

U Visa Certifications and Special Immigrant Juvenile Status: The Judge's Role

Judge Ramona Gonzalez and Leslye E. Orloff

National Judicial College

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WHERE ARE YOU JOINING US FROM?



- This training was developed with grant funding from the W.K. Kellogg Foundation (Grant No. P3036442) awarded to the National Immigrant Women's Advocacy Project, American University Washington College of Law (NIWAP), Michigan State University (MSU), Michigan Judicial Institute, the Mississippi Judicial College, New Mexico Judicial Education Center, Missouri, Office of the State Court Administrator



Learning Objectives

By the end of this training you will be better able to:

- Employ best practices when issuing state court findings in cases of abused, abandoned, or neglected children eligible for Special Immigrant Juvenile Status;
- Exercise discretion to sign U visa certifications in criminal, protection order, custody, divorce, and other civil court proceedings based on the courts' orders, findings, or on probable cause to believe the immigrant victim has suffered a U-visa-listed criminal activity; and
- Identify the range of topics for which the State Justice Institute (SJI) has funded and developed training materials that assist state court judges in adjudicating cases involving the care, custody, protection, and well-being of immigrant children and immigrant crime victims.

Immigrant Demographics

Data from the U.S. Census, the Migration Policy Institute Data Hub, and the Department of Homeland Security Office of Immigration Statistics

US Demographics (2016)*

- ❖ Total foreign born population – 43,739,345
- ❖ 13.5% of the country's ~323.1 million people are foreign born
 - 48.6% naturalized citizens
 - ~31% legal permanent residents (DHS data)
 - ~4.4% temporary visa holders
 - ~16% undocumented (includes pending VAWA, Us, Ts, SIJS)
 - 40.6% rise in immigrant population from 2000 to 2014
 - 21.6% of U.S. population speak a language other than English at home
- ❖ 25.2% of children under 6 have one or more immigrant parents
- ❖ 25.8% of children under age 18 have one or more immigrant parents
 - 88% of these children are native-born U.S. citizens

*Source: Migration Policy Institute Data Hub (July 2018) and DHS Population Estimates (November 2016)

Children in Immigrant Families

- 85% of immigrant families are “mixed status” (including at least 1 U.S. citizen, often a child)
- 1 in 4 children is the child of an immigrant
- 18% (5 and older) speak a language other than English at home

Many Immigrant Victims of Domestic Violence, Sexual Assault and Other Crimes Are Eligible for Immigration Relief



Immigration Relief Available for Immigrant Victims of ---

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

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



In what percentage of the cases you hear involving immigrants has the litigant, a child or a child's parent been a victim of one of these harms?

Answer on the left



Feedback

A

B

C

D

No Answer

- A. Under 10%
- B. 11- 25%
- C. 26- 50%
- D. Over 50%
- E. Other

Other write in chat box

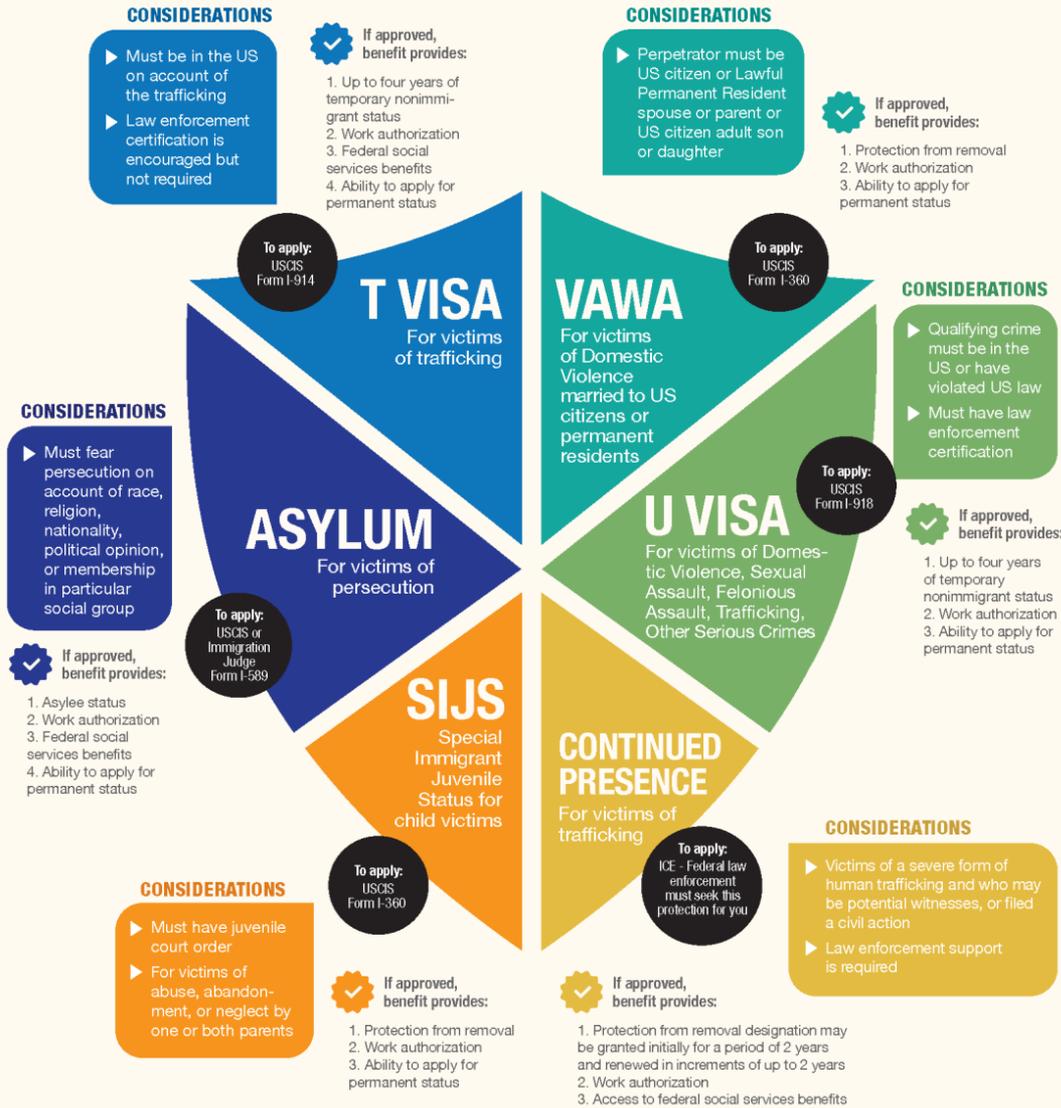


Chat

Public Private

Type here to send a message

PROTECTIONS FOR IMMIGRANT VICTIMS



Immigrant Victims and Children Who File for Immigration Relief Receive

- Protection from deportation
- Legal work authorization and access to drivers' licenses upon
 - Approval or wait list approval
- Access to some federal public benefits
 - Varies by immigration case type and state
- VAWA confidentiality protection upon filing VAWA, T or U visa case

When litigants and their children learn about and pursue immigration relief legally available to them how might this improve access to justice in family courts?



Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%
 - VAWA petitioners arrested at crime scene instead of the abuser 15.4%
 - U visa victims 26.7%

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014)

Case Scenario (Handout)

Clara met Eduardo a naturalized U.S. citizen when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

What forms of immigration relief would Clara qualify for:

- A. U visa
- B. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above

▼ Feedback

A

B

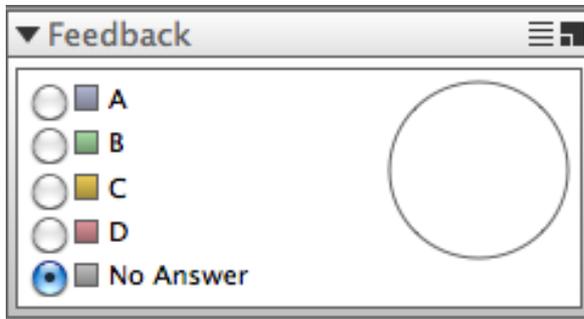
C

D

No Answer

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

- A. Both can VAWA self-petition
- B. Both qualify for a U visa
- C. Lupe qualifies for a T visa
- D. All of the above



Feedback

A

B

C

D

No Answer

U Visa Certification By Judges



U Visa for Immigrant Victims

- A victim of qualifying criminal activity is eligible for a U Visa when:
 - The criminal activity occurred in the U.S. **or** violated U.S. law;
 - The victims possesses information about the crime;
 - The victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the offense; and
 - The victim has suffered substantial physical or mental abuse as a result of the victimization

U Visa Regulations Definitions

Although terms are used interchangeably

- As a matter of law (U visa regulations)
 - Helpfulness in the “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - “Crime” always means
 - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
 - Improving stability for crime victims



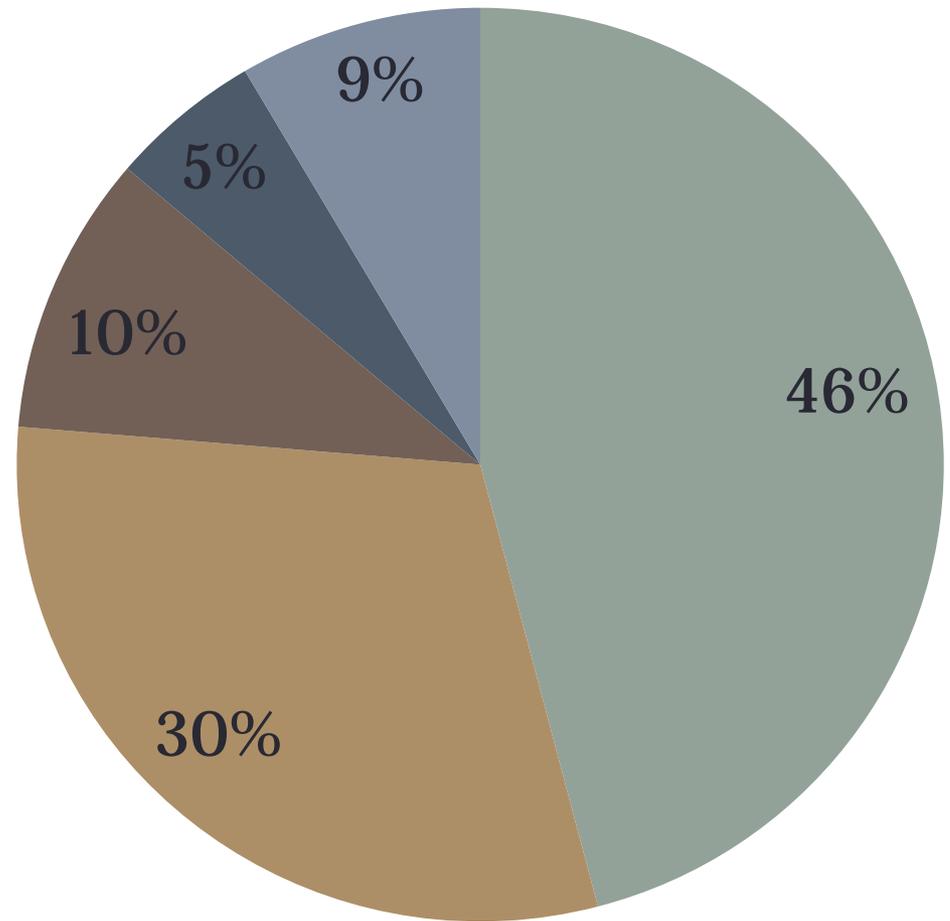
U Visa Qualifying Criminal Activity

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

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

U-Visa Criminal Activities (11/2011 data)

- Domestic violence- 45.9%
- Rape, Sexual Assault, Incest, Trafficking- 30.4%
- Felonious Assault, Murder, Manslaughter- 9.9%
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation- 8.47%
- Kidnapping, being held hostage, unlawful criminal restraint, torture- 5.3%





U/T Visa Certification: Who Can Certify?

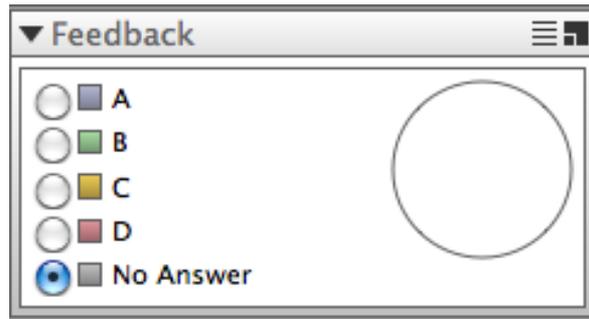
- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF...
 - Prosecutors
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies



Types of Court Proceedings: Courts Receive Evidence of “Criminal Activities”

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

Why would victims seek U visa certification from state courts?



A screenshot of a feedback form window titled "Feedback". The window contains five radio button options: A (blue square), B (green square), C (yellow square), D (red square), and No Answer (blue circle). The "No Answer" option is selected. To the right of the options is a large empty circle.

- A. Only justice system contact a custody, protection order, civil employment or child welfare case
- B. No language access to police when victim called for help
- C. Judge observed victim's attendance and participation in criminal case
- D. All of the above

According to DHS, a U/T Visa Certification Tells USCIS Only 3 Things:

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, **or** is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing

Helpfulness Requirement Met *Even When:*

- Victim reports a crime and there's no further investigation or prosecution
- Perpetrator absconds or is deported
- Perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order or custody but domestic violence is not being criminally prosecuted



Family/Civil Case Examples: Evidence of Helpfulness

- Filed and/ or appeared at hearing for full protection order
- Plead and or testified about abuse or sexual assault in a court case (e.g. protection order, divorce, custody, small claims, housing, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal or EEOC investigation
- Serving the perpetrator with notice of a
 - temporary protection order
 - A case in which the pleadings contain allegations of facts that constitute domestic violence, sexual assault or other U visa criminal activities



Criminal Case Examples: Evidence of Helpfulness

- Evidence in case that the victim:
 - Called 911
 - Participated in a criminal investigation
 - Identified perpetrator at line up
 - Testified before a grand jury or at trial
 - Appearance in a case
 - Attended criminal court hearings in the case
 - Victim impact statement
 - Testimony at sentencing

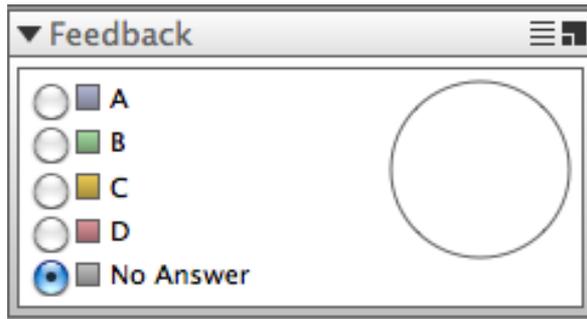
Eduardo and Clara Case Scenario – Handout

- Additional facts:
- While Clara was in the hospital she met a victim advocate who worked with a legal services attorney and after Clara's release from the hospital she got her children back and helped Clara file for a protection order
- You heard Clara's protection order case and issued Clara a protection order against Eduardo
- A week after the protection order was issued Clara's legal aid attorney sends you a letter requesting that you sign a U visa certification
 - In what other types of state court proceedings might a judge receive similar forms of evidence that could support U visa certification?

What evidence of helpfulness might you include on the U visa certification form?

Using your clickers please check:

- A. The fact that Clara sought and you issued a protection order
- B. Testimony Clara provided at a contested hearing
- C. You learned in the CPO case that Clara spoke to police at the crime scene and gave information for the police report
- D. All of the above





Minnesota Judicial Ethics Opinion U Visa Certification (June 26, 2015)

- Judge may sign certifications when
 - “adequate basis for the averments made in the certification”
- Certification after the criminal or civil case is completed does not raise impartiality issues
 - In open cases should disclose certification to the parties
- Certification describes immigrant victim’s past/present helpfulness -- Does not vouch for character
- In civil and criminal cases whether to sign a U visa certification is a an issue of law that does not implicate judicial ethics codes

Full Opinion Available at: <http://www.bjs.state.mn.us/file/advisory-opinions/opinion-2015-2-final.pdf>
Hon. Pendleton also published a training update based on the opinion at <http://pendletonupdates.com/>

U-visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
 - Waitlist approval backlog 110,000 visas
- The U-visa grants a temporary 4 year stay
- Work authorization (≈ 28-48 months)
- Limited state benefits
- 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

U Visa Certification Overview



Supplement B, U Nonimmigrant Status Certification

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

USCIS
Form I-918
OMB No. 1615-0104
Expires 02/28/2019

Part 6. Certification

I am the head of the agency listed in Part 2, or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in Part 1. is or was a victim of one or more of the crimes listed in Part 3. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.

1. Signature of Certifying Official (sign in ink)
➔
2. Date of Signature (mm/dd/yyyy)
3. Daytime Telephone Number
4. Fax Number

Judges can amend the form

Examples: Based upon ...

- My findings of fact or ruling in [name type of proceeding]
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case

REMEMBER: This is a certification that you believe the applicant was a victim of a crime.

Certification provides evidence to DHS.

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

U and T Visa Law Enforcement Resource Guide

for Federal, State, Local, Tribal and Territorial
Law Enforcement, Prosecutors, Judges, and
Other Government Agencies





Congressional Goals of Special Immigrant Juvenile Status (SIJS)

- Humanitarian protection that provides a path to lawful permanent residency
- Created by Congress in 1990 to help and protect foreign born children living in the United States
 - who have been abused, or abandoned, or neglected by at least one parent



Why Congress Wanted Input From State Court Judges

- Included a role for state court judges as experts in child best interests, custody, child welfare matters.
- State court expertise that are an inherent part of court's decision-making when courts:
 - Adjudicate facts of child abuse, neglect and abandonment
 - Issue orders regarding child care, custody and placement that further the best interests of children

SIJS State Court Findings Required for the Child to file

- State Court SIJS findings are a statutorily required prerequisite to an eligible child being able to file the SIJS immigration case
- DHS uses the state court order as evidence in adjudicating the immigration application
- The state court order does **not** award SIJS
 - **ONLY DHS can provide SIJS a form of legal immigration status and permanent residency**



State Court Findings Needed for SIJS

State Law Applies To Each

- The court has jurisdiction to issue orders regarding the care, custody, or placement of an immigrant child (under age of majority and unmarried) with
 - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend, adopting parent) OR
 - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to at least ONE PARENT'S abuse, abandonment, or neglect

**Using the Handout Scenario
True or False?**

**Both Lupe and Miguel Qualify for Special
Immigrant Juvenile Status**

 **True**

 **False**



All of the Following are Potentially Eligible for SIJS

- A minor who is:
 - Abused, abandoned or neglected
 - In the U.S.
 - In the home country
 - Living with their
 - Non-abusive parent
 - Guardian
 - Adopted parent
 - State foster care
 - Federal foster care (ORR)

Department of Homeland Security Confirms

- A juvenile court according to DHS
 - The “title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.”
 - “Juveniles” = all children

State Courts Regularly Make Custody & Placement Determinations

- Who will be the custodian/guardian of the child?
- With whom will the child live?
- Will the child be committed to the custody of the state or private agency for care, treatment, or rehabilitation



Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Custody and child support
- Divorce
- Legal Separation
- Adoption

Courts with jurisdiction under state law to make judicial determinations regarding the custody, placement, care or dependency of children = *juvenile courts* for SIJS immigration purposes



Apply State Law

- Apply state law without regard to where abuse, abandonment or neglect occurred
 - In the U.S. or abroad
- Jurisdiction
 - UCCJEA – Temporary Emergency Jurisdiction
- Follow state court procedures
 - Including regarding service and notice
- Definitions: abuse, abandonment, neglect
 - Includes child endangerment, domestic violence as child abuse, forced marriage
- Formal charges not required



SIJS Findings: Applying State Law

- Describe how the actions of the parent fit the state law definition of abuse, neglect, or abandonment
- State best interest laws apply to
 - Custody or Placement
 - Not returning child to their home country
 - Non-viability
- Where are best interest factors in state law?
 - Child welfare statutes
 - Custody statutes
 - Case law



SIJS: State and Federal Roles

State Courts With Jurisdiction Over Children

- Issue orders providing evidence to help DHS adjudicate SIJS application
- Make findings of fact **under state law** on
 - Custody, dependency, placement, care of a child
 - Child suffered abuse, abandonment, or neglect by at least one parent
 - Parental reunification
 - Child's best interests

DHS Adjudicators

- Adjudicate application filed by child
- Reviews evidence, including the state court's order, to determine if the child applicant is eligible for SIJS
- Determine if state court order was sought primarily
 - To provide the child relief from harm caused by abuse, abandonment or neglect; OR
 - For immigration purposes

“One *or* Both Parent” Requirement



A child can receive SIJS findings if they were abused, abandoned or neglected by one parent and are living with the other parent.

Home country not in child's best interests

1. Identify each potential custodian in U.S. and home country
2. Apply state best interests factors to each placement
3. States in court order the factual findings that support chosen placement
4. Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
5. Compare the supports, help, services child needs U.S vs. home country (See handout)



Reunification Not Viable and Best Interests

- Order must include the finding that reunification with the parent is not viable
- Using state best interests law
 - Identify factual reasons why reunification is not viable
 - Will include explaining why the abusive parent is not being granted physical custody of the child



Finding: Reunification Not Viable

- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Means granting the abusive parent custody is not envisioned by the court as a viable option
- Changes in circumstances can occur
 - But not granting full legal/physical custody to abusive parent

Factors impacting best interests and viability

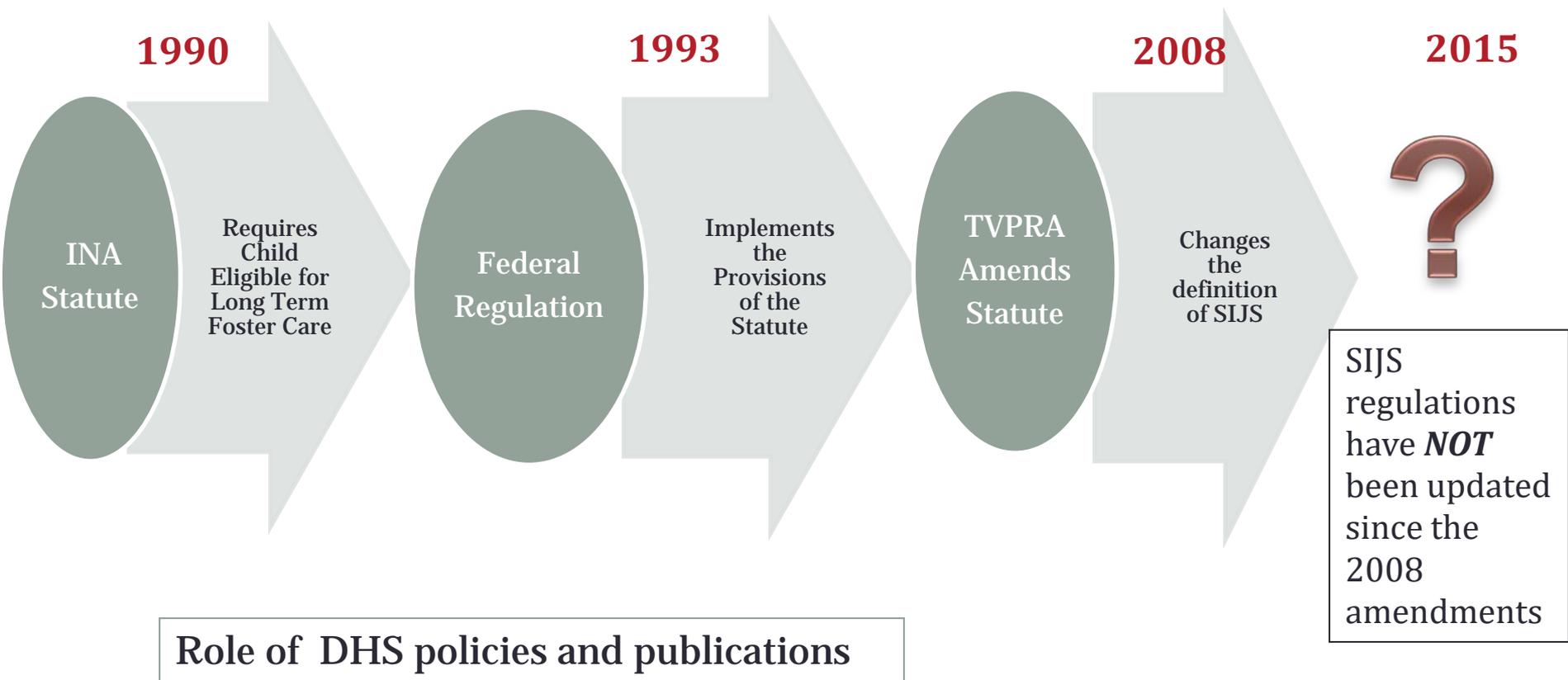
- Risk of danger to the child
- Family violence, abuse, neglect, abandonment
- Trauma the child has suffered
- State laws that preclude or discourage placement with abusive parent
- The child's physical, emotional, safety and mental health, and educational needs
- Help the child is receiving
- Child's wishes and fears
- Parent's fitness and caregiving capacity
- Family support system



SIJS in State Courts

- Some SIJS cases involve minors who are close to the age of majority under state law
- SIJS requires:
 - State court order received before the child turns the age of majority+
 - Filing for SIJS before the child ages out
- SIJS is an option any time an abused, abandoned or neglected child is not a
 - Citizen or lawful permanent resident

Important Note: Statute Controls over Regulations



Best Practice for Court Order

- Make factual findings regarding
 - Facts of abuse, abandonment and/or neglect
 - Separately regarding each parent
 - About facts occurring abroad and/or in the U.S.
 - Apply and cite state law
 - Articulate trauma impact on child helpful
 - Connect the dots
 - Explain why the orders and findings the court is issuing
 - Are needed for child protection, healing, stability
 - Because of the abuse/abandonment/neglect the child suffered
 - Why court orders in the child's best interest

In the Clara and Eduardo Scenario in which of the following cases could the court NOT issue SIJS findings for Lupe as part of the court's order?

- A. A protection order case in which the order grants Clara custody
- B. A custody case brought by Clara
- C. The criminal prosecution of Eduardo
- D. A child welfare case in which the court made findings of Eduardo's abuse and placed the children with Clara

State Justice Institute Funded
Training Materials for Judges on
Issues That Arise in State Court
Cases Involving
Immigrant Crime Victims and
Immigrant Children

Resources Available to Assist Courts

- SJI Funded Materials for Judges in the NIWAP Web Library
 - Bench book on SIJS
 - U visa certification toolkit for judges
 - Bench cards for family court judges
- State by state Directory programs with expertise serving immigrant victims

NIWAP Web library

niwaplibrary.wcl.american.edu



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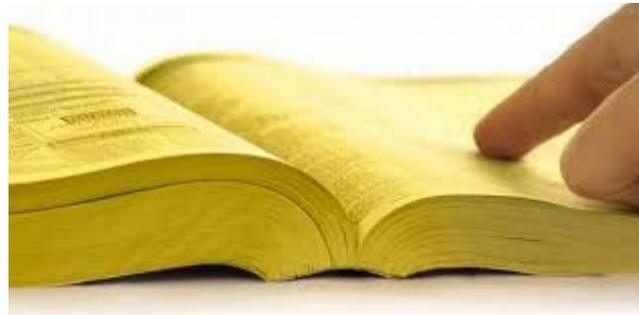
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[Regulations and Policies](#)

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Directory of Service Providers

- Providers with experience working with immigrant survivors
- Keep the directory up to date: add or edit your organization's entry!

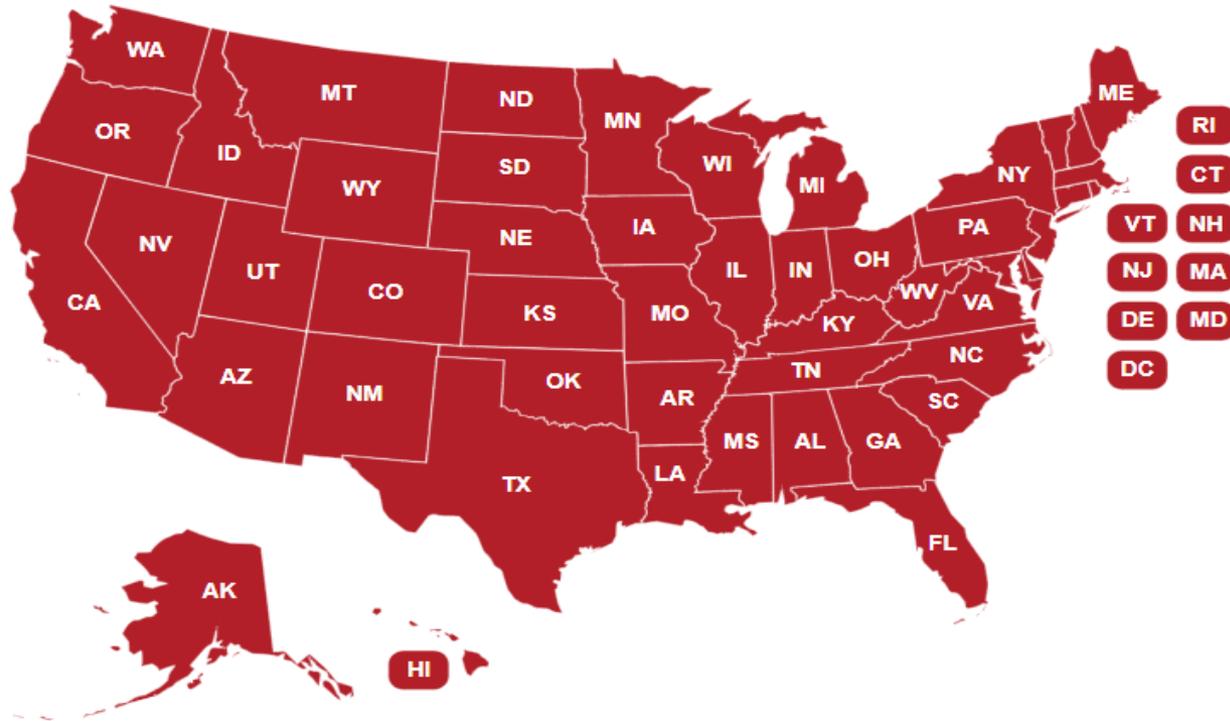


SJI Funded Resources: Menu of Topics

- Victim protection based forms of immigration relief: (VAWA, U and T Visas, SIJS)
- VAWA confidentiality limitations on courthouse immigration enforcement and state court discovery (family, civil, criminal)
- Using legally correct information to address immigration allegations in custody, divorce, protection order, child/spousal support & child welfare cases
- U and T Visa certification by state court judges
- Special Immigrant Juvenile Status findings best practices
- Public benefits access for immigrant victims
 - Health care, housing, TANF, SNAP, Education and more
- Improving access to justice for immigrant and LEP persons

Child Care

🏠 > Child Care



Child Care services may be provided through public benefits. All immigrants are eligible for the Child Care Development Fund (CCDF) funded child care services when provided through settings subject to public educational standards, and only certain immigration statuses are eligible for TANF-funded child care. Some states have provided their own funding to allow additional immigrant survivors to be eligible for state-funded TANF child care.



Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/NJC-ImmChildren2018
- Judicial Training Manual at www.niwap.org/go/sji
 - **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

Evaluation