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Interaction of Immigration and Family Law: Session II Immigration Issues Affecting Families

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IMMIGRATION ISSUES AFFECTING FAMILIES

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Immigrants in Michigan

- In 2019, 700,925 immigrants (foreign born individuals) comprised 7 percent of Michigan's population.
- Of these, 52% are from Asia, 24% from the Americas, 18% from Europe, and 5% from Africa.
- Keep in mind that many among the foreign born have become U.S. citizens.

Migration Policy Institute Data Hub
<https://www.migrationpolicy.org/data/state-profiles/state/demographics/MI>

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Immigrants in Michigan

- In 2018, 686,382 people in Michigan (7 percent of the state's population) were native-born U.S. citizens who had at least one immigrant parent.
- Nationwide, more than one in four children born in the United States has at least one immigrant parent.

https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_michigan.pdf

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Immigration Issues in Family Court

With so many families in which immigration status is an important issue or factor in home life, it is not surprising to see immigration issues in family courts

Family Law as Immigration Law

- ▣ Family laws create and enforce relationships that have great relevance in immigration law
- ▣ Family laws often are determinative of immigration and nationality rights
- ▣ Importantly, this interaction can happen **without regard to intention**

Immigration Law As Family Law

- ▣ Immigration law can have tremendous impact on family integrity as it intrudes into, and sometimes conflicts with, family or family court decisions
- ▣ In determining which family members can live together, immigration law functions as a form of family law

Conflicting Values

- Immigration law and family law have fundamentally different conceptions of “child” and “family”
- Immigration law and family law attach vastly different importance to the best interests of the child

Conflicting Values

- Though immigration and family laws serve different functions and values, they inevitably interact
- Understanding the interaction of immigration and family law can help ensure that agencies and courts working with immigrant families preserve and honor important family law values

Knowledge of immigration issues is important in family matters

- Understanding and resolution of immigration status issues early can have important consequences in planning for custody, family reunification or independent living
- Understanding of family dynamics may turn on knowing about family immigration issues

State Judicial Role

- Family court involvement may provide a basis for obtaining immigration status that should not be missed
- Immigration laws are complex and special protections exist for immigrant crime victims that often include a specific role for state court judges.

Immigration Status and Race

- As anti-immigrant bias has grown, courts see greater numbers of cases in which parties seek to raise immigration status of another party, child or parent to gain advantage in state family court proceedings.
- Parties often seek to conflate immigration status, inappropriately, with race and with appeals to bias.

Sunshine as Protection Against Misinformation and Bias

- Litigants often seek to raise immigration issues despite lack of relevancy
- Veiled and not so veiled appeals to bias are common
- Many immigrants are wrongly convinced they have no rights and are scared to appear and assert rights in court

Exceptions to Filing Fee

- (a)(3) Refugee;
- (a)(4) Paroled as Refugee;
- (a)(5) Asylee;
- (a)(7) N-8 or N-9 nonimmigrant;
- (a)(8) Citizen of Micronesia, Marshall Islands, or Palau;
- (a)(10) Granted Withholding of Deportation;
- (a)(16) Victim of Severe Form of Trafficking (T-1 Nonimmigrant);
- (a)(12) or (c)(19) TPS if an initial application and under 14 years of age or over 65 years of age.

Exceptions to Filing Fee

- (a)(19) Victim of Qualifying Criminal Activity (U-1 Nonimmigrant);
- (c)(1), (c)(4), or (c)(7) Dependent of certain foreign government, international organization, or NATO personnel;
- (c)(8) Applicant for Asylum and Withholding of Deportation and Removal;
- (c)(9) or (c)(16) Any current Adjustment of Status or Registry applicant who filed Form I-485 on or after July 30, 2007, filing fee.
- (c)(31) VAWA Self-Petitioner.

Who can work in the United States

- The categories of workers permitted to work in the U.S. include:
 - United States citizens
 - Non-citizen nationals of the United States
 - Lawful permanent residents
 - Asylees
 - Asylum seekers 365 days after their asylum application is filed
 - Refugees
 - People with pending lawful permanent residence applications, i.e. application to “adjust status”

Who can work in the United States

- Nationals of certain countries given Temporary Protected Status (TPS) due to conditions in their home countries
- People granted deferred action (DACA)
- Fiancés and spouses of U.S. citizens
- Dependents of foreign government officials
- J-2 spouses or minor children of exchange visitors
- Non-citizen, non-residents, duly authorized to work

Who can work in the United States

Non-citizen, non-resident workers include:

- **Temporary (Non-Immigrant) Workers**
- **Permanent (Immigrant) Workers**
- **Students** - must obtain permission from an authorized official at their school or Designated School Official (DSO).
- **Exchange Visitors** – must obtain permission from the Responsible Officer (RO). They may be eligible to work temporarily in the U.S. via the exchange visitor visa program.

Who can work in the United States

- Domestic violence victims with pending VAWA self-petitions – after granted prima facie determination
- U visa applicants once granted deferred action
- Special Immigrant Juvenile applicants once application is approved

Applying for Employment Authorization

USCIS Form I-765 Employment Authorization Document

31 pages of detailed instructions

<https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>

Social security cards are NOT evidence of immigration status

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Obtaining Social Security Number

Acceptable immigration documents include your:

- Unexpired foreign passport with a current admission stamp showing a class of admission permitting work;
- Form I-551, Permanent Resident Card;
- Form I-94, Arrival/Departure Record showing DHS work authorization; or
- Form I-766, Employment Authorization Document, (EAD, work permit from DHS)

Exchange Visitors & Int'l Students

- A J-1 visitor must show a DS-2019, Certificate of Eligibility for Exchange Visitor Status. Also, J-1 students, student interns, and international visitors must show a sponsor letter to prove employment.
- International students: An F-1 or M-1 student must show a Form I-20, Certificate of Eligibility for Nonimmigrant Student Status.

Individual Taxpayer ID Number

An ITIN is a tax processing number issued by the Internal Revenue Service. The IRS issues ITINs to individuals who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain, a Social Security number.

An ITIN **does not**:

- Authorize work in the U.S.
- Provide eligibility for Social Security benefits
- Qualify a dependent for Earned Income Tax Credit Purposes

ITIN does NOT authorize work



Immigration Law Does Not Override Family Law

“If the child was born in Mexico, . . . alright, and mom’s here illegally, alright there’d be no doubt in the court’s mind. Then the child is here illegally and I’d have to grant the U.S. citizen plaintiff custody.”

Núñez v. Alonso, No. 04-D-311872-C (Nev. Eighth Jud. Dist. Ct. Fam. Div. hearing Feb. 25, 2004) (rev’d).

DO NOT LET IMMIGRATION LAW DISPLACE FAMILY LAW VALUES AND STANDARDS

Fundamental Family Rights Transcend Immigration Law

Among the “fundamental interests [that] apply to individuals regardless of their immigration status” is “the interest of parents in the care, custody, and control of their children.... As such, **without regard to their immigration status, parents stand[] on equal footing ... when asserting their right to custody of their children.**”

Rico v. Rodriguez, 120 P.3d 812, 818 (Nev. 2005).

When Might Immigration Status Be Relevant to Custody?

- **Relevant:** 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:**
 - Evaluation of parenting abilities
 - Core primary caretaker determination
 - Best interests of the child
 - Requirements regarding custody awards to non-abusive parent

**Myth vs. Fact:
Parents without Legal Immigration Status**

Myth	Fact
Deportation is imminent	Many have defenses to removal and proceedings are slow DHS policies prevent detention/removal of immigrant parents who are crime victims
Immigrant parent is likely to flee U.S. with child	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.
The immigrant parent has no livelihood	Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits

**Myth vs. Fact:
Parents without Legal Immigration Status**

Myth	Fact
Lawfully present parent must have custody in order to file for immigration benefits for children	Immigration status does not affect parent's ability to file for or gain immigration benefits for his children
Parent lacking lawful immigration status cannot access public benefits for eligible children	Although immigrants, even those lawfully present, are often ineligible for certain public benefits, U.S. citizen children of immigrants are often eligible for benefits and parents can serve as payees.

**Sensitive Locations Protected From
Immigration Enforcement**

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 Policies (ICE & CBP)

- Schools
- Medical treatment & health care facilities
- Places of worship
- Religious or civil ceremonies i.e., weddings and funerals
- Public demonstrations i.e., march, rally, parade

Immigration status and child support

- A child is entitled to support from a parent regardless of a parent’s citizenship or immigration status.
- A parent is obligated to financially support his or her child. Whether the parents of a child are married or not, they must support the child.
- Immigration status does not bar the collection of child support.

Immigration status and child support

- If the parents of a child are separated, the parent with whom the child lives can pursue child support. Even if she is undocumented, she may ask a judge to order child support.
- So, the status of a parent as ‘undocumented’ does not affect his financial obligation.
- Neither does it stop a parent from receiving support.

Collecting Child Support from Immigrants Lacking Lawful Status

- If the child’s parent is in the U.S. without the ability to work lawfully and fails to make payments on his child support obligation, child support collections options that would be available to any other parent who is a U.S. citizen or lawful resident can be applicable. For example, the court can order garnishing wages or a bank account, or the non-paying parent may be held in contempt.

Collecting Child Support from an Undocumented Immigrant

- When an immigrant parent is deported, the child support obligation still does not cease. However, it can be more difficult to enforce the child support order and to ensure that the parent makes payments.

The Hague Convention on the International Recovery of Child Support

- The Convention and the conforming amendments to UIFSA 2008 do not affect intrastate or interstate cases in the United States.
- Its primary focus is on uniform procedures for enforcement of decisions and for cooperation among countries.
- It applies only to cases where the parent who receives support and child live in one contracting country and the parent who pays support lives in another contracting country.

The Hague Convention on the International Recovery of Child Support

- It does not affect substantive child support law, which is generally left to the individual states.
- While the Department of Health and Human Services (HHS) is the central authority for the United States under the Convention, HHS designated state Title IV-D child support enforcement agencies as the public bodies responsible for carrying out, under its supervision, many of its central authority functions, such as transmitting and receiving applications for services, and initiating and facilitating proceedings.

Office of Child Support Enforcement

- OCSE is the U.S. Central Authority for international child support. They work with states and countries to provide assistance to families seeking support when family members live in different countries.

Office of Child Support Enforcement

States process cases with certain countries under different types of reciprocity arrangements, including:

- **Hague Convention countries** — countries that have joined the Hague Child Support Convention, and
- **Foreign reciprocating countries (FRCs)** — countries and Canadian provinces/territories that have bilateral arrangements with the U.S. government and have not joined the Hague Convention.

<https://www.acf.hhs.gov/css/partners/international>

Office of Child Support Enforcement

- The top countries of origin for immigrants in Michigan are Mexico (13 percent), India (11 percent), Iraq (10 percent), China (5 percent), and Canada (5 percent).
- Only 40 countries have joined the Convention. China, India, Iraq, Mexico have not.

https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_michigan.pdf

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ICE Detained Parent Information

ICE Detained Parent Directive

- <https://www.ice.gov/detain/parental-interest>

Online Detainee Locator System:

- <https://locator.ice.gov/odls/#/index>

Ongoing Challenges

- Don't allow immigration issues to undermine critical values and principles
- Creatively use the flexibility and equitable powers of family law
- Question assumptions
- Guard against bias and misinformation

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