Improving Access to Justice for Immigrant Victims of Domestic and Sexual Violence

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2024 Conference on Enhancing Judicial Response to Intimate Partner/Domestic Violence

Virginia Beach, Virginia November 21, 2024

Thank You to SJI

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Join the National Judicial Network (NJN)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJN (405 judges – 42 states & territories)
  - Opportunity to engage in discussions with other judges
  - Receive latest information
  - Peer-to-Peer training opportunities
  - Get your questions answered
  - Receive the information you need through
    - Webinars, trainings, and technical assistance
    - Bench cards, tools and training materials
  - We are circulating a sign up sheet

Learning Objectives

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

- Know how accurate immigration law information and providing language access result in just and fair outcomes in family and criminal court cases
- Recognize facts that indicate a party qualifies for crime victim related forms of legal immigration status
- Understand the role Congress created for state court judges in signing U and T visa certifications and issuing Special Immigrant Juvenile Status (SIJS) judicial determinations
- Know that Violence Against Women Act (VAWA) confidentiality laws impacts discovery

Language Access: Demographics, Requirements, and Resources

What countries are you seeing immigrant survivors coming from?

Virginia Data (2022)

Sources: Migration Policy Institute Data Hub (November 2023) and Lawful Permanent Resident estimates MPI and DHS (2022)

Virginia (2022)*

- Total foreign-born population – 1,105,028
- 12.4% of the state's ~ 8.6 million people are foreign born
  - 58.7% naturalized citizens
  - 26% legal permanent residents (as of 2019)*
  - 15.3% temporary visa holders or undocumented immigrants
- 93.8% rise in immigrant population from 2000 to 2022
- Length of time immigrants have lived in the U.S.
  - 30.1% entered before 1999
  - 26.3% entered 2000 - 2009
  - 33.6% since 2010
- 25.0% of children under age 18 have one or more immigrant parents
  - 86.2% of these children are native-born U.S. citizens

Virginia– Countries/Regions of Origin & Limited English Proficiency (LEP)(2022)*

- Asia – 43.3%
  - South Central Asia (18.1%)
  - Eastern Asia (10.7%)
  - India (9.4%)
  - Other Southeastern Asia (2%)
  - Philippines (4.7%)
- Latin America – 34.4%
  - South America (9.6%)
  - El Salvador (9.3%)
  - Other Central America (7.4%)
  - Mexico (4.9%)
- Africa – 11.8%
- Europe – 8.8%
- Middle East – 5.1%
- Canada – 1.1%
- Oceania – 0.4%

- Language spoken
  - 17.0% of people in the state who speak a language other than English at home
  - 38.2% of foreign-born persons are LEP - speak English less than "very well"

Virginia - LEP (2022)*

- Limited English Proficiency (Speak English less than very well)
  - Naturalized citizens – 29.4%
  - Noncitizens – 49.9%
- Limited English Proficiency by language spoken at home
  - Vietnamese (55.1%)
  - Korean (47.8%)
  - Spanish (39.4%)
  - Nepali, Marathi, or Other Indic Languages (28.7%)
  - Chinese (including Mandarin, Cantonese) (40.8%)
  - Amharic, Somali, or Other Afro-Asiatic Languages (33.9%)
  - Bengali (34.8%)
  - Urdu (36.6%)
  - Arabic (30.9%)
  - Persian (including Farsi, Dari) (45.5%)
  - Tagalog (including Filipino) (24.4%)

DOJ Guidelines on Language Access for Courts -I

- LEP persons are to be provided qualified interpreters
  - For all parties, defendants and witnesses and all persons whose presence is necessary or appropriate (e.g., parents of minors and crime victims)
  - In ALL court room proceedings whether civil, criminal, family protection order, or administrative
    - Includes motions and status hearings
  - LEP individuals should not incur any fees for these services

DOJ Guidelines on Language Access for Courts -II

- LEP persons are to be provided qualified interpreters
  - Not restricted to court rooms, also other court functions including:
    - Clerks' offices, records room, information counters
    - Alternative dispute resolution
    - *Pro se* clinics
    - All interactions with court appointed personnel (e.g., batterers treatment, guardian's ad litem, court psychologists, child advocates, drug testing, paternity testing)

2018 DOJ Letter to Chief Justices and State Court Administrators

- "The Federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules."
- "Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary."
- "Language services expenses should be treated as a basic and essential operating expense, not as an ancillary cost."

Weaving trust and safety for Virginia's Latino community

Conference on Enhancing Judicial Response to Intimate Partner/Domestic Violence
Virginia Beach, Virginia November 21, 2024

NIWAP



LIVE Center is a trusted way out of abusive and violent situations for Virginia's Latino community.

Our mission is to provide **education, advocacy, and support** to **Spanish-speaking individuals affected by violence** and injustice in Virginia in order to ensure that they can access services that **empower them to become happy, healthy, and self-sufficient.**

NIWAP

The Need

10.5%

of Virginia's population is Hispanic

34%

experience abuse

~50%

don't seek help

>150,000 suffering in silence

NIWAP

This is not a "cultural" problem.

=
rates
of abuse

½
don't seek
help

Abusers can
any race, nationali
or gender.

It's about vulnerability and control, not culture.

NIWAP

Challenges unique to the community we serve:

- Limited English proficiency
- Cultural differences
- Fears - for themselves and their families



NIWAP

What's needed:

Trusted bi-lingual/bi-cultural, third-party advocates and interpretation to enable victims to convey their stories and understand support options



NIWAP

WE BELIEVE...

- Abuse should not be tolerated
- All victims (regardless of gender, race, origin, documentation status) deserve support
- No one should suffer alone or in silence
- Victims open up and seek support when they feel seen, heard, understood, and safe
- The entire community benefits when all individuals have freedom and opportunity to thrive



NIWAP

HOW WE UNIQUELY HELP:

Who We Serve:

Latinos across the state of Virginia who have been impacted by sexual or domestic violence, or who need support accessing help or services.



NIWAP

Types of victims we help



*"Other" were also victims of domestic and/or sexual violence.

NIWAP

Emotional Support Service



Licensed Counseling & Therapy



Peer Counseling



Support Groups

Legal Support Services



Legal Clinics



Protective Order Assistance



Court Accompaniment

Emergency & Safety Services



Crisis Intervention



Shelter Placement



Safety Planning



Hospital Accompaniment



Financial Assistance

Access & Advocacy Services



Interpretation Services



Case Management

NIWAP



SECONDARY SERVICE

General helpline for Latinos, which serves as a trusted resource for Virginia's Latino community. The helpline bridges the gap between Spanish-speakers and Virginia's available resources and services beyond sexual and domestic violence.

NIWAP



Partner Services

Spanish English Interpreter Bank (SEIB)

Our Spanish/English Interpreter Bank (SEIB) offers free and confidential interpreter services to Latinos impacted by domestic and sexual violence, and their service partners.

The goal of the SEIB is to lower the language barriers faced by those who have experienced violence to ensure communicative autonomy.

NIWAP

Partner Services:

Latinos in Virginia Empowerment Center (Physical Space)

LIVE Center provides physical locations (in Richmond and Hampton Roads) for community service providers to meet with members of the Latino community, increasing access and feelings of safety.

Proyecto Comunitario de Leyes de Impuestos

Grupo de Tejido

NIWAP



Empowering the Latino community to be part of the solution

- Community Victim Advocate Program-Volunteer Program
- Latino Leadership Program for DV/SV - Prevention Program
- Technical Assistance Program
- Public Speaking and Education Training

NIWAP

Our impact

A SMALL TEAM PROVIDING SIGNIFICANT SUPPORT

In the past five years we have provided:

- Over 10,000 crisis interventions
- Answers to over 10,000 helpline & crisis calls
- Almost 45,000 information & referral services
- Almost 25,000 advocacy services
- 440 instances of relocation assistance
- Almost 300 court accompaniments

With your help, we have expanded.

In the past five years we have grown our impact:

- 240% increase in informational and referral services provided
- 90% increase in advocacy services
- 460% increase in emotional support services

NIWAP

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

Purpose Crime Victim Based Immigration Relief

Congress enacted VAWA self-petitioning (1994), the U and T visas (2000, 2005, 2008) & Special Immigrant Juvenile Status (SIJS) (1990,2008) to:

- Enhance victim safety
- Allow victims to report crimes and seek help from police, prosecutors, and courts without fear of deportation
- Improve access to justice in family/criminal/civil courts for immigrant victims of
  - Domestic & sexual violence, stalking, human trafficking and child/elder abuse
- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Keep communities safe

Immigration Protections for Noncitizen Victims of Crime and Abuse



Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
  - -- Child abuse
  - -- Elder 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
- Hate Crimes
- Video voyeurism
- **Parent perpetrated**
  - **Child abuse**
  - **Child neglect**
  - **Child abandonment**

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

Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
  - Legal work authorization (6 months to 2 years from filing)
  - Issuance of federally recognized driver's licenses and IDs
  - Increased access to federal and state public benefits
- VAWA confidentiality
- Implication for the community

VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
  - Immigration law definition of domestic violence
- By a U.S. Citizen or Permanent Resident
  - spouse;
  - parent; or
  - Citizen adult son/daughter (over 21)
- With Whom Self-Petitioner Resided
  - No time period required
- Good Moral Character
- Good Faith Marriage
- VAWA cancellation of removal and Battered Spouse Waivers have similar eligibility requirements
- 2023 time to work authorization = 4-34 months

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, neglect, or dependency
  - By at least **one parent**
- To apply must submit required findings from a state court with jurisdiction over
  - the care, custody, or dependency of the child
- 2023 time to work authorization = 6 months

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
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- 2023 time to work authorization – 60-62 months

T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
  - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.S. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking. Exceptions
  - Under age 18
  - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- 2023 time to work authorization = 18 months

Involuntary Servitude in a Domestic Violence Relationship

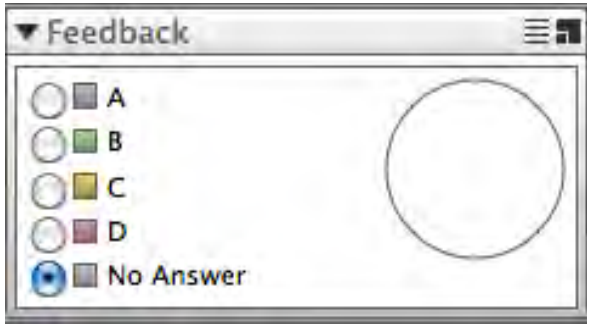
- Abuser/Trafficker controls victim's liberty creating conditions of servitude
- Expectation that the victim's life fulfills the trafficker's orders
  - E.g., demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and/or constant availability to labor regardless of health or energy;
- Lack of control over the victim's own wages (or not paid) despite laboring under the trafficker's demands; or
- The imposition of unequal living arrangements as part of a campaign of force, fraud, and coercion
  - E.g., unequal sleeping arrangements, living arrangements, or access to nourishment.

https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2

Clara and Eduardo Case Scenario

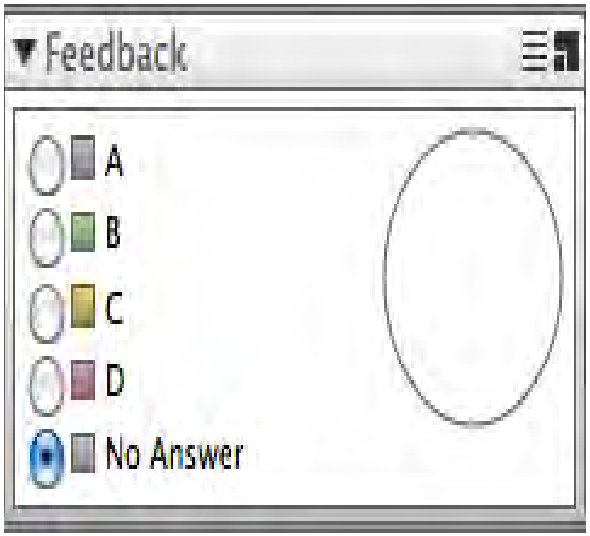
Clara met Eduardo, a lawful permanent resident, when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel, and Lupe 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 called the police for help, and Clara talked to the 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:



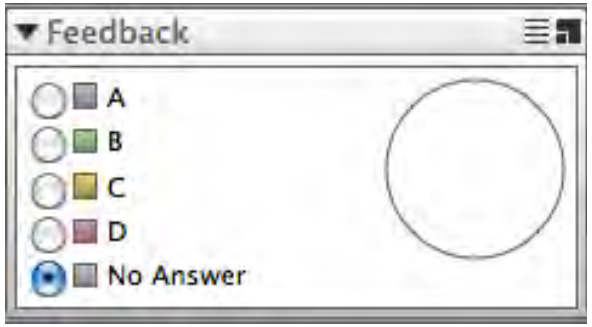
A. U visa
B. Included in Lupe's VAWA self-petition
C. T visa
D. File her own self-petition

What forms of immigration relief would Lupe *NOT* qualify for:



A. VAWA self-petition
B. U visa
C. Special Immigrant Juvenile Status (SIJS)
D. T visa

What forms of immigration relief would Miguel qualify for:



A. VAWA self-petition
B. U visa
C. T visa
D. SIJS

Evidence Based Research

After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- Increased justice system involvement
  - 114% increase in willingness to trust the police
  - 36% make police reports regarding future crimes
  - 60% seek protection orders and/or custody
  - 22% help other victims report abuse and seek help/justice
- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
  - 74% decline in immigration-related abuse
  - 78% decline in threats to snatch/cut off access to children
  - 65% decline in efforts to use the immigration status of the victim to gain an advantage in family court

Evidence Based Research Has Found Increased Access to Justice

- Courts that issue U/T visa certifications and SIJS judicial determinations
  - See greater numbers of immigrant victims seeking protection orders & custody, and participating in criminal, civil, and family cases
  - Even in times of increased anti-immigrant sentiment and immigration enforcement

Rodrigues, Orloff, Couture-Carron, and Ammar, Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Recommendations, **National Center for State Courts, Trends in State Courts** (2018) https://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings/

VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS, DOJ, and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
  - DHS data base "384" system + sanctions/$5000 fine
- **Location Prohibitions:** Enforcement of locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone
  - VAWA self-petitioners/cancellation/suspension, T & U visas, Battered Spouse Waiver, Abused Visa Holder Spouses
  - Impacts state family/civil/criminal court discovery

Hawke v. Dep't of Homeland Security
(N.D. CA, 2008) – VAWA Self-Petition Case
(Judicial review exception)

- VAWA Confidentiality Protects cases:
  - All cases unless denied on the merits
- Judicial exception applies to appeals of victim's immigration case
  - Does not apply to civil or criminal court proceedings
- 6th Amendment right to compulsory process does not permit access to absolutely privileged information
- "Primary purposes of the VAWA confidentiality provision, namely *to prohibit disclosure of confidential application materials* to the accused batterer"

New Mexico Supreme Court Ramirez & Reyes-Mendoza v. Marsh S-1-SC-39966 (May 7, 20924)

- VAWA confidentiality protections preclude discovery of U or T visa applications and related materials in a criminal case from:
  - The victim or the victim's family members
  - The victim's immigration attorney
- The Court issued two writs of superintending control overturning judicially ordered discovery

Implications of VAWA Confidentiality

- Information about the existence of case file contents and actions taken in VAWA confidentiality protected cases generally not discoverable in state court
- In criminal cases only the U or T visa certification itself and any cover letter is discoverable
  - If court determines it is relevant and potentially exculpatory
  - This is sufficient for cross examine victim's credibility
- In civil employment cases with multiple victims where EEOC certified, redacted certifications may be discoverable
- In family cases no discovery

In the Clara and Eduardo Scenario which of the following is discoverable in a state court case?



A. Information from Clara's VAWA self-petition file in Eduardo's criminal case
B. Information from Clara, Lupe's or Miguel's VAWA, T or U visa immigration case files in a family court case
C. U visa certification signed by law enforcement, prosecutors or a judge in the criminal prosecution of Eduardo
D. U visa certification signed by law enforcement, prosecutors or a judge in a custody case between Clara and Eduardo

U Visas Promote Trust and Access to Justice: U Visa Certification By Judges

U Visa Requirements

Victim (Certification)

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law
- Admissible to US or granted waiver

Helpful (Certification)

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

Harm (Victim's Application)

Substantial physical or mental harm as a result of having been a victim of criminal activity

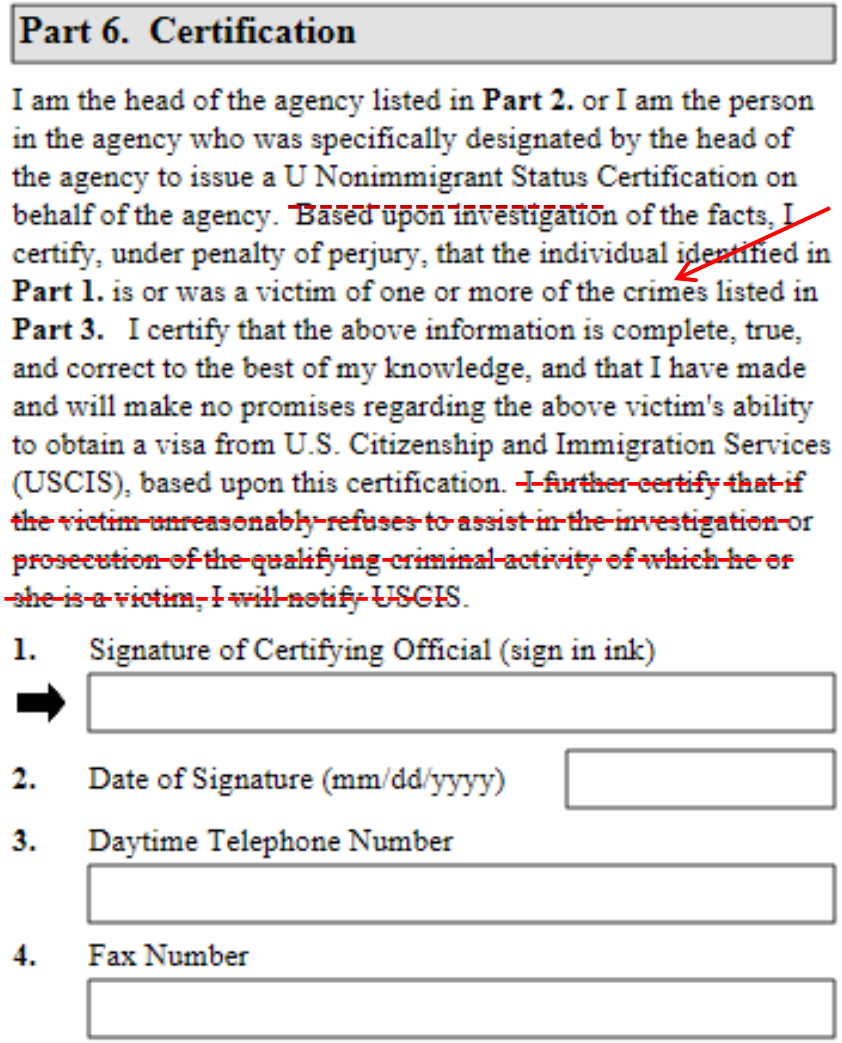
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- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking
- Similar Criminal Activity
  - Hate Crimes
  - Child/elder abuse
  - Abuse of persons with disabilities
  - Video Voyeurism

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

Which Judicial Officers Can Certify?

- Federal, state, & local
  - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
  - Others with delegated decision-making authority
- Judge will need to amend the form



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 and identifies the crime(s).

Certification provides evidence to DHS.

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

Judges detect "Criminal Activities" and "Helpfulness" In Wide Range of Court Cases

- 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

Who Else Can Certify?

- Federal, state, and local
  - Child abuse agencies
  - Elder abuse agencies
  - Police
  - Sheriffs
  - State police
  - FBI, HSI, ATF
  - Prosecutors
- Federal or State Departments of Labor (DOL)
- Equal Employment Opportunity Commission (EEOC)
- Other government agencies with civil, criminal or administrative investigative authority

Signor = Head of agency or designee

There is **NO** statute of limitations on signing a certification.

Why might a victim come to a judge for certification?

Why Victims Seek Judicial Certifications

- The victim's only contact with the justice system was in a custody, civil protection order, employment, or child welfare case
- No language access to police when victim called for help
- Police did not investigate and case never sent to prosecutor
- Judge observed victim's attendance and participation in criminal case

What Helpfulness do Judges See?

- Certification based on helpfulness to courts
  - Detection(family/juvenile/civil/criminal)
    - Filing pleadings
    - Testimony
    - Attending court
    - Seeking court orders
    - Working with police/prosecutors
  - Conviction/Sentencing
    - Criminal cases
    - Contempt proceedings

Things to Know About Certification

- Judges, law enforcement and other certifiers
  - May complete U visa certification if they
  - Observe or detect a victim's helpfulness
  - Can be a civil, family or criminal case

Victim-centered approach

- The investigation, prosecution or family court case
  - Can still be ongoing
  - Can be closed or may have settled/plead
  - Offender may not have been identified or arrested
  - May have occurred a long time ago
  - No statute of limitations
  - May never have been criminally prosecuted

Virginia U and T Visa Certification Law § 9.1-1500-1502

- Requires law enforcement and prosecution agencies in the state to
  - Designate certifiers
  - Make agency certification procedures publicly available
  - Respond to certification requests within 120 days
    - 21 business days for victims in removal proceedings
    - If certification delays would cut off a child, sibling, or family from U visa protections statute imposes 7-30 day deadlines
- Contains language § 9.1-1501(F) useful for jury instructions
- Imposes confidentiality protections
- Provides for circuit court review of refusals to certify and failure to respond to certification requests
  - Remedy includes judge signing certification for eligible victims

Special Immigrant Juvenile Status

Raise your hand if you have issued SIJS findings in your court orders.



Special Immigrant Juvenile Status (SIJS)

- Humanitarian immigration relief for under 21 year old unmarried children who cannot be reunified with one or both parents who…
  - Abused, abandoned or neglected the child
- **State court judicial determination is a required SIJS filing prerequisite**
- Provide evidence for child's immigration case
- The state court order reflects judge's expertise on children's best interests
- State court order does **not** grant immigration status

SIJS Judicial Determinations Can Be Issued When Family Court Judge Awards Custody

- Child is dependent on a juvenile court or **legally committed *to or placed under the custody of*** an agency or department of State, or ***an individual*** or entity appointed by a State court.
- **Child's best interest** would not be served by being returned to his or her country of origin.
- **Reunification** with one or both parents **is not viable due to** abuse, neglect, abandonment, or a similar basis under state law (through adjudication by USCIS)

8 U.S.C. § 1101(a)(27)(J)

Family Court Cases That Include Decisions About Care & Custody of Children

- Dependency/Delinquency
- Civil protection order cases
- Custody cases
- Divorce cases
- Paternity and child support cases
- Adoption cases
- DHS states: All are of the above = *Juvenile courts*
  - Juveniles = all children
- SIJS Bench Book has chapters on each case type
  https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents

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

Return to Home country not in child's best interests

- Identify each potential custodian state law requires the court to consider in U.S. and home country
- Apply state best interests factors to each placement
- Court order states the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors, court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
- Then, if relevant, address other country conditions
  - Gangs, other harmful factors

Reunification Not Viable

- Reunification with a parent is not viable due to abuse, neglect, abandonment, or similar state law basis
- 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
  - Duration: through adjudication of SIJS application
- Changes in circumstances can occur
  - But not granting full legal/physical custody to abusive parent

Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state law 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.
- Service of process tool

Best Practices to Address in SIJS Orders

- Make findings as to
  - The age of the child and the evidence relied upon
  - The child's parentage, naming each parent specifically
  - That the parent's identity is unknown (e.g., rape)
  - Abuse, abandonment, neglect suffered & impact on child
    - Address each occurring abroad and/or in the U.S.
  - Details of who the court awarded custody to and why
  - Include no-contact and other protective provisions
- Cite and apply only state law as to:
  - Definitions of abuse, abandonment, neglect, similar basis
  - Best interest
  - Jurisdiction

PROTECTION ORDERS

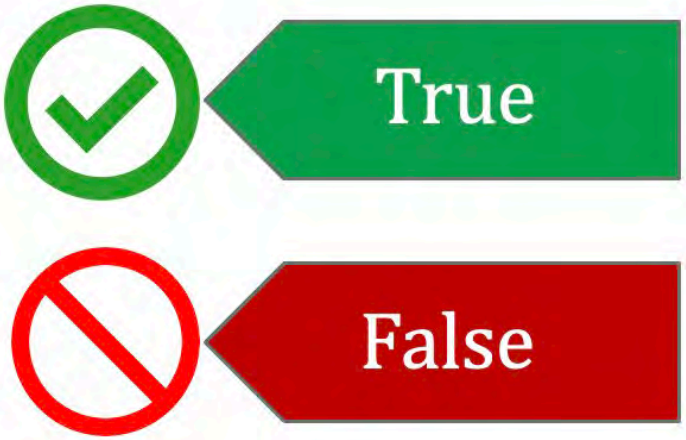


Immigrants and Protection Orders

- 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
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions
- Dangers of issuing protection orders against immigrant victims

True or False?

Violation of a protection order is a deportable offense ?



Protection Orders and Immigration Considerations

- Violation of a protection order is a deportable offense
  - Can lead to loss of lawful permanent residency and other immigration consequences for the perpetrator
  - A finding of violation of the protective provisions of a protection order in any context can trigger deportation including findings in civil contempt cases and admissions for diversion
- Victims should not be charged with violation of orders issued for their own protection orders
- Issue Padilla warnings
- Appoint counsel if one party is unrepresented and both have filed for protection orders

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

Victims Who Stay: No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions
  - No abuse
  - No unlawful contact
  - Batterer's treatment

Custody of Children in Immigrant Families

Tool: Immigrant Victims and Custody Bench Card

Protecting Immigrant Mothers Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004)
http://niwaplibrary.wcl.american.edu/pubs/co-occurencedvchildabuse/

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



Myth vs. Fact:
Parents without Legal Immigration Status

Myth	Fact
1. Deportation is imminent	1. Less risk for victims with pending victim-based immigration cases and over 2 years in the US
2. Parent is likely to flee U.S. with child	2. US citizens and lawful permanent residents 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. The parent has no livelihood	3. Abused immigrant parents in family court can receive child support & have a path to immigration relief, work authorization & some benefits
4. Legally present parent must have custody in order to file for benefits for child	4. Custody does not affect parent's ability to file for or gain immigration benefits for their children.

How Does Information About Protected Areas From Immigration Enforcement Help In Family Courts Cases?

VAWA Confidentiality

- Victims protected at courthouses in connection with civil/family/criminal cases related to
  - Domestic violence, sexual assault, trafficking, stalking
- Shelters, rape crisis centers
- Supervised visitation centers
- Family Justice Centers
- Programs serving victims

DHS Policy 10/27/21 At or Near:

- Schools and universities
- Medical or mental health care facilities
- Places of worship, religious events, weddings, funerals
- Places where children gather
- Social services: e.g., crisis, domestic violence, child advocacy, food banks, victim services, shelters, supervised visitation, family justice centers…
- Disaster/emergency response offered including family reunification
- Ongoing parade, demonstration, rally

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

Divorce and Economic Support

Impact of Divorce

- VAWA self-petitioners:
  - Spouse must file within two years of final divorce
  - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
  - Students, Work Visa Holders, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
  - Asylum
  - Employment
  - Family relationships
  - Cancellation of removal

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
- Impacts
  - Spousal support
  - Property division

Affidavits of Support

- Each person who petitions for a family member to immigrate to the United States must execute a legally enforceable affidavit of support. 8 U.S.C. § 1182(a)(4)(C)(ii)
  - Contractually committed to support sponsored family member at annually at 125% of Federal Poverty Guidelines
  - Sponsor submits to DHS evidence of ability to support sponsored family member
- Affidavits of Support are enforceable as contracts by the sponsored immigrant
- Support obligation lasts till immigrant spouse
  - Naturalizes, dies, earns 40 quarters of work credit, or gives up lawful permanent residency and leaves the U.S.

Child Support & Immigration

- Payment of child support through the court provides a non-citizen parent with a history of child support payments that is
  - Helpful evidence of good moral character for either parent's immigration cases
    - VAWA self-petition, Cancellation of removal, Naturalization
- Lack of legal work authorization is not a valid defense to non-payment of child support
- Can order child support, but not a job search, of an undocumented non-custodial parent
- Can order non-custodial parent to obtain an ITIN and pay taxes

Why public benefits matters to a Judge?

How judges ensure that court orders help children and families in Virginia access public benefits and services they are legally eligible to receive?

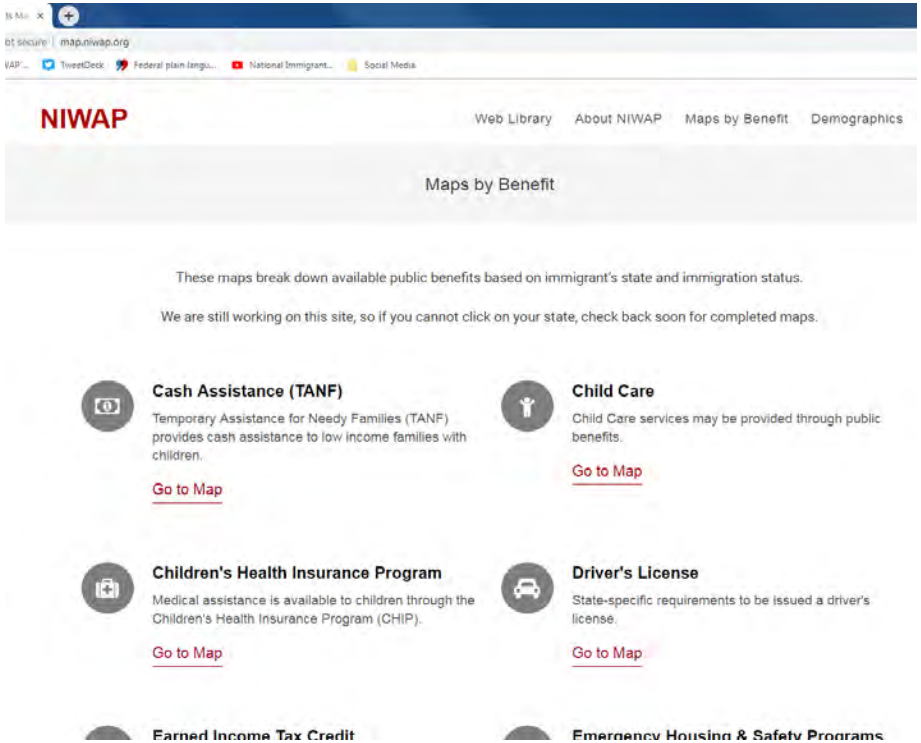
Both documented and undocumented immigrants can access:

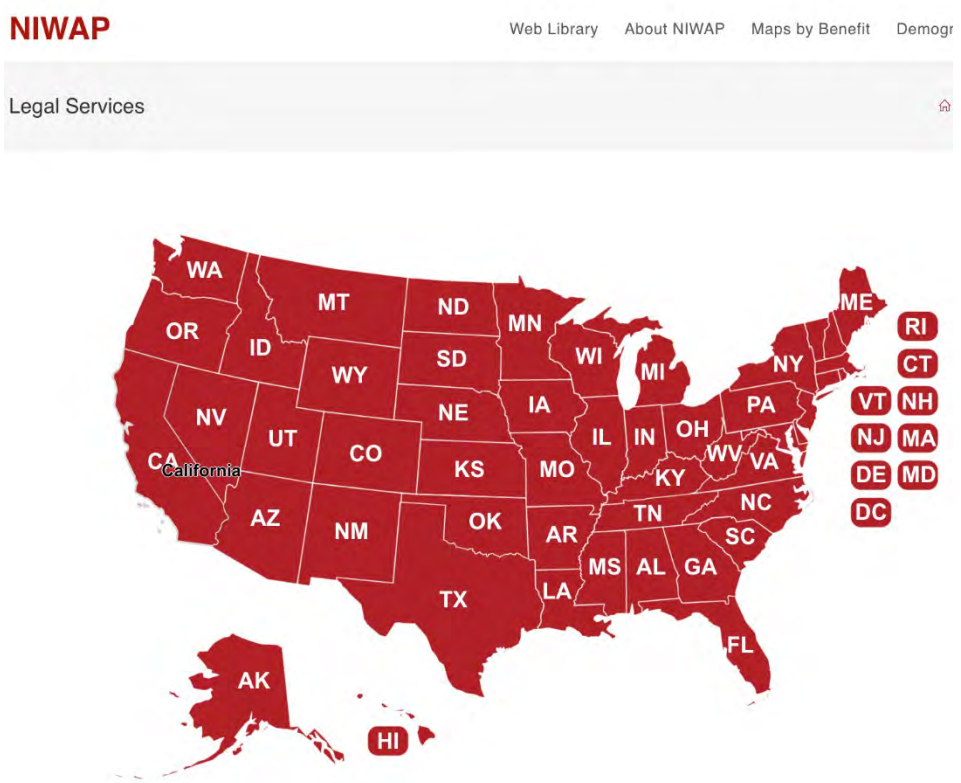
- Family Court – e.g. divorce, custody, child support, protection orders, child welfare
- Language Access
- Police Assistance
- Have perpetrators prosecuted
- Obtain public benefits for their children
- Elementary & Secondary education
- School lunch/breakfast
- Soup kitchens, food banks, nutrition assistance
- Communicable disease immunizations, testing, treatment, treatment from public health centers
- Services necessary to protect life and safety
- Legal Services
- Assistance for Crime Victims
- Emergency Medicaid
- Emergency Shelter
- Transitional Housing
- Child and Adult protective services
- Crisis counseling and intervention
- Violence/abuse prevention services

HHS Child Eligibility Letters

- TVPA requires government officials to report to Office on Trafficking in Persons within 24 hours of having credible information that an immigrant child **"may be a victim of trafficking"**
- HHS reviews Requests For Assistance (RFAs) and connects potential victims of trafficking with state and federal benefits and services
- The RFA for a trafficked child must be filed **before age 18**
- Receive interim assistance 90 days
- Eligibility letters give child trafficking victims access to benefits and services to the same extent as refugees indefinitely
  - Access to benefits throughout the time the child is applying for continued presence, T visa or U visa

Interactive Public Benefits Map





http://map.niwap.org/

In Virginia: Public Benefits Implications of Identifying Human Trafficking

- Trafficking victims can access
  - TANF, TANF Childcare,
  - SNAP (children and adults)
  - CHIP (5 years faster than through U visas)
  - Adult Medicaid (3-5 years faster than SIJS, VAWAs and 18 years faster than U visas)
  - FAFSA (3-18 years faster than SIJS, U visas)
  - Federally recognized IDs (3-5 years faster than U visas)

LATINOS IN VIRGINIA
EMPOWERMENT CENTER

Thank You

Richmond Office:

9513 Hull Street Rd N suite b, North Chesterfield, VA 23236

804.658.3341

Hampton Roads Office:

3808 Poplar Hill Road suite D, Chesapeake VA 23321

757.708.2812

24/7 Statewide Hotline for Latino Victims of DV/SV:

888.9691825

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Partners can Email Us at: hola@latinosenvirginia.org

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