

# Nuts and Bolts: Common Forms of Immigration Legal Relief



March 3, 2022



# SPEAKERS

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# OBJECTIVES

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- Learn the basic elements of Asylum and specific considerations related to unaccompanied children.
- Learn eligibility requirements and procedure for SIJS applications
- Learn the basic concepts of other humanitarian forms of relief, such as TPS, T Visa, U Visa and VAWA.



# Asylum



# Asylum

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Humanitarian protection for a person who is unable or unwilling to return to their home country or avail themselves of the country's protection because they have suffered:

Past  
Persecution

OR Well-founded fear of persecution

On account  
of

Race, religion, nationality, membership in a particular social group, or political opinion.



# Persecution

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- “Can consist of the infliction of harm or suffering by a government, or persons a government is unwilling or unable to control, to overcome a characteristic of the victim.” *Matter of Kasinga*, 21 I. & N. Dec. 357 (BIA 1996).
- Includes, but is not limited to, extreme physical violence, threats to life or freedom, or harm that causes permanent injuries.
- May be physical, sexual, emotional, or psychological.  
*Morales v. Sessions*, 860 F.3d 812, 816 (5th Cir. 2017). - “threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom”
- Cumulative harm.
  - Harm should be considered in the aggregate.



# Past Persecution

- Past persecution established, gives rise to a presumption of a well-founded fear of future persecution.

Burden shift: government should rebut the presumption. DHS can rebut the presumption by showing:

- (1) Internal relocation is both safe and reasonable. *See* 8 C.F.R. § 208.13 (b)(1)(i), (b)(1)(ii), (b)(2).  
 Relocation presumed unreasonable if persecutor is state actor  
 Consider age, familial ties, mental health, medical condition, language/race/ethnicity/gender issues, means of survival  
 Generally not reasonable to expect child to relocate
  - (2) Changed circumstances such that fear no longer exists
- Humanitarian Asylum: Past persecution alone can establish eligibility if:
    - The harm was severe and atrocious, or
    - Reasonable possibility of other serious harm.



# Well-founded Fear of Persecution

Legal standard:

- A “reasonable possibility” of persecution, i.e., a reasonable person in applicant’s circumstances would fear persecution
- A “one in ten” chance of persecution, *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)

Two ways to establish a “well-founded fear”:

1. Evidentiary presumption arising from past persecution,
2. Objective facts establishing risk of future persecution-  
*See* 8 CFR § 208.13

• Four Point Test:

- Possession – he or she possesses or is believed to possess a characteristic the persecutor seeks to overcome.
- Awareness – persecutor is aware or could be aware the applicant possesses the characteristic.
- Capability – persecutor has capability to persecute the applicant.
- Inclination – persecutor has the inclination to persecute.





# Nexus

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Examines the causal link between the persecution suffered or feared and at least one of the five enumerated protected grounds.

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The person were or would be targeted by the persecutor on **account of** a protected ground.

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The protected ground must be at least “one central reason” for the persecution.

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Can be established through the submission of direct or circumstantial evidence.



# Protected Grounds

## Race

- All kinds of ethnic groups that are referred to as 'races' in common usage

## Religion

- Prohibitions of membership in a religious community worship in private or in public, of religious instruction, or serious discriminatory measures imposed on persons because they practice their religion or belong to a particular religious community.

## Nationality

- Includes citizenship but "refers also to membership of an ethnic group or linguistic group and may occasionally overlap with the term "race."

## Political Opinion

- Does not mean expression of allegiance to a political ideology. It has a broader meaning and may be expressed through actions rather than words.

## Membership in a Particular Social Group

- A particular social group must have three elements:
  - Immutability
  - Particularity
  - Must be socially distinct.
  - Should avoid circularity.
- *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985) a PSG is "a group of persons all of whom share a common, immutable characteristic."
  - Immutable: something the members "either cannot change, or should not be required to change because it is fundamental to their individual identities."
- *Matter of M-E-V-G*, 26 I&N Dec. 227 (BIA 2014)-particularity
- *Matter of W-G-R*, 26 I&N Dec. 208 (BIA 2014)-social distinction



# Proof

- The burden of proof is on the applicant.
- Standard: Preponderance of the Evidence.
  - Testimony may be enough:
    - Credible (INA § 208(b)(1)(iii))
    - Persuasive
    - Refer to specific facts.
- Standard for Children:
  - Adjudicators should :
    - account for age, developmental stage, and other factors in assessing a child's testimony.
    - understand that children may: be unaware of the specific details or circumstances that led to their departure; have limited knowledge of conditions in their home country as well as their own vulnerability.





# Special Rules for Unaccompanied Children

- Do not apply to UAC
  - Safe third country exception
  - One year filing deadline
- Initial jurisdiction:
  - Affirmative Asylum: Asylum Office of USCIS
    - Regardless of age, reunification status
    - Unless: affirmative steps to terminate UC designation
  - If USCIS denies the application, the case is referred to the court.



# Benefits

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- Eligible to work in the United States.
- May request derivative asylum status for the spouse or children who were listed on the asylum application.
- Can Adjust status to lawful permanent resident.
- Subject to special rules for traveling outside the United States.



## Eligibility Framework

	Asylum 8 U.S.C. §§ 1101(a)(42)(A) & 1158(b)(1)	Withholding 8 U.S.C. § 1231(b)(3)	CAT 8 C.F.R. § 208.18(a)
Harm	Persecution	Threat to life or freedom	Torture
Degree of risk / Likelihood of Harm	- WFF (1 in 10); or - Eligibility based on past persecution (humanitarian asylum)	More likely than not	More likely than not
Nexus	One of the five protected grounds must be " <i>one central reason</i> " for the harm	One of the five protected grounds must be " <i>a reason</i> " for the threat to life or freedom (recognized in some jurisdictions)	No nexus required
Discretionary v. Mandatory	If no statutory bars apply, relief is discretionary	If no statutory bars apply, relief is mandatory	Relief is mandatory, but bars determine the type of relief
Relief provided	Leads to LPR and then USC status and right to bring spouse and children	Prevents return only to a country of feared harm; protection doesn't extend to derivatives	CAT WH: return withheld CAT Deferral: can be easily terminated and remain in detention; protection does not extend to derivatives



# Special Immigrant Juvenile Status (SIJS)



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# Special Immigrant Juvenile Status

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- Eligibility:
  - Under 21\*
  - Unmarried
  - In the United States
  - Abused, Abandoned, Neglected (or a similar basis under state law)
    - By one or both parents
- Does NOT require:
  - Unaccompanied minor
  - Lack of status
  - A particular custody status (ORR/Released)







# Special Immigrant Juvenile Status

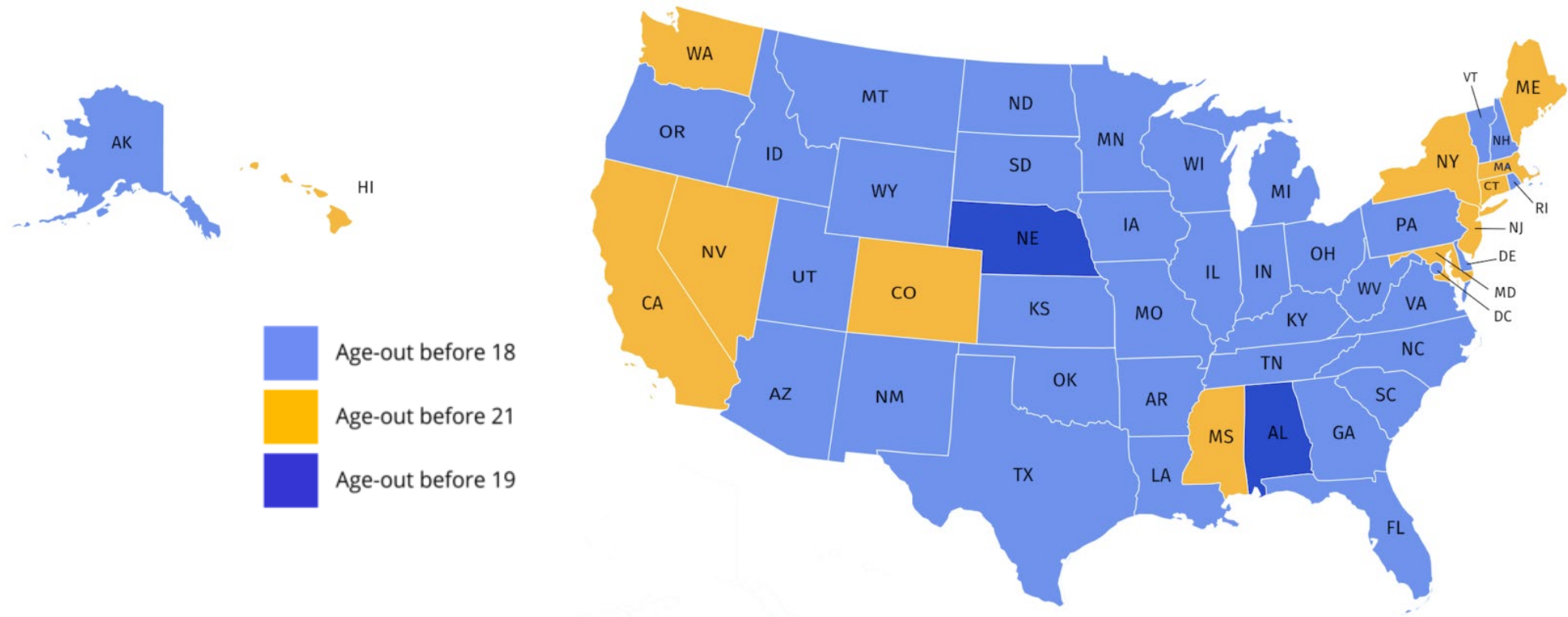
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- Process:
  - Predicate Order from Juvenile Court
  - I-360 Petition
  - Adjustment of Status (EOIR or USCIS)



# Special Immigrant Juvenile Status

- Juvenile Court Order
  - MUST be obtained before minor “ages out” of juvenile court jurisdiction





# Special Immigrant Juvenile Status

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- Juvenile Court Order
  - Juvenile Court: a court with “jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles”
- Required Findings:
  - You are dependent on the court, or in the custody of a state agency or department or an individual or entity appointed by the court;
  - You cannot be reunified with one or both of your parents because of ANY of the following:
    - Abuse, Abandonment, Neglect, or a similar basis under state law;
  - It is not in your best interests to return to the country of nationality or last habitual residence of you or your parents.





# Special Immigrant Juvenile Status

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- I-360 Petition
  - Filed with G-28, Predicate Order, and Birth Certificate
- Jurisdiction is always with USCIS
- Must be filed PRIOR to 21<sup>st</sup> birthday, regardless of age of majority in state
- Practice Pointer:
  - Often, OPLA offices will agree to dismiss proceedings when I-360 is approved





# Special Immigrant Juvenile Status

- Adjustment of Status
  - Must wait for Priority Date to be current (EB-4 category)

<u>Employment-Based</u>	All Charge-ability Areas Except Those Listed					
		CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	01MAR19	C	01MAY13	C	C
3rd	C	22MAR18	C	15JAN12	C	C
Other Workers	C	01MAY12	C	15JAN12	C	C
<b>4th</b>	<b>C</b>	<b>C</b>	<b>01MAY17</b>	<b>C</b>	<b>01APR20</b>	<b>C</b>





# Special Immigrant Juvenile Status

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- Adjustment of Status
  - Jurisdiction
    - If NOT in court = USCIS
    - If IN court:
      - Arriving alien = USCIS
      - Not arriving alien = EOIR
    - Remember you can try and dismiss EOIR proceedings so AOS can be filed with USCIS
  - Employment Authorization
    - As soon as I-485 is filed, client is eligible for EAD (category (c)(9))
  - Practice Pointer: Fee Waiver Available!
    - USCIS – file I-912 with I-360 receipt/approval
    - EOIR – IJ specific



# Temporary Protected Status (TPS)



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# Temporary Protected Status (TPS)

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- What is TPS?
  - Temporary status that can be designated due to temporary conditions in a country:
    - Ongoing armed conflict (such as civil war)
    - An environmental disaster (such as earthquake or hurricane), or an epidemic
    - Other extraordinary and temporary conditions
- What benefits come from TPS?
  - Are not removable from the United States
  - Can obtain an employment authorization document (EAD)
  - May be granted travel authorization







# Temporary Protected Status (TPS)

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- Eligibility
  - Be national of designated country or person without nationality who last habitually resided in designated country
  - File during open initial registration or re-registration period
  - Continuously physically present since effective date of designation
  - Continuously residing in U.S. since date specified
- NOT eligible if:
  - Convicted of felony or two or more misdemeanors
  - Inadmissible under applicable INA 212(a) sections
  - Subject to mandatory bars to asylum (i.e. Persecution of others; terrorist activity)



# Temporary Protected Status (TPS)

<u>Country</u>	<u>Continuous Residence Since</u>	<u>Physical Presence Since</u>
Burma/Myanmar	March 11, 2021	May 25, 2021
<b>El Salvador</b>	February 13, 2001	March 9, 2021
Haiti	July 29, 2021	August 3, 2021
<b>Honduras</b>	December 30, 1998	January 5, 1999
Nepal	June 24, 2015	June 24, 2015
<b>Nicaragua</b>	December 30, 1998	January 5, 1999
Somalia	July 19, 2021	September 18, 2021
<b>South Sudan</b>	January 25, 2016	May 3, 2016
Sudan	January 9, 2013	May 3, 2013
<b>Syria</b>	March 19, 2021	March 31, 2021
Venezuela	March 8, 2021	March 9, 2021
<b>Yemen</b>	July 5, 2021	September 4, 2021





# Temporary Protected Status (TPS)

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- No Derivatives!
  - Each applicant must demonstrate eligibility on their own – including continuous residence and physical presence.
- No Direct Route to AOS
  - TPS is not an admission (Sanchez v. Mayorkas, SCOTUS 2021)
  - August 2020 policy change: Advanced Parole is travel authorization, not parole for AOS purposes
  - May still AOS through other means, if available.



# Other Humanitarian Forms of Relief



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# T Non-Immigrant Status (T Visa)

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- Provides immigration protection to victims of human trafficking.
- In order to be eligible for a T visa a victim must:
  - Be a victim of a severe form of trafficking in persons.
  - Be physically present in the United States on account of the trafficking.
  - Comply with any reasonable requests for assistance in the investigation or prosecution (or be under the age of 18 or unable participate due to trauma).
  - Suffer extreme hardship involving unusual and severe harm upon removal from the United States.





# T Non-Immigrant Status (T Visa)

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





# U Non-Immigrant Status (U Visa)

- Provides immigration protection to victims of certain types of 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.





# U Non-Immigrant Status (U Visa)

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- In order to be eligible for a U visa a victim must:
  - Be a victim of qualifying criminal activity and suffered substantial physical or mental abuse as a result of the crime.
  - Possess information about the qualifying criminal activity.
  - Have been, is being, or is likely to be helpful to the investigation and/or prosecution of that qualifying criminal activity.
  - Be a victim of criminal activity that occurred in the U.S. or violated a U.S. law.







# U Non-Immigrant Status (U Visa)

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- Bona Fide Determination:
  - USCIS’s attempt to address the massive U visa backlog and limitations of the 10,000 annual statutory cap.
  - Applies to all pending I-918 petitions and all I-918 petitions filed on or after June 14, 2021, when this new process was announced.
  - “Bona fide”: the application was complete and properly filed and a criminal background check does not raise any national security, public safety, or other concerns.
  - The applicant will be granted protection from deportation—called deferred action—and will be eligible for work authorization (an EAD) for four years, which can be renewed as necessary.





# Violence Against Women Act (VAWA)

- Provides immigration relief to victims of domestic violence.
- VAWA is a “self-petitioning” relief that removes control from the abuser and allows the victim to submit his or her own application that is filed without the abuser’s knowledge or consent.
- Who may file?
  - Spouses - The abused spouse of a USC/LPR (child may be included as a derivative beneficiary)
  - Children - The abused child of a USC/LPR
    - Including: The spouse of a USC/LPR whose child has been abused may file a self-petition based on the abuse of the child. In this case, the parent files based on abuse of the child, but both parent and child benefit.
  - Parents – The abused parent of a USC (added in 2005)
- Applies equally to women and men.





# Violence Against Women Act (VAWA)

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- Special Requirements for abused spouses:
  - Is or was married to USC or LPR
    - Marriage was in good faith
- Special Requirements for abused children:
  - Is child of USC or LPR
- Special Requirements for abused parents:
  - Is parent of USC
- Requirements for all victims:
  - Has or had a qualifying relationship to the abuser
  - Subjected to battery or extreme cruelty by the abuser
  - Resides or Resided with the abuser
  - Good moral character



# Benefits

## T Visa

- Self-petitioning application—do not need a sponsor (law enforcement certification is optional - Form I-914 Supplement B) Form I-914.
- Can apply for family members Form I-914 Supplement A.
- 5,000 visas each fiscal year for victims and no limit for family members.
- Eligible to work in the US.
- 4 year duration of status (extensions are available).
- May adjust status to lawful permanent resident.
- May be eligible for federal refugee benefits.

## U Visa

- Self-petitioning application—do not need a sponsor (requires law enforcement certification – Form I-918 Supplement B) Form I-918.
- Can apply for family members Form I-918 Supplement A.
- 10,000 visas each fiscal year for victims, no limit for family members.
- Bona Fide Determination.
- Eligible to work in the US.
- 4-year duration of status. (extensions available.)
- Can Adjust status to lawful permanent resident.

## VAWA

- Self-petitioning form—do not need a sponsor.
- Changes to the abuser's immigration status after filing a self-petition will not adversely affect victim's self-petition.
- Can be placed in deferred action to prevent removal from the US.
- Can work in the US.
- Remarriage of the VAWA self-petitioner after approval of the self-petition is not a ground for revocation of the approved self-petition.
- Can adjust status to lawful permanent resident.



# FOR MORE INFORMATION

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- Resources:

- CGRS Children's Asylum Manual, 2021
- Safe Passage Project, Asylum Manual, 2021
- ILRC, OVERVIEW OF THE NEW U NONIMMIGRANT ("U VISA") BONA FIDE DETERMINATION
- ILRC, U VISA/T VISA/VAWA



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- Resources:

- End the SIJS Backlog <https://www.sijsbacklog.com/>
- USCIS: TPS
  - <https://www.uscis.gov/humanitarian/temporary-protected-status>
- USCIS: Adjustment of Status
  - <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin>

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# QUESTIONS?

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function.



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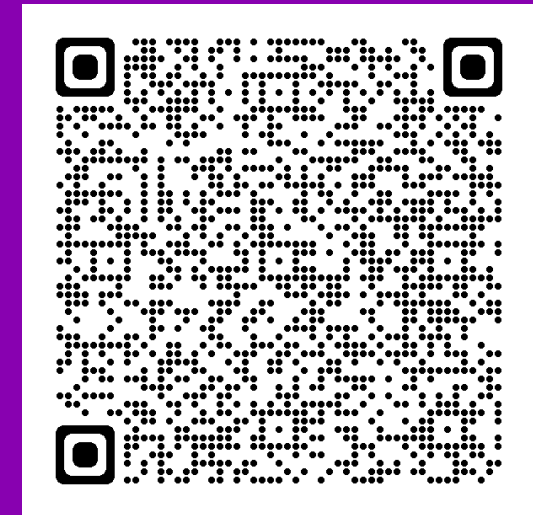
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