

Holistic Representation and Advocacy Services for Immigrant Survivors of Sexual and Domestic Violence

Kansas Coalition Against Sexual and Domestic Violence

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National Immigrant Women's Advocacy Project
Resource Library: niwaplibrary.wcl.american.edu

Learning Objectives

- Be able to screen immigrant survivors for immigration relief eligibility and advocate to help victims avoid immigration enforcement
- Identify benefits eligibility for immigrant survivors and their children and know how to accompany survivors applying for benefits
- Facilitate immigrant victim access to protection orders, child custody and family court protections

IMMIGRANT DEMOGRAPHICS

U.S. Immigrant Demographics

- **Immigrant:** defined as someone born outside the U.S. (and is not a U.S. citizen)
- 35.7 million immigrants in U.S.
- 55% increase over 1990
- Today 25% of U.S. population are immigrants or children of immigrants

From Michael Fix & Jeffrey S. Passel, The Urban Inst., *Immigration and Immigrants: Setting the Record Straight* 39-40, at <http://www.urban.org/publications/305184.html> (last visited November 9, 2012).

Immigrant Demographics

- 80% of immigrants are living in the U.S. legally
- 1/3 of foreign-born populations are naturalized U.S. citizens
- 1/3 of permanent residents were at one time undocumented

From Michael Fix & Jeffrey S. Passel, The Urban Inst., *Immigration and Immigrants: Setting the Record Straight* 39-40, at <http://www.urban.org/publications/305184.html> (last visited November 9, 2012).

Children in Immigrant Families

- 85% of immigrant families are “mixed status” (including at least 1 U.S. citizen, often a child)
- 1 in 5 children is the child of an immigrant
- 18% (5 and older) speak a language other than English at home

From Michael Fix & Jeffrey S. Passel, The Urban Inst., *Immigration and Immigrants: Setting the Record Straight* 39-40, at <http://www.urban.org/publications/305184.html> (last visited November 9, 2012).

What country do the victims in your jurisdiction come from?

Kansas - Demographics

- Total foreign born population –198,767
- 6.9% of the state's 2,871,238 people is foreign born
 - 33.9% Naturalized Citizens
 - 33.4% Legal Permanent Residents and Immigrant Visa Holders
 - 32.7% Undocumented (Immigration Policy Center May, 2013)
- Significant proportion of long term immigrants
 - 61.2% entered before 1990 (during 1980s)
 - 34.8% entered in the 1990s
 - 13.9% entered 2000 or after
- 48.2% of immigrant population are female
- 15.3% of children in the state under age 18 have 1 or more immigrant parents
- 84.8% of children with immigrant parents in Kansas are U.S. citizens

Kansas– Countries of Origin

- Mexico – 43.4%
- Asian countries that are not separately listed – 30.0%
- Latin America (not including Mexico) – 12.5%
- Europe – 8.5%
- Africa – 6.2%
- Vietnam – 6.2%
- India – 5.0%
- China/Taiwan – 4.6%
- Middle East – 3.2%
- Canada – 1.1%



Laws Governing Law Enforcement Agency Provision of Language Assistance to Limited English Proficient Persons

- Civil Rights Act of 1964 Title VI: prohibits national origin discrimination by programs receiving federal funding or assistance.
 - This includes all law enforcement agencies
- Lau v. Nichols (1973): U.S. Supreme Court held
 - “failing to take reasonable steps to ensure MEANINGFUL access for LEP persons is national origin discrimination under Title VI”
- Presidential Executive Order 13166 (2000): Title VI language access requirements apply
 - to all federally *conducted and funded* programs and activities



Federal Agency Guidance on Language Access

- U.S. Department of Justice Clarifying Memorandum Regarding Limited English Proficiency and Executive Order 13166 (2001):
 - Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith.
- DOJ Department of Justice Guidelines: (2002)
 - Shall provide information about & offer free language assistance services to LEP individuals
 - Applies to police, courts, justice system

DOJ Courts Letter (2010)

- Dispensing justice fairly, efficiently, and accurately is a cornerstone of the judiciary. Policies and practices that deny LEP persons meaningful access to the courts undermine that cornerstone.
- Court systems receiving federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons



Key Findings with LEP Survivors and LE

- Police treatment of immigrant and LEP clients was rated more favorably in larger jurisdictions, and worsened as jurisdiction type got smaller.
- Law enforcement agencies that had a collaborative relationship with service providers on outreach to LEP communities more likely to use a qualified interpreter or a language line.
- Language access has a profound impact on the willingness of a client to report their crime.

What federally funded services do victims need to access?

- Law enforcement (DOJ)
- Courts (DOJ, HHS)
- Housing assistance (HUD)
- Shelters – battered women’s, homeless, transitional (HHS, HUD, DOE)
- Legal Services (DOJ)
- Victim services, family justice, supervised visitation centers (DOJ)
- State, county, local health & welfare (HHS)
- Hospitals, health clinics (HHS)
- Welfare to work (HHS, DOL)
- Mental Health Centers (HHS)
- Education & Head Start (DOE, HHS)
- Nutrition (Agriculture)

DYNAMICS OF DOMESTIC AND SEXUAL VIOLENCE EXPERIENCED BY IMMIGRANT WOMEN AND CHILDREN

Research Among Immigrant Women Found

- Similar results lifetime abuse rates for immigrant women in the U.S. 33-50%
- Immigrant women also have high rates of sexual assault, particularly during the first two years after arrival in the U.S.
- Victimization of immigrant children also high, including child sexual abuse
- Multiple immigrant populations studied

Domestic Violence Prevalence and Severity

- U.S. in general: **22.1%** (NIJ)
- Immigrant women: **30-50%**
- Research has found that immigrant victims
 - Stay longer
 - Have fewer resources
 - Sustain more severe physical and emotional consequences of abuse

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
- Lifetime as high as 49.8%
- Those married to citizens and lawful permanent residents – 50.8%
- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for victims:
 - 72.3% never file immigration papers.
 - The 27.7% who did file had a mean delay of **3.97 years.**

Immigration Related Abuse as a Lethality Factor

- **10 times higher** in relationships with physical/sexual abuse as opposed to psychological abuse
- Lethality factor can predict abuse escalation
- Corroborates existence of physical and sexual abuse

Children of Immigrant Women Who Received Help Protected Against Child Abuse

- National co-occurrence rate: 30-40%
- Rates among immigrants similar
- Co-occurrence among
 - Help seekers: 23%
 - Abused immigrants who did not seek help: 77%
- Children of help seekers 20% less likely to have abuser threaten them
- 33% less likely to have abuser threaten to take them away from their mother

Role of Custody in Power and Control

- Fear of losing children is one of the most cited reasons that battered immigrants stay with their abusive husbands
- She believes he will get custody:
 - His immigration status
 - Her lack of knowledge about our laws

Tools

- *“Are You Safe At Home?”* and *“Know Your Rights”* brochures
- *“Breaking Barriers”* and *“Empowering Survivors”* Manuals
- Conference materials available at niwap.org/go/kansas

Screening and Safety Planning In the Context of Immigration Enforcement

VAWA Protections In a Time of Increased Immigration Enforcement

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Need to be aware of local law enforcement practices regarding immigrants
- Transportation issues for victims
 - to courts
 - to services
- Secure Communities and the dangers of dual arrest

Secure Communities

- Secure Communities is an information sharing program between federal, state, and local law enforcement agencies
- When individuals are arrested, they are fingerprinted, and their fingerprints are conveyed to the FBI and checked against the criminal database. The data is also shared with ICE and checked against immigration records.
- Through Oct. 2011, removals through Secure Communities significantly contributed to 89% increase in the percentage of convicted criminals removed by ICE

VAWA Confidentiality

VAWA Confidentiality

- **Non-Disclosure:** DHS cannot disclose VAWA information to anyone
 - Victims with VAWA confidentiality protected cases filed
- **Abuser-Provided Information:** DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
 - All victims
- **Location Prohibitions:** Enforcement locational prohibitions
 - All persons

Non-Disclosure: Protecting Immigration Files

- Prohibits from disclosing of any information relating to someone who has filed one of the eligible self-petitions, a T or a U visa.
- Applies to Departments of:
 - Justice
 - Homeland Security
 - State
- Disclosure rules extend to
 - Everyone
 - Not only crime perpetrator
- Disclosure rules generally bar access by government officials

Non-Disclosure: Protecting Immigration Files: **Exceptions**

- Legitimate law enforcement purposes
- Judicial Review of immigration case only (Hawke)
- Agency to whom victim has applied for public benefits only for benefits granting purposes
- Limitation ends when application for relief is denied based on substantive grounds and all opportunities for appeals have been exhausted
- If no denial, confidentiality continues

What does this mean for immigrant victims?

Protecting Immigration Files Preventative Strategies?

- Legal strategies:
- Attorneys/Advocates should clearly mark all immigration filings with the §384 warning
- Advise victim and whomever victims interact with to know that such protections exist
- Object to discovery of information contained in or about the immigration case in family court proceedings

Relying on Abuser Provided Information

- The government cannot gather and/or use information provided **solely** by a perpetrator or his or her family members to make adverse determination regarding admissibility or deportability
- The victim does not have to have filed or even qualify to file a VAWA, T or U visa immigration application
- Need only prove that the individual is a protected immigrant

Location Prohibitions:

Immigration judge to dismiss case if any part of an enforcement action occurs at:

- 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

WHERE ELSE IS DHS NOT SUPPOSED TO CONDUCT ENFORCEMENT ACTIVITIES?

Where else is DHS not supposed to conduct enforcement activities?

- Schools
- Places of Worship
- Funerals
- Religious Activities

Location Prohibitions

- This enforcement location bar applies in all cases and does not require victimization
- But if there is an enforcement action at one of these locations:
 - the Immigration Court Notice to Appear must include a certification by a DHS official
 - confirming that none of the VAWA confidentiality prohibitions were violated
 - DHS Policy
 - VAWA Confidentiality Enforcement

Relying on Information, Locational Prohibitions: Preventative Strategies

- Provide victims with proof of victimization
- Work with DHS and local law enforcement to screen for victimization
- Prevent and not pursue actions against victims
- Train personnel who work at prohibited locations
- File skeletal immigration applications
- Advise victim and everyone working with the victim about these protections...they may need to advocate on the spot
- Distribute copies of DHS policies
 - 384 Computer system
 - Pending applications

Preventative Strategies, Cont.

- File skeletal immigration applications
- Provide victims with proof of filed VAWA, T or U case
- Object to discovery of information contained in or about the immigration case in family court proceedings

When Violations Happen

- Advocate on the spot---provide
 - proof of victimization,
 - Copy of the statute
 - DHS enforcement policy
 - DHS complaint system
 - DHS 384 system
- Collect information about the violating officer
 - Name
 - Agency
 - Badge Number
- Work it up the chain to a supervisor
- File a formal complaint-
 - penalties of up to \$5000 per incident against the violating officer individually
 - Also disciplinary actions
- Advocate for release from detention/jail, termination of immigration proceedings, granting immigration relief

DHS Humanitarian Release 2007 expanded in 2008

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

DHS Memos

- DHS Enforcement priorities
 - Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
 - Low priority immigrants vs. high priority immigrants (3.3.2011)
 - Prosecutorial discretion (6.17.2011)
 - DHS and White House Directives regarding immigration case processing (8.18.2011)
 - Protections for immigrants who came to US as children (6.15.2012)
- Protections for crime victims
 - Initiation of VAWA confidentiality computer check system (12.21.2010)
 - Prosecutorial discretion for crime victims (6.17.2011)

DHS VAWA Confidentiality Computer System

- Directs use of new “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims

DHS Prosecutorial Discretion Not to Initiate Removal Against Crime Victims and Witnesses

- Minimize the effect that immigration enforcement may have on the willingness and ability of
 - Victims of crime
 - Witnesses to crime
 - Individuals pursuing legitimate civil rights complaints
 - To call the police and pursue justice
- Designed to stop immigration officials from acting
 - When local police make dual arrests
 - Leading to victims being arrested and having their fingerprints turned over to DHS

DHS and White House Working to Ensure Enforcement Conforms to DHS Priorities

- In the *civil immigration context* DHS is confronted with more administrative violations than resources
- By favorably exercising prosecutorial discretion, DHS decides not to assert the **full** scope of its enforcement authority available to the agency in “**low priority**” cases on a case by case basis
- **Prioritize** use of enforcement personnel, detention space and removal assets on:
 - National security
 - Border security
 - Public safety
 - Integrity of the immigration system

Positive factors

- Length of time in US (including lawful presence)
- Circumstances of arrival, manner of entry
- Presence in the U.S. since childhood*
- Pursuit of education: US high school/college
- Person/close family, veteran/military particularly combat*
- Community/family ties, contributions
- Ties to/conditions in home country
- Age – minor, elderly*
- USC/LPR spouse, parent, child
- Person who suffers from serious mental or physical disability or serious health condition*
- Primary caretaker of child, person with mental/physical disability, seriously ill parent
- Crime victim or witness*

Other positive factors

- Pregnant or nursing women
- Spouse is pregnant or nursing
- Nationality renders removal unlikely
- Long time lawful permanent residents
- Likely to be granted immigration relief as
 - spouse, child of a citizen or lawful permanent resident
 - Domestic violence, trafficking or victim of other serious crime
 - Crime victim
 - Asylee/refugee
- **Victims and Witnesses** cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, federal or state prosecutors, Department of Labor, or National Labor Relations Board, among others

Negative Factors to Consider

- Clear risk to national security*
- Serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind*
- Known gang members or other individuals who pose a clear danger to public safety*
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud*
- Criminal history, including arrests, prior convictions, or outstanding arrest warrants
- Immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud
- Whether the person poses a national security or public safety concern

White House and DHS Announcements (August 18, 2011)

- Requires DHS attorneys to review all immigration court cases and
 - “Totality of the circumstances”
 - Case by case review
 - Administratively close “low priority cases”
 - With ability to apply for work authorization
 - Includes review final orders of removal in compelling cases
- Future cases screened for priority and removal not initiated if “low priority”
- Three tier system

Temporary protections for immigrants who entered US as children

- Came to the United States **under the age of sixteen**;
- Has **resided in the United States for a least five years** preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- Is currently **in school**, has **graduated from high school** or GED, or is an **honorably discharged veteran** of the Coast Guard or Armed Forces of the United States;
- Has **not been convicted** of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- Is **not above the age of thirty**

A New Era In Safety Planning With Immigrant Survivors

Safety Planning and Action Steps for Immigrant Survivor

- Tools
 - New safety planning flow chart
 - Immigrant victim brochure
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Understand and intervene early in child welfare system
- Victim must tell DHS enforcement officials that she has children

Safety Planning Challenges Related to Enhanced Immigration Enforcement

- Immigration screening as early as possible essential
- Cannot assume by name or sight that victim is or is not an immigrant
- Changes in strategy – Immigration case filed before
 - CPO, family or criminal court case
 - Victim travels to new location
- Give client number of consular notification if she is detained – essential particularly if she has children

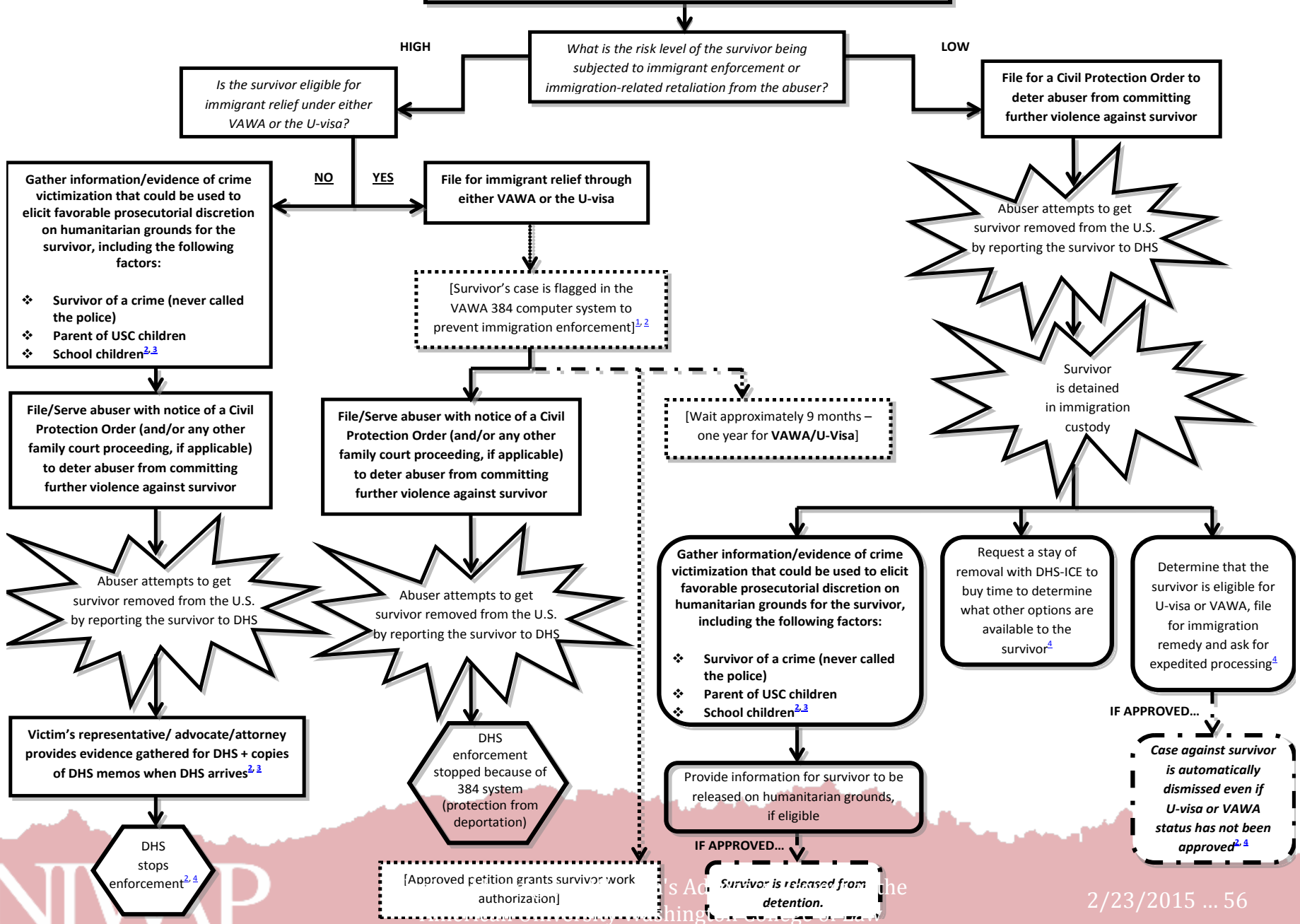
Application for VAWA, T or U immigration status improves immigrant victims access to public assistance

- Screen for immigration case already filed
- Screening + Filing (VAWA, T or U) =
 - Lawful Presence
- Filing for immigration benefits required for VAWA self-petitioners to become qualified immigrants eligible for federal public benefits

Early Victim Identification, Certification & VAWA/U-Visa Filing

- Cut off perpetrator's ability to trigger the victim's deportation
- Help victim secure
 - Protection from deportation
 - Release from detention
 - Swift adjudication of immigration case for victims detained or in immigration proceedings
- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator
- Set victim on path to legal work authorization

IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY



An immigrant survivor walks through the door of your agency:

What is the risk level of the survivor being subjected to immigrant enforcement or immigration-related retaliation from the abuser?

- **High**
- **Low:** Need to work with victim to balance risks
 - Informed by lethality assessment and immediacy of CPO need, vs.
 - Risks of perpetrator calling DHS when served

HIGH: Is the Survivor Eligible for Immigrant Relief Under Either VAWA or the U-visa?

YES

- File for VAWA or U-visa immigration relief
- [Survivor's case flagged in 384 system to prevent enforcement]
- [Wait 9 months-1year for VAWA/U-visa]
- File/serve abuser with CPO
- *Abuser reports survivor to DHS*
- DHS enforcement stopped because of 384 system
- [Approved petition grants survivor work authorization]

NO

- Gather information/evidence of crime to elicit favorable prosecutorial discretion
 - Survivor of crime
 - Parent of USC children
 - School children
- File/serve abuser with CPO
- *Abuser reports survivor to DHS*
- Victim's representative provides DHS with gathered evidence upon arrival
- DHS stops enforcement

Tools:

- Safety planning flow chart
- Immigrant victim brochure
- Advocate's toolkit for working with immigrant survivors at high risk of immigration detention
- Advocate's victim safety planning flow chart

LARGE GROUP ACTIVITY

- How would you prepare Maura to prevent immigration enforcement if either Jose or Juan called DHS or local police to turn her in as undocumented?
- How would you argue that DHS should not pursue immigration enforcement against her?

Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother. When Maura was 15 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 5 years in the abusive household and sexual advances from her stepfather, Maura left home and moved in with her boyfriend Juan, who started battering Maura when she became pregnant with their child. During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer, but fearing that she would get deported, she did not appear at the hearing on the domestic violence charge. The charge was amended to misdemeanor battery. Juan pled no contest and was convicted of battery.

For what form of relief, if any, is Maura eligible?

If Victim is Detained

Helping victims who are arrested

- If when the police arrived they spoke only to Juan and he convinced them to arrest Maura resulting in her finger prints being turned over to DHS
- How would you advocate for Maura's release from jail/detention?
- What tools/memos would you use?
- Whom would you collaborate with in your community?

Public Advocate: Contact Field Liaison

- **Chicago Field Office**
- **Assistant Field Office Director: Sylvia Bonaccorsi-Manno**
- **Email: Chicago.Outreach@ice.dhs.gov**
- **Area of Responsibility: IL, IN, WI, MO, KY, KS**
- Encourages crime victims that were arrested and subject to ICE detainer to call ICE's Law Enforcement Support Center (LESC) at their toll-free number: **(855) 448-6903**
 - Enables ICE to take prompt action on aliens against whom enforcement would be inappropriate

Steps to Secure Release From Detention

- Request stay of removal with DHS-ICE
 - Buy time to determine options available to survivor
- Determine survivor eligible for VAWA or U-visa, file for immigration remedy, and ask for expedited processing
 - (if approved) Case against survivor automatically dismissed even if VAWA or U-visa status not yet approved
- Gather information/evidence for favorable prosecutorial discretion
 - Survivor of crime
 - Parent of USC children
 - School children
- Provide information for survivor to be released on humanitarian grounds
 - (if approved) Survivor released from detention

Online Detainee Locator System

- ICE includes limited personal information about detainees in a publicly searchable Internet database. It is intended to assist family members, friends, and legal representatives in locating persons in custody.
- ICE may not disclose information about any individual who has applied for benefits under VAWA or a T or U Visa without that person's consent.
- A victim can check a box on the consent form that says she does not consent to ICE disclosing information about her status and location in the database. If she does not complete the form, ICE will not enter information about the detention.

Telephone Service for Detainees

- SP Telecom, at www.detaineescallhome.com or 1-845-342-8000 provides reduced cost telephone service for detainees and their families
- The service provides each caller with telephone numbers local to the facility of the detained individual.

DHS Crime Victim Notification

- When perpetrator is in DHS custody
- Victim must register with DHS to be informed of
 - “release related activates”
 - Receive information about relocation of the offender
 - Present victim impact statement to immigration judge in perpetrator’s removal case

BREAK

***Immigrant Victims' Legal
Rights to Access Benefits,
Housing, Legal Services,
Victim Services and
Protections***

Large Group Discussion:

What barriers are present, when an immigrant victim seeks federal or state public benefits?

Overview of Barriers for Immigrant Survivors

- Language access
- More legal rights tools needed
 - For benefits staff
 - For victim advocates and attorneys
- Immigration and benefits law confusing
- Not enough help for survivors filing for immigration protections
- Survivors afraid to seek benefits
 - VAWA 2013 – public charge exception
- Apparent conflict between state laws/policies and federal benefits and services access laws

Review of Resources and Materials

- Materials available at go link
 - Government: statutes, policies, regulations
 - Screening and benefits identification tools
 - Detailed benefits legal research, legislative history information supports advocacy/educating benefits providers
- VAWA, T and U visa benefits tools
 - Screening tools
 - Benefits flow charts
 - Program eligibility tools
- State Benefits in Kansas in addition to federal benefits
 - TANF for Qualified Immigrants
 - In state tuition for children who graduated high school/GED in KS + enrolled in KS college + 3 years residency



Immigrant Benefit Classifications

- Citizens
- “Qualified Immigrants”
 - Entering U.S. before Aug. 22, 1996
 - Entering U.S. on or after Aug. 22, 1996 subject to 5 year bar on federal means tested public benefits (e.g. TANF, Medicaid, Child Care, SSI, Food Stamps)
- Lawfully Residing
 - Health care access is provided and states (includes Kansas) can opt to offer state funded benefits to lawfully residing immigrants
- Undocumented Immigrants
- PRUCOL (Permanently Residing Under Color of Law)
 - States can opt to offer state funded benefits to persons residing under color of law – Not applicable to Kansas

Lawful Presence Defined

- Lawful presence includes immigrants who have:
 - Qualified immigrants
 - VAWA upon prima facie or approval
 - T upon bona fide or approval
 - Persons granted nonimmigrant status
 - Approved U and T visas
 - Work visas
 - Student visas
 - Children who have applied for special immigrant juvenile status
 - Deferred action
 - Humanitarian parole
 - TPS
 - Persons with approved visa petitions

Access to Benefits and Services Grows As Victims Pursue Immigration Relief

- Programs and services all undocumented survivors can access
- Filing immigration case leads to
 - Lawful Presence
 - PRUCOL
 - Continued presence
 - HHS certification or eligibility letter
 - State benefits access to some programs in some states
- Prima facie determination in VAWA or T visa case leads to
 - Qualified Immigrant Status
 - Federal public benefits
 - Federal Means tested public benefits
 - State funded benefits

**How does lack of access to
public benefits and work
authorization affect
immigrant survivors ?**

Help Open to All Immigrants Without Regard to Immigration Status

Large Group Discussion:

**What services, programs,
benefits can
undocumented immigrant
survivors legally access?**

Attorney General's List of Required Services

- In-kind services
- Provided at the community level
- Not based on the individuals income or resources
- Necessary to protect life & safety
- Programs covered by this AG order are open to all persons
- State and local governments CANNOT impose immigrant access restrictions

Benefits available to all immigrants include those offering the following types of services, programs or assistance:

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Crime victim assistance
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Medical and public health services
 - including treatment and prevention of diseases and injuries and mental health, disability, or substance abuse assistance necessary to protect life or safety

Benefits and Services continued

- Help during adverse weather conditions
- Soup kitchens, community food banks and nutrition programs for seniors and others requiring special assistance
- Activities designed to protect the life and safety of workers, children, youth and community residents
- Any other programs, services, or assistance necessary for the protection of life or safety

Other Federal Benefits Available to ALL Immigrants

- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Community Services Block Grant funded programs
 - ESL
 - Vocational Training
 - Transitional shelters
 - Community gardens

Preemption

- DOJ Necessary to Protect Life and Safety Regulation
- PRWORA “vests in the Attorney General the authority to specify certain types of community programs, services, or assistance for which all aliens remain eligible”
- “Neither states nor other service providers may use the Act as a basis for prohibiting access of undocumented to any programs, services, or assistance covered by this Order.”

Health Care For Undocumented Immigrants

- Services necessary to protect life and safety
- Community and migrant health clinics
- State funded programs
- Post assault health care paid by VOCA funds
- Emergency Medicaid

Emergency Medicaid

- Available only in cases where the person needs treatment for medical conditions with acute symptoms that could:
 - place the patient's health in serious jeopardy;
 - result in serious impairment of bodily functions;
or
 - cause dysfunction of any bodily organ or part

What Various States Offer Under Federal Emergency Medicaid

- Labor and Delivery (emergency and most states normal)
- Severe and acute
- Urgent pharmacy needs
- Mental health
- Inpatient substance abuse
- 72 hour release of drugs without prior approval
- No SSN is required to receive emergency services under Hawaii law

Federally Qualified Health Centers Offer

- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Well child services
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family planning services
- Preventative dental services
- Pharmaceutical services
- Emergency medical and dental services

State-by-State Charts Addressing Immigrant Victim Access to the Following:

- Health care access by immigration status by state
- Emergency Medicaid
- Forensic Examinations
- Post-Assault Health Care
- Pre-Natal Care
- TANF Replacement Programs
- Child Care
- SNAP (Food Stamps)
- LIHEAP
- SSI

Available at
Niwaplibrary.wcl.american.edu

True or False

- Immigrants applying for benefits for their children can refuse to provide immigration or social security information about themselves?
- What has happens in your state when immigrant victims apply for benefits for their children?

When children qualify and their parents do not:

- If a child qualifies for benefits as a citizen or “qualified immigrant” the benefits granting agency may *ONLY* ask questions about the child’s eligibility
- No questions may be asked about the *immigration status or social security number* of the child’s parent if the parent is not applying for additional benefits for themselves

Resources for Undocumented Victims

- Chapter: “Access To Programs And Services That Can Help Victims of Sexual Assault and Domestic Violence”
- HHS Programs List
- HUD Programs List
- HUD Letter
- AG Order

Immigration Options for Survivors

VAWA self-petition

Abused spouses/children of US citizens and lawful permanent residents

- Abused parents of U.S. citizens over 21 years of age

Battered spouse waiver

- Abused spouses of US citizens with two-year conditional permanent residency

T visa

- Victims of severe forms of human trafficking

Asylum

- Persecution based on protected classes

U visa

- Victims of criminal activity
- Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
- Substantial harm from criminal activity

Special Immigrant Juvenile (SIJ)

- Juveniles that have been abused, abandoned or neglected

Deferred Action (DACA)

- Deferred action for child arrivals including Dreamers

DHS Prosecutorial Discretion

- “low priority” for removal immigrants -- survivors, witnesses, parents, others
- Humanitarian detention release

U Visa Criminal Activity

Domestic violence
Sexual assault
Rape
Incest
Prostitution
Torture
**Female genital
mutilation**
Felonious assault
Manslaughter
Murder

Kidnapping
Abduction
Trafficking
**Involuntary
servitude**
Slave trade
**Being held
hostage**
Peonage

False Imprisonment
Blackmail
Extortion
Witness tampering
**Obstruction of
justice**
Perjury

Application for VAWA, T or U immigration status improves immigrant victims access to public assistance

- Screen for immigration case already filed
- Screening + Filing (VAWA, T or leads to
 - Lawful Presence
- Filing for immigration remedy is required for VAWA Self-petitioners to become “qualified immigrants” to eligible for federal public benefits

Qualified Immigrant Access to Federal Public Benefits

- All qualified immigrants can access some federal public benefits
 - Which benefits they can access depends on:
 - Immigration status
 - When they entered the United States
 - Whether they meet heightened program requirements for some programs
 - What benefits are offered by the state

Federal Benefits Immigrant Restrictions

- Only programs that as a matter of law have immigrant restrictions are those categorized as:
 - “federal public benefits” or
 - “federal means-tested public benefits”

Examples of “Federal Public Benefits”

- **US Agency Funded/Provided:**
 - Grants
 - Contracts
 - Loans
 - Professional or commercial licenses
 - Drivers licenses
- **Federally Funded Benefits for**
 - Retirement
 - Welfare
 - Health
 - Disability
 - Postsecondary education
 - Public or assisted housing
 - Food assistance or
 - Unemployment

Only considered a Federal Public Benefit if:

- Payment made or assistance provided directly to:
 - An individual
 - A household
 - A family eligibility unit

Funds are Not Federal Public Benefits if Federal Funds Are Paid to:

- A state in the form of a block grant
- A victim services program
- A shelter
- A hospital
- A health clinic
- A government entity
- A non-profit organization

Who are “Qualified Immigrants”?

- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T-visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- Persons who (or whose child) has been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent

How does and immigrant victim prove that they are a “qualified immigrant”?

- Family-based immigration cases
 - Prima facie determination in VAWA self-petition or cancellation
 - Approved VAWA self-petition or VAWA suspension/cancellation
 - Approved visa petition filed by an abusive spouse or parent
- Trafficking victims
 - Prima facie determination in a T-visa case
 - Approved T-visa

Additional Requirements for Battered Immigrant Spouse or Child to be a “qualified immigrant”

- The child’s immigrant parent must not have actively participated in the battery or cruelty
- There must be a “substantial connection” between the battery or extreme cruelty and the need for the public benefit sought
- The battered immigrant or child no longer resides in the same household as the abuser

Factors Used to Determine “Substantial Connection”

- To ensure the safety of the victim, the victim’s child or the victim’s parent
- The victim had to leave her job for safety reasons
- The victim loses a dwelling or a source of income following separation
- The victim needs medial attention or mental health counseling or has become disabled
- The victim’s fear of the abuser jeopardizes the victim’s ability to take care of her children

“Substantial Connection” continued

- To alleviate nutritional risk or need resulting from the abuse or following separation
- The victim lost her job or earns less because of the battery or cruelty or because of involvement in legal proceedings
- To provide medical care during a pregnancy resulting from the relationship with the abuser
- To replace medical coverage or health care services lost following separation.

Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- Public and assisted housing
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals
- Adoption assistance
- Foster care
- Social services block grant programs
- Supportive housing for the elderly or disabled

Education True/False

- DHS requires universities to ask about immigration status of applicant or enrolling students?
- Battered immigrant VAWA self-petitioners can get federal FAFSA grants and loans
 - Their children?
- U visa victims and their children can get
 - FAFSA?
 - In state tuition?

Post Secondary Educational Grants and Loans

- Battered immigrant self-petitioners and their children are “qualified immigrants” eligible to receive DOE funded grants and loans
- Universities should accept DHS/Immigration Judge Documentation of VAWA self-petition/cancellation status
 - documents must be current at each time of re-application
- On FAFSA check “eligible non-citizen” and provide “A” number
 - Explains no-match with DOE/DHS computer system and
 - DOES NOT require verification
- Students remain eligible after age of majority unless VAWA case is denied

Federal Means-Tested Public Programs Have Most Limited Immigrant Access:

- **TANF**
 - 5 yr. bar if entered the U.S. after August 22, 1996
- **SSI**
 - Lawful permanent residents only if 40 quarters or work credit + “qualified immigrant” status and 5 year bar if entered the U.S. after August 22, 1996
 - Refugee
 - Trafficking victim
 - Veteran and “qualified immigrant” spouses, children
- **Food Stamps**
 - “Qualified Immigrants” 5 year bar post August 22, 1996
- **Medicaid and Child Health Insurance Program**
 - Health Care reform opened up access to immigrants who are “lawfully present”

Federal Food Stamps

- “Qualified immigrant” children under 18 (no 5 year bar)
- Refugees, persons granted asylum or withholding of deportation/removal, Cuban/Haitian entrants, Amerasian immigrants, persons granted Iraqi or Afghan special immigrant status, and victims of trafficking (upon receipt of status and as lawful permanent residents)
- “Qualified immigrant” adults after 5 year bar
- Lawful permanent residents with 40 quarters work history
- Veterans & active military and their “qualified immigrant” spouses and children
- “Qualified immigrants” receiving disability
- Hmong and Laotian tribe members lawfully present

Immigrants and Health Care Reform

- Naturalized Citizens same as U.S. Born Citizens
- Legal immigrants
 - Subject to individual mandate and tax penalties (unless low income)
- Lawfully present immigrants
 - May purchase for state insurance exchanges (no wait)
 - Eligible for tax credits and cost-sharing reductions (no wait)
 - Eligible for state's temporary high risk pools and basic health plans
 - 5 year bar to Medicaid for “qualified immigrant” low income non-pregnant adults
- Undocumented immigrants
 - Exempt from individual mandates
 - Cannot purchase from state insurances exchanges & no tax credit
 - No Access to Medicare, Medicaid or CHIP
 - Only HHS funded unrestricted health care and emergency Medicaid

Immigrants and Health Care Reform

- Citizen or lawfully present children of undocumented immigrant parents
 - May purchase child-only coverage on state insurance exchanges
 - Are eligible for premium tax credits and reduced cost-sharing
 - May be eligible for Medicaid or CHIP

Federally Funded Medicaid and CHIP for “lawfully residing” children and pregnant women

- Lawfully present + Medicaid state residency rules
- Lawfully present =
 - Lawful permanent residency
 - Approved visa petition + application for lawful permanent residency filed
 - Persons fleeing persecution (e.g. refugees, asylees, withholding, conditional entrants)
 - Humanitarian immigrants (e.g. Cuban Haitian Entrants, TPS, DED, Deferred Action Status)
 - Parolees (lawfully present) if parole for 1yr + (also qualified immigrants)

Federally Funded Medicaid and CHIP for “lawfully residing” children and pregnant women

- VAWA self-petitioning applicants and their children
- VAWA cancellation and suspension applicants
- T visa holders, applicants and continued presence and their children
- U visa holders includes their children
- Temporary visa holders (e.g. student, visitor, work)
- Citizens of Micronesia, the Marshall Islands, and Palau
- Long term residents in the process of obtaining lawful permanent residency or not likely to be returned home

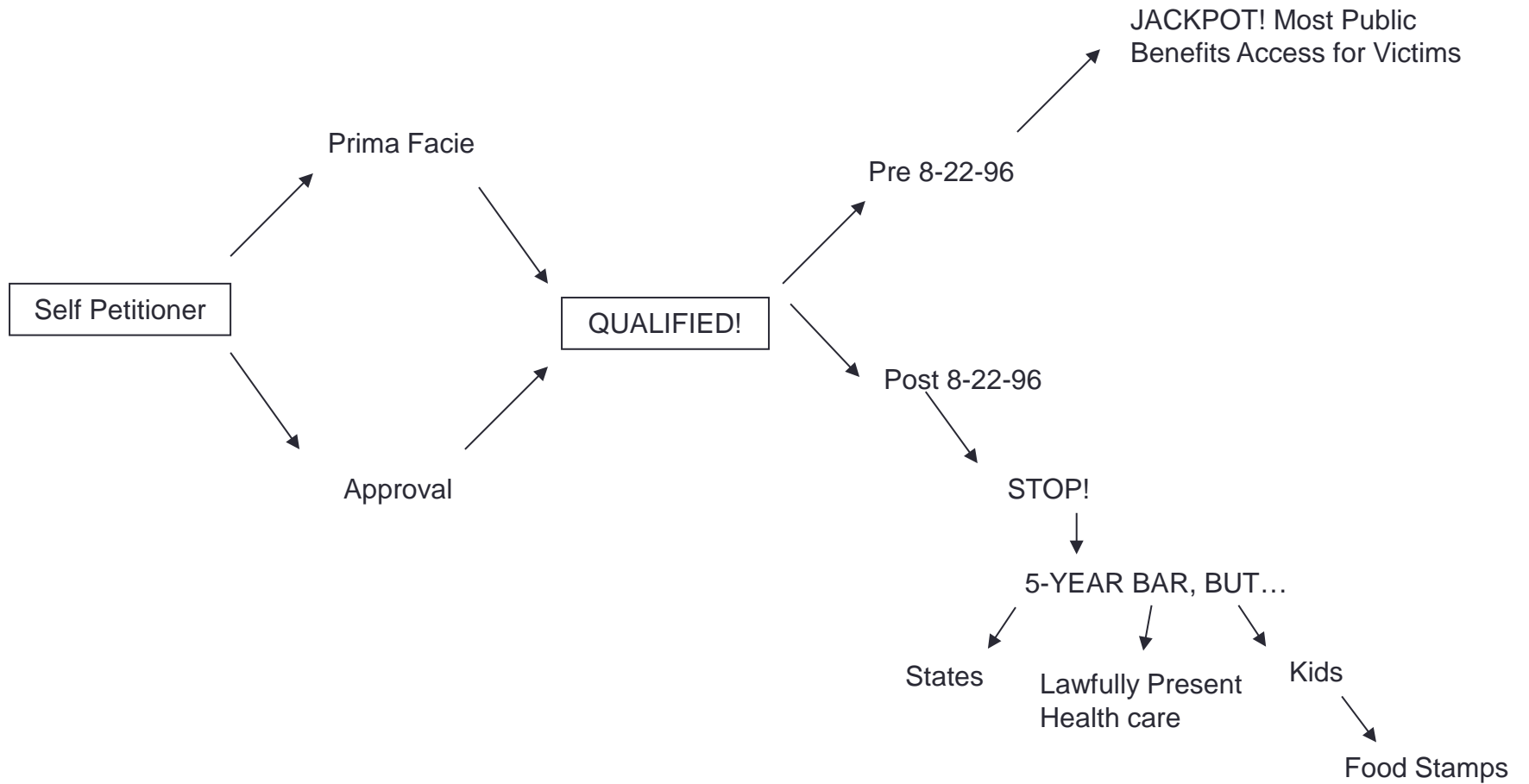
Child Care: Immigrant Restrictions Depend on Funding source CCDF vs. TANF

- Child Care Development Fund
 - Only the citizenship/immigration status of the child considered (child is the primary beneficiary of the child care benefit)
 - Open to “qualified immigrants” and victims of trafficking and their children
 - CCDF child care open to all without immigration restrictions if
 - Subject to public educational or Head Start standards, or
 - Eligibility determined by a non-profit organization
 - CCDF parents have the right to choose their child care provider, (e.g. relative, a family child care home, or child care center)
 - Provider may be required to have an SSN
 - State agencies *cannot require* an SSN from persons seeking CCDF-funded child care and cannot deny the benefit to families that do not provide an SSN (even if TANF funds included in CCDF)

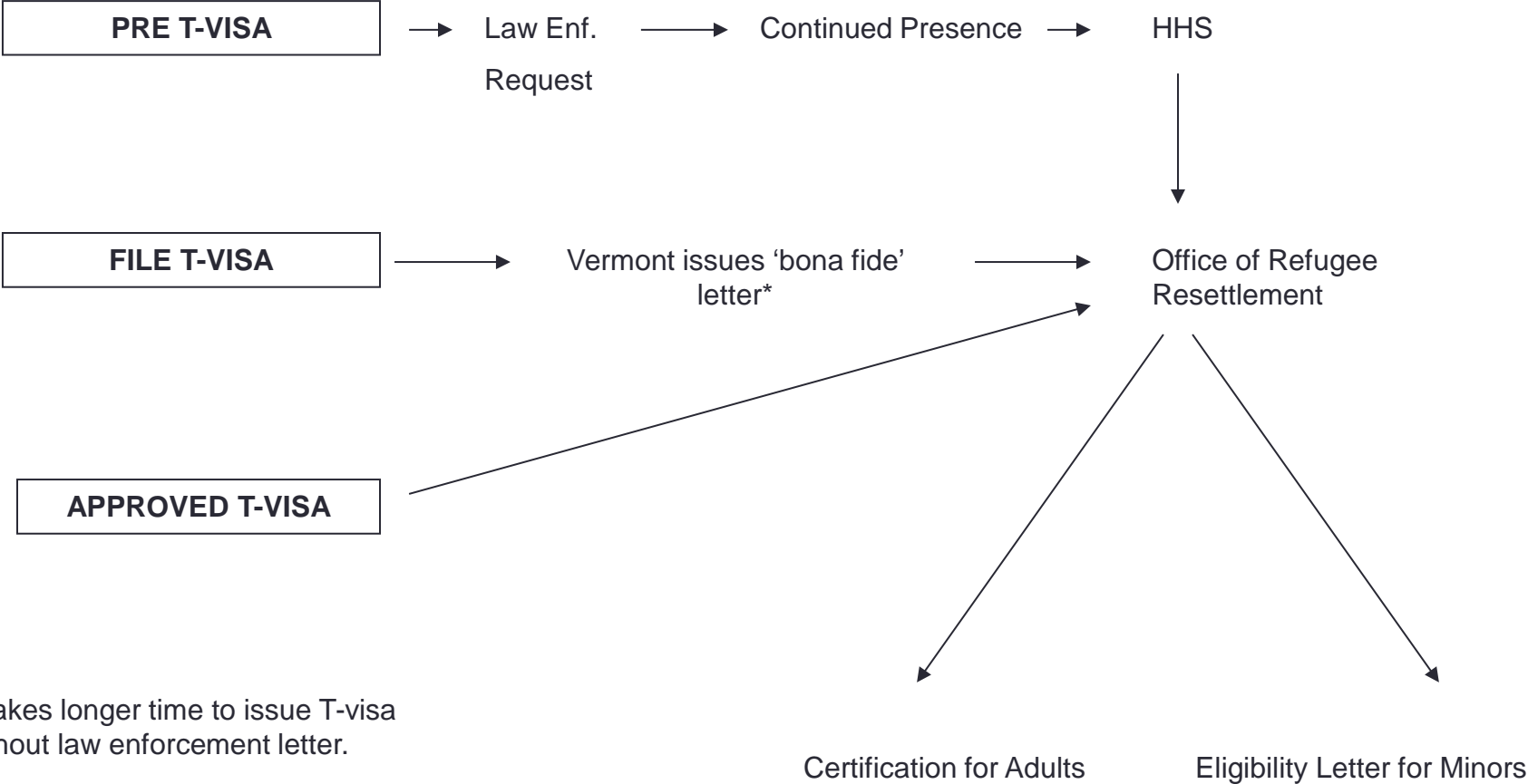
TANF Funded Child Care

- “Qualified immigrants” who entered the U.S. before Aug. 22, 1996.
- 5 year bar applied to all other qualified immigrants
- Refugees and asylees
- Persons granted withholding of removal
- Amerasian immigrants
- Cuban/Haitian entrants
- Victims of trafficking and their children
- Veterans and active duty military personnel, their spouses, un-remarried surviving spouses, and children, who are “qualified” immigrants

Helping Immigrants Applying for Federal or State Funded Public Benefits



Benefits Eligibility for Victims of Severe Forms of Trafficking

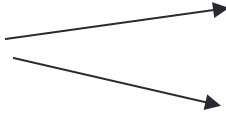


* Takes longer time to issue T-visa without law enforcement letter.

U VISA



lawful presence and PRUCOL (Persons Residing Under Color of Law)



Not qualified immigrants for public benefits purposes under federal law = no access to federally funded public benefits

U-visa holders lawfully present and eligible under health care reform laws

State Benefits ?
Non-PRUCOL States NO access to state funded benefits

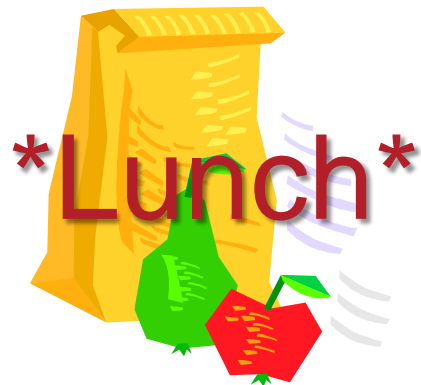


State Benefits?
Lawful presence or PRUCOL = some access to state funded public benefits



Some States Offer State Funded Public Benefits

- Kansas for victims without access to TANF, who are U visa victims
- Small group exercise
- Thinking creatively, brainstorm the range of programs and services available in Kansas to help immigrant survivors.



NEW DHS LAW ENFORCEMENT VIDEOS

Importance of victims interaction
with courts, police and prosecutors

VAWA SELF-PETITIONING

OMB No. 1841-0023, Expires 09-30-2018
**I-485, Application to Register
Permanent Residence or Adjust Status**

For USCIS Use Only

Applicant Name	Returned	Receipt
App. #	Resubmitted	



General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse,
 - parent,
 - adult son/daughter (over 21)
- With Whom self-petitioner resided
 - No time period required
- Good Moral Character
- Good Faith Marriage

How might you define “extreme cruelty”?



Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets

Factors that can constitute extreme cruelty

- Correlate strongly with physical & sexual abuse
 - Isolation
 - Intimidation
 - Economic Abuse
 - Employment Related Abuse
 - Immigration related abuse
- Threats to kill or cause bodily harm
- Threats to harm children or family members
- Threats to take away children
- Threats to take away money

Approved VAWA petitions

- Protection from deportation and detention
 - deferred action status.
- Legal work authorization
 - 6 months if abuser citizen spouse (26.1%)
 - If abusive spouse is lawful permanent resident
 - 1 year 46.8% to 13-18 months 27.1%
- Ability to apply for lawful permanent residency through VAWA

THE U-VISA FOR CRIME VICTIMS



Crime Victim (“U”) Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

U Visa Criminal Activity

Domestic violence
Sexual assault
Rape
Incest
Prostitution
Torture
**Female genital
mutilation**
Felonious assault
Manslaughter
Murder

Stalking
Kidnapping
Abduction
Trafficking
**Involuntary
servitude**
Slave trade
**Being held
hostage**
Peonage

False Imprisonment
Blackmail
Extortion
Witness tampering
**Obstruction of
justice**
Perjury

Who can certify?

- Police officer
 - State
 - Local
 - Federal
 - University
- Prosecutor
- State or Federal Judge
- Immigration Officer
- Other authority with responsibility for investigation or prosecution of criminal activity

U Visa Law
Enforcement
Certification Resource
Guide
for Federal, State, Local, Tribal and Territorial
Law Enforcement
U.S. Department of Justice



“Investigation or Prosecution” Includes:



- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing

The U-Visa Process

- Government official signs certification
- Child and/or child's parent filed U-visa application
- DHS adjudication – grants/denies U-visa
- Approved = receive 4 year U-visa
- After 3 years some will qualify for lawful permanent residence
- Can apply for citizenship 5 years after receiving lawful permanent residency

****For more Details look Immigration Screening Checklist**

Legal Options for Immigrant Survivors **Discuss Options SA and DV survivors**

Immigration relief:

•VAWA self-petition

- Abused spouses/children of US citizens and lawful permanent residents
- Abused parents of U.S. citizens over 21 years of age

•Battered spouse waiver

- Abused spouses of US citizens with two-year conditional permanent residency

•T-visa

- Victims of severe forms of human trafficking

• U-visa

- “Crime victim’ s visa”

• Asylum

- Persecution based on protected classes

• Special Immigrant Juvenile (SIJ)

- Juveniles that have been abused, abandoned or neglected

• Deferred Action – Relief based on new DHS policies and for Child Arrivals

- Deferred action for “low priority” survivors, parents, and “dreamers”

Immigration Status Issues and Family Law Cases



What are the major family law issues that arise in cases of

- Immigrant domestic violence victims
- Immigrant sexual assault victims
- Immigrant child abuse victims
- Immigrant elder abuse victims

Immigration status not relevant to establishing jurisdiction in family court cases

- Protection order case
 - domestic violence crime committed in state or
 - victim needs protection in state
- Divorce case
 - residency of party in state
 - Legal immigration status not required to establish residency under state family laws
- Custody case
 - (UCCJEA, Federal PKPA, Hague Convention) often the home state of children
- Child support case
 - where child or non-custodial parent lives

Impact of Divorce

- VAWA self-petitioners
 - Must file within two years of final divorce
- Spouses and children of visa holders ends legal immigration status in the United States:
 - Students, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Employment based
 - Asylees
 - Family based
 - Cancellation of removal applicants

Annulment Instead of Divorce

- Annulment can lead to a marriage fraud finding that
 - Permanently bars approval of any visa petition
 - Is a ground for deportation
 - Can lead to an unfavorable exercise of discretion by an immigration judge not to immigration relief
- Impact on
 - Spousal support
 - Property division

Protection Orders and Immigrant Victims

Protection Orders and Immigration Status

- Issuance of a protection order has no effect on immigration status of the abuser
- Violation of a protection order is a deportable offense
 - Violations of “ the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable”
 - Not custody and support provisions
- Dangers for victims of a protection order issued against her

Creative Protection Order Remedies

- Catch all provisions included in all state statutes
- Offer any additional relief that may potentially
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrators ability to exert power and/or control
 - Offer victim remedy-relief for past abuse
 - Help victim overcome victimization and build new post abuse life
- Nexus With Victimization
- Opportunity for courts to counter immigration related abuse

CREATIVE REMEDIES

What creative protection order remedies might help an immigrant victim?

Victims Who Stay: Full Contact Protection Orders

- No state's protection order statute requires separation of the parties
- In virtually every state victims cannot violate their own protection orders
 - Contrary to statutory intentions; and
 - Against public policy to prosecute abused women for complicity in violating their own orders.
- Provisions
 - No abuse
 - Counseling

Suggestions for Court Orders that help VAWA applicants: Examples

- Cooperate in and not withdraw any immigration case filed on the victim's behalf
- Turn over documents/evidence in abuser's control that she needs for her immigration case. E.g.,
 - Passports
 - Identification documents
 - Copies of documents from any immigration case filed on the victim's or the children's behalf
 - Love letters
 - Family photos



A protection order or discovery can help a victim obtain needed evidence:

- Marriage certificate
- Wedding/family pictures
- Birth certificates
- Love letters
- Copies of joint leases/utility bills
- Police, medical, court documents about the relationship,
- Copy of abuser's green card or passport

Protection order or discovery continued

- School records
- Medical records
- Employment records
- Social security number information
- Health insurance
- Children's birth certificates
- Letters and other mail addressed to the victim and to the abuser at the same address
- Copy of I-130 petition

Catch-all Provisions Preventing Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare etc.) concerning the petitioner except
 - Police emergency
 - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities

Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order.
- Supervised visitation
- Bond

Important Economic Provisions

- Maintain medical, car, house insurance, mortgage, rent, utility and/or debt payments
- Child support and spousal support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)
- Taxes
 - Turn over income tax statements
 - Victim named trustee for receipt of tax return funds, respondent ordered to sign check
 - Victim awarded exclusive right to claim children as tax exemptions
 - Respondent pays victim $\frac{1}{2}$ of return

Screening for Immigration Remedies for Family Law Practitioners



Small group activity

- Discuss roles the lawyer and the advocate can play to support an immigrant victim with a family court case
 - The victim qualifies for VAWA or U visa immigration relief
 - How does the lawyer help the victim
 - How does the advocate help the victim
 - How do they work together

Safety Planning and Action Steps for Immigrant Mothers

- Timing of immigration and family court cases
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Understand and intervene early in child welfare system
- Victim must tell DHS enforcement officials that she has children
- Safety planning
 - Developing plan to ensure care of children if detained
 - Power of Attorney appointing guardianship
- Give client number for consular notification

Suggestions For Court Orders That Help VAWA Applicants -- Examples

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- Turn over documents/evidence in abuser's control that she needs for her immigration case. E.g.,
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 - Love letters
 - Family photos

Obtaining Custody of Children for Battered Immigrants





In a custody case what arguments might an abuser raise to the judge against an immigrant victim?





Abusers arguments

- Victim Will flee or be deported and will take children
- Need custody to confer citizenship benefits
- Undocumented parent less able to financially support child
- Ability to care for child
 - driver's license
 - Abuser can work victim cannot
 - Get public benefits for the children
- Child's best interests are to be placed with citizen parent

Large group activity

- Screening for Sexual Assault in family court cases
 - Benefits to case?

Small group activity

- In small groups with one attorney at each table
 - Advocates present best techniques for
 - Raising sexual assault with immigrant clients
 - Choose recorder for each group report back
 - Techniques learned

Immigrant Parents' Constitutional Right to Custody of Their Children

- Constitutional right to custody absent unfitness
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- **Child's best interests is most important**
In re Interest of Angelica L., 277 Neb. 984 (2009)



“Best Interest” Factors

Uniform Marriage and Divorce Act

- The wishes of the parents
- The wishes of the child
- The interaction/interrelationship of the child with parents, siblings, other significant persons
- The child’s adjustment to home, school, community;
- The mental and physical health of all individuals involved.

When Immigration Status is raised in Custody Proceedings

- Parent raises the other parent's undocumented or temporary immigration status
 - to prejudice the decision maker
- Courts should not rely on immigration status as a stand-alone factor
- Courts must decide child's best interests:
 - Who has been primary caretaker? What has been status quo?
 - Who has been primarily responsible for child's education and health care?
 - History of abuse (or sexual assault) perpetrated by 1 parent against the other

Rule 11 Sanctions



- Designed to deter malicious behavior, abuses and bad faith acts by
 - Attorneys and pro se parties
- Striking pleadings, written motions or other papers and
- Disciplinary sanctions
- When the claims, defenses or legal contentions are meant to
 - Harass
 - Cause unnecessary delay or
 - Increase the cost of litigation

Threats: Deportation Like Criminal Prosecution

- *An attorney who threatens criminal prosecution to a person involved in the same civil case commits moral turpitude, and the attorney's belief in the person's guilt is no defense, and not even a mitigating factor*
- *Threatening criminal prosecution in order to force a settlement of a civil action is illegal, improper and unprofessional*

File Motion In Limine

- Based on Rule 11 when
 - Threats of deportation or
 - To stop discovery of a VAWA immigration case



Make your Record

- If immigration status is raised by perpetrator – object as to relevance, get ruling
- Make court aware of case law and memos
- Establish what the status quo was
- Establish that awarding your client custody is in child's best interest
- If not granted, ask for specific findings and conclusions of law from Court

Go on the Offensive

- Cross examine the perpetrator on issue, i.e.:
- You knew where your wife (the mother of your children) was from.
- You didn't do anything to remedy your so called "problem" with her status did you?
- You could have, yet you chose not to for how many years?

Best Interests and Immigration

- No state family code lists immigration status or English language competency as a factor
- All states have provisions that encourage courts not to award custody to batterers
- As a general rule immigration status is NOT relevant to
 - Core primary caretaker determination
 - Evaluation of parenting skills

Best Interests and Immigration

- Don't let immigration information distract the judge from statutorily required best interest factors,
- Motion in limine keep reference to status out
- Many immigrant victims involved in custody cases will qualify for VAWA, T or U visa immigration relief but do not know it.
- Courts should be encouraged to think about which party is raising the immigration issue, for what purpose and why?

ABA Center on Children & The Law (1991)

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings...”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...”

ABA Center on Children & The Law (1991)

- “When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

Myths and Facts

- Lack of legal immigration status does not mean
 - Deportation is imminent
 - Parent is likely to flee U.S.
 - Victim parent does not qualify for immigration relief
- Make sure focus remains on best interest
 - Primary caretaker
 - History of domestic violence and presumptions this raises

Victim's lack of legal immigration status undermines children's stability – since the victim is undocumented her deportation is imminent...

- *If abuser argues that victim's immigration status undermines children's stability by alleging victim will be imminently deported...*
 - If eligible, help client apply for VAWA self-petition, VAWA cancellation of removal, U-visa, T-visa, or immigration case filed by perpetrator spouse or employer
 - Call immigration expert as witness to educate court about DV related immigration protections; deportation and removal priorities at DHS; and how civil violations of immigration law are not crimes
 - Provide court with copies of an overview of DHS policies protecting immigrant victims and parents in process of filing for immigration relief
 - Discuss steps perpetrator could have taken to apply for immigration status for victim
 - Discuss hypothetical case similar to client's, provide opinion about victim's possibility of receiving immigration benefits

When the abuser chooses not to file immigration papers for victim...

- Present evidence of immigration related abuse – demonstrate that the reason the victim does not have legal immigration status is that abuser never filed immigration papers on her behalf
 - Corroborates evidence of DV to support finding that children should not be placed in custody of abusive parent
- Present documentation of lawful presence and prima facie determination by DHS that victim has valid VAWA or U-visa case

Myths and Facts

- Need to be awarded custody to give child immigration benefits and citizenship
 - Parent can apply for child to have immigration benefits whether or not they have custody
 - Discuss chart

Abuser misrepresents to the court that only a parent with custody can sponsor the child for legal immigration status...

- Call expert witness immigration lawyer to testify that a custody award plays no role in a citizen or lawful permanent resident parent's ability to confer legal immigration status on an immigrant child. Unless
 - Immigrant child adopted before age of 16 has lived less than 2 years with the sponsoring adoptive parent or
- Divorce should have no effect on natural or adoptive parent's ability to confer status
- Except divorce prior to time a step child receives lawful permanent residency will result in denial of step child's application
- Unless citizen step parent has filed family-based petition for the child

Myths and Facts

- Undocumented parent cannot financially support child
 - Could the parent making claim have filed immigration papers for the immigrant parent?
 - Immigrant victim parents are likely eligible for immigration benefits that include:
 - legal work authorization
 - some access to benefits
 - Child support (and spousal support, if married) can and should be ordered

When abuser says immigration status impact's victims ability to work, support children, get public benefits ...

- Apply for VAWA, T or U visa as soon as possible
- Victim would have had legal work authorization if the perpetrator had filed a case for her
- Present evidence of pending VAWA self-petition or U-visa application to show client is on path to receiving legal work authorization
- Seek child support from perpetrator
- Submit brief to court or present expert explaining issue of access to public benefits for children in immigrant families

Your Client's Plan

- Establish that your client has been the primary caretaker
- Establish how decisions regarding child were made
- Establish what your client's plan is for her future and the future of the children

Myths and Facts

- Undocumented parent cannot receive public benefits for the child
 - Incorrect, they can apply for “child only” benefits

Getting Information Into the Court Record

- When representing an immigrant victim plan how you will get evidence into the custody case regarding
 - ABA report and recommendations
 - Immigration related abuse
 - Materials explaining VAWA, T and U visa immigration options
 - Articles on dynamics of domestic violence experienced by immigrant victims
- Ask the court to take judicial notice
- Prepare bench brief for the court on the issue citing and including copies of appropriate resources
- Expert testimony

When abuser threatens or takes steps to have victim deported...

- Help victim file VAWA, T or U case as soon as possible
- Have victim memorize her A# from receipt notice
- Collect evidence of battering, extreme cruelty or criminal activity to show DHS enforcement officials if she is stopped
- If victim has filed a VAWA, T or U case before you go to court take with you
 - Victim's receipt notice A#
 - DHS Broadcast on VAWA confidentiality computer system
 - DHS VAWA confidentiality policies
 - All available at iwp.legalmomentum.org

Myths and Facts

- Legal immigrants/naturalized citizens are more likely to flee with children
 - When there have been threats of kidnapping children
 - When they are dual nationals
 - Because they can travel freely to and from U.S.

*Victim's immigration status places the children
at risk of parental kidnapping by alleging
victim will flee...*

- Parent alleging the other parent will flee must prove that flight is imminent by showing:
 - Possession/purchase of airline tickets
 - Plans to move to another location
 - Proof of contacts, family, or job in other location
 - Economic capacity to relocate
 - Other evidence that the other parent is planning to leave with the children

When potential kidnapping is alleged

- Court should treat as in any other case
- Evidence court should examine includes evidence of the victim's:
 - Connections to the US
 - Connections to the home country
 - Plans to leave
 - History of traveling to and from the home country
 - Whether she has purchased airline tickets
- Immigration status may be relevant to determine
 - Whether her deportation is imminent
 - Whether the parent making allegations could have filed immigration papers for the abused immigrant parent and did not
 - The history of immigration related abuse in the relationship
 - Expert testimony on these issues useful to the court

Dangers of International and Interstate Parental Kidnapping

- Behavioral indicators for parental abduction include when foreign-born parent:
 - Threatens to take the child;
 - Has no financial or emotional ties to U.S. and/or community in which the children live;
 - Has resources to survive in hiding;
 - Rejects or dismisses child's mixed heritage;
 - Feels separation/divorce constitute severe loss or humiliation; and
 - Has family and social support in country of origin

Special Custody Issues When Immigrant Parents Are for Detained

Emerging Trend: Termination of Parental Rights of Immigrant Parents

- Immigration enforcement against an immigrant parent can lead to loss of child and placement in foster care
- Loss of child when immigrant parent seeks services
 - Example: Hospitals
- Many cases problem compounded by hospitals, police, child protective services and courts not providing
 - Meaningful language access
 - Recent letter from Attorney General Eric Holder to Courts on language access to courts

How Victims End Up In DHS Custody

- Abusers/crime perpetrators report them
- Employers or co-workers report them
- Traffic stops
- Immigration enforcement at the worksite
- Reports by CPS
- Reports by welfare worker
- Reports by health care providers
- Reports by others
- Victims call the police for help and police
 - Make a dual arrest
 - Arrest the victim
 - Language access issues

Maria Luis Case

- Maria Luis is an undocumented Guatemalan national.
- She has four children, 2 in the United States and 2 in Guatemala. Her youngest child, Angelica, is a United States Citizen.
- Angelica was born with respiratory problems and has had to go to the emergency room several times since her birth
- The last time Maria Luis took Angelica to the emergency room she was told to bring the child back for a follow up visit (in a language she did not speak), she failed to do so.
- The hospital reported the situation to CPS, who subsequently took custody of Maria Luis and placed her 2 children who were with her in the U.S. in foster care
- It was discovered that Maria Luis was undocumented and she was detained by DHS and eventually deported

Maria Luis Case

- While in DHS custody, the state sought to terminate Maria Luis's parental rights
- The family court judge found Maria Luis to be an unfit parent and decided that it was in the best interests of her children to be raised in the US in the custody of foster parents.
- Maria Luis was not given proper notice of the parental rights termination hearing in her native language, did not hear or get a written copy of the family reunification plan in her native language, nor did she receive hospital instruction in her native language

WHAT MIGHT YOU DO TO HELP MARIA LUIS?

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

Challenges of Reunification for Immigrant Parents and Victims

- Lack of language access to system
- Lack of information about immigrant parent victim's legal rights
- Limited or lack of eligibility for public-funded services
- Limited timeframe for filing termination of parental rights (TPR) petitions under the Adoption and Safe Families Act
 - conflict with immigration case time frames
- DHS not bringing immigrants in custody to family courts

Challenges of Reunification for Detained or Deported Parents

- Limited ability to participate in court proceedings and case plan
 - New come up procedures
- Limited cooperation or communication between DHS and child welfare agencies
- Difficulty of communicating with detained immigrants new procedures
- Challenges in finding relative placement (both domestic and international)
- Making travel arrangements for children

Lessons Learned

- Due Process: Court documents and proceedings in immigrant parents' native languages
- Improper for Court to weigh where children "better off"
- Consular Notification, Consular Notification, Consular Notification!!!
- Preventive Measure: Execute Power of Attorney



Safety Planning and Action Steps for Immigrant Mothers

- Timing of immigration and family court cases
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Understand and intervene early in child welfare system
- Victim must tell DHS enforcement officials that she has children
- Safety planning
 - Developing plan to ensure care of children if detained
 - Power of Attorney appointing guardianship
- Give client number for consular notification



Technical Assistance

- PowerPoint and materials from this training
 - www.niwap.org/go/kansas
- NIWAP's technical assistance
 - (202) 274-4457
 - niwap@wcl.american.edu
- Web Library NIWAP and Legal Momentum
 - iwp.legalmomentum.org
 - Training materials
 - Tools for advocates
 - Multi-lingual materials for immigrant survivors
 - National online directory of programs serving immigrant survivors

CLOSING AND EVALUATION