Issues, Rights & Danger Assessment for Immigrant Intimate Partner Violence Survivors

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National Immigrant Women’s Advocacy Project
Resource Library: iwp.legalmomentum.org
Learning Objectives

• Understand of the dynamics of violence against women experienced by non-citizens
• Be able to identify legal options for immigrant survivors
• Understand the role you play in assessing danger is central to immigrant victims access to immigration and justice system protections
U.S. Immigrant Demographics

• “Immigrant” = born outside the U.S.
• 38.5 million immigrants in U.S (MPI 12/10)
  • 12.5% U.S. population (MPI 12/10)
• Today over 27% of U.S. population are immigrants or children of immigrants
  • (US Census)
• 21.2% increase in foreign born population between 2001 and 2009
Language Spoken at Home

(US Census 2010)

- 35.3 Million – Spanish
- 2 Million – Chinese, Mandarin, Cantonese
- 1.6 Million – French or Haitian Creole
- 1.3 Million – Filipino, Tagalog
- 1.1 Million – Vietnamese
- 959,673 - Russian
- 857,642 – German
- 682,879 - Arabic
- 665,369 - Russian
- 589,509- Italian
<table>
<thead>
<tr>
<th>Years Since Immigration</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>0-5 years</td>
<td>17%</td>
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<tr>
<td>6-10 years</td>
<td>17.4%</td>
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<tr>
<td>11-15 years</td>
<td>13.3%</td>
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<td>15-20 years</td>
<td>12.8%</td>
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<tr>
<td>21+ years</td>
<td>39.4%</td>
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<tr>
<td>More than 47.7% arrived after August 1996</td>
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DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS AND THEIR CHILDREN
NIJ funded research on protection orders and immigrant survivors:

- With advocate’s support, immigrant victims will use and benefit from protection orders
  - 60.9% first learned about protection orders from their advocates/legal services attorneys
  - 81% chose to seek and received a protection order with help from advocate/attorney
- Evidence of benefits of safety planning
  - Strong correlation between severity of violence and undocumented immigrant victims’ willingness to seek a protection order
  - 96% found them helpful
  - Protection orders reduced violence, but –
    - 68.3% of violations immigrant related abuse
Advocacy Makes a Difference

• Safety Planning and Advocacy Work
  – Victims learned about CPO
  – Advocates assessed lethality
  – When high risk of lethality, more immigrant victims working with sought orders
  – With this help, process was easier than women expected

• Challenge: effective advocacy in an age of immigration enforcement
Advocates are key for immigrant survivors access to services

- Once immigrant survivors with advocate support seek protection orders
- Factors in Immigrant victims calling police for help
- Positive Factors:
  - Length of time in the United States
  - She had spoken to 2 or more persons about the violence
    - (46% know other women victims)
  - Her children witnessed the abuse
  - She had a protection order
- Negative Factor:
  - Victim’s immigration status
Immigration Status Affects Willingness to Call Police

- Significant difference between victims willingness to call the police related to their immigration status:
  - Stable (citizen/permanent resident) 34.4%
  - Temporary (temporary visa) 16.7%
  - Undocumented 14.8%
Primary support persons with whom battered immigrants are willing to discuss abuse

- Female Friend: 49.6%
- Mother: 30.1%
- Sister: 22.5%
- Another Battered Woman: 10.4%
- Shelter Worker: 9.5%
Percent receiving services vs. percent disclosing abuse

- Lawyers/Legal Services (50.1% vs. 8.7%)
- Doctor/Nurse/Health Care (59% vs. 4.6%)
- Social Services/Social Worker (58.2% vs. 6%)
- Police (11.9% vs. 8.4%)
- Job Training/ESL (36.7% vs. 1.5% employer)
- Religious organization/worker (5.4% vs. 8.4%)
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
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
Sexual Assault Among Immigrant Women

• Immigrant women are particularly vulnerable to recurrent sexual assault
• School aged immigrant girls are twice as likely to have suffered sexual assault as their non-immigrant peers to have suffered sexual assault
• Increased vulnerability may stem from
  – Increased isolation
  – Break-up & restructuring of families during immigration process
  – younger immigrant girls being actively targeted by sexual assault perpetrators who see them as particularly legally and socially vulnerable
Domestic Violence Prevalence Rates 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 (50.8%) married to citizens and lawful permanent residents who could file immigration papers for them
  – 72.3% never file immigration papers.
  – The 27.7% who did file had a mean delay of 3.97 years.
Abuse Rates Rise When U.S. Born Citizen Marries Immigrant Woman

• U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
• Almost three times the national average
Immigration-Related Abuse

- Immigration related abuse =
  - Threats/Attempts to have her deported
  - Threats to and acts to withdraw papers
  - Calls to USICE to turn her in – have her case denied

- Keeps victims from
  - Seeking help
  - Getting protection order
  - Calling police
  - Cooperating in prosecutions

- NIJ Research found that 65% of immigrant victims report some form of immigration related abuse
Immigration Related Abuse as a Lethality Factor

• 10 times higher in relationships with *physical/sexual abuse* as opposed to *psychological abuse*

• Lethality factor could predict escalation

• Corroborates existence of physical/sexual abuse
Immigration Related Abuse as Coercive Control

- Any time relationship and control over victim’s immigration status
  - Family Violence
  - Sexual Assault in the workplace
- Cohesive control (Mary Ann Dutton)
  - Isolation
  - Intimidation
  - Economic Abuse
  - Immigration related abuse
Immigrant Victims Legal Rights

• Federal/State funded services
• Legal Services
• Justice System Help
• Victim Services
• Immigration protections
Both Documented & Undocumented Immigrant Victims Can Access

- Protection Orders
- Shelter
- Transitional Housing
- Child Custody and Support
- Receive Emergency Medical Care
- Police Assistance
- Have Their Abusers Criminally Prosecuted
- Assistance for Crime Victims
- Obtain Public Benefits for Their Children
- Legal Services
- Language Access
Attorney General’s List of Required Services

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

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Nutrition programs for those requiring special assistance
Health Care Open to All Immigrants

• Community and migrant health clinics
  – www.nachc.com
  – www.hrsa.gov
  – Enter zip code
• State funded programs
• Post assault health care paid by VOCA
• Immunizations, testing, and treatment of communicable diseases
• Emergency Medicaid
Partial List of Federal Public Benefits/Community Programs Open to All Qualified Immigrants

• Public and assisted housing
• Post-secondary educational grants & loans
• Social services block grant programs
• Child care
• Adoption assistance
• Foster care
• Low income energy assistance program
• Disability benefits
• Assistance to developmentally disabled
• Job opportunities for low income individuals
Federal Means-Tested Public Programs have most limited immigrant access

- **TANF**: 5 year bar, after 8/22/96
- **SSI**: Refugee/Trafficking victims
  - Lawful permanent residents: only if 40 quarters or work credit and qualified immigrant status for 5+ years if entry after 8/22/96
  - Veterans and qualified immigrant spouses, children
- **Food Stamps**
  - Qualified Immigrants 5 year bar post 8/22/96
- **Medicaid and Child Health Insurance Program**
  - Health Care reform opened up access to immigrants who are “lawfully present”
Food Stamps for Qualified Immigrants

• Children under 18
  – regardless of date of entry
• Receiving disability benefit
  – regardless of date of entry
• Persons who have been qualified immigrants for five years or more
• Refugees or Asylees
• Human Trafficking victims
• Persons credited with 40 quarters of work
Immigration Options
Potential Immigration Remedies

• Applications filed DHS
  – VAWA self petition
  – Battered spouse waivers (spouses of USCs with conditional permanent residency)
  – U visa
  – T visa (victims of trafficking)
  – Asylum (persecution based on protected classes)
• Forms of relief from removal- granted by Immigration Judge
  – VAWA cancellation of removal
  – VAWA suspension of deportation
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
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
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
Criminal activities covered by the U-visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Prostitution
- FGM
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- Any similar activity

National Immigrant Women’s Advocacy Project at the American University Washington College of Law
Who can certify?

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

- Protections for crime victims
  - Initiation of VAWA confidentiality computer check system (12.21.2010)
  - Prosecutorial discretion for crime victims (6.17.2011)

- 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)

  - Breastfeeding mothers
  - Sole/primary caregivers of children
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 of 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
A NEW ERA IN SAFETY PLANNING WITH IMMIGRANT SURVIVORS
Safety Planning and Action Steps for Immigrant Survivor Mothers

• Timing of immigration and family court cases
• New safety planning flow chart
• 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
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
IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY

Is the survivor eligible for immigrant relief under either VAWA or the U-visa?

HIGH

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

LOW

File for a Civil Protection Order to deter abuser from committing further violence against survivor

Abuser attempts to get survivor removed from the U.S. by reporting the survivor to DHS

Survivor is detained in immigration custody

File/Serve abuser with notice of a Civil Protection Order (and/or any other family court proceeding, if applicable) to deter abuser from committing further violence against survivor

File for immigrant relief through either VAWA or the U-visa

Abuser attempts to get survivor removed from the U.S. by reporting the survivor to DHS

Gather information/evidence of crime victimization that could be used to elicit favorable prosecutorial discretion on humanitarian grounds for the survivor, including the following factors:

- Survivor of a crime (never called the police)
- Parent of USC children
- School children

[Survivor’s case is flagged in the VAWA 384 computer system to prevent immigration enforcement]

[Wait approximately 9 months – one year for VAWA/U-Visa]

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- Survivor of a crime (never called the police)
- Parent of USC children
- School children

Abuser attempts to get survivor removed from the U.S. by reporting the survivor to DHS

DHS enforcement stopped because of 384 system (protection from deportation)

Provide information for survivor to be released on humanitarian grounds, if eligible

[Approved petition grants survivor work authorization]

IF APPROVED...

Survivor is released from detention.

Case against survivor is automatically dismissed even if U-visa or VAWA status has not been approved

IF APPROVED...

Request a stay of removal with DHS-ICE to buy time to determine what other options are available to the survivor

Determine that the survivor is eligible for U-visa or VAWA, file for immigration remedy and ask for expedited processing

DHS stops enforcement

Victim’s representative/advocate/attorney provides evidence gathered for DHS + copies of DHS memos when DHS arrives

File/Serve abuser with notice of a Civil Protection Order (and/or any other family court proceeding, if applicable) to deter abuser from committing further violence against survivor

National Immigrant Women’s Advocacy Project at the American University Washington College of Law

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Technical Assistance and Materials

- Power Point presentations and materials for this conference at niwap.org/go/ivat
- NIWAP Technical Assistance:
  - Call (202) 274-4457
  - E-mail niwap@wcl.american.edu
- Website: www.wcl.american.edu/niwap