

Immigration Toolkit

About the Immigration Toolkit

Immigrant survivors of domestic violence face many unique challenges in seeking protection from their abusive partners. Unfortunately, these challenges can also follow immigrant survivors into the courtroom. The materials in this Immigration Toolkit are intended to help domestic violence advocates support their immigrant clients in California family, juvenile, and probate courts. Please note that the materials and information in this Immigration Toolkit are not intended to help a client who is facing immigration proceedings, like deportation, or criminal proceedings.

This toolkit includes:

1. **A fact sheet that briefly explains three key California cases that address issues immigrant survivors of domestic abuse may frequently experience.**

This fact sheet can be provided to clients who may be facing immigration-related issues in family, juvenile, or probate court. Your clients can use this fact sheet to advocate for themselves.

2. **A tip sheet explaining California Evidence Code section 351.3, which protects a person's immigration status from being asked about or discussed ("disclosed") during court proceedings.**

This tip sheet can be provided to clients who are concerned about their immigration status (or someone else's) being disclosed during a court proceeding. This tip sheet also discusses how a person can respond if they, or another witness, is asked to talk about their own immigration status, or someone else's immigration status, in court.

3. **A model Memorandum of Points & Authorities (MPA) in Support of a Request to Enforce the I-864 Immigration Form.**

This MPA can be used by an immigrant client in a family law case to enforce the financial support obligations of the I-864 immigration form. Your clients can use this form to advocate for themselves by completing the highlighted portions and tailoring the information to their specific case.

How do I get more assistance? Contact FVAP at info@fvaplaw.org or (510) 858-7358 for questions.

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Key California Cases for Immigrant Survivors of Domestic Abuse

This fact sheet briefly explains three key California cases that address issues immigrant survivors of domestic abuse may frequently experience. Please note there may be other cases that may be helpful to immigrant survivors. FVAP also has a [Case-Annotated Compendium of California Domestic Violence Laws](#) which includes many of the most important civil (non-criminal) cases relating to domestic abuse.

Enforcing the I-864 Immigration Form in Family Court

- *In re Marriage of Kumar* (2017) 13 Cal.App.5th 1072 may help an immigrant survivor of domestic abuse obtain financial support owed to the survivor through an I-864 Affidavit of Support (“I-864”).
- An I-864 is required for family-based immigration petitions. By signing the I-864 form, the sponsor agrees to financially support the sponsored immigrant at 125% of the federal poverty level or above until one of the conditions that completes the I-864 support requirements is met, for example, the sponsored immigrant becomes a U.S. citizen.
- If the sponsor does not pay this amount, the sponsored immigrant may sue the sponsor to pay. The sponsored immigrant can request that the family court order the sponsor to pay as part of a domestic violence or divorce case.
- The sponsored immigrant does not have a duty to seek full time work, which the case explains as “mitigating damages.”
- Read about this case and how it could help immigrant survivors enforce the I-864 in FVAP’s [case alert](#).

Child Custody

- *S.Y. v. Superior Court* (2018) 29 Cal.App.5th 324 states that a court cannot consider whether a parent speaks English or how well they speak English when making a determination of custody or when overcoming the presumption against awarding an abuser custody under Family Code section 3044.
- Trial courts cannot consider race, religious belief, sexual orientation, single-parent status, economic position, and now, English language fluency, in considering a child’s best interest when making a custody determination.
- Read about this case and practice tips on how this case can help immigrant survivors in FVAP’s [case alert](#).

Seeking Special Immigrant Juvenile Status (“SIJS”) Findings in Family Court

- *Bianka M. v. Superior Court of Los Angeles County* (2018) 5 Cal.5th 1004 may help undocumented children obtain SIJS findings in family court.
- Undocumented children who have been neglected, abused, or abandoned by a parent may be able to obtain lawful permanent residency status through SIJS.
- Generally, before applying for SIJS at the United States Citizenship and Immigration Services, a juvenile, family, or probate court must first find the following: 1) the child is a juvenile dependent or a court has made a custody or guardianship order about the child; 2) reunification with one or both parents is not an option due to abuse, neglect or abandonment; and 3) it is not in the child’s best interest to return to their home country. These are called “SIJS findings.”
- A court may not refuse to make these three findings based on the court’s belief that the child’s primary motivation in filing the action is to obtain immigration relief.
- If an absent parent has received adequate notice of the request for SIJS findings, then the child does not need to legally join (or include) that parent in the family law proceeding before the court can make SIJS findings.
- Read this case [here](#).

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Can Evidence of Immigration Status Be Introduced in Family Court?

Generally, California law does not allow someone to ask about a person's immigration status during court proceedings. This fact sheet explains this law and how a person can respond if a witness is asked to talk about ("disclose") their own or someone else's immigration status in court.

Evidence Code § 351.3

- California has a law, Evidence Code § 351.3, that protects a person's immigration status from being asked about or discussed ("disclosed") during court proceedings.
- There are two exceptions to this lawⁱ:
 - Where evidence of immigration status is necessary to prove a part of their case;
 - Where a person voluntarily discloses their own immigration status to the court.
- If a person believes someone else's immigration status is necessary to prove part of their case, they cannot just talk about that person's immigration status in court. First, they have to ask the judge to hold a special hearing to decide whether the information can be revealed.ⁱⁱ This hearing is an "in camera hearing," which means it takes place in private with only the parties and their attorneys.ⁱⁱⁱ Only if the Judge orders that someone's immigration status can be asked about and disclosed can it be discussed in court.
- The purpose of this code section was to help all people in California feel more secure accessing the legal system, regardless of their immigration status.^{iv}

What if the Other Party Attempts to Disclose a Person's Immigration Status During Court Proceedings?

- If you believe that evidence of immigration status will be, or has been, improperly disclosed during court proceedings, you may challenge it by making an "objection" or by asking the court to "strike" the statement regarding immigration status. This is known as a "motion to strike." Objections and motions to strike are ways to challenge the admission of evidence. All objections and motions to strike the evidence must be made at the time when the opposing party discloses or tries to disclose a person's immigration status.^v
- Objections and motions to strike may be raised in the following ways to challenge the disclosure of immigration status evidence during court proceedings. The following scenarios are not the only ways to challenge disclosure of immigration status evidence during court proceedings, but are included here to provide you with examples:
 - **Scenario 1:**
 - Opposing party's attorney asks a party or witness a question that will disclose a person's immigration status.
 - As soon as the question is asked and before the party or witness answers, object to the question as irrelevant.
 - **Example:** "Objection, relevance. Counsel has not requested disclosure of immigration status in an in camera hearing to determine admissibility, per Evidence Code § 351.3."

○ **Scenario 2:**

- Opposing party's attorney asks a party or witness a question that will disclose a person's immigration status.
- As soon as the question is asked, and before there is enough time to make an objection, the party or witness answers the question and discloses a person's immigration status in court.
- Move to strike the answer.
- **Example:** "Move to strike the statement about immigration status based on Evidence Code § 351.3."

○ **Scenario 3:**

- Opposing party's attorney asks a question that will disclose a person's immigration status.
- As soon as the question is asked, you make a proper objection; but before the court rules on your objection, the party or witness answers the question and discloses a person's immigration status in court.
- Move to strike the answer.
- **Example:** "Move to strike the statement about immigration status based on Evidence Code § 351.3."

Challenging evidence that the court is not allowed to consider, like in the examples above, is important. If you do not object, the judge may consider the information, even though they should not. Objections are also important if you want challenge a trial court's decision by filing an appeal. Generally speaking, an appeal court can only review a mistake made by the trial court if the mistake was brought to the attention of the trial court. For that reason, it is important that you "object" or request a "motion to strike" when a question about someone's immigration status is asked at a hearing.

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ⁱ Evid. Code § 351.3, subd. (b) does not: (1) apply to cases where a person's immigration status is needed to prove an element of a claim in a lawsuit or an affirmative defense; (2) affect the laws that apply to the relevance of a person's immigration status for purposes of determining wrongdoing, or the standards for requests about a person's immigration status in discovery or other proceedings in a civil action; or (3) stop a person or their lawyer from voluntarily revealing their immigration status to the court. Evid. Code § 351.3, subd. (b); see also Civil Code section 3339; Gov't. Code section 7285; Health & Safety Code section 24000; and Lab. Code section 1171.5.

ⁱ Evid. Code, § 351.3, subd. (a).

ⁱⁱ Evid. Code, § 351.3, subd. (a).

ⁱⁱⁱ *Id.*

^{iv} Assem. Com. on Judiciary, com. on Sen. Bill No. 785 (2017-2018 Regular Session, Urgency Statute) April 17, 2018.

^v See Evid. Code, § 353.

Model Memorandum of Points & Authorities in Support of a Request to Enforce the I-864 Immigration Form

Instruction Sheet

About the I-864 Immigration Form

- An I-864 is required for family-based immigration petitions. By signing the I-864 form, the sponsor agrees to financially support the sponsored immigrant at at least 125% of the federal poverty level until one of the “terminating conditions” is met, for example, the sponsored immigrant becomes a U.S. citizen.
- If the sponsor does not provide this amount of financial support, the sponsored immigrant may sue the sponsor to pay. The sponsored immigrant can also ask a family court to enforce this obligation.
- Unlike with a request for spousal support, a sponsored immigrant does not have a duty to seek full time work in order to get support owed because of an I-864 agreement.

This model Memorandum of Points & Authorities (MPA) can be used by an immigrant in a family law case to enforce the financial support obligations of the I-864 immigration form.

To use this MPA, fill in the information highlighted in yellow to tailor it to the individual case. As explained in the model, the MPA will need to be accompanied by a declaration that is filed along with the MPA. The party making the request to enforce the I-864 claim should make sure that what it says actually applies to their situation, and should make changes where necessary. Once the information has been filled in and a declaration has been prepared with accompanying exhibits attached to the declaration, serve and file the MPA and the declaration with any attached exhibits.

For additional tips on enforcement of the I-864, please see FVAP’s [case alert](#) about *Kumar v. Kumar*, a California case about enforcing an I-864 in family court.

How do I get more assistance? Contact FVAP at info@fvaplaw.org or (510) 858-7358 for questions.

1 [YOUR NAME]
[Street Address]
2 [City, State, Zip]
Phone Number (with area code): [XXX-XXX-XXXX]
3 Fax Number: [if available]
Email: [if available]
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5
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF [NAME OF COUNTY]**
10

11 [NAME OF PETITIONER]

12 Petitioner,

13 v.

14 [NAME OF RESPONDENT],

15 Respondent.
16
17
18
19

) Case No.: [insert case number]
)
)

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **[PETITIONER/RESPONDENT'S]**
) **REQUEST TO ENFORCE THE I-864 AS A**
) **BREACH OF CONTRACT CLAIM**
)
)

) **DATE:** [date of hearing]
) **TIME:** [time of hearing]
) **DEPT:** [department number]
)
)

) Judge: [name of hearing judge]
) Dept.: [department number]
) Action Filed: [date]
) Trial Date: [date or unassigned]

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21 **I. Introduction**

22 [PETITIONER'S / RESPONDENT'S] request to enforce [PETITIONER'S /
23 RESPONDENT'S] financial support obligations as a breach of contract claim arises out of
24 [PETITIONER'S / RESPONDENT'S] promise to financially support the [PETITIONER /
25 RESPONDENT] as set forth in the Affidavit of Support ("I-864"). The I-864, which is required
26 under federal law for all family-based immigration petitions, is a contract between the sponsor and
27 the United States, wherein the sponsor agrees to financially support the sponsored immigrant until a
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1 terminating condition is met. (See 8 C.F.R. § 213a.2, subd. (d).) Given that none of the terminating
2 conditions under the Immigration and Nationality Act have been satisfied, [PETITIONER /
3 RESPONDENT] is in breach of their contractual obligations under the I-864. As the sponsored
4 immigrant, [PETITIONER / RESPONDENT] has standing to assert this claim and enforce
5 [PETITIONER'S / RESPONDENT'S] support obligations as a breach of contract claim in family
6 court. (See *In re Marriage of Kumar* (2017) 13 Cal.App.5th 1072, 1082-1084.) Furthermore,
7 [PETITIONER / RESPONDENT] has no duty to mitigate these damages. (*Id.* at pp. 1084-1085.)
8 Accordingly, [PETITIONER / RESPONDENT] respectfully requests that this Court enforce
9 [PETITIONER'S / RESPONDENT'S] support obligations set forth in the I-864.

10 II. Factual Background

11 [A sworn declaration of relevant facts should be submitted along with the
12 memorandum. Other evidence (for example, a copy of the I-864 or the federal poverty
13 guidelines) should be attached to the declaration as exhibits. Each fact asserted in this
14 memorandum should have an accompanying citation to the declaration. The following is an
15 example of how facts in the declaration can be referenced.] [PETITIONER / RESPONDENT]
16 married on [DATE]. (See Decl. of [] paragraph (para.) [].) [PETITIONER / RESPONDENT]
17 submitted a family based immigration petition to bring [PETITIONER / RESPONDENT] to the
18 United States on [DATE]. (See Decl. of [] para. [].) As part of the immigration petition,
19 [PETITIONER / RESPONDENT] executed a valid I-864, agreeing that [s/he/they] can and will
20 financially support [PETITIONER / RESPONDENT] at an annual income no less than 125% of the
21 federal poverty level until a terminating condition is met. (See Decl. of [] para. [], Exh. [].)

22 On [DATE], [PETITIONER/RESPONDENT] filed for dissolution of marriage/requested a
23 restraining order. Since [before] the filing of this action [PETITIONER/RESPONDENT] has failed
24 to financially support [PETITIONER/RESPONDENT] at an annual income that is at least 125% of
25 the federal poverty level. (See Decl. of [] para. [], Exh. [].)

26 III. Argument

27 a. Sponsor's Support Obligations Under the I-864 Have Not Been Terminated

1 A United States citizen may petition to bring their non-citizen spouse to the United States
2 through family-based immigration. As part of the immigration petition, the petitioner/sponsor must
3 submit an I-864, promising that they can and will financially support their sponsored family
4 member. (See generally 8 USCA § 1183a.) Specifically, “the sponsor agrees to provide support to
5 maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal
6 poverty line during the period in which the affidavit is enforceable.” (See 8 U.S.C. § 1183a, subd.
7 (a)(1)(A).) The purpose of the I-864 is to ensure that the petitioned immigrant does not become a
8 public charge of the United States upon immigrating. (See 8. U.S.C. § 213a.2, subd. (a).)

9 A sponsor’s support obligations under the I-864 do not terminate unless the sponsored
10 immigrant either:

- 11 (a) becomes a United States citizen,
- 12 (b) has worked or can be credited with working 40 qualifying quarters (approximately 10
13 years) under social security laws,
- 14 (c) abandons their lawful status or permanent residency and departs the United States,
- 15 (d) obtains a new grant of adjustment of status in removal proceedings, or
- 16 (e) dies.

17 (See 8 C.F.R. § 213a.2, subds. (e)(2)(i)(A)-(E).)

18 As plainly set forth above, dissolution of marriage is not a condition that terminates a sponsor’s
19 obligations under the I-864. (See also *In re Marriage of Kumar*, *supra*, 13 Cal.App.5th at p. 1079.)

20 **[Include relevant facts here from the sworn declaration about how the sponsor’s**
21 **support obligation under the I-864 has not been terminated because none of the terminating**
22 **conditions has been met. Each fact asserted in this memorandum should have an**
23 **accompanying citation to the declaration and exhibit, if any. The following is an example of**
24 **how facts in the declaration can be referenced.]** Here, [PETITIONER / RESPONDENT]
25 executed a valid I-864 in their immigration petition to bring [PETITIONER / RESPONDENT] to
26 the United States on [DATE]. (See Decl. of [REDACTED], Exh. [REDACTED].) As such, [PETITIONER /
27 RESPONDENT] has agreed to financially support [PETITIONER / RESPONDENT] at an annual
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1 income that is at least 125% of the federal poverty level for as long as the affidavit is enforceable.
2 Because a dissolution of marriage does not terminate a sponsor's obligations under the I-864 and no
3 terminating condition has been met in this case, [PETITIONER / RESPONDENT] remains
4 obligated to financially support the [PETITIONER / RESPONDENT] under the I-864.

5 b. The I-864 is a Contract that is Enforceable in Family Court

6 The I-864 is a valid contract that is enforceable in family court. (See *In re Marriage of*
7 *Kumar, supra*, 13 Cal.App.5th at p. 1082-1084.) In *Kumar*, a sponsored immigrant wife sought to
8 enforce her sponsor-husband's obligations under the I-864 in family court. (*Id.* at pp. 1076-77.) The
9 trial court had declined to enforce the I-864, finding that the sponsored immigrant wife lacked
10 standing to enforce the contract in state court. (*Id.* at p. 1078.) The appellate court reversed and
11 concluded that an I-864 is an enforceable contract, and a sponsored immigrant has standing to bring
12 an action to enforce the contract in state court. (*Id.* at p. 1083.)

13 Indeed, under federal immigration law, an I-864 must be "legally enforceable against the
14 sponsor by the sponsored alien, the Federal Government, any State... or by any other entity that
15 provides any means-tested public benefit..." (8 U.S.C. § 1183a, subd. (a)(1)(B).) Furthermore, by
16 executing the I-864, "the sponsor agrees to submit to the jurisdiction of any Federal or State
17 court...." (8 U.S.C. § 1183a, subd. (a)(1)(C).) As such, state courts have jurisdiction over breach of
18 contract claims to enforce the I-864. This includes family courts. As the *Kumar* court held, family
19 courts have jurisdiction to hear breach of contract claims to enforce support obligations under the I-
20 864 because family courts are not courts of special jurisdiction, but rather, courts of general
21 jurisdiction. (*In re Marriage of Kumar, supra*, 13 Cal.App.5th at pp. 1082-1083.)

22 **[Include facts here from the sworn declaration about how the sponsor has breached**
23 **their support obligations under the I-864. Each fact asserted in this memorandum should**
24 **have an accompanying citation to the declaration and exhibit, if any. The following is an**
25 **example of how facts in the declaration can be referenced. Please note the federal poverty**
26 **guideline may change. The current federal poverty guideline can be found on this [webpage](#).]**

27 Here, although [PETITIONER / RESPONDENT] executed a valid I-864 on [DATE] agreeing to
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1 support [PETITIONER / RESPONDENT] at an annual income no less than 125% of the federal
2 poverty level, [PETITIONER / RESPONDENT] has not paid this amount to [PETITIONER/
3 RESPONDENT]. (See Decl. of ____¶__, Exh. __.) The current federal poverty guideline for a one-
4 person household is \$[Insert number from <https://aspe.hhs.gov/poverty-guidelines>, for example,
5 2019, it was 12,490 per year]. (See Decl. of ____¶__, Exh. __.) 125% of this guideline is \$[Calculate
6 the amount and then insert here, for example, in 2019 it was 15,612.50 per year]. Thus, at
7 minimum, [PETITIONER / RESPONDENT] is obligated to support [PETITIONER /
8 RESPONDENT] with this amount per year until one of the terminating conditions has been met.
9 Furthermore, [PETITIONER'S / RESPONDENT'S] annual income is [\$\$\$], which is below this
10 guideline. (See Decl. of ____¶__, Exh. __.) Therefore, [PETITIONER / RESPONDENT] is in breach
11 of [his/her/their] obligations and [PETITIONER / RESPONDENT] has standing to enforce this
12 claim. Accordingly, this Court should enforce [PETITIONER'S / RESPONDENT'S] support
13 obligations under the I-864.

14 c. Sponsored Immigrant Does Not Have a Duty to Mitigate

15 A sponsored immigrant seeking enforcement of the I-864 does not have a duty to mitigate
16 damages by seeking employment. (See *In re Marriage of Kumar*, *supra*, 13 Cal.App.5th at p. 1085.)
17 The court in *Kumar* determined that it was error for the trial court to deny enforcement of the I-864
18 on grounds that the sponsored immigrant spouse failed to mitigate damages by not seeking
19 employment. (*Id.* at pp. 1084-85.) First, the sponsored immigrant's failure to seek work or
20 otherwise mitigate their damages is not an enumerated condition that excuses a sponsor's obligation
21 under the I-864. (*Id.* at p. 1084.) Second, absence of a duty to mitigate supports the statutory
22 purpose of the I-864 by encouraging sponsors to be more cautious about sponsoring an immigrant.
23 (*Ibid.*) Third, a sponsored immigrant already has a strong incentive to seek work even without the
24 duty to mitigate damages because financial support promised under the I-864 is insubstantial. (See
25 *Ibid.*) For these reasons, the court in *Kumar* concluded that a sponsored immigrant has no
26 affirmative duty to mitigate damages. (See *id.*) Accordingly, [PETITIONER / RESPONDENT]
27 does not have a duty to mitigate damages by seeking employment.

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IV. Conclusion

For the reasons set forth above, [PETITIONER/RESPONDENT] respectfully requests that this Court enforce the I-864.

DATED:

[Your signature]
[YOUR NAME]
In Pro Per