

**Community of Practice for Family Law
Attorneys Representing Immigrant Survivors**

**Immigration Issues That Arise in Family Court
Cases – Tools, Strategies, and TA
Part II**

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The following slides are intended to be a guide to lead our discussion on this topic and to provide substantive material for your future reference.



Learning Objectives

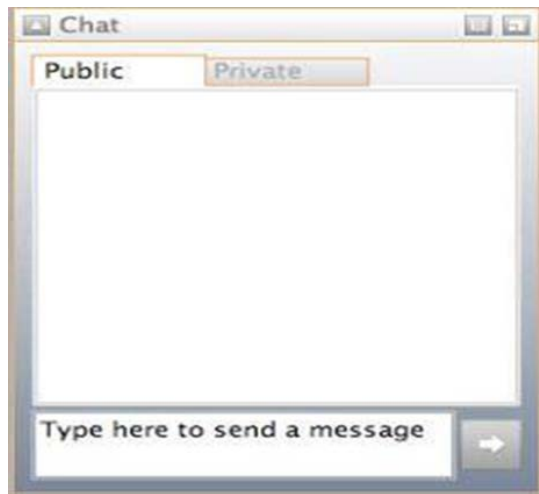
By the end of this session, you will be better able to:

- Anticipate immigration law issues that arise in family court cases, particularly in cases that involve domestic violence, sexual assault, stalking and and/or child maltreatment
- Know where to get up-to-date legally accurate information on immigration law when you need it
- Be able to present evidence and information to the judge in your protection order, divorce, and child support cases so that the judges applies legally correct information about immigration law to the facts of your case

Civil Protection Order Cases Involving Immigrant Survivors

Recap and Continuation

What immigration issues are you seeing in protection order cases?



Perpetrator claims that issuance
of a protection order will make
them deportable.

Poll 2: Check all of the following that would be deportable for a noncitizen (Check all that apply)



- A. Issuance of a protection order against them
- B. A finding of fact in a family court case that they violated the terms of a protection order issued against them
- C. Conviction for violating a protection order
- D. Being found in contempt for violating a protection order
- E. Agreeing to diversion for a protection order violation

Protection Orders and Immigration Considerations

- Violation of a protection order is a deportable offense
 - Can lead to loss of lawful permanent residency and other immigration consequences for the perpetrator
 - Victims should not be charged with violation of orders issued for their own protection
 - Importance of self-defense and primary aggressor determinations when CPO filed against immigrant victim
 - Ask the judge to issue Padilla advisals in CPO cases

Civil Protection Orders are not available to or useful for battered immigrants who are staying with their abusers or who have returned to live with their abusers.

Poll 3: Why Might Victims Not Separating From Their Abusers Seek Protection Orders?

(Check all that apply)



- A. Living in extended families
- B. Limited housing options
- C. Awaiting legal work authorization
- D. Curb abuse
- E. Help shift power and control in relationship

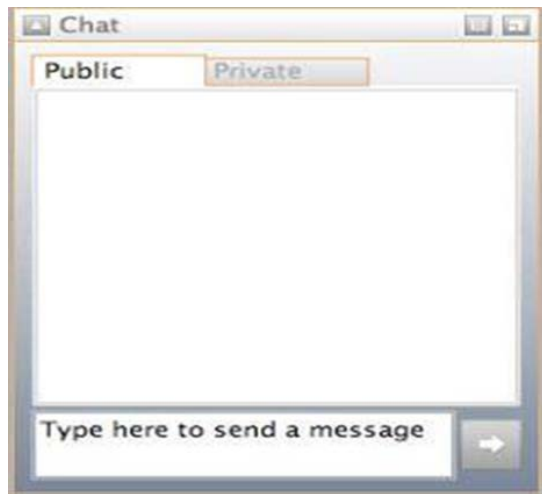
The Majority of Immigrant Victims Stay With Their Abusers ...

- Until the victim receives work authorization as part of their immigration case or their case is approved
- Percent who leave before receiving work authorization or approval
 - VAWA self-petitioners 33.9%
 - U visa victims 30.1%

Victims Who Stay: No Unlawful Contact Protection Orders

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

What type have creative remedies
have you sought in protection orders
to counter immigration related
abuse of your client?



Use Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Economic relief
 - Child/Spousal support, health insurance, rent, mortgage, utilities, one-time emergency monetary relief, tax returns

Beneficial Findings to Include When Issuing Family Court Orders

- In contested cases findings of:
 - Physical and sexual abuse, stalking, extreme cruelty, & human trafficking against
 - The immigrant survivor, their child, and/or their step-child
- In all cases showing existence of:
 - Parent/child relationship
 - Spousal relationship
 - Stepparent/stepchild relationship
 - Age of children

Protection Order Strategies

- Seeking Protection Orders for Immigrant Victims (57-68) (Fall 2016) in Family Court Proceedings in Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody and Parental Rights
<https://www.courts.ca.gov/documents/BTB24-PreCon1E-11.pdf>
- Battered Immigrants and Civil Protection Orders (July 1, 2013)
 - <http://niwaplibrary.wcl.american.edu/pubs/ch5-1-imm-civil-protection-orders/>
- Creative Methods in Protecting Battered Immigrants (June 20, 2014)
<http://niwaplibrary.wcl.american.edu/pubs/creative-cpo-batimms/>
- Ensuring Access to Protection Orders for Immigrant Victims of Family Violence (July 1, 2014)
 - <http://niwaplibrary.wcl.american.edu/pubs/ch5-2-access-protection-orders/>
- Jurisdictionally Sound Protection Orders (July 3, 2013)
<http://niwaplibrary.wcl.american.edu/pubs/ch5-3-jurisdictionallysound-cpos/>
- Unintended Consequences: How Civil Protection Orders Affect Immigrants, *Delaware Lawyer's Magazine* (Fall 2018)
<http://niwaplibrary.wcl.american.edu/wp-content/uploads/DELAW-FALL-2018.pdf>

Protection Order Tools

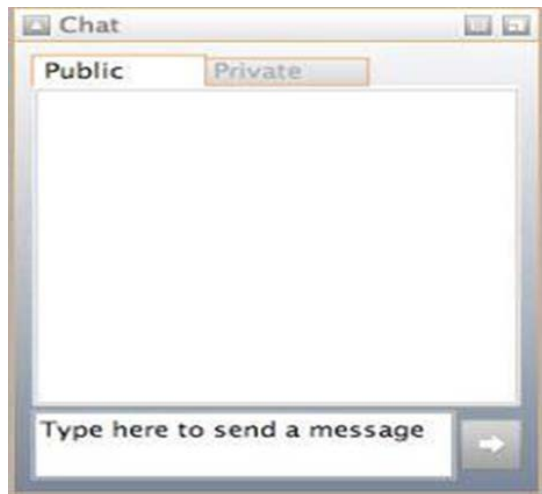
- Immigrants and Protection Orders Bench Card (March 29, 2019) <https://niwaplibrary.wcl.american.edu/pubs/protection-orders-bench-card>
- How Immigration Law and Policies Impact State Courts — When Children and Litigants are Victims of Human Trafficking, Domestic Violence, Child Abuse, or Sexual Assault (NCJFCJ, In-Session -Fall 2023) <https://niwaplibrary.wcl.american.edu/pubs/ncjfcj-in-session-fall-2023-dhs-policies-and-courts>
- NCJFCJ's Break From the Bench: What a judge needs to know about...Responding to Immigrant Victims of Domestic and Sexual Violence (April 27, 2021) <https://www.ncjfcj.org/webcasts/responding-to-immigrant-victims-of-domestic-and-sexual-violence/>
- Obtaining U Visa Certification from Judges in Protection Order, Family, Criminal, and Other State Court Proceedings (February 20, 2014) <https://niwaplibrary.wcl.american.edu/webinar-u-visa-certification-by-state-court-judges>

Links to Protection Order Collected Resources and Immigrant Victim CPO Research

- Civil Protection Orders Webinar Materials List (February 24, 2024) <https://niwaplibrary.wcl.american.edu/pubs/civil-protection-order-materials-list>
- Immigrant Victims of Interpersonal Violence and Protection Orders (2020) <https://niwaplibrary.wcl.american.edu/pubs/immigrant-victims-and-protection-orders-2020>
- Use and Outcomes of Protection Orders by Battered Immigrant Women (2006) <https://niwaplibrary.wcl.american.edu/pubs/fam-gov-nijtechnicalreportprotectionorders11-10-06>

Divorce and Child Support Cases Involving Immigrant Survivors

What immigration issues are you seeing in divorce or child support cases?



Impact of Divorce

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

Annulment Instead of Divorce

- Annulment can lead to a marriage fraud finding that:
 - Permanently bars approval of any visa petition
 - Is a ground for deportation
 - Can lead to an unfavorable exercise of discretion by an immigration judge not to grant immigration relief
 - Can set victim up for marriage fraud investigation
- Impacts
 - Spousal support
 - Property division

Child Support & Immigration: The Parent Paying Child Support

- Payment of child support through the court provides a non-citizen parent with a history of child support payments
- This is helpful evidence of good moral character for either parent's immigration cases
 - Cancellation of removal
 - Naturalization
 - Obtaining relief in immigration court
 - Can be used to show hardship to family members

Immigration Issues Arising in Child Support Cases

- Lack of legal work authorization is not a valid defense to non-payment of child support
- Can order child support, but not a job search, of an undocumented non-custodial parent
- Can order non-custodial parent to obtain an ITIN and pay taxes

Divorce and Economic Relief Strategies

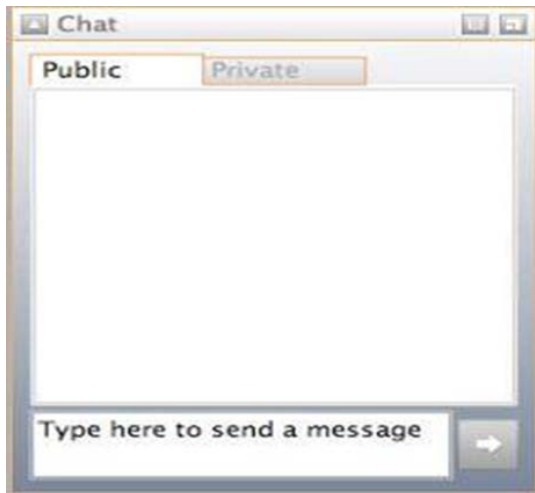
- Immigration Concerns for Family Law Practitioners
<http://niwaplibrary.wcl.american.edu/pubs/family-law-journal-immigration-concerns-for-family-law-practitioners/>
- Providing Economic Relief for Immigrant Victims: Child Support and Spousal Support (117-135)(Winter 2017) in Family Court Proceedings in Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody and Parental Rights <https://www.courts.ca.gov/documents/BTB24-PreCon1E-11.pdf>
- Chapter 06.4: Ensuring Economic Relief for Immigrant Victims Through Family Law Proceedings: Child Support and Spousal Support (July 1, 2013) <http://niwaplibrary.wcl.american.edu/pubs/ch6-4-ensuring-econ-relief/>

Divorce and Economic Relief Tools

- Bench Card: Impact of Divorce on Immigration Status (December 28, 2021) <http://niwaplibrary.wcl.american.edu/pubs/divorce-bench-card/>
- Bench Card for State Court Judges on Common Issues that Arise From Parties' Immigration Status: Economic Remedies (March 10, 2022) <https://niwaplibrary.wcl.american.edu/pubs/benchcard-economic-relief>
- Affidavits of Support and Enforceability Bench Card (September 30, 2021) <https://niwaplibrary.wcl.american.edu/pubs/affidavits-of-support-bench-card>
- 'Til Death Do Us Part: Affidavits of Support and Obligations to Immigrant Spouses (October 2012) <https://niwaplibrary.wcl.american.edu/pubs/til-death-do-us-part>

Public Benefits and Family Law

- How does knowing which public benefits and services your battered immigrant client and their children qualify for impact or help your family law client and their case?



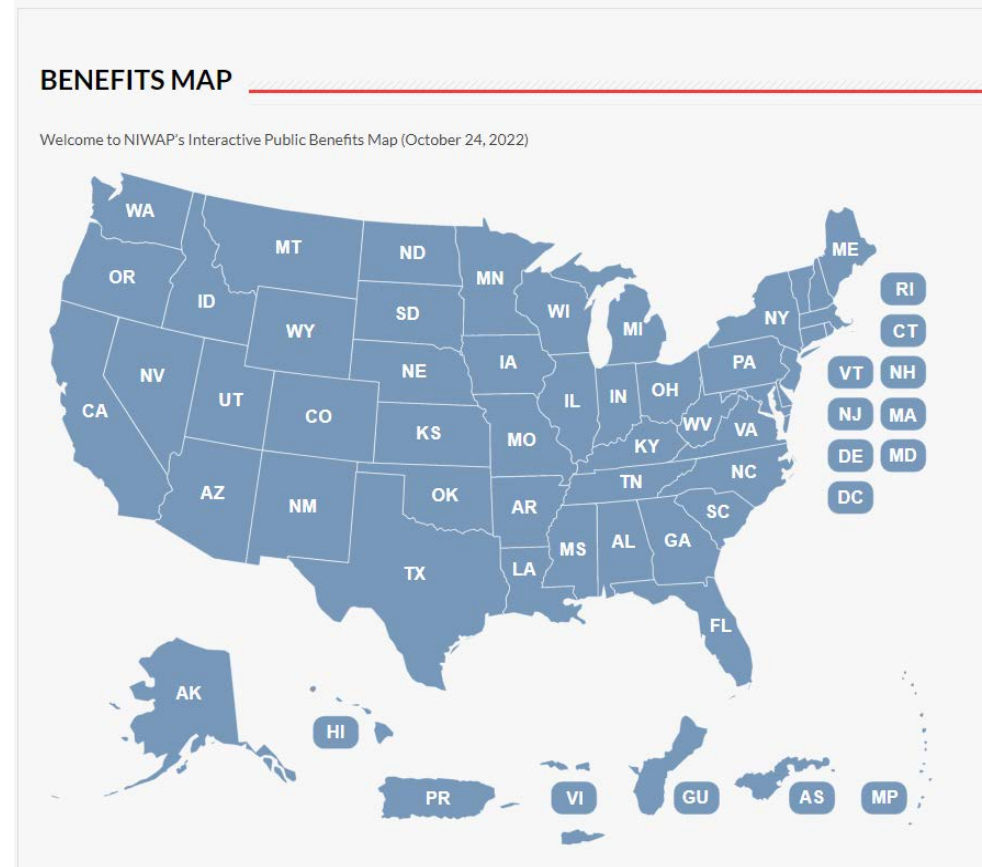
Interactive Public Benefits Map

Hide fields Filter Group Sort ...

	Ben...	STATE & TERRITORY	Benefit Name	VAWA Self-Petitioner
1	309	Florida Public Benefits	Child Care - TANF Funded	Eligible for TANF funded child care if receiving TANF.
2	308	Florida Public Benefits	Child Care: Child Care Development Fund (CCDF)	Eligible for CCDF
3	310	Florida Public Benefits	Children's Health Insurance Program (CHIP)	Eligible up to age 19 upon prima facie determination. ...
4	311	Florida Public Benefits	Earned Income Tax Credits (EITC)	Eligible with conditions upon receipt of work ...
5	313	Florida Public Benefits	Emergency Medicaid	Eligible.
6	315	Florida Public Benefits	Family Medical Leave Act - State Law	No state law, federal law applies.
7	316	Florida Public Benefits	Federal Education Student Aid, Grants, and Loans	Eligible upon prima facie determination.

30 records um 13017

Airtable Download



<https://niwaplibrary.wcl.american.edu/benefits-map>

A GUIDE TO THE PUBLIC BENEFITS MAP



HOW TO DETERMINE PUBLIC BENEFITS ELIGIBILITY BY STATE AND IMMIGRATION STATUS FOR IMMIGRANT CRIME VICTIMS AND TRAFFICKING SURVIVORS

STEP ONE

TO START, BEGIN BY ACCESSING THE NIWAP WEBPAGE AT:
[HTTPS://NIWAPLIBRARY.WCL.AMERICAN.EDU/BENEFITS-MAP](https://niwaplibrary.wcl.american.edu/benefits-map)



STEP TWO

SEARCH BY...



SELECT THE STATE FOR WHICH YOU WOULD LIKE TO SEE ELIGIBILITY INFORMATION.

STEP THREE

RESOURCES

NOTE THAT EACH STATE PAGE HAS THREE STATE-SPECIFIC RESOURCE LINKS FOR USE WITH THE MAP BELOW [FURTHER DETAILED INFORMATION]



SCREENING CHART	QUICK DESKTOP REFERENCE
FULL PUBLIC BENEFITS CHART	FULL CITATIONS FOR ALL LISTED BENEFITS
DEMOGRAPHICS	FOREIGN-BORN POPULATION IN EACH STATE (2019)

STEP FOUR LOCATING BY.....

SCROLLING TO THE BOTTOM OF EACH STATE PAGE WILL ALLOW YOU TO ACCESS A COMPREHENSIVE LIVE DATA STATE TABLE WITH ELIGIBILITY BY TYPE OF BENEFIT AND BY IMMIGRATION STATUS AND APPLICATION TYPE.



STEP FIVE

NAVIGATING

CUSTOMIZING THE TABLE FOR YOUR NEEDS [RELEVANT TABS EXPLAINED]

WHY DOES THIS MATTER?

Effective navigation can help you use the table more efficiently. For example, if you know your client's state and immigration status, you can **hide all columns except state, benefit name, and immigration status** to see all the benefits your client qualifies for at a glance.

HIDE: Only display columns needed

FILTER: Select for specific results for each column

SORT: Organize by alphabetical/numerical order for specific columns

Adjusting row height for full text view

	Be...	STATE...	Benefit Name	VAWA Self-Petitioner	Battered Spouse Waiver	Refugee	Asylee
1	138	California F	Child Care - Child Care Develo...	Eligible for CCDF	Eligible for CCDF	Eligible for CCDF	Eligible for CCDF
2	139	California F	Child Care - TANF Funded	Eligible for TANF funded c...	Eligible for TANF funded c...	Eligible	Eligible.
3	140	California F	Children's Health Insurance Pr...	In CA, all children eligible ...	In CA, all children eligible ...	In CA, all children eligible ...	In CA, all ch
4	141	California F	Earned Income Tax Credits (EIT...	Eligible with conditions up...	Eligible with conditions up...	Eligible with conditions up...	Eligible with
5	143	California F	Emergency Medicaid	Eligible.	Eligible.	Eligible.	Eligible.
6	145	California F	Family Medical Leave Act - Sta...	May be eligible for CA Fam...	May be eligible for CA Fam...	May be eligible for CA Fam...	May be elig
7	146	California F	Federal Education Student Aid,...	Eligible upon prima facie d...	Eligible as Battered Spous...	Eligible.	Eligible.
8	147	California F	Federal Emergency Manageme...	Eligible for disaster relief.	Eligible for disaster relief.	Eligible for disaster relief.	Eligible for c
9	170	California F	Federally Recognized Driver's ...	Eligible for federally recog...	Eligible for federally recog...	Eligible for federally recog...	Eligible for f
10	149	California F	FEMA-Restricted Programs	Eligible upon prima facie d...	Eligible as Battered Spous...	Eligible for food, unemploy...	Eligible for f
11	150	California F	Health Insurance Exchanges - ...	Eligible with prima facie de...	Eligible as Battered Spous...	Eligible.	Eligible.
	153	California F	Income Tax Credits	Immigrants with social sec...	Immigrants with social sec...	Immigrants with social sec...	Immigrants

Hover mouse next to a row number to expand its details. Click on the blue arrows to view complete information in a pop up box.

Download table into CSV file then use "save as" to convert to Excel format

A better way to view the full state table.

STEP SIX

BENEFITS

Expanding an individual row allows you to see detailed eligibility status information for each benefit category (example below):

"Eligible with conditions" means the immigrant may be eligible, but is subject to additional requirements before being able to access the benefit.

The screenshot shows a modal window titled "150" with the following details:

- Benefit Number:** 150
- STATE & TERRITORY:** California Public Benefits
- Benefit Name:** Health Insurance Exchanges - Purchase Eligibility
- VAWA Self-Petitioner:** Eligible with prima facie determination.
In CA, with conditions may be eligible for subsidies.
- Battered Spouse Waiver:** Eligible as Battered Spouse Waiver victim.
In CA, with conditions may be eligible for subsidies.

USING THE STATE BENEFITS MAP TABLE INFORMATION, YOU CAN LOOK UP ALL OF THE DETAILS REGARDING ELIGIBILITY WITH THE SOURCES OF LAW CITED IN FOOTNOTES IN YOUR STATE'S FULL BENEFITS CHART LINKED ON THE INTRO PAGE FOR THE STATE.

IF YOU WOULD FURTHER INFORMATION, CALL NIWAP FOR TECHNICAL ASSISTANCE AT (202) 274-4457 OR EMAIL INFO@NIWAP.ORG.



Maps by Benefit

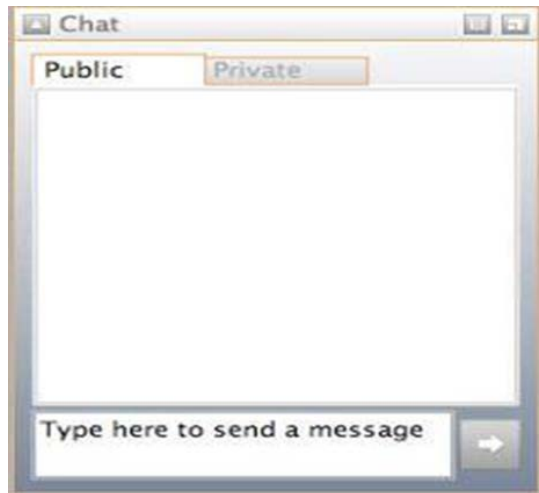
- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License, IDs, & Professional Licenses
- Earned Income Tax Credit
- Emergency & Transitional Housing & Safety Programs
- Emergency Medicaid
- Family Medical Leave
- Federal Education Benefits
- FEMA Assistance & Restricted Programs
- Food Stamps
- Health Insurance Exchanges
- Income Tax Credits
- Legal Services
- Medicaid
- Prenatal Care
- State Education Benefits
- Supplemental Security Income
- VOCA
- Weatherization & Energy Assistance
- WIC
- Unemployment Insurance

Benefits Map Demonstration

<https://niwaplibrary.wcl.american.edu/benefits-map>

Next Steps

- What do you want learn more about and share strategies about in greater detail at future sessions?



Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
 - Web Library:
www.niwaplibrary.wcl.american.edu
 - Directory
 - <https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims/>
- Materials for this COP:
 - <https://niwaplibrary.wcl.american.edu/family-law-cop-materials-repository/>

Thank You!

