Effect of Anti-Immigrant Legislation and Times on Immigrant Women and Immigrant Victims of Violence Against Women

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New Racism:
The State of Hate in the United States
Washington, D.C.

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Impact of Anti-Immigrant Sentiment and Legislation on Immigrant Women

- Undermines two decades of legislation offering protections to immigrant crime victims
- Cuts off women and other vulnerable immigrants from
  - DHS policies designed to prevent detention/deportation
  - Federally guaranteed services for all persons
  - VAWA T and U visa immigration relief
- Deters crime victim reporting
- Immigrant women and all immigrants risk apprehension whenever they leave their homes
- Causes forced separation of immigrant mothers and children
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
Other Federally funded programs open to ALL Immigrants

- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid
- HHS funded health care provided by community, migrant and rural health clinics
Local Enforcement of Immigration Laws—Effect on Immigrant Women & Crime Victims

• Secure communities
• 287(g)
• Informal partnerships with Immigration and Customs Enforcement (ICE)
• Local officials without immigration expertise
  – Arrest legal present immigrants
  – No familiarity with full range of documents/statuses
  – Do not know DHS policies including VAWA Confidentiality
VAWA Confidentiality

• DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
• Enforcement locational prohibitions
• DHS cannot disclose VAWA information to anyone (except in limited circumstances)
VAWA Confidentiality Protected Locations:

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouses

**ADD IN VAWA 2011**
- Religious institutions
- Health care providers
- Schools
- Child case centers
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

• Applies to Homeland Security Detention
  – Initiation and prosecution of removal of immigrants
  – Homeland Security detention

• Release for immigrants with a filed, pending or approved applications for immigration benefits
  – U visa,
  – T-Visa
  – VAWA,
  – Family Petition
  – Other
August 2010 DHS Policy

- Dismissal without prejudice of immigration removal case if Homeland Security 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
- Effect of VAWA confidentiality protections
December 2010

• DHS implements computerized system that “red flag” VAWA, T and U visa cases and other cases protected by VAWA confidentiality
Effect of Maternal Child Separations

- Can result in children being placed in custody of the abuser
- Detention related Mother-Child Separations even short term ones
- Pose serious risks to children’s immediate safety, economic security, wellbeing, and long-term development
- Causing eating and sleeping disorders, anxiety, withdrawal, aggression, and academic and behavioral problems
Effect of Increased Immigration Enforcement on Immigrant Mothers

• Case Examples

• Maria Luis, Nebraska
• Encarnacion, Missouri
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
Safety Planning and Action Steps for Immigrant Mothers

• Understand and intervene early in child welfare system
• Developing plan to ensure care of children if detained
• Power of Attorney appointing guardianship
• Timing of immigration and family court cases
• Documentation victim can carry with her
  – Evidence that immigration case has been filed
  – Civil protection order
• Consular Notification
The Violence Against Women Act of 2011
Priorities and Possibilities
National Network VAWA IV

Selected Priorities Include

• Make U-Visa certification primary evidence NOT mandate
• Early access to work authorization
• Expand access to federal public benefits for victims
  – U-visa victims
  – End 5 year bar
• Improved protections against deportation
  – Red Flag system for VAWA, T and U victims cases
  – Reinstatement of removal not apply to VAWA/T/U
• Expand inadmissibility waivers for VAWA self-petitioners
• Expand list of U-visa crimes
  – e.g. stalking, child abuse, child exploitation, child labor exploitation, child endangerment, elder abuse and exploitation, sexual harassment
National Network VAWA IV Selected Priorities

- Any state or local police who get involved in immigration enforcement subject to VAWA confidentiality
- Improved protections/options for immigrant children
- Recapture of U-visas lost due to DHS regulations delay
- Death of the abuser or the victim will not cut off VAWA, T or U-visa eligibility
- Divorce of parent not cut off child from VAWA self-petition
- Improved access to gender-based asylum
- Enforcement of language access re: governmental agencies
VAWA VI Priorities

• Funding priorities when police/prosecutor/court is
  – Certifying in U and T visa cases
  – Providing language access

• Open VOCA in all states to non-citizens
• Expanding grant programs that can fund legal assistance
• Improved access to transitional housing
• Encouraging more government funding for research on
  – Violence against women including domestic violence, sexual
    assault, trafficking, stalking, dating violence and elder abuse
  – Underserved victims, including immigrant victims

• HELP Separated Children Act
• Uniting American Families Act
For further assistance

Contact:
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Resource Library
www.iwp.legalmomentum.org

Arizona 9th Cir. Brief Effect on Immigrant Women
http://www.legalmomentum.org/our-work/vaw/iwp.html