

Webinar: Immigration Issues in Family Court

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Judiciary of Hawaii and

Center for Justice Innovation

Honolulu, Hawaii

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(Ret.)**
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Join the National Judicial Network (NJNI)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJNI (304 judges – 42 states & 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
- We are placing a link to a sign up sheet in the chat

Learning Objectives

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

- Apply legally accurate information about immigration law in family court proceedings
- Issue protection orders with remedies that most effectively protect immigrant victims and their children
- In custody cases know which immigrant parents and other caregivers are not likely to be removed and which are most likely to flee the country with children
- Understand the importance of issuing orders containing economic relief for immigrant survivors and their children

**IMMIGRANT VICTIMS OF
CRIME AND ABUSE WILL
QUALIFY FOR HUMANITARIAN
IMMIGRATION RELIEF**

Department of Homeland Security

- DHS Dynamics Video



U.S. & Demographics (2021)

- 24.5% of the U.S. population is either foreign born or has one or more foreign born parents
- 29.1% of children in Hawaii under age 18 have one or more immigrant parents
- 84.8% of children in Hawaii living in immigrant families are U.S. citizens

Rafaela Rodrigues, Leslye E. Orloff, Amanda Couture-Carron, and Nawal H. Ammar, Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Survey and Recommendations (2018), National Center for State Courts: Courts and Society. <https://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings> ; Migration Policy Institute Data Hub , Hawaii 2021 <https://www.migrationpolicy.org/data/state-profiles/state/demographics/HI>

Judges Reporting Increases in the Opposing Party Raising Immigration Status in State Court Cases

- 2017 at higher rates (vs 2016)
 - Criminal cases 39%
 - Civil protection order cases 32%
 - Custody cases 31%
 - Divorce cases 23%

Rafaela Rodrigues, Leslye E. Orloff, Amanda Couture-Carron, and Nawal H. Ammar, Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Survey and Recommendations (2018), National Center for State Courts: Courts and Society. <https://niwaplibrary.wcl.american.edu/pubs/trends-in-state-courts-survey-findings>

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

Immigration Protections for Noncitizen Victims of Crime and Abuse

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply: USCIS Form I-914

T VISA

For victims of human trafficking

To apply: USCIS Form I-360

VAWA

For victims of domestic violence and abuse

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

To apply: USCIS Form I-589

ASYLUM

For victims of persecution

To apply: USCIS Form I-360

SIJ

Special Immigrant Juvenile classification for child victims under 21 years of age

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations



If approved, benefit provides:

- Ability to apply for permanent residency



If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

To apply: USCIS Form I-918

U VISA

For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



Center for Countering Human Trafficking

Immigration Relief Available for Immigrant Victims of:

- Domestic violence
 - Child abuse
 - Elder abuse
- Sexual assault
- Stalking
- Rape
- Abusive sexual contact
- Sexual Exploitation
- Incest
- Prostitution
- Video voyeurism
- Female genital mutilation
- Felonious assault
 - Aggravated Robbery
- Manslaughter
- Murder
- Hate Crimes
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Torture
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Parent perpetrated
 - Child abuse
 - Child neglect
 - Child abandonment

Involuntary Servitude in a Domestic Violence Relationship

<https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>

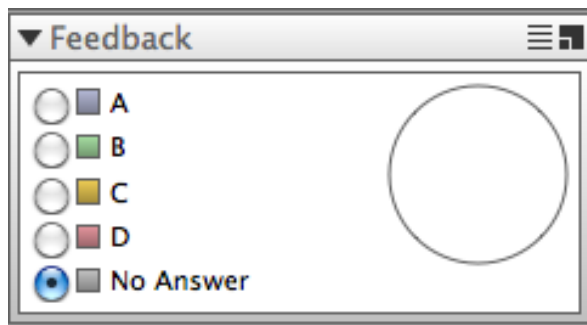
- Violates federal & state anti-trafficking laws
- Forced to work by use/threat of
 - physical restraint or physical injury
 - Coercion through law or legal process
- Goal of abuser to subject victim to a condition of servitude

Trafficker Control Victim's Liberty To Create a Condition of Servitude

- An expectation that the victim's life fulfills the orders of the trafficker
 - E.g., demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and/or constant availability to labor regardless of health or energy;
- Lack of control over the victim's own wages (or not paid) despite laboring under the trafficker's demands; or
- The imposition of unequal living arrangements as part of the campaign of force, fraud, and coercion
 - E.g., unequal sleeping arrangements, living arrangements, or access to nourishment.

Poll: In light of these immigration protections, which of the following groups of immigrants do you think you see in your courtrooms?

- A. VAWAs - Abused spouses and children of citizens and lawful permanent residents
- B. Special Immigrant Juveniles – Children abused, abandoned or neglected by one parent
- C. U Visa – Crime victims
- D. T visa – Adult or child victims of sex or labor trafficking
- E. All of the above

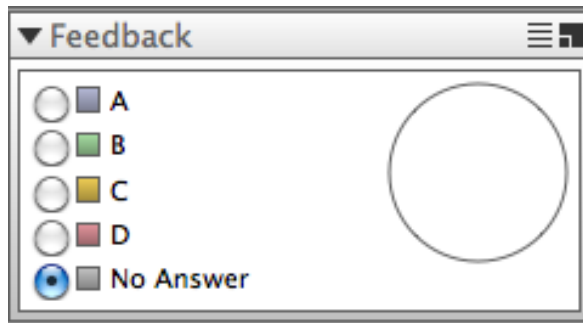


Rationale

- 25% of perpetrators actively report the victim for removal
- 36% of perpetrators get immigrant and LEP victims who called police for help arrested for domestic violence
- U visa applicants have over 70% cooperation rates in criminal investigation and prosecutions and have 36% higher future crime reporting rates

Krisztina E. Szabo, et.al., *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014); Rafaela Rodrigues, et. al., *Promoting Access to Justice for Immigrant and Limited English Proficient Victims (2017)*; Leslye E. Orloff, et.aal., *Transforming Lives: How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children After Work Authorization and Legal Immigration Status* (April 12, 2021)

Poll: What are the benefits of victims learning about and applying for victim-based immigration relief? (Check all that apply)



A screenshot of a poll interface. The window title is "Feedback". On the left, there are five radio button options: A (blue square), B (green square), C (yellow square), D (red square), and No Answer (blue circle). The "No Answer" option is selected. On the right, there is a large empty circle.

- A. Protection from deportation
- B. Legal work authorization
- C. Federally recognized ID
- D. Can include children in application
- E. More access to healthcare, housing, benefits
- F. Greater willingness to seek help from justice system & courts
- G. Other – TYPE IN CHAT

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

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>

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
 - 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)

After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action (2021)

- 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
- 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

Economic Impact of Work Authorization

- 300% increase in jobs that pay at least minimum wage
- 542% increase in formal sector jobs that deduct taxes
- 43% secure jobs with health insurance, sick leave, vacation pay & those working in the informal sector pay taxes using tax IDs
- At lawful permanent residency
 - 77% reduction in sexual assault or attempted sexual assault at work

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)

Education and English Language Learning

- 226% increase in victims taking ESL classes
- 167% increase in working to improve English speaking abilities
- 60% attend social events with people in the U.S.
- 35% obtain GEDs
- 38% pursue AAs and Bas
- 21% receive vocational education
- 19% advanced degrees

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)

Mental Health Benefits of Work Authorization and Deferred Action

- VAWA and U visa victims report increases in:
 - It being easier to make decisions 432%
 - Sleeping better & being calmer– 300%
 - Being more focused – 280%
 - More independent – 261%
 - Standing up for themselves 225%
 - Having more energy – 188%
 - Being less depressed 183%
 - More at ease – 162%
 - More hopeful 130%

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)

Protecting Immigrant Mothers Reduces Co-Occurring Child Abuse

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%)
- Children of help seekers are 20% less likely to have abusers threaten them
- One third less likely to have an abuser threaten to take them away from their mother

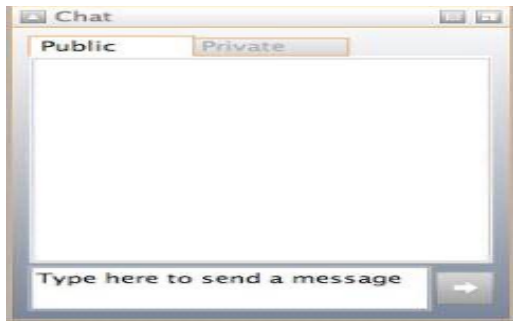
Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004) <http://niwaplibrary.wcl.american.edu/pubs/co-occurencedvchildabuse/>

Improvements for Children

- 6.6 fold increase in victim's involvement in their children's schools
- Increases in victim's children
 - 101% being more socially active
 - 134% pursuing their own interests
- At lawful permanent residency
 - 65% improvement in children's grades
 - 125% decrease in disciplinary problems
 - 80% less aggressive

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)

How does this information help family court judges?



Write in chat the box

What judicial leadership opportunities might this information provide?



Domestic Violence Definitions Under State Law and Federal Immigration Laws

Immigration Law Domestic Violence Definition

- Is broader and more inclusive than all state
 - Protection order laws, and
 - Criminal laws
- Immigration law definition
 - "Battery or Extreme Cruelty"

“Battery or Extreme Cruelty”

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

NCJFCJ Model Code on Domestic and Family Violence Incorporates Coercive Control

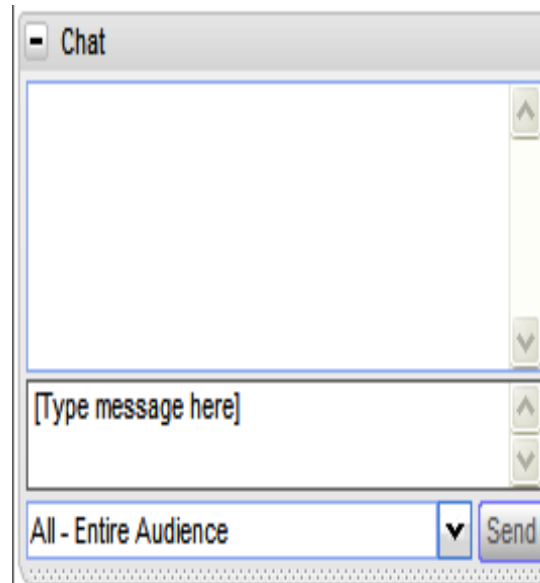
- Pattern involving a range of abusive behaviors beyond any inflicted or attempted physical violence
- Coercive controlling domestic abuse - a pattern of conduct that
 - Is associated with uniquely problematic and dangerous parenting
 - Uses intimidation, implicit/explicit threats, or compels compliance
 - Has the purpose or effect of restricting victim's safety or autonomy, trapping them, or using cultural practices/beliefs or immigration status to instill fear and maintain control over the victim
 - ≠ conduct victim takes to protect victim or their children from present or future harm

See Revised Chapter Four: Families and Children Model Code on Domestic and Family Violence (December 30, 2022) <https://www.ncjfcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/>

Immigration Law Definition of Battering or Extreme Cruelty

- “Being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence” 8 C.F.R. §204.2(c)(1)
- Based on what state family courts have consider to be extreme cruelty in divorce, alimony, support and custody cases

Name some factors that are included in NCJFCJ definition of coercive control and/or the immigration law definition of “extreme cruelty.”



Inexhaustive List of Examples of Behaviors Which May Constitute Coercive Control If They Are Part of a Pattern Of Conduct

- Monitoring, surveillance, intensely managing, dictating daily activities
- Intimidation
- Manipulating victim's mental health status/gaslighting
- Isolation
- Repeated humiliation and degradation
- Threatening to harm or abduct children
- Threatening deportation
- Immigration related abuse
- Committing or threatening to commit cruelty or abuse to animals connected to the family
- Using repeated court actions not warranted by existing law or good faith argument to harass, coerce, or control the other party, diminish or exhaust the other party's financial resources, or compromise the other party's employment or housing
- Cleaning, accessing, displaying, using, or wearing a firearm in an intimidating or threatening way

See Revised Chapter Four: Families and Children Model Code on Domestic and Family Violence (December 30, 2022)

<https://www.ncjfcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/>

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

- Includes but is not limited to
 - Emotional abuse
 - Economic abuse
 - Using children
 - Deportation threats and immigration-related abuse
 - Intimidation
 - Social isolation
 - Degradation
 - Possessiveness
 - Harming pets
 - Coercive control

What kinds of findings can judges make on CPO cases that could help prove battering or extreme cruelty in the victim's immigration case?



Beneficial Findings to Include When Issuing Family Court Orders

- In contested cases findings of:
 - Physical and sexual abuse, stalking, extreme cruelty, & human trafficking against
 - The immigrant survivor, their child, and/or their step-child
- In all cases showing existence of:
 - Parent/child relationship
 - Spousal relationship
 - Stepparent/stepchild relationship
 - Age of children

PROTECTION ORDERS



Tool: Immigrants and Protection Orders Bench Card

NIJ Funded CPO Study Found

With support immigrant victims will use and benefit from justice system assistance

- 60.9% did not know about CPOs
- 81% got CPO with help from advocate/attorney
- 96% found them helpful
- 68.3% of violations immigrant related

Ammar, Orloff, Dutton, and Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research Criminal Justice Review 37:337 (2012)

Abuse Suffered By Immigrant Survivors

- Immigrant seeking protection orders
 - 79% - physical and sexual abuse
 - 45% - stalking
 - 31% – dating violence
 - 25% – child abuse
- Survivor’s children
 - 39% - child abuse
 - 30% – battery and child abuse
 - 30% – physical and sexual abuse
 - 19% – stalking
- Ammar, Orloff, and Couture-Carron, Immigrant Victims of Interpersonal Violence and Protection Orders, in Civil Court Responses to Intimate Partner Violence and Abuse (2020)

When Courts Act in Ways Welcoming to Immigrants

- More immigrant survivors seek CPOs from courts that:
 - Provide language access
 - Sign U visa certifications
 - Issue Special Immigrant Juvenile Status findings
 - Outreach to immigrant communities
 - Rule against abusers who raise the victim's immigration status in CPO or custody cases

Rodrigues, Husain, Couture-Carron, Orloff, & Ammar, 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. (2018)

Immigrant Protection Order Eligibility

Immigrants and Protection Orders

- Courts have jurisdiction and all persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
 - Chapter on jurisdiction in materials
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Immigrants and Protection Orders

- Protection order issuance = no effect on immigration status
- 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

Poll: True or False?

Issuance of a
protection order
creates a deportable
offense ?



True



False

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

Poll: Which of 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

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

Poll: What are the Dangers of Issuing a Protection Order Against A Victim?

(Check all that apply)



- A. Endangers victims'/childrens' safety
- B. Increases coercive control
- C. Perpetrator could win custody of children
- D. Immigrant victims one-step away from deportation
- E. Other TYPE in CHAT

Effect of Protection Order Issued Against *Immigrant Victims*

- Victim is one step away from deportation
- A violation of a protection order is a deportable offense
 - Findings enough – conviction not required
- Perpetrators who are successful in convincing courts to issue protection orders are often also successful in obtaining findings that the victim violated the order
- Undermines access to victim based immigration relief which requires proof of good moral character
 - VAWA self-petition, VAWA cancellation, Naturalization

Importance of Self-Defense and Primary Aggressor Determinations

- Importance of determining was there an offense
- Was as person acting in self-defense
- Who is the primary aggressor in the relationship
 - When the party against whom a protection order is sought may be the victim
 - This is particularly important for immigrant victims

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/perpetrators 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

Protection Orders For Victims Not Separating From Their Abusers

Poll: Why Might Victims Not Separating From Their Abusers Seek Protection Orders?

(Check all that apply)



- A. Living in extended families
- B. Limited housing options
- C. Awaiting legal work authorization
- D. Curb abuse
- E. Help shift power and control in relationship

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

- Until the victim receives work authorization as part of their immigration case or thier 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 immigration related abuse
 - No unlawful contact
 - Batterer's treatment
- Discuss U.S. v Dixon Supreme Court Case

Creative Protection Order Remedies

Poll: What Protection Order Remedies Do You Most Commonly Include in Your Orders?

(Check all that apply)



- A. Custody of children
- B. Kick-out orders
- C. Economic relief
- D. Stop immigration related abuse
- E. Stay away orders
- F. Property exchange/ replacement

Why is it important to address custody and visitation in protection orders?

What other steps judges should take in cases of immigrant victims and children?



In CPOs for Immigrant Survivors

- Special Immigrant Juvenile Status
 - When CPO includes custody of a child who was abused, abandoned, or neglected by one of the child's natural or adoptive parents
- U Visa Certification
 - Victims of criminal activity
- Trafficking victims
 - Office of Trafficking in Persons (OTIP) reports for child trafficking victims
 - T Visa Declarations

Judicial Resources on Immigration Relief for Survivors and Children

- Special Immigrant Juvenile Status Bench Book
 - <https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>
- U Visa Certification and T Visa Declaration Toolkit for Judges and Other Judicial Officers
 - <https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit>
- HHS – Office on Trafficking In Persons Trainings help for human trafficking victims
 - <https://niwaplibrary.wcl.american.edu/njn-otip2023>
- NJN –State Justice Institute Judicial Training Materials
 - <https://niwaplibrary.wcl.american.edu/pubs/sji-and-judicial-training-network-materials>

Using Catch-all Provisions to Stop Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare, etc.) concerning the petitioner except
 - Police emergency
 - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities (e.g. work visa holders, I-130s)

Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order
- Supervised visitation
- Bond

Remedies That Help a Victim's Immigration Application

- Turn over documents/evidence in abuser's control needed for the victim's immigration case.
- What might some of those documents be?



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

Important Economic Provisions

- Maintain medical, car, house insurance
- Mortgage, rent, utility and/or debt payments
- Child support and spousal support
 - Enforce Affidavit of Support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm victim (banks, retirement funds, utility companies)

Important Economic Provisions

- Provide one time emergency monetary relief
 - Money to repair locks or broken windows
 - Obtain an unlisted telephone number
 - Relocation assistance
- Taxes
 - Turn over income tax statements
 - Respondent ordered to pay victim $\frac{1}{2}$ of refund
 - Victim named trustee for receipt of tax return funds
 - Respondent ordered to sign over check
 - Victim awarded exclusive right to claim children as tax exemptions

Custody of Children in Immigrant Families Experiencing Domestic Violence and/or Child Abuse

Tool: Immigrant Victims and Custody Bench Card

Impact of domestic violence on a child's developing brain



Protecting Immigrant Mothers Reduces Co-Occurring Child Abuse

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%)
- Children of help seekers are 20% less likely to have abusers threaten them
- One third less likely to have an abuser threaten to take them away from their mother

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How Children Benefit

- After filing
 - Mothers seek protection orders –include children
 - VAWA self-petitioners 63%; U visas 67%
 - Mothers seek custody orders
 - VAWA self-petitioners 60%; U visas 64%
- After work authorization and deferred action
 - 78% decline in threats to snatch/cut off access to children

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> ; 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);

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



Poll: Which parents are the *most* likely to be removed from the U.S.?



- A. Immigrants with orders of removal
- B. Undocumented immigrant victim parents
- C. Immigrants with criminal convictions
- D. Immigrants with notices to appear in immigration court

Who Is Likely to be Removed?

Year

Criminal Convictions Pending Criminal Charges:

Other Immigration Violations:

- | | | |
|-----------|---------|---------|
| • FY 2016 | • 91.7% | • 8.3% |
| • FY 2017 | • 89.2% | • 10.8% |
| • FY 2018 | • 87.1% | • 12.9% |
| • FY 2020 | • 92% | • 8% |

“The fact an individual is a removable noncitizen therefore should not alone be the basis of an enforcement action against them. We will use our discretion and focus our enforcement resources in a more targeted way. Justice and our country's well-being require it.”

Department of Homeland Security Memo, Sept. 30, 2021)

Department of Homeland Security Victim Witness 2011 Memo – still effective

Goal: “Minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”

- “Absent special circumstances or aggravating factors, it is *against* ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”
- Crime victims and witnesses should receive “release from detention and deferral or a stay of removal.”

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

Immigrant Victims Involved in Custody Cases Will Qualify for One of These Remedies

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

To apply: USCIS Form I-914

T VISA

For victims of human trafficking

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply: USCIS Form I-360

VAWA

For victims of domestic violence and abuse

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

To apply: USCIS Form I-589

ASYLUM

For victims of persecution

SIJ

Special Immigrant Juvenile classification for child victims under 21 years of age

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

To apply: USCIS Form I-360

U VISA

For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes



If approved, benefit provides:

- Ability to apply for permanent residency

To apply: USCIS Form I-918

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities (Sept. 30, 2021) and
Trasviña ICE OPLA (May 27, 2021) Memos

- *Crime victim, witness, party in legal proceedings*
- *Person is likely to be granted humanitarian or other immigration relief (temporary or permanent)*
- *Impact on family in U.S. of loss of caregiver/provider*
- *Advanced/tender age/pregnancy*
- *Poor health or serious medical condition*

Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities (Sept. 30, 2021) and
Trasviña ICE (May 27, 2021) Memos

- Lengthy presence in U.S.;
- Military or public service by immigrant or family member
- History of work in the U.S.
- Pursuit or completion of education in the U.S.
- Time since offense, rehabilitation, conviction vacated or expunged

Examples: Mitigating Factors

- Post Nov. 1, 2020 entrants who are
 - Victim of domestic or sexual violence in the U.S.
 - SIJS eligible child
- Victim arrested for domestic violence
 - Victim called police, no qualified interpreters
 - Victim arrested, to get out of jail plead guilty
- Victim arrested for stealing baby food when fleeing abuser

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).

Flight Risk of Foreign Born Parents with Children

- Assessing risk factors for international child abduction based on U.S. State Department research
 - Consider whether the other parent:
 - Has previously abducted or attempted to abduct the child;
 - Has threatened to abduct the child;
 - Has engaged in activities that may indicate a planned abduction including abandoning employment; terminating a lease; or closing bank accounts;
 - Has engaged in domestic violence, stalking, or child abuse;
 - Has refused to follow a child-custody determination; or
 - Has strong family, financial or emotional ties to another country.
 - For complete list of risk factors, *See* Uniform Law Commission, *Uniform Child Abduction Prevention Act*, at 10, (2006), <https://www.uniformlaws.org/viewdocument/final-act-with-comments-7?CommunityKey=c8a53ebd-d5aa-4805-95b2-5d6f2a648b2a&tab=librarydocuments>.

Judge Collins:
What should be
included in court
orders to prevent
international child
abduction and/or
reduce the risk of a
parent fleeing with a
child?



Poll: True or False?

- True or False: A parent with legal immigration status must be awarded custody in order to sponsor their child for legal immigration status



Custody not legally required for sponsorship

- Custody is not required for parents to file for immigration status for their children
 - Citizens
 - Lawful permanent residents
 - Visa holders
 - Work Visas
 - Student Visas
 - Diplomatic Visas
 - Religious worker and international worker visas

Poll: What options might be available to a battered immigrant when the abuser seeks custody claiming that the victim has no livelihood?

(Check all that apply)



- A. Child and/or spousal support
- B. Victim files immigration case and gains legal work authorization
- C. Public benefits available to the child or immigrant parent under state/federal benefits laws
- D. All of the above

When Victims File For Crime Victim Based Immigration Relief --

- They are on a path to obtain
 - Legal work authorization
 - A driver's license
 - Greater access to state and federally funded public benefits
- Their application is confidential so that their abuser cannot learn they have filed
 - VAWA confidentiality bars discovery in family court of victim's immigration case file, its existence, and results

Work Authorization by Immigration Status

- VAWA Self Petitioners
 - Abuser US citizen = 4 months
 - Abuser Lawful permanent resident = 1 -1.5 years
- U-Visa applicant = 4-5 years
- T-Visa applicant = 18 months
- SIJS applicants = 6 months

Trends in Case Law

- Flight risk:
 - Finding that undocumented immigration status does not make an individual a flight risk. *See Huff v. Vallejo*, 347 Ga. App. 127, 817 S.E.2d 696 (2018).
- Ability to provide financially for children
 - “...illegal aliens suffer disadvantages. For example, they cannot enter into an employment relationship. But plenty of people have worked, and thrived, as independent contractors all their lives.” *See Hupp v. Rosales*, 2013 IL App (4th) 130433-U.

Trends in Case Law: Risk of Deportation

- “[i]t is true that, theoretically, any illegal alien can be deported. The danger, however, is extremely remote. Statistically, the chances are minuscule that any particular illegal alien will be apprehended and placed in removal proceedings.” *See Hupp v. Rosales*, 2013 IL App (4th) 130433-U.
- “...Pending removal proceedings being treated as a single factor in the best interest analysis rather than determinative. *See N.C.T. v. F.T.S.*, No. A-3822-16T3, 2018 WL 891216 (N.J. Super. Ct. App. Div. Feb. 15, 2018).

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

A Family Reunited



ICE Parental/Guardian Interests Directive 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
 - Unless parent is the abuser, ICE required to accommodate efforts to make arrangements for children
 - If court orders custody or return of child, ICE will in most cases release parent/guardian
 - ICE required to bring parents/guardians to court and establish communication with courts.

Visitation

How Does Information About Protected Areas From Immigration Enforcement Help In Family Courts Cases?

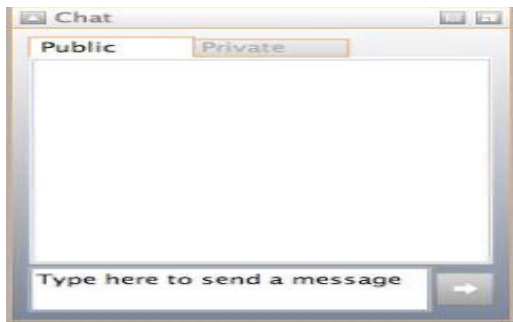
VAWA Confidentiality

- 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

What impact could knowledge about protected locations have on your visitation orders?



Write in chat the box

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

Background

- Spousal control over filing for immigration relief affects
 - Ability to legally live in U.S. without risk of deportation
 - 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)
- Immigrant victims have limited access to the public benefits safety net

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
 - Can set victim up for marriage fraud investigation
- Impacts
 - Spousal support
 - Property division

Child Support in Mixed Immigration Status Families

What are the
benefits of seeking
and paying court
ordered child
support for
immigrant parents?



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
- Obtaining child support awards can provide helpful evidence of good moral character
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies

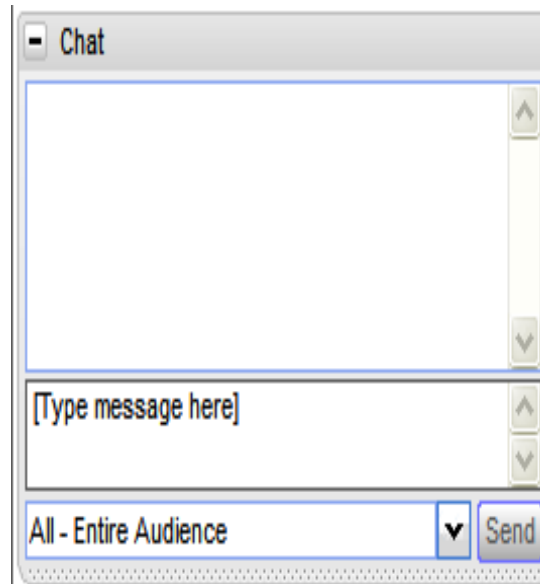
Immigration Issues Arising in Child Support Cases

- 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)

When a non-custodial immigrant parent is working in the informal economy what can be used to prove 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)
 - Information in the Affidavit of Support
- Undocumented workers can pay state & federal taxes on income earned using an IRS issued
 - Tax ID number (ITIN)

What Judges Need to Know About Immigrant Access to Public Benefits

Poll: In what types of court proceedings have you ordered or directed someone to seek, obtain, looked into seeking a state or federally funded public benefit or service? (Check all that apply)



- A. Child welfare
- B. Custody
- C. Divorce
- D. Delinquency
- E. Guardianship

Why Is It Important for Judges?

- Ordering or directing survivors and children to seek state or federally-funded public benefits
 - Enhances the economic stability of survivors and their children.
- However, court's need to be careful to only order that litigants apply for benefits they or their children are eligible to receive

Immigration Enforcement Reporting Requirements

- Federal laws do not require state and federal government employees who do not work for the Department of Homeland Security to participate in immigration enforcement
- Exceptions
 - Public benefits agency staff
 - Specific law enforcement officials working under 287(g) agreements with Department of Homeland Security

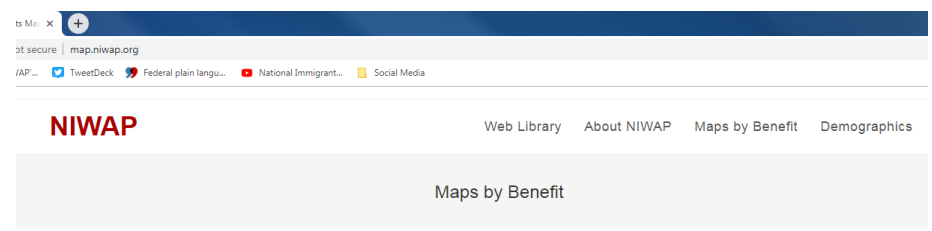
Public Benefits Agency Reporting DHS Requirements

- SNAP and TANF programs staff are required to make reports to DHS about
 - Immigrants who seek TANF or SNAP for their own use; AND
 - TANF or SNAP makes a formal finding that they “know” the immigrant is not lawfully present in the U.S. ; AND
 - That finding is based on a DHS or immigration judge determination that the immigrant benefits applicant is unlawfully present
 - Requires a final order of deportation
 - <https://niwaplibrary.wcl.american.edu/pubs/limits-on-required-government-agency-reporting>

Both documented and undocumented immigrants can access:

- Family Court – e.g. divorce, custody, child support, protection orders, child welfare
- Language Access
- Police Assistance
- Have perpetrators prosecuted
- Obtain public benefits for their children
- Elementary & Secondary education
- School lunch/breakfast
- Soup kitchens, food banks, nutrition assistance
- Communicable disease immunizations, testing, treatment, treatment from public health centers
- Services necessary to protect life and safety
- Legal Services
- Assistance for Crime Victims
- Emergency Medicaid
- Emergency Shelter
- Transitional Housing
- Child and Adult protective services
- Crisis counseling and intervention
- Violence/abuse prevention services

Interactive Public Benefits Map



NIWAP

Web Library About NIWAP Maps by Benefit Demogr

Legal Services



Maps by Benefit

These maps break down available public benefits based on immigrant's state and immigration status.
We are still working on this site, so if you cannot click on your state, check back soon for completed maps.



Cash Assistance (TANF)
Temporary Assistance for Needy Families (TANF) provides cash assistance to low income families with children.

[Go to Map](#)



Child Care
Child Care services may be provided through public benefits.

[Go to Map](#)



Children's Health Insurance Program
Medical assistance is available to children through the Children's Health Insurance Program (CHIP).

[Go to Map](#)



Driver's License
State-specific requirements to be issued a driver's license.

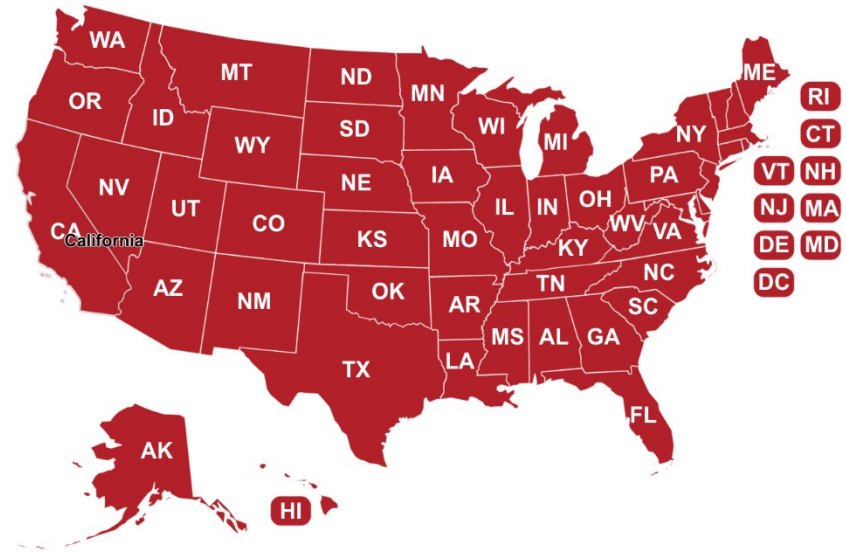
[Go to Map](#)



Earned Income Tax Credit



Emergency Housing & Safety Programs



<http://map.niwap.org/>

Benefits in Hawaii

- TANF
 - VAWA, Continued Presence (CP), T visas
 - SIJS (3 yrs) and U visa (25+ yrs) lawful permanent residents
- Child care
 - TANF same as above
 - Child Care Development Fund – no restrictions
- SNAP
 - CP, T visas
 - Child VAWA self-petitioners and SIJS child-LPRs
- Education
 - Federal: VAWA, CP, T visa applicants, SIJS-LPRs
 - In-State tuition & scholarships: If in U.S. 3 yrs. + 12 months residence in HI no immigrant restrictions

Benefits in Hawaii

- **Health Care**
 - Exchanges: VAWA, CP, T visa, U visa bona fide, SIJS applicants
 - State Premium Subsidies: Under 100% FLP & lawfully present
 - VAWA, CP, T visa, U bona fide, SIJS applicants
 - CHIP: Until 19 - VAWAs, CP, T visa, U visa bona fide, SIJS applicants
 - Full scope adult Medicaid if pregnant, seniors, disabled, or after federal 5 year bar if: VAWA, CP, T visa, U visa bona fide; SIJS
 - Breast and cervical cancer screening no immigrant restrictions
- **SSI (most limited):** CP, T visa, VAWA, SIJS, and U visa lawful permanent residents (5 year bar+ 40 quarters work)
 - HI: Seniors & persons with disabilities Aid to Aged, Blind, Disabled
 - VAWA, CP, T visa, and SIJS and U visa Lawful permanent residents
- **Hawaii Driver's License** with proof of identity and HI residency
 - Federally recognized – work authorization
 - VAWA approved, T visa bona fide, CP, U visa waitlist, SIJS –LPRs, DACA

Benefits in Hawaii

- Housing
 - Transitional – all victims + homeless + abused children
 - Public and Assisted: VAWA applicants, CP, T visas, SIJS – LPRs
- LIHEAP
 - Weatherization and Hawaii Electric Light's Special Medical Needs and Ohana Energy Gift Programs – No Immigrant Restrictions
 - LIHEAP – VAWA, CP, T visa, SIJS LPRs
- FEMA
 - Emergency assistance: everyone
 - Individual Households Program: VAWA, T visa, CP
 - Individual & Family Grant Program: VAWA, T visa, CP, SIJS & U Visa-LPRs
 - US Small Business Administrations Loans: VAWA, T visa, CP
 - Disaster Unemployment Assistance: VAWA, T visa, CP, SIJS & U visa-LPRs
 - Emergency Food Stamps: T visa, CP, SIJS & U visa-LPRs (after 40 quarters of work credit)

Enforcement of Affidavits of Support

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
- Immigrant victims could have affidavits of support if their citizen husband ever filed immigration papers
- Enforcing affidavits of support should be routine in mixed immigration status divorce cases

How Could a Judge Learn That an Affidavit of Support Exists and Obtain a Copy

- Ask both parties if one was ever filed
- Order citizen or lawful permanent resident spouse to produce it
- If the citizen or lawful permanent resident spouse says they do not have a copy
 - order that they complete a FOIA to obtain it
- Be sure to obtain the Affidavit of Support and the evidence submitted to DHS with the affidavit

Poll: What evidence would have been submitted with the affidavit of support? (Check all that apply)



- A. 3 years of tax returns
- B. Evidence of current employment including self-employment
- C. Proof of income sufficient to sustain spouse at or above 125% of the federal poverty guidelines
- D. 12 months of bank statements
- E. Evidence of ownership & value of stocks, bonds, real and personal property

Affidavit of Support: Duration and Enforceability

- Affidavits of support are enforceable as contracts by the sponsored immigrant
- Affidavits can be forever. The responsibility lasts until the non-citizen spouse:
 - Becomes a U.S. citizen = Naturalizes;
 - Dies
 - Is Credited with forty (40) hours (10 years) of work credit under Social Security Administration rules- INA §213A;
 - Ceases to hold the status of a lawfully admitted for permanent resident *and* departs the U.S.;
 - Obtains in removal proceedings a new grant of lawful permanent residency.

Divorce does not end the obligation

- It is possible that none of these happen until the death of the parties involved.
- The Affidavit of Support itself specifically warns “that divorce **does not** terminate your obligations under this Form I-864.”
- Estrangement, loss of contact between the spouses, premarital or divorce agreements to not end the responsibility
- There is no statute of limitations on enforcement

How do Sponsored Immigrants Earn Qualifying Quarters

- Sponsored immigrants earn the quarters themselves
- Sponsoring spouse earned qualifying quarters during the marriage that can be credited to the immigrant spouse
 - Divorce cuts off immigrant spouse quarters spouse earned; death of sponsor does not
- Immigrant children can count the qualifying quarters earned by sponsor parent when child was under 18 years old
- A combination of the above

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)

Greenleaf v. Greenleaf

- Greenleaf court ordered that “the trial court shall first determine plaintiff’s obligation under the Affidavit of Support and enforce that obligation.”
“After having determined plaintiff’s obligation under the Affidavit of Support, the trial court shall make a separate determination whether defendant is entitled to spousal support.”
 - Greenleaf v. Greenleaf, Docket No. 299131, 2011 WL 4503303, at 3 (Mich. Ct. App. Sept. 29, 2011)
- No Duty to Mitigate
 - Kumar v. Kumar, 220 Cal. Rptr. 3d 863, 868 (Cal. Ct. App. 2017)

Spousal Support – Hawaii

Haw. Rev. Stat. § 580-9; 580-47 (13)

- Immigrants are eligible for:
 - Temporary support while divorce pending
 - Short-term (transitional or rehabilitative support)
 - Long-term spousal support
- Wait times for immigrant victims to work authorization
 - Should be considered together with other factors in deciding duration and amount

Amount Due Per Year Depends on Household Size - Example

Citizen sponsored his immigrant spouse and step-child for lawful permanent residency. During the marriage, the citizen and immigrant spouse had two more children. The immigrant spouse needed to separate from the citizen spouse due to domestic violence, and lived with the three children apart from the abusive citizen spouse for three years. The immigrant spouse did not receive any income or support from the abuser for those three years, and she filed for divorce and enforcement of the affidavit of support.

Poll: What would be the household size for the affidavit of support obligation?



- A. Immigrant mother and step child = 2
- B. Immigrant mother, step-child and party's 2 children born of the marriage = 4

2021 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES & DC

Persons in family/household	Poverty guideline
For families/households with more than 8 persons, add \$4,540 for each additional person.	
1	\$12,880
2	\$17,420
3	\$21,960
4	\$26,500
5	\$31,040
6	\$35,580
7	\$40,120
8	\$44,660

Calculating the Affidavit of Support

- Poverty Guideline for 2 people for 2021
 - $17,420 \times 125\% = 21,775$
- Poverty Guideline for 2 people for 2020
 - $17,240 \times 125\% = 21,550$
- Poverty Guideline for 2 people for 2019
 - $16,910 \times 125\% = 21,138$
- Total due under affidavit of support =
64,463

Effect of a Pre 1997 I-134 Affidavit of Support

- Do not create a legal obligation
- Not legally binding contracts
- Helpful evidence for spousal and child support - the affidavit of support may be
 - Be considered with other evidence in deciding alimony after a long marriage
 - Impact the amount of alimony
 - Used to impute income regarding ability to pay spousal or child support
 - Provide helpful evidence of income and assets

VAWA Confidentiality in State Court Proceedings

Why is VAWA Confidentiality Important for State Courts?

- Promotes access to justice and just and fair outcomes in state courts
- Perpetrators may attempt to use state court discovery to obtain federal VAWA confidentiality protected information
- Prohibited immigration enforcement locations include courthouses

VAWA Confidentiality Prongs

Abuser-Provided Information Prohibition

Included family members of perpetrators

Protects all victims
*in the process of applying for U and T visas

Location Prohibitions

Protects all victims

Requires:
No action at protected locations
OR
Notice to Appear must state how they complied with VAWA confidentiality

Non-Disclosure

Protects victims who **have filed** a protected case with DHS

Overview of DHS Policies and Regulations on VAWA Confidentiality

- Protects all information about the victim's VAWA confidentiality protected immigration case
- Prohibits disclosure of any information about
 - The existence of a VAWA, T or U visa application
 - Decisions made in the case
 - Information contained in the #A file
- Disclosure is prohibited to all persons, not just the perpetrator

Protecting Information About a Survivor's Immigration Case

- Protect survivors who have suffered
 - Battering or extreme cruelty
 - Domestic violence, child abuse, elder abuse
 - Human trafficking
 - Sexual assault, stalking and other U visa listed crimes
- Protections apply from the time of filing permanently unless
 - Case denied on the merits
 - All appeal options have been completed

DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, and attorneys about immigration law protections for
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivor

VAWA Confidentiality Violations

- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Violations also include making a false certifications in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)
- ICE required to certify compliance to immigration judge = violations can be basis for dismissal



Poll: Have you had a case where an abuser, trafficker or crime perpetrator sought discovery of information about or contained in a victim's immigration case file?



A. Yes

B. No

Poll: If you answered yes, in which types of cases? (Check all that apply)



- A. Criminal prosecution
- B. Divorce
- C. Civil Protection Order
- D. Custody
- E. Civil employment case
- F. Other – TYPE in CHAT

VAWA Confidentiality Law's Statutory Disclosure Exceptions

Limited Disclosure in Narrow Circumstances – Law Enforcement

- Disclosure to law enforcement or national security officials
 - Solely for a legitimate law enforcement or national security purpose; and
 - In a manner that “protects the confidentiality of such information”

Poll: True or False?

VAWA confidentiality's judicial exception applies to State Court judges hearing criminal, family and/or civil court matters.



Limited Disclosure in Narrow Circumstances – Judicial

- A judicial exception applies only to appeals of the victim's immigration case
- Exception does not extend to state or federal judges hearing other civil, family, or criminal court matters

Hawke v. Dep't of Homeland Security

(N.D. CA, 2008) – VAWA Self-Petition Case

(Judicial Review Exception)

- VAWA Confidentiality Protects cases:
 - All cases unless denied on the merits
- Judicial exception applies to appeals of victim's immigration case
 - Does not apply to civil, family, or criminal court proceedings
- 6th Amendment right to compulsory process does not permit access to absolutely privileged information
- “Primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer”

Other Limited Exceptions

Public Benefits

Federal, state and local public benefits agencies, and to private agencies providing public benefits

Determine eligibility for public benefits

Anonymous Information

Congressional oversight same privacy protections as census

Victim Directed

Victim can authorize DHS to refer them for help to victim service providers

Must have consent from all adult victims to waive confidentiality

Demaj v Sakaj (D. Conn, 2012) –U Visa/Custody Case

- Although relevant to credibility and impeachment
- Family court discovery barred as contrary VAWA confidentiality purpose --
 - Prevent disclosure of documents & information in a protected case file to alleged criminals
 - Stop perpetrator's actions to interfere with & undermine a victim's immigration case
- Seeking to obtain protected information through discovery in a custody case = interference with the victim's immigration case barred by the federal statute
- VAWA confidentiality applies to protect the case file contents, including in cases when
 - The victim discloses in state court that DHS has approved her protected immigration case

EEOC v Koch (5th Circuit)

- In civil discovery court must consider
 - How discovery of U visas might intimidate victims outside of the case before the court
 - Compromising the U visa program and law enforcement investigations and prosecutions more broadly
 - Koch: limited discovery crafted to maintain anonymity may be allowable
 - That is not possible in a family or criminal court case

State v. Marroquin-Aldana – Criminal Case

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- “Insufficient justification” to disclose additional documentation when the defense had the certification form
- Provided defense opportunity to cross-examine victim and call credibility into question
- Court noted the “high level of protection” given to documents filed with immigration

People v. Alvarez- Criminal Case

No. G047701, 2014 WL 1813302, at *5 (Cal. Ct. App. May 7, 2014),
review denied (July 16, 2014)

- “The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status...which was completely irrelevant to this case.”
- The trial court was well within its discretion in excluding reference to the U visa

Key Learning Points

- The need for balancing of interests
 - Relevancy of the information vs.
 - Prejudice against immigrants
 - Federal law protecting the information
- Difference between
 - U/T Visa case with certification
 - T Visa case with no certification
 - VAWA Self-Petition



Impact of VAWA Confidentiality

- VAWA Self-Petition
 - No discovery in a criminal, family, or civil case
- U visa
 - U visa certification *may be discoverable* in criminal or civil multiple victim employment case
- T visa
 - If there was a T visa declaration *may be discoverable* in criminal or multiple victim employment case

Resources Available to Assist Courts

- SJI Funded Materials for Judges in the NIWAP Web Library
 - Bench book on SIJS
 - U and T visa certification toolkit for judges
 - Bench cards for family court judges
 - Custody
 - Protection Orders
 - Divorce
 - Economic Relief
 - Public benefits map and charts

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/CJIHIFamilyJan2024>
- Judicial Training Manual at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials/>
 - **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

Evaluation