

Violence Against Women Act Immigration Protections: Past Success and Future Possibilities

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National Network to End Violence Against Immigrant Women

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Prospects For Action: November 2010 and Beyond

- Moving toward fair and humane immigration reforms in 2011 will be challenging
- Some reforms may still be possible:
 - Dream Act
 - Violence Against Women Act
- Extremely important to continue to take action to push for comprehensive immigration reform
- It is important to also focus our energy on what can be achieved by federal, state and local governments to benefit immigrants

Development, Relief, and Education for Alien Minor's Act -- The DREAM Act

- Remains possible to achieve in this lame duck session of Congress
- DREAM Act allows undocumented students
 - Who came to the U.S. at age 15 or younger
 - Who have lived in the U.S. for at least 5 years
 - Have good moral character
 - To become *conditional permanent residents* upon graduation from a U.S. high school or GED
 - If they are accepted into college or the U.S. military
 - Can receive lawful permanent residency if complete two years of college or military service

What Dream Will Do

- Dramatically improve the lives and future economic productivity of immigrant children
- For immigrant women and girls DREAM will provide:
 - Lawful permanent residency for 57,000 immigrant women age 18 + who have earned associates degrees or higher
 - Conditional legal immigration status to 268,000 immigrant women high school graduates ages 18-34 enabling them to attend college
 - Encourage a greater proportion of the 934,000 undocumented immigrant children under age 18 to complete high school and attain conditional permanent residency if they attend college or join the armed forces
 - 934,000 undocumented immigrant children under age 18 will be eligible if they complete high school and enroll in college or join the military

Without DREAM

- Undocumented immigrant high school graduates are destined for a live in the informal, underground economy
- No economic security
- Vulnerable to exploitation, sexual violence and abuse
- Unable to access the protections of U.S. labor laws
- Subjected to dangerous working conditions
- The prospect of this future increased high school drop out rates among children from immigrant families

- The impact on immigrant women and girls is particularly severe with immigrant women earning \$16,500 less than U.S. born men

Improving Policies and Practices Through Federal Administrative Agency Action

- Federal administrative agencies are
 - fully staffed with political appointees and
 - many new federal agency staff
- Opportunity to imagine federal agency policy reforms
 - Document the need
 - Bring voices of our communities and constituencies to federal agency policy makers
 - Significant changes can occur
 - Example:
 - Access to Shelter and Transitional Housing for up to 2 years for undocumented immigrants

Implications of Increased Immigration Enforcement for Immigrant Women

- § Separation of immigrant mothers from their children
 - § In the 10 year period (1998 - 2007) **108,000 +** undocumented immigrant parents of U.S. citizen children were removed from the United States
 - § 5.5 million children in the U.S. live in families with a least one undocumented immigrant parent – 3 million of these children were U.S. citizens
 - § 85% of immigrant families are “mixed status”, including at least 1 U.S. citizen, often a child

Enforcement tactics and immigrant women

- Historically high level of arrests, detentions and removals constant since 2006 accomplished through
 -
 - Worksite raids
 - Traffic stops
 - Searches of public transportation
 - Responsiveness to “tips”
 - From family members during custody proceedings
 - Crime perpetrators against crime victims to undermine prosecutions
 - Particularly gender based violence against women crimes
 - DHS enforcement actions at courthouses

Family law implications for women who lack legal immigration status -- Custody

- Citizen fathers raise immigration status of non-citizen mothers ---
- To circumvent state laws designed to result in custody decisions based upon
 - Best interests of the child
 - The primary care taker parent
 - Presumptions that award custody to the non-violent parent
- To challenge jurisdiction to make custody awards to undocumented parents
- To win custody by having the undocumented parent detained by DHS
- No obligation for courts to report to DHS

Legalization will help immigrant women

- Win custody of their children
- Children remain with their primary caretaker immigrant mother
- Healthier outcomes for children
- Research among a particularly vulnerable population of immigrant mothers – battered immigrant women found that
 - Immigrant victims who receive help including legal immigration status, the likelihood mother's abuser would also abuse the children dropped from 77% to 23%

Legalization helps immigrant women

- Counter court orders that mothers learn English before
 - Being awarded custody
 - The court will return children taken by child protective services
- Subjected to DHS enforcement at and outside courthouses
- Receive protection from abuse orders by stopping judges who
 - Refuse to issue protection orders to immigrant victims
 - Threaten to undocumented victims over to DHS when they came to court seeking protection orders

Terminating the Parental Rights of Undocumented Parents

- State Abuse and Neglect agencies intervening to take children from undocumented parents
- Triggered by
 - reports from health care system and other government agencies (Maria Luis – Nebraska)
 - Immigrant parents caught up in immigration enforcement (Encarnacion Bail – Missouri)

Immigrant Parents' Constitutional Right to Custody of Their Children

- Constitution right to custody absent finding of unfitness
- Overriding presumption that parent child relationship is constitutionally protected and
- In child's best interest to stay with/be reunited with their parent
- Applies to all families without regard to
 - Immigration status; and
 - Whether or not the parent is
 - In immigration detention or deported
- Child's best interests not comparison of natural vs. adoptive parent's
 - cultures, countries, or financial means

What immigrant women need in CIR and immigration policy reforms

- End enforcement practices that adversely affect immigrant women and their children by
 - Separating immigrant mothers from their children
 - Humane Enforcement and Legal Protections for Separated Children Act (HELP)
 - Serving as a potent tool for crime perpetrators
- Enhance personal and economic security and autonomy by expanding access to immigration status
 - Based on an immigrant women's own work
 - For immigrant children who graduate high school and attend college (DREAM Act)

What immigrant women need in CIR and immigration policy reforms

- Promote family reunification and reduce family back logs
- Ensure that legalization and all immigration fee structures are designed to enable all members of the family to attain legal immigration status
- Promote women's economic security by protecting immigrant women workers rights
- Provide portable work authorization

What immigrant women need in CIR and immigration policy reforms

- Ensure access to a fair justice system for all immigrants
 - Language access
 - Unrestricted access to legal services
- Provide access to federal and state funded public safety net benefits for lawfully present immigrants
 - End the 5 year bar
- Expand access to protection and services for immigrant victims of violence against women
 - Screen all immigrants subject to enforcement actions for victimization and humanitarian release
 - Provide early access to work authorization and protection from deportation

Prior to VAWA

- Abusive spouses, employers and family members controlled the immigration status of non-citizen victims
- No protection from deportation for immigrant victims of domestic violence, sexual assault and human trafficking
- Police, prosecutors, courts, shelters turned away LEP victims
- Programs that did serve immigrant victims isolated
- Immigrant victims had limited access to family courts to obtain custody and protection orders

Collaborative Legislative Advocacy

- Battered Spouse Waiver – 1990
- Violence Against Women Act – 1994
- Carve outs and benefits access for battered immigrants in the 1996 Welfare and Immigration Reforms
- Access to Legal Services for Battered Immigrants – 1998
- Violence Against Women Act 2000
- Victims of Trafficking Protection Act 2000
- Funding for INS processing of domestic violence crime victim and trafficking cases 2001
- Violence Against Women Act of 2005
- International Marriage Broker Regulation Act of 2005
- Trafficking Victims Protection Reauthorization Act 2008

Keys to Success

- History providing direct services
- Developing trust – honesty
- Drafting for staffers
- Developing coalitions
 - National Network on Behalf of Battered Immigrant Women
 - Freedom Network
 - Women’s rights, domestic violence, sexual assault program allies
 - Researchers, advocates, attorneys
 - Community based and Faith based
- Documentation of Need

Lobbying Approach

- Collaboration
- Women's and domestic violence groups take the lead
- Immigrant rights groups provide technical support
- Documenting the need
 - Stories
 - Research
 - Technical assistance and training
- Countering anti-immigrant sentiment
- Grassroots role
- Remaining in the work after passage

Federal Agency Reforms

- Securing regulations that would work for victims
- Educating DHS
- VAWA Unit
- No filing fees
- Humanitarian release
- No removal and swift adjudication when victim has case before an immigration judge
- VAWA Confidentiality
- Red Flag system
- Legal Services
- Post secondary educational grants and loans

Holistic Approach –Full Circle

- Legislation
- Regulations
- Working with government to implement
- Training
- Materials
- Technical Assistance
- Building Survivor leadership
- Building collaborations with immigrant CBOs
- Monitoring
- Research
- Story collection
- Legislation

Today's challenges

- Anti-immigrant legislation
- States taking children from undocumented mothers

Today's Challenges:

- Arizona's SB 1070 and other state and local anti-immigrant legislation: Impact on Women
 - Undermines VAWA, TVPRA and U visa
 - No Humanitarian release
 - No screening for crime victimization
 - Detention of mothers and separation of children
 - Interfere with access to federally mandated life and safety services

Today's Challenges

- States taking children from undocumented mothers
- Maria Luis, Nebraska
- Encarnacion, Missouri

The Violence Against Women Act of 2011 Priorities and Possibilities

Priorities Include

- Make U-Visa certification primary evidence NOT mandate
- Early access to work authorization
- Expand access to federal public benefits for victims
 - U-visa victims
 - End 5 year bar
- Improved protections against deportation
 - Reinstatement of removal not apply to VAWA/T/U
 - Expand inadmissibility waivers for VAWA self-petitioners
- Expand list of U-visa crimes
 - e.g. stalking, child abuse, child exploitation, child labor exploitation, child endangerment, elder abuse and exploitation, sexual harassment

National Network VAWA IV Selected Priorities

- Any state or local police who get involved in immigration enforcement must
 - Obey VAWA confidentiality
 - Have U-visa policies and be doing certifications
 - Screen for victims, primary caretaker parents and vulnerable immigrants
- Improved access to VAWA, T and U protections
 - Visa recapture
 - Death of abuser
 - Divorce if step-child
- Improved access to gender-based asylum
- Enforcement of language access re: governmental agencies

VAWA VI Priorities

- Funding priorities when police/prosecutor/court is
 - Certifying in U and T visa cases
 - Providing language access
- Open VOCA in all states to non-citizens
- Improved access to transitional housing
- Encouraging more government funding for research on
 - Violence against women including domestic violence, sexual assault, trafficking, stalking, dating violence and elder abuse
 - Underserved victims, including immigrant victims
- HELP Separated Children Act

VAWA Immigration Has Taught Us

- That what might seem impossible is possible
- That collaboration between attorneys, advocates, immigrant community groups, government officials, and justice system personnel is possible
- And can reap immeasurable benefits for victims of domestic violence, sexual assault and trafficking

What you can do.

- Join the National Network
- Connect with groups working with immigrant victims in your state
- Join local and state efforts to prevent passage of anti-immigrant legislation and ordinances
- Become part of our grassroots campaign for VAWA 2011

For further assistance

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