

Advocacy and Collaborations That Help Immigrant Victims of Domestic Violence: VAWA, The U-Visa, Protection Orders and Custody

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By the end of this segment you will be better able to:

- Understand how immigration status may arise in family law cases
- Screen for immigration relief that immigrant mothers who are crime victims qualify to receive
- Understand the potential unintended immigration consequences that may arise in the family law context when working with detained immigrant victims.

Advocate's Role VAWA Self-Petition

Screening for Eligibility and Red Flags

- When attorneys must handle case
- Attorney resources
- Advocate-Attorney collaborations
 - Most successful cases
- Screen for Red Flags

Screening for Red Flags

- Alcohol abuse
- **Drug trafficking**
- Drug abuse or addiction
- Illegal gambling
- False testimony for immigration purposes
- Penal confinement
- Genocide, torture, killings, violations of religious freedom
- **Child Protective Services intervention**
- Communicable disease
- Physical or mental disorder
- **Any criminal convictions**
- Unlawful voting
 - Polygamy
- Prostitution
- Human trafficking
- \$ laundering
- Terrorist activities
- Espionage
- Communist
- Public charge
- Immigration violation
- Misrepresentation for immigration purposes
- Stowaway
- **“Alien smuggling”**
- Draft evasion
- **Previously deported**
- **Unlawfully present**
- **Unlawful entry**
- International child abduction

Group Discussion

- Steps you have taken to develop trust with immigrant victims
- Approach to obtaining information about
 - Arrests-Victim's criminal history
 - Prior deportation
 - Drug involvement
 - Persons she brought into the US
 - Unlawful presence

Victim's eligible for VAWA and U

- What advantages to each route?
- What challenges?

Issues to Consider

- Ease of initial petition
 - History/willingness to be helpful to law enforcement
- Level of harm suffered by victim
- Victims economic stability
 - Swift access to work authorization
 - Access to public benefits
- Victims has red flags
 - Lawful permanent residency if red flags
 - Victim has case before immigration judge

Comparison VAWA vs. U-visa

- Abuser spouse, former spouse, parent, 21+ USC child
- Abuser USC or LPR
- Children included
- No cooperation with law enforcement required
- No proof of harm
- Criminal involvement can cut off access to relief
- Qualified immigrant = public benefits
- One year wait for work authorization
- Protection from deportation 1 yr
- Green card after approval if abuser is a citizen or 7 yr wait if abuser LPR
- Abuser anyone
- Any status
- Children included
- Cooperation in detection, investigation or prosecution required
- Substantial physical or emotional abuse
- Crimes can be waived
- PRUCOL less benefits access
- One year wait for work authorization
- If in immigration proceedings case expedited
- Green card after 3 years **if** can show cooperation + either humanitarian need, public interest or family unity

Helping a Victim Prepare a VAWA Self-Petition

Preparing Self-Petition Cover Letter

- Complete on organization's letterhead
- Print "**VAWA**" in red block letters at the top of
 - Form I-360, cover letter and mailing envelope
- Note on top of cover letter **FEE WAIVER REQUESTED**
- Address each element of proof required
 - Bulleted list of evidence for each

Self-petitioner's statement

- Victim's own words
- Tell story about courtship and marriage
- Parties life together
- Full history of
 - Physical abuse
 - Sexual abuse
 - Extreme cruelty
 - Immigration related abuse
 - Effect of abuse on self/children
- History of contact with
 - Police/prosecutors
 - Health care related to abuse

Proof of valid (good faith)
marriage to the abuser

Proof of abuser's prior divorces

Proof of abuser's citizenship or
lawful permanent residency

Information about immigration
cases abuser filed for victim

Proof of battering

Proof of extreme cruelty

Proof of good moral character

Proof of parent child relationship to include children in the self- petition

Self-petition check list

- Form I-360
- Victim's affidavit
- Advocate's affidavit
- Evidence of
 - Good faith marriage
 - Abuser's immigration status
 - Battering and/or extreme cruelty
 - Good moral character
 - Parent/child relationship
- Fee or fee waiver
- Work authorization application
- File application with the Vermont Service Center

Tools/Materials Review

- iwp.legalmomentum.org
- Self-petitioning check list
- VAWA eligibility flow charts
- Screening tool
- Review I-360 Form

Helping U-Visa Victims

What steps might you take to work with certifying agencies in your community?

- Police
- Prosecutors
- Judges
- Child Protective Services
- Adult Protective Services
- EEOC/State labor boards

Building Collaborations

- What collaborations do you already have?
- What works and doesn't in building and maintaining them?
- Who's missing from the table?

Building Collaborations: Practice Pointers

- Identify common ground
- Understand being "in their shoes"
- Examine your assumptions
- Acknowledge differing priorities
- Understand their concerns
- Respect & be clear on confidentiality & privilege
- Sort out who does what BEFORE crises
- Formalize responsibilities
 - MOU, protocols
- Fundraise together

U-visa Certification:

Considerations For Law Enforcement

- What criminal activity occurred
- Identify the victim
 - Note injuries observed, if any
- Helpfulness of the victim
 - Current or past
 - Willingness to be helpful
- Any family members implicated in the crime

Forms Required

- U-Visa application I-918
 - Each section must be filled out
- U-Visa Supplement for each child
- U-Visa certification I-918B
- Waiver of inadmissibility
 - E.g. Undocumented status, criminal history
- Passport or waiver request
- Any credible evidence
- File applications in Vermont
- Filing fee or fee waiver

What is additional evidence?

- Any credible evidence establishing the petitioner's eligibility.
- May include but is not limited to:
 - Trial transcripts
 - Court documents
 - Police reports
 - Affidavits from medical personnel, police, judges, other witnesses, etc.
 - News articles
 - Any documentation submitted to DHS by the petitioner in the past

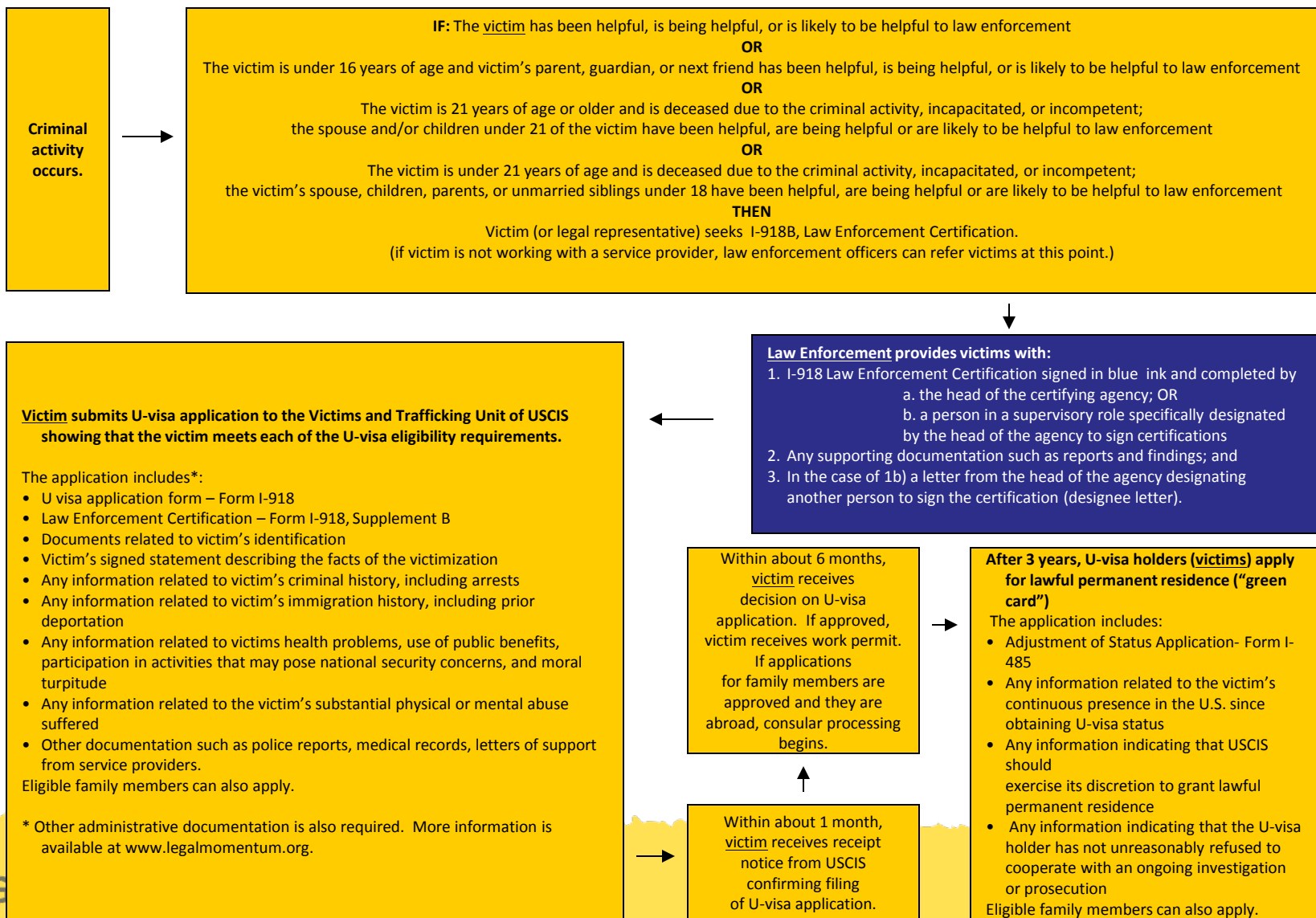
Victim's Affidavit and Evidence

- Information about the crime
- Who is the perpetrator
 - Perpetrator cannot benefit from U-Visa
- That the applicant was a victim of the crime
- Evidence of victim's efforts to be helpful in the detection, investigation, prosecution
- Response to her efforts to be helpful
- Documentation of injuries

Victim Must Additionally Prove:

- Physical or mental abuse as a result of the criminal activity
- Disclose criminal history, if any
 - Immigration law definition of “aggravated felony”
 - Discretionary waivers available
 - No waiver if history of espionage or terrorism
 - Victim will be fingerprinted
- Immigration history including violations, if any
 - Misrepresentation on an immigration application
 - Removal proceedings
- Information about family members who may also receive U-visas
- *Materials: U-visa I-918 form*

U-visa Application Victim Flow Chart



Application Process

- Filed with Vermont Service Center
- Upon approval receive work authorization
- Limit of 10,000 principal visas per year
 - (placed on wait list for next year if cap met)
- Seek permanent residency after three years of physical presence. Must show grounds of
 - Public interest,
 - Family Unity or
 - Humanitarian need AND
 - Victim cannot unreasonably refused to cooperate

HYPOTHESIS

- The Local Immigrant Free Clinic & Center calls police. Upon arrival, police are told that they have a victim of Domestic Violence, who is very afraid of her boyfriend John, they have a child in common, and the abuse is getting worse.
- The last time she was beaten was a week ago. She was beaten with the telephone. She needs to get medical attention now. She is also undocumented. She has been advised that the police will help her if she reports the crime. She has agreed to do so.

What are some ways immigration status or being an immigrant can be raised in or can affect a family law case?

Creative Protection Order Remedies

Myth: Issuance of a Protection Order Will Result in Abuser's

Deportation

- Issuance of Protection Order \neq abuser's deportation
- Violation of protection order is a deportable offense

Catch All Provisions

- Included in all state statutes
- Offer any additional relief that may potentially
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrators ability to exert power and/or control
 - Offer victim remedy-relief for past abuse
 - Help victim overcome victimization and build new post abuse life
- Nexus With Victimization

Victims who stay

- Protection orders can be issued in all states to offer protections to immigrant victims who stay with their abusers
 - No abuse
 - Counseling

Victims Who Stay -- Full Contact Protection Orders

- No state's protection order statute requires separation of the parties
- In virtually every state victims cannot violate their own protection orders
 - Contrary to statutory intentions; and
 - Against public policy to prosecute abused women for complicity in violating their own orders.

Effective Uses of Protection Orders When Representing Immigrant Women

Goals of Protection Order Exercise:

- To address the fears that immigrant victims have when deciding whether or not to request a protective order
- To become familiar with effective uses and specific remedies relevant to immigrant victims
- To counter allegations from batterers in the context of protective orders

CPO GAMES

- The participants compete as teams.
- Teams will be called upon in order.
- Once an idea has been offered, no other team can use it.
- The judge's ruling is final.
- The team that has remedies to propose when other teams have run out of remedies wins.
- Rule: Remedy must be specific to immigrant victims

Instructions for CPO Game

- 5 minutes to brainstorm a list of creative remedies for immigrant survivors to include in the CPO.
- Tables must create two lists:
 - survivor's immigration status; and
 - cultural issues and barriers victim's experiences.
- Select a representative.
- Team members can run up to the Rep to provide additional answers if they are stuck.

CPO Instructions cont'd

- Your team will be eliminated if
 - You repeat a remedy or a variation of that remedy
 - You fail to answer in allocated time
 - You do not provide orders related to immigration status or immigrant issues
- The judge will have final say about whether an answer qualifies

Creative Remedies Categories

- Immigration case
- Victims who stay
- Parental kidnapping
- Economic relief
- Preventing victim's deportation
- Undercutting immigration related abuse
- Cultural related

Taking It Home

- What issues do you envision being raised when you seek creative remedies for victims?
- What practice questions do you have about successfully obtaining these remedies for immigrant victims?

Child Custody

In a custody case what arguments might an abuser raise to the judge against an immigrant victim?

Best Interests and Immigration

- No state family code lists immigration status or English language competency as a factor
- All have provisions that encourage courts not to award custody to batterers

ABA Center on Children and The Law - Position

- ABA– “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”

ABA Center on Children and the Law -- Position

- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”

ABA Position Continued

- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

Facts:

- Safety of children is promoted by awarding custody to non-abusive parent without regard to the parent's immigration status
- Many immigrant victims who come to courts for help will today qualify for legal immigration status through VAWA or the U visa but they may not know it.

Examples of when raising immigration status may be part of pattern of abuse

- One party raises immigration status of the opposing party to
 - Prevent the court from having jurisdiction
 - Gain advantage in a custody case
 - Undermine the opposing party's credibility
 - Exert power and control to gain advantage in settlement or mediation

Intersections in Family Law Court

- Immigration status as a factor in custody determinations
 - Will flee or be deported and will take children
 - Public benefits
 - Need custody to confer citizenship benefits
 - Undocumented parent less able to financially support child
 - Ability to care for child (driver's license)
- Child's best interests are still to be placed with non-abusive parent

Examples of when a party may raise their own immigration status

- In a custody or divorce case to explain:
 - How their inability to work is tied to their spouse's immigration related abuse
 - To explain the need for child support, alimony or maintenance
- In a custody or child abuse case to demonstrate why they may not have accessed public benefits
- To explain how threats of deportation prevented them from leaving an abuser who controlled her immigration status and that her actions should not be deemed failure to protect

Undocumented Immigrants & Custody

- Lack of legal immigration status does not mean
 - Deportation is eminent
 - Parent is likely to flee U.S.
 - Victim parent does not qualify for immigration relief
- Legal immigrants and naturalized citizens are more likely to flee with children
 - When have been threats of kidnapping children
 - When they are dual nationals
 - Because they can travel freely to and from U.S.
- Crime victims can attain legal immigration status

Court Should Treat As Any Other Case Of Alleged Child Kidnapping

- Require abuser to prove that victim is likely to flee (or be deported from) the U.S.
- Evidence court should examine includes evidence of the victim's:
 - Connections to the US
 - Connections to the home country
 - Plans to leave
 - Whether she has purchased airline tickets
 - Whether her deportation is imminent

Undocumented Status, Detention and Removal and Termination of Parental Rights for Immigrant victims

- Loss of child due to immigration enforcement actions
- Loss of child as a result of accessing a community resource

How Victims End Up In DHS Custody

- Abusers report them
- Employers or co-workers report them
- Driving without a license
- Immigration enforcement at the worksite
- Report by CPS
- Report by welfare worker
- Report by others

Case Hypothetical: Maria Luis

- Read over the fact pattern in teams and answer the following questions:
- Questions:
 - What are Maria's parental rights?
 - What community members need to work together to ensure that the parental rights of Maria are not jeopardized?

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

A Family Reunited



Lessons Learned From the Maria Luis Case

- Due Process: Court documents and proceedings in immigrant parents' native languages
- Improper for Court to weigh where children "better off"
- Consular Notification, Consular Notification, Consular Notification!!!
- Preventive Measure: Execute Power of Attorney

Safety Planning and Action Steps for Immigrant Mothers

- Timing of immigration and family court cases
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Understand and intervene early in child welfare system

Solutions Review

- Advocacy for victims in all immigration enforcement actions
- Prevents unnecessary child welfare system involvement
- Execute power of attorney
- Carry information about immigration filings
- Client must tell DHS that she is a primary caretaker of children
- Client must tell DHS about her VAWA or U-visa case Give client phone number of her government's consular office
- Increased collaboration among child welfare staff, immigration enforcement personnel, immigration and family attorneys, consulates, community-based organizations, and service providers

Economic Relief for Immigrant Victims

- What issues are you seeing in cases of immigrant victims

Proof of Batterer's Income

- Pay Stubs
- Bank statements
- Mortgage/rental documents
- Credit Card Statements
- Past employment records
- Income tax returns and W2's
- Applications for lines of credit
- Credit Reports

Proof of Batterer's Income

- Proof of Assets – inventory, written or video and/or photographs of assets
- Testimony
- Affidavit of support filed with family-based immigration petition
- FOIA request if previously filed immigration case for victim
- Evidence from abuser's employer

Economic relief thorough protection orders

Important Economic Provisions

- Particular importance for immigrant victims
- Maintain medical, car, house insurance
- Maintain mortgage, rent, utility and/or debt payments
- Child support and spousal support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)

Economic Relief Continued

- Turn over income tax statements (subpoena before hearing)
- Protective provisions regarding income tax returns
 - Victim named trustee for receipt of tax return funds, respondent ordered to sign check
 - Victim awarded exclusive right to claim children as tax exemptions
 - Respondent pays victim $\frac{1}{2}$ of return