

# Understanding the Intersection of Immigration Law in State Court Proceedings

## WEBINAR

Presented By:

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# Sponsorship & Review of Resources

This Training was developed under grant number SJI-13-E-199 from the State Justice Institute. The points of view expressed are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute.

Materials are available at:

- [www.niwap.org/go/PAjudges](http://www.niwap.org/go/PAjudges)



Show or hide the toolbar window

The screenshot shows the GoToWebinar interface with several windows and annotations. The 'Attendee List' window is at the top, showing 'Attendees (1)' and 'Staff (1)'. Below it is the 'Audio' window, which includes options for 'Telephone' and 'Mic & Speakers', and a message: 'you're already on the call, press #54# now.' with a link 'Problem dialing in?'. At the bottom is the 'Questions' window, which has a text input field with the placeholder '[Enter a question for staff]' and a 'Send' button. A toolbar window is visible on the left side of the interface. Three callout boxes with arrows point to these elements: the top one points to the toolbar, the middle one points to the 'Problem dialing in?' link, and the bottom one points to the 'Questions' window.

Link to resources for audio problems

Enter questions here

# Learning Objectives

By the end of this webinar participants will

- Understand the interactions between state court proceedings and immigration law.
- Recognize facts that indicate a party may qualify for legal immigration status.
- Know how accurate immigration law information affects just and fair outcomes in state courts.
- Learn about findings in state court cases that are helpful in an immigrant crime victim's immigration case.
- Know federal requirements of state courts regarding individuals with limited English proficiency.
- Have the information needed for judges to sign U visa certifications.

# Pennsylvania Demographics (2012)\*

- Total foreign born population – 769,264
  - 6% of the state's 12.7 million people are foreign born
  - 51.8% naturalized citizens
  - 32.5% legal permanent residents (DHS)
  - ~14.7% undocumented or temporary visa holders
- 51.3% rise in immigrant population from 2000 to 2012
- High proportion of new immigrants
  - 24.6% entered in the 1990s
  - 42.5% entered 2000 or later
- 10.9% of children in the state under age 18 have 1 or more immigrant parents
  - 85.5% of children with immigrant parents in the state are U.S. citizens

\*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=VA>  
(October 2014)

# Countries and Regions of Origin (2012)\*

- Latin America – 17.8%
  - Mexico (7.4%)
  - El Salvador (1.0%)
  - South America (5.8%)
- Europe – 17.2%
  - Southern Europe (3.6%)
  - Eastern Europe (9.1%)
- Caribbean - 12.1%
- Asia – 38.5%
  - China/Taiwan (7.6%)
  - Korea (3.5%)
  - India (10.3%)
  - Vietnam (4.3%)
- Africa – 7.3%
  - Western Africa (3.4%)

\*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=VA>  
(October 2014)

# Individuals with Limited English Proficiency (LEP)

- Limited English Proficiency
  - English is not primary language
  - Limited ability to read, write, speak or understand English
  - Language for LEP individuals can be a barrier to
    - Access to justice, benefits or services;
    - Understanding and exercising legal rights;
    - Understanding and participating in court proceedings;
    - Understanding information and instructions provided;
    - Complying with court orders.
- **41.7%\* of the 769,264 foreign born Pennsylvanians are LEP**

*\*Source:*

<http://www.migrationpolicy.org/data/state-profiles/state/language/PA> (October 2014)

# Laws Governing Language Assistance to Limited English Proficient Persons

- Civil Rights Act of 1964 Title VI: prohibits national origin discrimination by programs receiving federal funding or assistance.
- Lau v. Nichols (1973): U.S. Supreme Court held
  - “failing to take reasonable steps to ensure MEANINGFUL access for LEP persons is national origin discrimination under Title VI”
- Presidential Executive Order 13166 (2000): Title VI language access requirements apply to courts & all federally *conducted and funded* activities
- U.S. Department of Justice Clarifying Memorandum Regarding Limited English Proficiency and Executive Order 13166 (2001):
  - Delivery of LEP services is at its zenith when denial or delay could have life or death or other serious implications
- U.S. Department of Justice Memo on Language Access Requirements for State Courts (2010):
  - Ensuring language access is fundamental to courts and the cornerstone of the judiciary’s ability to dispense justice fairly, efficiently and accurately

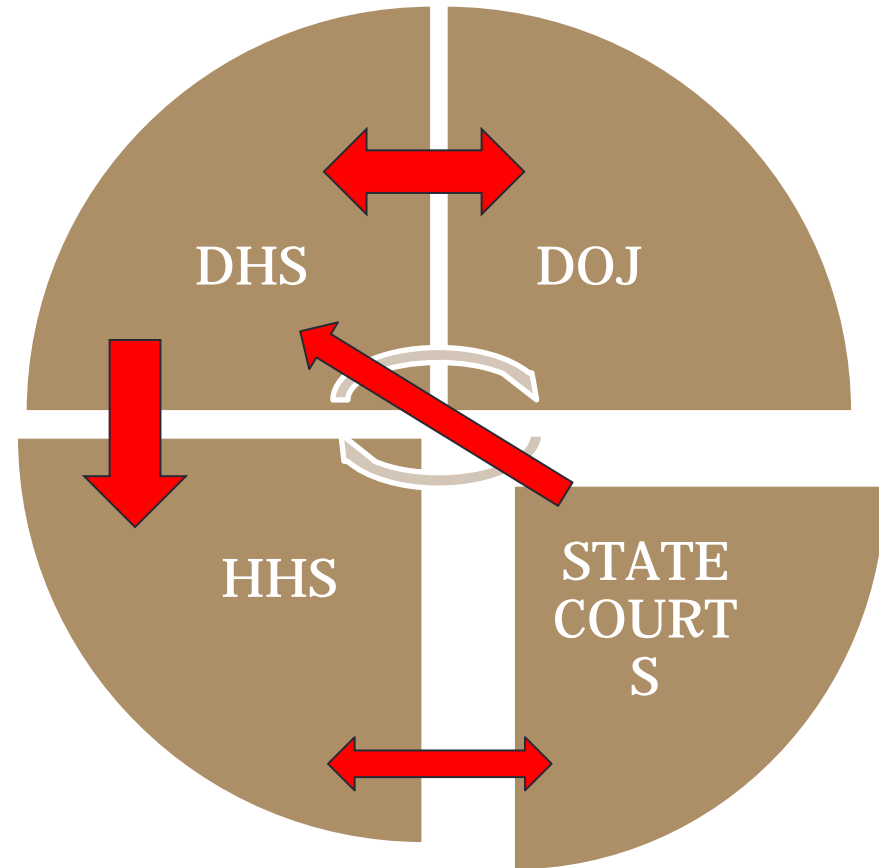


# DOJ LEP Directive to State Courts on Federal Civil Rights Requirements August 16, 2010

- LEP individuals are to be provided qualified interpreters
  - For all parties, defendants and witnesses and all persons whose presence is necessary or appropriate (e.g., parents of minor crime victims).
  - In ALL court room proceedings whether civil, criminal, administrative or other.
  - LEP individuals should not incur any fees for these services.
  - Not restricted to court rooms, also other court functions including:
    - Clerks offices;
    - Records room;
    - Alternative dispute resolution;
    - *Pro se* clinics; and
    - All interactions with court appointed personnel such as guardians ad litem or court psychologists.
- Language-specific documents
  - Translated petitions, court orders, and materials explaining rights and obligations.
  - Post signs and public service announcements in foreign languages advertising free qualified interpreters.
  - Language cards to accurately identify individual language needs.

# Immigration Law: Responsibilities

- Multiple purposes of immigration law
  - Provide path to permanent residency & citizenship for
    - Non-citizen crime victims
    - Children
      - SJIS – abused, battered, abandoned, neglected
      - Children included in victim’s applications
  - Remove undocumented immigrants from the U.S.
- Agencies Include:
- Department of Homeland Security (DHS)
  - Immigration and Customs Enforcement (ICE)
  - Customs and Border Patrol (CBP)
  - U.S. Citizenship and Immigration Services (USCIS)
- Department of Justice
  - Immigration Judges
  - Board of Immigration Appeals (BIA)



Relationships that benefit victims and children

# DHS Priorities for Enforcement and Victim Protection DHS Memos – Guidance

- DHS victim witness memo
- Humanitarian release
- 384 DHS computer system (VAWA, T-visas, U-visas)
- Memorandum on DHS detention priorities

# Legal Immigration Status Options for Non-citizen crime victims and children

## VAWA self-petition

- Abused spouses/children of U.S. citizens and lawful permanent residents
- Abused parents of U.S. citizens over 21 years of age

## VAWA cancellation of removal

- Abused spouses/children of U.S. citizen and lawful permanent residents
- Relief provides protection from deportation

## Battered spouse waiver

- Abused spouses of U.S. citizens with two-year conditional permanent residency

## T visa

- Victims of severe forms of human trafficking

## Asylum

- Individuals who have faced persecution or have a well-founded fear of future persecution by their governments on account of one of five enumerated grounds: race, religion, nationality, political opinion, or membership in a particular social group

## U visa

- Victims of criminal activity, who
- Have been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
- Suffered substantial harm from criminal activity

## Special Immigrant Juvenile (SIJ)

- Juveniles that have been abused, abandoned or neglected by one or both parents

## Deferred Action (DACA)

- Deferred action for childhood arrivals including Dreamers

## DHS Prosecutorial Discretion

- Individuals who are “low priority” for removal immigrants -- survivors, witnesses, parents, children, elderly, disabled
- Relief provides humanitarian detention release

Materials overview of remedies - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits>

# Immigration Issues That Arise In State Court Proceedings

# Court's Role

- Provide DHS brochure
- Follow U.S. Attorney General's letter on language access to Courts
- Know how to obtain accurate information about current immigration laws, policies and practices
  - Technical assistance through NIWAP's SJI grant
  - Materials available at [www.niwap.org/go/PAjudges](http://www.niwap.org/go/PAjudges)
- Make findings that provide immigrant victims, parents and children helpful evidence
  - Family relationships (Marriage – parent child relationship)
- Findings of fact about: battering, extreme cruelty, child abuse, elder abuse, child abandonment, child neglect
- Identify potentially eligible immigrants

Impact of Immigration Law on  
State Criminal Cases:  
Focus on cases involving  
immigrant crime victims

# Key Deportable Convictions

- Domestic violence offenses
  - Domestic violence (VAWA definition)
  - Stalking
  - Child Abuse, Neglect, Abandonment
  - Violation of protective provisions of protection order (finding enough)
- Crimes of Moral Turpitude
- Aggravated Felonies



# Key Differences Between State Criminal Laws and Federal Immigration Laws

- “Sentence” has different definitions under immigration law and state criminal laws
  - State court misdemeanor convictions can be aggravated felonies under federal immigration law
  - State criminal convictions can be crimes involving moral turpitude under federal immigration law

# Crimes of Moral Turpitude

- Can be felonies or misdemeanors
- No set definition; depends on state law definition of the crime, includes:
  - Crimes involving conduct that is inherently “base, vile, depraved and contrary to moral standards”
  - Theft, fraud
  - Intentional bodily or property harm or serious harm caused by reckless act
  - Sex offenses
  - Felonies
  - Misdemeanors with malice element

# Aggravated Felony Examples

- Murder, rape, child molestation
- Theft, burglary if sentence is 365 days or more
- Drug offenses
- Trafficking in firearms
- Crimes of violence and 365 days or more sentence
- Ransom
- Child pornography
- Treason

# Convictions Under Immigration Law

- Not same as state law
- Any formal judgment of guilt entered by the court, OR
- If no adjudication of guilt but
  - The immigrant entered a plea or nolo contendere
  - Immigrant admitted sufficient facts or judge made finding sufficient to warrant finding of guilt
    - Drugs
    - Violation of protection order
    - Diversion agreement structure
  - AND judge has ordered some form of punishment, penalty or restraint on liberty
- Expungements no effect

# Criminal Convictions Can Also Cause Non-citizens to Lose Legal Immigration Status

- Lawful permanent residents can lose their green cards
- Result in denial of naturalization
- Battered immigrant spouses and children applying for Violence Against Women Act Protections
  - Makes proving good moral character difficult
  - May harm a victim's chances of being awarded VAWA cancellation of removal
  - Can lead to denial of lawful permanent residency

# Responsibilities in Plea Bargaining Under *Padilla v. Kentucky* 130 S. Ct. 1473 (2010)

- Plea bargains and admissions of guilt may have serious consequences for immigrant defendants.
- *Padilla* held that all immigrant defendants must receive legal advice about the potential consequences plea deals may have on their immigration status.
- Consequences include:
  - Makes the defendant removable;
  - Makes the defendant inadmissible;
  - Makes defendant ineligible for cancelation of a removal order;
  - Prevents defendant from attaining citizenship.
- *Failing to disclose these risks amounts to ineffective assistance of counsel in the criminal case.*
- No right to counsel in immigration case.

# Family Court Cases: Protection Orders

# Domestic Violence Under Immigration Law = Battering or Extreme Cruelty

- Broader than state protection order laws -- Includes
  - Coercive control,
  - Emotional abuse,
  - Economic abuse,
  - Using children,
  - Deportation threats and immigration related abuse,
  - Intimidation,
  - Social isolation,
  - Degradation,
  - Possessiveness,
  - Harming pets



# Immigrants and Protection Orders

- When issuing protection orders, the court must not consider the immigration status of either party
- Issue protection orders documenting
  - Physical, sexual and emotional abuse
    - Of immigrant, their child or step-child
  - Existence of parent/child or spousal relationship
- Include creative remedies
- Protection order issuance
  - no effect on immigration status of perpetrator
  - Provides evidence of abuse
  - Does not mandate DHS grant of legal immigration status
- Violation of the anti-abuse provisions of a protection order  
= deportable offense

# Dangers of Protection Orders Issued Against Non-Citizen Victims

- **Mutual protection orders violate VAWA**
- **When parties both file protection orders**
  - Dangers for victim safety
  - Puts immigrant victims one step away from deportation
  - Only issue order against predominant perpetrator
  - Adjudicate self-defense

# Creative Protection Order Remedies

- Catch all provisions included in all state statutes
- Offer any additional relief that may potentially
  - Curb future abuse, harassment
  - Interfere with abuser/perpetrators ability to exert power and/or 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

# Full Contact Protection Orders

- State protection order statutes do not require separation
- Immigration case
  - Victims file confidentially
  - Adjudication 7 months to 1 year
  - Immigrant victims stay until work authorization.
- Provisions
  - No abuse, harassment
  - Counseling

# Creative Remedies Designed To:

- Deter parental kidnapping including international
- Halt immigration related abuse
- Gain access to evidence needed for victim's immigration case
- Provide economic assistance to victim and children

**Abused, Abandoned and Neglected  
Immigrant Children:  
Special Immigrant Juvenile Status  
(SIJS)**

# Types of Proceedings to order special findings for immigrant children

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Paternity
- Child support
- Criminal cases
- Custody
- Custody Modification
- Divorce
- Legal Separation
- Motions for a declaratory judgment

Procedural Issues: May require consolidation of cases to attain ability to make needed findings

Order must be issued before the age of majority in the state

Materials: SIJS Examples Provided By Case - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/SIJS-Proceedings-Chart.pdf/view>

# SIJS: Children Need State Court Order

Court with jurisdiction over care, custody, visitation or dependency of a child issued

- Court order, finding, or declaration
  - Awarding custody *OR*
  - Placing the child either permanently or temporarily with:
    - An individual
      - » e.g. non abusive parent, grandparent, kinship care
    - Agency,
    - Department
    - Foster care not longer required post 2008
- *AND* finding that reunification with at least one parent is not viable due to abuse, battery, abandonment, or neglect
- *AND* finding that not in the child's best interest to be returned to their home country



# What Children with SIJ Status Receive

- Upon filing
  - Protection from deportation and removal
  - Health care access to exchanges
  - Health care subsidies for children and pregnant women
  - Programs open to all undocumented persons
- Upon approval
  - Legal permanent residency
  - Government issued ID
  - Legal work authorization
  - Eligibility for driver's license
- Eligible for citizenship after five years
- SIJ's may NEVER file family petition for natural parents

# Child Custody and Support for Immigrant Families

**NIWAP**

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law

# Children in Immigrant Families

- 85% of immigrant families in the U.S. are “mixed status”
  - including at least 1 U.S. citizen, often a child
- 10.9% of children in Pennsylvania under age 18 have 1 or more immigrant parents
- 85.5% of children with immigrant parents in the state are U.S. citizens

# Custody Cases Involving Immigrant Parents and/or Immigrant Children

- Immigration status of a parent or child may be raised by a party in a custody case
- Accurate information about immigration status helps courts issue fair rulings in custody cases
- Provide tools for judges to
  - Avoid reliance on incorrect information provided by parties about immigration status and likelihood of detention or deportation
  - Obtain accurate information when needed
  - [www.niwap.org/go/PAjudges](http://www.niwap.org/go/PAjudges)
  - Direct technical assistance to state court judges, commissioner and magistrates
  - Bench cards, charts, training materials and webinars

# Immigrants and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a Constitutional right to custody
- 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

# Immigrants and Child Custody

- When considering the “best interest of the child” the following are not factors
  - Immigration status
  - English language proficiency
- Immigration information
  - distracts the judge from focusing on best interest factors listed in the statute
- Grant custody to non-abusive parent
  - Including when non-abusive parent is foreign born
- Keep focus on best interests

# Best Interests and Immigration

- Immigrant victims involved in custody cases will qualify for one or more of the following
  - Family violence victims
    - VAWA self-petitioning
    - VAWA defenses against removal in immigration court
    - Battered spouse waiver
  - U visa
    - Domestic violence, sexual assault, stalking, human trafficking, other U visa crimes
  - T visa and continued presence in trafficking cases
  - DHS victim/witness protections (any crime)
  - Humanitarian Release for parents
    - Caretakers of children, elderly, disabled, breastfeeding and pregnant mothers

# 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



# ABA Center on Children & The Law (1991)

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

# Facts

- Lack of legal immigration status does not mean
  - Deportation is eminent
  - Parent is likely to flee U.S.
  - Victim parent does not qualify for immigration relief
  - The parent has no livelihood
- Legal immigrants/naturalized citizens are more likely to flee with children
  - When there have been threats of kidnapping children
  - When they are dual nationals
  - Because they can travel freely to and from U.S.

# Facts

- Custody not affect parent's ability to file for or gain immigration benefits for their children
- Undocumented parents can
  - file for and receive “child only” public benefits
  - Receive and be ordered to pay child support
- Victims filing for VAWA/U/T
  - Gain work authorization
  - Access to some public benefits (VAWA/T)
    - State funded health care for children (VAWA/T/U/SIJS)
    - State funded health care pregnant women (VAWA, T, waitlist approved U visas)

# Immigration and Child Support

- Affidavit of support
  - Citizen and Lawful permanent resident spouses submit an *Affidavit of Support* to the Department of Homeland Security in family based immigration cases
- The Affidavit of Support
  - Promise to support the family member for up to 10 years or until they become a US citizen
  - Includes 3 years of tax information, evidence of current employment including self-employment, and proof of income over 125% of poverty
- Courts have relied on the Affidavit of Support to set spousal and child support at levels
- How child support orders help immigrants who are custodial and non-custodial parents

# State Courts and U Visa Certification

# 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
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- Suffered substantial physical or mental abuse as a result of the victimization

Materials: U visa toolkit, Helpfulness Tool and Reference Guide  
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/Judges-Toolkit.pdf>

# Who can sign a U visa Certification?

- Any entity that detects, investigates, prosecutes, convicts or sentences criminal activity may sign a certification:
  - Based on probable cause = detection
    - Judges -- criminal
    - EEOC, State and federal departments of Labor
- After making findings of facts of criminal activity
  - Judges – civil, family
- Investigation or prosecution
  - Police and Prosecutors
  - Child or Adult Protective Services
  - Federal agencies (DHS, ATF, FBI)
- Other state/local/federal government agencies in who detect, investigate, prosecute, convict, sentence

# U Visa Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- Fraud
- Foreign Labor Contracting
- Kidnapping
- Abduction
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

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



# The U-visa Application Process

- Certification
- Immigrant completes and submits application
  - Affidavit
  - Proof of substantial harm
  - Fingerprints
- Decision from DHS within about 1 year

# What the U-visa Certification Form Asks From a Certifier:

- What criminal activity occurred?
- Identify the victim
  - Include any findings regarding injuries
- Helpfulness of the victim
  - Current,
  - Past, OR
  - Willingness to be helpful
- Any family members implicated in the crime

# U-Visa Certification

- Provides initial evidence, does not control DHS adjudication
- Can sign after ruling and at earlier point in proceedings in the judge's discretion
- Can sign even when criminal case did not go forward
- No time limit after offense
- No statute of limitations

# Law Enforcement Certification Form I-918 Supplement B - Protection Order Example

OMB No. 1615-0104; Expires 08/31/2010  
**I-918 Supplement B,**  
**U Nonimmigrant Status Certification**

Department of Homeland Security  
U.S. Citizenship and Immigration Services

**START HERE - Please type or print in black ink.**

Part 1. Victim information.	For USCIS Use Only.																																
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<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering																														
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)																														
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.)																														
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	<input type="text"/>																														



# I-918 Supplement B, U Nonimmigrant Status Certification

**START HERE - Please type or print in black ink.**

**Part 1. Victim information.**

Family Name: **Orloff**      Given Name: **Leslye**      Middle Name: **E**

Other Names Used (Include maiden name/nickname):

Date of Birth (mm/dd/yyyy): **08/28/1956**      Gender:  Male       Female

**Part 2. Agency information.**

Name of Certifying Agency: **Washington, D.C.**

Name of Certifying Official:      Title and Division/Office of Certifying Official: **Superior Court Judge.**

Name of Head of Certifying Agency: **Judge Lora Livingston**

Agency Address - Street Number and Name: **555 Indiana Avenue NW**      Suite #:

City: **Washington**      State/Province: **DC**      Zip/Postal Code: **20005**

Daytime Phone # (with area code and/or extension): **202-555-5555**      Fax # (with area code): **202-555-5556**

Agency Type:  Federal       State       Local

Case Status:  On-going       Completed       Other

Certifying Agency Category:  Judge       Law Enforcement       Prosecutor       Other

Case Number: **H-62632-11**      FBI # or SID # (if applicable):

For USCIS Use Only.	
Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	

Remarks

**LEAVE BLANK**

**Part 3. Criminal acts.**

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)

<input type="checkbox"/> Abduction	<input type="checkbox"/> Female Genital Mutilation	<input type="checkbox"/> Obstruction of Justice	<input type="checkbox"/> Slave Trade
<input type="checkbox"/> Abusive Sexual Contact	<input type="checkbox"/> Hostage	<input type="checkbox"/> Peonage	<input type="checkbox"/> Torture
<input type="checkbox"/> Blackmail	<input type="checkbox"/> Incest	<input type="checkbox"/> Perjury	<input type="checkbox"/> Trafficking
<input checked="" type="checkbox"/> Domestic Violence	<input type="checkbox"/> Involuntary Servitude	<input type="checkbox"/> Prostitution	<input type="checkbox"/> Unlawful Criminal Restraint
<input type="checkbox"/> Extortion	<input type="checkbox"/> Kidnapping	<input type="checkbox"/> Rape	<input type="checkbox"/> Witness Tampering
<input type="checkbox"/> False Imprisonment	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Sexual Assault	<input type="checkbox"/> Related Crime(s)
<input type="checkbox"/> Felonious Assault	<input type="checkbox"/> Murder	<input type="checkbox"/> Sexual Exploitation	<input checked="" type="checkbox"/> Other: (if more space needed, attach separate sheet of paper)
<input type="checkbox"/> Attempt to commit any of the named crimes	<input type="checkbox"/> Conspiracy to commit any of the named Crimes	<input type="checkbox"/> Solicitation to commit any of the named crimes	<b>stalking</b>

**Part 3. Criminal acts. (Continued.)**

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

12/19/12

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

HRS sec. 709-906 Abuse of a Family or Household Member

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States?

Yes  No

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?

Yes  No

b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

c. Where did the criminal activity occur?

Washington, DC

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

I made findings that Husband strangled Mrs. Orloff during a domestic dispute and has been following her and tracking her movements

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

As a result of Mrs. Orloff being assaulted and strangled she suffered injuries to her neck and . (attached are copies of photographs submitted to the court and the protection order I issued)

**Part 4. Helpfulness of the victim.**

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in Part 3.

Yes  No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided)

Yes  No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)

Yes  No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.)

Yes  No



**Part 4. Helpfulness of the victim.** (Continued.)

5. Other, please specify.

Mrs. Orloff called 911 for help during a domestic dispute. Upon arrival she provided information about the incident to the officer on scene and allowed the officer to take photographs of the injury to her neck. She came to court seeking a protection order, which was granted.

**Part 5. Family members implicated in criminal activity.**

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim?  Yes  No
2. If "Yes," list relative(s) and criminal involvement. (Attach extra reports or extra sheet(s) of paper if necessary.)

Full Name	Relationship	Involvement
William Orloff	Husband	Defendant

Based on my issuance of a protection order

**Part 6. Certification.**

I am the head of the agency listed **Part 2** or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. ~~Based upon investigation~~ Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in **Part 1** is or has been a victim of one or more of the crimes listed **Part 3**. I certify that the above information is 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 the U.S. Citizenship and Immigration Services, 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/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Judge Lora Livingston

Date (mm/dd/yyyy)

January, 2014



# Law Enforcement Certification Form I-918

## Supplement B – Criminal Case Example

Department of Homeland Security  
U.S. Citizenship and Immigration Services

OMB No. 1615-0104; Expires 08/31/2010

**I-918 Supplement B,**

**U Nonimmigrant Status Certification**

**START HERE - Please type or print in black ink.**

Part 1. Victim information.			For USCIS Use Only.	
Family Name	Given Name	Middle Name	Returned	Receipt
<input type="text"/>	<input type="text"/>	<input type="text"/>	Date	<input type="text"/>
Other Names Used (Include maiden name/nickname)			Date	
<input type="text"/>			Resubmitted	
Date of Birth (mm/dd/yyyy)	Gender		Date	
<input type="text"/>	<input type="checkbox"/> Male <input type="checkbox"/> Female		Date	
<b>Part 2. Agency information.</b>			Reloc Sent	
Name of Certifying Agency			Date	
<input type="text"/>			Date	
Name of Certifying Official	Title and Division/Office of Certifying Official		Reloc Rec'd	
<input type="text"/>	<input type="text"/>		Date	
Name of Head of Certifying Agency			Date	
<input type="text"/>			Date	
Agency Address - Street Number and Name			Remarks	
<input type="text"/>				
Suite #				
<input type="text"/>				
City	State/Province	Zip/Postal Code		
<input type="text"/>	<input type="text"/>	<input type="text"/>		
Daytime Phone # (with area code and/or extension)		Fax # (with area code)		
<input type="text"/>		<input type="text"/>		
Agency Type				
<input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local				
Case Status				
<input type="checkbox"/> On-going <input type="checkbox"/> Completed <input type="checkbox"/> Other				
Certifying Agency Category				
<input type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other				
Case Number		FBI # or SID # (if applicable)		
<input type="text"/>		<input type="text"/>		

**Part 3. Criminal acts.**

1. The applicant is a victim of criminal activity involving or similar to violations of one of the following Federal, State or local criminal offenses. (Check all that apply.)
- |  |   |   |   |
|--|---|---|---|
| <input type="checkbox"/> Abduction                                 | <input type="checkbox"/> Female Genital Mutilation                    | <input type="checkbox"/> Obstruction of Justice                         | <input type="checkbox"/> Slave Trade  |
| <input type="checkbox"/> Abusive Sexual Contact                    | <input type="checkbox"/> Hostage                                      | <input type="checkbox"/> Peonage  | <input type="checkbox"/> Torture  |
| <input type="checkbox"/> Blackmail                                 | <input type="checkbox"/> Incest                                       | <input type="checkbox"/> Perjury  | <input type="checkbox"/> Trafficking  |
| <input type="checkbox"/> Domestic Violence                         | <input type="checkbox"/> Involuntary Servitude                        | <input type="checkbox"/> Prostitution                                   | <input type="checkbox"/> Unlawful Criminal Restraint                                    |
| <input type="checkbox"/> Extortion                                 | <input type="checkbox"/> Kidnapping                                   | <input type="checkbox"/> Rape   | <input type="checkbox"/> Witness Tampering  |
| <input type="checkbox"/> False Imprisonment                        | <input type="checkbox"/> Manslaughter                                 | <input type="checkbox"/> Sexual Assault                                 | <input type="checkbox"/> Related Crime(s)   |
| <input type="checkbox"/> Felonious Assault                         | <input type="checkbox"/> Murder                                       | <input type="checkbox"/> Sexual Exploitation                            | <input type="checkbox"/> Other: (If more space needed, attach separate sheet of paper.) |
| <input type="checkbox"/> Attempt to commit any of the named crimes | <input type="checkbox"/> Conspiracy to commit any of the named crimes | <input type="checkbox"/> Solicitation to commit any of the named crimes | <input type="text"/>  |





**Part 3. Criminal acts. (Continued.)**

2. Provide the date(s) on which the criminal activity occurred.

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

Date (mm/dd/yyyy)

12/19/12

3. List the statutory citation(s) for the criminal activity being investigated or prosecuted, or that was investigated or prosecuted.

HRS sec. 709-906 Abuse of a Family or Household Member

4. Did the criminal activity occur in the United States, including Indian country and military installations, or the territories or possessions of the United States?

Yes  No

a. Did the criminal activity violate a Federal extraterritorial jurisdiction statute?

Yes  No

b. If "Yes," provide the statutory citation providing the authority for extraterritorial jurisdiction.

c. Where did the criminal activity occur?

Washington, DC

5. Briefly describe the criminal activity being investigated and/or prosecuted and the involvement of the individual named in Part 1. Attach copies of all relevant reports and findings.

In a criminal case that came before me I found probable cause to believe that Husband strangled Mrs. Orloff during a domestic dispute and has been following her and tracking her movements

6. Provide a description of any known or documented injury to the victim. Attach copies of all relevant reports and findings.

As a result of Mrs. Orloff being assaulted and strangled she suffered injuries to her neck

**Part 4. Helpfulness of the victim.**

The victim (or parent, guardian or next friend, if the victim is under the age of 16, incompetent or incapacitated.):

1. Possesses information concerning the criminal activity listed in Part 3.

Yes  No

2. Has been, is being or is likely to be helpful in the investigation and/or prosecution of the criminal activity detailed above. (Attach an explanation briefly detailing the assistance the victim has provided)

Yes  No

3. Has not been requested to provide further assistance in the investigation and/or prosecution. (Example: prosecution is barred by the statute of limitation.) (Attach an explanation.)

Yes  No

4. Has unreasonably refused to provide assistance in a criminal investigation and/or prosecution of the crime detailed above. (Attach an explanation.)

Yes  No



**Part 4. Helpfulness of the victim.** (Continued.)

5. Other, please specify.

Mrs. Orloff called 911 for help during a domestic dispute. Upon arrival she provided information about the incident to the officer on scene and allowed the officer to take photographs of the injury to her neck. She provided assistance to prosecutors in a case that came before my court.

**Part 5. Family members implicated in criminal activity.**

1. Are any of the victim's family members believed to have been involved in the criminal activity of which he or she is a victim?  Yes  No

2. If "Yes," list relative(s) and criminal involvement. (Attach extra reports or extra sheet(s) of paper if necessary.)

Full Name	Relationship	Involvement
William Orloff	Husband	Defendant

Based on my finding of probable cause

**Part 6. Certification.**

I am the head of the agency listed **Part 2** or I am the person in the agency who has been specifically designated by the head of the agency to issue U nonimmigrant status certification on behalf of the agency. ~~Based upon investigation~~ Based upon investigation of the facts, I certify, under penalty of perjury, that the individual noted in **Part 1** is or has been a victim of one or more of the crimes listed **Part 3**. I certify that the above information is 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 the U.S. Citizenship and Immigration Services, 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/she is a victim, I will notify USCIS.

Signature of Certifying Official Identified in Part 2.

Judge Lora Livingston

Date (mm/dd/yyyy)

January, 2014



# Certifying judges will need to amend form

- Statute and regulations authorize Judge, Magistrate, Commissioner certification
- Judges may amend the language of the form to accurately reflect the basis upon which the judge is signing the certification.
  - Probable cause, findings, rulings
  - Include the type of proceeding and
  - If orders were issued attach a copy of the order
- Judges should amend current form --examples:
  - Based upon my having probable cause .... I certify”
  - Based upon my findings and issuance of a civil protection order ...I certify”
  - Based on my having presided over the criminal case ... I certify”
  - “Based upon my findings in a [custody/divorce] case of [domestic violence/child abuse] ... I certify”

# Resources and technical assistance

- NIWAP offers technical assistance for courts and judges
  - Provides access to up to date correct information
  - Provide consultations
  - Link to resources
  - Call (202) 274-4457
  - E-mail [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
  - Web-library <http://niwaplibrary.wcl.american.edu/>
    - Covers: immigration , family, benefits, language access
    - Contains: DHS memos related to immigrant victims and children, research, VAWA legislative history
- Materials for this training [www.niwap.org/go/PAjudges](http://www.niwap.org/go/PAjudges)

# Questions



# Evaluations



**NIWAP**

National Immigrant Women's Advocacy Project,  
American University, Washington College of Law