

Helping Immigrant Survivors: Options and Challenges in an Age of Immigration Enforcement

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Resource Library: iwp.legalmomentum.org

Learning Objectives

- Understand of the dynamics of violence against women experienced by non-citizens
- Be able to screen immigrant survivors for immigration relief eligibility and identify complex cases
- Know how to advocate for victims subject to immigration enforcement
- Accompany survivors to help them safely apply for public benefits for the survivor and/or her children
- Facilitate immigrant victim access to protection orders, child custody and family court protections

IMMIGRANT DEMOGRAPHICS

U.S. Immigrant Demographics

- **Immigrant:** defined as someone born outside the U.S. (and is not a U.S. citizen)
- 35.7 million immigrants in U.S.
- 55% increase over 1990
- Today 25% of U.S. population are immigrants or children of immigrants

Immigrant Demographics

- 80% of immigrants are living in the U.S. legally
- 1/3 of foreign-born population are naturalized U.S. citizens
- 1/3 of permanent residents were at one time undocumented

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
- 21.7% of Colorado children have at least one immigrant parent
 - At least 86.3% of children with immigrant parents in Colorado are U.S. citizens

Colorado: Demographics

- 9.8% of Colorado's population is foreign born
 - 35.7% naturalized citizens
 - ~26% lawful permanent residents
 - ~38% temporary legal status or undocumented
- 34.4% rise in immigrant population from 2000 to 2010
 - High proportion of new immigrants
 - 29.4% entered in the 1990s
 - 40.1% entered 2000 or later

Colorado: Countries of Origin

- Mexico (46.7%)
- Southeastern Asia (8.2%)
- Northern and Western Europe (7.8%)
- Central and South America (7.2%)
- Eastern Europe (5.3%)
- Africa (5.1%)
- South Central Asia (4.6%)
- Canada (3.7%)
- Korea (3.1%)
- China/Taiwan (3.1%)

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS AND THEIR CHILDREN

Research Among Immigrant Women Found

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

Domestic Violence Prevalence and Severity

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

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
- Lifetime as high as 49.8%
- Those married to citizens and lawful permanent residents – 50.8%
- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

Coercive Control Over Immigration Status

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

Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the victim's behalf
 - Family or work based visas
- Forcing victim to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied

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

Immigration Related Abuse as Coercive Control

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

Immigration Related Abuse as a Lethality Factor

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

Sexual Assault Among Immigrant Women

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

ADVOCACY MAKES A DIFFERENCE

NIJ funded research on protection orders and immigrant survivors:

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

Advocacy Makes a Difference

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

Advocates are key for immigrant survivors access to services

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

Immigration Status Affects Willingness to Call Police

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

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

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

Percent receiving services vs. percent disclosing abuse

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

Children of Immigrant Women Who Received Help Protected Against Child Abuse

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

Role of Custody in Power and Control

- Fear of losing children is one of the most cited reasons that battered immigrants stay with their abusive husbands
- She believes he will get custody:
 - His immigration status
 - Her lack of knowledge about our laws

Working Effectively Cross-Culturally

- Allow an immigrant survivor to define:
 - what she needs
 - her fears
 - the barriers she must overcome to seek help

She will define these from within her own cultural context.

Keys to Success

- Be creative
- Respond to clients' needs
- Know your own assumptions and do not use them
- Allow battered immigrant to choose what she needs
- Collaboration

Tools

- “*Are You Safe At Home?*” brochure
- Conference materials available at niwap.org/go/denver

Immigration 101 and Immigrant Crime Victims

YOU CAN GAIN CITIZENSHIP WHILE YOU ARE IN WHICH IMMIGRATION STATUS:

- **Blue:** a visa
- **Pink:** a green card (lawful permanent residency)
- **Green:** either

THE MOST COMMON WAY TO GET LAWFUL PERMANENT RESIDENCY IS:

- **Blue:** by staying in the U.S. for many years
- **Pink:** through an employer
- **Green:** 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
- **Pink:** a touring artist
- **Green:** a restaurant worker

AN UNDOCUMENTED PERSON IS A CRIMINAL WHEN:

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

WHY IS LEGAL IMMIGRATION STATUS IMPORTANT?

Small group discussion

Benefits for Victims

- Protection from deportation
- Enhanced safety for Victim
- Financial independence from perpetrator
- Legal Work Authorization
- VAWA Confidentiality
- Temporary legal immigration status
- U-visa protections for vulnerable family members
- Greater ability to gain/maintain custody of her children
- More access to victim services, health care, benefits

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

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
- Money 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

Conditional Residence & Battered Spouse Waivers

- Battered Spouse Waiver
- Waives the joint filing requirement and two year wait for full lawful permanent residency
- Requires proof of
 - Good faith marriage to U.S. citizen and
 - Battered or subjected to extreme cruelty by the citizen spouse
- Court's role:
 - Findings of fact regarding abuse in divorce or custody proceedings
 - Issuance of protection order
 - Information available at court about victim's immigration options

VAWA SELF-PETITIONING

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

HOW MIGHT YOU DEFINE “EXTREME CRUELTY”?

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 OR EXTREME CRUELTY?

Small group discussion

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
 - 6 months if abuser citizen spouse (26.1%)
 - If abusive spouse is lawful permanent resident
 - 1 year 46.8% to 13-18 months 27.1%
- Ability to apply for lawful permanent residency through VAWA

Immigration Relief Tools

- Glossary of terms
- Red flags list
- Identifying survivors screening tool
- Remedies comparison screening tool
- Self-petitioning flow charts for adults/children
- U-visa flow chart
- Evidence checklists:
 - Self-petitioning
 - U-visa
 - T-visa

More: iwp.legalmomentum.org

VAWA Cancellation Elements

- Relationship to abusive party (broader than self-petition)
 - Mother of a child abused by the child's other parent who is a USC or LPR even when no marriage
 - More than 2 years have passed since divorce from the abuser
- Battered or Subject to Extreme Cruelty
- Good moral character
- **Extreme Hardship to return to the home country**
- **Three years physical presence in the U.S.**
- Not inadmissible

THE U-VISA FOR CRIME VICTIMS

Crime Victim (“U”) Visa Requirements

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

Criminal activities covered by the U-visa?

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

WHO MIGHT BE HELPED BY THE U VISA?

What protection is there for family of U Visa applicants?

- Adult victims:
 - Spouse
 - Children
- Victims under 21 at time of criminal activity
 - Spouse
 - Children
 - Parents
 - Unmarried siblings under 18 (at the time of filing)

Who can certify?

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

Other Federal, State or Local Agencies

- Agencies with criminal investigative jurisdiction
- In areas of expertise
- Including but not limited to
 - Child Protection Services Worker
 - Adult Protective Services Worker
 - EEOC
 - Department of Labor
 - AFT, FBI

“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)

“Physical or Mental Abuse”

- Injury or harm to the victim’s physical person
- Impairment of the emotional or psychological soundness of the victim

What is substantial physical or emotional abuse?

- Decided based upon each individual's experience
- Case-by-case determination using these factors:
 - nature of the injury inflicted or suffered;
 - severity of the perpetrator's conduct;
 - the severity of the harm suffered;
 - the duration of the infliction of harm;
 - permanent or serious harm to victim's
 - appearance,
 - health,
 - physical, and mental soundness

Substantial Abuse (continued)

- No one factor is required
- Can include pre-existing conditions
- Can consider the severity of the perpetrator's conduct even if the actual impact is less than intended by the perpetrator

Evidence to Prove:

- Physical abuse or injury
- Severity of perpetrator's conduct
- Emotional abuse or injury

What the U-visa Certification Form Asks From a Certifier:

- What criminal activity occurred?
- Identify the victim
 - Include any findings regarding injuries
- Helpfulness of the victim
 - Current
 - Past or
 - Willingness to be helpful
- Any family members implicated in the crime

The U-Visa Process

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

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

Role of Certifying Officials

- **Court's Role**

- Sign U-visa certifications for victim
- Make findings about the criminal activity, injuries, helpfulness
- Inform litigants about the U-visa

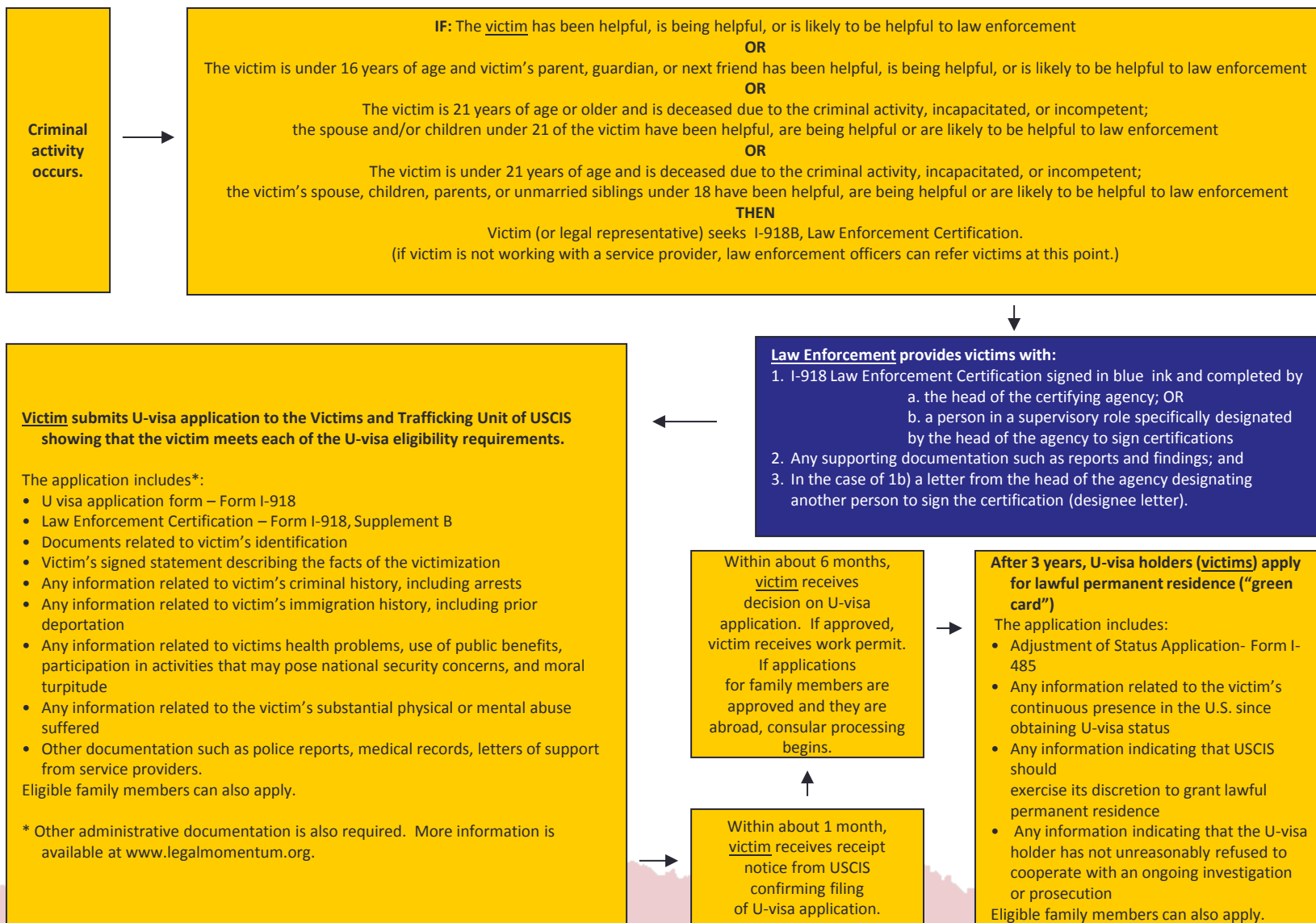
- **Police Role**

- Sign U-visa certifications for victims
- Take police reports (obtain interpreters)
 - At the crime scene
 - When victims later come forward to make a report
 - Include details about the criminal activity, injuries, helpfulness
- Inform litigants about the U-visa

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 review of cooperation and the reasonableness of non-cooperation is required for lawful permanent residency

U-visa Application Victim Flow Chart



Comparison: VAWA vs. U-visa

U-visa

- 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

VAWA Self-Petition

- 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 for 1 year
- Green card after approval if abuser is a citizen, or 7 year wait if abuser is LPR

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

Screening for Human Trafficking

- Recruitment
- Was the victim recruited by someone?
- What kind of job abroad was offered to the victim?
- How much money was promised to the victim and by whom?
- Did the victim sign a contract? What were the terms of the contract?
- Was the victim sold? By whom?

Screening for Human Trafficking

- Migration
- Was the victim kidnapped or coerced into migration? How?
- How did the victim obtain documents?
- Which documents were obtained?
- How did the victim travel to the U.S.?
- Was a fee paid for organizing the victim's migration? By whom and to whom?

Screening for Human Trafficking

- **Arrival**
 - Did the victim have control over his/her identity documents?
 - What happened to the victim's identification documents after arrival?
 - Did the employer/trafficker use the victim's identity for another purpose?
- **Working conditions**
 - Was the victim placed into debt bondage? By whom?
 - Were working conditions different than what the victims expected? How?
 - Was the victim's movement restricted? How?
 - Was the victim living and working at the same place?
 - Was the victim chaperoned, guarded, incarcerated?
 - Was the victim paid and at what rate?
 - How many hours a day did the victim work? Time off? Allowed to rest if sick?

Screening for Human Trafficking

- **Working Conditions continued:**
 - Was the victim allowed to communicate with family members? Other workers? Make friends?
 - Was the victim able to quit working for the employer and get a job somewhere else?
 - What strategies were used to coerce the victim? (One or all may apply.) Physical Coercion
 - Was the victim subjected to pinching, hitting, slapping, punching, kicking, shaking, etc?
 - Was the victim subjected to sexual assault, rape, sexual harassment/abuse?
 - Was the victim subjected to torture, beatings or other physical violence?
 - Was the victim subjected to incarceration, imprisoned or physically isolated? How?
 - Was the victim denied medical care, food, clothes and other basic necessities?
 - Did the victim attempt to escape from her traffickers? Why?

Screening for Human Trafficking

- **Psychological Coercion**

- Was the victim placed into debt bondage?
- Was the victim subjected to threats of physical abuse, harm or retaliation?
- Were others abused in front of victim?
- Were the victim's family members threatened? How?
- Threats to report victim to authorities for deportation/jail?
- Was the victim verbally abused, humiliated or degraded?
- Did the victim ask their employer if they could leave? Why? Why not? What happened?

Small Group Activity

Hypothetical Case
Immigration Relief

Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother. When Maura was 15 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 5 years in the abusive household and sexual advances from her stepfather, Maura left home and moved in with her boyfriend Juan, who started battering Maura when she became pregnant with their child. During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer, but fearing that she would get deported, she did not appear at the hearing on the domestic violence charge. The charge was amended to misdemeanor battery. Juan pled no contest and was convicted of battery.

For what form of relief, if any, is Maura eligible?

BREAK

Screening and Safety Planning In the Context of Immigration Enforcement

VAWA Protections In a Time of Increased Immigration Enforcement

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Need to be aware of local law enforcement practices regarding immigrants
- Transportation issues for victims
 - to courts
 - to services
- Secure Communities and the dangers of dual arrest

Secure Communities

- Secure Communities is an information sharing program between federal, state, and local law enforcement agencies
- When individuals are arrested, they are fingerprinted, and their fingerprints are conveyed to the FBI and checked against the criminal database. The data is also shared with ICE and checked against immigration records.
- Through Oct. 2011, removals through Secure Communities significantly contributed to 89% increase in the percentage of convicted criminals removed by ICE

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

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

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

- Legitimate law enforcement purposes
- Judicial Review of immigration case only (Hawke)
- Agency to whom victim has applied for public benefits only for benefits granting purposes
- Limitation ends when application for relief is denied based on substantive grounds and all opportunities for appeals have been exhausted
- If no denial, confidentiality continues

What does this mean for immigrant victims?

Protecting Immigration Files Preventative Strategies?

- Legal strategies:
- Attorneys/Advocates should clearly mark all immigration filings with the §384 warning
- Advise victim and whomever victims interact with to know that such protections exist
- Object to discovery of information contained in or about the immigration case in family court proceedings

Relying on Abuser Provided Information

- The government cannot gather and/or use information provided **solely** by a perpetrator or his or her family members to make adverse determination regarding admissibility or 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:

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?

Where else is DHS not supposed to conduct enforcement activities?

- Schools
- Places of Worship
- Funerals
- Religious Activities

Location Prohibitions

- This enforcement location bar applies in all cases and does not require victimization
- But if there is an enforcement action at one of these locations:
 - the Immigration Court Notice to Appear must include a certification by a DHS official
 - confirming that none of the VAWA confidentiality prohibitions were violated
 - DHS Policy
 - VAWA Confidentiality Enforcement

Relying on Information, Locational Prohibitions: Preventative Strategies

- Provide victims with proof of victimization
- Work with DHS and local law enforcement to screen for victimization
- Prevent and not pursue actions against victims
- Train personnel who work at prohibited locations
- File skeletal immigration applications
- Advise victim and everyone working with the victim about these protections...they may need to advocate on the spot
- Distribute copies of DHS policies
 - 384 Computer system
 - Pending applications

Preventative Strategies, Cont.

- File skeletal immigration applications
- Provide victims with proof of filed VAWA, T or U case
- Object to discovery of information contained in or about the immigration case in family court proceedings

When Violations Happen

- Advocate on the spot---provide
 - proof of victimization,
 - Copy of the statute
 - DHS enforcement policy
 - DHS complaint system
 - DHS 384 system
- Collect information about the violating officer
 - Name
 - Agency
 - Badge Number
- Work it up the chain to a supervisor
- File a formal complaint-
 - penalties of up to \$5000 per incident against the violating officer individually
 - Also disciplinary actions
- Advocate for release from detention/jail, termination of immigration proceedings, granting immigration relief

DHS Humanitarian Release 2007 expanded in 2008

- 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

DHS Memos

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

DHS VAWA Confidentiality Computer System

- Directs use of new “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims

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

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

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

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

Positive factors

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

Other positive factors

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

Negative Factors to Consider

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

White House and DHS Announcements (August 18, 2011)

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

Temporary protections for immigrants who entered US as children

- Came to the United States **under the age of sixteen**;
- Has **resided in the United States for a least five years** preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- Is currently **in school**, has **graduated from high school** or GED, or is an **honorably discharged veteran** of the Coast Guard or Armed Forces of the United States;
- Has **not been convicted** of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- Is **not above the age of thirty**

A New Era In Safety Planning With Immigrant Survivors

Safety Planning and Action Steps for Immigrant Survivor

- Tools
 - New safety planning flow chart
 - Immigrant victim brochure
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Understand and intervene early in child welfare system
- Victim must tell DHS enforcement officials that she has children

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
- Give client number of consular notification if she is detained – essential particularly if she has children

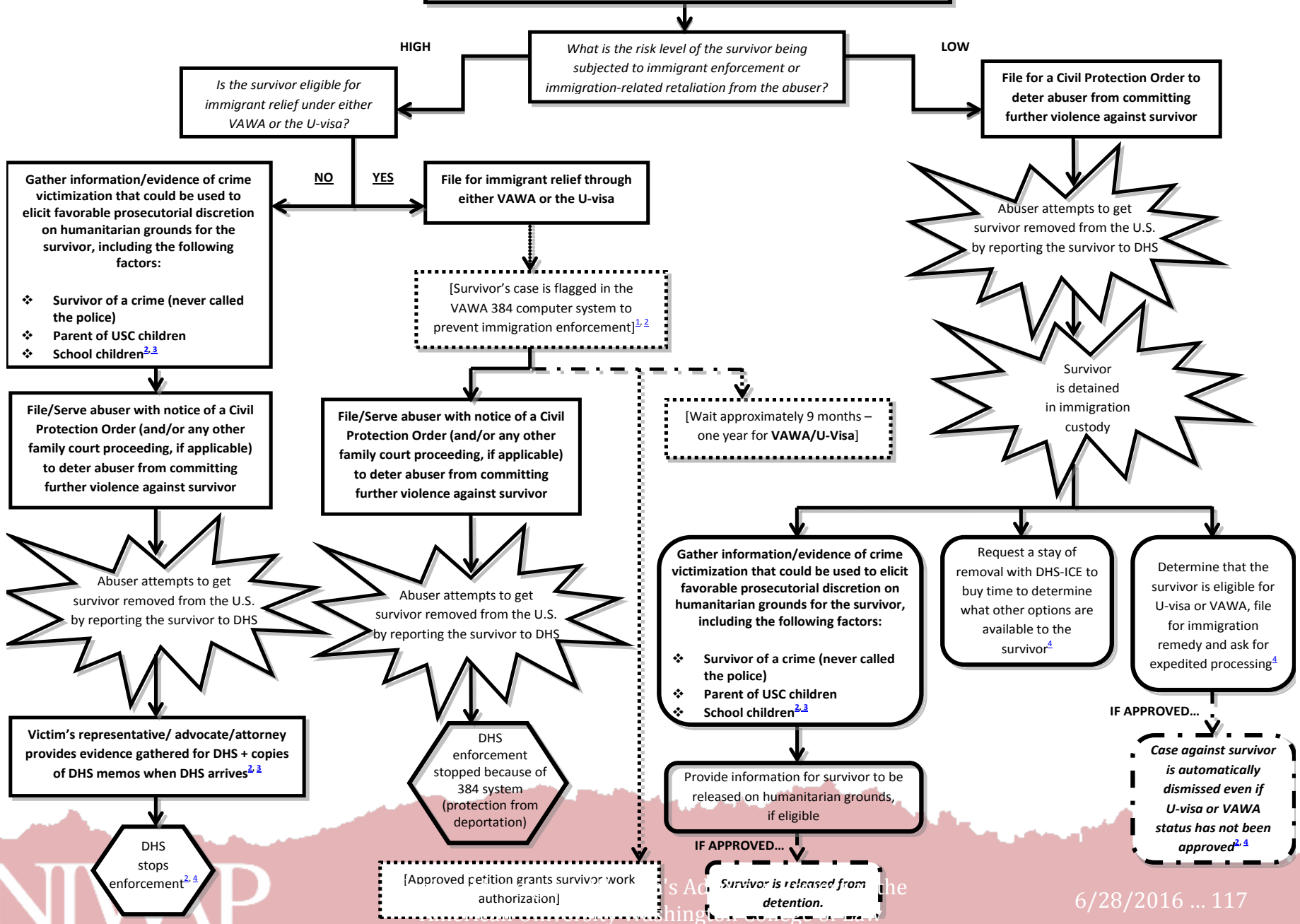
Application for VAWA, T or U immigration status improves immigrant victims access to public assistance

- Screen for immigration case already filed
- Screening + Filing (VAWA, T or U) =
 - Lawful Presence
- Filing for immigration benefits required for VAWA self-petitioners to become qualified immigrants eligible for federal public benefits

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
- Set victim on path to legal work authorization

IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY



An immigrant survivor walks through the door of your agency:

What is the risk level of the survivor being subjected to immigrant enforcement or immigration-related retaliation from the abuser?

- **High**
- **Low:** Need to work with victim to balance risks
 - Informed by lethality assessment and immediacy of CPO need, vs.
 - Risks of perpetrator calling DHS when served

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

YES

- File for VAWA or U-visa immigration relief
- [Survivor's case flagged in 384 system to prevent enforcement]
- [Wait 9 months-1year for VAWA/U-visa]
- File/serve abuser with CPO
- *Abuser reports survivor to DHS*
- DHS enforcement stopped because of 384 system
- [Approved petition grants survivor work authorization]

NO

- Gather information/evidence of crime to elicit favorable prosecutorial discretion
 - Survivor of crime
 - Parent of USC children
 - School children
- File/serve abuser with CPO
- *Abuser reports survivor to DHS*
- Victim's representative provides DHS with gathered evidence upon arrival
- DHS stops enforcement

Tools:

- Safety planning flow chart
- Immigrant victim brochure
- Advocate's toolkit for working with immigrant survivors at high risk of immigration detention
- Advocate's victim safety planning flow chart

LARGE GROUP ACTIVITY

- How would you prepare Maura to prevent immigration enforcement if either Jose or Juan called DHS or local police to turn her in as undocumented?
- How would you argue that DHS should not pursue immigration enforcement against her?

Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother. When Maura was 15 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 5 years in the abusive household and sexual advances from her stepfather, Maura left home and moved in with her boyfriend Juan, who started battering Maura when she became pregnant with their child. During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer, but fearing that she would get deported, she did not appear at the hearing on the domestic violence charge. The charge was amended to misdemeanor battery. Juan pled no contest and was convicted of battery.

For what form of relief, if any, is Maura eligible?

If Victim is Detained

Helping victims who are arrested

- If when the police arrived they spoke only to Juan and he convinced them to arrest Maura resulting in her finger prints being turned over to DHS
- How would you advocate for Maura's release from jail/detention?
- What tools/memos would you use?
- Whom would you collaborate with in your community?

Public Advocate: Contact Field Liaison

- **Denver Field Office**
- **Assistant Field Office Director:** Homero Mendoza
- **Email:** Denver.Outreach@ice.dhs.gov
- **Area of Responsibility:** Colorado, Wyoming
- Encourages crime victims that were arrested and subject to ICE detainer to call ICE's Law Enforcement Support Center (LESC) at their toll-free number: **(855) 448-6903**
 - Enables ICE to take prompt action on aliens against whom enforcement would be inappropriate

Steps to Secure Release From Detention

- Request stay of removal with DHS-ICE
 - Buy time to determine options available to survivor
- Determine survivor eligible for VAWA or U-visa, file for immigration remedy, and ask for expedited processing
 - (if approved) Case against survivor automatically dismissed even if VAWA or U-visa status not yet approved
- Gather information/evidence for favorable prosecutorial discretion
 - Survivor of crime
 - Parent of USC children
 - School children
- Provide information for survivor to be released on humanitarian grounds
 - (if approved) Survivor released from detention

Online Detainee Locator System

- ICE includes limited personal information about detainees in a publicly searchable Internet database. It is intended to assist family members, friends, and legal representatives in locating persons in custody.
- ICE may not disclose information about any individual who has applied for benefits under VAWA or a T or U Visa without that person's consent.
- A victim can check a box on the consent form that says she does not consent to ICE disclosing information about her status and location in the database. If she does not complete the form, ICE will not enter information about the detention.

Telephone Service for Detainees

- SP Telecom, at www.detaineescallhome.com or 1-845-342-8000 provides reduced cost telephone service for detainees and their families
- The service provides each caller with telephone numbers local to the facility of the detained individual.

Lunch

Building Relationships That Promote U-Visa Certification

What is Required for U-visa Certification?

- Identify the victim
 - Note injuries observed
- Helpfulness of the victim
 - Current or past
 - Willingness to be helpful
- Any family members implicated in the crime
- Goal: Identification of the crime, the victim and initiation of the process

HYPOTHETICALS

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.

LARGE GROUP DISCUSSION:

What constitutes helpfulness?

Helpfulness: Regulations

- There is no degree of helpfulness required
- Law enforcement may complete U-visa certification once assess victim's helpfulness
- Investigation need not be complete to certify
- Statute: has been helpful, is being helpful or is likely to be helpful in the
 - detection, or
 - investigation or
 - prosecution

Past, Present OR Future Helpfulness Examples

- Calling 911 to report a crime
- Providing a statement to the police
- Filing a police report
- Seeking a protection order
- Witness in a prior prosecution OR investigation

Helpfulness

- Reporting a crime with no further investigation
- Past crime when victim did not know/feel safe to report
- Perpetrator absconds or is subject to immigration removal
- Prosecuted for a different crime
- Not needed as a witness
- Victim is dead (indirect victim qualifies)
- Perpetrator is dead
- Victim has a criminal history
- Victim is subject to immigration enforcement
- Victim fully discloses story after better understanding rights and meaningful language access

SMALL GROUP DISCUSSIONS

- Identify who has obtained U-visa certifications
- Share what led to that success

LARGE GROUP DISCUSSION

- Are you getting certifications?
- Who is providing certifications?
- How did the certification process get started?
- Relationships involved?
- Where has certification been an issue?

SMALL GROUP DISCUSSION

- When you consider taking the information you are learning today back to your community and you seek a meeting with law enforcement on U-visa certification, what do you questions do you anticipate being asked that you would like to be able to answer?

LARGE GROUP DISCUSSION

Report back and discuss the small
group responses

Responding to Certification Concerns

- Do not want to confer citizenship on victim
- Not police officer's responsibility
- It is the responsibility of Homeland Security
- Victim is uncooperative
- Victim no longer helpful
- Crime occurred a long time ago
- Case closed
- Perpetrator is dead
- Perpetrator cannot be found or identified

Materials and Tools

- U-visa certification toolkit
 - Frequently asked questions
- DHS Q and A
- DHS U visa law enforcement certification guide

U-visa Opportunity to Build Relationships that Benefits Immigrant Survivors

- Best practices related to U-visa certification
- Long term relationships with law enforcement and prosecutors – KEY
- Role of advocates

Systemic barriers that prevent immigrant victims from coming forward, proceeding and/or following through

Language Access

Psychological Factors

Justice System

Economic Factors

Immigration Enforcement

*U-Visas Presentation – IFVC
– 2010 – Hass & Monahan*

VICTIM: PSYCHOLOGICAL FACTORS

Psychological toll of abuse
Frustration with process intrusive and lengthy

Fears:
About retaliation, feeling they have to chose
between, abuse v. streets, abuse v. children,
protection v. community, fleeing abuse v.
deportation

*U-Visas Presentation
– IFVC – 2010 –
Hass & Monahan*

Relationships Key

*U-Visas Presentation – IFVC
– 2010 – Hass & Monahan*

Law Enforcement

Success

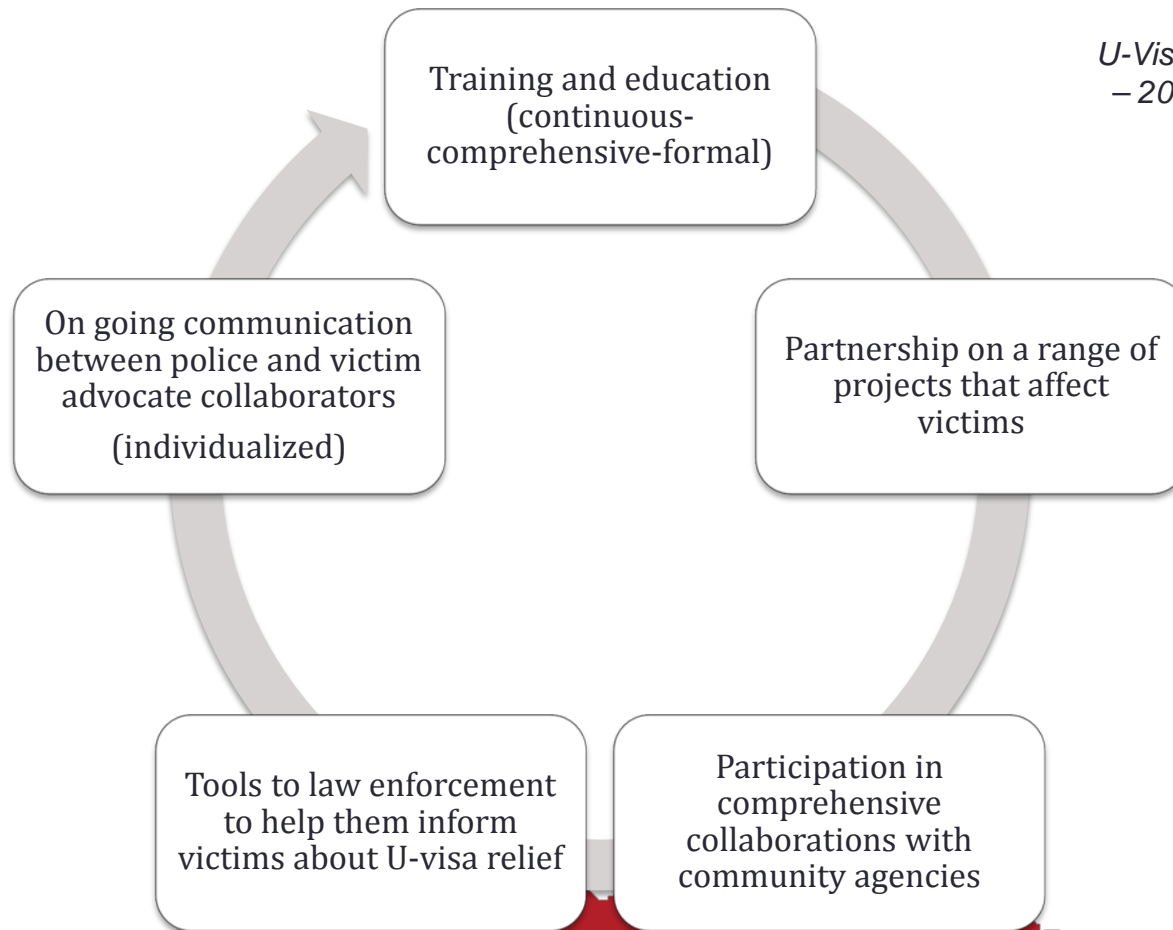
- Aware and sensitive about DV
- Coordinated with advocates and other first responders
- Call advocates when there is a case
- Educated about U visas
- Lack anti-immigrant attitude

Challenges

- Not aware of DV dynamics
- Not coordinating with others
- Not educated about U visas
- Anti-immigrant attitude

Building Advocate-Law Enforcement Relationships Result in U-Visa Certification

*U-Visas Presentation – IFVC
– 2010 – Hass & Monahan*



BREAK

***Immigrant Victims' Legal
Rights to Access Benefits,
Housing, Legal Services,
Victim Services and
Protections***

Immigrants and Benefits:

True (Yellow) False (Purple)

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 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
- Receive Emergency Medical Care
- Police Assistance
- Have Their Abusers Criminally Prosecuted
- Assistance for Crime Victims
- Obtain Public Benefits for Their Children
- Legal Services
- Language Access

Attorney General's List of Required Services

- in-kind services
- provided at the community level
- not based on the individuals income or resources
- necessary to protect life & safety

Benefits Available to All Immigrants

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

Undocumented Immigrant Victims and Transitional Housing

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

Other Federal Benefits Available to ALL Immigrants

- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid

Health Care Open to All Immigrants

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

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

State-by-State Health Care Charts

- Emergency Medicaid
- Forensic Examinations
- Post-Assault Health Care
- Pre-Natal Care
- www.iwp.legalmomentum.org
 - Nevada chart included in materials

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

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 of the child's parent if the parent is not applying for additional benefits for themselves

BRAINSTORMING ACTIVITY

List the range of services open to help undocumented victims.

Benefits for Undocumented Victims Resources

- AG Order regarding services necessary to protect life and safety
- HHS Programs List
- HUD Programs List
- HUD Letter regarding shelter and transitional housing

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

Immigrant Restrictions

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

“Federal Public Benefits” are US agency funded/provided:

- Grants, contracts, loans, professional or commercial licenses and
- 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:

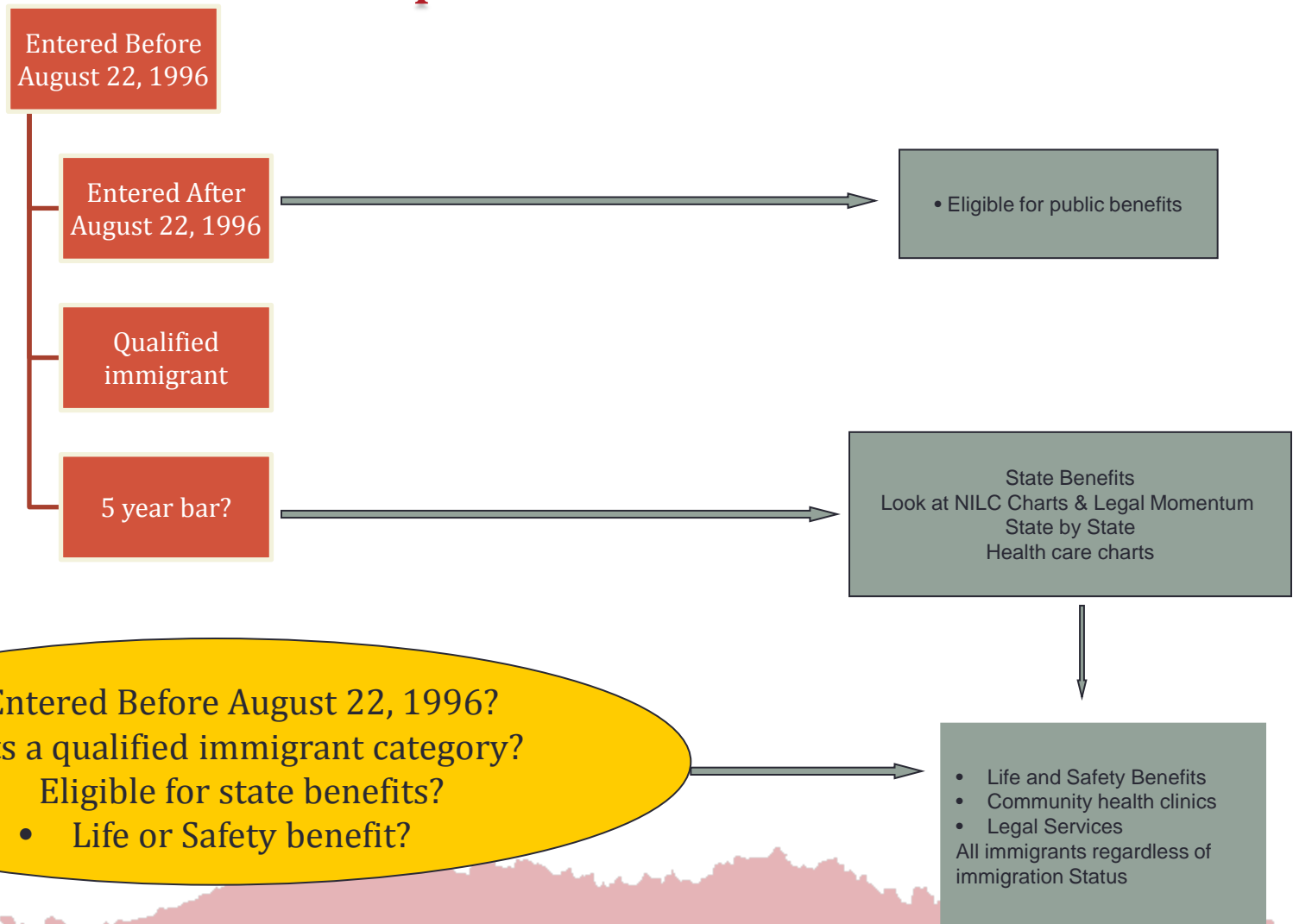
- A state in the form of a block grant
- A victim services program
- A shelter
- A hospital
- A health clinic
- A government entity
- A non-profit organization

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
 - Nevada offers none

WHAT ARE SOME CREATIVE OPTIONS
YOU COULD HELP IMMIGRANT VICTIMS
ACCESS WHO DO NOT QUALIFY FOR
STATE OR FEDERAL PUBLIC BENEFITS?

How to determine whether an immigrant is eligible for public benefits



Qualified Immigrants

- Lawful Permanent Resident (LPR)
- Refugee, Asylee, Withholding of Deportation/Removal, Conditional Entrant status
- Paroled into U.S. for at least 1 Year
- Cuban/Haitian Entrant
- Amerasians
- Veterans of certain US military Action
- VAWA Battered Spouse and Battered Children
- Child of VAWA Battered Spouse
- Victim of a severe form of trafficking

How does an 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
- Social services block grant programs
- Child care
- Adoption assistance
- Foster care
- Low income energy assistance program
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals

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

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

Food Stamps for Qualified Immigrants:

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

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

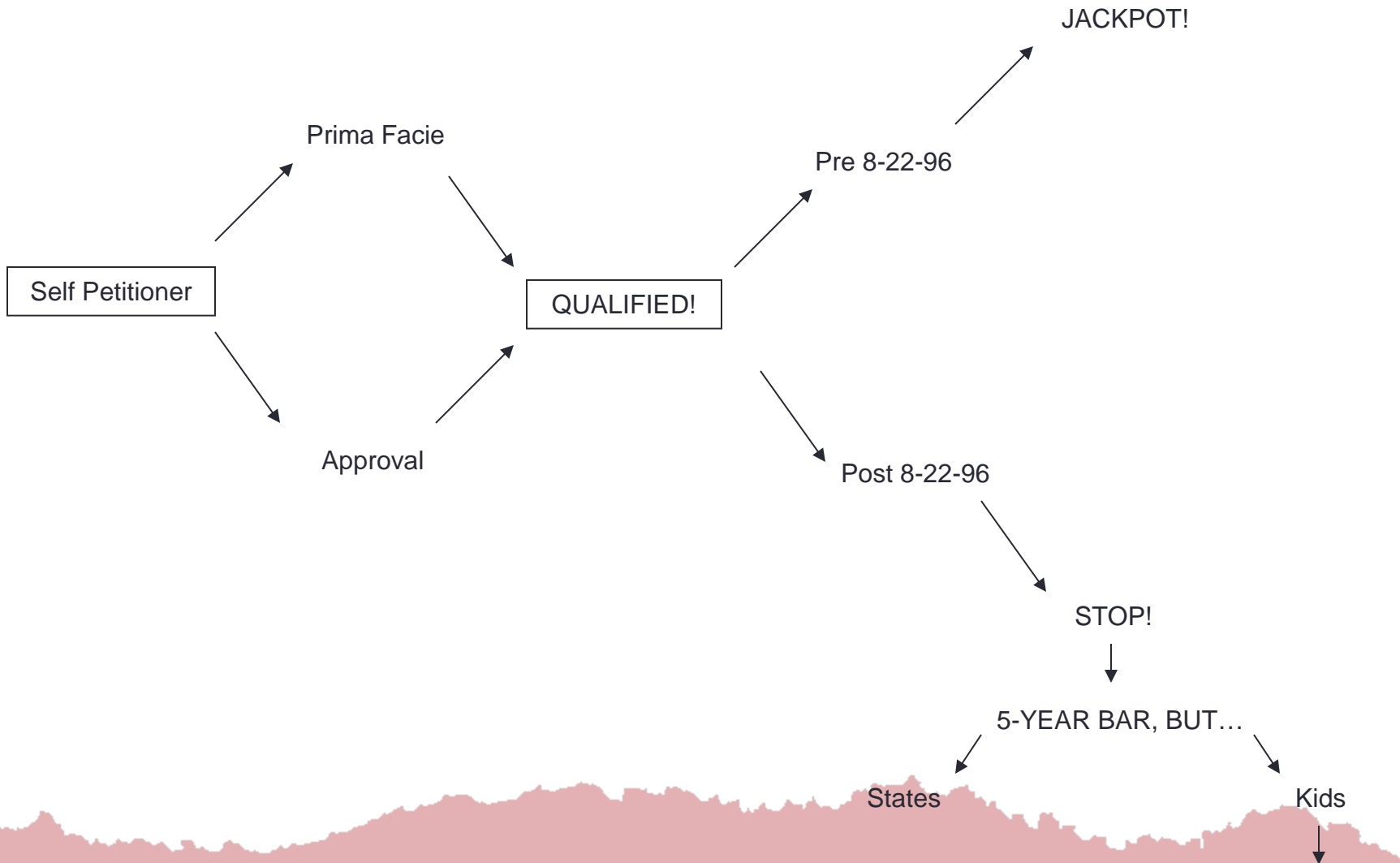
- Lawfully present + Medicaid state residency rules
- Lawfully present =
 - Lawful permanent residency
 - Approved visa petition + application for lawful permanent residency filed
 - Persons fleeing persecution (e.g. refugees, asylees, withholding, conditional entrants)
 - Humanitarian immigrants (e.g. 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

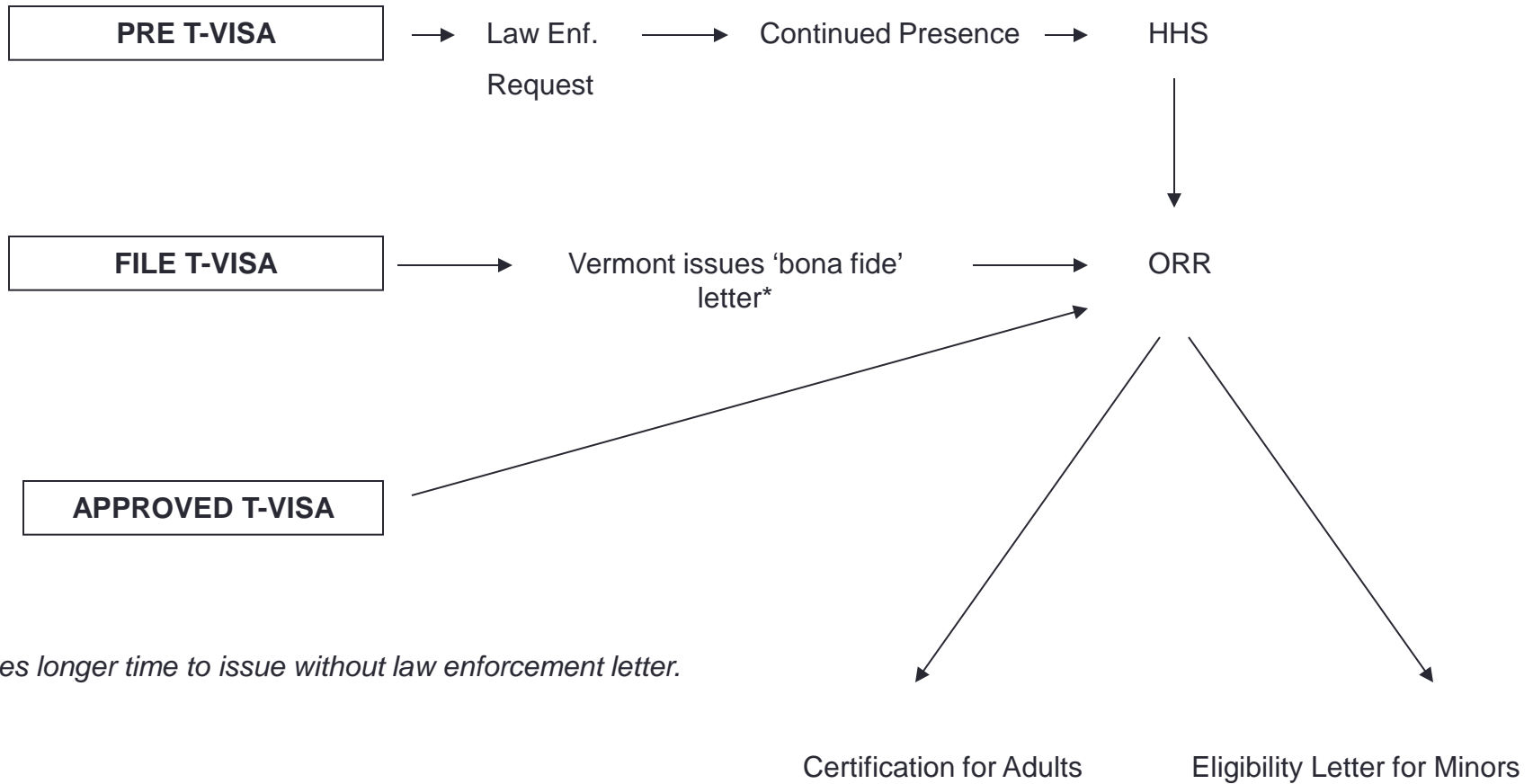
- VAWA self-petitioning applicants and their children
- VAWA cancellation and suspension applicants
- T visa holders, applicants and continued presence and their children
- U visa holders includes their children
- Temporary visa holders (e.g. student, visitor, work)
- Citizens of Micronesia, the Marshall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

Benefits in Colorado

- Lawfully present immigrants are eligible for prenatal care.
- Long-term care is available to persons
 - who were receiving Medicaid-reimbursed Nursing Facility or Elderly, Blind, or Disabled services on July 1, 1997.
 - Lawfully residing immigrants who are ineligible for Medicaid, are over age 60, and are enrolled in the Old Age Pension Program are eligible for Medicaid-like services (excluding long term care, psychiatric services, and in-patient hospitalization) through the Old Age Pension Health and Medical Fund.



Benefits Eligibility for Victims of Severe Forms of Trafficking

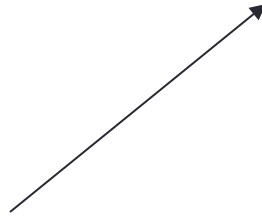


** Takes longer time to issue without law enforcement letter.*

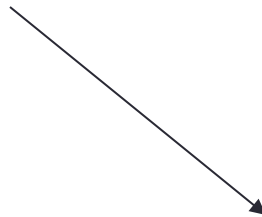
U
VISA



Interim Relief



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?

Family Court Immigration and the Family Law System

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

Impact of Divorce

- 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

CREATIVE REMEDIES

What creative protection order remedies might help an immigrant victim?

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.
- Provisions
 - No abuse
 - Counseling

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

A protection order or discovery can help a victim obtain needed evidence:

- Marriage certificate
- Wedding/family pictures
- Birth certificates
- Love letters
- Copies of joint leases/utility bills
- Police, medical, court documents about the relationship,
- Copy of abuser's green card or passport

Protection order or discovery continued

- School records
- Medical records
- Employment records
- Social security number information
- Health insurance
- Children's birth certificates
- Letters and other mail addressed to the victim and to the abuser at the same address
- Copy of I-130 petition

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

Provisions that 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

Custody

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
- 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?

ABA Center on Children and The Law

- “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

- Victim will flee or be deported and will take children
- 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
 - Get public benefits for the children
- Child's best interests are 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

Myths and Facts

- 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

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



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

Technical Assistance and Materials

- Powerpoint presentations and materials for this conference at niwap.org/go/denver

NIWAP Technical Assistance:

- Call (202) 274-4457 or
- E-mail niwap@wcl.american.edu
- Website: www.wcl.american.edu/niwap

CLOSING AND EVALUATION