

Child Custody and Immigration Related Abuse: Myths and Best Practices

WEBINAR

December 13, 2021



**Judge Rosemary Collins
(Ret.)**

Circuit Court Judge of the 17th
District Circuit Court of
Winnebago County



Leslye Orloff

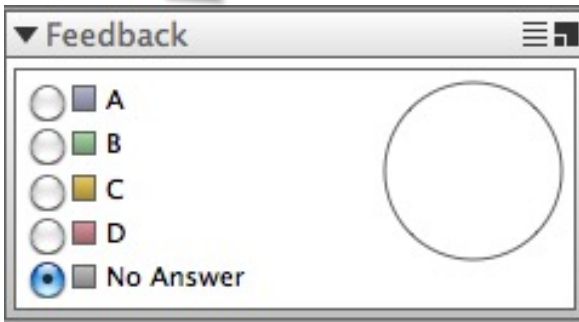
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Who Has Joined Us on This Webinar?

Answer on
the left

A screenshot of a feedback form window titled "Feedback". It features a vertical list of five radio buttons on the left, each followed by a letter: A (blue square), B (green square), C (yellow square), D (red square), and "No Answer" (blue circle). To the right of these options is a large empty circle. The window has a standard title bar and a menu icon in the top right corner.

▼ Feedback

☐ A

☐ B

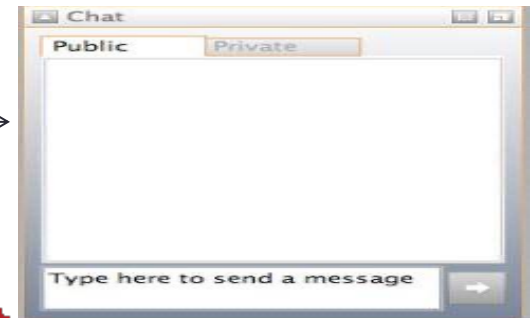
☐ C

☐ D

☒ No Answer

- A. Judge/court staff
- B. Domestic violence/Family law attorney
- C. Victim Advocate
- D. Law enforcement/prosecutor's office staff
- E. Other

Other write
in chat box

A screenshot of a chat window titled "Chat". It has two tabs: "Public" and "Private", with "Public" selected. Below the tabs is a large text area for messages. At the bottom, there is a text input field with the placeholder "Type here to send a message" and a send button with a right-pointing arrow.

Chat

Public Private

Type here to send a message

Questions about custody and
immigrant survivors that you would
like answered by the end of this
webinar?

Dynamics Of Domestic Violence Experienced By Immigrant Parents That Impact Custody Cases

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
 - Lifetime as high as 49.8%
 - Those married to citizens and lawful permanent residents – 50.8%
 - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses

Department of Homeland Security



Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years.**

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." *International Review of Victimology* 7 93113

- 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)

- Abuse rate rises to 59.5% when an immigrant's spouse/former spouse is a U.S. citizen

- Twice the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). *Battered Immigrants and U.S. Citizen Spouses*

Best Practice: Screen for Immigration Related Abuse

- 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse
- May predict abuse escalation
- Corroborates existence of physical and sexual abuse

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

- Threatening to report/turn over the victim to Department of Homeland Security
- Attempt to interfere in victims' immigration case filed by the abuser
- Hiding, destroying, or restricting access to identification and other important documents
- Giving victim misinformation about immigration status, process and/or available relief

Sexual Assault Rates Among Immigrant Women

- High school-aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
 - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).

The Effects of Domestic Violence on Children Vary and Include:

- **Physical** – injuries, health concerns
- **Emotional** – fear, reverting to safe behaviors, anxiety, self-blame
- **Social** – problems interacting with peers, high risk behaviors
- **Neurological** – effects on brain development
- **Cognitive** – school performance issues, anxiety/depression, PTSD

Impact of domestic violence on a child's developing brain



Behaviors of Abusive Parent

- Exposure to domestic violence
- Role model – rigid inappropriate roles, abusive tactics
- Undermining victim parent
- Isolating, limiting resources, restricting choices
- Threatening harm or removal of children (pets)
- Focus on their (the abusive parent's) needs
- Engendering fear in children

Perpetrators Efforts to Trigger Victim's Removal

- Perpetrators actively reporting victims with pending immigration cases for removal
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested when the victim called police for help with domestic violence
 - VAWA self-petitioners rose 2013-2017 from 15.4% -17%
 - U visa rose 2013-2017 from 7.5% -36%

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work 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)

Judge Collins:
What are some
examples of
immigration related
abuse in custody
cases?



Immigration Relief Plays an Important Stabilizing Role for Immigrant Parents Who Are Survivors of Domestic Violence, Sexual Assault and Stalking

Purpose of Crime Victim Protections

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes without fear of deportation
- Improve ability of victims to access justice from family, criminal and civil courts
- Enhance victim safety
- Keep communities safe

What are the Benefits for Survivors?

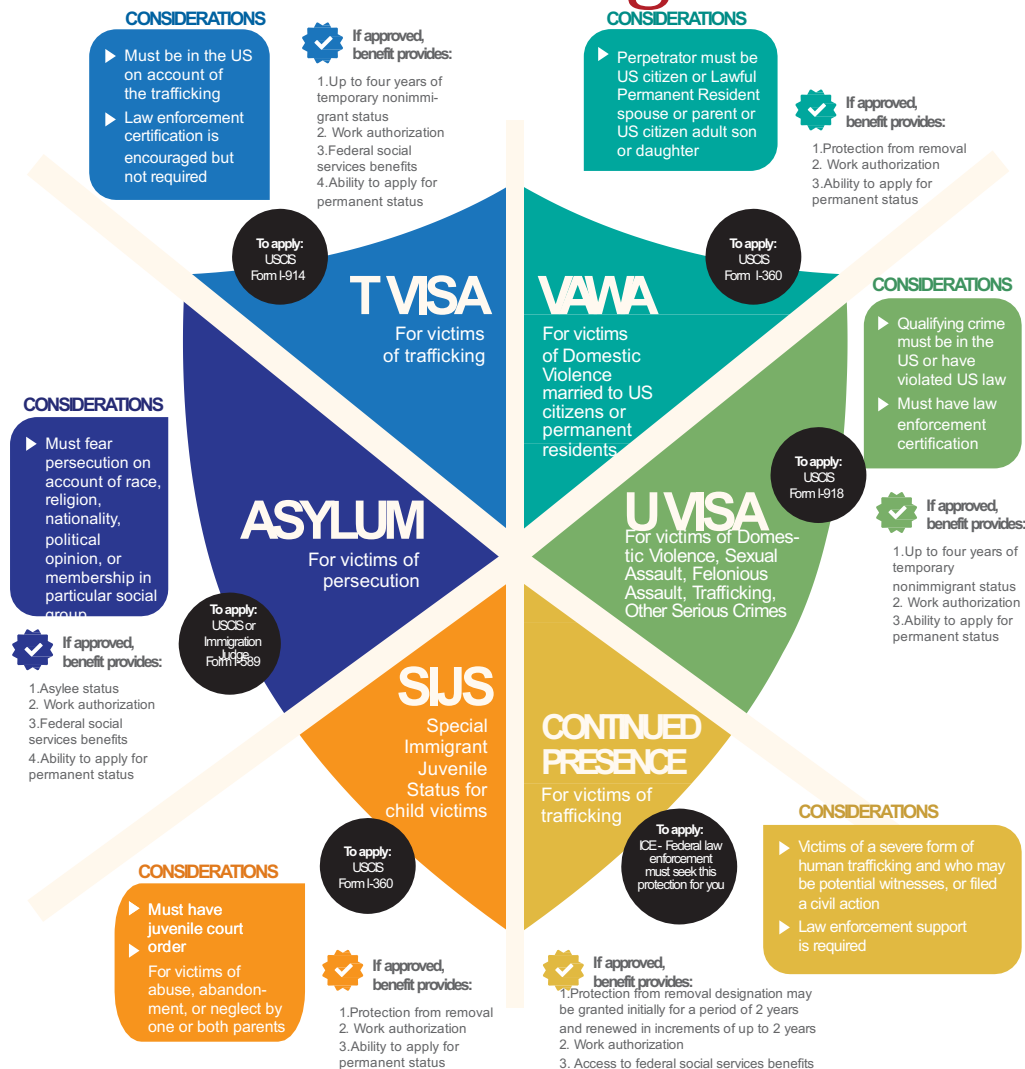
- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
 - Legal work authorization (3-60 months from filing)
 - Issuance of federally recognized ID and driver's license
 - More benefits access than undocumented victims
- VAWA confidentiality

Immigration Relief Available for Immigrant Victims of —

- Domestic violence
 - Child abuse
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking
- **Parent perpetrated**
 - **Child abuse**
 - **Child neglect**
 - **Child abandonment**

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

Protections For Immigrant Victims

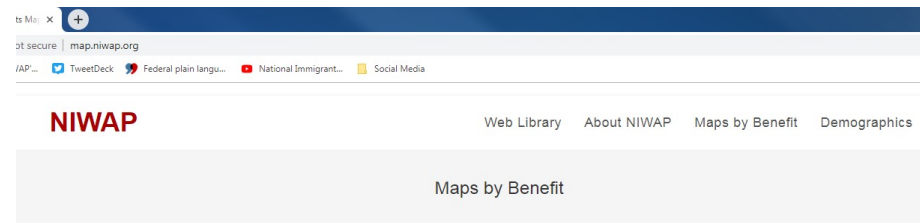


DHS.GOV/BLUE-CAMPAIGN

Recognizing Which Immigrant Crime Victims and Children May Qualify for Immigration Relief

- Domestic violence/child abuse
 - VAWA self-petitioning,
 - VAWA defenses against removal in immigration court,
 - Battered spouse waiver,
 - Special Immigrant Juvenile Status
 - U visa
- Sexual assault, stalking, many other violent crimes
 - U visa and T visa
 - Special Immigrant Juvenile Status
- Human trafficking
 - T visa and U visa
 - Continued presence

Look Up Eligibility Differences for Public Benefits by Immigration Case Type in Your State: 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.

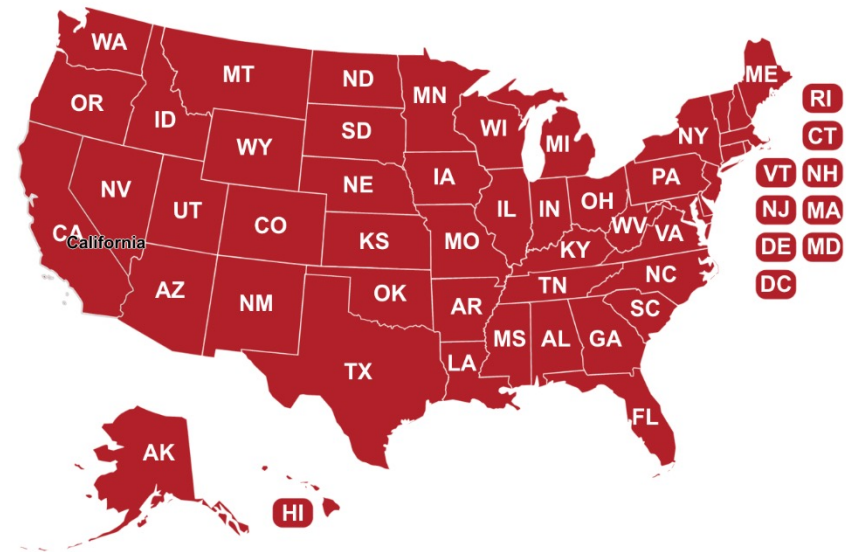
[Go to Map](#)



Earned Income Tax Credit



Emergency Housing & Safety Programs



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

Judge Collins: How
does a judge's
knowledge of
immigration relief
for victims and their
children impact
custody decisions?



Knowledge of Immigration Issues is Important in Family Matters

- ▶ Addressing immigration status issues early can
 - ▶ Improve outcomes in family court cases
 - ▶ Prevent or delay family court orders that cut off a party and her children from immigration relief
- ▶ Family court actions can assist with
 - ▶ Helpful evidence for an immigration case
 - ▶ Obtaining from family court judges
 - ▶ SIJS findings for abused immigrant children
 - ▶ Certifications in immigrant crime victim's U or T visa case
 - ▶ Creative protection order remedies

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
- Timeline to work authorization = 4–18 months (2019)
- Impact on family court cases and helpful court orders

Battered Spouse Waiver

- Helps immigrant spouses with 2-year conditional residency (green cards)
- Citizen spouse filed a family visa petition for them
- Requires proof of
 - Battering or extreme cruelty to immigrant spouse or immigrant spouse's child or step-child
 - Good faith marriage
- Waives
 - Joint filing requirement with abusive citizen spouse
 - Two-year wait to full lawful permanent residence
- Timeline to full lawful permanent residency = 12-24 months (2021)
- What family courts need to know and helpful orders

Immigration Law Definition of Domestic Violence (Battering or Extreme Cruelty)

Battering

- Physical violence against
 - Spouse/intimate partner
 - Child
- Use of a weapon
- Sexual abuse & assault
- Stalking
- Other acts defined as domestic violence under state law
- Attempts or threats to do any of these actions

Coercive Control = Extreme Cruelty:

- Strategies designed to retain control or establish domination through fear, dependence, deprivation, isolation, immigration related abuse
- Deprivation of basic necessities
- Controlling regulating, monitoring the victim
- Compelling through force, intimidation threats to abstain or engage in conduct against victim's will

Extreme Cruelty:

- Withholding medicine or medical care
- Adultery with a minor
- Financial abuse, seeking to destroy victim's credit
- Accusations of infidelity
- Using children as a tool
- Emotional abuse causing physical or psychological harm

U Visa for Victims of Criminal Activity

- 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
- Timeline to work authorization and deferred action = 4–6 years (shortening with 2021 bona fide process)
- Family court's role

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 findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- **Timeline to approval = 6 – 36 months (2021)**
- **Family court's role**

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
- Timeline to work authorization = 12–18 months (2021)
- Family court's role



Impact of State Court Orders on the Immigration Case

- Specific written orders are helpful to immigration adjudicators and immigrant parties
- Court orders contain evidence of
 - Abuse, abandonment, neglect, domestic violence, sexual assault, extreme cruelty
 - Family relationships including
 - Marriage
 - Parent-child relationship
 - Step-parent/step-child relationship

What are the benefits for immigrant survivor parents and their children crime victim based immigration relief?



NIWAP's Evidence Based Research Findings

- 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>

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

Trust on Justice System

- 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

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

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% security jobs with health insurance, sick leave, vacation pay
- At lawful permanent residency
 - 77% reduction in sexual assault or attempted sexual assault at work

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

Improved Community Engagement

- 13 fold increase in reengagement with the victim's cultural community in the US
- 80% increase in engaging with people outside of the abuser's family in the community, friends and neighbors
- At lawful permanent residency
 - 159% increase in socializing with people from the US
 - 126% adopting US social norms

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)

Judge Collins: How
can attorneys use
this information to
education judges
deciding custody
cases?

The National
Judicial Network's
Role



Custody For Immigrant Survivor Parents

Mixed Immigration Status Families

Demographics

- 24.5% of the U.S. population is either foreign born or has one or more foreign born parents
- 25.8% of children in the U.S. under age 18 have one or more immigrant parents
- 88.2% of children 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>

Protecting Immigrant Mothers Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- 33% less likely to have abuser threaten to take the children 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/>

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>

A Starting Principle for Analysis

- A person's immigration or citizenship status per se
- Is irrelevant to the determination of
 - Family law rights including
 - Divorce
 - Custody
 - Protection orders
 - Child support

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. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. 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. US citizens and lawful permanent residents are more likely to flee with children, especially when
 - There have been threats of kidnapping children
 - They are dual nationals
 - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

Multiple Choice Exercise:

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

ICE Removal Data

2013

- Convicted criminals 82%
- Repeat immigration violators 7.8%
- Ordered removed and failed to depart 1.6%
- Other immigrants 7.7%

<https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>

2017

- Criminal convictions 73.7%
- Pending criminal charges 15.5%
- Outstanding notices to appear in immigration court 5.3%
- Ordered removed and failed to depart + reinstatement 2.8%
- Other immigrants 2.6%

<https://www.ice.gov/removal-statistics/2017>

2020

- Criminal convictions/ pending criminal charges 92%

<https://niwaplibrary.wcl.american.edu/pubs/ice-ero-report-2020>

Victim Witness DHS Memo 2011

Confirmed 6/18 & 1/21

- 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.”

Civil Immigration Enforcement Priorities (DHS Memo, Sept. 30, 2021)

- Terrorism, espionage, or threat to national security
- Threat to Border Security if
 - Apprehended while attempting to unlawfully enter the U.S.; or
 - Apprehended inside the U.S. after unlawfully entering after November 1, 2020
- *Current* threat to public safety due to serious criminal conduct
 - Individual assessment based on totality of the circumstances
 - Gravity and sophistication of the offense, conviction, sentence
 - Nature and degree of harm
 - Serious prior criminal record; Use of dangerous weapons

Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities 9.30.2021 and Trasvina ICE 5.27.21 Memo

- *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*
- *Lengthly 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*

“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.” Alejandro Mayorkas (DHS Memo, Sept. 30, 2021)

Multiple Choice Exercise:

In what percentage of your cases involving battered immigrants would the the victim be a high priority for removal?



- A. None
- B. Under 10%
- C. Between 11% and 20%
- D. 20% to 50%
- E. Over 50%

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

Obtaining and Using Legally Correct Information About Immigration Law in Custody Cases

NIWAP Web library

niwaplibrary.wcl.american.edu



Introduction

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Family Law

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Dynamics, Culture, & Safety

Language Access

Access to Legal Services

VAWA Confidentiality

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Type here to search

NIWAP

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

Multiple Choice Exercise:

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 can attorneys
ask for and judges
can include in court
orders to prevent
international child
abduction and/or
reduce the risk of a
parent fleeing with
a child?



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

Multiple Choice Exercise:

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



- 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

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

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).

Detained Parent Directive, Aug. 2017

- If parents are detained:
 - Placement near family court when ongoing family court/child welfare cases
 - Bring parents to family court to participate in cases involving children
 - Alternate: video or teleconference participation
 - Facilitate visitation when required by family/child welfare court order
 - Help children travel with parent who is being deported—obtain passports for children
 - ICE field office points of contact

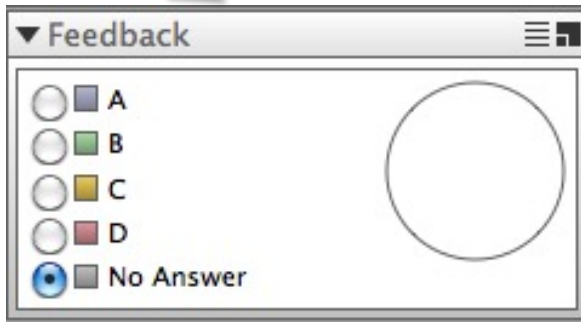


PROTECTION ORDERS



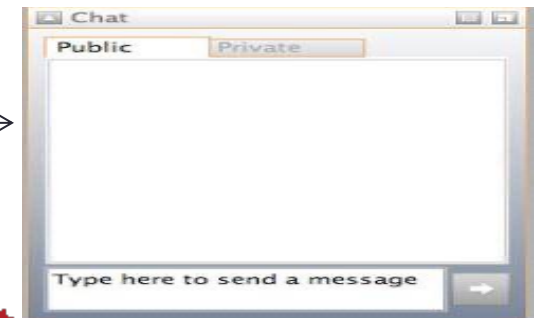
In your jurisdiction how often do judges include custody awards to the abused parent in protection order cases?

Answer on
the left

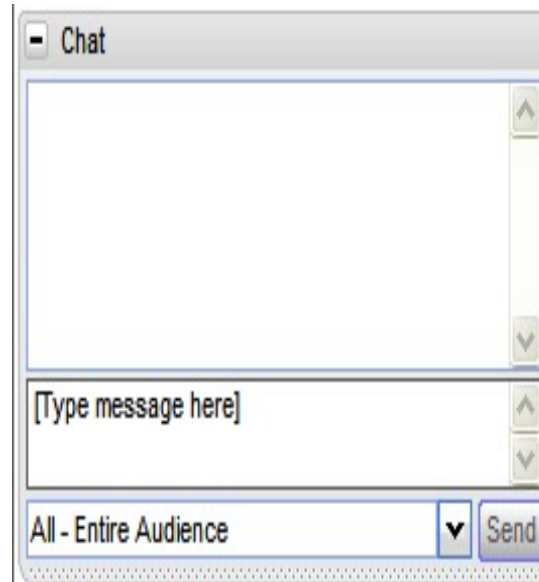
A screenshot of a feedback form window. The title bar says "Feedback". Inside, there are five radio buttons with corresponding colored squares: A (blue), B (green), C (yellow), D (red), and "No Answer" (grey). To the right of these options is a large empty circle. A green arrow points from the text "Answer on the left" to the radio button options.

- A. Always
- B. Over 90% of the time
- C. Often
- D. Sometimes
- E. Never

Other write
in chat box

A screenshot of a chat window. The title bar says "Chat". There are two tabs: "Public" and "Private". Below the tabs is a large text area for typing. At the bottom, there is a text input field with the placeholder "Type here to send a message" and a send button with a right-pointing arrow. An arrow points from the text "Other write in chat box" to the text input field.

Why are custody awards to the survivor not being included in protection orders?



What are the
advantages for
family lawyers to
litigate custody in
the protection order
case?



Judge Collins:
What are best
practices for state
court judges with
regard to issues
custody awards to
survivors in
protection orders?



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
- A conviction *or finding* of violation of the “*protection against* abuse provisions” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Findings of Certain Protection Order Violations = Deportable Offenses

- Even if no criminal prosecution or conviction
- Deportable Offense = An immigrant “enjoined under a protection order issued by a court and whom **the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable.**”
- 8 U.S.C. § 1227(a)(2), INA § 237(a)(2)(E)(ii) (emphasis added).

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

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
- Child/Spousal support
- Health insurance

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

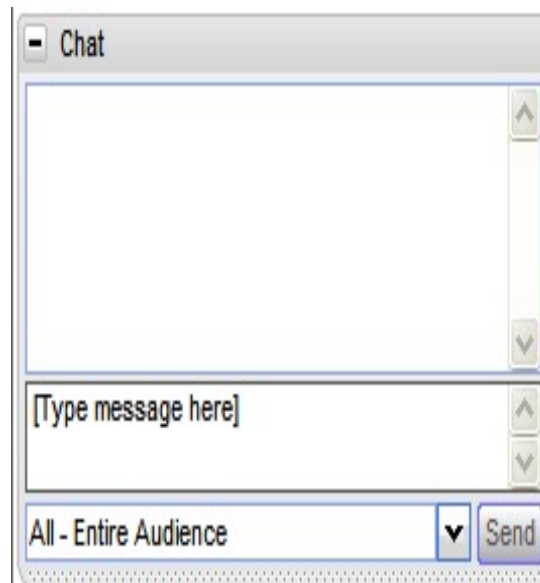
Immigration Issues Arising in Child Support Cases

- 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?



When a non-custodial immigrant parent is working in the informal economy how might a lawyer 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)
- Undocumented workers can pay state & federal taxes on income earned using an IRS issued
 - Tax ID number (ITIN)

NIWAP Technical Assistance, Materials, and Training

- Power Point and materials for this webinar
 - <https://niwaplibrary.wcl.american.edu/Custody2021>
- Judicial training manuals, toolkits, bench card and materials at <https://niwaplibrary.wcl.american.edu/sji-njn-materials>
- **NIWAP Technical Assistance**
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– <https://www.surveymonkey.com/r/BBHR3X3>