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

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## Introductions

- **Judge Mary Weir**

- Associate Circuit Judge, Jackson County, Kansas City, Missouri

- **Steven Weller**

- Senior Consultant, Center for Public Policy Studies

- **Leslye E. Orloff**

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

**Materials available at:**

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

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## Learning Objectives:

- **Understand the intersections between Oregon state court proceedings and immigration law**
- **Know how accurate immigration law information affects just and fair outcomes in state courts**
- **Recognize facts that indicate a child and/or a parent qualifies for:**
  - Legal immigration status
  - Protection from deportation/low priority for removal
- **Recognize facts that will allow Judges to make findings, certifications, and orders in state court cases needed for immigrant juveniles' immigration cases**

## Will include Overview of...



- **Department of Homeland Security policies**
- **Immigration relief for juvenile crime victims**
  - **Special Immigrant Juvenile Status**
  - **U visa, T visa, VAWA**
- **Board's role in identifying eligible immigrant victims**
- **Immigration issues that arise in family court cases involving immigrants**
- **Services and benefits available to immigrant victims, children & parents**
- **Resources, NIWAP web library, & technical assistance**

# Small group discussion:

- **What are you seeing with regard to immigrant children, immigrant crime victims, immigrant parents in the Oregon's foster care system?**
- **List questions you have that you would like answered during this training.**

## Large group report back

# Oregon's Immigrant Demographics

- **10% of Oregon's population is foreign born (391,206)**
- **Of Immigrants:**
  - 39.7% immigrants are naturalized citizens
  - 60.3% lawful permanent residents or temporary visa holders
  - 4.3% undocumented (American Immigration Council)
- **High proportion of new immigrants**
  - 37.6% entered after 2000
- **23.8% (816,446) of children in the state under age 18 have 1 or more immigrant parents**
  - 76% of children with immigrant parents in the state are U.S. citizens

Data from U.S. Census and Migration Policy Institute, State Immigration Data Profiles- Oregon (2013): <http://www.migrationpolicy.org/data/state-profiles/state/demographics/OR>

# Countries/ Regions of Origin of Immigrant Population in Oregon

- **Latin America – 46.4%**
  - Mexico (40.3%)
  - Northern America (3.6%)
  - Other Central America (2.3%)
  - South America (2.1%)
- **Asia – 28.5%**
  - China (5.2%)
  - Vietnam (5.2%)
  - Philippines (3.2%)
  - India (2.9%)
  - Korea (2.7%)
- **Africa – (3.1%)**
- **Middle East (1.5%)**
- **Europe – 16.7%**
  - UK and No. Europe (4.2%)
  - Germany, France, Western Europe (4.0%)
  - Eastern Europe (7.8%)
- **Oceania – 1.7%**



From:  
<http://www.migrationpolicy.org/data/state-profiles/state/demographics/OR>



# Languages Spoken in Oregon

- **21.2% of children ages 5-17 speak a language other than English at home**
  - 4.3% speak English less than “very well”:
- **Main languages spoken after English are:**
  - 25.6%- Spanish
  - Most common other languages are
    - Chinese, Vietnamese, Korean, French, German, Slavic languages, and Tagalog

## Department of Homeland Security

**The Homeland Security Act of 2002 abolished the former Immigration and Naturalization Service (“INS”) and the former U.S. Customs Service and combined the functions of these agencies within one department split between three principle agencies:**

- **Customs and Border Patrol**

- Uniformed agents along the border and ports of the United States
- Uses prosecutorial discretion in deciding to question, investigate and detain arriving and recently arriving individuals

- **Immigration Customs Enforcement**

- Uses prosecutorial discretion to enforce immigration laws
- Investigates immigration claims
- Oversees detention and removal

- **United States Citizen and Immigration Services**

- Adjudicates applications for immigration relief
- Grants immigration benefits
- Issues policy and regulations pertaining to victim and humanitarian based

**immigration relief**

# Department of Homeland Security's Roles



Homeland  
Security  
Blue Campaign

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

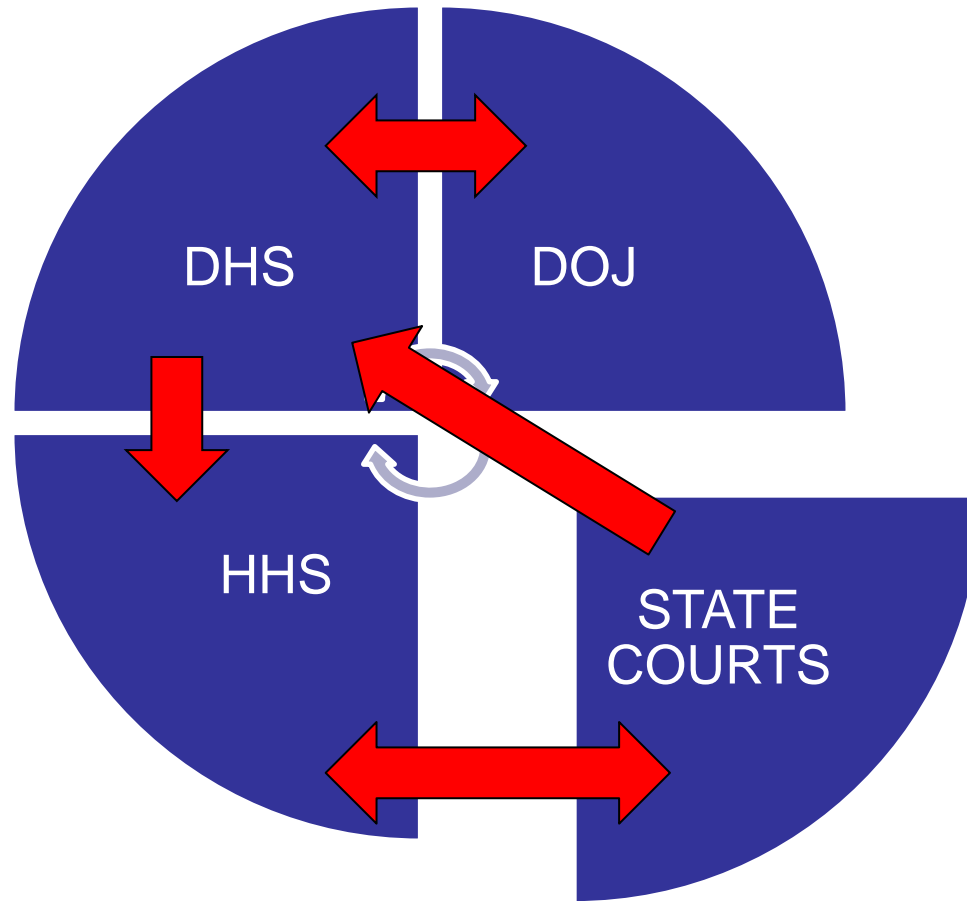
## Removing based on Department of Homeland Security enforcement priorities

- **Terrorism, espionage, dangers to national security**
- **Immigrant gang members over the age of 16**
- **Immigrants apprehended at the border and ports of entry while attempting to enter the U.S.**
- **Immigrants convicted of a felony under state or local law (except crimes where immigration status is an essential element of the crime)**
- **Immigrants convicted of “aggravated felonies” as defined by immigration law**
- **Exception: immigrants who qualify for asylum, crime victim or child related or other forms of immigration relief**
  - **Will not apply to national security or gang violence**

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

- **DHS victim witness memo**
- **Humanitarian release**
- **384 DHS computer system (VAWA, T visas, U visas)**
- **Memorandum on DHS detention priorities**
- **See *Web library* for –**
  - *Bench Card: DHS Enforcement Priorities Information for State Court Judges*
  - *DHS Victim Protection Resources and Guidance*

# Relationships that benefits victims and children



# Paths to legal immigration status for undocumented immigrants

- **Relief for crime victims**
- **Relief for children**
- **Humanitarian relief**
- **Family based immigration visas**
- **Employment based immigrant visas**
- **Temporary forms of relief**
  - **Deferred Action for Childhood Arrivals**
  - **Deferred Action for Parents of Americans and Lawful Permanent Residents**
  - **Prosecutorial Discretion**

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

## VAWA self-petition

- 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

- Abused spouses/children of US citizen and lawful permanent residents protection from deportation

## Battered spouse waiver

- Abused spouses of US citizens with two-year conditional permanent residency

## T visa and Continued Presence

- Victims of severe forms of human trafficking

## U visa (Victims of criminal activity)

- Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
- Substantial harm from criminal activity

## Asylum

- Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
- Domestic violence as gender based asylum

## Special Immigrant Juvenile (SIJ)

- Juveniles that have been abused, battered, abandoned or neglected

## Deferred Action (DACA)

- Deferred action for child arrivals including Dreamers

## DHS Prosecutorial Discretion

- “low priority” for removal immigrants -- survivors, witnesses, parents, children, elderly, disabled
- Humanitarian detention release

Materials overview of remedies -

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



# Role of courts and professionals working with immigrant children and victims

- **Identify potentially eligible immigrants**
- **Distribute information – Dept. of Homeland Security brochures**
- **Know how to obtain accurate information about current immigration laws, policies and practices**
  - Technical assistance through NIWAP's SJI grant
  - Materials available at [www.niwap.org/go/sji](http://www.niwap.org/go/sji)
- **Make or seek findings that provide immigrant victims, parents and children helpful evidence**
  - Family relationships (Marriage – parent child relationship)
  - Battering, extreme cruelty, child abuse, elder abuse, child abandonment, child neglect

*Access to Accurate  
Information on Immigration  
Laws, Regulations and  
Policies for Immigrant Parents*



# Termination of Parental Rights of Immigrant Parents

- **Immigration enforcement against an immigrant parent can lead to loss of child and placement in foster care**
- **Loss of child when immigrant parent seeks services**
  - **Example: Hospitals**
- **Many cases problem compounded by hospitals, police, child protective services and courts not providing**
  - **Meaningful language access**
  - **DOJ letter to courts on language access**
  - **Includes interactions with all court appointed personnel**

# How Immigrant Parents End Up In DHS Custody

- **Abusers/crime perpetrators report them**
- **Employers or co-workers report them**
- **Traffic stops**
- **Immigration enforcement at the worksite**
- **Reports by CPS**
- **Reports by welfare worker**
- **Reports by health care providers**
- **Reports by others**
- **Victims call the police for help and police**
  - **Make a dual arrest**
  - **Arrest the victim**
  - **Language access issues**

# Maria Luis Case

- Maria Luis is an undocumented Quiche speaking Guatemalan
- Has 2 children with her in the U.S.
- Youngest was born in the U.S. with respiratory problems
- Maria Luis took Angelica to the emergency room for treatment
- Was given a Spanish (not Quiche) interpreter
- She thought she was told to bring the child back for a follow up visit if Angelica did not get better
  - Hospital said that she was told to bring the child back the follow up
- Angelica got better, so Maria Luis did not return for the follow up visit
- The hospital reported her to CPS
- CPS arrived with police, took her 2 children who were placed in foster care
- Maria Luis was detained and turned over to DHS for deportation
- While she in DHS custody, Nebraska sought termination of parental rights
- She the notice that arrived in detention was not in her native language
  - She was never taken to the court proceeding
- Deported, parenting plan explained to her in Spanish over the phone
- Found a priest in Guatemala who helped her try to comply with the plan from Guatemala
- Her parental rights to both her children were terminated her children remained in foster care

# Immigrants 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

# Challenges of Reunification for Immigrant Parents and Victims

- **Lack of language access to system**
- **Lack of information about immigrant parent's legal rights**
- **Limited or lack of eligibility for public-funded services**
- **Difficulties of participating in reunification case plan not designed for detained or deported parent**
- **Limited timeframe for filing termination of parental rights (TPR) petitions under the Adoption and Safe Families Act**
  - **conflict with immigration case time frames**
- **DHS not bringing immigrants in custody to family courts**
  - **New DHS policy as a result of this case**

# Lessons Learned

- **Language Access**
- **Due Process:**
  - Court notices and documents communicated in parent's native language
  - Need to be prepared for non-English and non-Spanish speaking parents and children
  - Court proceeding interpreted
  - State child welfare communications interpreted
- **Importance of consular notification**



# A Family Reunited



# Facts

- **Lack of legal immigration status does not mean**
  - Deportation is eminent , or parent is likely to flee U.S.
  - Victim parent does not qualify for immigration relief
  - The parent have no livelihood
- **Legal immigrants/naturalized citizens are more likely to flee with children when:**
  - There have been threats of kidnapping children
  - They are dual nationals
  - They travel freely to and from U.S.



# Facts

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

## Best Interests Considerations and Immigration

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

# Custody Involving Immigrant Parents and/or Immigrant Children

- **Accurate information about immigration status helps judges issue fair rulings in custody cases where immigration status of a parent or child may be raised**



- **Tools for Judges**

- Avoid reliance on incorrect information provided by parties about immigration status and likelihood of detention or deportation
- Obtain accurate information when needed
- [www.Niwap.org/go/sji](http://www.Niwap.org/go/sji)
- Direct technical assistance to state court judges, commissioner and magistrates
- Bench cards, charts, training materials and webinars



# *Detention of Immigrant Parents*

# How Immigrant Parents End Up In Dept. of Homeland Security Custody

- **Abusers/crime perpetrators , or employers report them**
- **Traffic stops**
- **Immigration enforcement at the worksite**
- **Reports by CPS, welfare workers, health care providers, others**
- **Victims call the police for help and police**
  - **Make a dual arrest, Arrest the victim often due to language access issues**
- **Secure Communities program leads to reporting all arrested persons to DHS**

# Immigration and State Court Cases

- **New 2011 & 2013 DHS Policies designed to prevent detention and place a low priority on removal of immigrant parents who are:**
  - Parents of U.S. citizen/LPR children
  - Primary caretaker parents of minor children (without regard to the child's immigration status)
- **Facilitate immigrant parent participation in family court cases by parents in immigration detention or deported**
- **2014 Immigration and Customs Enforcement**
  - Revised courthouse enforcement policies



# Parental Interest Directive Aug 2013

- **DHS screening factors to prevent detention for**
  - Parent or legal guardian of citizen or LPR child
  - Primary caretaker of a minor child
- **Encourages prosecutorial discretion**
- **If parent detained:**
  - Placement near children and family court
  - Procedure 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



# *Remedies for Immigrant Child Crime Victims*



# Immigrant Children in Family Court

- **May have options for legal immigration status**
  - Child's own application
  - Child included in parent's application
- **Immigrant children's best interests are promoted when family courts**
  - Issue orders children need to assist in their attaining legal immigration status for which they qualify
  - Award custody to non-abusive parents
  - Do not inadvertently cut children off from legal immigration options
  - Provide and promote U visa certification

# Immigration Options for Children

- **Special Immigrant Juvenile Status(SIJS)**
- **Violence Against Women Act (VAWA)**
  - **Self-petition\***
  - **Cancellation of removal**
- **U-visa for crime victims**
- **T-visa for trafficking victims**
- **Asylum**
- **Temporary Protected Status**
  - **El Salvador, Haiti, Honduras, Nicaragua, Somalia, Sudan, South Sudan**
- **Deferred Action for Childhood Arrivals (DACA)**
- **Prosecutorial discretion**



*SIJS - Child Dependency,  
Abuse, Neglect,  
Delinquency, and Probate  
Court Cases*

# Special Immigrant Juvenile Status and State Court

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

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

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

# State Court Findings Needed for SIJS

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



# Types of Proceedings to order special findings for immigrant children

- **Dependency**
- **Delinquency**
- **Termination of parental rights**
- **Guardianship**
- **Paternity**
- **Child support**
- **Criminal cases**
- **Custody**
- **Custody Modification**
- **Divorce**
- **Legal Separation**

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

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

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



# Children and Courts

- **Child Abuse and Neglect**

- Temporary and permanent placements are both opportunities for SIJS findings. Covers wide range of placements:
  - parent, guardian, foster care or kinship care

- **Guardianship**

- Includes orders regarding care of the child to a responsible adult
  - E.g., aunt, grandparent, other family member, next friend
- To offer protection and care for the child
  - Including but not limited to
  - Providing safe housing, enrollment, decisions about education, health care, benefits access, financial support, providing a home

**Settlements that avoid court ordered placement = NO SIJS**

# Children and Courts

- **Domestic Violence Protection Order**

- Child seeking a protection order against abusive parent (abuse)
- Child witnessed physical or sexual abuse by one parent against the other (abuse-neglect)
- Protection order includes custody provisions

- **Paternity and Child Support**

- Case brought by non-custodial parent, state, or the child up to the age of 21
- Court can make findings in child support case of abandonment (including children born or rape or incest), abuse or neglect
- May require consolidation of family court matters

- **Declaratory Judgments**

- Children under the age of majority (18 or until married) can obtain declaratory judgments containing SIJS orders

# Children and Courts

- **Probate**

- Guardianship cases can result in SIJS findings
- Can place children without regard to the immigration status of the custodian or guardian
  - **DHS Parental Interest Directive**

- **Juvenile Court**

- Court issues orders confining child including:
  - **Juvenile detention**
  - **Foster care**
  - **Placing the child under court supervision**

**DHS may exercise its discretion to grant SIJS for children with convictions**

## You Can Help Children By--

- **Providing parties (children and parents) basic information about immigration options by distributing the DHS pamphlet**
- **Making findings that help children and crime victim parents attain legal immigration status through**
  - **VAWA, U visa, SIJS**
- **Increases courts options to help children and custodial parents, guardians and kinship care:**
  - **Greater access to state and federal public benefits**
  - **Can obtain drivers licenses**
  - **Legal work authorization**
  - **Protection from deportation**

# What Children with SIJ Status Receive

- **While case is pending**

- Protection from deportation and removal
- As lawfully present children – health care exchanges (no subsidies), education benefits
- Legal work authorization
- Programs and services necessary to protect life and safety

- **At approval**

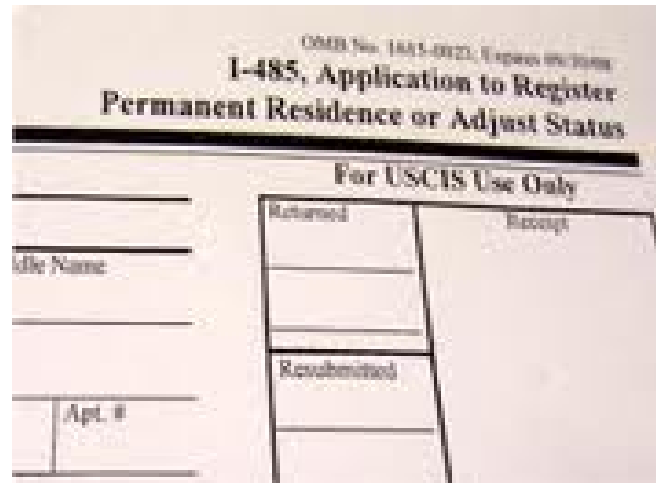
- LPR
- Eligible for citizenship after 5 years
- Food stamps, Post secondary educational grants and loans, public and assisted housing

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

## Resources for Courts

- **Immigration Relief for Abused Children (Brochure)**
  - [http://niwaplibrary.wcl.american.edu/immigration/other-immigration/special-immigrant-juvenile-status/Immigration Relief for Abused Children-FINAL.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/other-immigration/special-immigrant-juvenile-status/Immigration%20Relief%20for%20Abused%20Children-FINAL.pdf/view)
- **Special Immigrant Juvenile Status: Information for Juvenile Courts**
  - [http://niwaplibrary.wcl.american.edu/immigration/other-immigration/special-immigrant-juvenile-status/Information for Juvenile Courts -FINAL.pdf/view](http://niwaplibrary.wcl.american.edu/immigration/other-immigration/special-immigrant-juvenile-status/Information%20for%20Juvenile%20Courts%20-FINAL.pdf/view)

# VAWA SELF-PETITIONING



OMB No. 1841-0023, Expires 09/30/11  
**I-485, Application to Register  
Permanent Residence or Adjust Status**

**For USCIS Use Only**

		Returned	Receipt
Applicant Name			
Applicant Address			
Applicant City/State/Zip			
Applicant Phone		Resubmitted	
Applicant Email			
Applicant Signature			
Applicant Date			
Applicant Apt. #			

# General VAWA Self-Petitioning Requirements

- **Subjected to Battery or Extreme Cruelty**
- **By a U.S. Citizen or Permanent Resident**
  - **Spouse/former spouse**
    - **Can include undocumented children**
  - **Parent**
    - **Children abused (under 21) have until age 25 to file**
  - **Step-parent**
    - **Must file prior to any parent/step-parent divorce**
- **With whom self-petitioner resided**
  - **Visitation counts as residence**
- **Good Moral Character**
- **Good Faith Marriage**



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

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

# DHS Adjudications Examine Patterns of Coercive Control

- **Setting the stage**
  - Creating and Exploiting existing vulnerabilities
  - Wearing down resistance
  - Facilitating attachment
- **Coercive demand**
- **Credible threat**
- **Surveillance**
- **Delivery of consequences**



# Battered spouses and children applying for VAWA get following protections

- **Deportation: Protection from deportation shortly after filing.**
- **Immigration Benefits for Children:**
  - VAWA self-petitioners' children receive immigration benefits
  - VAWA cancellation parole into US visa process required
- **Public Benefits: As qualified immigrants (≈ 3 months)**
  - Health care exchanges (no subsidies)
- **Employment authorization: (currently ≈ 7 months)**
- **VAWA confidentiality: protections against the release of information and reliance on abuser provided information**
- **Lawful permanent residency**
  - Citizen perpetrator apply upon approval (1 year)
  - Lawful permanent resident perpetrator (≈ 3+ years)

Materials VAWA Immigration and Benefits Bench Card -

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

# THE U VISA FOR IMMIGRANT CRIME SURVIVORS

## Crime Victim (“U”) Visa Requirements

- **Victim of a qualifying criminal activity**
- **Has been, is being, or is likely to be helpful in an “investigation or prosecution”**
- **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**

“Investigation or Prosecution” is defined by The Department of Homeland Security to include

- **Detection**
- **Investigation**
- **Prosecution**
- **Conviction**
- **Sentencing**

## Criminal activities covered by the U Visa?

- **Domestic violence**
- **Sexual assault**
- **Rape**
- **Incest**
- **Prostitution**
- **Torture**
- **Female genital mutilation**
- **Felonious assault**
- **Manslaughter**
- **Murder**
- **Kidnapping**
- **Abduction**
- **Trafficking**
- **Involuntary servitude**
- **Slave trade**
- **Being held hostage**
- **Fraud**
- **Foreign Labor Contracting**
- **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**

# Who can certify?

- **Police officer**
  - Local and State police
  - Federal
  - University
- **Prosecutor (State and Federal)**
- **Judge**
- **Immigration Officer**
- **Adult and Child Protective Services**
- **EEOC, DOL and state labor agencies**
- **Other authority with responsibility for investigation or prosecution of criminal activity**



# The U Visa Process

- **Government official signs certification**
- **Victim files U visa application w USCIS**
- **DHS adjudication – grants/denies U visa**
- **U visa or wait-list approval**
- **Can apply for green card after 3 years**
- **Can apply for citizenship 5 years after green card**
- **Benefits:**
  - **U visa recipients are lawfully present for federal health care purposes.**

# Benefits for U Visa Applicants and their Children

- **Deportation:** Protection from deportation shortly after filing.
- **Immigration Benefits for Children:**
  - U visa victim's children receive immigration benefits
- **Public Benefits:**
  - Government funded help open to undocumented immigrants
  - Health care access (no subsidies) upon approval
- **Employment authorization:**
  - Upon approval ( $\approx$  7 months);
- **VAWA confidentiality:** protections against the release of information and reliance on abuser provided information
- **Lawful permanent residency**
  - Can apply 3 years after receiving U visa

## Requirements for a T visa

- **Must be victim of a severe form of trafficking in persons**
- **Victim must be physically present in U.S., American Samoa, or Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of the trafficking**
- **Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; OR**
- **Has not attained the age of 18; AND**
- **Would suffer extreme hardship involving unusual and severe harm upon removal**

# Federal Law Definition Severe Form of Human Trafficking

## ● Labor trafficking

- The Process: labor was attained by recruiting, harboring, transporting, providing, or obtaining a person for labor;
- The Means: used to procure the labor included force, fraud, or coercion
- The End: the labor procured for a certain purpose.
  - Involuntary servitude, peonage, debt bondage, or slavery

## ● Sex Trafficking

- The End: A commercial sex act; and
- The Means: that was induced by force, fraud, or coercion.
- Under 18 year old sex trafficking victims are only required to prove the commercial sex and are not required to prove the means

Materials Victim Bench Card Provides More on Trafficking -  
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/Immigration-Rights-Bench-Card.pdf/view>

## Oregon's Human trafficking— Trafficking in Persons ORS § 163.266

- **An actor commits human trafficking for forced labor or forced sexual exploitation if the actor recruits, entices, harbors, transports, provides, or obtain by any means another person and:**
  - (a) the person knows the other person will be subject to involuntary servitude;
  - (b) the person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or
  - (c) the person knows or recklessly disregards the fact that the other person is under 15 years of age and will be used in a commercial sex act.
- **A person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263 or 163.264**

## T visa and continued presence victims receive

- **Protection against removal/deportation**
- **Basis for work authorization**
- **Eligibility for driver's license**
- **VAWA confidentiality: protections against the release of information and reliance on abuser provided information**
- **LSC legal assistance**
- **Public benefits to the same extent as refugees for 7 years.**
- **Are qualified immigrants giving them access to public benefits beyond the 7 year limitation.**
- **Able to apply for permanent residency after 3 years**
- **Post-secondary Education**



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



# True or False

- 1. Receiving public benefits can harm an immigrant victim's ability to obtain legal immigration status**
- 2. Undocumented immigrant parents can apply for public benefits for immigrant children**
- 3. Undocumented victims and children can access transitional housing programs**
- 4. Federally funded health care is not available for undocumented immigrants**
- 5. DHS requires universities to ask about immigration status of applicant or enrolling students**



## Small Group Discussion

- **How is information about what benefits and services immigrant children and immigrant parents are eligible to receive help state courts?**

**Large group report back and discussion**

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

- **Citizens : Full access to benefits**
- **Trafficking victims and Refugees: Full access for 7 years**
- **“Qualified Immigrants”**
  - Access to Housing, Education, Prenatal care, child health care, child food stamps immediately
  - 5 year bar -TANF, Medicaid, Child Care, SSI, Food Stamps
- **Lawfully Residing – U visa and SIJS = Health care**
- **PRUCOL (Permanently Residing Under Color of Law)**
  - States can opt to offer state funded benefits to persons residing under color of law
- **Undocumented Immigrants**

## Both Documented and Undocumented Immigrant Victims Can Access:

- **Protection orders, Child Custody and Support**
- **Police, fire, ambulance, paramedic assistance**
- **Have a police report taken**
- **Criminal prosecution of their abusers**
- **Assistance for crime victims**
- **VOCA funds for victims**
- **LEP victim interpreter access**
- **Legal services**
- **Shelter and transitional housing**
- **Emergency medical care**
- **Services necessary to protect life and safety**
- **Public benefits their US born children are eligible for**

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

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

Materials Public Benefits Bench Card -

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

# Government funded assistance – no immigration restrictions

- **Crisis counseling and intervention**
- **Child and adult protection services**
- **Violence and abuse prevention**
- **Crime victim assistance**
- **Shelter and transitional housing for up to 2 years**
  - homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- **Medical and public health services**
  - Treatment/disease prevention
  - Mental health, disability, or substance abuse assistance necessary to protect life or safety

# Government funded assistance available – no immigration restrictions

- **Help during adverse weather conditions**
- **Soup kitchens**
- **Community food banks**
- **Nutrition programs for seniors and others requiring special assistance**
- **Activities designed to protect the life and safety of workers, children, youth and community residents**

## Other Federal Benefits Available to ALL Immigrants

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

# State Funded Benefits in Oregon

- **TANF/Aid to Dependent Children for**
  - qualified immigrants
  - victims of domestic violence regardless of immigration status
- **TANF funded child care for qualified immigrants**
- **Drivers Licenses for undocumented persons only if**
  - DACA recipients
  - Immigrants with legal work authorization
  - Approved VAWA Self-Petitioners
  - Wait-list approved U Visa applicants
  - Continued presence trafficking victims
  - T visa bona fides



# State Funded Benefits in Oregon

- **In-state college tuition for some undocumented students**
- **Health care subsidies for some immigrants**
  - After the 5 year bar; or
  - Who first entered the U.S. before August 22, 1996
  - Other benefits are limited to children and prenatal care

## Resources for Courts

- **Bench Card on Crime Victim Benefits Access**
- **Brochure on Life and Safety Services**
- **Emergency and Transitional Housing Fact Sheet**
- **Anti-discrimination fact sheet**
- **Legal Services fact sheet**
- **Health care access fact sheet**

## Resources and technical assistance

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

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

# Questions



# Evaluations



# Thank you!

