

**Immigration Law Protections for Immigrant  
Victims of Violence Against Women Act:  
The Intersection with Family Courts and  
Child Custody**

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National Association of Women Judges

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## Learning Objectives

- To understand the range of immigration benefits available when a party is an non-citizen victim of domestic violence, sexual assault, human trafficking or other U-visa listed crime
- To identify how issues regarding immigration status can arise in family court cases and the importance of courts having correct information about immigration and benefits options for immigrant victims
- To understand the potential the types of family court decisions that can have unintended consequences for immigrant victims

## Immigration-Related Abuse

- Keeps victims from seeking justice system help
- Affects victims documented and undocumented
- 65% of immigrant victims report some form of immigration related abuse (NIJ)
- Locks victims in abusive relationships

## Immigration Status Affects Willingness to Call Police

- Willingness to call the police by immigration status:
  - Stable (citizen/permanent resident) - 34.4%
  - Temporary (temporary visa) - 16.7%
  - Undocumented - 14.8%

# **Immigration Relief for Immigrant Victims of Domestic Violence, Sexual Assault, Child Abuse and Human Trafficking**

## Potential Immigration Remedies

- Applications filed with DHS
  - VAWA self petition (spouse/child/elder abuse)
  - Battered spouse waivers (spouse/child abuse)
  - U-visa (crime victims)
  - T-visa (victims of trafficking)
  - Special Immigrant Juveniles
- Forms of relief from removal- granted by Immigration Judge
  - VAWA cancellation of removal
  - VAWA suspension of deportation

# Battered Spouse Waiver

# **Family Violence Victims' VAWA Self-Petition For Lawful Permanent Residency**



## General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
  - Spouse/former spouse
  - Parent/current step-parent
  - adult son/daughter (over 21)
- With Whom self-petitioner resided
  - No time period required
- Good Moral Character
- Good Faith Marriage

## Forms of Extreme Cruelty

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

## VAWA self-petitioning available

- Must file within 2 years of marriage termination
- Abused step-child can obtain benefits
  - Effect of divorce Child abuse up to age of 25 to file
- Bigamist abuser
- *Any credible evidence*
- Attaining lawful permanent residency

# **VAWA Cancellation of Removal and Suspension of Deportation**

## VAWA Cancellation Requirements

- Relationship to abusive party
  - Same as VAWA self-petitioner or the following:
  - Mother of child abused by the child's other parent who is a citizen or lawful permanent resident
  - Over 2 years since divorce from the abuser
- Battered or Subject to Extreme Cruelty
- Good moral character
- Extreme Hardship to return to the home country
- Three years physical presence in the U.S.
- Not inadmissible

# U-Visas for Immigrant Crime Victims

# The Crime Victim U-visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S./violated U.S. law
- A U-visa certification signed by a government official must be included with the application

## Who can certify?

- Police officer
- Prosecutor
- *Judge*
- Immigration Officer
- Other authority with responsibility for investigation or prosecution of criminal activity
  - Adult/child protection worker
  - EEOC, US Department of Labor
  - State Departments of Labor
  - University/Military Police



## **What criminal activities are covered under the “U” visa?**

- **Rape**
- **Torture**
- **Trafficking**
- **Incest**
- **Domestic violence**
- **Sexual assault**
- **Prostitution**
- **Female genital mutilation**
- **Involuntary servitude**
- **Slave trade**
- **Being held hostage**
- **Kidnapping**
- **Abduction**
- **Peonage**
- **False Imprisonment**

## **Criminal Activities Covered -- Continued**

- **Blackmail**
- **Extortion**
- **Manslaughter**
- **Murder**
- **Felonious assault**
- **Witness tampering**
- **Obstruction of justice**
- **Perjury**
- **Attempt, conspiracy or solicitation to commit any of these crimes**
- **Any similar activity**

## The U-visa Process

- Certification from government official
- Application
- Approval
- U-Visa status 4 years
- Some will qualify for lawful permanent residence
- U.S. citizenship: Only after legal permanent residency for 5 years + proof of good moral character

# Which U-Visa Recipients Can Obtain Lawful Permanent Residence?

- Did not unreasonably refuse to cooperate in the detection, investigation or prosecution of criminal activity; AND
  - Humanitarian need; OR
  - Family unity: OR
  - Public Interest
- Homeland Security reviews cooperation or determines whether the victim's non-cooperation was unreasonable

## Judges as Certifying Officials

- Judges in family, criminal or administrative law courts can sign certifications
- Certifying victim's helpfulness or willingness to be helpful with regard to criminal activity in any of the following:
  - Detection
  - Investigation
  - Prosecution
  - Conviction
  - Sentencing

# What the U-visa Certification Form Asks From a Certifier?

- What criminal activity occurred?
- Identify the victim
  - Note injuries observed, if any
- Helpfulness of the victim
  - Current OR
  - Past OR
  - Willingness to be helpful
- Any family members implicated in the crime

# Special Immigrant Juvenile Status

## Special Immigrant Juvenile Status

Special immigrant juvenile status requires a finding by a court of juvenile jurisdiction (e.g. dependency, guardianship, probate, delinquency) in the U.S. that:

- The juvenile is dependent on the court;
- Reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis; &
- It would not be in the best interest of the juvenile to be returned to the juvenile's country of origin.
- The juvenile must concurrently apply for lawful permanent resident status
- Juvenile court ruling required for application
- DHS decision to grant or deny SJI status
- Inadmissibility applies



# **VAWA Confidentiality and Its Implications for State Courts**

## VAWA Confidentiality

- DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers (any victim)
- Enforcement locational prohibitions (any victim)
- DHS cannot disclose VAWA information to anyone (protects applicants)
  - Limited exceptions

## **VAWA confidentiality bars disclosure of**

- Information about the existence of the case
- Any information contained in the case
- Action taken on the case by DHS

## **Hawke vs. DHS**

**208 U.S. District Lexis 87603, Sept. 29, 2008**

- Judicial review exception for immigration judges only
- Civil/family courts should not allow or facilitate access to VAWA confidentiality protected information through --
  - Discovery
  - Motions seeking release of protected information
  - Cross-examination
- Courts are granting protective orders & motions in limine

# VAWA Confidentiality Violations

- Complaints:
  - DHS Office of Civil Rights and Civil Liberties
- Each violation
  - Disciplinary action and/or
  - \$5,000 fine
- Dismissal of the immigration case against non-citizen

# Protection Orders and Immigrant Victims

# Protection Orders and Immigration Status

- Issuance of a protection order has no effect on immigration status of the abuser
- Violation of a protection order is a deportable offense
  - Abuse related protections
  - Not custody and support provisions
- Dangers of protection order issued against immigrant victims

# Creative Protection Order Remedies

- Catch all provisions
  - Nexus with victimization
- Offer any additional relief that may
  - Curb future abuse
  - Interfere with abuser's power and control
  - Including immigration related abuse
  - Offer victim remedy for past abuse
  - Help victim overcome victimization



## Suggestions For Court Orders That Help VAWA Applicants -- Examples

- Cooperate in/not withdraw victim's immigration case
- Turn over documents in abuse's control
- Full contact protection orders
- Protections against parental kidnapping
- Economic relief
  - Child and spousal support
  - Maintain health insurance, rent, mortgage, utilities
  - Orders to third parties not to do as abuser asks
  - Tax options

## Catch-all Provisions Preventing Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare etc.) concerning the petitioner except
  - Police emergency
  - Subpoena

# **Immigration Status Issues and Family Law Cases**

**Special considerations for cases involving  
non-citizen family members**

# Immigration status and family court cases

- Not relevant to family court jurisdiction
- Divorce can cut immigrants off from immigration relief
- VAWA must file within 2 years
- Annulment can lead to a marriage fraud
  - Permanently bars approval of any visa petition
  - Is a ground for deportation
  - Can lead to an unfavorable exercise of discretion by an immigration judge

# Best Interests, Custody and Immigration

- Immigration status/English not statutory custody factors
- Immigration status not relevant to
  - Primary caretaker
  - Parenting ability
- State laws discourage awarding custody to abusers
- Immigration information distracts the judge from focusing on best interest factors
- Immigrant benefits for victims
- Which party is raising the immigration issue and why?

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## ABA Center on Children and The Law

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

## Helpful facts

- Lack of legal immigration status does not mean
  - Deportation is eminent
  - Victim parent does not qualify for immigration relief
  - Parent is likely to flee U.S.
  - Legal immigrants/naturalized citizens are more likely to flee with children
- A parent can confer immigration status whether or not they have custody
- Undocumented parents can obtain benefits for their children

## Financial support for the children

- Did one parent fail to file papers for the other?
- Immigrant victim parents eligible for immigration benefits can receive
  - legal work authorization
  - some access to benefits
- Child support can be ordered



# **Special Custody Issues When Immigrant Parents Are for Detained**

## Emerging Trend: Termination of Parental Rights of Immigrant Parents

- Immigration enforcement against an immigrant parent can lead to loss of child and placement in foster care
- Paths to detention
- Role of lack of language access
  - Recent letter from Attorney General letter to courts

# Immigrant Parents' Constitutional Right to Custody of Their Children

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- Constitutional right to custody absent finding of unfitness
- Parent child relationship is constitutionally protected
- Child's best interest to stay/be reunited with parent
- Applies to all families without regard to
  - Immigration status; and
  - Whether or not the parent is
    - In immigration detention or deported
- Child's best interests not comparison of natural vs. adoptive parent's
  - cultures, countries, or financial means

## Challenges of Reunification for Immigrant Parents and Victims

- Language access
- Lack of information re: parent's legal rights
- Less eligibility for public-funded services
- Conflicting timeframes
  - TPR under the Adoption and Safe Families Act
  - Immigration case processing
- DHS not bringing detained immigrants to family courts
- No consular notification
- Powers of attorney as prevention

# Legal Options for Immigrant Victims of Human Trafficking

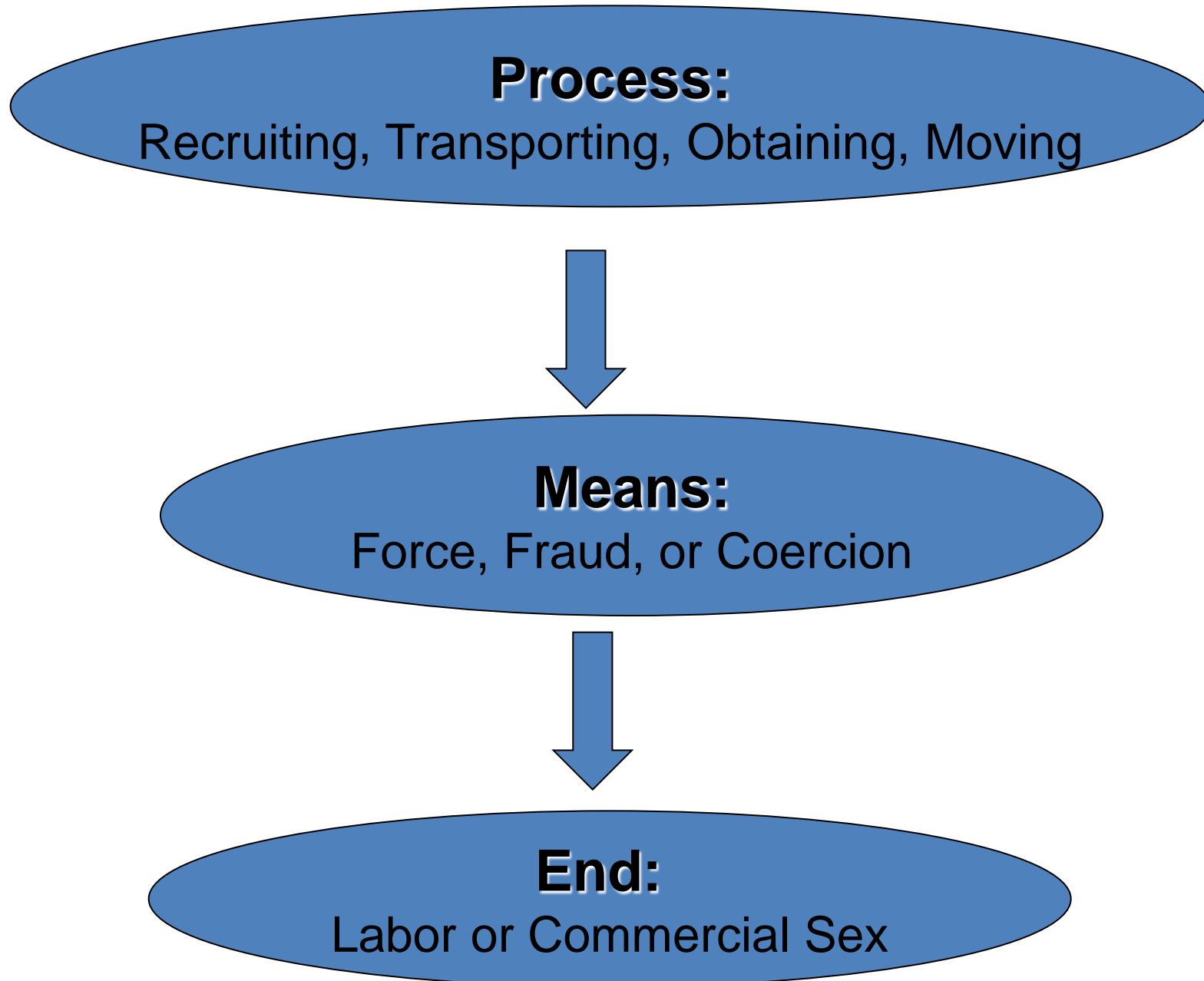
# A Severe Form of Trafficking in Persons

(22 USC sec. 7102)

- **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; OR
- **Sex Trafficking:** the recruitment, harboring, transportation, provision, or obtaining of
- a person for the purpose of a commercial sex act
- in which a commercial sex act is induced by **force, fraud, or coercion**, OR
- in which the person induced to perform the commercial sex act has not attained 18 years of age.

## Force, Fraud, or Coercion

- Debt servitude
- Surveillance
- Physical barriers
- Threats to safety
- Physical isolation
- Psychological isolation
- Threats to deport or report to law enforcement
- Holding passports or identity documents
- Threats to family members





## Trafficking **Smuggling**

- A crime against a person
- Contains as element of coercion
- Entails subsequent exploitation
- Treats trafficked people as victims.
- **An unauthorized border crossing**
- **Contains no element of coercion**
- **Facilitated entry by another person**
- **Treats smuggled people as criminals**

## For further assistance

Contact:

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