**INSIDE:** Due Process & Non-Citizens • Special Relief for Unaccompanied Youth • Abuse Victims Scared Silent

# Delaware Lawyer

A PUBLICATION OF THE DELAWARE BAR FOUNDATION

VOLUME 36 ◆ NUMBER 3
$3.00 ◆ Fall 2018

## IMMIGRATION

### Federal Law and Its Impact on Delaware Courts


Nonprofit Organization
U.S. Postage
PAID
Wilmington, Delaware
PERMIT NO. 697

2017 BEST OF Delaware
DelawareToday

GOURMET & EVERYDAY
JANSSEN'S market
SINCE 1952

# FINE FOOD MAKES A FABULOUS GIFT

This holiday, surprise everyone on your list with something special from Janssen's Market. From unique cheeses and gourmet fare to delicious bakery treats, we have something for everyone!

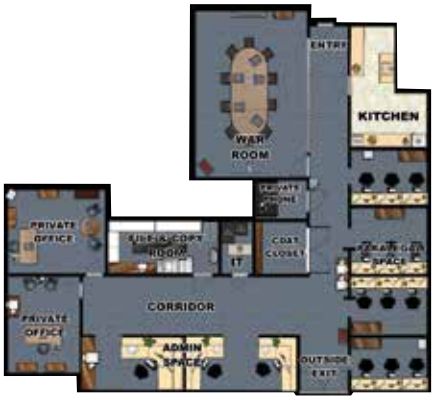
**www.janssensmarket.com**
3801 KENNETT PIKE, GREENVILLE, DE
302.654.9941


# DoubleTree by Hilton Downtown Wilmington Legal District

Now featuring 2 fully functional law centers located within one block of both the Federal and Superior Courthouses. Our 2 turnkey centers exceed 3,000 square feet in size and incorporate all of the following features:

- 2 private lead attorney offices
- Large War Room space with 52" HD flat screens
- 3 large administrative workstations
- 4 paralegal workstations accommodating up to 8 people
- Oversized file storage rooms complete with shelving
- Kitchen areas complete with full-size refrigerator, microwave, coffee maker and water cooler
- Direct-dial speakerphones with voicemail at each workstation
- Private, secured entrances with key card access
- 100 MG dedicated Internet service in each center
- Dedicated IT locations in each center

Sandra Day O'Connor Center



Thurgood Marshall Center

**For all your trial team needs contact:**

Julie Shaw
302.661.4316
Julie.Shaw@Hilton.com

Hilton HHonors®

** Hilton Honors points signing bonus for Fall and Winter Trial Teams in 2018! Ask for details!*

DOUBLETREE
BY HILTON™
DOWNTOWN WILMINGTON
LEGAL DISTRICT



**700 North King Street • Wilmington, DE 19801**
**Reservations: 1.800.222.TREE Hotel Direct: 302.655.0400**
**www.wilmingtonlegalcenter.com**

# Delaware Lawyer

CONTENTS FALL 2018



EST. LINDSAY CONSTRUCTION INC 1987

*"Conserving Treasured Resources -
Natural and Architectural."*

610.388.3202 | WWW.LINDSAYCONSTRUCTIONINC.COM

FINE CUSTOM HOME BUILDING ~ EXPANSION & RENOVATION ~ PERIOD RESTORATION

KITCHENS • BATHS • MASTER BEDROOM SUITES • CARRIAGE HOUSES

# Delaware Lawyer

*A publication of Delaware Bar Foundation*
*Volume 36 Number 3*





## DELAWARE BAR FOUNDATION

100 W. 10th Street / Suite 106
Wilmington, DE 19801
302-658-0773 / 302-658-0774 (fax)





## DELAWARE LAWYER

*is produced for the*
*Delaware Bar Foundation by:*
Today Media Custom Communications
3301 Lancaster Pike, Suite 5C
Wilmington, DE 19805

*Chairman:* Robert Martinelli
*President/Editor:* Jonathan Witty
*Art Director:* Samantha Carol Smith

*Subscriptions orders and address changes, call:*
Jen Schuele, 302-656-1809

*Advertising information, call:*
Steve Lassiter, 443-909-7828
steve.lassiter@todaymediacustom.com

***Delaware Lawyer*** is published by the Delaware Bar Foundation as part of its commitment to publish and distribute addresses, reports, treatises and other literary works on legal subjects of general interest to Delaware judges, lawyers and the community at large. As it is one of the objectives of ***Delaware Lawyer*** to be a forum for the free expression and interchange of ideas, the opinions and positions stated in signed material are those of the authors and not, by the fact of publication, necessarily those of the Delaware Bar Foundation or ***Delaware Lawyer***. All manuscripts are carefully considered by the Board of Editors. Material accepted for publication becomes the property of Delaware Bar Foundation. Contributing authors are requested and expected to disclose any financial, economic or professional interests or affiliations that may have influenced positions taken or advocated in the articles. That they have done so is an implied representation by each author.

# EDITORS' NOTE

Lisa C. Chan & Loretta M. Young

In planning for the fall issue of *Delaware Lawyer*, the board considered current topics that our readership would find both interesting and relevant to the practice of law from the bench and the bar side. The topic of immigration seemed to fit all of those parameters.

Immigration has been the focus of our nation recently—the cause of demonstrations, the center of news coverage, the reason for many tears and disagreements, and the subject of many tweets. It has kept the lights on in Washington into the wee hours of the night.

Locally, in 2018, immigration law presentations have been included in the Bench and Bar program, court retreat trainings, and the Office of Defense Services's CLE presentations. Attorneys and judges alike recognize that federal immigration law has many implications in our state courts.

The first article on asylum traces the history and legislative intent of this form of immigration relief and analyzes federal case law on the question of whether non-citizens enjoy the protections of due process under our Constitution.

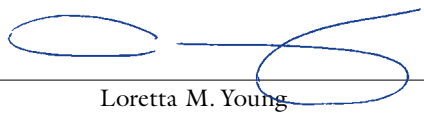
Next, Laura Carothers Graham gives us the nuts and bolts of Special Immigrant Juvenile Status and the requirement for a predicate state court order with specific findings.

The third article, Civil Protection Orders, spotlights possible unintended federal immigration consequences, for victims and respondents, as a result of the issuance of a state court protection order.

Finally, the last article addresses the federal Violence Against Women Act's (VAWA) victim-centered protections for immigrants and how VAWA applies to state discovery motions and in-court testimony.

The issue concludes with a tribute to Dan Lyons, a tireless advocate for his clients' rights, who recently retired after more than 20 years of practice in both the federal and state courts and in both the government and private sectors.

Lisa C. Chan



Loretta M. Young

### Licelle Cobrador

is the founding attorney of Cobrador & Associates, PLLC. She handles immigration, business transactions, real estate, litigation, intellectual property and entertainment law. As part of her cross-border practice, she counsels and represents clients from all 50 states, Asia, Latin America and Europe. She is the vice president and executive director for FALDEF and the co-chair of Cardozo Law's Masters Alumni Committee. Previously, Ms. Cobrador served as an attorney for asylum seekers in bond hearings, credible fear interviews and before immigration court judges and has prevailed in petitions for review with the U.S. Court of Appeals for the Second Circuit.

### Thomas A. Foley

has been practicing law since 1989. His practice is devoted entirely to criminal defense. A Fellow of the American College of Trial Lawyers, he is licensed in Delaware and the District of Columbia. He also is admitted to practice before the U.S. Court of Appeals for the Third Circuit and the United States Supreme Court. After graduating from Miami University in 1982, Mr. Foley was commissioned as a lieutenant in the United States Marine Corps, serving more than four years as an infantry officer. He graduated *cum laude* from the University of Detroit School of Law in 1989, and began his legal career as a prosecutor with the Delaware Department of Justice until 1995, when he entered private practice.

### Laura Carothers Graham

is the Deputy Director at Community Legal Aid Society, Inc. (CLASI), and the Managing Attorney in the Medical-Legal Partnership & Immigration Program. With CLASI since 2006, her work includes representation and systemic advocacy related to: Family Court and immigration petitions for victims of violent crime, domestic violence and child abuse; and working with community and healthcare providers to serve patients' unmet civil legal needs through the Medical-Legal Partnership. Ms. Graham graduated *magna cum laude* from Juniata College with a bachelor's degree in Political Science and German. She earned her J.D. from Temple University School of Law. She is a member of the Delaware Bar and Pennsylvania Bar, and the U.S. District Court for the District of Delaware.

### Leslye E. Orloff

is an Adjunct Professor and Director of the National Immigrant Women's Advocacy Project at American University Washington College of Law. She was involved in drafting the Protection for Immigrant Victims of Violence Against Women of the Violence Against Women Acts of 1994, 2000, 2005 and 2013; the Trafficking Victims Protection Acts of 2000 and 2008; legal services access for battered immigrants in 1997 and 2005; and welfare access for battered immigrants in 1996. She has published extensively on legal rights and services options for survivors of domestic violence, sexual assault and other crimes. She served as 2016 Chair of the Health-Mental Health Subcommittee of the U.S. Immigration and Customs Enforcement Advisory Committee on Family Residential Centers. In 2015, she was honored with a Social Educational Exchange Fellowship from the Eurasia Foundation for Gender Issues.

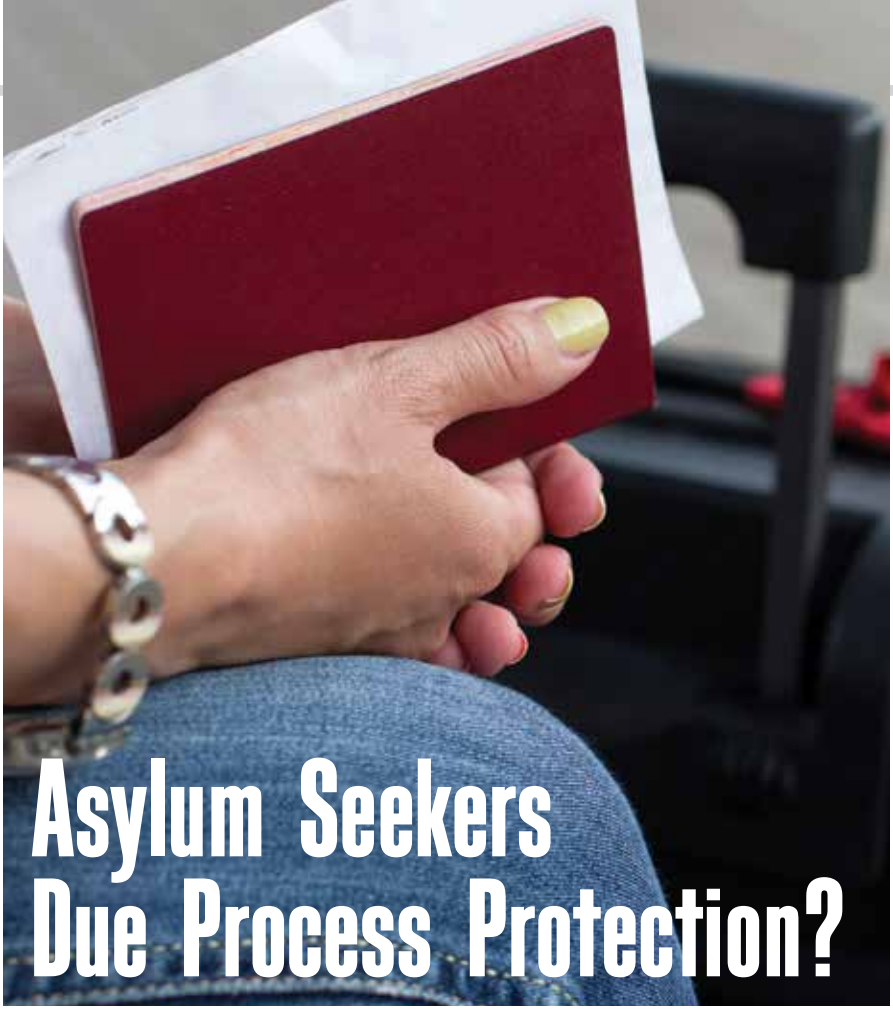
### Veronica T. Thronson

is Clinical Professor of Law and Director of the MSU Law Clinic at the Michigan State University College of Law, where she also directs the Immigration Law Clinic. She was appointed to the faculty of The National Judicial College in 2012. She teaches Immigration and Nationality Law and Domestic Violence. Prior to academia, Professor Thronson was Directing Attorney of the Domestic Violence Project at the Legal Aid Center of Southern Nevada, where she practiced family and immigration law. Previously, she served as the Director of Training and Legal Services at the New York Immigration Coalition. Professor Thronson is a graduate of the City University of New York School of Law. She is admitted to the practice of law in New Jersey, New York, Nevada and Michigan.

### Shravanthi Suresh-Silver

is an associate attorney at the New York offices of Fragomen, Del Rey, Bernsen & Loewy, LLP. She focuses her practice on comprehensive immigration issues, including employment-based visa petitions and permanent residency applications. Her practice includes advising on non-immigrant visas, as well as the PERM labor certification process. On a Dean's Merit Scholarship, she obtained a Master of Law in Dispute Resolution from Benjamin N. Cardozo School of Law in 2016. Ms. Suresh-Silver received her Ba. LL.B. with honors from Christ University, Bangalore, India in 2015. She is a member of the New York State Bar Association and is involved in Alternative Dispute Resolution as well as the International Mediation Institute. Ms. Suresh-Silver passionately advocates for immigrant justice.

Licelle Cobrador &
Shravanthi Suresh-Silver



# Are Asylum Seekers Entitled to Due Process Protection?

The answer is not an easy one as laws and practices change.

In an era when we hear the terms "removal," "deportation," "immigration" and "asylum" more often than perhaps ever before, it is important that we have a clear understanding of the implications to the rule of law that are at stake. Are non-citizens seeking asylum in the United States entitled to be treated equally to citizens? What legal rights do these asylum seekers have?

In a quest for answers to these questions, this article begins by reviewing the history of United States Supreme Court decisions on due process in the context of asylum law. The article further examines where we stand today in establishing and protecting the constitutional due process rights of asylum seekers.

### What is Asylum?

Asylum is a form of legal protection potentially available to people already in the United States or people seeking admission to the United States at one of its ports of entry. A person in one of those two categories may receive asylum if he or she meets the legal definition of a "refugee." A person seeking asylum is appropriately called an "asylum seeker." If refugee status is later granted, the asylum seeker then becomes a "refugee" who is entitled to certain legal protections, the most important of which is protection against removal to his or her home country.

The 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees define a "refugee" as a person who is unable or unwilling to return to his home country and is unable to avail himself of the protection of that country, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion."[1] Through the Refugee Act of 1980, Congress incorporated a substantially similar definition of a "refugee" into U.S. immigration law.[2]

As a signatory to the 1967 Protocol, the United States has international and

domestic legal obligations to provide protection to those who *qualify* as "refugees." Specifically, the United States is obligated under domestic and international law to grant asylum to applicants who qualify for asylum. In the fiscal year 2016, the most recent year for which there is available data, of the 84,989 refugees who were recorded to have entered the United States, only 20,455 individuals were granted asylum. The low number is directly correlated to the difficult evidentiary standard that one has to establish to qualify for asylum.[3]

### How does due process apply in asylum law?

The Fifth Amendment of the U.S. Constitution guarantees due process, or that no person can be "deprived of life, liberty or property without due process of law." The Fifth Amendment provides aliens with the "opportunity to be heard" at a meaningful time and in a meaningful manner. There must be a determination as to whether, given the totality of the circumstances, one had a full and fair opportunity to put on her case.[4] Due process demands a neutral and impartial arbiter who can "assiduously refrain from becoming an advocate for either party." [5] Due process is violated whenever an immigration judge's failure to reflect "the appearance of impartiality" has a potential to affect the outcome of the asylum proceeding.[6]

In *Augustin v. Sava*, the Second Circuit rooted an asylum seeker's right to seek asylum and right to receive a fair hearing with the required procedural safeguards in the Refugee Act of 1980.[7] These safeguards, according to the Third Circuit, are as follows: (i) a hearing before a neutral immigration judge; (ii) a transcribed record of the proceedings; (iii) adequate translation services; (iv) notification of the asylum seeker's right to counsel; (v) notification of the availability of free legal representation; (vi) a right to submit evidence and to present and subpoena witnesses; and (vii) a right to seek administrative review of the immigration judge's decision.[8]

Immigration judges decide whether asylum seekers qualify as refugees. Asylum seekers qualify as refugees and are consequently protected from removal to their home countries, only where there is a well-founded fear of persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion" under the U.S. immigration laws.

> The Supreme Court has ruled that all persons within the territorial jurisdiction of the United States are entitled to the protections guaranteed by the Constitution.

Asylum seekers bear the burden of establishing that they fall under the refugee definition. They are frequently, however, unable to establish that they qualify as refugees without the assistance of legal counsel. Although the Ninth Circuit has held that asylum seekers "have a due process right to obtain counsel of their choice at their own expense," [9] other Circuits have recognized that there is no due process right to effective assistance of counsel in removal proceedings.[10] In most situations, asylum seekers are economically disadvantaged and therefore are unable to retain legal counsel. Furthermore, while indigent defendants in criminal proceedings have a Sixth Amendment right to a government-appointed attorney, that right does not extend to immigration court, where the proceedings are considered civil, and not criminal.

The result is that even though there is a due process right for asylum seekers to obtain counsel of their choice, a significant population of asylum seekers are unable to avail themselves of this right in practice.

### Are non-citizens protected under the Constitution?

In 1886, in *Yick Wo v. Hopkins*, the Supreme Court struck down a San Francisco ordinance that had been used to close 200 Chinese-run laundries, while 80 non-Chinese-operated laundries had been allowed to continue their operations.[11] In its landmark decision, the Court held that the guarantees of protection contained in the Fourteenth Amendment to the Constitution extend to "all persons within the territorial jurisdiction of the United States, without regard to differences of race, of color, or of nationality." [12] The Court added that those subjects of the Emperor of China who have the right to temporarily or permanently reside within the United States are entitled to enjoy the protections guaranteed by the Constitution and afforded by the laws.[13] This groundbreaking case established that the Constitution protects not only citizens, but also non-citizens, in the United States. Years later, the Court reiterated the principle in *Fong Yue Ting v. United States*, where it held that Chinese laborers, "like all other aliens residing in the United States," are entitled to the protection of the laws.[14]

In *Wong Wing v. United States*,[15] the Supreme Court voided the Chinese Exclusion Act's (the "CEA") provisions that allowed imprisonment and hard labor of Chinese people who had illegally entered the United States. Wong Wing was charged under the CEA and sentenced to 60 days of imprisonment and hard labor. Wong Wing's writ of *habeas corpus* was denied in the Circuit Court of the United States for the Eastern District of Michigan.

The Supreme Court ruled that "it must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by [the Fifth and Sixth] Amendments, and that even aliens shall not be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, nor deprived of life, liberty or property without due process of law." [16] *Wong Wing* held that a sentence of imprisonment, hard labor and deportation without a jury trial imposed on a non-citizen constitutes a violation of due process provided by the Fifth and Sixth Amendments of the Constitution.[17] In subsequent cases, the Supreme Court also held that the term

"persons," in the context of due process, includes non-citizens.[18]

In *Kwong Hai Chew*, the Court held that arbitrary detention, exclusion and deportation of a lawful permanent resident "without notice of the charges against him and without opportunity to be heard in opposition to them" is a violation of due process.[19] The Court stated that if an alien is a lawful permanent resident of the United States and continues to be physically present in the country, he is protected under the Fifth Amendment.[20] While permanent residents may be deported, they must first have a fair opportunity to be heard.[21] Again, the Court held that the protections of due process are extended to non-citizens.[22]

In a criminal context, the Court ruled in *Almeida-Sanchez v. United States* that all criminal charge-related elements of the Constitution's Amendments (the First, Fourth, Fifth, Sixth and Fourteenth), such as search and seizure, self-incrimination, trial by jury and due process, protect non-citizens, whether legally or illegally present.[23]

From the very beginning, since *Yick Wo v. Hopkins* in 1886, the jurisprudence in this country has declared the principle that non-citizens, whether legally or illegally present, are entitled to the protections of due process under the Constitution.

### Present Day Law and Policy

The Refugee Act of 1980 was created to provide, among other things, a neutral procedure for those applying for asylum in the United States based on its treaty obligations under the United Nations's 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees. Congress has also spoken in no uncertain terms and directed the Attorney General to create an asylum procedure for aliens within the United States "irrespective of such alien's status."[24]

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRARA") replaced the concepts of "excludable and deportable aliens" with "inadmissible aliens."[25] Inadmissible aliens are those who have not lawfully entered this country. Broader than the former category of "excludable[s]," inadmissible aliens include not only immigrants detained at ports of entry, but also those who succeeded in illegally entering the U.S.[26] Thus, asylum law and due process provisions apply to both admissible and inadmissible aliens "physically present" in the United States.

> Going forward, Congress should take affirmative measures to ensure that the current system of laws with regard to asylum abide by the U.S.'s international treaty obligations.

The Real ID Act of 2005 (the "Real ID Act"), however, imposed limitations on an asylum seeker's appeals options. The Real ID Act restricted judicial review of an immigration judge's decision on an application for asylum by statutorily endorsing the judge's determination of an asylum seeker's credibility.

Although the Real ID Act instructed immigration judges to consider the "totality of the circumstances" and all relevant factors, the statute further declared that immigration judges could base credibility determinations on demeanor, candor or responsiveness of the applicant; the inherent plausibility of the applicant's account … any inaccuracies or falsehoods in the asylum seeker's statements, without regard to whether any inconsistency, inaccuracy or falsehood goes to the heart of the applicant's claim.[27]

By contrast, before the enactment of the Real ID Act, jurisdictions generally affirmed an immigration judge's adverse credibility findings only when an asylum seeker's omissions or inconsistencies went to the heart of his claim.[28] Given the now-limited review of credibility determinations, attention should continue to be paid to due process issues, other constitutional claims and questions of law that may be raised.

In addition, until recently, one of the most significant loopholes in the immigration system was the loosely defined term "aggravated felony." In the past, non-citizens could be removed due to an "aggravated felony" conviction as defined under the Immigration and Nationality Act (the "INA").[29] The term was a vague catch-all used to remove some immigrants on criminal grounds. The Supreme Court, in January 2018, however, struck down one part of the "aggravated felony" definition.[30] The Court held that 18 U.S.C. § 16(b), which defines a "violent felony" under the INA's removal provisions, is unconstitutionally vague.[31]

### Going Forward

Although the Supreme Court has held since the 1800s that non-citizens are entitled to the protections of due process under the Constitution, the extent to which those due process rights are afforded to non-citizens has recently become more limited. Going forward, Congress should take affirmative measures to ensure that the current legislative framework and system of laws with regard to asylum in the United States abide by its international treaty obligations. ◆

NOTES

1. UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.refworld.org/docid/3be01b964.html [accessed 12 September 2018].

2. 8 U.S.C. § 1101(a)(42) (defining a "refugee" as "any person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.").

3. Office of Immigration Statistics, Table 16 in 2016 Yearbook of Immigration Statistics

(Washington, DC: U.S. Dept. of Homeland Sec., 2018).

4. *Giday v. Gonzales*, 434 F.3d 543, 548 (7th Cir. 2006), *as amended* (Feb. 24, 2006) (quoting *Rodriguez Galicia v. Gonzales*, 422 F.3d 529, 538 (7th Cir. 2005)).

5. *Sukwanputra v. Gonzales*, 434 F.3d 627, 637 (3d Cir. 2006) (quoting *Abdulrahman v. Ashcroft*, 330 F.3d 587, 596 (3d Cir. 2003)).

6. *See id.* at 637-38.

7. *See Augustin v. Sava*, 735 F.2d 32, 36 (2d Cir. 1987).

8. *See Marincas v. Lewis*, 92 F.3d 195, 198-204 (3d Cir. 1996).

9. *Orantes Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990) (internal quotations and citations omitted).

10. *Rafiyev v. Mukasey*, 536 F. 3d 853, 860 (8th Cir. 2008); *Goonsuwan v. Ashcroft*, 252 F. 3d 383, 385 (5th Cir. 2001); *Hernandez v. Reno*, 238 F. 3d 50, 55, (1st Cir. 2001).

11. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

12. *Id.* at 369.

13. *Id.* at 368-69.

14. *Fong Yue Ting v. United States*, 149 U.S. 698, 724 (1893).

15. *Wong Wing v. United States*, 163 U.S. 228 (1896).

16. *Id.* at 238.

17. *Id.*

18. *See, e.g., U.S. v. Wong Kim Ark*, 169 U.S. 649, 693 (1898) (holding that the term "person" under the Fourteenth Amendment applied to aliens living in the United States); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary or permanent.").

19. *Kwong Hai Chew v. Colding*, 344 U.S. 590, 603 (1953).

20. *Id.* at 596.

21. *Id.* at 597-98.

22. *Id.* at 596.

23. *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973).

24. *Selgeka v. Carroll*, 184 F.3d 337, 342 (4th Cir. 1999) (citing 8 U.S.C. § 1158(a)).

25. Pub. No. 104-208, 110 Stat. 3009 (1996).

26. *Chi Thon Ngo v. INS*, 192 F.3d 390, 395 (3rd Cir. 1999).

27. Real ID Act of 2005, Section 101. INA § 208(b)(B)(iii), 8 U.S.C. § 1158(b)(1)(B)(iii).

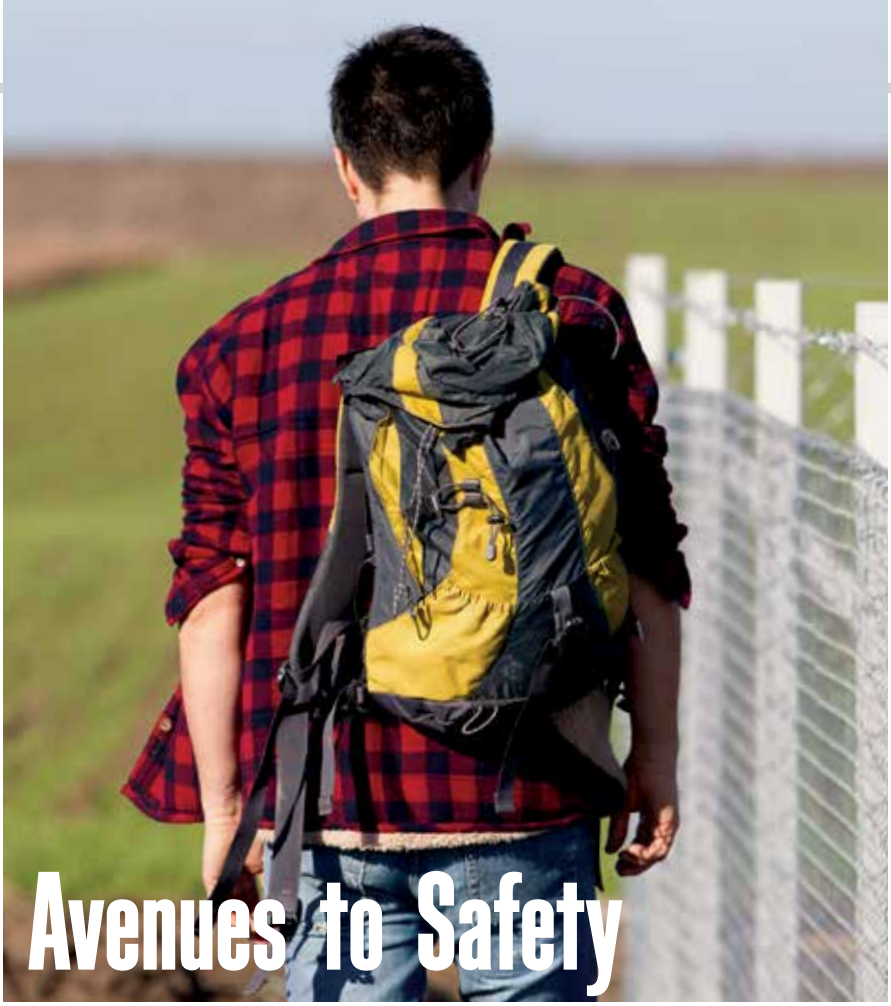
28. *Capric v. Ashcroft*, 355 F.3d 1075, 1090 (7th Cir. 2004); *Kondakova v. Ashcroft*, 383 F.3d 792, 796 (8th Cir. 2004); *Sylla v. INS*, 388 F.3d 924, 926 (6th Cir. 2004); *Ymeri v. Ashcroft*, 387 F.3d 12, 20 (1st Cir. 2004); *Mendoza Manimbao v. Ashcroft*, 329 F.3d 655, 660 (9th Cir. 2003); *Secaida-Rosales v. INS*, 331 F.3d 297, 308–09 (2d Cir. 2003).

29. Immigration Nationality Act § 101(a)(43); 8 U.S.C. § 1101(a)(43).

30. *Sessions v. Dimaya*, 584 U.S.____(2018), 138 S. Ct. 1204 (2018).

31. *Id.* at 1216.

Laura Carothers Graham



# Unaccompanied Youth Seek Avenues to Safety

## Unique status can lead to safety and permanency.

The United States has long been considered a safe haven for immigrant and refugee children seeking protection. Many children flee their home countries for the United States for many reasons — safety, whether escaping violence in their society or abuse in their homes; deprivation of basic necessities; family reunification; and/or better opportunities.[1]

The young people whose stories are told on these pages all made their way to Delaware. They are, or were, represented by advocates at Community Legal Aid Society, Inc. (CLASI). Their names were changed to protect their identities.

### Special Immigrant Juvenile Status

Children like Luis, Nancy, Ana and Omar embark on dangerous journeys to flee abuse or neglect, death, physical harm or economic hardship and to seek protection in the United States.

Once in the United States, these youth must locate willing family — often distant relatives they have never met — to care for them; navigate the state family court and federal immigration systems; and cope with daily life as a young person in the United States. They are separated from their parents, and without immigration status, without photo identification and often without English language skills or knowledge of the United States court systems.

Between October 2016 and June 2018, the Office of Refugee Resettlement placed 358 such unaccompanied immigrant children[2] with willing sponsors or caretakers in the State of Delaware.[3]

Many of these youth face hardship and fears of deportation that drive them into the shadows, where they are even more vulnerable to abuse and exploitation. Several avenues exist for undocumented youth to obtain lawful immigration status in the United States to eliminate their fear of deportation and ensure that they have access to the services they need.

In 1990, Congress created Special Immigrant Juvenile Status ("SIJS"), a unique form of immigration relief for children and

**Luis' Story:** In his home country, "Luis" was routinely physically abused by his father, a severe alcoholic. Luis's mother also abused him physically as discipline, using belts, ropes and household tools, leaving marks, welts and bruises. From an early age, Luis was required by both of his parents to work weekends in agriculture and construction and give all earnings to his parents to help feed and clothe his younger siblings. Luis attended school until the sixth grade; he was then forced to leave school and focus on work to support his siblings. Because of the conditions in his home, Luis fled to the United States at age 14.

youth who are victims of parental abuse, abandonment or neglect.[4] Congress created SIJS to address a common problem for immigrant youth aging out of foster care: a lack of long-term solutions for undocumented children exiting foster care, where they received support, care and services deemed in their best interests, and entering adulthood undocumented and thus unable to lawfully work or pursue higher education. Ultimately, they may face removal from the United States.

The 1990 SIJS statute incorporated into its eligibility requirements a provision for consideration of the "best interests of the child," a recognized legal standard that prioritizes the unique needs of children, and is based on specific findings from a state juvenile or family court to confirm the child's eligibility for long-term foster care, the child's dependency status and the child's inability to reunify with family, and to make a determination on a placement in the child's best interests.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA")[5] expanded the definition of SIJS, broadening eligibility to children in placements outside of the foster care system. Specifically, the TVPRA broadened the kinds of settings — foster care, a guardianship or custody with the non-offending parent — in which SIJS findings could be made by a state juvenile court, and no longer linked SIJS eligibility to long-term foster care, but rather to whether the state juvenile court found that reunification with one or both parents was viable.[6]

Under the TVPRA, the SIJS applicant must be a "child," federally defined as an unmarried person less than 21 years of age,[7] on the date the SIJS petition is properly filed with United States

Citizenship and Immigration Services ("USCIS").[8] The basic requirements for SIJS, as amended by the TVPRA, are as follows:[9]

1) The child must be declared dependent[10] by a juvenile court[11] located in the United States, or the court must have legally committed the child to, or placed the child under the custody of, an agency or department of a state or an individual or entity appointed by the state or a juvenile court, such as a guardian or custodian;

2) The juvenile court must find that reunification with one, or both, of the immigrant youth's parents is not viable due to abuse, neglect, abandonment or a similar basis found under state law, as opposed to entering an order simply to get the child lawful immigration status or for some other reason;[12] and

3) The juvenile court or an administrative authority must determine that return to the child's or parent's country of nationality or country of last habitual residence is not in the child's best interest.

These findings should be set out specifically in an order signed by the juvenile court judge.[13]

Abuse,[14] neglect,[15] abandonment[16] or other basis, such as dependency[17] are defined by state law, and the facts giving rise to these grounds do not have to have taken place within the United States in order for the child to be eligible for SIJS. Formal charges of abuse, neglect or abandonment need not be brought against the parents for the child to qualify for SIJS. For SIJS purposes, a finding that reunification with one or both parents is not viable does not require formal termination of parental rights, or a determination that reunification will *never* be possible.

While short separations in time or geography from parents likely would not qualify for a finding that reunification is not viable, the possibility need not deter a finding that reunification presently is not viable, as long as there is a significant separation.

The "one or both parents" language also signifies that the child need not be separated from *both* parents to be eligible for SIJS. In other words, the broadened statutory language under the TVPRA provides SIJS eligibility on the basis of the non-viability of reunification with one parent due to abuse, neglect or abandonment, even while the child remains in the care of the other non-abusive parent, or even while the court is actively trying to reunite the child with the other parent.

The juvenile court should include in its SIJS order that it is not in the child's best interest to be returned to his or her country of nationality or last habitual residence.[18] With a juvenile court order properly setting forth these factors, the youth can then apply for SIJS, and subsequently lawful permanent residency, with USCIS.

**Nancy's Story:** Nancy's father abandoned her when she was very young. While living with her mother, Nancy was approached by a gang, and was threatened with sexual assault if she did not comply with the gang members' demands. Knowing that law enforcement would not protect Nancy from the gang, and with the knowledge that other young girls in the same town had recently been killed by the gang, Nancy's mother encouraged 13-year-old Nancy to travel alone to the United States. During her journey, Nancy was raped by adult males and became pregnant.

### Continued Barriers to Justice for Immigrant Youth

Despite the availability of SIJS, many immigrant youths are unaware of, or unable to seek, relief. Children facing removal from the United States are not provided government-appointed counsel to represent them in immigration proceedings; nor are they afforded counsel to represent them when navigating the complicated SIJS and permanent residency application processes with USCIS.

Similarly, many proposed guardians or custodians are unaware of SIJS as well as the meaning and implications of "legal guardianship," and further lack the ability to navigate a custody or guardianship petition in the state juvenile court.

Children facing removal from the United States are not provided government-appointed counsel to represent them in immigration proceedings.

Because youth and their caretakers are typically unable to effectively navigate the state juvenile court and immigration systems, many immigrant youths are unable to, or simply do not, seek immigration relief for which they are eligible to remain in the United States with lawful status.

Even when fortunate enough to be screened and represented by counsel, many immigrant youth face issues navigating the state juvenile court process. Many youths are not screened for eligibility until they are 17 years old, creating age-out issues requiring emergency filings, as family court jurisdiction in Delaware ends on the child's 18th birthday.

Not surprisingly, service of the

Photo by Gary Emeigh

Meghann O'Reilly Karasic, a supervising attorney at CLASI, speaks with her young clients.

**Ana's Story:** Ana's father physically abused her and her mother in her home country. Ana's father made her work in the fields beginning at age 12 and then stole Ana's earnings to buy himself alcohol. Ana's father struck her with his fists and belts. Ana's mother was unable to protect herself, or Ana, from the abuse. Ana reported that she rarely had enough food to eat and never received medical care. At age 16, Ana fled her parents' abuse and neglect and came to the United States unaccompanied.

guardianship or custody filing upon the absent parent(s) in home country can be difficult, time consuming and often costly if foreign publication is required. Finally, many youths are hesitant to speak with counsel, or in open court, about the abuse and/or neglect they suffered at the hands of their parents; for example, it is difficult to prepare and encourage a 16-year-old witness to articulate his fears, testify about his parents and provide an accurate account of the relevant harm, trauma and abuse suffered to a room of strangers speaking a different language in a foreign courtroom. Therefore, a child-centered approach to develop a rapport with the child and explain to the child the guardianship or custody process, and what to expect at the family court hearing, is critical.

Many youths are hesitant to speak with counsel, or in open court, about the abuse and/or neglect they suffered at the hands of their parents.

Even if an immigrant youth and their custodian or guardian are able to obtain an order from the state juvenile court, a lack of legal representation in the immigration proceedings has a detrimental impact on the child's ability to successfully seek status and remain in the United States. A recent study by the University of Syracuse found that over half of the children appearing at removal proceedings in immigration court are *pro se*, and that only 15 percent of unrepresented children are successful in removal proceedings in immigration court, as compared to represented children, who have

Photo by Gary Emeigh

The United States Courthouse in Philadelphia, Pennsylvania.

**Omar's Story:** Omar's father was killed in his town by a rival family who wanted the family's land. Omar's mother later married another man, who physically abused Omar. Omar was forced to work to support himself and never received medical care. As a teen, Omar identified as gay; as punishment, both his mother and stepfather abused him physically and emotionally. Omar sought the protection of law enforcement in his home country, but they advised him they could not protect him from "family matters." At age 16, Omar fled his home country alone for the United States.

a 73 percent success rate.[20] Furthermore, the study found that the vast majority of children represented by lawyers appear for their hearings in immigration proceedings.[21] In other words, represented children are more likely to appear, and are more likely to obtain lawful status and remain in the United States in safety.

### What Can Delaware Lawyers Do?

Unaccompanied children are living in Delaware. Only a handful of these children have counsel. CLASI represents many of these children but has insufficient resources to take on all of the meritorious cases. The current administration's hardline immigration practices have exacerbated an already critical situation. Every attorney can help the most vulnerable among us — children like Luis, Nancy, Ana and Omar — access justice. We know that legal representation makes a difference in the child's case, and the number of children needing representation far outstrips the non-profit resources in Delaware. Delaware lawyers can give of their time and their resources to help Delaware's civil legal service providers who take on this challenging work — CLASI and Delaware Volunteer Legal Services — by attending an SIJS CLE seminar and accepting a case for representation *pro bono*, or by donating to the Combined Campaign for Justice at https://delawareccj.org. ◆

Legal representation makes a difference, and the number of children needing representation far outstrips the non-profit resources in Delaware.


Rio Grande Valley: U.S. Border Patrol agents take a young Salvadoran girl into custody for illegally entering the United States.

## NOTES

1. UN High Commissioner for Refugees (UNHCR), *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the need for International Protection*, March 13, 2014, available at: http://www.refworld.org/docid/532180c24.html [accessed Aug. 19, 2018].

2. Unaccompanied alien children are those children detained by the Department of Homeland Security and identified as having no parent or legal guardian in the United States available to provide for their care and physical custody. *See* 6 U.S.C. § 279(g)(2).

3. For a listing of unaccompanied alien children annually placed with sponsors in each state, see: https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state. ORR placed 69,880 children nationwide during the same time period.

4. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 5005-06 (1990) (codified at 8 U.S.C.A. § 1101(a) (27) (J); Immigration and Nationality Act §§ 101(a) (27) (j), 203(b)(4) (hereinafter "INA").

5. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457), 122 Stat. 5044 (Dec. 23, 2008) (hereinafter "TVPRA").

6. USCIS Memorandum, Donald Neufeld and Pearl Chang, "Trafficking Victims Protection

Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions" HQOPS 70, 8.5, p. 2 (March 24, 2009).

7. Note that while the federal law defines a child as a person who is unmarried and has not reached their 21st birthday, in most circumstances Delaware Family Court jurisdiction ends on the child's 18th birthday.

8. So long as the applicant is a child at the time of proper filing, the applicant's age will be locked in time for purposes of the SIJS petition. INA § 235(d)(6).

9. TVPRA § 235(d)(1)(A).

10. A juvenile is "dependent" upon the state juvenile court if the child "[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court." 8 CFR § 204.11(C)(6).

11. The term "juvenile court" means a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. 8 CFR § 204.11(a). In many states, such as Delaware, the Family Court has jurisdiction over matters involving juveniles.

12. INA § 101(a)(27)(J)(i).

13. 8 CFR § 204.11(d)(2).

14. 10 Del. C. §§ 901(1), (10), (21).

15. 10 Del. C. § 901(8).

16. 13 Del. C. §§ 1101, 1902.

17. 10 Del. C. § 901(8).

18. 13 Del. C. § 722.

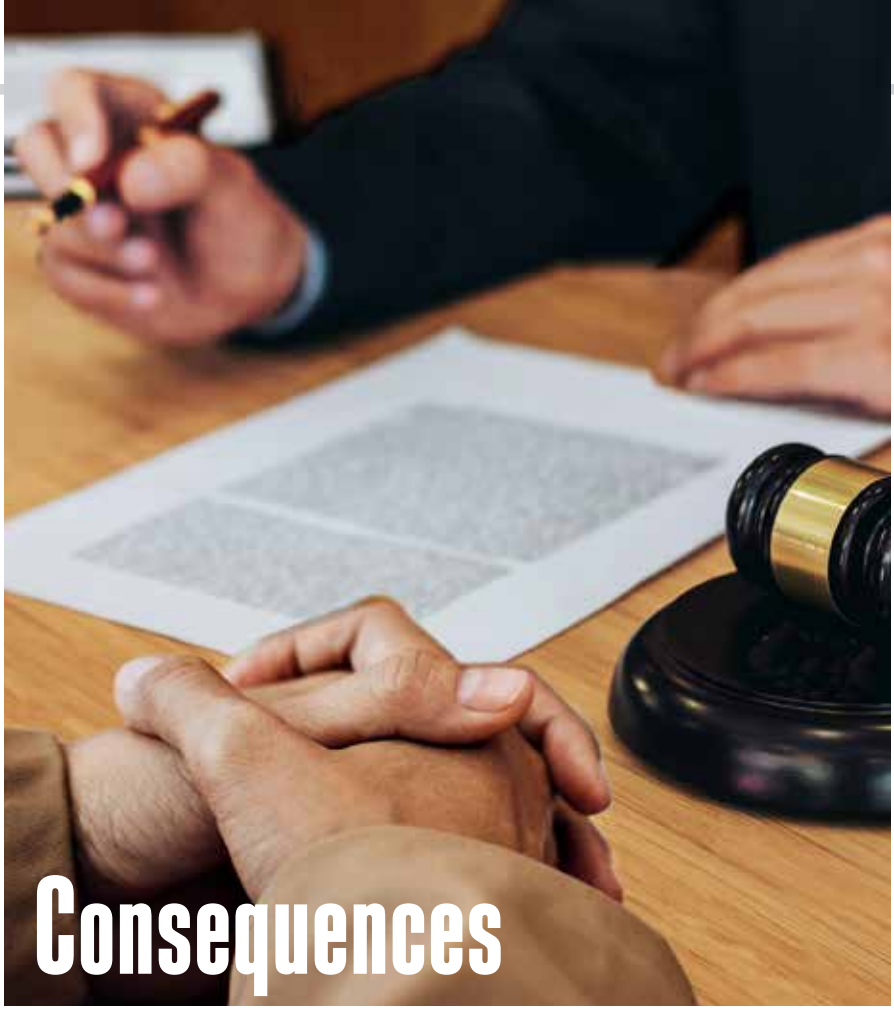
19. *See CJLG v. Sessions*, 880 F. 3d 1122 (9th Cir., Jan. 29. 2018)(finding no due process violation, or statutory right to a government funded attorney, for a 13-year-old seeking asylum in removal proceedings).

20. University of Syracuse, *TRAC Immigration Data*, at http://trac.syr.edu/immigration/reports/359/include/about_data.html.

21. *Id.*


La Grulla, Texas: U.S. Border Patrol agent searches a 14-year-old Honduran boy attempting to enter the United States illegally.

Veronica T. Thronson &
Leslye E. Orloff



# Unintended Consequences

## How civil protection orders affect immigrants.

Increases in immigration enforcement and changes in enforcement priorities[1] cause fear in immigrant communities that negatively impacts the willingness of immigrant victims of domestic violence, child abuse, sexual assault and human trafficking to seek help from the civil and criminal justice systems.[2] "Commonly, the worldview and understanding of the legal system for an immigrant spouse are shaped by the person with status who has more familiarity with the United States."[3] In this way, abusers are able to more effectively use threats of deportation to silence victims, lock them in abusive relationships and prevent them from seeking help from police and the court system.[4]

In a growing number of cases across the country, judges reported that the immigration status of a victim or a party is being raised by the opposing party in 32 percent of civil protection orders, 31 percent of custody and 23 percent of divorce proceedings.[5] Victim advocates and attorneys saw significant declines in the numbers of immigrant victims of domestic violence and child abuse willing to seek immigration protections afforded victims under U.S. immigration laws. They reported a 391 percent drop in filings of VAWA self-petitions by abused spouses and children of U.S. citizens and a 31 percent drop in filings of U visa cases by immigrant victims of domestic and sexual violence.[6]

Comparing 2014 with 2017, law enforcement reported a 22 percent decline in immigrant victims' willingness to make police reports.[7] Prosecutors reported substantial reductions in prosecution of certain categories of immigrant victim cases: 82 percent domestic violence, 48 percent child abuse, 55 percent human trafficking and 70 percent sexual assault cases.[8] Judges reported that 54 percent of court cases were being interrupted due to immigrant victims' fears of deportation.[9]

Changes in immigration enforcement priorities implemented in 2017 have impacted both immigrant victims and perpetrators of domestic violence. In 2017, Executive Order, Enhancing Public Safety in the Interior of the United States[10] was issued and followed on February 20, 2017 by an implementing memorandum from the Department of Homeland Security (DHS) entitled *Enforcement of the Immigration Laws to Serve the National Interest*.[11] These set out DHS categories of people who are priorities for removal. This list includes immigrants who:

- have been convicted of any criminal offense;
- have been charged with any criminal offense that has not been resolved;
- have committed acts that constitute a chargeable criminal offense;
- have engaged in fraud or willful misrepresentation in connection with any official matter before a government agency;
- have abused any program related to receipt of public benefits;
- are subject to a final order of removal, but have not departed; or
- otherwise pose a risk to public safety or national security.

As former Immigration and Customs Enforcement Acting Director Thomas Homan stated "[u]nder these new directives, ICE will no longer exempt entire classes or categories of removable aliens from potential enforcement. Those in violation of immigration law are subject to arrest, detention, and, if issued a final order by an immigration judge, removal from the United States."[12] Unfortunately, "[w]hen everyone is a potential priority, there effectively are no priorities."[13]

These policies have a particularly harmful effect on immigrant and limited English proficient (LEP) victims of domestic violence. When immigrant and LEP domestic violence victims call police for help, police responding to crime scenes fail to use qualified interpreters[14] needed to make predominant perpetrator determinations, thus increasing the likelihood that the victim will be arrested either with or instead of the perpetrator.[15]

DHS's increased presence in courthouses has caused grave concern among immigrant communities.[16] In an older articulation of its enforcement priorities, DHS issued a memorandum on October 24, 2011, outlining particular places or "sensitive locations" such as schools and churches where immigration enforcement would not regularly occur.[17] Courthouses, significantly, are not classified as "sensitive locations."[18] A January 2018 ICE directive addressing the circumstances under which they would conduct immigration enforcement at federal, state or local courthouses[19] purports to target individuals with criminal convictions, gang members and people with prior orders of deportation, among others.[20] These policies affect both victims and perpetrators.

Having an order of protection issued against a non-citizen could prevent that person from establishing the requisite good moral character for obtaining certain immigration benefits.

### Protection Order Benefits

All 50 states, D.C. and Puerto Rico have domestic violence protection order statutes that grant civil protection orders,[21] personal protection orders[22] or protection from abuse orders (PFA)[23] to victims of domestic violence and child abuse. The duration of the order varies by jurisdiction and ranges from months, to a year, to indefinitely.[24] For immigrant victims of abuse, protection orders are helpful and effective tools that limit that abuser's ability to leverage their knowledge of the United States and, often, more secure immigration status to exert coercive control over their immigrant victims.[25]

In addition to granting a victim use of the family home, custody of children, child and/or spousal support and keeping the abuser away, a protection order can help an immigrant victim with an order that the abuser not contact DHS and order the return of the victim's and the children's passports and other important immigration documents.[26] Protection orders can also provide victims critical evidence of abuse to support the victim's VAWA self-petition or U visa case[27] and can include orders that protect against international child kidnapping.[28] For immigrant victims of abuse, applying for an order of protection may be their first interaction with the legal system in the United States.

### Effects on Immigration Status

Applying for an order of protection will have no impact on the immigrant victim's immigration status. Having an order of protection entered against someone who is not a U.S. citizen, however, may have immigration consequences. For example, obtaining certain immigration benefits requires applicants to prove that they are of good moral character. Such proof is required for immigrants seeking naturalization, cancellation of removal, voluntary departure or lawful permanent residence as a VAWA self-petitioner.[29] Having an order of protection issued against a non-citizen could prevent that person from establishing the requisite good moral character. This is one key reason why it is important to contest the issuance of an order of protection against an immigrant victim and oppose the issuance of mutual order of protections.[30]

### Violating Protection Orders

Violation of a protection order is a deportable offense that can lead to a non-citizen's removal from the U.S., including for long-term lawful permanent residents.[31] Immigration law provides for the removal of any non-citizen:

> who at any time after admission is enjoined under a protection order issued by a court and whom *the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or*

*persons for whom the protection order was issued is deportable.* For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) . . .."[32]

Note that the statute only requires that a court "determines"[33] that the immigrant has engaged in conduct violating the protection order; a finding is sufficient and conviction is not required.[34] To be a deportable offense a court must find that the immigrant violated "the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued."[35] So for example, if a judge holds an individual in contempt of court for failure to pay child support or repeatedly returning children late from visitation, these contempt findings would not trigger removal.[36]

The immigration consequences of violating an order of protection affect both undocumented immigrants and immigrants who are lawful permanent residents. In *Matter of Obshatko*, the Board of Immigration Appeals held that a lawful permanent resident was removable without requiring a conviction, stating that "the plain language of section 237(a)(2)(E)(ii) makes clear that a 'conviction' is not required to establish an alien's removability,"[37] and "unlike other provisions of the Act, the text of [that section] does not depend on a criminal conviction but on what a court determines."[38]

Despite the potential severe consequences for violation of an order of protections, existing case law has not yet recognized a duty of attorneys to provide the parties with warnings regarding the impact that family court findings regarding protection order violations could have on the perpetrator's immigration status. In *Padilla v. Kentucky*, the Supreme Court held that criminal defense attorneys are required under the Sixth and Fourteenth Amendments to advise non-U.S. citizen defendants of the immigration consequences of a plea deal.[39]

Existing case law has not yet recognized a duty of attorneys to provide the parties with warnings that protection order violations could impact the perpetrator's immigration status.

Further, the Supreme Court held that "[a]lthough removal proceedings are civil, deportation is intimately related to the criminal process, which makes it uniquely difficult to classify as either a direct or a collateral consequence. Because that distinction is thus ill-suited to evaluating a *Strickland* claim concerning the specific risk of deportation, advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel."[40]

In light of this decision, several states have enacted statutes requiring that courts issue advisals to defendants prior to accepting pleas of guilty or *nolo contendere*.[41] While *Padilla* advisals are becoming standard practice in criminal court, family courts issuing protection orders and hearing cases involving protection order violations should issue advisals similar to those required by *Padilla*, particularly because many parties in protection order cases appear without an attorney. Providing warnings that violations of protection orders can lead to offenders' deportation can be beneficial for the parties, as it may help prevent violations if the respondent is aware of the immigration consequences for violating the order.

The immigration consequences are not always immediately apparent and can impact immigrants years after the case is concluded. It is crucial for victim safety that courts and attorneys representing immigrants avoid issuance of protection orders against immigrant victims and ensure that perpetrators are made fully aware of the potentially devastating consequences of violating an order of protection. ◆

## NOTES

1. For a detailed report on the impact of this administration's immigration policies, *see* Pierce, Sarah, Jessica Bolter, and Andrew Selee, *2018. U.S. Immigration Policy under Trump: Deep Changes and Lasting Impacts.* Washington, DC: Migration Policy Institute.
2. *See generally*, American Civil Liberties Union, *Freezing Out Justice: How Immigration Arrests at Courthouses Are Undermining the Justice System*, 2018, https://www.aclu.org/report/freezing-out-justice.
3. Veronica T. Thronson, *Domestic Violence and Immigrants in Family Courts*, 63 Juv. & Fam. Ct. J. 63, 66 (2012).
4. The National Immigrant Women Advocacy Project conducted a national survey among judges, prosecutors, law enforcement, advocates and attorneys documenting the impact on increased enforcement on immigrant victims. *See* http://niwaplibrary.wcl.american.edu/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf.
5. *Id.* at 15.
6. *Id.* at 102.
7. *Id.* at 42.
8. *Id.* at 76.
9. *Id.* at 103.
10. https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.
11. https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.
12. https://www.dhs.gov/news/2017/06/13/written-testimony-ice-acting-director-house-appropriations-subcommittee-homeland
13. Veronica T. Thronson, *Executive Orders and Immigrant Victims of Domestic Violence*, 47 Mich. Fam. L. J. 7 (2017).
14. National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (2013) http://niwaplibrary.wcl.american.edu/pubs/rsch-police-response-immigrant-victims/ p. 26 (discussing the use of perpetrators to interpret in domestic violence (8.3%) and sexual assault (10.7%) cases.
15. The Central Role of Victim Advocacy for Victim Safety While Victims' Immigration Cases Are Pending (2014) http://niwaplibrary.wcl.american.edu/pubs/imm-qref-safetyplanning/ p. 2.

16. *See generally*, American Civil Liberties Union, *Freezing Out Justice: How Immigration Arrests at Courthouses Are Undermining the Justice System*, 2018, https://www.aclu.org/report/freezing-out-justice.

17. *See generally* DHS Enforcement Actions at or Focused on Sensitive Locations at https://www.ice.gov/ero/enforcement/sensitive-loc.

18. In cases where ICE conducts enforcement against a victim in a courthouse, the officer must include a statement that he has complied with the provisions of 8 U.S.C. § 1367 (VAWA confidentiality requirements). *See* Immigration and Nationality Act, 8 U.S.C. § 1229(e). *See also* http://niwaplibrary.wcl.american.edu/courthouse-protections-and-crime-victims/.

19. Thomas D. Homan, "Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses," U.S. Immigration and Customs Enforcement, January 10, 2018, https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf.

20. *Id.*

21. *See, e.g.* Illinois 750 ILCS 60/222.5; New York FCA § 154.

22. Michigan: MI MCL § 600.2950.

23. Delaware: 10 Del. C., § 1041 *et seq.* ("Protective order means an order issued by the court to a respondent restraining said

respondent from committing domestic violence against the petitioner.").

24. *See generally*, https://www.womenslaw.org/laws/general/restraining-orders.

25. Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research (2012) http://niwaplibrary.wcl.american.edu/pubs/battered-women-protection-order-research/.

26. Immigrants and Protection Orders Bench Card (2013) http://niwaplibrary.wcl.american.edu/pubs/bench-card-imm-protection-orders/.

27. *See* Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii). *See also* Veronica T. Thronson, *Domestic Violence and Immigrants in Family Courts*, 63 Juv. & Fam. Ct. J. 63 (2012).

28. The Implications of the Hague International Child Abduction Convention: Cases and Practice (2013) http://niwaplibrary.wcl.american.edu/pubs/ch6-3-hagueintlchildabduction/.

29. 8 U.S.C. § 1101(f); INA § 101(f). Barriers to a finding of good moral character include a determination or admission of being a habitual drunkard; certain convictions; or having been found to have failed to pay court-ordered child support or spousal support. For an overview of immigration relief for immigrant victims *see generally*, Veronica T. Thronson, *Domestic Violence and Immigrants in Family Courts*, 63 Juv. & Fam. Ct. J. 63 (2012).

30. 42 U.S.C. 3796hh(a)(3) requires state government agencies to "certify that their laws, policies, or practices prohibit issuance of mutual restraining orders of protection except in cases where both spouses file a claim and the court makes detailed findings of fact indicating that both spouses acted primarily as aggressors and that neither spouse acted primarily in self-defense."

*See* **Unintended Consequences** *continued on page 27*

Veronica T. Thronson &
Leslye E. Orloff

# Protecting Immigrant Victims

VAWA offers immigration protections for sexual assault victims.

In 1994, Congress enacted the Violence Against Women Act[1] (VAWA), a far-reaching legislative effort to "deter and punish violent crimes against women."[2] From the outset, and in subsequent broadening of VAWA protections since,[3] the act has included sweeping provisions designed to protect immigrant victims and to remove critical barriers that may otherwise prevent them from seeking legal and social service protections.

The VAWA and the Trafficking Victims Protection Act (TVPA)[4] created several forms of immigration relief designed to offer protection to immigrant victims of domestic violence, sexual assault, human trafficking and other crimes. VAWA self-petitions,[5] VAWA cancellation of removal,[6] battered spouse waivers,[7] U visas[8] and T visas[9] offer immigrant victims access to lawful immigration status with a potential path to lawful permanent residence and eventually U.S. citizenship.

Each of these forms of immigration relief results in encouraging immigrant crime victims to come forward and avail themselves of protections in civil and criminal courts. Despite current misinformation in immigrant communities and increased immigration enforcement,[10] VAWA's protections for immigrant victims remain intact and available for immigrant victims.

### Importance of Confidentiality Protections

It is important for advocates, attorneys and victims of crime to be aware that there are critical confidentiality provisions for victims seeking immigration relief under VAWA and the TVPA. VAWA's confidentiality provisions prohibit the Department of Homeland Security (DHS) from using information solely from an abusive spouse or parent, a trafficker, sexual assault or other crime perpetrator, as the basis for arresting or charging the victim with removal.[11] Further, in no case may any official or employee of the Depart-

ment of Justice (DOJ), the DHS or the Department of State (DOS) "permit use by or disclosure to anyone … of any information which relates to an alien who is the beneficiary of an application for relief" under the VAWA provisions.[12] The distinctions between these two protections are important:

> *Unlike the confidentiality provisions of 8 U.S.C. § 1367(a)(2), which expire once the benefit request has been denied and all opportunities for appeal have been exhausted, this [8 U.S.C. § 1367(a)(1)] prohibition on adverse determinations of admissibility or deportability using information furnished solely by prohibited sources does not expire upon denial of the benefit petition and applies regardless of whether any application or petition has been filed.*[13]

A policy issued by USCIS on June 28, 2018, significantly expands the potential for DHS to initiate removal proceedings against immigrants whose petitions and applications for immigration benefits are denied.[14] For immigrant victims of crime applying for protection from abuse, this new policy means that if USCIS denies the request for humanitarian relief on the merits, USCIS will, with limited exceptions, issue a Notice to Appear (NTA), which is the charging document DHS serves to initiate removal proceedings.[15] In light of this policy, practitioners representing immigrant victims should take care to file well documented cases and discuss with clients the risks and ramifications of the application and the strength of the defenses the client may have should the client be placed in removal proceedings (*e.g.* VAWA cancellation and 10-year cancellation of removal).[16] VAWA confidentiality protections continue in full effect furthering VAWA's victim protection, law enforcement and community safety goals.

## Protection of Victims

VAWA was created specifically for the protection of victims. The majority of VAWA confidentiality-protected cases involve abusers who have intimate, close and/or ongoing access to the victim as a family member, employer or human trafficker. Many of the crimes covered by U visa protections[17] involve recidivist criminal activity that affects public safety. Crime victims who file police reports, obtain protection orders, cooperate in investigations and testify in criminal, civil and family court proceedings do so at increased risk to themselves, their children and their family members. Involvement in court actions increases danger to victims — both those who continue living or working in locations where the abuse occurred and those who have fled.[18]

> Individuals must be able to report crimes and seek help from the courts without fear that their reporting will give their abusers access to information in their immigration files.

In sexual assault cases, ensuring the confidentiality of the victim's extremely sensitive and personal information in the immigration case is crucial due to the privacy concerns related to the intimate nature of the harm suffered.[19] Disclosure can have consequences for the victim's self-esteem, reputation and safety and could incite more violence, blackmail, intimidation or harassment by the abuser.[20] Courts often give great weight to the consequences of revealing highly personal and private information in the course of judicial proceedings.[21]

It is for this reason that VAWA confidentiality protections were designed to continue indefinitely and to help prevent the removal of victims — a goal also furthered by DHS exercising prosecutorial discretion[22] to not initiate enforcement actions against victims of sexual assault, domestic violence, trafficking and other crimes.[23]

## Impact on Law Enforcement and the Justice System

Individuals must be able to report crimes and seek help from civil and criminal courts without fear that their reporting will give their abusers access to the sensitive information contained in their federal immigration files. Protecting the confidentiality of victims encourages their full participation in the detection, investigation, prosecution, conviction and sentencing of those crimes and increases victims' access to justice. This was the congressional intent in creating VAWA confidentiality. Ensuring that victims can confidentially file for, and receive, immigration protection removes the threat of deportation as a tool of coercion, frees victims to come forward and helps law enforcement and courts to better serve immigrant communities.

## VAWA Confidentiality in Practice

The confidentiality provisions do not permit an adverse party to have access to the victim's immigration file through discovery or through a victim's testimony in both civil and criminal cases involving the victim and the abuser.[24] Accordingly, attorneys representing immigrant victims who have filed for immigration relief must be ready to challenge an abuser's request for information through discovery. The language in the statute and case law prohibits such disclosure by the government, including disclosure of the *existence* of an immigration petition.[25] Using these provisions, an attorney should be prepared to object and brief confidentiality issues to prevent the use of state court discovery to obtain such sensitive information of the victim's protected federal immigration file. The objections could be based on relevance in a family-related proceeding and the discovery attempt itself provides evidence of a pattern of control and abuse of the victim by the abuser.[26]

Access to specialized training and materials containing legally correct information on immigration law will help state court judges in family, civil and criminal court proceedings understand how discovery of VAWA confidentiality-protected information is part of the power and

control dynamics at play in domestic violence, child abuse and workplace sexual assault cases involving immigrant victims and their children. If courts allow abusers access to a victim's immigration file, the harm and negative implications that would follow would impact not only the particular case but all immigrant victims of domestic violence and other crimes in all VAWA confidentiality-protected cases, and in all kinds of contexts where abusers target vulnerable immigrant women and children as victims.

To fully take advantage of the confidentiality protections discussed above, advocates and attorneys must do a thorough intake when representing clients who are not U.S. citizens to screen for possible immigration relief if they are in the United States without lawful immigration status and any criminal record to minimize any risk of detention and removal. The screening should address domestic violence, sexual assault and trafficking in order to properly advise clients about potential immigration relief. If the attorney determines that a client qualifies for immigration relief, the attorney should file the application as soon as possible. Early filing ensures that the client will receive VAWA confidentiality protection including some statutory protection against deportation[27] and discovery of the case will be restricted. In addition, the victim may be able to qualify to apply for employment authorization that will help the victim be self-supporting and less dependent on the abuser.

Congress enacted VAWA and the TVPA with the objective of eliminating obstacles for victims of domestic violence, sexual assault, human trafficking and other crimes.

### Conclusion

Congress enacted VAWA and the TVPA with the objective of eliminating obstacles for victims of domestic violence, sexual assault, human trafficking and other crimes. Knowledge about crime victim related immigration options for victims and understanding of the VAWA confidentiality provisions helps attorneys provide competent legal services while preventing disclosure of sensitive information related to the client's immigration file. Family law practitioners and

the judiciary should be skeptical of abusers' attempts to seek copies of immigration petitions through discovery, which seek to accomplish little more than intimidation.[28] ◆

NOTES

1. *See* 42 U.S.C § 13925, *et seq.*

2. H.R. Rep. No. 103-395, at 26 (1994). *See* Pub. L. 103-322 (Sept. 13, 1994).

3. The protections of VAWA 1994 were expanded in 1996, 2000, 2005, and 2013. VAWA reauthorization of VAWA's funding programs is required again in 2018, however, VAWA's immigration protections do not sunset and will continue even if Congress fails to reauthorize VAWA.

4. *See* Pub. L. 106-386 (Oct. 28, 2000) and 22 U.S.C. § 7101, *et seq.*

5. 8 U.S.C. § 1154(a)(1)(A)(iii).

6. 8 U.S.C. § 1229b(b)(2).

7. 8 U.S.C. § 1186a(c)(4).

8. 8 U.S.C. § 1101(a)(15)(U).

9. 8 U.S.C. § 1101(a)(15)(T).

10. Many immigrant victims of domestic and sexual violence are reticent to come forward to report their abusers fearing that contacting and cooperating with police and prosecutors or going to court will lead to the victim's detention or deportation. *See*, Rodrigues, *et al Promoting Access to Justice for Immigrant and LEP Crime Victims in an Age of Increased Immigration Enforcement - National Report* (2018) http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report.

11. *See* 8 U.S.C. § 1367(a)(1).

12. 8 U.S.C. § 1367(a)(2).

13. USCIS, Policy Memoranda: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, PM-602-0050.1, June 28, 2018, https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf. *See also, Hawke v. U.S. Dep't of Homeland Sec.* 2008 WL 4460241 (N.D. Cal. Sept. 29, 2008) (When a victim attains lawful permanent residence through a spouse's petition any VAWA confidentiality immigration case the victim may have filed is denied as moot and the confidentiality protections continue because the case was not denied on its merits.). For all of DHS's directives on implementation, *see* http://niwaplibrary.wcl.american.edu/pubs/implementation-section-1367.

14. For example, "USCIS will issue NTAs where, upon issuance of an unfavorable decision

on an application, petition, or benefit request, the alien is not lawfully present in the United Statesâ." USCIS, Policy Memoranda: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, PM-602-0050.1, June 28, 2018, https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf ("8 U.S.C. § 1367 does not preclude USCIS from serving an NTA upon the attorney of record or safe mailing address. However, USCIS cannot serve the NTA on the physical address of the applicant or petitioner unless Section 1367 protections have been terminated.").

15. INA § 239(a)(1). The Notice to Appear must contain information regarding the nature and legal authority of the proceedings, including the charges against the immigrant.

16. The National Immigrant Women's Advocacy Project, at American University provides technical assistance to individuals working with immigrant victims at info@niwap.org or at (202)274-4457.

17. 8 U.S.C. § 1101(a)(15)(U) (The criminal activity involves one or more of the following or any similar activity in violation of Federal, State, or local criminal laws: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; stalking; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; fraud in foreign labor contracting, manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt; conspiracy; or solicitation to commit any of these crimes).

18. For a discussion of immigrants' interaction with DHS and prohibition against enforcement in certain sensitive locations, *see generally*, Veronica T. Thronson, *Executive Orders and Immigrant Victims of Domestic Violence*, 47 Mich. Fam. L. J. 7 (2017).

19. *See, e.g.*, *Doe v. El Paso Cnty. Hosp. Dist.*, 2015 WL 1507840, at *4 (W.D. Tex. Apr. 1, 2015); *see also*, *e.g.*, *Plaintiff v. Francis B*, 631 F.3d 1310, 1315-19 (11th Cir. 2011); *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir.1997) ("[F]ictitious names are allowed when necessary to protect the privacy of ... rape victims, and other particularly vulnerable parties or witnesses."); *Doe v. Cabrera*, Civ. A. No. CV 14–1005(RBW), 2014 WL 4656610, at *4 (D.D.C. Sept. 10, 2014); *EEOC v. Spoa, LLC*, No. CIV. CCB–13–1615, 2013 WL 5634337, at *3 (D.Md. Oct.15, 2013); *Roe v. St. Louis Univ.*, No. 4:08CV1474 JCH, 2009 WL 910738, at *3–5 (E.D. Mo. Apr.2, 2009); *Doe No. 2 v. Kolko*, 242 F.R.D. 193, 196 (E.D.N.Y.2006).

20. *See Cazorla v. Koch Foods of Mississippi*, 838 F.3d 540 (5th Cir. 2016) (while the District Court permitted the use of a protective order to redact information related to the immigration status and history of Appellants, recognizing its irrelevance to the claims at hand, the information related to the very intimate nature of the crimes alleged, including those of a sexual nature, were permitted to be discoverable). Taking a harder line, another district court recently prohibited discovery of immigration status in a workplace case, finding "the chilling effect, public policy concerns, and Plaintiffs-Intervenors' fears outweigh any alleged probative value of possible exaggeration." *Washington v. Horning Bros.*, LLC., No. 2:17-CV-0149-TOR, 2018 WL 2208215 (E.D. Wash. May 14, 2018).

21. *See, e.g.*, *Doe v. El Paso Cnty. Hosp. Dist.*, 2015 WL 1507840, *4 (W.D. Tex. Apr. 1, 2015) (where the issues involved are matters of a sensitive and highly personal nature ... the normal practice of disclosing the parties' identities yields to a policy of protecting privacy in a very private matter," quoting *S. Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 712 - 13 (5th Cir. 1979)).

22. Under U.S. immigration law, prosecutorial discretion is the power that DHS has to initiate or discontinue removal proceedings against a person. The USCIS Policy Memorandum issued on June 28, 2018, provides for a Prosecutorial Review Panel that "must be maintained in each office authorized to issue NTAs." *See* https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf.

23. *See* John Morton, *U.S. Customs and Immigration Enforcement, Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs*, (June 17, 2011), http://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf.

24. *See Demaj v. Sakaj*, No. 3:09 CV 255 JGM, 2012 WL 476168, at *5 (D.Conn. Feb. 14, 2012); *State v. Marroquin-Aldana*, 2014 ME 47, 39, 89 A.3d 519, 531 (Me. 2014); *People v. AlvarezAlvarez*, No. G047701, 2014 WL 1813302, at *5 (Cal. Ct. App. May 7, 2014), *Cazorla v. Koch Foods of Mississippi*, 838 F.3d 540 (5th Cir. 2016). The statute lists limited exceptions (*e.g.* national security, statistical data collection and Congressional oversight). *See* 8 U.S.C. § 1367(b)).

25. All DHS Directives on Implementation of Section 1367 Information Provisions can be found at http://niwaplibrary.wcl.american.edu/pubs/implementation-section-1367.

26. For detailed strategies on utilizing the VAWA confidentiality provisions *see Veronica Thronson, et al.*, *Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody and Parental Rights*, Fam. & Intimate Partner Violence Q., Fall 2016 & Winter 2017, at 85.

27. *See* Alina Husain, *et. al.*, VAWA Confidentiality Statutes, Legislative History and Implementing Policy (4.4.18) http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/.

28. *See* Guillermo M. Hernandez, Closing the Courthouse Doors: The Implications of the Discovery of Immigration Related Facts and the Effects of § 30.014 of the Texas Civil Practice & Remedies Code, 13 Scholer 673, 701-704 (2011).

**Unintended Consequences** *continued from page 21*

31. A lawful permanent resident (LPR) is someone who has been given authorization to live and work in the U.S. permanently. As proof of LPR status, a person receives a "green card." LPRs can still be subject to removal from the U.S. for certain types of criminal-related grounds.

32. *See* 8 U.S.C. § 1227(a)(2), INA § 237(a)(2)(E)(ii) (emphasis added).

33. *See Garcia-Hernandez v. Boente*, 847 F. 3d at 872 (2017) ("The key language, 'the court determines,' does not require a conviction of a particular kind.")

34. For immigration purposes, a conviction includes (1) a formal judgment of guilt entered by a court; and (2) in a case where an adjudication of guilty has been withheld (*e.g.*, in a "diversion" court), a conviction exists when (a) a judge or jury has found the immigrant guilty or he has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt; *and* (b) the judge has ordered some form of punishment, penalty, or restraint on his liberty to be imposed (*e.g.*, a mandatory treatment program). 8 U.S.C § 1101(a)(48)(A); INA § 101(a)(48)(A).

35. 8 U.S.C. § 1227(a)(2). *See also Matter of Medina-Jimenez*, 27 I&N Dec. 399, 402 (BIA 2018).

36. However, failure to pay child support could impact the person's immigration application based on lack of good moral character.

37. *Matter of Obshatko*, 27 I&N Dec. 173, 175 (BIA 2017).

38. *Id.* (quoting *Garcia-Hernandez v. Boente*, 847 F.3d 869, 872 (7th Cir. 2017)) (internal quotation marks omitted).

39. *See Padilla v. Kentucky*, 559 U.S. 356 (2010).

40. *Id.* at 357.

41. More than one half of the states and the District of Columbia have statutes requiring advisals, *i.e.*, Alaska R. Crim. Proc. 11(c)(3)(C), Ariz. R. Crim. P. 17.2(f), Cal Pen Code § 1016.5, Fla. R. Crim. P. 3.172(c)(8). Delaware has not enacted a similar statute.

**Of Counsel** *continued from page 28*

has been the consummate champion on behalf of his clients, as reflected most recently in *Sherman, et al. v. State of Delaware Department of Public Safety*, 2018 WL 3118856, Del. Supr., Strine, C.J., June 26, 2018.

Dan's fortitude and perseverance over several years of litigation and appeals, finally brought triumph for his deceased female client, who following an arrest in 2009, was coerced into having sexual relations with the state trooper who arrested her. Reversing itself, the Supreme Court ruled that the jury should never have been asked to decide whether the sexual encounter was consensual as a matter of law, "because she is prohibited from seeking to escape her arresting officer, even by peaceable means, at risk of criminal penalty."

Recognized for years as one of Delaware's top lawyers, Dan's opinion was often solicited by *The News Journal*. In 2002, Dan was asked for comment as the New Castle County Courthouse moved from Rodney Square to its current location. In reflecting upon the former courthouse, Dan remarked, "A lot of drama played out here, far better than what is on TV. There is a lot of soul in this building because of that. I like things with soul and this building has soul."

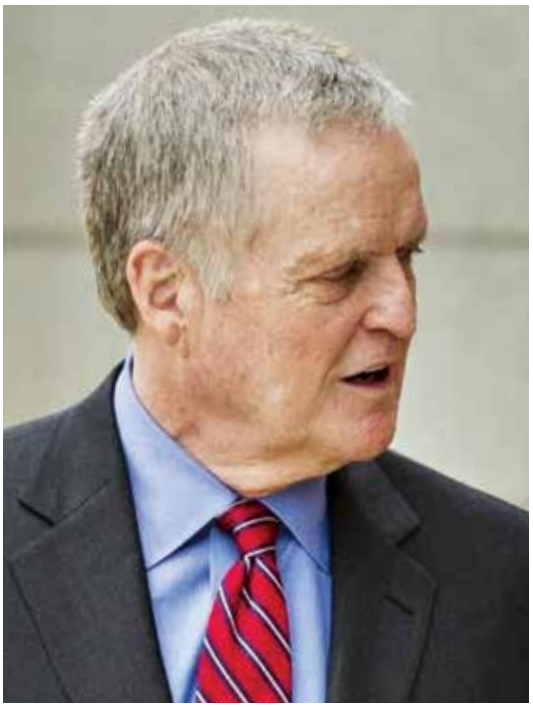
As do you, Dan. ◆

Thomas A. Foley

# OF COUNSEL: Edmund D. (Daniel) Lyons, Jr.

**Dan Lyons exemplifies why Delaware is indeed the finest place to practice law. We will miss Dan as he embarks upon his well-deserved retirement.**

Recognized for his thorough preparation, fearlessness and zeal, Dan inspired us all to be better lawyers. Dan's uncompromising integrity and acute ability to formulate novel issues — and deliver them with precision — earned him tremendous respect among his peers and the judiciary.



Dan's tenacity was perfectly balanced with his wit, civility and grace. He never hid his bad cards. Rather, he displayed them face up, robbing his opponent of the opportunity to make hay of those weaknesses.

Generous with his time and insights, Dan was always a great resource, eager to field questions of law or litigation strategy. Federal and state prosecutors appreciated Dan's straightforward nature, his ability to cut to the chase and his willingness to highlight issues at the first instance, always providing opposing counsel with the opportunity to evaluate and respond. Often, the prosecution would concede the point. But even when reasonable minds disagreed, Dan welcomed his adversary's best punch.

Born and raised in Delaware, Dan is a graduate of Brandywine High School and Amherst College, where he played football. Dan loves sports and enjoys cycling, fishing and swimming — he actually swam across the Delaware River!

Dan was honorably discharged from the United States Army. He then graduated from Georgetown University Law School in 1974 and was admitted to the Delaware Bar that same year. Dan began his legal career as a federal prosecutor in Washington, DC, but volunteered to serve in the US Attorney's Office in San Francisco, where he spent five years working alongside then Assistant US Attorney Robert Mueller.

In his early thirties, Dan prosecuted 18 members of the Hells Angels. Upon returning to Delaware, he served as an Assistant US Attorney before entering private practice. Interestingly, Dan would later defend a white-collar defendant in a federal trial in Massachusetts, going head-to-head against Robert Mueller, who had moved to the US Attorney's Office in Boston.

Early in Dan's private practice, in 1983, Lou Ferrara recalls Dan reaching out to inquire if Lou could help teach Dan the intricacies of effectively defending a DUI case. Although Lou had not met Dan before, he invited Dan to join him that day at the courthouse, as Lou had a DUI trial. The two quickly became great friends and were law partners for approximately 13 years. Dan spent more than 20 years practicing at his beloved office on Gilpin Avenue, in partnership with his younger brother, David.

Dan handled scores of big cases over his career in both state and federal courts, including Billy Bailey (executed by hanging in 1996). His willingness to defend high-profile cases was not driven by ego, but because Dan fiercely believed in his client's right to be treated fairly and with dignity, regardless of the nature of the accusations.

Dan's legacy is best defined by his strong commitment to fight for justice on behalf of both his clients and the public at large, willing to speak out about injustice in any form, whether it be the death penalty or minimum mandatory sentences.

A longtime member of DTLA, Dan fought against tort reform legislation to protect a plaintiff's opportunity to have their case heard before a jury. For the past four decades, Dan

*See* **Of Counsel** *continued on page 27*

# Get these special publications FREE by subscribing today


Subscribe to Delaware Business Times in Print & Digital to find out business news and events in Delaware.

**SUBSCRIPTION INCLUDES:**

- 26 Bi-weekly Issues
- Digital Editions
- Innovation Magazine ($9 value)
- Annual Book of Lists ($50 value)
- Regular E-newsletters
- Premium content on DelawareBusinessTimes.com

To Advertise with us, contact
Fay Steiger at 302.656.1837 or
fsteiger@delawarebusinesstimes.com


DELAWARE BUSINESS TIMES

DelawareBusinessTimes.com/Subscribe

# Delaware Back Pain & Sports Rehabilitation Centers

**Depend on us to get you better faster.**

DelawareToday TOP DOCTOR 2017

## YOUR DEDICATED CLINICAL LEGAL CONCIERGE

- Medical Report Narratives & Disability Requests
- Deposition (In-Person / Video)
- In-Office / Telephone Conferences
- Medical Records Requests
- Permanency Evaluation / Report

**Barry L. Bakst,** D.O. FAAPMR, FAOCPRM

**Craig D. Sternberg,** M.D. FAAPMR

**Arnold B. Glassman,** D.O. FAAPMR

**Anne C. Mack,** M.D. FAAPMR

**Stephen M. Beneck,** M.D. FAAPMR

**Rachael Smith,** D.O. FAAPMR

**Lyndon B. Cagampan,** D.O. FAAPMR

**Kartik Swaminathan,** M.D. FAAPMR

**Pramod Yadhati,** M.D.

**Jeffrey S. Meyers,** M.D. LAC, FAAPMR

**Irene Fisher,** PSY.D.

**Brian S. Baar,** D.C.

**Kristi Dillon,** D.C.

**Marjorie E. Mackenzie,** D.C.

**Adam L. Maday,** D.C.

**Mark Farthing,** D.C.

**Hetal Patel,** D.C. FIAMA

**Ty Harmon,** D.C.

**Jennifer Walder,** D.C.

## MULTIDISCIPLINARY CLINICAL TEAM

PATIENT SAFETY & QUALITY ASSURANCE | ADVANCED NON-SURGICAL TREATMENTS

- Guaranteed appointments within two business days
- Interventional procedures
- Comprehensive and timely work status reports
- Work restrictions and light duty assignment evaluations
- Quantitative Functional Capacity Evaluations (QFCEs)
- Independent medical evaluations (IMEs)
- Complete rehabilitation programs on site

## SEVEN CONVENIENT LOCATIONS

Foulk Road Office
Riverside Medical Arts
Omega Professional Center
Glasgow Medical Center
Middletown Office
Smyrna Office
Eden Hill Medical Center (Dover)

AANEM Accredited Laboratory

**302-529-8783**
**delawarebackpain.com**

twitter.com/DeBackPain

facebook.com/delawarebackpain