

# NIWAP



## *Improving Access to Justice for Immigrant Survivors of Domestic Violence, Sexual Assault, Stalking, and Human Trafficking*

For Judges, Court and Supervised Visitation Center Staff,  
Attorneys and Victim Advocates

**Center for Justice Innovation, New York**  
**August 8, 2024**

# NIWAP

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



**Leslye Orloff**  
Adjunct Professor and  
Director  
National Immigrant  
Women's Advocacy Project,  
American University  
Washington College of Law

*This project was supported by Grant Nos. 15JOVW-23-GK-05119-MUMU and 15JOVW-22-GK-04034-JFFX awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*

# NIWAP Resources

- NIWAP Web library
  - Directory
  - Public Benefits Interactive Map & Demographics
  - Materials: Bench cards, toolkits, training tools, legal research, multi-lingual outreach materials
- Technical Assistance
  - Cases, policies, strategies
  - Email, phone, zoom
- Trainings and Webinars
  - On-line, virtual, in-person
  - Customized
- Communities of Practice
  - Victim advocates, family lawyers, National Judicial Network
  - Law enforcement/prosecutors



# NIWAP <http://niwaplibrary.wcl.american.edu>

- Training Materials for:
- Law Enforcement
- Prosecutors
- Systems Based Victim Advocates
- Judges
- Attorneys/Victim Advocates
- Statutes, Regulations, Policies & Government Publications
- Language Access
- Multilingual Materials
- Immigration
- Family and Criminal Law
- VAWA Confidentiality
- Public Benefits, Legal Services & Economic Relief
- Dynamics, Culture, Collaboration & Safety

# Join a NIWAP Community of Practice

- Family Law Attorneys COP  
[www.surveymonkey.com/r/FamCOP2023](https://www.surveymonkey.com/r/FamCOP2023)
- Victim Advocates COP  
<https://www.surveymonkey.com/r/VictimAdvocateCOPApp>
- Roundtable for Law Enforcement, Prosecutors and System-based Advocates  
<https://www.surveymonkey.com/r/LERoundtable>
- National Judicial Network: Forum on Human Trafficking and Immigrants in State Courts (Judicial Officials only)  
<https://niwaplibrary.wcl.american.edu/pubs/njn-outreach-letter>

# Learning Objectives

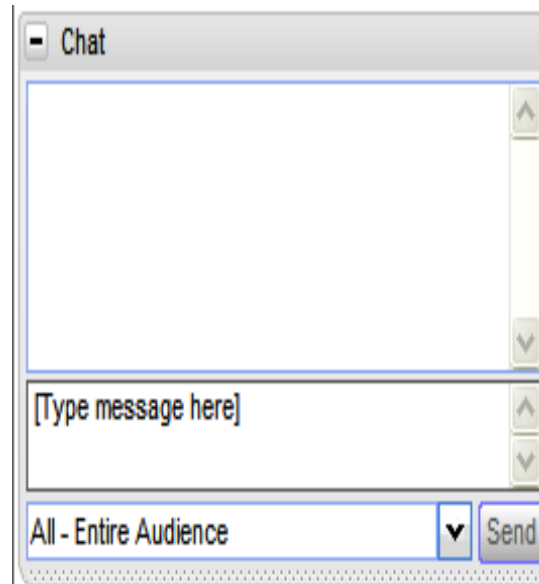
By the end of this webinar, participants will be better able to

- Identify survivors eligible for VAWA and other victim-based immigration protections
- Respond to issues commonly raised by perpetrators of domestic and sexual violence in protection order, custody, child support and divorce cases
- Help immigrant and limited English proficient victims obtain custody of their children and creative family court remedies that promote victim safety

# IMMIGRATION RELIEF OVERVIEW AND SCREENING



# How do VAWA's immigration protections benefits immigrant victims and their children?

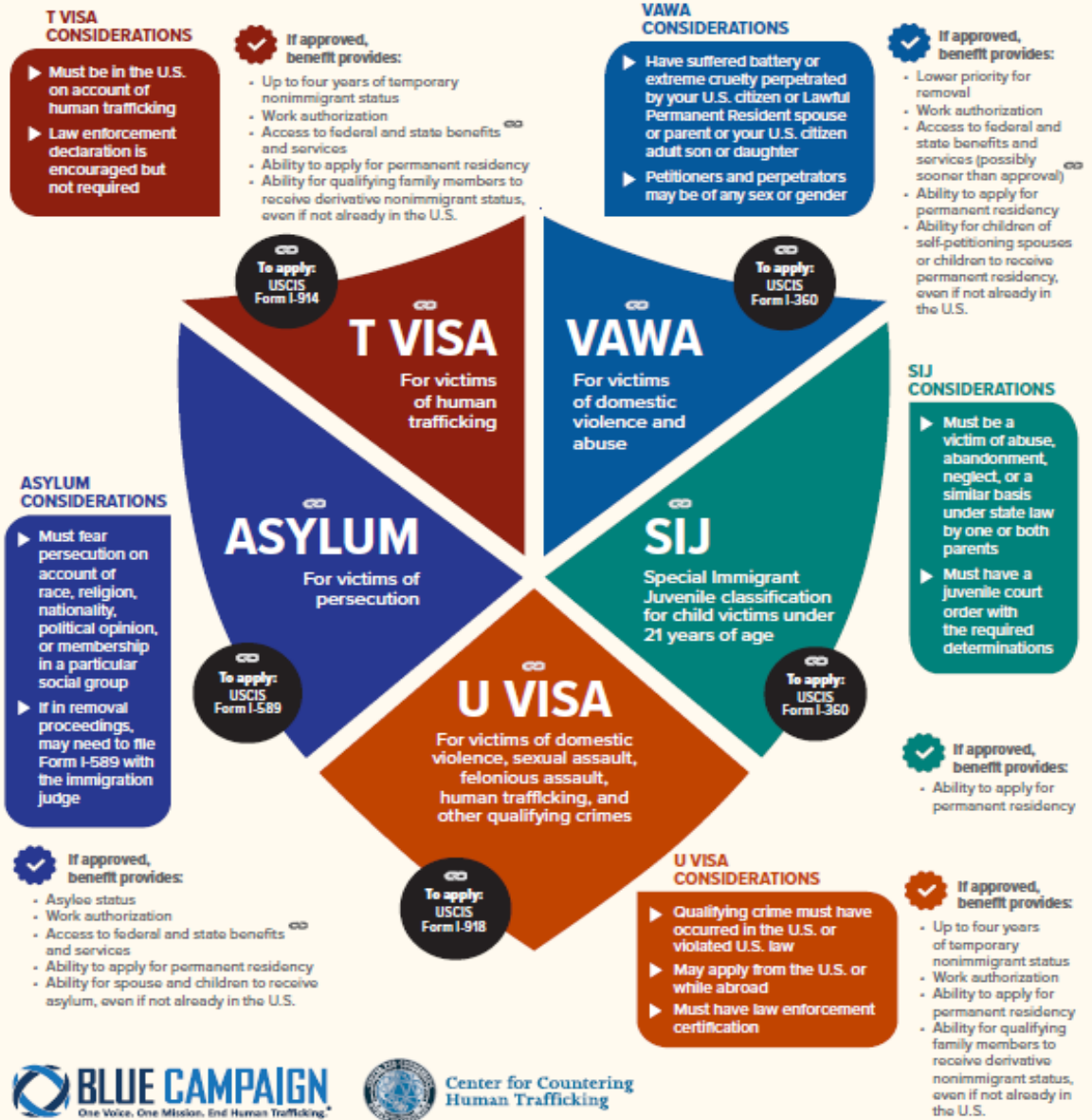


# Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from the perpetrator
  - Legal work authorization (6 months to 2 years from filing)
  - Issuance of federally recognized driver's licenses and IDs
  - Increased access to federal and state public benefits
- VAWA confidentiality

# U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

## Immigration Protections for Noncitizen Victims of Crime and Abuse



Center for Countering Human Trafficking

# Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	

# Similar Criminal Activity

- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:
  - Hate crimes
  - Video voyeurism
  - Elder abuse/abuse of adults with disabilities
  - Child abuse
  - Robbery or aggravated robbery could include felonious assault, depending on the evidence and state law definition

# 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
- 2023 time to work authorization = 4-34 months

# Battered Spouse Waivers

- For domestic violence survivors, provides for waiver of the “condition” placed on the status of immigrant spouses of marriages less than two years old
- Waives both the joint filing requirement and two year wait for full lawful permanent resident status
- Requires proof that:
  - Marriage to a U.S. citizen or permanent resident entered into in good faith and
  - Spouse or child was battered or subjected to extreme cruelty
    - Child can include step-child
    - Immigration and Nationality Act § 216(c)(4)
- 2023 time to approval 17.5 to 29 months

# 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 the required findings from a state court with jurisdiction over
  - the care, custody, or dependency of the child
- 2023 time to work authorization = 6 months



# 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
- 2023 time to work authorization – 60-62 months

# T Visa for Trafficking Victims

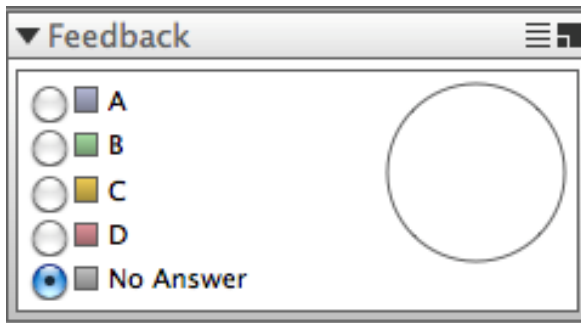
- A victim of a severe form of trafficking in persons
    - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
  - Victim is physically present in the U.D. on account of trafficking
  - Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking.
- Exceptions
- Under age 18
  - Physical or psychological trauma impedes helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
  - 2023 time to work authorization = 18 months

# Clara and Eduardo Case Scenario

Clara met Eduardo a lawful permanent resident 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.

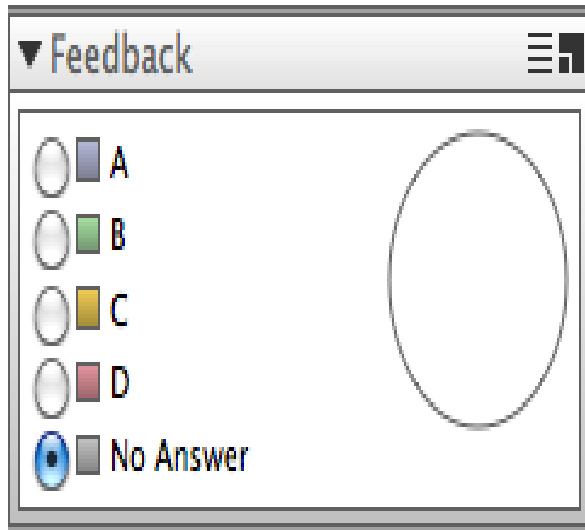
# What forms of immigration relief would Clara qualify for: *(Check all that apply)*

- A. U visa
- B. Included in Lupe's VAWA self-petition
- C. T visa
- D. Filing her own self-petition



A screenshot of a web form window titled "Feedback". The window has a header bar with a dropdown arrow and the text "Feedback", and a menu icon on the right. Below the header, there are five radio button options, each with a colored square next to it: A (blue), B (green), C (yellow), D (red), and No Answer (grey). The "No Answer" option is selected, indicated by a blue dot in the center of its radio button. To the right of the options is a large empty circle.

# What forms of immigration relief would Lupe *NOT* qualify for: (Check all that apply)



- A. VAWA self-petition
- B. U visa
- C. Special Immigrant Juvenile Status (SIJS)
- D. T visa

# What forms of immigration relief would Miguel qualify for: *(Check all that apply)*

▼ Feedback

A

B

C

D

No Answer

- A. VAWA self-petition
- B. U visa
- C. T visa
- D. SIJS

# After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- Increased justice system involvement
  - 114% increase in willingness to trust the police
  - 36% make police reports regarding future crimes
  - 60% seek protection orders and/or custody
  - 22% help other victims report abuse and seek help/justice
- 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 the immigration status of the victim to gain an advantage in family court

# Access for All

Both documented and undocumented immigrant survivors can access:

- Legal Services
- Family Court (Divorce)
- Language Access
- Police Assistance
- Protection Orders
- Child Custody & Support
- Have Their Abusers  
Criminally Prosecuted
- Public Benefits for Their  
Children
- Assistance for Crime Victims
- Shelter
- Transitional Housing
- GED
- WIC/school lunch & breakfast
- Primary/Secondary education
- Immunizations
- Emergency medical care
- Care from community &  
migrant health clinics
- VOCA



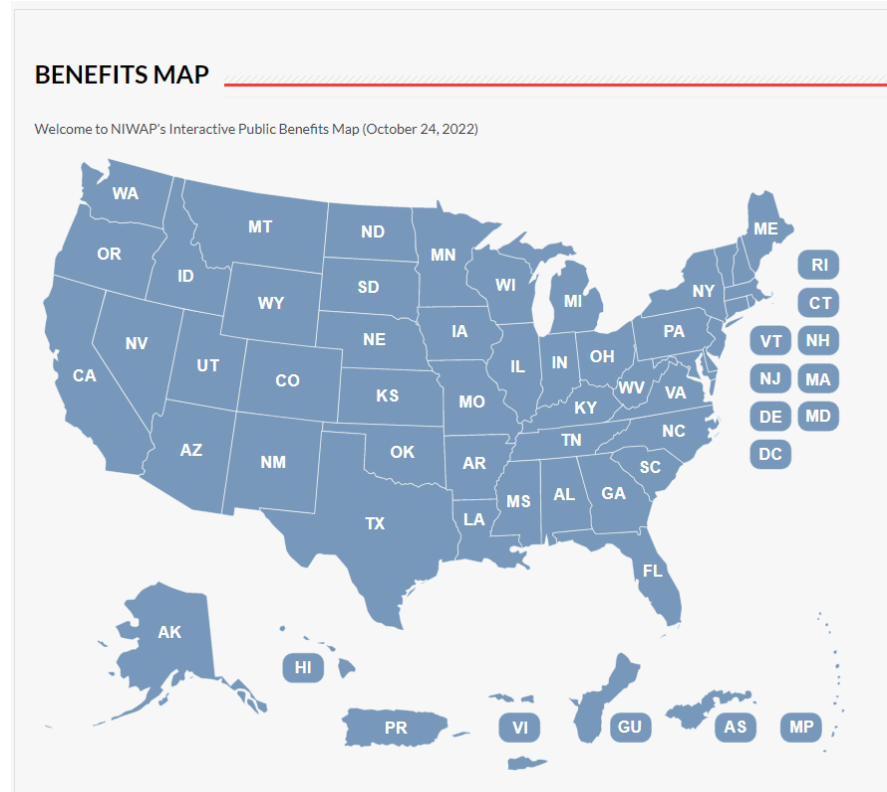
# As Survivors Apply for Immigration Relief Benefits Access Increases

## Interactive Public Benefits Map: State-By-State

Ben...	STATE & TERRITORY	Benefit Name	VAWA Self-Petitioner
1	309 Florida Public Benefits	Child Care - TANF Funded	Eligible for TANF funded child care if receiving TANF.
2	308 Florida Public Benefits	Child Care: Child Care Development Fund (CCDF)	Eligible for CCDF
3	310 Florida Public Benefits	Children's Health Insurance Program (CHIP)	Eligible up to age 19 upon prima facie determination. ...
4	311 Florida Public Benefits	Earned Income Tax Credits (EITC)	Eligible with conditions upon receipt of work ...
5	313 Florida Public Benefits	Emergency Medicaid	Eligible.
6	315 Florida Public Benefits	Family Medical Leave Act - State Law	No state law, federal law applies.
7	316 Florida Public Benefits	Federal Education Student Aid, Grants, and Loans	Eligible upon prima facie determination.

30 records um 13017

Airtable Download



<https://niwaplibrary.wcl.american.edu/benefits-map>

# PROTECTION ORDERS



# True or False

Issuance of a protection order is a deportable offense?



- A. True
- B. False

# 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
- Immigrant victims and their children often need creative protection order remedies using the state catch-all provisions

# Which the following is a deportable offense?



- A. Domestic violence criminal conviction
- B. Finding in a custody case that a protection order was violated by further abuse of the victim
- C. Criminal conviction for violating a protection order
- D. Agreeing to diversion in a protection order enforcement case where upon violation diversion turns into a conviction
- E. All of the above

# Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes, opportunity to offer relief designed to help:
  - Curb future abuse, harassment
  - Interfere with abuser/perpetrator's ability to exert power and/or coercive control
  - Offer victim remedy relief for past abuse
  - Help victim overcome victimization and build new post-abuse life
- Nexus with victimization
- Opportunity for courts to counter immigration-related abuse and order culturally helpful remedies

# The Majority of Immigrant Victims Stay With Their Abusers ...

- Until the victim receives work authorization as part of their immigration case or their case is approved
- Percent who leave before receiving work authorization or approval
  - VAWA self-petitioners 33.9%
  - U visa victims 30.1%

# Victims Who Stay: No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions:
  - No abuse
  - No unlawful contact
  - Batterer's treatment



# 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 the care of a child
- Deter parental kidnapping
- Child/Spousal support
  - Affidavit of support
- Health insurance

# Helpful Evidence

## Evidence of Legal Marriage

- Marriage certificate
- Wedding/family pictures
- Health insurance

## Good Faith Marriage

- Children birth certificates
- Love letters, cards, text, emails
- Copies of joint leases/utility bills
- School records
- Letters and other mail addressed to the victim and to the abuser at the same address

## Evidence of Abuse or Extreme Cruelty

- Police, medical, court documents about the relationship
- Protection order
- Affidavits of neighbors, relatives, friends

## Evidence of Abusers Legal Status

- Abuser's green card or passport
- Copy of I-130 petition
- Social security number

# CUSTODY OF CHILDREN IN IMMIGRANT FAMILIES

Tool: Immigrant Victims and  
Custody Bench Card

# 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



# Myth vs. Fact:

## Parents without Legal Immigration Status

### Myth

1. Deportation is imminent
2. The parent has no livelihood
3. Legally present parent must have custody in order to file for benefits for child

### Fact

1. DHS policies prevent detention/removal of immigrant parents who are crime victims
2. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
3. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

# Poll: Who is the *least* likely to flee with children from the United States?



- A. U.S. citizens
- B. Undocumented immigrant victim mothers
- C. Dual national parents
- D. Multiple entry visa holder parents

# Fact: Legal immigrants/naturalized citizens are more likely to flee with children

- **Particularly when**
  - There have been threats of kidnapping children
  - They are dual nationals
  - They can travel freely to and from U.S.
- The Ninth Circuit found that “there is no evidence that undocumented status correlates closely with unmanageable flight risk.” *Lopez-Valenzuela v. Apaio*, 770 F.3d 772, 786 (9th Cir. 2014).

# ICE Parental/Guardian Interests Directive

## Part I July 2022

- Requires affirmative and ongoing inquiries about and identification of parents/legal guardians of minor children and incapacitated adults
- Status as a caregiver parents/legal guardian impacts
  - Decision to detain, initial placements, transfers of parents
  - Rights to family visitation & child welfare services/programs
    - ICE to comply with and facilitate court ordered visitation



# Information About Protected Areas From Immigration Enforcement Can Help With Visitation Exchange

## VAWA Confidentiality

- Victims protected at courthouses in connection with civil/family/criminal cases related to
  - Domestic violence, sexual assault, trafficking, stalking
- Shelters, rape crisis centers
- Supervised visitation centers
- Family Justice Centers
- Programs serving victims

## DHS Policy 10/27/21 At or Near:

- Schools and universities
- Medical or mental health care facilities
- Places of worship, religious events, weddings, funerals
- Places where children gather
- Social services: e.g., crisis, domestic violence, child advocacy, food banks, victim services, shelters, supervised visitation, family justice centers...
- Disaster/emergency response offered including family reunification
- Ongoing parade, demonstration, rally

# DIVORCE AND ECONOMIC SUPPORT

# Impact of Divorce

- VAWA self-petitioners:
  - Spouse must file within two years of final divorce
  - Step-children must file before 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

# 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 grant immigration relief
- Impacts
  - Spousal support
  - Property division

# Affidavits of Support

- 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)
  - Contractually committed to support sponsored family member at annually at 125% of Federal Poverty Guidelines
- Affidavits of Support are enforceable as contracts by the sponsored immigrant
- Support obligation lasts till immigrant spouse
  - Naturalizes, dies, earns 40 quarters of work credit, or gives up lawful permanent residency and leaves the U.S.

# Immigration Issues Arising in Child Support Cases

- There are immigration benefits for both parents to court ordered child support
- Lack of legal work authorization is not a valid defense to non-payment of child support
  - Courts can impute income
- 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

# Questions and Answers

# Technical Assistance and Materials

- Power Point presentations and materials for this webinar at [https://niwaplibrary.wcl.american.edu/CJI-JFF Aug 2024/](https://niwaplibrary.wcl.american.edu/CJI-JFF_Aug_2024/)
- **NIWAP Technical Assistance**
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)



# Evaluation