

# Immigration, Family Law, and Domestic Violence

## Should I read this?

If you have a protection order case or family law matter, you may have immigration questions or concerns. People who are abusive often use immigration status to control their partners. Read this for basic answers to some common questions.

- 
- ❖ Immigration law is complicated. Each situation is different. **Try to get advice from an immigration lawyer.** If you cannot afford to hire one, you may be able to get free legal advice. See contact info at the end of this fact sheet.
- 

## Should I start my immigration case first or my family law case first?

It depends. See an immigration lawyer about your situation. Some of the proof in the two cases may be related. It is important to keep records of both.

You might have little time to file your immigration petition after your divorce is final. You should talk to an immigration lawyer before or soon after starting your divorce.

- 
- ❖ If you think your spouse might file a case against you, tell the immigration lawyer that as well. It might make sense for you to be the first one to file something in the immigration case.
  - ❖ If you and your spouse agree that you should divorce, and you agree on all divorce-related issues, it will be easier to finalize. You may not need to go to a court hearing. Some counties, like Lincoln County, let you finalize everything by mailing the papers to the Superior Court Clerk. There is no requirement that you live in that county. However, this might make things harder later. This is especially true if one spouse reconsiders and wants to contest (challenge) the case. Talk to a lawyer.
-

## I am dependent on my spouse for my immigration status. Could separating affect my status?

- 
- ❖ This area of law is complicated. Get advice from a lawyer about your situation.
- 

In general, if you are experiencing domestic violence, you may have options for staying in the U.S. even if you leave your partner or your partner does not help you to stay in the U.S.

**If your spouse is not a U.S. citizen** (example: he has a temporary work visa that also let you come to the U.S.) and one of you moves out or you temporarily separate, your status likely will probably not change. You could lose your right to stay in the U.S. if you divorce or your spouse is deported. You might be eligible for a U-Visa that lets you stay in the U.S. if you are a victim of certain crimes, including domestic violence, and you cooperate with law enforcement in the investigation or prosecution of that crime.

**If your spouse is applying (petitioning) for you to get legal status** (example: she is a legal permanent resident or U.S. citizen. She is trying to help you stay in the country), legal separation or divorce could remove that option for you. However, if you have experienced domestic violence, you may be able to apply for your own immigration status without your spouse. This is a **VAWA (Violence against Women Act) Self-Petition**. They are available to women and men who have experienced domestic violence. Read [VAWA Self-Petition: Immigration Relief for Victims of Domestic Violence](#), available at WashingtonLawHelp.org.

You might be in a **Conditional Lawful Permanent Residency status** (a two-year temporary green card). Separating from or divorcing your sponsoring spouse before you remove your conditions and get Lawful Permanent Residence (the 10-year green card) will affect your chance of getting the permanent green card. You might be able to do this without your spouse's help if you meet the requirement that lets you waive (be excused from) filing a joint petition. An immigration attorney can help with that.

## **I am undocumented. Is it risky to go to a courthouse?**

The Washington Immigrant Solidarity Network has been tracking places where immigration agents are showing up at courthouses or making arrests. Read more on their website at [jsis.washington.edu/humanrights/2019/10/16/ice-cbp-courthouse-arrests/](https://jsis.washington.edu/humanrights/2019/10/16/ice-cbp-courthouse-arrests/).

## **Is it risky to take part in a family law case?**

It depends. Filing a family law case will not necessarily result in Immigration contacting you. **But try to talk to a lawyer first, before filing anything.**

If your abusive partner reports you to ICE, you may be at greater risk. If you have been deported or have had a deportation order entered against you, Immigration might be looking for you.

## **What should I do and say if a judge asks about my immigration status?**

You should consult with a lawyer before giving the court that info. Generally, a judge cannot ask about your immigration status. There are a few exceptions. Read the next section.

---

❖ **Be very careful and talk to a lawyer. Answering a question about your immigration status could put you at risk of arrest or deportation.**

---

## **What should I do or say if my abusive partner tells the court I am undocumented or claims I only filed for a protection order to get legal immigration status?**

It can depend on when and how this happens.

**If your partner puts this in writing in something they file with the court**, such as a declaration, contact an advocate or a lawyer to redact (black out) that info and keep it from appearing in public records.

**Your partner might try to disclose your status in open court** (at a hearing). Under court rules ([Rule of Evidence 413](#)), your partner's lawyer is not supposed to

be able to bring this up in open court. Instead, he must file a motion asking for court permission to ask about your immigration status.

The judge must then hold a private hearing in the judge's chambers (offices), not the courtroom, on the issue. During the private hearing, you can point out that your abusive partner uses threats about immigration to try to control you, if true.

The court will seal the motion and all related paperwork. If the judge decides your partner's lawyer can ask about your immigration status, the judge must issue a written order saying so.

---

❖ **This rule only applies to lawyers. It will not keep your partner from telling the court this, if your partner is representing himself in court.**

---

## **I am undocumented. My children are U.S. citizens. Can I return to my home country with my children?**

Yes. However, although your U.S. citizen children will be able to come back to the U.S. later, you may not be able to.

If the other parent does not want the children to move with you, they could take steps to stop it. They could file a parenting plan, or ask the court to include this in a protection order.

If you have a final parenting plan already, you must follow relocation laws. Do not just move without filing the appropriate notices and waiting the required waiting period. Use our [Following Washington's Relocation Law](#) packet, available at WashingtonLawHelp.org.

If there is a parenting plan case that is not yet final, you might still need the court's permission to move. Talk to a lawyer.

If you plan to move with the children, make sure you have documentation of your children's U.S. citizenship before you leave. At least make sure you have their original birth certificates. You should also try to get passports for the children. They may need this for travel anyway.

- 
- ❖ Both parents must sign a child's passport, unless the parenting plan states differently or there is a current, full protection order. The court can order the other party to sign the passport.
- 

## **My abusive partner has threatened to take our children out of the country. What can I do?**

You can try to keep your partner from taking your children out of the country by doing these:

- File for a protection order or parenting plan stating your partner cannot take the children out of the country and giving you control of the children's passports.
- If you know about specific plans to take your children out of the country, contact law enforcement and/or airline personnel to try to stop the trip. They usually need to see a court order stating that the parent or anyone acting on the parent's behalf cannot take the children out of the country.
- Sign up for the Children's Passport Issuance Alert Program. This notifies you if someone submits a U.S. passport application or a passport renewal application for your child. Read [travel.state.gov/content/travel/en/International-Parental-Child-Abduction/prevention/passport-issuance-alert-program.html](https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/prevention/passport-issuance-alert-program.html).
- Ask the consulate or embassy for the country where the other parent might take your child to not issue a passport or visa for your child. Send a copy of this written request to the U.S. Department of State.

## **My abusive partner took our children out of the country, or he is in the process of doing so. What can I do?**

You should try the things in the section above. You can also do these:

- Get an Ex Parte Restraining Order by filing a Petition for a Parenting Plan or Divorce, as the case maybe, to get immediate restraint. Talk to a family law facilitator at your county courthouse if you cannot talk to a lawyer
- If you already have a restraining order and/or domestic violence protection order, call 911, make a police report, and ask them to enter your child into the FBI's National Crime Information Center (NCIC) system right away

- Call the Department of State's Office of Children's Issues at 1-888-407-4747
- Talk to a domestic violence advocate and a lawyer
- Contact the consulate or embassy of the country where you believe the children have gone. Ask for their help. If the country has signed the [Hague Convention treaty](#), they must follow certain rules regarding custody

---

❖ The [U.S. Department of State's International Parental Child Abduction website](#) has more info.

---

## **If I disclose that my undocumented status during a parenting evaluation or when speaking to Family Court Services, could that be used against me?**

**Family Court Services (FCS) should not ask about your immigration status.**

They are unlikely to share any info with Immigration that you tell them about your immigration status.

It is possible an evaluator could hold your status against you in the evaluation. You can try to help an evaluator understand how your abusive partner uses your immigration status against you as part of their control, if that is true.

Your status might also figure into what you need in a parenting plan. You can communicate this to an evaluator.

The evaluator may look at immigration status through the lens of what is in the children's best interest. Family Court Services gives the court a report with recommendations for your case. If you tell an evaluator your immigration status, the info may end up in the report to the court.

## **Is it risky to act as a witness in a criminal case?**

If you have not received a deportation order, the risk is probably small. However, courthouse arrests have recently been on the rise. Most of the individuals arrested were at court hearings in different proceedings, such as traffic matters and criminal violation and misdemeanors. Some of those arrested did not have a criminal history.

Acting as a witness in a criminal case might benefit you. **Example:** cooperating with the police or prosecutor (the lawyer for the government) might make you eligible to

stay in the U.S. through the U-Visa process. Talk with the prosecutor or a domestic violence advocate to learn more.

## **If I am arrested, what should I know about ICE reporting or notification?**

When an arrest happens, law enforcement shares the arrested person's fingerprint info with ICE. Then ICE can check their immigration status.

ICE officers also regularly question people held at the jail. They ask about their immigration status. You do not have to answer these questions.

If ICE identifies someone as being undocumented or having an uncertain immigration status, they may ask the jail to hold the person for them.

**If ICE takes you into custody, contact an immigration lawyer as soon as you can.** If you cannot afford a lawyer, contact the Northwest Immigrant Rights Project for help. The end of this fact sheet has contact info.

## **I am being deported without my children. How can I arrange for my children's care?**

If you are at risk of being deported, you should create a plan for your children's care. An advocate can help. See contact info at the end of this fact sheet. You can also use [Children Safety Planning & Temporary Parental Consent Agreements](#), available at WashingtonLawHelp.org.

The children may automatically go to their abusive parent or to Child Protective Services. However, you may want to put in writing:

- who you want to care for your children if you are arrested or deported
- why you feel they are not safe with their abusive parent

If your children are with you when you are arrested, ask law enforcement to let you call a friend or family member to come get them.

If ICE arrests you, let them know that you are the children's primary caretaker, if true. ICE could let you show up at an office or in court later instead of detaining you that day.

## Where can I learn about my options for staying in the U.S.?

Read [Victims of Crimes and U Visas](#), available at WashingtonLawHelp.org.

At [www.nwirp.org/resources/community-information/](http://www.nwirp.org/resources/community-information/), you can read about:

- [I-360 self-petitions under the Violence Against Women Act](#)
- [I-751 immigration waivers](#)

## Get Legal Help

- 
- ❖ **To report immigration activities**, call the Washington Immigrant Solidarity Network's rapid response hotline 1-844-724-3737.
- 

## Contact Northwest Justice Project:

**Outside King County:** Call the CLEAR Hotline at 1-888-201-1014 weekdays from 9:15 a.m. - 12:15 p.m.

**In King County:** Call 211 for referral to a legal services provider weekdays from 8:00 am – 6:00 pm.

**Persons 60 and Over** can call CLEAR\*Sr at 1-888-387-7111 (statewide).

**Deaf, hard of hearing or speech impaired callers** can call CLEAR or 211 (or toll-free 1-877-211-9274) using a relay service of your choice.

Apply online with [CLEAR\\*Online](#) - [nwjustice.org/get-legal-help](http://nwjustice.org/get-legal-help)

CLEAR and 211 will provide a free interpreter.

## Contact Northwest Immigrant Rights Project:

**Seattle Office** - serving Island, King, San Juan, Skagit, Snohomish, and Whatcom counties: 206.587.4009 or 1-800.445.5771

- 
- ❖ If you live in King County OR work or go to school in Seattle, you may be eligible for help through the new Legal Defense Hotline, made possible by the City of Seattle and King County. Call 206.816.3870 to find out.
-



www.WashingtonLawHelp.org

**Tacoma & South Unit (TSU)** – serving Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Kitsap, Lewis, Mason, Pacific, Pierce, Skagit, Skamania, Thurston, and Wahkiakum counties: 206.816.3893 or [TSUintake@nwirp.org](mailto:TSUintake@nwirp.org)

**Granger Office** - serving Adams, Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Yakima, Walla Walla, and Whitman counties: 509.854.2100 or 888.756.3641

**Wenatchee Office** - serving Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties: 509.570.0054 or 866.271.2084

*Northwest Justice Project adapted this fact sheet from the original by the Coalition Ending Gender-Based Violence. We appreciate their generosity in allowing us to share this information.*

---

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

© 20210 Northwest Justice Project — 1-888-201-1014.

(Permission for copying and distribution granted to Washington State Alliance for Equal Justice and to individuals for non-commercial purposes only.)