

Access to Transitional and Emergency Housing for Immigrant Crime Victims

By: Catherine Longville and Leslye E. Orloff¹ (June 20, 2014)

Immigrant victims of domestic violence and child abuse, abandoned or neglected children and the homeless, including victims of sexual assault at risk of homelessness are entitled to both emergency housing and transitional housing, without regard to their immigration status.² However, research has found that immigrant victims are turned away from transitional housing at very high rates (battered immigrants 52.9%; sexual assault 94.2%).³ In many instances (36%), advocates and attorneys working with immigrant survivors were not aware that battered immigrants and immigrant sexual assault victims are eligible for transitional housing.⁴

Legal Eligibility for Transitional Housing

While the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)⁵ restricted immigrants' access to many public benefits programs, PRWORA also explicitly declared that programs necessary to protect life and safety⁶ were to remain open to all persons without regard to immigration status.⁷ In PRWORA Congress granted the U.S. Attorney General the sole discretion to designate the programs that were to be accessible to all immigrants.⁸ The list of life and safety programs that were to

be accessible to both documented and undocumented immigrants included emergency shelter and transitional housing for up to two years.⁹

Data about immigrant access to transitional and emergency housing

Data shows housing agencies are often unaware of the law regarding immigrants' right to access transitional and emergency housing. Specifically, about 36% of housing agencies were unaware of the right of undocumented immigrants to access emergency and transitional shelter.¹⁰ Data also shows that a high number of undocumented immigrants are being denied access to transitional and emergency housing for reasons related to their immigration status.¹¹

Best Practices for Transitional Housing Admission Policies

The National Network to End Domestic Violence (NNEDV), is the Office on Violence Against Women funded national technical assistance provider on transitional housing. NNEDV published a transitional housing toolkit¹² that sets out best practices for transitional housing admission policies to ensure equal access to transitional housing programs for victims of domestic violence, sexual assault, stalking, and dating violence as required by the Violence Against Women Act of 2013.¹³

The following list contains eligibility requirements for transitional housing that reflect best practices. Applicants must be:

- A survivor of domestic and/or sexual violence, dating violence or stalking, who is actively fleeing an abusive relationship;
- Eighteen years old or (legally) emancipated minor;
- In need of housing due to fleeing, without sufficient emergency or transitional housing available;
- Willing and desiring to participate in Transitional Housing and meet with staff on a mutually-determined schedule;
- Willing to create an individualized safety plan, with the assistance of Transitional Housing staff; and
- Able to safely live independently, without access to staff or support 24-hours per day, 7 days per week.

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² See Letter from the Secretary of the U.S. Dep't of Housing and Urban Development (Jan. 19, 2001) (hereinafter "HUD Letter 2001"), available at <http://niwaplibrary.wcl.american.edu/public-benefits/housing/HUD-shelter-transitional-housing.pdf/view>; see also Final Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation (A.G. Order No. 2353-2001), 66 Fed. Reg. 3613 (Dep't of Justice Jan. 16, 2001) (Hereinafter "AG Order on Life and Safety Services"), available at: http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/AG_order.protection_life_or_safety.pdf.

³ Meaghan Fitzpatrick, Benish Anver, David Stauffer, Krisztina Szabo, & Leslye Orloff, *Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime*, NIWAP, at 17 (June 3, 2014) (Hereinafter Fitzpatrick 2014) available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/housing/Transitional%20Housing%20Report%20FINAL%206.3.14.pdf/view>

⁴ Fitzpatrick 2014 at 13.

⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter "PRWORA"), Pub.L. 104-193, 110 Stat. 2105 (codified at 8 U.S.C. § 1611).

⁶ 8 U.S.C. § 1611(b)(1)(D). For additional information on which other programs are exempt from PRWORA's immigration related prohibitions, see Leslye Orloff & Catherine Longville, *Programs Open to Immigrant Victims and All Immigrants Without Regard to Immigration Status*, NIWAP (2014), available at: <http://niwaplibrary.wcl.american.edu/public-benefits/unrestricted-benefits/Programs%20Open%20To%20All%20Immigrants%20Regardless%20Of%20Status.pdf/view>

⁷ *Id.*, at 8 U.S.C. § 1621(b)(2).

⁸ HUD Letter 2001, *supra* note 1; See also PRWORA, *supra* note 4, at 8 U.S.C. § 1621(b)(2)).

⁹ Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, 66 Fed. Reg. 3613, 3615 (Hereinafter "Life and Safety Regulations"); HUD Letter 2001.

¹⁰ Fitzpatrick 2014.

¹¹ *Id.* (This source provides the data used in each graph in this document).

¹² Best Practices for Setting Eligibility Criteria in Transitional housing Programs, NAT'L NETWORK TO END DOMESTIC VIOLENCE (NNEDV), http://nnedv.org/downloads/Thousing/BestPractices_SettingEligibilityCriteria.pdf (last visited June 2, 2014) (Hereinafter "NNEDV's Best Practices for Setting Eligibility Criteria").

¹³ VAWA 2013, 42 U.S.C. § 14043e-4 (b)(1) (2013).

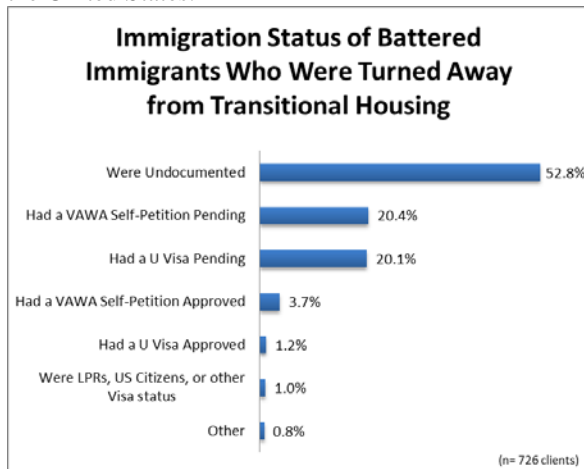
Immigrant Victims' Experiences Accessing Transitional Housing

Nationally, immigrants and Limited English Proficient (LEP) victims make up a small proportion of victims served by transitional housing programs. Between 2010 and 2012, 12.7% of victims in OVW funded transitional housing programs were immigrants and 14.1% were LEP.¹⁴ Only 14.4% of transitional housing residents were victims of dating violence, sexual assault or stalking.¹⁵

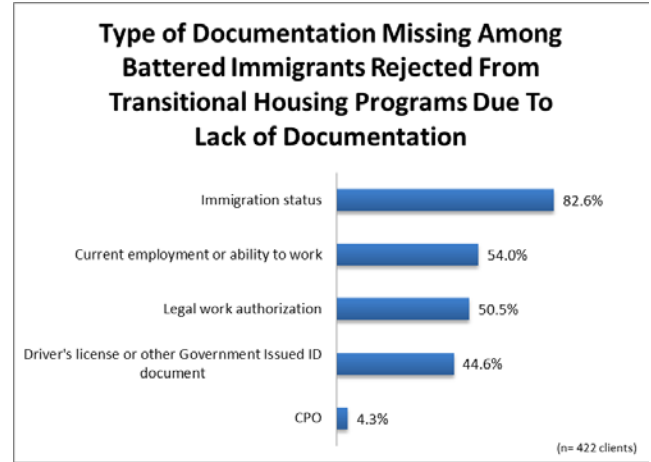
National research on immigrant victims' access to transitional housing found that the reasons transitional housing programs provided in turning away immigrant crime victims were very different from the criteria recommended by NNEDV.¹⁶

Reason Crime Victims Were Denied Transitional Housing	DV %	SA %	HT %
They were undocumented	25.6%	94.9%	20.5%
Required documentation they did not have	34.3%	87.0%	16.8%
No government issued ID	18.3%	86.1%	14.8%
Not meet formal income requirements	23.7%	85.8%	18.4%
Evidence presented of self-sufficiency insufficient	9.5%	85.7%	3.7%
They were not considered a victim of domestic violence		85.6%	21.8%
The program did not have any space available	35.1%	1.0%	6.9%

Although undocumented battered immigrants are legally eligible to access transitional housing programs, among the battered immigrants turned away over half were undocumented (52.8%) and 46.4% were lawfully present in the United States.¹⁷



An examination of the documentation required by transitional housing programs underscores that programs lack understanding that immigration status should not be a factor in transitional housing admissions. Programs are requiring proof of legal immigration status, proof of legal work authorization or "ability to work," and driver's licenses, which are all documents dependent on immigration status. In effect, the documentary requirements imposed by transitional housing programs, turn away eligible immigrant and LEP victims from accessing transitional housing.



Advocacy strategies to help immigrant victims access transitional housing programs

Advocates and attorneys should accompany immigrant victims applying for transitional housing and should bring the following documents:

- DOJ's Final Specification of Community Programs Necessary for Protection of Life or Safety;¹⁸
- HUD letter explaining immigrant eligibility;¹⁹
- The NNEDV toolkit's list of eligibility criteria;²⁰ and
- Evidence showing that the immigrant victim applying for transitional housing meets the NNEDV criteria.

To address other requirements transitional housing programs may impose, advocates and attorneys should also be prepared to describe and bring evidence of (if possible):

- Evidence that the victim has income, such as:
 - Evidence that the victim is working;
 - Child support orders;
 - Evidence that the victim has income from family member;
 - Evidence of self-employment; and/or
 - Evidence of cash income.
- If the victim is in the process of pursuing VAWA, T or U visa immigration relief, evidence of that can be used to show that the victim is on a path to self-sufficiency.

With regard to all eligibility criteria, advocates and attorney accompanying victims applying for transitional housing

¹⁴ The Violence Against Women Act Measuring Effectiveness Initiative (VAWA MEI) at the Muskie School of Public Service at the University of Southern Maine 2010 -2012 grant reporting data downloaded June 3, 2014 from <http://muskie.usm.maine.edu/vawamei/thousinggraphs.htm>; Data analyzed and reported: Fitzpatrick 2014 at 39-40.

¹⁵ *Id.*

¹⁶ Fitzpatrick 2014 at 39.

¹⁷ Fitzpatrick 2014 at 19.

¹⁸ See AG Order on Life and Safety Services, *supra* note 1.

¹⁹ See HUD Letter 2001, *supra* note 1.

²⁰ See NNEDV's Best Practices for Setting Eligibility Criteria, *supra* note 11.

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should urge the program to accept “any credible evidence” of eligibility.²¹

²¹ This is the standard used by DHS in adjudicating VAWA immigration cases, *see e.g.* 8 C.F.R. § 103.2(b)(2)(iii).