

Recognizing and Responding to Issues Related to Immigration in Intimate Partner Violence in State Court Cases

**Presentation Materials adapted from the National Judicial
Network by NIWAP, American University,
Washington College of Law**



Continuing Judicial Skills (CJS)



NATIONAL JUDICIAL INSTITUTE
ON DOMESTIC VIOLENCE

Disclaimers

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Content Notice: The following program includes slides, fictional scenarios and discussion questions related to the abusive tactics used by domestic violence offenders.

Learning Objectives

At the end of this workshop participants will be better able to:

- Recognize what information is covered in the NJIDV CJS Course full curriculum.
- Identify the visas available for survivors of domestic violence.
- Discuss the role immigration may play in a state court proceeding.

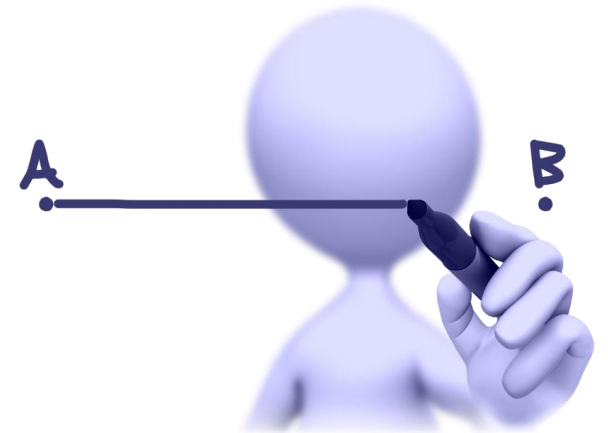


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Free Think

Why is knowing how to access legally correct information about immigration law helpful to state family court judges?



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SECTION ONE:

CJS Course Highlight

Immigrant Realities and Dynamics of Domestic and Sexual Violence Experienced by Immigrants



Domestic Violence Overview

- **65% of immigrant survivors report some form of immigration-related abuse (NIJ, 2003)** *Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)*
- **When immigration-related abuse is present in a relationship it is 10 times more likely that physical and/or sexual abuse is also occurring in the relationship.** *Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)*

Coercive Control Tactics: Immigrant Victims

- Threatening to or reporting/turning victim over to the Department of Homeland Security
- Controls access to mail/email/text communications from immigration agencies and/or courts
- Not filing or withdrawing immigration papers
- Giving misinformation about the immigration process and/or services available or rights of victims of crime or abuse
- Hiding, destroying, or restricting access to important papers
- Destroying property brought from her home country.

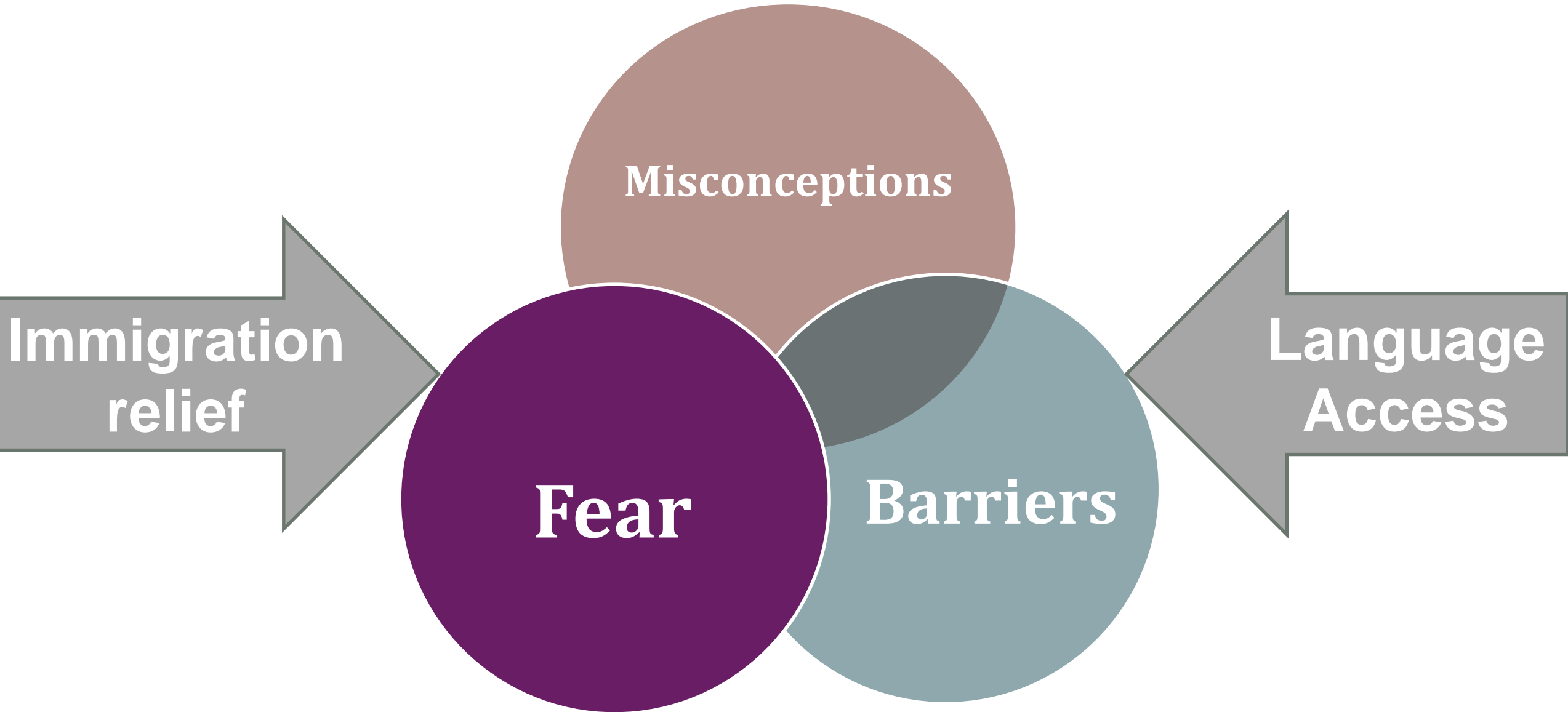
Immigration Law Definition of Domestic Violence

“Battery or Extreme Cruelty”

- Includes
 - All forms of abuse covered in state civil protection order statutes
 - All forms of abuse that constitute domestic violence under state criminal laws
 - Coercive control tactics
 - Plus – Forms of abuse that are extreme cruelty
 - No physical harm or crime required

Immigration Law's Domestic Violence Definition “Battering or Extreme Cruelty”

- Any state crime committed against a family member sufficient for issuance of a protection order including sexual abuse, stalking, threats, attempts *and/or*
 - Emotional abuse
 - Economic abuse
 - Using children
- Deportation threats and immigration-related abuse
- Intimidation
- Social isolation
- Degradation
- Possessiveness
- Harming pets
- Coercive control





SECTION TWO: CJS Course Highlight

Immigration Relief for Immigrant Victims and Juveniles

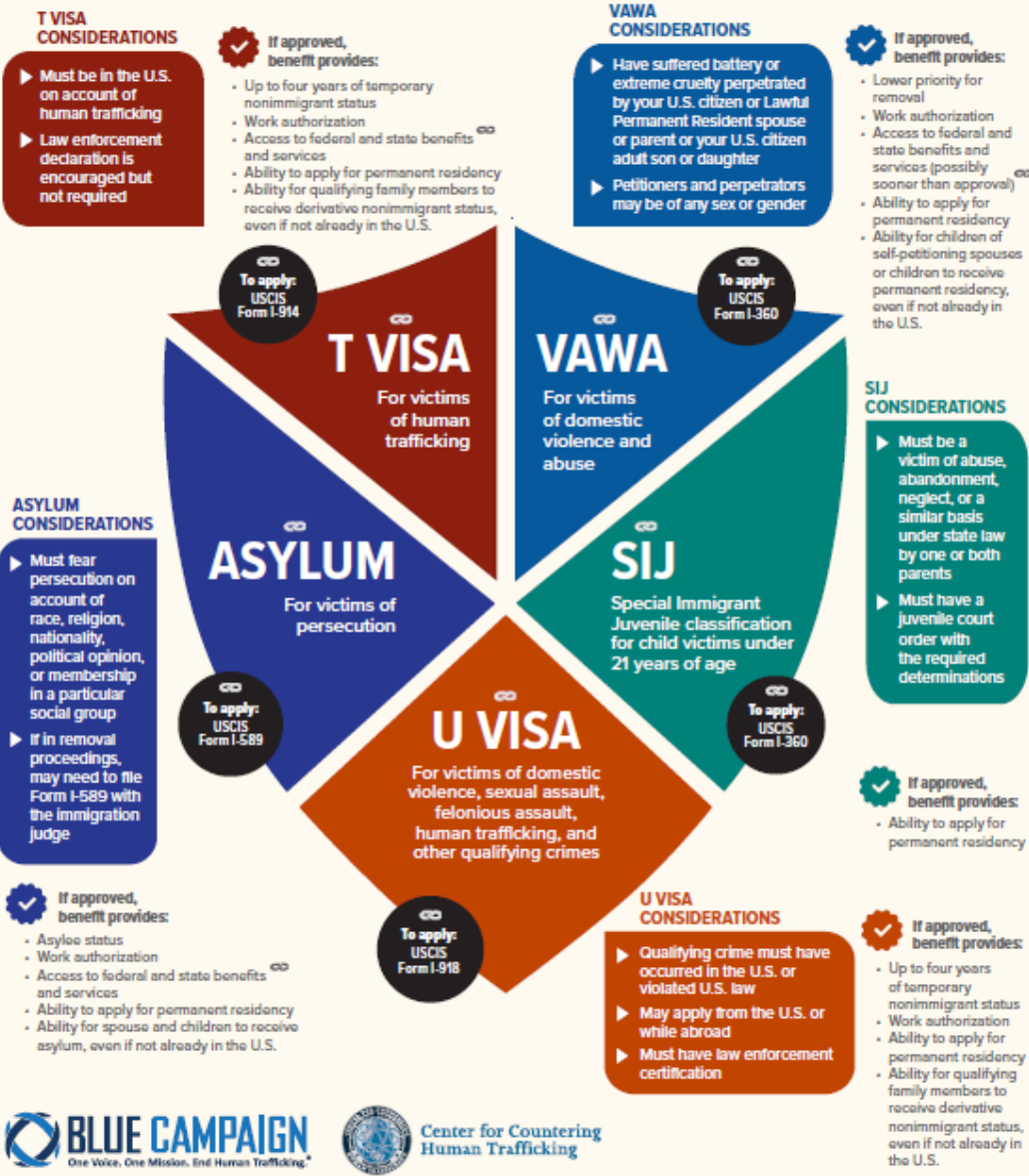


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Immigration Protections for Noncitizen Victims of Crime and Abuse

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS



VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident – Spouse; – 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
- Battered Spouse Waiver if perpetrator files

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 judicial determinations (findings of fact and conclusions of law) from a state court with jurisdiction over – the care, custody, or dependency of the child
- Congress requires involvement of state courts

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
- Applicant must submit a certification from a government official (includes judges)

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.S. 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
- DHS encourages applicants to obtain T visa declarations from government officials (including judges)

2013 and 2017 Research Found Increased Justice System Participation

- VAWA Self-Petitioners
 - 62% participate in criminal investigations and prosecutions
 - 63% seek civil protection orders
 - 60% turn to the courts for child custody orders
- U visa Victims
 - 70% participate in active criminal prosecutions and investigations
 - An additional 29% willing to cooperate if their criminal cases went forward
 - 67% seek protection orders
 - 64% seek custody orders

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rodrigues et al. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 3, 2018); Leslye Orloff, et. al., *U Visa Victims and Lawful Permanent Residency 5* (September 6, 2012)

With Deferred Action and Work Authorization Trust Improves

- Increased justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 22% help other victims report abuse and seek help/justice
 - 67% decline in immigrant victims who were not willing to participate in criminal investigations and prosecutions

Transforming Lives: How the VAWA Self-Petition and U Visa Change the Lives of Survivors and Their Children After Employment Authorization and Legal Immigration Status (June 8, 2021)

<https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report>

With Deferred Action and Work Authorization Immigration Related Abuse Declines

- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
 - 74% decline in immigration related abuse
 - 78% decline in threats to snatch/cut off access to children
 - 65% decline in efforts to use immigration status of the victim to gain advantage in family court

Orloff, Magwood, Campos-Mendez, & Hass, Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status (June 2021)

<https://niwaplibrary.wcl.american.edu/pubs/transforming-lives-final-report>

Benefits For Survivors and Their Children of Work Authorization and Deferred Action

- **VAWA and U visa victims report increases in:**
 - Involvement in children's schools 660%
 - Formal sector jobs that deduct taxes 542%
 - Jobs paying at least minimum wage 300%
 - It being easier to make decisions 432%
 - Sleeping better & being calmer– 300%
 - Being more focused – 280%
 - Victims taking ESL classes 226%
 - More independent – 261%
 - Standing up for themselves 225%
 - Pursuing education: GED 35%; AA/BA 28%; Vocational 21%; Advanced degrees 19%
 - Victim's children are more socially active 100% and pursuing own interests 134%

Specific Visas for Victims

U Visa and
T Visa



Image by PresenterMedia

U Visas and T Visas

U Visa for Crime Victims

- Victim of qualifying criminal activity
- *Has been, or is being, or likely to be helpful* in detecting, investigating, prosecuting, convicting, or sentencing perpetrator of criminal activity
- Possess information about crime
- Crime occurred in U.S.
- Victim suffered substantial physical or mental abuse from victimization
- U Visa Certification required

T Visa for Trafficking Victims

- Victim of a severe form of human trafficking
- *Victim must comply with reasonable requests for assistance* in detecting, investigating, prosecuting, convicting or sentencing human trafficking
- Reported the trafficking to police
- Trafficking occurred in the U.S.
- Removal from the U.S. would cause extreme hardship
- T Visa Declaration evidence and best practice

U Visa Qualifying Criminal Activity

- *Domestic violence*
- *Stalking*
- *Sexual assault*
- *Rape*
- *Sexual exploitation*
- *Abusive sexual contact*
- *Incest*
- *Prostitution*
- *Female genital mutilation*
- *Felonious assault*
- *Murder*
- *Manslaughter*
- *Kidnapping*
- *Abduction*
- *Trafficking*
- *Involuntary servitude*
- *Slave trade*
- *Being held hostage*
- *Torture*
- *Fraud Foreign Labor Contracting*
- *Unlawful criminal restraint*
- *Peonage*
- *False Imprisonment*
- *Blackmail*
- *Extortion*
- *Witness tampering*
- *Obstruction of justice*
- *Perjury*
- Similar activities e.g.,
 - Hate crimes
 - Child/elder/disabled abuse
 - Aggravated robbery
 - Video voyeurism

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

Who Can Certify?

- Federal, state, and local
 - Law enforcement
 - Prosecutors
 - Judges, Magistrates, Commissioners, Judicial Officers
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies with criminal, civil, administrative investigative power

U and T Visa Certification May be Signed by any Judicial Official

- Judicial officers who can sign U visa certification:
 - Any official with delegated authority from a federal, state, local, tribal or territorial court to decide cases including but not limited to: administrative law judges, commissioners, magistrates, aldermen, judicial referees, surrogates, masters, and chancellors.

What a U Visa is Not....

U visa certification does not mean a judicial officer is...

- Vouching for victim's character;
- Testifying as a character witness;
- Sponsoring or endorsing the victim; or
- Predicting anything about the victim's future actions

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

SECTION THREE: CJS Course Highlight

Protection Orders



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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
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions
- The definition of domestic violence under U.S. immigration laws is broader than all state protection order and criminal laws

Immigrants and Protection Orders

- 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

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
- Economic relief
 - Child/Spousal support, health insurance, rent, mortgage, utilities, one-time emergency monetary relief, tax returns

Protection Orders and Immigration Considerations

- Violation of a protection order is a deportable offense
 - Can lead to loss of lawful permanent residency and other immigration consequences for the perpetrator
 - Victims should not be charged with violation of orders issued for their own protection
 - Importance of self-defense and primary aggressor determinations when CPO filed against immigrant victim

Best Practices

- Issue Padilla advisals in protection order cases
- In cases in which parties seek protection orders against each other
 - When one party is pro se and the other is represented consider appointing counsel for the unrepresented party

SECTION FOUR: CJS Course Highlight

IMMIGRATION ISSUES IN FAMILY AND CIVIL COURT CASES



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

Immigration Issues Arising in Child Support Cases

- Payment of court ordered child support through the court beneficial to both paying and receiving immigrant parents
- 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

Impact of Divorce

- VAWA self-petitioners:
 - Spouse must file within two years of final divorce
- Ends legal immigration status for spouses and children of visa holders:
 - Students, Work Visa Holders, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Employment
 - Asylum
 - Family relationships
 - Cancellation of removal
- Courts enforce Affidavits of Support in divorce proceedings

Divorce and Economic Relief Tools

Bench Card: Impact of
Divorce on Immigration
Status

Bench Card for State
Court Judges on
Common Issues that
Arise From Parties'
Immigration Status:
Economic Remedies

Affidavits of Support
and Enforceability
Bench Card

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Network and NIWAP,
American University,
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SECTION FIVE:

CJS Course Highlight

Criminal Proceedings



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Inadmissibility & Deportation

Apply at Different Points in the Immigration Process

- To be granted immigration relief one must be admissible
 - Or be granted one of a limited types of waivers of inadmissibility
 - Applies to immigrants seeking legal immigration status and lawful permanent residency
- Immigrants in the U.S. with or without legal status can be subject deportation (removal)
- Criminal activity is a factor in both

Criminal Activity and Immigration

Criminal activity may:

- Result in removal/deportation from the United States
- Delay or completely bar legal immigration
- Delay or completely bar naturalization
- Bar discretionary relief from removal from the U.S.
- In some instances, limit the ability of U.S. citizens to sponsor family members
- Mandate detention

Responsibilities in Plea Bargaining Under *Padilla v. Kentucky* 130 S. Ct. 1473 (2010)

- Plea bargains and admissions of guilt may have serious consequences for immigrant defendants
- *Padilla* held that all immigrant defendants must receive legal advice about the potential consequences plea deals may have on their immigration status.
 - Consequences include:
 - Makes the defendant removable;
 - Makes the defendant inadmissible;
 - Makes defendant ineligible for cancellation of a removal order;
 - Prevents defendant from attaining citizenship

Padilla v. Kentucky 130 S. Ct. 1473 (2010)

- Failing to disclose these risks amounts to ineffective assistance of counsel.
- Attorneys have an affirmative obligation to tell a defendant about immigration and removal consequences
- *Judges have the obligation to ask whether the attorney has done so*

Impact of Failure to Advise

- Vacation of the plea entered
- Best practices ensure defendant is advised about
 - Risks of removal, inadmissibility, ineligibility for cancellation of removal or naturalization
 - That violation of a protection order is deportable
 - Defendant has a right to notify their consulate under the Vienna Convention on Consular Relations

Violations of Civil or Criminal Protection Orders

- Are deportable offenses
 - Conviction, plea or finding of violation by any court (e.g., family, criminal) enough
- When the violations are of the protective provisions of the protection order to stop
 - Credible threats of violence
 - Repeated harassment
 - Bodily injury
- Violation of custody or support provisions are not grounds for deportation

SECTION SIX

CJS Course Highlight

VAWA Confidentiality in State Court Proceedings



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Why Are VAWA's Confidentiality Protections Important for State Courts?

- Promotes access to justice and just and fair outcomes in state courts
- Victims who file VAWA, T and U visa cases receive deportation protections
- Perpetrators may attempt to use state court discovery to obtain federal VAWA confidentiality protected information

Discovery: Key Learning Points

- The need for balancing of interests
 - Relevancy of the information vs.
 - Prejudice against immigrants
 - Federal law protecting the information – victim safety
- Impact of VAWA confidentiality
 - U/T Visa case with certification
 - Certification may be discoverable in criminal case or multiple victim civil employment case
 - VAWA self-petition and T Visa case with no certification
 - No discovery in criminal, family or civil case
- Judicial exception = for judges hearing victim's immigration case

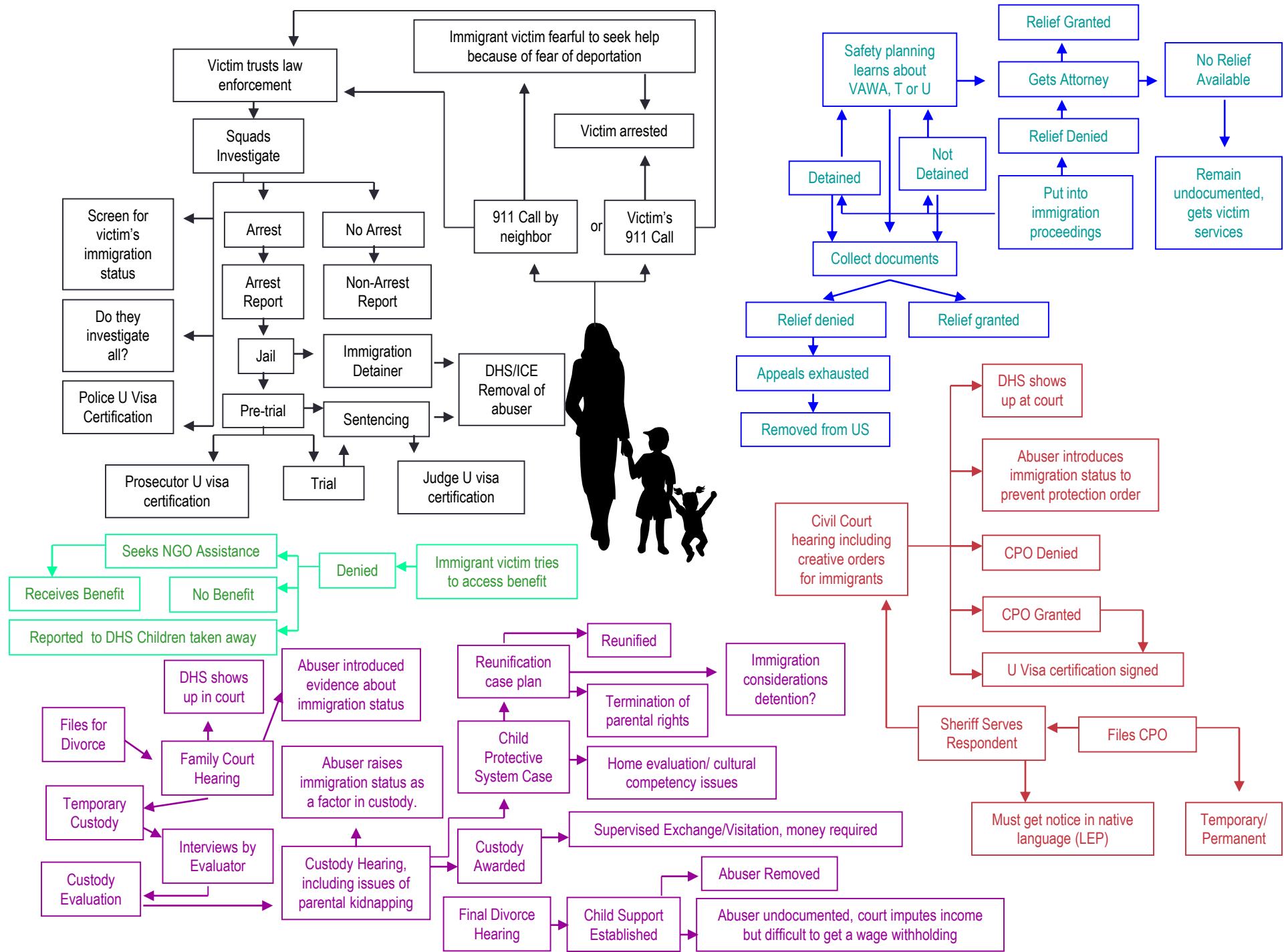
SECTION SEVEN

CJS Course Highlight

**Enhancing
Access to
Justice**



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Judicial Leadership

- Role in systems change
- Creating a courtroom culture to promote administration of justice
- Implementing tenets of procedural justice
- Increasing access to information for litigants
- Ensuring language access
- Promoting training opportunities

SJI Funded Materials and Technical Assistance for Judges in the NIWAP Web Library

- Bench cards for family court judges
 - Custody, Protection Orders, Divorce, Economic Relief, VAWA confidentiality
- Public benefits map and charts
- Bench book on SIJS
- U and T visa certification toolkit for judges
- **NIWAP Technical Assistance**
- Call (202) 274-4457
- E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

Help Us Recruit Judges to Join the National Judicial Network (NJNI)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJNI (368 judges – 39 states & 2 territories)
 - Opportunity to engage in discussions with other judges
 - Receive latest information
 - Peer-to-Peer training opportunities
 - Get your questions answered
 - Receive the information you need through
 - Webinars, trainings, and technical assistance
 - Bench cards, tools and training materials



Judicial Education Development Initiative on Domestic Violence

NCJFCJ

