Violence Against Women Act Immigration Protections: Past Success and Future Possibilities

April 8, 2011
Feminist Majority
Washington, D.C.

Leslye Orloff
Legal Momentum, Immigrant Women Program
www.iwp.legalmomentum.org
National Network to End Violence Against Immigrant Women

Legal Momentum, Immigrant Women Program
Leslye Orloff, Soraya Fara
(202) 326-0040, iwp@legalmomentum.org
www.legalmomentum.org
Resource Library: www.iwp.legalmomentum.org

ASISTA: Technical Assistance Project
Gail Pendleton, Sonia Parras Konrad, Maria Jose Fletcher
(515) 244-2469, questions@asistaehelp.org

Family Violence Prevention Fund
Leni Marin, Monica Arenas
(415) 262-8900 x16, immigration@endabuse.org
Prospects For Action: November 2010 and Beyond

• Moving toward fair and humane immigration reforms in 2011 will be challenging
• Some reforms may still be possible:
  – Dream Act
  – Violence Against Women Act
• Extremely important to continue to take action to push for comprehensive immigration reform
• It is important to also focus our energy on what can be achieved by federal, state and local governments to benefit immigrants
Development, Relief, and Education for Alien Minor’s Act -- The DREAM Act

• Remains possible to achieve in this lame duck session of Congress

• DREAM Act allows undocumented students
  – Who came to the U.S. at age 15 or younger
  – Who have lived in the U.S. for at least 5 years
  – Have good moral character
  – To become conditional permanent residents upon graduation from a U.S. high school or GED
  – If they are accepted into college or the U.S. military
  – Can receive lawful permanent residency if complete two years of college or military service
What Dream Will Do

- Dramatically improve the lives and future economic productivity of immigrant children

- For immigrant women and girls DREAM will provide:
  - Lawful permanent residency for 57,000 immigrant women age 18+ who have earned associate degrees or higher
  - Conditional legal immigration status to 268,000 immigrant women high school graduates ages 18-34 enabling them to attend college
  - Encourage a greater proportion of the 934,000 undocumented immigrant children under age 18 to complete high school and attain conditional permanent residency if they attend college or join the armed forces
  - 934,000 undocumented immigrant children under age 18 will be eligible if they complete high school and enroll in college or join the military
Without DREAM

- Undocumented immigrant high school graduates are destined for a live in the informal, underground economy
- No economic security
- Vulnerable to exploitation, sexual violence and abuse
- Unable to access the protections of U.S. labor laws
- Subjected to dangerous working conditions
- The prospect of this future increased high school drop out rates among children from immigrant families

- The impact on immigrant women and girls is particularly severe with immigrant women earning $16,500 less than U.S. born men
Improving Policies and Practices Through Federal Administrative Agency Action

• Federal administrative agencies are
  – fully staffed with political appointees and
  – many new federal agency staff

• Opportunity to imagine federal agency policy reforms
  – Document the need
  – Bring voices of our communities and constituencies to federal agency policy makers
  – Significant changes can occur
  – Example:
    • Access to Shelter and Transitional Housing for up to 2 years for undocumented immigrants
Implications of Increased Immigration Enforcement for Immigrant Women

§ Separation of immigrant mothers from their children

§ In the 10 year period (1998 - 2007) 108,000 + undocumented immigrant parents of U.S. citizen children were removed from the United States

§ 5.5 million children in the U.S. live in families with a least one undocumented immigrant parent – 3 million of these children were U.S. citizens

§ 85% of immigrant families are “mixed status”, including at least 1 U.S. citizen, often a child
Enforcement tactics and immigrant women

• Historically high level of arrests, detentions and removals constant since 2006 accomplished through
  – Worksite raids
  – Traffic stops
  – Searches of public transportation
  – Responsiveness to “tips”
    • From family members during custody proceedings
    • Crime perpetrators against crime victims to undermine prosecutions
      – Particularly gender based violence against women crimes
  – DHS enforcement actions at courthouses
Family law implications for women who lack legal immigration status -- Custody

• Citizen fathers raise immigration status of non-citizen mothers ---

• To circumvent state laws designed to result in custody decisions based upon
  – Best interests of the child
  – The primary care taker parent
  – Presumptions that award custody to the non-violent parent

• To challenge jurisdiction to make custody awards to undocumented parents

• To win custody by having the undocumented parent detained by DHS

• No obligation for courts to report to DHS
Legalization will help immigrant women

- Win custody of their children
- Children remain with their primary caretaker immigrant mother
- Healthier outcomes for children
- Research among a particularly vulnerable population of immigrant mothers – battered immigrant women found that
  - Immigrant victims who receive help including legal immigration status, the likelihood mother’s abuser would also abuse the children dropped from 77% to 23%
Legalization helps immigrant women

• Counter court orders that mothers learn English before
  – Being awarded custody
  – The court will return children taken by child protective services
• Subjected to DHS enforcement at and outside courthouses
• Receive protection from abuse orders by stopping judges who
  – Refuse to issue protection orders to immigrant victims
  – Threaten to undocumented victims over to DHS when they came to court seeking protection orders
Terminating the Parental Rights of Undocumented Parents

- State Abuse and Neglect agencies intervening to take children from undocumented parents
- Triggered by
  - reports from health care system and other government agencies (Maria Luis – Nebraska)
  - Immigrant parents caught up in immigration enforcement (Encarnacion Bail – Missouri)
Immigrant Parents’ Constitutional Right to Custody of Their Children

- Constitution right to custody absent finding of unfitness
- Overriding presumption that parent child relationship is constitutionally protected and
- In child’s best interest to stay with/be reunited with their parent
- Applies to all families without regard to
  - Immigration status; and
  - Whether or not the parent is
    - In immigration detention or deported
- Child’s best interests not comparison of natural vs. adoptive parent’s
  - cultures, countries, or financial means
What immigrant women need in CIR and immigration policy reforms

• End enforcement practices that adversely affect immigrant women and their children by
  – Separating immigrant mothers from their children
    • Humane Enforcement and Legal Protections for Separated Children Act (HELP)
  – Serving as a potent tool for crime perpetrators

• Enhance personal and economic security and autonomy by expanding access to immigration status
  – Based on an immigrant women’s own work
  – For immigrant children who graduate high school and attend college (DREAM Act)
What immigrant women need in CIR and immigration policy reforms

• Promote family reunification and reduce family backlogs

• Ensure that legalization and all immigration fee structures are designed to enable all members of the family to attain legal immigration status

• Promote women’s economic security by protecting immigrant women workers rights

• Provide portable work authorization
What immigrant women need in CIR and immigration policy reforms

• Ensure access to a fair justice system for all immigrants
  – Language access
  – Unrestricted access to legal services

• Provide access to federal and state funded public safety net benefits for lawfully present immigrants
  – End the 5 year bar

• Expand access to protection and services for immigrant victims of violence against women
  – Screen all immigrants subject to enforcement actions for victimization and humanitarian release
  – Provide early access to work authorization and protection from deportation
Prior to VAWA

• Abusive spouses, employers and family members controlled the immigration status of non-citizen victims
• No protection from deportation for immigrant victims of domestic violence, sexual assault and human trafficking
• Police, prosecutors, courts, shelters turned away LEP victims
• Programs that did serve immigrant victims isolated
• Immigrant victims had limited access to family courts to obtain custody and protection orders
Collaborative Legislative Advocacy

- Battered Spouse Waiver – 1990
- Violence Against Women Act – 1994
- Carve outs and benefits access for battered immigrants in the 1996 Welfare and Immigration Reforms
- Access to Legal Services for Battered Immigrants – 1998
- Violence Against Women Act 2000
- Victims of Trafficking Protection Act 2000
- Funding for INS processing of domestic violence crime victim and trafficking cases 2001
- Violence Against Women Act of 2005
- International Marriage Broker Regulation Act of 2005
- Trafficking Victims Protection Reauthorization Act 2008
Keys to Success

• History providing direct services
• Developing trust – honesty
• Drafting for staffers
• Developing coalitions
  – National Network on Behalf of Battered Immigrant Women
  – Freedom Network
  – Women’s rights, domestic violence, sexual assault program allies
  – Researchers, advocates, attorneys
  – Community based and Faith based

• Documentation of Need
Lobbying Approach

• Collaboration
• Women’s and domestic violence groups take the lead
• Immigrant rights groups provide technical support
• Documenting the need
  – Stories
  – Research
  – Technical assistance and training
• Countering anti-immigrant sentiment
• Grassroots role
• Remaining in the work after passage
Federal Agency Reforms

• Securing regulations that would work for victims
• Educating DHS
• VAWA Unit
• No filing fees
• Humanitarian release
• No removal and swift adjudication when victim has case before an immigration judge
• VAWA Confidentiality
• Red Flag system
• Legal Services
• Post secondary educational grants and loans
Holistic Approach – Full Circle

- Legislation
- Regulations
- Working with government to implement
- Training
- Materials
- Technical Assistance
- Building Survivor leadership
- Building collaborations with immigrant CBOs
- Monitoring
- Research
- Story collection
- Legislation
Today’s challenges

• Anti-immigrant legislation
• States taking children from undocumented mothers
Today’s Challenges:

• Arizona’s SB 1070 and other state and local anti-immigrant legislation: Impact on Women
  – Undermines VAWA, TVPRA and U visa
  – No Humanitarian release
  – No screening for crime victimization
  – Detention of mothers and separation of children
  – Interfere with access to federally mandated life and safety services
Today’s Challenges

• States taking children from undocumented mothers

• Maria Luis, Nebraska
• Encarnacion, Missouri
The Violence Against Women Act of 2011
Priorities and Possibilities
Priorities Include

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

• Any state or local police who get involved in immigration enforcement must
  – Obey VAWA confidentiality
  – Have U-visa policies and be doing certifications
  – Screen for victims, primary caretaker parents and vulnerable immigrants

• Improved access to VAWA, T and U protections
  – Visa recapture
  – Death of abuser
  – Divorce if step-child

• Improved access to gender-based asylum
• Enforcement of language access re: governmental agencies
VAWA VI Priorities

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

• Open VOCA in all states to non-citizens

• Improved access to transitional housing

• Encouraging more government funding for research on
  – Violence against women including domestic violence, sexual assault, trafficking, stalking, dating violence and elder abuse
  – Underserved victims, including immigrant victims

• HELP Separated Children Act
VAWA Immigration Has Taught Us

- That what might seem impossible is possible
- That collaboration between attorneys, advocates, immigrant community groups, government officials, and justice system personnel is possible
- And can reap immeasurable benefits for victims of domestic violence, sexual assault and trafficking
What you can do.

• Join the National Network
• Connect with groups working with immigrant victims in your state
• Join local and state efforts to prevent passage of anti-immigrant legislation and ordinances
• Become part of our grassroots campaign for VAWA 2011
For further assistance

Contact:
Immigrant Women Program, Legal Momentum
1101 14th St. NW
Washington, DC 20005
iwp@legalmomentum.org
202/326.0040
www.iwp.legalmomentum.org