PROTECTION AND LEGAL RELIEF FOR IMMIGRANT SURVIVORS: A COLLABORATIVE RESPONSE
FAMILY LAW TRACK: 2

National Immigrant Women’s Advocacy Project (NIWAP) & LEGAL MOMENTUM

IN PARTNERSHIP WITH DEPARTMENT OF JUSTICE, OFFICE ON VIOLENCE AGAINST WOMEN

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BASIC IMMIGRATION RELIEF:

SCREENING FOR IMMIGRATION RELIEF AND UNDERSTANDING THE VARIOUS FORMS OF RELIEF AVAILABLE TO IMMIGRANT VICTIMS
Learning Objectives

• Understand the basic immigration relief available to immigrant victims
• Screen for immigration relief and undertake/participate in preparation of the immigration case
• Identify cases which require immigration attorney representation
• Learn how to help immigrant survivors file VAWA self-petition and U-visa applications and how doing so benefits the family law case
Why is Legal Immigration Status Important?

Small group discussion
Benefits for Victims

- Protection from deportation
- Enhanced safety for victim
- Financial independence from perpetrator
- Legal work authorization
- VAWA confidentiality
- Temporary legal immigration status
- U-visa protections for vulnerable family members
- Greater ability to gain/maintain custody of her children
- Better access to victim services, health care, and benefits
Potential Immigration Remedies

• Applications filed with DHS
  – VAWA self petition
  – Battered spouse waivers (spouses of USCs with conditional permanent residency)
  – U-visa
  – T-visa (victims of trafficking)
  – Asylum (persecution based on protected classes)

• Forms of relief from removal- granted by Immigration Judge
  – VAWA cancellation of removal
  – VAWA suspension of deportation
General VAWA Self-Petitioning Requirements

• Subjected to Battery or Extreme Cruelty
• By a U.S. Citizen or Permanent Resident
  – spouse,
  – parent,
  – adult son/daughter (over 21)
• With Whom Self-Petitioner Resided
  – No time period required
• Good Moral Character
• Good Faith Marriage
HOW MIGHT YOU DEFINE “EXTREME CRUELTY”?
Forms of Extreme Cruelty

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

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Factors that can constitute extreme cruelty

• Correlate strongly with physical & sexual abuse
  – Isolation
  – Intimidation
  – Economic abuse
  – Employment related abuse
  – Immigration related abuse
• Threats to kill or cause bodily harm
• Threats to harm children or family members
• Threats to take away children
• Threats to take away money
WHAT KINDS OF EVIDENCE COULD A VICTIM SUBMIT TO PROVE BATTERING OR EXTREME CRUELTY?

Small group discussion
Proof of Extreme Cruelty or Battery

- Self-petitioner’s declaration
- Others’ declarations (family, neighbors, friends, faith communities, workplace, school)
- Domestic abuse service providers (shelters, crisis lines, support groups)
- Protection orders
- Criminal court records

- E-mails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Medical records (injuries, scars, PTSD, migraines, insomnia)
- Vet records
- Counselors (marriage, religious, mental health)
- Police reports
VAWA self-petitioning available

- If case filed within 2 years of marriage termination (be careful of bigamy)
- Child abuse up to age of 25 to file
- Step children up until divorce
- Credible evidence standard of proof (police report, protection order, medical records NOT required)
Approved VAWA petitions

- Protection from deportation and detention
  - deferred action status.
- Legal work authorization
  - 6 months if abuser is a USC spouse (26.1%)
  - If abusive spouse is lawful permanent resident
    - 1 year 46.8% to 13-18 months 27.1%
- Ability to apply for lawful permanent residency through VAWA
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. or violated U.S. law
Criminal activities covered by the U-visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Prostitution
- Female Genital Mutilation
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault

- Witness tampering
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- Any similar activity

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Who can certify?

• Police officer
  – State
  – Local
  – Federal
  – University
• Prosecutor
• Judge
• Immigration Officer
• Other authority with responsibility for investigation or prosecution of criminal activity
Other Federal, State, or Local Agencies

- Agencies with criminal investigative jurisdiction
- In areas of expertise
- Including, but not limited to:
  - Child Protective Services Worker
  - Adult Protective Services Worker
  - EEOC
  - Department of Labor
  - ATF, FBI
“Investigation or Prosecution”
Includes:

• Detection
• Investigation
• Prosecution
• Conviction
• Sentencing
What the U-visa Certification Form Asks From a Certifier:

• What criminal activity occurred?
• Identify the victim
  – Include any findings regarding injuries
• Helpfulness of the victim
  – Current,
  – Past, OR
  – Willingness to be helpful
• Any family members implicated in the crime
The U-visa Process

- Government official signs certification
- Child and/or child’s parent filed U-visa application
- DHS adjudication – grants/denies U-visa
- After 4 years, some will qualify for lawful permanent residence
- Can apply for citizenship 5 years after receiving lawful permanent residency
Victim Must Additionally Prove:

• Physical or mental abuse as a result of the criminal activity
• Disclose criminal history, if any:
  – Immigration law definition of “aggravated felony”
  – Discretionary waivers available
  – No waiver if history of espionage or terrorism
  – Victim will be fingerprinted
• Immigration history including violations, if any:
  – Misrepresentation on an immigration application
  – Removal proceedings
• Information about family members who may also receive U-visas
Comparison: VAWA vs. U-visa

**VAWA Self-Petition**
- Abuser: spouse, former spouse, parent, 21+ USC child
- Abuser USC or LPR
- Children included
- No cooperation with law enforcement required
- No proof of harm
- Criminal involvement can cut off access to relief
- Qualified immigrant = public benefits
- One year wait for work authorization
- Protection from deportation for 1 year
- Green card after approval if abuser is a citizen, or 7 year wait if abuser is LPR

**U-visa**
- Abuser: anyone
- Any status
- Children included
- Cooperation in detection, investigation or prosecution required
- Substantial physical or emotional abuse
- Crimes can be waived
- PRUCOL less benefits access
- One year wait for work authorization
- If in immigration proceedings, case expedited
- Green card after approval if can show cooperation + either humanitarian need, public interest or family unity
Requirements for a T-visa

• Must be victim of a severe form of trafficking in persons
• Victim must be physically present in U.S., American Samoa, or Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of the trafficking
• Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; OR
• Has not attained the age of 18; AND
• Would suffer extreme hardship involving unusual and severe harm upon removal
A severe form of trafficking in persons means:

- Sex trafficking in which 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

- The recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.
Human Trafficking simplified

- **Process:**
  - Recruiting,
  - Transporting,
  - Obtaining,
  - Moving

- **Means:**
  - Force,
  - Fraud, or
  - Coercion

- **End:**
  - Labor or
  - Commercial Sex
VAWA Cancellation Elements

• Relationship to abusive party (broader than self-petition):
  – Mother of a child abused by the child’s other parent who is a USC or LPR even when no marriage
  – More than 2 years have passed 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
Conditional Residence & Battered Spouse Waivers

• Battered Spouse Waiver
  • Waives the joint filing requirement and two-year wait for full lawful permanent residency
  • Requires proof of:
    – Good faith marriage to U.S. citizen and
    – Battered or subjected to extreme cruelty by the citizen spouse

• Court’s role:
  – Findings of fact regarding abuse in divorce or custody proceedings
  – Issuance of protection order
  – Information available at court about victim’s immigration options

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Immigration Relief Tools

- Glossary of terms
- Red flags list
- Identifying survivors screening tool
- Remedies comparison screening tool
- Self-petitioning flow charts for adults/children
- U-visa flow chart
- Evidence checklists:
  - Self-petitioning
  - U-visa
  - T-visa

More: iwp.legalmomentum.org
Screening for Red Flags

- Alcohol abuse
- **Drug trafficking**
- Drug abuse or addiction
- Illegal gambling
- False testimony for immigration purposes
- Penal confinement
- Genocide, torture, killings, violations of religious freedom
- **Child Protective Services intervention**
- Communicable disease
- Physical or mental disorder
- **Any criminal convictions**
- Unlawful voting
- Polygamy

- Prostitution
- Human trafficking
- Money laundering
- Terrorist activities
- Espionage
- Communist
- Public charge
- Immigration violation
- Misrepresentation for immigration purposes
- Stowaway
- "Alien smuggling"
- Draft evasion
- **Previously deported**
- Unlawfully present
- Unlawful entry
- International child abduction
Screening Exercise: Use the following tools to screen for immigration relief eligibility

- Immigration Screening tool for family lawyers
- Red Flag List
- Flow charts
  - Adult self-petitioner
  - Child self petitioner
  - U-visa
  - Elder abuse
- T-visa screening tool
Small Group Activity

Hypothetical Case

Immigration Relief
Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother. When Maura was 15 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 5 years in the abusive household and sexual advances from her stepfather, Maura left home and moved in with her boyfriend Juan, who started battering Maura when she became pregnant with their child. During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer, but fearing that she would get deported, she did not appear at the hearing on the domestic violence charge. The charge was amended to misdemeanor battery. Juan pled no contest and was convicted of battery.

For what form of relief, if any, is Maura eligible to receive?
Maura Case Study

• For what form of relief, if any, is Maura eligible to receive?
PROTECTING IMMIGRANT VICTIMS AND PRIMARY CARETAKER PARENTS AGAINST DETENTION, IMMIGRATION ENFORCEMENT, AND DEPORTATION
Learning Objectives

• To ensure immigrant parents understand the risks associated with being undocumented in the family law context and take precautions.

• To understand why it is essential to avoid the child welfare system, mainly because it is really hard to reunify and can end in a parental termination case.

• To learn how to put a temporary guardianship in place as well as work with embassies to ensure reunification assistance if detained or deported.
Special Custody Issues When Immigrant Parents are 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
• Loss of child when immigrant parent seeks services
  – Example: hospitals
• In many cases, the problem is compounded by hospitals, police, child protective services and courts not providing meaningful language access
  – Recent letter from Attorney General Eric Holder to courts on language access
How do immigrant victims end up detained by local law enforcement or DHS?

- Large group facilitated discussion
How Victims End Up In DHS Custody

• Abusers/crime perpetrators report them
• Employers or co-workers report them
• Traffic stops
• Immigration enforcement at the worksite
• Reports by CPS
• Reports by welfare worker
• Reports by health care providers
• Reports by others
• Victims call the police for help and police:
  – Make a dual arrest
  – Arrest the victim
  – Don’t address language access issues
Maria Luis Case

Handout Provided
While in DHS custody, the state sought to terminate Maria Luis’s parental rights.

The family court judge found Maria Luis to be an unfit parent and decided that it was in the best interest of her children to be raised in the U.S. in the custody of foster parents.

Maria Luis was not given proper notice of the parental rights termination hearing in her native language, did not hear or get a written copy of the family reunification plan in her native language, and did not receive hospital instruction in her native language.
WHAT MIGHT YOU DO TO HELP MARIA LUIS?

Small Group Activity
Immigrant Parents’ Constitutional Right to Custody of Their Children

• Constitutional right to custody absent unfitness
• Overriding presumption that:
  – Parent-child relationship is constitutionally protected
  – In children’s best interest to stay with/be reunited with their parent(s)
  – Cultural comparisons improper
• Applies to all families without regard to:
  – Undocumented immigration status
  – Immigration detention
  – Deportation
• Child’s best interest is most important
  In re Interest of Angelica L., 277 Neb. 984 (2009)
Challenges of Reunification for Immigrant Parents and Victims

• Lack of language access to system
• Lack of information about immigrant parent victim’s legal rights
• Limited or lack of eligibility for public-funded services
• Limited timeframe for filing termination of parental rights (TPR) petitions under the Adoption and Safe Families Act
  – conflict with immigration case time frames
• DHS not bringing immigrants in custody to family courts
Reunification Challenges for Detained or Deported Parents

• Limited ability to participate in court proceedings and case plan
  – New come-up procedures
• Limited cooperation or communication between DHS and child welfare agencies
• Difficulty of communicating with detained immigrants -- new procedures
• Challenges in finding relative placement (both domestic and international)
• Making travel arrangements for children
Lessons Learned

- Due Process: court documents and proceedings in immigrant parents’ native languages
- Improper for court to make a cultural comparison as to where children would be “better off”
- Consular Notification, Consular Notification, Consular Notification!!!
- Preventive Measure: Execute Power of Attorney, Temporary Guardianship Agreement
The Child Welfare System

• Quick overview of system (see map in your materials)
• Avoiding system altogether eliminates detrimental consequences in Family Court
Crime Victims and Humanitarian Relief

• Protections for crime victims
  – Initiation of VAWA confidentiality computer check system (12.21.2010)
  – Prosecutorial discretion for crime victims (6.17.2011)

• Humanitarian Release
  – Breastfeeding mothers
  – Sole/primary caregivers of children
DHS Enforcement priorities

– Prosecutorial discretion (6.17.2011)
– Low priority immigrants vs. high priority immigrants (3.3.2011)
– Protections for immigrants who came to U.S. as children (6.15.2012)
– Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
– DHS and White House Directives regarding immigration case processing (8.18.2011)
Positive factors

- Length of time in U.S. (including lawful presence)
- Circumstances of arrival, manner of entry
- Presence in the U.S. since childhood*
- Pursuit of education: U.S. high school/college
- Person/close family, a veteran/military particularly combat*
- Community/family ties, contributions
- Ties to/conditions in home country
- Age – minor, elderly*
- USC/LPR spouse, parent, child
- Person who suffers from serious mental or physical disability or serious health condition*
- Primary caretaker of child, person with mental/physical disability, seriously ill parent
- Crime victim or witness*
Other positive factors

• Pregnant or nursing women
• Spouse is pregnant or nursing
• Nationality renders removal unlikely
• Long-time lawful permanent residents
• Likely to be granted immigration relief as:
  – Spouse, child of a citizen or lawful permanent resident
  – Domestic violence, trafficking, or victim of other serious crime
  – Crime victim
  – Asylee/refugee
• Victims and Witnesses cooperating or have cooperated with federal, state, or local law enforcement authorities such as ICE, federal or state prosecutors, Department of Labor, or National Labor Relations Board, among others
Negative Factors to Consider

- Clear risk to national security
- Serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind
- Known gang members or other individuals who pose a clear danger to public safety
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud
- Criminal history, including arrests, prior convictions, or outstanding arrest warrants
- Immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud
Temporary protections for immigrants who entered the U.S. as children (DACA)

• Came to the U.S. under the age of sixteen;

• Has resided in the U.S. for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;

• Is currently in school, has graduated from high school or GED, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the U.S.;

• Has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and

• Is not above the age of thirty.
A New Era In Safety Planning With Immigrant Survivors
Safety Planning and Action Steps for Immigrant Survivors

• Tools
  – New safety planning flow chart
  – Immigrant victim brochure

• Documentation victim can carry with her
  – Evidence that immigration case has been filed
  – Civil protection order

• Victim must tell DHS enforcement officials that she has children
Safety Planning Challenges Related to Enhanced Immigration Enforcement

• Immigration screening as early as possible is essential

• Cannot assume by name or sight that victim is or is not an immigrant

• Changes in strategy – immigration case filed before:
  – CPO, family, or criminal court case
  – Victim travels to new location

• Give client the number of consulate notification if she is detained – essential particularly if she has children
Application for VAWA, T or U immigration status improves immigrant victims’ access to public assistance

• Screen for immigration case already filed
• Screening + Filing (VAWA, T, or U) =
  – Lawful Presence
• Filing for immigration relief is required for VAWA self-petitioners to become qualified immigrants eligible for federal public benefits
Early Victim Identification, Certification, & VAWA/U-visa Filing

• Cut off perpetrator’s ability to trigger the victim’s deportation
• Help victim secure:
  – Protection from deportation
  – Release from detention
  – Swift adjudication of immigration case for victims detained or in immigration proceedings
• Provide victim security & support
• Victim can more safely cooperate in criminal case against perpetrator
• Set victim on path to legal work authorization
Tools for Activity:

• DHS Victim-Witness Prosecutorial Discretion Policy
• DHS Prosecutorial Discretion Policy
• DHS Broadcast on 384 Computer System
SMALL GROUP ACTIVITY

• How would you prepare Maura to prevent immigration enforcement if either Jose or Juan called DHS or local police to turn her in as undocumented?
• How would you argue that DHS should not pursue immigration enforcement against her?
Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother. When Maura was 15 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 5 years in the abusive household and sexual advances from her step-father, Maura left home and moved in with her boyfriend Juan, who started battering Maura when she became pregnant with their child. During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer, but fearing that she would get deported, she did not appear at the hearing on the domestic violence charge. The charge was amended to misdemeanor battery. Juan pled no contest and was convicted of battery.

For what form of relief, if any, is Maura eligible to receive?
Report Back on Enforcement Strategies
Assisting Maura with Guardianship

• Helpful Guardianship handouts:
  – Explanation and Power of Attorney Designation Instructions
  – Appointment of Temporary Guardian of Child (one parent) (English and Spanish)
  – Appointment of Temporary Guardian of Child (two parents) (English and Spanish)
Small Group Activity: Guardianship

Work in small groups to create a guardianship agreement for Maura. Use the handouts given to guide you during the process.
Large Group Discussion

• Report back on the process:
  – What factors did you take into consideration?
  – What additional information do you want?
  – Challenges faced? Questions?
Making the custody case for immigrant victim parents even when the perpetrator raised immigration status issues in family court
Learning Objectives

• To understand how immigration status is being raised in court by perpetrators
• To learn techniques to combat any negative arguments perpetrators make regarding immigration status
Small Group Exercise

• Brainstorm various ways in which immigration status is raised or plays a role in family law court cases involving immigrant survivors.

• Create a list of examples you have experienced, worry about, or have heard about.
Relay Race Activity

• Groups will compete using their lists
• Groups will be asked to send a representative to play in the relay game for the team
• Teams will provide examples
• The last team to run out of examples wins!
Large Group Activity

- Faculty will guide participants in ranking various issues raised
- Identifying those most important for the group as a whole
Review of Custody Training Materials

• Obtaining Custody of Children for Battered Immigrants
• Breaking Barriers Custody Chapter
EXERCISE: ARGUING YOUR CASE
Small Group Activity

• Tables will be assigned to prepare to argue before the judge one of two topics identified by the group.

• For each topic, one table will represent the victim and a second table, the survivor.

• Tables will have the opportunity to prepare their arguments to be presented to the judge.
Large Group Discussion

• Activity debrief and group feedback
Day One Closing

• Evaluations
• Announcements
Family Law Track: 2

Welcome Back
Plenary: Day Two
U-VISA CERTIFICATION: LEARNING FROM LAW ENFORCEMENT BEST PRACTICES & APPROACHES TO OBTAINING U-VISA CERTIFICATION FROM FAMILY LAW JUDGES FOR LAWYERS AND ADVOCATES
Learning Objectives

• Learn collaboration techniques to tackle challenges in getting U-visa certifications
• Learn how to approach family law judges to obtain U-visa certifications
The U-visa Certification
Considerations for the Certifier

• What criminal activity occurred?
  – Is it or is there also a qualifying criminal activity?
    • Example: Drugs vs. domestic violence
• Similar activities
• Provide details of the criminal activity
• Identify the victim or indirect victim
  • Note injuries
• Determine helpfulness of the victim
  • Past, present, or willingness to be helpful
• Determine if any family members were implicated in crime
Role of Certifying Officials

• Court’s Role
  – Make findings about the criminal activity, injuries, helpfulness
  – Inform litigants about the U-visa
  – Sign U-visa certifications for victim

• Police Role
  – Take police reports (obtain interpreters)
    • At the crime scene
    • When victims later come forward to make a report
    • Include details about the criminal activity, injuries, helpfulness
  – Inform victims about the U-visa
  – Sign U-visa certifications for victims
Criminal activity occurs.

IF: The victim has been helpful, is being helpful, or is likely to be helpful to law enforcement

OR

The victim is under 16 years of age and victim’s parent, guardian, or next friend has been helpful, is being helpful, or is likely to be helpful to law enforcement

OR

The victim is 21 years of age or older and is deceased due to the criminal activity, incapacitated, or incompetent; the spouse and/or children under 21 of the victim have been helpful, are being helpful or are likely to be helpful to law enforcement

OR

The victim is under 21 years of age and is deceased due to the criminal activity, incapacitated, or incompetent; the victim’s spouse, children, parents, or unmarried siblings under 18 have been helpful, are being helpful or are likely to be helpful to law enforcement

THEN

Victim (or legal representative) seeks I-918B, Law Enforcement Certification.

(if victim is not working with a service provider, law enforcement officers can refer victims at this point.)

Law Enforcement provides victims with:

1. I-918 Law Enforcement Certification signed in blue ink and completed by
   a. the head of the certifying agency; OR
   b. a person in a supervisory role specifically designated by the head of the agency to sign certifications

2. Any supporting documentation such as reports and findings; and

3. In the case of 1b) a letter from the head of the agency designating another person to sign the certification (designee letter).

After 3 years, U-visa holders (victims) apply for lawful permanent residence (“green card”)

The application includes:

• Adjustment of Status Application- Form I-485

• Any information related to the victim’s continuous presence in the U.S. since obtaining U-visa status

• Any information indicating that USCIS should exercise its discretion to grant lawful permanent residence

• Any information indicating that the U-visa holder has not unreasonably refused to cooperate with an ongoing investigation or prosecution

Eligible family members can also apply.

Victim submits U-visa application to the Victims and Trafficking Unit of USCIS showing that the victim meets each of the U-visa eligibility requirements.

The application includes*:

• U-visa application form – Form I-918

• Law Enforcement Certification – Form I-918, Supplement B

• Documents related to victim’s identification

• Victim’s signed statement describing the facts of the victimization

• Any information related to victim’s criminal history, including arrests

• Any information related to victim’s immigration history, including prior deportation

• Any information related to victims health problems, use of public benefits, participation in activities that may pose national security concerns, and moral turpitude

• Any information related to the victim’s substantial physical or mental abuse suffered

• Other documentation such as police reports, medical records, letters of support from service providers.

Eligible family members can also apply.

* Other administrative documentation is also required. More information is available at www.legalmomentum.org.

Within about 6 months, victim receives decision on U-visa application. If approved, victim receives work permit.

If applications for family members are approved and they are abroad, consular processing begins.

Within about 1 month, victim receives receipt notice from USCIS confirming filing of U-visa application.

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Large Group Discussion

• How have you approached certifiers in the past?
• What paperwork, if any, have you provided them?
• What do you think is the best approach and why?
Becoming Familiar with the Certification Form

- Interactive discussion with law enforcement on certification
- Review of questions asked (and not asked) on the certification form
Seeking U-visa Certification from a Judge
Brainstorm Activity

• When and why might you seek U-visa certification from a judge?
Small Group Exercise: U-visa Certification

- Participants will use Maura fact pattern.
- **Maura called the police for help and the officers who arrived could not communicate with her and didn’t get an interpreter.**
- **Maura is seeking a protection order**
- Use the U-visa toolkit to develop a strategy for approaching the family court judge for certification.
  - What case strategy would you use?
  - How would you approach the judge?
  - When would you approach the judge?
  - What would you provide?
    - Written documents?
    - Evidence?
Large Group Discussion

• Report back on
  – Strategies
  – How/when to approach the judge
  – Written documentation evidence
U-visa Certification Toolkit for Judges

- What is the Role of Judges in U-visa Certifications?
- U-visa Quick Reference Guide for Judges
- U-visa Certification: Introduction
- U-visa Flowchart
- Judges and the U-visa Certification Requirement
- Statutory and Regulatory Background
- Frequently Asked Questions
- Redacted U-visa Certification

- Sample Victim Information Flyer
- Resource List
- Sample Motion for Certification
- Sample Declaration for Motion for Certification
- Glossary
- Blank U-visa Certification Form and Instructions
- U-visa News Articles

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LUNCH

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DIFFICULT ISSUES RELATED TO IMMIGRATION STATUS ARISING IN FAMILY LAW COURT
Learning Objectives

• Gain experience making core custody arguments and going on the offensive when a perpetrator raises immigration issues in custody cases

• Work with and develop responses for the most common immigration-related issues arising in custody cases
Difficult Issues Tools & Materials

• When Immigration Issues Arise in Custody Cases Involving Immigrant Survivors:
  – Language Access
  – Countering cultural arguments against non-abusive parents
  – Rule 11 motions, briefs
  – Undocumented ≠ deportation imminent
    • Does not threaten children’s stability
    • Does not correlate with likelihood of parental kidnapping
  – Abused immigrant parent cannot work
    • If VAWA or U, on path to obtain legal work authorization
  – Custody award not needed to sponsor children for immigration status
  – Abuser threatens/takes steps to have victim deported
Case planning, preparation, and litigation strategies that work when representing immigrant survivors
Make Your Record

• If immigration status is raised by perpetrator – object as to relevance, get ruling
• Make court aware of case law and memos
• Establish what the status quo was
• Establish that awarding your client custody is in child’s best interest
• If not granted, ask for specific findings and conclusions of law from court
Go on the Offensive

• Cross-examine the perpetrator on issue:
  – You knew where your wife (the mother of your children) came from.
  – You didn’t do anything to remedy your so-called “problem” with her status, did you?
  – You could have, yet you chose not to, for how many years?
Keep the focus:

- On the child’s best interests
- On client’s role in child’s life and on future plans for child
Your Client’s Plan

• Establish that your client has been the primary caretaker
• Establish how decisions regarding child were made
• Establish what your client’s plan is for her future and the future of the children
“Best Interest” Factors
Uniform Marriage and Divorce Act

• The wishes of the parents;
• The wishes of the child;
• The interaction/interrelationship of the child with parents, siblings, other significant persons;
• The child’s adjustment to home, school, community;
• The mental and physical health of all individuals involved.
Best Interests and Immigration

• No state family code lists immigration status or English language competency as a factor
• All states have provisions that encourage courts not to award custody to batterers
• As a general rule, immigration status is NOT relevant to
  – Core primary caretaker determination
  – Evaluation of parenting skills
Best Interests and Immigration

• Don’t let immigration information distract the judge from statutorily required best interest factors; submit a motion in limine to keep out reference to immigration status

• Many immigrant victims involved in custody cases will qualify for VAWA, T or U-visa immigration relief, but do not know it

• Courts should be encouraged to think about which party is raising the immigration issue, for what purpose, and why?
ABA Center on Children & The Law (1991)

• “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 . . . ”
ABA Center on Children & The Law (1991)

• “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.”
Small Group Activity

• Faculty will assign each group a different topic to work on

• Using the Maura case scenario, participants will work in small groups to:
  – Outline the case strategy to respond to the issue raised by the perpetrator, including, but not limited to:
    • Motions
    • Briefs
    • Evidence
    • Witnesses
Group presentation of strategies
Large groups discussion of each issue and proposed strategy

• This will include:
  – Discussion of NIWAP materials available to support participants in litigating each issue
  – Materials participants have developed to share with others
  – Identification of materials and research that participant would like to have to provide further support in custody cases involving immigrant survivors
Learning Objectives

• Understand the protections VAWA confidentiality offers victims in family court cases

• Develop and practice litigation skills that can keep perpetrators from obtaining the VAWA or U-visa file in family court
VAWA Confidentiality

• **Non-Disclosure:** DHS cannot disclose VAWA information to anyone
  – Victims with VAWA confidentiality-protected cases filed

• **Abuser-Provided Information:** DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
  – All victims

• **Location Prohibitions:** Enforcement locational prohibitions
  – All persons
Non-Disclosure: Protecting Immigration Files

• Prohibits disclosure of any information relating to someone who has filed one of the eligible self-petitions, a T, or a U-visa.

• Applies to Departments of:
  – Justice
  – Homeland Security
  – State

• Disclosure rules extend to
  – Everyone, not only the crime perpetrator

• Disclosure rules generally bar access by government officials
Non-Disclosure: Protecting Immigration Files: Exceptions

• Legitimate law enforcement purposes
• Judicial review of immigration case only (Hawke)
• Agency to whom victim has applied for public benefits, only for benefits-granting purposes
• Limitation ends when application for relief is denied based on substantive grounds and all opportunities for appeals have been exhausted
• If no denial, confidentiality continues
What does this mean for immigrant victims?
Protecting Immigration Files: Preventative Strategies?

• Legal strategies:
  – Attorneys/Advocates should clearly mark all immigration filings with the §384 warning
  – Advise victim and whomever victims interact with that such protections exist
  – Object to discovery of information contained in or about the immigration case in family court proceedings
WHERE IS DHS NOT SUPPOSED TO CONDUCT ENFORCEMENT ACTIVITIES?
Location Prohibitions:

Immigration judge to dismiss case if any part of an enforcement action occurs at:

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community-based organization
- Courthouse in connection with any
  - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking
Location Prohibitions

• This enforcement location bar applies in all cases and does not require victimization
• But if there is an enforcement action at one of these locations:
  – the Immigration Court Notice to Appear must include a certification by a DHS official
  – confirming that none of the VAWA confidentiality prohibitions were violated
  – DHS Policy
    • VAWA Confidentiality Enforcement
Where else is DHS not supposed to conduct enforcement activities?

- Schools
- Places of Worship
- Funerals
- Religious Activities
Preventing the Victim’s Detention

• Preparing the survivor
  – Memorize A#
  – Carry proof of victimization

• Your role
  – File skeletal immigration applications

• Inform other professionals about VAWA confidentiality
  – At courthouses
  – Other protected locations
  – Give copies of DHS memos
    • 384 Computer system
    • Victims memo
When Violations Happen

• Advocate on the spot---provide:
  – Proof of victimization
  – Copy of the statute
  – DHS enforcement policy
  – DHS complaint system
  – DHS 384 system

• Collect information about the violating officer:
  – Name
  – Agency
  – Badge Number

• Work it up the chain to a supervisor

• File a formal complaint:
  – Penalties of up to $5,000 per incident against each violating officer
  – Also disciplinary actions

• Advocate for release from detention/jail, termination of immigration proceedings, granting immigration relief
Rule 11 Sanctions

- Designed to deter malicious behavior, abuses, and bad faith acts by
  - Attorneys and *pro se* parties
- Striking pleadings, written motions, or other papers and
- Disciplinary sanctions
- When the claims, defenses, or legal contentions are meant to:
  - Harass
  - Cause unnecessary delay or
  - Increase the cost of litigation
Threats of Deportation akin to Threats of Criminal Prosecution

• An attorney who threatens criminal prosecution to a person involved in same civil case commits moral turpitude, and the attorney’s belief in the person’s guilt is no defense, and not even a mitigating factor

• Threatening criminal prosecution in order to force a settlement of a civil action is illegal, improper, and unprofessional
File *Motion in Limine*

- Based on Rule 11 when
  - Threats of deportation or
  - To stop discovery of a VAWA immigration case
Argument Highlights

• VAWA’s confidentiality provisions prohibit:
  – inquiring into any VAWA, T-visa, or U-visa case
    • Existence OR substance AND
  – acquiring any part of any VAWA, T-visa, or U-visa file
• No constitutional right to obtain information protected by VAWA confidentiality
• Legislative history confirms that VAWA confidentiality prevents accused batterers from using the immigration system against their victims.
• Congress
  – Understood that confidentiality protections were necessary in light of the dangers of domestic violence for immigrant victims (1994)
  – Sought to protect immigrant victims from retaliation from their abusers if they learn that the victim filed for immigration relief (2000 and 2005)
Tools and Materials

• Custody
  – Obtaining Child Custody Awards for Immigrant Survivors
  – Countering Abusers’ Attempts to Raise Immigration Status of the Victim in Custody Cases
  – Criminal and Civil Implications for Battered Immigrants Fleeing Across State Lines
  – Survivor’s Discovery Tool
  – When Immigration Issues Arise in Custody Cases
Small Group Activity: Motion in Limine

• Using the case of Maura
• Work in small groups to prepare to argue a motion in limine to preclude discovery of the victim’s VAWA/U-visa file during the family court case
Groups present arguments to the judge
Large Group Discussion
Closing and Evaluations

November 14 –15, 2012
Atlanta, Georgia
Technical Assistance and Materials

• Power Point presentations and materials for this conference at niwap.org/go/ivat

• NIWAP Technical Assistance:
  – Call (202) 274-4457
  – E-mail niwap@wcl.american.edu

• Website: www.wcl.american.edu/niwap
QUESTIONS & ANNOUNCEMENTS
Thank you!
Closing

• Wrap up
• Evaluation