

Economic Relief and Public Benefits

Florida State Team Training

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Introductions

- Judge Rosemary Collins (Ret.)
 - Rockford, Illinois
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Learning Objectives

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

- Grant economic relief for immigrant victims, families and children appearing in family court
- Enforce affidavits of support in family law cases
- Issue orders that are consistent with public benefit eligibility for immigrant children and victims in Louisiana
- Know how applying for immigration status as a crime victim improves access to state and federal public benefits

Small group activity: Scenario

Sam, a U.S. citizen, met and began living with Herminia while working for a U.S. company in Ecuador. Sam's abuse began in 2002 when Herminia was pregnant with their first child, Ana, and has continued to date. Sam and Herminia married in 2006 after their second child, Clarisa, was born. In 2007, Sam brought Herminia, Ana, and Clarisa with him when his company transferred to work in the U.S. Sam's physical abuse of Herminia escalated when the family moved to the U.S., with Herminia suffering incidents of physical abuse at least weekly. In 2014, when Herminia became pregnant again, Sam began sexually assaulting Ana. During this same time, Sam quit his job and began working for a business run by his cousin. Herminia cares for the parties three children Miguel (3), Clarisa (12) & Ana (16).

Small Group Discussion:

- Sam and Herminia have separated
- Herminia is living in the house with the children and is seeking a protection order and is filing for divorce.
- What type of economic relief or assistance would Herminia and the children need?

Spousal Support and Economic Relief in Family Court Cases

Background

- Spousal control over filing for immigration relief
 - Work authorization
 - Drivers' licenses
- Many forms of visas do not allow spouses and children of visa holders to work in the United States
 - Employment visas (H)
 - Student visas (F)
 - Diplomatic visas (A)
 - International organizations (G)
 - Investor visas (E)
- Immigrant victims have limited access to the public benefits safety net

Large Group Discussion

Sam and Herminia Scenario

- Assume this additional fact:
 - Before coming to the U.S. Sam filed immigration papers for Herminia and the children allowing them to legally enter the United States
- How might that affect options for economic relief for Herminia and the children?

Affidavits of Support

- Under provisions introduced in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, each person who petitions for a family member to immigrate to the United States must execute a legally enforceable affidavit of support.
- 8 U.S.C. § 1182(a)(4)(C)(ii)

Affidavits of Support

- Enforced as contract or used as evidence of ability to pay support
- These affidavits are of increasing importance in resolving support issues in immigrant families, sometimes decades after the act of immigration is complete.

Evidence in Affidavit of Support

- 3 years of tax returns
- Evidence of current employment
 - Including self-employment
- Proof of income sufficient to sustain the immigrant(s) being sponsored at or above 125% of poverty

Who Is Required to Complete an Affidavit of Support

- Almost all immigrants who are applying to obtain lawful permanent residence through a family member must submit an Affidavit of Support.
- Citizen and Lawful permanent resident spouses submit an Affidavit of Support to the Department of Homeland Security in family based immigration cases

In the Affidavit of Support Submitted to DHS the Signor Accepts the Responsibility:

- As a U.S. citizen or legal permanent resident for financially supporting the non-citizen relative and commits to preventing the immigrant family member from becoming a “public charge”
- “Public charge” is an immigration law term that describes someone who is or is likely to become primarily dependent on the government for income maintenance in the future

Affidavit of Support: Duration and Enforceability

- Promise to support family member for up to 10 years
- This responsibility lasts until the non-citizen either:
 - Becomes a U.S. citizen = Naturalizes;
 - Credited with forty (40) hours of work under the Social Security Administration - INA §213A;
 - Ceases to hold the status of an alien lawfully admitted for permanent residence and departs the U.S.;
 - Obtains in removal proceedings a new grant of adjustment of status;
 - Dies
- Courts have relied on the Affidavit of Support to set spousal and child support obligations

Enforceability of the Affidavit Support

- Courts have found the Affidavit of Support enforceable and have ordered support payments to a former spouse.
 - *See, Shumye v. Felleke*, 555 F.Supp.2d 1020(N.D. Cal.2008); *Stump v. Stump*, 2005 WL 2757329 (N.D. Ind. Oct. 25, 2005); *Cheshire v. Cheshire*, No. 3:05-cv-00453-TJC-MCR, 2006 WL 1208010, at *2-4 (M.D. Fla. May 4, 2006)
 - *Kumar v. Kumar* A145181 (Cal. App. Div. II, July 28, 2017)(enforceable and no duty to mitigate)
- As part of a family law property settlement, the sponsored immigrant may surrender his or her right to sue to enforce the Affidavit of Support.
 - 71 F.R. 35732, 35740 (June 21, 2006).

What does this information about affidavits of support mean for family court judges?

Child Support in Mixed Immigration Status Families

What are the immigration related issues you have seen in child support cases?

Child Support & Immigration: The Parent Paying Child Support

- Payment of child support through the court provides a non-citizen parent with a history of child support payments
- This is helpful evidence of good moral character for immigration cases
 - Cancellation of removal
 - Naturalization
 - Obtaining relief in immigration court
 - Can be used to show hardship to family members

Child Support & Immigration: The Parent Receiving Child Support

- Provides a custodial immigrant parent with evidence of child support that can be used as income in when applying for lawful permanent residency
 - Avoids public charge
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies

Immigration Issues Arising in Child Support Cases

- Lack of legal work authorization is not a valid defense to non-payment of child support
- Can order child support, but not a job search, of an undocumented non-custodial parent
- Can order non-custodial parent to obtain an ITIN and pay taxes
- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related crimes of moral turpitude

Importance of Wage Withholding

- Creates documented track record of payment
- Improves safety for immigrant victims
- 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)

How Might You Establish A Non-Custodial Immigrant Parent's Income for Child Support Purposes?

Proof of Non-Custodial Immigrant Parent's Income

- Undocumented workers can be ordered to pay child support based on
 - Child Support Guidelines
 - Actual earnings
 - Employer's statements
 - Evidence of earning capacity
 - Attributed income (e.g. minimum wage)
- Undocumented workers can pay state & federal taxes on income earned using an IRS issued
 - Tax ID number (ITIN)

**ACCESS TO BENEFITS AND SERVICES
GROWS AS CHILDREN AND VICTIMS
PURSUE IMMIGRATION RELIEF**



Immigrants and Benefits: True or False

1. Undocumented victims and children can access transitional housing programs
2. Federally funded health care is available for undocumented immigrants
3. DHS requires universities to ask about immigration status of applicant or enrolling students

Benefits Available to all Immigrants Include:

- Shelter transitional housing, victim services counseling, and intervention for:
 - Victims of:
 - Domestic violence
 - Sexual assault
 - Stalking
 - Dating violence
 - Human trafficking
 - Child abuse
 - Other abuse
 - Homeless
 - Runaway or homeless youth
 - Abandoned children

Access for All

Both documented and undocumented immigrant survivors can access:

- Legal Services
- Family Court (Divorce)
- Language Access
- Police Assistance
- Protection Orders
- Child Custody and Support
- Have Their Abusers
Criminally Prosecuted
- Assistance for Crime Victims
- Shelter
- Transitional Housing
- Receive Emergency Medical
Care
- Obtain Public Benefits for
Their Children

Attorney General's List of Required Services

Former Attorney
General Janet Reno



- In-kind services
- Provided at the community level
- Not based on the individuals income or resources
- Necessary to protect life and safety

Benefits Available to All Immigrants

- 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

Health Care Open to All Immigrants

- Community and migrant health clinics
 - www.nachc.com
 - www.hrsa.gov
 - Enter zip code
- State funded programs
- Post-assault health care paid by VOCA
- 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 of the child's parent if the parent is not applying for additional benefits for themselves

Immigrant Survivors' Legal Rights to Access Federal and State Funded Benefits

Qualified Immigrant Access to Federal Public Benefits

- All qualified immigrants can access some federal public benefits
 - Which benefits they can access depends on:
 - Immigration status
 - When they entered the United States
 - Whether they meet heightened program requirements for some programs
 - What benefits are offered by the state

Immigration Restrictions on “State and Federal Public Benefits”

- **US Agency Funded/Provided:**
 - Grants
 - Contracts
 - Loans
 - Professional or commercial licenses
 - Drivers licenses
- **Federally Funded Benefits for**
 - Retirement
 - Welfare
 - Health
 - Disability
 - Postsecondary education
 - Public or assisted housing
 - Food assistance or
 - Unemployment

Who are “Qualified Immigrants”?

- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- Persons who (or whose children) have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent

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

- Public and assisted housing
- Supportive housing for the elderly or disabled
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Receive payments for providing foster care
- Job opportunities for low income individuals
- Adoption assistance
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Social services block grant programs

Immigration Relief Expands Benefits Access

VAWA self-petition

- Qualified Immigrant (2-3 months after filing)
 - Self-petitioner and children

Battered spouse waiver

- Qualified Immigrant

Continued Presence

- Benefits access like refugees
- Need HHS certification

T visa

- Benefits access like refugees (7 years) with HHS certification
- Qualified Immigrant with bona fide determination

U visa

- Health care exchanges as lawfully present upon wait-list approval

Special Immigrant Juvenile

- Health care due to lawful presence upon filing
- Qualified Immigrant upon approval and receipt of lawful permanent residency

Deferred Action for Childhood Arrival (DACA)

- No access to health care exchanges or subsidies

Undocumented

- No federal public benefits
- Some states limited state benefits for victims

The Five Year Bar

- Due to 1996 welfare reform, qualified immigrants, including battered immigrant women, that enter the United States after August 22, 1996 are ineligible for “federal means-tested public benefits” for the first five years of holding qualified status.
- Certain immigrants are not subject to the five year bar including:
 - Refugees,
 - Asylees
 - Amerasian immigrants
 - Cuban/Haitian entrants,
 - Immigrants granted withholding of deportation
 - Victims of severe forms of human trafficking

Child Care: Immigrant Restrictions Depend on Funding source CCDF vs. TANF

Child Care Development Fund

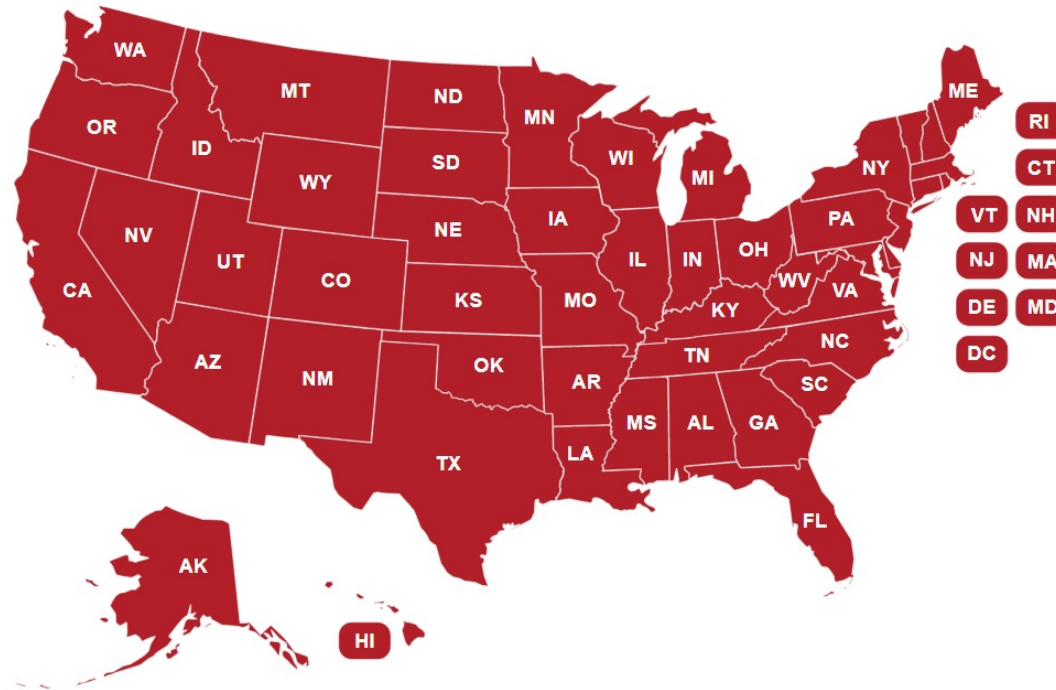
- Only the citizenship/immigration status of the child considered (child is the primary beneficiary of the child care benefit)
- Open to “qualified immigrants” and victims of trafficking and their children
- CCDF child care open to all without immigration restrictions if
 - Subject to public educational or Head Start standards, or
 - Eligibility determined by a non-profit organization
- State agencies *cannot require* an SSN from persons seeking CCDF-funded child care and cannot deny the benefit to families that do not provide an SSN (even if TANF funds included in CCDF)

Small Group Discussion: Clara, Eduardo and Lupe

- What benefits in Florida could each qualify for?
 - Assuming Lupe and Clara can self-petition
 - If Miguel qualifies for SIJS
 - If they receive waitlist approval in their U visa case
 - If Clara and Eduardo file T visas

Demographics

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Access to Public Benefits in Florida for Survivors

- TANF & TANF funded childcare
 - 5 year limit, unless transition to qualified status, LPR with 40 Qualifying Quarters or veterans
 - Trafficking victims with HHS certification (T visas and continued presence)
 - VAWA self-petitioners 5 year bar if entered on or after 8/22/96
 - SIJS children, U visas 5 years after lawful permanent residency
 - CCDF funded child care generally open to all immigrants; TANF funded child care upon LPR
 - Subject to the same conditions as TANF

Access to Public Benefits in Florida for Survivors

- Food Stamps
 - Refugees, Asylees, and T visas (& their children)
 - Under 18 year old children of VAWA self-petitioners
 - SIJS children, U visas 5 years after lawful permanent residency
- Health Insurance Exchange
 - Refugees, Asylees, & T visas (& their children)
 - VAWA self-petitioner (& children)
 - SIJS applicant children

Access to Public Benefits in Florida for Survivors

- CHIP
 - Lawfully residing children eligible (VAWA, refugees, asylees, T visa, Continued Presence, SIJS, U (including wait-list approved))
 - If do not meet immigration requirements, but otherwise eligible, can buy full coverage under KidCare
- Medicaid
 - Refugees, asylees, T visa bona fide and continued presence eligible
 - VAWA self-petitioners and U visa and SIJS lawful permanent residents 5 year bar if entered after 8/22/96
- Educational Grants/Loans (FAFSA)
 - T visas, VAWA self-petitioners (& their children)
 - SIJS children, U visas after lawful permanent residency

Access to Public Benefits in Florida for Survivors

- SSI
 - 7 year limit for Refugees, Asylees, and T visa (& their children)
 - Post 8/22/1996 arrival, U Visa and SIJS at lawful permanent residency, subject to additional qualifiers (5 year bar, veterans, 40 QQ,)
- Public and Assisted Housing & Vouchers
 - T visas (& their children)
 - VAWA self-petitioner (& children)

Resources for Courts

- Bench cards economic relief and benefits
- Affidavit of Support Articles
- Visa chart by immigration status
 - Who can sponsor children
 - Work authorization
 - Benefits access
- Benefits maps
- State Charts
- Health Care Charts