

Expanding the Toolbox for Children in Immigrant Families: Tips and Tools for Child Welfare and Children's Courts

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Introductions



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Thank you to OVW

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Learning Objectives

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

- Recognize facts that indicate a party qualifies for crime victim based forms of immigration relief
- Sign U and T visa certifications
- Seek or make the state court findings required for Special Immigrant Juvenile Status
- Craft better reasonable services and case plans for children in immigrant families due to expanded eligibility for benefits and services

Type in the chat box

What countries
do victims in
your courts
come from?



Chat

Public Private

Type here to send a message

→



US Demographics (2018)*

- ❖ Total foreign born population – 44,728,721
- ❖ 13.7% of the country's ~327.2 million people are foreign born
 - 40.6% naturalized citizens
 - 28% legal permanent residents
 - 31.4% temporary visa holders or undocumented immigrants
 - 43.8% rise in immigrant population from 2000 to 2018
- ❖ 21.9% of people in the U.S. speak a language other than English at home & 46.8% of foreign born persons are limited English proficient
- ❖ Length of time immigrants have lived in the U.S.
 - 40.4% entered before 1999
 - 29.5% entered 2000 - 2009
 - 16.3% entered 2010 -2014
 - 13.7% entered 2015 or after
- ❖ 25.9% of children under age 18 have one or more immigrant parents
 - 85.8% of these children are native-born U.S. citizens

**Source: Migration Policy Institute Data Hub (July 2020) and Lawful Permanent Resident estimates MPI and DHS (2018)*

Poll 1: In what % of your cases is there co-occurrence of child abuse and domestic violence?

- A. Under 15%
- B. From 16% to 25%
- C. From 26% to 50%
- D. From 51% to 75%
- E. Over 75%



Protecting Children in Immigrant Families

- 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

Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004)

<http://niwaplibrary.wcl.american.edu/pubs/co-occurencedvchildabuse/>

How have you seen immigration status come up in child welfare and children's court cases?



Immigration Status in Child Welfare and Children's Court Cases

- One parent in the home country with child before the court
- Both parents here with the child exposed to intimate partner violence is taken out of the home, at least one parent is undocumented
- The immigration status of a child or parent is raised in court
- Parent is detained in ICE custody child placed in foster care

Dynamics Of Domestic Violence Experienced By Battered Immigrants and Abused Children in Immigrant Families

Immigration Related Abuse

- Threats to have the non-abusive parent deported if abuse of child/victim is reported
- Failing to file/withdrawing a victim parent's or child's immigration case
- Telling victim that police will deport them if they call for help
- If victim reports/cooperates they will be separated from and not see children again
- Controlling victim's ability to work/drive

Immigration Related Abuse

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

Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

Perpetrators Efforts to Trigger Victim's Removal

- Perpetrators actively reporting victims with pending immigration cases for removal
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested when the victim called police for help with domestic violence
 - VAWA self-petitioners rose 2013-2017 from 15.4% -17%
 - U visa rose 2013-2017 from 7.5% -36%

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rodrigues et al. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 3, 2018)

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years.**

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." *International Review of Victimology* 7 93113

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)
Edna Erez and Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003)
- Abuse rate rises to 59.5% when an immigrant's spouse/former spouse is a U.S. citizen
 - Twice the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). *Battered Immigrants and U.S. Citizen Spouses*

Sexual Assault Rates Among Immigrant Women

- High school-aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
 - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).

How does a parent or child obtaining legal immigration status help immigrant families?



Benefits of Applying for & Attaining Legal Immigration Status When Children and/or Their Parents Qualify

- Protection from deportation
 - Both parent and children
- Legal work authorization
- VAWA confidentiality protections
- Driver's licenses
- Greater access to public benefits and services
- Enhanced stability
- Turn to civil and criminal justice systems for help at higher rates
 - E.g., call police, get civil protection orders, seek custody

What role does the judge play in creating stability, safety and healing for children in immigrant families in your courtroom?



Judges Role

- Identify immigrant victims who qualify for immigration relief
- Refer adult and child victims who qualify to attorneys and victim advocates who in cases of immigrant survivors
- Sign U and T visa certification requests
- Grant Special Immigrant Juvenile Status findings
- Distribute know your rights information at the courthouse

How Gaining Legal Status Changes Immigrant Victim Parents and Children's Lives

Leslye E. Orloff, Haley Iesha Magwood, Yasmin Campos-Mendez, *Changing Lives; How the VAWA Self-Petition and the U Visa Change the Lives of Victims and Their Children (2021)*

Changing Lives NIWAP Survey

- 169 agencies in 42 states (2016 & 2019)
- Reporting on 11,171 immigrant survivor clients
 - U visa (71%), VAWA self-petitions (26%), VAWA cancellation/suspension (3%)
 - Received work authorization VAWA 59.7%, U visa 56.1%
 - 2,845 Received lawful permanent residency
 - 88.2% domestic violence and/or child abuse cases
 - Average number of children victims had
 - VAWA 2.6 and U visa 2.9
 - Children in common with abuser
 - VAWA 53% + 18% step children + 29% own children
 - U visa 53.2% + 10.3% stepchildren + 36.5% own children

Immigrant Survivors Continued Willingness to Seek Protection Orders

- 74% filed for civil protection orders (CPO) before filing their immigration cases
- 36% sought CPOs after receiving work authorization*
- 24% sought CPOs after lawful permanent residency*

*includes renewals

Positive Effects of Work Authorization

- 81% less threats of deportation
- 78% less threats to cut off access to children
- Decline of 73% in less victims unwilling to seek custody in court
- 65% decrease using immigration status in family court against victim
- 50% drop in workplace sexual assault/harassment
- Decline in victims who rarely/never saw friends 78% and family 72%
- 50% decline in involvement with abuser's family
- 65% decline in refusal to seek adult health care
- Decline in need for
 - Emergency shelter (47%)
 - Transitional housing (36%)

The Power of Work Authorization

- 661% increase in engagement with children's schools
- 201% increase in children actively pursuing own interests
- 142% increase in supporting children's social development
- 79.9% children less aggressive
- 80% increase in engagement with people other than abuser's family
- 114% increase in trust of police
- 51% increase in helping other victims
- 597% increase in victims accessing student grants and loans
- Increase of 251% ESL classes and 167% making efforts to speak English
- 132% more vocational training
- 502% increase in jobs with tax withholding & victims filing returns
- 300% increase in jobs paying at least minimum wage

Benefits of Work Authorization

- 43.3% gained jobs with sick leave and vacation
- 40% gained jobs with maternity leave benefits
- 42% willing to seek child support
- 40% participate in criminal investigations and/or prosecutions
- 36% file police reports for future crimes
- 30% participate in child welfare investigations and/or prosecutions

Positive Changes in Victim's Lives After Work Authorization

- 432% easier time making decisions
- 300% sleep better
- 299% more calm
- 281% less distracted and more focused
- 261% more independent
- 225% more able to stand up for themselves
- 201% better self-care
- 74% more hopeful about the future
- 188% more energy, alertness, awareness, activity and higher self-esteem and empowerment
- 183% less depressed
- 161% more interested, involved with community, friends and family
- 162% more at ease
- 112% better physical appearance/grooming

Positive Impacts of Lawful Permanent Residency for Children

- 300% increase in children being more involved in after school activities
- 201% increase in children socially active with friends
- 175% report improvements in children's grades
- 125% increase in children with fewer disciplinary problems in school
- 108% more involvement with children's after school activities
- Increases in children
 - Sleeping better 120.1%
 - Eating better 100%
 - More talkative 80%
- Interacting with
 - Other parents 49%
 - Neighbors 46%

At Lawful Permanent Residency Greater Access to Benefits and Education

- 85% increase in victim access to public and assisted housing
- Get healthcare
 - Preventative health care 51%
 - Child healthcare 43%
 - Prenatal care 35%
- Get nutrition assistance through
 - SNAP 36%
 - WIC 35%
- 36% increased use of subsidized child care
- Increases in victims' educational attainment
 - High school graduation 62%
 - GED 108%
 - ESL classes 251%
 - Adult education 86%
 - Associates Degrees - AA 137%
 - Bachelor's degrees or higher 315%

Social Gains of When Victims Attain Lawful Permanent Residency

- 367% increase in familiarity with and willingness to access community resources
- 128% increase in trust in police
- 63% increase in divorce from perpetrators
- 40% participate in criminal investigations or prosecutions
- 38% file police reports for future crimes
- 283% increase in victims experiencing fewer medical problems
- 201% increase in confidence in independent decision-making
- 160% more comfortable socializing with people from U.S
- 70% of victims are more assertive
- 50% feel more at home in the U.S
- 39% increase in participation in faith-based communities

What is important for
state court judges in
this data?



Identifying Paths Victims & Children Have to Legal Immigration Status Promotes

- Victim safety
- Family stability
- Access to legal immigration status, public benefits, and services
- More options for courts to offer assistance to immigrant families as part of reasonable efforts and case plans
- Reduced reliance on local support needed for children in immigrant families

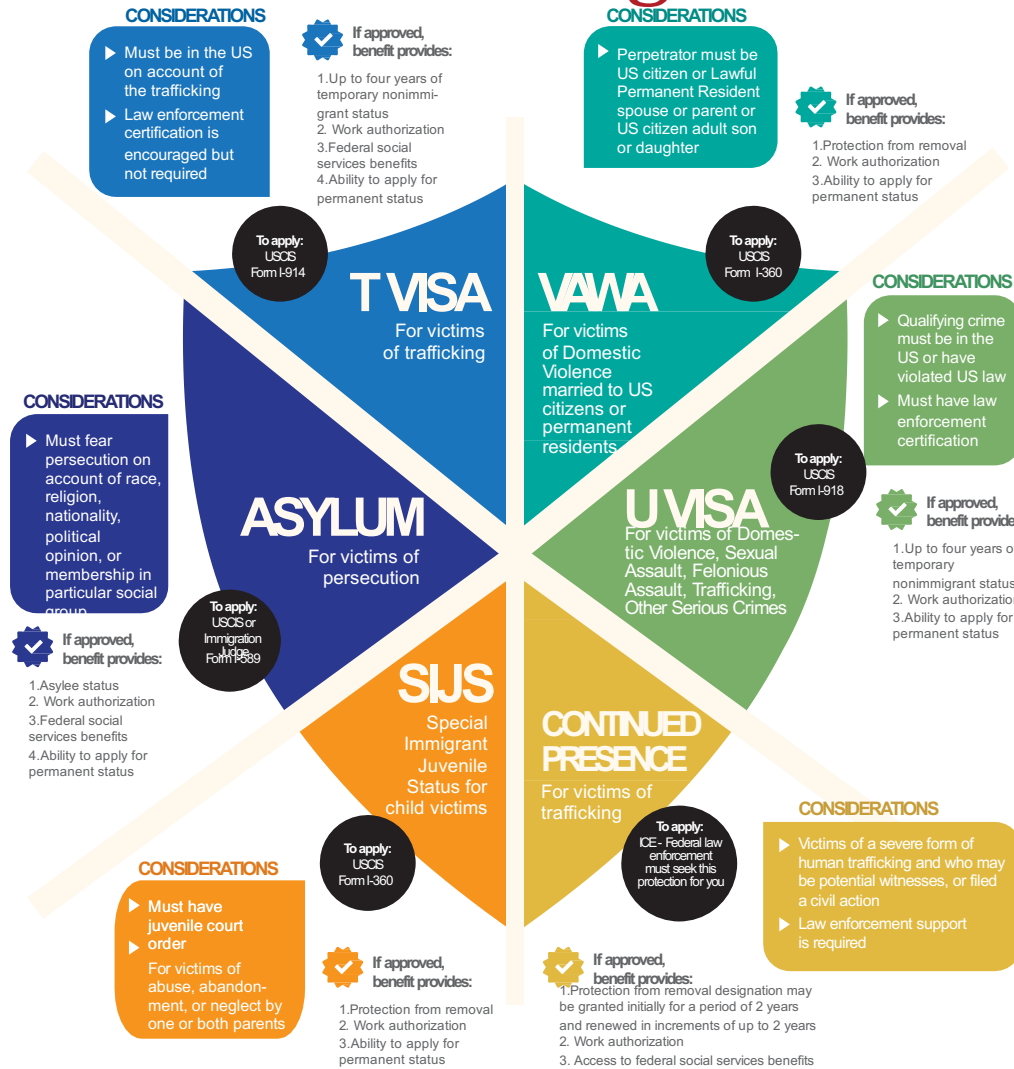
Identifying Victims Eligible for Immigration Relief

All Immigrant Victims of These Criminal Activities Will Qualify for Immigration Relief

- Domestic violence
 - Child abuse
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking
- **Parent perpetrated**
 - **Child abuse**
 - **Child neglect**
 - **Child abandonment**

Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity

Protections For Immigrant Victims



DHS.GOV/BLUE-CAMPAIGN

VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - Spouse; Parent; or
 - Citizen adult son/daughter (over 21)
- With Whom Self-Petitioner Resided
 - No time period required
- Good Moral Character
- Good Faith Marriage
- VAWA cancellation of removal has similar eligibility requirements
- Battered Spouse Waiver if perpetrator files
- **Timeline to work authorization = 4–18 months (2019)**
- **Judicial role**

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, neglect, or dependency
 - By at least **one parent**
- To apply must submit required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- **Timeline to approval = 6 – 36 months (2019)**
- **Judicial role**

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction, or sentencing
- 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
- **Timeline to work authorization and waitlist approval =**
 - 4-6 years(2019)
 - Judicial role

T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.S. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking.
Exceptions
 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- **Timeline to work authorization = 3-12 months (2019)**
- **Judicial role**

Case Scenario (Handout)

Clara met Eduardo a lawful permanent resident when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

What forms of immigration relief would Clara qualify for:

- A. U visa
- B. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above

Feedback

A

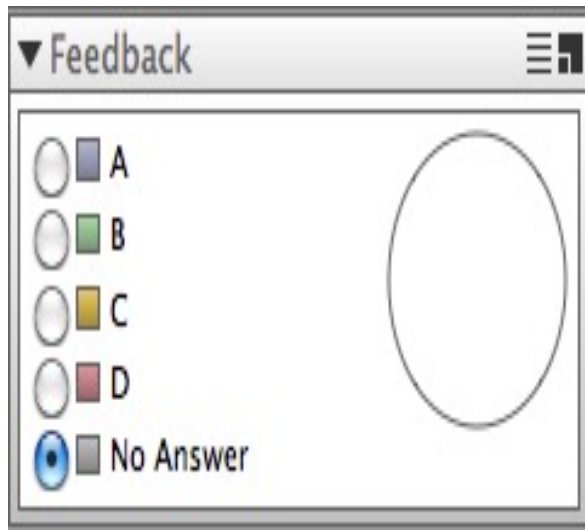
B

C

D

No Answer

What forms of immigration relief would Miguel qualify for (check all that apply).



- A. VAWA self-petition
- B. U visa
- C. Special Immigrant Juvenile Status (SIJS)
- D. T visa

What forms of immigration relief would Lupe *NOT* qualify for:

Feedback

A

B

C

D

No Answer

- A. VAWA self-petition
- B. U visa
- C. Special Immigrant Juvenile Status (SIJS)
- D. T visa

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

- Continues in effect
- To minimize the effect that immigration enforcement may have on the willingness and ability to make calls to police and pursue justice:
 - Victims of crime
 - Witnesses to crime
 - Individuals pursuing legitimate civil rights complaints

Prosecutorial Discretion in Civil Immigration

Enforcement (January 20, 2021 & June 17, 2011)

Immigration Enforcement Priorities (1/20/21)

- National security
- Border crossers caught *while attempting to unlawfully enter*
- Undocumented immigrants not physically present in the U.S. before 11/1/20
- Persons in/released from jail
 - For aggravated felony *and*
 - Pose a threat to public safety

Prosecutorial Discretion for no immigration enforcement

- Crime victim or witness
- Caretakers of
 - Children, seriously ill parent, physically/mentally disabled
- Children, elderly or disabled
- Family relationships and status of family members
- Length of time in the U.S.
- Pursuit of education
 - US high school graduates, college students

How might a dependency court or child welfare system inadvertently add challenges for immigrant victims?



Challenges and Barriers

- Lack of qualified interpreters
 - Parenting classes, paternity testing, other court ordered requirements
- Ordering that immigrants obtain benefits they or their children are not eligible for
- Faith related barriers in AA/NA classes
- Requirements related to legal work authorization

Immigrant Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

Know How to Get Detained Parents to Court For Children's Cases

- Detained Parent Directive 2017
- If parents are detained:
 - Placement near family court when ongoing family court/child welfare cases
 - Bring parents to family court to participate in cases involving children
 - Alternate: video or teleconference participation
 - Facilitate visitation when required by family/child welfare court order
 - Help children travel with deported parent –obtain passports for children

Protection Orders

- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against* abuse provisions” of a protection order is a deportable offense
 - Best practice Padilla warnings re: immigration and removal consequences
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Know What All Immigrants Qualify For:

- Family Court – e.g. divorce, custody, child support, protection orders, child welfare
- Language Access
- Police Assistance
- Have perpetrators prosecuted
- Obtain public benefits for their children
- Elementary & Secondary education
- School lunch/breakfast
- Soup kitchens, food banks, nutrition assistance
- Communicable disease immunizations, testing, treatment, treatment from public health centers
- Services necessary to protect life and safety
- Most COVID-19 Cares Act rental assistance
- Legal Services
- Assistance for Crime Victims (VOCA)
- Emergency Medicaid
 - COVID-19 treatment
- Emergency Shelter
- Transitional Housing
- Child and Adult protective services
- Crisis counseling and intervention
- Violence/abuse prevention services

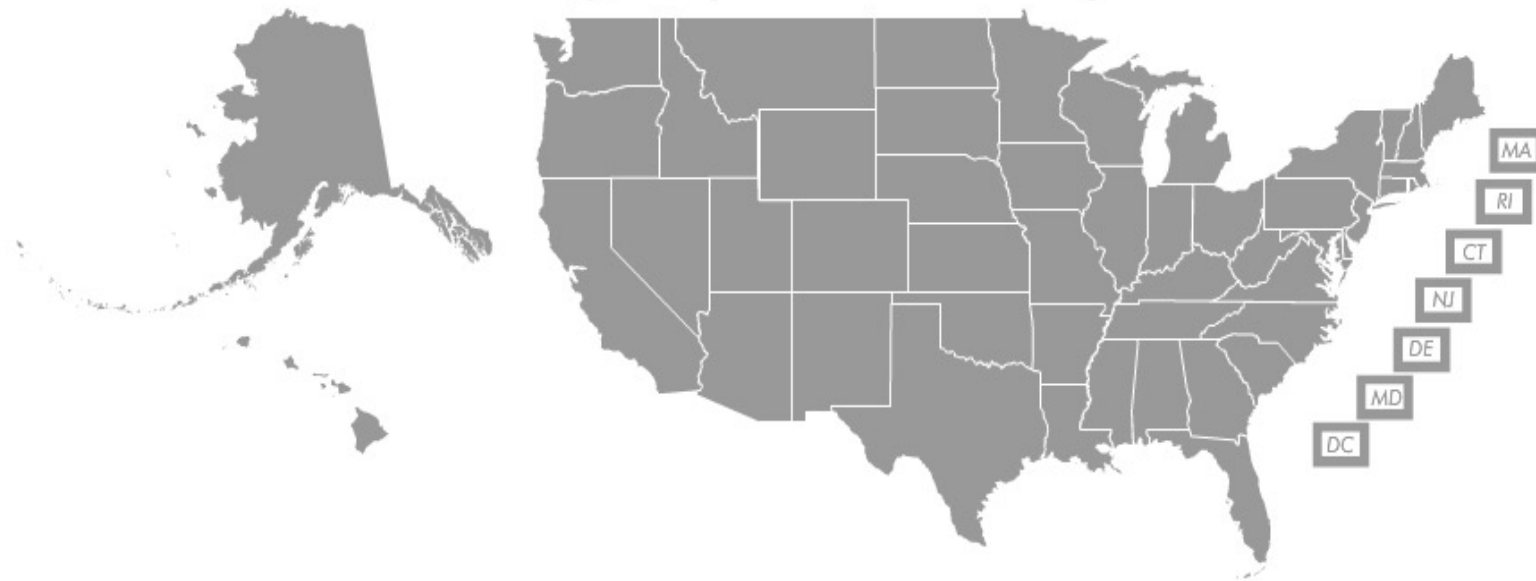
Parents and Children With Pending or Approved Immigration Cases Have

- Expanded access to federal and state public benefits
- Varies by
 - State
 - Type of immigration case
 - When victim entered the U.S.
 - Before or after August 22, 1996
 - Type of benefit needed

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

- Public and assisted housing
- Post-secondary educational grants & loans
- Driver’s Licenses
- Access to most subsidized child care (Not TANF)
- Adoption assistance
- Foster care
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals

NIWAP Demographics Map



Demographics

TANF

Health Care

Post-Assault Care

Pre-Natal Care

Emergency Medicaid

Forensic Exams

Child Care

Driver's Licenses

Food Programs

In-State Tuition

SSI

Energy/Weatherization

If you have additional questions or need technical assistance on immigrant victim access to federal and state public benefits, contact NIWAP by e-mail at info@niwap.org or by phone at 202-274-4457.

NIWAP

National Immigrant Women's Advocacy Project,
American University Washington College of Law

Judicial Leadership Opportunities

- Identify and help eliminate barriers to accessing justice for non-citizens
- Need to be willing to sign U and T visa certification requests to help immigrant victims have access to justice in the courtroom

Technical Assistance and Materials

- Power Point presentations and materials for this conference at http://niwaplibrary.wcl.american.edu/NCJFCJ_JJ_2021
 - **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu