

# Protecting Immigrant Children: U Visas, SIJS and Other Legal Options

Zero to Three

Iowa

August 2, 2018

# Learning Objectives

By the end of this training participants will be able to:

- Promote issuance of state court findings for children filing for Special Immigrant Juvenile Status
- Sign U visa certifications in cases of abused children and their immigrant parents
- Identify cases in which children or parents qualify for victim related immigration relief
- Understand how eligibility for immigration relief impacts the court cases involving children
- Identify which public benefits and services children in immigrant families are legally eligible to receive

# **DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS**

# Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
  - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied

# Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
  - 72.3% never file immigration papers
  - The 27.7% who did file had a mean delay of **3.97 years.**
- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

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

# Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
  - Lifetime as high as 49.8%
  - Those married to citizens and lawful permanent residents – 50.8%
  - U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

# Helping Abused Immigrant Women Protects Children in Immigrant Families

- National co-occurrence rate: 30-40%
- Rates among immigrants similar
- Co-occurrence among
  - Help seekers: 23%
  - Abused immigrants who did not seek help: 77%
- Children of help seekers 20% less likely to have abuser threaten them
- 33% less likely to have abuser threaten to take them away from their mother

# Best Practice: Screen for Immigration Related Abuse

- Immigration Related Abuse
  - 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse\*
  - May predict abuse escalation
  - Corroborates existence of physical and sexual abuse

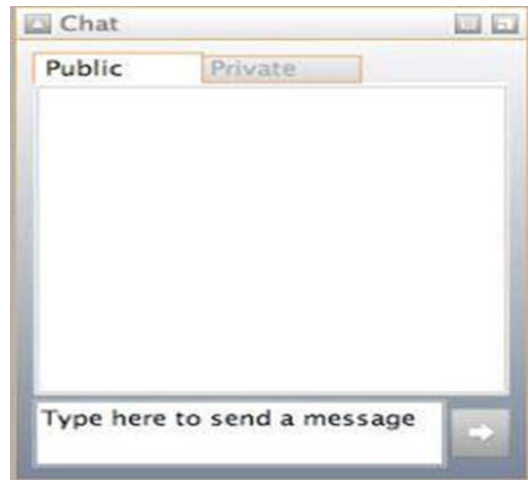
\*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)



# Barrier: When Service Providers DO NOT Have Accurate Information About....

- Immigrant victims' legal rights to
  - Language access
  - Immigration relief
  - Family law protections
  - Legal services
  - Life and safety programs including
    - Shelter, transitional housing, and victim service
  - Health care options

How does attaining legal immigration status benefit survivors?



# Benefits for Child and Adult Victims and Their Children

- Protection from deportation
- VAWA confidentiality protection
- Enhanced safety for survivors
- Temporary legal immigration status
- Protections for family members
- Financial independence from perpetrator
  - Legal work authorization (7-48 months of filing)
  - Greater public benefits and services
  - E.g. Health care, child care, foster care payments, financial aid, housing, food stamps (SNAP)

# Access to Legal Immigration Status:

- Removes fear of deportation
- Promotes stability
- Facilitates access to:
  - Government issued ID and Driver's Licenses
  - Nurturing family relationships
  - Stable school environment
  - Mentors, role models and community support

Many Immigrant Children and  
Immigrant Parents who are Victims  
of Domestic Violence, Child Abuse,  
Child Neglect or Child Abandonment  
Are Eligible for Immigration Relief



# DHS Victim Protection Role

- Statute and Regulations Create
  - Immigration protections for victims of domestic violence, child abuse, sexual assault, stalking, human trafficking and other crimes
- DHS victim witness protection memo
- VAWA Confidentiality
  - 384 DHS computer system (VAWA, T visas, U visas)

# State Court Role

- Federal statutes include explicit role for state court judges
  - U and T Visas
  - SIJS Findings
- Facilitate access to justice by relying upon legally correct information about U.S. immigration laws
- U.S. Department of Homeland Security
  - Developed Know Your Rights Materials Courts can Distribute

# Immigration Relief Available for Immigrant Victims of ---

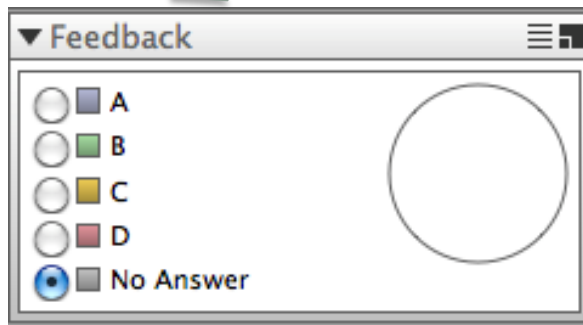
- Domestic violence
    - Child abuse
  - Sexual assault
  - Rape
  - Incest
  - Prostitution
  - Torture
  - Felonious assault
  - Manslaughter
  - Murder
  - Female genital mutilation
  - Kidnapping
  - Abduction
  - Trafficking
  - Involuntary servitude
  - Slave trade
  - Being held hostage
  - Fraud 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 any similar activity*



# In what percentage of the cases you hear involving immigrant litigants or children, has the litigant, a child or a child's parent suffered a any of these abuses or U visa listed criminal activities?

Answer on the left

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



Feedback

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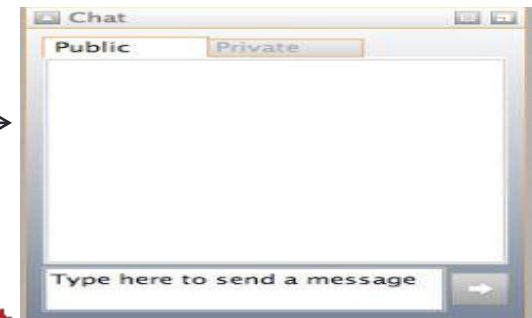
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D

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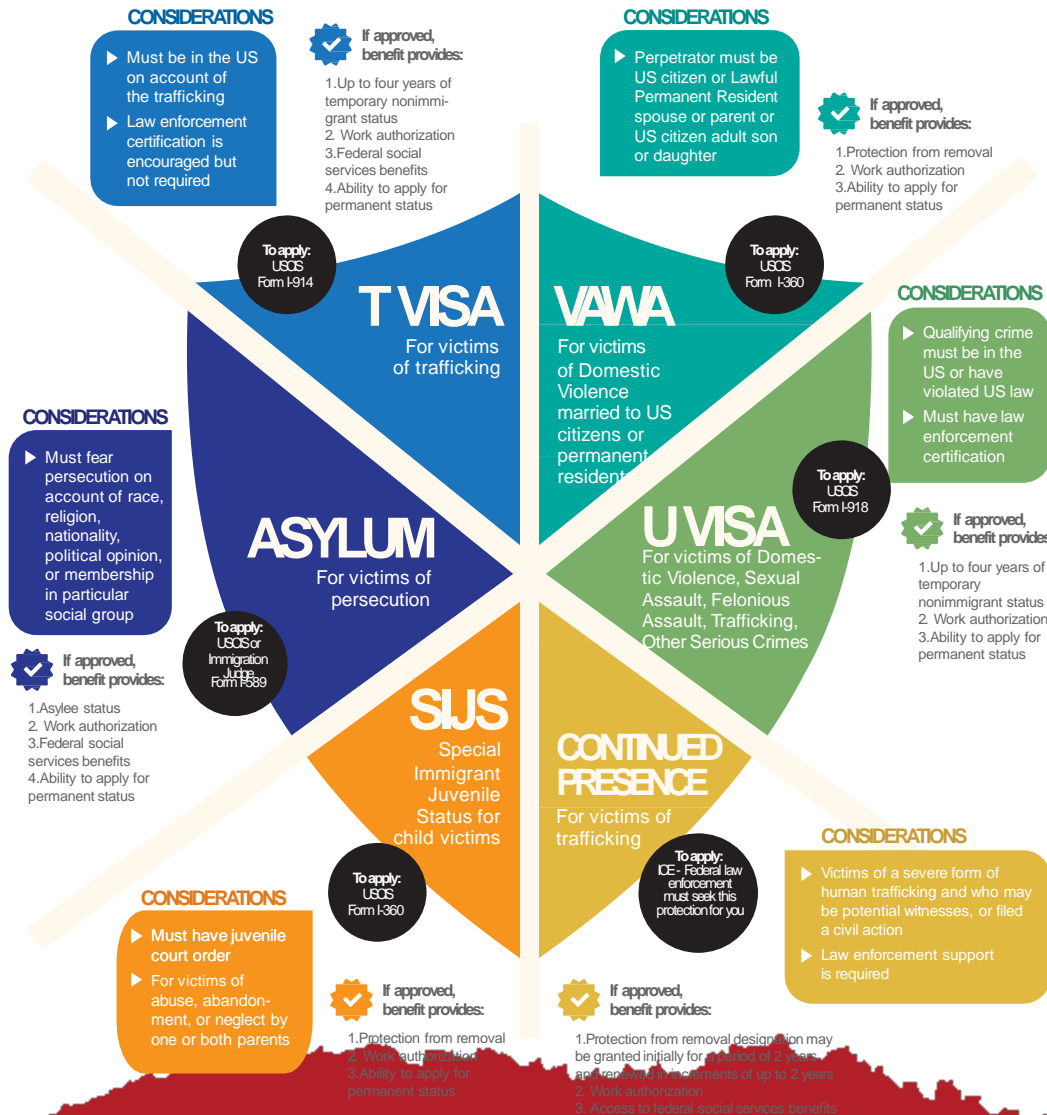


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# PROTECTIONS FOR IMMIGRANT VICTIMS



# Legal Immigration Status Options for Non-citizen Crime Victims and Children

- VAWA self-petition (8-10 months)
  - Abused spouses/children of US citizens and lawful permanent residents
  - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal and suspension of deportation
  - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver (12+ months)
  - Abused spouses of US citizens with two-year conditional permanent residency
- Abused Spouse of Visa Holders
  - Spouses battered or subjected to extreme cruelty by spouses with the following visas: A(diplomats), E(3)(Australian specialty occupation workers), G (foreign gov- Int'l orgs), H (work visas)
- U visa (36 months)
  - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
  - Substantial harm from criminal activity
- T visa & Continued Presence (8-12 months)
  - Victims of severe forms of human trafficking
- Special Immigrant Juvenile (SIJS) (6 months)
  - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
  - Deferred action for child arrivals including Dreamers
- Asylum (Waiting for interview 2+ years)
  - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
  - Domestic violence as gender based asylum

# Historical Context of VAWA Immigration Legislation

“Eliminating domestic violence is especially challenging in immigrant communities, since victims often face additional cultural, linguistic, and immigration barriers to their safety. Abusers of immigrants- spouses or children are liable to use threats of deportation to trap them in endless years of violence. Many of us have heard horrific stories of violence in cases where the threat of deportation is used against spouses and children – if you leave me, I’ll report you to immigration authorities, and you will never see your children again.”

*Senator Ted Kennedy, VAWA 2005*

*Congressional Testimony*

# Violence Against Women Act (VAWA) Confidentiality

- Only Federal Statute That Limits Immigration Enforcement
  - Particularly important for cases where a person in the U.S. perpetrated abuse or neglect of a
    - Child and/or
    - The child's other non-abusive parent

# VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS barred from relying on information provided by perpetrators to harm victims
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** of information about or contained in protected case files – applies to
  - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

# DHS VAWA Confidentiality Computer System

- Directs use of “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
  - Victims of domestic violence
  - Crime victims
  - Human trafficking victims

# Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
  - VAWA self-petitioners 38.3%; U visa 26.7%
- Perpetrators got the victim arrested for domestic violence
  - VAWA self-petitioners 15.4%; U visa 7.5%
- Traffic stops
  - VAWA self-petitioners 28.6%; U visa 26.7%



# Which Parents Likely to Be Removed: ICE

## Removal Data

**2013**

- Convicted criminals 82%
- Repeat immigration violators 7.8%
- Ordered removed and failed to depart 1.6%
- Other immigrants 7.7%
- <https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>

**2017**

- Criminal convictions 73.7%
- Pending criminal charges 15.5%
- Outstanding notices to appear in immigration court 5.3%
- Ordered removed and failed to depart +reinstatement 2.8%
- Other immigrants 2.6%
- <https://www.ice.gov/removal-statistics/2017>

# VAWA Confidentiality Bars Limiting Reliance Upon Information Provided by a Perpetrator

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

# Adverse Actions Include Using Perpetrator Provided Information To...

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

# Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
  - A shelter
  - Rape crisis center
  - Supervised visitation center
  - Family justice center
  - Victim services program or provider
  - Community based organization
  - Courthouse in connection with any
    - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



# VAWA confidentiality is likely violated when a DHS official comes to the courthouse in response to a “tip” from the perpetrator and arrests a victim who has come to court.....

- A. Seeking a protection order
- B. For a child custody or child welfare case
- C. For an eviction case when the perpetrator stopped paying court ordered rent
- D. As a State’s witness in a criminal case
- E. All of the above

Answer on the left



Feedback

A

B

C

D

No Answer

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# VAWA Confidentiality Violations

- Each violation
  - Disciplinary action and/or
  - \$5,000 fine for the individual
- Violations also include making a false certification in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)



# Sensitive Locations

- Enforcement actions by ICE and CBP are not to occur or be focused at sensitive locations:
  - Schools
  - Medical treatment and health care facilities
  - Places of worship
  - Religious or civil ceremonies: e.g. weddings, funerals
  - During a public demonstration: e.g., march, rally, parade

What are all of the forms of  
immigration relief that  
immigrant survivors would  
qualify for?



# Potential Immigration Remedies

- Applications filed with DHS
  - VAWA self petition
  - Battered spouse waivers
  - Abused spouses of work visa holders work authorization
  - U-visa (crime victims)
  - T-visa (victims of trafficking)
  - Special Immigrant Juvenile Status
  - Deferred Action for Childhood Arrivals (DACA)
- Forms of relief from removal- granted by Immigration Judge
  - VAWA cancellation of removal
  - VAWA suspension of deportation
- Multiple applications possible

# General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
  - spouse;
  - parent; or
  - adult son/daughter (over 21)
- With Whom Self-Petitioner Resided
  - No time period required
- Good Moral Character
- Good Faith Marriage

# Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets

# VAWA self-petitioning available

- If perpetrator is the child's step-parent must file before marriage to child's natural parent is terminated
- If parent is filing to protect abused child or step-child must file within 2 years of marriage termination
- Child abuse up to age of 25 to file
- Credible evidence standard of proof

# VAWA self-petitioners get:

- Deportation: Protection from deportation soon after filing.
- Benefits for Child's Family Members:
  - VAWA self-petitioner's children and non-abusive parent receive immigration benefits
- Public Benefits: As qualified immigrants ( $\approx$  2 months)
  - TANF in TN, IA; Health Care: IA
  - Prenatal care regardless of immigration status: OK, TN, AR
  - No immigration restrictions on in- state tuition for higher education: OK
- Employment authorization:
  - Citizen abuser ( $\approx$  4 months);
  - Lawful permanent resident abuser ( $\approx$  7 months).
- Lawful permanent residency
  - Citizen perpetrator apply upon approval (1 year)
  - Lawful permanent resident perpetrator ( $\approx$  3+ years)
- \*Leaving the U.S. before lawful permanent residency could trigger 10 year unlawful presence bars to reentry

# Cases You Typically See of Children Who Could Self-Petition

# Child Self-Petition Scenarios

- Abuser is a citizen or lawful permanent resident parent or step-parent
  - Abused child and non abusive parent both undocumented
  - Child is citizen or lawful permanent resident with undocumented non-abusive parent
  - If parent filing to protect a child
    - If marriage = self-petition
    - If no marriage VAWA cancellation

# U Visas

Improve reporting, investigation,  
and prosecution of child welfare  
cases



# 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

# Qualifying Criminal Activity

Domestic Violence	Kidnapping	False imprisonment
Sexual Assault	Abduction	Blackmail
Rape	Trafficking	Extortion
Incest	Involuntary servitude	Witness tampering
Prostitution	Slave trade	Obstruction of justice
Torture	Being held hostage	Perjury
Female genital mutilation	Peonage	Stalking
Felonious assault	Fraud in foreign labor contracting	Manslaughter

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

# Who can apply?

- Victims of qualifying criminal activity
- Parents and guardians can apply as an “indirect victim” if:
  - the victim is a child under 21 years of age and/or
  - is incompetent, incapacitated, or deceased due to murder or manslaughter
- For child victims a “next friend” can provide helpfulness

# Certification Required From:

*DHS U and T Resource Guide states:  
“law enforcement” & “law enforcement agencies” =*

- Federal, state, and local
  - Law enforcement
  - Prosecutors
  - Judges, Magistrates, Commissioners
    - Civil protection order
    - Child welfare
    - Divorce, Civil & Criminal cases
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

# U Visa Certification Mandatory

- Department of Homeland Security U visa regulations require a certification
- Eligible immigrant victim cannot file a U visa case without a certification
- Certification provides required evidence
  - Is not dispositive
  - Certification does not contain all the evidence a victim required to present in U visa application

# U Visa Basics

- Certification is just one part of the overall process  
it does not = Citizenship
- Meant to promote reporting of criminal activities  
including child abuse
  - Does not require criminal prosecution
  - Reporting, talking with investigators, coming to court  
in a child welfare case sufficient
- Increases immigrant victim and immigrant parent  
participation in child welfare cases and system

# U Visa Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
- Note evidence of injuries
  - If available not required
- Determine helpfulness of
  - Victim or victim's parent, next friend
- Determine if any family members were the perpetrators

# Family Relationships Covered: U Visa Examples

- Citizen child victim of child abuse or sexual assault
  - Child's non-abusive parent who provides helpfulness can apply for a U visa
- Immigrant child's immigrant mother is a victim of domestic violence & child has suffered child abuse
  - Immigrant mother can apply for a U visa and include the child in her application
- Immigrant child has suffered child abuse
  - Can file for a U visa and include the child's non-abusive immigrant parent in their application



# U-visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
  - Waitlist approval backlog 110,000 visas – 11 years
- Receive Work authorization ( ≈ 28 - 48 months)
- The U-visa grants a temporary 4 year stay
- Immigration relief for family members included in application
  - Under 21: **spouse, children, parents, unmarried siblings under age 18**
  - Over 21: spouse and children
- Lawful permanent residency after U visa 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 Benefits Access

- U visa access to federal public benefits very limited
- Prenatal care regardless of immigration status: OK, TN, AR
- No immigration restrictions on in- state tuition for higher education: OK
- State funded TANF: IA
- Health care through CHIP: IA

What types of cases do you see that where immigrant children and/or their parents may qualify for a U visa?

# U Visa Typical Scenarios

- Undocumented child suffered child abuse, sexual assault, other U visa criminal activity
  - Unaccompanied or with parent or guardian
  - Any perpetrator
- Documented children without path to lawful permanent residency who suffered criminal activity including
  - DACA
  - Abused children of work visa holders

# T Visas for Victim of Human Trafficking and Their Children

# T Visa Overview

- Victim of Severe form of Trafficking
- In the US or territories on account of trafficking
- Respond to reasonable requests for collaboration with investigation
- Prosecution unless victim is under 18
- Hardship upon return to home country
- Certification not mandatory

# What are Severe Forms of Human Trafficking?

- **Sex Trafficking:** in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- **Labor:** The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

(Federal Law—“Victims of Trafficking and Violence Prevention Act of 2000 can be found at [www.ojp.usdoj.gov/vawo/laws/vawo2000/](http://www.ojp.usdoj.gov/vawo/laws/vawo2000/))

# Three Elements of Trafficking

**1**  
PROCESS  
Recruiting  
OR  
Harboring  
OR  
Obtaining a  
Person

**2**  
MEANS  
By Force  
OR  
Fraud  
OR  
Coercion

**3**  
END  
For the purpose of  
Involuntary  
Servitude  
OR  
Debt Bondage  
OR  
Slavery  
OR  
Sex Trade



# Family Members Who Can Be Included in T Visa Application

- Child victims under age 21 can include:
  - Spouse, children, parents and unmarried siblings under age 18
- Victims over 21 can include:
  - Spouse and children

# T Visa Benefits

- While Case is Pending
  - Protection from deportation and removal
  - VAWA Confidentiality
- Upon receiving a bona fide determination or continued presence and HHS certification
  - All federal and state public benefits
  - Health Care Exchanges
  - Receives work authorization
  - Drivers licenses
- Upon Approval
  - Immigration benefits for children (and unmarried siblings if applicant is under age 21)
  - Eligible for lawful permanent residence after 3 years or end of criminal case
  - Can travel outside of the U.S. but may need permission

# Special Immigrant Juvenile Status: Latest Tips, Tools, Bench Book and Best Practices for Judges

# Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children under the age of majority under state law who have been
  - Victims of abuse, abandonment, neglect
  - By at least **one parent**
- State Court Findings Required As Evidence requires
  - State court with jurisdiction over care, custody, dependency or placement of the child
  - has issued a court order, finding, or declaration on three statutorily required issues
- DHS uses the state court order as evidence in adjudicating the immigration application

# State Court Findings Needed for SIJS

## \*State Law Applies To Each\*

- The court issued orders regarding the care or custody, of an immigrant child with
  - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend) 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 the parent's abuse, abandonment, or neglect

# State Courts Regularly Make Custody & Care Determinations

- Who will be the custodian/guardian of the minor
- Who the minor will live with
- Who will receive child support for the child living with them
- Whether the minor will be committed to the custody of the state or private agency for care, treatment, or rehabilitation
- Issue orders directing the child's care
  - Child support, health care, applying for benefits or services for the child

# SIJS in State Courts

- SIJS child while they are a minor as defined by state law must
  - Obtain a state court order
  - File while still a child as defined by state law
- SIJS is an option any time an abused, abandoned or neglected child is not a
  - Citizen or lawful permanent resident

# 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
    - Kinship care
    - Adopted parent
    - State foster care
    - Federal foster care (ORR)



# Children of Immigrants

- 26% of children in the U.S. under the age of 18 have one or more immigrant parents
  - 88% of these children are native-born U.S. citizens
- 21.6% of U.S. population speak a language other than English at home

# Immigrant Children

- 66% of undocumented immigrants have been in the U.S. 10 years or more
- Unlawful presence bars do not apply to children until after they are adults
- When children end up in immigration court
  - No Right to have counsel assigned
  - Percent of cases initiated by year in which children were unrepresented in immigration court
    - FY 2015-30%
    - FY 2016 -40%
    - FY 2017 – 75%

# Types of Proceedings With Jurisdiction To Make SIJS Findings:

- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Protection orders
- Paternity
- Child support
- Custody
- Divorce
- Legal Separation
- Adoption
- Motions for a declaratory judgment

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

# Best Practices for Court Order

- Include a statement of the court's jurisdiction citing the state statute, court rule, or other authority under which the court is exercising jurisdiction.
- Follow your state court procedures and note that you do so to demonstrate that the court made an informed decision

# Approach:

1. Make findings about the facts of harm to the child in US or abroad
2. Determine applying state law if = abuse, abandonment, neglect, similar basis
3. If yes apply state best interest factors to
  - Custody, placement, commitment
  - If not in child's best interests to return to home country
  - Viability of reunification with abuser

# Best Practice for Court Order

- Make factual findings regarding
  - Facts of abuse, abandonment and/or neglect
  - Separately regarding each parent
  - Articulating 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

# What Children with SIJ Status Receive

- While case is pending:
  - Protection from deportation and removal
  - As lawfully present children – health care exchanges and subsidies in Maryland while under 21
  - Programs and services necessary to protect life and safety

# What Children with SIJ Status Receive

- At approval:
  - Lawful Permanent Residency
    - (separate but usually concurrent filing)
  - Legal work authorization
    - Brings access to federally recognized driver's licenses and IDs
  - Eligible for citizenship after 5 years

**SIJS' may NEVER file family petition for either of the child's natural parents**

**Should not travel outside of the U.S. until they receive lawful permanent residency**



# SIJS Benefits

- SIJS access to federal public benefits very limited until the child receives lawful permanent residency
- Prenatal care regardless of immigration status: OK, TN, AR
- No immigration restrictions on in- state tuition for higher education: OK
- State funded TANF: IA
- Health Care through CHIP for SIJS applicant children: IA

# SIJS Typical Scenarios

- Undocumented child entered US as an unaccompanied minor
  - Placed by HHS with sponsor in Maryland
- Child reunited with a parent or extended family members in your state
- Any protection order or child welfare case where the child is foreign born and not a citizen or lawful permanent resident with
  - Abuse, abandonment, or neglect by 1 parent

# Child Welfare Cases and Termination of Parental Rights

# Immigrant Parents and Child Custody

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

- Parents have a Constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
  - Undocumented immigration status
  - Immigration detention
  - Deportation
- Overriding presumption that:
  - Parent-child relationship is constitutionally protected
  - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
  - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

# Detained Parent Directive 2018

- If parents are detained:
  - Placement near children and family court
  - Bring parents to family court to participate in cases involving children
  - Facilitate visitation
  - Help children travel with deported parent – obtain passports for children
  - Bring deported parents back to the US for custody and parental rights cases

# Custody of Children in Immigrant Families

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



# 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
  - State laws on custody awards to non-abusive parent
- Impact of childhood trauma on brain development research on custody



# Myth vs. Fact:

## Parents Without Legal Immigration Status

### Myth

1. Deportation is imminent
2. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. Legally present parent must have custody in order to file for benefits for child

### Fact

1. DHS policies prevent detention/removal of immigrant parents who are crime victims
2. Legal immigrants/naturalized citizens are more likely to flee with children, especially when
  - There have been threats of kidnapping children
  - They are dual nationals
  - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for their children.



# PROTECTION ORDERS



# Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

# Use Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Child/Spousal support
  - Affidavit of support
- Health insurance

# Technical Assistance and Materials

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

# Questions



**Thank You!**