

**Training and Meeting on
Best Practices, Legal Rights, and
Protections for Immigrant and
Limited English Proficient Crime
Victims**

September 27, 2019
Kensington, Maryland



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University Washington College of Law

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**Faculty Introductions
and Opening**



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**What are the questions regarding
legal protections for immigrant
and refugee survivors you want to
be sure are answered by the end
of this conference?**



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Learning Objectives

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

- Understand dynamics and barriers immigrant survivors encounter
- Be familiar with the full range of protections immigrant survivors of domestic and sexual violence & children are legally eligible to access
- Know how to assist immigrant and refugee survivors accessing housing, public benefits, legal service and justice system help in a trauma informed manner
- There will be a plan for future training

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DEMOGRAPHICS

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**What countries are you seeing
immigrant survivors coming
from?**

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Maryland Demographics (2017)*

- ❖ Total foreign born population – 927,936
- ❖ 15.3% of the state's population are foreign born
 - 52.5% naturalized citizens
 - ~28% lawful permanent residents
 - ~19.5% temporary residents and undocumented
- ❖ 79.0% rise in immigrant population from 2000 to 2017
- ❖ 29.4% of children in the state under age 18 have 1 or more immigrant parents
 - 84.7% of children with immigrant parents in the state are U.S. natives.

*Source: <https://www.migrationpolicy.org/data/state-profiles/state/demographics/MD> (June 2019)

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Maryland – Countries/Regions of Origin (2017)*

- Latin America - 39.3%
 - El Salvador (11.8%)
 - Mexico (4.1%)
 - Jamaica (3.2%)
 - Other Central America (8.2%)
 - South America (7.1%)
- Africa – 17.5%
 - Western Africa (9.1%)
 - Eastern Africa (3.9%)
 - Middle and Southern Africa (2.6%)
- Asia – 32.7%
 - India (6.9%)
 - China (6.3%)
 - Philippines (4.3%)
 - Korea (3.7%)
 - Vietnam (2.0%)
- Europe – 9.2%
 - United Kingdom (1.5%)
 - Russia (1.1%)
 - Germany (1.0%)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/demographics/MD> (June 2019)

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Maryland – Languages Spoken at Home

- Spanish (486,012)
- Chinese (72,246)
- Yoruba, Twi, Igbo, or Other Languages of Western Africa (48,899)
- Korean (39,601)
- Tagalog (37,180)
- Amharic, Somali, or Other Afro-Asiatic Languages (28,646)
- Urdu (25,046)
- Russian (19,691)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MD> (June 2019)

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Maryland - LEP

- Limited English Proficiency (Speak English less than very well)
 - Naturalized citizens - 25.8%
 - Noncitizens - 49.2%
- LEP Speakers
 - Spanish (211,311)
 - Chinese (32,467)
 - Korean (20,436)
 - French (including Cajun) (12,989)
 - Amharic, Somali, or Other Afro-Asiatic Languages (10,458)
 - Vietnamese (9,644)
 - Tagalog (8,627)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MD> (June 2019)

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Language Access in Cases Involving Limited English Proficient Victims

- Required of law enforcement, courts, benefits agencies, victim and legal services, health care
- All programs receiving federal assistance
- Securing language access part of case planning
- World language identification card

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Title VI of the Civil Rights Act 1964

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving *Federal financial assistance*. Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d

"Language assistance that results in accurate, timely and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior, as compared to programs or activities provided to English proficient individuals"

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Who's covered?

1. Federally conducted programs
2. State/local government grantees
3. Non-governmental organization grantees



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Any Federal Funding Includes Funds From:

- Office for Victims of Crime (OVC)
- Office on Violence Against Women (VAWA)
- Family Violence Prevention and Services Act (FVPSA)
- Health and Human Services funded programs (HHS)
- Office of Juvenile Justice and Delinquency Prevention (OJJDP)
- Bureau of Justice Assistance (BJA)
- Bureau of Justice Statistics (BJS)
- Community Capacity Development Office (CCDO)
- National Institute of Justice (NIJ)
- Other examples agencies in your community have?

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Policy Guidance Four Factors

67 Fed. Ref. 41455

1. Number or proportion of LEP individuals served or encountered in the eligible service population
2. Frequency of contacts
3. The nature and importance of the program, activity or services
4. Resources available → However, there is Dept. of Justice guidance that lack of resources is no excuse for failure to comply.

Large group discussion: Could one of these factors outweigh the others when you are working with immigrant crime victims?

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Title VI of the Civil Rights Act 1964

Meaning:

- If an organization receives any federal funds
- All aspects of the organization must take reasonable steps to provide meaningful access to programs, benefits, and services offered by the organization to persons who are limited English proficient (LEP)

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DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010) - Interpreters

- LEP individuals are to be provided qualified interpreters
 - For all parties, defendants and witnesses and all persons whose presence is necessary or appropriate (e.g., parents of minor crime victims)
 - In ALL court room proceedings whether civil, criminal, administrative, includes motions and status hearings
 - LEP individuals should not incur any fees for these services

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DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010) - Interpreters

- LEP individuals are to be provided qualified interpreters
 - Not restricted to court rooms, also other court functions including:
 - Clerks offices, records room
 - Alternative dispute resolution
 - *Pro se* clinics
 - All interactions with court appointed personnel (e.g. batterers treatment, guardians ad litem, court psychologists, testing)

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DOJ Model Guidance

- Police provide free language access to:
 - LEP persons who request it
 - *When officer decides it is helpful* to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in persons primary language

DOJ Sample Policy Center City Police Department

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DOJ and Exigent Circumstances

- Use the most reliable *temporary* interpreter available to address exigent circumstances
 - Fleeting suspect
 - Weapons
 - Life threatening to the officer /victim/or public

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DOJ Requirements for Investigations & Interrogations

- "A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness' legal rights could be adversely impacted"
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings

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We Can't Afford Language Access

Financial limitations do not provide an exemption from language access requirements. Investigators will look at:

1. Demonstrated previous success
2. Whether other essential services are being restricted or defunded
3. Whether additional revenues secured or technology used
4. Whether the grantee has an implementation plan
5. Nature and impact on LEP persons

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DYNAMICS OF DOMESTIC AND SEXUAL VIOLENCE EXPERIENCED BY IMMIGRANT SURVIVORS IN MISSOURI

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What barriers and fears prevent immigrant survivors from seeking help?

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Major Challenges in working with Immigrant Survivors of Crime

- Fear of Deportation
- Language
- Retaliation
- Fear of losing their children
- Lack of knowledge of legal rights
- Do not trust that advocates, attorneys, police, prosecutors, judges will help them
- Service providers and professionals do not know what immigrant victims qualify to receive

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Department of Homeland Security

- DHS Dynamics Video



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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**.
- 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)

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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

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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).

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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)

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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)

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)



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IMMIGRATION OPTIONS FOR IMMIGRANT SURVIVORS AND THEIR CHILDREN: SCREENING



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How does filing for immigration relief help immigrant domestic and sexual violence survivors?



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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 a federally recognized ID
 - Increased access to government funded benefits and services
- VAWA confidentiality

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Purpose of Crime Victim Protections

Congress enacted VAWA self-petitioning (1994), the U and T visas (2000) & Special Immigrant Juvenile Status (SIJS) (1990, 2008) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Allow victims to report crimes and seek help from police, prosecutors, and courts without fear of deportation
- Improve access to justice in family/criminal/civil courts for immigrant victims of
 - Domestic & sexual violence, stalking, human trafficking, and child/elder abuse
- Enhance victim safety
- Keep communities safe

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Immigration Relief Available for Immigrant Victims of —

- | | | |
|-----------------------------|-----------------------------------|-----------------------------|
| • Domestic violence | • Kidnapping | • Extortion |
| -- Child abuse | • Abduction | • Witness tampering |
| • Sexual assault | • Trafficking | • Obstruction of justice |
| • Rape | • Involuntary servitude | • Perjury |
| • Incest | • Slave trade | • Stalking |
| • Prostitution | • Being held hostage | • Parent perpetrated |
| • Torture | • Fraud Foreign Labor Contracting | – Child abuse |
| • Felonious assault | • Peonage | – Child neglect |
| • Manslaughter | • False Imprisonment | – Child abandonment |
| • Murder | • Blackmail | |
| • Female genital mutilation | | |
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

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PROTECTIONS FOR IMMIGRANT VICTIMS

T VISA (For victims of human trafficking)
VAWA (For victims of domestic violence)
U VISA (For victims of crimes)
ASYLUM (For victims of persecution)
SIJS (Special Immigrant Juvenile Status)
CONTINUED PRESENCE (For victims of domestic violence)

BLUE CAMPAIGN
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DHS Immigration Options for Victims of Crime Brochure

- Languages Offered
 - Spanish
 - Mandarin
 - English
 - Korean
 - Russian

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VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - Spouse;
 - Parent; or
 - Citizen adult son/daughter (over 21)
- With Whom Self-Petitioner Resided
 - No time period required
- Good Moral Character
- Good Faith Marriage
- VAWA cancellation of removal has similar eligibility requirements
- Battered Spouse Waiver if perpetrator files
- **Timeline to formal protection = 4–18 months (2019)**

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Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets

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U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- **Timeline to formal protection = 4-6 years (2019)**

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Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	


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Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, or neglect
 - By at least **one parent**
- To apply must submit required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- Findings
 - Not in child's best interests to return to home country
 - Reunification with abusive parent not viable
- **Timeline to formal protection = 6 – 36 months(2019)**




T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.D. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking.


Exceptions

 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- **Timeline to formal protection = 3-12 months (2019)**



Protections for Children and Family Members

- VAWA self petitioner = Abused Child, Parent of abused child, Abused parent
 - Family included: applicants' children and an under 21 year old child can include their parent
- U and T visa applicant = Child victim or their parent
 - Family included:
 - Under 21: spouse, children, parents, unmarried siblings under 18
 - Over 21: spouse and children
- Special Immigrant Juvenile Status = child victim
 - Family included: None



Case Scenario (Handout)

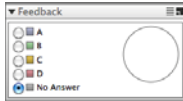
Clara met Eduardo a naturalized U.S. citizen when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe 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 call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

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What forms of immigration relief would Clara qualify for:



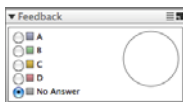
- A. U visa
- B. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above

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What forms of immigration relief would Lupe and Miguel qualify for:




- A. Both can VAWA self-petition
- B. Both qualify for a U visa
- C. Lupe qualifies for a T visa
- D. All of the above

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**VAWA CONFIDENTIALITY,
VICTIM SAFETY, AND CASE
STRATEGY IN CASES OF
IMMIGRANT SURVIVORS**



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Large Group Discussion

- When a victim comes to your agency for help how might the information about immigration relief and immigration related abuse impact
 - The strategy
 - Victim safety



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**Raise your hand if you have worked
with a domestic or sexual violence
victim who --**

- Received threats of deportation from the abuser?
- Were contacted by immigration enforcement officials?



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Improving Immigrant Victim Safety Through Early Screening

- Know forms of immigration relief immigrant survivors qualify for
- Document history of abuse
- Know differences between immigration options
- Incorporate into safety planning
 - How victim can safely carry DHS document copies

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Value of Filing Early

- File victim's immigration case ASAP
 - DHS VAWA confidentiality computer system
 - Sufficient evidence for prima facie
- Benefits for victims of early filing
 - Protection from deportation
 - Safer for victim to cooperate in criminal case
 - Earlier access to work authorization
 - State benefits in some states or speeds access
 - Better position in family law case
 - Can use the Requests for Further Evidence process to supplement application

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Case Strategies That Promote Victim Participation in Civil and Criminal Cases

- Changes in case strategy- when possible an immigration case should be filed before:
 - CPO, family or criminal court case
 - Victim travels to new location
 - Victim experiencing immigration related threats
- Role of VAWA confidentiality laws
- Importance of sufficient evidence for prima facie case

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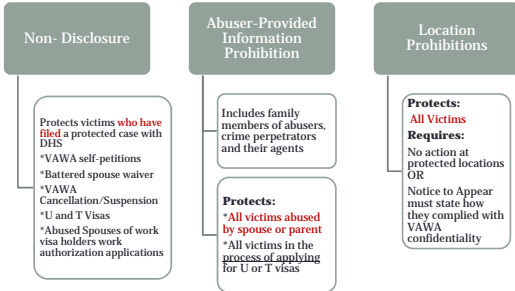
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Advocacy and Best Practices

- Give victims a letter stating that they are in the process of filing a VAWA, T or U visa immigration case
- File immigration case before
 - Protection order, divorce, or custody case
 - Victim travels to a new location
- Particularly when the victim is receiving immigration related threats

VAWA Confidentiality Prongs Chart



Violation = \$5,000 fine and/or disciplinary action

VAWA Confidentiality Protections

- **Abuser-Provided Information:** DHS, DOJ and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (their family members or associates)
- **Location Prohibitions** to enforcement unless DHS complies with specific statutory and policy safeguards – includes no courthouse immigration enforcement against immigrant crime victims
- **Non-Disclosure:** DHS, DOJ and the State Department cannot disclose VAWA confidentiality protected information to anyone including through civil, family and criminal court discovery of information about or contained in the file of any protected case:
 - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

Bars Limiting Reliance Upon Information Provided by a Perpetrator

- The government cannot gather and/or use information provided solely by:
 - A domestic violence or child abuser
 - A sexual assault or stalking perpetrator
 - A trafficker
 - The perpetrator of any U visa listed crime
 - The perpetrator's family member
 - Other persons associated with the perpetrator
 - (ICE 2007)
- To take an adverse action against a victim
- 8 U.S.C. 1367(a)(1)



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Adverse Actions Include Using Perpetrator Provided Information To...

- Deny a victims immigration case
- Detain a victim
- Deport a victim
- Initiate an immigration enforcement action against a victim
- Seek out, question, arrest, or detain a victim



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DHS Cannot ---

- Contact an abuser
- Seek information from an abuser
- Call an abuser as a witness
- Use information obtained solely from an abuser against the victim in the victim's immigration case



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Statute Does Not Require Filing For VAWA Confidentiality Protections To Apply To:

- Domestic violence victims
- Child abuse victims
- Immigrant parents of child abuse victims
- Victims of family violence perpetrated by another family member residing in the same household
- Best practice to file as soon as possible
 - A well documented case



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DHS VAWA Confidentiality Computer System

- Directs to check for "384" computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers that the immigrant is a victim
- Sanctions \$5,000 fine and/or disciplinary action



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State and Federal VAWA Confidentiality and Discovery Case Law

- Family law - VAWA and U visa case information not discoverable
- Criminal law – only U visa case certification discoverable
 - File not in prosecutors' custody or control
- Civil cases not discoverable except potentially as needed to prove damages to a specific individual
 - In chambers review judge can redact



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VAWA Sensitive Location Prohibitions

- Enforcement actions are not to be taken unless the action specific procedures designed to protect victims are followed:
 - A shelter
 - Rape crisis center
 - Supervised visitation center
 - Family justice center
 - Victim services program or provider
 - Community based organization
 - Courthouse in connection with any
 - Protection order case, child custody case, civil, or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



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Sensitive Locations

- Enforcement actions by ICE and CBP are not to occur or be focused at sensitive locations:
 - Schools
 - Medical treatment and health care facilities
 - Places of worship
 - Religious or civil ceremonies, e.g. weddings, funerals
 - During a public demonstration, e.g., march, rally, parade
- Very limited exceptions:
 - Exigent circumstances
 - Prior approval by a designated supervisor
 - Other law enforcement action led ICE/CBP there

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January 2018 ICE Courthouse Enforcement Policy: Targeted Immigrant Limitation

- Civil immigration enforcement at courthouses will only occur when
 - ICE officers have information that leads them to believe that a *targeted immigrant* will be present at a courthouse
- No immigration enforcement against other persons including
 - Victims
 - Witnesses
 - Family members
 - People accompanying others to court

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Steps Courts Are Taking

- Restrict activities that interfere with courtroom operations
- Enforcement restricted to non-public areas of the courthouse*
- Courts ask ICE to coordinate with court security staff and use of non-public entrances & exits*
- Some courts do not allow ICE into courtrooms
- No enforcement in civil and family proceedings absent written authorization from ICE Field Office Director or Special Agent in Charge*
- No interruptions during court proceedings or until case is completed
- No enforcement against victims, witnesses, family members, people accompanying others to court*
- Call courthouse security if ICE fails to comply with court orders



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Victim Witness DHS Memo 2011 Continuing Effect Confirmed 4/19

- Goal: "Minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice."
- "Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime."
- Crime victims and witnesses should receive "release from detention and deferral or a stay of removal."



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What to Take to Court When Accompanying an Immigrant DV/SA Survivor

- A# or Letter from advocate/attorney stating that victim is in the process of filing a
 - VAWA, T or U visa case
- Police Reports
- Copy of the U/T certification
- VAWA confidentiality policies
 - ICE, DHS
- Evidence of abuse include copies of protection orders, photos, documentation of the perpetrator's criminal case



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When Violations Happen

- Work it up the chain to a supervisor
- File a formal complaint-
 - Penalties of up to \$5000 per incident against the violating officer individually
 - Also disciplinary actions
- Advocate to mitigate harm for victim
- Call NIWAP for technical assistance

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Why Trauma Informed Writing Interventions Work?

- Writing intervention
 - *Process* by which advocate helps the survivor writes her/his story –trauma history
 - *Why* writing (or story telling) interventions can help survivors heal from trauma

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Building Trust

- Take a trauma-informed approach that is sensitive to the victim's trauma history
- Non-judgmental attitude
- Remind survivors of confidentiality, not only within your relationship
- Explain VAWA Confidentiality protection for immigration applications
- Be mindful of non-verbal cues
- Cultural sensitivity

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Process of Trauma-Informed VAWA, U Visa or T Visa Story Collection

1. Recognize the client as whole human being and as a survivor
2. Support client's self-regulation
3. Understand client's behavior through a trauma lens
4. Titrate client's exposure to traumatic memories
5. Recognize the impact of exposing the trauma and its effects
6. Use techniques for grounding and soothing
7. Validate completing the process as success
8. Referral for trauma services in collaboration, as needed

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Interview Goals

- Develop emotional safety plan for generating the story
- Invite the initial telling/writing of the story of *"What happened to me?"* and *"How did it change me?"* and *"How did law enforcement help?"*
- Elaborate the story
 - Standard tools for eliciting additional information
 - Reading and re-reading the story
 - Validate and support the emotional response

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Standardized Tools: Assessing *"What happened to me?"*

- Multiple types of trauma exposure
- Structured Life Events Screening Questionnaire (SLESQ)
- Domestic Violence
- Conflict Tactics Scale (CTS-2)
 - Psychological Maltreatment of Women
 - Coercive Control Scale (IPV Coercion Measure)
 - Danger Assessment
- Indigenous Trauma
- Additional traumatic effects based on oppression and discrimination


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Standardized tools:
Assessing “How did it change me?”
 (Impact of battering or extreme cruelty)

- IPV (Intimate Partner Violence) Threat Appraisal and Fear Scale
- PTSD Checklist (PCL-C)
- Patient Health Questionnaire (PHQ-9; depression)



Immigration Story Writing Intervention


- **Affidavit = A Survivor’s “Story”**
 - Unique opportunity for trauma informed healing
 - Most important pieces of evidence submitted
 - DHS hears directly from the survivor, in her voice
 - Less affidavit, than “story” of the survivor’s experience
 - Getting the full story for the immigration case can be a traumatic experience for survivors
 - The goal is to develop an approach that:
 - Obtains more complete information
 - Improves outcomes and helps survivors heal



Trauma Informed Approach to Story Writing

Story Writing Intervention

- Process by which advocate/attorney supports and helps survivors write their own story
- By capturing trauma history through narrative, survivors are helped to heal from trauma
- What research tells us about importance of writing the trauma narrative



Story Writing Intervention Method

- 1. Invite the survivor to write/tell her story**
 - Support, witness, listen without judgment, allow space
 - Goal: story comes out unedited/uninterrupted
- 2. Follow up with interview**
 - Structured Interview Questionnaire for Immigration (SIQI)
 - Take notes for follow up during story telling interview
- 3. Edit together**
 - Story + structured interview responses into affidavit
- 4. Survivor reads back the final story**

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Tools to Help You

- Trauma informed interview tool
- Evidence checklists
- Manual chapters on VAWA and U visa
- Webinars and online learning
 - On VAWA and U visas
 - Video on helping survivors who go into crisis reliving trauma while writing their story for their immigration case
- NIWAP's TA (202) 274-4457 or info@niwap.org

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ACCESS TO BENEFITS AND SERVICES GROWS AS CHILDREN AND VICTIMS PURSUE IMMIGRATION RELIEF



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Access for All

Both documented and undocumented immigrant survivors can access:

- Legal Services
- Family Court (Divorce)
- Language Access
- Police Assistance
- Protection Orders
- Child Custody & Support
- Have Their Abusers Criminally Prosecuted
- Public Benefits for Their Children
- Assistance for Crime Victims
- Shelter
- Transitional Housing
- WIC/school lunch & breakfast
- Primary/Secondary education
- Immunizations
- Emergency medical care
- Care from community & migrant health clinics
- VOCA

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Attorney General's List of Required Services

- In-kind services
- Provided at the community level
- Not based on the individual's income or resources
- Necessary to protect life and safety

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In-Kind Services Necessary to Protect Life and Safety Open to All Immigrants

- Child and adult protection services
- Crisis counseling and intervention
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Shelter & transitional housing assistance
- Nutrition programs for those requiring special assistance



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Federal Benefits Available to ALL Immigrants



- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid

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When children qualify and their parents do not:

- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may only ask questions about the child's eligibility
- No questions may be asked about the immigration status of the child's parent if the parent is not applying for additional benefits for themselves

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Health Care Open to All Immigrants

- Community and migrant health clinics
 - www.nachc.com
 - www.hrsa.gov
 - Enter zip code
- State funded programs
- Post-assault health care paid by VOCA
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



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Emergency Medicaid

- Available only in cases where the person needs treatment for medical conditions with acute symptoms that could:
 - place the patient’s health in serious jeopardy;
 - result in serious impairment of bodily functions;
 - or
 - cause dysfunction of any bodily organ or part



IMMIGRANT SURVIVORS’ LEGAL RIGHTS TO ACCESS FEDERAL AND STATE FUNDED BENEFITS



Qualified Immigrant Access to Federal Public Benefits

- All qualified immigrants can access some federal public benefits
 - Which benefits they can access depends on:
 - Immigration status
 - When they entered the United States
 - Whether they meet heightened program requirements for some programs
 - What benefits are offered by the state

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Who are "Qualified Immigrants"?

- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- Persons who (or whose children) have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent

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Partial List of Federal Public Benefits/Community Programs Open to All "Qualified Immigrants"


- Public and assisted housing
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Low income and residential energy assistance programs
- Disability benefits
 - *Assistance to developmentally disabled
- Job opportunities for low income individuals
 - *Adoption assistance
 - *Foster care
- Social services block grant programs
- Supportive housing for the elderly or disabled

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IMMIGRANT VICTIMS AND FAMILY COURT CASES




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Protecting Immigrant Mothers Protects Children

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



Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004)
<http://niwaplibrary.wcl.american.edu/pubs/co-occurrenceofchildabuse/>



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Is Immigration Status Relevant to Custody?

- **Relevant to:** Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
 - Either not filing or withdrawing immigration papers
 - Threats to turn victim in for deportation
 - Part of history of violence
- **Not relevant to:**
 - Core primary caretaker determination
 - Evaluation of parenting skills
 - Best interests of the child determination
 - Requirements regarding custody awards to non-abusive parent

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Myth vs. Fact: Parents without Legal Immigration Status

Myth	Fact
Deportation is imminent	DHS policies prevent detention/removal of immigrant parents who are crime victims
Parent is likely to flee U.S. with child	US citizens and lawful permanent residents are more likely to flee with children, especially when <ul style="list-style-type: none"> - There have been threats of kidnapping children - They are dual nationals - They travel freely to and from U.S.
The parent has no livelihood	Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
Legally present parent must have custody in order to file for benefits for child	Custody does not affect parent's ability to file for or gain immigration benefits for his children



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ICE Removal Data

- | 2013 | 2017 |
|--|---|
| <ul style="list-style-type: none"> • Convicted criminals 82% • Repeat immigration violators 7.8% • Ordered removed and failed to depart 1.6% • Other immigrants 7.7% | <ul style="list-style-type: none"> • Criminal convictions 73.7% • Pending criminal charges 15.5% • Outstanding notices to appear in immigration court 5.3% • Ordered removed and failed to depart + reinstatement 2.8% • Other immigrants 2.6% |
| https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf | https://www.ice.gov/removal-statistics/2017 |



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Victim Witness DHS Memo 2011 Continuing Effect Confirmed 4/19

- Goal: "Minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice."
- "Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime."
- Crime victims and witnesses should receive "release from detention and deferral or a stay of removal."



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Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction or *finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

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Use Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

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Immigrant Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

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Detained Parent Directive, Aug. 2017

- If parents are detained:
 - Placement near family court when ongoing family court/child welfare cases
 - Bring parents to family court to participate in cases involving children
 - Alternate: video or teleconference participation
 - Facilitate visitation when required by family/child welfare court order
 - Help children travel with deported parent –obtain passports for children

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Impact of Divorce

- VAWA self-petitioners:
 - Spouse must file within two years of final divorce
 - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
 - Students, Work Visa Holders, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Employment
 - Asylum
 - Family relationships
 - Cancellation of removal
- Annulment instead of divorce can lead to federal marriage fraud charges

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Support Issues

- Where spouse sponsored immigrant spouse for lawful permanent residency
 - Affidavit of support enforced as contract in family or federal court
 - Evidence of ability to pay support
- Importance of court ordered child support paid through the court

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LUNCH BREAK - 1 HOUR

INTERACTIVE SESSION- IDENTIFYING PUBLIC BENEFITS ELIGIBILITY FOR IMMIGRANT AND CHILDREN VICTIMS IN MARYLAND

Protections For Immigrant Victims

T VISA
For victims of trafficking

- Must be in the U.S.
- Must be a victim of a form of trafficking
- Must be available to provide information to law enforcement
- Must be willing to cooperate with law enforcement
- Must be in the U.S. for at least 90 days
- Must be a victim of a form of trafficking
- Must be available to provide information to law enforcement
- Must be willing to cooperate with law enforcement

AWA
For victims of Domestic Violence

- Must be a victim of domestic violence
- Must be in the U.S. for at least 90 days
- Must be a victim of domestic violence
- Must be in the U.S. for at least 90 days

U VISA
For victims of Criminal Activity

- Must be a victim of criminal activity
- Must be in the U.S. for at least 90 days
- Must be a victim of criminal activity
- Must be in the U.S. for at least 90 days

ASYLUM
For victims of persecution

- Must be a victim of persecution
- Must be in the U.S. for at least 90 days
- Must be a victim of persecution
- Must be in the U.S. for at least 90 days

SJS
Special Immigrant Juvenile Status

- Must be a victim of abuse, neglect, or abandonment
- Must be in the U.S. for at least 90 days
- Must be a victim of abuse, neglect, or abandonment
- Must be in the U.S. for at least 90 days

CONTINUED PRESENCE
For victims of trafficking

- Must be a victim of trafficking
- Must be in the U.S. for at least 90 days
- Must be a victim of trafficking
- Must be in the U.S. for at least 90 days

CONSIDERATIONS

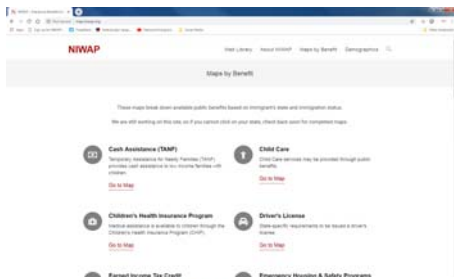
- Must have a valid passport
- Must have a valid passport
- Must have a valid passport
- Must have a valid passport

NIWAP's Public Benefits Map and Public Benefits Charts

- Public benefits map
 - <http://map.niwap.org/>
- Public benefits charts
 - <http://niwaplibrary.wcl.american.edu/all-state-public-benefits-charts/>



Interactive Public Benefits Map



Maps by Benefit

- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License
- Earned Income Tax Credit
- Emergency Housing & Safety Programs
- Emergency Medicaid
- Federal Education Benefits
- FEMA Assistance
- FEMA Restricted Programs
- Food Stamps
- Forensic Costs Coverage
- Income Tax Credits
- Legal Services
- Medicaid
- Post-Assault Healthcare
- Prenatal Care
- Purchasing Health Insurance on the Exchanges
- State Education Benefits
- Supplemental Security Income
- Weatherization & Energy Assistance
- WIC



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New Mexico TANF

- 1888A Not Pastored? Eligible with conditions
- Refugee Eligible
- Asylee Eligible
- T Visa Holder Eligible
- T Visa Status: Applicants and Family Members Eligible
- Continued Presence: Applicants and Family Members Eligible
- Deferred Action for Childhood Arrivals (DACA): Not eligible
- Special Immigrant Juvenile Status (SIJS): Eligible with conditions
- U Visa Status and Not Pastored? Eligible with conditions
- U Visa Recipients: Not eligible
- Unlawful Entry: Not eligible

For more information, see New Mexico Public Benefits Chart

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	1888A Not Pastored?	Refugee, Asylee, T Visa?	T Visa Holder/Continued Presence?	Deferred Action for Childhood Arrivals (DACA)?	Special Immigrant Juvenile Status (SIJS)?	U Visa Eligible and Not Pastored?	U Visa Applicants	Unauthorized
TANF	Eligible if 1888A not pastored?	Eligible with conditions	Eligible with conditions	Eligible with conditions	Eligible with conditions	Eligible with conditions	Eligible with conditions	Eligible with conditions
Child Care	Eligible with conditions	Eligible with conditions	Eligible with conditions	Eligible with conditions	Eligible with conditions	Eligible with conditions	Eligible with conditions	Eligible with conditions

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Materials to Use for Exercise

- You will need to use one or more computers to access NIWAP’s public benefits map
-<http://map.niwap.org/>
- Public benefits bench card
- Your state’s public benefits chart
 - You each have a version without footnotes



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Small Group Exercise

Identify which public benefits and publicly funded services immigrant children and immigrant victims qualify in Maryland for each of the following groups:

- VAWA self-petitioners with a prima facie determination included the applicant and eligible family members (e.g. applicant mother includes child or applicant child can include their mother in their application)
- U visa victim who has received wait list approval
- T visa applicant with bona fide determination
- SIJS applicant child



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Report Back By Group

- VAWA Self-Petitioners
- U Visa Waitlist Approved Victims
- T Visa Applicants
- SIJS Children



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Post –Secondary State Funded Education - MD

- Exempt from paying the out-of-state tuition rate at a community college in Maryland if:
 - Attended a public or nonpublic secondary school in Maryland for at least three years;
 - Either graduated from a public or nonpublic Maryland secondary school or has received the equivalent of a high school diploma in Maryland;
 - Registers as an entering student in a community college in Maryland not earlier than the fall 2011 semester; and
 - Provides to the community college documentation that the individual’s parent or legal guardian has filed a Maryland income tax return.



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Benefits in Maryland

- TANF
 - VAWA, Continued Presence (CP), U visa waitlist, SIJS lawful permanent residents (LPRs)
- Child care
 - TANF same as above
 - Child Care Development Fund – no restrictions
- SNAP
 - VAWA children, CP, T visas , SIJS-LPRs
- Education
 - Federal: VAWA, CP, T visa applicants, SIJS-LPRs
 - State: School in MD 3 yrs. + diploma + taxes in MD
 - No immigration restrictions except T and U visa holders ineligible



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Benefits in Maryland

- Health Care
 - Exchanges: VAWA, CP, T visa, U visa waitlist, SIJS applicants
 - CHIP: VAWAs, CP, T visa, U visa waitlist, SIJS applicants
 - Until 21
 - Full scope adult Medicaid: VAWA, CP, T visa, U visa waitlist approved; SIJS (LPRs only if pregnant or 5 years as LPR)
- SSI (most limited): CP, T visa
 - VAWA & SIJS LPR (5 year bar+ 40 quarters work)
- Driver’s License
 - Maryland (not federally recognized) anyone with MD tax return
 - Federally recognized – work authorization
 - VAWA approved, T visa bona fide, CP, U visa waitlist, SIJS – LPRs, DACA



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Benefits in Maryland

- Housing
 - Transitional – all victims + homeless + abused children
 - Public and Assisted: VAWA applicants, CP, T visas, SIJS – LPRs
- LIHEAP
 - Weatherization everyone
 - LIHEAP – VAWA, CP, T visa, SIJS LPRs
- FEMA
 - Emergency assistance: everyone
 - Individual Households Program: VAWA, T visa, CP
 - Individual & Family Grant Program: VAWA, T visa, CP, SIJS-LPRs
 - US Small Business Administrations Loans: VAWA, T visa, CP
 - Disaster Unemployment Assistance: VAWA, T visa, CP, SIJS-LPRs
 - Emergency Food Stamps: T visa, CP, SIJS-LPRs (after 40 quarters of work credit)

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Public Charge

- VAWA, T visas and U visas exempted
- SIJS and other children with paths to lawful permanent residency
 - Only receipt of TANF, institutionalization, or long-term care at government expense =
 - public charge

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Importance of Accompanying Immigrants in Applying for Public Benefits


- Help educate state benefits workers
- Accompanying immigrant applicants helps
 - Children and victims get what they are legally entitled to access
 - Helps undocumented parents file for benefits for their citizen or LPR children
 - State welfare worker reporting requirements

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QUESTIONS AND ANSWERS



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Small Group Activity

- Identify topics of most urgent need for additional information through post-it exercise
- Choose a topical group of greatest interest
- Meet in small groups to identify most urgent needs for additional training, information, tools for small group activity
- Small group report back



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CONTINUED SUPPORT FROM NIWAP, RESOURCES, TECHNICAL ASSISTANCE, EVALUATION AND CONCLUSION



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Types of Technical Assistance

- Case consultations
- Training materials and practice tools
- Legal research, motions, briefs
- In-person trainings and webinars
- 24/7 web library and training videos
- Help developing policies/protocols
- Strategies for removing systemic barriers
- Community of Practice and Roundtables
- List serves

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NIWAP Topics

- VAWA, U and T Visas, Gender based asylum, SIJS
- VAWA confidentiality
- U and T Visa certification
- Language access and legal services access
- Immigration allegations in custody, CPOs, and divorce
- Special Immigrant Juvenile Status (SIJS), child abuse, and protective battered immigrant parents
- Public benefits access for immigrant victims
 - Health care, housing, TANF, SNAP, FAFSA, and more
- Serving victim's cultural, religious, and immigration needs
- Providing trauma informed help for immigrant survivors

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Interested in Joining the Community of Practice or Roundtable

- Application available at:
www.niwap.org/go/COPapplication
- To register for the Law Enforcement & Prosecution U Visa Roundtable, visit
<http://www.niwap.org/go/LEArroundtables>

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Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

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