

RIGHTS & OPTIONS

*for Battered Immigrant, Migrant,
and Refugee Women*



SURVIVING DOMESTIC ABUSE IN THE USA

1-800-799-SAFE (7233)

Rights and Options for Battered Immigrant, Migrant, and Refugee Women¹

*By Legal Momentum, Leslye E. Orloff and Organización en California de Lideres Campesinas,
Mily Trasvenia Saucedo*

Regardless of your immigration status, you have the right to be safe in your own home. You have the right to leave anyone or have removed from your home anyone who abuses you and/or your children physically, emotionally, or sexually.

**YOU HAVE THE RIGHT TO MAKE YOUR OWN DECISIONS
ABOUT YOUR LIFE.**

NO ONE HAS THE RIGHT TO HURT YOU OR YOUR CHILDREN IN ANY WAY!

Does Your Spouse or Partner hurt you, your children or your pets?

- Threaten to hurt or kill you?
- Make you have sex when you do not want to?
- Threaten to report you to the Department of Homeland Security (DHS) and have you deported?
- Threaten to take your children away?
- Control where you go and whom you can see, talk to or write to?

¹“This Brochure was produced by The National Immigrant Women’s Advocacy Project (NIWAP) at American University, Washington College of Law and Legal Momentum and was supported by Grant Numbers 2005-WT-AX-K005 and 2011-TA-AX-K002 awarded by the Office on Violence Against Women, Office of Justice Programs, U. S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.”

Control your access to money, take your money away from you or make you say how you have spent every penny?

- Stop you from getting a job or learning English?
- Refuse to file immigration papers for you or threaten to withdraw these papers?
- Withhold or destroy your passport and other personal documents?
- Make you feel like a prisoner in your own home?
- Make fun of you and insult you in private or in front of others?

If you answered “yes” to any of these questions, you may be a victim of domestic violence.

What is domestic violence?

Domestic violence is violence that happens between partners or former partners in a relationship. This can mean between spouses, boyfriends and girlfriends, same sex partners, relatives, and parents and their children. Domestic violence can occur at home and/or in other locations. Domestic violence can occur when parties live together, when they are separated, or when they are divorced. Domestic violence occurs in an intimate or family relationship when one person is forced to change his or her behavior in response to threats or abuse from an intimate partner or family member. Domestic violence can be physical, or it can involve threats, isolation of one partner from others, intimidation, harassment, emotional mistreatment, forced sex or making threats about reporting you or your children to immigration officials and/or having you deported.

If you are experiencing domestic violence in your home, you are not alone. Domestic violence is very common and it probably affects many people you know. Although domestic violence is usually hidden, it exists in every community.

Domestic violence often gets worse with time and it does not go away on its own. It is important to remember that domestic violence is not your fault. Your abuser chooses to use domestic violence to control you. Domestic violence is a crime in the United States. No matter what your abusive partner tells you he can or cannot do to you, if he hurts you or your children, it is wrong. There are things you can do to protect yourself and people who will help you prevent the cycle of violence. Every person can get help to prevent domestic violence, even if they do not have legal permission from the Department of Homeland Security (DHS) to be in the United States. This booklet will explain how you can safely seek help to prevent the violence without a high risk of you being reported to DHS or deported.

This booklet will refer to the abuser as “he.” Some women are abused by other women. While not all legal remedies will apply to lesbian relationships, this booklet will still provide some basic information about things you can do to make yourself safe. While most victims of domestic violence are women, men can also be victims of domestic violence. Government statistics published in 1998 and 2001 show that 85% of domestic violence victims are women and 15% are men. Male victims, particularly those abused by women, are eligible for the same legal protections as women, and may qualify for immigration relief. Although this booklet refers to victims of domestic violence as women, men who are victims are also encouraged to speak to an advocate or an attorney.

DOMESTIC VIOLENCE IS NOT YOUR FAULT!

You are not alone. There are places you can go and things you can do to protect yourself and your children.

MYTHS AND FACTS ABOUT DOMESTIC VIOLENCE

MYTH: Domestic violence only occurs in American families.

Fact: Violence occurs in families of every culture, nationality, religion, class, race, and socio-economic background. Believing myths about domestic violence prevents immigrant women from getting the help they need.

MYTH: Battering is a family matter.

Fact: Domestic violence is a crime regardless of the relationship between the two people. You deserve the same protection and help that any victim of assault, battery, or rape would receive.

MYTH: I am in the United States without legal permission from DHS; therefore, I cannot get help to prevent or flee domestic violence.

Fact: Any battered immigrant woman, even if she is not living in the United States legally, can get help to prevent or flee domestic violence. She has a legal right to get help from any shelter or other program that helps women who have suffered domestic violence. Community-based charitable programs do not ask any questions about immigration status and do not report to DHS people who come to them for help. A battered immigrant woman can obtain a protection order from the courts, call the police for help and receive emergency medical assistance. All of these agencies offer help to battered immigrant women without regard to immigration status.

MYTH: It is easy for battered women to leave their abusers.

Fact: Leaving the abuser is very difficult. Women may have a real fear that they will be killed or severely hurt by their batterer if they leave. They may not be able to support themselves. They may want to keep the family together. They may be afraid of being ostracized from their community, and there may not be culturally sensitive domestic violence resources where they live. All of these things make it difficult for battered women to leave their abusers.

MYTH: Women are responsible for the violence against them.

Fact: Violence is a learned behavior that abusers use to assert their power and control over others. You are not responsible for your abuser's violent behavior and do not deserve to be treated this way. Even though an argument may be what causes your abuser to become angry, what he does with his anger is his responsibility.

MYTH: Violence is caused by alcohol or drug abuse.

Fact: There is a high rate of alcohol/drug abuse among men who batter; however, there is no causal relationship between the two problems. Many men who batter do not drink heavily, and many substance abusers do not beat their wives. Batterers may use alcohol or drug abuse as an excuse for their violence instead of taking responsibility for their behavior.

MYTH: If I leave my abuser, he will get custody of the children and I will not be able to see them.

Fact: Many immigrant women who are undocumented receive legal custody of their children through protection orders and custody orders because judges believe it is safer and healthier for children to live with the parent who is not an abuser. Courts in the United States generally do not give custody of children to parents who are abusers. This is true even when the abuser is a citizen and the mother is an immigrant who does not have legal immigration status in the United States.

Help All Battered Immigrant Women Can Receive

Even if you do not have legal immigration status in the United States, or if your legal status is tied to your abuser's work visa, you can receive all of the following services:

- Services from shelters and other domestic violence programs;
- Civil protection orders from a court;
- Custody and support for children;
- Police assistance;
- Emergency medical care;
- Your abuser can be criminally prosecuted; and
- Your citizen children can receive public benefits.

Police Assistance for Battered Immigrants

Domestic violence is against the law. If you want to leave, then the police can help you and your children safely get out of the house and often they can also drive you to a safe place. The police may arrest your spouse/intimate partner if they think that a crime has been committed. If the police officer does not speak your language, find someone to interpret for you.

Always ask the police to make a report about what happened and get an "incident report number" so that you can get a copy of the report. Ask for and write down the name and badge number of the officer making the report. If your spouse/partner is taken into custody, he may be released as quickly as two hours after he is taken into custody. This will give you time to find a safe place to go. The police generally will not turn women reporting domestic violence into the DHS.

In recent years greater resources have been devoted to Department of Homeland Security enforcement of immigration laws. Also, more and more immigrant victims of violence against women who qualify for legal immigration status, including VAWA, U-visas, and T-visas, find themselves being contacted by DHS enforcement officers. This can occur for several reasons. An abuser or crime perpetrator may call DHS to enlist their assistance in having you removed from the United States; this is an attempt to use the U.S. government as a tool of their abuse.

Under federal VAWA confidentiality laws, DHS officials should not rely on information provided by an abuser, a crime perpetrator, or family members of abusers or perpetrators to delay a case the victim has applied for, to arrest or detain a victim, or to otherwise harm victims, including harm through DHS enforcement actions. This is called "VAWA Confidentiality," and is discussed further below. Consulting with an expert on immigration and violence against women can help you determine which forms of immigration relief you may qualify for as a victim. Once you determine that you qualify to attain legal immigration status, filing as soon as possible will help protect you from deportation. We strongly recommend pursuing immigration relief immediately.

You should consider carrying copies (not originals) of documentation about your VAWA, T-visa, or U-visa immigration case (prima facie determinations, approvals) with you so that you can show these papers to immigration officials if you are ever stopped. Showing immigration officials evidence that you are a victim of domestic violence can also be helpful in delaying or suspending your removal. You can obtain documentation that you are a victim of domestic violence or sexual assault by obtaining a protection order (or a stay away order) in any pending criminal case. Copy these important documents and leave a copy with a trusted friend so that they will be accessible when you need them, or if it is not safe to carry the copies with you. Consult with a victim advocate to help you determine whether and how to carry documents safely. Some survivors may be concerned about their safety should their abuser find the papers they received from immigration. Call the National Domestic Violence Hotline 1-800-799-SAFE or the Rape Abuse and Incest Network (RAIN) Hotline at 1-800-656-HOPE for referrals to advocates and attorneys in your community who can assist you.

VAWA CONFIDENTIALITY

What is “VAWA Confidentiality”?

Congress recognized that abusers of immigrant victims and crime perpetrators of both trafficking and sexual assault often threaten victims with deportation. These abusers and perpetrators also sometimes try to discover, interfere with, or undermine a victim's VAWA immigration case. To stop abusers and crime perpetrators from convincing DHS officials to take actions against immigrant victims, Congress created VAWA Confidentiality. VAWA Confidentiality offers the following protections to victims. Department of Homeland Security, Department of State, Department of Justice and Department of Labor employees MAY NOT:

- Rely on abuser/family member provided information in any case, without regard to whether the victim is eligible for any immigration relief including deportation, detention, removal, or denial of her immigration case.
- Use or disclose any information contained in or about the existence of any VAWA, T-visa or U-visa immigration case. Family or criminal court officers or judges, as well as law enforcement officers, are also prohibited from use or disclosure.
- Undertake any part of an enforcement action against any immigrant victim at any of the following protected locations:
 - 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, or stalking

The immigration judge may dismiss deportation or removal cases involving any of these prohibited activities. The officer committing the VAWA confidentiality violation is subject to disciplinary sanctions and up to a \$5,000 fine for each VAWA confidentiality violation. If you feel your abuser has contacted immigration or law enforcement with information on you, tell your advocate or lawyer immediately. If you do not have a lawyer, obtain a referral to a lawyer by contacting the resources at the end of this booklet.

Battered Immigrants Rights to Access Shelter and Domestic Violence Programs

There are different services that can help you escape the violence in your home, such as: shelters, hospitals, police, legal aid, and other community services. Shelters are usually free and will often have information about other services in your community. A shelter is a safe, secret home where you and your children can stay when you leave an abusive relationship. Shelters provide food, free housing, and counseling, and can help you get legal advice and assistance in obtaining work. The shelter staff may also be able to help you find permanent housing and job training. They may also be able to help you find out if you or your children qualify for public benefits.

You can find a shelter by calling your local domestic violence program or the National Domestic Violence Hotline — (800) 799-SAFE. Shelter services are **FREE**. You do not have to pay money to get these services.

All domestic violence shelters are required to help you, even if you are undocumented. Domestic violence services must be provided without asking any questions about your immigration status. Non-profit charitable organizations that help battered immigrants are not required to ask any questions about a woman's immigration status. You will not be reported to DHS for seeking these services. Shelters and domestic violence programs cannot discriminate against you because of your country of origin, your immigration status, your ethnic background, or your language ability.

Battered women's shelters and other services can offer you help even if you do not choose to stay at the shelter. You can receive help if you choose to stay with friends or family members, and even if you decide not to leave your abuser. Shelters provide counseling, legal assistance; help finding housing, and other needed services for battered women whether or not you stay at the shelter. It is also important to know that there are domestic violence programs that have particular experience helping battered immigrant women. To find these services in your area, see the resources listed at the end of this booklet.

If you leave your home, do everything you can to take your children with you. Also try to take your important papers, such as a driver's license, identification, passports, visas and social security cards for you and your children, birth certificates, any public assistance documents, leases, checkbooks, paycheck stubs, marriage license, medical and police reports, copies of your spouse's green card, passport, birth certificate, or social security card, photographs of your injuries and any current court orders. If your abuser is a citizen or lawful permanent resident, then before you leave try to find a safe way to write down his alien registration number ("A" number). This is the number on his green card, naturalization papers or any other immigration papers he may have filed. If he is a citizen, then copy down his passport number or try to get a copy of his passport or birth certificate. If you think you may need to leave in the future, pack these items in a bag so you can find them quickly when you leave or take them to a friend's house. Taking these papers is not always possible, however, if you can bring them — you should.

Some Battered Immigrants, Immigrant Victims of Sexual Assault, or Human Trafficking May Qualify to Obtain Legal Immigration Status Without Their Abuser's Help or Knowledge Because of the Abuse

There are twelve ways you or your child might qualify to obtain legal immigration status without your abuser's knowledge, help, or control. Qualifying for legal immigration status because of domestic violence, and which form of immigration relief you may qualify for, depends on:

- Who abused you
- If you are or were married to your abuser
- If your child has been abused
- The immigration status and/or citizenship of your abuser
- If your spouse ever filed immigration papers for you

If you came to the United States on a fiancé visa (then you have a right to receive information about the U.S. citizen spouse or fiancé who brought you here).

If you think you may qualify, seek help from an immigration lawyer or advocate who works with battered immigrant women or a battered women's advocate who has been trained on immigration protections for battered immigrants. These advocates and lawyers can help you determine whether you qualify to attain legal immigration status. You can find such a person in your area by calling the telephone numbers at the end of this booklet.

The immigration options for battered immigrants are:

- 1) The self-petition under the Violence Against Women Act;
- 2) The battered spouse waiver;
- 3) Cancellation of Removal under the Violence Against Women Act (only after you have been placed in deportation proceedings);
- 4) The crime victims visa, called a U-visa;
- 5) Gender-based asylum;
- 6) The trafficking visa, called a T-visa;
- 7) VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997;
- 8) VAWA HRIFA (Haitian Refugee Immigration Fairness Act) of 1998;
- 9) VAWA Cuban Adjustment Act of 1966;
- 10) VAWA Abused Adopted Child Protections;
- 11) Special Immigrant Juvenile Status (includes special protections under VAWA 2005);
- 12) International Marriage Broker Regulation Act Protection and access to information.

1. Self-petitions Under the Violence Against Women Act (VAWA)

VAWA creates several ways for women and children to get legal permanent residency. The first is called "self-petitioning". VAWA is available to women and children whose abusive spouse or parents are U.S. citizens or lawful permanent residents. Despite what your spouse or someone else may have told you, as an immigrant domestic violence victim, you do not need to rely on your abusive spouse or parent to file papers for you to get legal immigration status. The law has special protections called "VAWA Confidentiality" so that your abusive spouse or parent cannot interfere with or undermine your immigration case. You should seek assistance from an attorney or advocate who has expertise working with immigrant victims of domestic violence who can help you determine if you qualify and can help you prepare and file your case with the Department of Homeland Security. Many organizations are now able, under changes in law, to provide you with help in your domestic violence, sexual assault, or VAWA case, regardless of your status.

If you are, or were, married and your spouse has abused you or your child, you may qualify for help under the Violence Against Women Act (VAWA). Unmarried children under the age of 21 who are being abused by a parent who is a U.S. citizen or a lawful permanent resident are also eligible for VAWA.

SPECIAL NOTE –

Children battered or subjected to extreme cruelty, including sexual abuse and incest, while they are under 21 years of age, must file for VAWA immigration relief based on this abuse before they turn 25 years old.

If your citizen or lawful permanent resident spouse has abused your child, you may also qualify for VAWA, even if you have not been abused yourself. VAWA is also available to parents of adult U.S. citizens who have been abused by their adult U.S. citizen son or daughter. If you do not know your abusive spouse or parent's immigration status, contact an immigration attorney who may be able to help you find out.

IF YOU ARE:

- Married to a U.S. citizen or a lawful permanent resident; **OR**
- Were divorced less than two years ago from a U.S. citizen or lawful permanent resident spouse; **OR**
- The child of a U.S. citizen or lawful permanent resident; **OR**
- The parent of an adult U.S. citizen son or daughter

AND

- You are living in the United States; **OR**
- You are living abroad, and
 - You were abused in the United States; **OR**
 - Your abusive spouse or parent is either an employee of the U.S. government or a member of the U.S. armed forces;

AND

- You or your child were physically or sexually abused or you suffered extreme cruelty from your spouse or parent

You may be able to get a “green card” (permanent residence in the United States) without your abuser's help or knowledge, through the Violence Against Women Act (VAWA).

If your spouse or parent has never filed for your “green card,” if he filed for your green card and then withdrew the application, or if he has filed but you fear he may not continue to help you get your “green card”, you may be able to apply for a **VAWA SELF-PETITION**.

Abusers who are not citizens of the United States may be deported if convicted of domestic violence or violation of a protection order. If your spouse or parent was deported within the last two years, you may still self-petition under VAWA if you can show that his deportation was related to an incident of abuse. See the Flow Chart on eligibility at the end of this booklet.

2. Battered Spouse Waiver

Some battered immigrant women are married to abusive spouses who did file immigration papers for them. If your U.S. citizen spouse filed immigration papers for you and you were married for less than two years on the date you went with your spouse to your interview with DHS, what you received from DHS is called “conditional temporary residency.” This conditional residency lasts only for two years. At the end of that two-year period you and your spouse are required to file joint petition requesting that you be granted lawful permanent residency.

If your spouse will not help you in filing the petition to move from your conditional status to legal permanent residency, you can ask for a **BATTERED SPOUSE WAIVER** to keep your lawful immigration status. You qualify for a battered spouse waiver if:

- 1) You have a conditional “green card” that lasts for two years;
- 2) You or your child have been battered or subjected to extreme cruelty by the citizen spouse; **AND**
- 3) You can prove that your marriage was valid.

You can file for a battered spouse waiver at any time. You do not need to wait two years. Your batterer will not be able to find out that you filed the battered spouse waiver, and you can file even if you are still living with your abuser, or if your abuser divorced you. Contact an immigration attorney or a nonprofit agency that helps people with immigration for information about the Battered Spouse Waiver.

3. VAWA Cancellation of Removal — Defense Against Deportation for Battered Immigrants

Sometimes battered immigrants who qualify for VAWA immigration relief are reported to DHS by their abusers or are picked up by DHS at their place of employment. These battered immigrants can obtain legal residency through “cancellation of removal” (formerly suspension of deportation). This method is only available to you if you are in, or can be placed into, deportation/removal proceedings. To qualify:

- You must have lived continuously in the United States for more than three years;
- You must be in the United States illegally;
- You or your child must have been battered or suffered extreme cruelty;
- The person who harmed you or your child by battering or extreme cruelty must have been:
 - Your current or former spouse who is a U.S. citizen or lawful permanent resident;
 - Your citizen or lawful permanent resident parent or step parent if you are under the age of 21; or
 - The citizen or lawful permanent resident other parent of your abused child;
- You must have been abused in the United States; **AND**
- You must prove that your deportation would cause extreme hardship to yourself or your child.

If you qualify, then the court may waive your deportation/removal and grant you legal permanent residency. If you are granted cancellation of removal, then any children of yours under the age of 21 whether living with you in the United States or living outside of the United States can receive humanitarian parole. Humanitarian parole gives them legal permission to live with you in the United States while you file applications for your children to receive legal immigration status.

Note: If you lose your VAWA cancellation of removal case, you can be deported. If you are a battered immigrant and you end up in deportation proceedings before an immigration judge, call the numbers at the back of this booklet to obtain the help of an immigration attorney who is knowledgeable about the legal relief available to battered immigrants.

4. Crime Victim U-visas

In October of 2000 Congress created a new immigration remedy, the crime victim visa (U-visa), which may be able to help you if you do not qualify for either the VAWA self-petition or the Battered Spouse Waiver. The U-visa offers access to legal immigration status to immigrants of domestic violence, rape, sexual assault, being held hostage and some other criminal activity. The U-visa remains valid for four years. Both U-visa applicants who have provided sufficient evidence to present a valid case and approved U-visa applicants can receive legal work authorization. The grant of the U-visa leads to closure of any removal case pending against you. In order to assure that any pending or prior removal case is dismissed, it is very important that victims with removal orders or cases pending against them seek the assistance of an immigration attorney experienced in working with victims of violence against women.

At the end of three years, you may be able to obtain legal permanent resident status if you can prove humanitarian need to remain in the United States, that remaining in the United States is necessary to promote family unity, or that it is in the public interest for you to remain in the United States. For example, a battered immigrant who receives a U-visa will likely be able to show humanitarian need in cases in which the abuser was deported to the same country that the victim comes from.

This new visa will be especially helpful if you are abused by:

- Your boyfriend or girlfriend; or
- Your spouse, parent, or child who is not a citizen or lawful permanent resident.

The U-visa will also be helpful when your abuser is an employer, a stranger, or a family member other than a spouse, parent, or child. Your relationship to the abuser does not matter. The immigration or diplomatic status of the abuser also does not matter.

To qualify for a U-visa, you must prove:

- Substantial physical or emotional abuse from criminal activity;
- That you possess information about the criminal activity;
- That the criminal activity occurred in the United States or otherwise violates U.S. law; **AND**
- That you have obtained a certification from a government official stating that you:
 - Have been; **OR**
 - Are likely to be; **OR**
 - Are being helpful to an investigation or prosecution of criminal activity;**AND**
- The certification must be made within 6 months of filing for a U-visa by a:
 - Police officer
 - Prosecutor
 - Judge
 - DHS official
 - Equal Employment Opportunity Commission official
 - Department of Labor official
 - State child or elder abuse investigator; **OR**
 - Any other state or federal government employee with responsibility for detection, investigation, prosecution, conviction or sentencing with regard to criminal activity.

You must have been the victim of one of the following general categories of criminal activity. These include:

<ul style="list-style-type: none"> • Rape, • Torture, • Trafficking in persons, • Incest, • Domestic violence, • Sexual assault, • Abusive sexual contact, • Prostitution, • Sexual exploitation, • Female genital mutilation, • Being held hostage, • Peonage, • Involuntary servitude, • Slave trade, 	<ul style="list-style-type: none"> • Kidnapping, • Abduction, • Unlawful criminal restraint, • False imprisonment, • Blackmail, • Extortion, • Manslaughter, • Murder, • Felonious assault, • Witness tampering, • Obstruction of justice, • Perjury, • Attempt, conspiracy or solicitation to commit any of these crimes.
---	---

There are a wide variety of state criminal statutes in which criminal activity listed above may have different names under state law. If the nature and elements of the crime are similar to a crime listed above, the victim can be eligible for U-visa protection. The criminal activity that qualifies for U-visa protection may occur during or in addition to the commission of another crime. If police or prosecutors choose to investigate or prosecute only the other non-U-visa listed crime, the victim of the U-visa listed crime can still qualify for a U-visa. For example the police may investigate embezzlement or a drug offense and the perpetrator may also be abusing the spouse. The spouse can obtain certification as to domestic abuse and attain a U-visa.

To receive a U-visa, you must be willing to cooperate in the investigation or prosecution of the criminal activity. Usually this will require you to make a police report and to be willing to speak with prosecutors. However, you can apply for the U-visa as soon as you can get the needed certification and gather the proof of the substantial physical or emotional abuse you have suffered. Substantial physical or emotional abuse is defined as injury or harm to the victim's physical person or impairment of the emotional or psychological soundness of the victim. DHS decides this on a case-by-case basis using the following 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 or mental soundness

You can receive the U-visa even if the criminal case has not yet been filed, if prosecutors decide not to file the criminal case, if a case is filed and you are not needed as a witness, if the abuser cannot be prosecuted because he is a diplomat, if the abuser eludes arrest, or if the abuser is not ultimately convicted of the crime.

Your children can also receive U-visas if they qualify independently as a victim of criminal activity or if they are your children under immigration law, meaning they are under the age of 21 and unmarried. Other family members can also receive a version of the U-visa that is dependent on your main U-visa application.

- If you are under the age of 21 your parents, spouse, unmarried children under the age of 21, and unmarried siblings under the age of 18 can receive a U-visa based on your U-visa case.
- If you are over the age of 21 your spouse and unmarried children under the age of 21 can receive a U-visa based on your U-visa.
- U-visa recipients may petition for qualifying derivative applicants residing outside of the United States.

5. Gender-Based Asylum

In some cases battered immigrants may also qualify for a form of relief called gender-based asylum. This will be the most difficult form of relief to obtain, and you must seek the assistance of an immigration lawyer with expertise in gender-based asylum.

To qualify for asylum in the U.S., an applicant must establish that s/he is a refugee.² To be classified as a refugee, an applicant must demonstrate that she has a well-founded future fear of suffering, harm in her home country that rises to the level of persecution. An applicant must establish that the persecution was or will be on account of **Race**, **Religion**, **Nationality**, **Membership in a Particular Social Group**, or **Political Opinion**. Additionally, an applicant must establish that the persecution she suffered was committed by a foreign government, or, that the government of her home country is or was unwilling or unable to protect her from the harm of a non-governmental actor. As a general rule, an individual must apply for asylum within one year of her entry into the United States.

Some battered immigrants who will qualify for gender-based asylum may also qualify for a U-visa if the domestic violence was committed against them in the United States. An example would include domestic violence victims who are abused in the United States by someone who comes from the same country as they do. This is particularly true if the abuser is convicted of domestic violence, a deportable offense. Gender-based asylum cases are difficult immigration cases and require assistance of a skilled immigration lawyer. If you are an immigrant victim of domestic violence, sexual assault, trafficking, child abuse, elder abuse or other U-visa crime you should consult with an immigration attorney to determine which form of immigration relief to pursue.

² See INA § 101(a)(42); 8 U.S.C. § 1101(a)(42)(defining the term “refugee”); Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified at various sections of 8, 22 U.S.C.); United Nations Protocol Relating to the Status of Refugees, art. I § 2, opened for signature Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

6. Trafficking Victims (T-visas)

If you came to the U.S and were coerced, forced, or deceived into a job that you could not leave, you may be a victim of trafficking. As a victim of trafficking, you may be eligible for the T-visa, which provides at least four years of immigration relief. For purposes of T-visa eligibility, trafficking is defined as:

“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 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.”

In order to qualify for the T-visa, you must satisfy the following four conditions:

- You must be or have been a victim of a severe form of trafficking in persons;
AND
- You must be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a Port of Entry, on account of such trafficking;
AND
- You must have complied and/or show willingness to assist with any reasonable request for assistance in the investigation or prosecution of acts of trafficking- or- you must be under the age of 18;
 - o If your physical or psychological trauma makes it difficult to cooperate with law enforcement you may be eligible for a waiver of this requirement.
 - o You must demonstrate that you would suffer extreme hardship involving unusual and severe harm upon removal

As a T-visa recipient, you can obtain legal work authorization and are granted the same access to public benefits as refugees. After three years of continuous physical presence in the United States, the T-visa recipient can apply for adjustment of status and become a lawful permanent resident. As a T-visa recipient you can also protect your family members living abroad by applying for them to receive T-visas as well; they do not have to show extreme hardship. Family members eligible to derive benefits through a T-visa include parents and siblings of a T-visa recipient who is under the age of 18 years. Adult T-visa recipients may bring their spouse or children to the U.S.

7. VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act of 1997)

If you are Nicaraguan or Cuban and your abusive spouse or parent is Nicaraguan or Cuban, you may qualify for VAWA NACARA. This allows Nicaraguan or Cuban battered spouses and children who have been subjected to extreme cruelty by Nicaraguan or Cuban abusers to self-petition. VAWA NACARA helps victims who are unable to attain lawful permanent residency due to their abuser's failure to file for lawful permanent residency. The battered spouse or child must have been physically present in the United States on the date the application was filed (which must have been before April 1, 2000).

If your abuser is an El Salvadoran, Guatemalan or Eastern European spouse or parent, you may also qualify for VAWA NACARA. VAWA NACARA self-petitioning offers protection from deportation and access to lawful permanent residency for abused immigrants who were the spouses and children of El Salvadoran, Guatemalan and Eastern European abusers at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation

of removal, asylum, or temporary protected status under NACARA 203. VAWA NACARA Section 203 also allows battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant, or spouse, or child, filed an application to suspend or to cancel the removal.

8. VAWA HRIFA (Haitian Refugee Immigration Fairness Act of 1998)

If you are Haitian and your abuser is Haitian you may qualify for VAWA HRIFA immigration relief. HRIFA provides that Haitians (natives, citizens, and nationals) can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and the general requirements for lawful permanent residency are met. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA- if they are Haitian and in the United States on the date the application is filed. HRIFA allows applicants to prove continuous presence even when they were absent from the United States for a time period of up to 180 days. (See "continuous presence"). Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian, even if the abusive Haitian spouse or parent never applied for lawful permanent residency under HRIFA.

9. VAWA CUBAN ADJUSTMENT (Cuban Adjustment Act of 1966)

If your abusive spouse or parent is Cuban, you may qualify for VAWA Cuban Adjustment. The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and the general requirements for lawful permanent residency must be met. Spouses and children are also eligible to receive lawful permanent residency through the Cuban Adjustment Act, regardless of their citizenship and/or place of birth, provided that they are residing with their spouse or parent Cuban Adjustment Applicant in the United States. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban, even if he never applied for lawful permanent residency under the Cuban Adjustment Act. VAWA CAA self-petitioners are not required to show that they are currently residing with the spouse or parent in the United States.

10. VAWA Abused Adopted Child Protections

VAWA protections for abused adopted children removes requirements that place abused adoptive children under the control of abusive adoptive parents. It allows adopted children to obtain permanent residency even if they have not been in the legal custody of their adoptive parent for at least two years. They are additionally exempted from the residency requirement. To qualify for this abused adopted child relief, the child must have been battered or subjected to extreme cruelty by the adoptive parent or by a family member of the adoptive parent.

11. Special Immigrant Juvenile Status

If you are under 21 years old and are in the United States and have been abused, neglected or abandoned you may qualify to attain lawful permanent residency as a Special Immigrant Juvenile. In order to qualify for Special Immigrant Juvenile status you must have been declared dependent on a juvenile court in the United States or a court must have committed you to the custody of a state agency or department, you must have been deemed eligible for long-term foster care due to abuse, neglect or abandonment, the court must have determined it is not in your best interest to be returned to your country of origin.

When a child has been battered, abused, neglected, or abandoned, a special VAWA provision bars state and federal government officials from requiring the child to communicate with the child's abuser or family member of the abuser at any stage of the Special Immigrant Juvenile Status application process.

12. Special Issues for Women Who Met Their Spouses through International Matchmaking Agencies (International Marriage Broker Regulation Act (IMBRA) of 2005)

Women who met their US citizen or Legal Permanent Resident spouses through an arranged marriage or an international matchmaking agency can legally access protection orders, police assistance, shelter and domestic violence services without regard to how they met their abusive spouse, fiancé or boyfriend. Consult an immigration attorney if you met your spouse or came to the US through an international matchmaking agency. Women who met their U.S. citizen spouses or fiancés through international matchmaking agencies have the same rights as any other immigrant woman to attain legal permanent residency through their marriage. If you met your spouse through an international matchmaking agency and you are abused, you can access VAWA immigration protections. Immigrant fiancés and spouses also have the right to information on the criminal history and domestic violence protection orders issued against your U.S. citizen fiancé or spouse.

If your fiancé or spouse is a U.S. citizen whom you met through an international matchmaking agency, through an arranged marriage, or if you entered the United States on a fiancé visa, there are special immigration rules that you need to know about. If you were brought to the United States on a fiancé visa, to qualify for legal immigration status you must:

- Marry the fiancé who brought you to the United States; **AND**
- You must marry your fiancé within 90 days of entering the United States on a fiancé visa.

If you fail to comply with either of these requirements, then you will not qualify for either the battered spouse waiver or to file a VAWA self-petition. If you entered the United States on a fiancé visa and your fiancé did not marry you, you married another citizen, lawful permanent resident, work visa holder or someone else who is abusing you, or if your fiancé married you after the 90 day period had passed, you must seek help from an immigration attorney who will help you learn what immigration benefits (including the U-visa) may be open to you as a battered immigrant.

Collecting Evidence For Your VAWA Petition, Battered Spouse Waiver or U-visa Case: Collecting "Any Credible Evidence"

If you qualify to file for one of the forms of VAWA immigration relief described above, you will need to work with an advocate or an advocate and an attorney to help you collect the evidence you will need to prove your violence against women related immigration case. DHS and the immigration courts can look at many forms of proof. Examples include:

- your written statement (affidavit/testimony),
- statements from friends, family members, victim advocates or shelter workers,
- copies of your protection order,
- medical records,
- pictures of your injuries,
- police reports,
- trial transcripts,
- court documents,
- news articles, or

There is not one particular piece of paper that you must have in order to prove your case. If you testify in immigration court, you can request that the court provide an interpreter for you. If you are contemplating leaving the home you share with your abuser and you think you may qualify for VAWA or other immigration relief discussed here, see the safety planning section of this booklet for a complete list of items you should take with you when you leave.

YOU HAVE THE RIGHT TO CONSULT WITH AN IMMIGRATION ATTORNEY ABOUT IMMIGRATION OPTIONS THAT ARE AVAILABLE TO YOU.

If you do not understand what your immigration status is, call an immigration attorney. Your conversation with the lawyer will be confidential. Lawyers are generally required to not disclose information provided by a client to them to any person without the client's permission. To find a lawyer who knows about U.S. domestic violence laws, contact the nearest domestic violence shelter or legal services office, or call one of the organizations listed in the referral section of this booklet. Those organizations can help you find advocates and/or a lawyer who can help you for free or at a low cost. If you do not qualify for free or low cost legal services, these programs are the best resources to help you locate a family and/or immigration lawyer who has expertise in the special laws that help domestic violence victims, including immigrant victims.

It is important to ask any attorney you consider working with whether they have experience working on immigration cases for battered immigrants. Most of the lawyers who have this experience work for legal aid, faith-based, or community-based organizations. For immigrant victims who can afford to pay an attorney, it is recommended that they contact one of the resources listed at the end of this manual to receive a referral to an immigration lawyer who is trained in working on domestic violence, sexual assault, or trafficking cases. Many immigration lawyers have not received this training.

Family Law Protections for Battered Immigrants

Call an immigration lawyer before you get a divorce.

If you are an undocumented battered immigrant and your spouse files a divorce case against you, or if you are considering seeking divorce, contact an immigration lawyer before getting a divorce. Divorce may cut you off from access to legal immigration status.

If your abuser is your U.S. citizen or lawful permanent resident spouse or former spouse, you may qualify for VAWA self-petitioning or VAWA cancellation of removal. Divorced women must file their VAWA self-petitions within two years of divorce and they must show that domestic violence occurred prior to divorce. Divorced battered immigrants who have been in the United States for longer than three years can qualify for VAWA cancellation of removal.

If you are getting divorced or separating from your spouse, you should keep important papers and items that you may need for your immigration case in a safe place. This would include photographs from your wedding and family occasions that you will need to show DHS that your marriage was real and that you did not get married only to get immigration papers. See the safety planning section of this booklet for a complete list of items you should store in a safe place or take with you when you leave.

PROTECTION ORDERS

What is a protection order?

A protection order is a document written up by the court that can help protect you and your children from future abuse by your spouse, partner, or family member. The other terms that can be used to refer to this type of court order are:

- Civil Protection/Protective/Restraining) order
- CPO or PPO
- Restraining order

What are the requirements to obtain a protection order?

- You must prove that you are a victim of domestic or dating violence, **AND**
- You must also have a relationship to your abuser through:
 - Marriage (e.g. spouse, former spouse, mother-in-law, father-in-law, child/stepfather relationship);
 - Blood lines (e.g. your natural mother, father, siblings, cousins, aunts and uncles);
 - Adoption;
 - Having a child in common;
 - Living together;
 - A current or former dating relationship.

You can get a protection order based on assault (including pushing, hitting, shoving, slapping, kicking, pulling hair, and choking, whether or not there are visible injuries), sexual assault, rape, stalking, harassment, parental kidnapping, or terrorist-type threatening. You may file for a protection order where you currently live, where the abuser lives, or where the violence took place. There is no specified time after an incident of domestic violence within which you must file for a protection order. A local domestic violence advocate or attorney in your state can help you find out about specific procedures for filing for protection orders in your state.

You have the right to get a Protection Order **even if you are undocumented**. You do not have to answer questions about your immigration status to get a protection order or have it enforced.

How Protection Orders Can Help Battered Immigrants.

If you are a victim of domestic violence, you can obtain a protection or restraining order from your local court that will protect you from ongoing violence, abuse, threats, or harassment from your spouse, boyfriend, or any family member.

Filing for and receiving a protection order will not result in your abuser's deportation. Once you obtain a protection order, and if your abuser violates the order, you will need to decide if you want to act to enforce the protection order. If your abuser is a non-citizen, a conviction or violation of certain provisions of the protection order (those designed to offer you and your children protection from violence) could lead to your abuser's deportation. Protection orders can help prevent violence against you even if you do not choose to have your abuser convicted of violating the protection order. At the time you obtain a protection order you do not have to decide whether you will choose to have it enforced by the courts.

What can I ask for in a protection order?

In most states, you can request:

- That the abuser does not harass, threaten, molest, assault, or physically abuse you or your children.
- That the abuser participates in and completes a certified domestic violence and/or substance abuse program.
- That the abuser stays away from your person, home, your workplace, your car, your children, your children's school, and other places that you frequent.
- That the abuser does not contact you or your children personally, in writing, by telephone, or through third parties.
- That the abuser vacate your home and that the local police be present while the abuser gathers his personal belongings and turns over to you all sets of keys in his possession. If you choose to stay in your home, then your abuser can be ordered to stay away from you and the home you shared with your abuser even if he owns the home or if the rental agreement with the landlord is in the abuser's name.
- That the police accompany you to retrieve your belongings if you wish to leave your home and go to a shelter or stay with family or friends. The abuser can be ordered to stay away from the location where you choose to stay.
- That the abuser turns over all weapons in his possession to the police.
- That the abuser returns your personal property, any joint property, and property awarded to you by the court.
- That you receive temporary custody of any children you have in common with your abuser even if he has legal immigration status and you do not. This custody lasts for as long as your protection order. You will need to file a separate case in the family courts in most state to receive a permanent child custody order.
- That you receive child support and health coverage for yourself and your children while the protection order is in effect.
- That the abuser turns over your children's passports to you.
- That the abuser turns over your passport to you.
- That the abuser receives visitation rights with the children under circumstances that will not endanger you or the children. This can include exchange through a third party, so that there is no contact between you and your abuser. It can also include a set visitation schedule that the abuser cannot change.
- That the abuser pays for medical expenses and property damage costs that result from the violence.
- That the police help you enforce your protection order and patrol you neighborhood more closely.
- That your abuser turns over documents and information that you may need. This includes, but is not limited to, documents you need to support obtaining a green card (legal permanent residency status) without your abuser's knowledge or help. These documents can be used to support your VAWA self-petition, your U-visa case, or to support any other immigration case you may have or that your abuser may have filed for you.

How will a protection order help me if I qualify for domestic violence immigration relief including relief under the Violence Against Women Act (VAWA)?

If you apply for VAWA, U-visa, or other domestic violence related immigration relief, a protection order will help prove that you were abused. To assist you with your VAWA or other immigration case, request in your protection order that:

- The abuser not withdraw any immigration applications filed on your behalf.
- The abuser not take any action to undermine your immigration case and not contact any government agency, consulate or embassy about you without seeking permission from the protection order judge.
- The abuser turn over your work permit, ID card, bankcard, birth certificate, marriage certificate, passport, and any other documents that would be important for your immigration case. He can be ordered to pay to have these documents replaced if he has destroyed, lost, thrown away, or stolen them, or if he tells the judge he does not have them.
- The abuser give you copies of his documents for your immigration or child support case, such as copies of his passport, ID card, income tax returns, copies of bills, his birth certificate, his alien registration card (green card), and work permit and that he be ordered to turn over to the court and to you his social security number, passport number and/or "A" number.
- The abuser pays your immigration case fees.
- The abuser fill out a "Freedom of Information Act" (FOIA) request to release information contained in any immigration case he may have filed, particularly any family based visa petitions he filed for you or for your children.

If you have questions about your immigration status, consult an immigration attorney immediately. You can locate an immigration attorney or advocate with experience working with immigrant victims by contacting one of the agencies listed at the end of this booklet for a referral.

How can a protection order help if my abuser has threatened to kidnap our children?

Parental kidnapping is the basis for receiving a protection order in many states. If you fear that your children could be kidnapped and taken away from your community or taken out of the U.S., you can request certain provisions in your protection order, such as:

- the abuser not remove your children from the county where you reside without a court order;
- if international child kidnapping is a possibility, ask that the abuser be ordered not to remove the children from the United States;
- you, your abuser, and the judge sign a statement preventing the embassy of your abuser's home country from issuing visas allowing your children to travel to that country without a court order.
- If the abuser has your children's passports, request that he return those to you or to the court. Send a letter and a copy of your protection order to the U.S. Passport Office to inform them that you or the court have the children's passports and that no new passports should be issued for the children.

Do I have to leave my abuser in order to file for a protection order?

No. You can have a protection order against someone while living together. This order can simply require your abuser to prevent his violent behavior and/or attend a batterer's counseling program. This helps protect you and your children against further abuse. If the abuser hurts you again, then you can call the police and have your order enforced.

How do I obtain a protection order?

You can obtain a protection order by yourself or with the assistance of a battered women's advocate or domestic violence attorney. If you do not speak English comfortably, or if you speak some English, but are more comfortable speaking about what has happened to you in your native language, then you should seek help from a local domestic violence program and ask them to help you find an interpreter who can help with your case. Do not use as an interpreter anyone who may be biased toward you or your abuser or afraid of your abuser.

To apply for a protection order on your own, go to your local courthouse and fill out a petition for a protection order. In this petition, describe the full history of violence against you. Start with the most recent incidents and then list the full history. Provide as many details about each incident of violence or abuse as possible, including the time, date, and location where the violence took place. Abuse that qualifies for a protection order includes: hits, slaps, punches, pulling hair, scratches, kicks, choking, other forms of assault with or without weapons, being held hostage, threats to harm, threats to kill, forced sexual relations, other forms of violence, and attempts to do any of these things.

After you have filed the necessary paperwork, a hearing before a judge will be scheduled and a copy of the protection order petition will be delivered to your abuser. If you need immediate protection, you will be able to see the judge the same day and receive a temporary protection order. This temporary order lasts between two weeks and one month. After you receive a temporary protection order, the court will send a copy of that temporary order to your abuser along with a notice of your court date for the hearing on your full protection order. In most states a police officer or sheriff will deliver these court papers. In other states, you must arrange for someone to deliver the papers to the abuser. In some states the temporary order becomes final unless you, or your abuser, request a hearing. However, in most states, for your protection order to be final and to last for a period of one year or longer, you must return to the court for a hearing to get your final protection order.

Both you and your abuser will be required to attend the full protection order hearing. It is very important that you do not go to this hearing by yourself. Ask a battered women's advocate and a friend to accompany you and help with court procedures. You do not have to speak with or sit with the abuser at the courthouse. During the hearing for the full protection order, you will have the opportunity to tell the judge about the history of abuse and threats against you and/or your children. Explain how this has affected you and your children. Testify about what you have written in your petition and bring witnesses to court with you who saw the abuse or your injuries. You may also use torn clothing, photographs of injuries, destroyed property, medical reports, and police reports to prove that you have been abused.

In the U.S. legal system, your spoken testimony has value and is a formal legally accepted form of evidence. A woman's testimony is as valuable as a man's. The judge cannot be bribed by your abuser to rule against you. If you need an interpreter, ask the court to provide one for you. Once you receive your protection order, both you and your abuser will receive copies. If you are afraid of the abuser following you when you leave the courthouse, ask the judge to have your abuser wait in the courtroom for thirty minutes before he can leave. This will give you an opportunity to leave the courthouse without being followed. You can have the court give you multiple copies of your protection order. Keep a copy with you at all times. Keep another copy at your work and at your home. Give a copy of the order to your children's schools and day care providers so they are on notice that they are not to turn the children over to the abuser.

Do I need a lawyer to obtain a protection order?

No. In most states, you can obtain a protection order without hiring an attorney. However, if your abuser plans to fight for custody of your children or has filed for a protection order against you, contact an attorney immediately. If you are undocumented and your abuser obtains an attorney, you should not go to court by yourself. Many lawyers associated with domestic violence programs will represent you for free if you cannot afford to pay legal fees. Ask your local domestic violence shelter or program to locate a lawyer or legal advocate to help you with your case.

What if I decide to leave the county or state where I got my protection order?

Through the Full Faith and Credit laws in the Violence Against Women Act, police officers are required to recognize and enforce your valid out-of-state protection order. When you move, get a certified copy of your protection order from the courthouse and staple the full faith and credit provisions to the back. When you arrive at your new location, call the local domestic violence program to find out how to enforce your order in your new state.

Once I have a protection order, can I change parts of it or withdraw it?

Yes. At any time while you have a valid protection order, you may file a motion to modify or change this order. This can happen if you need to change your visitation schedule, if you decide to leave your batterer, or if you want to reunite with your batterer. If you choose to return to your abuser after you have received a protection order, then you can still keep your protection order. If you resume living with your abuser, this does not invalidate your protection order. If you do this, in some states, you will be required to return to court to have your protection order modified to order that your abuser continue to prevent his violence, threats and harassment and order him to attend a batterer treatment program.

How effective are protection orders?

Studies have shown that a majority of cases, having a protection order prevents physical violence and helps victims regain a sense of well-being.³



³ National Institute of Justice Research Preview, Civil Protection Orders: Victims' Views on Effectiveness, FS 00019 (January 1998) (<http://www.ncjrs.gov/pdffiles/fs000191.pdf>).

LEGAL INFORMATION FOR BATTERED IMMIGRANT WOMEN WITH CHILDREN

Domestic violence is very harmful to children. Children may be intentionally or accidentally hurt when your abuser is violent toward you. They may be hurt when household items are thrown or weapons are used. Even if the children are not physically hurt, witnessing or hearing domestic violence happening to you can psychologically harm them. If you are being abused, there is a good chance that your children are in danger of being abused themselves. This booklet will help you understand how domestic violence affects your children. It will also offer suggestions as to how you can help them by getting help from the courts.

Did You Know:

About 3.3 million children witness violence towards their mothers each year. In general, 70% of men who abuse their female partners also abuse their children. More than 50% of child kidnappings result from domestic violence. Boys who witness violence are ten times more likely to abuse their future female partners.

How Are Children Affected by Domestic Violence?

The following behavioral and cognitive problems have been observed in children who come from violent homes:

OVERACHIEVING.

The child may believe that nothing s/he does is good enough. The child always redoes things, is never happy with the results, and gets involved in too many activities to avoid thinking about family problems.

ACTING OUT.

The child always does things to be noticed, such as hitting, yelling, biting, pushing, name-calling, and destroying toys. The child may lack impulse control.

ROLE REVERSAL.

The child takes on adult responsibilities, always worries that the parent is being abused, tries to solve family problems and tells the parent not to do certain things so that the parent won't get hit. The child may feel guilty about not being able to protect the abused parent or may be angry with the abused parent for not protecting him/her.

CONTROLLING.

The child tries to get his/her way by bullying, never sharing, making threats, making others afraid and using violence to resolve conflicts.

UNDERACHIEVING.

The child acts helpless, won't do anything by him/herself, has low self-esteem, thinks s/he is not valued or loved and is afraid to be alone. The child may start to do badly in school and be unable to complete his/her homework because of the violence. The child may develop learning disabilities and may have lower verbal and quantitative skills, delayed motor skills, and speech difficulties.

WITHDRAWING.

The child often does not want to participate, isolates him/herself from family, friends, or school, gives up easily, and cannot express his/her true feelings.

REGRESSING.

The child acts younger than he/she is by thumb sucking, wetting and soiling, bed-wetting, and nail biting.

ESCAPING.

The child uses unhealthy ways to get away from family problems by using drugs and alcohol, running away, becoming suicidal, joining gangs, and engaging in criminal behavior.

Overall, the child may experience aggression, shame, anxiety, grief, confusion, fear, depression, nightmares, and post-traumatic stress disorder (PTSD). S/he may have physical problems such as ulcers, eating disorders, insomnia, diarrhea, and headaches. Ultimately, children who grow up in violent homes learn that it is okay to use violence to show their frustration, anger, and needs.

If you suspect that your child is suffering from the effects of domestic violence or child abuse, or if you need the assistance of a family law attorney, contact your local shelter or domestic violence program. Special advocates are available to work with your children and assist you with family law matters. Your children's school may also have psychological services that can help your children.

The immigration section and VAWA flow chart in this booklet will help you and your advocate determine what types immigration relief you or your child are eligible to receive related to victimization. It is important to note that immigrant women whose children are battered or subjected to extreme cruelty can qualify for VAWA self-petitioning (when they are married to the child's abuser). An immigrant mother or stepmother of a child abuse victim can qualify for VAWA Cancellation of Removal (when the child's abuser is the child's other parent who is a US citizen or lawful permanent resident even, when the immigrant mother is not herself a victim or is not married to the abuser.).

HOW TO HELP YOUR CHILDREN THROUGH THE U.S. LEGAL SYSTEM: YOUR CHILDREN MIGHT QUALIFY FOR IMMIGRATION RELIEF

If your children have been abused, they may qualify to file for immigration relief through VAWA or through a U-visa. If you have been abused, although your children have not been abused, your children may be able to receive immigration relief because of your immigration relief. If you qualify to file a VAWA self-petition you may include any of your children who are undocumented in your VAWA self-petition. When your application is approved, both you and your children will receive an agreement that DHS will not deport you (called deferred action status) and your children will receive their green cards at the same time you do. If you qualify for VAWA suspension or cancellation, your children will be allowed to stay with you in the United States through parole, while you file papers for them to receive their lawful permanent residency. If you qualify for a battered spouse waiver, your children will switch from conditional residents to lawful permanent residents along with you. Finally, if you qualify for a U-visa, then your children should be able to get U-visas along with you. Mothers and stepmothers of adopted children can also qualify as VAWA self-petitioners, for VAWA cancellation of removal, and as U- and T-visa applicants.

Obtain a Protection Order

Getting a protection order helps prevent further violence against you and your children. It is also the fastest way to obtain temporary custody of your children. When you do leave the relationship, ask for custody and child support in your protection order. Visitation can be ordered at set times and exchange of children can be arranged without contact between you and your abuser. If there is a no-contact order in your protection order, have someone else help you safely

communicate with your abuser about the children. This could be an advocate, a friend, a family member or your attorney. Even if you choose not to leave your abuser, you may get a protection order that says that he cannot abuse you or your children.

If you go to a shelter or safe place before filing for a protection order, take your children with you. This will make it easier for you to get custody of the children and will protect them from being kidnapped by the abuser. If your abuser has threatened that if you try to leave him he will get custody of the children and you will not see them again, or if he has threatened to kidnap the children or remove them from the United States, you should tell your advocate, attorney, and/or the judge about these threats. You should ask the protection order judge to order your abuser not to remove the children from your community or from the country (see the discussion in the protection order section about other relief you can ask for that will help prevent this kidnapping). If the children are removed from the country it is often very hard to get them back. This is true even when they are kidnapped to a country with which United States has agreed to cooperate in the return of kidnapped children. If you believe your abuser may kidnap the children, you should contact a local domestic violence program and seek their help finding a domestic violence lawyer who will help you with your protection order case.

When you plan to leave your abuser, do not tell your children things that may put them in danger. Teach your children to use 911 so that they can get help if you or they are injured or if the abuser violates the protection order.

YOU ARE ENTITLED TO CUSTODY AND CHILD SUPPORT REGARDLESS OF YOUR IMMIGRATION STATUS.

File for Permanent Custody of your Children

A protection order can only give you custody of your children while the order is in effect. To have permanent custody of your children, you will need to file a family court case asking the court to give you full legal custody of your children.

If you think that your abuser is going to seek custody, oppose your custody request, or come to the court with his own lawyer, find a family law attorney who has experience with domestic violence cases to help you with your custody case. Any time your abuser comes to court in a custody or protection order case with a lawyer, you should ask the court for time to find your own lawyer. You should not agree to or sign anything before you get a domestic violence lawyer to help you. You can find a family law attorney by calling your local domestic violence program or by calling your local legal aid office.

Even if you can afford to pay something for a lawyer, you should contact your local domestic violence program to ask for a referral to a domestic violence lawyer. These are lawyers with the best experience working on domestic violence cases. They will also be more likely to take cases charging domestic violence reduced fees on a sliding scale or may seek to collect payment for their fees from your abuser.

During any family court hearing, the judge should not ask you about your immigration status. If your abuser makes an issue of your immigration status, seek the assistance of an attorney with custody and immigration experience immediately. If the lawyer you find does not have experience working with battered immigrants and/or domestic violence victims, your attorney should contact Legal Momentum for assistance at 202-326-0040.

In a custody case, the judge will consider the best interests of the children. The judge will look at the criminal and drug abuse histories of both parents. In most states, judges must also take into

account whether there has been domestic violence, which person was violent or abusive, and how the abuse affected the children. In most cases, courts do not award custody to abusers. You can seek legal custody of your children even if you are undocumented. The judge should not allow your abuser to raise the issue of your immigration status in the custody case.

Advocate for a Safe Visitation Schedule

In protection order and custody cases, judges usually grant visitation rights to the abuser unless there are a lot of reasons not to. Be prepared to tell the judge if you think that you or your children will be in danger during child visitations with the abuser.

Tell the judge if the abuser drinks in front of the children, has driven drunk, has physically or sexually assaulted the children, has been emotionally abusive towards the children, has used excessive or inappropriate discipline, or has threatened to kidnap the children. Tell the judge if the children have been acting out or having problems as a result of the violence.

If the safety of the children cannot be guaranteed, the judge can order supervised visitation. Supervised visitation is when the abuser can only visit with the children when someone, like a friend, relative, or counselor, is with the children and the abuser during the visitation session.

If your abuser has unsupervised visitation with the children, the court order must clearly state how the children are to be exchanged and the exact dates and times of visitation. Try to exchange the children in a way that prevents you from coming into contact with the abuser. If you are worried that the abuser will not return the children or you do not want the abuser to know where your home or the children's school are located, a trusted friend or family member could exchange the children or you can drop off and pick up the children at the local police station. Police officers can serve as witnesses if needed.

If your abuser fails to attend visitation sessions, ask that visitation be suspended. If you are worried that the abuser is neglecting your children during visitation, get help from a lawyer. If your abuser does not return the children after visitation is over, call the police immediately and report that the children have been kidnapped.

Request Child Support

If you have physical custody of your children, or if you receive full or joint custody of your children, your abuser must pay you child support. You can receive temporary child support through your protection order, and you can also file for a permanent child support case. The abuser usually has to pay support until the children reach age 18 or 21. The amount of support that you receive will usually depend on your earnings, the earnings of the abuser, the number of children that he supports, your child care costs, who has custody, or, if you share custody, who has the children for the most time. The abuser may also be ordered to pay for health insurance for the children.

If you receive a child support order, particularly in domestic violence cases, it is best to ask that the child support be taken directly from your abuser's paycheck and paid to the court. The court will forward the payments to you. If your abuser is self-employed or is being paid in cash, he should be ordered to pay child support payments to the court and not directly to you. In this way the court will have proof that he did or did not make the court ordered payments. If your abuser tries to quit his job so that he can avoid paying child support, the court can order him to find a job. If your abuser fails to make timely child support payments, or if he is ordered to find a job and does not, your state child support office may press charges against him. He can be ordered to go to jail until he starts paying and/or pays past due child support.

PUBLIC BENEFITS ACCESS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN

Eligibility for Documented and Undocumented Immigrants

Benefits Available to All Immigrants

The 1996 Welfare Reform Act authorized the U.S. Attorney General to designate particular programs that are open to all persons without regard to immigration status. To be exempt from immigration restrictions, the programs designated by the U.S. Attorney General must be in-kind services, provided at the community level, necessary to protect life or safety, and not based on the individual's income or resources. These benefits may be particularly useful if you are a domestic violence victim who does not qualify for VAWA or other immigration relief:

<ul style="list-style-type: none"> • Crisis counseling and intervention programs; • Services and assistance relating to child protection; • Adult protective services; • Violence and abuse prevention; • Victims of domestic violence or other criminal activity; • Treatment of mental illness or substance abuse; • Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children. This includes emergency shelter and transitional housing for up to two years; 	<ul style="list-style-type: none"> • Programs to help individuals during periods of adverse weather conditions; • Soup kitchens; • Community food banks; • Senior nutrition programs and other nutritional programs for persons requiring special assistance; • Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life and safety; • Activities, designed to protect the life and safety of workers, children and youths or community residents; and • Any other programs, services, or assistance necessary for the protection of life or safety.
---	--

State Funded Benefits

In addition to the benefits immigrant victims can receive under federal laws, some states have decided to provide access for some state funded benefits programs to some groups of immigrants. State funded supplemental benefits programs can include:

- Medical Assistance
- Food Stamps
- Temporary Aid to Needy Families (TANF) financial assistance.
- State Child Health Insurance Programs.

For a state-by-state overview of whether your state offers supplemental state funded benefits to immigrants and to see what programs are available in your state go to www.NILC.org.

Access to state or federally funded health care can be particularly important for immigrant victims of violence against women, such as domestic violence, sexual assault, and trafficking. Often, victims lack of access to post assault and abuse-related health care because few advocates, attorneys, social workers, or health care providers have the information they need regarding state and federally subsidized health care immigrant victims are legally authorized to receive. For State-By-State charts on access to post rape and post assault health care, pre natal care, forensic examinations, and emergency Medicaid that immigrant victims are eligible to receive go to

www.legalmomentum.org and the Health Care Chapter of Legal Momentum's manual: Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault.

Benefits Only "Qualified Immigrants" Can Access

Although the law denies public benefits to many immigrants, some immigrants, including some battered immigrants, may still be able to receive certain public benefits as "qualified immigrants." Battered women may require some form of public assistance in order to help them survive economically after they leave their abusers. Some battered immigrants may be able to receive some public benefits if they have a VAWA immigration case or a family-based visa case filed with DHS and can prove a "substantial connection" between the abuse and the need for public assistance. If, after reading the information in this booklet, you think that you or your children may qualify for public benefits, we strongly recommend you contact a battered women's advocate or legal services attorney who can help you determine whether or not you or your children qualify.

When applying for public benefits, the benefits agency should only check on the immigration status of the person applying. U.S. citizen, lawful permanent resident, and "qualified immigrant" children may receive certain public benefits even when their parents cannot. If you are a battered immigrant who cannot become a "qualified immigrant", you should not go to apply for benefits without a battered women's advocate or legal services worker accompanying you.

If you are asked questions about your immigration status when you are only applying for benefits for your children, you should tell the public benefits agency that you "are not applying for public benefits for yourself." This will prevent the benefits worker from obtaining information and turning it over to DHS. Additionally, many benefits workers are not knowledgeable about battered immigrant's ability to legally access welfare assistance for undocumented battered immigrants with VAWA and family based visa cases pending before DHS. Going to apply for benefits with the assistance of a social worker, lawyer or advocate will help ensure they will take your application and not wrongly turn you away.

Who Are "Qualified Immigrants" Eligible for Public Benefits?

<ul style="list-style-type: none"> <input type="checkbox"/> Lawful permanent residents (including conditional permanent residents); <input type="checkbox"/> Refugees; <input type="checkbox"/> Asylees; <input type="checkbox"/> Persons granted withholding of deportation <input type="checkbox"/> Persons granted cancellation of removal; <input type="checkbox"/> Cuban/Haitian entrants; <input type="checkbox"/> Veterans; <input type="checkbox"/> Persons granted conditional entry; <input type="checkbox"/> Amerasians; <input type="checkbox"/> Persons paroled into the United States for a year or more; 	<ul style="list-style-type: none"> <input type="checkbox"/> Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or family-based petitions before DHS; and <input type="checkbox"/> Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident parent, with pending or approved VAWA cases or family-based petitions before DHS.
---	---

Benefits Qualified Immigrants Can Receive

If you are a “qualified immigrant”, your eligibility for certain federal public benefits depends on the date you first entered the United States and what benefits you are seeking. Some benefits are very restricted and will not be available even though you may be a “qualified immigrant.”

Immigrants who are or become “qualified immigrants” and who entered the U.S. before **August 22, 1996** are generally eligible for the same federal means-tested public benefits, federal public benefits, and federally funded social services available to U.S. citizens, *except for SSI and Food Stamps*.

Immigrants who become “qualified immigrants” and who entered the United States **on or after August 22, 1996 are barred from receiving federal means-tested benefits during the first five years** after they obtain qualified immigrant status. They may, during this five-year period, receive federal public benefits that are not deemed to be “federal means-tested public benefits.”

A few immigrant groups qualify for an **exemption** from the **five-year bar** if you are a/an: refugee, person granted asylum, Amerasian, Cuban and Haitian entrant, veteran and immigrant on active military duty, immigrant granted cancellation of removal (stops the deportation process), and/or an immigrant without sponsors.

Federal Public benefits that qualified immigrants can receive:

<ul style="list-style-type: none"> <input type="checkbox"/> Temporary Assistance for Needy Families (TANF) (unless you entered after August 22, 1996 and are subject to the five year bar) <input type="checkbox"/> Medicaid and Medicare (unless you entered after August 22, 1996 and are subject to the five year bar) <input type="checkbox"/> Food Stamps (all qualified immigrant children can receive food stamps however, qualified immigrant adults must be in qualified status for 5 years). <input type="checkbox"/> Social Security Disability Insurance <input type="checkbox"/> Administration on Developmental Disabilities (ADD) (direct services only) <input type="checkbox"/> Child Care and Development Fund 	<ul style="list-style-type: none"> <input type="checkbox"/> Independent Living Programs <input type="checkbox"/> Job Opportunities for Low Income Individuals (JOLI) <input type="checkbox"/> Low-Income Home Energy Assistance Program (LIHEAP) <input type="checkbox"/> Postsecondary Education Loans and Grants <input type="checkbox"/> Public Housing <input type="checkbox"/> Refugee Assistance Programs <input type="checkbox"/> Section 8 Subsidized Housing <input type="checkbox"/> State Children’s Health Insurance Program (CHIP) <input type="checkbox"/> Title IV Foster Care and Adoption Assistance Payments (if parents are “qualified immigrants”) <input type="checkbox"/> Title XX Social Services Block Grant Funds
--	--

Access to Supplemental Security Income (SSI) is severely restricted by complex program eligibility requirements in addition to a 5-year bar imposed on immigrants. Few immigrant victims will qualify for benefits through SSI.

Receiving public benefits will not prevent a VAWA self-petitioner from obtaining lawful permanent resident status. ~~In determining whether a battered immigrant should be considered likely to become a public charge and be denied lawful permanent residency, DHS may not consider public benefits the victim has received for herself or her children that were connected to the surviving, overcoming, or fleeing the abuse. In making public charge decisions DHS, can only consider cash benefits or institutionalization for long term care. Also, public charge is a forward looking determination, so dependence in the past is not an automatic disqualification as long as you can show that you will not be dependent in the future.~~

How Battered Immigrants Become Qualified Immigrants

“Qualified Immigrants” are legally entitled to access a greater range of publicly funded benefits than non-qualified immigrants. Both documented and undocumented battered immigrants are “qualified immigrants” if they meet the following requirements:

- The immigrant or the immigrant's child has been abused by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse or parent's family member living in the same household. (The other immigrant spouse or parent cannot have actively participated in the abuse.)

AND

- The battered immigrant has an approved family-based petition or Violence Against Women Act (VAWA) self-petition; **OR**
- After a petition has been filed, DHS gives the battered immigrant permission to receive public benefits (this is called a prima facie determination); **OR**
- the battered immigrant has been granted cancellation of removal by an immigration judge (the deportation process has been stopped and the woman has been given a green card); **OR**
- an immigration judge has decided in an ongoing VAWA cancellation case that the battered immigrant can receive public benefits (also known as a prima facie determination);

AND

- The battered immigrant or child no longer lives with the abuser. (Note that the benefits agency must decide if the battered immigrant is eligible for benefits before she leaves the abuser.)

AND

- There is a “substantial connection” between the abuse and the need for the public benefit. The following are considered appropriate conditions for establishing this connection:

- To help the victim of abuse be able to support herself economically without help from the abuser.
- To escape the abuser and/or the abuser's community.
- To ensure the safety of the woman and her children.
- To make up for the loss of financial support due to the separation.
- To make up for the loss of a job or income because of the abuse, for safety reasons or because of time spent in domestic violence legal proceedings.
- To make up for the loss of a place to live as a result of the abuse
- To help the victim take care of the children when fear of the abuser interferes with her ability to care for her children.
- To meet nutritional needs resulting from the abuse or separation.
- To provide the victim with medical care or mental health care, or because she has become disabled
- To provide for medical care during a pregnancy that resulted from the abuse.
- To replace medical coverage or health care services were lost because of the separation from the abuser.

Exemptions From Deeming Requirements For Battered Immigrants

When an immigrant's family member sponsors her to receive lawful permanent residency in the United States, the sponsoring family member must sign and file an affidavit of support with the DHS. This affidavit states that the sponsor is willing to be financially responsible for that immigrant. When a sponsored immigrant applies for public benefits, deeming rules require that the benefits agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of her sponsor. It is often the case that these rules render the vast majority of immigrants with sponsor affidavits ineligible to receive public benefits. Previously, battered immigrants who were sponsored by their abusive spouses were often denied public benefits because it was assumed that they had full access to their spouse's income. Some battered immigrants can now be excused from "deeming" requirements for 12 months if there is a connection between the abuse and the need for the benefit. Extensions of the 12-month time period are available to battered immigrants with protection orders or other formal finding of abuse. Immigrants excused from deeming include:

- VAWA self-petitioners
- VAWA cancellation of removal or suspension of deportation applicants
- Battered immigrants whose spouses or parents filed family based visas for them
- Immigrants who obtained green cards through a family-based visa petition and who were battered before and/or after obtaining lawful permanent resident status

In addition to victims of domestic violence, the following individuals are also exempt from deeming requirements:

- Those who have become U.S. citizens
- Persons with 40 quarters of work history (which is equivalent to about 10 years of work)
- Spouses or children of U.S. citizens or lawful permanent residents with 40 quarters of work history. (These quarters do not count after divorce)
- Immigrants facing hunger or homelessness
- Immigrants whose sponsor is dead
- Refugees
- Persons granted asylum (i.e. — asylees)



BATTERED IMMIGRANT ACCESS TO MEDICAID AND TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

Medicaid provides access to health care services for people in need. Temporary Assistance for Needy Families (TANF) is a program that provides cash payments, vouchers, social services and other types of assistance to disadvantaged families. Although the law denies public benefits to many immigrants, states have the option to give these benefits to some needy immigrant families. Immigrant crime victims who have an immigration petition filed with, or approved by, the DHS, can qualify for some public benefits. Which benefits a crime victim can receive varies based on the type of immigration case the victim has filed and their state of residence. Battered immigrants must also show that there is a “substantial connection” between the abuse and the need for Medicaid and/or TANF. For an overview of benefits eligibility based on the type of immigration case an immigrant crime victim has filed go to: <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates>

You Must be a “Qualified Immigrant” To Receive Medicaid and TANF

Generally, only “qualified immigrants” can receive Medicaid and TANF. The qualifications for a battered immigrant to be eligible for Medicaid and TANF are the same as for other public benefits. However, an immigrant, including a battered immigrant, who entered the United States after August 22, 1996, will be unable to receive TANF and Medicaid for five years, except for prenatal care and child health care. Immigrants who are exempt from the five-year bar are eligible for these benefits see exemptions above. For state-by-state charts of immigrant victim eligibility for Medicaid and/or Victims of Crime Act Funded prenatal and/or post assault health care go to: <http://niwaplibrary.wcl.american.edu/public-benefits/health-care>

Some State TANF Programs Provide Cash Assistance To Qualified Immigrants Who Are Subject to the Federal 5-Year Bar:

Twenty states have created substitute TANF programs that provide benefits during the five-year bar to “qualified immigrants” including qualified battered immigrants. These states are: California, Connecticut, Illinois, Indiana, Iowa (only offers to abused immigrants), Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Tennessee, Utah, Washington, Wisconsin, and Wyoming. For the most up-to-date list of states offering financial assistance to immigrants visit: <http://www.nilc.org/guideupdate.html>

Emergency Medicaid Is Open To Both Documented and Undocumented Immigrants

Emergency Medicaid is available to all immigrants. Immigrants who are not legally in the U.S. AND those who entered the U.S. after 8/22/96 (who are barred for five years from receiving TANF and Medicaid), can receive emergency Medicaid. All immigrants are immediately eligible for Emergency Medicaid. Emergency Medicaid covers labor and delivery, as well as treatment for medical conditions “with acute symptoms that could place the patient’s health in serious jeopardy, result in impairment of bodily functions, or cause dysfunction of any bodily organ or part.” For a chart of the types of health care services immigrants and immigrant victims can access through emergency Medicaid go to: http://niwaplibrary.wcl.american.edu/public-benefits/health-care/17_Emergency-Medicaid-Chart-MANUAL-ES.doc/view

Family Violence Option Helps Protect Battered Women Receiving TANF

The Family Violence Option (FVO) included in the Welfare Act of 1996 permits states to grant “good cause waivers” for certain TANF program requirements, including mandatory work requirements and time limits. Under the FVO, states are required to identify victims of violence, conduct individual assessments, and develop temporary safety and service plans in order to protect battered immigrants from: “...immediate dangers, stabilize their living situations and explore avenues for overcoming dependency.” Family violence option waivers are temporary, but the actual length is defined in federal law so that they can last “so long as necessary.” Thirty-five states and the District of Columbia have adopted the Family Violence Option: Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.⁴ Each state determines which Federal requirements are waived. Most other states have an alternative policy in place for domestic violence victims. Check with battered women’s advocates in your area to see what benefits FVO offers battered women in your state. If you are an immigrant victim of domestic violence eligible for TANF you will also be eligible for your state’s FVO.

TANF Immigrant Status Reporting Requirements

Four times a year, states have to report people who are applying for TANF benefits whom the state knows do not have legal immigration status to DHS. The Attorney General of the United States has instructed state welfare agencies that they may request information on immigration status only about the person who is actually applying for TANF benefits. You can apply for benefits for your children who qualify and you are not required to apply for additional benefits for yourself. When applying only for qualifying children if the state TANF worker asks you questions about your own immigration status you should tell them you will not answer this question because “you are not seeking benefits for yourself.”

The laws regarding access to public benefits for immigrant victims of domestic violence are complicated. Many workers at local public benefits agencies are unfamiliar with these laws and can turn away immigrant victims who qualify for benefits without allowing them to apply. It is therefore strongly recommended that immigrant victims of domestic violence locate an advocate to assist them in applying for benefits for themselves or for their children. Before applying for benefits, seek advice from a trained advocate or attorney to determine what, if any, public benefits you or your children may qualify. This advocate should accompany you when you go to apply for benefits. Having the advocate with you will help you in two ways. First, the advocate can talk to the public benefits provider and make sure that they allow you to file the public benefits application. Second, should there be problems, the advocate can help you document how you were treated by the public benefits agency, including the names of people who handled your case.

⁴Wilkins, Andrea. “Domestic Violence and Welfare Reform”, National Conference of State Legislatures (<http://www.ncsl.org/statefed/welfare/famvioopt.htm>) (2008).

FOOD STAMPS ACCESS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN

The 1996 welfare reform law eliminated food stamps access for most non-citizens as of August 22, 1996. Subsequent laws have restored Food Stamps access for a small number of qualified immigrants. Like access to TANF and Medicaid, immigrants who entered after 1996 must be “qualified” immigrants for 5 years before accessing Food Stamps.

Immigrants Who Currently Qualify for Food Stamps

- Refugees—eligibility limited to seven years from date of entry.
- Asylees—eligibility limited to seven years from the date asylum was granted.
- Amerasians—eligibility limited to seven years from date of admission as an Amerasian.
- Cuban/Haitian Entrants—eligibility limited to seven years from the date status was granted.
- Veterans, including spouses and dependents.
- Immigrants on active military duty including spouses and dependents.
- Immigrants granted withholding of deportation/removal—eligibility limited to seven years from the date withholding was granted
- Immigrants who have worked 40 qualifying quarters or can be credited with 40 quarters of a spouse or parent.
- Elderly immigrants born before August 22, 1931 who were lawfully residing in the US on August 22, 1996.
- Immigrants who are now less than 18 years of age who were lawfully residing in the US on August 22, 1996.
- Blind and disabled immigrants who are receiving benefits or assistance for their condition and who were lawfully residing in the US on August 22, 1996.
- American Indians born in Canada who possess at least 50 percent of American Indian race to whom the provisions of section 289 of the INA apply or are members of an Indian tribe as defined in section 4(e) of the Indian Self-determination and Education Assistance Act.
- Hmong or Highland Laotian tribe members who assisted the US military during the Vietnam era and who are lawfully residing in the U.S.

40 Quarters of Work Qualification

A qualifying quarter measures how much someone earns during the year. One may earn up to four quarters of credit per year. It is not necessary that you actually work during the four calendar quarters. Instead, qualifying quarters count entirely on the money earned and this figure is adjusted annually for inflation. In 2005, the amount of a qualifying quarter was \$920.00. Battered immigrants children may count work quarters of their U.S. citizen, lawful permanent resident, or “qualified immigrant” parents or spouses (as long as the battered immigrant victim is married to the abuser when applying for Food Stamps). If, after qualification, they are divorced and the battered immigrant does not have 40 quarters of her own work, she will be able to continue receiving benefits only until re-certification. Battered immigrants who are divorced from their abusers will lose Food Stamps at re-certification when they must reapply for this benefit.

The best way for battered immigrants to qualify for food stamp eligibility is to demonstrate that she has worked 40 qualifying quarters or to use the qualifying quarters of a spouse or parent. However, under the Food Stamp Reauthorization Act, qualified immigrants will be eligible for food stamp benefits if they have been in “qualified immigrant status” for five years.

Food Stamp Reauthorization Act

On May 13, 2002 President Bush signed into law the Food Stamp Reauthorization Act.⁵ This law restores Food Stamp benefits to approximately 400,000 qualified immigrants. The Food Stamp Reauthorization Act restores eligibility to three groups of immigrants:

- Qualified immigrant children under 18, regardless of date of entry.
- Qualified immigrants receiving a disability benefit, regardless of date of entry.
 - Qualified immigrants who entered the U.S. after August 22, 1996 are not eligible to receive SSI; however qualified immigrants who receive disability-related Medicaid or other disability benefits for their condition would be able to receive food stamps.
- Qualified immigrants living in the United States for five years under qualified immigrant status.

Recertification

Persons receiving food stamps must attend re-certification interviews with their welfare worker every three, six, or twelve months. At these interviews, the applicant must prove that she is still eligible to receive food stamps. Applicants are usually required to bring proof of residency, household details, and financial information to their re-certification interview.

State Food Stamps Program

States can choose to provide state-funded food stamps to immigrants made ineligible by the welfare reform law. Only seven states have chosen to provide food assistance to immigrants with state funds: California, Connecticut, Maine, Minnesota, Nebraska, New York, Washington, and Wisconsin. Some states have restored the benefits for all immigrants who meet all the requirements for eligibility for Food Stamps, except that they are immigrants with a specific immigration status. Other states have chosen to provide food assistance for specified categories of immigrants (children, elderly, or disabled) or provide benefits to immigrants at a lower benefit level. If you live in one of these states, seek assistance from an advocate or social worker to find out if you qualify.

All documented and undocumented immigrants qualify for emergency food assistance from food banks and charitable organization.

⁵ See Farm Security and Rural Investment Act of 2002, (“Food Stamp Reauthorization Act”), Title IV, Pub. L. No. 107-171 (2002).

YOUR RIGHTS AS AN IMMIGRANT AND A VICTIM OF DOMESTIC VIOLENCE AT YOUR PLACE OF EMPLOYMENT

(This section has been adapted from materials developed by the Employment Rights for Survivors of Abuse project of Legal Momentum; the U.S. Equal Employment Opportunities Commission; and from "Rights Begin at Home: Protecting Yourself and a Domestic Worker" by the Asian American Legal Defense and Education Fund and the National Employment Law Project)

Federal and state labor laws protect both documented and undocumented immigrant workers. The laws give immigrant workers some protection regardless of their immigration status, even if undocumented workers may not necessarily benefit from the full extent of workers remedies available. Generally, both documented and undocumented workers are protected under wage and hour laws, are protected against abuse, harassment, and discrimination in the workplace. If you file a complaint with the Equal Employment Opportunity Commission, a claim for unpaid wages, for worker's compensation, or any other employment related problem, it is not necessary to answer questions about your immigration status in order for your complaint to be processed. However, because laws and practices differ from state to state, it is important to consult with an attorney or advocate familiar with employment laws and practices in your area to help you evaluate how they should best enforce your employment rights. The advocate at your local domestic violence program can assist you in locating experts in your community who can help you.

In addition to your rights in the work place, as an immigrant, it is important that you know that domestic violence affects various aspects of your life, including your workplace environment. You have the right to feel safe at your place of employment, and there are legal remedies available if your abuser injures you at work. As a domestic violence survivor, you also have the right to attend court proceedings regarding your domestic violence case.

Can I recover money damages from my employer if my abuser injures me at work?

Your employer is not legally responsible for every injury that happens at work. However, in some cases, you may be able to recover money damages from your employer when the abuser injures you on the job. If you are considering seeking damages against your employer for abuse on the job, you should seek the advice of an attorney or advocate in your area who can help you evaluate the best and safest way for you to enforce your employment rights, particularly if you do not have permanent legal immigration status.

What if my abuser is my coworker or supervisor?

When a coworker or supervisor injures you, your employer may be liable for its negligence in hiring the abuser in the first place, for continuing to employ the abuser after it became aware of a problem, or for failing to adequately supervise the abuser. Under certain circumstances, you may have a claim for:

- Negligent hiring
- Negligent retention (continuing to employ)
- Negligent supervision; and/or
- Negligence (such as failure to warn or protect)

In addition, you may have additional claims if the person who injured you is a supervisor or high-level employee. Your employer may be legally responsible for his conduct. If your injuries are covered by your state's Worker's Compensation system, your relief will probably be limited to Worker's Compensation. Depending on the facts of your situation, you may also have a claim for sexual assault or sexual harassment. If you are an undocumented immigrant or if you do not have permanent legal immigration status, and you are a victim of assault, sexual assault, being held hostage or certain other violent crimes committed against you by a coworker or supervisor, and you are willing to report the crime to law enforcement or the Equal Employment Opportunity Commission, you may qualify to receive legal immigration status in the form of a crime victim visa. If you were brought to the U.S by means of fraud, coercion or deceit and were forced to perform sexual acts and/or were forced to work under conditions of bondage, peonage or slavery, you may be eligible for the T-visa.

Protections Offered Immigrant Victims by the U.S. Equal Employment Opportunity Commission

Federal employment discrimination laws protect all employees in the United States, including those who do not have work authorization. It is unlawful for an employer to discriminate against you because of your immigration status. It is also unlawful for your employer to report or threaten to report your status to the DHS if you oppose unlawful discrimination or participate in a proceeding under the anti-discrimination laws. If you are undocumented and your employer retaliates against you, you may be entitled to some compensatory and/or punitive damages without regard to your immigration status.

Undocumented workers are also potentially entitled to some of the same remedies available to all other workers for violations of the laws enforced by the EEOC except for limited situations, including instances where the award would conflict with the purposes of immigration laws. These basic remedies can include reinstatement if you were unlawfully terminated, reinstatement if you were discriminatorily denied a job, back pay and other appropriate injunctive relief, damages, and attorneys' fees.

Federal laws also protect immigrants from sexual harassment at the workplace. If your employer sexual harasses or abuses you at work, you can take legal action against him/her.

What should I know about sex discrimination laws?

Your employer may be violating anti-discrimination laws if he or she permits domestic abuse or sexual harassment to occur in the workplace, or if he or she treats abused women differently than male employees. Your company's sex discrimination and sexual harassment policy (if it has one) may be a basis for you to ask your employer to stop discriminating against you, or to take steps to reduce or prevent sexual harassment by the abuser.

Do I have any other legal claims if I have been fired or forced to quit because of domestic violence?

You may have a claim for wrongful discharge. Most employees are employees at will. This means they can be fired for any reason. There are some exceptions to this rule. One exception is that an employer cannot fire a person for a discriminatory reason.

Another exception is that in most states an employer cannot fire a worker for a reason that violates public policy. What this means is different in each state, but “against public policy” means generally things that hurt all people in that state if they are allowed to happen. For example, in some states an employer cannot fire someone because she attended jury duty or because she filed a claim for workers compensation. If an employer fires someone for a reason that violates public policy, the employee may have a claim for money damages, which is called a wrongful discharge or wrongful termination claim.

Many advocates believe that it is against public policy to fire an employee because she is a survivor of domestic violence. Since the law in this area is changing and varies from state to state, it is important that you consult with a lawyer to discuss bringing this type of claim.

Finally, if you were fired because you missed time from work to testify in a court proceeding related to the domestic violence, you may have additional claims.

Can I take time from work to testify in criminal court without being fired?

Many states have enacted laws that permit crime victims, including domestic violence victims to take time off from work to testify in criminal court without being fired from their jobs. Some states grant time off for a witness to testify as well. If your employer terminates you because you took time off from work to testify against the abuser in a criminal court, you may have other causes of action under which to sue your employer, such as wrongful discharge.

As of January 2001, the following thirty-two states have laws that make it illegal for an employer to fire or otherwise discriminate against a crime victim for taking time off to testify in criminal court: **Alaska, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee (applies to state employees only), Utah, Wisconsin, and Wyoming as well as the Virgin Islands. The level of protection extended to the employee varies by state.** Some of these states also allow a domestic violence victim to take time off from work to meet with an attorney to prepare for trial. Other states do not make it illegal for an employer to fire a crime victim for taking time off to testify, but do require that the prosecuting attorney work with the victim to negotiate with the employer for time off to testify.

If you work in one of the states listed above and your employer threatens to fire you or discriminates against you for testifying in criminal court, you may want to notify the prosecuting attorney or judge and ask for assistance. If your employer either threatens to fire you or does fire you for taking time from work to testify in criminal proceedings against the abuser, some of these states allow you to sue your employer so that a court could award you money damages (like lost pay or benefits). Some states could require the employer to rehire you, or could hold the employer in contempt of court for violating the law. Please contact **Legal Momentum** or a local legal aid organization if an employer fires you for exercising your rights under these laws.

Other states provide more limited protections for victims of crime who need to take time from work to participate in criminal proceedings. Some states encourage employers to cooperate with employees who were victimized by crime, but do not require your employer to permit you to take time from work to testify. These states include **Florida, Illinois, Kentucky, Louisiana, Nebraska, New Jersey, New Mexico, North Dakota, Oklahoma, Texas, Washington, and West Virginia.** In these states, your employer still may be able to legally terminate you if you take time off to testify.

Domestic violence victims who work in a state that is not listed here have no job-protected time off to testify in a criminal proceeding at the time of publication of this booklet. However, if your employer terminates you because you took time off from work to testify against the abuser in a criminal court, you may have other causes of action under which to sue your employer, such as wrongful discharge.

Can I take time from work to go to court to get a civil protection order without being fired?

Most states don't have laws preventing employers from firing domestic violence survivors who take time from work to obtain a protective order in civil court. However, a few state and municipal laws provide some protection for domestic violence survivors who take time from work to obtain a civil restraining order or other civil assistance.

Can I collect Workers' Compensation for injuries caused by my abuser at work?

Yes, in some cases. Workers' Compensation is an insurance system that pays for the medical, hospital, and rehabilitation expenses and for a portion of the lost wages of workers who are injured on the job. State law sets the amount of money an injured worker receives. Workers' Compensation is a "no-fault" system. This means that the employee does not have to prove that the employer was at fault in order to get benefits. Workers' Compensation is available in every state. Each state requires certain types of employers to participate in the system and has its own rules concerning who is eligible for benefits. Generally, when you can file for workers compensation, it will not be necessary for you to answer questions about your immigration status. However, if you are undocumented or otherwise working without legal authorization, you should consult a local expert on employment issues and immigration to seek assistance in verifying that you can safely apply under local procedures and practices.

If you are eligible for Workers' Compensation benefits for a particular injury, then Workers' Compensation may be your only remedy for that injury. This means generally that you would not be able to bring other legal claims against your employer for the same injury.

When are injuries at work covered by Compensation?

The law is different in each state. Here are some general principles about what injuries and employees are covered:

- You will be covered only if your type of employer and your type of job is specifically included in your state's Workers' Compensation system. Federal employees are covered by the federal Worker's Compensation system.
- Your injury must "**arise out of employment**". This means the injury must be linked to your job. In some states, assaults by coworkers or non-employees are covered. In other states, such assaults are not.
- Your injury must occur "**in the course of employment**". This usually means the injury must happen while you were performing your job or while you were on your employer's property during working hours (eating lunch in the cafeteria, for example).
- Your injury must be an "**accident**". Intentional injuries inflicted by your employer are not accidents. However, intentional injuries inflicted by a coworker or a non-employee may count as "accidents" in some states.

How do I apply for Worker's Compensation?

- Contact your local Worker's Compensation board or an attorney in your state for information on how to apply and about the specific laws in your state.
- Make sure to ask about deadlines. Most states have a time period during which you must inform your employer about your injury and file your claim.
- Be sure to tell your employer about your injury within the deadlines.
- File a claim on time with your state's Worker's Compensation board or the appropriate organization.
- Remember to ask about how to appeal in case your claim is denied at first.



HOW TO PROTECT YOURSELF AND YOUR CHILDREN FROM DOMESTIC VIOLENCE

SAFETY PLANNING FOR IMMIGRANT AND REFUGEE WOMEN

Safety planning is an important first step for all battered women. It should be done by anyone who has suffered abuse, whether or not you are currently planning to or have already separated from your abuser. Safety planning will help protect and empower you against future threats of imminent domestic violence toward you and/or your children. Safety planning will help you prepare now so that if you do decide to leave your abuser in the future, you will have gathered the information you will need to pursue any future legal actions you may need to take, including: protection orders, immigration cases and family court matters. Safety planning is also important for women who are not now deciding to separate from their abusers. Women who choose to try to stay with their abusers can use safety planning to provide them with more options in case they decide to leave quickly to flee escalating violence in the future.

The time when you decide to leave your abuser can be the most dangerous for you and your children, because violence often escalates when the abuser feels that he is losing control over the family. If and/or when you choose to separate from your abuser, you should know that you have options.

- 1) You can obtain a protection order that removes your abuser from the family home; **OR**
- 2) You can leave the home you share with your abuser taking the children with you.

You should be aware that you can take legal and other steps towards ending the abuse, whether or not you have legal immigration status in the United States.

Further, there are provisions under the Violence Against Women Act (VAWA), that allow many victims of domestic violence, sexual assault, trafficking and many other crimes to file for legal immigration status without their spouse's, abuser's, abusive employer's, or trafficker's assistance, knowledge or cooperation. VAWA has special protections for victims of domestic violence, trafficking, and other crimes, to prevent disclosure and use of information in your VAWA case and prevents the use of such abuser-provided information in removal proceedings. These provisions are designed to ensure that your abuser cannot use the immigration system against you. It is illegal for the government to provide your abuser any information about whether you have filed a case, the status of your case or give him any information that you have provided in your case. Immigrant victims of domestic violence, sexual assault, trafficking, and many other crimes that result in substantial physical or emotional harm to the victim, whose abusers are boyfriends, spouses, or even strangers who are not citizens or legal residents, may be eligible for a U-visa.

EMERGENCY MEASURES

- Contact a local domestic violence hotline to find out about laws, shelters, and resources available.
- Create a plan for a safe exit from your home. Practice your safety escape plan with your children.
- Plan the safest time to get away.
- Have an easily accessible place to keep car keys, purse/wallet, identity cards for you and your children and any other essential items.
- Tell someone what is happening to you. If possible, tell your neighbors about the abuse and tell them to call the police if they hear any suspicious noises coming from your home. You can also arrange a signal with neighbors to let them know you are in danger and need police help — for example flashing lights or a code word.
- Know where you can go for help. Arrange a place where you and your children can stay temporarily, such as with close friends, neighbors, relatives, or at an emergency shelter. If you are considering staying at a battered women's shelter you should know the following:
 - You should get the telephone number of the shelter.
 - Both documented and undocumented battered immigrants are legally entitled to access emergency and short-term shelter programs.
 - Emergency and short-term shelters and transitional housing programs cannot ask you any questions about your immigration status
 - If you do not speak English, ask the shelter to provide you with a translator. If you cannot communicate this to the shelter workers, have a trusted friend, family member or co-worker help you communicate with the shelter.
 - If you will be staying at a shelter tell them about any special foods you eat and ask them to allow you to cook foods that are familiar to you and your children. Discuss with them the kind of sleeping arrangements, religious needs, or a need for an interpreter. Make sure you can take your children to the shelter with you. If you cannot bring your children, ask the shelter to help you find a safe place you can go with your children.
- In a safe but accessible place, store a suitcase with important survival items you may need for you your children, including: clothes for you and your children, money, and important documents that you might need to prove the abuse you have suffered, to take care of your children, to obtain a protection order or prosecute your abuser, to obtain custody and child support, and for your immigration case.
- If you could not escape during a recent incident of violence, or if the violence appears to be escalating and you and/or your children are in imminent danger, you should know that you can have your abuser removed from the family home through a temporary protection order which can also require that your abuser not reenter the home, turn over to the police any keys he has to residence and not contact you in any way.
- If you foresee an outbreak of violence, try to move away from weapons and out of the kitchen where knives or heavy objects could be used as weapons. Move to a low-risk place near an exit to the outside. Avoid bathrooms, kitchens and garages.
- Use your judgment and intuition. You have to do what you can to protect yourself and your children until you are out of danger.
- Call the police if you are in danger or need help. The police will help you if you are a victim of domestic violence or any other crime, even if you are undocumented. The police should not ask you any questions about your immigration status. If they do, then you are not required to answer. Tell them you want to speak to a lawyer.

- If you are injured, go to the hospital emergency room or your doctor and report what happened. Before you tell them what happened, ask them whether the information you give them is confidential. If so, tell them what happened and ask that they document your visit and your injuries. If they are required to report domestic violence to the police, they must tell you this when you ask and you can decide if you want the police informed. If they must report to the police, and you do not want them to, do not tell them what happened; just ask them to document your injuries. If your abuser insists on taking you to the hospital, then try to ask that you be interviewed in private, if you think it is safe to do so.
- If you encounter Department of Homeland Security officials, tell them you are a victim of domestic violence, sexual assault or trafficking and show them copies of any immigration papers you have. We encourage you, if it is safe to do so, to carry with you any paper approving your immigration cases or granting you what they call a “prima facie” determination about your immigration application.
- If DHS officials stop you, it is also important to tell them you want to call an attorney. As soon as you begin working with an advocate or an attorney ask them for their phone numbers so that you can call your attorney or advocate if DHS officials stop you.
- If you encounter DHS officials at any of the following locations, find an advocate or attorney to help you tell DHS that their contact with you at this location violates VAWA confidentiality. Also obtain the name and contact information including telephone numbers for any persons who witness DHS contact with you at these “VAWA confidentiality” protected locations.
 - 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.

VAWA confidentiality is a federal law that protects immigrant victims against government release of information regarding their victimization. It also bars government officials from relying on information provided by an abuser to deny a victim her immigration benefits or to attempt to remove her from the United States.



SAFETY FOR THE CHILDREN

- Plan with your children and identify a safe place for them if another domestic violence incident should occur — a room with a safe lock or a neighbor's house where they can go for help. Reassure them that their job is to stay safe, not to protect you.
- Teach your children how to dial 911 in an emergency and where to go if the abuser becomes violent.
- Plan ahead so that if it is necessary to flee, you will be able to flee with your children. In an emergency escape, you must take your children with you if at all possible. No matter what your abuser has told you about U.S. custody laws, the courts do not like to give custody to abusers, even if he is a citizen and you are not. Further, if you leave your children with your abuser, you are leaving him with a very effective tool he can use to control your life and your children's lives.
- Inform school personnel about who is allowed to pick the children up from school.
- Provide childcare workers and staff at your children's school with a copy of your protection order and a list of the only people who may see or pick up your children from their care.
- In case your abuser abducts your children, create a plan for what your children can do to safely try to prevent this. Teach your children how to call the police and that calling the police is for their safety and the right thing to do. Teach them how to make a collect call to you or a trusted friend, minister or family member if they are kidnapped. Teach them how to call for help if they are abducted from a public place.
- If you are stopped by DHS and you are the sole caretaker of your children, tell DHS this immediately. Then ask to not be detained so that you can care for your children while DHS processes any case they choose to bring against you. DHS may allow sole caretaker parents and breastfeeding mothers to continue caring for their children until their case is decided. If you are stopped by DHS it is important that you contact an immigration attorney immediately. You must tell the immigration attorney about your history of domestic violence, sexual assault, trafficking, or other criminal victimization.



SAFETY AT HOME AFTER YOU SEPARATE FROM YOUR ABUSER

- Once the abuser is removed from your house, have all the locks changed. If possible, install locks or bars on the windows, a security system, and door wedges. Install rope ladders if you live on an upper story. Install smoke detectors and fire extinguishers. The abuser can be ordered to pay these costs in a protection order.
- Inform neighbors, close friends, family and co-workers that you are about to separate or have separated from your abuser. Ask that they tell you if they see your abuser around your house, workplace, or car.
- If you rent, ask your landlord if you can move to another unit or building that the landlord controls. Have the name on the lease changed to your name. Request that the building management notify building employees that your abuser is barred from the building and give them a copy of the protection order for their records. Inform them that they can call the police if they see your abuser in or near the building.
- If you will be moving out of a residence you share with your abuser, you should try to do this when the abuser is at work or is otherwise not at home.
- Once you are living on your own, the phone company can give you an unlisted number. If you and your partner owe a large past due phone bill, you will have difficulty getting a new phone number on your own. If you get a domestic violence lawyer they can negotiate with the phone company a payment plan that will allow you to get reconnected as soon as possible. Local charities, churches, and victims of crime assistance programs may be able to help you in paying off these phone bills so that you have a phone at home that you can use to call 911 for police assistance.
- If you are living at a hidden location, have your mail sent to a post office box address so that your abuser cannot locate you. You can also have your mail sent to the home of a trusted friend, family member, or your lawyer. Give the post office a copy of your protection order and inform them that they are not to provide any information about your forwarding address to your abuser.
- You may want to consider changing your name to protect yourself.



SAFETY AT WORK

- Consider telling your employer about the abuse in case you need to take time off to meet an advocate, if you need time off for court proceedings related to the domestic violence, or want to vary your working hours.
- Inform your employer, supervisor and/or security personnel at your workplace that you are about to separate, or have just separated, from your partner and to block phone calls or his entrance to your workplace.
- Arrange to have someone screen your calls at work.
- Advise other employees of suspected danger from your abuser. You should particularly inform receptionists and employees with offices near stairwells, large windows and entry doors to the building. Show them a picture of your abuser and ask them to call security and tell you if they see him in, around, or approaching the building.
- Get a protection order that requires that your abuser stay away from you and not contact you at your workplace. Give a copy of this order to your employer so that they can see you are taking steps to protect yourself and them from the abuser.
- Keep a copy of your protection order at work in case of emergency.
- If you work for an employer with multiple locations, ask to be relocated (where possible) if there is a great probability of danger.



ECONOMIC ASSISTANCE

- Keep cash on hand for emergencies and open your own bank account. This will increase your independence and so that you have access to money if you decide to leave your abuser.
- Keep change for phone calls.
- To keep your phone calls confidential you will either have to use coins, a phone card you pay for in advance in cash or you might ask a friend to use their telephone credit card for a limited time.
- Economic assistance can help you and your children support yourselves apart from your batterer. Assistance may be available from governmental and non-governmental sources.
 - **For rent, mortgage and utility bills:** Seek emergency funds from local churches, community groups or the Red Cross. These sources can help for a month or two but will not provide monthly ongoing help. For long term assistance, consider getting a roommate, living with a family member, obtaining an order as part of your protection order and/or divorce requiring your abuser to pay rent, spousal support and/or child support.
 - **For food:** You and your children qualify to receive food from local food banks no matter what your immigration status is. Your citizen children qualify for food stamps and you can file for food stamps on their behalf. You and your children may qualify for child nutrition programs or welfare cash payments including TANF (Temporary Aid to Needy Families). See discussion below on benefits to see if you qualify.
 - **Money to change locks, move, and make repairs needed for security:** These funds can sometimes be obtained from the Red Cross. If not, your abuser can be ordered to pay these costs in your protection order.
 - **Money to pay medical bills:** You may be eligible to have your local crime victims' compensation program pay your medical costs. You can also have your abuser pay these costs as part of your protection order or through his health insurance plan.
- Consider asking for child support, reimbursement for repairs, and payment of certain medical expenses or rent expenses in your civil protection order.
- Consider applying for long-term economic relief such as child support from your abuser.
- Consider applying for any public benefits your child qualifies for, or that you may qualify for as a battered immigrant once you have filed your Violence Against Women Act (VAWA) immigration case.



GENERAL SAFETY TIPS

- Take photographs of any injuries you sustain during the abuse. Also take photographs of torn clothing, broken property, and furniture in disarray. Take these photos when it is safe to do so. Leave copies of the photographs and the negatives in a safe place outside of your home and away from your abuser.
- Keep evidence of the abuse (ripped clothes, photos of injuries and bruises, etc.) even if you are not now considering separating from your abuser. Should you ever decide to take any legal action to protect yourself and your children, to obtain custody, support, welfare or immigration benefits, you will need this evidence.
- Always keep a copy of your protection order and referral list with you (if safe to do so).
- Alter your routines so that your abuser cannot find you. Change the times and the routes that you use to go to and return from work, the times and places you go grocery shopping, the times you pick up and drop off the children from day care, and the dates and times you have any other regular appointments.
- Keep a detailed record of your interactions with the abuser, such as telephone calls, e-mails, or letters. This information may help you to prepare for court. Keep a record of all of his actions that violate your protection order. Get a telephone answering machine and answer all calls through the machine. This can help you tape calls that document ongoing harassment. Keep all letters that your abuser sends you.

LEGAL STEPS

Contact the local domestic violence hotline, shelter or legal services program for help. They can inform you of your legal rights and help you access legal relief. They can also help to find interpreters to assist you. To find an advocate or attorney in your community who can help you call the National Domestic Violence Hotline 1-800-799-SAFE or the Rape, Abuse and Incest Network Hotline at 1-800-656-HOPE for referrals. Once you have an advocate or attorney helping you, show them this booklet and ask them to contact the expert resources listed at the end of this booklet. The experts listed provide technical assistance to advocates, attorneys and other professionals working with immigrant victims. They **DO NOT** provide legal representation to victims.



CIVIL PROTECTION ORDERS

- You can obtain a protection order whether or not you currently plan to separate from your abuser.
- Both documented and undocumented battered immigrants can obtain protection orders.
- Protection orders can help prevent your abuser's violence against you and/or your children.
- Getting a protection order against your abuser will not affect his immigration status or lead to his deportation.
- However, since violation of a protection order is a crime, if your abuser is convicted of violating the order of protection, it could lead to his deportation. For this reason, protection orders can work well to prevent violence when the abuser is a non-citizen.
- You can file for a civil protection order to remove your abuser from your home, to protect you and your children if you move out, and to prevent future violence if you continue living with your abuser.
- For a complete discussion of the relief you can get through a protection order, including custody, support and stay away provisions see the protection order section of this booklet.
- Once you receive a protection order, keep a copy of the order with you at all times. Keep extra copies in a safe location with a friend or family member in case your copy is stolen, lost or destroyed.
- Give a copy of your protection order to:
 - Friends and family members you visit often,
 - Your employer,
 - Your children's schools or day care centers,
 - Your clergy member,
 - Persons whose homes you may stay in when you escape from danger, and
 - The police department in the communities in which you live, work, visit friends or family members, and where your children go to school.
- You can enforce your protection order by calling the police when the order has been violated. The prosecutor will then ask you to testify in the criminal case. You can also have a domestic violence lawyer help you enforce the order by bringing a contempt case before a judge.
- Do not initiate contact or communicate with your batterer if he is under a court order to stay away from and not contact you. Some judges and police may be less willing to enforce a protection order if you have been willingly communicating with your abuser. If you reunite with your abuser, know that the provisions of your protection order that require no abuse are still in effect. See the protection order section below regarding modifying the order.
- If you fear continued harassment, you can ask your local police department to place your home on the special attention list. This means that the police in your neighborhood may keep in contact with you to ensure that you are not having any further problems with your abuser. You can ask that the court order the police to pay special attention to your house as part of a protection order.

IMMIGRATION OPTIONS

- If you qualify to get legal immigration status because of the domestic violence you have suffered, you do not have to separate from your abuser in order to file your immigration case.
- The procedures for Violence Against Women Act immigration cases, battered spouse waivers and crime victim visa cases (U-visas) all allow you to file the immigration case confidentially without your abuser's knowledge or cooperation. You may file for legal immigration status for yourself and for any undocumented children you may have.
- In each of these types of cases it is illegal for the government to provide your abuser any information about whether you have filed a case, the status of your case or give him any information that you have provided in your case. VAWA has special protections for victims of domestic violence, trafficking, and other crimes, to prevent disclosure and use of information in your VAWA case and prevents the use of such abuser-provided information in removal proceedings. These provisions are designed to ensure that your abuser cannot use the immigration system against you. For example, VAWA protections prevent your abuser from using DHS to get information about the existence of your VAWA self-petition, interfering with or undermining your immigration case, or encouraging immigration enforcement officers to pursue removal actions against you. It also prevents DHS from making arrests of immigrants at locations where victims seek help including community-based organizations, shelters, rape crisis centers, and courthouses.
- If are relying on your spouse for legal immigration status, seeking help to prevent domestic violence may also help you obtain legal immigration status without your spouse's help, knowledge or consent.
- You should start gathering the information you may need to prove your domestic violence related immigration case whether or not you have decided to leave your abuser. You should consider filing your immigration case even if you do not plan to leave your abuser, because obtaining legal immigration status will increase your options for self-sufficiency. For a complete list of the evidence you will need to collect for your immigration cases and for other family law cases review the checklist below carefully.

CRIMINAL CASES

- U.S. laws protect all domestic violence victims without regard to immigration status.
- Police are not supposed to ask any questions about your immigration status when you call for help.
- Call the police for help if you are being abused (911).
- In the United States, it is a crime to hit, kick, punch, threaten, or injure a family member, even if it occurs in the home.
- Abusers can be prosecuted for their crimes against family members, even if that family member does not have legal status in the United States.
- Cooperating in the criminal prosecution of your abuser may increase your chances of obtaining legal immigration status in the United States, a legal immigration status that is your own and not connected to your abuser in any way. Cooperating in the criminal prosecution of your abuser should not lead to your deportation.
- Check with a local domestic violence or immigration program about police and DHS practices in your area.

**CHECKLIST OF WHAT YOU NEED TO TAKE WITH YOU
WHEN YOU LEAVE YOUR ABUSER**

- photo identification for yourself and your children
- passports for yourself and your children
- children's birth certificates
- your birth certificate
- your children's social security cards
- your social security card, if you have one
- green cards (alien registration card), for you and your children if you and/or they have one
- money for phone calls, transportation, and expenses
- credit cards, checkbooks, bank books, ATM cards
- work permits for you and your older children
- welfare identification for you and your children
- keys to the house, office and car and any ownership documents
- drivers license and registration
- necessary medicines, medical records, and insurance papers for yourself and your children
- children's school and vaccination records
- small saleable objects
- clothing for you and the children
- all court documents
- telephone/address books, including information on victim service providers
- children's favorite toys, books and blankets
- your sentimental and irreplaceable items, such as photographs, jewelry, special gifts from your family

**TO PROVE THE ABUSE AND THE EFFECT IT HAS HAD
ON YOU AND YOUR CHILDREN**

- copies of police reports
- copies of medical records
- hospital records documenting abuse (even if you did not tell anyone the cause of the abuse)
- copies of current and former protection orders (civil, criminal, temporary, emergency)
- photographs of your injuries
- torn clothing or destroyed property
- your diary
- names of shelters you have stayed at
- names, addresses and telephone numbers of doctors, nurses, counselors, mental health professionals and social workers whom you or your children have spoken with or received treatment from
- names, addresses, and telephone numbers of people who: saw your bruises, heard you scream, witnessed any incident of the abuse, you told about the abuse, you have stayed with for refuge, or can describe the effect that the abuse has had on you and your children
- names, addresses, and telephone numbers of police officers, prosecutors, judges or other government officials who know about the domestic violence you experienced

TO OBTAIN CHILD SUPPORT

- your spouse's or the parent of your child's social security number
- a copy of your spouse/parent of your child's most recent pay stub
- the name, address, phone and fax number of your spouse/parent of your child's employer
- a copy of your spouse/parent of your child's tax returns for the past three years
- proof of who is your child's parent (children's birth certificates, acknowledgement of paternity, or other proof)

FOR BATTERED IMMIGRANT WOMEN WHO MAY QUALIFY FOR A VIOLENCE AGAINST WOMEN ACT FORM OF RELIEF OR OTHER IMMIGRATION RELIEF:

- work permits, green cards, visa applications, and other immigration papers for you and your children
- copies of any documents filed with DHS
- marriage license and certificate for current marriage
- divorce papers from your previous marriage(s) or your spouse's previous marriage(s)
- birth certificates, adoption certificates, acknowledgement of paternity records for your children
- passports and I-94s (record of entry into US) for you and your children, if you have one
- identification (social security, driver's license, welfare identification)
- copies of your spouse's birth certificate, social security card, green card, or certificate of naturalization
- if your spouse was born abroad and is now a citizen or has legal permission from DHS to live and work in the United States, write down and take with you his "A" number, the number on his green card, work visa, or naturalization certificate
- court papers filed and court orders related to you, your spouse/partner, and your children
- photographs of wedding, wedding invitations, love letters from spouse
- family photographs from vacations, birthdays, family events, and trips you have taken
- personal property or real property deeds, leases, and rental agreements in both of your names
- papers that show that you lived with your spouse in the US (such as copies of the lease agreement, real property deed, utility bills, rent receipts, mortgage payment book, letters addressed to the two of you, letters addressed to you, and other letters or magazines addressed to your abuser at the same address during the same time period)
- names, addresses, and telephone numbers of persons who knew you as a couple, knew that you and your spouse lived together, or who saw any of your injuries on any of the incidents of violence
- copies of documents related to joint checking or savings accounts
- joint tax returns listing you as a dependant
- identification with a photograph listing you with your married name
- life and health insurance policies covering you, your spouse, and your children
- letter from employer stating that you or your spouse listed the other as an emergency contact
- letter from employer stating that you or your spouse listed the other spouse as an emergency contact

CONGRATULATIONS!

By reading this booklet, you have just taken the first step toward creating a safe home for yourself and your children. The next step is to seek the assistance of organizations from the following list of resources, or to make your own list of resources in the important phone numbers area.

IMPORTANT PHONE NUMBERS:
Police:
Hotline:
Friends:
Shelter:
<p>FOR HELP CALL: For help locating a battered women's advocate who has experience working with battered women's advocates in your area or for help finding an immigration lawyer call:</p> <p style="text-align: center;"> National Domestic Violence Hotline 1-800-799-SAFE (7233) 1-800-787-3224 (TTY) Interpreters are available in many languages. Calls cost nothing. Call anytime. </p>
<p>Police — 911 Call the police if you think you or your children are in danger. If the police ask about your immigration status or where you were born, you do not have to answer.</p>
<p>Medical Emergency — 911 The emergency room in any public hospital must give you emergency medical care, even if you are undocumented or do not have insurance.</p>
Your Local Domestic Violence Program:
Your Local Legal Services Agency:
<p>The National Network on Behalf of Battered Immigrants Provides Technical Assistance to Professionals Working With Battered Immigrants</p> <p>Attorneys, advocates, health care workers, social services providers, and government employees working with immigrant victims are encouraged to contact the following organizations to receive expert technical assistance to help provide up-to-date and culturally competent assistance to immigrant victims of violence against women. The numbers listed below DO NOT provide direct assistance, advocacy, legal representation or legal advice to victims.</p> <p style="text-align: center;"> <u>The National Immigrant Women's Advocacy Project, American University, Washington College of Law</u> (202) 274-4457, niwap@wcl.american.edu </p> <p style="text-align: center;"> <u>ASISTA</u> (515) 244-2469, www.asistaonline.org </p> <p>These organizations do not provide representation or direct assistance to individual immigrant victims of domestic violence. They can refer you to help in your local community. Once you are working with a battered women's advocate, social worker or attorney, they can call these experts for technical assistance on how they can better help you.</p>

NIWAP



This booklet developed jointly by:

National Immigrant Women's Advocacy Project (NIWAP)
American University, Washington College of Law
4910 Massachusetts Avenue NW
Suite 16, Lower Level
Washington, D.C. 20016
(202) 274-4457

Legal Momentum
1101 14th Street, NW Suite 300
Washington, DC 20002
(202) 326-0040

The Iowa Coalition Against Domestic Violence
220 Lafayette, Suite 150
Iowa City, Iowa 52240
(319) 688-2805

Lideres Campesíñas
611 South Rebecca Street
Pomona, CA 91766
(909) 868-7174

All photos Copyright Leslye E. Orloff, NIWAP

© 2013 National Immigrant Women's Advocacy Project at American University,
Washington College of Law and Legal Momentum

This booklet may be copied and distributed freely provided that credit is given to
National Immigrant Women's Advocacy Project (NIWAP) at American University,
Washington College of Law, Legal Momentum, Iowa Coalition Against Domestic
Violence and Lideres Campesíñas.