

NATIONAL JUDICIAL INSTITUTE ON DOMESTIC VIOLENCE
*A joint project of the U.S. Department of Justice Office on Violence Against Women,
National Council of Juvenile and Family Court Judges, and
the Family Violence Prevention Fund*

CONTINUING JUDICIAL SKILLS IN DOMESTIC VIOLENCE CASES
MARCH 2007

IMMIGRATION AND TRAFFICKING SPECIAL TOPIC
COURSE CURRICULUM OUTLINE

02-08-07

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I. CURRICULUM CONTENT AND USE

This curriculum outline is for faculty teaching the 2006 National Judicial Institute on Domestic Violence (“NJIDV”) Special Topics Workshop on Immigration/Trafficking, which will take place twice in one week, on Tuesday and Wednesday. Each day begins at 8:30 am and ends by 5 pm.

The workshop has four major sections: (1) Immigration and Trafficking Realities in the Courtroom; (2) Immigration Issues in the Civil Context; (3) Judicial Leadership Focus Issues: Building Community Collaborations and the Challenge of Interpretation; and (4) Immigration Consequences of Criminal Conduct. The outline includes step-by-step instructions to the faculty, descriptions of exercises and a summary of Learning Points for each segment. PowerPoint (**SLIDE**)s and Handouts are contained in independent documents.

PowerPoint (**SLIDE**)s (“**SLIDE** #”) generally contain the goals/objectives, major discussion questions, instructions for activities, and summaries of Learning Points, where appropriate. Faculty should reference the Handouts (“**Handout** #”), as noted in the outline. They contain the entire content of exercises, as well as other resources for participants. Participants will also receive a “Self-Test” sheet and Action Planning cards. They will use these documents throughout the workshop to memorialize what they’ve learned and what they plan to do as a result. The NJIDV staff will prepare and bring to the workshop all the materials included and referenced in this document; faculty members need not prepare them.

Faculty should attempt to fully cover all items in the outline and adhere to the workshop’s time frames. Breadth of coverage is not the goal of this workshop; faculty may omit or add points to meet the needs of participants, but must consult with NJIDV staff before changing content, times or exercises.

NJIDV staff will perform overall time-keeping functions and flash warning cards when 5 minutes, 2 minutes, and 0 minutes are left in a section. Faculty may adjust the exercises/discussions to stay within the allocated time for each segment. When staff flashes the 0-minute warning, faculty must conclude immediately and yield to the next activity.

This curriculum is a working draft subject to revision after every NJIDV Immigration/Trafficking Workshop. Faculty should suggest revisions in the exercises, teaching techniques, visual aids, and learning points. Please give your suggestions to the NJIDV staff before the conclusion of the workshop.

Goals/Objectives

- As a result of this training, participants will be able to:
- Identify “red flags” that immigration/trafficking status or issues are affecting what’s happening in your courtroom.

- Assess and consider immigration implications when crafting civil and criminal findings, orders and dispositions.
- Identify specific measures you'll take to enhance access to justice for immigrant victims of domestic violence and trafficking.

II. WELCOME, OVERVIEW, AND INTRODUCTIONS (8:30 – 9:00 A.M.)

Faculty: Susan Breall

- Welcome participants, provide overview of the day, and why the training is taking place (8:30 – 8:45)
- Introduce the faculty and staff, and facilitate participant self-introductions (brief) (8:45 – 8:55)
- Explain the goals/learning objectives of the day (see above), the self-test (tool for participants to fill out for themselves throughout the day), and segue into the first training section (8:55 – 9:00am) (SLIDE 2)
- Overview of the day: Ancestor, civil, interpretation, criminal
- If you have judicial leadership ideas, write them on the flip chart

III. IMMIGRANT REALITIES IN THE COURTROOM (9:00 – 10:15 A.M.)

Faculty: Sujata Warriar

A. Goals/Learning Objectives (SLIDE 3)

In addition to warming them up to actively participate in the learning experience, the goals/objectives of the first section are to:

- Enhance identification with noncitizens you encounter
FACULTY presenter should note: “We will use the word “noncitizen” to cover both immigrants and trafficking victims. It’s the most accurate and encompassing description of this class of people.”
- Identify and assess system barriers to noncitizens attempting to access justice
- Recognize and articulate noncitizen realities that may impede access to justice

B. Ancestor Exercise What Do We Know About Noncitizens? What Do We Need to Learn? (9:02 – 9:30 a.m.)

Before coming to the workshop, participants received a homework assignment to read the “Ancestor Exercise” (HANDOUT 1) and bring stories or items about ancestors who first came to United States.

Gail Pendleton & Sujata Warriar facilitate discussion of the questions. The first set of questions address general immigrant experiences. Questions then move to more general discussion of myths about immigrants and end by bringing it to their world in the courtroom. There are more questions than necessary to generate the desired discussion, so don't feel compelled to ask every question if you feel the topic is being adequately covered without explicitly asking them all.

Note the Learning Points after each question, which relate ancestor experience with current immigrant experience. Don't ask all of these questions of one person; pick on different people for different ones, especially to get at Learning Points.

Start by noting:

“We realize that not all of your ancestors were brought here voluntarily (slavery; indentured servitude), that some of you may have roots indigenous to the United States, and that some of you may have parents to whom you are not related by blood. Focus on what your family experienced in the past as they tried to build lives in the United States, or what you have experienced yourselves as a recent immigrants”

Q: Who would like to share a story or item?

Q: Why did your ancestors come to US?

LEARNING POINTS: Current immigrants, e.g., fleeing persecution, making a better life for next generation, sending money back to home country, etc.

Q: How did they get here? Did they come in legally? If not, how did they or their kids get legal status?

LEARNING POINTS: How is this like current immigration? e.g., smuggling like steerage, family brought over, not “legal” immigration (were they criminals, then?), how hard was getting status and who could get it form them, etc.

LEARNING POINTS on migration:

Legal migration = visas, immigrant v. nonimmigrant

Many can't get visas, examples?

If overstay visa = undocumented;

If violate conditions of visa = undocumented

Q: Is being undocumented a crime? **(SLIDE 4)**

LEARNING POINTS: Not yet. Although attempts to criminalize being undocumented (“unlawfully present”) persist, so far Congress has rejected them. For now, at least, it's entering illegally that is the crime. But not everyone without status entered without permission and merely lacking documents is not, itself, a crime. Many immigrant trafficking victims and domestic violence survivors

entered illegally but they are still eligible to get status. Being convicted is, of course, another thing, which we'll discuss this afternoon.

Q: Can undocumented immigrants apply to work legally?

LEARNING POINTS: No, you can't just apply to get work authorization. You have to have some sort of immigration status that allows work and that's what you apply for. Not all statuses allow work, such as spouses and kids of many people with work visas. The process to get status and work authorization often is controlled by others, e.g., agribusiness for farmworkers (in the news a lot these days).

Q: Can you apply to be a US citizen if you don't have status now?

LEARNING POINTS: No, mostly you have to be a lawful permanent resident (LPR in immigration jargon) first and often someone else has to file for you = "sponsor".

LPRs = usually through families or employers; some other routes. Examples from stories?

Q: Who can apply for lawful permanent residence?

LEARNING POINTS: Employers, family, "lottery", "legalization" (for groups who entered U.S. without approval or have lost status), asylum/refugee, special routes for victims of crimes.

How does family-based immigration work? Use story of participant to illustrate: USC/LPR = sponsor and controls process; long waits for certain categories with no work authorization during wait; how did system work for them?

(HANDOUT 2) = status glossary

Q: What problems did your immigrant ancestors experience once they were here? (Start with open-ended question, then ask different people):

Q: Were they able to use their skills to best advantage? If not, why not?

LEARNING POINTS: Many immigrants take jobs that a much lower socio-economic and skill level than they had in their home country. They often take jobs that native-born, or later generation immigrants, won't take.

Q: Did they speak English? How long did it take them to learn? Did the next generation speak English or the home country language?

LEARNING POINTS: Most first generations do not speak English (if they didn't speak it already) and don't have enough time to learn it well (too busy working for the next generation). But current studies show second generation usually speaks it quite well, often acting as intermediary for first generation.

Q: What stereotypes and discrimination did your ancestors experience?

Qs: Who are the primary immigrant groups in your communities? What kind of work are they doing? Which nations coming from? Who is showing up in your courtroom?

Q (If hasn't come up already): Do you remember the articles we sent you to read, about Irish and Mexican immigrant experiences? What stereotypes did they experience in common? What different?

What stereotypes, good or bad, about immigrants in your community?

LEARNING POINTS: Many immigrants (including white ones) suffer from stereotyping discrimination. Seems a human feature to distinguish newcomers as “different/other/less deserving”, regardless of how similar they and their experiences actually are.

C. Mini-Lecture: The Road to Immigration Status, Part 1 (9:30 – 10:00)

Faculty: Maria Jose Fletcher briefly explains immigration structure

(HANDOUT 3) = Overview of Immigration System & Laws

Under Department of Homeland Security (DHS): **(SLIDES 5 & 6)**

- Citizenship and Immigration Service (CIS) = “benefits”, meaning grants immigration status to people not in immigration proceedings.
- Immigration and Customs Enforcement (ICE) = finds, detains and attempts to deport noncitizens in US
- Customs and Border Protection (CBP) = does the same at the border and airports

Executive Office for Immigration Review (EOIR) = immigration court system, under DOJ

Q: What rights do detained non-citizens have? **(SLIDE 7)**

Similar, but not quite equal to rights of any U.S. citizen in the criminal system:

- Right to speak to an attorney before answering any questions or signing any documents;
- Right to a hearing with an Immigration Judge (some exceptions);
- Right to have an attorney represent them at that hearing and in any interview with DHS (not government-paid attorneys); and
- Right to request release from detention, by paying a bond if necessary (some exceptions).

Procedure if an immigrant without status is picked up

If someone is picked up by ICE before granted status by CIS (sometimes even after):

- May detain (nowadays usually do).
- Issues a “Notice to Appear” = immigration hearing notice.
- No notice of rights and options

Q: What are legal grounds for removing noncitizens? (SLIDE 8)

They probably will give specific examples, e.g., committing a crime, being undocumented; fit into deportation v. admissibility framework

- Deportation grounds are for people who entered lawfully (for example, a student who stayed after his/her visa expired).
- Inadmissibility grounds are for people who entered the U.S. without approval. People applying for lawful permanent residence also must overcome them, even if staying in the US to apply.
- Both can be used against lawful permanent residents (admissibility is an issue if returning and has criminal record or long absence).

How it works for those who have served time for crimes

ICE puts “immigration detainer” on noncitizens serving time for crimes, so that released to them when done. In some places, local jails are helping ICE identify noncitizens before they are done serving time, or even before they’ve had a criminal hearing, so getting deported before going through state criminal system.

(SLIDES 9 & 10) = What Congress Has Done

Special routes to immigration status

Access to public benefits

Access to legal services

Access to language services and translation (LEP)

Special Immigration Options

Special Immigrant Juveniles \

Conditional Residence Waiver

Self-petitioning & Cancellation

U & T Visas

Self-petitioning for parents of US citizens

Work authorization for nonimmigrant spouses

Self-Petitioning (Susan helps MJF)

Q: Has anyone heard of the special routes to status Congress created in VAWA 94 and the Trafficking Act of 2000? Self-petitioning & U visa?

If the audience seems to know something, ask

Q: Who is self-petitioning for?

LEARNING POINTS: Because it's for people who normally would get status through family immigration, it's for spouses and children (current and former) of US citizens and LPRs.

Q: Anyone experienced the family-immigration process? Who controls the process/files the application?

LEARNING POINTS: USC or LPR controls, so creates conditions for abuse to go unchecked.

(HANDOUT 4) = How family immigration system works &

(HANDOUT 5) = Routes to status for DV/trafficking survivors

A specially trained CIS unit (the Vermont Service Center VAWA Unit) does all self-petitions.

This is what self-petitioners must show: **(SLIDE 11)**

- Battery or extreme cruelty to the victim (can include cruelty to the victim's child/ren, too);
- Good moral character (police clearances);
- A U.S. citizen or lawful permanent resident spouse/parent

NOTE that NOT ELIGIBLE if divorced more than two years before applying or divorce not connected to DV

- Residence somewhere with the spouse/parent;
- Married the spouse in "good faith" (not for immigration status only)
- Can get work authorization and public benefits, unlike regular family-based process

D. Immigrant Realities (10:00 – 10:15)

Faculty: Susan Breall and Maria Jose

NOTE: Use Qs below only as necessary to get them to recognize barriers; can also ask re current immigrants, if think they get it from previous discussion

Q: If your ancestors had been a victim of a crime, would they have accessed the legal system? Why not? (some prompting questions below)

Q: Did they understand legal system?

Q: Did they think they would get justice in it? Why not?

Q: Who would they have gone to for problems like domestic violence or divorce?

LEARNING POINTS: The system is not the first place most newcomers turn for help. They don't know it, trust it, or understand how it works. Their communities may ostracize them if they do, or it may violate their culture or religion (divorce, subordination of women).

Q: Where do you think immigrant domestic violence and trafficking victims would go for help now? Are the normal services accessible? Why not? Do immigrants know about them?

Q: Let's say your ancestors are transported to current time and want justice in your courtroom; what barriers and obstacles would they face?

(HANDOUT 6) = Immigrant Realities

(SLIDE 12)

- Language & accessibility
- Information/misinformation
- Potential for deportation
- Experience in the home country
- Economic barriers
- Cultural and religious pressure

E. Break (10:15 – 10:30)

IV. IMMIGRATION ISSUES AND CIVIL COURT (10:30 – 12:00PM)

A. Goals/Objectives

Faculty: Gail Pendleton will review the following goals (SLIDE 13)

As a result of this section, you will be better able to:

- Identify “red flags” for the implicit or explicit introduction of immigration status as leverage in cases before you.
- Document facts and create a record in light of immigration collateral consequences, both positive and negative.
- Craft remedies that effectively further desired outcomes and reflect the immigration and cultural realities of the parties.

1. Part 1= CPO context (10:35 – 10:50)

Q: Based on what you've heard about self-petitioning, do you think you've seen people in your court who might be eligible?

Q: Where could what you do affect eligibility for status?

USE real case examples as hypos, maybe from earlier discussion; modify as necessary

If need hypo, use (**HANDOUT 7**) = Hypo

Q: Can you make findings about extreme cruelty, even if not basis for order? (**SLIDE 14**)

NOTE that this will help spouses and children of many nonimmigrants too, who may need work authorization.

LEARNING POINTS: Battery/extreme cruelty to mom and child; residence; good faith marriage;

Q: What about proof of abuser's status? Often impossible for victim to show; anything you can do?

LEARNING POINTS: Can you make him show proof? Make findings? Anything else? (**SLIDE 15**)

Information from the abuser:

- Legal and bona fide marriage
- His status
- Residence together
- Their documents in his control

10 mins: THE GOAL is to get them thinking, not be exhaustive.

LEARNING POINTS: Findings about domestic violence, and protection orders themselves, are helpful. Some judges are willing to make findings about range of DV, even if not basis for order.

Judges are using the catch-all provision, the "other" check box on standard forms, to require abusers to provide information their immigrant victims need to get status.

Q: What if someone doesn't want the abuser to move out, why would this be true? Can you do something to protect them while honoring her wishes? AGAIN, 5 mins, just get juices going.

LEARNING POINTS: Judges may modify normal check boxes to meet the needs of immigrant applicants (for instance, not making him live elsewhere, but crafting other sanctions to check abuse).

Q: Do any of you do mutual protection orders? Good, if no; if yes, what might implications be for someone trying to get status?

LEARNING POINTS: Good moral character may be implicated

(HANDOUT 8) = Creating a Useful Record, Part 1 (by immigration status)

(HANDOUT 9) = Useful Protection Orders

Q: Anyone know of consequences of protection orders for immigrants? For citizens?

LEARNING POINTS: Will explain in more detail in criminal section, but flag that findings of certain violations = deportation ground; USC's sponsoring fiancées must now reveal CPOs.

2. Road to Status, Part 2: Other Routes (10:50 – 11:00)

Use the cases they've given, to explore:

Q: What if abuser is not spouse or in status?

U Visas (**SLIDES 16 & 17**)

(HANDOUT 10) = U & T visa outline

Congress created the special U visa for victims of crimes.

- Crimes include DV, SA, slavery/indentured servitude-type crimes, and others.
- The VAWA unit does all Us and Ts, too.
- An applicant for a U visa must:
- Provide a certificate from a justice system professional, whose job is to “investigate or prosecute” the crime, which
- Attests that the applicant “has been, is being or is likely to be helpful” in the investigation or prosecution of the perpetrator of the crime.
- Substantial physical or mental abuse from the crime suffered

Q: Have you seen people who might qualify? What crimes?

Q: Any role for you here? What about CPo contempt phase?

Issue for Children

- Police may not be able to reveal names on certs, so need you to do limited disclosure order U = DV/assault victims; potential police cert;

B. Trafficking (11:00 - 11:15)

Congress created the special T visa for victims of sex or labor trafficking.

- This can include domestic violence survivors, but those survivors must have been trafficked for sex/labor.

Q: Have you ever encountered human trafficking in your region? If not, do you believe it happens in your region?

(SLIDEs 18 - 21)

LEARNING POINTSs: Trafficking involves many forms of exploitation: sexual, domestic servitude, agricultural, sweatshops; may vary depending on the region of the state or country. Recent laws focus on commercial sex and labor that amounts to indentured servitude or slavery. Trafficking victims are most often women and children but also may be men, who are most often trafficked for labor purposes. Trafficking victims may be individuals, e.g., servile marriages arranged through international matchmaking businesses.

Q: Who are traffickers

LEARNING POINTS: As in past, not only big organized crime, but also family members and people who say they will get trafficking victims legitimate jobs, but end up enslaving them, or selling them into slavery instead.

LEARNING POINTS: Traffickers often force their victims to help persecute/enslave other victims.

LEARNING POINTSs: Can get benefits, services and work authorization earlier if fed agency signs off on “continued presence.” This is over once prosecution is over, however. To get the T, need

- Law Enforcement Agency (LEA) endorsement

LEARNING POINTS: often feds, since fed crime, but state and local police can now sign, and some states have trafficking laws.

Q: Do you know if your state has a trafficking law?

Can also get if show tried to be helpful (complied with reasonable requests), even if couldn’t get LEA endorsement.

Q: Red Flags for trafficking?

- One attorney for many defendants
- Prostitution for juveniles; servile marriages

Q: Is there something you can do about the trafficking that seems to be going on?

- Appoint counsel so independent rep
- Have they talked to victim advocate?
- Refer to clerks with info

- Refer to prosecutor: on facts looks like trafficking

Q: If no state trafficking crime, are there ancillary crimes, or old slavery-type crimes on the books you could use?

C. Custody & Support (11:15 – 11:40)

Faculty: Gail asks:

If any of you read that Nevada Supreme Court decision we sent you? If so, hypo should sound familiar

(SLIDEs 22 & 23) = Questions

Q: To what degree is immigration status relevant to this case? How do you know whether the generalizations being made are true? What facts related to a person's status seem relevant to custody and support?

LEARNING POINTS: Should lack of status per se mean you have fewer rights?

LEARNING POINTS: If this seems an issue

Even if Congress makes being undocumented a crime, does that automatically mean an undocumented person has fewer rights? Is this true for others with criminal charges who appear in your court? Why is this different?

1. Fact Focus

- It's the facts that matter, not generalizations about immigrants or immigrant status
- Victims often are eligible for status, so not likely to get deported (not detained either)
- If so then eligible to work and get public benefits, depending on status
- Victims often wouldn't be in immigration proceedings if their spouses hadn't called immigration. Is the spouse trying to manipulate the court or the system? Trying to get other spouse deported to can get custody?
- She will eventually be able to work but can't right away; ditto with benefits.
- His control of her status is one reason she's economically dependent on him.
- They need support and services:
- Don't assume the attorneys necessarily know what they are doing; in the Nevada case they did not, not until they brought in experts at the appellate phase, who pointed out the abuser was wrong on the law. Ask parties to

brief immigration law issues and to consult immigration experts in doing so.

- Challenge service agencies to accommodate limitations imposed because of immigration status, e.g., if a noncitizen can't do regular job training program because she doesn't have a status that makes her eligible, how else can they help her acquire skills or a job?

Q: What if someone wants to go back to the home country with a child? How does that affect your decision?

LEARNING POINTS: Do they deal with USCs traveling and living abroad (the military, for one)? Why would this be different?

2. Kidnapping Prevention - Maria Jose

If concerned that either party may take the children out of the country, the court may limit access to the children's passports and visas and monitor custody/visitation violations carefully to prevent the abduction of the children.

3. Affidavits of Support

Q: Anyone had immigration affidavits of support raised in their courtroom?

(HANDOUT 11) = Alien v. Sponsor

LEARNING POINTS: State courts just starting to deal with these requests; some enforcing, some not, some using as evidence that sponsor has means to support. Fed district courts also starting to enforce or not, depending on facts.

This latter approach may be best for several reasons:

- There are good arguments that it's not an enforceable contract
- Indefinite; no meeting of minds and not voluntary, no consideration
- Even if enforced, it's not prospective and all it gets you is 125% of poverty line minus whatever other income you get in past year

4. Economic Dependence

Q: What if is undocumented and says he's judgment proof because he can't work legally? What else would you want to know and what could you do?

LEARNING POINTS: Check facts, not assumptions: being undocumented doesn't necessarily mean not working. Maybe can't make him work, do job training, or take money out of his check, but can attach assets and otherwise explore his resources.

LEARNING POINTS: if not already covered: Red Flags for manipulation

When one party provides the court negative info about the other's immigration status

- Court should be alert to the possibility that this is a form of abuse and control
- DHS views such behavior as evidence of battery/extreme cruelty, so court should make findings in the PO regarding these actions
- One party may use the immigration system as weapon of control
- To impugn the credibility/motivation of the victim
- To show the victim is an unfit parent
- To suggest the victim is a flight risk
- To suggest she is about to be deported so doesn't need the relief she is seeking

LEARNING POINTS:

- Immigration status is irrelevant to parenting skills
- Lack of status may well flow from the abusive party's manipulation
- The victim may be unaware of eligibility for status
- Being "deportable" does not mean immediate exit—appeals process may take years

(HANDOUT 12) = Thronson article

D. Juveniles (11:40 – 11:55)

Q: Do you think you see immigrant juveniles? What context? Do you think some of them are trafficked? Any of them eligible for U visas or self-petitioning?

1. Special Immigrant Juveniles

(HANDOUT 13) lists resources for judges on SIJ and related immigrant juvenile issues

(HANDOUT 14) FL law on best practices

Q: Any of you make placement or custody decisions for immigrant juveniles, usually dependency or delinquency, but also could be probate? Do you know about Special Immigrant Juvenile Status? What is required? (SLIDE 24)

- Neglected, abandoned, abused
- Eligible for long-term foster care
- Dependent of court or agency
- Not in best interests to be returned to home country
- Juvenile court must retain jurisdiction until child gains status

Q: What is your role?

LEARNING POINTS: In fact, you MUST make these findings or immigrant children not eligible for SIJ.

(SLIDE 25) – FLA DCFS best practices

What can you do to make system work for children?

- Ensure referred to legal service provider to pursue SIJS
- Ensure CPS and GALs trained and part of system
- Materials for children and foster care providers

2. [Improving Accessibility (Optional, if there's time before lunch)]

Q: What can you do to make it more likely immigrant victims will divulge information? (SLIDES 26 & 27) (HANDOUT 9) = Dos and Don'ts

- Do refer the victim to local resources with immigration expertise to assist with her status issues
- Don't allow abuser to intervene with DHS in order to impair victim's immigration status

Q: Is there anything you can do to overcome their fears of the courtroom?

LEARNING POINTS: Use the authority of the court to correct victim misinformation

- The abuser may tell the victim that the court will work against her or that she will not be permitted to testify against him, because courts in their native country have such biases. Inform the victim and abuser that the court serves parties regardless of gender, money, or immigration status.
- The victim may be unrepresented or may be accompanied only by a victim advocate. Explain the relevant legal standards (for evidence, best interests of the child, reason to believe that violence has occurred, when or why modification of a protection order can take place) to ensure that the victim understands how the U.S. legal system works.
- The victim may be unaware that she is entitled to have help from court-related systems. Have court personnel (such as clerks in specialized intake centers or court-based victim advocates) explain the rights of non-citizens in other related systems such as child support enforcement or public benefits.
- The victim may assume that she cannot access the help of the court because she lacks documentation. Do outreach through community-based programs to get the word out that the court will help regardless of immigration status and that the court will not act as an enforcement arm of DHS. Let the parties know immediately in hearings that immigration status is irrelevant.

- The victim may assume that the court cannot serve her because no interpreting service is available. Do outreach through community-based programs to get the word out that interpreter assistance is available through the court or through affiliated community-based organizations volunteering interpretation services.]

E. Action Planning (11:55 – 12:00pm Noon)

Write down a few things you'll do differently or what you'll tell your colleagues;
If you have judicial leadership ideas, write them on the flip-chart.

V. LUNCH (12:00- 1:15PM)

VI. COURT ACCESSIBILITY: THE CHALLENGE OF INTERPRETATION (1:15 – 2:05)

Faculty: Gail presents

A. Goal/Objective (SLIDE 28)

Identify specific measures that ensure immigrant parties in your court have access to culturally and linguistically appropriate resources and services, both court-based and out-of-court.

Faculty: Sujata Introduces

1. The Play (with embedded big group discussion) (1:40 – 2:10) (SLIDE 29)

The Cast

Juana, the Applicant, Gail. She is actually indigenous Kanjobal, but speaks some Spanish. She's in court with her shelter advocate and her child, seeking to get a protection order against her husband, Antonio.

The Judge, Sujata. She cares about good interpretation and is frustrated that lack of it impedes getting all the facts.

The Advocate, Susan. She's from the shelter where Gail has been staying. She speaks a little Spanish, enough to know when something's really off with interpretation, and enough to know she's not good enough to interpret effectively.

Random Interpreter, Maria Jose: She happens to be in the courtroom still, packing up from a previous hearing.

Sujata: Yells "cut" and "action" and asks the audience questions at appropriate moments. Works talking points, along with any faculty who feel inclined to chime in.

The Child (*Keiko or recruit from audience*): Child's main role is to sit with Gail. If he wants to wear things that indicate s/he is a child, welcome to be creative.

Action

Sujata: Welcome to our courtroom. Since you've just had lunch, we're going to do something we hope will keep you from falling asleep, a little skit about the Challenge of Interpretation. No need to take notes: we'll be calling on you throughout the skit for your input.

Today in court we have Juana who has come seeking a protection order. Susan and [insert child's name] are with her. Susan is an advocate from the shelter she's been staying at. [insert name] is Juana's little boy. I am the judge (now wouldn't that be interesting). Let the play begin. . .

Calling the case of docket number 30-24-96 in family court, hearing the petition for a restraining order filed by Juana Fletcher.

The Judge: We're now hearing the petition of (looks at papers) Juana Banderas for a restraining order against her husband, Antonio. I have here her petition; I'm wondering if you might need an interpreter, Ms. Banderas? Umm, habla Ingles?

Juana looks perplexed and Susan says: Your Honor, Ms. Banderas does not speak English, so she will need an interpreter.

Judge: Did she bring someone with her to help with that?

Advocate: Well, your Honor, her child [insert name] is here with her; perhaps s/he could help?

Director: Cut! (Turns to participants). How should I respond to this?

Talking Points (make these fast, this should be easy): Shouldn't use children for a variety of reasons, including: trauma to them, likelihood of inaccuracy due to social and familial pressures, lack of knowledge of words and context of those words (e.g., domestic violence and the legal system generally).

OK, Action!

Judge: No, I don't think the child should interpret. What about you, Ms. Breall? Do you speak Spanish?

Director: Cut! Is this a good idea?

Talking Points, not so easy, but can revisit this in big group discussion:

- Cons: Role violation that's bad for everyone involved; better to preserve advocacy role instead of trying to serve as neutral interpreter.

- Privilege & confidentiality concerns
- Pros: sometimes it's the only option and better than nothing (?).

Director: Action!

The Advocate: No, your honor, I wouldn't feel comfortable doing that. You don't have interpreters here?

Judge: Oh, good thought! Ms. Fletcher, could you please help us out with this case?

Maria Jose (looks perplexed and confused, not wanting to say no to a judge): Well, your Honor, I really have to get back to the office, plus I doubt Ms. . . . (Turns to Gail and says in Spanish) Excuse me, ma'am, could you tell me your name, please?

Gail: My nombre es Juana Banderas.

Maria Jose Not Antonio's wife, by any chance? (Gail says "Si.") Oh, I've met him down at the club, yes, indeed. Do you need help with this matter?

Gail: Si, pero. . .

MFJ (turns to Judge): Your Honor, I'd be happy to help, even though I doubt I'll get paid.

Judge: Thank you, Ms. Fletcher. I'm eternally grateful (said a tad ironically, perhaps). OK, let's get going. Ms. Banderas, what is it you're asking for?

MFJ, to Gail in Spanish: What is it you want from the judge?

Gail: Quiero que Antonio no me page mas.

MJF (in Spanish to her): Do you understand what can happen here? Do you want Antonio deported? What about your family? What will they say about you bringing shame to your marriage?

Advocate: Your Honor, what's going on here? I don't think he's translating what you said!

Judge: Yes, I was wondering about that too. Ms. Fletcher, please, just interpret exactly what I say!

MJF: Yes, Your Honor, I apologize. I was just explaining what's going on here, since she doesn't know how our system works. She says she wants her husband to stop bothering her.

Judge: What do you mean by bothering?

MJF (in Spanish to Gail): So what has Antonio done that you want to stop?

Gail: El me grita y quando toma, tira cosas por todos lado, y a veces me pega. La semana pasada se enojo con el nino y lo tiro contra la pared. Yo quiero que no lo hago mas.

MJF: He yells at her. She's worried about [insert child's name].

Director: Cut!

Faculty: Sujata takes over

Q: What IS going on here (I know some of you speak Spanish, or enough. . .)? Why is the victim hesitating? What should I do about it? What are the red flags that something's going awry?

(SLIDEs 30 & 31)

Red Flags

- Saying too much (probably explaining something on their own)
- Saying too little (applying their own spin, or just can't keep up)
- She stops talking suddenly
- Body language
- Be aware of inappropriate relationships between interpreter and other parties in court

LEARNING POINTS:

- Interpreters should be vetted before use: do they understand domestic violence, do they understand basic interpretation rules?
- Bad interpretation vitiates due process, so it's very important you correct problems as they occur, not hope it works out in the wash (or on appeal).
- Don't assume which languages are best for applicant (e.g., Spanish is not Juana's first language); ascertaining this can be difficult, obviously; what do they do now?
- Interpreters of different genders or class, or from the same community may bring personal/political agendas with them: DV, child abuse, SA, incest
- Small communities are particularly challenging; sometimes no interpretation may be better than bad interpretation;
- Be aware of terminology (make it accessible);
- And pacing; SLOW DOWN
- Idioms and phrases may not interpret literally;

- Insist on phrase-by-phrase interpretation and interrupt parties and interpreter as much as necessary to make them comply; IT WILL TAKE LONGER
- Ensure the interpreter is interpreting everything going on in the courtroom, so all parties are aware of what's going on;
- If it gets bad enough (e.g., Michael's pressure may make it impossible to get the facts out), fire the interpreter and do what you can until you can get a good one;

Q: We assume you all have court appointed interpretation for criminal proceeding? Anyone not have that? (yikes, if yes; flag for same problems as discussion to follow).

Q: What about in civil? How many have court-appointed in civil? (show of hands)

Q: What do the rest of you have? (some may have interpreter systems or pool that aren't court-appointed; many will have nothing except what the parties bring)

Q: re you all familiar with the Title VI Limited English Proficiency requirements?

(HANDOUT 16) = LEP information

LEARNING POINTS:

- Work with court system and DOJ to ensure your system complies with LEP requirements;
- Review interpreter qualification criteria: It may be more important for interpreter corps to be trained in basic interpretation skills AND domestic violence issues than to have passed a difficult and possibly not completely relevant exam (e.g., being able to translate written material may weed out lots of fine interpreters and isn't particularly central to aural interpretation).

Q: So those who have court-appointed, how did this happen?

Explore with them how system found resources, got political will to make it happen, did they work with DOJ on LEP issues?

Q: Those of you who have other systems, how do you ensure good interpretation? What are they trained in?

Explore criteria for good interpretation; onerous v. inadequate criteria and training. People with developed systems may have useful advice here, too.

Q: Any ideas from this discussion about what you can do when you go back to get or improve interpretation?

Remember to write your leadership ideas on the flip-chart

VII. IMMIGRATION CONSEQUENCES OF CRIMINAL CONDUCT (2:05 – 2:15 P.M.)

Faculty: Gail (Slide 32)

A. Goals/Objectives

Participants will be able to:

- Identify “red flags” for presence of immigration concerns, trafficking issues, and unintended immigration consequences of criminal dispositions.
- Use sanctions and penalties that hold batterers accountable while minimizing damage to the immigration status and economic stability of victims.
- Craft a helpful record informed by an understanding of immigration consequences.

B. Victim Issues (2:05 – 2:15)

Qs: Do you see victims charged as perpetrators? Why does this happen? Additional reasons it might happen to immigrant women and children?

Why might victims not want their abusers deported?

Q: Is Victim centered prosecution a good idea

Q: Why?

LEARNING POINTS:

- Trust of immigrant communities
- Achieving real justice (is he likely to do this to someone else?)

C. Consequences for Perpetrators, Part 1 (2:15 – 2:30)

Q: How often do you think you see immigrant perpetrators?

Q: What relevance is their immigration status?

Q: Do you give notice of immigration consequences? What consequences do you mention? **(SLIDE 33)**

- Barrier to naturalization?
- CPO violation?

- Right to notify consulate?

Summary of Consequences (**SLIDE 34**)

- Deportation
- LPR Bar
- Natz barrier
- USCs sponsoring spouses and kids

(**HANDOUT 17**) = Sample advisals

Summary of possible consequences

D. Protection Order Consequences (2:30 – 2:45)

New Consequences for USCs (**SLIDE 35**)

Fiancee sponsors must reveal convictions to DHS and CPOs to marriage brokers; DHS may do background check (IMBRA in VAWA 2005)

- Reveal to fiancée
- Examine closely and deny

Consequences for Noncitizens (**SLIDE 36**) and (**HANDOUT 18**)

- Deportation: Court findings that the abuser violated anti-violence and anti-harassment provisions of a protection order,
- Naturalization: good moral character consideration.

Q: For you? What notice would you give?

VIII. BREAK (2:45 – 3:00)

E. Sex Offenses against Minors (3:00 – 3:05)

(**SLIDE 38**) and (**HANDOUT 19**)

LEARNING POINTS:

- Convictions for certain sex offenses against minors (under 18):
- USCs can't immigrant spouses and children unless DHS finds no risk to intending immigrant
- No one with conviction can come in as spouse or child of USC, no waiver
- Crimes include kidnapping, false imprisonment and sex offenses

F. Convictions for Domestic Violence (3:05 – 3:15)

(**SLIDE 39**)

- Special ground for removal for non-citizens who are convicted of “a crime of domestic violence,” stalking, child abuse, neglect, or abandonment. A “crime of domestic violence” is a crime of violence (18 USC § 16)
- Crime of violence (18 USC § 16):
- Use or threatened use of force against person/property against
- What is force? Touching v. hitting, e.g.
- Committed by a person who is a current or former spouse of the victim, has a child in common with the victim, is cohabiting with the victim as a spouse, or who has any other relationship otherwise covered by state domestic violence law.
- Complicated waiver, and only for real victim.

(HANDOUT 20) = DV Removal Ground

Does your misdemeanor DV statute trigger this ground?

Key questions:

Is it possible to be convicted of it without using force? State law def of force?

If yes, then court will have to look at record to decide.

(HANDOUT 21) = BIA Decision

G. Convictions & Sentences Definitions (3:15 – 3:25)

Faculty: Susan

LEARNING POINTS: (SLIDE 40)

Immigration law treats the following as convictions:

- Pleas
- Nolo
- Admission of sufficient facts (diversion & deferred adjudications)
- Police reports included if attached to plea statement
- Expungements and vacated convictions **ARE STILL** convictions for immigration law purpose
- Stipulate to police report, attached to plea = record of conviction
- Immigration law does **NOT** treat the following as convictions:
- Convictions vacated on due process grounds not related to immigration concerns

- Pardons
- Juvenile dispositions

(**HANDOUT 22**) (at end of crim section) = Immigration Safe Deferred Adjudication Agreements

(**HANDOUT 23**) = Criminal Concepts in the Immigration Context

Sentences: (**SLIDE 41**)

What counts:

- Suspended sentence
- Deferred sentences

What doesn't count:

- Probation, parole, diversion (unless jail time is imposed as a condition)

IX. IMMIGRATION DEFINITIONS: CMTs AND AG FELs (3:25 –4:00PM)

Faculty: Gail takes over

A. Aggravated Felonies (3:25 – 3:30)

(**HANDOUTS *****) have a lot more background information on the topics we're covering today. We're honing this down to the things most relevant to what you do in your courtroom.

(**HANDOUT 24**) = Ag fels

Q: Can someone give an example of a crime considered an aggravated felony under immigration law that's neither aggravated nor a felony?

LEARNING POINTS: (SLIDE 42)

- In general, it's the elements of the offense, not its statutory name or category, that matters (e.g., misdemeanors can trigger same results as aggravated felonies).
- Listed in statute,
- Includes theft with intent to keep and a sentence of year or more &

Crime of violence = aggravated felony if sentence of year or more

Ag fel consequences include (**SLIDE 43**)

- Removal
- Ineligibility for VAWA self-petition and for asylum relief
- May still be able to get a U visa or a T visa

1. EXERCISE (Do at table if large group) (3:30 – 3:35)

(40 if large group) (SLIDE 44)

Look at your shoplifting statutes: Could a conviction under it be an ag fel?

What are key questions?

- Intent to keep & possible sentence

What about your misdemeanor DV statute?

- Crime of violence? Possible sentence?

B. Crimes of Moral Turpitude (3:35 – 3:45)

(SLIDE 45) (HANDOUT 25) = CMTs

Q: What are crimes of moral turpitude?

While there is no statutory definition of the term, it generally refers to a crime of “bad intent”, e.g., defendant intends to keep property unlawfully, conspires to cause harm, or defrauds someone or some entity

Consequences of crimes of moral turpitude include: **(SLIDE 46)**

- Removal
- Barrier to lawful permanent residence (Inadmissibility)
- Barrier to special status for domestic violence survivors
- Ineligibility for VAWA cancellation
- Impugns good moral character

(HANDOUT **) LINKS for updates.

LEARNING POINTS:

Crimes of moral turpitude OK if: **(SLIDE 47)**

- Only one crime of moral turpitude AND
- The maximum penalty possible is less than a year in prison AND
- The actual sentence is 6 months or less (regardless of actual time served).

1. EXERCISE (at tables if large group) (3:45 – 3:55) (SLIDE 48)

Is your shoplifting a CMT? Intent again; max possible sentence

- Misdemeanor DV? Intent clearly required? Max penalty?
- Putting in fear of unwarranted touching may be insufficient

UNLESS aggravating factors, e.g., serious bodily injury or pain & suffering

(**HANDOUT 21**) again = BIA decision on DV as CMT

C. What other charges are available? (3:55 – 4:00)

Damage to property?

- Doesn't trigger DV ground (not to person);
- Crime of violence? Possible to be convicted without "force"?

Anything else?

X. SENTENCES: THE CRUX OF THE MATTER (4:00 – 4:20)

(**SLIDE 49**) and (**HANDOUT 26**)

Q: Assuming intent/force requirements met, what sentence would trigger an ag fel for either shoplifting or dv misdemeanor? Sentence of year or more.

Is this likely with shoplifting? Misdemeanor assault?

Q: What about CMT? Is this likely for shoplifting? Misdemeanor assault?

LEARNING POINTS:

Max possible sentence is more than a year and actual sentence is at least six months = no LPR

Two more things: GMC & Admissibility (**SLIDE 50**)

- GMC problem if imposed period of confinement of 180 days or more

Admitting to having committed, or to essential elements of CMT or controlled substances makes applicant for LPR ineligible

True even for children unless the crime occurred more than 5 years before the application for status.

What will DHS discover with state records check? Qs at interview

The Killers: Drugs, Prostitution & Firearms

Convictions for these are lethal to immigration status regardless of sentence.

Will bar juveniles if admit to sufficient facts at interview for status

Summary of Issues & Your Cheat Sheet (**SLIDE 51**)

Faculty: Susan

LEARNING POINTS:

- To cause least damage, plea agreements should be for crimes having a maximum possible sentence of less than a year's imprisonment.
- Effect of juvenile dispositions depends on what state records reveal: elements of crime? Name of crime? If so, then questions at interview

- Unlike convictions, sentences can be modified subsequently by the court to relieve negative immigration consequences.
- Sentence of 6 months or less (avoids both CMT and ag fel for shoplifting)
- Actual period of confinement less than 180 days (GMC)

(SLIDE 52) and (HANDOUT 28) = Sample Cheat Sheet

Gail takes over

Q: What would be good rules for a cheat sheet?

LEARNING POINTS:

- These could range from general:
- Don't allow DHS or immigration status to affect decisions
- To very specific:
- Avoid sentences of a year or more
- Actual time of more than six months
- Don't assume that immigration status means flight risk; look at facts before making that assumption.

XI. LEADERSHIP & ACTION PLANNING (4:20 – 4:25)

Gail facilitates (SLIDE 53)

Q: What “gems” or “nuggets” will you take back for your colleagues?

Q: Who else needs to know this? What can you do about it?

XII. WORKSHOP CLOSURE AND EVALUATION (4:25 – 4:30) (SLIDE 54)

XIII. USE FORM FOR FULL COMMENTS

XIV. QUICK FEEDBACK FOR US: WHAT WORKED, DIDN'T WORK FOR YOU?

XV. -----

I. OPTIONAL SECTIONS

II. HYPO: IF NO REAL CASES TO USE, HYPO AT HANDOUT ***

III. EXERCISES FOR LARGER GROUP

IV. CRIM SECTION:

Group Legal Arguments

Read *****(HANDOUTS 20)** (Criminal Hypo Spin) & **21** (NH shoplifting statute) and make some notes about arguments you'd make AS A DEFENSE ATTORNEY.

Q: What arguments did you make? (**SLIDE 60**)

Q: Did any of you make arguments about bail? What did you argue?

LEARNING POINTS: Being undocumented doesn't necessarily make you a flight risk – should depend on particular facts, not stereotypes

Faculty: Maria Jose

Q: What about her immigration options; do you mention those? And what do you say?

LEARNING POINTS: Eligible for everything, if you can get help from police officer, prosecutor and/or court to investigate or prosecute the crimes she's suffered.

Q: Did you make any arguments about the statutory elements? What did you argue?

Q: Did you make arguments about the immigration consequences of a conviction for her? What did you argue?

Now, back in your judge role (**SLIDE 61**)

Q: If the right people end up getting charged for what they've done to Marta and Lilia, could you sign a U certification?

Q: What crimes would you suggest to get at the trafficking (assuming no state statute?]

V. ADDITIONAL JUDICIAL LEADERSHIP DISCUSSION POINTS

A. Others in the System

Faculty: Susan

Q: What or who else in the system needs improving to ensure access to justice for immigrants? Who else in your system are immigrants, including kids, likely to encounter?

Q: What can you do about this?

LEARNING POINTS:

- Disseminate info to other judges and other court personnel
- Encourage/educate attorneys in courtroom

- Ensure appropriate/accessible info is available to immigrants who access court
- Co-sponsor bar association and other cross-professional trainings

B. Outreach to Immigrant Communities

Q: What immigrant communities are in your area?

Q: Do they trust you? How can you build trust?

LEARNING POINTS: Building trust takes time. Work with someone the community already trusts to make the “introduction,” e.g., for immigrants that might be religious institutions, community-based organizations, schools.

- Identify immigrant populations living within their communities;
- Find out what culturally specific programs are available (e.g., a task force on Asian-Pacific Islander issues or a Latino community coalition);
- Are these groups involved in the roundtables or community coordinating councils on domestic violence;
- Can court promote involvement of these groups;
- Meet with these groups in places and with intermediaries they trust;
- Who, if anyone, provides legal representation to these populations; are there people or agencies that could?

C. Making the System More Accessible

- The court must work to make itself more accessible by:
- Training court personnel and helping to train the bar on immigration, cultural, and linguistic issues;
- Hiring bilingual, culturally diverse personnel from the immigrant community;
- Finding and training interpreters.

Q: Who else needs to know this stuff?

- Other judges, prosecutors, defense bar, victim advocates, law enforcement, community-based groups working with immigrants);

Q: What can you do to encourage them learning it?

Q: What else needs to be done in this area?

- Referrals and Information for those who enter courthouse

- Some ideas: Developing scripts for use in court to inform victims and abusers of immigration concerns; reviewing criminal statutes to determine which criminal charges, convictions or sentences trigger which immigration consequences.
- Victim impact statements, including immigration consequences for victim and family

Q: Anything you can do to further this?

- Work with immigration specialists and law enforcement to think about best practices and options for handling situations in which there is a potential for arrest;
- Work with immigration specialists, prosecution and defense bar to think about how to charge domestic violence crimes that reflect victim preferences as well as safety
- Develop court protocols/rules with input from immigration specialists to ensure best practices for minimizing harm to immigration status, if that's the goal. Suggest they include:
- Assess real facts about flight risk, not assumptions based on status.
- Review pleas, convictions, and sentencing to ensure that options chosen do not unnecessarily harm immigration status or options.
- When sentencing a defendant, invite information about the victim's needs and concerns so that they can be factored into sentencing decisions.