

Special Immigration Issues in Family Court

Judge Rosemary Collins (Ret.), Judge Katherine
Essrig, Leslye E. Orloff, and Dr. Sujata Warriier

Advanced Judicial Studies -OSCA

Sanibel, Florida

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Introductions

- Judge Katherine Essrig
- Judge Rosemary Collins (Ret.)
 - Presiding Judge Family Court Rockford, Illinois
- Leslye E. Orloff,
 - Adjunct Professor, NIWAP American University, Washington College of Law
- Dr. Sujata Warriar
 - Training and Technical Assistance Specialist, Battered Women's Justice Project

Learning Objectives

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

- Know how accurate immigration law information results in just and fair outcomes in family court cases
- Recognize facts that indicate a party qualifies for crime victim related forms of legal immigration status
- Know how Violence Against Women Act (VAWA) confidentiality laws impact discovery
- Be able to sign U and T visa certifications, understanding the role that Congress created for judges
- Make appropriate findings in state court cases that immigrant children filing for Special Immigrant Juvenile Status must obtain from a state court

Resources Review

- Handouts
- Training materials
- Web Library
- On-line webinars
- Technical Assistance
- National Judicial Network
 - Peer to Peer Sessions

Participant's Expectations

- What are your questions you want to be sure are answered by the end of the course?
- What are you expecting to learn?

Join the National Judicial Network (NJN)

- Forum on Human Trafficking and Immigration in State Courts
- What is the NJN
 - 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 circulating a sign up sheet

What countries do the
immigrants you see in your
courts come from?

Florida (2021)*

- ❖ Total foreign born population – 4,608,653
- ❖ 21.2% of the country's ~ 21.8 million people are foreign born
 - ❖ 60.2% naturalized citizens
 - ❖ 29% legal permanent residents
 - ❖ 10.8% temporary visa holders or undocumented immigrants
- ❖ 72.6% rise in immigrant population from 2000 to 2021
- ❖ Length of time immigrants have lived in the U.S.
 - ❖ 44.7% entered before 1999
 - ❖ 23.8% entered 2000 - 2009
 - ❖ 31.5% since 2010
- ❖ 35.4% of children under age 18 have one or more immigrant parents
 - ❖ 82.9% of these children are native-born U.S. citizens

**Source: Migration Policy Institute Data Hub (September, 2023) and Lawful Permanent Resident estimates MPI and DHS (2022)*

Florida– Countries/Regions of Origin & Limited English Proficiency (LEP)(2021)*

- ❖ Latin America – 75.6%
 - ❖ Cuba (21.1%)
 - ❖ Other South America (14.8%)
 - ❖ Other Caribbean (12.8%)
 - ❖ Other Central America (9%)
 - ❖ Colombia (6.6%)
 - ❖ Mexico (6.2%)
 - ❖ Jamaica (5.1%)
- ❖ Europe – 9.8%
 - ❖ Eastern Europe (4%)
- ❖ Asia – 9.2%
 - ❖ Southeastern Asia (4%)
- ❖ Canada – 2.1%
- ❖ Africa – 1.6%
- ❖ Middle East – 1.6%
- ❖ Oceania –0.2%
- ❖ Language spoken
 - ❖ 30% of people in the state who speak a language other than English at home
 - ❖ 44.5% of foreign born persons are LEP - speak English less than “very well”

**Source: Migration Policy Institute Data Hub (September, 2023)*

Florida-Languages Spoken at Home (2021)*

- ❖ Spanish (4,556,093)
- ❖ Haitian (434,681)
- ❖ Portuguese (156,347)
- ❖ French (including Cajun) (103,125)
- ❖ Russian (77,454)
- ❖ Vietnamese (74,233)
- ❖ Tagalog (including Filipino) (73,785)
- ❖ Arabic (71,232)
- ❖ Chinese (including Mandarin, Cantonese) (69,713)
- ❖ German (60,481)
- ❖ Italian (44,465)
- ❖ Polish (24,942)
- ❖ Hindi (26,467)
- ❖ Gujarati (24,439)
- ❖ Hebrew (22,171)
- ❖ Korean (18,899)
- ❖ Yiddish, Pennsylvania Dutch, or Other West Germanic Languages (17,926)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/FL>
(September, 2023)

Florida-LEP (2021)*

- ❖ Limited English Proficiency (Speak English less than very well)
 - ❖ Naturalized citizens – 36.6%
 - ❖ Noncitizens – 56.5%
- ❖ Limited English Proficiency by language spoken at home
 - ❖ Vietnamese (55.8%)
 - ❖ Chinese (including Mandarin, Cantonese) (50.6%)
 - ❖ Spanish (42%)
 - ❖ Korean (42%)
 - ❖ Russian (41.4%)
 - ❖ Haitian (39.2%)
 - ❖ Portuguese (36.1%)
 - ❖ Polish (30.7%)
 - ❖ Arabic (29.7%)
 - ❖ Gujarati (27%)
 - ❖ Italian (25.8%)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/FL> (September, 2023)

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Polling Exercise: Myths and Realities

Abusers of immigrant spouses are more likely to be lawful permanent residents and immigrants than U.S. citizens.



True



False



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



Polling Exercise: Myths and Realities

In over 70% of abusive marriages U.S. citizen husbands refuse to file or withdraw immigration papers they filed to sponsor their abused immigrant spouse for lawful permanent residency.



True



False

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)



Polling Exercise: Myths and Realities

Foreign born girls are twice as likely as U.S. born girls to have experienced sexual assault by the time they are in high school.



True



False

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).



Polling Exercise: Myths and Realities

Being present in the U.S. without legal immigration documentation is a crime.



True



False

8 U.S.C. § 1325

“Improper Entry ” by Noncitizen

- It is a misdemeanor to enter or attempt to enter the United States at an improper place, without inspection by an immigration officer, or by willful misrepresentation and concealment of material facts. The misdemeanor occurs when the undocumented individual is apprehended while attempting to enter the U.S. unlawfully or immediately after unlawful entry

Department of Homeland Security

- DHS Dynamics Video





Polling Exercise: Myths and Realities


Tips from perpetrators and trafficking stops are of the two most common ways immigrant victims of domestic and sexual violence become targets of immigration enforcement.



True



False



When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence when victims called police for help
 - VAWA self-petitioners 17% (2017); U visa 36% (2017)
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7%

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)



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)

Historical Development of Humanitarian Immigration Relief for Abused Immigrants and Immigrant Crime Victims

- Spousal sponsorship rooted in the how laws viewed rights within marriage
- 1907-1922 US citizen woman lost citizenship if married foreign born husband
- In 1952, the INA became gender neutral, but kept the sponsorship scheme
- Control of immigration process could be in hands of a batterer, abusive employer, trafficker
- Congress created **VAWA, T and U-visa, and SIJS** to address this problem, protecting victims and contributing to increased offender accountability.

Purpose Crime Victim Based Immigration Relief

Congress enacted VAWA self-petitioning (1994), the U and T visas (2000, 2005, 2008) & Special Immigrant Juvenile Status (SIJS) (1990,2008) to:

- Enhance victim safety
- Allow victims to report crimes and seek help from police, prosecutors, and courts without fear of deportation
- Improve access to justice in family/criminal/civil courts for immigrant victims of
 - Domestic & sexual violence, stalking, human trafficking and child/elder abuse
- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Keep communities safe

Story: How Immigration Relief for Victims Improves Community Safety

Large Group Discussion

- What are the benefits of gaining legal immigration status for immigrant victims and immigrant children?

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>



Trust in 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

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)

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

**Many Immigrant Victims of
Domestic Violence, Child
Abuse, Sexual Assault and
Other Crimes Are Eligible for
Immigration Relief**

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

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



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-589

ASYLUM

For victims of persecution

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

To apply:
USCIS
Form I-360

SIJ

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

U VISA

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

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.



DHS.GOV/BLUECAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

All U.S. Citizenship and Immigration Services (USCIS) forms can be found at: www.uscis.gov/forms/all-forms



Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
 - Child abuse
 - Elder 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
 - Hate Crimes
 - Video voyeurism
 - **Parent perpetrated**
 - **Child abuse**
 - **Child neglect**
 - **Child abandonment**
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

DHS Immigration Options for Victims of Crime Brochure



- Languages Offered
 - Spanish
 - Mandarin
 - English
 - Korean
 - Russian

Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Ability get immigration relief for children
- Financial independence from perpetrator
 - Legal work authorization (6 months to 5 years from filing)
 - Issuance of federally recognized driver's licenses and IDs
 - Increased access to federal and state public benefits
- VAWA confidentiality



VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse;
 - parent; or
 - Citizen adult son/daughter (over 21)
- With Whom Self-Petitioner Resided
 - No time period required
- Good Moral Character
- Good Faith Marriage
- VAWA cancellation of removal has similar eligibility requirements
- **2023 time to work authorization = 4-34 months**

Battered Spouse Waivers

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

2023 time to approval 17.5 to 29 months

Abused Spouses of Work Visa Holders

- VAWA provides work authorization for abused spouses of work visa holders
 - A - Diplomats/Foreign government workers
 - E-3 - Australian specialty occupation workers
 - G - International organizations
 - H - Specialty occupations/distinguished merit
- Receive work authorization but will need to file for a U or T visa or other form of permanent immigration relief
- **2023 – 9.5 months to work authorization**

Time to Legal Work Authorization and Formal Protection Against Deportation

- Battered spouse waiver
(Continue existing protections)
Abused spouses of US citizens with 2-year conditional permanent residency
- VAWA self-petition (3-24 months)
Abused spouses/children of US citizens and lawful permanent residents
Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
(1 year)
Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Special Immigrant Juvenile (SIJS)
(6 -8 months) Children abused, abandoned or neglected by one or both parents
- U visa (4-5 years)
Has been, is being, is likely to be helpful
Substantial harm from criminal activity
- T visa-Continued Presence
(6 months -24 months)
Victims of severe forms of human trafficking
- Work Authorization -Abused Spouses of Work Visa Holders (6-12 months)
A, Eiii, G and H visas

“Battery or Extreme Cruelty”

- Includes
 - All forms of abuse covered under state civil protection order statute or criminal laws
 - Includes threats, attempts, and coercive control
 - Plus – Forms of abuse that are extreme cruelty
 - No physical harm or crime required – examples
 - Emotional abuse; Economic abuse; Using children; Deportation threats and immigration-related abuse; Intimidation; Social isolation; Degradation; Possessiveness; Harming pets

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



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
- **2023 time to work authorization = 6 months**

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- **2023 time to work authorization – 60-62 months**



T Visa for Trafficking Victims

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



What are Severe Forms of Human Trafficking?

- **Sex Trafficking:** in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- **Labor:** The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

(Federal Law—“Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.ojp.usdoj.gov/vawo/laws/vawo2000/)

Familial Trafficking

- Over 62.7% of sex trafficked children their trafficker is a family member
 - Parent, grandparent, aunt, uncle, cousin, sibling
 - With 45.8% parent or guardian
- Up to 34% of sex trafficked children are trafficked by an intimate partner
- Cole, J., & Sprang, G. Sex trafficking of minors in metropolitan, micropolitan, and rural communities. *Child Abuse & Neglect* (2014), <http://dx.doi.org/10.1016/j.chiabu.2014.07.015>

Protections for Abused Children and Family Members

- VAWA self petitioner = Abused child, stepchild, parent or parent of abused child can apply for family:
 - Over 21: applicants' children/stepchildren
 - Under 21: Can include their parent and their children
- U and T visa applicant = Victim/parent of abused child can apply for family:
 - Over 21: spouse and children/stepchildren
 - Under 21: spouse, children, stepchildren, parents, unmarried siblings under 18
- Special Immigrant Juvenile Status = child victim
 - Family included: None

Clara and Eduardo Case Scenario

Clara met Eduardo a lawful permanent resident when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.



What forms of immigration relief would Clara qualify for:

- A. U visa
- B. Included in Lupe's VAWA self-petition
- C. T visa
- D. All of the above

Feedback

A

B

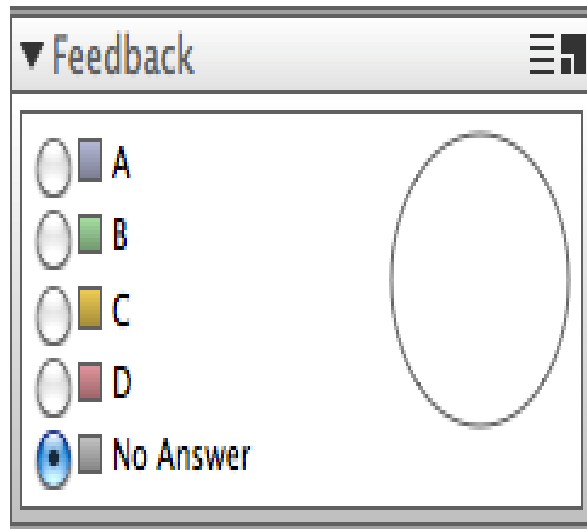
C

D

No Answer

A large empty circle is visible to the right of the radio buttons.

What forms of immigration relief would Lupe *NOT* qualify for:



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



What forms of immigration relief would Miguel qualify for:

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

Feedback

A

B

C

D

No Answer

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



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
- Helpful to apply and cite state law



Custody of Children in Immigrant Families

Tool: Immigrant Victims and Custody Bench Card

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
- One third less likely to have 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/>

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





ABA Center on Children & The Law

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”



Myth vs. Fact:

Parents without Legal Immigration Status

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



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.

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

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



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-589

ASYLUM

For victims of persecution

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

To apply:
USCIS
Form I-360

SIJ

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

U VISA

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

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.



DHS.GOV/BLUECAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

All U.S. Citizenship and Immigration Services (USCIS) forms can be found at: www.uscis.gov/forms/all-forms



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

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% |



Department of Homeland Security Victim Witness 2011 Memo – Still in Effect

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.”

“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)

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 (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



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.

Large Group Discussion

- How might you apply this information in the custody cases you hear?

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

Large Group Discussion

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

Divorce and Economic Support



Impact of Divorce

- Importance of findings about existence of a marriage
- VAWA self-petitioners: must file within two years of final divorce
- Ends legal immigration status for spouses and children of visa holders: Students, Work Visa Holders, Diplomats
- Divorce cuts off an immigrant applicant's spouses and children from legal status for visas based on:
 - Employment, Asylum, Family relationships, Cancellation of removal



Annulment Instead of Divorce

- Annulment can lead to a marriage fraud finding that:
 - Permanently bars approval of any visa petition
 - Is a ground for deportation
 - Can lead to an unfavorable exercise of discretion by an immigration judge not to grant immigration relief
- Impacts
 - Spousal support
 - Property division

Affidavits of Support



Large Group Discussion

Clara and Eduardo Scenario

- Assume this additional fact:
 - Clara and Eduardo are married
 - Eduardo filed immigration papers for Clara
 - Eduardo is gainfully employed
- How might that affect options for economic relief for Clara and the children?



Affidavits of Support

- Each person who petitions for a family member to immigrate to the United States must execute a legally enforceable affidavit of support. 8 U.S.C. § 1182(a)(4)(C)(ii)
 - Contractually committed to support sponsored family member at annually at 125% of Federal Poverty Guidelines
- Affidavits of Support are enforceable as contracts by the sponsored immigrant
- Support obligation lasts till immigrant spouse
 - Naturalizes, dies, earns 40 quarters of work credit, or gives up lawful permanent residency and leaves the U.S.



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)
- As part of a family law property settlement, the sponsored immigrant may surrender his or her right to sue to enforce the Affidavit of Support.
 - 71 F.R. 35732, 35740 (June 21, 2006).

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)



What does this information about affidavits of support mean for family court judges?



Evidence in Affidavit of Support

- 3 years of tax returns and all supporting documents
- Bank statements last 12 months
- Evidence of ownership of stocks, bonds, certificates of deposit, real and personal property
- Evidence of current employment
 - Including self-employment
- Proof of income sufficient to sustain the immigrant(s) being sponsored at or above 125% of poverty



What are the immigration related issues you have seen in child support cases?



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
- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related crimes of moral turpitude



Importance of Wage Withholding

- 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)



PROTECTION ORDERS



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)

True or False?

Issuance of a protection order is a deportable offense ?



True



False



Protection Orders

- Issuance of a protection order = 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



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
 - A finding of violation of *the protective provisions of a protection order* in any context can trigger deportation including findings in civil contempt cases and admissions for diversion
- Victims should not be charged with violation of orders issued for their own protection

Immigrant Parties: 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



Multiple Choice Exercise:

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

Large Group Discussion

- What are the dangers of issuing a protection order against a domestic violence victim?

Effect of Protection Order Issued Against Victims

- Increases perpetrator's power and coercive control
- Harmful to victim and their children's safety
- Can lead to the perpetrator gaining custody of children – impact on child's brain development
- Findings of violation of a protection order is a deportable offense
- Impedes victim's proof of good moral character for
 - VAWA self-petition, VAWA cancellation, Naturalization

Importance of Primary Aggressor and Self-Defense Determinations

- Importance of determining
 - Did the person against who the protection order is sought the victim
 - Was an family offense committed
 - Did one party act in self-defense
 - Who is the primary aggressor in the relationship

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



Victims Who Stay: No Unlawful Contact Protection Orders

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

Small Group Creative Protection Order Exercise

- Meet in small groups to develop list of creative protection order remedies helpful for immigrant victims specifically
- Split room in 2 –competition to see which side runs out of remedies first
- Judge Collins rule on whether proposed remedies are immigrant specific



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
 - Affidavit of support
- Health insurance



U Visas Promote Trust and Access to Justice: U Visa Certification By Judges



Bipartisan Legislative Intent

- We want crimes reported to police and courts
- Improved community policing helps everyone
- No one should be a victim of crime
- Offenders prey upon the most vulnerable in our communities, often immigrants
- Without victims reporting crimes, we won't know about the most dangerous offenders
 - Domestic violence
 - Sexual Violence
 - Stalking

U Visa Requirements

Victim (Certification)

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law
- Admissible to US or granted waiver

Helpful (Certification)

- Has been, is being, or is likely to be
- Detection, investigation, prosecution, conviction, or sentencing

Harm (Victim's Application)

- Substantial physical or mental harm as a result of having been a victim of criminal activity

Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	
	These are general categories, and not specific crimes or citations to a criminal code.	

Similar Criminal Activity

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

U Visa Regulations Definitions Although terms are used interchangeably

- As a matter of law (U visa regulations)
 - Helpfulness in the “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - “Crime” always means
 - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
 - Improving stability for crime victims

Small Group Activity: What are the U Visa Criminal Activities in the Clara and Eduardo Case Scenario?

Clara met Eduardo a lawful permanent resident when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

Which Judicial Officers Can Certify?

- Federal, state, & local
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
 - Others with delegated decision-making authority
- Judge will need to amend the form

Who Else Can Certify?

- Federal, state, and local
 - Child abuse agencies
 - Elder abuse agencies
 - Police
 - Sheriffs
 - State police
 - FBI, HSI, ATF
 - Prosecutors
- Federal or State Departments of Labor (DOL)
- Equal Employment Opportunity Commission (EEOC)
- Other government agencies with civil, criminal or administrative investigative authority

Signor = Head of agency or designee
There is **NO** statute of limitations on signing a certification.



Why might a victim come to a judge for certification?

Why Victims Seek Judicial Certifications

- Only justice system contact a custody, protection order, civil employment or child welfare case
- No language access to police when victim called for help
- Police did not investigate and case never sent to prosecutor
- Judge observed victim's attendance and participation in criminal case

Large Group Discussion: U Visa Judicial Leadership Opportunity

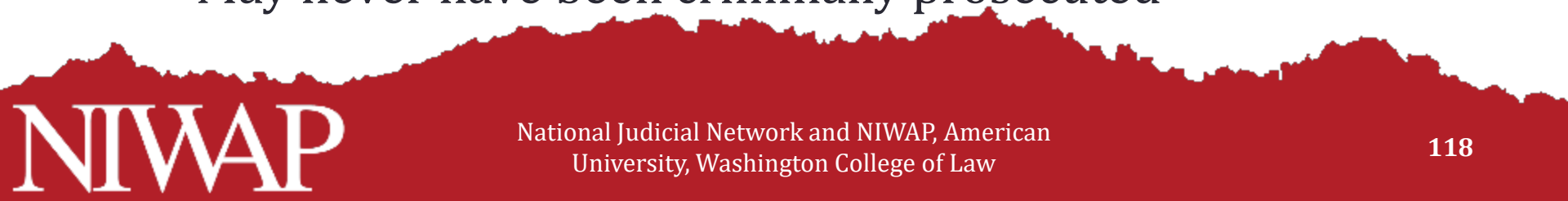
- In some communities law enforcement or prosecution officials do not certify
- When this occurs courts can be the only option
- What role could judges play?



Things to Know About Certification

- Judges, law enforcement and other certifiers
 - May complete U visa certification if they
 - observe or detect a victim's helpfulness
 - Can be a civil, family or criminal case
- The investigation, prosecution or family court case
 - Can still be ongoing
 - Can be closed or may have settled/plead
 - Offender may not have been identified or arrested
 - May have occurred a long time ago
 - No statute of limitations
 - May never have been criminally prosecuted

Victim-centered approach



Detecting Helpfulness



Judges detect “Criminal Activities” and “Helpfulness” In Wide Range of Court Cases

- Family
 - ✓ Civil Protection
 - ✓ Custody
 - ✓ Divorce
 - ✓ Paternity
 - ✓ Adoption
- Juvenile
 - ✓ Child Abuse, Neglect, or Termination of Parental Rights
 - ✓ Delinquency
- Criminal
- Probate
 - ✓ Elder / Dependent Adult Abuse
 - ✓ Guardianship
 - ✓ Conservatorship
- Civil
 - ✓ Employment
 - ✓ Tort damages against a perpetrator

Small Group Activity

- What are some examples of how judges detect helpfulness in –
 - Custody, Divorce, and Protection Order Cases
 - Child welfare cases
 - Criminal cases
 - Civil cases

What Helpfulness do Judges See?

- Certification based on helpfulness to courts
 - Detection(family/juvenile/civil/criminal)
 - Pleadings
 - Testimony
 - Attending court
 - Seeking orders
 - Working with police/prosecutors
 - Conviction/Sentencing
 - Criminal cases
 - Contempt proceedings



Family/Civil Case Examples: Evidence of Helpfulness

- Filed and/ or appeared at hearing for full protection order
- Plead and or testified about abuse or sexual assault in a court case (e.g. protection order, divorce, custody, small claims, housing, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal or EEOC investigation
- Serving the perpetrator with notice of a
 - temporary protection order
 - A case in which the pleadings contain allegations of facts that constitute domestic violence, sexual assault or other U visa criminal activities



Criminal Case Examples: Evidence of Helpfulness

- Evidence in case that the victim:
 - Called 911
 - Participated in a criminal investigation
 - Identified perpetrator at line up
 - Testified before a grand jury or at trial
 - Appearance in a case
 - Attended criminal court hearings in the case
 - Victim impact statement
 - Testimony at sentencing
- U Visa Helpfulness Checklist (2019)
<https://niwaplibrary.wcl.american.edu/pubs/u-visa-helpfulness-checklist>

Multiple Choice Question Clara and Eduardo: What evidence of helpfulness might you include on the U visa certification form?

- A. The fact that Clara sought and you issued a protection order
- B. Testimony Clara provided at a contested hearing
- C. You learned in the CPO case that Clara spoke to police at the crime scene and gave information for the police report



According to DHS, a U/T Visa Certification Tells USCIS Only 3 Things:

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing

Not Required

- Conviction
- Charges filed
- Offender arrested
- Testimony at trial
- Necessary witness
- Within statute of limitations
- Offender is identified
- Offender is alive



Victim-
centered
approach

Helpfulness Requirement Met *Even When:*

- Victim reports a crime and there's no further investigation or prosecution
- Perpetrator absconds or is deported
- Perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order or custody but domestic violence is not being criminally prosecuted

Helpfulness vs. Cooperation/Assistance

For Certification Before Filing the U Visa

- Has been helpful *Or*
- Is being helpful *Or*
- Is likely to be helpful

TO.....

- Detection *Or*
- Investigation *Or*
- Prosecution *Or*
- Conviction *Or*
- Sentencing

After Filing the U visa & for Permanent Residency

- Ongoing obligation to provide cooperation or assistance
 - Reasonably requested by law enforcement or prosecutors
- **Exception:** may show that refusal to cooperate or assist was not unreasonable

Analysis

Is the request
reasonable?

8 C.F.R. 214.14(b)(3)

8 C.F.R. 245.24(2)(2)(ii)

Is the refusal
unreasonable?

8 C.F.R. 245.24(a)(5)

Reasons for Refusing to Cooperate

- Fear of reprisal
- Continued threats or violence
- Pressure from either family
- Financial hardship
- Lesser of two evils

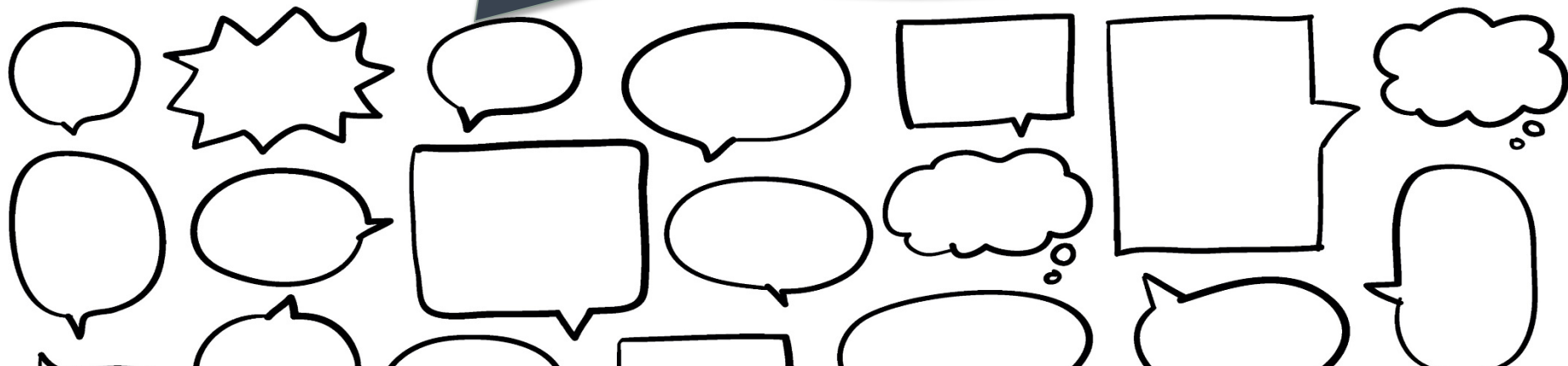
Evaluating Whether Victim's Refusal to Provide Assistance/Cooperation was "Unreasonable"

- Considerations:
 - Totality of the circumstances, including the nature of the victimization
 - Victim's fear of the abuser
 - Trauma suffered
 - Force, fraud or coercion



Large Group Discussion

Ethical Considerations: What are the ethical considerations regarding U visa certification by judges that you have encountered, have been asked about or have questions about?





Minnesota Judicial Ethics Opinion U Visa Certification (June 26, 2015)

- Judge may sign certifications when
 - “adequate basis for the averments made in the certification”
- Certification after the criminal or civil case is completed does not raise impartiality issues
 - In open cases should disclose certification to the parties
- Certification describes immigrant victim’s past/present helpfulness -- Does not vouch for character
- In civil and criminal cases, whether to sign a U visa certification is a an issue of law that does not implicate judicial ethics codes

Full Opinion Available at: <http://www.bjs.state.mn.us/file/advisory-opinions/opinion-2015-2-final.pdf>
Hon. Pendleton also published a training update based on the opinion at <http://pendletonupdates.com/>

Inaccuracies in North Carolina Ethics Opinion Not Addressed by Minnesota

- Investigation or prosecution =
 - Detection , investigation, prosecution, conviction,
or sentencing
- U visa ≠ preferential status
- Judges certify on past or present (not future) helpfulness
- Judges generally sign after having made findings and the case is concluded

Analyzing Requests for Certification

What criminal activity occurred?



Identify the victim or indirect victim



Determine helpfulness



Identify if any family members were implicated in the crime



Note any injuries observed; provide documentation

Part 6. Certification

I am the head of the agency listed in **Part 2**, or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. ~~Based upon investigation of the facts, I~~ certify, under penalty of perjury, that the individual identified in **Part 1** is or was a victim of one or more of the crimes listed in **Part 3**. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. ~~I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.~~

1. Signature of Certifying Official (sign in ink)



2. Date of Signature (mm/dd/yyyy)

3. Daytime Telephone Number

4. Fax Number

Judges can amend the form

Examples: Based upon ...

- My findings of fact or ruling in [name type of proceeding]
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case

REMEMBER: This is a certification that you believe the applicant was a victim of a crime.

Certification provides evidence to DHS.

DHS adjudicates and decides whether to grant the victim immigration relief.

T Visa Declaration

- Identify type of trafficking (sex, child sex, labor)
- Describe the victimization
- Identify relationship with the crime detected, under investigation, being prosecuted, conviction or sentencing and dates
- Comments on potential for retaliation or revenge from trafficker if victim is removed from U.S.
- Dates of trafficking
- Statutory citations to crimes
- Information about victims involvement in case(s) against trafficker
- Names and relationship of any family members involved in the human trafficking

Materials on Webpage in NIWAP Library

- U Visa Certification Toolkit for Judges
- Tip Sheet for Courts on U Certification
- San Francisco U Certification Protocol
- Immigration Remedies Identification Tool for Courts
- Article: Understanding the Judicial Role in U Visa Certification
 - Comparing DHS regulations, policies, publications and court cases
- *Chevron* handout
- And much more...

Special Immigrant Juvenile Status



Raise your hand if you have issued SIJS findings in your court orders.



Special Immigrant Juvenile Status (SIJS)

- Humanitarian immigration relief for under 21 year old unmarried children who cannot be reunified with one or both parents who...
 - Abused, abandoned or neglected the child
- **State court order is a required filing prerequisite**
- Provides evidence for child's immigration case
- The state court order reflects judge's expertise on children's best interests (Congress' intent)
- State court order does **not** grant immigration status

SIJS Judicial Determinations Can Be Issued When Family Court Judge Awards Custody

- Child is dependent on a juvenile court or legally committed *to or placed under the custody of* an agency or department of State, or *an individual* or entity appointed by a State court.
- Child's best interest would not be served by being returned to his or her country of origin.
- Reunification with at least ONE PARENT is not viable due to abuse, neglect, abandonment, or a similar basis under state law (through adjudication by USCIS)

8 U.S.C. § 1101(a)(27)(J)

“Judicial Determination”

- A “judicial determination” is a conclusion of law made by a juvenile or family court. 8 C.F.R. § 204.11(a)
- “There is nothing in the Immigration and Nationality Act (INA) that allows or directs ...courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.” 6 USCIS-PM J.1.A (footnote 2)
- Note: regulation no longer uses the terms “SIJS finding” or “predicate order”

Finding: “One *or* Both Parent”



A child can receive SIJS findings if they were abused, abandoned or neglected by one parent and are living with the other parent.

State Courts Regularly Make Custody & Placement Determinations

- Who will be the custodian/guardian of the minor
- With whom will the child live
- Whether the minor will be committed to the custody of the state or private agency for care, treatment, or rehabilitation

Variety of Different Scenarios Where Child in US May be SIJS Eligible

- Children in the care or custody of a family member or other caregiver who have been abused, neglected, abandoned or subject to similar maltreatment by a parent prior to their arrival in the U.S or while in the U.S.;
- Children in federal custody with HHS, Office of Refugee Resettlement, Unaccompanied Children's Program; or
- Children in the state child welfare system in the custody of a state agency (e.g., foster care), or in the custody of a person or entity appointed by a state child protective services agency or state court. 6 USCIS-PM J.1.A

SIJS Terminology

“Dependent”

The mere “acceptance of jurisdiction over the custody of a child by a juvenile court ... makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care or, as here, in a guardianship situation.”

In re Menjivar, 29 Immig. Rptr. B2-37 (1994)

Court Order May Place the Child in the Care or Custody of:

- An individual
 - Non-abusive parent
 - Grandparent
 - Kinship care
 - Guardian
 - Foster or adopting parent
- State agency
- Private agency
- Foster care system

Large Group Free Think Exercise

- What are all the types of courts and court proceedings in which courts issue orders addressing the custody or placement of children?

Family Court Cases That Include Decisions About Care & Custody of Children

- Dependency/Delinquency
- Civil protection order cases
- Custody and Guardianship cases
- Divorce cases
- Paternity and child support cases
- Adoption and termination of parental rights cases
- DHS states: All are of the above = *Juvenile courts*
 - Juveniles = all children
- SIJS Bench Book has chapters on each case type
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>

In the Clara and Eduardo Scenario in which of the following cases could the court NOT issue SIJS findings for Lupe as part of the court's order?



- A. A protection order case in which the order grants Clara custody
- B. A custody case brought by Clara
- C. The criminal prosecution of Eduardo
- D. A child welfare case in which the court made findings of Eduardo's abuse and placed the children with Clara

Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state statute, court rule, or other authority under which the court is exercising jurisdiction.
- Follow your state juvenile and family court procedures and note that you do so to demonstrate that the court made an informed decision.

State Law Definitions Apply: Abuse, Neglect, Abandonment

- Apply state law without regard to where abuse, abandonment or neglect occurred
- Describe how the actions of the parent fit the state law definition of abuse, neglect, or abandonment
- Formal charges of abuse, neglect or abandonment against a parent are not required

Make Findings of Neglect or Abuse Rather Than Similar Basis for:

- Child Endangerment
 - All state statutes more than neglect and may also fall within definition of abuse
- Forced marriage
 - All state statutes = abuse
- Domestic violence
 - When child abuse falls within state domestic violence statute definitions

Home country not in child's best interests

- Identify each potential custodian state law requires the court to consider in U.S. and home country
- Apply state best interests factors to each placement
- Court order states the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
- Then, if needed, address other country conditions
 - Gangs, other harmful factors



Finding Best Interests

- Any time a state court makes a decision about the care and custody of a child, it takes the best interests of the child into account.
- It is precisely this experience and expertise that Congress sought to tap when it required that SIJS petitioners provide a state court determination

Small Group Activity: Clara and Eduardo Scenario

- Identify factors you would address in the SIJS findings you issue for Lupe and Eduardo (assume there is a marriage)
- Use ---
 - Your state’s best interest factors; and
 - Handout: “Factors the Can Demonstrate That it is Not in a Child’s Best Interests to be Returned to Their Home Country”

Factors to consider...

- Family violence, abuse, neglect, abandonment, sexual violence
- Risk of physical/mental injury to the child
- Trauma child has suffered and child's physical, emotional, safety, mental health needs
- Help the child is receiving
- Family support system
- Emotional well being and ties

Factors to consider...

- Child's educational and developmental needs
- Child's wishes and fears
- Parent's fitness, caregiving capacity, mental and physical health and moral fitness
- Parent's demonstrated capacity to provide stability and continuity of care
- Delegation of parental responsibilities to third parties



Finding: Reunification Not Viable

- Reunification with a parent is not viable due to abuse, neglect, abandonment, or similar state law basis
- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Means granting the abusive parent custody is not envisioned by the court as a viable option
- Changes in circumstances can occur
 - But not granting full legal/physical custody to abusive parent

Timing of SIJS Judicial Determinations

- Some SIJS cases involve minors who are close to the age of majority under state law
- SIJS requires:
 - State court order received before the child turns the age of majority
 - Child must be under 21 when the SIJS application is filed
- SIJS is an option any time an abused, abandoned or neglected child is not a
 - Citizen or lawful permanent resident



Delinquency and Criminal Issues

- Juvenile delinquency finding \neq conviction for immigration purposes
- Juvenile dispositions can have immigration consequences
 - Negative factors in discretionary determinations
 - Some grounds of inadmissibility or deportability do not require a criminal conviction

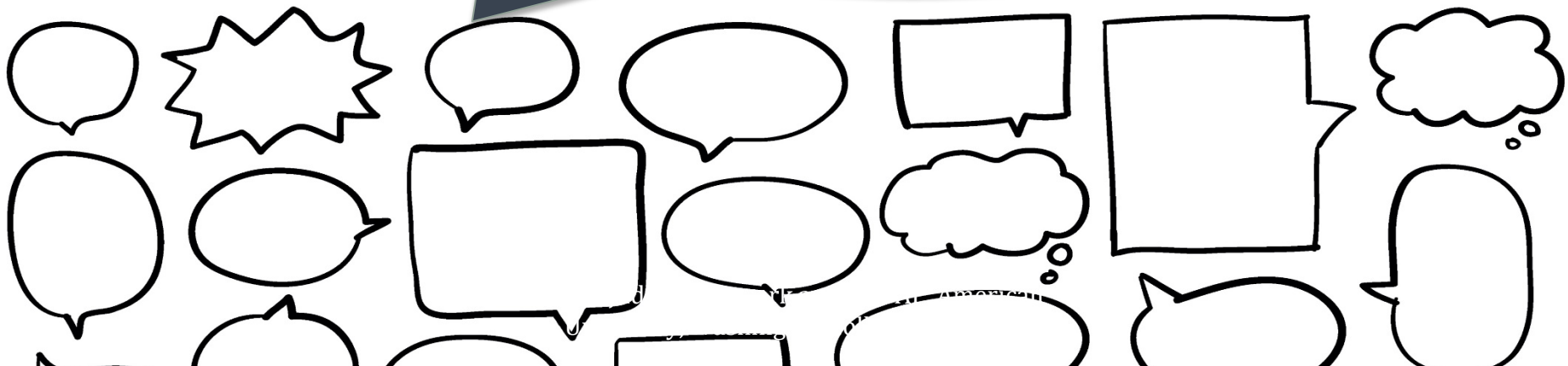


Is There a Waiver for SIJS Cases

- Waivable Offenses
 - Prostitution
 - Drug abuse or addiction,
 - Smuggling
- Non-Waivable Offenses
 - Moral turpitude crimes (theft and shoplifting, murder, spousal or child abuse, fraud, espionage, terrorist activities, genocide, torture)
 - Drug crimes (findings and admissions regarding drugs except simple possession of 30 grams or less of marijuana; controlled substances traffickers)
 - Multiple criminal convictions (does not include juvenile adjudications)

Large Group SJIS Questions and Answers

What are the questions about SIJS cases you would like to discuss?



Family Law Services of Process and Jurisdiction Requirements Charts

- By proceeding for all states:
 - Adoption
 - Child abuse and neglect
 - Custody
 - Divorce
 - Paternity and Child Support
 - <https://niwaplibrary.wcl.american.edu/family-law-service-jurisdiction-charts>
- Comparisons among case types by state
<https://niwaplibrary.wcl.american.edu/all-state-family-law-jurisdiction-and-service-of-process-charts>
- SIJS Bench Book Chapter on Service of Process
<https://niwaplibrary.wcl.american.edu/pubs/chapter-vii-service-of-process-in-sijs>

Best Practice for Court Orders

- Make factual findings regarding
 - Facts of abuse, abandonment and/or neglect
 - Separately regarding each parent
 - About facts occurring abroad and/or in the U.S.
 - Apply and cite state law only
 - Articulate trauma impact on child helpful
 - Why court order is in the child's best interest
- Explain how each of the judicial determinations are:
 - Based on state statutes
 - Needed for child protection, healing, and stability
 - In the child's best interests
 - Designed as a remedy for abuse, abandonment, or neglect

Issues to Avoid When Drafting Orders

- Vague language
- Not enough details and facts
- Lack of citation to state law authorities
- Reasons why court made findings not stated
- Citing to the federal law
- Referring to the judicial determination and SIJS findings or SIJS predicate order



Access Exercise

NIWAP

Learning Objectives

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

- Analyze the complex realities faced by immigrants subject to domestic abuse, sexual assault, child abuse, or human trafficking
- Identify gaps in access to justice in your courts and communities
- Develop skills for working with immigrant survivors you encounter in your courtrooms and your courthouses

Access Exercise – Your Experience

Discussion

- How did it feel to go through the process?
 - Participants with green folders?
 - Participants with red folders?

Learning From the Access Exercise Discussion

- What lessons did you learn?
- What systems barriers to access to justice for immigrant and LEP victims did the exercise illustrate?
- What types of help do immigrant victims and children who try to access justice from courts need?

Large Group Discussion



What are steps courts can take to make the courts accessible to immigrant, LEP and culturally diverse populations?



DEBRIEF

Steps Courts Take to Increase Accessibility



- By developing:
 - Relationships with NGOs that serve immigrant, refugee and asylee populations
 - U visa certification and SIJS findings practices
 - Incorporate immigrant victims needs into collaborative community response work courts are involved in

What if you identify a child or victim that qualifies immigration relief?

- How does the judge raise the issue without alarming immigrant litigants?
- How does the judge respond to a party raising the immigration status of the opposing party?





Large Group Discussion



Question: What's the judges role when immigration status is raised ?



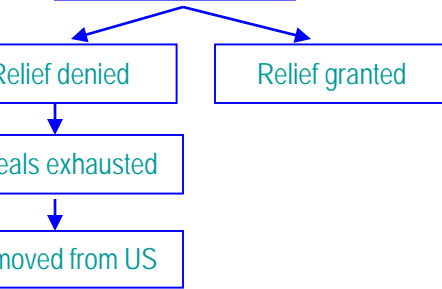
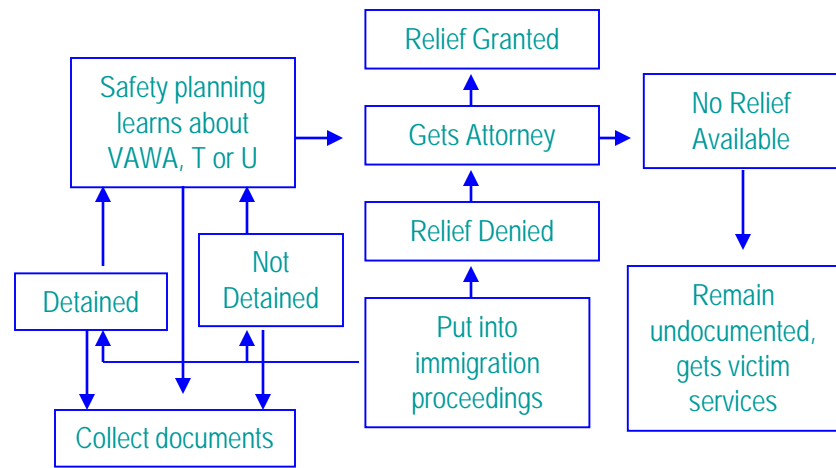
Raquel's Path Accessing Justice



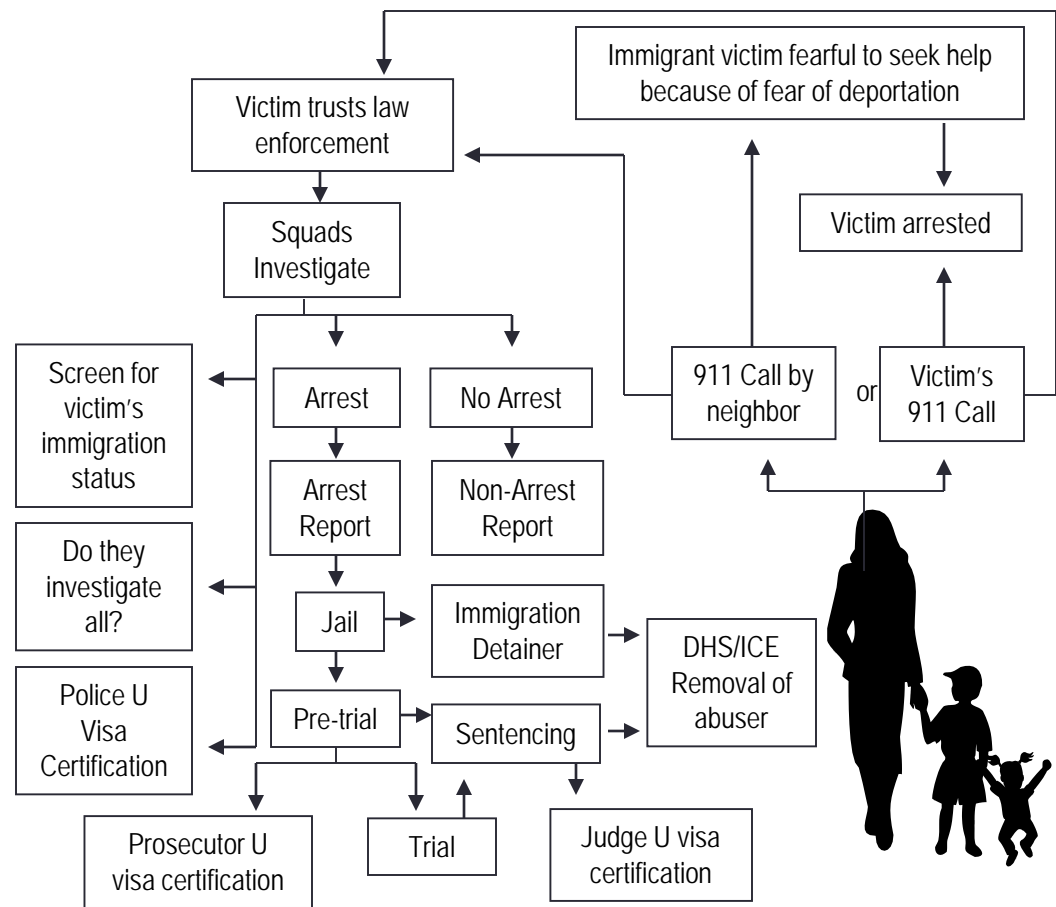


Immigrant Victims in the Justice System -Raquel

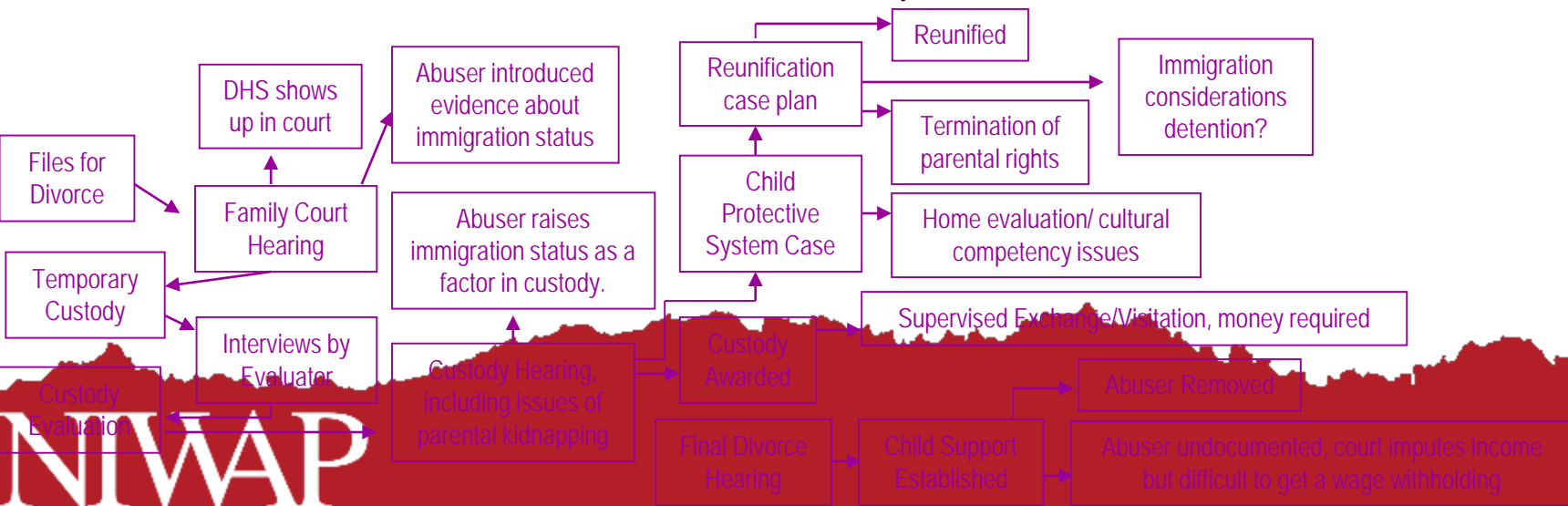
This Infographic illustrates how immigration issues intersect in state court proceedings involving immigrant victims of domestic violence, sexual assault and child abuse and their children. This provides an overview for judges, police, prosecutors, victim advocates and attorneys of the role immigration status can play.



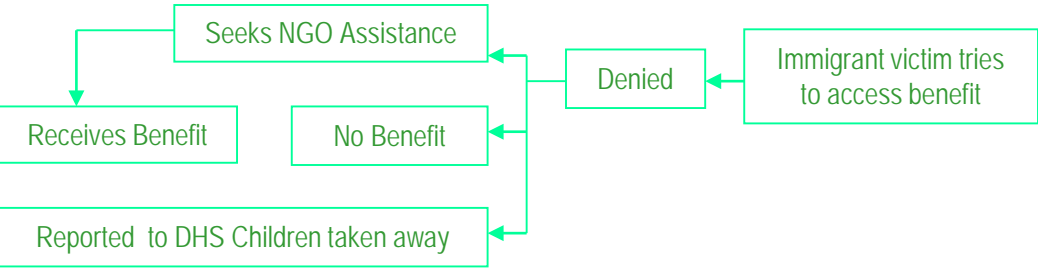
IMMIGRATION MAP



FAMILY COURT



BENEFITS MAP



PROTECTION ORDER – CIVIL COURT PROCESS



Civil Court hearing including creative orders for immigrants

DHS shows up at court

Abuser introduces immigration status to prevent protection order

CPO Denied

CPO Granted

U Visa certification signed

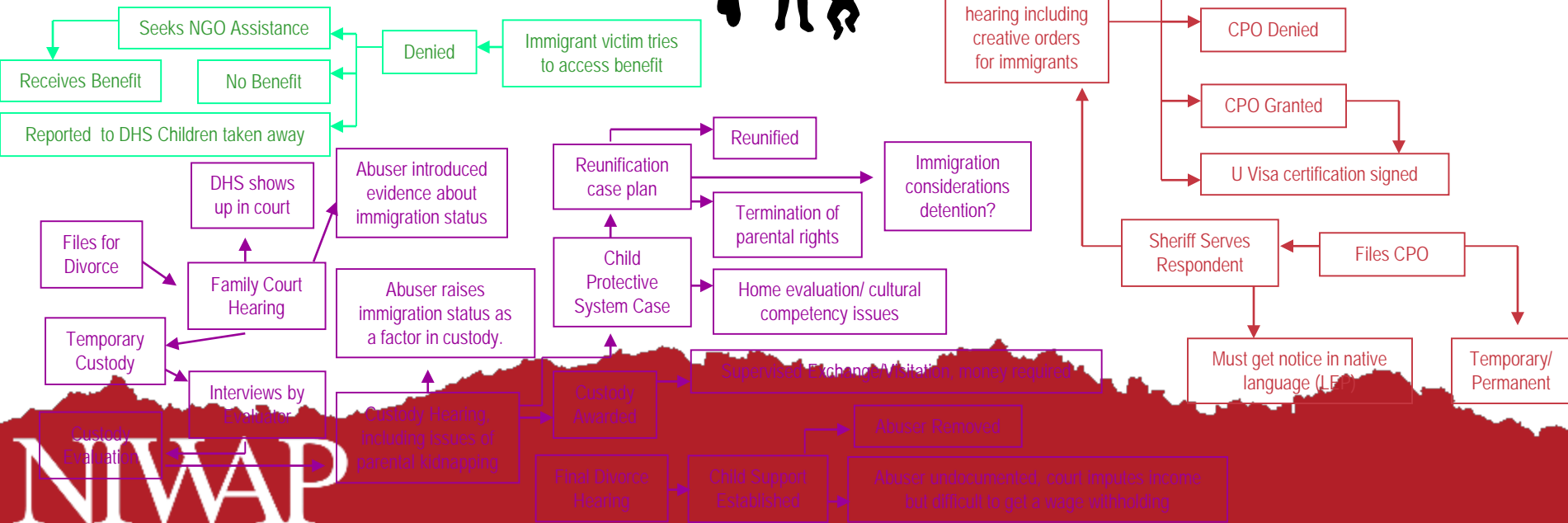
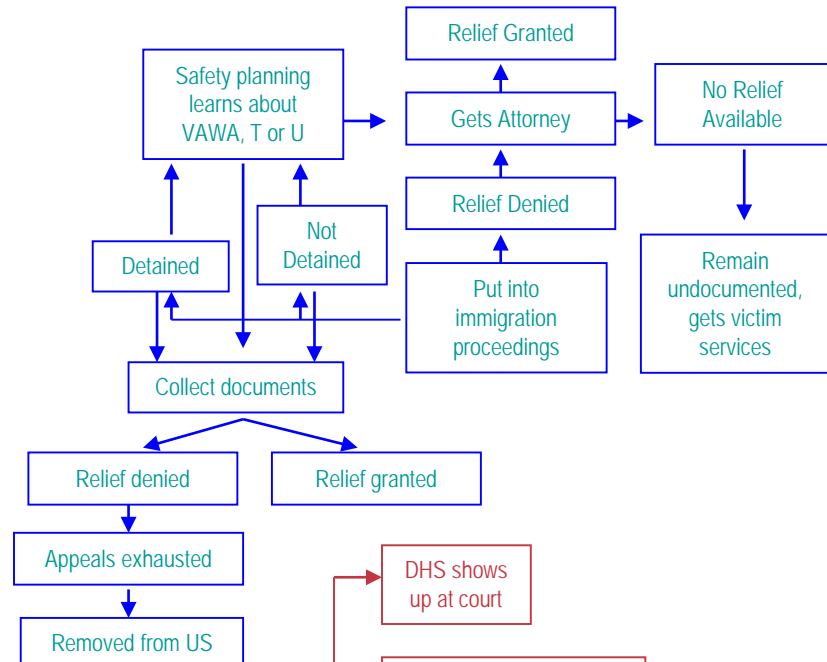
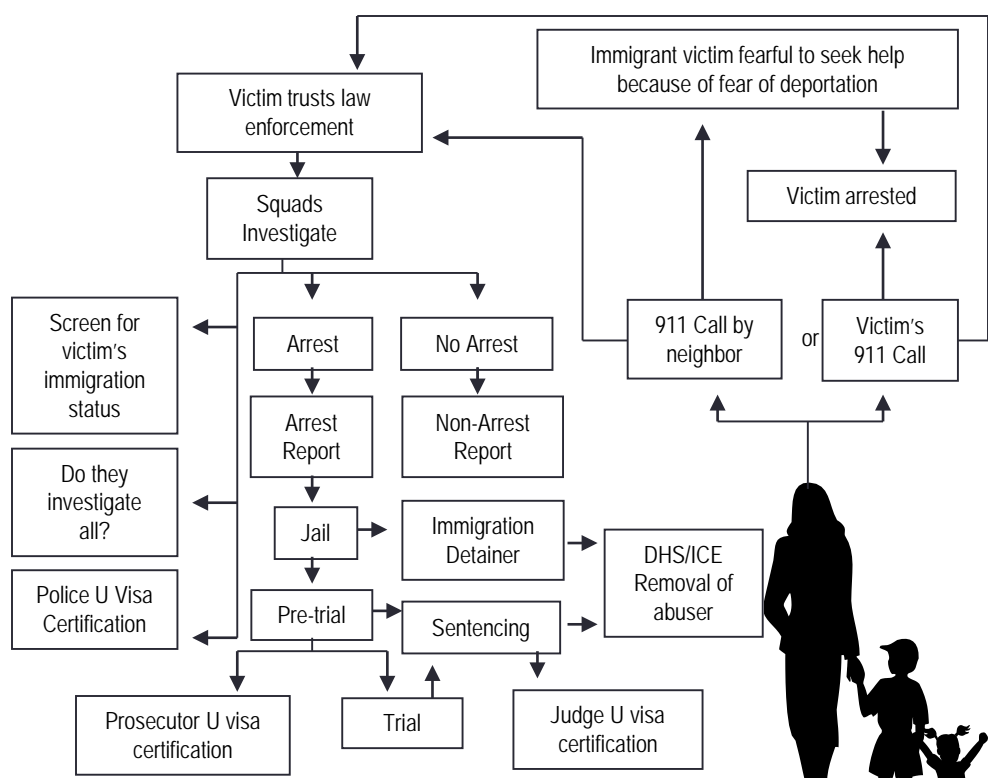
Sheriff Serves Respondent

Files CPO

Must get notice in native language (LEP)

Temporary/Permanent





Language Access

Nebraska Maria Luis Case

Maria Luis is an undocumented Quiche-speaking Guatemalan who had 2 children with her in the U.S. the youngest (Angelica) was born in the U.S. with respiratory problems. Maria Luis took Angelica to the emergency room for treatment and she was given a Spanish (not Quiche) interpreter. She thought she was told to bring the child back for a follow up visit if Angelica did not get better. The hospital said that she was told to bring the child back for a follow up appointment. Angelica got better, so Maria Luis did not return for the follow up visit. The hospital reported her to CPS. CPS arrived with police, took her 2 children who were placed in foster care. Maria Luis was detained and turned over to DHS for deportation. While she in DHS custody, Nebraska sought termination of parental rights. The notice that arrived in detention was not in her native language and DHS did not take her to the dependency court proceeding. Maria Luis was deported to Guatemala and Nebraska called her to explain her parenting plan explained to her in Spanish over the phone. She found a priest in Guatemala who helped her try to comply with the plan from Guatemala. Her parental rights to both her children were terminated her children remained in foster care.

Large Group Discussion



What would you have the power to do as a judge with the problemsn you see in this case?

- At the hospital?
- The role CPS played?
- With regard to Maria's consulate?
- As the judge this case came before?
- With the police?
- When Maria was detained?



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.

DOJ Guidelines on Language Access for Courts

- The use of qualified interpreters:
 - Not limited to courtrooms
 - clerks' offices, file rooms
 - For all parties, defendants and witnesses and when appropriate (e.g., parents of minor crime victims)
 - For all types of proceedings and courts
 - motions, status hearings and trials
 - For court ordered services batterers treatment, therapy, drug counseling
 - LEP individuals should not incur any fees for these services

Translation

- Requirements for Documents
 - Translated petitions, court orders, and materials explaining rights and obligations
 - Post signs and public service announcements in foreign languages advertising free qualified interpreters
 - Language cards to accurately identify individual language needs

DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010)



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:** DHS, DOJ, and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone
 - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses



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

All DHS Memo 002-02-001

- “Whenever a DHS officer or employee receives *adverse information* from a spouse, family member of a spouse, or unknown private individual, the employee will check the Central Index System (CIS) for the COA ‘384’ flag. Employees will be sensitive to the fact that the alien at issue may be a victim and that a victim-abuser dynamic may be at play.”

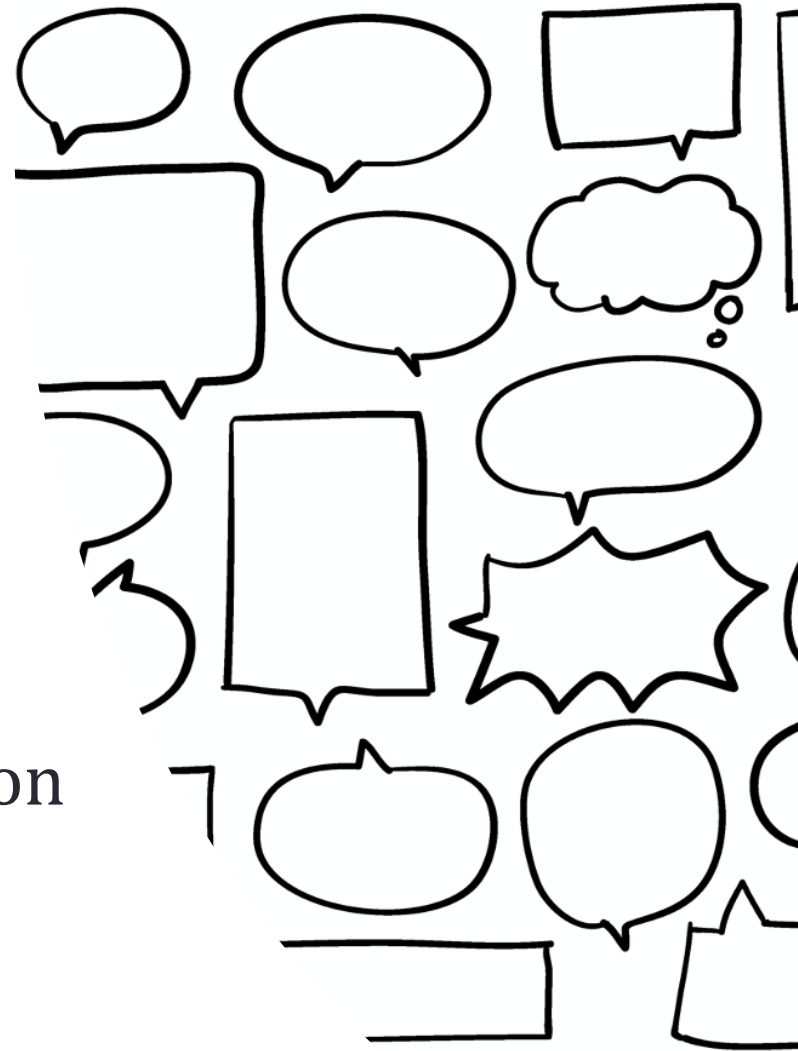
VAWA Confidentiality Violations

- 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



Large Group Discussion

- Can you describe cases where a party sought to discover information about or information from a party's or child's immigration case?





Protecting Information About a Survivor's Immigration Case

- Prohibits disclosure of any information about
 - The existence of a VAWA, T or U visa application
 - Information contained in the A file
- Disclosure prohibited to all persons, not just the perpetrator;
- Protections apply from the time of filing permanently unless:
 - Case denied on the merits
 - All appeal options have been completed
- State court orders that victim submits as part of immigration case are confidential



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 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”

Disclosure Exceptions: Law Enforcement, National Security, Judges in Victim's Immigration Case

- All DHS instruction 002-02-001
 - Only “in a manner that protects the confidentiality of such information”
 - “Please note, defense counsel in state cases may sometimes attempt to make the entire A-file discoverable; however the entire file is not discoverable in its entirety under this exception”
- 8 C.F.R. 214.14 (3)(2)
 - “Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367”

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



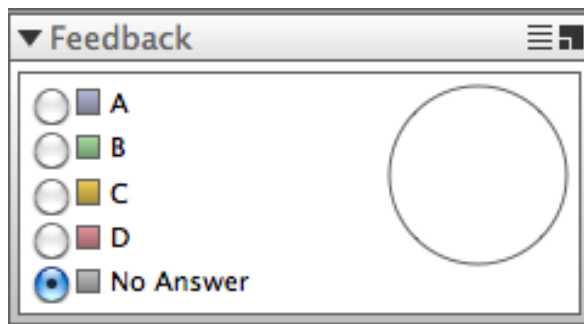
People v. Alvarez Alvarez- Criminal Case

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

Returning to Clara and Eduardo

- If Clara wanted Eduardo prosecuted for his abuse and wanted the family court to grant her custody of Lupe in her divorce case but feared what Eduardo would do if he learned about her immigration case, which form of immigration relief would be most protective of Clara?



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

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

Publicly Funded Benefits and Services

Large Group Discussion



Why is information about what public benefits immigrant victims and children can access in your state is important for judges to know?



Access for All

Both documented and undocumented immigrant survivors can access:

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

Attorney General's List of Required Services

Former Attorney
General Janet Reno



- In-kind services
- Provided at the community level
- Not based on the individuals income or resources
- Necessary to protect life and safety

Benefits Available to All Immigrants

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Nutrition programs for those requiring special assistance



Health Care Open to All Immigrants

- Community and migrant health clinics
 - www.nachc.com
 - www.hrsa.gov
 - Enter zip code
- State funded programs
- Post-assault health care paid by VOCA
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



Raise Your Hand: True or False?

Immigrants applying for benefits for their children can refuse to provide immigration or social security information about themselves.



True



False



When children qualify and their parents do not:

- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may only ask questions about the child's eligibility
- No questions may be asked about the immigration status of the child's parent if the parent is not applying for additional benefits for themselves



Small Group Exercise

Identify which public benefits and publicly funded services immigrant children and immigrant victims qualify your state for each of the following groups:

- VAWA self-petitioners with a prima facie determination included the applicant and eligible family members (e.g. applicant mother includes child or applicant child can include their mother in their application)
- U visa victim who has received wait list approval
- T visa applicant with bona fide determination
- SIJS applicant child

- **Assume victim's entered U.S. after 8/22/96**

Materials to Use for Exercise

- You will need to use one or more computers to access NIWAP's public benefits map
-<http://map.niwap.org/>
- Public benefits bench card for you group's immigration case type
- Florida's public benefits screening chart

Maps by Benefit

- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License
- Earned Income Tax Credit
- Emergency Housing & Safety Programs
- Emergency Medicaid
- Federal Education Benefits
- FEMA Assistance
- FEMA Restricted Programs
- Food Stamps
- Forensic Costs Coverage
- Income Tax Credits
- Legal Services
- Medicaid
- Post-Assault Healthcare
- Prenatal Care
- Purchasing Health Insurance on the Exchanges
- State Education Benefits
- Supplemental Security Income
- Weatherization & Energy Assistance
- WIC
- Unemployment (coming soon)

Benefits in Florida

- TANF
 - VAWA, Continued Presence (CP), Pre-8/22/96 VAWA self-petitioners and lawful permanent residents
- Child care
 - TANF same as above
 - Child Care Development Fund – no restrictions
- SNAP
 - VAWA children, CP, T visas , SIJS and U visa lawful permanent residents (LPRs)
- Education
 - Federal: VAWA, CP, T visa applicants, SIJS-LPRs
 - In-State tuition: 3 years high-school in Florida
 - No immigration restrictions

Benefits in Florida

- Health Care
 - Exchanges: VAWA, CP, T visa, U visa/deferred action, SIJS applicants. All other children can buy full cost KidCare
 - CHIP: Up to age 19 - VAWAs, CP, T visa, U visa/deferred action, SIJS applicants
 - Full scope adult Medicaid: T visa/CP U. Pre 8/22/96 or after 5-year bar for VAWAs & lawful permanent residents (U/SIJS)
- SSI (most limited): CP, T visa
 - VAWA, U visa, & SIJS LPR (5 year bar+ 40 quarters work)
- Driver's License
 - Federally recognized – work authorization
 - VAWA 30 months or approved, T visa bona fide, CP, U visa or deferred action, SIJS –LPRs, DACA

Benefits in Florida

- Housing
 - Transitional – all victims + homeless + abused children
 - Public and Assisted: VAWA applicants, CP, T visas, SIJS & U visa LPRs
- LIHEAP
 - Weatherization everyone
 - LIHEAP – VAWA, CP, T visa, SIJS & U visa LPRs
- FEMA
 - Emergency assistance: everyone
 - Individual Households Program: VAWA, T visa, CP
 - Individual & Family Grant Program: VAWA, T visa, CP, LPRs (SIJS/U visa)
 - US Small Business Administrations Loans: VAWA, T visa, CP
 - Disaster Unemployment Assistance: VAWA, T visa, CP, LPRs (SIJS/U)
 - Emergency Food Stamps: T visa, CP, & LPRs (VAWA/SIJS/U visa after 40 quarters of work credit)

Get to Know Your Materials Flash Drive

- Find a tool on
 - Helpfulness in U-visa cases
 - Screen for SIJS eligibility
 - National Judicial Network
 - Public benefits access for crime victims
 - Issues for immigrant victims in custody cases
 - VAWA confidentiality and discovery

Judicial Leadership Opportunities Related To Immigration Issues In Family Court

Small Group Discussion

- Create a list of:
 - What you can begin using when you get back to your courts after this training
 - What you work on implementing over the next 6 months or a year



DEBRIEF

- Report back on small group discussions.

Large Group Discussion

- What are some examples of how as a judge you could play a leadership role related to immigration issues in family court in your
 - Court
 - Community

Resources Available to Assist Courts

- SJI Funded Materials for Judges in the NIWAP Web Library
 - Bench book on SIJS
 - U visa certification toolkit for judges
 - Bench cards for family court judges
 - Public benefits bench cards maps and charts

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/AJS-Sanibel2022/>
- Judicial Training Manual at <https://niwaplibrary.wcl.american.edu/sji-njn-materials>
- **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

Evaluation