

When Federal Immigration Laws and State Laws Intersect: Promoting Just and Equitable Outcomes for Immigrant Survivors and Children

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Philadelphia, PA

February 21, 2025

Thank You to SJI

This project was supported by Grant No. SJI-24-T-046 from the State Justice Institute. The opinions, findings, conclusions, and recommendations expressed by program faculty and in program materials are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

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<https://www.surveymonkey.com/r/BBHR3X3>

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) victim safety, access to justice and discovery
- 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 Immigration Relief

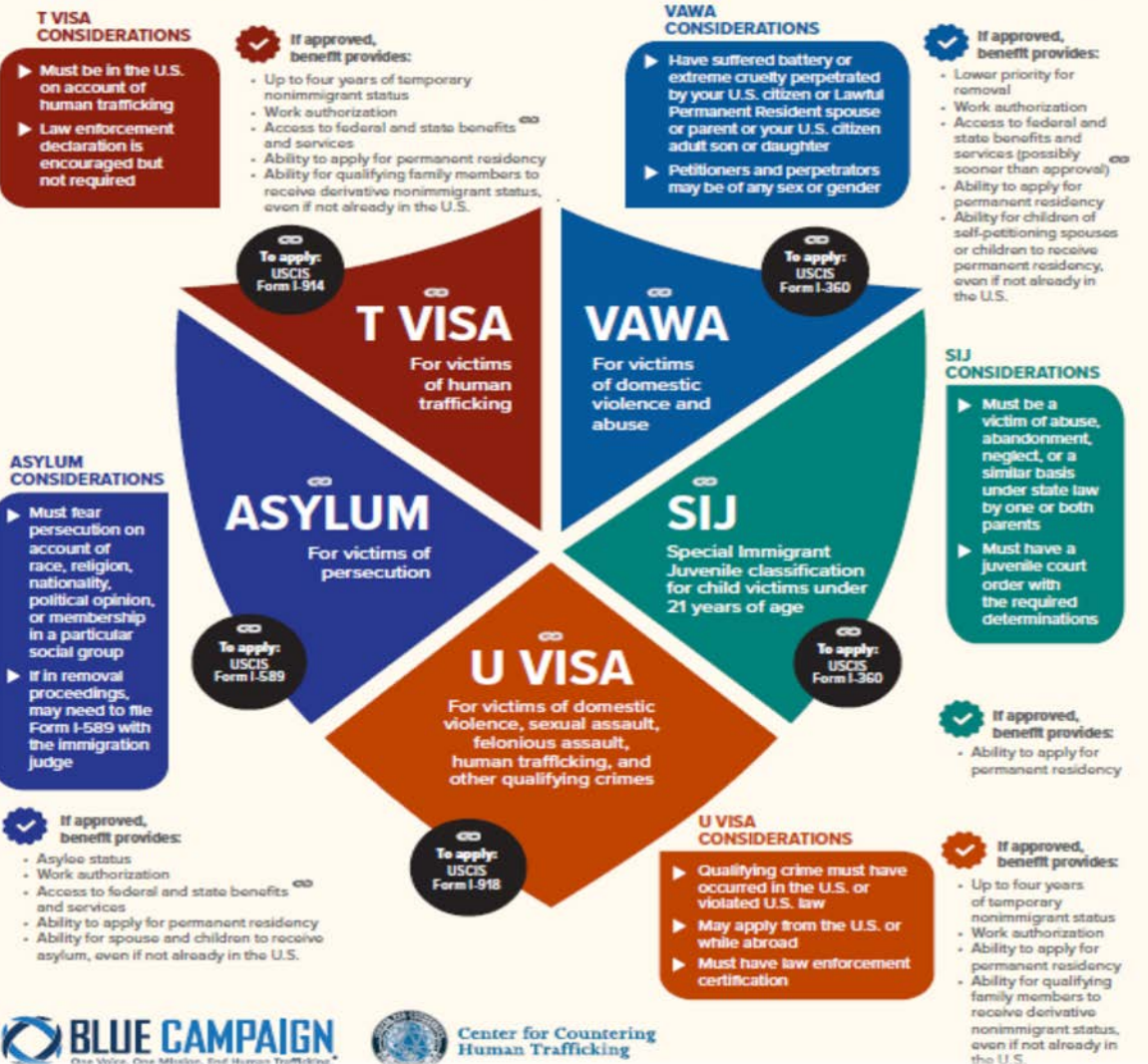
Purpose Crime Victim Based Immigration Relief

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

Immigration Protections for Noncitizen Victims of Crime and Abuse



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
 - Immigration law definition of domestic violence
- 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

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**

Involuntary Servitude in a Domestic Violence Relationship

- Abuser/Trafficker controls victim's liberty creating conditions of servitude
- Expectation that the victim's life fulfills the trafficker's orders
 - E.g., demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and/or constant availability to labor regardless of health or energy;
- Lack of control over the victim's own wages (or not paid) despite laboring under the trafficker's demands; or
- The imposition of unequal living arrangements as part of a campaign of force, fraud, and coercion
 - E.g., unequal sleeping arrangements, living arrangements, or access to nourishment.

<https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>

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

Feedback

A

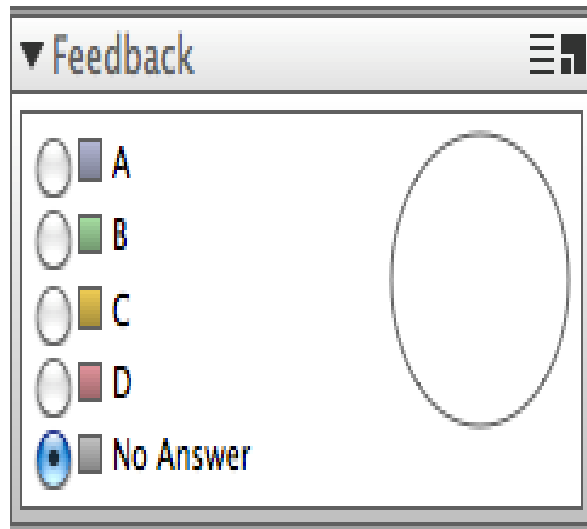
B

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

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

Excerpts of speech of Hon. John Conyers, Jr.

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

Re: VAWA 2005 (12/18/2005)

VAWA Confidentiality Prongs

Non- Disclosure

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

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

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 seeking 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

Bars Limiting Reliance Upon Information Provided by a Perpetrator

- The government cannot gather and/or use information provided solely by:
 - A domestic violence or child abuser
 - A sexual assault or stalking perpetrator
 - A trafficker
 - The perpetrator of any U visa listed criminal activity
 - The perpetrator's family member
 - Other persons associated with the perpetrator
- To take an adverse action against a victim
- 8 U.S.C. 1367(a)(1)

Adverse Actions Include Using Perpetrator Provided Information To...

- Deny a victims immigration case
- Detain a victim
- Deport a victim
- Initiate an immigration enforcement action against a victim
- Seek out, question or detain a victim at a prohibited location, including courthouse

Violations of perpetrator provided information bar

- Can result in dismissal of the immigration proceeding against the non-citizen
 - (VAWA 2005 legislative history)



- Have led to DHS investigations that resulted in demotions and other job sanctions

VAWA Confidentiality Sensitive Locations

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - A shelter
 - Rape crisis center
 - Supervised visitation center
 - Family justice center
 - Victim services program or provider
 - Community based organization



Are Courthouses Sensitive Locations?

- Courthouses are not considered sensitive locations
- Exception: VAWA confidentiality statutes and DHS policies treat courthouses as sensitive locations with regard to victims of
 - Domestic violence, sexual assault, human trafficking, stalking, battering or extreme cruelty, any U visa or T visa listed crime

Enforcement at courthouses must be against targeted immigrants

DHS Policies (ICE & CBP) 2021 ICE Policy January 21, 2025

- A civil immigration enforcement action may be taken in or near a courthouse only in limited instances, including the following:
 - Involves national security,
 - There is an imminent risk of death, violence, or physical harm to any person,
 - Hot pursuit of an individual who poses a threat to public safety, or
 - Imminent risk of destruction of evidence material to a criminal case.
- Civil immigration courthouse enforcement will be planned against a targeted immigrant who
 - Is a threat to national security or public safety
 - Has criminal conviction(s)
 - Is a gang member
 - Has been ordered removed and failed to depart, or
 - Has re-entered the country illegally after being removed

Enforcement Against Other Persons At Court Jan. 21, 2025 Policy

- “Other aliens encountered during a civil immigration enforcement action in or near a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, may be subject to civil immigration enforcement action on a case-by-case basis considering the totality of the circumstances.”

Civil Enforcement at Courthouses - Limitations

DHS Policies (ICE & CBP) 2021

- Must be approved in advance by a Field Office Director, Special Agent in Charge, Chief Patrol Agent, or Port Director
- Take place in non-public area
- Be conducted in collaboration with courthouse security personnel
- Utilize the courthouse's non-public entrances and exits
- Be conducted at the conclusion of the judicial proceeding that brought the individual to the courthouse

ICE Policy January 21, 2025

- Take place in non-public areas
- Be conducted in collaboration with court staff and security
- Use non-public entrances/exits
- When practicable conduct enforcement actions discretely to minimize impact on court proceedings
- Avoid courthouses/areas within courts dedicated to non-criminal cases (e.g. family, civil, small claims) – supervisor approval required
- Make substantial efforts to avoid unnecessarily alarming the public or disrupting court operations

VAWA Confidentiality 8 U.S.C. 1367

All DHS Directive 002-02-001.1 (2019)

- Protections apply “even if the alien has not applied for or does not intend to apply for a victim-based application or petition”
- “If a DHS employee suspects that the provisions and relevant policy were not followed, the employee immediately brings the issue to the attention of his or her immediate supervisor rather than issuing the NTA.”
- “[I]t is clear that Congress intended that arrests of aliens at such locations to be handled properly given that they may ultimately benefit from VAWA’s provisions”

Steps Courts Are Taking

- Restrict activities that interfere with courtroom operations
- Enforcement restricted to non-public areas of the courthouse*
- Courts ask ICE to coordinate with court security staff and use of non-public entrances & exits*
- Some courts do not allow ICE into courtrooms
- No enforcement in civil and family proceedings absent written authorization from ICE Field Office Director or Special Agent in Charge*
- No interruptions during court proceedings or until case is completed
- No enforcement against victims, witnesses, family members, people accompanying others to court*
- Call courthouse security if ICE fails to comply with court orders

Implications of VAWA Confidentiality

State Court Discovery

- 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

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”

People v. Alvarez Alvarez- Criminal Case

No. G047701, 2014 WL 1813302, at *5 (Cal. Ct. App. May 7, 2014),
review denied (July 16, 2014)

- “The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status...which was completely irrelevant to this case.”
- The trial court was well within its discretion in excluding reference to the U visa

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

**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 issues 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.

PROTECTION ORDERS



NIJ Funded CPO Study Found

With support, immigrant victims will use and benefit from justice system assistance

- 60.9% did not know about CPOs
- 81% got CPO with help from a victim advocate or attorney
- 96% found them helpful
- 68.3% of violations immigrant related

Ammar, Orloff, Dutton, and Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research Criminal Justice Review 37:337 (2012)

More immigrant survivors seek Civil Protection Orders from courts that...

- In times of increased immigration enforcement more immigrant victims turned to courts that
 - Provide language access
 - Sign U/T visa certifications
 - Issue Special Immigrant Juvenile Status findings
 - Outreach to immigrant communities
 - Rule against abusers who raise the victim's immigration status in CPO or custody cases

Rodrigues, Husain, Couture-Carron, Orloff, & Ammar, 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. (2018)

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

Creative Protection Order Remedies

Creative Protection Order Remedies

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

Victims Who Stay:

No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions
 - No abuse
 - No immigration related abuse
 - No unlawful contact
 - Batterer's treatment
- Over 30% of VAWA & U visa victims stay in abusive homes until they receive work authorization

Research Among Immigrant Victims Found

- Protection orders were effective in preventing or reducing recurring physical abuse
 - Including full contact protection orders issued to victims who continued to live with their abusers

Dutton, M. A., Ammar, N., Orloff, L., & Terrell, D. (2006). *Use and outcomes of protection orders by battered immigrant women* (Revised final technical report #2003-WG-BX-1004). Washington, DC: *National Institute of Justice Office of Justice Programs*, U.S. Department of Justice.

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

Key issues to address in protection order remedies

- Safety
- Custody and caring for children
- Housing
- Financial support
- Victims cultural, religious, and community support needs
- Importance of detailed orders and compliance reviews

Take the time initially when seeking/issuing a protection order to address victim's needs

- Cultural
- Religious
- Family traditions
- Immigration
- Education
- Social and community support system
- Sporting

Remedies that Address Cultural and Religious Needs of Victim and Children

- Cultural
 - Turn over photos, mementos, items of sentimental value from victim's home country
 - Restrain from cultural events victim attends
 - Prohibit interference with victim's ability to communicate with persons who speak their language
 - Document destruction as evidence of abuse
- Religious
 - Prohibit hex on victim
 - Allow ceremony to banish bad spirits in house
 - Set times when abuser cannot attend religious services
 - Religious holiday visitation

CPO Custody and Visitation Orders Need to Address

- Vacation time
- Birthdays
- Graduations
- Family events
 - 1st Communion
 - Religious holidays
 - Other examples

Economic Relief

- 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

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/>

NCJFCJ Model Code

Coercive Control

- Range of abusive behaviors beyond physical violence
 - Problematic and dangerous parenting
 - Intimidation, implicit/explicit threats, or compels compliance
 - Purpose of restricting victim's safety or autonomy, trapping them, or using cultural practices/beliefs or immigration status to instill fear and maintain control over the victim

See Revised Chapter Four: Families and Children Model Code on Domestic and Family Violence (December 30, 2022)

<https://www.ncjfcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/>

Immigration Law Definition of Domestic Violence (Battering or Extreme Cruelty)

Battering

- Physical violence against
 - Spouse/intimate partner
 - Child
- Use of a weapon
- Sexual abuse & assault
- Stalking
- Other acts defined as domestic violence under state law
- Attempts or threats to do any of these actions

Coercive Control = Extreme Cruelty:

- Strategies designed to retain control or establish domination through fear, dependence, deprivation, isolation, immigration related abuse
- Deprivation of basic necessities
- Controlling regulating, monitoring the victim
- Compelling through force, intimidation threats to abstain or engage in conduct against victim's will

Extreme Cruelty:

- Withholding medicine or medical care
- Adultery with a minor
- Financial abuse, seeking to destroy victim's credit
- Accusations of infidelity
- Using children as a tool
- Emotional abuse causing physical or psychological harm

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years.**

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." *International Review of Victimology* 7 93113

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

Edna Erez and Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003)

- Abuse rate rises to 59.5% when an immigrant's spouse/former spouse is a U.S. citizen

- Twice the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). *Battered Immigrants and U.S. Citizen Spouses*

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 is it Important for judges?

- Enhancing the economic stability of survivors and their children.
- Only ordering or directing survivors and children to seek state or federally-funded public benefits survivors and/or their children qualify

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

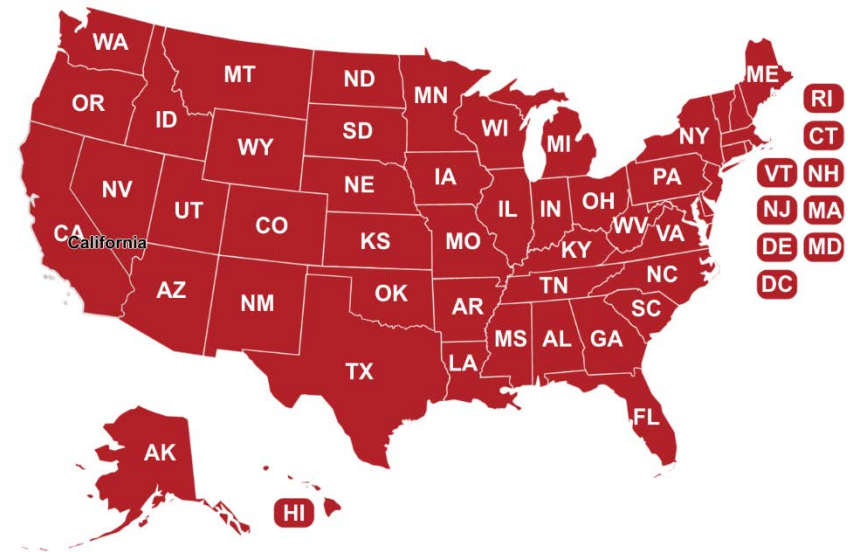
- TVPA requires government officials to report to Office on Trafficking in Persons within 24 hours of having credible information that an immigrant child “**may be a victim of trafficking**”
- HHS reviews Requests For Assistance (RFAs) and connects potential victims of trafficking with state and federal 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



<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

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

Immigration Relief Available for Immigrant Victims of —

- Domestic violence
 - Sexual assault
 - Rape
 - Incest
 - Prostitution
 - Torture
 - Felonious assault
 - Manslaughter
 - Murder
 - Female genital mutilation
 - Kidnapping
 - Abduction
 - Trafficking
 - Stalking
 - Involuntary servitude
 - Slave trade
 - Being held hostage
 - Fraud Foreign Labor Contracting
 - Peonage
 - False Imprisonment
 - Blackmail
 - Extortion
 - Witness tampering
 - Obstruction of justice
 - Perjury
 - **Nature & elements of offense substantially similar**
 - Hate crimes, child, elder, disabled adult abuse, video voyeurism
- 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.

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

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

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

Victim-
centered
approach

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 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

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

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/BendJudges2024>
- Judicial Training Manual at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials/>
 - **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu