





PRESENTED BY: U.S. DEPARTMENT OF JUSTICE OFFICE ON VIOLENCE AGAINST WOMEN IN PARTNERSHIP WITH LEGAL MOMENTUM, THE NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (NIWAP) AND THE CALIFORNIA COALITION AGAINST SEXUAL ASSAULT (CALCASA)

Webinar

Improving Outcomes for Immigrant Survivors Involved in Custody Disputes by Beginning the Process of Applying for VAWA and the U Visa


We will start soon

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- D2** Grant No. 2011-TA-AX-K002
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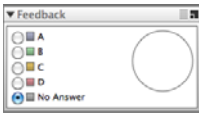
- This the 2nd Webinar in a series of 5 Webinars

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Let's see who is on the call with us. Please check the box that best describes you:

Answer on the left



- A. Lawyer or BIA Representative representing victims in family court
- B. Domestic violence/sexual assault victim advocate
- C. Work for a government agency
- D. Other

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Immigration Status Issues and Family Law Cases



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Immigration status not relevant to establishing jurisdiction in family court cases

- Protection order case
 - domestic violence crime committed in state or
 - victim needs protection in state
- Divorce case
 - residency of party in state
 - Legal immigration status not required to establish residency under state family laws
- Custody case
 - (UCCJEA, Federal PKPA, Hague Convention) often the home state of children
- Child support case
 - where child or non-custodial parent lives

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Impact of Divorce

- VAWA self-petitioners
 - Must file within two years of final divorce
- Spouses and children of visa holders ends legal immigration status in the United States:
 - Students, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Employment based
 - Asylum
 - Family based
 - Cancellation of removal applicants

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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 immigration relief
- Impact on
 - Spousal support
 - Property division



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What arguments are you seeing used by abusers against immigrant victims in their custody case ?




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Abuser's arguments

- Victim will flee or be deported and will take children
- Need custody to confer citizenship benefits
- Undocumented parent less able to financially support child
- Ability to care for child
 - Driver's license
 - Abuser can work victim cannot
 - Get public benefits for the children
- Child's best interests are to be placed with citizen parent



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Screening for Immigration Remedies for Family Law Practitioners



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Safety Planning and Action Steps for Immigrant Survivors

- Timing of immigration and family court cases
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Understand and intervene early in child welfare system
- Victim must tell DHS enforcement officials that she has children
- Safety planning
 - Developing plan to ensure care of children if detained
 - Power of Attorney appointing guardianship
- Give client number for consular notification

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Legal Options for Immigrant Survivors

Immigration relief:


- **VAWA self-petition**
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- **Battered spouse waiver**
 - Abused spouses of US citizens with two-year conditional permanent residency
- **T-visa**
 - Victims of severe forms of human trafficking
- **U-visa**
 - "Crime victim's visa"
- **Asylum**
 - Persecution based on protected classes
- **Special Immigrant Juvenile (SIJ)**
 - Juveniles that have been abused, abandoned or neglected
- **Deferred Action** – Relief based on new DHS policies and for Child Arrivals
 - Deferred action for "low priority" survivors, parents, and "dreamers"


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VAWA SELF-PETITIONING






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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




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How might you define “extreme cruelty”?





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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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Suggestions For Court Orders That Help VAWA Applicants -- Examples

- Cooperate in and not withdraw any immigration case filed on the victim's behalf
- Turn over documents/evidence in abuser's control that she needs for her immigration case. e.g.,
 - Passports
 - Identification documents
 - Copies of documents from any immigration case filed on the victim's or the children's behalf
 - Love letters
 - Family photos

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A protection order or discovery can help a victim obtain needed evidence:

- Marriage certificate
- Wedding/family pictures
- Birth certificates
- Love letters
- Copies of joint leases/utility bills
- Police, medical, court documents about the relationship,
- Copy of abuser's green card or passport

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Protection order or discovery continued

- School records
- Medical records
- Employment records
- Social security number information
- Health insurance
- Children's birth certificates
- Letters and other mail addressed to the victim and to the abuser at the same address
- Copy of I-130 petition



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Early Survivor Identification, U-visa Certification & VAWA, U, T-Visa Filing (cont.)

- Provide victim security & support
- Victim can more safely cooperate in family/custody and criminal case against perpetrator



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THE U-VISA FOR CRIME VICTIMS




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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
- FGM
- 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



Who can certify?

- Police officer
 - State
 - Local
 - Federal
 - University
- Prosecutor
- State of Federal Judge
- Child/Adult Protective Services
- Immigration Officer
- Other authority with responsibility for investigation or prosecution of criminal activity
- EEOC, Department of Labor




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Abuser's arguments

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Obtaining Custody of Children for Battered Immigrants




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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)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- **Child's best interests is most important**
In re Interest of Angelica L., 277 Neb. 984 (2009)



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“Best Interest” Factors
Uniform Marriage and Divorce Act § 402 (amended
 1970 and 1973), 9 U.L.A. 561 (1998).

- 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.

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When Immigration Status is raised in Custody Proceedings

- Parent raises the other parent’s undocumented or temporary immigration status
 - to prejudice the decision maker
- Courts should not rely on immigration status as a stand-alone factor
- Courts must decide child’s best interests:
 - Who has been primary caretaker? What has been status quo?
 - Who has been primarily responsible for child’s education and health care?
 - History of abuse (or sexual assault) perpetrated by 1 parent against the other

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Threats of Deportation akin to Threats of Criminal Prosecution

- *An attorney who threatens criminal prosecution to a person involved in the 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*

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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

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Make Your Record

- If immigration status is raised by perpetrator – object as to relevance, get ruling
- Make court aware of case law and memos

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Go on the Offensive

- Cross examine the perpetrator on issue, i.e.:
- You knew where your wife (the mother of your children) was from.
- You didn't do anything to remedy your so called "problem" with her status did you?
- You could have filed to obtain status for your spouse, yet you deliberately chose not to for how many years?

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Make Your Record Regarding Custody


- 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



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Best Interests and Immigration Status

- 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 by rebutting presumption of jt. custody with evidence of domestic violence
- Immigration status is NOT relevant to
 - Core primary caretaker determination
 - Evaluation of parenting skills




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Best Interests and Immigration

- Don't let immigration information distract the judge from statutorily required best interest factors, motions to keep status out
- 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?

See- Case Reference Handout



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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...”
- “Batters 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...”

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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.”

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Strategies to Address Myths

- Lack of legal immigration status does not mean
 - Deportation is imminent
 - Parent is likely to flee U.S.
 - Victim parent does not qualify for immigration relief
- Make sure focus remains on best interest
 - Primary caretaker
 - History of domestic violence and presumptions this raises

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D21 **Footnote**
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Victim's lack of legal immigration status undermines children's stability - since the victim is undocumented her deportation is imminent...

- *If abuser argues that victim's immigration status undermines children's stability by alleging victim will be imminently deported...*
 - If eligible, help client apply for VAWA self-petition, VAWA cancellation of removal, U-visa, T-visa, or immigration case filed by perpetrator spouse or employer
 - Call immigration expert as witness to educate court about DV related immigration protections; deportation and removal priorities at DHS; and how civil violations of immigration law are not crimes
 - Provide court with copies of an overview of DHS policies protecting immigrant victims and parents in process of filing for immigration relief
 - Discuss steps perpetrator could have taken to apply for immigration status for victim
 - Discuss hypothetical case similar to client's, provide opinion about victim's possibility of receiving immigration benefits



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When the abuser chooses not to file immigration papers for victim...

- Present evidence of immigration related abuse - demonstrate that the reason the victim does not have legal immigration status is that abuser never filed immigration papers on her behalf
 - Corroborates evidence of DV to support finding that children should not be placed in custody of abusive parent
- Present documentation of lawful presence and prima facie determination by DHS that victim has valid VAWA or U-visa case



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True or False?

- **True or False:** The abusive parent with status must be awarded custody in order to give child immigration benefits and citizenship



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Abuser misrepresents to the court that only a parent with custody can sponsor the child for legal immigration status...

- Call expert witness immigration lawyer to testify that a custody award plays no role ability to confer legal immigration status on an immigrant child.
- Divorce should have no effect on natural or adoptive parent's ability to confer status

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Strategies to Address Myths

- **Myth** : Undocumented parent cannot financially support child
 - The abusive parent may have filed immigration papers for the immigrant parent.
 - Immigrant victim parents are likely eligible for immigration benefits that include:
 - legal work authorization
 - some access to benefits
 - Child support (and spousal support, if married) can and should be ordered
 - If child citizen is eligible on their own for public benefits

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When abuser says immigration status impact's victims ability to work, support children, get public benefits ...

- Apply for VAWA, T or U visa as soon as possible
- Victim would have had legal work authorization if the perpetrator had filed a case for her
- Present evidence of pending VAWA self-petition or U-visa application to show client is on path to receiving legal work authorization
- Seek child support from perpetrator
- Submit brief to court or present expert explaining issue of access to public benefits for children in immigrant families

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Getting Information Into the Court Record

- When representing an immigrant victim plan how you will get evidence into the custody case regarding
 - ABA report and recommendations
 - Immigration related abuse
 - Materials explaining VAWA, T and U visa immigration options
 - Articles on dynamics of domestic violence experienced by immigrant victims
- Ask the court to take judicial notice
- Prepare bench brief for the court on the issue citing and including copies of appropriate resources
- Expert testimony



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Most Important is Your Client's Plan Regardless of Immigration Status

- 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




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Technical Assistance

- PowerPoint and materials from this training
 - www.niwap.org/go/ovw-webinar-victims-DHS
- NIWAP's technical assistance
 - (202) 274-4457
 - niwap@wcl.american.edu
- Web Library NIWAP and Legal Momentum
 - iwj.legalmomentum.org
 - Training materials
 - Tools for advocates
 - Multi-lingual materials for immigrant survivors
 - National online directory of programs serving immigrant survivors



National TA Providers

- National Immigrant Women's Advocacy Project
niwap@wcl.american.edu (202)274-4457
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- National Immigration Project of the National Lawyer's Guild
www.nationalimmigrationproject.org 617.227.5495



