

Impact of Immigration on Families: Intersection with Family Law

Judicial Training Network
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Introductions

- Judge Ramona A. Gonzalez, Presiding Judge, Lacrosse County Circuit Courts, Wisconsin
- Commissioner Loretta Young
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Learning Objectives

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

- Understand how accurate immigration law information affects just and fair outcomes in state family court cases
- Know where to access legally correct information when litigants raise immigration issues in court
- Issue just and fair orders in custody, protection order, divorce and child support cases involving immigrant children and immigrant crime victims

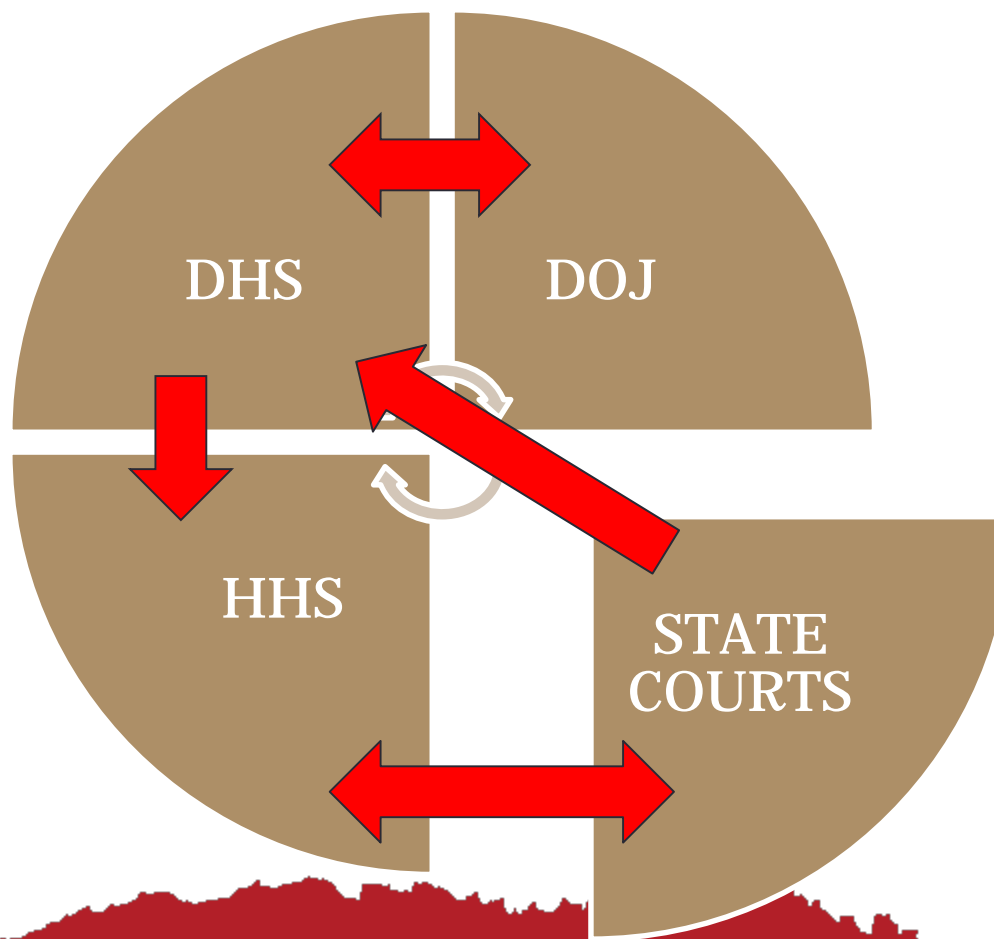
Large group discussion:

- What are you seeing with regard to immigrant survivors, children, litigants in your courts?
- List questions you have that you would like answered during this training.

When litigants and their children learn about and pursue immigration relief legally available to them might this improve access to justice in family courts?



Relationships that benefit victims and children



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 US 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

Asylum

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

U visa

- Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of criminal activity
- Substantial mental or physical abuse as result from criminal activity

T visa and Continued Presence

- Victims of severe forms of human trafficking

Special Immigrant Juvenile Status SIJS

- Children abused, battered, abandoned or neglected by one or both parents

Deferred Action (DACA)

- Deferred action for childhood arrivals

Immigration Issues that Arise in Family Court: Importance of Accurate Information

Opportunities to Enhance Just Outcomes for Immigrant Victims, Children and Litigants

- In a range of cases
 - Protection orders
 - Custody
 - Abuse, neglect, abandonment
 - Child support
 - Divorce



A Starting Principle for Analysis

- A person's immigration or citizenship status per se
- Is irrelevant to the determination of
 - Family law rights including
 - Divorce
 - Custody
 - Protection orders
 - Child support

Knowledge of immigration issues is important in family matters

- ▶ Addressing immigration status issues early can
 - ▶ Improve outcomes in family court cases
 - ▶ Prevent or delay family court orders that cut off a party and her children from immigration relief
- ▶ Family court actions can assist with
 - ▶ Helpful evidence for an immigration case
 - ▶ Obtaining from family court judges
 - ▶ SIJS findings for abused immigrant children
 - ▶ Certifications in immigrant crime victim's U visa case
 - ▶ Creative protection order remedies

Impact of State Court Orders on the Immigration Case

- Specific written orders are helpful to immigration adjudicators and immigrant parties
- Court orders contain evidence of
 - Abuse, abandonment, neglect
 - Family relationships including marriage
- Divorce can result in an immigrant family member being denied immigration relief
 - Tactic used by perpetrators of spouse, child, elder abuse
- Annulment instead of divorce can set up a spouse for a federal marriage fraud prosecution

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
- Impacts
 - Spousal support
 - Property division

Custody of Children in Immigrant Families

Tool: Immigrant Victims and Custody Bench Card

Protecting Immigrant Mothers Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004)

<http://niwaplibrary.wcl.american.edu/pubs/co-occurencedvchildabuse/>

Is Immigration Status Relevant to Custody?

- Relevant to: Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
 - Either not filing or withdrawing immigration papers
 - Threats to turn victim in for deportation
 - Part of history of violence
- Not relevant to:
 - Core primary caretaker determination
 - Evaluation of parenting skills
 - Best interests of the child determination
 - Requirements regarding custody awards to non-abusive parent



ABA Center on Children & 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.”

Myth vs. Fact:

Parents without Legal Immigration Status

Myth

1. Deportation is imminent
2. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. Legally present parent must have custody in order to file for benefits for child

Fact

1. DHS policies prevent detention/removal of immigrant parents who are crime victims
2. US citizens and lawful permanent residents are more likely to flee with children, especially when
 - There have been threats of kidnapping children
 - They are dual nationals
 - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

Dependency, Termination of Parental Rights

How Immigrant Parents End Up In Department of Homeland Security Custody

- Abusers/crime perpetrators/employers report them
 - VAWA self-petitions 38.3%; U visas 26.7%
- Traffic stops
 - VAWA self-petitions 28.6%; U visas 30.1%
- Immigration enforcement at the worksite
- CPS, welfare workers, health care providers, others
- Victims call the police for help and police
 - Make a dual arrest;
 - Fail to obtain qualified interpreter and arrest the victim
 - Under Secure Communities program all arrested persons reported to DHS

Szabo, Stauffer, Anver and Orloff, Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants 26 (February, 2014) http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/

Immigrant Parents 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

Lessons Learned

- Due Process: Court documents and proceedings in immigrant parents' native languages
- Preventive Measure: Execute Power of Attorney
- Consular Notification

How to Secure a Detained Parent's Participation in Court (Aug 2013)

- Parental Interest Directive
 - Bring parents to family court to participate in cases involving children
 - Make parents available to participate by video conference
 - NIWAP brochure
- Detainee locator system

<https://locator.ice.gov/odls/#/index>

Case Study

Duncan is a naturalized citizen who had been married to Rosa for 5 years. They have two children ages 7 and 3. Rosa fled to the local shelter after Duncan held her against her will for weeks, and broke her arm when she tried to flee. The neighbors called police and when Rosa spoke to police, they took her to the shelter. The children were present during the latest incident of violence and are afraid of their father. Rosa is an undocumented immigrant who has been the primary caretaker of the children, particularly when Duncan leaves the country for extended work. Duncan has filed for custody alleging that Rosa is an unfit mother, because she is an “illegal alien” and unable to provide for the children because she is unable to work or obtain a driver’s license.

Large Group Discussion

- What immigration remedy or remedies might the Rosa be eligible for?
- What factors would the court consider in the custody case?
- How might having information on immigration relief DHS offers available at the courthouse be helpful to Rosa?

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
 - Help avoid reliance on incorrect information provided by parties about immigration status & likelihood of detention or deportation
 - Provide accurate information when needed
 - www.Niwap.org/go/sji
 - Direct technical assistance to state court judges, commissioners, magistrates, court staff
 - Bench cards, charts, training materials and webinars
 - In person SJI funded trainings in states/local jurisdictions



PROTECTION ORDERS



Immigration Law Definition of Domestic Violence

- “Battery or Extreme Cruelty”
- Includes
 - All forms of abuse covered in state civil protection order statute
 - All forms of abuse that constitute domestic violence under states criminal laws
 - Plus – Forms of abuse that are extreme cruelty
 - No physical harm or crime required

Immigration Law's Domestic Violence Definition “Battering *or* Extreme Cruelty”

- 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

NIJ Funded CPO Study Found

With support immigrant victims will use and benefit from justice system assistance

- 60.9% did not know about CPOs
- 81% got CPO with help from advocate/attorney
- 96% found them helpful
- 68.3% of violations immigrant related

Ammar, Orloff, Dutton, and Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research Criminal Justice Review 37:337 (2012)

Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against* abuse provisions” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

What harms, if any, could occur if the court issues protection orders against both parties?

Large Group Discussion

Issuance of Mutual Protection Orders

Florida - Fla. Stat. Ann. §741-30(1)(i) (2015)

The court is prohibited from issuing mutual orders of protection. This does not preclude the court from issuing separate injunctions for protection against domestic violence where each party has complied with the provisions of this section. Compliance with the provisions of this section cannot be waived.

Louisiana - La. Ch. Code Ann. art. 1570(I) (2014)

A court shall not grant a mutual order for protection to opposing parties. However, nothing contained in this Paragraph shall be construed to prohibit the court from granting a protective order to a party in a subsequently filed Petition for Domestic Abuse Assistance provided that the provisions contained in R.S. 46:2136(B) have been met.

Issuance of Mutual Protection Orders

Michigan - Mich. Comp. Laws Serv. 600.2950a(8) (2015)

A personal protection order shall not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court under subsection (1) or (2).

Mississippi - Miss. Code Ann. §93-21-15(3) (2014)

Every domestic abuse protection order issued pursuant to this section shall set forth the reasons for its issuance, shall contain specific findings of fact regarding the existence of abuse, shall be specific in its terms and shall describe in reasonable detail the act or acts to be prohibited. No mutual protection order shall be issued unless that order is supported by an independent petition by each party requesting relief pursuant to this chapter, and the order contains specific findings of fact regarding the existence of abuse by each party as principal aggressor, and a finding that neither party acted in self-defense.

Issuance of Mutual Protection Orders

Missouri -Mo. Rev. Stat. §455.050(2) (2015)

Mutual orders of protection are prohibited unless both parties have properly filed written petitions and proper service has been made in accordance with sections 455.010 to 455.085.

New Mexico -N.M. Stat. Ann. §40-13-5(D) (2015)

A mutual order of protection shall be issued only in cases where both parties have petitioned the court and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

Effect of Protection Order Issued Against Immigrant Victims

- Increases perpetrators power and coercive control
 - Victim is one step away from deportation
 - A violation of a protection order is a deportable offense
 - Findings enough – conviction not required
- Perpetrators who are successful in convincing courts to issue protection orders are often also successful obtaining findings that the victim violated the order
- This can pose serious safety concerns for victims

How Immigrant Victims End Up As Respondents In Protection Order Proceedings

Police arrive at domestic violence incident, perpetrator speaks English

- Perpetrator speaks to and/or interprets for the police
- Outcome A
 - Police see victim's injuries but take no action and advise the parties about protection order
 - Perpetrator files for a protection order against the victim
 - Victim is served and then also seeks a protection order
- Outcome B
 - Perpetrator convinces the police to arrest the non-English speaking victim

Effects of “No Findings” Protection Orders

- Can allow the abuser to keep his firearms
- Increase danger to a survivor and her children
- Undermine state laws regarding domestic violence and custody

Beneficial Findings to Include When Issuing Protection Orders

- In contested cases
 - Findings of physical, sexual and emotional abuse of immigrant, her child or step-child
- In all cases showing an:
 - Existence of parent/child or spousal relationship by checking this box on standard court orders
- Include creative remedies

Group Activity:

What Creative Protection
Order Remedies Might
Help an Immigrant Victim?



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
- Child/Spousal support
 - Affidavit of support
- Health insurance

Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes, opportunity to offer relief designed to help:
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrators ability to exert power and/or coercive control
 - Offer victim remedy-relief for past abuse
 - Help victim overcome victimization and build new post abuse life
- Nexus with victimization
- Opportunity for courts to counter immigration related abuse and order culturally helpful remedies

Victims Who Stay: Full Contact Protection Orders

- No state's protection order statute requires separation of the parties
- In virtually every state victims cannot violate their own protection orders
 - Contrary to statutory intentions; and
 - Against public policy to prosecute abused women for complicity in violating their own orders.
- Provisions
 - No abuse
 - Counseling

Using Catch-all Provisions to Stop 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
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities (e.g. work visa holders, I-130s)

Remedies That Help a Victim's Immigration Application

- Turn over documents/evidence in abuser's control needed for the victim's immigration case.
- What might some of those documents be?



Helpful Evidence

Evidence of Legal Marriage

- Marriage certificate
- Wedding/family pictures
- Health insurance

Good Faith Marriage

- Children birth certificates
- Love letters, cards, text, emails
- Copies of joint leases/utility bills
- School records
- Letters and other mail addressed to the victim and to the abuser at the same address

Evidence of Abuse or Extreme Cruelty

- Police, medical, court documents about the relationship
- Protection order
- Affidavits of neighbors, relatives, friends

Evidence of Abusers Legal Status

- Abuser's green card or passport
- Copy of I-130 petition
- Social security number

Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order
- Supervised visitation
- Bond

Important Economic Provisions

- Maintain medical, car, house insurance, mortgage, rent, utility and/or debt payments
- Child support and spousal support
- Enforce Affidavit of Support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)

Important Economic Provisions

- Maintain and/or pay for health care for victim and children
- Provide one time emergency monetary relief
 - Money to repair locks or broken windows
 - Obtain an unlisted telephone number
 - Relocation assistance
- Pay house insurance, mortgage, rent, utility and/or debt payments
- Taxes
 - Turn over income tax statements
 - Respondent ordered to pay victim ½ of refund
 - Victim named trustee for receipt of tax return funds
 - Respondent ordered to sign over check
 - Victim awarded exclusive right to claim children as tax exemptions

Bench Cards

- Immigrants and protection orders
- Public benefits and services
- Immigration rights of crime victims
- Custody issues and immigrants
- Economic options
- VAWA confidentiality

Resources for Courts

- U Visa Certification Toolkit
- Visa chart by immigration status
 - Who can sponsor children
 - Work authorization
 - Benefits access
- Legal and social science bibliographies

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/JTN1
- Judicial Training Manual at www.niwap.org/go/sji
 - **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library:
www.niwaplibrary.wcl.american.edu

Thank you!