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Access To Programs And Services That Can Help Battered Immigrants^{1,2}

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Chapter Overview

Despite recent legal changes that restrict immigrant access to many forms of public assistance, battered immigrants continue to remain eligible for a wide array of programs and services.³ In recognition of the special needs of victims of domestic violence, the federal government has lifted many of the restrictions it otherwise imposes on immigrant access to legal and social services, allowing nonprofit organizations to provide a variety of services to battered immigrants regardless of their immigration status.⁴

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2 In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

³ For more information on this topic, visit <http://niwaplibrary.wcl.american.edu/public-benefits>.

⁴ It is important to note that despite immigrant restrictions on government services, nonprofit charitable organizations have no legal obligation to inquire about the immigration status of persons who seek their services, nor do they have a legal

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This chapter highlights several important types of assistance that nonprofit organizations serving immigrant victims of domestic violence may provide and discusses the requirements that service providers must meet when working with battered immigrant populations. Specifically, the chapter describes shelter services, victim compensation, legal assistance, and other types of federal benefits that organizations may provide to battered immigrants. Next, it discusses federal laws prohibiting service providers from discriminating on the basis of national origin and requiring them to provide services without regard to immigration status when necessary to protect the life and safety of a victim.

Access to Shelter

INTRODUCTION

According to federal law and orders issued by the U.S. Attorney General, undocumented shelter residents qualify for federally funded emergency and short-term shelter and housing programs, as well as other forms of state and federally funded assistance necessary to “protect life and safety.” In addition, service providers who receive funds under other federal programs may help undocumented immigrants if they provide assistance regardless of income eligibility criteria. As a result, shelters can use certain types of federal funding to house undocumented women and to provide other social services to battered immigrants without penalty. This section discusses the legal and funding guidelines that permit and require domestic violence shelters to provide assistance to all battered immigrant women regardless of immigration status by treating them as they would any other battered woman or shelter resident.

With recent changes in federal immigration and welfare laws, there has been much concern in the domestic violence advocacy community about providing shelter and transitional housing services to battered immigrant women. Two major fears were whether shelter advocates could house undocumented residents without risk of losing federal funds and whether battered immigrants could qualify for shelter services or certain other types of public assistance in the first place. As a matter of law, battered immigrant women have full access to government funded domestic violence shelters and services *even if* they are undocumented. Furthermore, federal laws and decisions confirm that domestic violence service providers should provide shelter services, emergency services, short-term housing, domestic violence services, counseling, and most other services to undocumented battered women in the same manner that these services are available to all other battered women. Programs that turn away undocumented battered immigrants risk being charged with discrimination in violation of Federal law and loss of federal funding.

While the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (commonly referred to as PRWORA or the Welfare Reform Act) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) cut certain benefits for certain immigrants, Congress and the U.S. Attorney General have affirmed that public benefits should be available to help battered immigrants rebuild their lives after leaving their abusers. Thus, many battered immigrant women remained eligible for and were granted increased access to public benefits. These amendments underscore Congress' commitment to ensuring that battered immigrant women have full access to services and protection from ongoing abuse.

Moreover, all battered immigrants qualify for federal, state, and locally supported emergency and short-term shelter programs, regardless of immigration status. This understanding is derived from the Welfare Reform Act, IIRAIRA, orders of the U.S. Attorney General, the Fair Housing Act, the McKinney Homeless Act, the Violence Against Women Act (VAWA), and guidance issued by federal agencies that serve domestic violence victims. This section will explain how each of these legislative acts and executive decisions protect a battered immigrant's right to shelter services and other types of public assistance, exempt shelters and other domestic violence service providers from the U.S. Citizenship and Immigration Services (CIS) verification and reporting guidelines, prevent discrimination against immigrants, and allow federal funds to be allocated to shelters and other organizations serving battered immigrants.

obligation to report this information to the Immigration and Naturalization Services (now CIS, the United States Bureau of Immigration and Customs Enforcement). 8 U.S.C.S. § 1642(d).

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PROVISION OF SHELTER SERVICES UNDER WELFARE REFORM AND THE U.S. ATTORNEY GENERAL'S LIST OF SERVICES NECESSARY TO PROTECT LIFE AND SAFETY

The Welfare Reform Act put in place major changes to the welfare system in an effort to “promote[s] work over welfare and self-reliance over dependency.”⁵ However, while Congress wanted to shrink the rolls of the welfare system, it acknowledged that some people still needed assistance and could not be abandoned. To assist these needy persons, the bill “retains protections for those who experience genuine and intractable hardship.”⁶ Congress recognized that “qualified aliens” are exempt from certain federal benefits cutoffs.⁷ Battered immigrant women and children abused by U.S. citizen or lawful permanent resident spouses, former spouses, or parents are included in this qualified alien exemption category.⁸

Moreover, while state and local government officials are allowed to contact the BCIS for information on a person’s immigration status, the Welfare Reform Act does not explicitly require them to do so.⁹ The Act is written in this way as a compromise to offer officials the flexibility not to report, when doing so would be contrary to other state interests (i.e., prosecuting crimes or protecting victims of domestic violence).

The Welfare Reform Act also gives the U.S. Attorney General the authority to exempt certain programs from any restrictions on immigrant access to services and benefits, even if they are state or federally funded. Programs that meet the following criteria are required to provide services to all persons without regard to immigration status.¹⁰ These programs are also completely exempt from any requirements that they verify or report the immigration status of persons seeking or receiving their services. To be exempt, programs must:

- offer in-kind services¹¹
- provide services at the community level
- provide services regardless of the individual’s income or resources and
- be necessary to protect life or safety¹²

The following public assistance programs provided by community-based agencies have been designated by the U.S. Attorney General to be open to all persons, even undocumented immigrants, without regard to immigration status:¹³

- Crisis counseling and intervention programs;
- Services and assistance relating to child protection;
- Adult protective services;
- Violence and abuse prevention;
- Services to victims of domestic violence or other criminal activity;
- Treatment of mental illness or substance abuse;
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, and runaway, abused, or abandoned children;
- Programs to help individuals during periods of adverse weather conditions;

⁵H.R. REP. NO. 104-725, at 261 (1996).

⁶*Id.*

⁷The term “qualified alien” refers to non-citizens who are nonetheless eligible for public benefits.

⁸Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 501(c), 110 Stat. 3009-625 (1996).

⁹H.R. REP. NO. 104-725, at 383 (1996).

¹⁰ See VAWA 2013 § 1231 and INA . §105(d)(7) 22 U.S.C. 7103(d)(7) which require the Attorney General to report on the efficiency of T and U visa processing, on efforts to train law enforcement at the State, Tribal, and local levels to investigate trafficking, and on how Federal trafficking programs meet the needs of US citizen or lawful permanent resident minor victims.

¹¹“In-kind” services are those that involve the provision of goods or services, not cash payments, to persons. These services could include food, clothing, shelter, legal assistance, counseling, etc.

¹²AG Order No. 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996); AG Order No. 2170-98, 63 Fed. Reg. 41,662, 4166 (Aug. 4, 1998) (to be codified at 8 C.F.R. pt. 104).

¹³AG Order No. 2049-96, 61 Fed. Reg. 45,985 (1Aug. 30,1996); see also Attorney General's list included in the Appendix to this Manual.

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- Soup kitchens;
- Community food banks;
- Senior nutrition programs and other nutritional programs for persons requiring special assistance;
- Medical and public health services and mental health disability or substance abuse assistance necessary to protect life and safety; and¹⁴
- Activities designed to protect the life and safety of workers, children, and youths or community residents.

When the U.S. Attorney General specified what programs were to be open to all persons, domestic violence shelters and service providers were specifically included.¹⁵

By being included in the above list, shelters are legally permitted and required to offer their services equally to battered immigrant women as to all other battered women without regard to immigration status. Furthermore, as nonprofit, charitable organizations, shelters can legally provide services and are explicitly allowed to do so without asking any questions about immigration status and without any immigration status verification of those being served. Additionally, nonprofit, charitable organizations, including shelters, cannot be penalized for failing to verify immigration status.

IIRAIRA AND REPORTING REQUIREMENTS

In November of 1997, the U.S. Attorney General issued guidelines that specifically state “nonprofit charitable organizations” are not required to inquire into immigration status or ensure that applicants are “qualified aliens” before providing them services or benefits.¹⁶ This is true even when the nonprofit organization is using funds deemed federal public benefits (e.g., TANF funds) to provide services to an immigrant who may be undocumented.¹⁷ If a shelter administers TANF funds for its residents, the shelter may provide those funds to all residents who otherwise qualify, without regard to immigration status. In so stating, the Department of Justice indicated that its commitment to helping battered immigrants and others who truly need assistance from these programs is more important than identifying the immigration status of applicants. Thus, as a matter of federal law, shelters and other domestic violence service providers can be assured that they can and are required under the U.S. Attorney General’s and the Department of Health and Human Service’s directives to provide shelter and other services to protect the lives and safety of all battered women, even those who are in the country without legal papers.

The U.S. Attorney General’s guidance states, “A nonprofit charitable organization that chooses not to verify cannot be penalized . . . for providing federal public benefits to an individual who is not a U.S. citizen, U.S. non-citizen national, or qualified alien.”¹⁸

The only exception to this is if the state TANF agency or other nonexempt entity has verified the immigration status of the immigrant domestic violence victim following verification procedures set forth by the U.S. Attorney General. If a government entity notifies a shelter that a particular immigrant does not meet verification requirements, TANF funds could not be used to house that immigrant.¹⁹ Even in those

¹⁴This definition includes: immunizations for children and adolescents, AIDS and HIV services and treatment, tuberculosis services, and treatment for sexually transmitted diseases. See Claudia Schlosberg, *Not Qualified Immigrants' Access to Public Health and Emergency Services After the Welfare Law*, available at www.healthlaw.org/pubs/19980112immigrant.html (1998).

¹⁵Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation. AG Order No. 2049-96, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

¹⁶Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, AG Order No. 2129-97, 62 Fed. Reg. 61,344, 61,345 (Nov. 17, 1997).

¹⁷U.S. Department of Health and Human Services, *Policy Q's & A's – Immigrants*, available at <http://www.acf.dhhs.gov/programs/ofa/polquest/immigran.htm> (date revised Jan. 30, 2001).

¹⁸AG Order No. 2129-97, 62 Fed. Reg. 61,344, 61,346 (Nov. 17, 1997).

¹⁹This problem would only arise if a battered immigrant sought benefits from a public benefits agency for which she did not qualify. It could also arise if she applied for benefits for her children and the benefits-granting agency verified her immigration status despite the fact that she was not applying for benefits for herself. Verifying the immigration status of a non-applicant is a violation of federal law. For this reason, we highly recommend that battered immigrants not apply for benefits unless they are accompanied by an advocate who is familiar with the U.S. Attorney General’s Guidance and HHS

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circumstances, the undocumented battered immigrant would continue to be fully eligible for all other shelter services except TANF, Medicaid, or other programs which are federal means-tested public benefits. The shelter simply would not apply for TANF funds for that resident but would be able to use funds it receives from other sources. These sources could include other state, local or federal government funds, foundation grants, grants from ecumenical programs, and funds from other sources raised by domestic violence programs. (See the discussion of unrestricted federal funding programs later in this section and the chapter on benefits elsewhere in this manual.)

DISCRIMINATION

THE U.S. ATTORNEY GENERAL'S GUIDANCE

Service providers who help women escape abusive relationships must be aware that programs receiving federal funds are required to provide services in a nondiscriminatory manner. Congress has consistently upheld the right of immigrants to be free from discrimination based upon their immigration status. The U.S. Attorney General's guidelines for implementing the Welfare Reform Act acknowledge that Title VI "prohibits discrimination on the basis of race, color, or national origin in any program or activity . . . that receives federal funds or other federal financial assistance."²⁰ The guidelines further state:

This prohibition applies to disparate treatment, as well as to the utilization of facially neutral procedures . . . that have the effect of discriminating against individuals because of their race, color, or national origin . . . A benefit provider that denies benefits or delays determinations of eligibility on the basis of an individual's race, color or national origin may violate Title VI. A benefit provider may violate Title VI if it concludes that applicants are ineligible for benefits because they have ethnic surnames or origins outside the United States, or because they look or sound foreign. It also may violate Title VI if it acts upon the assumption that applicants with these characteristics are illegal aliens, or if it imposes additional eligibility requirements on ethnic or racial minorities because of their ethnicity or race.²¹

When nonprofit organizations exempt from CIS verification and reporting requirements ask about or attempt to verify status before providing services or assistance, they risk violating the prohibitions of Title VI.²²

Furthermore, protection against national origin discrimination under Title VI encompasses individuals with limited English proficiency (LEP). Under Executive Order 13166, federal agencies are required to ensure that programs who are recipients of federal financial assistance provide meaningful access to their programs and activities for LEP individuals.²³ Thus, if federally funded organizations that serve immigrants refuse to assist individuals who speak another language, they violate the prohibition against LEP discrimination. Because Executive Order 13166 requires each federal agency to issue specific guidance regarding compliance with the LEP nondiscrimination policy, organizations that receive federal funding should consult the relevant agency for additional guidance. In conjunction with Executive Order 13166, the Department of Justice provides a list of agency guidance on their website.²⁴

policy directives regarding procedures requiring that agencies only ask about immigration status and social security number information for the persons on whose behalf the benefits are being sought. See AG Order No. 2129-97, 62 Fed. Reg. 61,344 (Nov. 17, 1997). See also Verification of Eligibility for Public Benefits, AG Order No. 2170-98, 63 Fed. Reg. 41,662, 41,662-65 (Aug. 4, 1998); DEP'T OF HEALTH AND HUMAN SERV. AND DEP'T OF AGRICULTURE, POLICY GUIDANCE REGARDING INQUIRIES INTO CITIZENSHIP, IMMIGRATION STATUS AND SOCIAL SECURITY NUMBERS IN STATE APPLICATIONS FOR MEDICAID, STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP), TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), AND FOOD STAMP BENEFITS, available at www.hhs.gov/ocr/immigration/triagency.html (last modified Sept. 21, 2000).

²⁰ AG Order No. 2129-97, 62 Fed. Reg. 61,344, 61,360 (Nov. 17, 1997).

²¹ *Id.*

²² Verification, Reporting and Confidentiality, 6 *in* National Immigration Law Center in IMMIGRATION AND WELFARE RESOURCE MANUAL: 1998 EDITION (National Immigration Law Center ed., 1998).

²³ Improving Access to Services for Persons With Limited English Proficiency, Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

²⁴ Available at www.usdoj.gov/crt/cor/13166.htm.

THE FEDERAL FAIR HOUSING ACT

Domestic violence shelters should further be aware that their services are subject to the Fair Housing Act, which prohibits discrimination on the basis of race, national origin, color, religion, sex, familial status, or disability.²⁵ Shelters fall under the rubric of fair housing because they are considered "dwellings" under the law. A dwelling is defined as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families."²⁶ The term residence is not defined by the statute, but courts have developed interpretations through case law. The courts have set forth various tests to determine whether a building is a "dwelling" and thereby bound to operate in compliance with the provisions of the Fair Housing Act.

For example, in the case of *Baxter v. City of Belleville*, the court looked to the objective intent of the director of the facility.²⁷ In that case, the facility was an AIDS hospice and the director installed a kitchen unit in the building. The court determined that the objective intent of the director was to use the building as a residence because he installed a kitchen where there previously had been none.²⁸ The court further determined that persons living at the hospice were not "mere transients", but rather were residents with the intent to return to that dwelling.²⁹ Preliminarily, the court found that adding kitchen units for individuals who would remain there temporarily or permanently made the building a residence. In turn, the AIDS hospice was bound by the provisions in the Fair Housing Act and could not discriminate against any individual on the basis of race, sex, national origin, color, religion, race, familial status, or disability. Similarly, domestic violence shelters are equipped with kitchens and their residents live there for an unspecified period of time while seeking other more permanent housing arrangements.

A later case also determined that a shelter for the homeless was a "dwelling" under the Fair Housing Act. *Woods v. Foster*, decided in 1995, further defined the term "dwelling" and what buildings fit into that definition.³⁰ In this case, the court deemed a homeless shelter to be a "dwelling" based on the intent of the visitor rather than the visitor's length of the stay at the shelter. The court stated, "Although the shelter is not designed to be a place of permanent residence, it cannot be said that the people who live there do not intend to return – they have nowhere else to go."³¹

Women staying in domestic violence shelters have the intent to return there while they are shelter residents, however short their stay may be. Most shelters even have requirements that residents return to the shelter by a specified time each night. Furthermore, domestic violence shelter residents have no other safe place to reside because the violence in their homes has forced them to flee and seek shelter. The intent of the women is to return to the shelter because she has no other place where she may safely return. For some period of time, each woman who stays at a shelter *intends* to return there the next night.

These cases clarify that domestic violence shelters are bound by the Fair Housing Act. Failure to comply with this Act could put a shelter at risk of lawsuits or government enforcement actions. In order to protect themselves, it is advisable that shelters develop protocols for screening potential residents that are not based on any of the discriminatory factors prohibited under the Act such as race, national origin, language capabilities, or immigration status.

IMMIGRANT ACCESS TO FEDERALLY FUNDED PROGRAMS

The only federal programs from which immigrant access is restricted by the Welfare Reform Act or IIRAIRA are federal means-tested public benefits and federal public benefits.³² The only federal funds that fall into

²⁵Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 *et seq.*

²⁶42 U.S.C. § 3602(b).

²⁷720 F. Supp. 720, 731 (S.D. Ill. 1989).

²⁸*Id.*

²⁹*Id.*

³⁰884 F. Supp. 1169 (N.D. Ill 1995).

³¹*Id.* at 1173.

³²8 U.S.C.S § 1611-1613.

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these categories are federal funds paid directly to an individual, a family unit, or a household. (For more detailed rules regarding these categories of federal programs, see the Benefits Chapter.) Thus, all state or federal funds provided to a shelter or other service provider to assist the organization in its work with battered women fall within the definition of “federal public benefits.” Federal and state funding of domestic violence shelters or service programs are not “federal public benefits” and are not subject to any immigrant access restrictions.

“Federal public benefits” often include direct monetary assistance (e.g., TANF, Food Stamps, Medicaid, and SSI). Nevertheless, not all of the benefits or services paid by federal public benefit programs count as “federal public benefits” under the law. Some benefits or services under such programs “may not be provided to an ‘individual, household, or family eligibility unit’ and, therefore, do not constitute ‘Federal public benefits’ as defined by PRWORA.”³³ For example, Food Stamps are federal public benefits. However, food provided by a shelter or food bank is not a federal public benefit even if some or all of the food is purchased with federal dollars. Similarly, TANF funds that are paid to support the work of a shelter are not federal public benefits.³⁴

Immigration and welfare reform legislation place no new restrictions on immigrant access to other federally funded services. Since each of the programs listed below are grants awarded to nonprofit organizations and other programs that provide services to domestic violence victims, crime victims, and the homeless, federal dollars awarded by these programs are not “federal public benefits” and do not impose any restrictions on immigrant access. Programs that receive funds from any of the sources listed below must make their services available to all to avoid being in violation of federal discrimination and fair housing laws.

In addition to the specific programs listed below, funds that benefit battered immigrants are also available under the Victims of Crime Act (VOCA) programs, which are discussed separately later in this chapter. The appendix of this manual provides a list of some of the major federally funded programs that fall both within and outside the category of “federal public benefit” programs. Some federal agencies have also published guidance memoranda that list which of their programs are considered federal public benefits, which service providers may wish to consult. Programs deemed “federal public benefits” may only be accessed by battered immigrants who are qualified aliens, but programs not deemed federal public benefits are open to all immigrants without regard to immigration status.

DEPARTMENT OF JUSTICE FUNDING

The Violence Against Women Act (VAWA)

Passed in 1994 and amended in 2000, 2005 and 2013, the Violence Against Women Act (VAWA) has designated more than \$1 billion in state grants to fund expanded shelter and related social services for battered women, a national domestic violence hotline, domestic violence research efforts, and educational programs for judges, police, prosecutors, and other court personnel.³⁵ The Victims of Trafficking and Violence Protection Act of 2000 describes underserved populations as:

“populations underserved because of geographic location (such as rural isolation), underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the State planning process in consultation with the Attorney General.”³⁶

³³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658 (Aug. 4, 1998).

³⁴ U.S. Department of Health and Human Services, *Policy Q's & A's – Immigrants*, available at www.acf.dhhs.gov/programs/ofa/polquest/immigran.htm (last modified Jan. 2001).

³⁵ Julie Goldscheid & Susan J. Kraham, *The Civil Rights Remedy of the Violence Against Women Act*, 29 CLEARINGHOUSE REV. 505, 506 (1995).

³⁶ Pub. L. No. 106-386, § 1103, 114 Stat. 1464, 1496, codified at 42 U.S.C. § 3796gg-2.

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The definition of “underserved populations” includes immigrant communities by specifically incorporating alienage status as well as cultural, ethnic, and language minority populations. Additionally, under VAWA, procedures set forth in the plan to ensure equal distribution of grant funds require states to consider the needs of underserved populations. These include those immigrant populations underserved because of ethnic, racial, cultural, or geographic isolation.³⁷

Under VAWA, alienage status is included in the list of underserved populations making assistance to immigrant victims of violence eligible for VAWA funding. Programs that receive grant funding from the Department of Justice’s Office on Violence Against Women (OVW) can use those funds to help clients who are immigrant victims of domestic violence, sexual assault, and trafficking. Programs are encouraged to seek funding to provide assistance to underserved populations, including immigrant victims. It is also important to note that programs receiving OVW funding can use that funding to serve immigrant victims even if such services were not highlighted in the grant application.

VAWA aims to ensure that all battered women, regardless of nationality, language ability, or immigration status, receive equal access to domestic violence services that will free them from further abuse. VAWA grants are therefore not restricted based on alienage or national origin.

The OVW administers several grant programs, including: STOP grants (Services, Training, Officers, and Prosecutors; described below), Grants to Encourage Arrest Policies and Enforcement of Protection Orders, Rural Domestic Violence and Child Victimization Enforcement Grants, Legal Assistance for Victims Grants, and Grants to Reduce Violent Crimes Against Women on Campus. Programs that receive OVW grants must provide services without immigration restrictions and can use OVW grant funds to provide assistance to battered immigrants in immigration matters.³⁸

STOP Grants³⁹

STOP grants (Services, Training, Officers, and Prosecutors) are given to states to develop and strengthen the criminal justice response to violence against women,⁴⁰ including domestic violence, sexual assault, dating violence and stalking. State grants are allocated by formula to various activities, with 30 percent of the funds dedicated to victim services, 25 percent allocated to police, 25 percent earmarked for prosecutors, 5 percent set aside for state courts, and 15 percent dedicated to a discretionary category.⁴¹ At least 10 percent of the victim services funds are to be distributed to culturally specific⁴² community based organizations whose services are primarily directed toward ethnic and racial minority populations.⁴³ Additionally, the Office on Violence Against Women (OVW) is responsible for ensuring that all states administering STOP funding

“recognize and meaningfully respond to the needs of underserved populations and ensure that monies set aside to fund culturally specific services and activities for underserved populations are distributed equitably among those populations.”⁴⁴

By 2015, 20 percent of the total amount of STOP funds shall be allocated for meaningful responses addressing sexual assault.⁴⁵ Sexual assault is defined as including stranger rape, acquaintance rape, alcohol or drug-facilitated rape, and rape within the context of an intimate partner relationship. This funding for

³⁷ S. REP. NO. 103-138, (1993).

³⁸ Pub. L. No. 106-386, § 1201, 114 Stat. 1464, 1504, codified at 42 U.S.C. § 3796gg-6.

³⁹ See generally, U.S. DEPARTMENT OF JUSTICE, FREQUENTLY ASKED QUESTIONS ON STOP FORMULA GRANTS (2013), available at: <http://www.ovw.usdoj.gov/docs/stop-formula-faq.pdf>

⁴⁰ Violence Against Women Act of 2000, Pub. L. No. 103-322, § 40121. 108 Stat. 1796, 1911, codified at 42 U.S.C. § 3796gg-1.

⁴¹ Violence Against Women Act of 2000, Pub. L. No. 106-386, § 1103, 114 Stat. 1497.

⁴² 42 U.S.C. 13925(a)(6) CULTURALLY SPECIFIC- The term ‘culturally specific’ means primarily directed toward racial and ethnic minority groups (as defined in section 1707(g) of the Public Health Service Act (42 U.S.C. 300u-6(g))). This section of the Public Health Service Act defines racial and ethnic minority groups to mean American Indians including Alaska Natives, Eskimos, and Aleuts; Asian Americans; Native Hawaiians and other Pacific Islanders; Blacks; and Hispanics. The term “Hispanic” means individuals whose origin is Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish-speaking country.

⁴³ 42 U.S. Code § 3796gg-1(c)(4)(C)

⁴⁴ 42 U.S. Code § 3796gg-1(e)(2)(D)

⁴⁵ 42 U.S. Code § 3796gg-1(c)(5)

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sexual assault programs is to be distributed to two or more categories of funding, for example police and victim services, or prosecutors, police and victim services.⁴⁶ The program is designed to train law enforcement officers, court personnel, and prosecutors to respond more effectively to violent crimes against women. Funds may be used for training, expanding domestic violence units, strengthening victim services, and providing assistance to victims of domestic violence and sexual assault in immigration matters.⁴⁷

The STOP statute contains several provisions designed to help ensure that programs serving underserved populations in the state, culturally specific services, and programs that serve victims from diverse language backgrounds receive and can access STOP funding. State STOP administrators are required to develop and submit STOP funding plans.⁴⁸ In developing these plans, state STOP administrators are required by statute to consult and coordinate with the following groups:⁴⁹

- (A) the State sexual assault coalition;
- (B) the State domestic violence coalition;
- (C) the law enforcement entities within the State;
- (D) Prosecution offices;
- (E) State and local courts;
- (F) Tribal governments in those States with State or federally recognized Indian tribes;
- (G) Representatives from underserved populations,⁵⁰ including culturally specific populations;
- (H) Victim service providers;
- (I) Population specific organizations;⁵¹ and
- (J) Other entities that the State or the Attorney General identifies as needed for the planning process;

The state STOP plan submitted to the Office on Violence Against Women are required to include “documentation from the prosecution, law enforcement, court, and victim services programs to be assisted, describing—

- (i) the need for the grant funds;
- (ii) the intended use of the grant funds;
- (iii) the expected result of the grant funds; and

⁴⁶ *Id.*

⁴⁷ 42 U.S.C. § 3796gg (a)

⁴⁸ 42 U.S. Code § 3796gg-1(i)

⁴⁹ 42 U.S. Code § 3796gg-(c)(2)

⁵⁰ 42 U.S.C. 13925(a) (39) defines underserved populations as follows “UNDERSERVED POPULATIONS- The term `underserved populations' means populations who face barriers in accessing and using victim services, and includes populations underserved because of geographic location, religion, sexual orientation, gender identity, underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the Attorney General or by the Secretary of Health and Human Services, as appropriate.”

⁵¹ 42 U.S.C. 13925(a)(21) POPULATION SPECIFIC ORGANIZATION- The term `population specific organization' means a nonprofit, nongovernmental organization that primarily serves members of a specific underserved population and has demonstrated experience and expertise providing targeted services to members of that specific underserved population.

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(iv) the demographic characteristics of the populations to be served, including age, disability, race, ethnicity, and language background;

The plans must also include “demographic data on the distribution of underserved populations within the State and a description of how the State will meet the needs of underserved populations including the minimum allocation for population specific services required under subsection (c)(4)(C)”. This language highlights the importance of state stop plans identifying each of the underserved, population specific and culturally specific populations in the state and considering how the state will “recognize and meaningfully respond to”⁵² addressing the needs of each of these more isolated and particularly vulnerable populations within the state.

The STOP grant purpose areas directly relevant to programs serving immigrant, limited English proficient, culturally specific, population specific and underserved victims are:⁵³

- (1) training law enforcement officers, judges, other court personnel, and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of domestic violence, dating violence, sexual assault, and stalking, including training on the certification process for T and U visa;
- (5) developing, enlarging, or strengthening victim and legal services⁵⁴ programs, including sexual assault, domestic violence and, dating violence and stalking programs, developing or improving delivery of victim services to underserved populations, providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted, and increasing reporting and reducing attrition rates for cases involving violent crimes against women, including crimes of domestic violence, dating violence, sexual assault and stalking;
- (10) providing assistance to victims of domestic violence, dating violence, stalking and sexual assault in immigration matters;
- (14) developing and promoting legislation and policies that enhance best practices for responding to domestic violence, dating violence, sexual assault, and stalking;⁵⁵
- (16) developing and strengthening policies, protocols, best practices and training for law enforcement agencies and prosecutors relating to the investigation and prosecution of sexual assault cases and the appropriate treatment of victims;⁵⁶

Grants to Encourage Arrest Policies and Enforcement of Protection Orders

Grants to Encourage Arrest Policies and Enforcement of Protection Orders (Arrest Program grants) are designed to encourage state and local governments to treat domestic violence, sexual assault, dating violence and stalking as serious problems by requiring the coordinated involvement of the entire criminal justice system. Funds may be used for executing mandatory and pro-arrest programs, developing policies and training in criminal justice agencies for domestic violence case tracking, and educating judges about domestic violence. Special consideration is given to programs that develop innovative approaches to responding to domestic violence in categories such as outreach to traditionally underserved populations, coalitions between businesses and the criminal justice system to ensure the safety of women in the community, and stopping

⁵² 42 U.S.C. § 3796gg-1(e)(2)(D).

⁵³ 42 U.S.C. § 3796gg(b).

⁵⁴ The ability to fund legal assistance for victims with STOP funds is particularly important for immigrant victims who need access to lawyers trained on the dynamics of domestic violence, sexual assault, dating violence and/or stalking, who are aware of and have expertise on the special legal protections for immigrant victims under immigration and public benefits laws and how these protections can benefit outcomes in the victim's family court case (protection order, custody, child support or divorce).

⁵⁵ This is particularly helpful for the development of U visa certification policies and practices at STOP funded law enforcement and prosecution agencies.

⁵⁶ With regard to immigrant and LEP victims, these policies, protocols, best practices and trainings would include U visa certification, improving language access to law enforcement, prosecutors, and the courts for LEP sexual assault victims, T visa endorsements, requests for continued presence, and T visa certifications for lawful permanent residency applications by law enforcement and prosecutors' offices.

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domestic violence by police officers within the community. Applicants are required to enter into formal collaborations with nonprofit organizations serving victims of domestic violence. This grant program's purpose areas of particular importance to immigrant victims are:

^(15) To develop or strengthen policies, protocols, and training for law enforcement, prosecutors, and the judiciary in recognizing, investigating, and prosecuting instances of domestic violence, dating violence, sexual assault, and stalking against immigrant victims, including the appropriate use of applications for nonimmigrant status under subparagraphs (T) and (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

^(16) To develop and promote State, local, or tribal legislation and policies that enhance best practices for responding to the crimes of domestic violence, dating violence, sexual assault, and stalking, including the appropriate treatment of victims.⁵⁷

^(19) To develop and strengthen policies, protocols, and training for law enforcement officers and prosecutors regarding the investigation and prosecution of sexual assault cases and the appropriate treatment of victims.⁵⁸

Grants to Reduce Violent Crimes Against Women on Campus

The Campus Program is intended to strengthen the higher education community's response to sexual assault, stalking, domestic violence, and dating violence crimes on campuses and to encourage alliances between campuses and local criminal justice and victim advocacy organizations. The goals of the program are to assist institutions of higher learning to create a coordinated community response to end violence against women on campuses and ally themselves with local non-profit victim advocacy and civil justice organizations. Grant funds may be used for training, creation and development of victim services programs, installing data collection and communication systems, and other programs of the like. Priority consideration will be given to programs that address enumerated "special interests."

The amount of funding disbursed hinges on a variety of factors including the scope of activities proposed and the number of students served. Applicants are required to submit a copy of their application to the agency that administers STOP grants. To enhance victim safety and hold perpetrators accountable, applicants are discouraged from proposing any activities that may compromise victim safety.

Rural Domestic Violence and Child Victimization Enforcement Grants

The Rural Domestic Violence and Child Victimization Enforcement Grants are designed to enhance services available to victims and children by encouraging community involvement in developing a coordinated response to domestic violence, dating violence, and child abuse. A state is considered rural if it has a population of 52 or fewer persons per square mile or the largest county has less than 150,000 people. In rural states, eligible applicants are state and local governments and public and private entities. Non-rural states may apply on behalf of rural jurisdictions in their states. Eligible applicants also include tribal governments in rural and non-rural states. At least five percent of the funding for this program must be available for grants to Indian tribal governments.

States are encouraged to administer this program through the same agency that administers the STOP grants, unless there is a compelling reason to place responsibility for rural programs with a different agency. Again, to enhance victim safety and hold perpetrators accountable, applicants are discouraged from proposing any activities that may compromise victim safety.

HUD AND HHS GUIDANCE ON PROGRAMS FOR BATTERED IMMIGRANTS

⁵⁷ For immigrant crime victims this purpose area court include trainings, promoting best practices for U visa certification and provision of access to qualified immigrants

⁵⁸ For immigrant survivors having U visa certification practices and policies and language access policies would be a necessary part of law enforcement's ability to both investigate and prosecute cases involving immigrant victims.

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Federal agencies that administer grant programs serving domestic violence victims- HUD and HHS- have issued guidance with respect to shelter services for battered immigrants. Since many of the federal agency grant programs are bound by the same rules discussed above, including the Title VI prohibition against discrimination on the basis of national origin, the Attorney General's list of services necessary to protect life and safety, and the definition of federal public benefit, the agency guidance generally tends to reiterate these rules and delineate how they apply to the agency's programs specifically. Thus, the HUD and HHS guidance on provision of services to immigrants are addressed only briefly here.

HUD guidance on services to battered immigrants clarifies that both emergency and short-term shelter for victims of domestic violence have been deemed by the Attorney General to be services necessary to protect life and safety. HUD emphasizes that HUD-funded programs that provide emergency shelter and transitional housing for up to two years, but that do not consider the recipient's income or resources when providing assistance, must make their services available to all needy individuals, including battered immigrants who may be undocumented and/or not qualify for other types of federal means-tested benefits.⁵⁹ HUD emphasizes that organizations that disregard the laws and guidance with respect to services for battered immigrants are subject to sanctions. Organizations receiving HUD funding who turn undocumented immigrants who are victims of domestic violence away from shelter or transitional housing risk losing federal funding.

Likewise, HHS guidance clarifies that battered immigrants are eligible for services provided by domestic violence shelters and other domestic violence programs, that receive HHS funding under the Family Violence Prevention and Services Act, community and migrant health centers, Community Services Block Grant, substance abuse, mental health, and maternal and child health programs.⁶⁰ Many of these programs provide services that are considered necessary for the protection of life and safety, while others are open to all persons without regard to immigration status because they do not meet HHS's definition of federal public benefit programs.⁶¹

HUD – McKinney Homeless Act Funding

In the eyes of the law, domestic violence shelters are considered homeless shelters because they help battered women who would otherwise be homeless. Some domestic violence programs receive McKinney Homeless Act funds as programs which allow homeless individuals and families to move to more permanent housing within twenty-four months... ”⁶² This Act places no alienage restrictions on those persons who can access emergency shelter and short-term or transitional housing facilities, nor does it require operators of McKinney Act-funded programs to inquire into the immigration status of their residents.⁶³ Under the McKinney Act, shelter services must be available to all needy individuals, and shelters receiving McKinney Act funds may use those funds to serve all battered immigrants, including undocumented battered immigrants.

HHS – Family Violence Prevention and Services Act Funding

FVPSA (Family Violence and Prevention Services Act) grants are awarded to states for distribution to support programs that provide services to battered women. This funding provides services to domestic violence victims and their dependents. Funded services include shelter, counseling, preventive activities, and outreach. The Family Violence Prevention and Services Act funds the national domestic violence hotline and has at times specifically provided discretionary grants directed toward improving domestic violence services to immigrant and migrant communities. Further, FVPSA funds can be used to serve battered victims without regard to their immigration status.⁶⁴

⁵⁹Letter from the Secretary of the U.S. Department of Housing and Urban Development to HUD Funds Recipient (Jan. 19 2001) (on file with author).

⁶⁰OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, *available at* <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001).

⁶¹Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,658 (Aug. 4, 1998).

⁶²See Stewart B. McKinney Homeless Act of 1987, 42 U.S.C. § 11301.

⁶³42 U.S.C. §§ 11301-11302.

⁶⁴ OFFICE FOR CIVIL RIGHTS, U.S. DEP'T OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, *available at* <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001).

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FVPSA also urges states to devote a portion of their FVPSA funding to improve their services to underserved populations. FVPSA further allows the individual states to determine the underserved population within their borders and create better programs for that population. Consistent with the intention of Congress in passing the Violence Against Women Act, which contained amendments of FVPSA, funds may be used to serve underserved immigrant battered women. Programs serving battered women with FVPSA funds must serve any victim of domestic violence without regard to immigration status.⁶⁵ Programs that receive FVPSA funding who turn undocumented or non-citizen battered women away from receiving services risk HHS sanctions.

CONCLUSION

Despite recent legislation that generally treats immigrants more harshly, battered immigrant women and children have been consistently singled out for additional protection by that very same legislation. An examination of current statutes and grant programs reveals that the federal government remains committed to protecting battered immigrants without regard to their immigration status.

Therefore, shelters and other domestic violence programs need not fear opening their doors to any immigrant who needs their services. In fact, shelters that do turn immigrant women away may actually open themselves up to federal enforcement actions for discrimination. Shelters and transitional housing programs that receive some form of federal funding must provide emergency shelter, transitional housing for up to two years, and other domestic violence services to all battered women, including those who are undocumented. Battered immigrant women, like battered women from other underserved populations, desperately need access to the protection provided by battered women's shelters and other social services programs. In many communities, cutting off battered immigrants from shelter programs isolates them from the only service providers in their community who are domestic violence experts. The information in this section can be used to educate other advocates, state officials, and local grant programs about keeping shelters and other social services programs open and accessible to everyone who needs them.

Access to Victims of Crime Act (VOCA) Funds

INTRODUCTION

Although all battered immigrants can legally access shelter, transitional housing, and domestic violence services, many will not qualify to access the full range of public benefits that they may need for economic survival apart from their abusers. Despite their need for economic resources, battered immigrants may be restricted in their ability to access many of the financial safety nets available to non-immigrant victims of domestic violence. These restrictions prevent many battered immigrants from being economically self-sufficient, and force them to remain in abusive relationships to survive or care for their children's needs. Crime victim compensation and assistance programs may provide one source of relief and services for battered immigrants to help them cover expenses related to their victimization by their abuser.

The Victims of Crime Act (VOCA) established two major formula grant programs for the states – one for victim compensation and the other for victim assistance. The Crime Victims Fund, derived from fines, penalty assessments, and bond forfeitures from convicted federal offenders, is the source of the federal funds provided to the states. State programs serve victims of domestic violence, sexual assault, and child abuse. Thus, battered immigrants may be eligible for VOCA services and compensation to help end the violence in their lives.

⁶⁵ OFFICE FOR CIVIL RIGHTS, U.S. DEPT OF HEALTH AND HUMAN SERV., ACCESS TO HHS-FUNDED SERVICES FOR IMMIGRANT SURVIVORS OF DOMESTIC VIOLENCE, *available at* <http://www.hhs.gov/ocr/immigration/bifsltr.html> (date revised Jan. 30, 2001). ("In most cases, HHS-funded programs serving domestic violence victims are available to all immigrants who have been abused when those programs do not impose eligibility criteria, such as income. These programs include, but are not limited to, FVPSA-funded programs, community and migrant health centers, Community Services Block Grant (CSBG), substance abuse, mental health and maternal and child health programs.")

Battered Immigrants' Access to Services

VOCA grants were created to 1) provide direct victim services including safety services (e.g., repairing broken locks), information about how they can participate and understand the criminal justice system, and funds to stabilize life circumstances, and 2) provide victim assistance funds for agencies that respond to the physical and emotional needs of crime victims.⁶⁶ VOCA provides funding that states can use to support programs, including domestic violence shelters and services that assist battered women who are crime victims.

States receiving VOCA funds are required to "identify gaps in available services [to] ... 'underserved' victims, [which include] ... non-English speaking residents ... [and] members of racial or ethnic minorities"⁶⁷ The requirement further notes that each state has the discretion to determine who the underserved population is within their borders. The formal grant requirements do not exclude any group of persons. In fact, this requirement allows states to incorporate undocumented immigrants into the group of persons entitled to better services due to inadequate services in the past.

In addition to these state formula grant programs, VOCA funds are also available for victims of federal crimes under the Federal Crime Victim Assistance Fund, which supports activities similar to those conducted under the state programs described below.

VICTIM COMPENSATION

Victim compensation programs vary by state, but all programs reimburse victims for crime-related expenses, including: medical costs; mental health counseling; funeral and burial costs; and lost wages. Federal funds provide a portion of the state compensation program budgets. State funds provide the remainder of the budget, and state laws govern the precise types of compensation available.

In some states, compensation is available for other domestic violence related needs, such as counseling for children who witness domestic violence or lost support (paid to a victim if reporting the crime leaves the victim without financial support from the offender). Domestic violence victims can also benefit from state compensation statutes that cover the following expenses:

- Moving expenses for victims
- Legal expenses
- Wages lost while attending legal proceedings related to the case
- Hotel rooms
- Housing and utility deposits
- Emergency expenses.

These types of financial compensation may provide victims with the temporary assistance they need to leave their abusers. Emergency financial aid payments may be particularly useful for immigrant victims of domestic violence whose economic resources are limited.

In some states, domestic violence victims may have difficulty complying with the state's conditions for receiving victim compensation. VOCA requires victim compensation programs to "promote victim cooperation with the reasonable requests of law enforcement authorities."⁶⁸ Individual states, however, have victim compensation requirements at odds with the circumstances of many victims of domestic violence. For instance, some states require victims to report the crime to law enforcement within seventy-two hours, cooperate with the police and prosecution, and submit a timely application, in order to receive victim compensation benefits.

⁶⁶DEPARTMENT OF JUSTICE, FINAL PROGRAM GUIDELINES, <http://www.ojp.usdoj.gov/ovc/welcovc/scad/guides/vaguide.htm> (last updated June 23, 2004).

⁶⁷*Id.*

⁶⁸42 U.S.C. § 10602(d)(2).

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Battered immigrants may be particularly unable to comply with strict victim compensation rules. For instance, a battered immigrant may be unaware of a seventy-two-hour reporting requirement or unable to communicate effectively in English. They are unlikely to know that they are eligible for victim compensation benefits until an informed victim advocate or immigrant rights advocate who speaks their language informs them of these laws. Alternatively, the victim may be reluctant to call the police because her abuser has said the police will deport her or because of prior experiences with repressive police forces in her home country. Similarly, battered immigrants may be afraid to work with the police or prosecutors because of misperceptions of the United States legal system, or because of language and cultural barriers. Advocates working with battered immigrants should inform them about VOCA eligibility and assist them in filing timely applications.

Battered immigrant victims of sexual assault who qualify for U-visas because they are crime victims must be willing to report the crime to law enforcement or other government officials (e.g., prosecutors and the EEOC). To qualify they must obtain a certificate from a government official stating that they have been, are being, or will be helpful in an investigation or prosecution of criminal activity. Further, U-visa crime victims will not qualify for public benefits, so victim assistance funds can provide critical financial support to help them bridge the gap between leaving abuser, and attaining work authorization, based on their U-visa, and securing employment. Advocates should conduct careful safety planning with immigrant victims whose only option for attaining legal immigration status is thru the U-visa to help them determine whether they can safely report the crime to officials and cooperate in any resulting investigation or prosecution. If so, advocates should encourage reporting in a timely manner consistent with state VOCA eligibility rules so that the immigrant victim can also receive VOCA support based on her report of the crime to law enforcement.

Many states are revising their victim compensation policies to be more responsive to the dynamics of domestic violence. These changes are likely to benefit battered immigrants as well. Several states have changed their seventy-two-hour reporting requirements, instead requiring a report to be made within a reasonable period of time. This should enable victims of domestic violence to get to a safe place and protect themselves prior to pursuing criminal charges. In New York, victims of domestic violence may be compensated even if they do not initiate criminal cases against their abusers, but rather seek orders of protection in Family Court.⁶⁹ This policy recognizes that victims of domestic violence may have justifiable reasons for failing to prosecute. These reasons may include fear for their safety based on their abusers' threats or prior violence.

California's guidelines permit a report to be made by a battered women's shelter employee, friend, relative, neighbor, or clergy person, in addition to the victim. This provision can help battered immigrants who do not speak English, or who are unaware of victim compensation benefits, receive assistance from others in filing claims. The state also interprets "lack of cooperation" narrowly, recommending that victims receive benefits unless they actively interfere with police or prosecution efforts to hold perpetrators accountable. This standard gives greater protection to victims of domestic violence whose fears of retaliation may prevent them from testifying against their abusers in criminal cases.

Finally, in states that retain the seventy-two-hour reporting requirement, many battered immigrants may only find their way to an advocacy program after the seventy-two-hour time limit has expired. In these cases advocates should advise battered immigrants about the types of assistance available to them under VOCA, explain the seventy-two-hour reporting rules, and offer to help her file the required police report should she experience any future incident of domestic violence. In light of the on-going nature of domestic abuse, victims who may be cut off from VOCA relief for a prior domestic violence incident may apply should they be victimized in the future.

VICTIM ASSISTANCE

⁶⁹NY FAM. CT. ACT § 446(g) .

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VOCA funds awarded to states support more than 5,000 community-based organizations serving several million crime victims each year.⁷⁰ Battered immigrants may require services provided by these domestic violence shelters, rape crisis centers, and victim services programs in police departments, prosecutors' offices, hospitals, and social services agencies. Victim assistance programs provide desperately needed relief, such as crisis intervention, counseling, emergency shelter, criminal justice advocacy, and emergency transportation.

Crime victim assistance programs must certify that they provide assistance to victims of sexual assault, spousal abuse, or child abuse. Additionally, they must certify that they fund programs that serve historically underserved populations of victims of violent crime.⁷¹ Since battered immigrants are often underserved in their communities due to cultural or language barriers, this VOCA provision should foster the development by providers of improved programs for battered immigrants with the use of VOCA funds.

IMMIGRANT ELIGIBILITY FOR VICTIM COMPENSATION AND VICTIM ASSISTANCE

In most states, immigration status is not a bar to receiving victim compensation benefits or victim assistance benefits.⁷² Victim compensation administrators do not require applicants to identify their immigration status,⁷³ and have no duty to inquire about immigration status under either federal or state law. Rather, victims are eligible for benefits when they have been injured in the state and meet the conditions set forth in the state's guidelines.

Specifically, VOCA funds are only available to states whose victim compensation programs "make[s] compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State."⁷⁴ State victim compensation statutes cover victims injured in the particular state regardless of their residency in the state.⁷⁵ Thus, immigration status should also be irrelevant to receipt of victim compensation benefits. The VOCA guidelines confirm that:

the term 'nonresident' must, at a minimum, include anyone who is a resident in one state but victimized in another. A state may, at its discretion, broaden its definition of nonresident to include anyone victimized in the state regardless of whether the victim is a United States resident.⁷⁶

Further underscoring the legislative intent of VOCA to provide compensation and services to all victims, regardless of their national origin, the VOCA nondiscrimination provision states:

No person shall on the ground of race, color, religion, *national origin*, handicap, or sex be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with sums made available under this chapter.⁷⁷ (Emphasis added)

Thus, services to battered women and crime victims funded by VOCA must offer their services equally to all persons without regard to immigration status. As with VAWA- and HUD- and HHS-funded services for domestic violence victims, programs offering victims' services funded under VOCA that discriminate risk violating VOCA and other federal antidiscrimination laws. Battered

⁷⁰Office for Victims of Crime, U.S. Department of Justice, *OVC Fact Sheet: State Crime Victim Compensation and Assistance Grant Programs* (last modified April 19, 2001); <http://www.ojp.usdoj.gov/ovc/publications/factshts/compandassist/welcome.html>

⁷¹42 U.S.C. § 10603(a)(2)(B).

⁷²Telephone Interview with Dan Eddy, Executive Director, National Association of Crime Victim Compensation Boards (Nov. 20, 1997).

⁷³Telephone Interview with Laurie Schipper, Iowa Coalition Against Domestic Violence (Dec. 8, 1997).

⁷⁴42 U.S.C. § 10602(b)(4).

⁷⁵ Even if residency were an issue, state residency laws focus on where a person intends to reside permanently. These laws do not consider immigration status. See Family Law Chapter of this manual for full discussion on residency laws.

⁷⁶42 U.S.C. § 10601, *et seq.*

⁷⁷*Id.*; See <http://www.ojp.usdoj.gov/ovc/welcovc/scad/guides/voca.pdf>

Battered Immigrants' Access to Services

immigrants and other immigrant crime victims have the same access to VOCA-funded services as all other crime victims.

Further, VOCA-funded services are among the services necessary to protect life and safety that are open to all individuals without regard to immigration status.⁷⁸ With regard to victims' compensation payments that can be made directly to crime victims, VOCA and most state victim compensation statutes do not discriminate against battered immigrants based on immigration status. Further, VOCA benefits have not been identified by either the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) or the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) as one of the "federal public benefits" programs, a designation which would restrict immigrant access. Thus, victim compensation benefits should be accessible for both battered immigrants and other immigrant crime victims without regard to immigration status.

CONCLUSION

VOCA grants are an important yet often overlooked source of funds for battered immigrants. Because many immigrants are ineligible for assistance under the primary federal public benefit programs such as TANF, Food Stamps, and Medicaid, VOCA grants can fill an important gap in the social safety net for battered immigrants who leave their abusers, allowing them to access cash assistance, medical care, and shelter during their time of need. Since VOCA program requirements vary from state to state, advocates and attorneys representing battered immigrants should become familiar with the program rules in their states. Consult the web site for the Department of Justice's Office for Victims of Crime at <http://www.ojp.usdoj.gov/ovc/> to find a listing of state contacts for victim compensation and assistance programs.

Access to Legal Services

INTRODUCTION

Currently, the availability of free or low-cost legal services for battered immigrants is somewhat limited. Nevertheless, battered immigrants seeking legal assistance do have several options. One such option is found among the loose network of stand-alone nonprofit legal services providers that assist low-income clients in cities and towns across the country. Many of these nonprofit legal assistance organizations, however, receive funding from the federal government, most notably under the auspices of the federally funded Legal Services Corporation (LSC). Although organizations that receive LSC funds are barred from using their federal dollars to assist most immigrants who are non-citizens, they may use non-LSC money to provide free legal services to certain groups of battered immigrants regardless of their immigration status. Thus, LSC-funded organizations are an important potential source of free legal assistance for immigrants who are victims of domestic violence.

A second major source of legal services for battered immigrants stems from programs that receive grants from the Department of Justice's Office on Violence Against Women (OVW). Several OVW grant programs can be used to provide legal assistance to battered immigrants. Funds from OVW's STOP, Rural, Legal Assistance for Victims, Arrest, and Campus grant programs may be used to provide immigration assistance to battered women.⁷⁹

Legal Assistance for Victims (LAV)⁸⁰ grants are the most significant source of OVW funding for legal services for domestic violence victims. The Violence Against Women Act of 2000 created a LAV grant program designed to improve the legal aid available to domestic violence victims. These grants allow organizations to assist all victims of domestic violence, stalking, or sexual assault with a wide range of legal

⁷⁸AG Order No. 2129-97, 62 F.R. 61344 (Nov. 17, 1997); AG Order No. 2170-98, 63 F.R. 41664 (Aug. 4, 1998).

⁷⁹ For a list of OVW-funded grant programs, please visit the OVW website at <http://www.ojp.usdoj.gov/vawo/applicationkits.htm>.

⁸⁰ Formerly called Civil Legal Assistance Grants.

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matters that arise as a result of the abuse or violence. LAV grantees are explicitly authorized to provide a broad range of legal services to battered immigrants, including representation in immigration cases to certain groups of battered immigrants. Programs that receive both LAV and LSC funding were, however, subject to LSC grant program restrictions regarding the groups of undocumented battered immigrants they can serve. Programs that receive no LSC funding or receive LAV but not LSC funding have no restrictions on providing services to undocumented battered immigrants. Both LSC- and VAWA-funded legal services for battered immigrants are discussed in greater detail below.

LEGAL SERVICES CORPORATION SERVICES FOR BATTERED IMMIGRANTS

In 1996, Congress passed a law prohibiting any organization that receives Legal Services Corporation (LSC) funding from providing legal assistance to undocumented immigrants and many lawfully present non-citizens.⁸¹ This law originally even prohibited a LSC-funded organization from using non-LSC funds to provide legal assistance to ineligible non-citizens. Since most legal services offices at the time relied solely or primarily on funding from the LSC, this meant that most legal services offices could no longer represent many non-citizens. LSC-funded organizations could, however, provide brief service and consultation by telephone, and normal intake and referral services to anyone, regardless of their citizenship or immigration status.⁸²

The following year, Congress amended this law to ameliorate some of its harsh effect on battered women and abused children.⁸³ The amendment permits LSC-funded organizations to use non-LSC funds to represent certain victims of domestic abuse on matters directly related to the abuse, even if these abuse victims would otherwise be ineligible for legal representation from the LSC funded organization because of their immigration status.⁸⁴ LSC-funded legal services offices can now represent non-LSC eligible battered immigrant women, regardless of their immigration status, on matters directly related to domestic abuse, if they raise non-LSC funds to do so.⁸⁵

LSC-funded organizations may only, however, represent non-LSC eligible battered immigrant women who have been battered by either a spouse, a parent, or a member of the spouse's or parent's family residing in the same household as the immigrant when the spouse or parent consented to the battery. The law allows representation only on issues directly related to the abuse. Therefore, non-LSC eligible immigrant women who are not married but who are battered by their boyfriends or the fathers of their children may not be served by a LSC-funded organization.

REPRESENTATION OF NON-CITIZENS

Battered women need to have access to the assistance of legal services program lawyers for help in obtaining protection orders, child and spousal support, child custody, divorce, and immigration benefits. In many communities, legal services lawyers are the only lawyers in the community with significant expertise and experience assisting battered women and children. Confusion about which non-citizens may receive legal assistance from LSC-funded programs and which funds governmental and non-governmental programs may use for this representation has reduced battered immigrant's access to legal services below that which is legally required. For this reason it is important for battered women advocates and immigrant rights advocates to know which non-citizens legal services programs are authorized. In order to assist clients in obtaining much needed services, advocates also need to be familiar with the broad range of services that have been deemed directly related to the abuse. Advocates should work with their local LSC-funded programs to encourage them to represent battered immigrants by using non-LSC funding. Also, advocates should consider working with legal services programs with experience representing battered women to jointly raise non-LSC funds that can be used to provide legal services to battered women and children who are non-citizens.

⁸¹Legal Services Corporation Appropriations Act of 1996, Pub. L.No. 104-134, § 504 (a) (11), 110 Stat. 1321 (1996).

⁸²45 C.F.R. § 1626.3, 1626.6(a).

⁸³45 C.F.R. § 1626.2(g).

⁸⁴Legal Services Corporation Appropriations Act of 1997, Pub. L. No. 104-208, § 504(a)(11), 110 Stat. 3009 (1996).

⁸⁵*Id.*

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Many non-citizen battered immigrant women and abused immigrant children are eligible to receive legal services because they qualify for assistance under federal law. LSC-funded organizations may represent U.S. citizens and the following non-citizens using federal LSC dollars:

- Lawful permanent residents;
- Lawful conditional residents;
- Immigrants who are married to U.S. citizens and who have filed an application for adjustment of status to lawful permanent resident status where such application has not been rejected;
- Immigrants who are parents or unmarried children under the age of 21 of U.S. citizens who have filed an application for adjustment of status to lawful permanent resident status and such application has not been rejected;
- Immigrants who have been admitted as refugees or granted asylum;
- Immigrants who have been granted conditional entry pursuant to INA § 203(a)(7) as in effect on March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political opinion or because of catastrophic natural calamity; and
- Immigrants who are lawfully present in the U.S. as a result of withholding of deportation.

The following groups of domestic violence victims are the only other non-citizens who may receive legal representation from an LSC-funded organization regardless of their citizenship or immigration status. A victim of domestic violence may receive services if the legal assistance is directly related to the preventing or obtaining relief from the battery or cruelty and she meets the following criteria:

- The applicant has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the immigrant, when the spouse or parent consented or acquiesced to such battery or cruelty.
- The applicant's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the immigrant or by a member of the spouse's or parent's family residing in the same household as the immigrant, when the spouse or parent consented or acquiesced to such battery and the immigrant did not actively participate in such battery.⁸⁶

The first prong of eligibility for battered immigrant women and abused immigrant children to receive services from an LSC-funded organization requires that the client have been battered or subjected to extreme cruelty.

"Battered or subjected to extreme cruelty" is defined as including, but not limited to:

Being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that in and of themselves may not initially appear violent but that are a part of the overall pattern of violence.⁸⁷

This definition is fairly expansive. It parallels the definitions contained in immigration law and is broader than most protection order statutes because it includes some forms of emotional abuse. The definition of battering or extreme cruelty is limited however to battering or extreme cruelty that occurs within the United

⁸⁶ Legal Services Corporation Appropriations Act, 104 P.L. 134, § 504(a)(11).

⁸⁷ 45 C.F.R. § 1626.2(f).

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States.⁸⁸

To be eligible for representation by an LSC-funded organization, the battered immigrant woman or child must have suffered abuse at the hands of:

- a spouse
- a parent
- a member of the spouse's or parent's family residing in the same household as the battered immigrant⁸⁹

Note that the relationship with the abuser is the chief relationship. If the abuser is a spouse, former spouse, or parent, the battered immigrant may receive a variety of legal services on issues directly related to the abuse, regardless of whether the abuser has or does not have any form of legal immigration status.

The preamble to the LSC regulations states that the terms "spouse" and "parent" are terms of relationships that are generally regulated by state law. The LSC regulations do not expand the generally recognized legal meanings of these terms under state law, nor do they define them. The preamble directs that LSC-funded organizations should defer to the local law defining spouse and parent or the federal law that would apply in a particular case.⁹⁰ It is important to note that the immigration law definition of parent includes step-parents and could include children up to the age of twenty-one.⁹¹ This federal law definition of the parent/child relationship should be used by LSC-funded programs where it may be broader than local or state laws. Advocates should look to state definitions of spouse and parent, particularly those included in state domestic violence laws and family laws regarding common law marriages, as well as the immigration law definition, and work with their local LSC-funded legal services program to convince them to interpret these terms broadly.

The statute and the regulations offer legal services access to an immigrant who "has been" battered or subjected to extreme cruelty by a spouse or parent. The statute contains no requirement that the spousal or parent/child relationship continue to exist when the battered immigrant seeks legal assistance from a LSC-funded agency. Similarly, all state domestic violence statutes refuse to make distinctions between current and former spousal or parental relationships for the purpose of offering access to legal protection. Thus, abused immigrant spouses and children should be able to obtain legal assistance from LSC-funded programs even if the abuser's parental rights have been terminated and even if the abuser has divorced his immigrant wife.⁹²

The LSC regulations lack a definition for the meaning of a "member of the spouse's or parent's family" and instead direct LSC-funded organizations to refer to state protection order statutes where available or to other applicable local law in defining these terms.⁹³ This approach parallels the approach taken by the Attorney General of the United States in defining this same terminology in the welfare context. In November 1997, the Attorney General⁹⁴ provided guidance to the states for use in the welfare context on how the phrase "member of the spouse or parent's family" is to be defined. The guidance provides a definition that should also be followed by LSC funded programs. A "member of the spouse or parent's family," means:

“...any person having a relationship to the spouse or parent that is covered by the civil or criminal domestic violence statutes of the state or Indian country in which the alien, the alien's child, or the alien's parent received a protection order.”

This definition also sheds useful light on how this language should be interpreted in the context of access to legal services.

⁸⁸45 C.F.R. § 1626.4.

⁸⁹ Legal Services Corporation Act, § 504(a)(11).

⁹⁰Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 45,755, 45,756 (Aug. 29, 1997).

⁹¹Immigration and Nationality Act, § 101(b)(1), 8U.S.C.A. § 1101.

⁹²Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (1996).

⁹³*Id.*

⁹⁴AG Order No. 2129-97, 62 Fed.Reg. 61344 (Nov. 17, 1997).

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State protection order statutes often broadly define family to protect individuals from ongoing abuse. Under many state protection order statutes, that definition would usually include persons who are in the following relationship with the spouse or parent of the battered immigrant:

- Blood relatives
- Current and former relatives by marriage
- Current and former cohabitants
- Persons who share a common child with the victim's spouse or parent
- People who have dated the victim's spouse or parent
- Any other people in relationships with the immigrant victim's spouse or parent covered in the state's protection order statute.

Immigrant women who have been battered by individuals that have any of the above relationships with the immigrant victim's spouse or parent should be eligible for representation by an LSC-funded organization, in accord with the definition provided by the state's protection order statute.

In order for battered immigrants who do not otherwise qualify for LSC funded services to be eligible to receive services from an LSC funded organization, they must show that the legal assistance provided is directly related to their abuse. Legal assistance directly relating to the prevention of, or obtaining relief from, the battery or cruelty is defined as any legal assistance that will:

- Assist victims of abuse in escaping from the abusive situation
- Ameliorate the effects of abuse
- Protect against future abuse.⁹⁵

A wide array of legal assistance for which battered immigrants are eligible may be deemed related to the abuse. For example, an LSC-funded organization may use non-LSC funds to represent battered immigrant women, helping them secure housing, medical, or income assistance so that they and their children are no longer forced to depend on their abuser. Similarly, an LSC-funded organization may provide legal assistance to seek a civil protection order against the abuser or to terminate the marriage and parental rights of the abuser. The LSC program may not, however, provide adoption assistance if the victim remarries and the new spouse, who is an ineligible alien, wishes to adopt the children.⁹⁶

The preamble to the LSC regulations provides a non-exclusive list of examples of permissible legal representation and makes it clear that a broad variety of legal services are needed to assist abuse victims. According to the preamble, permissible representation includes, but is not limited to:

- Representation of a domestic violence victim in a VAWA immigration case; or
- Representation of a domestic violence victim in other immigration cases that would allow an abuse victim to stabilize immigration status, facilitate naturalization, or acquire work authorization so long as the victim can show the necessary connection to abuse.

In addition to providing assistance in immigration matters, LSC programs may provide any of the following forms of legal assistance when they are necessary to assist victims' escape from an abusive situation or ameliorate the current effects of the abuse or protect against future abuse. This legal assistance includes, but is not limited to:

- Obtaining civil protection orders
- Divorce

⁹⁵45 C.F.R. § 1626.2(g).

⁹⁶Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 45,755, 45,757 (1997). This restriction parallels restrictions in immigration law which previously cut off access to VAWA relief if the abuse victim remarries. The Violence Against Women Act of 2000 deleted this restriction from immigration law.

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- Child custody
- Child and spousal support
- Housing
- Public benefits
- Employment
- Abuse and neglect
- Juvenile proceedings
- Small claims cases
- Contempt actions⁹⁷

Additionally, there are many poverty law issues a battered immigrant woman faces that affect her ability to maintain self-sufficiency and independence from her abuser. Such legal assistance is permissible as it is related to the abuse, and it includes assistance in:

- Obtaining public benefits
- Retaining the family home for the battered immigrant and her children
- Evicting the abuser from the residence
- Obtaining child and spousal support
- Maintaining health insurance from the abuser
- Staving off eviction.

REQUIREMENTS TO VERIFY IMMIGRATION STATUS

The Legal Services regulations implementing battered immigrant access to legal services provide important confidentiality protections so that immigrants who receive legal representation by LSC-funded organizations can be assured that the information about the immigration status contained in the LSC organization's records will not be provided to BCIS/BICE or used against them by immigration officials. These confidentiality provisions are extremely important in light of the onerous immigration status eligibility requirements that LSC-funded programs normally are required to undertake. Confidentiality protections were included in the regulations to allay the fears of battered immigrant women who would otherwise be deterred from seeking the legal representation they need to help them escape from their abuser.⁹⁸ The regulations recognize the need to protect from disclosure information provided to an organization by battered immigrants who may be undocumented immigrants, and by potential clients who are rejected or referred to another legal services provider because they do not qualify as eligible non-citizens.

Consequently, the regulations provide that LSC-funded organizations are not required to inquire about a domestic violence client's immigration status or to maintain records regarding her status.⁹⁹ Further, since legal assistance as defined under these regulations does not include normal intake and referral services, an organization is not required to verify citizenship or eligibility during intake and referral or when providing brief advice or consultation by telephone. LSC-funded programs do not need to document the immigration status of potential clients to whom they offer only intake and referral services or to whom they provide quick advice.¹⁰⁰

For all other clients, except battered immigrants and clients provided only referrals or quick advice, an LSC-funded organization is required to have clients attest to their citizenship (or prove it, if there is reason to doubt it), or verify their non-citizen eligibility under LSC regulations. The organization must also maintain records sufficient to document its compliance with LSC regulations.¹⁰¹ For this reason, even battered immigrant women who fall within the group of non-citizens whom LSC is authorized to assist may prefer to apply for legal services under the special provisions for battered immigrants. Those services are available without any

⁹⁷ Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 19409, 19410-11 (Apr. 21, 1997) (codified at 8 C.F.R. pt. 204).

⁹⁸ Restrictions on Legal Assistance to Aliens, 62 Fed. Reg. 45,755, 45,757 (1997).

⁹⁹ 45 C.F.R. § 1626.4(b).

¹⁰⁰ 45 C.F.R. §§ 1626.3, 1626.6(a), 1626.7(a).

¹⁰¹ 45 C.F.R. §§ 1626.12, 1626.6, 1626.7.

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requirements for verification of immigration status and without producing specific immigration documents.¹⁰²

Practically, this means that interviewers should determine whether applicants are victims of battery or extreme cruelty by a spouse or parent, thus establishing Kennedy Amendment eligibility. Once this eligibility is established, interviewers should qualify questions related to immigration status by assuring the applicant that the questions about to be asked are asked of everyone and that all responses will be kept confidential. This is done so that the applicant is not deterred from applying for legal aid. Hence, potential clients will not be afraid to access much needed legal services provided by LSC-funded organizations.

Battered immigrants who qualify for LSC-funded legal representation using federal LSC funds may prove their eligibility by providing:

- United States passport
- Birth certificate
- Naturalization certificate
- United States Citizenship Identification Card
- Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth
- Green card
- Evidence of lawful permanent residency or conditional residency
- Application for adjustment of status
- Evidence of admission as a refugee, asylee, conditional resident, or of withholding of deportation.

An LSC-funded organization may also accept any other authoritative document, such as a document issued by BCIS, a court, or another governmental agency, that provides evidence of citizenship or qualifying immigration status. Examples include documents confirming refugee or asylee status, conditional entry, or withholding of deportation. If a person is unable to provide any of the above documents, she may submit a notarized statement signed by a third party. LSC programs may accept certified copies or photocopies of any of the documents in cases where documentation of immigration status is required.

It is also important to take note that LSC-funded programs may provide emergency legal assistance without written verification of immigration status. The LSC regulations do not define "emergency." The preamble to the LSC regulations state, however, that emergency in the legal services context would include cases in which immediate action is necessary to preserve significant legal rights or prevent significant harm to a person's family, property, or other legal interests.¹⁰³ Under these emergency provisions, LSC-funded programs should be able to assist battered immigrants in filing for and obtaining temporary protection orders and civil protection orders which remove the abuser from the family home, grant custody, and provide immediate protection. They should be able to provide this assistance without regard to immigration status to those battered immigrants who qualify under state protection order laws, but who are abused by persons who are not their spouse or parent.¹⁰⁴ Further representation of battered immigrants, however, is not permitted unless they are abused by a spouse or parent or can provide documentation of immigration status that qualifies them for representation.

VAWA LEGAL ASSISTANCE FOR VICTIMS

Under the Violence Against Women Act amendments passed in 2000, a new program offering legal assistance for domestic violence victims was created.¹⁰⁵ The Legal Assistance for Victims (LAV) grants are

¹⁰²This approach is not an option when the LSC-funded program has raised no non-LSC funds that can be used to represent battered immigrants who do not otherwise qualify for federally funded LSC services. Domestic violence programs should encourage local LSC-funded programs to raise and allocate non-LSC dollars for representation of battered immigrants.

¹⁰³45 C.F.R. § 1626.8.

¹⁰⁴ Advocates should urge LSC funded programs in their states to represent any battered woman in a protection order case without regard to her immigration status.

¹⁰⁵42 U.S.C.S. § 3796gg-6. This law codified and made permanent the civil legal assistance grant program that had been inoperative for a few years prior to VAWA 2000.

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designed to establish projects or expand existing programs that provide legal services to victims of domestic violence, stalking, and sexual assault. Organizations that receive grants under this new program may assist victims in a range of legal services that arise as a consequence of abuse or violence, including protection orders, family law, public benefits, immigration, employment, and housing matters.¹⁰⁶

Under this program, domestic violence is defined broadly to include abuse by a current or former spouse, a person with whom the victim shares a child, a person with whom the victim has cohabitated as a spouse, or other people who could be covered by a protection order under the domestic violence laws of the jurisdiction in question.¹⁰⁷ Because the federal funding under this program is provided to nonprofit organizations, not to individuals directly, this program is not a federal public benefit program and therefore is not subject to immigrant access restrictions. Thus, organizations receiving grants under this program may provide free or low-cost legal services to battered immigrants regardless of their immigration status. Advocates working with battered immigrants in local communities should collaborate with legal services providers to encourage them to apply for LAV funding to support legal representation of battered immigrants.

ADVOCACY STRATEGIES

LSC management and senior attorneys should educate advocates in the domestic violence community about the Kennedy Amendment because direct service providers may assume that the law prohibits immigrants from receiving legal services. Additionally, LSC program staff should educate their own staff by including the language of the Kennedy Amendment and articles such as this one in their training manuals for new attorneys and paralegals.

Because LSC-funded programs may represent otherwise ineligible battered immigrants under the Kennedy Amendment, programs should locate community resources to which they can refer immigrant victims whose abusers fall under other categories. LSC-funded programs should, in turn, accept referrals of clients who qualify for representation. Without careful coordination, legal aid programs not receiving LSC-funding may fill their caseload with clients who also qualify for LSC-funded representation. In this event, a battered immigrant whose abuser is not her spouse, but the father of her child, will have nowhere to turn for representation in a custody case, for example.

Coordination can also fill a critical need to develop additional resources. In many communities, LSC-funded organizations are beleaguered by the demand for their services. Local advocates and LSC-funded programs should work together to compile referral lists of private attorneys and other legal agencies whose staff understand domestic violence and immigration issues. Additionally, domestic violence advocates, along with legal services programs, should consider joint efforts to raise non-LSC funds they can use to provide services to battered immigrant women and children. This joint funding can be used to support advocate/legal services attorney collaborations in which one attorney working with advocates can provide legal representation to many more battered immigrant victims than if he or she were doing all of the client interviewing and evidence collection alone. This approach works particularly well in VAWA self-petitioning cases.

A model approach to such collaboration has been developed in Albuquerque, New Mexico. In New Mexico, one attorney trained battered women's advocates across the state on VAWA's self-petitioning provisions. Working with advocates who conduct client interviews and collect evidence for VAWA immigration cases based on checklists provided by the attorney, one attorney has been able to represent large numbers of battered immigrants in VAWA self-petitioning cases with a very high success rate in securing swift approvals from CIS.¹⁰⁸ This approach is particularly useful for ensuring that battered immigrant victims living in rural communities gain access to immigration relief offered by VAWA.

CONCLUSION

While the law precludes LSC-funded organizations from representing many non-citizens, the law does allow

¹⁰⁶ Pub. L. No.106-386, § 1103, 114 Stat. 1464, 1503-1505, codified at 42 U.S.C. § 3796gg-6.

¹⁰⁷ 42 U.S.C.S. § 3796gg-2.

¹⁰⁸ For more information on this approach developed by Mirna Torres of Catholic Charities in Albuquerque, as well as sample materials, contact the National Immigrant Women's Advocacy Project (NIWAP). (202) 274-4457, info@niwap.org.

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LSC-funded organizations to represent many domestic violence victims, regardless of their citizenship or immigration status. Battered immigrant women who have been abused by a spouse, parent, or member of their spouse's or parent's family can receive legal assistance from an LSC-funded organization for any matter that is directly related to their abuse, so long as the organization uses non-LSC funds for the representation. Other battered immigrants may be able to obtain emergency legal assistance to obtain temporary protection orders and civil protection orders.

While the language of the regulations and the statute does limit who is eligible for representation as a victim of domestic violence, many of the restrictions are subject to flexible interpretations, which LSC-funded organizations must be encouraged to interpret broadly.¹⁰⁹ Battered women's advocates must encourage LSC-funded organizations not to turn away any battered immigrant women because of the restrictions on representing non-citizens until they have carefully evaluated a woman's case. Ultimately, many battered immigrant women will be eligible for representation by the LSC-funded organization. Some will be eligible for services because they fit within the categories of non-citizens whom LSC programs may represent using federal funds. Others will qualify for legal services because they have been victims of domestic violence. Programs must be encouraged to represent everyone in protection order cases and to interpret the range of services they can offer immigrants abused by a spouse, parent, or specified family member broadly.

Likewise, advocates should work with all local legal services programs, both those that are funded by LSC and those that are not, to encourage them to apply for LAV funding and to inform them that both LAV funding and other sources of OVW funds (STOP, Rural, Arrest, and Campus grants) can be used to provide assistance to battered immigrants in a broad array of matters, including assistance in immigration matters. Battered immigrants are eligible for legal assistance services authorized under VAWA through OVW-funded grants regardless of their immigration status. To assure that programs funded by OVW or state STOP grant funds will actually provide the full range of services battered immigrants need, it is important that legal services and all other programs apply for OVW or STOP grant funds to provide services to immigrant victims by specifically including in their grant applications a provision stating that they intend to provide legal assistance to battered immigrants. Provisions of immigration assistance need not be the primary purpose of the grant, but to ensure that immigration assistance can be provided when needed, this form of legal assistance should be listed in the grant.

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¹⁰⁹The LSC regulations implementing the 1997 statute encourage a broad and flexible interpretation. 62 Fed. Reg. 19,410, 19,411.