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Hi, my name is Greg MCLE Lawson, I'm an immigration attorney in the Seattle Washington area. And I focus on a very specific and very unique crossover area between the US immigration law and civil litigation. This is a talk I've given all across the country, I'm giving it here to an awkward empty room with the Dylan, my very nice videographer, the only attorneys I've ever met anywhere in the United States, outside of the immigration bar, who've ever heard of this issue, were those who'd sponsored a fiance or spouse to immigrate to the United States. So if what we're talking about is surprising, and unusual, you're in good company, because almost nobody in the general bar in the United States has heard about this issue. Let's set it up. Imagine that Anna walks into your office. Ana has been married for just six months, she came over to the United States from Russia to marry somebody she met while on a vacation on a has, let's say, a graduate level degree. She has strong work history in her home country. And Ana asks you now that she's facing the possibility of divorce, whether she has a likelihood of receiving life long financial support from her us husband. Now under the law of almost any jurisdiction that I'm familiar of, not familiar with in the United States. The answer to that question, under Family Law principles is know that most jurisdictions strongly disfavor long term spousal maintenance, and somebody who has the ability to work is going to be presumed to be self sufficient and have the ability to be self sufficient. And maybe they'll get some short period of maintenance, but it's certainly not going to be long term alimony. Well, here's the kicker. Unless you have asked Ana, about her US immigration status, you actually can't give her an answer to that question she just asked. Because if Ana is a lawful permanent resident of the United States, she actually may have the right to receive spousal support from her husband for the remainder of her life. And that's what we're here to talk about. Because in the process of bringing on it to the United States, her husband signed a contract called the form I 864 affidavit of support. This is a binding contract between him and the United States government, whereby he guarantees to provide support to Ana, anytime her

income dips beneath 125% of the poverty guideline, this is an enforceable contract that can be potentially enforced for the remainder of his life. So what we'll be talking about for the remainder of this session, is what this Affidavit of Support is, where it comes from, and the types of clients who may have substantial financial rights under the ICT 64. As I mentioned, my name is Greg MCLE. Lawson, my main area of practice is doing specifically these cases, we represent beneficiaries of the ICT 64, in lawsuits against their us sponsors to recover support. So usually, they're not always that's a fiance, who's married a US citizen. So these are marriage based immigration cases, though, as we'll talk about later, this Affidavit of Support actually comes up in all US immigration cases, where there's a family member sponsor. We'll start off by going through a little bit of the history of where this comes from in terms of US immigration law, and then dive into the particulars of what types of legal duties the sponsor has to the immigrant beneficiary. We'll talk about how you actually go about enforcing this in US courts, and what sort of defenses a sponsor might be able to raise? It turns out, they're quite limited.

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So what is the affidavit of support? under US immigration law, there are a litany of what are known as grounds of inadmissibility.

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You can basically think of these as facts, which if true of an intending immigrant, render that person inadmissible to the United States. So there are unsurprising things on this list. If you have certain forms of communicable disease diseases. You're inadmissible to the US. If you've done certain crimes. If you've been naughty in certain ways, you're inadmissible if you're a terrorist you're going to miss. Now, one of the other grounds of inadmissibility, which actually goes back to the very first immigration statute ever passed in the United States is referred to as the public charge ground back in 1882. immigration law that ever passed forbid the admission of paupers. And basically what this means is that as long as we've had regulations affecting immigration law in the United States, our policy has been that you need to be able to demonstrate the ability to be financially self sufficient. And if you are perceived to be somebody who is likely to become a drain on public resources, that is to become a public charge, you are inadmissible to the United States. So this has always been the case since 1882, and it remains in law to this day. Now, the standard there for inadmissibility is somebody is likely to become a public charge, such a person is deemed to be inadmissible. Now for years and years and years, the consular agencies and the domestic US immigration agency known then as ins would impose an ad hoc standard to this. So they would look at various circumstances of the individual to determine whether the person was likely to become poor and the public charge in the future. Let's fast forward to the 1990s. So in the 1990s, in the days of America Online, we were having a couple big debates as a as a society. One was about what we wanted our immigration policy to look like. And the simultaneous one was

what our welfare policies were going to look like. So 1996, we had two concurrent pieces of legislation moving through Congress, one was totally revamping the welfare system, and the other was totally revamping the immigration system. And Congress asked itself a public policy question for these immigrants who come to the United States, and we get it wrong about whether they're likely to become a public charge. So immigrant is admitted, and whoops, they aren't able to support themselves, who ought to bear the burden of that liability. It's basically going to be two people, two possibilities, either the American public are going to bear the burden of supporting that person, in which case, we could make them eligible for things like countif, cash benefits, and Medicaid. Or we could make the visa petitioner responsible. And we could say, if you elect to bring your spouse or your child or your mother into the United States, you are welcome to do so. But you are going to bear the financial burden if that person is unable to support themselves. That policy decision created the affidavit of support that we're talking about here. Congress mandated that in every single family sponsored immigration case, the US petitioner would be required to file an 864 affidavit of support. There are very, very limited exceptions to that, primarily that pertained to somebody who already has 10 years of work history in the United States. So if you've been here on a temporary visa, like an h1 be doing technical work here in Seattle, we have a lot in Google and Amazon, such a person might be exempt. But in the vast, vast majority of cases, somebody who achieves immigration status through family member must have had this Affidavit of Support signed in their cases. It's worth mentioning that within the realm of all people who require permanent residency status in the US, the vast majority of those are family sponsored. So that means that we can say as a rule of thumb, if you have a green card in the United States, chances are there's also an affidavit of support that's been signed for your benefit. Who is the sponsor? Well, as I mentioned, in all of these cases where the affidavit of support is required, the US petitioner is required to sign the affidavit. So that means if you are a spouse, petitioning for your foreign national spouse, if you're petitioning for a foreign national fiance, you're ultimately going to end up signing one of these affidavits of

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support. But they're also required in all other family sponsored cases. So if you're petitioning for a parent, or a sibling or a child, the affidavit of support will also be required. Now, what if that primary petitioner doesn't have much financial wherewithal? This happens a lot of times. For example, if you have a student so couple meets on a foreign exchange program and a 19 year old wants to petition for his foreign fiance, but he's in college and doesn't have any income. If the primary petitioner lacks adequate income, any US citizen or permanent resident residing in the United States can become a joint sponsor, also known as a Co sponsor. Now that can be anyone. In reality, it's typically a close friend of the petitioner. Sometimes it's an employer, sometimes it's a family member. And that person is basically picking up the slack that the primary petitioner can't meet, because of his lack of financial wherewithal. This is critical in these cases, to be aware of that because that joint sponsor, and this is the person who is going to have financial resources,

has joint and several liability with respect to the primary sponsors obligation. So primary sponsor, let's just say it's the spouse has full liability. But that joint sponsor also has full joint and several liability on the contract. So you've signed the affidavit of support and what is what does it mean? You basically make two promises in the course of signing that affidavit of support. Now, the strength of this promise comes directly from the statute, it's reiterated in the regulations, and it's contained in the four corners of the 864 contract itself. The first promise is that you guaranteed to repay to the government in a means tested benefits that are paid to the intending immigrant, so means tested benefit, that's a term of art. But if the immigrant comes to the United States and receives food stamps, or Medicaid, or surplus, supplemental security income, an agency can sue the sponsor to recoup those benefits. Now, that's not what we're talking about. Here. We're talking about a different aspect of the affidavit of support. But I just want to mention for context that this recouping public benefits doesn't happen anywhere in the United States that I'm aware of, I'm not aware of any jurisdiction that actually Sue sponsors. One reason for that is that under the 1996 legislation, permanent residents are actually ineligible for most public benefits, so they can't get them in the first place. And secondly, it's just polite, it seems to have been politically unfeasible for agencies to sue sponsors for support. The Trump administration in 2018, considered the possibility of mandating local agencies to go after sponsors to recoup these costs, but that policy hasn't gone anywhere. So right now, this is kind of obligation on paper only. Excuse me. But we're here to talk about the second promise that the that the sponsor makes. And that is as follows to maintain the income of the immigrant at 125% of the federal poverty guideline. That's just to put some figures on the table, that's approximately 13 $100 for a household of 102,019 guidelines. So that obligation, again, the petitioner says, I assume the responsibility of on a monthly basis, ensuring that this immigrants income is at least 13 $100 a month. If it's not 13 $100 a month, I promise to make up the difference and provide the person with support to get their income up to that level. We'll return in a moment to talk about calculation of damages and what the person can actually recoup in the course of a lawsuit, but core duty is 13 $100 per month in support, or larger depending on household size. How long does that last? The Affidavit of Support statute is very, very clear that there are five and only five conditions that terminate the sponsors obligation, it ends when the immigrant becomes a US citizen.

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When the person has been credited with 40 quarters of work 10 years of work under the Social Security Act, when the person has lost status as a US resident, and has departed, the United States physically left the United States. If the person has been ordered deported, gone through the entire it's called Adjustment of Status process of getting a new green card based on a new sponsor, or five when the person dies. Now in practice, when we're looking at these cases, usually the terminating conditions that actually occur, or that a person either becomes a citizen or dies, those other events may never occur in the person's lifetime. It's noteworthy that when it comes to becoming a citizen, usually somebody sponsored through a spouse can become a citizen in three

years, but they don't have to So if you choose to as a lawful permanent resident, assuming you meet all the other requirements, you can file an application for naturalization in three years, but you don't have to. So if you have somebody who's unemployed, and choosing not to leave the United States, choosing not to become a citizen, that person could be entitled to support for the remainder of their life, and one of these conditions would never be met. Now, that's not an academic scenario. Because for plenty of nationalities, Japanese would be one of these, for example, you lose your foreign citizenship if you choose to naturalize as a US citizen. So lots of times people have a good genuine reason not to become a citizen. So again, you could have a scenario where none of these terminating conditions is ever met. Guess what's not a terminating condition? And the affidavit of support says this right in the contract, dissolution or separation, they have absolutely no bearing on the support obligation. So the fact that the foreign national has divorced her US citizen sponsor does not end the obligation. Nor does remarriage terminate the obligation. Now, the vast majority of these cases that we do at the firm, are former spouses, suing a former spouse. When it comes to enforceability, here are the basics. The contract is between the US citizen petitioner and the US government. But the contract is very clear that the immigrant has third party standing to enforce the contract. Every single jurisdiction in the United States that has considered this issue has held that the affidavit of support is enforceable. So that law is just it's fair to say it's settled at this point. Not every case has an appellate decision on the topic. But everyone that does and every federal decision that touches on the issue, has held that the affidavit of support is enforceable. This is a slightly academic point, but you might ask, what's the sponsors? What's the sponsors consideration for this? The sponsor is incurring a lifelong obligation of support and what are they getting in return? effectively, what they are getting is the government's return promise that the benefit will overcome public charge inadmissibility. Put differently, the government is saying, okay, petitioner, you've asked us by filing this immigration petition to allow this person into the country as a lawful permanent resident. We'll do that, but only if you sign this affidavit of support. So that thing of value the return consideration is over overcoming public charge, inadmissibility? And, of course, yes, that's the thing of value. Otherwise, why is the petitioner trying to achieve this immigration objective in the first place?

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enforcing the affidavit of support? So let's say your honor, and you through the advice of the now well informed attorney on the other side of the table, have learned that you have financial rights under the affidavit of support. Where do you go? Something I often hear is, well, this is a federal law issue. So of course, you must have to go to federal court. That's wrong. The wrong The reason it's wrong is because of the presumption of concurrency. So yes, the federal immigration statute creates a cause of action. But under the presumption of concurrency, a state court has jurisdiction over federal law claims, unless the federal statute says no, no, no state courts, this is only for the federal judiciary to decide. And there's nothing in the statute that looks anything like that. So there's no reason you should be thinking exclusively about federal court. But But let's talk federal

court. So yes, you can go to federal court. The vast majority of jurisdictions to have touch on this, have had no problem holding that federal courts have subject matter jurisdiction. And that seems unsurprising. Congress very clearly created a private right of action for the immigrant beneficiary. The government, by the way, doesn't play any role in enforcing this. It's just up to the immigrant beneficiary. So it would be a little bit crazy for the government per Congress to create a cause of action for the immigrant beneficiary that she can't enforce in federal court. Because it is a federal statute. So earlier versus earlier, for example, is one of the more recent decisions here in the ninth circuit to say, Well, yeah, of course, the immigrant beneficiary can come into federal court on federal question jurisdiction. The only exception to that anywhere in the United States, excuse me, is in the Middle District of Florida, where a couple of magistrate judges have actually held to the contrary, and said, No, we can't find in the statute, that particular enough language that gives federal question jurisdiction. But that's a very surprising exception. And everywhere else holds that there is federal question jurisdiction. And when it comes to state court, it's just the contract. Right, any court of general jurisdiction in a state ought to have ought to be perfectly competent to hear contract dispute. And depending on the value of the claimant at issue, you might even be able to go into your court of limited jurisdiction, District Court here in Washington State. You can even potentially go into small claims court, if you only had a few $1,000. In dispute, though, of course, often attorneys can appear in small claims court. So the choice of forum really does lie with the beneficiary here. And it's largely simply a strategic decision about timetables in terms of what court might be a friendlier jurisdiction and other tactical considerations. But in terms of jurisdiction, either does have an affidavit of support contains a waiver of personal jurisdiction. So this is like any number of other contracts of adhesion, when you sign a credit card agreement, it's got the same thing. There's a waiver of personal jurisdiction. Now, that doesn't solve the inconvenient forum issue. So I've inconvenient forum principles, you can't necessarily drag a defendant off to some state that he or she has had no contact with. But the personal jurisdiction question is, is clearly waived directly under the affidavit of support. So this means certainly that what happens is a couple will split. Us petitioner will move across the United States, but he can definitely be brought back to the jurisdiction where the marriage occurred. And he should also be able to be brought back to any state where the plaintiff resides because the theory is the ongoing breach of the support contract is occurring in whatever state the beneficiary resides on. So that's, that's important, tactical material for the plaintiff, because these can be very costly suits for the defendant to defend.

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What about family awkward? So, as I mentioned, these come up most often, either during or after a couple has split up. Can you break? Can you enforce it in family law court? It's everyone's favorite answer. It depends. I'm here in Washington State. The appeals court looked at our statute and said, Well, we can't find anything in our statutory rubric about spousal maintenance, that gives us a way to shoehorn this contractual obligation into our assessment of maintenance

awards. So in Washington, no, you can't use spousal maintenance as a vehicle to enforce the affidavit of support right. different results in California in California, the marriage of Kumar, matter of Kumar case, held that yes, this is a part of the parties of the spouses rights and liabilities to each other. So yeah, it makes sense to adjudicate this in the context of a divorce case. So in California, you can theoretically raise it in the context of a divorce proceeding. Lots of other cases just don't have law on the topic. Because a lot of states don't have law on this topic. It leads to a hairy situation for the beneficiary. So let's say the divorce has been filed. The immigrant beneficiary learns about this right to support Well, what does she do? Does she risk bringing it up in the family law proceeding? The court doesn't necessarily have jurisdiction. But if she doesn't, then she might face arrest judicata issues for not having brought it up. So usually, our advice to folks in that scenario is to go ahead and file a concurrent civil action, a separate civil action to enforce the rights because there should be little question of residue caught it being a problem, if that's separate action to enforce the ICT. 64 right, is proceeding simultaneously with the family law case. But not to sit on those rights because you don't want to run into a waiver or rez judicata issue with the sponsor coming back and saying, whoa, you should have raised that in the family law proceeding. Well, what damages can be recovered in one of these actions. It's relatively straightforward. So again, the support right is 125% of the federal poverty guidelines. Now, again, the obligation is to maintain income at the 125% level. What this means in practice is that the sponsor is entitled to an offset for anything that the beneficiary has received, which qualifies as income. So in the most straightforward sense, if the immigrant is earning w two income, working in a standard job, any of that income is going to offset the damages owed by the sponsor. So an example of this would be let's say, you've got six months of support arrears at 13 $100 a month, that would be roughly $7,800 in support. Although the arrears can be somewhat limited, assuming that the beneficiary hops on the enforcement bandwagon pretty fast. Remember, the length of the support obligation. So maybe you only have six months of arrears, but you also have that very long tail to the support obligation, which again, goes on until one of those five terminating conditions is met, which can be the remainder of the individual's life. So obviously, you can't get a perspective award of damages, but you can't get an order of specific performance. And that order of performance to require the sponsor to continue to perform on the contract might be worth a whole lot more to the beneficiary than the arrears that you can enforce in a judgement. In terms of what what counts as income offset, obviously, W two employment standard employment will, most any sort of payment from the sponsor, even if it was characterized as a gift or just helping out, probably any dollar figure given from the sponsor to the beneficiary will, will count as income. But things that don't count I'm include gifts from friends and family, or loans. So I mean, imagine that you're an immigrant here. without the ability to work, so you're unemployed, you don't qualify for means tested benefits, you can't can't even get food stamps, obviously, you're going to have to turn somewhere for support.

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If your sponsors reneging on his support duty, you're probably going to turn to your friends and family members for gifts and loans. But the sponsor, of course, isn't entitled to receive windfall and to ignore his sponsorship duty simply because the person's dad has jumped in with a loan. So courts consistently hold that that does not offset the person's the sponsors obligation. Likewise, child support, for example, does not serve as an offset, since child support, at least in most states is the property and for the benefit of the child, not of the immigrant parent. Now, here's a big one. So that's calculation of damages. How about attorney fees? The statute regulations and the 864 itself all include a very clear attorney fee provision. So that beneficiary is entitled to get her attorney fees for the cost of enforcing the affidavit of support. At least one court has held that it is not a prevailing party attorney fee. So if the sponsor prevails, he's not entitled to his attorney fees. That's of course, something of a moot point since the beneficiary is going to be judgment proof Anyway, she doesn't have any resources. But her entitlement to attorney fees is very well established. And courts have have been consistently appropriate and awarding fees in these cases. It's it's effectively something like a private attorney general statute. A private attorney general statute is of course, a scenario where an individual has been given the right to enforce a type of rape that's generally within the public sphere. And what I mean by that is that remember that this case isn't really about the beneficiary. Congress's concern in a sentence wasn't really primarily with the immigrant, it was with the American public. And the policy goal here was to ensure that the public doesn't end up having to foot the bill for this person's welfare. So Congress could have said, well, let's give the attorney general's office the ability to step in and hold the sponsor to account if need be, but they took the more efficient action of saying, well, we'll just give the beneficiary the ability to wield that cudgel. But the cost of the enforcement action is certainly not going to be with the beneficiary. It's going to be with the sponsor. So, again, courts have been consistently appropriate in awarding fees in these cases. Well, if you're representing the sponsor, what do you do? What defenses are available to you? The short answer is not much you don't have much available to you. One view is that this is a contract. And so standard contractual defenses should apply. Those would include illusory contract. So parties have argued that there's no return consideration for the contract than those have been conclusively rejected on the view that the return consideration, is the person overcoming public charge, inadmissibility, so illusory contract is mostly gone. unconscionability has been tried. So basically raising the argument that it's too lopsided, that all the beneficiary, all of all that the sponsor got was immigration status for his spouse. And Gosh, now he's got something that looks really tough, and it's this lifelong support obligation. And courts have said, Well, too bad. This, this was your option to enter into the contract. Contracts can be draconian, and this one is draconian, tough luck. So unconscionability this is every time. fraud in the inducement is potentially a little bit different. Some courts have held that on the right set of facts, a defendant could potentially raise fraud in the inducement. I'll mention a huge exception to that in a moment. But basically the view that if you could prove that you were fraudulently induced into marriage and induced into the immigration sponsoring project, that you could unravel that obligation. As you can imagine, when these failed marriages occur, there's bad there's genuinely bad feeling. And in most of the cases,

the sponsors, certainly in the course of settlement negotiations will make assertions about the mal intentions of the immigrant beneficiary. courts are largely unimpressed by those sorts of allegations. Sadly, marriages just fail. And it doesn't mean that the sponsor was duped, it simply means that the marriage didn't work out.

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And finally, statute of limitations is something that has not been raised consistently in the United States. In Defense of these cases. Usually, they're brought pretty soon after the marriage has dissolved. The statute itself doesn't contain a clear statute of limitations. So it's actually unclear whether there even is a statute of limitations or whether perhaps, the statute applicable to written contracts would apply. And finally, in terms of affirmative defenses, courts, summarily reject the defensive standing, because it's very clear that the intending immigrant has standing as a third party beneficiary. As a side note momentarily, I will note that the prevailing view is that the defendant has no duty to mitigate damages. What does that mean? Going back to honor, let's say Ana has that advanced degree and strong work history in Russia? General legal principles, of course, would say that she has the obligation to reduce damages by seeking work, if she can't, the leading case, Leo v Mund. By none less than a judge Posner in the Seventh Circuit held squarely that the beneficiary has no duty to mitigate damages. And the reasoning there was basically look, the obligation, the idea here is to ensure that the person has actual financial support. So we're not going to play this counterfactual game about whether the person is voluntarily unemployed, since the only thing we care about is ensuring that they have actual dollars in their pocket so that they can meet the basic needs of life. Seventh Circuit held this in the ninth circuit is post rule on this any day now. And this is it's safe to say that's the prevailing view in the United States is no duty to mitigate. Excuse me. Now, I mentioned a moment ago, the issue of fraud in the inducement as a kind of the one affirmative defense that, at least in some jurisdiction has has had legs, although statistically most defendants failed to successfully raise that. The decennial case, which my firm handled in California, stands for the opposite proposition, and it is that the federal statute underpinning the affidavit of support conclusively sets forth the bases on which the obligation can be avoided. Put differently. There aren't any affirmative defenses to the affidavit of support, unless the statute says there is. And those grounds for avoidance are the five terminating conditions, so becoming a citizen league in the United States, etc. But fraud is not one of them. I have to quote from desenio. Quote, even if the sponsor presents legitimate evidence of fraudulent inducement, he has borne the risk of being fraudulently induced into sponsoring someone and must satisfy his financial obligations. So this is, in my view, totally consistent with what the Congress intended with the affidavit of support, which, again, is a risk allocation mechanism. And it says, if you are the one who's bringing the green card holder into the United States, then you are going to bear that risk. And be careful, make a good decision, because it's on your head. If that doesn't work out. As one, again, kind of side note. Sometimes family law attorneys will ask whether a party can prospectively kind of curtail their risk in this arena with a

nuptial agreement? And the answer there appears to be no. There's one case, which in dicta This is a district court in Hawaii in dicta seems to say that the parties could waive rights. But the prevailing view in courts that have actually held on this is that no, a nuptial agreement can't waive the affidavit of support rights. Why? Because this is a policy objective that Congress has codified and cares about. And it doesn't make any sense if private parties can say, Okay, thank you, Congress, we understand that generally, you want the sponsor to be responsible for an immigrant. But we've decided in our case, now, we're just not going to do that. And she can just be dependent on the American public instead of the sponsor. That doesn't make any sense. The whole point of the affidavit of support is that Congress created a policy rubric for who would be the support mechanism. And that's the sponsor, and the sponsor can't just contract his way out of that. So the bottom line advice to Family Law Attorneys on that is, you know, it's unsettled in a lot of jurisdiction. So it's not that you clearly can't attempt to waive the affidavit of support, right. But you would definitely want to

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cover yourself in your file, and make sure that you've given clear, legal advice to your client that that attempted waiver could very well turn out to be ineffective. So how do these cases typically resolve themselves, like any civil litigation, large percentage of these are resolved through negotiations either pre filing or when that federal complaint lands, and the defendant figures out that the plaintiff is really serious about holding the sponsor to account. Basically, they go down two different ways, one of two different ways. Number one, again, you've got this long potential support period. So usually, when the plaintiff is bringing one of these cases, he or she is currently unemployed, but she's got some sort of pathway in mind to becoming self sufficient. Oftentimes, the plaintiff will be planning to get a two year degree and then re enter the job market. And so oftentimes, a settlement looks something like you will pay certainly all of the support arrears that are already due. And then we think that with a pretty good degree of certainty, our client is going to be back in the job market within three years. So rather than have you the defendant face the uncertainty, of long tail of obligation to our plaintiff, we will just agree now that you will make a lump sum or structured payment, representing three years of support, whatever it's going to be two years or four years, depending on the circumstance. And then we'll simply release you from all of your other future support obligations. So that's often attractive to both parties, it puts dollars in the pocket of the plaintiff that can be used to get her education and get back on her feet. And then the defendant has certainty about what his liability looks like, and can just wash his hands of the matter and be done. The other alternative is that, again, support arrears are paid so the obligation has been brought current, and then the defendant simply makes monthly support payments, until one of the terminating conditions is met. And that can be a long, long time because again, That person doesn't have a legal obligation to seek citizenship. If you have somebody I can think of a client who was with Gujarati with very limited English language, no work history. Very little formal education could be years before that person is effectively in the job

market. And so if the defendant chooses to not make simply a lump sum, payment in exchange for a full release of liability, the alternative is just to make monthly payments until the obligation terminates, which could be a long, long time. So why haven't you heard about this before? This comes up a lot. And here's kind of my take on that. Within the immigration world, most immigration lawyers don't involve ourselves in civil damages litigation. So most of my colleagues in the immigration bar spend all of their time focusing on securing immigration benefits for clients, fighting deportation, assisting in consular cases working on green card matters. And it's just not the focus of the bar to be thinking about asserting civil damages claims. Nor do many immigration lawyers necessarily even handle litigation matters. Conversely, in the civil litigation world, for general civil litigators who are working who are working on contract disputes all day, and doing business litigation, or family law litigators, the immigration context just isn't on their radar, probably, if you're a family law attorney, you may not even be asking your clients if they're foreign nationals, so you're probably not even necessarily screening for their eligibility for the affidavit of support work. So my theory is that this kind of just falls in a crack between the two expertises of civil litigation and immigration expertise. And you really have to have both to be able to successfully pursue one of these cases, because you need to have a deep understanding of what's going on in that person's immigration process to be able to know where they are with their damages claim.

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Who are the plaintiffs in these matters, you know, when if we're thinking about in terms of your own client counseling, and keeping your eye out for when these may show up on your caseload, who's likely plaintiff number one, they've got to be a green card holder. So in order to have a claim, the person must be a lawful permanent resident, or LPR. That's a little bit sloppy in the sense that if they're a naturalized citizen, they might have a claim for periods of support before they naturalized but as a rule of thumb, you're looking for somebody who's currently a lawful permanent resident. Number two, they need to be unemployed or underemployed. Because again, if that person is earning at or above 125% of the poverty guideline, they don't have a claim for support for that period of time. Now, they might have arrears for previous months. But really, the people who have viable cases are those who are really struggling to get on their feet. And typically, in our caseload, almost all of them are unemployed and just can't find a way to enter the workforce. And again, those who have the greatest challenges transition into employment, so English language challenges, lack of strong work history, lack of formal education, those are the ones who probably are going to have the most substantial financial claims. You could potentially have one of these cases against a US citizen, parent, or sibling or child who's petitioning for you. But usually, the people who are willing and interested in enforcing the obligation are those who are seeking support from former spouses. So usually, it's folks who are either relatively recently divorced or in the process of separating, who go to enforce these cases. I will note, this is by no means a requirement for having a viable case under the affidavit of support. But we find that a

very highly disproportionate number of our clients are victims of domestic abuse in the relationship. It's just a sad reality that oftentimes, somebody is brought into the United States on a fiance or marriage is in a really precarious home situation where there's very disparate power in the relationship. And that can culminate either in violence, or at least in non violent abuse of the foreign national. So it's been all too often that we've had somebody who fled an abusive relationship in the household. Only to find themselves in a women's shelter with absolutely no way to support themselves, because they don't qualify for public benefits. They don't have a job because they speak Vietnamese and don't speak English fluently. That's a person for whom the affidavit of support really could be their best line of defense, when it comes to finding just a bare bones amount of financial resources to try to start rebuilding their lives. So we view this as the absolute most helpful mechanism for folks who are in that very vulnerable situation. What should you do? Certainly, if you have a family immigration practice, and also if you have civil litigation, practice, specially if you're talking to low income folks, from if you have a bankruptcy practice, you should always be screening for the citizenship status of your new clients and of the opposing party. In a bankruptcy practice, or family law practice, if you have a green card holder client, by green card holder, I mean lawful permanent resident, you need to poke at this and see if that person might have financial support rights under the affidavit of support. For some of your clients, this might be the biggest asset that they have. And they're going to be relying on you as their legal expert to tell them about it. This might be their one shot, speaking to you to learn about their Affidavit of Support rights. If you have a green card holder, come across your desk, we're happy to talk to you and give you an assessment of whether that person may have viable rights under the affidavit of support. You're welcome to contact us on our website. We don't charge anything for this, and just give you an initial assessment of whether this is something that

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you really should be looking into. I'm happy to answer questions, either by email, you can contact us through our website, we have a q&a forum. And to the best of my knowledge, we're the only law firm in the United States that focuses exclusively on these cases. And we're happy to answer the questions that come up because chances are even the immigration attorneys in your local bar may not be very experienced in defending or prosecuting these cases, and we're happy to discuss them with you. Hope this was interesting. And please do let me know if you have any questions. Take care