

# Freedom from Fear: Helping Undocumented Victim of Domestic Violence

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# Dynamics of Domestic Violence and Sexual Assault Experienced By Immigrant Victims: Barriers to Justice System Assistance

# Domestic Violence Prevalence Rates 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

# Sexual Assault Among Immigrant Women

- 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

# Connection Between Abuse and Control Over Immigration Status

- Immigrant women lifetime abuse rates as high as 49.8%
- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

# The Power of Control Over Immigration Status

- Of spouse 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 Lock's Immigrant Women in Abusive Relationships

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

# 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



# Barriers for Noncitizens

- Fear of Deportation
- Fear of losing custody/access to children
- Language access
- Lack of understanding of U.S. Laws
- Abuser's power and control over victim's immigration status
- Local police involvement with immigration enforcement

# Factors Affecting Immigrant Victim's Willingness to Call Police for Help

- Positive Factors:
  - Length of time in the United States
  - She had spoken to 2 or more persons about the violence
  - 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%

# ***Protecting Immigrant Mothers, Protects Children***

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

# NIJ Funded Immigrant Victims and Protection Order Study Findings

- With advocate support immigrant victims will use and benefit from justice system assistance
  - 60.9% of victims first learned about protection orders from their advocates
  - 81% got protection order with help from advocate
  - 96% found them helpful
  - 68.3% of violations of immigrant victim's protection orders were
    - ongoing immigration related threats and abuse

# The Importance of Immigration Status

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

# ***Why Legislative Reforms Were Needed to Help Battered Immigrants***

# Immigration Law Historically Gave:

- Spouses and Parents
- Control over the immigration status of
- Alien spouse and children
- Citizen or permanent resident controls
  - Whether to file
  - When to file
  - Whether alien family member can attain or keep legal immigration status



# Dependence On Spouse For Legal Immigration Status

- Exacerbates:
  - Likelihood of domestic violence
  - Severity of the violence
  - Isolation of the victim from help
- Higher Risk When Abuser is a
  - Spouse; and a
  - Citizen
  - Lawful permanent resident
  - Lawful Immigrant Visa Holder

# Prior to the Violence Against Women Act 1994- Immigrant Victims Had:

- Little access to civil legal remedies
- Limited ability to attain criminal justice system help
- Little or no language access to justice
- No independent access to legal immigration status
- Few programs nationally helping immigrant victims

# Violence Against Women Act of 1994 -- Purpose

- Federal role in stopping
  - Domestic violence
  - Sexual assault
  - Trafficking in persons
- By meeting two equally important goals
  - Increasing justice system's role in offender accountability
  - Offering services, protection, counseling for

# VAWA Immigration Provisions Needed To --

- Sever abuser/perpetrator control over
  - Criminal justice system intervention
  - Victim and children
    - Locking them in abusive relationships
    - Keeping them from seeking help
- Provide victims access to services, help, healing, safety, and economic security

# VAWA 1994 -Immigration

- VAWA self-petitioning battered
  - *Helps victims of family violence perpetrated by a US citizen or lawful permanent resident who is a--*
    - *Spouse/former spouse*
    - *Parent/step-parent*
    - *Over 21 year old citizen son or daughter*
- VAWA suspension of deportation
- VAWA credible evidence standard
- Connection with VAWA goals
  - Offender accountability
  - Victim assistance and protection

# VAWA 2000 Brought Further Help for Immigrant Victims

- U-Visa for victims of crime
- T-Visa for trafficking victims
- Expanded VAWA confidentiality protections
  - Bar on use of abuser provided information
  - Prohibition against release of information about VAWA, T or U visa case
  - Locational prohibitions

# U-Visa Helps Victims

- Domestic violence when abuser is
  - Undocumented, Not a spouse. US citizen boyfriend
  - Any family member
  - Work or student visa holder
  - Diplomat
- Victims of rape or sexual assault
- Nannies and domestic workers abused by their employers
- Trafficking victims
- Victims of violence crime

# Understanding Behind U and T visas

- If victims are too afraid to come forward --  
No prosecutions
- Deportation no longer a tool in the hands of perpetrators
- Promote crime victim cooperation in
  - detection OR investigation OR prosecution



# Potential Immigration Remedies

- Applications filed DHS
  - VAWA self petition
  - Battered spouse waivers (spouses of USC's 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

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Advancing Women's Rights

– VAWA cancellation of removal

– VAWA suspension of deportation

New York and Washington, D.C.

# 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

# Crime Victim (“U”) Visa Requirements

- Substantial physical or emotional abuse from criminal activity
- Possesses information about criminal activity in the US or violates US law
- Victim has been, is likely to be or is being helpful to detection, investigation or prosecution of criminal activity
- Must include certification from a government official
- Can lead to lawful permanent residency

# 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

# The U-visa Process

1. Certification
2. Application
3. Approval – Deferred Action
4. U-Visa status 4 years
5. Some will qualify for lawful permanent residence

# U-visa Certification: Considerations For Law Enforcement

- 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

# 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
- After 5 years lawful permanent residency can apply for naturalization

# VAWA Protections In a Time of Increased Immigration Enforcement

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



# Early Identification and Certification Is Crucial for Victim Safety

- Victims who are eligible for
  - VAWA
  - T-visas
  - U-visas
- Sole and primary caretaker parents

# DHS Humanitarian Release

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

# New Release From Detention Homeland Security Policy (August 20, 2010)

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

# August 2010 DHS Policy

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

# 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