

Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody and Parental Rights

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INTRODUCTION

Immigrant victims of domestic violence, sexual assault and human trafficking face an array of challenges in the family law system. Abusers of immigrant women use immigration-related abuse² as a powerful form of emotional abuse in order to coercively control and trap immigrant victims of domestic

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² Historically, immigration laws have made lawful permanent residents and citizens responsible for filing immigration papers on behalf of their spouses and children. In non-abusive relationships, the citizen or lawful permanent resident spouse would file immigration papers, either before or shortly after the marriage, requesting that their spouse be granted lawful permanent residence. Research has found a strong connection between power and control over immigration status and physical and sexual abuse. Dutton, Mary Ann et al., *Characteristics of Help-Seeking*

violence and their children in relationships with abusers.³ Evidence of immigration-related abuse might include: threats of deportation, threats to turn her in to the Department of Homeland Security (DHS) if she tells anyone about his abuse, refusal to file or threats to withdraw immigration papers filed for the victim or her children, or threats to raise her immigration status in custody, protection order or divorce cases.⁴

When attorneys represent an immigrant client and that client is a victim of domestic violence, sexual assault, human trafficking or other violent crime, approaching cases in a manner that enhances protections for particularly vulnerable victims requires knowledge of legal and social services options that were specifically developed to help immigrant crime victims. This special volume provides an overview of family law options for immigrants and immigrant victims, with a particular focus on how to address and respond

Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications, 7 Geo. J. on Poverty L. & Pol'y 245, 293 (2000), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Characteristics%20of%20Help-Seeking%20Immigrant%20Battered%20WomenOVW%2010.23.01.pdf>; Raj, Anita & Silverman, Jay, *Immigrant South Asian Women at Greater Risk for Injury From Intimate Partner Violence*, 93 Am. J. Pub. Health 435-437 (2003). When a U.S. citizen marries a foreign born spouse, the probability of domestic abuse in that relationship climbs to almost three times the national average. Hass, Giselle Aguilar, et al., *Battered Immigrants and U.S. Citizen Spouses*, at 3 (April 24, 2006), available at: http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/copy_of_BB_RSRCH_ImmVictims_Battered_Imm.pdf. Congress has recognized this clear connection between control over immigration status and domestic violence. "[T]he Battered Immigrant Women Protection Act of 2000 . . . Title V continues the work of the Violence Against Women Act of 1994 ("VAWA") in removing obstacles inadvertently interposed by our immigration laws that may hinder or prevent battered immigrants from fleeing domestic violence safely and prosecuting their abusers by allowing an abusive citizen or lawful permanent resident spouse to blackmail the abused spouse through threats related to the abused spouse's immigration status. . . . VAWA 2000 addresses the residual immigration law obstacles standing in the path of battered immigrant spouses and children seeking to free themselves from abusive relationships that either had not come to the attention of the drafters of VAWA 1994 or have arisen since as a result of 1996 changes to immigration law." Violence Against Women Act of 2000 Section by Section Summary, 146 Cong. Rec., S10,195 (daily ed. Oct. 11, 2000).

³ Dutton, Mary Ann & Goodman, Lisa, *Coercion in Intimate Partner Violence: Toward a New Conceptualization Sex Roles*, Vol. 52, Nos. 11/12, 743 June 2005, available at: <http://www.mendeley.com/research/coercion-in-intimate-partner-violence-toward-a-new-conceptualization>; Immigrant survivors of sexual assault, particularly sexual assault perpetrated in the workplace, experience similar forms of entrapment as undocumented workers or workers who have work visas that are tied to the particular employer who is perpetrating acts of sexual violence against the victim. Sexual assault victims can end up in family court if they became pregnant as a result of the sexual assault or because the sexual assault victimization led or contributed to the break-up of the victim's relationship with her children's father. See generally, Orloff, Ed. *Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault* (2013), available at: <http://niwaplibrary.wcl.american.edu/reference/manuals/sexual-assault> (hereinafter *Empowering Survivors*).

⁴ Orloff, Leslye E. & Kaguyutan, Janice V., *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U.J. Gender Soc. Pol'y & L. 95, 98-99 (2002). available at: http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-self-petition-and-cancellation/research-reports-and-data/VAWA_Offering_Helping_Hand_History.pdf.

effectively when immigration status, language access and other issues intersect in family court cases involving immigrants.

We start with an example of a case that made its way over the course of several years to the Nebraska Supreme Court, which issued a unanimous decision returning custody of a child to a Guatemalan immigrant mother whose parental rights had been terminated. With the assistance of DHS officials, the mother was reunited with her children and allowed to remain in the United States on humanitarian parole to ease her children's adjustment to reunification with their mother. Over the past few years immigration policies have changed significantly in ways that can either harm or help immigrant parents, particularly those who are victims of domestic violence or sexual assault. However, an immigrant victim's ability to attain the protections offered under today's immigration laws depends largely on the victim's ability to access legal assistance and advocacy services from attorneys and advocates who are knowledgeable about immigrant victims legal rights.⁵ This volume is designed to help attorneys develop case plans that position immigrant clients to best take advantage of the immigration and family law protections available to help battered immigrants. Filing applications for immigration benefits early in the case offers victims protection from deportation, access to health care and some public benefits, and sets the victim on a path to obtaining work authorization.

This volume highlights key issues that arise for attorneys representing battered immigrants in custody cases. Our goal is to provide an overview and to direct attorneys to resources that provide additional information, evidence checklists, legal research and tools when such issues arise for their clients. Attorneys representing immigrant victims in family court cases can and should work with victim advocates to collect information and help immigrant survivors file for immigration relief as soon as possible. We provide tools and resources to help screen clients for immigration relief eligibility and to locate immigration attorneys in your state who have expertise working with immigrant survivors.⁶

In the vast majority of cases, a domestic violence or family attorney can assist her client in filing a Violence Against Women Act (VAWA) self-petition or U visa immigration case using the tools and materials referenced in this volume. Experts on immigration law and immigrant victims in your state and national technical assistance providers can support attorneys in this representation. When a client's immigration case is complex, the attorney should help the client find and collaborate with an experienced immigration attorney

⁵ Ammar, Nawal, Orloff, Leslye, Dutton, Mary Ann, and Hass, Giselle Aguilar, "Battered Immigrant Women in the United States and Protection Orders: an Exploratory Research" 37 *Criminal Justice Review* 337 (2017) at 14.

⁶ To locate an immigration expert in your area with experience working with immigrant victims go to the National Directory of Programs with Experience Serving Immigrant Victims, available at: <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>.

who specializes in representing immigrant victims. Complex immigration cases include cases in which the client has a criminal history, is involved in a removal proceeding, or has an outstanding removal or deportation order. Coordination of case strategy between the immigration and family attorney is essential to promoting victim safety, particularly when she is involved in custody litigation.



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