

Domestic Violence: The Intersection of Family Law and Immigration Law



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Domestic Violence Intersections

Protective Orders, Divorce, Child
Custody Determinations, Special
Juvenile Visas

Other Intersections

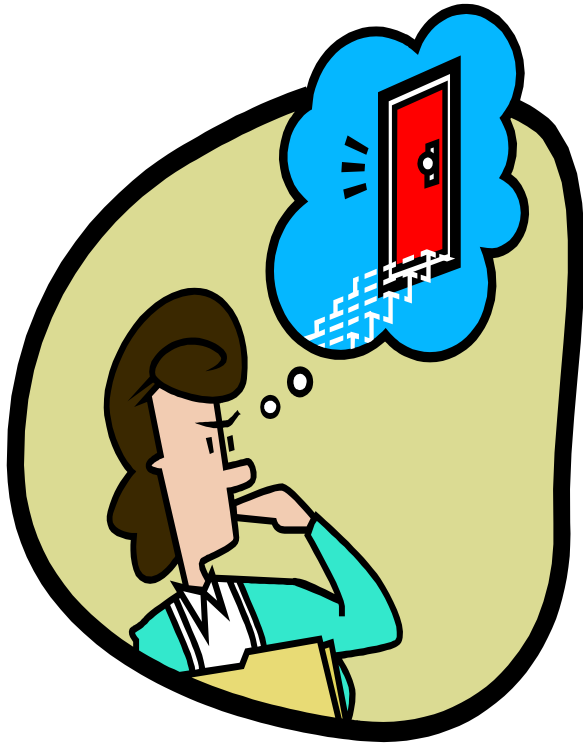
Adoptions



Why Focus on Family Violence?

- Prevalence: A leading cause of injury to women in the United States
- Lethality: In 2006, 120 women were murdered in Texas by their intimate male partners
- Correlation: Family violence (including child abuse and neglect) is often the root of other social problems
- Priority for most legal service providers

Why Doesn't She Leave?



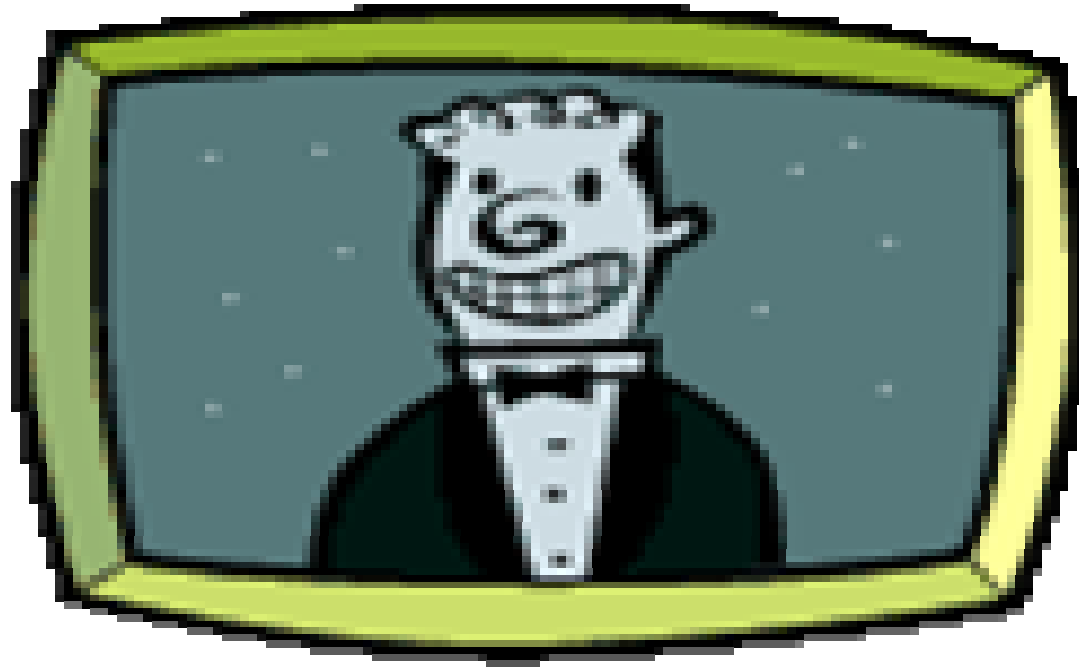
- Why doesn't he STOP hitting?



Barriersto Leaving

- Fear of Deportation
- Fear of Loosing Children
- Not understanding the legal system
- Not speaking the language
- Not able to work
- Not able to drive/open bank account/etc.
- Highly isolated

Domestic Violence Immigration Primer





Immigration Options Available to Domestic Violence Victims

- VAWA Self-Petition
- Crime Victim U Visa
- Waiver of Joint Petition for Removal of Conditional Residency
 - VAWA Cancellation of Removal
 - Special Immigrant Juvenile Status
 - Asylum



VAWA Self-Petition Requirements

- Married to USC or LPR
- Subjected to Battery or Extreme Cruelty
- Residency with Abuser
- Good Moral Character



VAWA Benefits

- Also available for abused children and parents
- Children may derive status from mother's application
- Eligible for employment authorization



U Visas

Undocumented victims of crime willing to assist authorities with investigation or prosecution of crime.



Waiver of Joint Petition for Removal of
Conditional Residency

Battered Spouse Waiver

Must prove battery and/or extreme cruelty
by USC or LPR

Available if currently married, separated,
divorced, or in the process of divorcing



VAWA Cancellation of Removal

- Battered or subject to extreme cruelty by USC or LPR
- Continuous residence in the U.S. for 3 yrs.
- Removal would cause extreme hardship



Special Immigrant Juvenile Status

- Only available to certain undocumented children in the state juvenile system
- Must be unmarried and under 21
- Good option for abused child not eligible for VAWA or U visa and already in the juvenile justice system or probate guardianship due to abuse
- Biggest obstacle & requirement: “deemed eligible for long term foster care” must be in finding and based on abuse, neglect or abandonment



Asylum

- Persecution or well founded fear of future persecution based on:
 - Race, religion, nationality, political opinion, or membership in a particular group
- Persecution by group or individual that government is unable or unwilling to control
- No third country
- Generally must be filed within 1 yr.



Review of Options

- VAWA Self-Petition
- Crime Victim U Visa
- Waiver of Joint Petition for Removal of Conditional Residency
 - VAWA Cancellation of Removal
 - Special Immigrant Juvenile Status
 - Asylum

The Intersection





FAMILY LAW

Protective Orders

Divorce

Custody Proceedings



Protective Orders

- Must be narrowly tailored to meet the safety needs of the victim
- Should include a finding of violence when possible
- Include award of property, child & spousal support, access provisions
- Keep information confidential
- Enjoin from contacting ICE & victim's family
- Include the children as protected persons



Protective Orders

- Include work
- Vacate orders must take place immediately
 - Craft special provisions regarding utilities
 - Instruct clients to change passwords
- Make sure court makes instructions regarding weapons



Creative Provisions in Protective Orders

For Undocumented Victims

Proving the Statutory Requirements

- Marriage
- USC or LPR status
- Provide copies or access to records needed such as previously filed immigration documents
 - Bonafide marriage, proof that they lived together
 - Should request police escort
- Prevent abuser from withdrawing filed application
- Make provisions to pay for immigration processing fees



Divorce Proceedings

Additional Tool for Protection of Undocumented Victims

- Economic Relief
 - Award of marital estate – use grounds
 - Spousal support and the I-864
- Discovery and TRO's



Civil Discovery

- Status of abuser, SSN's
- Prior marriages
- Marriage certificate, birth certificates
- Copies of leases, utility bills
- Photos of marriage and family, love letters
- I-130, I-864 and other immigration documents
- School records, medical records



TRO's

- Removal of child from jurisdiction
- Turn over passports
- Maintain medical, car, house insurance
- Maintain payment of mortgage, rent, utility deposits
- Injunctions against third parties
- Prior court approval before contacting any governmental agency except in emergencies
- Cooperate and not withdraw any petition filed on behalf of spouse and/or children



Common Law Marriages

INA recognizes as valid marriage for
VAWA Self-Petitions provided state law
requirements are met



Potential Pitfalls

- I-360 must be filed within 2 years of divorce
- If parties are divorced at the time of filing the I-360, THERE MUST BE A CONNECTION BETWEEN DIVORCE AND ABUSE!
- If abuser deported due to DV, I-360 must be filed within 2 years
- If abuser about to be deported: FILE I-360 ASAP!
- If the USC abuser dies must file I-360 within two years



SAPCR's

- 30-60% of perpetrators that abuse partners also abuse children in the household
- Abusers are twice as likely to seek sole custody of their children
- Battered women are less likely than non-battered women to be awarded SMC
- Fathers who contest custody win sole or primary custody in 40-70% of cases



SAPCR's

- Finding of domestic violence very important
 - Presumptions against JMC
 - Denial of visitation
- Risks Against Parental Kidnapping
 - Make sure to go over risk factors and asks court for specific orders
 - Beware that client's safety planning may also be used against her



Citizenship Issues

Child Citizenship Act of 2000

Automatic (derivative) citizenship is available to children born outside the U.S.

1. At least one parent is a USC
2. Child is under 18
3. Child resides in US in the “legal” and “physical” custody of the USC parent pursuant to a lawful admission for permanent residence



Derivative Citizenship Status -What does this Mean to Family Law Practitioners?

5th Circuit goes against JMC presumption
to secure citizenship

Nehme and Bustamante-Barrera

Nehme v. INS, 252 F.3d 415

Bustamante-Barrera v. Alberto Gonzales, 447 F.3d 388



Immigration Benefits to Victims in Family Law Case

- Filed application that will secure legal residence in the U.S.
- Work Authorization
- Provide expertise on immigration laws to lawyer assisting client, court, social study investigator



Domestic Violence Findings & Fault Grounds

Always important in cases involving DV,
but more so for undocumented victims

Most Important Step INTAKE:



- Immigration Status
- Place of Birth
- Parentage



Contact the Experts

- If you are an immigration attorney
- If you are a family law attorney
- If you practice in both areas, your client is very lucky!

Power and Control Wheel for Immigrant Women



Domestic Abuse Intervention Project • 206 West Fourth Street • Duluth, Minnesota 55806 • 218/722-4134



Safety Planning