

Webinar

**Safety Planning for
Survivors in Light of
Immigration Enforcement
and DHS' New Policies**



Background



VAWA: Legislative History

- Congress created immigration protection for immigrant victims of domestic violence, sexual assault and human trafficking
- With the express intention of removing immigration status as a tool that abusers can use against survivors
- By federal law, all victim services are to be provided without the requirement that providers ask questions about immigration status

Help all victims can access -- including immigrant victims:

- Justice system relief
 - Protection orders
 - Criminal investigations and prosecutions
 - Custody
- HHS funded and emergency health care
 - Hrsa.gov
- Victim services
- Shelter and transitional housing
- Legal services
- Programs protecting life and safety

Legal options for immigrant 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"
Applications filed DHS
- 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
 - Deferred action for "low priority" survivors, parents, and "dreamers"

Overview

VAWA

vs.

U-visa

- Abuser = spouse, former spouse, parent, 21+ USC child
- Abuser must be USC or LPR
- Can apply for children
- No cooperation with law enforcement required
- No proof of harm **required**
- Experienced Battery or "Extreme Cruelty"
- Criminal involvement can cut off access to relief
- Qualified immigrant = public benefits
- One-year wait for work authorization
- Protection from deportation for one year
- Green card usually given after approval if abuser is a citizen

- Abuser = anyone
- Abuser can have any status
- Children included
- Cooperation in detection, investigation or prosecution required
- Substantial physical or emotional abuse
- Crimes can be waived
- PRUCOL less benefits access
- About 9 months wait for work authorization
- If in immigration proceedings, case can be expedited
- Green card received after 3 years **if** can show cooperation + either humanitarian need, public interest or family unity

Forms of relief from removal granted by Immigration Judge

- VAWA cancellation of removal
- VAWA suspension of deportation
- Pending petitions for immigration benefits
 - Expedited adjudication
 - Dismissal without prejudice
 - Cases administratively closed
 - In the future may be able to apply for employment authorization

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 children's best interest to stay with/be reunited with their parent(s)
- 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 = most important**
 - **A comparison of natural vs. adoptive parent's cultures, countries or financial means is inconsequential in this determination**



**Screening and
Safety Planning
in the Context
of Immigration
Enforcement**

How Survivors 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
 - Encounter language barriers when communicating with the victim

Immigration Enforcement

- Increased funding for DHS may lead to greater likelihood of DHS response to perpetrators' 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-visa immigration benefits



Early Identification of Immigration Remedies Crucial to Victim Safety

- Important to identify victims who are eligible for:
 - VAWA
 - T-visas
 - U-visas
- Low Priority Survivors
 - Sole and primary caretaker parents of young children
 - Eligible “Dreamers”

VAWA Confidentiality

- DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
- DHS cannot disclose VAWA information to anyone (except in limited circumstances)
- Prohibited from conducting enforcement action at certain locations

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

Immigration case can be dismissed if 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

DHS required to refrain from enforcement also at:

- Schools
- Institutions of education
 - Head start
 - Child care
 - Colleges/universities
- Funerals
- Places of worship
- Religious ceremonies

384 Red Flag VAWA Confidentiality System

(December 10, 2010)

- New computerized system's "384" flags signify that the individual has a pending or approved VAWA confidentiality-protected case
- This system will help stop removal of victims with pending and approved VAWA, T- and U-visa cases

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

(June 17, 2011)

- To 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
 - Victims to call the police and pursue justice

DHS and White House Working to Ensure Enforcement Conforms to DHS New 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 on a case-by-case basis to the agency in "low priority" cases
- Prioritize use of enforcement personnel, detention space and removal on:
 - National security
 - Border security
 - Public safety
 - Integrity of the immigration system

White House and DHS Announcements (August 18, 2011)

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

Detention Release - Immigration Court

Dismissal of Case per DHS Policy

(August 20, 2010)

- Release for immigrants with filed, pending or approved applications for immigration benefits
 - U-visa
 - T-visa
 - VAWA
 - Family Petition
- Dismissal without prejudice of immigration court case if:
 - Immigration case likely to be approved
- **Unless applicant:**
 - Has criminal convictions or misconduct
 - Is a threat to public safety or national security
 - Evidence of fraud

Positive Factors: Low Priority Cases

- 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*

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

Deferred Action for Dreamers including those who are immigrant victims

- **Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children Memo (June 15, 2012)**
- permits certain young people who were brought to the United States as young children, do not present a risk to national security or public safety, and meet several key criteria to remain in the U.S.

Deferred Action for Dreamers

- brought to U.S. before the age of 16;
- continuously present for 5 years preceding June 15, 2012;
- present on June 15, 2012;
- currently in school, has graduated from high school, has obtained a GED, or is an honorably discharged veteran of the military;
- no major criminal history

Countering Misinformation

- Proposed changes in VAWA reauthorization causing confusion in the field
- IMPORTANT NOTE:
- No changes to VAWA as of this date for immigrant survivors

Key Role of Advocates

The Advocate's Role

- Advocates play a key role in informing immigrant survivors about these options and collecting the evidence needed to attain lawful immigration status
- Familiarize yourself with the options and resources available to immigrant survivors and new federal policy on immigration relief and deportation

The Advocate's Role (cont.)

- Be able to connect immigrant survivors to resources with expertise on immigrant survivors' legal rights
- Understand what are possible "red flags" for immigration relief

Learning About a Client's Immigration Status

Small group discussion:

- At what point do you raise the question?
- What are some signs that might lead you to ask?
- How would you ask the question without scaring away your client?
- Why is asking sooner rather than later important?



**An immigrant survivor walks
through the door of your
agency.**

What do you do?

Safety Planning and Action Steps for Immigrant Survivor

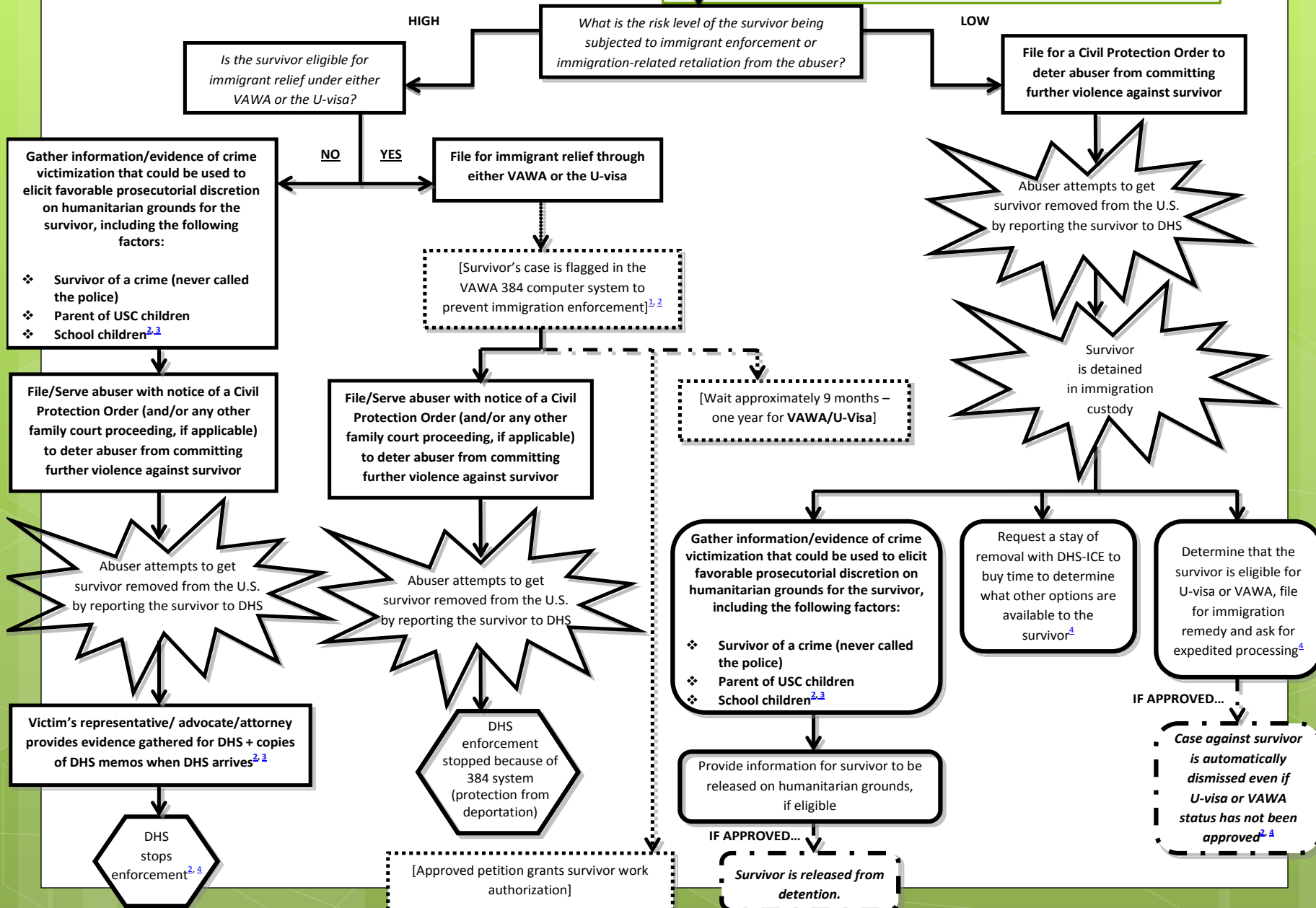
- Tools
 - New safety planning flow chart
 - Immigrant victim brochure
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Understand and intervene early in child welfare system
- Victim must tell DHS enforcement officials that she has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

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 = Health Care
- Filing for immigration benefits required for VAWA self-petitioners to become qualified immigrants eligible for
 - Federal public benefits
 - State funded benefits (differs by state)

IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY

2/23/2015



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

Challenges Related to Enhanced Immigration Enforcement

- Immigration screening as early as possible is essential
- Cannot assume by name or sight that the survivor is or is not an immigrant
- Changes in strategy – Immigration case filed before
 - CPO, family or criminal court case
 - Victim travels to new location

Early Survivor Identification, U-visa 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

Early Survivor Identification, Certification & VAWA/U-Visa Filing (cont.)

- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator

Screening for “Red Flags”

- Entry as an international exchange visitor
- Previous deportation/removal from the U.S.
- Failure to voluntarily depart
- Departure since original entry
- “Alien” smuggling
- Marriage fraud

Screening for “Red Flags” (cont.)

- Criminal convictions
- Penal confinement (as a result of conviction)
- Prostitution
- Drug or human trafficking
- Falsely claiming citizenship
- False testimony for immigration purposes

What Can Programs and Advocates Do to Be More Welcoming to Immigrant Survivors? (cont.)

- Institute policies that give immigrant survivors the support that the familiarity of their own culture brings
 - Access to familiar sleeping arrangements and ethnically-specific food at shelters
- Promote learning and understanding of culture among shelter residents

Steps You Can Take

- Help immigrants overcome the differences in laws and the court system in the U.S.
 - Explain in detail about the laws and court system
 - Take immigrant survivors to court in advance of their case so they can see a courtroom where battered immigrants are receiving court orders to protect them
 - Avoid using legal jargon or abbreviations



What technical assistance is available to help advocates work with immigrant survivors?

Technical Assistance

- PowerPoint and materials from this training
 - www.niwap.org/go/ovw-webinar-victims-DHS
- 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

National TA Providers

- National Immigrant Women's Advocacy Project - niwap@wcl.american.edu or (202)274-4457.
- ASISTA - questions@asistahelp.org