

# **Labor Trafficking, Ethical Considerations, Identification of Victims: Immigrant Victims**

1<sup>st</sup> Annual Human Trafficking Summit  
Regional Interdisciplinary Collaborative to End  
Human Trafficking

February 9, 2021

# Faculty Introductions



**Hon. Loretta Young**  
Commissioner  
New Castle County, Family  
Court, Wilmington,  
Delaware



**Leslye E. Orloff**  
Director  
National Immigrant  
Women's Advocacy Project,  
American University  
Washington College of Law

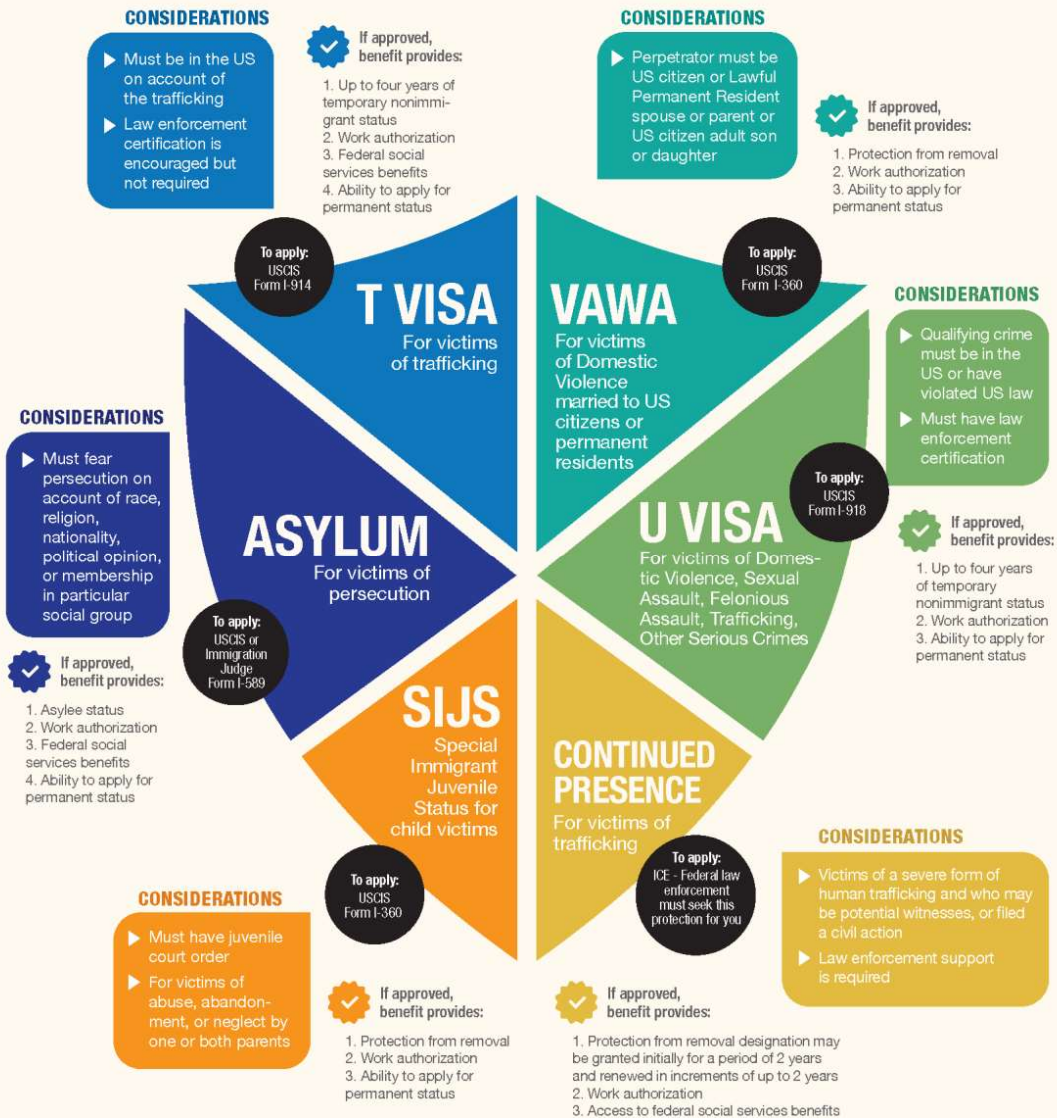


## Thank you to SJI

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# Immigration Protections for Immigrant Victims of Labor Trafficking

# PROTECTIONS FOR IMMIGRANT VICTIMS



# 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
- Labor trafficking occurs in families

# 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
- Path to lawful permanent residency (3 years or less if prosecution completed)

# Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

| Act  | Means   | Purpose  |
|--|---|--|
| <ul style="list-style-type: none"><li>• <b>Recruits</b></li><li>• <b>Harbors</b></li><li>• <b>Transports</b></li><li>• <b>Provides</b></li><li>• <b>Obtains</b></li><li>• <b>Benefits, financially or by receiving anything of value</b></li></ul> | <ul style="list-style-type: none"><li>• <b>Force</b></li><li>• <b>Restraint</b></li><li>• <b>Threats of harm</b></li><li>• <b>Abuse or threatened abuse of the legal system</b></li><li>• <b>Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint</b></li></ul> | <ul style="list-style-type: none"><li>• <b>Involuntary servitude</b></li><li>• <b>Peonage</b></li><li>• <b>Debt Bondage</b></li><li>• <b>Slavery</b></li></ul> |



# U Visa Requirements

## INA § 101(a)(15)(U)

### Victim

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

### Helpful

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

### Harm

Substantial physical or mental abuse as a result

## U - VISA QUALIFYING CRIMINAL ACTIVITY DEFINED AT 8 U.S.C. § 1101(A)(15)(U)(III)

- Includes **attempt, conspiracy, or solicitation** to commit :
  - *Abduction*
  - *Abusive Sexual Contact*
  - *Being held hostage*
  - *Blackmail*
  - Domestic Violence
  - **Extortion**
  - *False Imprisonment*
  - Female Genital Mutilation
  - *Felonious Assault*
  - **Fraud in Foreign Labor Contracting**
  - Incest
  - **Involuntary Servitude**
  - *Kidnapping*
  - Manslaughter
  - Murder
  - **Obstruction of Justice**
  - **Peonage**
  - **Perjury**
  - *Prostitution*
  - *Rape*
  - *Sexual Assault*
  - *Sexual Exploitation*
  - **Slave Trade**
  - *Stalking*
  - Torture
  - **Trafficking**
  - **Witness Tampering**
  - *Unlawful Criminal Restraint*

# Continued Presence

- Temporary immigration status should be requested for any
  - Victim of human trafficking *who may be a potential witness*
    - Sex and/or labor trafficking
    - Based on a totality of the circumstances
- Victim (and certain family) remain lawfully in the U.S. during investigation into human trafficking-related crimes and during civil actions filed by victims against their traffickers
  - Granted for two (2) years; can be renewed up to two-year increments
  - Recipients receive work authorization, public benefits and services
- State agencies investigating facts that could constitute human trafficking can request that federal law enforcement or prosecutors file trafficking victims' applications with HSI
- If HSI approves notifies HHS to issue certification letter

# Potential U or T Visa Certifiers

## Labor Cases

- EEOC
- U.S. Department of Labor
- State labor enforcement agencies
- State, local, federal law enforcement or prosecution agencies
- State, local, federal, tribal, or administrative law judges, commissioners, magistrates, or other judicial officials
- Child and Adult Protective Services

# Identifying Human Trafficking Occurring in Labor Cases Provides Immigrant Victims ...

- Swift access to
  - Immigration relief & protections from deportation
  - Work authorization
  - Federally recognized ID
  - Greater public benefits
    - TANF, SSI, public & assisted housing
    - Health care
    - Food stamps
    - Educational grants and loans (FAFSA)

# Human Trafficking in the Work Place Is Present in Family Court Cases

- Divorce proceedings before family court including custody dispute child is foreign born
- Husband is a US citizen
- Victim works for a business owned by her husband's family
  - Locked into the work place daily no ability to leave
    - Arrives at home different times
    - Husband claims victim is fooling around
  - Sexually assaulted by foreman
  - Forced to work and is not paid

# Spotting the Trafficker

- Civil Cases
  - Truancy
  - Protection Orders
  - Child Support
  - Guardianship
  - Custody
  - SIJS
- Criminal Cases
  - Minor Violations, shoplifting, loitering, runaways
  - Kids in drug houses
  - Traffic stops of adults with passengers
  - DV cases

# State Labor Crimes and the U visa

- Forced labor
  - Abduction
  - Blackmail
  - False imprisonment
  - Felonious Assault
  - Involuntary servitude
  - Kidnapping
  - Unlawful criminal restraint
  - Slave Trade
  - Sexual Exploitation
- Prostitution
- Trafficking
- Fraud in foreign labor contracting
- Extortion
- Peonage
- Slave trade
  - False imprisonment
  - Unlawful criminal restraint



# State Labor Crimes and the U visa

- Involuntary Servitude
  - Abduction
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  - Slave trade
  - Extortion
  - Peonage
- Trafficking
- Prostitution
- Peonage
  - Abduction
  - Blackmail
  - False imprisonment
  - Unlawful criminal restraint
  - Slave trade
  - Involuntary servitude
  - Trafficking
  - Sexual exploitation

# Technical Assistance and Materials

- Power Point presentations and materials for this conference at
  - <https://niwaplibrary.wcl.american.edu/wilmu-victims2020>
- Employment based criminal activities charts
  - <https://niwaplibrary.wcl.american.edu/dolcharts>
- **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)
- Webinars at
  - <http://niwaplibrary.wcl.american.edu/all-niwap-webinars>