



The Experience of Immigrants in DC Courts

Ayuda

- Ayuda's mission is to protect the rights of low-income immigrants who live in the metropolitan area of the District of Columbia.
- We offer legal and social multilingual services for low-income immigrants in the areas of immigration, personal advice, domestic violence, sexual assault and protection against family violence.





Public Defender Service of DC (PDS)

- PDS represents indigent clients accused of crimes, as does the CJA panel.
- Advise on the immigration consequences of conviction for noncitizen clients pursuant to Supreme Court's decision in *Padilla v. Kentucky*.



Agenda

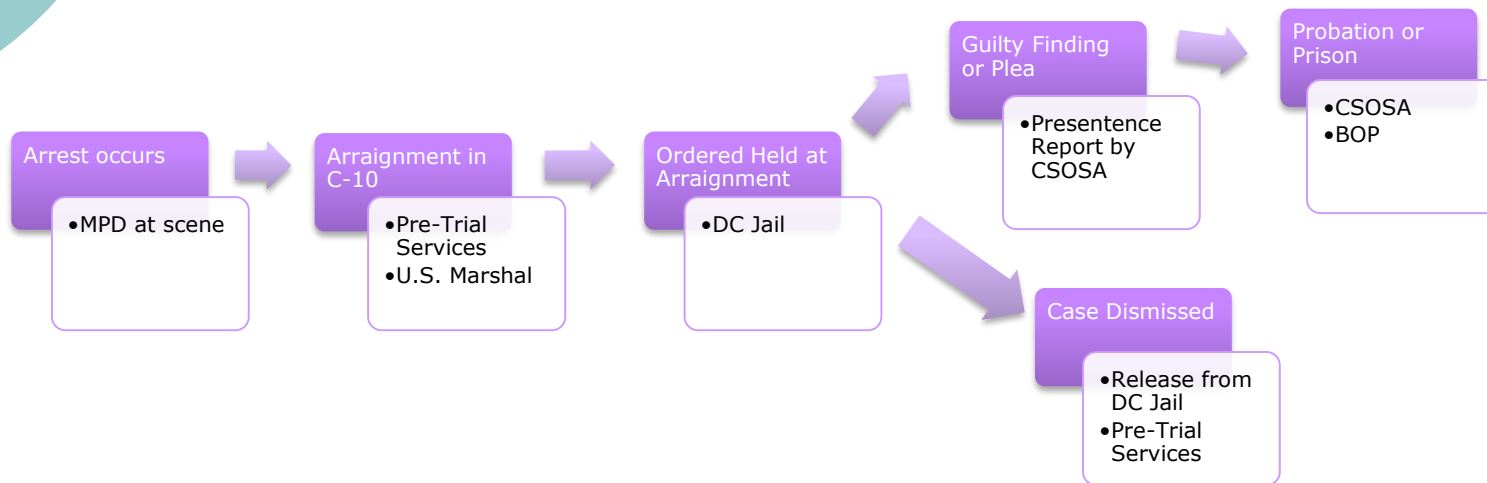
- Criminal Courts
 - DC Criminal justice system actors
 - DHS Enforcement Practices
- Victim Services
 - DC Civil Court actors
 - Legal protections for Victims
 - DHS Enforcement Practices

DC Criminal Justice System: DC Agencies & Federal Agencies

DC Agencies	Federal Agencies
DC Jail	U.S Marshals
Metropolitan Police Dept	CSOSA (Probation)
Office of Attorney General	Pre-Trial Services
Department of Youth Rehabilitation Services	Bureau of Prisons
Office of Victim Services	U.S. Attorneys Office

DC Criminal Court Process

DC Criminal Justice Actors:



DC Criminal Court Process

Interaction with ICE can be triggered at each stage of criminal case

Arrest occurs

- MPD at scene
- Fingerprints sent to FBI database and immigration databases

Arraignment in C-10

- Pre-Trial Services collects country of origin info, has cooperated with ICE
- U.S. Marshal complies with ICE detainers and sometimes holds for ICE without detainers

Ordered Held at Arraignment

- DC Jail accepts ICE detainers and notifies ICE of release for anyone with an ICE detainer, despite DC Code 24-211.07

Guilty Finding or Plea

- Presentence Report by CSOSA – they ask about immigration status and country of origin in interview, contact ICE

Probation or Prison

- CSOSA cooperates with ICE
- BOP cooperates with ICE, releases people to ICE who have detainers at the end of their sentence

DC Criminal Court - Policies

- Washington, DC
 - “Sanctuary city”
 - Mayors Order 2011-174
 - DC public safety agencies shall not inquire about a person’s immigration status or contact ICE for purpose of initiating removal proceedings
 - No detention on basis of civil immigration violation
 - No arrests based on administrative warrants of removal in NCIC
 - Requires a policy in place to ensure detainees are not made available for immigration interviews w/o criminal nexus

DC Criminal Court - Policies

- Metropolitan Police Department
 - No arrests based on NCIC hits
 - No reporting to ICE
 - However, anecdotally, some do ask about country of origin
- U.S. Marshals
 - Comply with ICE detainers
 - Hold until ICE comes even w/o detainer
- DC Jail
 - “Do not hold” for ICE; however, notify for every ICE detainer
 - DC Code 24-211.07

DC Detainer Law:

DC Code 24-211.07

- The District of Columbia is authorized to comply with civil detainer requests from ICE by holding inmates for an additional 24-hour period, after they would otherwise be released only if:
 - At least 18 years old
 - Has been convicted of:
 - (i) A dangerous crime as defined in § [23-1331\(3\)](#) or a crime of violence as defined in § [23-1331\(4\)](#), for which he or she is currently in custody;
 - (ii) A dangerous crime as defined in § [23-1331\(3\)](#) or a crime of violence as defined in § [23-1331\(4\)](#) within 10 years of the detainer request, or was released after having served a sentence for such dangerous crime or crime of violence within 5 years of the request, whichever is later; or
 - (iii) A crime in another jurisdiction which if committed in the District of Columbia would qualify as an offense provided, that the conviction occurred within 10 years of the detainer request or the individual was released after having served a sentence for such crime within 5 years of the request, whichever is later;
 - a homicide crime regardless of when convicted.



DC Criminal Court - Policies

- CSOSA
 - Probation/parole agency
 - Policy of reporting suspected noncitizens to ICE
- Pre-Trial Services
 - Collect country of origin and citizenship information at arraignment
 - Share that info with CSOSA
 - Have cooperated with ICE in past for individuals on pre-trial supervision
- U.S. Attorneys Office
 - Sessions memo on prosecuting federal immigration-related crimes



Sessions Memo:

Priorities for Federal Prosecution

- April 11, 2017 memo directs U.S. Attorneys offices to “increase your efforts making the following immigration offenses higher priorities:”
 - 8 USC § 1324: bringing in and harboring aliens
 - 8 USC § 1325: improper entry
 - 8 USC § 1326: illegal reentry
 - 18 USC § 1546: fraud, misuse of visas, etc
 - 18 USC § 111: assaulting, resisting or impeding officers as it relates to officers administrative or criminal immigration duties
 - 18 USC § 1028A: aggravated identity theft



DHS Enforcement “Priorities”

- Anyone who is removable is fair game for enforcement now, pursuant to Executive Order on Interior Enforcement and implementing memorandum.
- However, specific focus on “priorities”:
 - Individuals with pending criminal charges
 - Criminal convictions (including criminal traffic offenses)
 - Those who have “committed acts that constitute a chargeable criminal offense”
 - Engaged in fraud or willful misrepresentation
 - Abused programs related to public benefits
 - Received a final order of deportation but have not actually left the country
 - Otherwise deemed to pose a risk to public or national safety in the judgment of an immigration officer

Agenda

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- Victim Services
 - DC Civil Court actors
 - Legal protections for Victims
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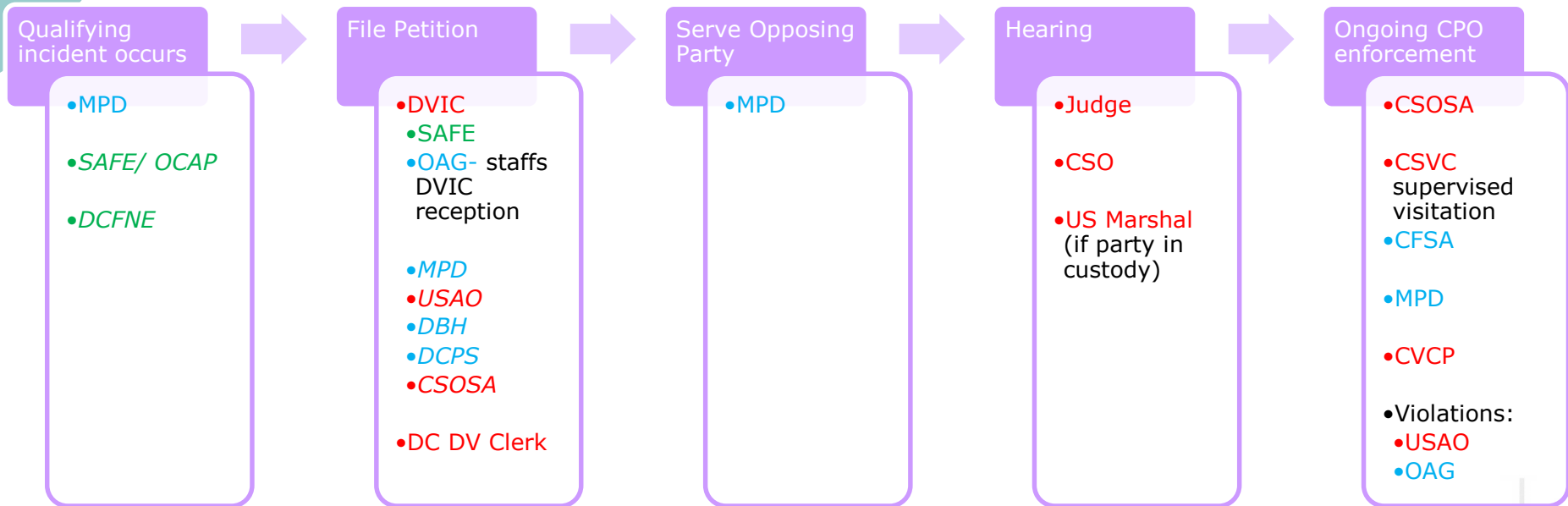
DC Civil Courts

Actors in a CPO process:

Red= Federal

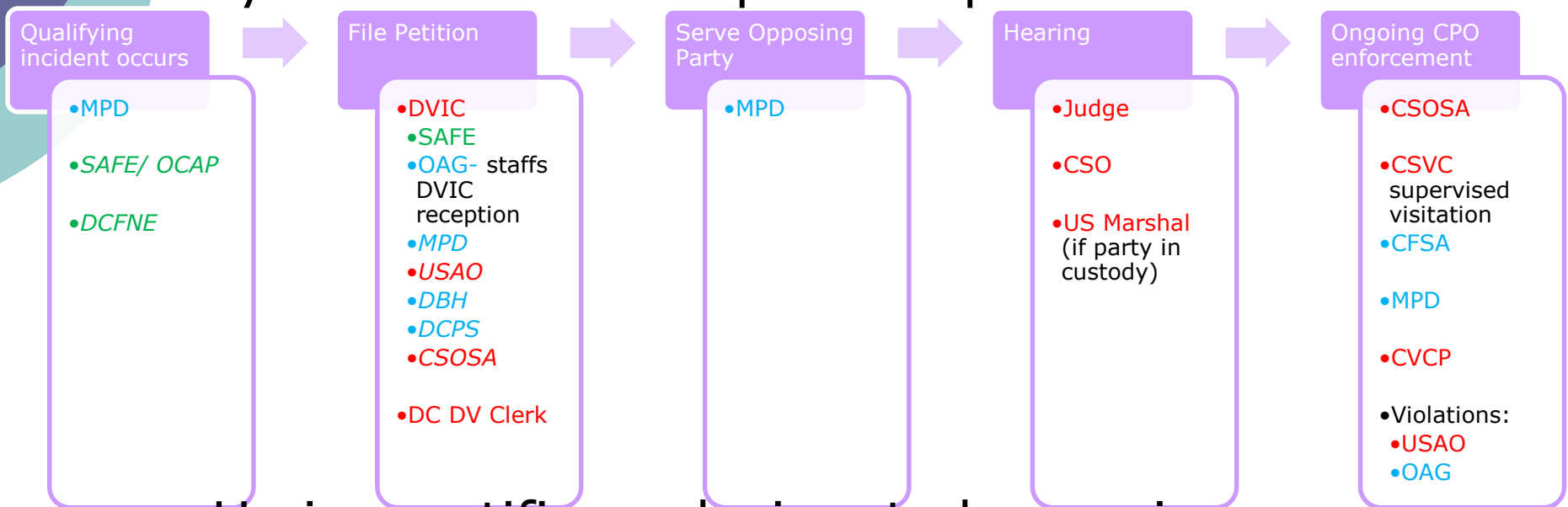
Blue= DC

Green= non-governmental



DC Civil Courts

Opportunities to advocate for immigration status may exist at each step in the process



- U visa certifiers: designated agencies
 - Judges do not need to be designated. 8 CFR 214.14(a)(3)
- Requests for documents during discovery

Protections for Victims

Statutory protections for victims remain in effect:

- VAWA confidentiality: 8 USC § 1367
- Initiation of removal proceedings: 8 USC § 1229



Protections for Victims

8 USC 1367

(a) IN GENERAL

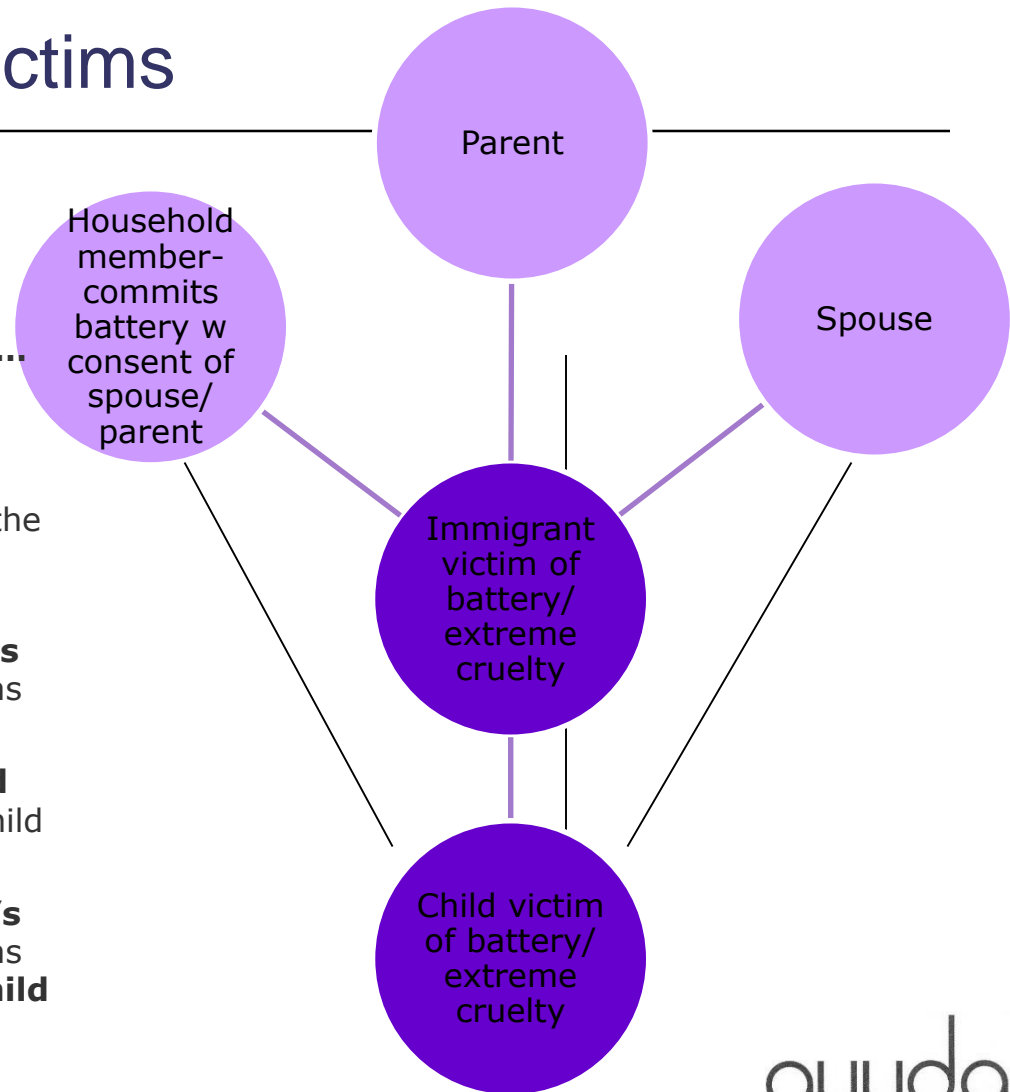
...in no case may the Attorney General, ... make an adverse determination of admissibility or deportability of an alien... using information furnished solely by—

(A) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty,...

(B) a member of the spouse's or parent's family residing in the same household as the alien...

(C) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty...

(D) a member of the spouse's or parent's family residing in the same household as the alien **who has battered the alien's child** or subjected the alien's child to extreme cruelty



Protections for Victims

...in no case may the Attorney General, ... make an adverse determination of admissibility or deportability of an alien... using information furnished solely by—

(E) in the case of an alien *applying for* U visa status... the perpetrator of the substantial physical or mental abuse and the criminal activity,

(F) in the case of an alien *applying for* T visa status ... the trafficker or perpetrator,

“applying for” is broader than simply filing an application

Would include situations where applicant is eligible but is seeking representation, working on application, assisting law enforcement in ongoing cases...



Protections for Victims

Protected application types:

- I-360
- I-914
- I-918
- I-751
- Abused Cuban Adjustment Act applicants (CAA)
- Abused Haitian Refugee Immigration Fairness Act applicants (HRIFA)
- Abused Nicaraguan Adjustment and Central American Relief Act (NACARA)
- VAWA Suspension of Deportation
- VAWA Cancellation of Removal



Protections for Victims

Information protected:

- Address, contact information
- Records not related to abuse
- Existence of application
- Information not yet 'databased'

Limited disclosure exceptions



Protections for Victims

Triggering event:

DHS 'reason to believe' individual is victim of qualifying abuse

To trigger protections:

- Provide letter for client regarding eligibility
- File application asap
- Get case approved

Remember: this is a statutory protection with penalties for violations



Protections for Victims

Protections end only when application denied *and* all opportunities for appeal are exhausted

- Must be denial- not mootness

*** Certain applicants with criminal convictions are NOT protected ***



Protections for Victims

Sensitive Location Enforcement: Community 8 USC 1229(e)

... where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations [below], the Notice to Appear shall include *a statement that [8 USC 1367 has] been complied with*

(A) At

- a domestic violence shelter,
- a rape crisis center,
- supervised visitation center,
- family justice center,
- a victim services, or victim services provider, or
- a community-based organization.

NO NEED to show that person apprehended was victim of abuse, cruelty, or U/T visa eligible applicant



Protections for Victims

Sensitive Location Enforcement: Courts

8 USC 1229(e)

... where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations [below], the Notice to Appear shall include *a statement that [8 USC 1367 has] been complied with**.*

(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) *if...* appearing in..

- a **protection order** case,
- **child custody case**, or
- other **civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking** *in which the alien has been battered or subject to extreme cruelty or forming the basis for a T or U visa application*



Protections for Victims

Sensitive Location Enforcement: Triggering Mechanism

8 USC 1229(e)

... where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations [below], the Notice to Appear shall include ***a statement that [8 USC 1367 has] been complied with**.***

Compliance should be verified when immigrant appears before Immigration Judge in removal proceedings

Goal:

- Prevent filing of immigration charges
- Intercede with DHS pre removal hearing
- Terminate proceedings- require proof of DHS receipt of corroborative evidence prior to DHS action



Protections for Victims

Sensitive Location Enforcement: Who is Protected?

Protections against enforcement actions in listed locations may exist independent of whether immigrant is or will apply for status based on victimization

This is a statutory protection with consequences for statutory violations

- DHS Office of Civil Rights and Civil Liberties
- <https://www.dhs.gov/publication/file-civil-rights-complaint#>



DHS enforcement

DHS Sensitive Places Memo: (2011)

- Schools – daycare through college
 - Includes school related activities
 - Includes school bus stops
- Medical facilities
 - Hospitals, clinics, doctor's offices
- Places of worship
- Religious or civil ceremonies
 - Funerals, weddings
- Public demonstrations
 - march, rally, parade...

Note- does not include courts!



DHS enforcement

DHS Sensitive Places Memo: (2011)

Prohibited actions include:

- Interviews,
- arrests,
- searches,
- immigration related surveillance

DHS may request documents, serve subpoenas, guard detainees, review visa compliance, participate in events...



DHS enforcement

DHS Sensitive Places Memo: (2011)

Enforcement actions may occur at these locations if:

1. Exigent circumstances
2. Results of other law enforcement activities
3. Prior supervisory approval
4. Border related**



DHS enforcement

Victim Witness memo (2011)

- Against policy to initiate removal proceedings against victim or witness to a crime
- Against policy to remove individuals during process to protect rights

Particular attention for:

- victims of domestic violence, human trafficking, or other serious crimes;
- witnesses involved in pending criminal investigations or prosecutions;
- plaintiffs in non-frivolous lawsuits regarding civil rights or liberties violations; and
- individuals engaging in a protected activity related to civil or other rights





Questions?
