

PRESENTED BY: LEGAL MOMENTUM, IN PARTNERSHIP WITH THE NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (NIWAP) AND THE CALIFORNIA COALITION AGAINST SEXUAL ASSAULT (CALCASA)

Webinar

Safety Planning for Immigrant Survivors Using DHS's New Victim Protection Policies

We will start soon



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Leslye Orloff
 Director of National Immigrant
 Women's Advocacy Project,
 American University
 Washington College of Law
orloff@wcl.american.edu

Rocío Molina
 Staff Attorney & Associate Director
 National Immigrant Women's
 Advocacy Project
 American University Washington
 College of Law
molina@wcl.american.edu

NIWAP's Technical Assistance: (202) 274-4457

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Webinar Series

- This the First Webinar in a series of 5 Webinars
- Next Webinar on Emerging Issues in Family Law will to be held in November 2012






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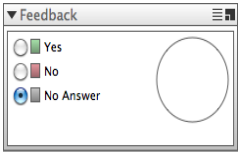


Background

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CAN UNDOCUMENTED IMMIGRANT SURVIVORS ACCESS VICTIM'S SERVICES IN THEIR STATE ?

Answer on the left



Feedback

Yes

No

No Answer

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VAWA: Legislative History

- Congress created immigration protection for immigrant victims of domestic violence, sexual assault and human trafficking
- With the express intention of removing immigration status as a tool that abusers can use against survivors
- By federal law, all victim services are to be provided without the requirement that providers ask questions about immigration status

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Help all victims can access --including immigrant victims:

- Justice system relief
 - Protection orders
 - Criminal investigations and prosecutions
 - Custody
- HHS funded and emergency health care
 - Hrsa.gov
- Victim services
- Shelter and transitional housing
- Legal services
- Programs protecting life and safety

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Legal Options for Immigrant Survivors


Immigration relief:

- **VAWA self-petition**
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- **Battered spouse waiver**
 - Abused spouses of US citizens with two-year conditional permanent residency
- **T-visa**
 - Victims of severe forms of human trafficking
- **U-visa**
 - "Crime victim's visa"
- **Asylum**
 - Persecution based on protected classes
- **Special Immigrant Juvenile (SIJ)**
 - Juveniles that have been abused, abandoned or neglected
- **Deferred Action** - Relief based on new DHS policies and for Child Arrivals
 - Deferred action for "low priority" survivors, parents, and "dreamers"




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Brief Overview VAWA vs. U-visa





- Abuser = spouse, former spouse, parent, 21+ USC child
- Abuser must be USC or LPR
- Can apply for children
- No cooperation with law enforcement required
- No proof of harm **required**
- Experienced Battery or "Extreme Cruelty"
- Criminal involvement can cut off access to relief
- Qualified immigrant = public benefits
- About 1 year wait for work authorization
- Protection from deportation for one year
- Green card usually given after approval if abuser is a citizen
- Abuser = anyone
- Abuser can have any status
- Can apply for children and spouse/parent
- Cooperation in detection, investigation or prosecution required
- Substantial physical or emotional abuse
- Crimes can be waived
- PRUCOL less benefits access
- About 9 months wait for work authorization
- If in immigration proceedings, case can be expedited
- Green card received after 3 years *if* can show cooperation + either humanitarian need, public interest or family unity



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Forms of relief from removal granted by Immigration Judge

- VAWA cancellation of removal
- VAWA suspension of deportation
- Pending petitions for immigration benefits
 - Expedited adjudication
 - Dismissal without prejudice
 - Cases administratively closed
 - In the future may be able to apply for employment authorization

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CAN IMMIGRANT SURVIVORS BE ELIGIBLE FOR MORE THAN MORE IMMIGRATION REMEDY?

Answer on the left

Feedback

Yes


No

No Answer

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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 children's best interest to stay with/be reunited with their parent(s)
- 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 = most important**
 - **A comparison of natural vs. adoptive parent's cultures, countries or financial means is inconsequential in this determination**



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KEY ROLE OF ADVOCATES



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The Advocate's Role

- Advocates play a key role in informing immigrant survivors about these options and collecting the evidence needed to attain lawful immigration status
- Familiarize yourself with the options and resources available to immigrant survivors and new federal policy on immigration relief and deportation



The Advocate's Role (cont.)

- Be able to connect immigrant survivors to resources with expertise on immigrant survivors' legal rights
- Understand what are possible "red flags" for immigration relief



Learning About a Client's Immigration Status


Important Considerations

- At what point do you raise the question?
- What are some signs that might lead you to ask?
- How would you ask the question without scaring away your client?
- Why is asking sooner rather than later important?




An immigrant survivor walks through the door of your agency.

What do you do?



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What kind of barriers do you believe immigrant survivors experience when seeking help?

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Safety Planning and Action Steps for Immigrant Survivor

- **Tools**
 - New safety planning flow chart
 - Immigrant victim brochure
- **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**

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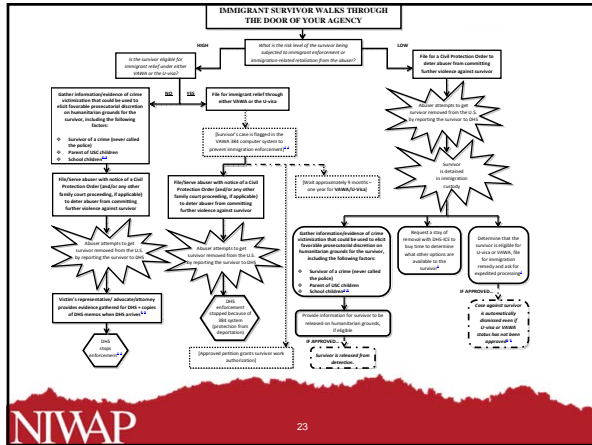
Application for VAWA, T or U immigration status improves immigrant victims access to services

- Screen for immigration case already filed
- Screening + Filing (VAWA, T or U) =
 - Lawful Presence = Health Care
- Filing for immigration benefits required for VAWA self-petitioners to become qualified immigrants eligible for
 - Federal public benefits
 - State funded benefits (differs by state)



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HIGH: Is the Survivor Eligible for Immigrant Relief Under Either VAWA or the U-visa?

YES

NO

- | | |
|---|---|
| <ul style="list-style-type: none"> • File for VAWA or U-visa immigration relief • [Survivor's case flagged in 384 system to prevent enforcement] • [Wait 9 months-1 ½ year for VAWA/U-visa] • File/serve abuser with CPO • Abuser reports survivor to DHS • DHS enforcement stopped because of 384 system • [Approved petition grants survivor work authorization] | <ul style="list-style-type: none"> • Gather information/evidence of violence or crime to elicit favorable prosecutorial discretion <ul style="list-style-type: none"> – Survivor of crime – Eligible under DACA – Parent of USC children – School children • File/serve abuser with CPO • Abuser reports survivor to DHS • Victim's representative provides DHS with gathered evidence upon arrival • DHS stops enforcement |
|---|---|



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Key Points for Advocates

- Immigration screening as early as possible is essential
- Cannot assume by name or sight that the survivor is or is not an immigrant
- Changes in strategy – Immigration case filed before
 - CPO, family or criminal court case
 - Victim travels to new location



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Early Survivor Identification, U-visa Certification & VAWA,U,T-Visa Filing

Help survivor's secure:

- Protection from deportation
- Release from detention
- Swift adjudication of immigration case for victims detained or in immigration proceedings
- Some access to public benefits
- Access to employment authorization



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Early Survivor Identification, U-visa Certification & VAWA,U, T-Visa Filing (cont.)

- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator



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Screening for “Red Flags”

- Entry as an international exchange visitor
- Previous deportation/removal from the U.S.
- Failure to voluntarily depart
- Departure since original entry
- “Alien” smuggling
- Marriage fraud



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Screening for “Red Flags” (cont.)

- Criminal convictions
- Penal confinement (as a result of conviction)
- Prostitution
- Drug or human trafficking
- Falsely claiming citizenship
- False testimony for immigration purposes

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SCREENING AND SAFETY PLANNING IN THE CONTEXT OF IMMIGRATION ENFORCEMENT




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How Survivors End Up in DHS Custody


- Abusers/crime perpetrators report them
- Employers or co-workers report them
- Traffic stops
- Immigration enforcement at the worksite
- Reports by CPS
- Reports by welfare worker
- Reports by health care providers
- Reports by others
- Victims call the police for help and police:
 - Make a dual arrest
 - Arrest the victim
 - Encounter language barriers when communicating with the victim



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Early Identification Enhances Survivors Safety


- By filing for VAWA, T or U visa immigration benefits as early as possible survivors will be protected against immigration enforcement action
 - Will facilitate working with survivors
 - Transportation issues
 - Timing of help offered
 - Maintaining custody of child
 - Promote community policing enhancing trust with law enforcement

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Early Identification of Immigration Remedies Crucial to Victim Safety

- Important to identify victims who are eligible for:
 - VAWA
 - T-visas
 - U-visas
- Low Priority Survivors
 - Primary caretaker parents of young children
 - Deferred Action for Childhood Arrivals (DACA)



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What might immigrant survivors be most concerned about when a perpetrator or abuser is served with legal documents?

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VAWA Confidentiality

1. DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
2. DHS cannot disclose VAWA information to anyone (except in limited circumstances)
3. Prohibited from conducting enforcement action at certain locations

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384 Red Flag VAWA Confidentiality System (December 10, 2010)

- New computerized system's "384" flags signify that the individual has a pending or approved VAWA confidentiality-protected case
- This system will help prevent removal of victims with pending and approved VAWA, T- and U-visa cases

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DHS Humanitarian Release

- Breastfeeding mothers
- Sole/primary caregivers of children
- Screening in detention done:
 - In English/Spanish
 - Oral and writing
- Release as:
 - Order of recognizance
 - Order of supervision
 - Alternatives to detention



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Immigration case can be dismissed if enforcement action occurs at:

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



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DHS required to refrain from enforcement also at:

- Schools
- Institutions of education
 - Head start
 - Child care
 - Colleges/universities
- Funerals
- Places of worship
- Religious ceremonies



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DHS Prosecutorial Discretion Not to Initiate Removal Against Crime Victims and Witnesses
(June 17, 2011)

- To 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
 - Victims to call the police and pursue justice

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DHS and White House Working to Ensure Enforcement Conforms to DHS New Priorities

- In the *civil immigration context*, DHS is confronted with more *administrative violations* than resources
- By favorably exercising prosecutorial discretion, DHS decides not to assert the **full** scope of its enforcement authority - available on a case-by-case basis to the agency in "low priority" cases
- Prioritize use of enforcement personnel, detention space and removal on:
 - National security
 - Border security
 - Public safety
 - Integrity of the immigration system

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White House and DHS Announcements
(August 18, 2011)

- **Requires DHS attorneys to review all immigration court cases**
 - "Totality of the circumstances"
 - Case-by-case review
 - Administratively close "low priority cases"
 - With ability to apply for work authorization
 - Includes reviewing final orders of removal in compelling cases
- **Future cases screened for priority and removal not initiated if "low priority"**
- Three-tier system

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DHS -Detention Release - Immigration Court Dismissal of Case
(August 20, 2010)

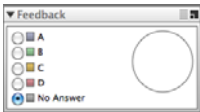
- **Release for immigrants with filed, pending or approved applications for immigration benefits**
 - U-visa
 - T-visa
 - VAWA
 - Family Petition
- **Dismissal without prejudice of immigration court case if:**
 - Immigration case likely to be approved
- **Unless applicant:**
 - Has criminal convictions or misconduct
 - Is a threat to public safety or national security
 - Evidence of fraud




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If a survivor is detained by immigration what should be the first thing she tells officials ?

Answer on the left




- A. She has filed for VAWA, U-T Visa
- B. She is a survivor of violence (DV/SA/ Human Trafficking)
- C. She has two young children waiting for her at home
- D. All of the above



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Positive Factors: Low Priority Cases

- 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



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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



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Deferred Action for Childhood Arrivals - including those who are immigrant victims (June 15, 2012)

Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children Memo Permits certain young people who were brought to the United States as young children, do not present a risk to national security or public safety, and meet several key criteria to remain in the U.S.



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Deferred Action for Childhood Arrivals (DACA)

- Came to the US **under age 16** and were **under 31 on June 15, 2012**;
- Continuously resided in the US since **June 15, 2007**;
- **Entered without inspection** before June 15, 2012 or otherwise **had no legal status** on June 15, 2012;
- Are in school, graduated from high school, have earned a GED, or have been honorably discharged from the Coast Guard or the US armed forces;
- Have not committed felonies, "significant" or multiple misdemeanors, or pose a "public safety" or "national security" threat.



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What can programs and advocates do to be more welcoming to immigrant survivors?

- Institute policies that give immigrant survivors the support that the familiarity of their own culture brings
 - Access to familiar sleeping arrangements and ethnically-specific food at shelters
- Promote learning and understanding of culture among shelter residents



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Steps You Can Take



- Help immigrants overcome the differences in laws and the court system in the U.S.
 - Explain in detail about the laws and court system
 - Take immigrant survivors to court in advance of their case so they can see a courtroom where battered immigrants are receiving court orders to protect them
 - Avoid using legal jargon or abbreviations



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- PowerPoint and materials from this training
 - www.niwap.org/go/ovw-webinar-victims-DHS
- NIWAP's technical assistance
 - (202) 274-4457
 - niwap@wcl.american.edu
- Web Library NIWAP and Legal Momentum
 - iwj.legalmomentum.org
 - Training materials
 - Tools for advocates
 - Multi-lingual materials for immigrant survivors
 - National online directory of programs serving immigrant survivors



National TA Providers

- National Immigrant Women's Advocacy Project
niwap@wcl.american.edu (202)274-4457
- ASISTA questions@asistahelp.org (515)244-2469
- National Immigration Project of the National Lawyer's Guild
www.nationalimmigrationproject.org 617.227.5495



