

National Judicial Network Peer-to-Peer Forum: You Don't Know What You Don't Know: Surprising Information Every Family Court Judge Needs to Know About Immigration Law

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

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

NCJFCJ - Enhancing Judicial Skills in Domestic Violence – Immigration Curriculum

- NCFJCJ – Juvenile Justice Conference – Cleveland March 18, 2024 – SIJS
- NCFJCJ Pending Application– National Conference Phoenix July 2024
- June 2024 – U visa certification by judges
- 2025 – Full curriculum

Learning Objectives

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

- Recognize when a child, parent, or party before the court is eligible for victim or abuse based immigration relief
- Issue spot and anticipate immigration law issues that arise in family court cases, particularly in cases that involve domestic violence and/or maltreatment
- Know where to get up-to-date legally accurate information on immigration law when you need it
- Attend future trainings based on the Enhancing Judicial Skills in Domestic Violence Cases curriculum that address the intersection of immigration and family laws

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

Tool: Immigration Options for Victims Bench Card; SIJS
Bench Book; & U Visa Judicial Certification Toolkit

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



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
 - Fraud Foreign Labor Contracting
 - Peonage
 - False Imprisonment
 - Blackmail
 - Extortion
 - Witness tampering
 - Obstruction of justice
 - Perjury
 - Parent perpetrated
 - Child abuse
 - Child neglect
 - Child abandonment
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

Involuntary Servitude in a Domestic Violence Relationship

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

- Trafficker controls victim's liberty creating conditions of servitude
- Expectation that the victim's life fulfills the trafficker's orders
 - 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 1: What are the benefits of victims learning about and applying for victim-based immigration relief? (Check all that apply)

▼ Feedback

A

B

C

D

No Answer

○

- 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

Immigration Law Domestic Violence Definition “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

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

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/>

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

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

Use Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Economic relief
 - Child/Spousal support, health insurance, rent, mortgage, utilities, one-time emergency monetary relief, tax returns

Poll 2: 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

When parties are separated why is it important to address custody and visitation in protection orders, including particularly for immigrant victims?



Poll 3: 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
 - Importance of self-defense and primary aggressor determinations when CPO filed against immigrant victim

Best Practices

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

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

**Tool: Immigrant Victims and Custody Bench Card;
Immigration In Custody Cases:
Article Reviewing Case Law Trends**

Children Benefit When Mothers File for Immigration Relief

- Co-occurring child abuser reduces (77% to 23%)
- 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); 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/>

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



- 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 by ICE?

Year

Criminal Convictions and 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% |
| • FY 2021-2023 | • 98% | • 2% |

Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities (Sept. 30, 2021) and OPLA Memos

- *Crime victim, witness, party in legal proceedings*
- *Likely to be granted immigration relief*
- *Impact on family in U.S. of loss of caregiver/provider*
- *Advanced/tender age/pregnancy*
- *Poor health or serious medical condition*
- *Lengthy presence in the U.S*
- *Work history, pursuit/completion education in US*

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

Myth vs. Fact:

Parents without Legal Immigration Status

- Parent is likely to flee U.S. with child
- The parent has no livelihood
- Legally present parent must have custody in order to file for benefits for child



Myth vs. Fact:

Parents without Legal Immigration Status

Myth

1. Parent is likely to flee U.S. with child
2. The parent has no livelihood
3. Legally present parent must have custody in order to file for benefits for child

Fact

1. 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.
2. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
3. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

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.

Best Interest Children Is Furthered by Keeping Children With Custodial Caregivers



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.

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

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 & 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 either parent's immigration cases
 - Cancellation of removal
 - Naturalization
 - Obtaining relief in immigration court
 - Can be used to show hardship to family members

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

Affidavits of Support

- Each person who petitions for a family member to immigrate to the U.S. executes an affidavit of support
 - Legally enforceable contract
 - Enforceable by the sponsored immigrant
 - Requires support at 125% of Federal Poverty Guidelines
- Enforcing affidavits of support should be routine in mixed immigration status divorce cases
- Affidavits can last forever - until noncitizen spouse
 - Becomes a citizen, dies, is credited with 40 quarters of work credit (SSA), or no longer LPR *and* leaves US
- Divorce does not end obligation

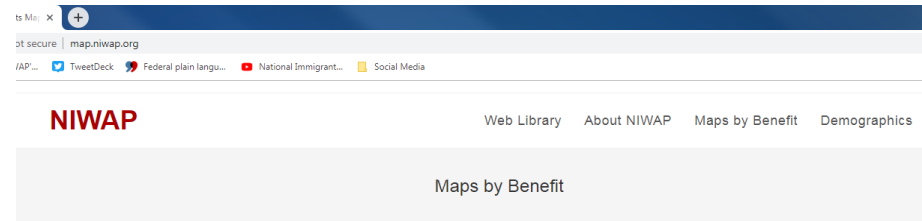
Why Immigrant Access to Public Benefits Is Important for Judges?

- 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

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.

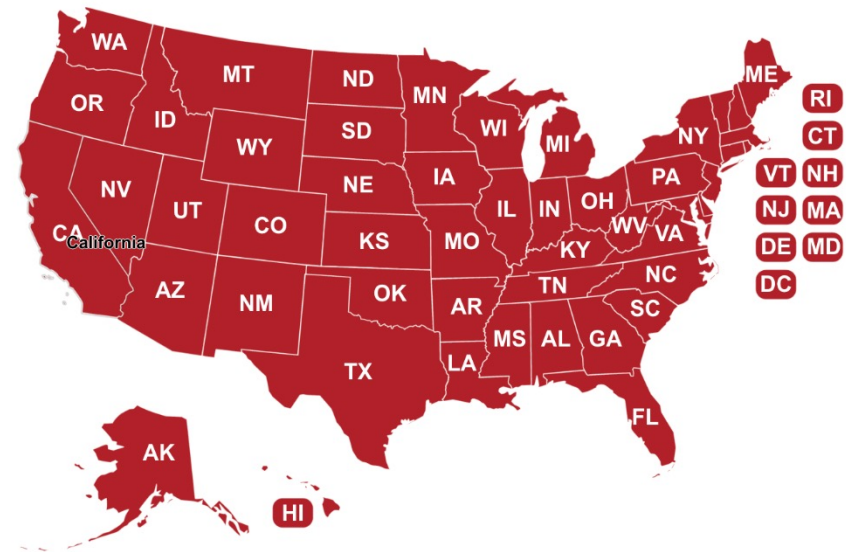
[Go to Map](#)



Earned Income Tax Credit



Emergency Housing & Safety Programs



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

VAWA Confidentiality in State Court Proceedings

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

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

Discovery: Key Learning Points

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

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

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