


Community of Practice for Family Law  
Attorneys Representing Immigrant Survivors

Proving Earning Capacity of Noncitizen  
Abusers and Survivor Clients in Family Law  
Cases Involving Support

**August 31, 2022**




National Immigrant Women's Advocacy Project,  
American University Washington College of Law

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**Thank you to OVW**

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**Guest Presenter**




**Laura Martinez**  
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The following slides are intended to be a guide to lead our discussion on this topic and to provide substantive material for your future reference.





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**Upcoming Community of Practice Meetings in 2022**

- September 27<sup>th</sup> 2022 at 1 to 2pm EST
- October 25<sup>th</sup> 2022 at 1 to 2pm EST





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**SAVE THE DATE FOR THE  
PROMOTING NATURALIZATION  
WEBINAR with DHS**


- **Date:** Friday, September 23, 2022
- **Time:** 12:00 PM – 1:30 PM EST
- Register at:  
[https://us06web.zoom.us/webinar/register/WN\\_i5eeBO51S5CBQcLTPVWuiA](https://us06web.zoom.us/webinar/register/WN_i5eeBO51S5CBQcLTPVWuiA)



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**SAVE THE DATE FOR THE  
VAWA CONFIDENTIALITY AND  
DISCOVERY WEBINAR**

- **Date:** Friday, October 14, 2022
- **Time:** 1:00 PM – 2:30 PM EST




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**EARNING CAPACITY**

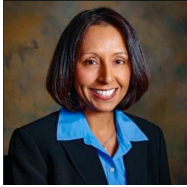



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**Proving Immigrant Survivors'  
Income**



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What are some strategies for educating courts so they do not use undocumented status against survivors with regard to earning capacity?



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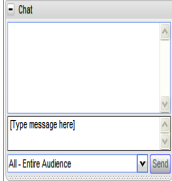
**Proving income of client**

- Why it is important to do so:
  - Shows that client has a plan for herself and her children.
  - Plan can include seeking child support and spousal support and spousal maintenance, obtaining education, licensure, skill - what will that cost, how long will that take, etc.
  - Demonstrate how seeking victim based immigration relief leads to work authorization
- Use Proposed Support Decision to document income and regular monthly expenses and future expenses once they are in their own apartment/house.
- Can prove through their testimony and that of their employer - which also goes to work ethic, responsibility, trustworthiness, etc.



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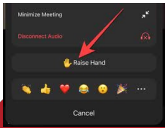
### What are some examples of how you have provided proof in court of your immigrant client's income?



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**Raise Your Zoom Hand:**  
If you are in a jurisdiction where it is possible to seek spousal maintenance/alimony for domestic violence victim clients.



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### Considerations

- If seeking Enforcement of Affidavit of Support – if survivor/beneficiary's income is over 125% of poverty guideline for household, they may not be eligible
- If seeking spousal maintenance, make sure that survivor will still be able to demonstrate that her earned income is insufficient to pay their "minimum reasonable needs"
- Income tax issues: be careful to advise client about innocent spouse relief and refer to a tax expert regarding failure to declare income issues

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What are the issues to be aware of for undocumented working immigrant survivors?



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### Working Non-Citizen Victims

- Impact of buying or using false papers on survivors' victim based immigration options
- Benefits of helping clients apply for Individual Tax ID Numbers (ITINs)

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What are the benefits to a custodial and non-custodial immigrant parents' immigration cases of seeking/receiving and paying court ordered child support?




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### Benefits of Court Ordered Child Support for Custodial and Non-Custodial Immigrant Parents

- Payment of child support through the court provides a non-citizen parent with a history of child support payments that will be helpful evidence of good moral character for immigration cases
  - Cancellation of removal
  - Naturalization
- Provides a custodial immigrant parent with evidence of child support that can be used as income in lawful permanent residency cases
  - Avoiding public charge
  - Proving good moral character



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## Proving Immigrant Non-Custodial Abusive Parents' Income



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What is your general approach to proving the opposing party's income?



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### Proving Income of Opposing Party


- Discovery – Request for Production of Documents
- Earning records, other monetary receipts, credit and charge account statements, tax returns and any tax documents (1099), their credit report
- All periodic statements that relate to financial accounts on deposit with banks, brokerage firms, or other financial institutions for the individual and/or entities they have an interest in.
- All documents that relate to CDs, bonds, retirement/investment accounts.
- All mortgages, deeds, pending lawsuits, criminal charges/arrests, safety deposit boxes, etc.



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### What if it is "hidden" income?

- Prove through testimony of your client and witnesses to transactions
- Prove through their list of expenses
- Prove through the amount they are sending abroad, property abroad
- Prove through other child support order involving children not of this marriage/relationship
- Have their business evaluated by an expert and request that they pay for this – in cases where they have an LLC – if business is registered, may also be able to request reporting documents with State Comptroller



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Please share some creative approaches you have used to prove income of an abuser who is working "under the table".

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What approaches have you seen courts used to arrive at an income for a non-custodial abusive parent?

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### Proof of Non-Custodial Immigrant Parent's Income

- Undocumented workers can be ordered to pay child support based on Child Support Guidelines and
  - Actual earnings
  - Employer's statements
  - Evidence of earning capacity
  - Attributed income (e.g. minimum wage)
  - Evidence in the Affidavit of support
    - Taxes, bank statements, stocks, bonds, real property

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### Helpful Caselaw

- Lack of legal work authorization is not a valid defense to non-payment of child support
  - Asal v. Asal, 960 P.2d 849, 850 – 851 (Okla. 1998)
- Courts have found employers who willfully violate wage withholding orders liable to the custodial parent for the amount of child support ordered withheld.
  - State v Filipino, Conn. Super. LEXIS 266 (2000)
  - Belcher v Terry, 420 S.E.2d 909 (1992)
  - Child Support Recovery Srvs., Inc. ex rel S.C. v. Inn at the Waterfront, Inc., 7 P3d 63 (Alas. 2000)

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### Child Support Enforcement Safety Planning

- Criminal convictions for willful failure to pay child support could be deportable theft/fraud related offenses as crimes of moral turpitude

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### Further Questions and Discussion

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