Transnational Marriage Abandonments: Systems Solutions
March, 2023

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Kelsey | End Abuse: Hi, everyone! We just started the recording.
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Some people are still filtering in, but, Janan, whenever you're ready, I think we can go ahead and begin.
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00:00:26,404 --> 00:00:31,299
Janan Najeeb, Milwaukee Muslim Women's Coalition: Sounds great. Thank you very much.
Good afternoon, everyone.
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Thank you very much for joining us today on behalf of the Milwaukee Muslim Women's
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Coalition and End Domestic Abuse Wisconsin.
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We welcome you to this afternoon's discussion on Transnational Marriage Abandonment System Solutions.
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My name again is Janan Najeeb. I'm President of the Milwaukee Muslim Woman's Coalition,
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and for those of you who don't know us, we have been around for almost 3 decades.
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We're well known throughout Wisconsin for our educational programs and trainings,
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our culturally informed classes for teachers, educators, elected officials, healthcare workers, etc.
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We run a resource library and cultural center. We publish the Wisconsin Muslim Journal,
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a free online publication. We host the Milwaukee Muslim Film Festival,
which is under the umbrella of Milwaukee Film. We have many programs for women, children, and youth specifically, and 4 years ago we became the newest, culturally specific Domestic Violence and Family Strengthening program here in the State, serving mainly immigrants, refugees, and their children. But really anyone who seeks help. Our special expertise, of course, is within the Muslim community.

I'm also very pleased to introduce to you Basema Yasin, who is a Coordinator and Advocate with Our Peaceful Home, which is the Domestic Violence Project under the Milwaukee Muslim Women's Coalition.

I'm also very pleased to introduce Kelsey Mullins. She is the staff attorney for underserved populations with End Domestic Abuse Wisconsin, and we have been working very closely together for quite a while now on transnational marriage abandonment, and maybe we can also get into the chat the link.
There was an extensive article in yesterday's main newspaper here in Wisconsin, the Milwaukee Journal Sentinel about this project that we happen to be working on. Before we begin, I think it's just very important for us to note that transnational marriage abandonment has actually been happening for many decades. It's not a new issue. However, very few have really been able to give it a name, and it definitely has not been something on the radar of the legal system. And so, we are really working on and building on the work done by other organizations. We will highlight some of the organizations that have worked on this. I think it's very important to note that this practice is not specific to any religious or ethnic group. Rather, it's based on immigration status, and, as we know, abusers will use whatever tools they have at their disposal. And so, this is a situation where the immigration status of a survivor is used against her.
I will be back later on in the presentation, but I'd like to turn it over right now to Kelsey. Thank you.

Thank you so much, Janan. Hi, everyone. I'm Kelsey, she/her/hers, and I'm staff attorney for underserved populations at End Abuse.

Before we really launch into our content today, I do have a few reminders for us. First, please feel welcome to introduce yourself in the chat, and then please remain muted unless you're speaking during the discussion portion of our event.

Likewise, please do save your questions and comments for that discussion period. The informational content of today's event is being [unintelligible] can share this content with others. However, the discussion portion at the end will not be recorded. So, you'll be able to share without worry about your comments or questions being recorded.

Finally, we are applying for CLE and Judicial Education Credit. Please update your name to the first and last name that you use to register, so that we can review attendees as necessary for those purposes.

Now, today is our first system solutions outreach event, and our goal is to seek
your feedback, your input, and your suggestions to address transnational marriage abandonment.

We will be using what we learn in today's discussion to further education for legal and policy decision makers, to guide conversations with judges and legislators,

and to inform our policy and judicial goals to support these survivors.

Today we have 4 topics from our presenters. First, we'll do a brief overview of transnational marriage abandonment to provide us all with a common definition of this type of abuse. Second, we'll hear about some case examples to better illustrate and understand transnational marriage abandonment and we'll hear some examples of these survivors experiences in court.

Third, we'll cover legal issues, strategies and gaps that transnational marriage abandonment survivors experience. Fourth, we'll learn about civil versus religious marriages, and how this may impact cases here in Wisconsin, and the fifth item on our agenda is a discussion space where we want to gain your insights on issues, best practices, and solutions for the systems-based legal issues that transnational marriage abandonment survivors encounter.
So with that, let’s go ahead and dive in.

The first thing that I want to do today is provide a working definition of transnational marriage abandonment. There's very little legal research on this issue, likely because it's so hidden.

It's also hard to find academic research on the issue, because different terms are used to describe it.

Despite that there's a lot of advocacy for these survivors from agencies nationally and globally, and I want to give credit to those agencies for their work identifying this issue and developing information that has been so helpful to our understanding of it.

Definitions of transnational marriage abandonment can be gleaned from among advocates, who defined abuse of international marriage, a related form of abuse.

And there's also been advocacy and defining of this issue in the Muslim community, in particular, from the Peaceful Families Project, and additionally, advocates in the United Kingdom, in particular, the Southall Black Sisters are pioneering this issue, and have been using the term "Transnational Marriage Abandonment" since 2015.
Defining "Transnational Marriage Abandonment" is really the first step to ensuring that we're able to consistently identify this form of abuse and empower survivors.

Our working definition of TMA is blended from the definitions that other organizations have created. We can define TMA as a type of abuse where an abuser abandons their spouse in that spouse's country of origin, or another country outside of the US without means to return to the US.

You'll see some citations on this slide that can provide you with some additional context.

Next, though, I will provide you with a more specific definition from an advocacy organization. The Peaceful Family Project's Guide called "Islamic Marriage Contracts a Resource Guide for Legal Professionals, Advocates, Imams, and Communities" provides a definition of what they term "Abandonment Divorce."

An Abandonment Divorce consists of four different subtypes, and the two that are most relevant to the types of transnational marriage abandonment we've observed here in Wisconsin are on this slide.
C) A couple residing in the US travels to their country of origin, the man returns to the US leaving his wife behind, often without proper documentation.

The husband files for divorce, and the wife often does not contest due to lack of information or misinformation provided by the husband. Due to the lack of information and proper legal representation the wife may lose her right to alimony, child support, and equitable distribution of marital assets.

And, yet another example. D) A husband leaves his wife in the US to return to his country of origin (or the country in which their marriage was originally registered) and files for divorce in his wife's absence.

The source also says that this is sometimes referred to as the "Marry and Dump Practice," which is a subtype of abuse of international marriage. Again, that's a type of abuse on which the Hmong community has provided immense advocacy and scholarship.

In the examples that we've seen here in Wisconsin, we notice a combination of types C and D, where the husband abandons the survivor spouse in that survivor's country of origin, and the husband may also obtain a divorce in the country where the marriage occurred.
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without the wife’s knowledge and without providing her with any notice or opportunity to advocate for herself.

So with these definitions in mind, I will go ahead and turn it over to here some case examples.

Basema Yasin: Now, good afternoon everyone. For those that joined late, my name is Basema Yasin, coordinator of Our Peaceful Home, and thank you again for joining us.

Let me begin by saying that transnational marriage abandonment, as Janan stated, is not a new issue. It has sadly been around for a long time, and again it’s not limited to any one religion, culture, educational or economic background. When Our Peaceful Home opened its doors almost 4 years ago, we began seeing TMA cases right away, but had not put a name to it.

Just as it was with our first case that we want to highlight, which is Noor.

I would like to remind everyone that the names have been changed for confidentiality.

Also, I would like to state that each one of these cases were very complicated, but for the sake of brevity, we are just summarizing the important facts. But if you have any particular questions, we can discuss those after the presentation, especially given the fact that...
some of the attorneys that were involved in some of these cases are here with us today,

and I would like to take this time and thank them all publicly for all their outstanding work. You know who you are.

Case #1 is Noor. Noor's family contacted the local mosque looking for information about their daughter, whom they have not heard from for almost a year. The mosque contacted us, and we were able to finally locate Noor. Noor was married overseas to a US Citizen, and then came to the US and gave birth to 2 US born children. Nora's husband had at first applied for Noor to become a lawful permanent applied resident, but as tensions grew in the marriage and abuse became more severe, the husband intentionally missed the interview that is required. Noor's case is typical of DV relationships where the abuser has most of the power and likes to control his victim. He never allowed Noor to have any friends, forbade her from communicating with her family, she was not allowed to drive, learn English, or basically acquire any skills that would make her more independent. Or, I should say, would make her less dependent on him, and that is the case in all the cases that we will highlight.
When we were able to finally visit Noor, we were shocked at her living conditions.

She was living in an empty apartment with her 2 children and only a mattress on the floor and a television set.

There was little food in the kitchen, and Noor was desperate for someone to help her.

Her situation frankly resembled more that of a trafficking victim.

During our first intake session with Noor, she told us that her husband intentionally kept the apartment empty, and barely came to visit her just providing as little food as possible for the children in an attempt to force her to go back home. She said that he had tried many times to force her to go to the airport with him by beating her repeatedly, but that she still would refuse, knowing that his intentions were to take her back home and abandon her there in order to just basically become his mother’s caretaker. OPH was able to finally help Noor escape the situation by providing transitional housing, getting a restraining order, and filing for divorce.

As far as her immigration status, Noor stayed in a strange limbo type state because her temporary residence card had expired. We did go ahead and apply for a VAWA
application for Noor. Her divorce was finally over after a year,

and she currently does have full custody and placement of her children.

Our second case: Shaheda. Here Shahida's family reached out to us through Facebook Messenger,

and just like Noor, they were extremely worried about her because they had not communicated

with her for a few months, and the last time they did talk to her she was very ill,

and they were simply afraid, quite frankly, that she was dead.

Shaheda married a US citizen overseas, came to the US, and eventually gave birth to two US-born children.

Unlike Noor, however, Shaheda did become a US citizen.

Shortly after Shaheda gave birth to her second child, tensions in the marriage grew,

and the husband began talking about going on a family trip to see his family.

Shaheda, right away, had an extremely bad feeling about this, but nonetheless acquiesced to the trip.

Shortly after arriving to this war-torn nation, the husband takes the older child to a quote

unquote birthday party, leaving Shaheda and the baby behind. To make a long story short,
Shaheda then learns that her husband and child are back in the US, and she could not find her or her child's documents. No IDs, passport, airline tickets, nothing.

It takes Shaheda over 6 years to get her and the baby's US passports back, and a few more years to save enough money to buy 2 tickets to the US.

The time span of this return did become an issue in the US Courts, and we can talk a little bit more about that in the discussion section. But, I just want everyone to know that in some nations, it is not easy to get a hold of a US Embassy/US Consulate, so it did take a very long time for Shaheda to get any kind of documentations to prove who she was in the first place and her child, and then ultimately seek help from somebody that helped her contact a US Embassy and get her passport back, and then save enough money to even buy a ticket to come to the US. which can add up to thousands of dollars.

After Shaheda finally returned to her original home in the US where her husband and all their child still resided, to the surprise of no one, violence quickly ensued, and the police were called several times to that home. When Our Peaceful Home was finally able to make contact with Shaheda,
she was basically trapped in her own home with cameras everywhere.

We were able to assist Shaheda just like Noor in getting out of the home, and we assisted in filing a restraining order. It was during the restraining order case that we all learned that there was a divorce decree from overseas. She was served for the first time ever with that divorce decree during the restraining order hearing. This case is still ongoing.

And, the purpose of the foreign divorce decree, as you will hear later on, is basically for the husband to have to avoid paying maintenance and any property divisions that would be her right in a US Family Court.

I will note that we have three more cases to highlight, but I promise I will be a bit quicker since you will already notice similar patterns emerging.

Randa was referred to us by her primary care physician. Her case is actually very similar to Shaheda's.

She married a US citizen overseas, came to US, had children, stayed together for a reasonably long time, over 4 years, problems in the marriage increased the relationship became abusive, and then, in an attempt quote unquote to save the marriage, they took a family vacation overseas.
Again, just like Shaheda, the husband takes all the children back to the US and abandoned Randa in that country with no legal documents, no ID, no passport, airline tickets, same situation. Nothing.

Now unlike Shaheda, luckily Rhonda was able to get her US passport back in just a few months, and acquired a ticket to buy a ticket to come back to Wisconsin.

When Rhonda attempted to enter her own family residence, the husband called the police and presented them with a foreign divorce decree claiming that they are already divorced, and she and this was no longer her home to enter.

So, he kept the children away from her, and the police basically told Randa to take the matter to family court that this was not in their jurisdiction. This case, again, is still pending.

Okay, our last 2 cases 4 and 5. These 2 cases are a bit different in that the victims are still currently trapped overseas.

Halima reached out to OPH through Facebook Messenger in a desperate attempt to reach her child, whom she had not seen or heard from for a few months.
Halima had come to the US Under a Visitor’s VISA, met her husband, and get married in the US.

She gave birth to a US-born child, and after a few violent episodes where the police were called, both Halima and her husband agreed that it was best for her and the child to return to live with her family overseas.

Once again, you have to remember that all of these ladies did not have any family here in the US.

So, Halima agreed to return to live with her family. Halima and the child lived together for over 4 years, and the husband and father of the child would visit regularly.

And again, as we heard in the previous cases, Halima was persuaded to take a family vacation to a third nation in order for the paternal grandmother to see the child. That was the excuse.

After less than a week in this third nation, Halima awoke in the hotel room all alone. Everyone was gone including her child and all of Halima’s belongings.

Again, no passport, no tickets, no documents, nothing.

It's noteworthy to state that Halima strongly believes that she was drugged.

Halima quickly notified the local authorities, but was told that if the child left with her biological
father then there was no crime committed.

This is when Halima finally realized that coming to this particular nation was the plan all along, since the father could never have left her country with the child, because her nation required the authorization of both parents for any child to leave the country.

Halima quickly tried to seek help from the US Embassy wanting to return to the US as quickly as she can to follow her child, but was shocked to learn that there was a 10-year block on her VISA for having overstayed her original Visitor’s VISA. Meaning when Halima got married in the US, her husband had never applied for her residential status. And again, this case is pending.

Our final case Huda. Huda contacted us again through Facebook messenger, and now communicate solely through WhatsApp.

Let me just point out as many of you have already noticed, how the advent of social apps have facilitated communications for TMA victims, and this is what I believe can make a huge difference moving forward and educating the victims, and also exposing this issue to a global audience.
Huda had been a US citizen and resident of Wisconsin for over 4 years.

Once again, Huda's husband convinced her to go overseas with the kids and help take care of his ailing mother for just a few months.

While overseas, Huda realized she was pregnant and wanted to return to the US to have her child. Her husband took all her children's passport and returned to the US by himself, and sold the family home, forcing Huda to give birth to the child, and severing basically all contacts with her home here in the US.

Huda's husband then refuse to register the baby with the US Embassy, and, as many of you know, the US Embassy does require both parents to be present when registering a newborn or renewing US passport.

So, this was clearly an attempt to keep Huda trapped overseas, since no mother would ever leave without her children especially a newborn.

OPH was able to assist Huda by contacting her local US Congressman's office, who were able to facilitate an emergency appointment for Huda to speak to
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someone in the Embassy without the presence of her husband.

Let's end on a fairly good note by stating that Huda was able to register that baby and get
new US passport and a social security card for her newborn.

Huda is actually similar to another two women that we're assisting in other States,
so this is really could be the same for two more cases.

Our final slide or at least in my section, I will close my section of the presentation by going
over some trends that you may have already noticed. But this particular chart comes
from the research done by a professor in the University of Lincoln in the UK.

I'll begin by noting that the dowry referred to in these slides refers to the Hindu tradition,
where the parents of the bride agreed to pay the groom's family for them to marry their daughter,
As the chart notes, this can be very problematic, and research has shown, as you can see,
that 68% of the violence experience in TMA cases are related to the dowry, but, as Janan
will explain later on, the Islamic traditions are a bit different in this case, but the rest of the
Statistics in these charts do hold similar to our cases that we've seen and gone over.

Where it's stated that 73% of TMA cases experience physical violence from their husbands and or in-laws.

In fact, in Halima’s case, she went on to tell us that after she got married, she felt more like a maid to her in-laws who were living with her rather than a wife,

and that the in-laws would actually punish her for not doing certain labor tasks, or cooking, or cleaning the house, and so forth.

98% of the cases experience isolation as you saw in all of our cases.

Again, this is very common in general even DV cases, since the dynamics of power and control rest with the victim being isolated from the people that care about them and the people that are willing to help them.

93% experience verbal abuse, and 100% experience coercive control and intimidation as was the case with all of our cases.

I will conclude by stating that this is why DV agencies, and particularly culturally specific DV advocates are so important. In all the cases I went through, none were English dominant.
In fact, most spoke zero English, and all our communication has been in different languages.

It is important for systems people, especially those involved in either family law cases or immigration cases, to be familiar with this issue, and be able to identify a victim when she's in the courtroom and understand these victims and the dynamics involved.

We'll talk a little bit more about that towards the end of our presentation.

With that spirit, I'm going to turn it over to Janan for our last section.

Kelsey Mullins: It's actually me again. We have two sections left.

So, as you saw from those case examples, TMA survivors often encounter legal systems that can act as barriers to their empowerment.

So, now we'll go ahead and discuss those legal issues in greater depth.

There are two primary legal issues that TMA survivors encounter.

First, immigration: For survivors who have gotten back to the US, they may still need to obtain permanent status if, for instance, they return on a visitor visa.
For survivors who are still stuck in their countries of origin or another country abroad, it's even trickier because they must find a way to re-enter the US in the first place, and that tends to pose both logistical and legal issues. Second, survivors often encounter family law. The survivor typically wants to divorce her user and receive legal custody and physical placement of their children. Both of these goals have proven difficult to accomplish after abandonment. Especially, when an abuser claims that there's already a divorce in another jurisdiction. So we'll go ahead and talk more about immigration. Here, I have three immigration options that may be useful to TMA survivors. I've listed them in order from least to most helpful for a typical case based on what we've observed for survivors in Wisconsin. Of course, the facts of an individual survivors case, as analyzed by a lawyer, would be necessary to select which option is best for that particular survivor.
First, a T Visa is intended to protect victims of sex or labor trafficking,
and some TMA survivors do experience labor trafficking in particular as part of their victimization in the US.
As you heard, an abuser might force a survivor to perform unpaid labor that could be for a family business or unpaid labor in the survivors In-Laws' home. However, one requirement for a T Visa is showing that the immigrant is physically present in the US because of the trafficking. In this case, if a survivor is abandoned abroad, they typically won't be able to satisfy that requirement unless they're able to return to the US to help with the prosecution of the trafficking case, or similar circumstances related to the underlying human trafficking.
Now, a second option is a U Visa, which is intended to protect victims of certain specified crimes. Domestic violence and related crimes are often qualifying crimes. However, one requirement for a U Visa is that the immigrant has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. Survivors of TMA, especially those who are already abandoned abroad, are unlikely to
have reported the violence they experienced as a crime. As you heard, these survivors are typically very isolated.

They wouldn't know to reach out to law enforcement for these issues and might be mistrusting of being able to do so. Additionally, being abandoned abroad could also be a barrier to meeting that helpfulness requirement.

The third option on the slide is a VAWA self-petition, which is intended to support immigrants who are abused by US citizen or lawful permanent-resident spouses and certain other family members. But in this case, it's the spousal relationship that's most relevant.

The self-petition is meant to protect survivors from relying on their abusers for their immigration status. As you heard in the case examples, there were situations where abusers had said that they applied for status or intentionally missed interviews to sabotage a survivor's lawful status here in the US. So critically, the VAWA self-petition is meant to protect a survivor from that form of abuse. Additionally, the VAWA self-petition explicitly accounts for those immigrant survivors outside of the United States by stating, when that is the case, the immigrant must show that they are...
the spouse of a citizen or local permanent resident, who subjected the immigrant or

A VAWA self-petition does need to be filed within 2 years of the end of a qualifying marriage.

So, a survivor will want to get an immigration consult right away if the abuser has begun divorce proceedings.

As you can see, the VAWA self-petition will fit this the circumstances of most TMA survivors,

because we know that the abandonment is typically the culmination of years of other forms of abuse and violence.

Because the VAWA self-petition is the most applicable immigration remedy for most

TMA survivors, I want to briefly cover its outcomes.

If a survivor is able to successfully pursue a VAWA self-petition, the results are work

authorization with that VAWA self-petition approval.

Some VAWA applicants can actually file for adjustment of status to become a lawful,

permanent resident concurrently with the VAWA self-petition itself.

However, this concurrent filing would not be available to those who are outside of the US.
Additionally, a VAWA self-petition does offer a pathway to naturalize after an applicant has had three years with their lawful permanent resident status.

There are options for derivative applicants, in other words, certain family members to gain status, too.

So, the VAWA self-petition can provide immense stability for a survivor who has been abandoned abroad, but, as you realize when we discussed those three immigration options and as you heard in the case examples, there are many gaps even in the measures that are intended to protect survivors.

TMA survivors, in particular, will face increased barriers when pursuing any of the measures we talked about. For example, TMA survivors are unlikely to have reported their abuser.

Likewise, few TMA survivors will have proof of the domestic violence they experienced especially once they’re abandoned outside the US.

Additionally, unfortunately, that abandonment itself, which we view as a form of domestic violence, is unlikely to fall under definitions of domestic abuse or other crimes that would create the basis for relief by itself.

And then, finally, TMA survivors may not even have proof of the marital relationship and
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cohabitation that’s required for a VAWA self-petition. This is because an abuser is likely to
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keep all assets in his name alone as part of maintaining that power and control.
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The abuser likely didn't share important information with the survivor, so that she could access proof later.
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00:32:50,733 --> 00:32:58,014
So, these issues pop up often in the immigration cases that we've seen.
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Now, I do want to share a legal success story. This case comes out of the UK where a
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survivor was abandoned in Pakistan after years of abuse by her UK citizen husband while in the UK.
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After she was abandoned back in Pakistan, she applied for a permit under the UK's
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domestic violence Indefinite Leave to Remain. That's an immigration remedy in the UK.
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However, that law did not apply to those were outside of the United Kingdom,
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and so her application was denied. The survivor took this case to appeal, and it was
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determined after hearing from advocates about transnational marriage abandonment that the
347
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law could not make a distinction based on the survivor being in the UK versus outside of the
348
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UK because TMA is recognized as a form of domestic violence, and they found that it was a
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violation of survivors' rights to make a distinction on domestic violence when a
survivor was inside versus outside of the United Kingdom.

This survivor was able to return to the United Kingdom using this immigration remedy,
and, now, this case is precedent in the UK and is garnering a lot of attention there.

This type of case is really inspirational for us as we hope to make systems changes for
US survivors of transnational marriage abandonment, too.

Now, we'll go ahead and turn to family law issues that TMA survivors encounter and some
common issues are here on the slide. First, an abuser may claim there was never a marriage.

Here, it's important for a lawyer or an advocate to educate the court on civil and religious marriages,
and how a marriage was treated in the country where it occurred to prove that it did in fact occur.

Similarly, an abuser might claim to have already received a divorce judgment from the
country where the marriage occurred. But, this divorce likely granted the abuser sole legal
custody, and physical placement of children, and ownership of all the marital assets.
Most likely, the survivor wouldn't have received any notice of this divorce, and so it shouldn't be enforced here in Wisconsin.

Another issue that comes up is when the survivor struggles to prove domestic violence during the marriage because of the isolation she experienced here in the US, possible fear of law enforcement, and restricted access to community resources.

This will impact the way that the court is able to treat the domestic violence for considering custody and physical placement.

That makes it crucial to help prepare a survivor to give testimony about her experiences, as well as prepare any evidence she may have, such as photos, messages on WhatsApp, anything that can help substantiate the abuse she experienced.

That's going to help the court to consider that factor when determining custody and placement.

Likewise, as we talked about with immigration, a survivor can struggle to prove the abandonment itself. This is especially common when the abuser claims the survivor voluntarily left the children, for instance, abusers may claim that the survivor had mental health issues and so just left the family.

Or, they may claim that the survivor was unfaithful in the marriage and abandoned them.
Here again, it's really important to help the survivor show whatever evidence she may to demonstrate that she did not voluntarily have leave. For example, communications with an advocacy organization, or proof that the survivor was attempting to contact children here in the US.

Finally, we've observed some complications due to whether the country of abandonment is a Hague signatory and interpreting the UCCJA.

So with these issues in mind, we'll cover a few statutes that might be useful for judges, lawyers, and advocates. First, we'll discuss some Wisconsin Statutes. Related to that issue of an abuser getting a bogus or foreign divorce decree without notice is Wisconsin statute 767.21(2), Actions in courts of foreign countries. This more or less provides courts that any court of this State may recognize a judgment from a foreign court if it complies with public policy here in the US and in Wisconsin. However, it also specifies that custody decisions will not be recognized for Wisconsin residents. So if the abuser's foreign divorce judgment does relate to child custody, it should not be recognized. If instead, it only pertained to property division and financial matters that may be recognizing.
But again, that's assuming that it comports with public policy such as notice.

So, if you see a case where a survivor did not have notice of the action in another country that should be a red flag for you.

Next, ideally in a TMA divorce, the survivor could invoke Wisconsin's domestic abuse presumption, under Wisconsin Statute 767.41(2)(d), which states that if the court finds by preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal battery or domestic abuse, there is a rebuttable presumption that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party.

This is very important for protecting TMA survivors who face of use throughout the marriage, and that culminated in abandonment. If you see abandonment, that too, can be a clue to look for domestic violence throughout the course of the relationship.

We have always seen that the abandonment is the culmination of years of abuse.

Now, other legal issues that come up include determining which court has jurisdiction.
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So, the UCCJEA or Uniform Child Custody Jurisdiction and Enforcement Act addresses
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this and it can be found in Chapter 822 of the Wisconsin statutes.
402
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The UCCJEA provides for when foreign judgments are recognized and enforced here in Wisconsin,
403
00:39:18,266 --> 00:39:23,232
including that Wisconsin courts need not recognize judgments from a country,
404
00:39:23,233 --> 00:39:27,466
whose child custody laws violate fundamental principles of human rights.
405
00:39:27,466 --> 00:39:33,732
This means it's important to understand country conditions in the place where a survivor was
406
00:39:33,733 --> 00:39:40,333
abandoned or in a place where an abuser obtained a divorce judgment. Again, custody
407
00:39:40,333 --> 00:39:45,566
decisions for Wisconsin residents shouldn't be recognized when they come from foreign courts.
408
00:39:45,566 --> 00:39:51,266
But, if a whole family was living abroad, and there is a custody order that, too, need not be
409
00:39:51,266 --> 00:39:58,899
recognized if the country's child custody laws are in violation of human rights and our US public policy.
410
00:39:58,900 --> 00:40:03,733
For lawyers and advocates, educating the court on country conditions may be helpful to
411
00:40:03,733 --> 00:40:07,970
obtaining a safe, final order for TMA survivors.
412
00:40:07,970 --> 00:40:13,470
And then, finally, another issue that has come up in cases we've observed is the Hague Convention.
413
Here, I've included a link of all the Hague signatory countries, because this is something that judges have been considering when trying to understand abandonment where children were also left in another country.

So with these issues in mind, we'll dive into the impact of civil versus religious marriages. Thank you, Kelsey.

I do want to note that here we are focusing specifically on Muslim religious marriages, because that happens to be our area of expertise. And these are some of the things that we're seeing how basically the Muslim religious marriages are being misused.

But as we had mentioned at the beginning, that TMA affects a wide range of religious and ethnic groups, and the common issue here is immigration status.

I do want to note here that some of these slides are from the Peaceful Families Project, and so we'd like to thank them for kind of leading the way.

An Islamic marriage is a civil contract, and it has a set of requirements that must take place for it to be valid.
It involves a formal request or offer of marriage, and it requires an acceptance of marriage.

It requires the signing of the marriage contract in front of 2 witnesses, and it requires the publicizing of the marriage that’s usually done through a celebration.

The Islamic marriage contract must include a mahr, which is a gift, and this gift is usually a ring, jewelry, money, can be a property. It could be anything of financial value from the groom to the bride to show their seriousness and commitment to the marriage.

And so, you’ll notice here that in Islamic marriage a mahr or the dowry gift is given from the groom specifically to the bride.

You’ll find in some of the other traditions, as we had noted, for example, in India where the bride is and her family are required to give a dowry to the groom and his family.

In most Islamic marriage contracts, the mahr is divided into two payable options.

They do not have to be, but oftentimes there's an immediate, and there's a deferred portion.

The immediate part will be the ring, the jewelry or money which allows her to choose whatever
she wants, and the deferred mahr is something that she is required to be paid because it's part of the actual Mahr.

Whether it's the next day, the next week, the next year, if the bride asks for the second part, the deferred part of the mahr. It is required that she'd be given that, but definitely, definitely before a divorce occurs. It is considered kind of like a loan that must be paid to the bride before the divorce occurs. Islamic law allows for conditions to be added to the marriage contract.

And so, whether that involves that I want to add, for example, the husband will help me as I complete my PHD studies, or that we agree upon that I will continue to have my career throughout the marriage. So, keeping in mind that this is a contract that goes back 1,400 years, and it can include certain conditions, and traditionally, Islamic law requires a husband to financially support his wife, and if she chooses to work, traditionally her salary can be solely her own. It is not required of her to support the household or the children. In this day and age, you find that oftentimes it has changed quite a bit where both of them might work,
and both of them might share in the responsibilities of the household.

But in traditional Islamic law, this is how it's generally done.

There's arrange versus forced marriage, and I think it's very, very important to make clear here.

In an arranged marriage, which is actually the most common marriage in the world,

more common than just dating and and finding your own mate. In an arranged marriage,

both the woman and the man consent to the arrangement. There has to be consent.

In a forced marriage, one or both of them is coerced into the marriage,

and at least one does not give full and free consent. I want to make very, very clear that a

forced marriage is not permitted in Islam.

It is considered null and void, and so, anytime there is a forced marriage,

the female can very easily go to any court in a predominantly Muslim world,

and they will immediately consider it null and void because that is not something that is acceptable.

People might wonder why it is necessary in the United States to have an Islamic marriage,
and why these take place when you can just go and have a civil marriage.

It's really no different than many Christians that would like to be married in the church before they get their marriage license, because they consider it to be a sacred thing to do.

And so, this is, of course, also type of understanding that many Muslims have.

So a non-civil marriage, these types of marriages involve couples that have only a religious or cultural marriage, not a civil marriage. This is problematic.

They may sign a religious contract, but do not register for a marriage license through the court system.

We want to note here is that in predominantly Muslim countries, the Islamic marriage is the marriage contract.

The fact that it doesn't have a lot of details on things like child custody, etc. because this is a marriage contract. This is not a divorce contract or decree, and the way that predominantly Muslim countries function is that there are such rules and guidelines when a marriage takes place, and when a divorce takes place that are not written, but known throughout society, that these are the standards that are followed, and we'll get into some of that a little bit in one of the other slides.
What happens here is that if a couple only have a religious contract, and, of course,

they don't register for a marriage license to the court system. The female really doesn't have a much opportunity,

if her abuser leaves her, or dumps her, or takes everything. And so, it is important in this
country to make sure that not only a religious marriage takes place, but also a civil marriage.

In the event of divorce, you find that wives are really left with little recourse and no spousal rights.

You find that there are some people that even practice of polygynous marriages. The legal wife,
the one that is registered in the court will have the financial rights. She will have spousal rights,
but the non-legal wife will have no recourse through the the court system. It's sort of like
having a girlfriend on the side almost. Making it easy for the husband to avoid any financial
responsibilities that may have been promised. Many religious and community leaders have
caught on to this and how, at times, it is being misused. And so, they have remained
consistent in encouraging women to protect their rights by obtaining a civil marriage license before the Islamic marriage.

Here in Milwaukee, the largest Islamic centers that runs 3 Islamic mosques, the Islamic Society of Milwaukee.
They refuse to conduct any religious marriages until the couple receives a civil marriage and brings the contract to them, and shows that it has, in fact, taken place.

So, when we talk about divorce, the dissolution of marriage in Islam, there are 4 general types of marital dissolution. There is the unilateral, which is just plain Talaq, plain divorce.

There is the delegated, which is what we will be talking about, or the what's often called a Tafwid. For example, the husband is here, and his wife, let's say, is overseas, and there's a serious reason why he cannot go overseas. Let's say political reasons, whatever the case is, to be able to divorce his wife. What he is required to do is, he is required here to get an affidavit that is with two witnesses, and then send that basically overseas.

That is used by the person, who he has delegated. Let's say it's his father. It is a requirement that the wife be informed before he goes to the court to ask for the divorce that your husband has asked you to get a divorce. He has delegated me.
Here are the witnesses and the affidavit to prove that. That is taken to the court.

Unfortunately, in the cases that we see where people are creating their own kind of ideas of what rules to follow, and many times bringing divorce decrees without the female having even known that she was divorced. That is not acceptable. The female must be informed.

There's a third type, which is a wife-initiated, known as Khul, which can be known as where they both agree, so they don't even really need to go to court. So it's a kind of like a no contest divorce. We will agree between each other, and that's called Khul.

There's then the judicial, the Tafriq, where they need to go to in front of a judge.

and the judge will determine the the reasons for, you know, the divorce, and will issue the judgment.

Now, something to note again, if we're talking about Islamic law or Islamic practices in predominantly Muslim world, custody of the children covers child rearing and guardianship,

mothers, unless, for example, they have a what is clearly identified as serious mental illness or something of that sort, they are generally favored to have custody of the children
until those children reach puberty. So, until they reach puberty, it is the mother that has them, and it is the responsibility of the father to pay all expenses for taking care of the children.

All kinds of guardianship remains with the father, and the father has access to visitation, of course, with the children. When they reach puberty, the court revisits and determines, because in Islamic tradition, puberty is when you are generally considered an adult, and so the children can then determine oftentimes, if they want to remain with the mother, or if they prefer to live with the father. But the guardianship, until those children are full adults, and able, and capable of taking care of themselves, falls upon the father.

So, when judging Islamic marriage contracts, a primary goal for judges is to ensure the US Constitution's first amendment, that Congress shall make no law on establishment of religion, or prohibiting the free exercise thereof is not violated, and that the contract complies with US public policy. Court rulings on the validity of an Islamic marriage, very depending on whether it is accompanied by a civil marriage license, and if it has been registered in the US or overseas.
The problem that we have witnessed is when some of these women come with an Islamic marriage license, which is a valid license, they don't know the laws of the United States. And so, the husband, sometimes in a form of control will, decide that he's not going to apply for a marriage license, for example. This becomes problematic, because when then there is an actual divorce, and if it takes place in the United States, it appears as if she really was not married, because she does not have a marriage license. We need to keep this in mind that Islamic marriage license, if it was issued overseas, and they have been living together, that this is something that is important. Islamic marriage contracts are most often presented to courts with regard to the Mahr clause, especially in cases where the amount of the mahr is substantial because sometimes the amount of the mahr and that's why it's deferred because maybe the husband at the time of marriage doesn't have that amount. Let's say maybe it's a $100,000 or something of that sort. When a dissolution takes place or a divorce, the mahr must, must be paid. To determine if an Islamic marriage contract stipulation is enforceable, judges need to look
for comparisons with US legal principles, and consider precedent and, consult with experts in the field.

Some legal and religious experts recommend treating the Islamic marriage contract as a pre-nuptial contract, while others recommend considering the contract as a simple enforceable contract, so that the mahr will serve as a supplement to other legal obligations.

Please note I am not an Islamic scholar in any way, shape, or form, but it is my belief that it should be considered as a supplement, because you’re going to find that sometimes some of the individuals that are getting divorced maybe they have been married for 20-25 years, and the mahr at that time in their country of origin might have been $200 or $500, because that was significant when you would compare it. But now, it's really... it's a nominal amount. And these individuals have lived together, built a home, built business, supported each other. And so, if it is going to be considered, it really should be considered as a supplement to all of the other aspects of what will be divided.
Too often, we have many of our abusers trying to get away with just paying that mahr and calling it a done day if they end up deciding to get a divorce in in the United States.

This is just a sample of a marriage contract. So, you can see it's really very, very simple.

It basically includes where the Imam, or the individual that is doing the marriage certificate, has to sign, and it includes the husband and the wife. It includes the dowry.

You'll notice that it says the prompt and the differed, which means what is upfront and then what is to be paid at agreed upon time, and then the signature of both the bride and the groom and then the witnesses. So, you need to have the witnesses for both the groom and the bride sign that.

You can extend it a little bit if you have something specific like let's say the woman this marriage, and she has, you know, an entire, a home, and decides that. Okay, we're we're entering into this marriage and this home, let's say she was married previously, and she has children. This home will remain in my name, and will eventually be given to my children. This will never become part of the marriage property. So these are the kinds of things comes into this marriage, and she has a home and decides that, "Okay, we're entering into this marriage," let's say she was married previously and she has children, "this home will remain in my name and will eventually be given to my children. This will never become part of the marriage property."

These are the kinds of things that can be included in an Islamic Marriage Certificate,
but otherwise, it's a very simple certificate.

This is an example of an Islamic Divorce, or Talaq, Certification. Again, it's also a relatively simple. It's asking about the divorce. Both individuals have to sign, and one of the things that you will notice at the bottom, where it is specifically says that, "The husband, so and so, has also been reminded of his obligation regarding payment of the Mahr dowry, if applicable, to his former wife." And so the Talaq is not, cannot go through until he has completed that obligation, because that is basically like as if it's something that he is responsible for from the beginning. So, he owes it to her from the beginning. And, you notice also that there are witnesses that need to be a present. In the cases that we are seeing, divorce or Talaq certification is presented, and many times there are no witnesses that are even there. But most importantly, the wife has not been informed, and that does not make it valid. I think we're back to Kelsey.
Transnational Marriage Abandonments: Systems Solutions
March, 2023

Thank you, Janan. So, we are getting ready to dive into our discussion session today.

But first I want to talk about a few resources.

As we've mentioned, there are many organizations that work with transnational marriage abandonment survivors. On this slide, we've provided links to just some organizations that are also engaged in systems advocacy on TMA, such as writing about this issue.

If you are here today and you work at another organization working on this issue, please feel welcome to contact me so that we can include you in this list. We will be sending the slides out to all of our participants today, so that you can refer back to these.

Now, if you're interested in learning more about transnational marriage abandonment in Wisconsin, here are some linked citations to a few articles. First, an article I wrote for Wisconsin Lawyer Magazine that was also republished in the Wisconsin Journal of Family Law.

This article really focuses on the legal implications of transnational marriage abandonment. You can also read an article by Sandra Whitehead in the Wisconsin Muslim
Journal that focuses on our advocacy efforts so far.

And then, just yesterday an article by Sophie Carson was published in the Milwaukee Journal Sentinel, and this article does a really great job of overviewing this issue.

Again, we'll provide you with the slides, so you'll be able to access links to these articles.

Now, with this we'll turn to our discussion portion.