



Representing Immigrant Survivors of Domestic Violence: Enhancing Your Case Research

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This project was supported by Grant No. 2017-TA-AX-K061 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

February 26, 2020

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Objectives

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- By participating in this session, you will be better able to:
 - ▣ Assess options for obtaining client records from federal, state, and local agencies and private institutions
 - ▣ Navigate federal and state criminal and civil records databases
 - ▣ Locate clients' criminal and civil legal records

3 Freedom of Information Act Requests



Hypo: Pauline

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- Pauline wants to file a VAWA self-petition. She knows she entered the US three times but is not sure when.
 - ▣ Once, she was detained by CBP but later released. She thinks she was supposed to go to court, but she never went and does not have any of the documents from CBP.
 - ▣ Her abuser frequently threatened to call ICE on her if she reported him to the police. Pauline does not know if he ever followed through on the threat.
 - ▣ Pauline previously filed an I-485 based on her abuser's I-130 petition, but she does not know the status of the case

What is the FOIA?

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- Federal law
- Gives public the right to request any records from federal agencies
 - ▣ Some information subject to exclusion
- Promotes transparency of federal government

- Agency will not create records
- Cannot request information – only records



How Can the FOIA Help My Case?

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- Get client's own records
 - ▣ Uncover missing previous filings
 - ▣ Clarify confusing immigration history
 - ▣ Discover if there was abuser contact with immigration agencies
- Preventive measure to avoid inconsistencies, errors, and allegations of misrepresentation

- Confirm whether USCIS sent notices (RFEs, denial notices)

Where Should I Send the FOIA?

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- USCIS: <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia>
 - ▣ A-file: prior submissions by client; abuser communications regarding client
 - ▣ Electronic records from A file (“keystroke” FOIA)
- ICE: <https://www.ice.gov/foia/request>
 - ▣ Records of ICE interaction with client, including detention records
- CBP: <https://www.cbp.gov/site-policy-notice/foia>
 - ▣ Records of border apprehensions, expedited removals (by name)

Where should I send the FOIA, cont'd

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- EOIR: <https://www.justice.gov/eoir/foia-facts>
 - ▣ IJ orders; filings; recordings of hearings
- OBIM: <https://www.dhs.gov/foia-contact-information>; foia-obim@hq.dhs.gov
 - ▣ Records of border apprehensions, removals (by fingerprints)
- DOS: <https://foia.state.gov/Request/>
 - ▣ Consular records

POLL

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- Which agency would you FOIA if you wanted to know whether she was placed in removal proceedings?
 - USCIS
 - ICE
 - CBP
 - EOIR
 - OBIM

Discussion: How to describe request

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- If you were submitting a FOIA request to EOIR to find out whether Pauline had been placed in proceedings, and if so, the status of those proceedings, what would you request?

- What other records might you want to get from EOIR?

POLL

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- Which agency would you FOIA if you wanted to find out whether Pauline’s abuser had made allegations that she “married him for papers”?
 - USCIS and CBP
 - EOIR
 - ICE
 - USCIS and ICE
 - Other

How Do I Submit a FOIA Request?

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- Electronic submission preferred
 - ▣ Better for record-keeping, may be faster
 - ▣ Depends on agency
 - ▣ G-639 not required, but need client's permission
- Be specific about what records you want:
 - ▣ “Complete A-file”
 - ▣ “Officer’s notes from I-485 interview”
 - ▣ “Recording from all master calendar and individual hearings”

How is the FOIA processed?

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- USCIS Processing time: Varies. Track 1 = a few weeks; Track 2 = 6+ months
 - ▣ Expedited: Track 3
 - Must provide documentation of removal proceedings
- Can modify request after submission to limit search and get results faster

Discussion: Back to Pauline

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- Pauline is also applying for a U visa. You received an RFE for the police report from an arrest Pauline had for trespass in 2004. Pauline requested a copy from the police but they said the record could not be released. The police refused to provide written confirmation of their refusal to provide the record. Pauline wrote an affidavit regarding her effort to obtain the requested document, but USCIS issued a NOID because they “could not conduct a full discretionary analysis” without the report.
- What can you do?



FOIA: Not just for Feds

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- Every state has own version of FOIA
 - ▣ Sometimes called “open records act” and/or “open meetings act”
 - ▣ Purpose is same: promote government transparency
- See <https://www.nfoic.org/> (find your state)
 - ▣ Each state’s statutes
 - ▣ Sample FOIA request letters
 - ▣ Contact info for state’s FOIA hotline (if any)
- Trickiest part: finding where to send request

How does it work?

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- Can request police records, including arrest reports, gang database information, U visa certification policies
- Like federal FOIA requests, may be subject to exclusions
 - ▣ Agency must respond to request by deadline (if any – look at statute)
 - ▣ If no responsive records, will have written confirmation of unavailability. See 8 CFR 103.2(b)(2)(ii).



Background Checks

POLL

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- I have represented a client who initially told me that s/he had never been arrested, charged, or convicted of any crime but who later disclosed that s/he had been arrested, charged, or convicted:
 - ▣ Yes
 - ▣ No

Discussion: Pauline again

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- Pauline told you that her 2004 arrest was her only arrest and that she had never been convicted of any crime. As you are working on her affidavit, however, she mentions “that time in 2009 that she was in jail for a night”.
- What do you do?

Background checks: Where and When?

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- When: Before filing the petition
- Where:
 - ▣ FBI – checks national crime databases, includes immigration-related arrests and removals. May miss state and local records if not in database
 - ▣ State – may not include certain types of cases or cases from certain courts or localities
 - ▣ Local – Generally for larger cities
- Some based on name, others on prints

Screenshare – state criminal records database

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- <https://www.dccourts.gov/superior-court/cases-online>



How to Submit FBI Background Check Request

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- **Electronic request:** <https://www.fbi.gov/services/cjis/identity-history-summary-checks#Electronically-Submit%20a%20Request>
- **Fingerprint form:** <https://www.edo.cjis.gov/artifacts/standard-fingerprint-form-fd-258-1.pdf>
 - ▣ Can get from USPS
- **Cost: \$18, plus fingerprinting**
- **Much faster results if submit electronically**



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Using Records to Document Your Case



Discussion: Finding law enforcement records

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- Pauline also tells you that she was the victim of human trafficking in the US and that law enforcement agents rescued her from the traffickers in 2012 and interviewed her.
- Pauline does not recall in which city the rescue took place or which agency the officers were from.
- What do you do?

Victim Witness Coordinator

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- Each state has Victim Witness Assistance Program (may be under different name)
- Most prosecutors and federal law enforcement agencies also have victim/witness services
- Victim/Witness coordinator may have access to more records or be able to help figure out which agency would have responded (FBI, HSI, state police, local police, sheriff's office, etc)



Crime Victims Compensation Fund

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- Every state has fund for crime victim compensation
- Fund administrator typically has access to law enforcement records, including 911 calls, any reports, court records
 - ▣ May be able to help figure out which law enforcement agency responded or would have been responsible for investigation

Vital Records

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- Each state keeps vital records (births, deaths, marriages, divorces, name changes)
- Electronic availability of records varies by state
- Use records to confirm client's eligibility for benefit
 - ▣ For example, abuser may file for divorce and say he does not know where client is to avoid service/contested suit. Result: client may not know divorce in process or even finalized.

Screenshare – state civil court records

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- <http://casesearch.courts.state.md.us/casesearch/>

Medical Records

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- If client sought medical treatment for injuries, try to get records
- May need to request from multiple institutions – client may not recall which hospital/clinic
 - ▣ Submit HIPAA form to each institution
- Ambulance record may have name of hospital
 - ▣ E.g., <https://www1.nyc.gov/assets/fdny/downloads/pdf/about/public-record-ambulance-call-report.pdf>

Office of Refugee Resettlement

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- ❑ Did client enter as Unaccompanied Child?
- ❑ Records request, not FOIA
- ❑ Cannot get records related to sponsor unless sponsor agrees
- ❑ Record may contain: Medical or mental health information; family history; trauma history; information sent by ORR to DHS
- ❑ <https://www.acf.hhs.gov/orr/resource/requests-for-uac-case-file-information>



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QUESTIONS?

Thank you!

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□ For individual technical assistance:

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