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Courts and Society



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Table of Contents

Preface	V
Mary Campbell McQueen	
New York State's Opioid Intervention Court	1
Hon. Janet DiFiore	
Florida's Early Childhood Initiative	6
John Couch	
A Firm Foothold: Establishing the Judiciary's Role in the National Response to Human Trafficking	12
Abigail Hill	
Florida's GRACE Court	18
Hon. Mari Sampedro-Iglesia	
Peacemaking Programs Offer State Courts an Alternative Path	23
Nora Sydow	
Changing Times, Changing Relationships for the Bench and Civil Bar	32
Paula Hannaford-Agor	
Developing a Research Agenda for Access to Justice	39
Pamela Cardullo Ortiz	
Responding to the Clash Between Access to Justice and Immigration Arrests in State Court Facilities	47
James D. Gingerich	
Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Recommendations	53
Rafaela Rodrigues, Leslye E. Orloff, Amanda Couture- Carron, and Nawal H. Ammar	
When Might Blockchain Appear in Your Court?	62
Di Graski and Paul Embley	
Cybersecurity: Protecting Court Data Assets	67
Brian J. McLaughlin	





Immigrant crime victims are becoming more common in state courts. A national survey of judges in 2017 provides a look at what types of cases involving immigrants and their families are appearing in the courts.

Promoting Access to Justice for Immigrant Crime Victims and Children: Findings of a National Judicial Survey and Recommendations

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State Courts, Immigrant Crime Victims, and Immigrant Children

Over the past 27 years, the numbers of immigrants from linguistically and culturally diverse backgrounds has steadily increased nationwide.¹ Immigrants have moved beyond traditional gateway states (e.g., California, Florida, Illinois, New Jersey, New York, and Texas) and are settling in urban and rural communities across the country, particularly in the Southeast, the Pacific Northwest, Mountain States, and the Sun Belt (Immigration and the States Project, 2014). The immigrant population rose by 40.6 percent between 2000 and 2016. As of 2016:

- 13.5 percent (43,739,345) of the U.S. population is foreign born² (Migration Policy Institute, 2016b);
- 24.5 percent of the U.S. population is either foreign born or has one or more foreign-born parents (derived from data obtained from Migration Policy

Institute, 2016a, b; Immigration in the States Project, 2014);

- 25.8 percent of children in the United States under the age of 18 have one or more immigrant parents (Migration Policy Institute, 2016a); and
- 88.2 percent of children in immigrant families are U.S. citizens (Migration Policy Institute, 2016a).

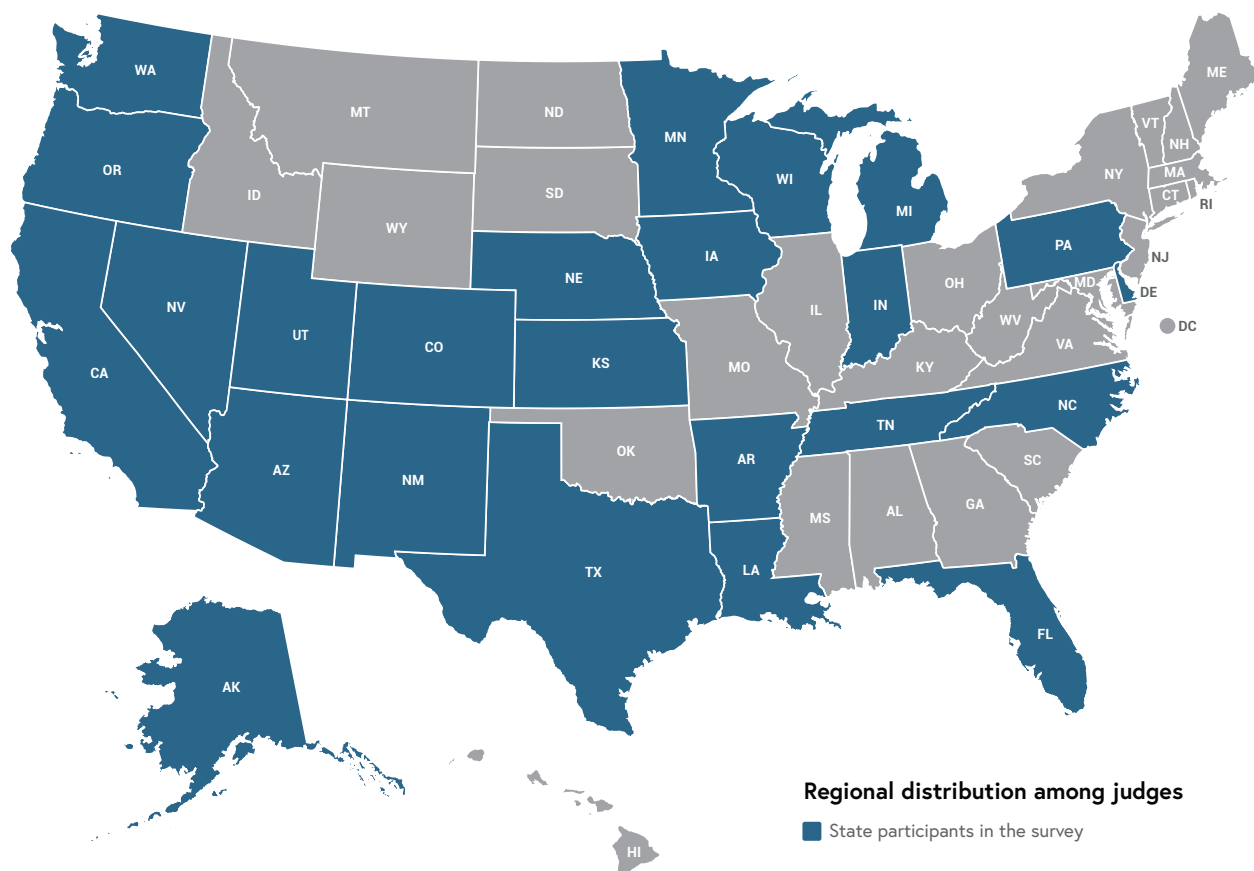
State courts are among the first in the justice system called upon to provide access to justice for new immigrant populations. Family courts nationwide are seeing growing numbers of immigrants seeking custody; child support; divorce; guardianship; protection orders; dependency/delinquency adjudications; U visa

certification from judges (Department of Homeland Security, 2016a, b); and state-court findings required for immigrant children applying for Special Immigrant Juvenile Status (SIJS) who have been abused, abandoned, or neglected by one of their parents (U.S. Citizen and Naturalization Services, 2017). Hearing cases involving immigrant families, children, and crime victims presents challenges for the courts. Immigrant litigants and children come to the United States with assumptions and expectations about the justice system based on experiences in their home countries. Most live in mixed-status families (Capps, Fix, and Zong, 2016); these are families in which one or more family members are undocumented and other family members are citizens, lawful permanent residents, or immigrants with another form of temporary legal immigration status (Fata et al., 2013).

Findings from 2017 National Survey of Judges

The National Immigrant Women’s Advocacy Project (NIWAP) surveyed 107 judges in 25 states during November and December 2017. The aim of the survey was to learn from judges about cases coming before courts involving immigrant and Limited English Proficient (LEP) victims. The survey particularly examined the intersection of immigration status and immigration concerns with state family- and criminal-court proceedings. It also explored whether judges are seeing changes in immigrant victims’ willingness to participate in various types of court proceedings in 2017 relative to 2016. The map below illustrates the states in which judicial survey participants work.

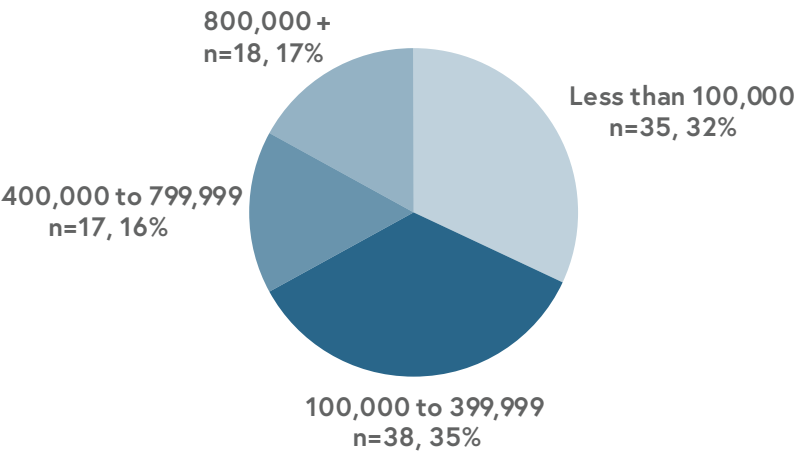
States with Judges Participating in the Survey



Most judges (69 percent) reported that they have many LEP residents living in their jurisdictions. Judges participating in the survey routinely worked with LEP victims who spoke 29 languages, including most prominently Spanish, Vietnamese, Russian, Chinese, Arabic, and Korean. They served jurisdictions with diverse population sizes and presided over a wide range of state court proceedings.

Judges were asked to indicate whether judges in their courts signed U visa certifications for immigrant crime victims, T visa certifications for human trafficking, or issued SIJS findings (“signing courts”). The majority (64 percent) of judges surveyed indicated that judges in their courts do not sign U or T visa certifications and SIJS findings (“non-signing courts”). Among the 36 percent of judges who reported working in signing courts:

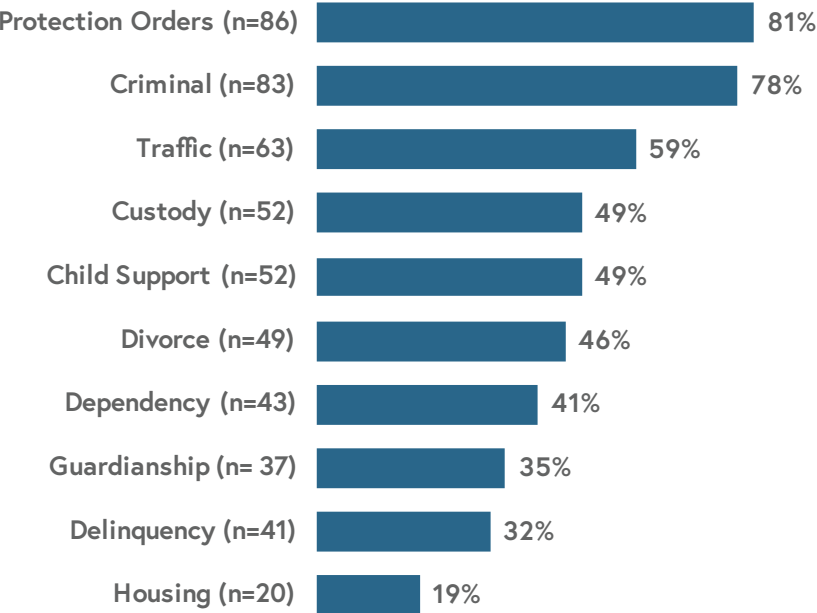
Figure 1. Population Size of Court's Jurisdiction



- 23 percent sign in only one case type (either U visas, T visas, or SIJS findings); and
- 13 percent report that judges in their courts sign more than one of the forms of certification or findings Congress authorized state court judges to sign.

The survey sought to assess judges’ knowledge about the U visas, and their judicial role as U visa certifiers, and found many judges (32 percent) lacked knowledge about both U visas and certification.

Figure 2. Types of Court Proceedings Judge Survey Participants Hear

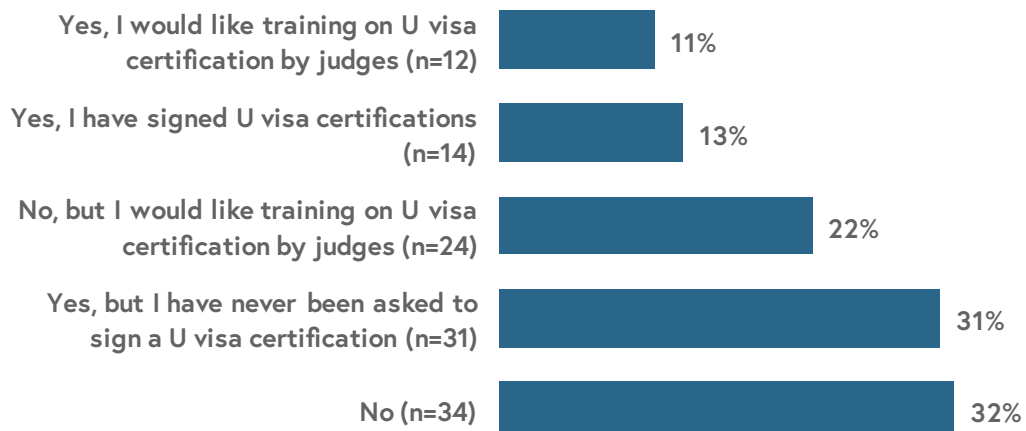


Over a quarter (26 percent) of judges reported that judges in their court issued SIJS findings that immigrant children who have been abused, abandoned, or neglected by one or both parents must obtain as a prerequisite to filing for SIJS immigration relief.

Judges participating in the survey were asked if they were aware of Violence Against Women Act (VAWA) confidentiality laws that place limits on immigration enforcement actions permitted at courthouses. The majority (55 percent) of judges reported knowing something about these laws, 22 percent had heard about them, and 23 percent were unaware of them.

Across a wide range of civil, family, and criminal court proceedings, the vast majority (88-94 percent) of judges participating in the

Figure 3. Do you understand what a U visa is and the role of a judge as a U visa certifier?

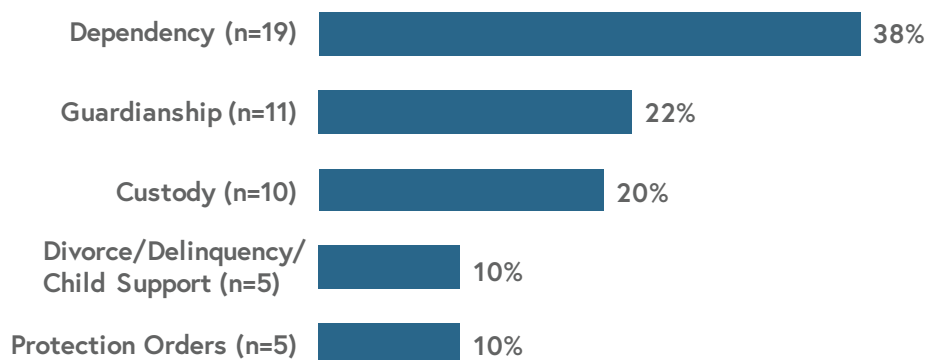


Signing courts (26 percent) were more likely than non-signing courts (16 percent) to have adopted policies on steps courts should take if immigration enforcement officials come to judges' courtrooms.

Judges were asked whether the number of cases involving immigrant or LEP victims changed in 2017 relative to 2016. Some judges reported an increase in immigrant victims coming to court in 2017 in several types of cases. Other judges reported some decline in victim participation in criminal, protection orders, and custody cases.

Signing courts differed from non-signing courts when asked to compare the number of cases involving immigrant or LEP victims appearing in state court proceedings in 2017 relative to 2016.

Figure 4. Judges Issued SJIS Findings in a Range of State Court Proceedings

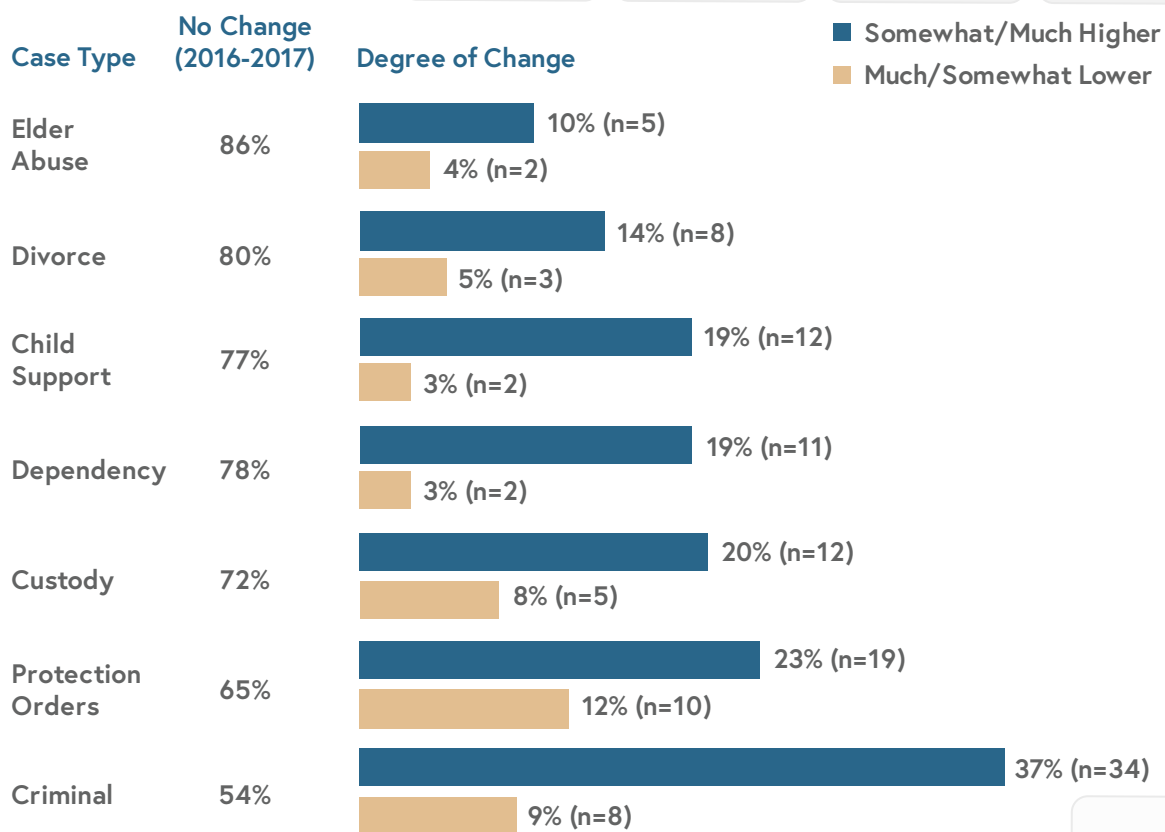


survey reported being concerned about the impact increased immigration enforcement could have on access to justice for immigrant and LEP victims and witnesses. A substantial percentage of these judges (26-40 percent) reported that they were very concerned about this issue. Judges reported the following numbers of cases in which immigration enforcement occurred at their courthouses:

- criminal cases—29 (2016=11; 2017=18)
- family-court cases (protection order, custody, child welfare)—14 (2016=6; 2017=8)
- employment and civil cases—4 (2016=2; 2017=2)

For criminal proceedings, a substantial portion of judges responding to the survey reported that they are seeing more criminal cases involving immigrant crime victims in 2017 than in 2016 (signing courts 45 percent; non-signing courts 35 percent). Among judges from signing courts, 20 percent reported increases in U visa certification requests, and 30 percent reported increases in SIJS requests in 2017 compared to 2016. Most judges participating in the survey (76 percent) reported that their courts do not distribute "Know Your Rights" information on immigration-law protections for crime victims and children.

Figure 5. Judges Reporting Changes in Numbers of Cases Involving Foreign-Born/LEP Victims in 2017 vs. 2016



More judges participating in the survey reported that court cases were interrupted in 2017 due to immigrant victims' fear of coming to court (54 percent) compared to 2016 (45 percent).

A substantial number of judges participating in the survey reported that immigration status was being raised offensively by an opposing party, or against a victim or another parent, more in 2017 compared to 2016 in a wide range of cases.

The survey asked judges to list other concerns or challenges they have encountered in cases involving immigrant or LEP victims. Several judges reported that fear of coming to court, worry, and distrust of the police,

courts, and getting involved with any government agencies impedes access to justice for immigrants and LEP victims (n=10). Additionally, several judges (n=7) commented about the need for more qualified interpreters and the difficulty in obtaining qualified interpreters in rural areas. They suggested that access to qualified interpreters not be limited to court proceedings. Qualified interpreters are needed to assist in preparation for court (e.g., in clerk's offices and other court services or court-ordered programs).

Figure 6: Immigrant/LEP Victim Participation in Family-Law Proceedings

Type of Proceeding	Rate at Which Signing Courts Reported <i>Increases</i> in 2017 over 2016 Compared to Non-Signing Courts	Rate at Which Non-Signing Courts Report <i>No Change</i> Compared to Signing Courts
Child support	3x higher	1.8x higher
Custody	2x higher	1.6x higher
Child abuse/Neglect	1.8x higher	1.4x higher
Divorce	1.7x higher	1.7x higher
Civil protection orders	1.1x higher	1.7x higher

Figure 7. Court Process Was Interrupted Due to Victim's Fear of Coming to Court 2017 vs. 2016

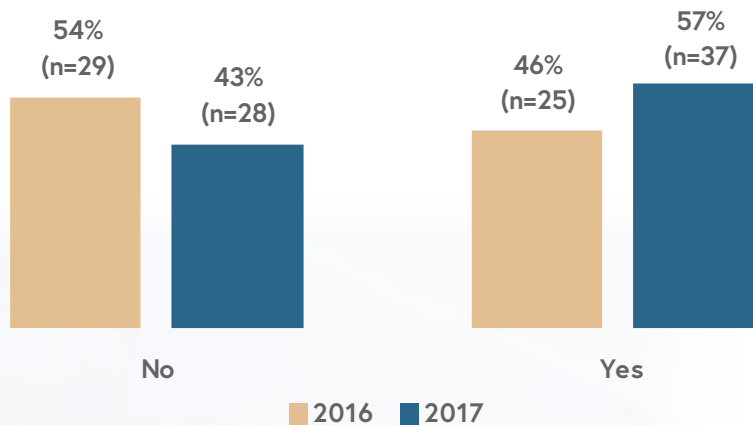
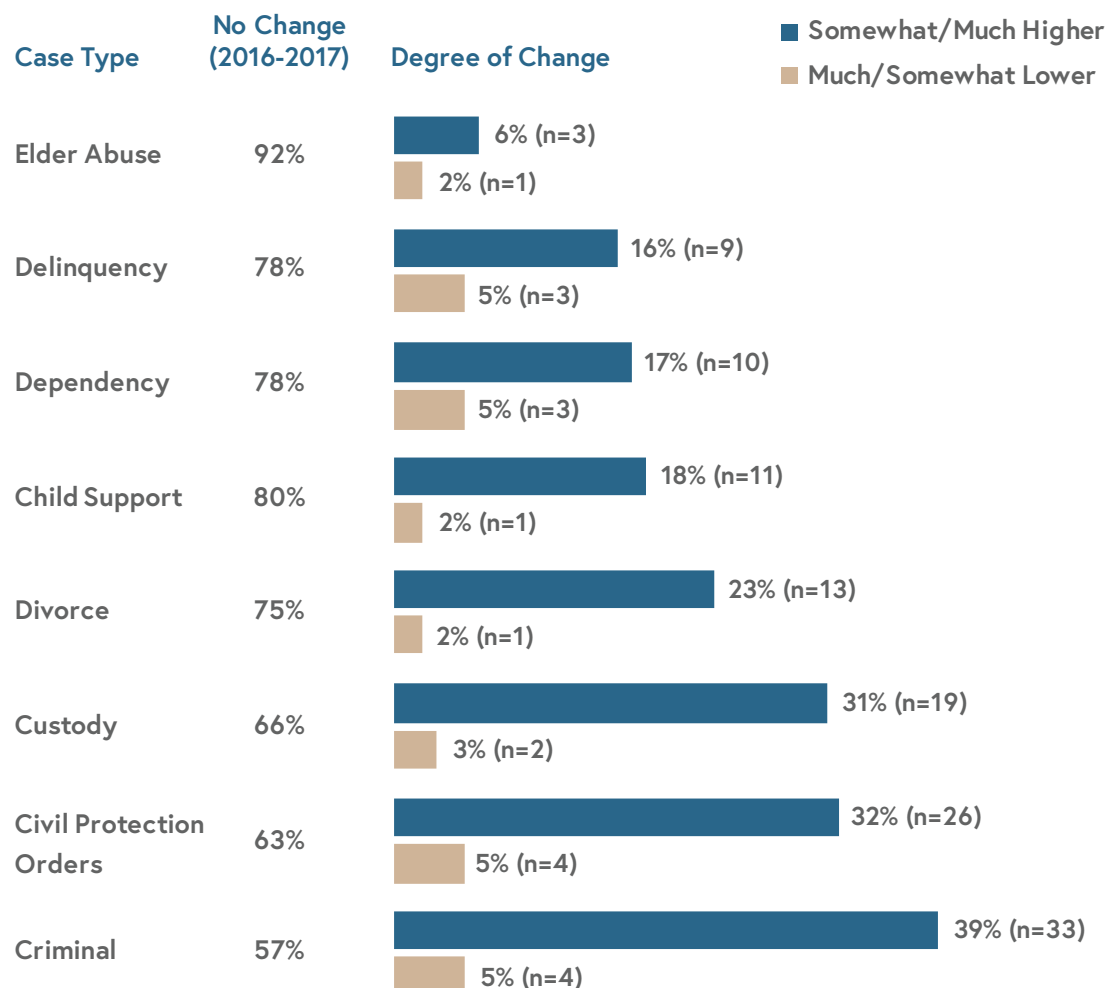


Figure 8. Extent to Which Immigration Status Is Raised Against Opposing Party in Courtrooms (2017 Compared to 2016)



Recommendations for Courts, Judges, Judicial Training, and Access to Justice

To promote access to justice for immigrant and LEP victims and children in immigrant families, judges, court leadership, and national judicial leadership organizations should implement the following recommendations and best practices at courthouses nationwide.³

1. Implement practices and policies that promote U and T visa certification and issuance of SIJS findings by state court judges.
2. Adopt language-access plans and practices that ensure language access to all court services, in addition to providing qualified interpreters in court proceedings.⁴
3. Develop relationships with local agencies serving immigrant and LEP communities that work collaboratively to promote access to justice and language access to courts (Uekert et al., 2006).

4. Distribute Department of Homeland Security-produced “Know Your Rights” information on immigration protections for immigrant crime victims and immigrant children at courthouses.
5. Adopt policies on steps judges should take if immigration enforcement officials come to civil, family, and criminal courtrooms.⁵
6. Provide training for state court judges on:⁶
 - a. immigration relief for immigrant crime victims and children;
 - b. U and T visa certification by judges;
 - c. SIJS findings;
 - d. how to obtain and apply legally correct information about immigration law in custody, protection order, child welfare, and other state court cases in which immigration status is raised by a party as an issue in the case;
 - e. VAWA confidentiality protections against courthouse enforcement and discovery in family- and criminal-court cases; and
 - f. federal immigration laws and policies that limit courthouse enforcement of immigration laws.
7. Sustain access to justice for immigrant and LEP victims and children by building these policies and trainings into court budgets, grants, and management and strategic plans.



Legally Accurate Information Promotes Fair Adjudication of Cases with Immigrants

A review of state family-court decisions reveals patterns of court rulings based on legally incorrect information about U.S. immigration laws or on assumptions about the potential for removal or deportation of one of the parties or witnesses in the case before the court (see Fata et al., 2013; Thronson et al., 2016). Access to legally accurate information about immigration laws, regulations, policies, and federal protections promotes the fair administration of justice in cases involving immigrant victims, children, and families.

The National Immigrant Women’s Advocacy Project (NIWAP), American University, Washington College of Law, with support from the State Justice Institute, the Office on Violence Against Women, and a team of national judicial faculty, has developed training materials, bench cards, manuals, and webinars to assist state courts in swiftly accessing legally correct information on topics like Immigration and State Family Law, VAWA Confidentiality, Courthouse Immigration Enforcement, Special Immigrant Juvenile Status, and Public Benefits. Visit <http://www.niwap.org/go/sji> to access these resources or contact NIWAP at (202) 274-4457 or info@niwap.org to learn about training and technical assistance available to judges and court staff.

References

- Capps, R., M. Fix, and J. Zong (2016). "A Profile of U.S. Children with Unauthorized Immigrant Parents." *Fact Sheets*, Migration Policy Institute, January. Online at <https://tinyurl.com/ydeju9fv>.
- Department of Homeland Security (2016a). "Protections for Immigrant Victims." Infographic, Washington, D.C., January 12. Online at <https://tinyurl.com/ybtyoful>.
- (2016b). "U and T Visa Law Enforcement Resource Guide." Washington, D.C., January. Online at <https://tinyurl.com/yca3vxpz>.
- Department of Justice (2010). DOJ Letter to State Courts on Language Access. Washington, D.C., August 16. Online at <https://tinyurl.com/yagyjzfk>.
- Fata, S., L. E. Orloff, A. Carcamo-Cavazos, A. Silber, and B. Anver (2013). "Custody of Children in Mixed-Status Families: Preventing the Misunderstanding and Misuse of Immigration Status in State-Court Custody Proceedings." 47 *Family Law Quarterly* 191.
- Immigration and the States Project (2014). "Changing Patterns in U.S. Immigration and Population." *Issue Brief*, Pew Charitable Trust, December 18. Online at <https://tinyurl.com/kys669x>.
- Migration Policy Institute (2016a). "Children in U.S. Immigrant Families." Data Hub. Online at <https://tinyurl.com/y72xlee9>.
- (2016b). "United States: Demographics and Social." Table, Data Hub, State Immigration Data Profiles. Online <https://tinyurl.com/y7xp322s>.
- National Center for State Courts (2006). "Court Interpretation in Protection Order Hearings." Bench card, Williamsburg, Va. Online at <https://tinyurl.com/yb2tawtz>.
- Rodrigues, R., A. Husain, L. E. Orloff, A. Couture-Carron, and N. H. Ammar (2018). "Promoting Access to Justice for Immigrant Crime Victims in an Age of Increased Immigration Enforcement: Report from 2017 National Survey." National Immigrant Women's Advocacy Project, American University, Washington College of Law, Washington, D.C., March 23. Online at <https://tinyurl.com/yceq8wdq>.
- Thronson, V. T., L. Orloff, C. Angel, S. Fata, R. Molina, B. Anver, and K. Wells (2016). "Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody and Parental Rights." 9 *Family and Intimate Partner Violence Quarterly* 7.
- Uekert, B., T. Peters, W. Romberger, M. Abraham, and S. Keilitz (2006). "Serving Limited English Proficient (LEP) Battered Women: A National Survey of the Courts' Capacity to Provide Protection Orders." Project report, National Center for State Courts, Williamsburg, Va., June 30. Online at <https://tinyurl.com/y76ndwhy>.
- U.S. Citizenship and Immigration Services (2017). *USCIS Policy Manual*, vol. 6, part J. Washington, DC: U.S. Citizenship and Immigration Services.
- Zong, J., and J. Batalova (2015). "The Limited English Proficient Population in the United States." *Spotlight*, Migration Policy Institute, July 8. Online at <https://tinyurl.com/yaegq6xr>.

¹ Languages most commonly spoken are Spanish, Chinese, Vietnamese, Korean, and Tagalog (Zong and Batalova, 2015).

² The term "foreign born" includes naturalized U.S. citizens, lawful permanent immigrants (or green-card holders), refugees and asylees, certain legal nonimmigrants (including those on student, work, or some other temporary visas), and persons residing in the country without authorization.

³ Leadership organizations include the Conference of Chief Justices, Conference of State Court Administrators, American Judges Association, National Association for Court Management, National Association of State Judicial Educators, National Center for State Courts, National Council of Juvenile and Family Court Judges, and National Association of Women Judges.

⁴ For more information about interpreters in court, see Department of Justice, 2010; National Center for State Courts, 2006; and Interpretation Technical Assistance and Resource Center (ITARC), <https://tinyurl.com/y9khowl8>.

⁵ For examples of policies state courts are implementing, see Rodrigues et al., 2018.

⁶ Training and technical assistance are available to judges and court staff from NIWAP (202) 274-4457 or info@niwap.org.