

- If you suspect someone you know is a human trafficking victim
  - Call 911 in the event of emergency.
  - Ensure that immigrant children who are potential victims of human trafficking [are reported to OTIP for assessment within 24 hours](#)
  - Find a safe opportunity to provide them the [National Human Trafficking Hotline's](#) contact information and talk to them about reporting their situation.
    - Call 1-888-373-7888 (TTY:711)
    - Text 233733
    - <https://humantraffickinghotline.org/report-trafficking>
  - Get connected with social and legal services for victims and survivors through [Pennsylvania Office of Victims Services](#) or the [National Human Trafficking Hotline's Online Referral Directory](#)

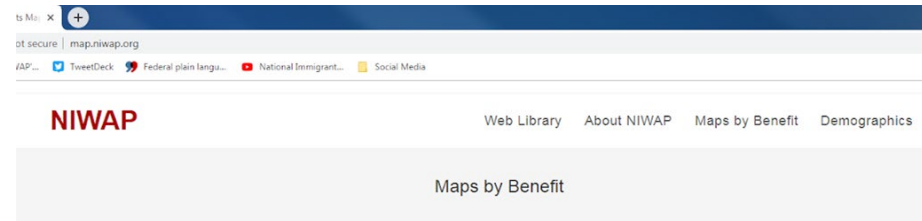
When judges know which immigrant victims, children or family members can access which benefits, how might this impact state court orders?



# Both documented and undocumented immigrants can access:

- Family Court – e.g. divorce, custody, child support, protection orders, child welfare
- Language Access
- Police Assistance
- Have perpetrators prosecuted
- Obtain public benefits for their children
- Elementary & Secondary education
- School lunch/breakfast
- Soup kitchens, food banks, nutrition assistance
- Communicable disease immunizations, testing, treatment, treatment from public health centers
- Services necessary to protect life and safety
- Legal Services
- Assistance for Crime Victims
- Emergency Medicaid
- Emergency Shelter
- Transitional Housing
- Child and Adult protective services
- Crisis counseling and intervention
- Violence/abuse prevention services

# Interactive Public Benefits Map



NIWAP

Web Library About NIWAP Maps by Benefit Demogr

Legal Services

Maps by Benefit

These maps break down available public benefits based on immigrant's state and immigration status.

We are still working on this site, so if you cannot click on your state, check back soon for completed maps.



#### Cash Assistance (TANF)

Temporary Assistance for Needy Families (TANF) provides cash assistance to low income families with children.

[Go to Map](#)



#### Child Care

Child Care services may be provided through public benefits.

[Go to Map](#)



#### Children's Health Insurance Program

Medical assistance is available to children through the Children's Health Insurance Program (CHIP).

[Go to Map](#)



#### Driver's License

State-specific requirements to be issued a driver's license.

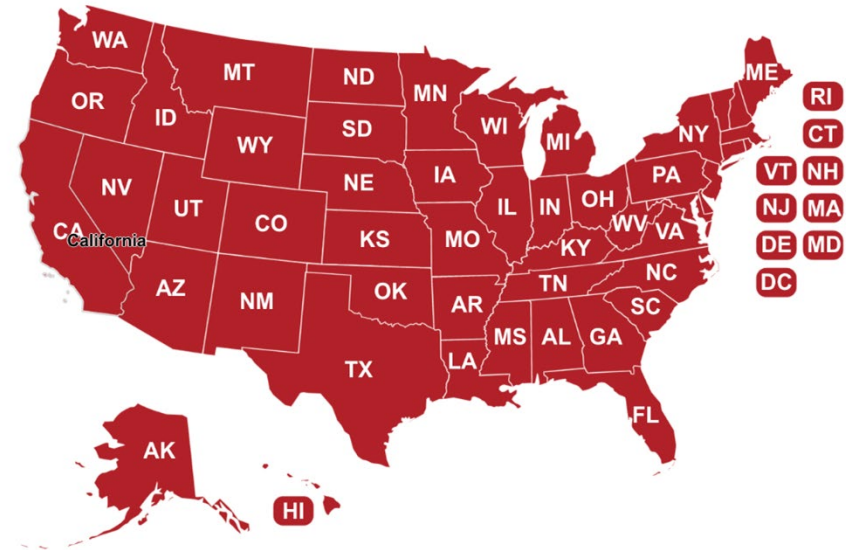
[Go to Map](#)



#### Earned Income Tax Credit



#### Emergency Housing & Safety Programs



<http://map.niwap.org/>

# Benefits in Pennsylvania – 1

- TANF
  - Applicants for VAWA, T visas, SIJS and U visas, Continued Presence, OTIP Letters
- Child care
  - TANF same as above
  - Child Care Development Fund – no restrictions
- SNAP
  - CP, T visas, OTIP Letters
  - Child VAWA self-petitioners and SIJS & U visa child-LPRs
- Education
  - Federal: VAWA, CP, T visa applicants, SIJS & U visa-LPRs
- Driver's License
  - Federally recognized – work authorization

# Benefits in Pennsylvania - 2

- **Health Care**

- Exchanges: VAWA, CP, T visa, OTIP, U visa bona fide, SIJS applicants

- State funded health care subsidies for lawfully present immigrants children, adults, and pregnant persons

- VAWA, CP, T visa, OTIP, U bona fide, SIJS applicants

- **SSI (most limited):** CP, T visa, VAWA, SIJS, and U visa lawful permanent residents (5 year bar+ 40 quarters work)

- HI: Seniors & persons with disabilities Aid to Aged, Blind, Disabled

- VAWA, CP, T visa, and SIJS and U visa Lawful permanent residents

# Benefits in Pennsylvania - 3

- Housing
  - Transitional – all victims + homeless + abused children
  - Public and Assisted: VAWA applicants, CP, T visas, SIJS & U visa– LPRs
- LIHEAP & WAP – No immigrant restrictions
  - Weatherization Assistance Program if at or below 200% FPL
  - LIHEAP – if at or below 150% FLP
- FEMA
  - Emergency assistance: everyone
  - Individual Households Program: VAWA, T visa, CP
  - Individual & Family Grant Program: VAWA, T visa, CP, SIJS & U Visa-LPRs
  - US Small Business Administrations Loans: VAWA, T visa, CP
  - Disaster Unemployment Assistance: VAWA, T visa, CP, SIJS & U visa-LPRs
  - Emergency Food Stamps: T visa, CP, SIJS & U visa-LPRs (after 40 quarters of work credit)

# SIJS Resources

- SIJS Bench Book
- SIJS regulations annotated compilation with full regulatory history
- SIJS Case Law Chart – All states
- *In Re Guardianship of Saul H.* case overview tool
- Family Law Jurisdiction and Service of Process Charts
- Best Interests of the Child State Comparisons by Factors Covered
- State Public Benefits Charts and on-line Map to see SIJS children's eligibility by state by type of benefit



# Pennsylvania AOPC Human Trafficking Resources

- AOPC, Human Trafficking in Pennsylvania (2021)  
<https://niwaplibrary.wcl.american.edu/pubs/pa-infoshare-humantrafficking>
- AOPC, Human Trafficking: Judicial Bench Card  
<https://niwaplibrary.wcl.american.edu/pubs/pa-humantraffickingbenchcard>
- AOPC, Understanding Human Trafficking Fiction vs. Fact  
<https://niwaplibrary.wcl.american.edu/pubs/pa-humantrafficking-fiction-v-fact>

# Technical Assistance and Materials

- Power Point presentations and materials for this training at <http://niwaplibrary.wcl.american.edu/PASIJS2023>
- National Judicial Network and SJI Training Manuals <https://niwaplibrary.wcl.american.edu/sji-njn-materials>
- **NIWAP Technical Assistance**
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)

# Evaluation