



IMMIGRATION LAW & POLICY UPDATES FOR VICTIMS OF CRIME

MIDLANDS COUNCIL MEETING

JUNE 7, 2022



SPEAKERS & AGENDA

OVERVIEW OF IMMIGRATION BENEFITS FOR VICTIMS

Tricia Ravenhorst, SC Coalition Against Domestic Violence & Sexual Assault

ICE ENFORCEMENT PRIORITIES & IMMIGRATION COURT

Rebekah Niblock, Charlotte Center for Legal Advocacy

U VISAS & U CERTIFICATIONS

Rebekah Hiatt, SC Victim Assistance Network

T VISAS & CONTINUED PRESENCE

Anne Ross, Tri-County Human Trafficking Task force

VAWA SELF-PETITIONS & WAIVERS FOR CONDITIONAL RESIDENTS

Jennifer Pinilla, Pinilla Law

SPECIAL IMMIGRANT JUVENILE STATUS

Olivia Jones, Olivia Jones Law

POLL QUESTION

WHAT IS YOUR LEVEL OF KNOWLEDGE OF
IMMIGRATION BENEFITS FOR VICTIMS OF CRIME?

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

To apply:
USCIS
Form I-914

T VISA

For victims
of human
trafficking

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply:
USCIS
Form I-360

VAWA

For victims
of domestic
violence and
abuse

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

ASYLUM

For victims of
persecution

To apply:
USCIS
Form I-589

U VISA

For victims of domestic
violence, sexual assault,
felonious assault,
human trafficking, and
other qualifying crimes

To apply:
USCIS
Form I-918

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

To apply:
USCIS
Form I-360

SIJ

Special Immigrant
Juvenile classification
for child victims under
21 years of age



If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.



If approved, benefit provides:

- Ability to apply for permanent residency



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



Center for Countering
Human Trafficking



ENFORCEMENT PRIORITIES & REMOVAL DEFENSE

Rebekah Niblock
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VICTIMS WITH REMOVAL DEFENSE CONCERNS

Victims with Prior Final Orders of Removal

- Remained undocumented in US after entry of *in absentia* order of removal or granted permission for Voluntary Departure and failed to leave
- Remained legally in US after grant of ICE Stay of Removal; ICE Order of Supervision; or Deferred Action
- Re-entered the US after a prior removal order

Pending Removal Proceedings

- Detained & released at the border; waiting for immigration court hearing
 - Unaccompanied minors -- custody of Office of Refugee Resettlement; place in foster home or group home
- May be required to check in with ICE & update address

EXISTING PROTECTIONS UNDER VAWA

Prohibited Disclosure of Victim-Based Applications

- Federal agencies prohibited from disclosing the existence or contents of a VAWA-protected immigration case

Prohibited Sources of Information

- Prohibited from seeking or using info. provided solely by a perpetrator or his or her family members to make adverse determinations

Prohibited Enforcement Locations

- domestic violence shelter
- victim services program
- family justice center
- supervised visitation center or
- courthouse if appearing in connection with criminal case or protection case

NEW ENFORCEMENT PRIORITIES

- **April 2022 – New federal priorities - “Doyle Memo”**
 - Priority cases: a) threats to national security; b) threats to public safety & c) threats to border security
 - Non-priority cases: dismissal encouraged
- **August 2021 – ICE Policy Directive - *Using a Victim-Centered Approach with Noncitizen Crime Victims***
 - *“A victim-centered approach encourages victim cooperation with law enforcement, engenders trust in ICE agents and officers, and bolsters faith in the entire criminal justice and civil immigration systems.”*
 - **Homeland Security Investigations (HSI), New Human Trafficking & Exploitation Group**
 - Abbey E. Kepf, Supervisory Special Agent (Charleston)
 - Victim Advocate – Robin Chapman (Charlotte)
- **May 2022 – S. 1032 (pending in Senate) - SC Immigration Enforcement Unit proposed move to SLED**
 - Lt. Jade Roy (also head of SLED Human Trafficking Unit)

UPDATES - CHARLOTTE IMMIGRATION COURT

- Charlotte Immigration Court - North & South Carolina
 - Mix of Virtual and In Person Hearings
- Prosecutorial discretion trends: If not an enforcement priority, government can move to unilaterally dismiss proceedings.
- Free removal defense resources for SC residents
 - American Immigration Lawyer's Association - Pro Bono Room: Respondents Can Obtain Legal Advice/Guidance, Friend of the Court
 - Catholic Charities – New Rock Hill office is open – Attorney Rakia Turner
 - Lighthouse Immigration Services – Charleston – Attorney Dana Fields
 - SCCADVASA Contract Attorney Program (for interpersonal violence victims)



U Visas

Rebekah Hiatt
SC Victim Assistance Network
rebekah@scvan.org

POLL QUESTION

CAN A QUALIFYING
VICTIM FILE AN
APPLICATION FOR A U
VISA WITHOUT A
CERTIFICATION FROM
LAW ENFORCEMENT?

U Visa

- 10,000 per year
- 158,000 + cases pending
- preponderance of the evidence standard

BASIC REQUIREMENTS

- victim of a *qualifying criminal activity*
- suffered substantial physical or mental abuse
- have information about the criminal activity
- were helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime.
 - unless under 16 or unable because of disability; parent or next friend may help
- crime occurred in the United States or violated U.S. laws.

BENEFITS

- While pending - deferred action & work permit for “bona fide” applicants; protection from deportation
- After approval - Lawful status & work permit for 4 years
- Eligible to sponsor certain family members
- Eligible to apply for green card after 3 years in U status

FORMS

Form I-918 – Petition for U Nonimmigrant Status

Form I-918, Supp. B – LEA certification **REQUIRED**

Form I-192 – to waive grounds of inadmissibility

U Qualifying Crimes

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes*†

*Includes any similar activity where the elements of the crime are substantially similar.

†Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.

DERIVATIVE BENEFICIARIES & PARENTS

Victims can sponsor non-offending family members:

Unmarried & under 21	All victims
Parents Children Siblings under 18	Spouse Children under 21

Parents of a child victim can file as “indirect victim”:

Common Example
<ul style="list-style-type: none">- Direct victim is a US citizen child; no visa needed- Parents are non-citizens- Parents provide information & are helpful- Law enforcement signs U Certification Forms for parents

FORM I-918B – U CERTIFICATION

- Pre-requisite for filing a U visa application
- Simply verifies qualifying crime & victim “helpfulness”
- Certifying agencies include:
 - investigating agency (police, DSS, EEOC, DOL)
 - prosecuting agency
 - judge
- Must be signed by agency head (or their official designee)
- No law requires agencies to sign

FORM I-198 – U VISA APPLICATION

- Filed by the victim with USCIS
- MUST include a U Certification Form I-918B signed within last 6 months
- Victim must also prove that they have suffered substantially as a result of the crime & are not a threat to public safety

Common reasons for rejection of Form I-918B even if victim is eligible:

There was no arrest

where's the
incident report?

forwarding to
prosecutor first

only sign for certain
crimes

won't sign until
adjudicated

worried about what
defense will do
with the
information

that case is closed,
we don't need
victim's help now

that case is too old

WE JUST DON'T
DO THAT

U VISA UPDATES

Policy Updates & Resources

- June 2021 – “bona fide” applicants to receive 4 years of deferred action & a work permit
- SCVAN South Carolina U Certifier Database
- 2019 U Law Enforcement Certification Guide

Processing Times

- For “Bona Fide” Application Determination: Processing cases from 2016
- For Wait List Determination: Processing cases from 2016
- For Final U Visa approval: est. 10 years



New U Visa Bona Fide Determination Process


Eligibility:

- All pending & new U Visa applications
- Application establishes a “prima facie” case
- Applicant living in the US
- Not a threat national security or public safety & no “adverse discretionary factors”

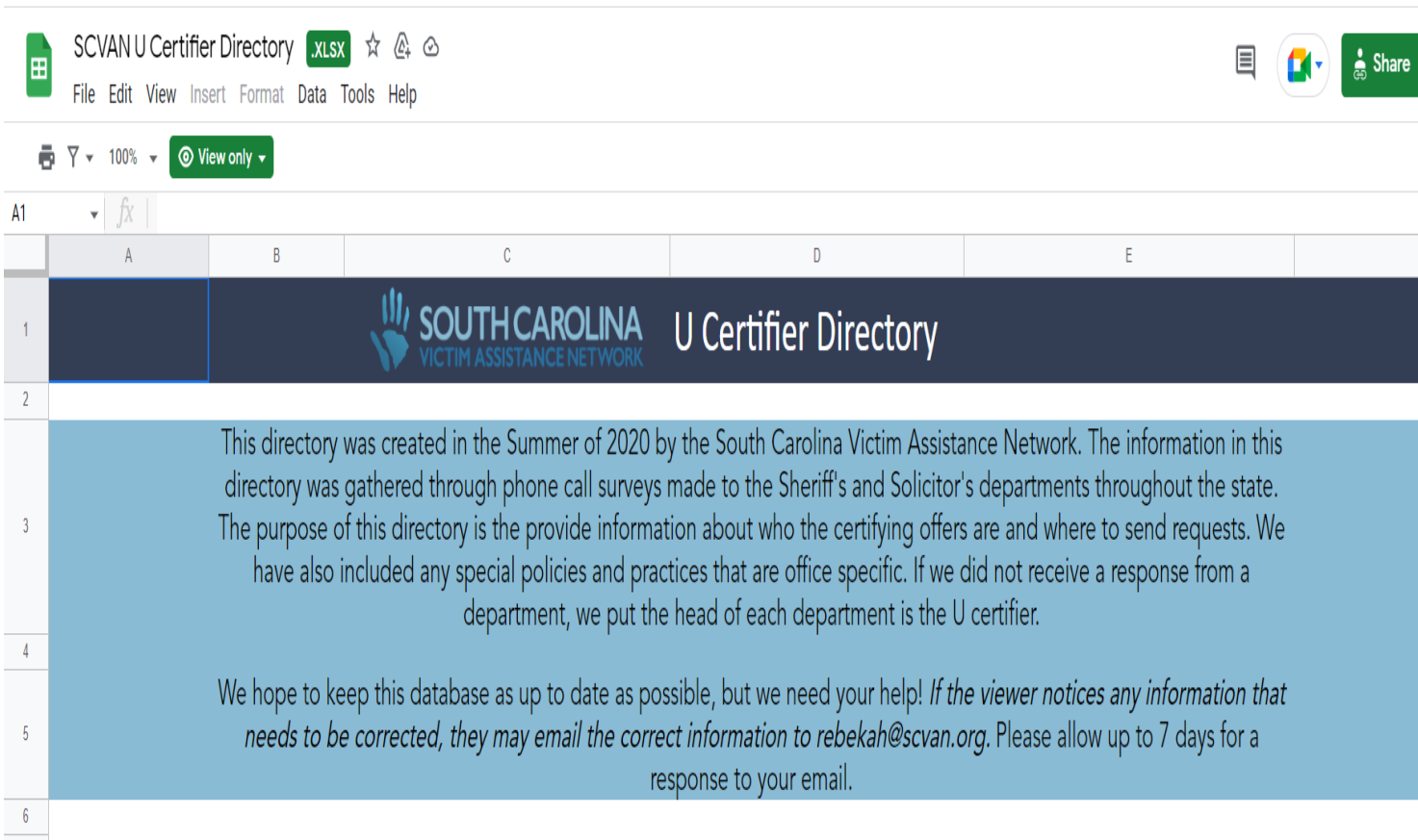
How to ask for BFD?

- USCIS automatically initiates review – no request is necessary
- If granted, a work permit application must be filed if not already submitted with application.


Processing Time?

- USCIS processing cases “first in, first out”
 - Currently processing cases filed in 2016
- 

SCVAN's South Carolina U Certifier Directory



The screenshot shows a Google Sheets interface. The title bar reads 'SCVAN U Certifier Directory .xlsx'. The menu bar includes 'File', 'Edit', 'View', 'Insert', 'Format', 'Data', 'Tools', and 'Help'. The toolbar shows a print icon, a filter icon, '100%', a 'View only' button, and a 'Share' button. The spreadsheet has columns A through E. Row 1 is a header with a dark blue background. Row 2 is empty. Row 3 contains a paragraph of text. Row 4 is empty. Row 5 contains another paragraph of text. Row 6 is empty.

	A	B	C	D	E
1	 U Certifier Directory				
2					
3	<p>This directory was created in the Summer of 2020 by the South Carolina Victim Assistance Network. The information in this directory was gathered through phone call surveys made to the Sheriff's and Solicitor's departments throughout the state. The purpose of this directory is to provide information about who the certifying officers are and where to send requests. We have also included any special policies and practices that are office specific. If we did not receive a response from a department, we put the head of each department as the U certifier.</p>				
4					
5	<p>We hope to keep this database as up to date as possible, but we need your help! <i>If the viewer notices any information that needs to be corrected, they may email the correct information to rebekah@scvan.org. Please allow up to 7 days for a response to your email.</i></p>				
6					

- Modeled after national database
- Crowd-sourced information that pools the field's collective knowledge.
- Includes –name of certifying officers; where to send requests, & updated policies and practices.
- Directory is **free** to all practitioners.
- Send updates to rebekah@scvan.org

U VISA LAW ENFORCEMENT RESOURCES

2011

U Visa Law Enforcement Certification Resource Guide

for Federal, State, Local, Tribal and Territorial
Law Enforcement



2019

U VISA LAW ENFORCEMENT RESOURCE GUIDE

For Federal, State, Local, Tribal and Territorial
Law Enforcement, Prosecutors, Judges and
other Government Agencies



Homeland
Security



U.S. Citizenship
and Immigration
Services



Contacting SCVAN Legal

Intake Line for Victims:

803-509-6552 (English)

864-312-6456 (Spanish)

www.scvanlegal.org

Technical Assistance for Advocates & Attorneys Only

Rebekah Hiatt

rebekah@scvan.org

803-542-1312





T Visas & Continued Presence

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POLL QUESTION

**IS A LAW
ENFORCEMENT
CERTIFICATION
FORM REQUIRED TO
FILE A T VISA
APPLICATION?**

T Visa

- 5,000 per year
- preponderance of the evidence standard

BASIC REQUIREMENTS

- a victim of trafficking as defined by federal law
- physically present in US or at a port *because of trafficking*
- comply with reasonable requests from law enforcement for assistance in the investigation & prosecution
 - Unless under 18 or inability because of trauma
- removal from the U.S. would cause an *extreme hardship involving unusual and severe harm*

BENEFITS

- Lawful status & work permit for 4 years
- Eligible to sponsor certain family members
- Eligible to apply for green card - the earlier of
 - Closure of the criminal case & *issuance of DOJ Case Closure Letter*
 - 3 years in T status

FORMS & EVIDENCE

- Form I-914 – Petition for T Nonimmigrant Status
- Form I-914, Supp. B – LEA certification preferred, but not required
- Form I-192 – to waive grounds of inadmissibility



U.S. Immigration
and Customs
Enforcement

CONTINUED PRESENCE

Temporary Immigration
Designation for Victims
of Human Trafficking



Benefits to Victim

- lawful immigration status & a work permit for 2 years
- Public benefit eligibility with HHS Certification Letter
- Protection from deportation
- Renewed if criminal case remains open; victims in federal cases can obtain Deferred Action after case closure

When can this be submitted & processing time?

- Immediately upon law enforcement/prosecution approval
- 6-12 weeks (or less)

Who Can Help Submit Application?

- Federal Victim/Witness Coordinators – HSI & FBI
- State & local law enforcement can ask HSI or FBI to submit application
- Immigration attorneys can help victims gather info. & sign forms

T VISA & CONTINUED PRESENCE UPDATES

Policy Updates & Resources

- July 2021 – New Continued Presence Resource Guide, Brochure & Videos
- Oct 2021 – DHS - Victim-Centered Human Trafficking Investigations Policy
 - HSI Victim-Centered Investigative Unit in SC
- Oct 2021 – New T Visa Law Enforcement Resource Guides - Victim-Centered Approach
- Oct 2021 – New T Visa Sections in USCIS Policy Manual

Processing Times

- For Continued Presence: 1 – 3 months
- For Final T Visa Approval: 21 months



VAWA Self-Petitions & Waivers for Conditional Residents

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POLL QUESTION

DOES AN ABUSED FAMILY
MEMBER OF A US CITIZEN
OR LEGAL PERMANENT
RESIDENT HAVE TO
REPORT TO LAW
ENFORCEMENT PRIOR TO
FILING FOR A GREEN
CARD UNDER VAWA?

VAWA Self-Petition

&

VAWA Waivers for Conditional Permanent Residents

BASIC REQUIREMENTS

- Abuser is a US Citizen spouse, former spouse, son/daughter or parent or LPR spouse, former spouse or parent
- Spouses must show “good faith marriage”
- Shared residence with abuser in US
- “Good moral character”
- Battery or Extreme Cruelty

BENEFITS

- While pending
 - Prima facie cases – eligible for certain public benefits
 - Interim Employment Authorization while pending
- Legal Permanent Resident Status
- Maintain eligibility for early naturalization

FORMS

Form I-360 – VAWA Self-Petition OR

Form I-751 – VAWA Waiver for Conditional Permanent Residents
(for spouses with a 2 year green card)

VAWA SELF- PETITION & I-751 WAIVER UPDATES


Trends

- Significant delays in interim work permits
- Increase in emergency calls from victims with pending marriage-based applications
 - Need for rapid filing & change of address to avoid denial of pending green card applications or loss of status
 - Need to file secretly before leaving spouse

Processing Times

- Temporary work permit: 10 months
- Form I-360 Approval: 2 + years
- Green card approval: 1.5 + years
- I-751: 15 months





Special Immigrant Juvenile Status (SIJS)

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Olivia Jones Law
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Special Immigrant Juvenile Status (SIJS)

- Immigration Law
- Family Law

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POLL QUESTION

**WHO IS CONSIDERED
A CHILD UNDER US
IMMIGRATION LAW?**



“Juvenile”

For immigration purposes, under age 21

For family court purposes, under age 18

Special Immigrant Juvenile Status (SIJS)

- Immigration remedy for children who have been abused, abandoned, or neglected by a parent.
- Can create eligibility for permanent residency (green card).
- Requires a state family court order.



Criteria for SIJS

Under age of 21

- Unmarried (can be divorced or widowed)

Living in the U.S.

Consent from DHHS if in DHHS custody

Victim of:

- Abuse
- Abandonment
- Neglect
- Or similar basis under state law

AND

- Not in best interest to return to country of nationality or last habitual residence

****Request for SIJS must be bona fide: primary reason is not for immigration benefit, but rather to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law.**

Contents of Complaint and Order

Family Court must make finding that:

- child dependent upon the family court; or
- child is placed under the custody of a state agency or department, or an individual or entity appointed by the court; and
- reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under State law. (Termination of parental rights is not required).

Definitions – controlled by state law

Abuse/Neglect

- S.C. Code Ann. § 63-7-20 (6)

Abandonment

- "a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child." S.C. Code Ann. § 63-7-20 (1)

Get Family Court Order

1

File initial pleadings in Family Court:

- Summons
- Complaint
- Coversheet
- Redacted Identifiers

2

Serve notice on Defendant(s)

3

Have a hearing
(request an interpreter if needed)

4

Get Order granting custody and listing out SIJS-specific findings

Tips

- Possible to get order for child over 18 but under 21: need temporary order before 18th birthday. S.C. Code Ann. § 63-3-510 (B); see *also* S.C. Code Ann. § 63-3-530 (A)(17).
- Can do orders by consent.
- Interpreters are free for any hearing. Notify scheduling clerk/Form SCCA263.



SIJS UPDATES

Processing Times & Trends

- For I-360 Approval: 8 months
- For Final Approval of Greencard: 1.5 years

Policy Updates & Resources

- May 17, 2017 – SC Approved Medicaid Coverage for Juveniles with pending & approved SIJS Petitions
- Immigration Court Updates – No longer ordering children removed; Waiting for SIJS Eligibility
- May 2022 – Updated USCIS Policy Manual
 - Deferred action & work permits for approved SIJS petitioners
 - Age-out protection for applicants who turn 21
 - Victims not required to contact abusers
 - Right to attorney &/or trusted adult in interview



QUESTIONS

SC LEGAL RESOURCES FOR IMMIGRANT SURVIVORS

Catholic Charities Immigration Services

- Immigration applications; NEW – INCLUDES REMOVAL DEFENSE (Rock Hill office)

Charleston Pro Bono Legal Services

- full-time HT attorney
- affirmative immigration, victim's rights, other civil

Charleston Legal Access

- affirmative immigration, victim's rights, other civil

Lighthouse Immigration Legal Services

- affirmative immigration, removal defense, other civil

SC Coalition Against Domestic Violence & Sexual Assault (SCCADVASA)

- contract attorney program
- affirmative immigration, removal defense, victim's rights, other civil

SC Department of Social Services

- funding for private attorneys for victims in foster care

SC Legal Services

- affirmative immigration (not U visas), other civil

SC Victim Assistance Network

- affirmative immigration (not U visas), victim's rights, other civil



REGIONAL COUNCILS

Upstate IVC In-Person Meeting - September 15, 2022

STATEWIDE GATHERINGS — IN-PERSON

Aug 25, 2022 10:00 AM — 12:00 PM — Language Access

December 8, 2022, 10-12 - Trailblazer Award Ceremony

Sign Up for Meeting Announcements

www.scivc.info

Contact — Marie McDonald

Human Trafficking & Language Access Coordinator

mmcdonald@sccadvasa.org

