

Improving Access to Justice for Immigrant Victims of Domestic and Sexual Violence

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Join the National Judicial Network (NJJN)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJN (480 judges – 44 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
- **We are circulating a sign-up sheet**

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 and criminal court cases
- Recognize facts that indicate a party qualifies for crime victim related forms of legal immigration status
- Understand the role Congress created for state court judges in signing U and T visa certifications and issuing Special Immigrant Juvenile Status (SIJS) judicial determinations
- Know how Violence Against Women Act (VAWA) confidentiality laws impact discovery and courthouse enforcement
- Look up which immigrants qualify for which publicly funded benefits and services in Pennsylvania

**Many Immigrant Victims of
Domestic Violence, Child
Abuse, Sexual Assault and
Other Crimes Are Eligible for
Legal Immigration Protections**

Purpose Crime Victim Based Immigration Relief

Congress enacted VAWA self-petitioning (1994), the U and T visas (2000, 2005, 2008) & Special Immigrant Juvenile Status (SIJS) (1990,2008) to:

- Enhance victim safety
- Allow victims to report crimes and seek help from police, prosecutors, and courts without fear of deportation
- Improve access to justice in family/criminal/civil courts for immigrant victims of
 - Domestic & sexual violence, stalking, human trafficking and child/elder abuse
- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Keep communities safe



U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

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.

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

If approved, benefit provides:

- Asylum status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

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

If approved, benefit provides:

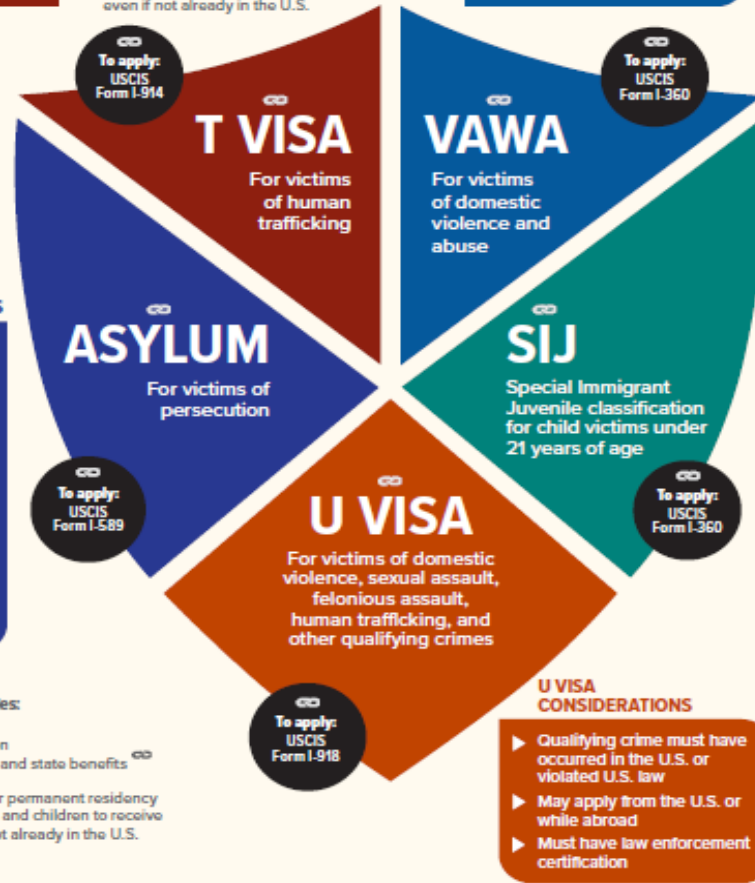
- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

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



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



Center for Countering Human Trafficking

Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
 - Child abuse
 - Elder 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
 - Hate Crimes
 - Video voyeurism
 - **Parent perpetrated**
 - **Child abuse**
 - **Child neglect**
 - **Child abandonment**
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
 - Legal work authorization (6 months to 2 years from filing)
 - Issuance of federally recognized driver's licenses and IDs
 - Increased access to federal and state public benefits
- VAWA confidentiality
- Implication for the community

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
- *2025 time to work authorization ≈ 4-42 months*
- **Battered Spouse Waiver**
 - Same group of victims – cases where abuser filed for victim
 - Removes requirement that victim stay with abuser for 2 years
 - *2025 time to approval ≈ 24 to 29 months*

Special Immigrant Juvenile Status (SIJS)

- Immigration legal remedy 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 the required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- *2025 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
- *2025 time to work authorization \approx 39.2 months*

T Visa for Trafficking Victims

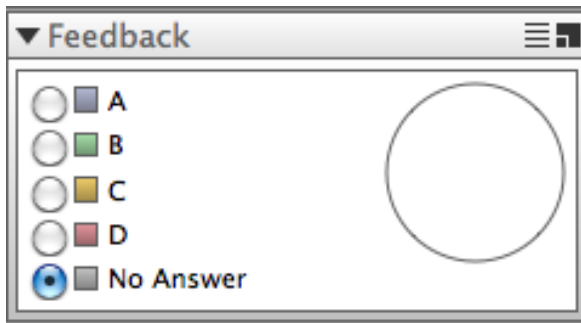
- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.S. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking.
Exceptions
 - Under age 18
 - Physical or psychological trauma impedes helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- *2025 time to work authorization ≈ 6 months*

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 called the police for help, and Clara talked to the 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:

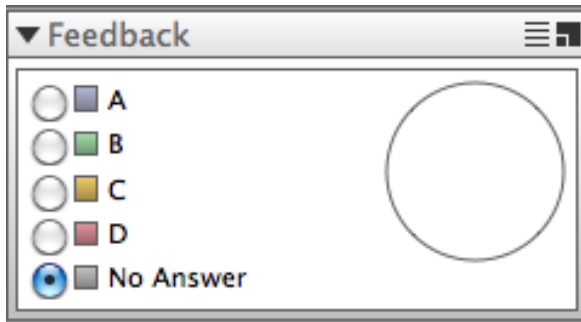
- A. U visa
- B. Included in Lupe's VAWA self-petition
- C. T visa
- D. File her own self-petition



The image shows a 'Feedback' window with a title bar containing a dropdown arrow and the text 'Feedback'. Below the title bar is a list of radio button options: A (blue square), B (green square), C (yellow square), D (red square), and No Answer (grey square). The 'No Answer' option is selected, indicated by a blue dot in the center of its radio button. To the right of the options is a large empty circle.

What forms of immigration relief would Miguel and Lupe qualify for:

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



Feedback

A

B

C

D

No Answer

Evidence Based Research

Evidence Based Research Has Found Increased Access to Justice

- Courts that issue U/T visa certifications and SIJS judicial determinations
 - See greater numbers of immigrant victims seeking protection orders & custody, and participating in criminal, civil, and family cases
 - Even in times of increased anti-immigrant sentiment and immigration enforcement

Rodrigues, Orloff, Couture-Carron, and Ammar, Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Recommendations, **National Center for State Courts, Trends in State Courts** (2018)

<https://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings/>

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

- Increased justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 60% seek protection orders and/or custody
 - 22% help other victims report abuse and seek help/justice
- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
 - 74% decline in immigration-related abuse
 - 78% decline in threats to snatch/cut off access to children
 - 65% decline in efforts to use the immigration status of the victim to gain an advantage in family court

VAWA Confidentiality, Courthouse Enforcement, and Impact on State Court Discovery

Key 2025 Policies

- Enforcement at Protected Areas (Jan. 20, 2025) & Courthouse Enforcement (Jan. 2025) Policies
 - Sensitive location policies cancelled
 - Require supervisor approval for courthouse enforcement in noncriminal cases and courthouses
- Interim guidance on Victims 11005.4 Jan. 31, 2025
 - Revoked 2011 and 2021 Policies That Required:
 - Prosecutorial discretion for victims who had filed victim-based immigration cases with limited exceptions
 - ICE/CBP look for indicia/evidence of victimization and consider this as a positive factor
 - Seek expedited adjudication of victim's cases
 - *Required ongoing adherence to VAWA confidentiality statutes and implementing policies*

VAWA Confidentiality Prongs

8 U.S.C. 1367 and 8 U.S.C. 1229(e)

Non-Disclosure

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

Violation = \$5,000 fine and/or disciplinary action & immigration judge may dismiss case

Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators and their agents

Protects:

- ***All victims abused by a spouse or parent**
- *All victims in the process of applying for U or T visas
- *Abused spouses of visa holders with VAWA work authorization filed

Location Prohibitions

Protects: **All Victims**
Requires:
No action at protected locations
OR
Notice to Appear must state how they complied with VAWA confidentiality

VAWA Sensitive Location Prohibitions

8 U.S.C. 1229(e)

- Enforcement actions are not to be taken against a victim without proof of non-reliance on perpetrator provided information and supervisor approval at:
 - 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, battering or extreme cruelty, or any T or U visa criminal activity



ICE Policy 11072.3 Court House Enforcement (January 2025) - Non-Criminal Court/Case Limitations

- “ICE officers and agents should generally avoid enforcement actions in or near courthouses, or areas within courthouses, that are wholly dedicated to non-criminal proceedings (e.g. family court, small claims court). When an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required prior to conducting the enforcement action.”

https://niwaplibrary.wcl.american.edu/pubs/2025-01_ice_courthouse_enforcement_guidance/

Civil Enforcement at Courthouses - Limitations

ICE Policy 11072.3 - January 21, 2025

- ICE Policy requires that civil immigration enforcement actions
 - Generally in criminal cases, and should be conducted in collaboration with court staff
 - Will take place in non-public areas of the courthouse
 - Will be conducted against targeted immigrants discretely to minimize impact on court proceedings
 - Should generally avoid being conducted in or near courthouses and courtrooms wholly dedicated to noncriminal proceedings
 - Make every effort to not disrupt court cases and court operations
 - Make substantial efforts to avoid alarming the public.

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 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”

State v. Marroquin-Aldana – Criminal Case

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

New Mexico Supreme Court Ramirez & Reyes-Mendoza v. Marsh S-1-SC-39966 (May 7, 2024)

- VAWA confidentiality protections preclude discovery of U or T visa applications and related materials in a criminal case from:
 - The victim or the victim’s family members
 - The victim’s immigration attorney
- The Court issued two writs of superintending control overturning judicially ordered discovery

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.

In the Clara and Eduardo Scenario which of the following is discoverable in a state court case?



- A. Information from Clara's VAWA self-petition file in Eduardo's criminal case
- B. Information from Clara, Lupe's or Miguel's VAWA, T or U visa immigration case files in a family court case
- C. U visa certification signed by law enforcement, prosecutors or a judge in the criminal prosecution of Eduardo
- D. U visa certification signed by law enforcement, prosecutors or a judge in a custody case between Clara and Eduardo

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

Resources

- Resources on Civil Immigration Enforcement At Courthouses (March 31, 2025)
<https://niwaplibrary.wcl.american.edu/pubs/courthouse-enforcement-resources/>
- Sample Letters From Courts for ICE Officers At Courthouses (March 2025)
<https://niwaplibrary.wcl.american.edu/pubs/sample-letters-from-courts-for-ice-officers-at-courthouses/>
- ICE Courthouse Enforcement Guidance 11072.3 Jan.2025, VAWA Confidentiality Statutes, and DHS Implementation Policies
<https://niwaplibrary.wcl.american.edu/pubs/attachments-a-d-ice-courthouse-handout/>
- ICE Office of Principal Legal Advisor (OPLA):
<https://www.ice.gov/contact/field-offices>

U Visas Promote Trust and Access to Justice: U Visa Certification By Judges

U Visa Requirements

Victim (Certification)

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law
- Admissible to US or granted waiver

Helpful (Certification)

- Has been, is being, or is likely to be
- Detection, investigation, prosecution, conviction, or sentencing

Harm (Victim's Application)

Substantial physical or mental harm as a result of having been a victim of criminal activity

U Visa Criminal Activities

- Domestic violence
 - Child abuse
 - Elder abuse
 - Abuse of disabled adults
 - Sexual assault
 - Rape
 - Incest
 - Prostitution
 - Torture
 - Felonious assault
 - Manslaughter
 - Murder
 - Female genital mutilation
 - Kidnapping
 - Abduction
 - Unlawful criminal restraint
 - False Imprisonment
 - Trafficking
 - Involuntary servitude
 - Slave trade
 - Being held hostage
 - Hate Crimes
 - Fraud Foreign Labor Contracting
 - Peonage
 - Blackmail
 - Extortion
 - Witness tampering
 - Obstruction of justice
 - Perjury
 - Stalking
 - Abusive sexual contact
 - Sexual exploitation
 - Video voyeurism
 - Aggravated robbery
- Attempt, conspiracy, or solicitation to commit any of these crimes or any similar activity**

Which Judicial Officers Can Certify?

- Federal, state, & local
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
 - Others with delegated decision-making authority
- Judge will need to amend the form

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 and identifies the crime(s).

Certification provides evidence to DHS.

DHS adjudicates and decides whether to grant the victim immigration relief.

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

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

Why 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

What Helpfulness do Judges See?

- Certification based on helpfulness to courts
 - Detection(family/juvenile/civil/criminal)
 - Filing pleadings
 - Testimony
 - Attending court
 - Seeking court orders
 - Working with police/prosecutors
 - Conviction/Sentencing
 - Criminal cases
 - Contempt proceedings

Things to Know About Certification

- Judges, law enforcement and other certifiers
 - May complete U visa certification if they
 - Observe or detect a victim's helpfulness
 - Can be a civil, family or criminal case
- The investigation, prosecution or family court case
 - Can still be ongoing
 - Can be closed or may have settled/plead
 - Offender may not have been identified or arrested
 - May have occurred a long time ago
 - No statute of limitations
 - May never have been criminally prosecuted

Special Immigrant Juvenile Status

Raise your hand if you have issued SIJS findings in your court orders.



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 judicial determination is a required SIJS filing prerequisite**
- Provide 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 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.
- **Child's best interest** would not be served by being returned to his or her country of origin.
- **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)

8 U.S.C. § 1101(a)(27)(J)

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

- Dependency/Delinquency
- Custody, divorce and civil protection order cases
- Paternity and child support cases
- Adoption and termination of parental rights cases
- DHS states: All are of the above = *Juvenile courts*
 - Juveniles = all children
- Velasquez v. Miranda 321 A.3d 876 (2024)
<https://niwaplibrary.wcl.american.edu/pubs/supreme-court-opinion-and-judgment-velasquez/>
- 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

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.
- Service of process tool

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

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
- Dangers of issuing protection orders against immigrant victims

True or False?

Violation of a protection order is a deportable offense ?



True



False

Protection Orders and Immigration Considerations

- 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 be charged with violation of orders issued for their own protection orders
- Issue Padilla warnings
- Appoint counsel if one party is unrepresented and both have filed for protection orders

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
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

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

Custody of Children in Immigrant Families

Tool: Immigrant Victims and Custody Bench Card

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

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. 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 crime victims
2. US citizens and lawful permanent residents 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

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 immigration status 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:
 - Asylum
 - Employment
 - 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 immigration relief
- Impacts
 - Spousal support
 - Property division

Affidavits of Support

- 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
 - Sponsor submits to DHS evidence of ability to support sponsored family member
- 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.

Child Support & Immigration

- Payment of child support through the court provides a non-citizen parent with a history of child support payments that is
 - Helpful evidence of good moral character for either parent's immigration cases
 - VAWA self-petition, Cancellation of removal, Naturalization
- 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 an undocumented non-custodial parent
- Can order non-custodial parent to obtain an ITIN and pay taxes

Why public benefits matters to a Judge?

How judges ensure that court orders help children and families in Pennsylvania access public benefits and services they are legally eligible to receive?

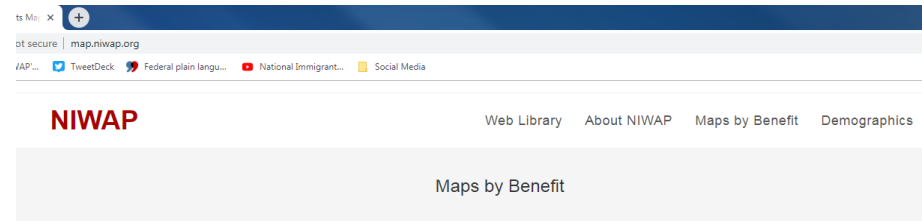
Both documented and undocumented immigrants can access:

- 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

HHS Child Eligibility Letters

- TVPA requires 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
- The RFA for a trafficked child must be filed **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

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.

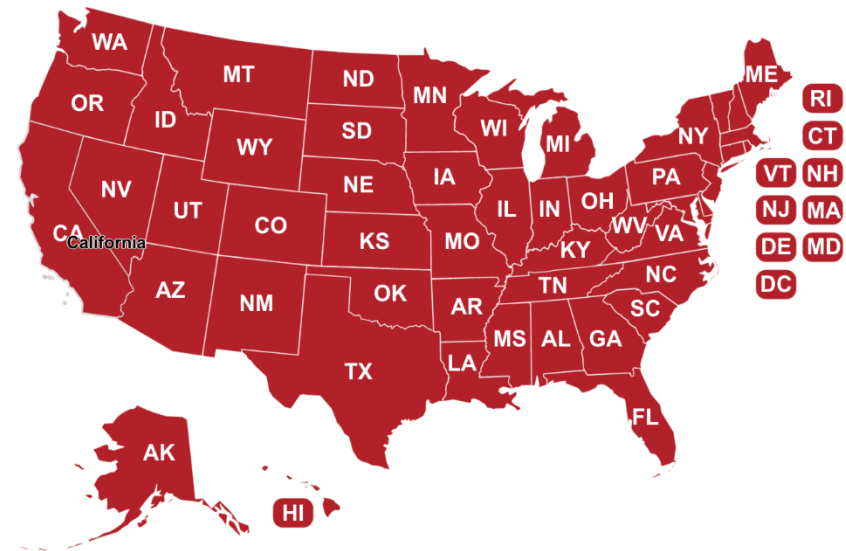
[Go to Map](#)



Earned Income Tax Credit



Emergency Housing & Safety Programs



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

How Immigration Status Impacts Benefits Access in Pennsylvania

Early Access

- VAWAs, Ts, Us, SIJS, DACA, trafficking victims, refugees:
 - TANF, Childcare, Health care for children under age 19 and pregnant persons, adult health care, health care exchanges
- Refugees, Ts, CP:
 - Medicaid, SSI, driver's licenses, SNAP
- VAWAs, Ts, CP, Refugees:
 - FAFSA, Public and assisted housing, LIHEAP

Substantial Wait (Years)

- SIJS Children (3-5 years): SNAP (as children), FAFSA, public assisted housing, LIHEAP, FEMA,
- VAWAs: SNAP adults (5 yr/40 Qs), Driver's licenses (3+ years)
- U visas (20+ years)
 - SNAP, public assisted housing, FAFSA, LIHEAP, FEMA
- SSI (10) – VAWAs, Us, SIJS

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <https://niwaplibrary.wcl.american.edu/philadelphia-judges-2025/>
- SJI/NJN Judicial Training Materials <https://niwaplibrary.wcl.american.edu/pubs/njn-sji-training-materials/>
 - **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
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