





Legal Protections When Child Victims are Immigrants: The Judge's Role

Webinar
June 20, 2019

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Faculty



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Learning Objectives

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

- Identify the forms of immigration relief available to provide protection to child abuse and neglect victims and their non-abuser parents
- Issue orders that are in the best interests of abused and neglected immigrant children in custody, protection order, child welfare and child support proceedings
- Know how to use tools to help you determine which publicly funded benefits and services are open the abused immigrant children and their protective parents

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Who Has Joined Us on This Webinar?

Answer on the left

Feedback

A

B

C

D

No Answer

A. Judge

B. Court/Judicial Education Staff

C. Attorney

D. Victim Advocate

E. Other

Other write in chat box

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



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Judicial Role

- Make detailed findings
 - Family relationships: Marriage and Parent child relationship
 - Battering, extreme cruelty, child abuse, elder abuse, child abandonment, neglect, sexual assault, stalking
 - Apply and cite state law
- Role Congress created for state court judges in
 - U/T visa certification
 - Special Immigrant Juvenile Status findings
- Distribute DHS-produced "Know Your Rights" information available at your courthouse

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DHS VAWA Confidentiality Computer System

- Directs use of “red flag” “384” computer system to identify victims who have already filed for or have been granted victim-based immigration relief
- Protects against immigration enforcement, removal, release of information and reliance on information from perpetrator in victim’s cases
 - Spouse abuse, child abuse, elder abuse
 - Crime victims including domestic violence, sexual assault, stalking, other violent crimes
 - Human trafficking victims

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Benefits for Child and Adult Victims and Their Children

- Protection from deportation
- VAWA confidentiality protection
- Enhanced safety for survivors
- Temporary legal immigration status
- Protections for family members
- Financial independence from perpetrator
 - Legal work authorization (7-48 months of filing)
 - Greater public benefits and services
 - E.g. Health care, child care, foster care payments, financial aid, housing, food stamps (SNAP)

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VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse;
 - Parent or step-parent; or
 - Citizen adult son/daughter (over 21)
- With Whom Self-Petitioner Resided
 - No time period required
- Good Moral Character
- Good Faith Marriage
- VAWA cancellation of removal has similar eligibility requirements

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T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.D. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking. Exceptions
 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship

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U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- 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

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U Visa Qualifying Criminal Activity

• Domestic violence	• Female genital mutilation	• Peonage
• Sexual assault	• Kidnapping	• False Imprisonment
• Rape	• Abduction	• Blackmail
• Incest	• Trafficking	• Extortion
• Prostitution	• Involuntary servitude	• Witness tampering
• Torture	• Slave trade	• Obstruction of justice
• Felonious assault	• Being held hostage	• Perjury
• Manslaughter	• Fraud Foreign Labor Contracting	• Stalking
• Murder		

Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

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U Visa Regulations Definitions

Although terms are used interchangeably

- As a matter of law (U visa regulations)
 - Helpfulness in the “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - “Crime” always means
 - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
 - Improving stability for crime victims

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According to DHS, a U/T Visa Certification Tells USCIS Only 3 Things:

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing

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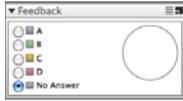
Types of Proceedings Courts May Detect Helpfulness

- | | |
|---|--|
| <ul style="list-style-type: none"> • Family <ul style="list-style-type: none"> ✓ Civil Protection Order ✓ Custody Case ✓ Child Abuse, Neglect, or Termination of Parental Rights ✓ Divorce Case ✓ Paternity Case • Juvenile | <ul style="list-style-type: none"> • Criminal • Probate <ul style="list-style-type: none"> ✓ Elder / Dependent Adult Abuse ✓ Guardianship ✓ Conservatorship • Civil <ul style="list-style-type: none"> ✓ Employment ✓ Tort damages against a perpetrator |
|---|--|

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Why might an immigrant child victim or parent come to a judge for certification?

Answer in the box



- A. Child victim/parent sought a protection order
- B. Evidence of abuse provided in a child welfare or custody case
- C. Police called but provide no language access at crime scene
- D. All of the above
- E. Other

Other write in chat box



Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, neglect, or dependency
 - By at least **one parent**
- To apply must submit required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child

Why Congress Wanted Input From State Court Judges

- Included a role for state court judges as experts in child best interests, custody, and child welfare matters.
- State court expertise that are an inherent part of court's decision-making when courts:
 - Adjudicate facts of child abuse, neglect and abandonment
 - Issue orders regarding child care, custody, and placement that further the best interests of children

State Court Findings Needed for SIJS
State Law Applies To Each

- The court has jurisdiction to issue orders regarding the care, custody, or placement of an immigrant child (under age of majority and unmarried) with
 - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend, adopting parent) QR
 - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to at least ONE PARENT'S abuse, abandonment, or neglect

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State Courts Regularly Make Custody & Placement Determinations

- Who will be the custodian/guardian of the minor
- With whom will the child live
- Whether the minor will be committed to the custody of the state or private agency for care, treatment, or rehabilitation

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Decisions about care and custody of children arise in...

- Civil protection order cases
- Custody cases
- Child welfare cases
- Divorce cases
- Delinquency cases
- Guardianship cases

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Home country not in child's best interests

- Identify each potential custodian in U.S. and home country
- Apply state best interests factors to each placement
- States in court order the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
 - Example of factors VAWA Extreme hardship

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Reunification Not Viable and Best Interests

- Order must include the finding that reunification with the parent is not viable
- Using state best interests law
 - Identify factual reasons why reunification is not viable
 - Will include explaining why the abusive parent is not being granted physical custody of the child

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Protections for Abused Children and Family Members

- VAWA self petitioner = Abused Child, Parent of abused child, Abused parent
 - Family included: applicants' children and an under 21 year old child can include their parent
- U and T visa applicant = Child victim or their parent
 - Family included:
 - Under 21: spouse, children, parents, unmarried siblings under 18
 - Over 21: spouse and children
- Special Immigrant Juvenile Status = child victim
 - Family included: None

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Impact of Divorce on Child's Access to Immigration Relief

- Divorce cuts off an abused step-child's access to
 - VAWA self-petitioning
 - must be filed before divorce is final
 - Family based visa filed by step-father
 - Divorce cannot occur before receipt of green card



Immigrant Victims and Children Who File for Immigration Relief Receive

- Protection from deportation
- Legal work authorization and access to drivers' licenses upon
 - Approval or wait list approval
- Access to some federal public benefits
 - Varies by immigration case type and state
- VAWA confidentiality protection upon filing VAWA, T or U visa case



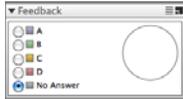
Case Scenario

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. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe 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 call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.



What forms of immigration relief would Lupe and Miguel qualify for:

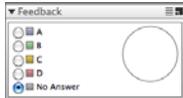
Using your clickers please check:



- A. Both can VAWA self-petition
- B. Both qualify for a U visa
- C. Lupe qualifies for a T visa
- D. All of the above

What forms of immigration relief would Clara qualify for:

Using your clickers please check:



- A. U visa
- B. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above



How would which immigration case Clara files make a difference in the help the children receive?

PROTECTION ORDERS



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Judge Collins: What types of protection order findings are helpful for children?

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Immigrants and 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

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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

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Custody

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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, Orioff, 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://nswag@brany.wcl.american.edu/pubs/co-occurencychildabuse/>

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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



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 | Fact |
|---|---|
| 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"> – There have been threats of kidnapping children – They are dual nationals – They travel freely to and from U.S. |
| 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. |

ICE Removal Data

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



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.



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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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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VAWA Sensitive Location Prohibitions

- Enforcement actions are not to be taken unless the action specific procedures designed to protect victims are followed:
 - 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



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January 2018 Policy: Avoid Non-Criminal Proceedings

- Avoid enforcement in courthouses or areas within a courthouse that are dedicated to non-criminal proceedings
 - Applies to courts and cases
 - Family cases
 - Civil cases
- Requires Field Office Director/Special Agent in Charge Approval
 - Will involve screening for VAWA confidentiality protected victim's cases

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Sensitive Locations

- Enforcement actions by ICE and CBP are not to occur or be focused at sensitive locations:
 - Schools
 - Medical treatment and health care facilities
 - Places of worship
 - Religious or civil ceremonies: e.g. weddings, funerals
 - During a public demonstration: e.g., march, rally, parade

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Publically Funded Services and Benefits Open to Immigrant Child Victims

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Judge Collins: Why is information about which immigrant children and families qualify for which public benefits important for judges to know?

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Access for All

Both documented and undocumented immigrant survivors can access:

- Language Access
- Crime Victim Assistance
- Shelter
- Transitional Housing
- Obtain Public Benefits for Their Children
- Police
- Fire
- Ambulance
- Courts
- Legal Services
- Receive Emergency Medical Care
- Health care from community and migrant health centers
- VOCA funded crime victim assistance



List of Required Life and Safety Services

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Nutrition programs for those requiring special assistance



Federal Benefits Available to ALL Immigrants



- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



When children qualify and their parents do not:

- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may only ask questions about the child’s eligibility
- No questions may be asked about the immigration status or social security number of the child’s parent
 - if the parent is not applying for additional benefits for themselves

Qualified Immigrant Children and Crime Victims -Examples

- | | |
|--|---|
| <ul style="list-style-type: none"> • Qualified Immigrants <ul style="list-style-type: none"> – Lawful permanent residents <ul style="list-style-type: none"> • Includes U visas and SIJS – Refugees/Asylees – VAWA self-petitioners – Trafficking victim with <ul style="list-style-type: none"> • Continued presence or • Bona fide determination in T visa case | <ul style="list-style-type: none"> • Not Qualified Immigrants <ul style="list-style-type: none"> – Asylum applicants – DACA recipients – U visa applicants & recipients – Work/Student visa holders – Undocumented |
|--|---|

Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- Public and assisted housing
- Post-secondary educational grants & loans
- Driver’s Licenses
- Access to most subsidized child care (Not TANF)
- Adoption assistance
- Foster care
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals

Federal Means-Tested Public Programs Have Most Limited Immigrant Access – (State Option):

- **TANF**
 - 5 yr. bar if entered the U.S. after August 22, 1996
- **SSI**
 - Lawful permanent residents only if 40 quarters or work credit + “qualified immigrant” status and 5 year bar if entered the U.S. after August 22, 1996
 - Refugee
 - Trafficking victim
 - Veteran and “qualified immigrant” spouses, children
- **Food Stamps**
 - “Qualified Immigrants” 5 year bar post August 22, 1996 and children
- **Medicaid and Child Health Insurance Program Subsidies**
 - Exchange purchase access = “lawfully present” immigrants
 - Subsidies federal 5 yr. post Aug., 22, 1996 entrants to U.S.

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NIWAP’s Public Benefits Map and Public Benefits Charts

- Public benefits map
 - <http://map.niwap.org/>
- Public benefits charts
 - <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>
- Public benefits webinar
 - <http://niwaplibrary.wcl.american.edu/april2019publicbenefitswebinar/>

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Maps by Benefit

- | | |
|---------------------------------------|--|
| • Cash Assistance (TANF) | • Income Tax Credits |
| • Child Care | • Legal Services |
| • Children’s Health Insurance Program | • Medicaid |
| • Driver’s License | • Post-Assault Healthcare |
| • Earned Income Tax Credit | • Prenatal Care |
| • Emergency Housing & Safety Programs | • Purchasing Health Insurance on the Exchanges |
| • Emergency Medicaid | • State Education Benefits |
| • Federal Education Benefits | • Supplemental Security Income |
| • FEMA Assistance | • Weatherization & Energy Assistance |
| • FEMA Restricted Programs | • WIC |
| • Food Stamps | |
| • Forensic Costs Coverage | |

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