

Immigration Relief for Crime Victims

Florida State Team Training

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Faculty

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Learning Objectives

By the end of this training you will be better able to:

- Know how accurate immigration law information promotes just and fair outcomes in family court
- Recognize facts that indicate victims of domestic violence might qualify for:
 - Lawful immigration status
 - Protection from deportation
- Understand the role Congress envisioned for state judges in establishing eligibility for immigration relief
- Make appropriate findings and certifications in state court cases that will permit an immigrant crime victim to pursue immigration relief

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Department of Homeland Security



- DHS Dynamics Video

Immigration Related Abuse

- Refusal to file immigration papers on a spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on a victim's behalf for family or work based visas
- Forcing victim to work with false documents
- Threats/attempts to have the victim deported
- Calls to DHS to turn the victim in or have her case denied

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years.**

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." *International Review of Victimology* 7 93113

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

*Edna Erez and Nawal Ammar, *Violence Against Immigrant Women and Systemic Responses: An Exploratory Study* (2003)

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
 - Lifetime as high as 49.8%
 - Those married to citizens and lawful permanent residents – 50.8%
 - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses

Sexual Assault Rates Among Immigrant Women

- High school aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
 - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).

Immigration Related Abuse

- 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
- May predict abuse escalation
- Corroborates existence of physical and sexual abuse

*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7% (2013)
 - 39% (2017)

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rodrigues et al. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 3, 2018)

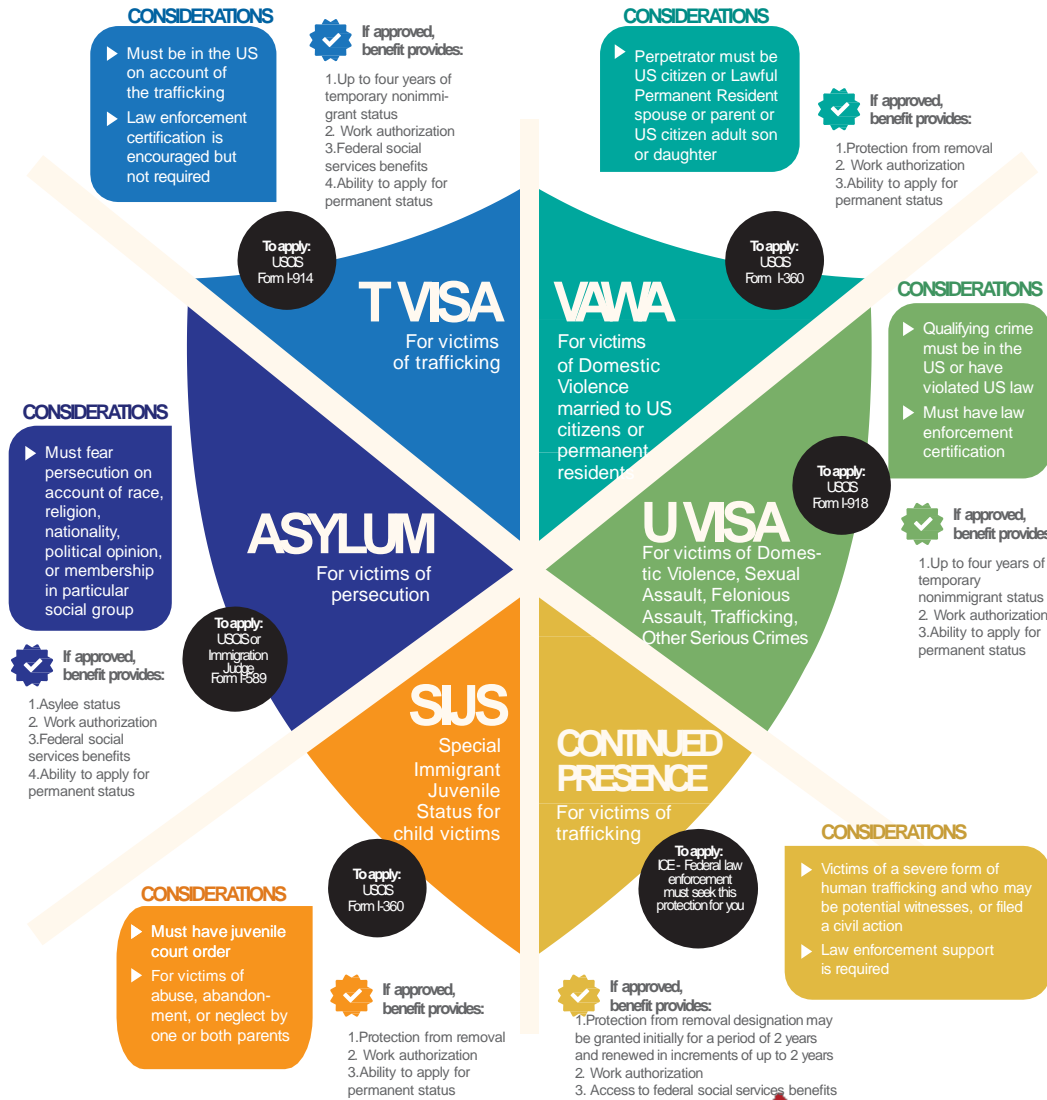
Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%
 - VAWA petitioners arrested at crime scene instead of the abuser 15.4%
 - U visa victims 26.7%
- Traffic stops
 - VAWA self-petitioners 28.6%
 - U visa victims 26.7%

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014)

Forms of Immigration Protection for Victims

PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

Legal Immigration Status Options for Non-citizen Crime Victims and Children

- Battered spouse waiver
 - Abused spouses of US citizens with two-year conditional permanent residency
- VAWA self-petition
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Work Authorization for Abused Spouses of Work Visa Holders
 - A (Diplomats); G (Foreign government, international organization employees), H & E3 (Specialty occupation workers)
- U visa
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity
- T visa and Continued Presence
 - Victims of severe forms of human trafficking
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
 - Deferred action for child arrivals including Dreamers

Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
 - Legal work authorization (3-48 months from filing)
 - Issuance of federally recognized ID
- VAWA confidentiality
- Greater access to public benefits

Protections Help

- Adult/child/elder victims of
 - Domestic violence (battering or extreme cruelty)
 - Sexual assault
 - Human trafficking
 - Dating violence
 - Stalking
 - Many violent crimes
- Children separated from a parent
- People who arrived in the United States as children

Immigrant Children in Family Court

- May have options for legal immigration status
 - Child's own application
 - Child included in parent's application
- Immigrant children's best interests are promoted when state courts:
 - Issue detailed findings required for children to apply for Special Immigrant Juvenile Status
 - Sign U visa certifications
 - Award custody to non-abusive parents, family members, guardians
 - Without regard to the custodian's immigration status
- Distribute U.S. DHS legal rights for victims/children brochures

Court's Role:

- Can be first responder
 - Interpreters, CPO
- Distribute information
- Provide language access
- Recognized potentially eligible immigrants
 - Requests of counsel
 - Referrals to services
- Know how to access accurate information about immigration laws

Violence Against Women Act (VAWA) Immigration Protections

History, Purpose

Historical Development of Battered Immigrant and Immigrant Crime Victim Protections

- Spousal sponsorship rooted in the legal concept of marriage
- 1907-1922 US citizen woman lost citizenship if married foreign born husband
- In 1952, the INA became gender neutral, but kept sponsorship scheme
- Control of immigration process could be in hands of a batterer, abusive employer, trafficker
- VAWA, T and U-visa immigration provisions were enacted to address the problem

Violence Against Women Act of 1994 – Purpose

- Address the federal role in stopping
 - Domestic violence
 - Sexual assault
 - Trafficking in persons
- By meeting two equally important goals
 - Increasing justice system’s role in offender accountability
 - Victim assistance, protection and services
- Designed to help ALL victims
 - Immigration relief key component of legislation
 - Builds upon 1990 Battered Spouse Waiver

VAWA Self-Petition Designed to –

- Provide a battered spouses and children access to immigration relief they are already entitled to
- Stop abuser/perpetrator use of immigration law as a weapon
- Sever abuser/perpetrator's control over
 - Criminal justice system intervention
 - Victim and children
 - Locking victims in abusive family relationships
 - Keeping victims from leaving abusive employers
 - Stopping victims from seeking help
- Provide victims access to justice, services, help, healing, safety, and economic security

VAWA Works for Immigrant Victims

- Stops perpetrator retaliation in form of deportation of victims
- Severs economic dependence on perpetrator through employment authorization for victims
- More crime victims are willing and able to
 - Leave perpetrators
 - Cooperate with law enforcement in crime detection, investigation and prosecution
- Victims more successful in accessing
 - The criminal and civil justice systems
 - Obtain custody of and protection for children
 - Victim services and support

VAWA Terminology for Domestic Violence

- “Battery or Extreme Cruelty”
- Includes
 - All forms of abuse covered in state civil protection order statute
 - All forms of abuse that constitute domestic violence under states criminal laws
 - Forms of abuse that constitute extreme cruelty
 - No physical harm or crime required

Battered Spouse Waivers

- For domestic violence survivors, provides for waiver of the “condition” placed on the status of immigrant spouses of marriages less than two years old
- Waives both the joint filing requirement and two year wait for full lawful permanent resident status
- Requires proof that
 - Marriage to U.S. citizen or permanent resident entered into in good faith *and*
 - Spouse or child was battered or subjected to extreme cruelty
 - Child can include step-child

Immigration and Nationality Act § 216(c)(4)

General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty by a U.S. Citizen or Lawful Permanent Resident
 - spouse;
 - parent; or
 - adult son/daughter who is over age 21
- With Whom Self-Petitioner Resided
 - No time period required
- Good Moral Character
- Good Faith Marriage
 - some intended marriages qualify

U Visa Status for Victims of Crime

- A victim of qualifying criminal activity is eligible for a lawful immigration status under INA § 101(a)(15)(U) when:
 - The victim has suffered substantial physical or mental abuse as a result of qualifying criminal activity crime
 - The criminal activity occurred in the United States **or** violated U.S. law;
 - The victim possesses information concerning the criminal activity; and
 - The victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the offense

Qualifying Criminal Activity

Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, stalking, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, fraud in foreign labor contracting

Immigration and Nationality Act § 101(a)(15)(U)(iii)

Qualifying Criminal Activity Includes

- Violations of Federal, State, or local criminal law
- Violations of “similar activity in violation of Federal, State, or local criminal law”
- Any “attempt, conspiracy or solicitation to commit any of the above mentioned crimes”

Immigration and Nationality Act § 101(a)(15)(U)(iii)

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children who cannot be reunified with one or both parents
- State court findings are required as evidence
 - The state court order does **not** provide immigration status
 - The order is one required piece of evidence in a federal adjudication process

Immigration and Nationality Act § 101(A)(27)(J)

State Court Findings

- The court exercised jurisdiction over the care and custody of the child
- It is not in the child's best interest to return to their home country
- The child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law

Immigration and Nationality Act § 101(A)(27)(J)

Decisions about care and custody of children arise in...

- Civil protection order cases
- Custody cases
- Child welfare cases
- Divorce cases
- Delinquency cases
- Guardianship cases

T Visa Status for Victims of Human Trafficking

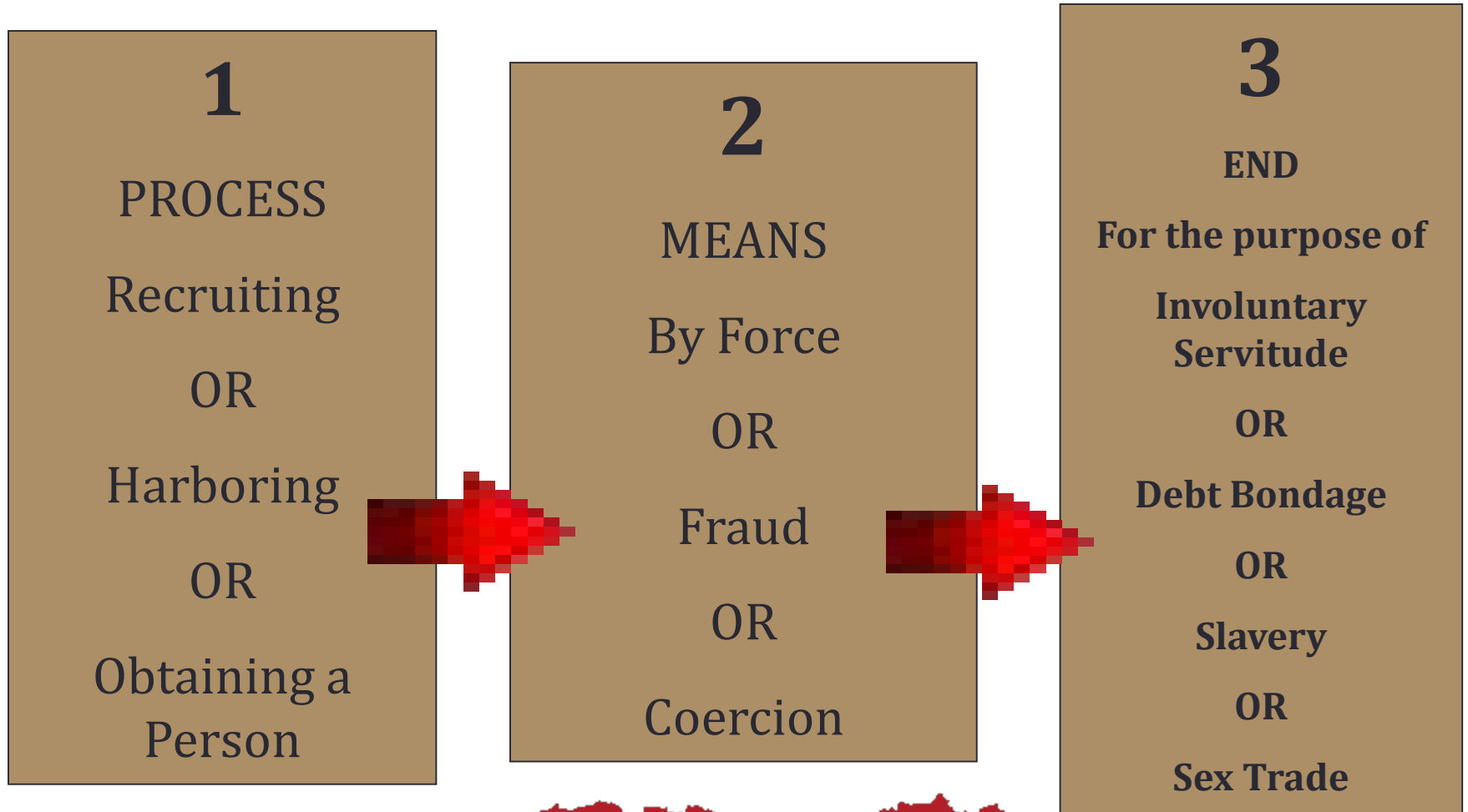
- Victims of human trafficking is eligible for a lawful immigration status under INA § 101(a)(15)(T) when they:
 - are or have been a victim of a severe form of human trafficking
 - are physically present in the United States on account of the trafficking,
 - comply with reasonable requests for assistance with an investigation or prosecution, and
 - would suffer extreme hardship involving unusual and severe harm upon removal from the United States

Severe Forms of Human Trafficking

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

22 U.S.C. § 7102(9)

Three Elements of Trafficking



Deferred Action for Childhood Arrivals

- Under the age of 31 as of June 15, 2012;
- Came to the United States before 16th birthday;
- Continuously resided in the United States since June 15, 2007;
- Physically present in the United States on June 15, 2012;
- No lawful status on June 15, 2012;
- Currently in school, graduated, or obtained a certificate of completion from high school, obtained a GED certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- Not convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Small Group Activity - Case

- Clara met Eduardo a naturalized U.S. citizen when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara, who was raising her 9-year-old son Miguel. Eduardo began regularly coming to visit Clara, who became pregnant and gave birth to a baby girl Lupe. When Lupe turned 1 year old, Eduardo decided to bring Clara, Miguel, and Lupe to the U.S. to live with him. Upon their arrival in the U.S., Eduardo took Clara, Miguel, and Lupe's passports and became physically and sexually abusive of Clara. Eduardo's abuse turned toward Miguel when he tried to protect his mother from Eduardo, and Lupe was physically beaten by Eduardo when he said she "misbehaved". Within a year following their arrival in the U.S., Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors called the police for help. Police arrested Eduardo for attempted murder and child abuse. The police came, took Clara to the hospital, and took both children into care of the state.
- What forms of immigration relief do the abused family members qualify for?

Report Back and Discussion

- Immigration relief for
 - Clara
 - Miguel
 - Lupe
- What steps can judges take when they believe a child or party before them qualifies for immigration relief?

Questions?