



# **What Every Family Lawyer Needs to Know When Representing Immigrant Survivors**

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# NIWAP Resources

- NIWAP Web library
  - Directory
  - Public Benefits Interactive Map & Demographics
  - Materials: Bench cards, toolkits, training tools, legal research, multi-lingual outreach materials
- Technical Assistance
  - Cases, policies, strategies
  - Email, phone, zoom
- Trainings and Webinars
  - On-line, virtual, in-person
  - Customized
- Communities of Practice
  - Victim advocates, family lawyers, National Judicial Network
  - Law enforcement/prosecutors



# Join a NIWAP Community of Practice

- Family Law Attorneys COP [www.surveymonkey.com/r/FamCOP2023](http://www.surveymonkey.com/r/FamCOP2023)
- Victim Advocates COP <https://www.surveymonkey.com/r/VictimAdvocateCOPApp>
- Roundtable for Law Enforcement, Prosecutors and System-based Advocates <https://www.surveymonkey.com/r/LERoundtable>
- National Judicial Network: Forum on Human Trafficking and Immigrants in State Courts (Judicial Officials only) <https://niwaplibrary.wcl.american.edu/pubs/njn-outreach-letter>

# Learning Objectives

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



Screen survivors eligible for immigration legal remedies

Discuss legal immigration remedies and benefits for qualified immigrants including the identification of human trafficking co-occurring with domestic violence, sexual assault, stalking and child abuse

Understand the filing of VAWA, T visa, U visa, and/or SIJS cases and obtain U/T visa certifications and SIJS judicial determinations

Identify VAWA confidentiality protections, civil protection orders, custody and state and federal benefits and services qualified immigrants are eligible to receive in Pennsylvania

# Learning Objectives

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

- Use tools support a trauma informed approach to your work with immigrant domestic and sexual violence survivors
- Help immigrant survivors attain VAWA confidentiality protections
- Improve success by being prepared to respond to special issues that arise in family court cases for immigrant survivor clients
- Be able to obtain SIJS findings and U visa certifications from judges in a wide range of family court cases

# BUILDING TRUST WITH IMMIGRANT SURVIVORS



# How do you provide culturally-responsive care?

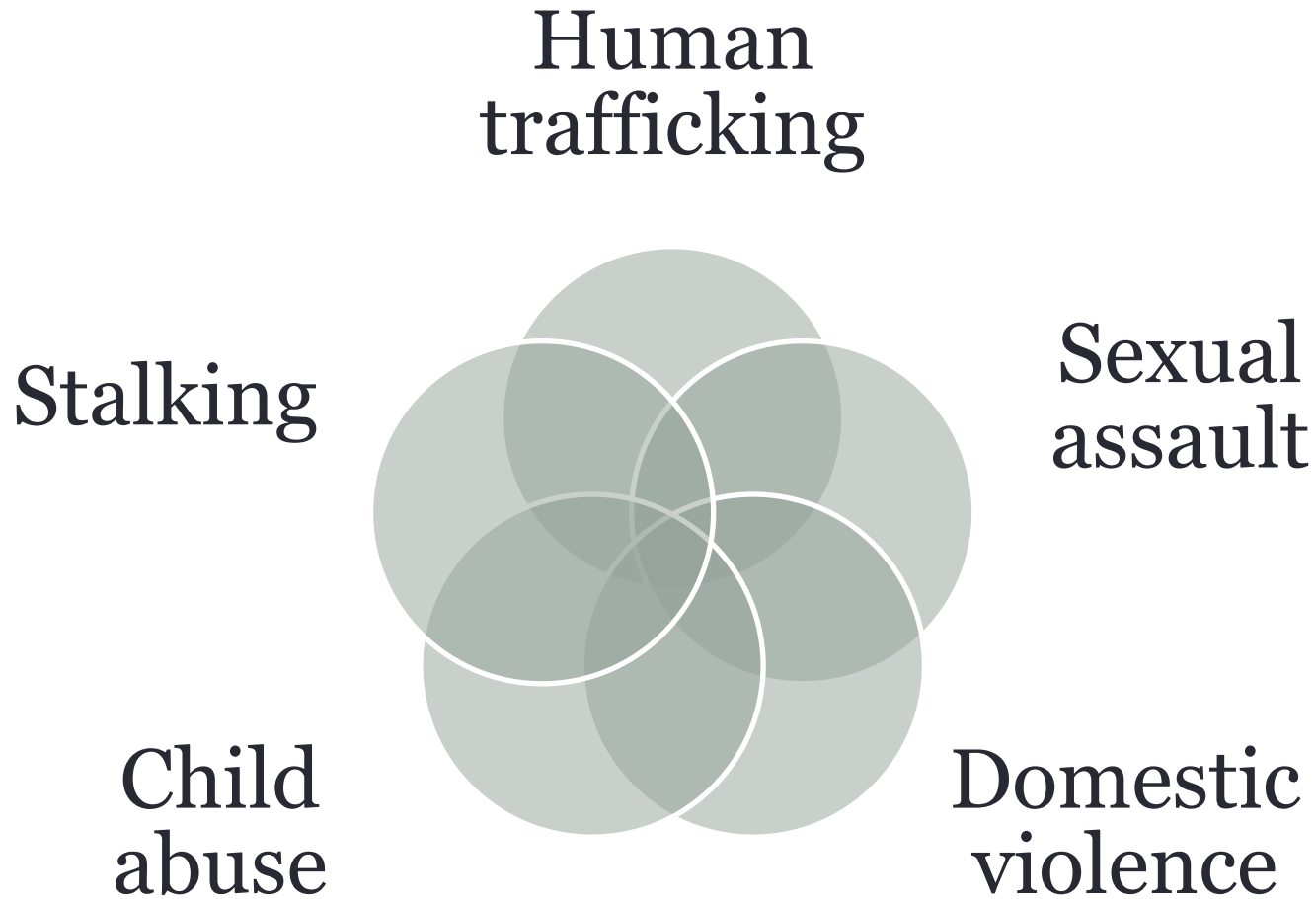


# What are common priorities, needs, and interests of victims?

- How can we assist in restoring a victim's feelings of safety and security?
- Why is story telling important?



# Poly-Victimization



# Trauma-Informed Tools

Legal  
immigration  
remedies

Using  
interpreters

Culturally-  
responsive  
services

Survivor-led  
programs

# Immigration Story Writing

- Affidavit = A Survivor's "Story"
  - Most important pieces of evidence submitted
    - Research on importance of writing the trauma narrative
  - DHS hears directly from the survivor
  - Can be a traumatic experience for survivors
  - The goal is to develop an approach that:
    - Obtains more complete information
    - Improves outcomes and helps survivors heal



# Story Writing

## Intervention Method

- Invite the survivor to write/tell her story
  - Support, witness, listen without judgment, allow space
  - Goal: story comes out unedited/uninterrupted
- Follow up with interview
  - Structured Interview Questionnaire for Immigration (SIQI)
  - Take notes for follow up during story telling interview
- Edit together
  - Story + structured interview responses into affidavit
- Survivor reads back the final story

## Standardized Tools:

Assessing “What happened to me?”

- Multiple types of trauma exposure
  - Structured Life Events Screening Questionnaire (SLESQ)
  - Stalking behaviors [SLII]
- Domestic Violence
  - Conflict Tactics Scale (CTS-2)
  - Psychological Maltreatment of Women
  - Coercive Control Scale (IPV Coercion Measure)
  - Danger Assessment
- Indigenous Trauma
  - Additional traumatic effects based on oppression and discrimination

## Standardized tools:

Assessing “How did it change me?”

- Articulating the impact of battering or extreme cruelty
- IPV (Intimate Partner Violence) Threat Appraisal and Fear Scale
- PTSD Checklist (PCL-C)
- Patient Health Questionnaire (PHQ-9; depression)



# Resources for Working with Immigrant Victims

- [Advocate's and Attorney's Tool for Developing a Survivor's Story:](#)
  - This resource from National Immigrant Women's Advocacy Project (NIWAP) provides guidance on how people working with survivors can collect their stories.
- [Structured Interview Questionnaires for Immigration Cases \(SIQI\)](#)
  - This resource from NIWAP was developed by drawing upon evidence-based research on violence against women, coercive control, trauma, and acculturation
  - Languages: Spanish, Chinese, Russian, English
- [How to Prepare Your Case: Tips on Using the Structured Interview Questionnaires for Family Court Cases \(SIQI\)](#)



# LEGAL IMMIGRATION OPTIONS

# U.S. Legal Immigration Benefits for Noncitizen Victims of Crime and Abuse

## U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS



Center for Countering Human Trafficking

# Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
  - Child/elder abuse
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Hate Crimes
- False Imprisonment
- Kidnapping
- Abduction
- Unlawful criminal restraint
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking
- Abusive sexual contact
- Sexual exploitation
- Video voyeurism
- Aggravated robbery
- **Parent perpetrated**
  - Child abuse, neglect, abandonment

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

# VAWA CONFIDENTIALITY IN STATE COURT PROCEEDINGS



# **Poll: Have you worked with survivors who have received ...**

- A. Threats of deportation from perpetrators
- B. Been contacted by immigration enforcement officials

# Immigration-Related Abuse

- 25% of perpetrators actively report the victim for removal
  - Rises to 38% for VAWA self-petitioners
- 36% of perpetrators get immigrant and limited English proficient (LEP) victims calling for help arrested for domestic violence
- U visa applicants have higher future crime reporting rates

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff and Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Victims* (2017)

# VAWA Confidentiality Prongs Chart

## Non- Disclosure

Protects victims **who have filed** a protected case with DHS

- \*VAWA self-petitions
- \*Battered spouse waiver
- \*VAWA Cancellation/ Suspension
- \*U and T Visas
- \*Abused Spouses of work visa holders work authorization applications

## Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators and their agents

### **Protects:**

- \***All victims abused by spouse or parent**
- \*All victims in the process of applying for U or T visas

## Location Prohibitions

### **Protects:**

**All Victims**

### **Requires:**

No action at protected locations  
OR

Notice to Appear must state how they complied with VAWA confidentiality

Violation = \$5,000 fine  
and/or disciplinary  
action



# DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based legal immigration status
- Reminds immigration officers, agents, and attorneys about immigration legal remedies for:
  - Survivors of domestic violence
  - Crime victims
  - Human trafficking victims

# VAWA Confidentiality Non-Disclosure Protections

- Prohibits disclosure of any information about
  - The existence of the case
  - Actions taken in the case
  - Information contained in the case file
- Disclosure is prohibited to all persons, not just the perpetrator
  - Limits family, civil, and criminal court discovery
  - U/T certification likely discoverable in criminal cases
- Protections apply from the time of filing permanently unless
  - Case denied on the merits
  - All appeal options have been completed

## Poll 1: When do victims get VAWA confidentiality's removal protections?



- A. Victim has filed a VAWA, T, or U visa case
- B. Victims shows a protection order to an immigration official
- C. Victim shows letter from advocate stating that victim is seeking VAWA, T or U immigration relief
- D. When abuse occurs in a spouse or parent child relationship

## Are Courthouses Protected Locations? 8 U.S.C. Sec.1229(e)(2)(B) – INA 239(e)

- Generally prohibits immigration enforcement at Courthouses **against victims**:
  - “(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15) [8 USCS § 1101(a)(15)].”



## When Immigration Enforcement Occurs at a Courthouse Against A Victim --

- 8 U.S.C. §1229(e) -Requires ICE certification re: non-reliance on perpetrator provided information
- 8 U.S.C. §1367(c) imposes disciplinary action and fines for violation
- DHS VAWA Confidentiality Implementation - Instruction 002-02-001, Implementation of Section 1367 Information Provisions (May 28, 2019) <https://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>
  - ICE is required to check the *Central Index System* for the “COA 384” flag identifying victim-based cases filed under the Violence Against Women Act and the Trafficking Victim’s Protection Act
  - Requires *supervisory approval*
  - Officers are to be “*sensitive to the fact that the alien at issue may be a victim and the victim-abuse dynamic may be at play.*”

Poll 3: VAWA confidentiality is likely violated when a DHS official comes to the courthouse in response to a “tip” from the perpetrator and arrests a victim who has come to court.....



### Check all that apply

- A. Seeking a protection order
- B. For a child custody case
- C. As a witness in a criminal case
- D. In an eviction case when the perpetrator stopped paying rent in violation of a family court order

# **VAWA Confidentiality Law's Statutory Disclosure Exceptions**



# Raise Your Hand - True or False?

VAWA confidentiality's judicial exception applies to State Court judges hearing criminal, family, and/or civil court matters.



True



False



## Limited Disclosure in Narrow Circumstances – Judicial

- A judicial exception applies only to appeals of the victim's immigration case
- Exception does not extend to state or federal judges hearing other civil, family, or criminal court matters

# *Hawke v. Dep't of Homeland Security*

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

(Judicial Review Exception)

- 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, family, or criminal court proceedings
- 6<sup>th</sup> 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”

# Large Group Discussion

- What, if anything is discoverable in a state family, criminal, or civil court case when a victim has filed a ---
  - U visa application
  - T visa application
  - VAWA self-petition
  - Petition for SIJS

# Implications of VAWA Confidentiality

- Information about the existence of case file contents and actions taken in VAWA confidentiality protected cases generally not discoverable in state court
- In criminal cases only the U or T visa certification itself and any cover letter is discoverable
  - If court determines it is relevant and potentially exculpatory
  - This is sufficient for cross examine victim's credibility
- In civil employment cases with multiple victims where EEOC certified, redacted certifications may be discoverable
- In family cases no discovery

# Ramirez v. Marsh, and New Mexico Immigrant Law Center v. Leos

(May 7, 2024) New Mexico Supreme Court

- Criminal court judge cannot order disclosure of U or T visa applications or related materials from
  - The victim
  - The victim's parents
  - The victim's counsel
- New Mexico Supreme Court invalidated subpoenas issued by state criminal court judges requiring disclosure
- *Ramirez v. Marsh*, S-1-SC-39966, and *New Mexico Immigrant Law Center v. Leos*, S-1-SC-40114.

People v. Jun Du – Criminal Case  
“Sanctuary For Families”  
[NY Sup Ct Kings County 2024](Sept. 27, 2024)

- Based on VAWA confidentiality laws, the Judge reversed their previous decision granting an *in-camera review* and denied the request for *in camera review* of the T-visa application (Form I-914).
- VAWA Confidentiality protects the disclosure of the T-visa application (Form I-914).
- Party seeking disclosure must show that the application is so relevant or material that it outweighs VAWA confidentiality.
- The Court decided the materials (T-visa application) are protected and confidential. No exceptions are permitted.

# *Motion in Limine*

- Precluding irrelevant or prejudicial evidence
- Limiting disclosure of confidential records
- Restricting testimony or questions
  - Collateral questions, not necessarily about immigration status
- Excluding Personally Identifiable Information (PII)

# ISSUES THAT ARISE FOR IMMIGRANT SURVIVORS IN FAMILY LAW CASES



# PROTECTION ORDERS



# Immigrants and Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- Immigrant victims and their children often need creative protection order remedies using the state catch-all provisions

# True or False?

Violation of a protection order is a  
deportable offense ?

# Protection Orders Involving Immigrants

- Violation of a protection order is a deportable offense
  - Can lead to loss of lawful permanent residency and other immigration consequences for the perpetrator
  - A finding of violation of the protective provisions of a protection order in any context can trigger deportation including findings in civil contempt cases and admissions for diversion
- Victims should not agree to issuance of CPOs against them.

# Small Group: Which the following is a deportable offense?



- A. Domestic violence criminal conviction
- B. Finding in a custody case that a protection order was violated by further abuse of the victim
- C. Criminal conviction for violating a protection order
- D. Agreeing to diversion in a protection order enforcement case where upon violation diversion turns into a conviction
- E. All of the above

# Best Practices

- Ask for Issuance of Padilla advisals in protection order cases
- In cases in which parties seek protection orders against each other:
  - When one party is pro se and the other is represented consider appointing counsel for the unrepresented party

# Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes, opportunity to offer remedies designed to help:
  - Curb future abuse, harassment
  - Interfere with abuser/perpetrator's 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

# Poll: Why Might Victims Not Separating From Their Abusers Seek Protection Orders?

(Check all that apply)



- A. Living in extended families
- B. Limited housing options
- C. Awaiting legal work authorization
- D. Curb abuse
- E. Help shift power and control in relationship



# The Majority of Immigrant Victims Stay With Their Abusers ...

- Until the victim receives work authorization as part of their immigration case or until their case is approved
- Percent who leave before receiving work authorization or approval
  - VAWA self-petitioners 33.9%
  - U visa victims 30.1%

# Victims Who Stay: No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions:
  - No abuse
  - No unlawful contact
  - Batterer's treatment

# Use Creative Remedies to...

- Stop immigration-related abuse
- Protect victims still living with their abusers
- Obtain documents the qualified victim needs for their immigration case or for the care of a child
- Deter parental kidnapping
- Child/Spousal support
  - Affidavit of support
- Health insurance

# Helpful Evidence

## **Evidence of Legal Marriage**

- Marriage certificate
- Wedding/family pictures
- Health insurance

## **Good Faith Marriage**

- Children birth certificates
- Love letters, cards, text, emails
- Copies of joint leases/utility bills
- School records
- Letters and other mail addressed to the victim and to the abuser at the same address

## **Evidence of Abuse or Extreme Cruelty**

- Police, medical, court documents about the relationship
- Protection order
- Affidavits of neighbors, relatives, friends

## **Evidence of Abusers Legal Status**

- Abuser's green card or passport
- Copy of I-130 petition
- Social security number

# Economic Remedies

- Child support
- Spousal support
- Enforce Affidavit of Support
- Rent/Mortgage
- Pay for relocation
- Payment of Medical bills
- Household maintenance
  - Utilities, home insurance
- Maintain spouse & children on health insurance
- Tax remedies
- Pay for Repairs/replacement
  - Car, tires, windows, locks, cell phones, passports, identification cards, important documents
- Payment of
  - Credit card debt
  - Children's sports, travel, music lessons, religious school expenses
- Shall not dissipate assets

# CUSTODY OF CHILDREN IN IMMIGRANT FAMILIES

Tool: Immigrant Victims and  
Custody Bench Card

# Immigration Legal Remedies Promote Better Family Court Outcomes

- After filing
  - Mothers seek protection orders and include children
    - VAWA self-petitioners 63%; U visas 67%
  - Mothers seek custody orders
    - VAWA self-petitioners 60%; U visas 64%
  - Co-occurring child abuse declines from 77% to 23%
- After work authorization and deferred action
  - 78% decline in threats to snatch/cut off access to children

Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Survivors and Their Children After Employment Authorization and Legal Immigration Status (June 8, 2021) <https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report> ; Krisztina E. Szabo, David Stauffer, Benish Anver, Authorization For VAWA Self-Petitioners and U Visa Applicants, NIWAP (Feb. 12, 2014) and Rodrigues et al. Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey (May 3, 2018); Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004) <http://niwaplibrary.wcl.american.edu/pubs/co-occurencedvchildabuse/>

# 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. The parent has no livelihood
3. Legally present parent must have custody to file for child's legal immigration status

### Fact

1. VAWA Confidentiality laws can prevent detention/removal of immigrant victims
2. Abused immigrant parents in family court are qualified for immigration legal remedies, work authorization, services & some benefits
3. Custody does not affect parent's ability to file for or gain immigration legal remedies for qualified children

# Poll: Who is the *least* likely to flee with children from the United States?



- A. U.S. citizen parents
- B. Immigrant victim parents without or pending legal status
- C. Dual national parents
- D. Multiple entry visa holder parents

Fact: Legal immigrants/naturalized citizens are more likely to flee  
with children

- **Particularly when**
  - There have been threats of kidnapping children
  - They are dual nationals
  - They can travel freely to and from U.S.
- The Ninth Circuit found that “there is no evidence that undocumented status correlates closely with unmanageable flight risk.” *Lopez-Valenzuela v. Apaio*, 770 F.3d 772, 786 (9th Cir. 2014).

# PA Rule of Evidence Rule 413

- Civil Matters; Evidence Generally Inadmissible.
- In any civil matter, evidence of a party's or a witness's immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the action, or to show bias or prejudice of a witness pursuant to Rule 607.
- <https://www.pacourts.us/Storage/media/pdfs/20210813/154112-ruleofevidence413isadopted.pdf>

# 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:
  - 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

# International Issues In Custody

- Passport Issues
- Jurisdiction
- Convention on the Civil Aspects of International Child Abduction
- Concept of “Habitual Residence”
- Problems with Non-Hague Countries

# International Child Abduction

- Risk factors when victim is fearful abuser will take children to home country:
  - strong ties to another country
  - involvement in an intimate partner relationship with a partner from a different country of origin
  - previous threats to abduct the child
  - the parent feeling alienated from the U.S. legal system
  - or the parent has paranoid or delusional tendencies or exhibits psychopathic behavior
  - <https://www.ojp.gov/pdffiles1/ojjdp/190105.pdf>

# In your work with immigrant survivor parents:

- Having a plan in case a parent is detained or deported
- No easy, clear solution. Very dependent on family's situation
- Considerations:
  - Other parent and paternity
  - Travel and international travel
  - Medical and educational decisions
- For further information visit
  - [https://www.ilrc.org/sites/default/files/resources/family\\_preparedness\\_plan.pdf](https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf)
  - <https://philalegal.org/sites/default/files/attachments/2025-02/Family%20Preparedness%20Plan%20Final%20%281%29.pdf>



# DIVORCE AND ECONOMIC SUPPORT

# Impact of Divorce

- VAWA self-petitioners:
  - Spouse must file within two years of final divorce
  - Step-children must file before divorce
- Ends legal visas for spouses and children of visa holders:
  - Students, Work Visa Holders, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
  - Employment
  - Asylum
  - Family relationships
  - 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 an immigration legal remedy to an otherwise qualified immigrant
- Impacts
  - Spousal support
  - Property division

# Affidavits of Support <https://niwaplibrary.wcl.american.edu/pubs/affidavits-of-support-bench-card/>

- Each person who petitions for a family member to immigrate to the United States must execute a legally enforceable affidavit of support. 8 U.S.C. § 1182(a)(4)(C)(ii)
  - Contractually committed to support sponsored family member at annually at 125% of Federal Poverty Guidelines
- Affidavits of Support are enforceable as contracts by the sponsored immigrant
- Support obligation lasts till immigrant spouse
  - Naturalizes, dies, earns 40 quarters of work credit, or gives up lawful permanent residency and leaves the U.S.

# I-864 Case Law

- Love v Love 33 A.3d 1268 \*; 2011 Pa. Super. LEXIS 4305 \*\*; 2011 PA Super 268
  - Immigrant spouse no duty to mitigate
  - Do not impute earning capacity
- Motlagh v. Motlagh 2017-Ohio-8667 \*; 100 N.E.3d 937 \*\*; 2017 Ohio App. LEXIS 5095 \*\*\*; 2017 WL 5632723
  - Spousal support and obligation under I-864 are different but can & should be enforced in same action; attorney's fees

## Child Support In Immigrant Families: The **Parent Paying Child Support**

- Payment of child support through the court provides a non-citizen parent with a history of child support payments
- This is helpful evidence of good moral character for immigration cases
  - Cancellation of removal
  - Naturalization
  - In immigration court
    - Can be used to show hardship to family members

## Child Support In Immigrant Families: The Parent Receiving Child Support

- Provides a custodial immigrant parent with evidence of child support that can be used as income in when applying for lawful permanent residency
- Obtaining child support awards can provide helpful evidence of good moral character
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies

## Issues Arising in Immigrant Victims' Child Support Cases

- Lack of legal work authorization is not a valid defense to non-payment of child support
- Can order child support, but not a job search, of a non-custodial parent without work authorization
- Can order non-custodial parent to obtain an ITIN and pay taxes
- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related crimes of moral turpitude



# Special Immigrant Juvenile Status (SIJS)

# Raise Your Hand

If you have requested SIJS judicial determinations from a family court judge for children of your domestic violence victim clients?



# Large Group Discussion

How does seeking SIJS for a domestic violence or sexual assault survivor's child help the immigrant survivor?

## Special Immigrant Juvenile Status (SIJS)

- Humanitarian immigration legal remedy 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 judicial determination is a required filing prerequisite**
- Provides evidence for child's SIJS 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 Family Court Judge Awards Custody

- Child is dependent on a juvenile court 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 (through adjudication by USCIS)
- 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)

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

- Dependency/Delinquency
- Civil protection order cases
- Custody cases
- Divorce cases
- Paternity and child support cases
- Adoption 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>

## Return to Home country not in child's best interests

- Identify each potential custodian state law requires the court to consider in U.S. and home country
- Apply state best interests factors to each placement
- Court order states the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
- Then, if relevant, address other country conditions
  - Gangs, other harmful factors

# Finding: Reunification Not Viable

- Reunification with a parent is not viable due to abuse, neglect, abandonment, or similar state law basis
- 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
  - Duration: through adjudication of SIJS application
- Changes in circumstances can occur
  - But not granting full legal/physical custody to abusive parent



# Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state law under which the court is exercising jurisdiction.
- Follow your state court procedures and note that you do so to demonstrate that the court made an informed decision.

# 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 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

# U VISAS PROMOTE TRUST AND PARTNERSHIP WITH LAW ENFORCEMENT AND PROSECUTORS

# U Visa Requirements

## Victim

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

## Helpfulness

- Victim has been, is being, or is likely to be helpful in *any of the following*:
  - Detection
  - Investigation
  - Prosecution
  - Conviction
  - Sentencing

## Harm

- Substantial physical or mental abuse as a result

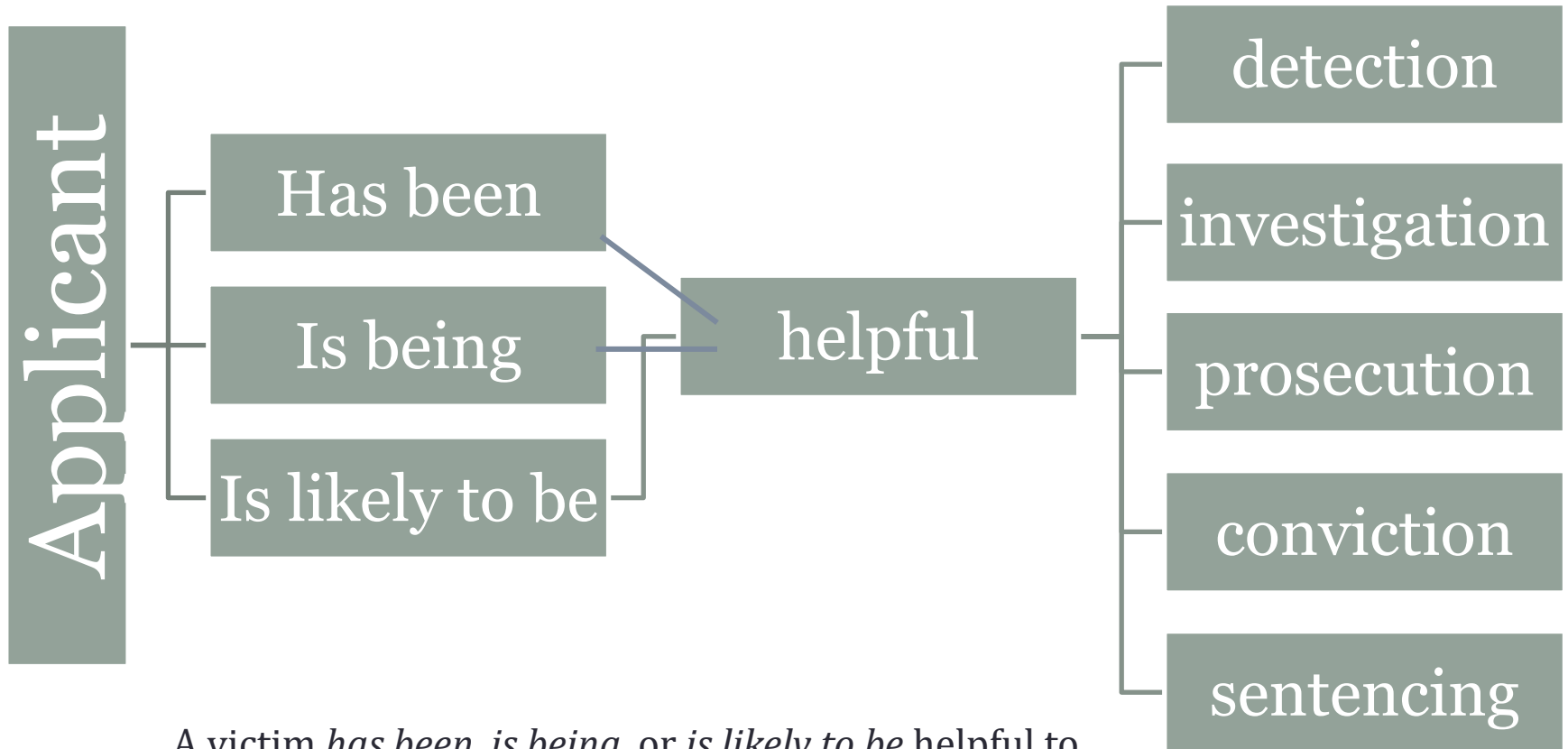
This is not a part of the certification.

# Who can apply?

- Parents and guardians can apply as an “indirect victim” if:
  - The direct victim is a child under 21 years of age and/or is incompetent, incapacitated, or deceased due to murder or manslaughter
  - They demonstrate helpfulness
- When the victim is a child, the helpfulness requirement can be met by a “next friend” or family member being helpful
- Bystander victimization – very limited

# Definition of “Helpfulness”

8 C.F.R. 214.14(b)(3)



*A victim has been, is being, or is likely to be helpful to law enforcement, prosecutors, judges, or other government officials*

# Determining Helpfulness

- Certifying agency determines “helpfulness”
- No degree (or timing) of helpfulness required
  - DHS adjudicates helpfulness based on– totality of the circumstances
- Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
- Victim’s criminal history does not preclude U visa eligibility, particularly when crime connected to the abuse
- The investigation or prosecution can still be ongoing
- Certification can be “revoked”

What are some examples of  
helpfulness?



# Helpfulness May Include:

Calling 911

Having a Rape Kit performed

Providing a description of offender or their whereabouts

Allowing photographs to be taken

Filing for a protection order

Bringing a minor victim to court

Providing a statement about “other bad acts”

Providing evidence of abuse in a custody, child welfare, or divorce case

Testifying at a bond hearing, trial, or sentencing

# Why Victims Seek Judicial Certifications

- The victim's only contact with the justice system was in a custody, civil protection order, employment, or child welfare case
- No language access to police when victim called for help
- Police did not investigate and case never sent to prosecutor
- Judge observed victim's attendance and participation in criminal case

## Part 6. Certification

I am the head of the agency listed in **Part 2**, or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. ~~Based upon investigation of the facts, I~~ certify, under penalty of perjury, that the individual identified in **Part 1**, is or was a victim of one or more of the crimes listed in **Part 3**. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. ~~I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.~~

1. Signature of Certifying Official (sign in ink)



2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

Judges can amend the form

Examples: Based upon ...

- My findings of fact or ruling in [name type of proceeding]
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case

REMEMBER: This is a certification that you believe the applicant was a victim of a crime.

Certification provides evidence to DHS.

DHS adjudicates and decides whether to grant the victim an immigration remedy.

# Technical Assistance and Materials

- Power Point presentations and materials for this training at <https://niwaplibrary.wcl.american.edu/PAVOCA2025>
- **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

**Thank you!**