

Issues, Rights & Danger Assessment for Immigrant Intimate Partner Violence Survivors

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National Immigrant Women's Advocacy Project
Resource Library: iwp.legalmomentum.org

Learning Objectives

- Understand of the dynamics of violence against women experienced by non-citizens
- Be able to identify legal options for immigrant survivors
- Understand the role you play in assessing danger is central to immigrant victims access to immigration and justice system protections

IMMIGRANT DEMOGRAPHICS

U.S. Immigrant Demographics

- “Immigrant” = born outside the U.S.
- 38.5 million immigrants in U.S (MPI 12/10)
 - 12.5% U.S. population (MPI 12/10)
- Today over 27% of U.S. population are immigrants or children of immigrants
 - (US Census)
- 21.2% increase in foreign born population between 2001 and 2009

Language Spoken at Home

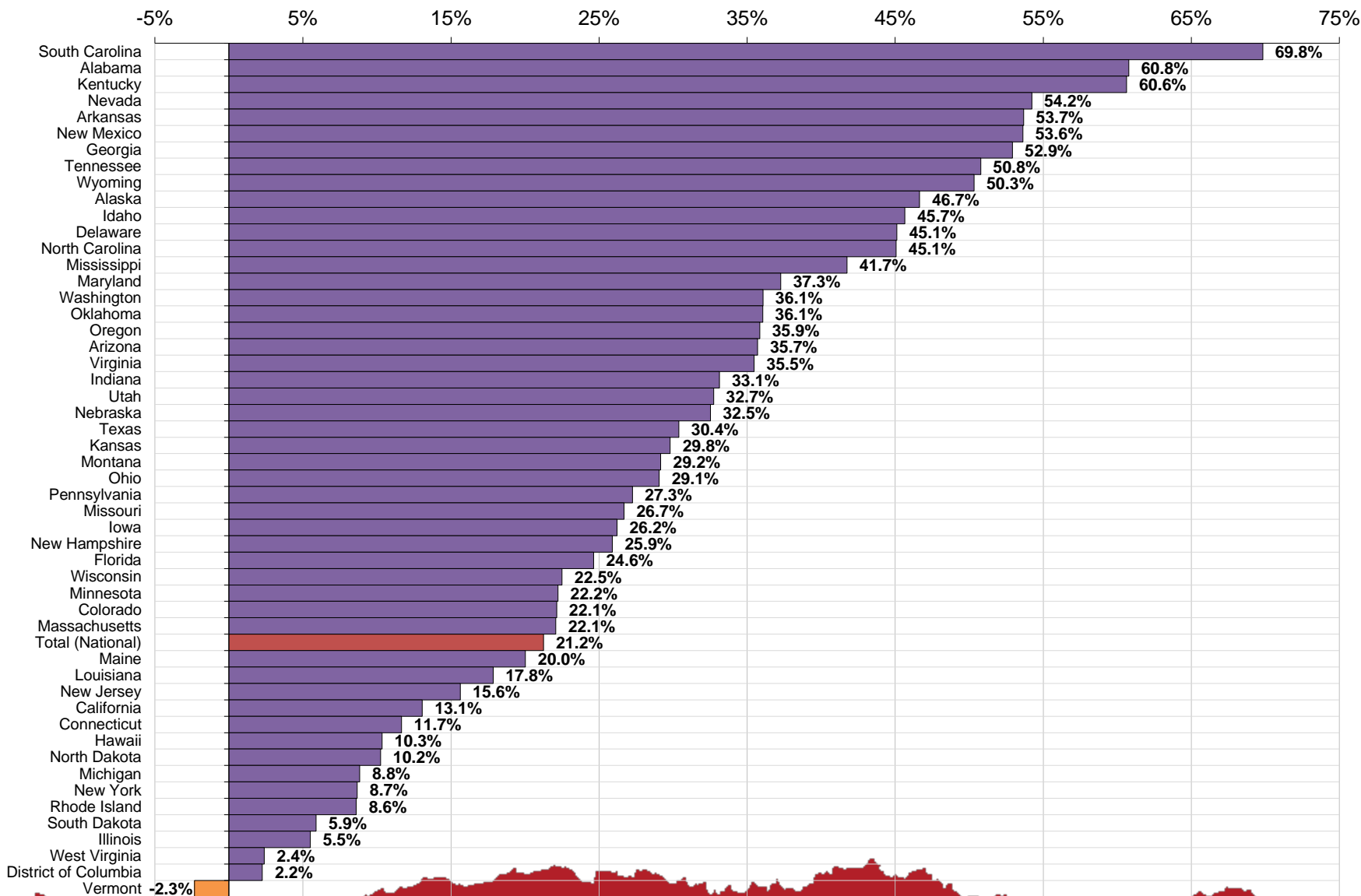
(US Census 2010)

- 35.3 Million – Spanish
- 2 Million – Chinese, Mandarin, Cantonese
- 1.6 Million – French or Haitian Creole
- 1.3 Million – Filipino, Tagalog
- 1.1 Million – Vietnamese
- 959,673 - Russian
- 857,642 – German
- 682,879 - Arabic
- 665,369 - Russian
- 589,509- Italian

Years Since Immigration

- 0-5 years 17%
- 6-10 years 17.4%
- 11-15 years 13.3%
- 15-20 years 12.8%
- 21+ years 39.4%
- More than 47.7% arrived after August 1996

% change in foreign-born population between 2001 and 2009



DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS AND THEIR CHILDREN

NIJ funded research on protection orders and immigrant survivors:

- With advocate's support, immigrant victims will use and benefit from protection orders
 - 60.9% **first** learned about protection orders from their advocates/legal services attorneys
 - 81% chose to seek and received a protection order with help from advocate/attorney
 - Evidence of benefits of safety planning
 - Strong correlation between severity of violence and undocumented immigrant victims' willingness to seek a protection order
 - 96% found them helpful
 - Protection orders reduced violence, but –
 - 68.3% of violations immigrant related abuse

Advocacy Makes a Difference

- Safety Planning and Advocacy Work
 - Victims learned about CPO
 - Advocates assessed lethality
 - When high risk of lethality, more immigrant victims working with sought orders
 - With this help, process was easier than women expected
- Challenge: effective advocacy in an age of immigration enforcement

Advocates are key for immigrant survivors access to services

- Once immigrant survivors with advocate support seek protection orders
- Factors in Immigrant victims calling police for help
- Positive Factors:
 - Length of time in the United States
 - She had spoken to 2 or more persons about the violence
 - (46% know other women victims)
 - Her children witnessed the abuse
 - **She had a protection order**
- Negative Factor:
 - Victim's immigration status

Immigration Status Affects Willingness to Call Police

- Significant difference between victims willingness to call the police related to their immigration status:
 - Stable (citizen/permanent resident) 34.4%
 - Temporary (temporary visa) 16.7%
 - Undocumented 14.8%

Primary support persons with whom battered immigrants are willing to discuss abuse

- Female Friend 49.6%
- Mother 30.1%
- Sister 22.5%
- Another Battered Woman 10.4%
- Shelter Worker 9.5%

Percent receiving services vs. percent disclosing abuse

- Lawyers/Legal Services (50.1% vs. 8.7%)
- Doctor/Nurse/Health Care (59% vs. 4.6%)
- Social Services/Social Worker (58.2% vs. 6%)
- Police (11.9% vs. 8.4%)
- Job Training/ESL (36.7% vs. 1.5% employer)
- Religious organization/worker (5.4% vs. 8.4%)

Children of Immigrant Women Who Received Help Protected Against Child Abuse

- National co-occurrence rate: 30-40%
- Rates among immigrants similar
- Co-occurrence among
 - Help seekers: 23%
 - Abused immigrants who did not seek help: 77%
- Children of help seekers 20% less likely to have abuser threaten them
- 33% less likely to have abuser threaten to take them away from their mother

Research Among Immigrant Women Found

- Similar results lifetime abuse rates for immigrant women in the U.S. 33-50%
- Immigrant women also have high rates of sexual assault particularly during the first two years after arrival in the U.S.
- Victimization of immigrant children also high including child sexual abuse
- Multiple immigrant populations studied

Sexual Assault Among Immigrant Women

- Immigrant women are particularly vulnerable to recurrent sexual assault
- School aged immigrant girls are twice as likely to have suffered sexual assault as their non-immigrant peers to have suffered **sexual assault**
- Increased vulnerability may stem from
 - Increased isolation
 - Break-up & restructuring of families during immigration process
 - younger immigrant girls being actively targeted by sexual assault perpetrators who see them as particularly **legally and socially vulnerable**

Domestic Violence Prevalence Rates and Severity

- U.S. in general – 22.1% (NIJ)
- Immigrant women – 30-50%
- Research has found that immigrant victims
 - Stay longer
 - Have fewer resources
 - Sustain more severe physical and emotional consequences of abuse

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
- Lifetime as high as 49.8%
- Those (50.8%) married to citizens and lawful permanent residents who could file immigration papers for them
 - 72.3% never file immigration papers.
 - The 27.7% who did file had a mean delay of 3.97 years.

Abuse Rates Rise When U.S. Born Citizen Marries Immigrant Woman

- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

Immigration-Related Abuse

- Immigration related abuse =
 - Threats/attempts to have her deported
 - Threats to and acts to withdraw papers
 - Calls to USICE to turn her in – have her case denied
- Keeps victims from
 - seeking help
 - Getting protection order
 - Calling police
 - Cooperating in prosecutions
- NIJ Research found that 65% of immigrant victims report some form of immigration related abuse

Immigration Related Abuse as a Lethality Factor

- **10 times higher** in relationships with physical/sexual abuse as opposed to psychological abuse
- Lethality factor could predict escalation
- Corroborates existence of physical/sexual abuse

Immigration Related Abuse as Coercive Control

- Any time relationship and control over victim's immigration status
 - Family Violence
 - Sexual Assault in the workplace
- Cohesive control (Mary Ann Dutton)
 - Isolation
 - Intimidation
 - Economic Abuse
 - Immigration related abuse

Immigrant Victims Legal Rights

- Federal/State funded services
- Legal Services
- Justice System Help
- Victim Services
- Immigration protections

Both Documented & Undocumented Immigrant Victims Can Access

- Protection Orders
- Shelter
- Transitional Housing
- Child Custody and Support
- Receive Emergency Medical Care
- Police Assistance
- Have Their Abusers Criminally Prosecuted
- Assistance for Crime Victims
- Obtain Public Benefits for Their Children
- Legal Services
- Language Access

Attorney General's List of Required Services

- In-kind services
- Provided at the community level
- Not based on the individuals income or resources
- **Necessary to protect life & safety**
- Programs covered by this AG order are open to all persons
- State and local governments **CANNOT** impose immigrant access restrictions
- Federal non-discrimination laws apply

Benefits Available to All Immigrants

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Nutrition programs for those requiring special assistance

Health Care Open to All Immigrants

- Community and migrant health clinics
 - www.nachc.com
 - www.hrsa.gov
 - Enter zip code
- State funded programs
- Post assault health care paid by VOCA
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid

Partial List of Federal Public Benefits/Community Programs Open to All Qualified Immigrants

- Public and assisted housing
- Post-secondary educational grants & loans
- Social services block grant programs
- Child care
- Adoption assistance
- Foster care
- Low income energy assistance program
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals

Federal Means-Tested Public Programs have most limited immigrant access

- **TANF:** 5 year bar, after 8/22/96
- **SSI:** Refugee/Trafficking victims
 - Lawful permanent residents: only if 40 quarters or work credit and qualified immigrant status for 5+ years if entry after 8/22/96
 - Veterans and qualified immigrant spouses, children
- **Food Stamps**
 - Qualified Immigrants 5 year bar post 8/22/96
- **Medicaid and Child Health Insurance Program**
 - Health Care reform opened up access to immigrants who are “lawfully present”

Food Stamps for Qualified Immigrants

- Children under 18
 - regardless of date of entry
- Receiving disability benefit
 - regardless of date of entry
- Persons who have been qualified immigrants for five years or more
- Refugees or Asylees
- Human Trafficking victims
- Persons credited with 40 quarters of work

Immigration Options

Potential Immigration Remedies

- Applications filed DHS
 - VAWA self petition
 - Battered spouse waivers (spouses of USCs with conditional permanent residency)
 - U visa
 - T visa (victims of trafficking)
 - Asylum (persecution based on protected classes)
- Forms of relief from removal- granted by Immigration Judge
 - VAWA cancellation of removal
 - VAWA suspension of deportation



General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse,
 - parent,
 - adult son/daughter (over 21)
- With Whom self-petitioner resided
 - No time period required
- Good Moral Character
- Good Faith Marriage

Approved VAWA petitions

- Protection from deportation and detention
 - deferred action status.
- Legal work authorization
 - 6 months if abuser citizen spouse (26.1%)
 - If abusive spouse is lawful permanent resident
 - 1 year 46.8% to 13-18 months 27.1%
- Ability to apply for lawful permanent residency through VAWA

Crime Victim (“U”) Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law



Criminal activities covered by the U- visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Prostitution
- FGM
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- Any similar activity

Who can certify?

- Police officer
 - State
 - Local
 - Federal
 - University
- Prosecutor
- Judge
- Immigration Officer
- Other authority with responsibility for investigation or prosecution of criminal activity

The U-Visa Process

- Government official signs certification
- Child and/or child's parent filed U-visa application
- DHS adjudication – grants/denies U-visa
- Approved = receive 4 year U-visa
- After 3 years some will qualify for lawful permanent residence
- Can apply for citizenship 5 years after receiving lawful permanent residency

DHS Prosecutorial Discretion Not to Initiate Removal Against Crime Victims and Witnesses

- Minimize the effect that immigration enforcement may have on the willingness and ability of
 - Victims of crime
 - Witnesses to crime
 - Individuals pursuing legitimate civil rights complaints
 - To call the police and pursue justice
- Designed to stop immigration officials from acting
 - When local police make dual arrests
 - Leading to victims being arrested and having their fingerprints turned over to DHS

DHS Memos

- Protections for crime victims
 - Initiation of VAWA confidentiality computer check system (12.21.2010)
 - Prosecutorial discretion for crime victims (6.17.2011)
- DHS Enforcement priorities
 - Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
 - Low priority immigrants vs. high priority immigrants (3.3.2011)
 - Prosecutorial discretion (6.17.2011)
 - DHS and White House Directives regarding immigration case processing (8.18.2011)
 - Protections for immigrants who came to US as children (6.15.2012)
- Humanitarian Release (2007-2008)
 - Breastfeeding mothers
 - Sole/primary caregivers of children

Positive factors

- Length of time in US (including lawful presence)
- Circumstances of arrival, manner of entry
- Presence in the U.S. since childhood*
- Pursuit of education: US high school/college
- Person/close family, veteran/military particularly combat*
- Community/family ties, contributions
- Ties to/conditions in home country
- Age – minor, elderly*
- USC/LPR spouse, parent, child
- Person who suffers from serious mental or physical disability or serious health condition*
- Primary caretaker of child, person with mental/physical disability, seriously ill parent
- Crime victim or witness*

Other positive factors

- Pregnant or nursing women
- Spouse is pregnant or nursing
- Nationality renders removal unlikely
- Long time lawful permanent residents
- Likely to be granted immigration relief as
 - spouse, child of a citizen or lawful permanent resident
 - Domestic violence, trafficking or victim of other serious crime
 - Crime victim
 - Asylee/refugee
- **Victims and Witnesses** cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, federal or state prosecutors, Department of Labor, or National Labor Relations Board, among others

Negative Factors to Consider

- Clear risk to national security*
- Serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind*
- Known gang members or other individuals who pose a clear danger to public safety*
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud*
- Criminal history, including arrests, prior convictions, or outstanding arrest warrants
- Immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud
- Whether the person poses a national security or public safety concern

A NEW ERA IN SAFETY PLANNING WITH IMMIGRANT SURVIVORS

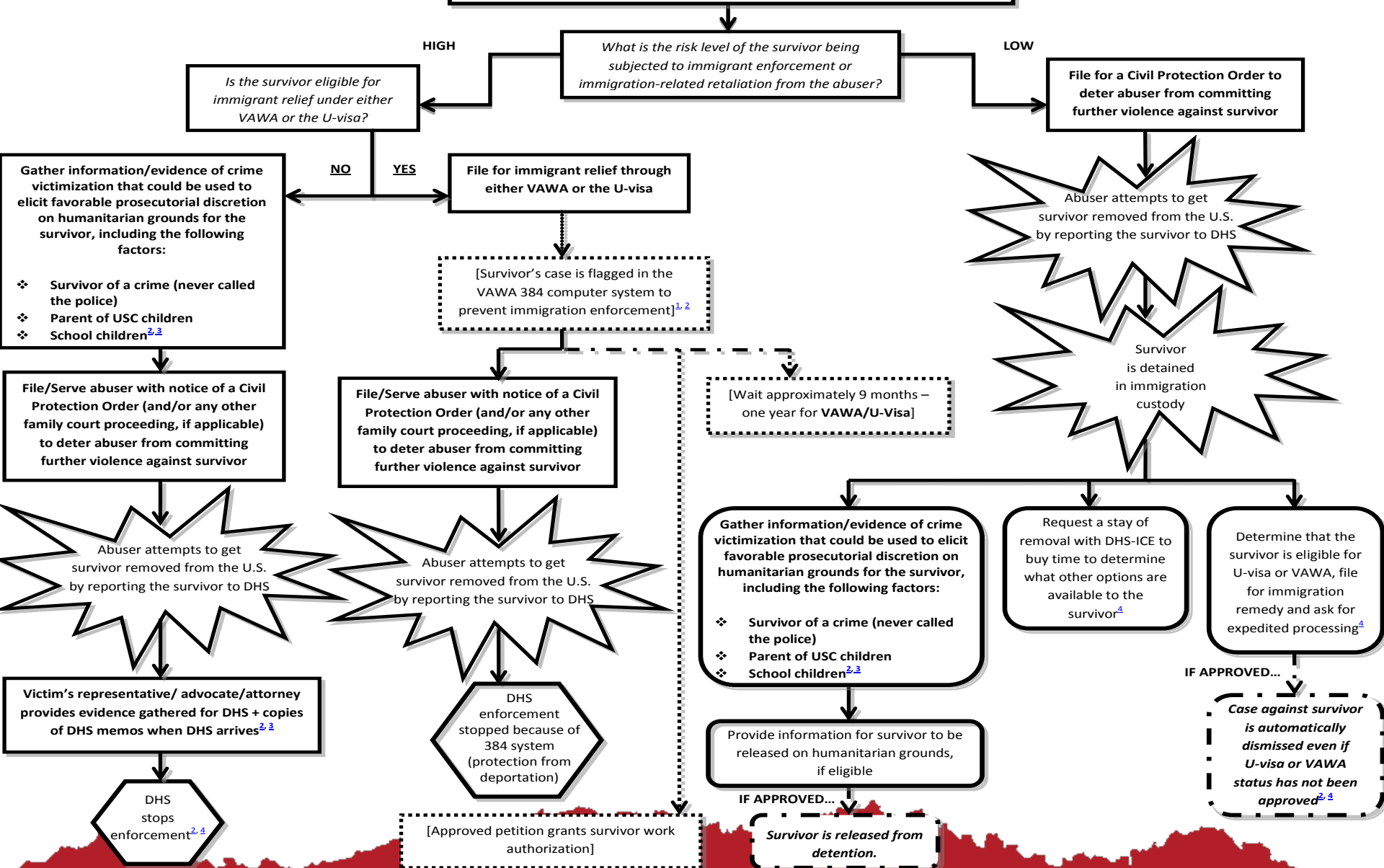
Safety Planning and Action Steps for Immigrant Survivor Mothers

- Timing of immigration and family court cases
- New safety planning flow chart
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Understand and intervene early in child welfare system
- Victim must tell DHS enforcement officials that she has children
- Safety planning
 - Developing plan to ensure care of children if detained
 - Power of Attorney appointing guardianship
- Give client number for consular notification

Early Victim Identification, Certification & VAWA/U-Visa Filing

- Cut off perpetrator's ability to trigger the victim's deportation
- Help victim secure
 - Protection from deportation
 - Release from detention
 - Swift adjudication of immigration case for victims detained or in immigration proceedings
- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator

IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY



Technical Assistance and Materials

- Power Point presentations and materials for this conference at niwap.org/go/ivat
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Website: www.wcl.american.edu/niwap