

Freedom from Fear: Helping Undocumented Victim of Domestic Violence

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Dynamics of Domestic Violence and Sexual Assault Experienced By Immigrant Victims: Barriers to Justice System Assistance

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

Sexual Assault Among Immigrant Women

- 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

Connection Between Abuse and Control Over Immigration Status

- Immigrant women lifetime abuse rates as high as 49.8%
- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

The Power of Control Over Immigration Status

- Of spouse 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 Lock's Immigrant Women in Abusive Relationships

- Keeps victims from
 - seeking help
 - Getting protection order
 - Calling police
 - Cooperating in prosecutions
- Affects victims documented and undocumented
- 65% of immigrant victims report some form of immigration related abuse (NIJ)

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

Barriers for Noncitizens

- Fear of Deportation
- Fear of losing custody/access to children
- Language access
- Lack of understanding of U.S. Laws
- Abuser's power and control over victim's immigration status
- Local police involvement with immigration enforcement

Factors Affecting Immigrant Victim's Willingness to Call Police for Help

- Positive Factors:
 - Length of time in the United States
 - She had spoken to 2 or more persons about the violence
 - 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%

Protecting Immigrant Mothers, Protects Children

- Immigrant victims who receive help including immigration relief child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

NIJ Funded Immigrant Victims and Protection Order Study Findings

- With advocate support immigrant victims will use and benefit from justice system assistance
 - 60.9% of victims first learned about protection orders from their advocates
 - 81% got protection order with help from advocate
 - 96% found them helpful
 - 68.3% of violations of immigrant victim's protection orders were
 - ongoing immigration related threats and abuse

The Importance of Immigration Status

- Severs dependence on potential abusers
- Protection from detention and deportation
- Ability to work legally
- Improved access family law remedies, such as protection orders and custody
- Path to lawful permanent residency and ultimately citizenship
- Increased access to public benefits, including housing
- Ability to travel to and from the U.S. (with some exceptions)

Why Legislative Reforms Were Needed to Help Battered Immigrants

Immigration Law Historically Gave:

- Spouses and Parents
- Control over the immigration status of
- Alien spouse and children
- Citizen or permanent resident controls
 - Whether to file
 - When to file
 - Whether alien family member can attain or keep legal immigration status

Dependence On Spouse For Legal Immigration Status

- Exacerbates:
 - Likelihood of domestic violence
 - Severity of the violence
 - Isolation of the victim from help
- Higher Risk When Abuser is a
 - Spouse; and a
 - Citizen
 - Lawful permanent resident
 - Lawful Immigrant Visa Holder

Prior to the Violence Against Women Act 1994- Immigrant Victims Had:

- Little access to civil legal remedies
- Limited ability to attain criminal justice system help
- Little or no language access to justice
- No independent access to legal immigration status
- Few programs nationally helping immigrant victims

Violence Against Women Act of 1994 -- Purpose

- Federal role in stopping
 - Domestic violence
 - Sexual assault
 - Trafficking in persons
- By meeting two equally important goals
 - Increasing justice system's role in offender accountability
 - Offering services, protection, counseling for

VAWA Immigration Provisions Needed To --

- Sever abuser/perpetrator control over
 - Criminal justice system intervention
 - Victim and children
 - Locking them in abusive relationships
 - Keeping them from seeking help
- Provide victims access to services, help, healing, safety, and economic security

VAWA 1994 -Immigration

- VAWA self-petitioning battered
 - *Helps victims of family violence perpetrated by a US citizen or lawful permanent resident who is a--*
 - *Spouse/former spouse*
 - *Parent/step-parent*
 - *Over 21 year old citizen son or daughter*
- VAWA suspension of deportation
- VAWA credible evidence standard
- Connection with VAWA goals
 - Offender accountability
 - Victim assistance and protection

VAWA 2000 Brought Further Help for Immigrant Victims

- U-Visa for victims of crime
- T-Visa for trafficking victims
- Expanded VAWA confidentiality protections
 - Bar on use of abuser provided information
 - Prohibition against release of information about VAWA, T or U visa case
 - Locational prohibitions

U-Visa Helps Victims

- Domestic violence when abuser is
 - Undocumented, Not a spouse. US citizen boyfriend
 - Any family member
 - Work or student visa holder
 - Diplomat
- Victims of rape or sexual assault
- Nannies and domestic workers abused by their employers
- Trafficking victims
- Victims of violence crime

Understanding Behind U and T visas

- If victims are too afraid to come forward --
No prosecutions
- Deportation no longer a tool in the hands of perpetrators
- Promote crime victim cooperation in
 - detection OR investigation OR prosecution

Potential Immigration Remedies

- Applications filed DHS
 - VAWA self petition
 - Battered spouse waivers (spouses of USC's 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

LEGAL – VAWA cancellation of removal

momentum

Advancing Women's Rights

– VAWA suspension of deportation

New York and Washington, D.C.



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



Crime Victim (“U”) Visa Requirements

- Substantial physical or emotional abuse from criminal activity
- Possesses information about criminal activity in the US or violates US law
- Victim has been, is likely to be or is being helpful to detection, investigation or prosecution of criminal activity
- Must include certification from a government official
- Can lead to lawful permanent residency



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

The U-visa Process

1. Certification
2. Application
3. Approval – Deferred Action
4. U-Visa status 4 years
5. Some will qualify for lawful permanent residence

U-visa Certification: Considerations For Law Enforcement

- Identify the victim
 - Note injuries observed
- Helpfulness of the victim
 - Current or past
 - Willingness to be helpful
- Any family members implicated in the crime
- Goal: Identification of the crime, the victim and initiation of the process

Which U-Visa Recipients Can Obtain Lawful Permanent Residence?

- Did not unreasonably refuse to cooperate in the detection, investigation or prosecution of criminal activity; AND
 - Humanitarian need; OR
 - Family unity: OR
 - Public Interest
- Homeland Security review of cooperation and the reasonableness of non-cooperation is required for lawful permanent residency
- After 5 years lawful permanent residency can apply for naturalization

VAWA Protections In a Time of Increased Immigration Enforcement

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Undermines community policing
- Victims safety concerns
 - Transportation
 - Timing of help offered
 - Maintaining custody of children
- Early identification of victims who qualify for VAWA, T or U immigration benefits

Early Identification and Certification Is Crucial for Victim Safety

- Victims who are eligible for
 - VAWA
 - T-visas
 - U-visas
- Sole and primary caretaker parents

DHS Humanitarian Release

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

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

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

August 2010 DHS Policy

- Dismissal without prejudice of removal case if DHS believes the applicant is likely to receive an immigration benefit
- Unless applicant
 - Has criminal convictions or misconduct
 - Is a threat to public safety or national security
 - Evidence of fraud
- Importance of Predominant Aggressor Determination

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