

**Impact of Immigration on Families: Intersection with Family Law**

Louisiana State Team Training  
New Orleans, Louisiana  
September 21, 2018

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**Faculty**

- Judge Rosemary Collins
  - Rockford, Illinois
- Professor Veronica T. Thronson
  - Michigan State University College of Law, East Lansing, Michigan

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**Learning Objectives**

By the end of this session 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

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**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.




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




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**Legal Immigration Status Options for Non-citizen Crime Victims and Children**

- |  |   |
|--|---|
| <u>VAWA self-petition</u>  | <u>U visa</u>   |
| - Abused spouses/children of US citizens and lawful permanent residents                            | - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of criminal activity |
| - Abused parents of US citizens over 21 years of age   | - Substantial mental or physical abuse as result from criminal activity   |
| <u>VAWA cancellation of removal</u>  | <u>T visa and Continued Presence</u>  |
| - Abused spouses/children of US citizen and lawful permanent residents protection from deportation | - Victims of severe forms of human trafficking  |
| <u>Battered spouse waiver</u>  | <u>Special Immigrant Juvenile Status SIJS</u>   |
| - Abused spouses of US citizens with two-year conditional permanent residency                      | - Children abused, battered, abandoned or neglected by one or both parents  |
| <u>Deferred Action (DACA)</u>  |   |
| - Deferred action for childhood arrivals   |   |




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



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## 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



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## 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



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**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

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**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

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**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

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### 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



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### Custody of Children in Immigrant Families

Tool: Immigrant Victims and Custody Bench Card



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### 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://niwajlibrary.uclamerican.edu/pubs/co-occurrencechildabuse/>



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### 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




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### 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.”

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### Myth vs. Fact: Parents without Legal Immigration Status

- | <b>Myth</b>   | <b>Fact</b>   |
|---|---|
| 1. Deportation is imminent  | 1. DHS policies prevent detention/removal of immigrant parents who are crime victims  |
| 2. Parent is likely to flee U.S. with child   | 2. US citizens and lawful permanent residents are more likely to flee with children, especially when <ul style="list-style-type: none"> <li>– There have been threats of kidnapping children</li> <li>– They are dual nationals</li> <li>– They travel freely to and from U.S.</li> </ul> |
| 3. The parent has no livelihood   | 3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits   |
| 4. Legally present parent must have custody in order to file for benefits for child | 4. Custody does not affect parent’s ability to file for or gain immigration benefits for his children.  |

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**Immigrant victims involved in custody cases will qualify for one or more of the following:**

- Domestic violence/child abuse= VAWA self-petitioning, VAWA defenses against removal in immigration court, Battered spouse waiver
- U visa = Domestic violence, sexual assault, stalking, human trafficking, other U visa crimes
- T visa and continued presence = human trafficking cases
- DHS victim/witness protections (any crime)

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**DHS Immigration Enforcement Priorities 2017**

- Have been convicted of *any* criminal offense
- Charged with a criminal offense that has not been resolved
- Have committed acts which constitute a chargeable criminal offense
- Are subject to a final order of removal and did not leave the U.S.

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**DHS Immigration Enforcement Priorities 2017**

- Have abused a program related to public benefits
- Fraud, willful misrepresentation with any official matter before the government
- Risk to public safety or national security

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**ICE Removal Data**

<b>2013</b>	<b>2017</b>
<ul style="list-style-type: none"> <li>• Convicted criminals 82%</li> <li>• Repeat immigration violators 7.8%</li> <li>• Ordered removed and failed to depart 1.6%</li> <li>• Other immigrants 7.7%</li> </ul> <p><a href="https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf">https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf</a></p>	<ul style="list-style-type: none"> <li>• Criminal convictions 73.7%</li> <li>• Pending criminal charges 15.5%</li> <li>• Outstanding notices to appear in immigration court 5.3%</li> <li>• Ordered removed and failed to depart + reinstatement 2.8%</li> <li>• Other immigrants 2.6%</li> </ul> <p><a href="https://www.ice.gov/removal-statistics/2017">https://www.ice.gov/removal-statistics/2017</a></p>

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**What is the Impact of Victim Protections and Enforcement Priorities on State Court Proceedings?**

- Protection orders
- Divorce
- Child support

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**Dependency, Termination of Parental Rights**

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### 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://niwapllibrary.wcl.american.edu/pubs/final\\_report-on-early-access-to-ead\\_02-12/](http://niwapllibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/)

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### Nebraska Maria Luis Case

Maria Luis is an undocumented Quiche-speaking Guatemalan who had 2 children with her in the U.S. the youngest (Angelica) was born in the U.S. with respiratory problems. Maria Luis took Angelica to the emergency room for treatment and she was given a Spanish (not Quiche) interpreter. She thought she was told to bring the child back for a follow up visit if Angelica did not get better. The hospital said that she was told to bring the child back for a follow up appointment. Angelica got better, so Maria Luis did not return for the follow up visit. The hospital reported her to CPS. CPS arrived with police, took her 2 children who were placed in foster care. Maria Luis was detained and turned over to DHS for deportation. While she in DHS custody, Nebraska sought termination of parental rights. The notice that arrived in detention was not in her native language and DHS did not take her to the dependency court proceeding. Maria Luis was deported to Guatemala and Nebraska called her to explain her parenting plan explained to her in Spanish over the phone. She found a priest in Guatemala who helped her try to comply with the plan from Guatemala. Her parental rights to both her children were terminated her children remained in foster care.

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### 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

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## Lessons Learned

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

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## A Family Reunited



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## Detained Parent Directive Aug. 2017

- If parents are detained:
  - Placement near family court when ongoing family court/child welfare cases
  - Bring parents to family court to participate in cases involving children
    - Alternate: video or teleconference participation
  - Facilitate visitation when required by family/child welfare court order
  - Help children travel with deported parent – obtain passports for children

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### Small Group Activity - Case

Clara met Eduardo a naturalized U.S. citizen when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara, who was raising her 9 year old son Miguel. Eduardo began regularly coming to visit Clara, who became pregnant and gave birth to a baby girl Lupe. When Lupe turned 1 year old Eduardo decided to bring Clara, Miguel, and Lupe to the U.S. to live with him. Upon their arrival in the U.S., Eduardo took Clara, Miguel, and Lupe's passports and became physically and sexually abusive of Clara. Eduardo's abuse turned toward Miguel when he tried to protect his mother from Eduardo, and Lupe was also physically beaten by Eduardo when he said she "misbehaved". Within a year following their arrival in the U.S., Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors called the police for help. Police arrested Eduardo for attempted murder and child abuse. The police came and took Clara to the hospital and took both children into care of the state.

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### Discussion

- What factors would the court consider in the custody case?
- What immigration related questions issues might courts have or see parties raise in a child welfare case?
- How might having information on immigration relief DHS offers available at the courthouse be helpful to Clara and her children?
- What immigration related questions might judges have in this case?

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### 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
  - <http://iwap.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

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**U.S. Government Materials Excellent for Courthouse Distribution**

- DHS “Know Your Rights” Information
  - Infographic
  - VAWA/T and U Brochure
  - SIJS Brochure
- U.S. Dep’t Of State –Rights and Protections for Foreign-citizen Fiancé(e)s and Spouses of U.S. Citizens and Spouses of Lawful Permanent Residents

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**Bench Cards**

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

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**Resources for Courts**

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

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