

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

March 28, 2011

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

Leslye Orloff
Legal Momentum, Immigrant Women Program
www.iwp.legalmomentum.org

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

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

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

August 2010 DHS Policy

- Dismissal without prejudice of 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:

Immigrant Women Program, Legal Momentum

1101 14th St. NW

Washington, DC 20005

iwp@legalmomentum.org

202/326.0040

Resource Library

www.iwp.legalmomemtum.org

Arizona 9th Cir. Brief Effect on Immigrant Women

<http://www.legalmomentum.org/our-work/vaw/iwp.html>