

# The Legal Rights of Immigrant Victims of Family Violence: What You Need to Know Today to Help Victims and Their Children

Atlanta, Georgia

June 10, 2011

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# Welcome

- Introduction of faculty
- Legal Momentum and VIDA Legal Assistance
- Raksha
- Agenda for the day
- Materials
- Logistics

**Who are the immigrant communities you work with in Georgia?**

## Georgia - Demographics

- 9.4% of Georgia's population is foreign born
  - 34.5% naturalized citizens
  - 25% lawful permanent residents
  - 40.5% temporary legal status or undocumented
- 59.4% rise in immigrant pop 2000-2009
- High proportion of new immigrants
  - 37.1.0% entered in the 1990s
  - 41.4% entered 2000 or after
- 18.8% of Georgia children have 1 or more immigrant parents
- 83% of children with immigrant parents in Georgia are U.S. citizens

## Georgia– Countries of Origin

- Mexico -- 29.8%
- Central America – 9.2%
- Africa – 8.2%
- Asia (not separately listed) – 8.2%
- South America – 6.6%
- India – 5.9%
- Europe – 5.4%
- Caribbean- 5.2%
- Eastern Europe – 4.6%
- Korea – 4.1%
- Jamaica -3.9%
- Vietnam – 3.5%
- China/Taiwan – 3.3%

# Immigration 101 and Immigrant Crime Victims

## You can gain citizenship while you are in which immigration status:

- **Blue:** a visa
- **Yellow:** a green card (lawful permanent residency)
- **Purple:** either

## The most common way to get lawful permanent residency is:

- **Blue:** by staying in the U.S. for many years
- **Yellow:** through an employer
- **Purple:** through a family member



## Who of the following would qualify for a work visa:

- **Blue:** someone who invests a million dollars in the U.S. economy
- **Yellow:** a touring artist
- **Purple:** a restaurant worker

## An undocumented person is a criminal when:

- **Blue:** always, being undocumented is a crime
- **Yellow:** s/he enters the U.S. unlawfully
- **Purple** when the undocumented person commits and is convicted of a state or federal criminal law.

# Why is Legal Immigration Status Important?

## The Importance of Immigration Status

- Severs dependence on potential abusers
- Protection from immigration detention and deportation
- Ability to work legally
- Improved access family law remedies, such as protection orders and custody
- Path to lawful permanent residency and ultimately citizenship
- Increased access to public benefits, including housing
- Ability to travel to and from the U.S. (with some exceptions)

## 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

# Requirements for a T visa

- Must be victim of a severe form of trafficking in persons
- Victim must be physically present in U.S., American Samoa, or Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of the trafficking
- Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; OR
- Has not attained the age of 18; AND
- Would suffer extreme hardship involving unusual and severe harm upon removal

## A severe form of trafficking in persons means:

- Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

## Force, Fraud, or Coercion

- Debt servitude
- Surveillance
- Physical barriers
- Threats to safety
- Physical isolation from protections
- Psychological isolation
- Threats to deport or contact law enforcement



# Human Trafficking simplified

- Process-
  - Recruiting,
  - Transporting,
  - Obtaining,
  - Moving
- Means-
  - Force,
  - Fraud, or
  - Coercion
- End-
  - Labor or
  - Commercial Sex

## Trafficking v. Smuggling

- Crime against a person
- Contains an element of coercion
- Subsequent exploitation
- Trafficked people treated as victims
- Unauthorized border crossing
- No coercion
- Facilitated entry by another person
- Smuggled people treated as criminals



## 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

## Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets

## **Factors that can constitute extreme cruelty**

- Correlate strongly with physical & sexual abuse
  - Isolation
  - Intimidation
  - Economic Abuse
  - Employment Related Abuse
  - Immigration related abuse
- Threats to kill or cause bodily harm
- Threats to harm children or family members
- Threats to take away children
- Threats to take away money

**What kinds of evidence could a victim submit to prove –**

**Battering?**

**Extreme cruelty?**

**Large group activity**

## Proof of Extreme Cruelty or Battery

- Self-petitioner's declaration
- Others' declarations (family, neighbors, friends, faith communities, workplace, school)
- Domestic abuse service providers (shelters, crisis lines, support groups)
- Protection orders
- Criminal court records
- E-mails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Med records (injuries, scars, PTSD, migraines, insomnia)
- Vet records
- Counselors (marriage, religious, mental health)
- Police reports

## VAWA self-petitioning available

- If case filed within 2 years of marriage termination
- Bigamy
- Child abuse up to age of 25 to file
- Step children up until divorce
- Police report, protection order, medical records NOT required
- *All credible evidence* standard of proof



## Approved VAWA petitions

- Protection from deportation and detention  
–deferred action status.
- Legal work authorization
- Ability to apply for lawful permanent residency through VAWA

# U-Visa

## 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

# **“Investigation or Prosecution”**

## **Includes:**

- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing

## Why “Criminal Activity” and not limited to “Crimes”?

- U visa protection available even when:
  - Investigation does not result in prosecution
  - Victim helpful in investigation does not testify at trial
  - Abuser eludes arrest
  - Criminal case dismissed
  - Victim comes forward makes report and police or prosecutors decide not to prosecute
  - Prosecution but no conviction
  - Victim of listed criminal activity but another crime prosecuted
  - Prosecution cannot take place (diplomats, no extradition)



## 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
- Sheriff
- Prosecutor
- Judge
  - (family, criminal, state, federal, administrative law)
- Immigration Officer
- Other authority with responsibility for detection, investigation or prosecution of criminal activity
- Including but not limited to
  - Child Protection Services Worker
  - Adult Protective Services Worker
  - EEOC
  - Department of Labor

## Judges as Certifying Officials

- Judges in family, criminal or administrative law courts can sign certifications
- Certifying victim's helpfulness or willingness to be helpful with regard to criminal activity in any of the following:
  - Detection
  - Investigation
  - Prosecution
  - Conviction
  - Sentencing



## **U-visa Certification: Considerations For the Certifier**

- 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

## Victim Must Additionally Prove:

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- 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

## What Constitutes Helpfulness?

- Is this person eligible for a U-visa certification?

# Hypothetical #1

**Nusheen**

**Nusheen entered the United States five years ago with a tourist visa. Well after the visa had expired, she met Ali through a friend at her mosque. Months later they married and bought a home together. One night soon afterward, their home was robbed and Ali was murdered in the couple's living room while Nusheen was asleep in the bedroom. She never saw the perpetrator, though several neighbors did. The police contacted Nusheen, who told them everything she knew. The police also spoke with the neighbors, who described the perpetrator.**

# Hypothetical #2

Li

**Li is an 18-year-old Chinese national. A friend introduced him to a “snakehead” who would take him from China to the United States for \$75,000. The snakehead arranged for Li to go from China to Hong Kong, where Li was given a fake passport that he used to enter the U.S. Li now works seven days a week in a Chinatown restaurant. Most of his wages are taken from him to pay the snakehead, room and board, and other “fees.” When Li asked to work fewer hours so he could go to school, his employer shoved him against a wall and told him to never ask again. Li made contact with a Chinatown-based police officer who is fluent in Mandarin. The officer encouraged Li to report the restaurant to the Department of Labor and work with his department’s trafficking unit to report the snakehead. Li has agreed to do both.**

# Hypothetical #3

## Maricela and Diego



- Maricela and Diego paid a coyote to take them to
- Kansas, where they now work at a poultry processing plant.
- One payday they were robbed by three gang members who
- think of immigrants like Maricela and Diego as “walking
- ATMs” because they don’t have bank accounts and carry a
- lot of cash. In addition to losing their wages, the couple were
- beaten and Maricela was sexually assaulted. After their
- friends encouraged them, the couple reported the incident to
- local police. Maricela and Diego were able to describe their
- assailants and a few days later, the police apprehended three
- people who matched the descriptions. Maricela and Diego
- refuse to press charges, however, because they fear
- retaliation.

## U-visa Facts

- Maximum number of U-visas that can be approved annually is 10,000
- U-visa is a temporary 4 year visa
- Lawful permanent residency only some will qualify – no guarantee
- U.S. citizenship: Only after legal permanent residency for 5 years + proof of good moral character

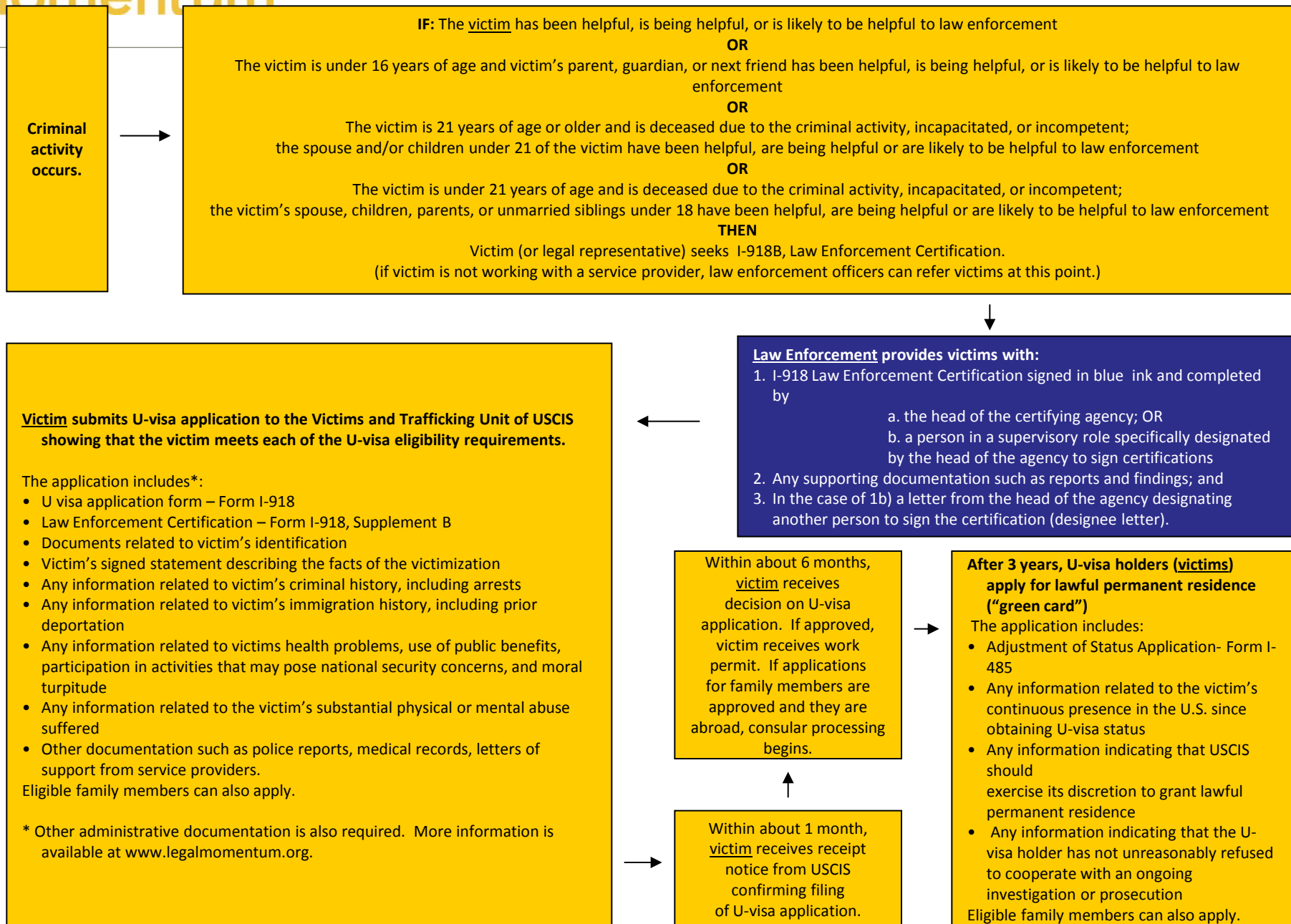
# Which U-visa Recipients Can Obtain Lawful Permanent Residence?

- Did not unreasonably refuse to cooperate in the detection, investigation or prosecution of criminal activity; AND
  - Humanitarian need; OR
  - Family unity: OR
  - Public Interest
- Homeland Security reviews cooperation or determines whether the victim's non-cooperation was unreasonable

# The U-visa Process

1. Certification
2. Application
3. Prima Facie if detained or in removal proceedings
4. Approval
5. U-Visa status 4 years
6. Some will qualify for lawful permanent residence

# U-visa Application Victim Flow Chart



# U-visa Tool Kits for Police and Judges

- Backgrounder
- Quick Reference Guide
- U-visa Certification Instructions
- Sample redacted U-visa certification (I-918B)
- Sample designee letter
- Sample Duties descriptions
- Sample Outreach flyer
- Sample protocol
- News articles Summary
- Statutory and regulatory background
- Flowchart
- Frequently asked questions

# 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

**What kinds of collaborations do you currently have that could help with obtaining U-visa certification?**



# VAWA Confidentiality

## VAWA Confidentiality

- **Non-Disclosure:** DHS cannot disclose VAWA information to anyone
  - Victims with VAWA confidentiality protected cases filed
- **Abuser Provided Information:** DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
  - All victims
- **Location Prohibitions:** Enforcement locational prohibitions
  - All persons

## Why VAWA Confidentiality Created

- Reduce danger to victim
- Prevent stalking and perpetrator finding where the victim is living, working, etc.
- Escalates violence when a perpetrator finds out about even the existence of an immigration case
- Perpetrators try to use victim's immigration status against their victims in other family and criminal court cases

## **Non-Disclosure: Protecting Immigration Files**

- Prohibits from disclosing of any information relating to someone who has filed one of the eligible self-petitions, a T or a U visa.
- Applies to Departments of:
  - Justice
  - Homeland Security
  - State
- Disclosure rules extend to
  - Everyone
  - Not only crime perpetrator
- Disclosure rules generally bar access by government officials

## Prohibition on disclosure of information about a VAWA confidentiality protected case

- Bars disclosure of
  - Information about the existence of the case
  - Any information contained in the case
  - Action taken on the case by DHS
- Limited exceptions
  - Legitimate law enforcement purposes
  - For judicial review (in immigration court only)
  - Statistical data collection
  - Benefit granting or public benefits purposes
  - Congressional judiciary Chairs and Ranking Members for oversight without personal or locational information
  - With the victim's permission DHS may communicate with victim's services organizations to secure assistance for the victim

## **VAWA Confidentiality -- Hawke**

- Judicial Review of immigration case only (Hawke)
- Limitation ends when application for relief is denied based on its merits and all opportunities for appeals have been exhausted
- When case approved confidentiality continues indefinitely
- Travels with the case from filing through approval, lawful permanent residency and beyond

## Relying on Abuser Provided Information

- The government cannot gather and/or use information provided solely by an perpetrator or his or her family members to make adverse determination regarding admissibility/deportability
- The victim does not have to have filed or even qualify to file a VAWA, T or U visa immigration application
- Need only prove that the individual is a protected immigrant

## Location Prohibitions

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**Immigration judge to dismiss case if any part of an 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



# Where else is DHS not supposed to conduct enforcement activities?

- Schools
- Places of Worship
- Funerals
- Religious Activities

# Preventive Strategies

- Screen for VAWA/T/U eligibility
- Safety promoted by quick filing of immigration case
- Client memorize A-number
- Tell enforcement officials of VAWA confidentiality protected case –DHS must search CIS computer system
- Educate all who work with victims about VAWA/T/U benefits and VAWA confidentiality
- Object to discovery of VAWA/T/U information in family court case
- Distribute copies of DHS policies
  - 384 Computer system
  - Pending applications

## **New Release From Detention Homeland Security Policy**

(August 20, 2010)

- Applies to Homeland Security Detention
  - Initiation and prosecution of removal of immigrants
  - Homeland Security detention
- Release for immigrants with a filed, pending or approved applications for immigration benefits
  - U visa,
  - T-Visa
  - VAWA,
  - Family Petition
  - Other

## August 2010 DHS Policy

- Dismissal without prejudice of removal case if DHS believes the applicant is likely to receive an immigration benefit
- Unless applicant
  - Has criminal convictions or misconduct
  - Is a threat to public safety or national security
  - Evidence of fraud
- Importance of Predominant Aggressor Determination

## **DHS 2-4-11 Coordination Memo on VAWA, T and U cases when victim in proceedings**

- Immigration and Customs Enforcement (ICE) required to notify the VAWA Unit when a victim in removal proceedings has a pending case for –
  - VAWA self-petition
  - T-visa
  - U-visa
- ICE to send A-file to VAWA Unit
- Victim in removal + detention = 30 days to adjudicate
- Victim in removal no detention = 45 days to adjudicate

## How To Respond If DHS Comes

- Follow obligations under federal/state law and grant requirements not to disclose privileged or confidential information about victims
- Know if your program is a VAWA confidentiality protected location
- Disclosure only required if warrant or court order
- Subpoena is not a court order
  - DHS cannot obtain a warrant or subpoena without violating VAWA confidentiality if you are a protected location
- File complaint with DHS Office of Civil Rights and Civil Liberties

# **VAWA Protections In a Time of Increased Immigration Enforcement**

## **Factors That Harm Victim Access to VAWA's Immigration Protections**

- Criminal History
- Purchase/use of false documents
- Immigration/Benefits Fraud
- Other 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

## **VAWA Protections In a Time of Increased Immigration Enforcement – Federal Level**

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Undermines community policing
- Victims safety concerns
  - Transportation
  - Timing of help offered
  - Maintaining custody of children
- Early identification of victims who qualify for VAWA, T or U immigration benefits

## **Safety Planning Challenges Related to Enhanced Immigration Enforcement**

- Immigration screening as early as possible essential
- Cannot assume by name or sight that victim is or is not an immigrant
- Changes in strategy – Immigration case filed before
  - CPO, family or criminal court case
  - Victim travels to new location
- Due to VAWA Confidentiality DHS enforcement officers cannot see that VAWA, T or U case exists

## **Early Identification and U-Visa Certification by Government Official Is Crucial for Victim Safety**

- Victims who are eligible for
  - VAWA
  - T-visas
  - U-visas
- Victims with pending/approved visa applications
  - Work
  - Family
- Sole and primary caretaker parents

## **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

## 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

*Help Open to All Immigrants Without  
Regard to Immigration Status*

## Self-Test: True or False

1. Receiving public benefits can harm an immigrant victim's ability to obtain legal immigration status
2. Undocumented immigrant parents can apply for public benefits for immigrant children
3. Immigrants applying for benefits for their children can refuse to provide immigration or social security information about themselves
4. Undocumented victims and children can access transitional housing programs
5. Federally funded health care is not available for undocumented immigrants
6. DHS requires universities to ask about immigration status of applicant or enrolling students



**What types of services and assistance are open to all persons without regard to immigration status?**

## **Both Documented and Undocumented Immigrant Victims Can Access:**

- Protection orders
- Shelter
- Transitional housing
- Child custody and support
- Emergency medical care
- Police, fire, ambulance, paramedic assistance
- Criminal prosecution of their abusers
- Assistance for crime victims
- Public benefits their children are eligible for
- 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

Benefits available to all immigrants include those offering the following *types of services, programs or assistance*:

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Crime victim assistance
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children

Benefits available to all immigrants include those offering the following *types of services, programs or assistance*:

- Medical and public health services
  - including treatment and prevention of diseases and injuries and mental health, disability, or substance abuse assistance necessary to protect life or safety
- Help during adverse weather conditions
- Soup kitchens, community food banks and nutrition programs for seniors and others requiring special assistance
- Activities designed to protect the life and safety of workers, children, youth and community residents
- Any other programs, services, or assistance necessary for the protection of life or safety

# Undocumented Immigrant Victims and Transitional Housing

- In transitional housing programs what kinds of barriers, practices, rules might impede immigrant victim access to transitional housing?
- Large Group Discussion

## Other Federal Benefits Available to ALL Immigrants

- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Community Services Block Grant funded programs
  - ESL
  - Vocational Training
  - Transitional shelters
  - Community gardens
  - Crisis counseling and hotlines

## Health Care For Undocumented Immigrants

- Services necessary to protect life and safety
- Community and migrant health clinics
- State funded programs
- Post assault health care paid by VOCA funds
- Emergency Medicaid



# Emergency Medicaid

- Available only in cases where the person needs treatment for medical conditions with acute symptoms that could:
  - place the patient’s health in serious jeopardy;
  - result in serious impairment of bodily functions;  
or
  - cause dysfunction of any bodily organ or part.

## **What Various States Offer Under Federal Emergency Medicaid**

- Labor and Delivery (emergency and most states normal)
- Severe and acute
- Urgent pharmacy needs
- Mental health
- Inpatient substance abuse
- 72 hour release of drugs without prior approval
- No SSN is required to receive emergency services under Hawaii law

## Health Care Open to All Immigrants

- HHS funded community and migrant health clinics
  - [www.nachc.com](http://www.nachc.com)
  - [www.hrsa.gov](http://www.hrsa.gov)
  - Enter zip code
- VOCA funded Post assault health care
- Emergency Medicaid
- Immunizations, testing, and treatment of communicable diseases
- CDs Georgia charts

## Federally Qualified Health Centers Offer

- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Well child services
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family planning services
- Preventative dental services
- Pharmaceutical services
- Emergency medical and dental services

## When children qualify and their parents do not:

- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may *ONLY* ask questions about the child's eligibility
- No questions may be asked about the *immigration status or social security number* of the child's parent if the parent is not applying for additional benefits for themselves

## **Benefits for Undocumented Victims Resources**

- Chapter: Access To Programs And Services That Can Help Victims of Sexual Assault and Domestic Violence
- HHS Programs List
- HUD Programs List
- HUD Letter
- AG Order

# Federal and State Public Benefits



## Immigrant Benefit Classifications

- Citizens
- Qualified Immigrants
  - Entering US before Aug. 22, 1996
  - Entering US on or after Aug. 22, 1996 subject to 5 year bar on federal means tested public benefits (e.g. TANF, Medicaid, Child Care, SSI, Food Stamps)
- Lawfully Residing and Prucol (Permanently Residing Under Color of Law)
  - States can opt to offer state funded benefits to persons residing under color of law
  - NILC charts
- Undocumented Immigrants



## Federal Benefits Immigrant Restrictions

- Only programs that as a matter of law have immigrant restrictions are:
  - “federal public benefits” or
  - “federal means-tested public benefits”

## “Federal Public Benefits”

- **US agency funded/provided:**
- Grants
- Contracts
- Loans
- Professional or commercial licenses and
- **Federally Funded Benefits for**
- Retirement
- Welfare
- Health
- Disability
- Postsecondary education
- Public or assisted housing
- Food assistance or
- Unemployment

Only considered a federal public benefit if:

- Payment made or assistance provided directly to:
  - An individual
  - A household
  - A family eligibility unit

## Funds are Not Federal Public Benefits if Federal Funds Are Paid to:

- A state in the form of a block grant
- A victim services program
- A shelter
- A hospital
- A health clinic
- A government entity
- A non-profit organization

# Qualified Immigrant Access to Federal public Benefits

- All qualified immigrants can access some federal public benefits
- Which benefits they can access depends on
  - Immigration status
  - When they entered the United States
  - Whether they meet heightened program requirements for some programs
  - What benefits are offered by the state

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## State Funded Benefits

- 1996 Welfare Reforms gave states the authority to:
  - Extend state funded benefits eligibility to immigrants who are not “qualified immigrants” under federal law
  - Limited the state funded “public benefits” available to qualified immigrants, immigrant visa holders, and immigrants paroled into the U.S. for under one year
- NILC State Benefits Charts track state funded:
  - TANF, Health Care, Food Stamps, SSI

## Who are “Qualified Immigrants”?

- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T-visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- Persons who (or whose child) has been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent

## How does and immigrant victim prove that they are a “qualified immigrant”?

- Family based cases
  - Prima facie determination in VAWA self-petition or cancellation
  - Approved VAWA self-petition or VAWA suspension/cancellation
  - Approved visa petition filed by an abusive spouse or parent
- Trafficking victims
  - Prima facie determination in a T-visa case
  - Approved T-visa

## Additional requirements for a battered immigrant spouse or child to be a “qualified alien”:

- The child’s immigrant parent must not have actively participated in the battery or cruelty
- There must be a “substantial connection” between the battery or extreme cruelty and the need for the public benefit sought
- The battered immigrant or child no longer resides in the same household as the abuser.

## “Substantial Connection”

- To ensure the safety of the victim, the victim’s child or the victim’s parent
- The victim had to leave her job for safety reasons
- The victim loses a dwelling or a source of income following separation
- The victim needs medial attention or mental health counseling or has become disabled
- The victim’s fear of the abuser jeopardizes the victim’s ability to take care of her children

## “Substantial Connection” continued

- To alleviate nutritional risk or need resulting from the abuse or following separation
- The victim lost her job or earns less because of the battery or cruelty or because of involvement in legal proceedings
- To provide medical care during a pregnancy resulting from the relationship with the abuser
- To replace medical coverage or health care services lost following separation.



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

- Public and assisted housing
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals
- Adoption assistance
- Foster care
- Social services block grant programs
- Supportive housing for the elderly or disabled

## Post secondary educational grants and loans

- Battered immigrant self-petitioners and their children are qualified immigrants eligible to receive DOE funded grants and loans
- Universities are to accept DHS/Immigration Judge
  - Documentation of VAWA self-petition/cancellation status
- On FAFSA check “eligible noncitizen” and provide “A” number
- Explains no-match with DOE/DHS computer system and
  - DOES NOT require verification
- DHS documents must be current at each time of re-application
- Students remain eligible after age of majority unless
  - VAWA case is denied

# Federal Means-Tested Public Programs have most limited immigrant access:

- TANF
  - 5 yr bar post 8/22/96
- SSI
  - Lawful permanent residents only if 40 quarters or work credit + qualified immigrant status for 5+ years if post 8/22/96 entry
  - Refugee
  - Trafficking victim
  - Veteran 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”

## **Hawaii State funded SSI replacement for**

- “Qualified” immigrant seniors and
- Persons with disabilities can receive Aid to the Aged, Blind and Disabled (AABD),
- Program provides \$418 per month
  
- **No Hawaii state funded**
  - TANF or Food Stamps

# Federal Food Stamps

- Qualified immigrant children under 18 (no 5 year bar)
- Refugees, persons granted asylum or withholding of deportation/removal, Cuban/Haitian entrants, Amerasian immigrants, persons granted Iraqi or Afghan special immigrant status, and victims of trafficking (upon receipt of status and as lawful permanent residents)
- Qualified immigrant adults after 5 year bar
- Lawful permanent residents with 40 quarters work history
- Veterans & active military and their qualified immigrant spouses and children
- Qualified immigrants receiving disability
- Hmong and Laotian tribe members lawfully present

## Immigrants and Health Care Reform

- Naturalized citizens same as U.S. Born Citizens
- Legal Immigrants
  - Subject to individual mandate and tax penalties (unless low income)
- Lawfully present immigrants
  - May purchase for state insurance exchanges (no wait)
  - Eligible for tax credits and cost-sharing reductions (no wait)
  - Eligible for state's temporary high risk pools and basic health plans
  - 5 year bar to Medicaid for qualified immigrant low income non-pregnant adults
- Undocumented immigrants
  - Exempt from individual mandates
  - Cannot purchase from state insurances exchanges & no tax credit
  - No Medicare, Medicaid or CHIP
  - Only HHS funded unrestricted health care and emergency Medicaid

# Immigrants and Health Care Reform

- Citizen or lawfully present children of undocumented immigrant parents
  - May purchase child-only coverage on state insurance exchanges
  - Are eligible for premium tax credits and reduced cost-sharing
  - May be eligible for Medicaid or CHIP.

## **Federally Funded Medicaid and CHIP for “lawfully residing” children and pregnant women**

- Lawfully present + Medicaid state residency rules
- Lawfully present =
  - Lawful permanent residency
  - Approved visa petition + application for lawful permanent residency filed
  - Persons fleeing persecution (e.g. refugees, asylees, withholding, conditional entrants)
  - Humanitarian immigrants (e.g. Cuban Haitian Entrants, TPS, DED, Deferred Action Status)
  - Parolees (lawfully present) if parole for 1yr + (also qualified immigrants)



## **Federally Funded Medicaid and CHIP for “lawfully residing” children and pregnant women**

- VAWA self-petitioning applicants and their children
- VAWA cancellation and suspension applicants
- T visa holders, applicants and continued presence and their children
- U visa holders includes their children
- Temporary visa holders (e.g. student, visitor, work)
- Citizens of Micronesia, the Marshall Islands, and Palau
- Long term residents in the process of obtaining lawful permanent residency or not likely to be returned home

# Hawaii State Funded Medical Assistance for Immigrants

- State Basic Health Hawaii provided to children and non-pregnant adults with the following statuses
  - Children and pregnant women who are “qualified” immigrants,
  - Persons residing under color of law (includes U-visa applicants and Other persons in the US with the knowledge of DHS whose departure that agency does not contemplate enforcing)
  - Residents of Freely Associated States (Marshall Islands, Micronesia, and Palau)
  - Enrollment in this program is capped.
- Federal funds are used to provide medical coverage to lawfully residing children and/or pregnant women, regardless of their date of entry into the U.S.

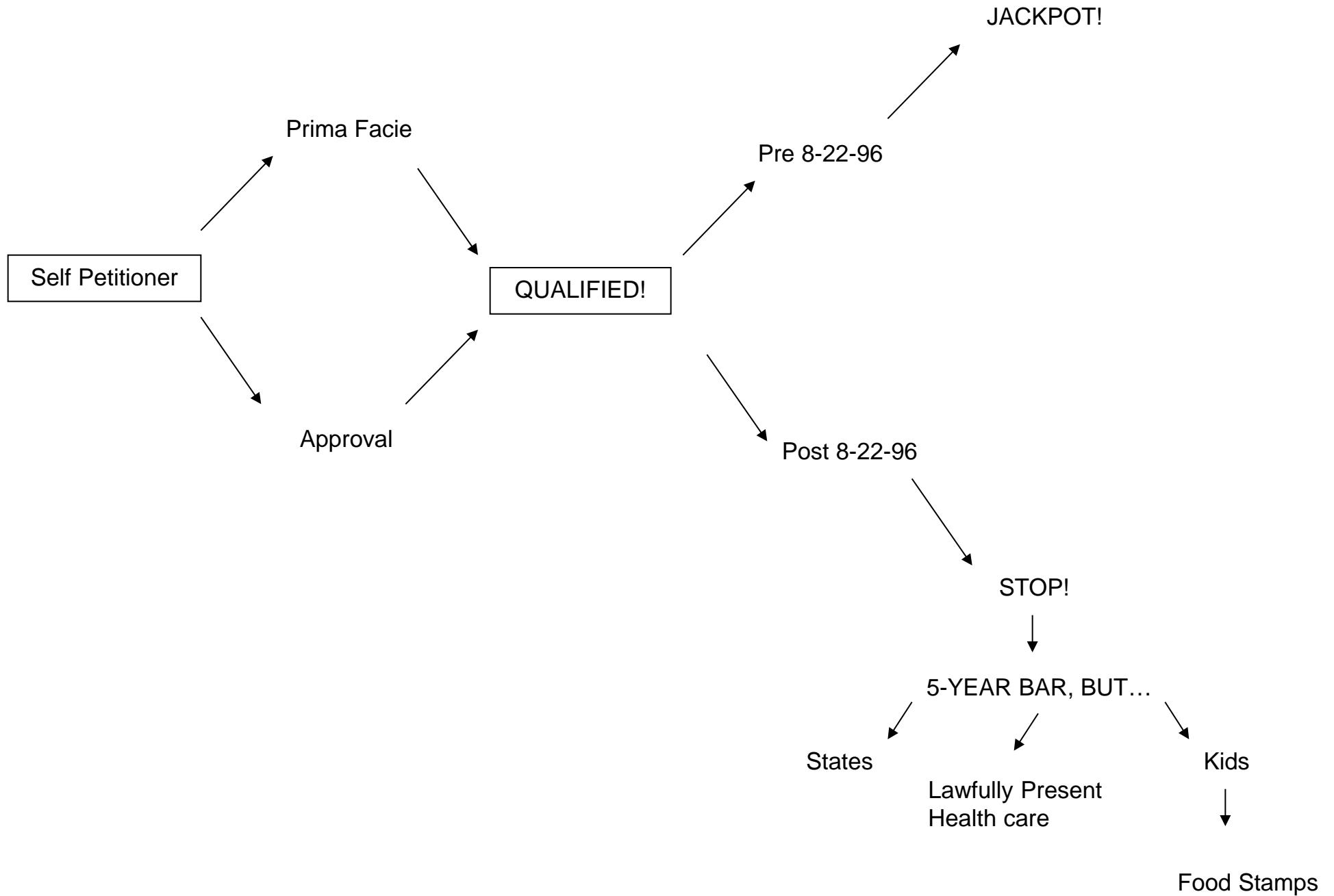
## Child Care: Immigrant restrictions depend on funding source CCDF vs. TANF

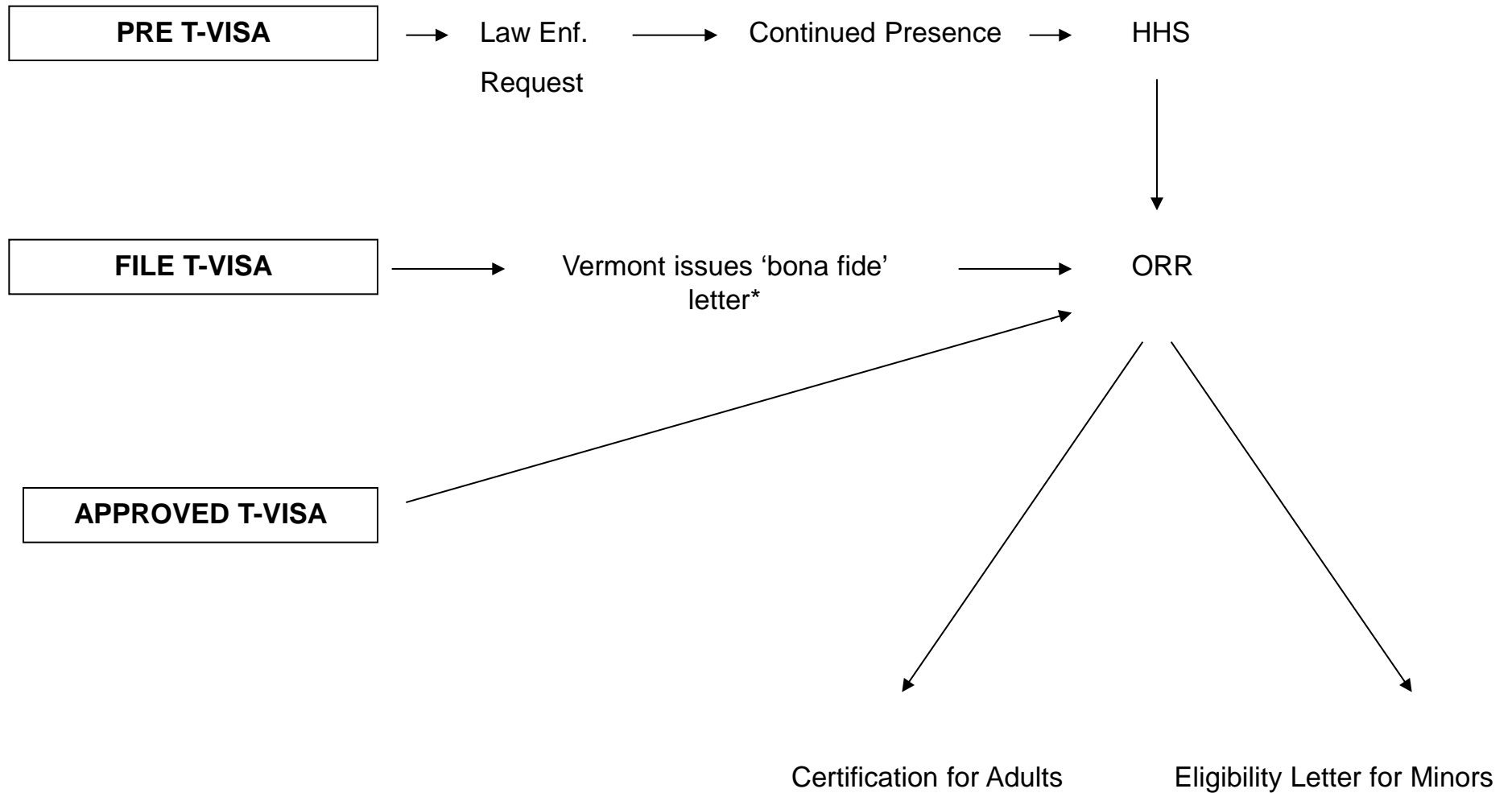
- Child Care Development Fund
  - Only the citizenship/immigration status of the child considered (child is the primary beneficiary of the child care benefit)
  - Open to qualified immigrants and victims of trafficking and their children
  - CCDF child care open to all without immigration restrictions if
    - Subject to public educational or Head Start standards, or
    - Eligibility determined by a non-profit organization
  - CCDF parents have the right to choose their child care provider, (e.g. relative, a family child care home, or child care center)
  - Provider may be required to have an SSN
  - State agencies *cannot require* an SSN from persons seeking CCDF-funded child care and cannot deny the benefit to families that do not provide an SSN (even if TANF funds included in CCDF)

## TANF Funded Child Care

- “Qualified immigrants” who entered the U.S. before Aug. 22, 1996.
- 5 year bar applied to all other qualified immigrants
- Refugees and asylees
- Persons granted withholding of removal
- Amerasian immigrants
- Cuban/Haitian entrants
- Victims of trafficking and their children
- Veterans and active duty military personnel, their spouses, un-remarried surviving spouses, and children, who are “qualified” immigrants

# Helping immigrants applying for federal or state funded public benefits



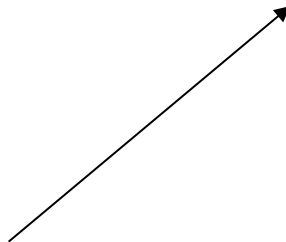


\* Takes longer time to issue without law enforcement letter.

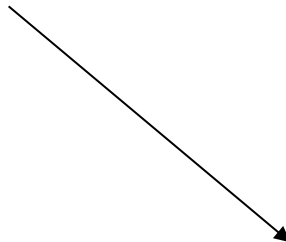
U  
VISA



Application  
filed



Non-PRUCOL States



PRUCOL States



## Small Group Exercise

- Dee is from Thailand. She has 2 children. A son who was born in the U.S. and a daughter was born in Thailand. She recently left her husband, an undocumented Thai immigrant farm worker from because he was abusive toward her. Her neighbor called the police and a criminal case was started Dee's husband.
- What federal benefits can Dee and her children access?
- What state benefits?
- How would her access be different if Dee's husband was a US citizen?

**What are the barriers to accessing public benefits that immigrant victims and their children encounter?**

## Potential Barriers:

- Immigrant benefit categories;
- Language access barriers;
- Verification barriers;
- Fear of Deportation;
- Need to educate state benefits agency officials with correct information about legal rights to access benefits for
  - immigrant victims and
  - their children.

**How might accompanying an immigrant victim applying for benefits help overcome these barriers?**

# Importance of Accompaniment

- Helps prevent problems including
  - Turned away at the door
  - Problems with language access
  - Incorrect information about eligibility
  - Denied benefits for citizen children
  - VAWA eligible denied benefits
  - Fear of deportation
  - Public charge
  - Concern about family members who are sponsors or who may be deported
- Provides documentation and opportunity to train benefits workers

## Reporting Requirements

- Mandatory reporting requirement of section 404 of the welfare law (PRWORA)
- Requires most government benefits programs to
  - 4 times a year
  - Notify DHS about any immigrant the entity “knows” is not lawfully present in the U.S.
- Agency could appropriately “know” the immigration status only of “*applicants*”
- An agency can only KNOW an applicant’s undocumented status through a formal determination supported by a DHS document (e.g. order of deportation)

## Reporting Requirement Bottom Line

- “Non-applicant” family members *immigrant family members who do are not seeking to receive benefits for themselves*
- Must not be required to disclose:
  - Proof of immigration/citizenship status; *or*
  - SSNs
- Federal requirements of benefits workers if they ask about immigration status or SSN of non-applicants

## Role Play

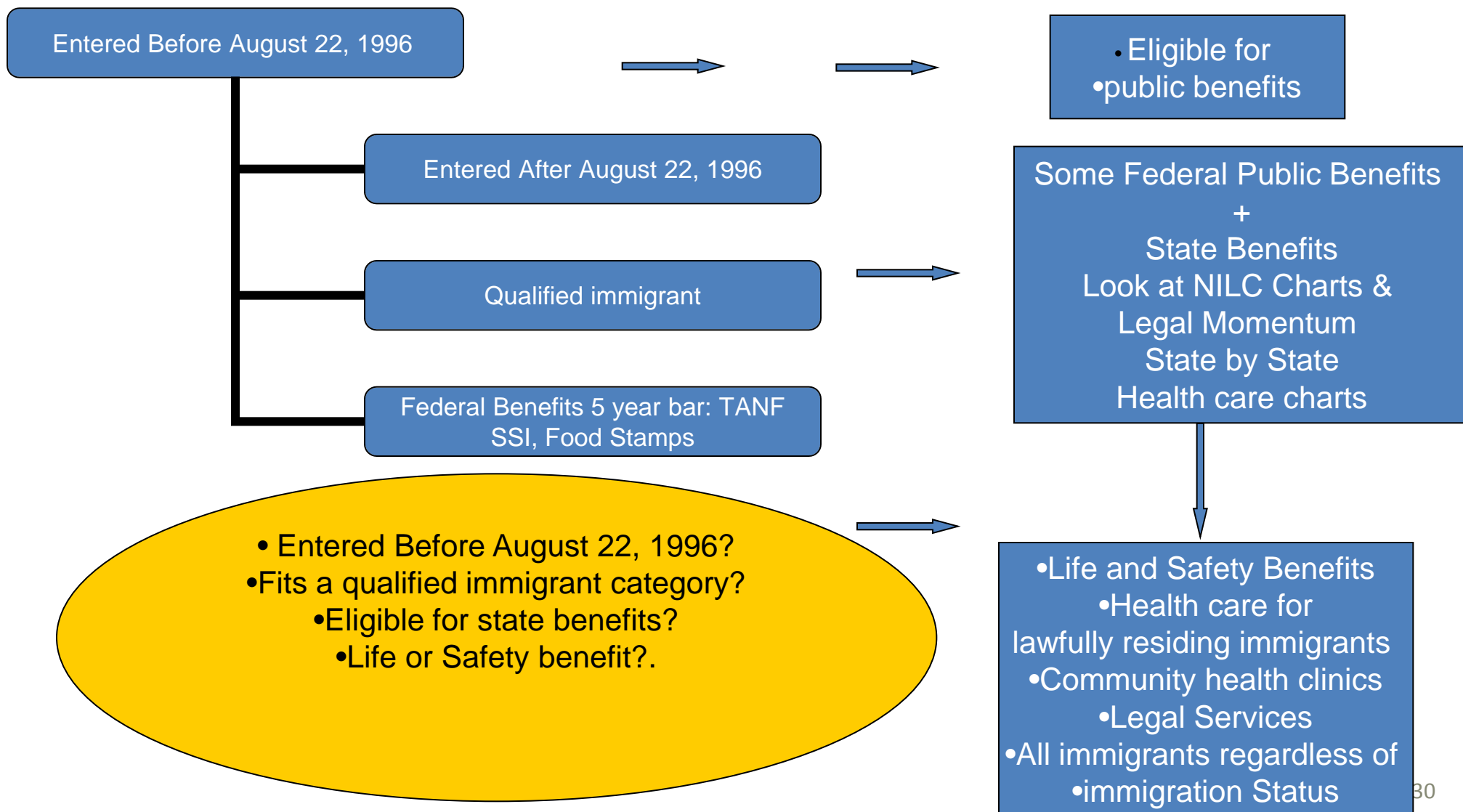
- Adina has applied for and received a prima facie determination in a VAWA self petitioning case she included her undocumented daughter in her application
- Prepare to accompany Adina to apply for public benefits
- What problems do you want to be prepared for?



All federal, state, local agencies, both governmental and non-profit :

- Who receive any federal funds
- Are subject to federal civil rights laws barring discrimination based on
  - Race,
  - Color
  - National Origin
- Are required to provide meaningful language access

# How to determine whether an immigrant is eligible for public benefits



# **Family Court Immigration and the Family Law System**

## Immigration Status and Immigrants in Family Court

- Provide examples of the various ways immigration status and being an immigrant can play out in family law court.
- Small group activity

## Children in Immigrant Families

- 85% of immigrant families are “mixed status”, including at least 1 U.S. citizen, often a child
- 1 in 5 children is the child of an immigrant
- 18% (5 and older) speak a language other than English at home
- In Georgia 18.8% of children live in immigrant families

## *Protecting Immigrant Mothers, Protects Children*

- Immigrant victims who receive help including immigration relief child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

## 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.

## Immigration Related Abuse as a Lethality Factor

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



## Immigration-Related Abuse

- Keeps victims from
  - Seeking help
  - Calling police
  - Cooperating in prosecutions
  - Getting protection order
- Affects victims documented and undocumented
- 65% of immigrant victims report some form of immigration related abuse (NIJ)
- Locks victims in abusive relationships

## NIJ Funded CPO Study Found

- With advocates support immigrant victims will use and benefit from justice system assistance
- 60.9% did not know about CPOs
- 81% got CPO with help from advocate
- 96% found them helpful
- 68.3% of violations immigrant related

# **Immigration Status Issues and Family Law Cases**

**Special considerations for cases involving  
non-citizen family members**

# Immigration status not relevant to establishing jurisdiction in family court cases

- Protection order case
  - domestic violence crime committed in state or
  - victim needs protection in state
- Divorce case
  - residency of party in state
  - Legal immigration status not required to establish residency under state family laws
- Custody case
  - (UCCJEA, Federal PKPA, Hague Convention) often the home state of children
- Child support case
  - where child or non-custodial parent lives

- VAWA self-petitioners
  - Must file within two years of final divorce
- Spouses and children of visa holders ends legal immigration status in the United States:
  - Students, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
  - Employment based
  - Asylees
  - Family based
  - Cancellation of removal applicants

## Annulment Instead of Divorce

- Annulment can lead to a marriage fraud finding that
  - Permanently bars approval of any visa petition
  - Is a ground for deportation
  - Can lead to an unfavorable exercise of discretion by an immigration judge not to immigration relief
- Impact on
  - Spousal support
  - Property division

# Protection Orders and Immigrant Victims

# Protection Orders and Immigration Status

- Issuance of a protection order has no effect on immigration status of the abuser
- Violation of a protection order is a deportable offense
  - Violations of “ the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable”
  - Not custody and support provisions
- Dangers for victims of a protection order issued against her



## Creative Protection Order Remedies

- 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
- Opportunity for courts to counter immigration related abuse

## Suggestions For Court Orders That Help VAWA Applicants -- Examples

- Cooperate in and not withdraw any immigration case filed on the victim's behalf
- Turn over documents/evidence in abuser's control that she needs for her immigration case. E.g.,
  - Passports
  - Identification documents
  - Copies of documents from any immigration case filed on the victim's or the children's behalf
  - Love letters
  - Family photos

## Catch-all Provisions Preventing Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare etc.) concerning the petitioner except
  - Police emergency
  - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities

## Other Protection Order Provisions Helpful to Non-Citizen Victims

- Full contact protection orders for battered immigrants who stay (order no future violence + counseling)
- To Deter Parental Kidnapping
  - Not remove the children from the court's jurisdiction
  - Turn over passports of parties and/or children
  - Sign statement that no visa or passport should be issued to children absent court order.
  - Supervised visitation
  - Bond

## Important Economic Provisions

- Maintain medical, car, house insurance, 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)
- Taxes
  - Turn over income tax statements
  - 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

# Bond Orders in Criminal Cases

# Custody

- 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
- As a general rule immigration status is not relevant to
  - Core primary caretaker determination
  - Evaluation of parenting skills
- Immigration information distracts the judge from focusing on best interest factors listed in the statute
- Many immigrant victims involved in custody cases will qualify for VAWA, T or U visa immigration relief but do not know it.
- Which party is raising the immigration issue and why?



- “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.”
- “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.”
- “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.”

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

## **Abusers arguments why immigration status should be a factor in custody determinations**

- Victim Will flee or be deported and will take children
- Abuser and get public benefits
- Need custody to confer citizenship benefits
- Undocumented parent less able to financially support child
- Ability to care for child
  - driver's license
  - Abuser can work victim cannot
- Child's best interests are still to be placed with non-abusive parent

## **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

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  - Parent is likely to flee U.S.
  - Victim parent does not qualify for immigration relief
- Legal immigrants/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.
- Need to be awarded custody to give child immigration benefits and citizenship
  - Parent can apply for child to have immigration benefits whether or not they have custody

# Myths and Facts

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- Undocumented parent cannot financially support child
  - Could the parent making claim have filed immigration papers for the immigrant parent?
  - Immigrant victim parents are likely eligible for immigration benefits that include:
    - legal work authorization
    - some access to benefits
  - Child support can be ordered
- Undocumented parent cannot receive public benefits for the child
  - Incorrect, they can apply for “child only” benefits

- Court should treat as in any other case
- Evidence court should examine includes evidence of the victim's:
  - Connections to the US
  - Connections to the home country
  - Plans to leave
  - History of traveling to and from the home country
  - Whether she has purchased airline tickets



## **Immigration status may be relevant to determine**

- Whether her deportation is imminent
- Whether the parent making allegations could have filed immigration papers for the abused immigrant parent and did not
- The history of immigration related abuse in the relationship
- Expert testimony on these issues useful to the court

# **Special Custody Issues When Immigrant Parents Are for Detained**

## Emerging Trend: Termination of Parental Rights of Immigrant Parents

- Immigration enforcement against an immigrant parent can lead to loss of child and placement in foster care
- Loss of child when immigrant parent seeks services
  - Example: Hospitals
- Many cases problem compounded by hospitals, police, child protective services and courts not providing
  - Meaningful language access
  - Recent letter from Attorney General Eric Holder to Courts on language access to courts

## How Victims 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
  - Language access issues

## Maria Luis Case

- Maria Luis is an undocumented Guatemalan national.
- She has four children, 2 in the United States and 2 in Guatemala. Her youngest child, Angelica, is a United States Citizen.
- Angelica was born with respiratory problems and has had to go to the emergency room several times since her birth
- The last time Maria Luis took Angelica to the emergency room she was told to bring the child back for a follow up visit (in a language she did not speak), she failed to do so.
- The hospital reported the situation to CPS, who subsequently took custody of Maria Luis and placed her 2 children who were with her in the U.S. in foster care
- It was discovered that Maria Luis was undocumented and she was detained by DHS and eventually deported

## Maria Luis Case

- While in DHS custody, the state sought to terminate Maria Luis's parental rights
- The family court judge found Maria Luis to be an unfit parent and decided that it was in the best interests of her children to be raised in the US in the custody of foster parents.
- Maria Luis was not given proper notice of the parental rights termination hearing in her native language, did not hear or get a written copy of the family reunification plan in her native language, nor did she receive hospital instruction in her native language

**What might you do to help Maria Luis?**

## 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



## Challenges of Reunification for Immigrant Parents and Victims

- Lack of language access to system
- Lack of information about immigrant parent victim's legal rights
- Limited or lack of eligibility for public-funded services
- Limited timeframe for filing termination of parental rights (TPR) petitions under the Adoption and Safe Families Act
  - conflict with immigration case time frames
- DHS not bringing immigrants in custody to family courts

## Challenges of Reunification for Detained or Deported Parents

- Limited ability to participate in court proceedings and case plan
  - New come up procedures
- Limited cooperation or communication between DHS and child welfare agencies
- Difficulty of communicating with detained immigrants new procedures
- Challenges in finding relative placement (both domestic and international)
- Making travel arrangements for children

## Lessons Learned

- 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

**A F**



## **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
- 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

# For further assistance

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Contact:

Immigrant Women Program, Legal Momentum

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Washington, DC 20005

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