The Crucial but Overlooked Role of State Decision-Making in Family-Based Immigration Matters

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ABSTRACT: Family and immigration law are inevitably linked as children and families continue to cross borders. In the United States, state actors routinely make family law decisions that can have determinative effects on whether certain immigration opportunities are opened or foreclosed to noncitizens. These state actions include: (1) granting marriage certificates and divorce decrees; (2) recognizing intercountry adoptions; (3) certifying required forms for a federal grant of U nonimmigrant status; and (4) making special findings required for a federal grant of Special Immigrant Juvenile Status. This Note brings awareness to the vital role states play when immigration and family law intersect, filling a gap in immigration federalism discourse. Additionally, this Note calls for greater resources and training opportunities to help state actors understand their crucial role in the immigration process.

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INTRODUCTION

For most of the United States's history, the federal government has controlled immigration matters.[1] The delegation of immigration law to the federal government has its authority backed by constitutional provisions and the need for uniformity in immigration regulation.[2] Family law, on the other hand, generally falls within the powers reserved to the states.[3] The traditional federal lane for immigration matters and state lane for family matters blur when family and immigration law inevitably collide. As Professor David Thronson and Judge Frank Sullivan note, "[g]iven the prevalence of immigrant families in the United States, immigrants and issues of immigration often cross the threshold of family court."[4] State actors, including state court judges, family law practitioners, and workers at child welfare agencies, must understand how their decisions and state processes can open and foreclose certain immigration opportunities to noncitizens.

Until this point, legal scholarship has largely focused on the federal government's control over immigration matters, a natural consequence of immigration law's plenary power doctrine.[5] Regrettably, this focus has overshadowed the powerful influence that state family law decisions often have on the immigration opportunities that are available to noncitizens.

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1. *See infra* Section I.A.

2. *See infra* Section I.A.

3. Legal justification for state control of family law can be found in the U.S. Constitution's Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X. *But see* Ann Laquer Estin, *Sharing Governance: Family Law in Congress and the States*, 18 CORNELL J.L. & PUB. POL'Y 267, 269–71 (2009) (cataloging the national government's increased involvement in family law regulation); Linda D. Elrod, *The Federalization of Family Law*, AM. BAR ASS'N (July 1, 2009), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/summer2009/the_federalization_of_family_law [https://perma.cc/9FCG-JRJ4] (summarizing federal statutes dating back to the 1930s that regulate family law matters).

4. David B. Thronson & Frank P. Sullivan, *Family Courts and Immigration Status*, JUV. & FAM. CT. J., Winter 2012, at 1, 1.

5. "The basic tenets of [the plenary power] doctrine are that the federal government enjoys sole and full authority over the legal regime governing immigration . . . ." 1 CHARLES GORDON, STANLEY MAILMAN, STEPHEN YALE-LOEHR & RONALD Y. WADA, IMMIGRATION LAW AND PROCEDURE § 9.03 (2024). For a historical account of immigration's plenary power doctrine, see *infra* Section I.A.

While the trend toward immigration federalism[6] in the twenty-first century has led to increased scholarly debate on state decisions' impact on immigration matters,[7] this discussion has been primarily limited to immigration enforcement and policymaking. This Note fills a gap in immigration federalism discourse by highlighting, through a family law lens, how actions at the local levels impact immigration opportunities for noncitizens.[8]

Part I of this Note begins with a historical overview of state and federal jurisdiction over immigration law before moving into an explanation of four types of state family law decisions that can determinatively affect an individual's ability to obtain lawful immigration status in the United States. These state decisions include (1) granting marriage certificates and divorce decrees; (2) recognizing intercountry adoptions; (3) certifying required forms for a federal grant of U nonimmigrant status; and (4) making special findings required for a federal grant of Special Immigrant Juvenile Status ("SIJS"). After exploring practical ways that state family law decisions can impact immigration, Part II traces the scholarly debate, concluding that the discourse has underplayed the important role of local family law actors in immigration matters. Part III concludes by proposing ways to bring state court judges, family law practitioners, and child welfare agencies into the immigration federalism discourse, as well as ways to prepare these local actors for the immigration issues that they may encounter in their daily work.

Bringing a new perspective to immigration federalism, this Note calls attention to the crossroads of family law, immigration law, the role of the federal government, and the role of the states by describing several situations in which states frequently and inevitably engage in immigration matters through family law. Legal scholars, practitioners, and policymakers involved in both immigration and family law must understand the crucial role states play in this space. More resources and training opportunities to help state actors navigate the complexities of the immigration and family law sphere are also needed. The success of such endeavors hinges on collaboration between state and federal actors, as well as between family and immigration law experts. Only through such efforts will these actors fully understand how family law decisions impact immigration opportunities for noncitizens.

6. *See infra* note 20 and accompanying text.

7. *See infra* Section I.A.

8. *But see* S. Lisa Washington, *Fammigration Web*, 103 B.U. L. REV. 117, 120 (2023) (drawing attention to "fammigration" but in the context "of family regulation system and immigration enforcement system interconnectedness," a notable overlap in family and immigration law that is beyond the scope of this Note).

I. STATE INFLUENCE OVER IMMIGRATION MATTERS

A. FROM IMMIGRATION'S PLENARY POWER DOCTRINE TO IMMIGRATION FEDERALISM

From 1776 through the mid-nineteenth century, immigration was largely controlled by the individual states.[9] But by the 1870s, the United States began to see a dramatic shift from state control over immigration to federal control.[10] Although the phrase "plenary power doctrine" was not coined until 1984 with the publication of Stephen H. Legomsky's *Immigration Law and the Principle of Plenary Congressional Power*,[11] the principle first emerged more than a century before, in the years following the Civil War, and has roots in nineteenth-century case law. For example, in 1876 the Supreme Court ruled in *Chy Lung v. Freeman* that "[t]he passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States."[12] The Court decided Congress has the power to regulate the admission of noncitizens because "[i]t has the power to regulate commerce with foreign nations."[13] *Chy Lung* launched an "expansion of federal power over immigration [that] evolved as an exercise in judicial interpretation by the Supreme Court."[14]

Following *Chy Lung*, the Supreme Court issued an 1889 decision that reinforced the federal government's power to regulate immigration law. In *Chae Chan Ping v. United States*, often referred to as "The Chinese Exclusion Case," the Court held that Congress may deny a Chinese national admission to the United States even after having already granted them the right to re-enter the country.[15] In deferring immigration powers to Congress, the Court relied on immigration's link to foreign affairs and the idea that the United

9. PRATHEEPAN GULASEKARAM & S. KARTHICK RAMAKRISHNAN, THE NEW IMMIGRATION FEDERALISM 15–16 (2015) ("[T]he federal government was an inconsequential player in migration control into the newly founded nation, and especially when compared to states and large cities that exercised significant control over ports of entry.").

10. *Id.* at 19 (explaining how the end of slavery, bar on specific state taxes that funded local immigration control, entrance into international treaties, and influx of Chinese laborers pushed immigration matters out of the wheelhouse of the states and into federal power).

11. *See* Stephen H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, 1984 SUP. CT. REV. 255, 255 ("Immigration law is a constitutional oddity. 'Over no conceivable subject,' the Supreme Court has repeatedly said, 'is the legislative power of Congress more complete.' At the heart of that sentiment lies the 'plenary power' doctrine . . . ." (footnote omitted) (quoting Oceanic Steam Navigation Co. v. Stranahan, 214 U.S. 320, 339 (1909))).

12. Chy Lung v. Freeman, 92 U.S. 275, 280 (1876).

13. *Id.*; U.S. CONST. art. I, § 8, cl. 3 (granting Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes"). "Undergirding this conclusion was the understanding that the transportation of immigrants to the United States was foreign commerce of great economic importance to the country." Jennifer Gordon, *Immigration as Commerce: A New Look at the Federal Immigration Power and the Constitution*, 93 IND. L.J. 653, 675 (2018).

14. Shani M. King & Nicole Silvestri Hall, *Cooperative Federalism and SIJS*, 61 B.C. L. REV. 2869, 2881 n.62 (2020).

15. Chae Chan Ping v. United States (The Chinese Exclusion Case), 130 U.S. 581, 609 (1889).

States must act as a united nation in handling such matters.[16] Four years later, in *Fong Yu Ting v. United States*, the Court held that the federal government's control over immigration is not limited to admission cases; it extends to deportation cases as well.[17]

The plenary power doctrine is widely recognized and continues to be reinforced by courts today. In 2012, for example, *Arizona v. United States* affirmed that "[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens."[18] The Court stated this power "rests . . . on the National Government's constitutional power to 'establish an [sic] uniform Rule of Naturalization,' and its inherent power as sovereign to control and conduct relations with foreign nations."[19]

At odds with the federal government's plenary power over immigration is the idea of "immigration federalism" or "the role of the states and localities in making and implementing immigration law and policy."[20] While traces of immigration federalism have been around as long as the plenary power doctrine,[21] state involvement in enforcing federal immigration laws has grown exponentially over the past two decades.[22] The momentum behind immigration federalism began largely after the 9/11 attacks, but federal policy legalizing immigration federalism has been in place since the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") in 1996.[23] IIRIRA added section 287(g) to the Immigration and Nationality Act ("INA"),[24] which permits agreements between the federal government and local governments that enable local officials to carry out the "function[s] of an

16. *See id.* at 604–06, 608–09; David A. Martin, *Why Immigration's Plenary Power Doctrine Endures*, 68 OKLA. L. REV. 29, 39–41 (2015); *see also* United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 542 (1950) ("The exclusion of aliens . . . is inherent in the executive power to control the foreign affairs of the nation.").

17. *See* Fong Yue Ting v. United States, 149 U.S. 698, 731–32 (1893) (denying writs of habeas corpus to Chinese citizens who were arrested and detained in New York for failing to have certificates of residency mandated by the Chinese Exclusion Act of 1882).

18. Arizona v. United States, 567 U.S. 387, 394 (2012); *see also infra* notes 132–37 and accompanying text (detailing the Supreme Court's holding regarding four provisions of the Arizona law).

19. Arizona v. United States, 567 U.S. at 394–95 (citation omitted) (quoting U.S. CONST. art. I, § 8, cl. 4).

20. Monica Varsanyi, Paul Lewis, Doris Provine & Scott Decker, *Immigration Federalism: Which Policy Prevails?*, MIGRATION POL'Y INST. (Oct. 9, 2012), https://www.migrationpolicy.org/article/immigration-federalism-which-policy-prevails [https://perma.cc/L8CL-LUVL].

21. *See* GULASEKARAM & RAMAKRISHNAN, *supra* note 9, at 12.

22. *See* Varsanyi et al., *supra* note 20.

23. *Id.*; *see also* GULASEKARAM & RAMAKRISHNAN, *supra* note 9, at 60–61 (noting Arizona and Montana state laws that were passed in response to the 9/11 terrorist attacks require state and local agencies to verify legal immigration status before providing individuals with public benefits). IIRIRA sought "to amend the Immigration and Nationality Act to improve deterrence of illegal immigration to the United States" through increased border security and violation penalties. H.R. REP. NO. 104-828, at 1 (1996) (Conf. Rep.).

24. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 133, 110 Stat. 3009, 3009–563 (codified as amended at 8 U.S.C. § 1357 (2018)). The INA is federal legislation that governs all U.S. immigration.

immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States."[25] The role of states in immigration policy has grown through independent state initiatives and the authorization of state officials to enforce federal immigration laws under section 287(g).[26] Although the focus of immigration federalism has been on immigration enforcement, scholars note that recent state involvement has, in some situations, promoted the integration of undocumented immigrants.[27] This more immigrant-friendly approach by states has been dubbed "the new immigration federalism."[28] However, this Note takes an approach to immigration federalism different from enforcement or integration and centers on an area that has received little attention—state family law decisions that impact immigration opportunities for noncitizens.

B. THE IMPACT OF STATE FAMILY LAW DECISIONS ON VARIOUS IMMIGRATION MATTERS

This Note's focus now turns to four routine, local-level decisions that show how family law matters can impact immigration status and opportunity. First, this Section explains the impact that a state's issuance or denial of a marriage certificate or divorce decree can have on an immigrant's ability to seek marriage-based or Violence Against Women Act ("VAWA") immigration benefits. Second, this Section analyzes the significance that a state's decision to issue an adoption decree has on an adopted child's immigration status. Third, this Section describes the important role state actors often play in the grant of U nonimmigrant status. This Section concludes by examining the consequences that juvenile court-issued predicate orders have on an abused or neglected child's ability to obtain SIJS and, accordingly, the child's ability to obtain lawful permanent resident ("LPR") status in the United States.

1. Marriage-Based Visas and VAWA Benefits

Familial relationships have a powerful influence on immigration. Over the last decade, family-based immigration[29] accounted for approximately eighty-five percent of new immigrant arrivals into the United States.[30] Immediate relatives are "the children, spouses, and parents of a citizen of the United States," and immediate relative visas make up a large portion of this family-

25. Immigration and Nationality Act § 287(g)(1), 8 U.S.C. § 1357(g)(1).

26. Stella Burch Elias, *The New Immigration Federalism*, 74 OHIO ST. L.J. 703, 721–22 (2013).

27. *See generally id.* (arguing early 2000s cases *Arizona v. United States* and *Chamber of Commerce v. Whiting* signaled a new direction for immigration federalism that opened state opportunities to implement immigrant-inclusionary measures); GULASEKARAM & RAMAKRISHNAN, *supra* note 9 (analyzing a shift toward state and local decisions that promote integration of undocumented immigrants).

28. *See* sources cited *supra* note 27.

29. Family-based immigration is when a U.S. citizen or LPR sponsors a family member's immigration into the United States.

30. *Family-Based Immigration Backlogs: 5 Things to Know*, FWD.US (Sept. 14, 2022), https://www.fwd.us/news/family-based-immigration-backlogs [https://perma.cc/6H6E-6KSJ].

based immigration.[31] In 2022 alone, 428,268 immigrants obtained LPR status by virtue of immediate relative relationships.[32] Of those immediate relative admissions, about fifty-six percent relied on marriage-based visas.[33]

To obtain immigration benefits, a marriage-based visa applicant must prove their marriage to a U.S. citizen is legally sound.[34] A marriage will be considered valid "in cases where the marriage is valid under the law of the jurisdiction in which it is performed."[35] Simply put, if the state or country in which a couple was married recognizes the marriage, the marriage will generally be recognized for U.S. immigration purposes. In the United States, state law regulates marriage,[36] and marriage certificates are generally issued by a county clerk's office.

The marriage certificate plays an essential role in the marriage-based visa process. To obtain LPR status through marriage, the U.S. citizen spouse must file a Form I-130 to establish a relationship with their qualifying spouse,[37] and the qualifying spouse must submit a supplemental Form I-130A.[38] A copy of the marriage certificate must be submitted with the I-130 as evidence of the marital relationship.[39] Qualifying spouses who are already physically located inside the United States and need to adjust their status to permanent residency must also submit a Form I-485.[40] Typically, applicants include a copy of their marriage certificate with the I-485 as evidence that their marriage is legally valid.[41]

Marriage laws vary by state, so the jurisdiction in which a couple seeks to marry or reside may create or foreclose certain immigration opportunities.

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31. Immigration and Nationality Act § 201, 8 U.S.C. § 1151(b)(2). For a parent to be considered an immediate relative, their U.S. citizen son or daughter must be at least twenty-one years old. *Id.*

32. OFF. OF HOMELAND SEC. STAT., U.S. DEP'T OF HOMELAND SEC., 2022 YEARBOOK OF IMMIGRATION STATISTICS 18 tbl.6 (2023) [hereinafter 2022 YEARBOOK], https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf [https://perma.cc/N929-H6GL].

33. *Id.*

34. *Chapter 2 - Marriage and Marital Union for Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS.: POLICY MANUAL (Jan. 24, 2024), https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-2 [https://perma.cc/48JX-WRZK].

35. *Id.*; *see also* 8 C.F.R. § 319.1(a) (2011) (defining marriage requirements for marriage-based visa eligibility).

36. *See* U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively . . . .").

37. *See Bringing Spouses to Live in the United States as Permanent Residents*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Feb. 2, 2018), https://www.uscis.gov/family/bring-spouse-to-live-in-US [https://perma.cc/DLS3-G5KG]; *I-130, Petition for Alien Relative*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Feb. 5, 2024), https://www.uscis.gov/i-130 [https://perma.cc/2RVZ-3Y4W].

38. U.S. CITIZENSHIP & IMMIGR. SERVS., DEP'T OF HOMELAND SEC., SUPPLEMENTAL INFORMATION FOR SPOUSE BENEFICIARY (2021), https://www.uscis.gov/sites/default/files/document/forms/i-130a.pdf [https://perma.cc/5QFV-HPBK].

39. *I-130, Petition for Alien Relative*, *supra* note 37.

40. *See Bringing Spouses to Live in the United States as Permanent Residents*, *supra* note 37.

41. *Checklist of Required Initial Evidence for Form I-485 (for Informational Purposes Only)*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Oct. 27, 2022), https://www.uscis.gov/i-485Checklist [https://perma.cc/EEJ2-7Y6M]; *Chapter 2 - Marriage and Marital Union for Naturalization*, *supra* note 34.

For example, ten U.S. states recognize common law marriages, whereas the other forty states either have abolished common law marriages or have not expressly addressed the matter.[42] Thus, if a mixed-citizenship couple, in which one partner is a U.S. citizen and one partner is not, meets common law marriage requirements while residing in Montana, the noncitizen partner may be eligible to obtain citizenship through that marriage.[43] If that same couple resides in Alabama, however, the noncitizen partner will be ineligible to obtain citizenship through that same common law marriage.[44]

Federal deference to state marriage decisions when adjudicating marriage-based visas was affirmed in the 2005 case, *Lovo-Lara*.[45] A U.S. citizen who had undergone surgery to change her sex designation from male to female brought this case.[46] North Carolina recognized the petitioner's shift in gender expression and issued her a new birth certificate that indicated her sex as female.[47] The petitioner married a Salvadoran man, which North Carolina recognized.[48] U.S. Citizenship and Immigration Services ("USCIS") denied their marriage-based visa petition, reasoning that the federal government (in 2005) only recognized marriages between a man and a woman.[49] The federal government had not yet addressed whether marriages between couples born of the same sex, in instances where one partner later changed their sex designation, were legally valid.[50] On review, the Board of Immigration Appeals ("BIA") reversed the decision and approved the couple's visa petition.[51] The BIA explained, "[w]e have long held that the validity of a marriage is determined by the law of the State where the marriage was celebrated."[52] By issuing the petitioner a new birth certificate, North Carolina recognized the petitioner's sex as female, which legally validated the marriage. The BIA honored the state's decision.

In addition to legalizing marriages, states are charged with validating divorces. Divorce requirements thus vary by state,[53] which in turn can create

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42. THOMSON REUTERS, 50 STATE STATUTORY SURVEYS: FAMILY LAW: MARRIAGE *Common Law Marriage*, Westlaw 0080 Surveys 20 (database updated May 2023).

43. *See* MONT. CODE ANN. § 40-1-403 (2020) (explicitly validating common law marriages).

44. *See* ALA. CODE § 30-1-20 (LexisNexis 2016) (abolishing common law marriages).

45. Lovo-Lara, 23 I. & N. Dec. 746, 753 (B.I.A. 2005) (affirming that for the purpose of granting immigration benefits, "the validity of a marriage is determined by the law of the State where the marriage was celebrated").

46. *Id.* at 746–47.

47. *Id.* at 748.

48. *Id.* at 746, 748.

49. *Id.* at 747.

50. *See id.*

51. *Id.* at 753.

52. *Id.*

53. For example, "[s]ome states . . . require the couple to live apart for a certain length of time before officially filing for divorce. . . . Kentucky's requirements are two months, while Hawaii requires couples to be separated for at least two years." *No-Fault Divorce States 2024*, WORLD POPULATION REV., https://worldpopulationreview.com/state-rankings/no-fault-divorce-states [https://perma.cc/UN2L-LRPQ].

complexities in the immigration system. But as with marriage, USCIS typically defers to the states on issues of divorce status and considers a divorce valid so long as it is recognized by a state.[54] A state's issuance of a divorce decree and its timing can have immigration consequences for LPRs, individuals on derivative visas, conditional permanent residents, and individuals seeking permanent residency under VAWA. Family law attorneys must understand the effect divorce can have on noncitizens so that they do not put their clients' immigration rights or status at risk.

Divorces do not directly impact an LPR's immigration status, but they can impact an LPR's ability to petition for a future spouse.[55] If an LPR received their immigration status through a spouse whom they later divorce, the LPR typically "cannot file a petition for a new spouse for five years."[56] There is an exception if the LPR "can prove by 'clear and convincing evidence' that the first marriage was bona fide, including reasons for that marriage's demise."[57]

Individuals who are in the United States on a derivative visa should also carefully consider the timing of a divorce. Derivative beneficiaries are noncitizens "who can follow-to-join or accompany the principal beneficiary [of an immigrant visa] based on a spousal or parent-child relationship."[58] Many derivative beneficiaries are, for example, "the spouse of a person holding a student or work visa."[59] If a state issues a divorce decree to a derivative beneficiary, derivative status is automatically terminated, along with its immigration benefits.[60]

Conditional permanent residents are, likewise, susceptible to losing immigration benefits in the event of a divorce.[61] Conditional permanent residents obtain LPR status "by virtue of a marriage that is less than two years old."[62] Their "permanent residence [is thus] subject to certain conditions."[63] If their marriage dissolves before a two-year conditional period has expired, absent a hardship waiver or the death of a spouse, their LPR status is terminated.[64] Removal proceedings could follow, so "[c]ounsel representing a conditional resident spouse in divorce or annulment proceedings should consult with an

54. ANGIE JUNCK, SALLY KINOSHITA & KATHERINE BRADY, IMMIGRANT LEGAL RES. CTR., IMMIGRATION BENCHBOOK FOR JUVENILE AND FAMILY COURT JUDGES 63 (2010), https://www.ilrc.org/sites/default/files/resources/2010_sijs_benchbook.pdf [https://perma.cc/UUD6-KVAE] ("If the state recognizes a divorce, the CIS also will consider it valid unless to do so would violate public policy.").

55. *Id.*

56. *Id.*

57. *Id.*

58. U.S. CITIZENSHIP & IMMIGR. SERVS., U.S. DEP'T OF HOMELAND SEC., FILING FOR PERMANENT RESIDENCE BASED ON A FAMILY PETITION 4, https://www.uscis.gov/sites/default/files/document/guides/Permanent_Residents_Fam.pdf [https://perma.cc/Z8TQ-DNN3].

59. ANN LAQUER ESTIN, INTERNATIONAL FAMILY LAW DESK BOOK 64 (2d. ed. 2016).

60. *Id.*

61. JUNCK ET AL., *supra* note 54, at 63.

62. STEPHEN H. LEGOMSKY & DAVID B. THRONSON, IMMIGRATION AND REFUGEE LAW AND POLICY 364–65 (7th ed. 2019).

63. *Id.* at 365.

64. Immigration and Nationality Act § 216, 8 U.S.C. § 1186a(c)–(d).

immigration expert to determine whether factual allegations made in the family law matter may jeopardize his or her immigration status."[65]

Divorce timing is especially relevant to noncitizens seeking immigration benefits under VAWA. Immigrants facing domestic violence by their spouse are in particularly vulnerable situations, as the spouse could prevent them from leaving the abusive relationship with a threat to withdraw the spousal petition that the victim is relying on for legal immigration status.[66] Congress enacted VAWA in 1994 in an attempt to fix this risk by allowing abused spouses (and children) to self-petition for lawful immigration status.[67] However, VAWA imposes a time limit on the self-petitioner if they divorce their abuser. A victim of domestic violence must self-petition either while still married to their abuser or within two years following the divorce.[68] Eligibility for VAWA thus depends on a state's validation of the petitioner's marriage to their abuser or the state's timely recognition of the petitioner's divorce from their abuser.

2. Intercountry Adoptions

Intercountry adoption is "the adoption of a child born in one country by an adoptive parent living in another country."[69] Despite a significant fall in the number of intercountry adoptions over the past several years,[70] intercountry adoption continues to provide U.S. immigration opportunities and benefits to thousands of children each year. Even with the onset of the COVID-19 pandemic, 1,648 immigrants were adopted by U.S. citizens in 2020.[71] State actors, processes, and adoption laws likely influenced each of these cases, as

65. ESTIN, *supra* note 59, at 64.

66. Laura Carothers Graham, *Relief for Battered Immigrants Under the Violence Against Women Act*, 10 DEL. L. REV. 263, 263 (2008).

67. VERONICA GARCIA, IMMIGRANT LEGAL RES. CTR., IDENTIFYING HUMANITARIAN FORMS OF RELIEF FOR DERIVATIVES 1 (2020), https://www.ilrc.org/sites/default/files/resources/vawa_derivatives_final_formatted.pdf [https://perma.cc/M3A7-RLWD].

68. Immigration and Nationality Act § 204.

69. *Immigration Through Adoption*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Apr. 11, 2023), https://www.uscis.gov/adoption/immigration-through-adoption [https://perma.cc/269N-GMDR].

70. *Compare* OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2018 YEARBOOK OF IMMIGRATION STATISTICS 35 tbl.12 (2019) [hereinafter 2018 YEARBOOK], https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/yearbook_immigration_statistics_2018.pdf [https://perma.cc/9KUX-GXPY] (recording that 4,033 immigrants received LPR status via adoption in 2018), *with* 2022 YEARBOOK, *supra* note 32, at 35 tbl.12 (recording that 1,545 immigrants received LPR status via adoption in 2022). *See also* U.S. DEP'T OF STATE, ANNUAL REPORT ON INTERCOUNTRY ADOPTION 2 (2021), https://travel.state.gov/content/dam/NEWadoptionassets/pdfs/FY%202020%20Annual%20Report.pdf [https://perma.cc/5E42-7E5S] ("[COVID-19] health-related restrictions . . . made the intercountry adoption process difficult if not impossible.").

71. OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2020 YEARBOOK OF IMMIGRATION STATISTICS 35 tbl.12 (2022) [hereinafter 2020 YEARBOOK], https://www.dhs.gov/sites/default/files/2022-07/2022_0308_plcy_yearbook_immigration_statistics_fy2020_v2.pdf [https://perma.cc/2M4S-VYK2]. In 2021, this number rose to 1,788. OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2021 YEARBOOK OF IMMIGRATION STATISTICS 35 tbl.12 (2022) [hereinafter 2021 YEARBOOK], https://www.dhs.gov/sites/default/files/2023-03/2022_1114_plcy_yearbook_immigration_statistics_fy2021_v2_1.pdf [https://perma.cc/2ZD4-B6U3]. In 2022, it fell slightly to 1,545. 2022 YEARBOOK, *supra* note 32, at 35 tbl.12.

state authorities often decide whether an intercountry adoption is permissible, and "[s]tate court proceedings may be necessary to finalize an adoption that was begun in another country."[72]

Immigration through adoption can be completed either before or after the child enters the United States.[73] Regardless of whether the adoption is finalized before or after the child is relocated, there must be a legal child/parent relationship between the adoptee and the prospective adoptive parent(s) ("PAP(s)").[74] There are three avenues through which this relationship is formally established for immigration purposes: (1) the Hague Adoption Convention process; (2) the orphan adoption process; and (3) the family-based petition process.[75] State laws and policies regulate the adoption process,[76] and state courts issue final adoption decrees,[77] so compliance with state requirements is essential to receive immigration benefits under all three processes. Generally, whether the child resides in a country that has signed the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption ("the Hague Adoption Convention") determines which of the three processes an adoption must follow.[78]

i. Hague Adoption Convention Process

If a U.S. citizen is adopting a child residing in a Hague Adoption Convention country, they must generally follow the Hague Adoption Convention process.[79] Under this process, the PAP(s) must file a Form I-800 to show that the child

72. ESTIN, *supra* note 59, at 259.

73. *Immigration Through Adoption*, *supra* note 69. An IR-3 or IH-3 visa is issued if the adoption was completed abroad, before the child entered the United States, whereas an IR-4 or IH-4 is issued if the adoption is to be completed in the United States. *Your New Child's Immigrant Visa*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Dec. 15, 2021), https://www.uscis.gov/adoption/bringing-your-internationally-adopted-child-to-the-united-states/your-new-childs-immigrant-visa/your-new-childs-immigrant-visa [https://perma.cc/X48E-4GF7].

74. JUNCK ET AL., *supra* note 54, at 53–54.

75. *Family-Based Petition Process*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Dec. 5, 2023), https://www.uscis.gov/adoption/immigration-through-adoption/family-based-petition-process [https://perma.cc/7ACN-4GGF]; *Chapter 2 - Adoption Processes*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 24, 2024), https://www.uscis.gov/policy-manual/volume-5-part-a-chapter-2 [https://perma.cc/V85V-AXNC].

76. *See Adoption*, CHILD WELFARE INFO. GATEWAY, https://www.childwelfare.gov/topics/adoption/laws [https://perma.cc/6FCH-VF4V] ("There are many avenues for adoption, and the legal procedures for these will vary by location and type (e.g., foster care, independent, intercountry, adult).").

77. *See* ESTIN, *supra* note 59, at 262 ("An adoption decree granted by a state court does not confer immigration rights or citizenship status, but an adopted child may be eligible to adjust status after a decree has been entered.").

78. The Hague Adoption Convention is an international agreement that "aims to prevent the abduction, sale of, or trafficking in children, and it works to ensure that intercountry adoptions are in the best interests of children." *Understanding the Hague Convention*, U.S. DEP'T OF STATE, https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html [https://perma.cc/FTC9-DU9K].

79. *Chapter 2 - Adoption Processes*, *supra* note 75 ("A U.S. citizen [may only] use the family-based petition process for a child that is from a Hague Adoption Convention country [if] they can establish that the Convention does not apply.").

is eligible for adoption and a Form I-800A to show that they are suitable to adopt the child.[80] For USCIS to approve an I-800A, the PAP(s) must provide evidence of compliance with their state's pre-adoption requirements (where applicable) and evidence of a home study.[81] Home studies must meet applicable state standards and be prepared by state-authorized individuals or agencies.[82] If USCIS approves both the I-800A and I-800, then the child will be eligible to immigrate as a Hague Convention adoptee.[83] If the adoption was finalized abroad, the child will obtain U.S. citizenship automatically upon entering the United States.[84] But if "the adoption is not finalized in the country of origin, the process will need to be concluded with final adoption proceedings in the state where the parents and child reside."[85]

ii. Orphan Process

If the child is from a country that has not signed onto the Hague Adoption Convention, the PAP(s) must typically follow the orphan process.[86] This process is similar to the Hague Adoption Convention process and typically begins with the PAP(s) filing a Form I-600A for parent suitability determinations.[87] Like the I-800A, the I-600A must be accompanied by evidence of compliance with state pre-adoption requirements and a home study conducted by a state-authorized individual or agency.[88] The PAP(s) must also file a Form I-600 for child eligibility determinations.[89] Once approved by USCIS, the PAP(s) may apply for an immigrant visa so that their adopted child can enter the United States.[90] After entering the country, "the parents will be required to complete the adoption in their state of residence . . . . Even if the adoption was finalized abroad, parents may wish to readopt the child or obtain a new birth certificate under state law."[91]

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80. *Id.*

81. *I-800A, Application for Determination of Suitability to Adopt a Child from a Convention Country*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 30, 2024), https://www.uscis.gov/i-800a [https://perma.cc/4LNU-5ALB].

82. *Suitability and Home Study Information*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Nov. 19, 2021), https://www.uscis.gov/adoption/suitability-and-home-study-information [https://perma.cc/JL7A-3WF7].

83. *Chapter 2 - Adoption Processes*, *supra* note 75.

84. ESTIN, *supra* note 59, at 276.

85. *Id.* at 276–77.

86. *Chapter 2 - Adoption Processes*, *supra* note 75.

87. *Id.*; *see also* ESTIN, *supra* note 59, at 273 ("The I-600A is optional, but there are strong advantages to having this approval in advance, both for expediting the process of obtaining a visa for the child after the adoption is complete and protecting the adoptive parents against the risk that approval might be denied after they have already adopted the child.").

88. *I-600A, Application for Advance Processing of an Orphan Petition*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Dec. 23, 2022), https://www.uscis.gov/i-600a [https://perma.cc/XPM4-R9Z5].

89. *Chapter 2 - Adoption Processes*, *supra* note 75; ESTIN, *supra* note 59, at 273.

90. ESTIN, *supra* note 59, at 274.

91. *Id.*

iii. Family-Based Petition Process

The third way to establish a child/parent relationship for intercountry adoption is through the family-based petition process. Whereas only U.S. citizens can use the Hague Adoption Convention and orphan processes, both citizens and LPRs can use the family-based petition process.[92] However, the child typically cannot be from a Hague Adoption Convention country.[93] Moreover, the adoption must be finalized at the time the adoptive parent petitioner files the Form I-130 (family-based petition).[94] Among other requirements, the parent petitioner must file a state-issued adoption decree (or adoption certificate) with the I-130.[95] Typically, a family or juvenile court judge issues an adoption decree at an adoption finalization hearing.[96]

The Child Citizenship Act of 2000 permits intercountry adoptees to obtain U.S. citizenship.[97] Children whose adoption was finalized abroad receive automatic citizenship upon entry.[98] For those who enter the United States as LPRs, citizenship is obtained after the adoption is finalized by state authorities.[99] In these situations, state involvement occurs not only through applicable state laws and home studies at the stage of obtaining LPR status, but state recognition of the adoption also determines whether citizenship is ultimately granted to the adoptee.

3. U Nonimmigrant Status

The Victims of Trafficking and Violence Prevention Act ("VTVPA") created U nonimmigrant status (hereinafter referred to as the "U visa"[100]) in October 2000.[101] The U visa benefits "victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government

92. *Family-Based Petition Process*, *supra* note 75.

93. *Id.*

94. *Id.*

95. *I-130, Petition for Alien Relative*, *supra* note 37.

96. *See generally Adoption Laws*, ADOPTION CTR., https://www.adopt.org/adoption-resources/adoption-laws [https://perma.cc/QTY8-X2DH] (detailing the different steps in an adoption process).

97. Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (codified as amended in scattered sections of 8 U.S.C. and 18 U.S.C.).

98. ESTIN, *supra* note 59, at 265.

99. *Id.*; *FAQ: Child Citizenship Act of 2000*, U.S. DEP'T STATE, https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-FAQs/child-citizenship-act-of-2000.html [https://perma.cc/49MQ-88GM].

100. "U nonimmigrant status" and "U visa" are used interchangeably in colloquial language, but acknowledging their distinctions is important. U nonimmigrant status grants individuals who are already in the United States the temporary right to remain in the United States. SALLY KINOSHITA, SUSAN BOWYER, JESSICA FARB & CATHERINE SEITZ, IMMIGR. LEGAL RES. CTR., THE U VISA: OBTAINING STATUS FOR IMMIGRANT VICTIMS OF CRIME 1-1 (4th ed. 2014). U visas, on the contrary, are documents that grant individuals the right to enter the United States. *See id.* at 1-2. "[M]ost clients in the United States who benefit from this immigration option will not have a U visa. Instead, they will be approved for *U nonimmigrant status*." *Id.* at 1-1 to 1-2.

101. *Id.* at 1-1.

officials in the investigation or prosecution of criminal activity."[102] U visa holders receive lawful status in the United States for up to four years, employment authorization, and lawful status for qualifying family members.[103] During their final year of U status, they may apply for permanent residence.[104] Under the derivative provisions, spouses, unmarried children under twenty-one, parents of children under twenty-one, and unmarried siblings under eighteen may be eligible for a U visa as indirect victims.[105] These derivative provisions are some of "the most generous in immigration law."[106]

Domestic violence is one of the most common crimes that qualify survivors for U visas. From 2012 to 2018, forty-one percent of individuals who received U visa benefits were eligible because they were survivors of domestic violence.[107] Domestic violence impacts the entire family and has devastating effects on children. Almost half of all children who are victims of child abuse have reported domestic violence in their home.[108] Even if a child is not the direct victim of the violence, "[w]itnessing abuse carries the same risk of harm to children's mental health and learning as being abused directly."[109] As such, family and immigration law again cross paths when U visas are at issue.

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102. *Victims of Criminal Activity: U Nonimmigrant Status*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Mar. 20, 2023), https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status [https://perma.cc/B9AX-GSAP]. Both U Visas and VAWA petitions can provide immigration benefits to victims of domestic violence, but there are distinctions worth noting. U visas have an annual cap of ten thousand whereas VAWA petitions have no cap. KRISZTINA E. SZABO, SPENCER CANTRELL, ABIGAIL WHITMORE & LESLYE E. ORLOFF, COMPARISON CHART OF U VISA, T VISA, VIOLENCE AGAINST WOMEN ACT (VAWA) SELF-PETITION, SPECIAL IMMIGRANT JUVENILE STATUS (SIJS), AND DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) 9 (2021), https://niwaplibrary.wcl.american.edu/wp-content/uploads/IMM-Chart-U-T-VAWA-SIJS-DACA7.10.15.pdf [https://perma.cc/XJ6X-KQWV]. VAWA self-petitioners must have been subjected to abuse by a qualifying U.S. citizen or LPR, whereas U visa recipients may have been subjected to abuse by any individual. *Id.* at 6. Further, the need to cooperate with law enforcement is unique to U visas. *Id.* at 6–7.

103. U.S. DEP'T OF HOMELAND SEC., U VISA LAW ENFORCEMENT RESOURCE GUIDE iii (2022) [hereinafter U VISA ENFORCEMENT GUIDE], https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf [https://perma.cc/H7DA-KA6Q].

104. 8 U.S.C. § 1255(m).

105. U VISA ENFORCEMENT GUIDE, *supra* note 103, at 7.

106. David B. Thronson & Veronica T. Thronson, *Immigration Issues — Representing Children Who Are Not United States Citizens*, *in* CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 557, 569 (Donald N. Duquette, Ann M. Haralambie & Vivek S. Sankaran eds., 3d ed. 2016).

107. U.S. CITIZENSHIP & IMMIGR. SERVS., U.S. DEP'T OF HOMELAND SEC., TRENDS IN U VISA LAW ENFORCEMENT CERTIFICATIONS, QUALIFYING CRIMES, AND EVIDENCE OF HELPFULNESS 1, 4 (2020) [hereinafter TRENDS IN U VISA CERTIFICATIONS], https://www.uscis.gov/sites/default/files/document/reports/U_Visa_Report-Law_Enforcement_Certs_QCAs_Helpfulness.pdf [https://perma.cc/Y6VC-MYPD].

108. *Behind Closed Doors: The Impact of Domestic Violence on Children*, U.S. DEP'T JUST., https://www.ojp.gov/ncjrs/virtual-library/abstracts/behind-closed-doors-impact-domestic-violence-children [https://perma.cc/6F2R-4K2G].

109. Jayne O'Donnell & Mabinty Quarshie, *The Startling Toll on Children Who Witness Domestic Violence Is Just Now Being Understood*, USA TODAY (Jan. 31, 2019, 7:03 PM), https://www.usatoday.com/story/news/health/2019/01/29/domestic-violence-research-children-abuse-mental-health-learning-aces/2227218002 [https://perma.cc/4SVS-3AB8].

To apply for a U visa, direct and indirect victims must submit a Form I-918, Supplement B ("I-918B"), which is known as the "U Nonimmigrant Status Certification."[110] This form introduces the visa applicant and must be signed by "[a]ny federal, state, tribal, territorial, or local law enforcement agency, prosecutor, judge, or other authority that has responsibility to detect, investigate, or prosecute the qualifying criminal activity."[111] While the certification of an I-918B does not alone grant legal status in the United States, it is a required step in obtaining a U visa. Eighty-four percent of I-918Bs are certified by local agencies, twelve percent are certified by state agencies, and only two percent are certified by federal agencies.[112] Local and state agencies, including child protection service agencies and police departments, exercise discretion in signing certifications and at times impose stricter conditions than federal law requires.[113] "Thus, the U scheme transfers significant gatekeeping authority to local law enforcement," as their certification requirements and decisions could prevent opportunities for victims to remain in the United States.[114]

4. Special Immigrant Juvenile Status

SIJS is a path to legal residency for children who have been abused, abandoned, or neglected.[115] On its own, SIJS does not grant or guarantee LPR status or citizenship.[116] However, SIJS permits certain children who arrive at the border unaccompanied to remain in the United States, and it offers them a path to permanent residence.[117] SIJS is a critical form of humanitarian relief

110. *Victims of Criminal Activity: U Nonimmigrant Status*, *supra* note 102. In addition to a Form I-918B, U visa applicants must submit a Form I-918, a statement describing the qualifying crime, and evidence that shows they meet each eligibility requirement. *Id.*

111. U VISA ENFORCEMENT GUIDE, *supra* note 103, at iii; *see also* The Utah Chapter of the Am. Immigr. Laws. Ass'n, *The Broader U-Niverse: A Response*, UTAH BAR J., Nov.–Dec. 2016, at 34, 36 (describing the role of local law enforcement in this process).

112. TRENDS IN U VISA CERTIFICATIONS, *supra* note 107, at 1.

113. Jason A. Cade & Meghan L. Flanagan, *Five Steps to a Better U: Improving the Crime-Fighting Visa*, 21 RICH. PUB. INT. L. REV. 85, 95 (2018).

114. *Id.*

115. *Special Immigrant Juveniles*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Nov. 8, 2023), https://www.uscis.gov/working-in-US/eb4/SIJ [https://perma.cc/932L-YPFX].

116. Cristina Ritchie Cooper, *A Guide for State Court Judges and Lawyers on Special Immigrant Juvenile Status*, AM. BAR ASS'N (Mar. 1, 2017), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/mar-apr-2017/a-guide-for-state-court-judges-and-lawyers-on-special-immigrant- [https://perma.cc/2XPU-F8L8].

117. SIJS is an immigration benefit distinct from Deferred Action for Childhood Arrivals ("DACA"). While both SIJS and DACA protect noncitizens from deportation, SIJS benefits applicants under twenty-one years old who have been abused, abandoned, or neglected by one or both of their parents and meet the other statutory requirements described in section 101(a)(27)(J) of the INA. Cooper, *supra* note 116. DACA, alternatively, provides protection to individuals who arrived illegally in the United States while under the age of sixteen and have continuously resided in the United States, among other requirements. *See Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Sept. 18, 2023), https://www.uscis.gov/DACA [https://perma.cc/XX5Y-CJP3].

that opens the door to both state and federal benefits.[118] Thousands of children procure SIJS each year, and state courts (including dependency, delinquency, juvenile, probate, and family courts) play a vital role in this process.[119]

Unlike spouses and adopted children, who qualify as immediate relatives and are thus spared from visa category admission limits, children who are granted SIJS are subject to annual immigration caps when it comes to obtaining a green card.[120] The high demand for SIJS alongside the annual cap has created a backlog in which thousands of abused children who have been granted SIJS are still waiting to obtain LPR status.[121] Despite the annual caps and tremendous backlog, 64,872 children obtained permanent residence between 2012 and 2022 by virtue of SIJS.[122] State juvenile courts played a critical part in this.

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118. LESLYE E. ORLOFF, ALINA HUSAIN, KAY LONGVILLE & AMANDA BARAN, NAT'L IMMIGRANT WOMEN'S ADVOC. PROJECT, AM. UNIV. WASH. COLL. OF L., PUBLIC BENEFITS FLOW CHARTS: VAWA SELF-PETITION AND CANCELLATION, U VISAS, T VISAS AND SIJS 5 (2021), https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/PB-PPWbnr-PBFlowchart-07.30.14.pdf [https://perma.cc/UPC6-SEYF] (showing that, in addition to immigration benefits, SIJS victims may be eligible for food stamps and state-funded healthcare).

119. *See, e.g.*, 2022 YEARBOOK, *supra* note 32, at 22 tbl.7 (showing 14,383 juvenile court dependents adjusted to LPR status in 2022); *see also* Austin Rose, *For Vulnerable Immigrant Children, A Longstanding Path to Protection Narrows*, MIGRATION POL'Y INST. (July 25, 2018), https://www.migrationpolicy.org/article/vulnerable-immigrant-children-longstanding-path-protection-narrows [https://perma.cc/RGE5-YF3C] (outlining steps in the SIJS process and publishing data on SIJS applications and adjudications).

120. Jasmine Aguilera, *A Years-Long Immigration Backlog Puts Thousands of Abused Kids in Limbo*, TIME (Dec. 16, 2021, 11:25 AM), https://time.com/6128025/abused-immigrant-kids-sijs-backlog [https://perma.cc/XR9Z-SFSV]; *see also* IMMIGRANT LEGAL RES. CTR., OVERVIEW AND COST OF COMMON IMMIGRATION REMEDIES FOR YOUTH 2 (2021), https://www.ilrc.org/sites/default/files/resources/6-21_batpro_fee_rule-final.pdf [https://perma.cc/4XHK-4NAM] ("There is no limit on the number of SIJS petitions that may be granted in a given year, but sometimes individuals granted SIJS must wait to apply for permanent residency because visas for approved special immigrant juveniles are subject to an annual quota based on category and country of origin.").

121. Aguilera, *supra* note 120.

122. This number was retrieved by adding statistics reported in the U.S. Department of Homeland Security's Yearbook of Immigration Statistics for the years 2012 to 2022. *See* 2022 YEARBOOK, *supra* note 32, at 22 tbl.7; 2021 YEARBOOK, *supra* note 71, at 22 tbl.7; 2020 YEARBOOK, *supra* note 71, at 22 tbl.7; OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2019 YEARBOOK OF IMMIGRATION STATISTICS 22 tbl.7 (2020), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/yearbook_immigration_statistics_2019.pdf [https://perma.cc/L2HB-EYJV]; 2018 YEARBOOK, *supra* note 70, at 22 tbl.7; OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2017 YEARBOOK OF IMMIGRATION STATISTICS 22 tbl.7 (2019), https://www.dhs.gov/sites/default/files/publications/yearbook_immigration_statistics_2017_0.pdf [https://perma.cc/ACX3-8NMS]; OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2016 YEARBOOK OF IMMIGRATION STATISTICS 22 tbl.7 (2017), https://www.dhs.gov/sites/default/files/publications/2016%20Yearbook%20of%20Immigration%20Statistics.pdf [https://perma.cc/6PAM-CB3N]; OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2015 YEARBOOK OF IMMIGRATION STATISTICS 22 tbl.7 (2016), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2015.pdf [https://perma.cc/9FEH-HAQR]; OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2014 YEARBOOK OF IMMIGRATION STATISTICS 22 tbl.7 (2016), https://www.dhs.gov/sites/default/files/publications/DHS%202014%20Yearbook.pdf [https://perma.cc/48SV-FW8D]; OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2013 YEARBOOK OF IMMIGRATION STATISTICS 22 tbl.7 (2014), https://www.dhs.gov/sites/default/files

Juvenile courts have "jurisdiction under state law to make judicial determinations about the care and custody of juveniles."[123] In determining that a child qualifies for SIJS, a juvenile court judge must issue a predicate order with the following special findings: (1) the child is dependent upon the court or in the state's custody; (2) reunification of the child and their parents is not viable due to abuse, abandonment, or neglect; and (3) it is not in the child's "best interest" to be returned to their home country.[124] If the juvenile court agrees to make a custody decision for the child, the court dependency requirement is automatically met for immigration purposes. As held in *Menjivar*, "[t]he acceptance of jurisdiction over the custody of a child by a juvenile court, when the child's parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court."[125] The child must remain under the juvenile court's jurisdiction until the entire SIJS application is approved.[126] Regarding the second finding, "the INA does not define "abuse, abandonment, or neglect," and federal guidance clarifying these terms for SIJS findings are nonexistent.[127] Juvenile courts therefore rely on state law definitions in making this factual determination.[128] Juvenile courts likewise apply state law on the best interest of the child to make the third SIJS finding.[129]

USCIS ultimately grants SIJS, but it "relies on the juvenile court's findings on child welfare issues to determine whether a child is eligible for SIJ classification."[130] USCIS defers to state courts here "because of their responsibility to protect children under their jurisdiction and their expertise

/publications/Yearbook_Immigration_Statistics_2013_0.pdf [https://perma.cc/FX7Y-YRKF]; OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2012 YEARBOOK OF IMMIGRATION STATISTICS 22 tbl.7 (2013), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2012.pdf [https://perma.cc/6RGG-235F].

123. U.S. CITIZENSHIP & IMMIGR. SERVS., U.S. DEP'T OF HOMELAND SEC., IMMIGRATION RELIEF FOR ABUSED CHILDREN: SPECIAL IMMIGRANT JUVENILE STATUS (2016), https://www.uscis.gov/sites/default/files/document/brochures/PED.SIJ.1015_Brochure_M-1114B_Revised_05.19.16.pdf [https://perma.cc/5FAZ-EKLY].

124. 8 C.F.R. § 204.11(c)–(d) (2024); *see also* Thronson & Sullivan, *supra* note 4, at 11 n.69 ("The factual findings concerning the child that are required 'may only be made by the juvenile court.'" (quoting Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court, 58 Fed. Reg. 42844, 42847 (Aug. 12, 1993) (to be codified 8 C.F.R. pts. 101, 103, 204, 205, 245))).

125. Menjivar, No. A70117167, 1994 Immig. Rptr. LEXIS 4038, at *7 (Admin. App. Off. Dec. 27, 1994).

126. JUNCK ET AL., *supra* note 54, at 60, 70.

127. Jessica R. Pulitzer, *Fear and Failing in Family Court: Special Immigrant Juvenile Status and the State Court Problem*, 21 CARDOZO J.L. & GENDER 201, 217 (2014).

128. RAFAELA RODRIGUES & LESLYE E. ORLOFF, NAT'L IMMIGRANT WOMEN'S ADVOC. PROJECT, AM. UNIV. WASH. COLL. OF L., CHAPTER III: ABUSE, ABANDONMENT, OR NEGLECT: THE ROLE OF STATE LAW DEFINITIONS IN SPECIAL IMMIGRANT JUVENILE STATUS FINDINGS 1 (2017), https://niwaplibrary.wcl.american.edu/wp-content/uploads/Abuse-Abandonment-or-Neglect-The-Role-of-State-Law-Definitions-in-Special-Immigrant-Juvenile-Status-Findings-1.pdf [https://perma.cc/WR9E-UKDV].

129. *Id.* at 3.

130. U.S. CITIZENSHIP & IMMIGR. SERVS., *supra* note 123.

. . . in making decisions about the welfare and best interests of children."[131] Although state courts are only involved in the first step of an undocumented child's SIJS application, their findings are an important part of the process. If the state court fails to make any three of the "special findings," an unaccompanied child without U.S. citizen relatives will typically be closed off from any immigration opportunities.

II. THE GAP IN THE IMMIGRATION FEDERALISM DEBATE

States, courts, and legal scholars are immersed in an ongoing debate about the role states should play in immigration. This debate has been dominated by immigration enforcement concerns and the federal government's attempt to prevent states from overstepping their role in immigration policymaking. Even legal scholarship that addresses the intersection of immigration and family law has underplayed the importance of the states in this arena. Instead of focusing on the impact of state-made decisions on the immigration status of families and children, the scholarship has largely criticized the lack of uniformity amongst such state decisions. While the lack of uniformity in processes affecting immigration benefits is undoubtedly concerning, the role states play here is more nuanced. Fixing the uniformity problem by cutting states out of the immigration process altogether, when so many immigration situations involve the family unit and children, would not be a simple or productive solution.

The immigration federalism debate's focus on enforcement and lack of attention to family law matters has created a misconception about the impact of state decisions on immigration. In turn, insufficient resources are available to state actors who are involved in family law issues that impact noncitizens. This Note will now explore the predominant immigration federalism issues arising in courts and the primary discussions taking hold in legal scholarship on immigration and family law matters, revealing a gap in the process.

A. THE IMMIGRATION FEDERALISM DEBATE IN COURTS

The debate over the role of states in immigration gained national attention in the 2012 U.S. Supreme Court case *Arizona v. United States*.[132] In this case, the federal government challenged the constitutionality of SB 1070, which Arizona had enacted into law as an anti-illegal immigration measure.[133] The Court struck down three provisions of the Act for being preempted by federal law, citing the federal government's "broad, undoubted power over the subject of immigration."[134] However, the Court upheld section 2(B) of the Act, which requires state officers "'to determine the immigration status' of any person they stop, detain, or arrest . . . if 'reasonable suspicion exists that the

131. Cooper, *supra* note 116.

132. *See* Arizona v. United States, 567 U.S. 387, 387 (2012).

133. *Id.* at 393; S. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010).

134. Arizona v. United States, 567 U.S. at 393, 394, 403, 407, 410.

person . . . is unlawfully present in the United States.'"[135] The Court explained, "[c]onsultation between federal and state officials is an important feature of the immigration system."[136] When it came to assisting U.S. Immigration and Customs Enforcement ("ICE"), the Court did not think the state was overstepping its role.[137]

The Supreme Court again addressed the states' role in immigration in 2018 when it decided *Trump v. Hawaii*.[138] On January 27, 2017, the Trump Administration implemented a controversial proclamation that placed entry restrictions on nationals from seven countries,[139] five of which had Muslim-majority populations.[140] The State of Hawaii brought suit, arguing that the INA does not grant the President the authority to implement such restrictions, and the Administration's actions violated the Constitution's Establishment Clause because they were "motivated . . . by animus toward Islam."[141] Here, the Supreme Court ruled in favor of the federal government, finding the proclamation to be legally sound.[142] The Court reasoned that the country-specific restrictions were related to national security concerns and not religious animus.[143]

One of the most widely recognized issues circulating within the immigration federalism debate is the DACA program. In a 2012 memorandum, the Obama Administration created DACA to deprioritize the deportation of undocumented youth.[144] In 2021, nine states challenged DACA's validity in a lawsuit led by Texas.[145] The Fifth Circuit, in October 2022, declared that the 2012 DACA Memorandum was unlawful; it enjoined the approval of any new DACA applications but allowed current DACA recipients to continue benefiting from the program.[146] The Fifth Circuit also remanded the 2022 DACA Rule, which replaced the 2012 DACA Memorandum, to the district court for it to consider in the first instance.[147] The district court declared the 2022 DACA Rule unlawful as well, but maintained a partial stay for existing DACA recipients who received their initial DACA status prior to July 16, 2021.[148]

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135. *Id.* at 411 (quoting ARIZ. REV. STAT. ANN. § 11-1051(B) (2012)).

136. *Id.*

137. *See id.* at 411–13.

138. *See* Trump v. Hawaii, 138 S. Ct. 2392, 2392 (2018).

139. Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

140. Trump v. Hawaii, 138 S. Ct. at 2421.

141. *Id.* at 2406.

142. *Id.* at 2423.

143. *Id.* at 2421–23.

144. LEGOMSKY & THRONSON, *supra* note 62, at 806–07.

145. Texas v. United States, 549 F. Supp. 3d 572, 576 n.1 (S.D. Tex. 2021), *aff'd in part, vacated in part, remanded*, 50 F.4th 498 (5th Cir. 2022).

146. Texas v. United States, 50 F.4th at 508.

147. *Id.*

148. Texas v. United States, No. 18-cv-00068, 2023 WL 5951196, at *24 (S.D. Tex. Sept. 13, 2023). On November 9, 2023, the U.S. Department of Justice and a civil rights group filed notices of appeal. Juan A. Lozano, *Department of Justice, Civil Rights Group to Appeal Federal Judge's Ruling Declaring DACA Illegal*, U.S. NEWS & WORLD REP. (Nov. 9, 2023, 5:12 PM), https://www.usnews.co

In recent years, courts have continued to issue decisions that attempt to define state boundaries in immigration law. For example, in May 2022, in a case known as *Louisiana v. CDC*, twenty-four states sued "to enjoin the Centers for Disease Control [and Prevention] ("CDC") from terminating the COVID-related restrictions on immigration enacted by the CDC pursuant to its authority under Section 265 of Title 42."[149] A federal district court in Louisiana granted the states' motion for a preliminary injunction, preventing the CDC from terminating immigration restrictions that it had imposed at the start of the COVID-19 pandemic to combat its spread.[150] Only one month later, the Supreme Court issued a decision in *Biden v. Texas* that was less favorable to plaintiff states.[151] In that case, Texas and Missouri challenged the Department of Homeland Security's ("DHS's") decision to end its Migrant Protection Protocols ("MPP").[152] MPP was a program that returned non-Mexican asylum seekers, who had entered the United States via the U.S./Mexico land border, to Mexico to wait out their immigration proceedings.[153] The Court upheld the federal government's rescission of the program, finding the INA granted DHS discretion on whether or not to have individuals await adjudication of their asylum claims outside U.S. territory.[154]

As the above cases demonstrate, the battle between the federal government and the states over immigration policymaking is alive and animated. The balance of power over immigration is a swinging pendulum, as the federal government challenges state laws regulating immigration while the states simultaneously

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m/news/best-states/texas/articles/2023-11-09/department-of-justice-civil-rights-group-to-appeal-federal-judges-ruling-declaring-daca-illegal [https://perma.cc/2VE8-HNXK]. Pending further litigation, DHS continues to accept both initial and renewal DACA requests; however, it will only process renewal requests. *Deferred Action for Childhood Arrivals (DACA)*, U.S. DEP'T HOMELAND SEC. (Jan. 10, 2024), https://www.dhs.gov/deferred-action-childhood-arrivals-daca [https://perma.cc/FJ5N-ZXJY].

149. Louisiana v. CDC, 603 F. Supp. 3d 406, 412 (W.D. La. 2022). Title 42 § 265 states,

> Whenever the [Director of the CDC] determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the [Director of the CDC], in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

42 U.S.C. § 265; Louisiana v. CDC, 603 F. Supp. 3d at 413.

150. Louisiana v. CDC, 603 F. Supp. 3d at 441.

151. Biden v. Texas, 142 S. Ct. 2528, 2548 (2022).

152. *Id.* at 2534–36.

153. MPP is informally known as the Remain in Mexico policy and has been heavily criticized for putting asylum seekers "at risk of kidnapping, extortion, and rape" while also "den[ying them] access to basic services like health care and education." *'Remain in Mexico': Overview and Resources*, HUM. RTS. WATCH (Feb. 7, 2022, 9:00 AM), https://www.hrw.org/news/2022/02/07/remain-mexico-overview-and-resources [https://perma.cc/94RB-RH88].

154. Biden v. Texas, 142 S. Ct. at 2543–44, 2548.

push back and challenge federal immigration programs. These issues call attention to the states' and federal government's opposing interests when it comes to immigration. Such attention regrettably overshadows the fact that the federal government and the states are inevitably interdependent when it comes to the intersection of immigration and family law.

B. THE FOCUS OF FAMILY AND IMMIGRATION LAW SCHOLARSHIP

The legal scholarship that directly focuses on the intersection of family and immigration law is mostly limited to the discussion of U visas and SIJS. It thus ignores the significance of state marriage, divorce, and adoption processes that this Note illuminates. Scholarship that does address the family and immigration law overlap also tends to scrutinize immigration federalism, largely because state involvement can lead to a lack of uniform policy. As noted, there is a strong argument for uniformity in immigration, and uniformity is particularly hard to achieve when states implement their own policies that have determinative effects on immigration opportunities for noncitizens. However, focusing solely on the lack of uniformity ignores the inevitable overlap of immigration and family law, as well as the importance of keeping the regulation of family law largely within the purview of the states.

Immigration and family law scholars have criticized the fact that states lack a set of uniform criteria in determining whether to certify Form I-918Bs for U visa applicants. This is a deserving topic for concern, as varying conditions for certification at local levels create situations in which victims of the same crime may be entitled to, or foreclosed from, immigration benefits depending solely on which state they live in.[155] As a prime example, legal scholar Danielle Kalil has called attention to the differences between I-918B certification policies at the Texas Department of Family and Protective Services ("DFPS") and the Connecticut Department of Children and Families ("DCF").[156] The Texas DFPS lies at one far end of the spectrum, with a very restrictive policy on I-918B certification.[157] Despite DHS having specifically granted child and adult protective service agencies the authority to certify I-918Bs, the Texas DFPS has a blanket policy that prohibits staff from certifying any.[158] The Texas DFPS believes its lack of criminal investigative authority makes it inadequate to make such determinations.[159]

At the opposite end of the spectrum, the Connecticut DCF's policy requires caseworkers to submit a request for I-918B certification for any adult or child

155. Danielle Kalil, *Certified Disaster: A Failure at the Intersection of the U Visa and the Child Welfare System*, 35 GEO. IMMIGR. L.J. 513, 547 (2021).

156. *Id.* at 539–40.

157. *Id.* at 539.

158. *See Child Protective Services Handbook*, TEX. DEP'T FAM. & PROTECTIVE SERVS., http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_6700.asp?zoom_highlight=U+visa [https://perma.cc/NQ5W-TLNF] ("DFPS does not certify U visas. . . . DFPS does not have 'criminal investigative jurisdiction.' To ensure consistent responses to stakeholders requesting a U visa certification, staff must forward these requests to the immigration specialist assigned to the region . . . ." (citation omitted) (quoting 8 C.F.R. § 214.14(a)(2) (2024))); Kalil, *supra* note 155, at 539.

159. Kalil, *supra* note 155, at 539.

they suspect may qualify for a U visa.[160] As a result, if a Connecticut DCF employee interacted with a noncitizen survivor of domestic violence, a request for I-918B certification would be made on that survivor's behalf, even if the survivor themselves were unaware such U visa benefits existed. However, if that same survivor were in Texas, the Texas DFPS would not assist them with the certification process, even at the survivor's request. Differing criteria for I-918B certification, depending solely on locality, is troubling. Yet, the federal government's dependency on local authorities in this area is critical. Cutting local authorities from the I-918B certification process entirely would require federal agencies to develop the competency for dealing with crimes like domestic violence and sexual assault on a case-by-case basis, a task better left to local officials such as social workers, whose training and relationships with undocumented clients better position them for handling these types of situations.

Inconsistent adjudications of SIJS proceedings amongst the various family courts is another regularly critiqued subject. In her research on family courts' role in the grant of SIJS status, Jessica Pulitzer acknowledged that "[b]y mandating family or juvenile court involvement prior to application for SIJS, Congress sought to benefit from the expertise of adjudicators who had experience with children's special needs."[161] But the focus of Pulitzer's research is on inconsistencies in family courts that "have created uncertainty and incongruent treatment of children."[162] Similarly, Elizabeth Keyes's research on the SIJS process noted "some identifiable positives to involving states more in immigration law's implementation" but ultimately concluded, "the state role is highly problematic in its unevenness, its complexity, and its distance from the federal immigration adjudication process."[163] Keyes's proposed solution is to "challenge the state's involvement" and "giv[e] exclusive authority to the federal government through a centralized adjudications unit."[164]

Although locality should not play a role in determining whether a predicate order should be issued to make a child eligible for SIJS benefits, cutting states from the SIJS process entirely is, again, not a perfect fix. As previously noted, SIJS requires a determination that the child is in the state's custody, that reunification between the child and parents is not viable, and that it is not in the child's best interest to return to their home country.[165] State courts are better suited than federal units to make these findings

160. CONN. DEP'T OF CHILD. & FAMS., SPECIALIZED CHILD WELFARE SUBJECT MATTER 2 (2019), https://portal.ct.gov/-/media/DCF/Policy/Chapters/21-13.pdf [https://perma.cc/Q39U-Q8X6]; CONN. GEN. STAT. ANN. § 46b-38b (West 2018); Kalil, *supra* note 155, at 540.

161. Pulitzer, *supra* note 127, at 214.

162. *Id.* at 215 (providing examples of definitions that vary among states and create inconsistencies in SIJS predicate order determinations, such as "the age of majority" and the "meaning of juvenile or family court 'dependency'").

163. Elizabeth Keyes, *Evolving Contours of Immigration Federalism: The Case of Migrant Children*, 19 HARV. LATINO L. REV. 33, 39 (2016).

164. *Id.*

165. *See supra* note 124 and accompanying text.

because family law and child protection are "within the state court's traditional expertise."[166]

Finally, a brief discussion of the attention placed on the immigration and criminal law overlap may help illustrate why attention should likewise be placed on the immigration and family law overlap.[167] The term "crimmigration" was coined by Juliet Stumpf in 2006 and refers to the intersection of immigration and criminal law.[168] Crimmigration has received significant attention from legislators, scholars, the media, and public alike,[169] even becoming the focus of several law courses across the country.[170] With increased awareness of the overlap between immigration and criminal law came practical consequences.[171] In 2010, the U.S. Supreme Court held in *Padilla v. Kentucky* that criminal defense counsel must advise their client on whether their guilty plea would carry a risk of deportation, a requirement grounded in the Sixth Amendment's right to effective assistance of counsel in criminal cases.[172] The Court recognized the weight of immigration consequences and "[t]he importance of accurate legal advice for noncitizens."[173] Criminal procedure laws followed, codifying the requirement.[174]

Although the intersection of immigration and family law does not have the constitutional implications that the intersection of immigration and criminal law has, the problems that may arise from downplaying the intersections are similar. In both situations, a legal decision that is made at the state level

166. KIDS IN NEED OF DEF., CHAPTER 4: SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) 2 (2015), https://supportkind.org/wp-content/uploads/2015/04/Chapter-4-Special-Immigrant-Juvenile-Status-SIJS.pdf [https://perma.cc/TTQ9-XCTH].

167. The scope of this Note does not extend to the impact of the family regulation system on immigration enforcement, a more direct comparison to "crimmigration." For this discussion, see generally Washington, *supra* note 8.

168. *See generally* Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 (2006). Notably, Stumpf criticizes the convergence of immigration and criminal law for excluding and alienating immigrants and undocumented individuals. *See generally id.* This Note does not aim to compare immigration and criminal law's overlap to immigration and family law's overlap, but rather to highlight the impact of addressing intersections between immigration law and other areas of law.

169. *Id.* at 376.

170. *See, e.g.*, *Crimmigration: The Intersection of Criminal Law and Immigration Law*, HARV. L. SCH.: COURSE CATALOG, https://hls.harvard.edu/courses/crimmigration-the-intersection-of-criminal-law-and-immigration-law-4 [https://perma.cc/VH75-L8UT]; *Crimmigration*, MICH. L.: COURSE CATALOG, https://michigan.law.umich.edu/courses/crimmigration [https://perma.cc/4QDS-5NS9]; *see also Crimmigration Clinic*, HARV. L. SCH.: COURSE CATALOG, https://hls.harvard.edu/courses/crimmigration-clinic-8 [https://perma.cc/G7YL-5BLV] (describing a law school clinic that gives students the opportunity to "work on cutting-edge issues regarding the intersection of criminal law and immigration law").

171. *See* Manny Vargas, *Looking Back Ten Years Later at the Road to* Padilla v Kentucky, IMMIGRANT DEF. PROJECT, https://www.immigrantdefenseproject.org/padilla-anniversary-vargas [https://perma.cc/8TV9-XJNE].

172. Padilla v. Kentucky, 559 U.S. 356, 366, 373–74 (2010); *see* U.S. CONST. amend. VI.

173. *Padilla*, 559 U.S. at 364.

174. *See, e.g.*, CAL. PENAL CODE § 1016.2 (West 2018).

may have immigration consequences that not even state actors are aware of.[175] And in both situations, an understanding of the overlaps is critical if individuals are to be empowered to make fully informed legal decisions.[176]

III. HOW TO BETTER SUPPORT STATE ACTORS AND FAMILY LAW ATTORNEYS

Removing state court judges, family law practitioners, and child and family welfare agencies from immigration processes are impractical solutions to the uniformity issue, given the inextricable link between families and immigration.[177] Instead of trying to remove family law experts from the immigration process, these local actors need training and access to resources that will help them understand how their daily processes and decisions might affect the immigration status of children and families.[178] At the New Mexico Judicial Conclave in 2018, Judge Mary Weir[179] and Immigration Law Professor David Thronson[180] provided educational training on the role of state courts in SIJS adjudication proceedings and the U visa certification process.[181] Increasing collaborative educational opportunities such as this will position state actors to better understand and prepare for the full-picture needs of the families and children that they are striving to help.

Another example of such collaborative efforts in action is the Immigrant Defense Project ("IDP"), a nonprofit legal and advocacy organization based in New York that also provides legal advice and training to attorneys, advocates, and judges on how Family Court processes and decisions can

175. It is unclear exactly how many noncitizens are affected by state family law decisions each year, but the number of individuals who rely on family-based visas, VAWA benefits, adoptions, U visas, and SIJS, *see infra* Section I.B, suggest that thousands are susceptible to state impact on immigration status. *See also* Washington, *supra* note 8, at 122 (suggesting thousands of immigrant families are affected by the family regulation system alone).

176. Further legal research is encouraged to determine the degree to which immigrants have been impacted by states' lack of immigration and family law wherewithal.

177. Additionally, the situation at the border, in which unaccompanied minors in federal custody have been failed by the system, clearly shows that absent additional funding, federal actors should not take on any new responsibilities in this arena. *See generally* Emily Ryo & Reed Humphrey, *Children in Custody: A Study of Detained Migrant Children in the United States*, 68 UCLA L. REV. 136 (2021) (critiquing the system's capacity to care for and protect unaccompanied minors).

178. *See* Theo Liebmann, *Family Court and the Unique Needs of Children and Families Who Lack Immigration Status*, 40 COLUM. J.L. & SOC. PROBS. 583, 587 (2007) ("With so much riding on the immigration status of the children and families seen in Family Court, judges and attorneys must —at a minimum—be aware of how decisions, findings and orders in court cases can affect that status.").

179. Judge Mary F. Weir is an Associate Circuit Judge for the Sixteenth Circuit Court of Jackson County Missouri. *See Division 31 - Judge Mary F. Weir*, 16TH CIR. CT. JACKSON CNTY., MO., https://www.16thcircuit.org/division-31-judge-mary-f-weir [https://perma.cc/3ZLL-EWSP].

180. David Thronson serves as the Alan S. Zekelman Professor of International Human Rights Law and directs the Talsky Center for Human Rights of Women and Children at the Michigan State University College of Law. *See David B. Thronson*, MICH. STATE UNIV. COLL. L., https://www.law.msu.edu/faculty_staff/profile.php?prof=709 [https://perma.cc/XP83-NSHM].

181. Mary Weir & David B. Thronson, PowerPoint Presentation at the New Mexico Judicial Conclave, State Court Judicial Role in Issuing Special Immigrant Juvenile States Findings and U Visa Certifications, at slide 3 (June 7, 2018), *available at* https://niwaplibrary.wcl.american.edu/wp-content/uploads/New-Mexico-06-07-2018-SIJS-and-U.pdf [https://perma.cc/W54T-FNNC].

impact immigrant families.[182] In addition to holding trainings, the IDP provides free family court immigration intake worksheets for attorneys to use.[183] These guided worksheets inform attorneys who specialize in family law, not immigration law, of the appropriate questions to ask clients to determine whether they may qualify for any immigration benefits. Such trainings and resources naturally help streamline family court procedures and legal assistance with best practices in federal immigration law. In turn, streamlining helps resolve the state inconsistencies that many scholars have expressed concern over.[184]

Family courts, in particular, must be familiar with how judicial decisions and court processes affect noncitizens.[185] Before making any factual determinations involving a noncitizen, family courts should inquire whether any governmental immigration agencies, such as USCIS, have been involved in the noncitizen's case.[186] In addition, judges should confirm that "respondent[s] ha[ve] been 'fully advised of the potential consequences of [their statements] on any immigrant matters which the respondent may have pending, or with which the respondent may be involved in the future.'"[187] Further, cases involving noncitizens should only be assigned to family court judges who have completed training sessions on the overlap of family and immigration law.

It is imperative that state child welfare agencies working with immigrant youth have processes in place for identifying children whose vulnerable situations make them eligible for immigration benefits. Rhode Island Family Court Judge Laureen D'Ambra recommends that Rhode Island's Department of Children Youth and Families help implement state regulations that develop a formal legal protocol for motioning the Family Court to make special findings once potentially SIJS-eligible immigrant youth are identified.[188] This Note extends Judge D'Ambra's recommendation to all state-run adult and child welfare services throughout the United States. Additionally, similar processes should be implemented for individuals identified as being potentially eligible for VAWA and U visa benefits. State agencies may be wary of the implementation costs of formal regulations and processes mandating welfare agencies to preemptively assist those eligible for immigration benefits. However, as Judge D'Ambra notes, such costs will likely be offset by the alleviation of

182. *Family Court: Raising Awareness About Immigration Consequences*, IMMIGRANT DEF. PROJECT, https://www.immigrantdefenseproject.org/family-court-raising-awareness-about-immigration-consequences [https://perma.cc/KqJ6-Y78G].

183. *See, e.g.*, IMMIGRANT DEF. PROJECT, FAMILY COURT IMMIGRATION INTAKE WORKSHEET (2021), https://www.immigrantdefenseproject.org/wp-content/uploads/Family-Court-immigration-intake-worksheet-July-2021.pdf [https://perma.cc/LS3E-7CWJ].

184. *See supra* notes 155–66 and accompanying text.

185. Liebmann, *supra* note 178, at 601.

186. Laureen A. D'Ambra, *The Vital Role of the Rhode Island Family Court and Its Unique Jurisdiction in Immigration Cases Involving Abused and Neglected Children*, 15 ROGER WILLIAMS U. L. REV. 24, 38 (2010).

187. *Id.* (quoting Liebmann, *supra* note 178, at 601).

188. *Id.*

financial stress on state funds that help care for immigrant children present in the state illegally, which are often ineligible for federal reimbursement.[189]

CONCLUSION

State courts, policymakers, attorneys, and family and child welfare practitioners regularly make decisions that can have broad-sweeping immigration effects when the individuals involved are noncitizens. Scholarship on immigration federalism, however, has largely overlooked this dynamic. Recognizing that states are often better equipped than federal units to make decisions on child and family welfare, it is critical that state actors have the resources to understand the full effects of their decisions and to implement the appropriate processes, as such effects extend beyond the family law sphere and into matters such as immigration. It is the responsibility of public servants and legal practitioners, regardless of their area of expertise, to know about the family and immigration law overlap so that they can best serve those whom they intend to assist.

189. *Id.*