

**April 21, 2014**

# **State Courts and the Protection of Immigrant Crime Victims and Children Workshop**

**Leslye Orloff, National Immigrant Women's Advocacy Project**

## Introductions

- **Leslye Orloff**
  - National Immigrant Women's Advocacy Project

Materials available at:

[www.niwap.org/go/sji](http://www.niwap.org/go/sji) and

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

## Sponsor

- This Training was developed under grant number SJI-12-E-169 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

# Workshop Learning Objectives

By the end of this session you will be better able to

- Know how accurate information about immigration law affects just and fair outcomes in custody and protection order cases including
  - Legal immigration status
  - Protection from deportation/low priority for removal
- Make findings needed in Special Immigrant Juvenile Cases
- Understand Congressional authorization for judges to sign U visa certifications

# Large group discussion

- What are the questions you would like to have answered by the end of this workshop regarding immigrant victims and immigrant children's legal rights and options?



# New Jersey Demographics (2013)\*

- ❖ Total foreign born population – 1,925,773
- ❖ 21.6% of the state's 8.89 million people is foreign born
  - 53% naturalized citizens
  - ~32.4%^ legal permanent residents (2012 data)
  - ~15.9%^ undocumented or temporary visa holders (2012 data)
- ❖ 30.4% rise in immigrant population from 2000 to 2013
- ❖ High proportion of new immigrants
  - 25.2% entered in the 1990s
  - 39.8% entered 2000 or later
- ❖ 36.8% of children in the state under age 18 have one or more immigrant parents
  - 85.8% of these children are native-born U.S. citizens

<http://www.migrationinformation.org/datahub/state.cfm?ID=NJ>

# **New Jersey – Countries/Regions of Origin (2013)\***

- **Latin America - 45.3%**
  - South America (16%)
  - Caribbean (15.5%)
  - Mexico (6.7%)
  - El Salvador (2.2%)
- **Asia – 32.2%**
  - India (12.2%)
  - China/Taiwan (4.7%)
  - Philippines (4.5%)
  - Korea (3.4%)
- **Europe – 16.3%**
  - Italy (2.3%)
  - Poland (2.6%)
  - United Kingdom (1.5%)
- **Africa – 5.2%**
  - Northern Africa (2.1%)
  - Western Africa (2.1%)
- **Canada – 0.8%**
- **Oceania – 0.2%**

\*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=NJ> (January 2015)

# Abuse rates among immigrant women



- U.S. in general: 22.1% (NIJ)
- Immigrant women almost three times the national average
- Lifetime as high as 49.8%
- U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Immigrant Victims
  - Stay longer
  - Have fewer resources
  - Sustain more severe physical and emotional consequences of abuse

# Department of Homeland Security's Roles



Homeland  
Security  
Blue Campaign

- **Protecting vulnerable crime victims and children**
  - non-citizen crime victims
  - Children
    - **SJIS – abused, abandoned, neglected**
    - **DACA**
    - **Children included in victim's applications**
  - Adjudicating legal immigration status
    - **Visas, lawful permanent residency, citizenship**
- **Remove undocumented immigrants from the U.S. who are high priorities for removal**

# Federal Immigration Law Purposes and Roles

- **Removing immigrants from the U.S. based on DHS enforcement priorities**
  - Clear national security or public safety risk,
  - Serious felons, repeat offenders, immigrants with long criminal histories, gang members,
  - Recent border crossers, egregious immigration violators
    - **Requires more than undocumented immigration status**

# **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**
- ***See Web library for –***
  - ***Bench Card: DHS Enforcement Priorities Information for State Court Judges***
  - ***DHS Victim Protection Resources and Guidance***

# Parental Interest Directive Aug 2013

- **Factors that prevent detention of parents – DHS screens for:**
  - Parent or legal guardian of citizen or legal permanent resident child
  - Primary caretaker of a minor child
  - Encourages prosecutorial discretion
    - **Immigrant parents generally are a low priority for removal**
- **If parent detained**
  - Placement near children and family court
  - New DHS procedures to bring parents to family court to participate in cases involving children
  - Facilitate visitation
  - Help children travel with deported parent
  - Bring deported parents back to the US for custody and parental rights cases

# Immigration Options for 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

## T visa

- Victims of severe forms of human trafficking

## U visa

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

### **Materials overview of remedies -**

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

## 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

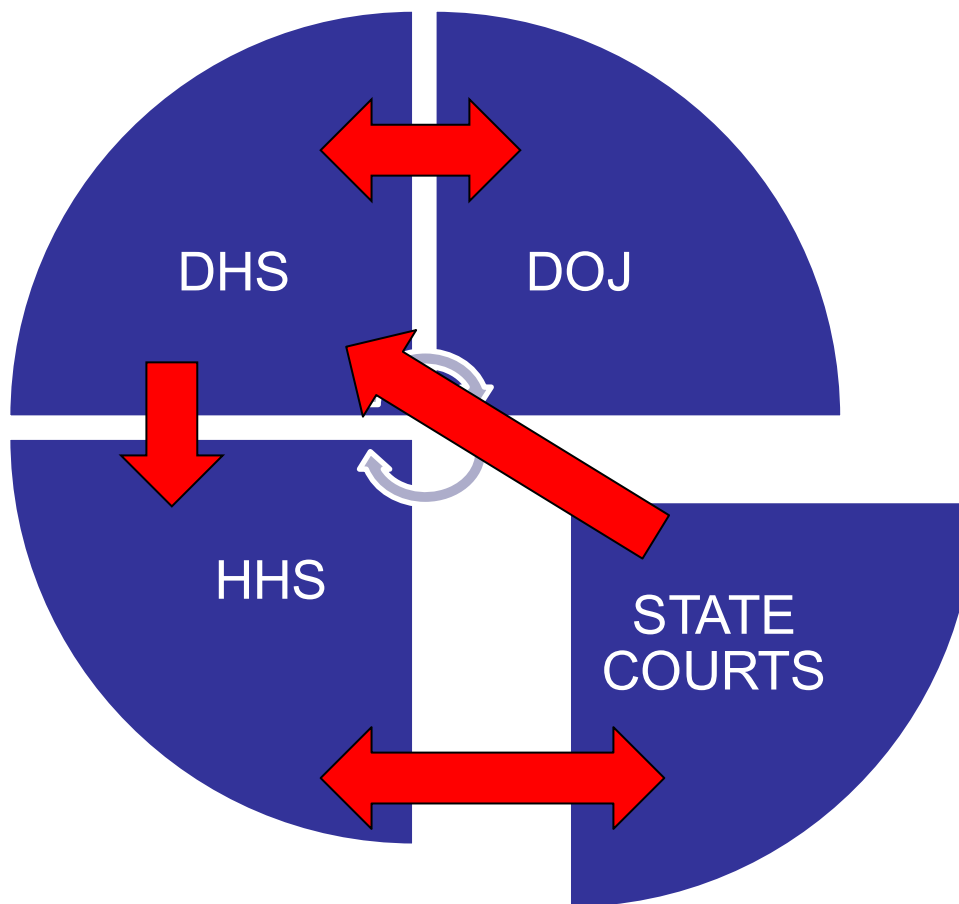
## VAWA cancellation of removal

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

## **VAWA and U visa Applications**

- **Do not require separation**
- **Significant numbers of VAWA self-petitioners and U visa applicants remain with their domestic abusers until they receive work authorization**
  - **43.1% VAWA self-petitioners (7 months)**
  - **63.4% U visa applicants (1 year)**

## Relationships that benefits victims and children



# ***Immigration Issues that Arise in Family Court***

## Court's Role

- **Identify potentially eligible immigrants**
  - Provide DHS brochure
- **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/sji](http://www.niwap.org/go/sji)
- **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, neglect

## **Under immigration law victims of “battering *or* extreme cruelty” have access to immigration relief**

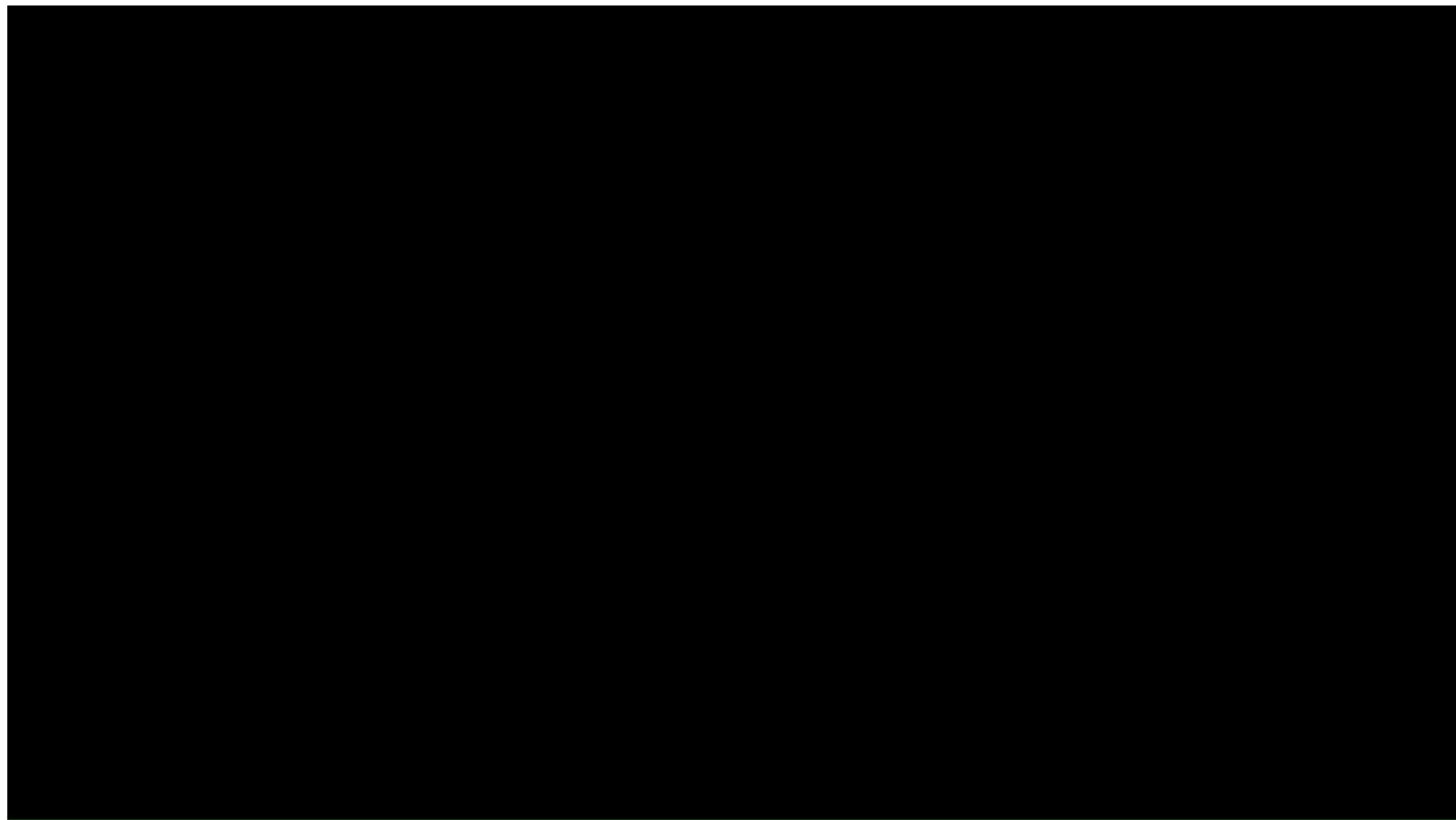
- **Any state crime committed against a family member sufficient for issuance of a protection order including sexual abuse, stalking, threats, attempts *AND/OR***
  - Emotional abuse,
  - Economic abuse,
  - Using children,
  - Deportation threats and immigration related abuse,
  - Intimidation,
  - Social isolation,
  - Degradation,
  - Possessiveness,
  - Harming pets,
  - Coercive control

# Coercive Control Over Immigration Status

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



# Department of Homeland Security



# Immigration-Related Abuse as a Lethality Factor

- 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse
- Lethality factor can predict abuse escalation
- Corroborates existence of physical and sexual abuse





# ***Protection Orders***

# **NIJ Funded CPO Study Found**

- **With advocates support immigrant victims will use and benefit from justice system assistance**
- **60.9% did not know about CPOs**
- **81% got CPO with help from advocate**
- **96% found them helpful**
- **68.3% of violations immigrant related**

# Protection Orders

- Can receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
  - A conviction *or finding* of violation of *protection against* abuse provisions of a protection order is a deportable offense

# How Immigrant Victims End Up As Defendants In Protection Order Proceedings

- **Typical Scenarios**

- Police arrive at domestic violence incident, perpetrator speaks English,
  - Perpetrator speaks to and/or interprets for the police
- Outcome A
  - Police see victims injuries but take no action and advise the parties about protection order
  - Perpetrator files for a protection order against the victim
  - Victim is served and then also seeks a protection order
- Outcome B
  - Perpetrator convinces the police to arrest the non-English speaking victim

- Perpetrators seek such orders against immigrant victims as a tactic to undermine the victim's immigration case

# What Creative Protection Order Remedies Might Help an Immigrant Victim?



# **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
  - Offer victim remedy-relief for past abuse
  - Help victim overcome victimization and build new post abuse life
- **Nexus With Victimization**
- **Opportunity for courts to counter immigration related abuse and order culturally helpful remedies**

# **Remedies that help a victim's VAWA immigration application**

- **Cooperate in and not withdraw any immigration case filed on the victim's behalf**
- **Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare etc.) concerning the petitioner except**
  - **Police emergency**
  - **Subpoena**

# Remedies that help a victim's VAWA immigration application

- Turn over documents/evidence in abuser's control needed for the victim's immigration case.
- What might some of those documents be?



# Helpful Evidence

## Evidence of Legal Marriage

- Marriage certificate
- Wedding/family pictures
- Health insurance

## Good Faith Marriage

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

## Evidence of Abuse or Extreme Cruelty

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

## Evidence of Abusers Legal Status

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

# Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order
- Supervised visitation
- Bond



# Important Economic Provisions

- **Maintain and/or pay for health care for victim and children**
- **Pay house insurance, mortgage, rent, utility and/or debt payments**
- **Child support**
- **Spousal support**
- **Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)**
- **Taxes**
  - **Turn over income tax statements**
  - **Victim named trustee for receipt of tax return funds, respondent ordered to sign check**
  - **Victim awarded exclusive right to claim children as tax exemptions**
  - **Respondent pays victim 1/2 of return**



# **Family Law: Child Custody, Support, Divorce, and Special Immigrant Juvenile Status**

# Impact of Divorce

- **VAWA self-petitioners**
  - Must file within two years of final divorce
- **Spouses and children of visa holders ends legal immigration status in the United States:**
  - Students, Persons with legal work visas, Diplomats
- **Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:**
  - Employment based
  - Asylees
  - Family based
  - Cancellation of removal applicants

# 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
- **Impact on**
  - Spousal support
  - Property division

# Children in Immigrant Families

- **Many immigrant families are “mixed status”**
  - including at least 1 U.S. citizen, often a child
- **In New Jersey**
  - ❖ 36.8% of children in the state under age 18 have one or more immigrant parents
  - 85.8% of these children are native-born U.S. citizens

# 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

# 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
  - In the US or abroad
- Best Interests in the context of custody cases

# 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

# Facts

- **Lack of legal immigration status does not mean**
  - Deportation is imminent
  - 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 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 Us)

# Child Support



# Background

- **Abusive spouse controls filing for immigration relief**
  - Work authorization
  - Drivers' licenses
- **Many forms of visas do not allow spouses and children of visa holders to work in the United States**
  - Employment visas (H)
  - Student visas (F)
  - Diplomatic visas (A)
  - International organizations G)
  - Investor visas (E)
- **Immigrant crime victims have limited access to public benefits**

# 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 fair levels

# Immigration Issues Arising in Child Support Cases

- **Payment of child support through the court**
  - Creates history of child support payments that is helpful evidence of good moral character for immigration cases
    - Cancellation of removal –hardship to family members
    - Naturalization
- **Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies**
- **Lack of legal work authorization is not a valid defense to non-payment of child support**
  - *Asal v. Asal*, 960 P.2d 849, 850 – 851 (Okla. 1998)

# Proof of Non-Custodial Immigrant Parent's Income

- Undocumented workers can be ordered to pay child support based on Child Support Guidelines and
  - Actual earnings
  - Employer's statements
  - Evidence of earning capacity
  - Attributed income (e.g. minimum wage)
- Undocumented workers can pay state and federal taxes on income earned using an IRS issued Tax ID number

# **Special Immigrant Juvenile Status (SIJS)**

# Special Immigrant Juvenile Status and State Court

Eligibility requires that a court with jurisdiction over the care, custody, or dependency of the child has issued a court order, finding, or declaration:

- Regarding the custody or care of the applicant child *OR*
- Placed the child either permanently or temporarily with:
  - An individual *OR* (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend)
  - Agency, Department, or Foster care (foster care is included, but not required)

**Most SIJS eligible children will not be in foster care or detention**

# State Court Findings Needed for SIJS

1. Finding that the child has suffered abuse, abandonment or neglect perpetrated by *at least* one of their parents **AND**
2. Finding that reunification with at least one parent is not viable due to the state's definition of abuse, abandonment, or neglect **AND**
3. Finding that it is not in the child's best interest to be returned to their home country



## **DHS Position on One or Both Parents**

- **2008 statutory changes supersede regulations**
- **“Child cannot be reunified by a parent” – one of their parents**
- **Abuse, abandonment or neglect**
  - Need only be perpetrated by one parent
  - Could have occurred in US or abroad
  - DHS: A child who enters the US illegally to join his/her parent in the US may be considered “abandoned” by the other parent for SIJS puposes
- **Definitions of abuse abandonment or neglect that apply**
  - Are the definitions in the state of the court issuing the findings
- **“SIJ eligible children may be living with a foster family, an appointed guardian, or the non-abusive parent... not an exhaustive list” USCIS**

# 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

**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>

# What Children with SIJ Status Receive

- While case is pending
  - Protection from deportation and removal
  - As lawfully present children – health care exchanges (no subsidies), education benefits
  - Legal work authorization
  - Programs and services necessary to protect life and safety
- At approval
  - LPR
  - Eligible for citizenship after 5 years
  - Food stamps, Post secondary educational grants and loans, public and assisted housing

**SIJ's may NEVER file family petition for natural parents**

# Immigrant Crime Victims: The U Visa

# 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>**

## **Criminal activities covered by the U Visa?**

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

**Includes attempt, conspiracy, or solicitation to commit any of these crimes, or 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**
  - Wait-list approval + work authorization

# Who can sign a U visa Certification?

- Any entity that detects, investigates or prosecutes criminal activity may sign a certification:
  - Based on probable cause = detection
    - Judges
    - EEOC, State and federal departments of Labor
  - 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

# Helpfulness in the Regulations

- There is no degree of helpfulness required
- Judges and law enforcement may complete U visa certification once they assess victim's helpfulness
- The investigation, prosecution or case can still be ongoing or can be closed

# Examples of Helpfulness



- Calling 911 to report a crime
- Filing a police report
- Providing a statement to the police or court
- Seeking a protection order
- Providing information to prosecutors
- Serving as a witness in a prior prosecution or investigation
- Testimony in a sentencing hearing
- No degree of helpfulness required
- Case can be ongoing or closed

# Law Enforcement Certification

## Form I-918 Supplement B – Family Court Case

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.**

Family Name \_\_\_\_\_ Given Name \_\_\_\_\_ Middle Name \_\_\_\_\_  
 Other Names Used (Include maiden name/nickname) \_\_\_\_\_  
 Date of Birth (mm/dd/yyyy) \_\_\_\_\_ Gender ☐ Male ☐ Female

**Part 2. Agency information.**

Name of Certifying Agency \_\_\_\_\_  
 Name of Certifying Official \_\_\_\_\_ Title and Division/Office of Certifying Official \_\_\_\_\_  
 Name of Head of Certifying Agency \_\_\_\_\_  
 Agency Address - Street Number and Name \_\_\_\_\_ Suite # \_\_\_\_\_  
 City \_\_\_\_\_ State/Province \_\_\_\_\_ Zip/Postal Code \_\_\_\_\_  
 Daytime Phone # (with area code and/or extension) \_\_\_\_\_ Fax # (with area code) \_\_\_\_\_  
 Agency Type ☐ Federal ☐ State ☐ Local  
 Case Status ☐ On-going ☐ Completed ☐ Other \_\_\_\_\_  
 Certifying Agency Category ☐ Judge ☐ Law Enforcement ☐ Prosecutor ☐ Other \_\_\_\_\_  
 Case Number \_\_\_\_\_ FBI # or SID # (if applicable) \_\_\_\_\_

**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 |                                                                                         |

Form I-918 Supplement B (08/31/07)

**I-918 Supplement B,  
U Nonimmigrant Status Certification**

GRATION  
TE COURTS INITIATIVE

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

**Part 1. Victim information.**

|                                                                                    |                             |                         |
|------------------------------------------------------------------------------------|-----------------------------|-------------------------|
| Family Name<br><b>Orloff</b>                                                       | Given Name<br><b>Leslye</b> | Middle Name<br><b>E</b> |
| Other Names Used (Include maiden name/nickname)                                    |                             |                         |
| Date of Birth (mm/dd/yyyy)<br><b>08/28/1956</b>                                    |                             |                         |
| Gender<br><input type="checkbox"/> Male <input checked="" type="checkbox"/> Female |                             |                         |

**Part 2. Agency information.**

|                                                                                                                                                                                     |                                                                                  |                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|-----------------------------------------------|
| Name of Certifying Agency<br><b>Washington, D.C.</b>                                                                                                                                |                                                                                  |                                               |
| Name of Certifying Official<br><b>Judge Lora Livingston</b>                                                                                                                         | Title and Division/Office of Certifying Official<br><b>Superior Court Judge.</b> |                                               |
| Name of Head of Certifying Agency<br><b>Judge Lora Livingston</b>                                                                                                                   |                                                                                  |                                               |
| Agency Address - Street Number and Name<br><b>555 Indiana Avenue NW</b>                                                                                                             |                                                                                  |                                               |
| City<br><b>Washington</b>                                                                                                                                                           | State/Province<br><b>DC</b>                                                      | Zip/Postal Code<br><b>20005</b>               |
| Daytime Phone # (with area code and/or extension)<br><b>202-555-5555</b>                                                                                                            |                                                                                  | Fax # (with area code)<br><b>202-555-5556</b> |
| Agency Type<br><input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> Local                                                            |                                                                                  |                                               |
| Case Status<br><input type="checkbox"/> On-going <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Other                                                       |                                                                                  |                                               |
| Certifying Agency Category<br><input checked="" type="checkbox"/> Judge <input type="checkbox"/> Law Enforcement <input type="checkbox"/> Prosecutor <input type="checkbox"/> Other |                                                                                  |                                               |
| Case Number<br><b>H-62632-11</b>                                                                                                                                                    |                                                                                  | FBI # or SID # (if applicable)                |

**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)





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      |
|-----------------------|----------------|------------------|
| <b>William Orloff</b> | <b>Husband</b> | <b>Defendant</b> |
|                       |                |                  |
|                       |                |                  |
|                       |                |                  |

**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 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**

- **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 can should amend current form --examples:**
  - Based upon my having probable cause .... I certify”
  - Based upon my 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”

# U Visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
- The U visa grants a temporary 4 year stay
- Work Authorization ( 4 year)
- Lawful permanent residency after 3 years if
  - Cooperation or not unreasonably refuse to cooperate
  - + humanitarian need, family unity or public interest
- U.S. citizenship after 5 years of lawful permanent residency+ proof of good moral character



# ***Services and Benefits Available to Immigrant Victims, Children, and Parents***

# **U.S. Attorney General's List of Required Services**

- **In-kind services**
- **Provided at the community level**
- **Not based on the individuals income or resources**
- **Necessary to protect life & safety**
- **Programs covered by this AG order are open to all persons**
- **State and local governments CANNOT impose immigrant access restrictions**

**Materials Public Benefits Bench Card -**

**<http://niwaplibrary.wcl.american.edu/reference/additional materials/materials-for adjudicators-and-judges/tools-for courts/benefits/Public-Benefits-Bench-Card.pdf/view>**

# Government funded assistance

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Crime victim assistance
- Shelter and transitional housing for up to 2 years
  - homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Medical and public health services
  - Treatment/disease prevention
  - Mental health, disability, or substance abuse assistance necessary to protect life or safety
- Help during adverse weather conditions
- Soup kitchens, community food banks
- Nutrition assistance programs (e.g. seniors, disabled)

# **Other Federal Benefits Available to ALL Immigrants**

- **HHS funded health care HRSA.gov**
- **Elementary and Secondary education**
- **School lunch and breakfast**
- **WIC**
- **Immunizations, testing, and treatment of communicable diseases**
- **Community Services Block Grant funded programs**
  - **ESL**
  - **Vocational Training**
  - **Transitional shelters**
  - **Community gardens**

# **Access to Benefits and Services Grows As Victims Pursue Immigration Relief**

- **Citizens:** Full access to benefits
- **Trafficking victims and Refugees:** Full access for 7 years
- **“Qualified Immigrants”**
  - Access to Housing, Education, Prenatal care, child health care, child food stamps immediately
  - 5 year bar -TANF, Medicaid, Child Care, SSI, Food Stamps
- **Lawfully Residing – U visa and SIJS** = Health care
- **Undocumented Immigrants**

## State Funded Benefits in New Jersey

- **TANF/Work First New Jersey available for:**
  - qualified abused immigrants
- **TANF funded child care for**
  - Qualified abused immigrants
  - Refugees and Trafficking Victims
- **Drivers Licenses are not available for undocumented immigrants**
- **Health care subsidies for some immigrants**
  - Lawfully residing children and pregnant women
    - Lawful permanent residents 5+ years
    - Asylees and refugees
    - VAWA self-petitioners
    - U Visa holders
    - Individual in deferred action status except DACA
    - T visa holders
    - SIJS approved juveniles

## 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/sji](http://www.niwap.org/go/sji)

**[www.niwap.org/go/sji](http://www.niwap.org/go/sji)**

- **Bench Cards on—**
  - Immigrants and protection orders
  - DHS enforcement priorities and victim protections
  - Public benefits and services
  - Immigration rights of crime victims
  - Custody Issues and Immigrants
  - Economic options
- **U visa certification toolkit for judges**
- **Visa chart – by immigration status**
  - Who can sponsor children
  - Work authorization
  - Benefits access
- **Immigration remedies comparison chart**
- **Legal and Social Science Bibliographies on Immigrant Crime Victims**

# Questions



# Evaluations



# Thank you!

