

# Immigrant Crime Victims Legal Rights and Best Practices for Serving Immigrant Victims

Webinar For the Asian Pacific Institute on  
Gender Based Violence – OVC Grantees

August 24, 2022



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Director

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American University Washington College of Law

# Learning Objectives

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

- Help immigrant survivors of crime and abuse access the full range of protections for which they are legally eligible.
- Screen survivors eligible for immigration relief and use tools to help with their applications
- Know how to assist immigrant and refugee survivors in accessing housing, health care, and other public benefits they and their children qualify for
- Provide immigrant survivors legally correct information about family law remedies

# Poll 1: Let's see who is on the webinar with us

Please check the box that best describes you:

- A. Victim Advocates
- B. Attorneys
- C. Coalition staff
- D. Shelter staff/Social service providers
- E. Other – type in the chat





# Who We Are

- The National Immigrant Women's Advocacy Project (NIWAP) at American University Washington College of Law
- Provide technical assistance, training and advocacy that promotes the implementation and use of:
  - laws, policies, and practices to improve legal rights, services, and assistance for immigrant victims of domestic violence, sexual assault, stalking, human trafficking, child abuse and other crimes.



# Who We Provide Technical Assistance To

- Local, State, Federal law enforcement, prosecutors, victim advocates, judges, attorneys and other professionals.
- NIWAP supports professionals in the field working with immigrant crime victims so that they are more effective in helping more victims access more help for which they are legally eligible.



# Technical Assistance Topics

- Immigration relief
  - VAWA, U and T visas, Special Immigrant Juvenile Status
- U and T visa certification
- VAWA Confidentiality
- Access to legal services and public benefits
  - E.g. housing, healthcare, driver's licenses, food assistance, education
- Issues that arise for immigrant survivors in family court cases
  - Including protection orders, custody, divorce, support
- Language access for Limited English Proficient survivors
- Providing trauma informed assistance to immigrant survivors
- Serving survivors' cultural, religious, and immigration related needs

# 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

# NIWAP Resources

- NIWAP Web library
- Technical Assistance
- Trainings and Webinars
  - On-line, virtual, in-person
  - Customized
- Communities of Practice
  - Victim advocates, family lawyers
  - Law enforcement/prosecutors, judges
- Materials
  - Bench cards, toolkits, training tools, legal research, multi-lingual outreach materials
- Directory



# NIWAP Web library

[niwaplibrary.wcl.american.edu](http://niwaplibrary.wcl.american.edu)



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[Language Access](#)

[Access to Legal Services](#)

[VAWA Confidentiality](#)

[Criminal Justice](#)

[Public Policy](#)

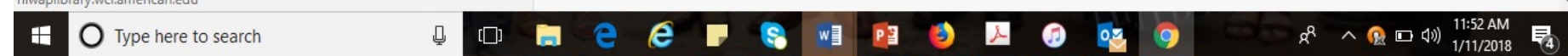
[Research](#)

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# NIWAP is New Podcast Series

The screenshot shows the Spotify interface for the 'National Immigrant Women's Advocacy Project' podcast. The left sidebar contains navigation options: Home, Search, Your Library, Create Playlist, and Liked Songs. The main content area features the podcast cover art with the NIWAP logo and the text 'National Immigrant Women's Advocacy Project'. Below the cover is a 'FOLLOW' button and a list of episodes under the heading 'All Episodes'. The first episode is 'Web Library Podcast Dec 2020', followed by 'Langauge Access Podcast 2020 - Part Two', and 'Langauge Access Podcast 2020 - Part One'. An 'About' section on the right states 'Podcast by National Immigrant Women's Advocacy Project' and includes tags for 'Government' and 'Educational podcasts'. At the bottom left of the Spotify interface, there are links for 'Cookies' and 'Privacy'.

Spotify

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PODCAST

**National Immigrant Women's Advocacy Project**  
National Immigrant Women's Advocacy Project

FOLLOW

**All Episodes**

**Web Library Podcast Dec 2020**  
Introduction to NIWAP and the Web Library featuring Leslye Orloff. What NIWAP is, how it came to be, and how to take advantage of its resources (including the web library, local resources, online webinars, training materials, and technical assistance)  
Oct 29 · 25 min 42 sec

**Langauge Access Podcast 2020 - Part Two**  
Issues of language access for crime victims and witnesses featuring Detective Shelll Sonnenberg from the Boise, Idaho, police department, and Investigator Michael LaRiviere from the Salem, MA Police Department, along with Leslye Orloff, director of NIWAP...  
Oct 29 · 25 min 36 sec

**Langauge Access Podcast 2020 - Part One**  
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**About**  
Podcast by National Immigrant Women's Advocacy Project

Government Educational podcasts

Cookies  
Privacy

NIWAP

National Immigrant Women's Advocacy Project at the  
American University Washington College of Law



# **IMMIGRATION RELIEF FOR IMMIGRANT SURVIVORS OF DOMESTIC AND SEXUAL VIOLENCE**

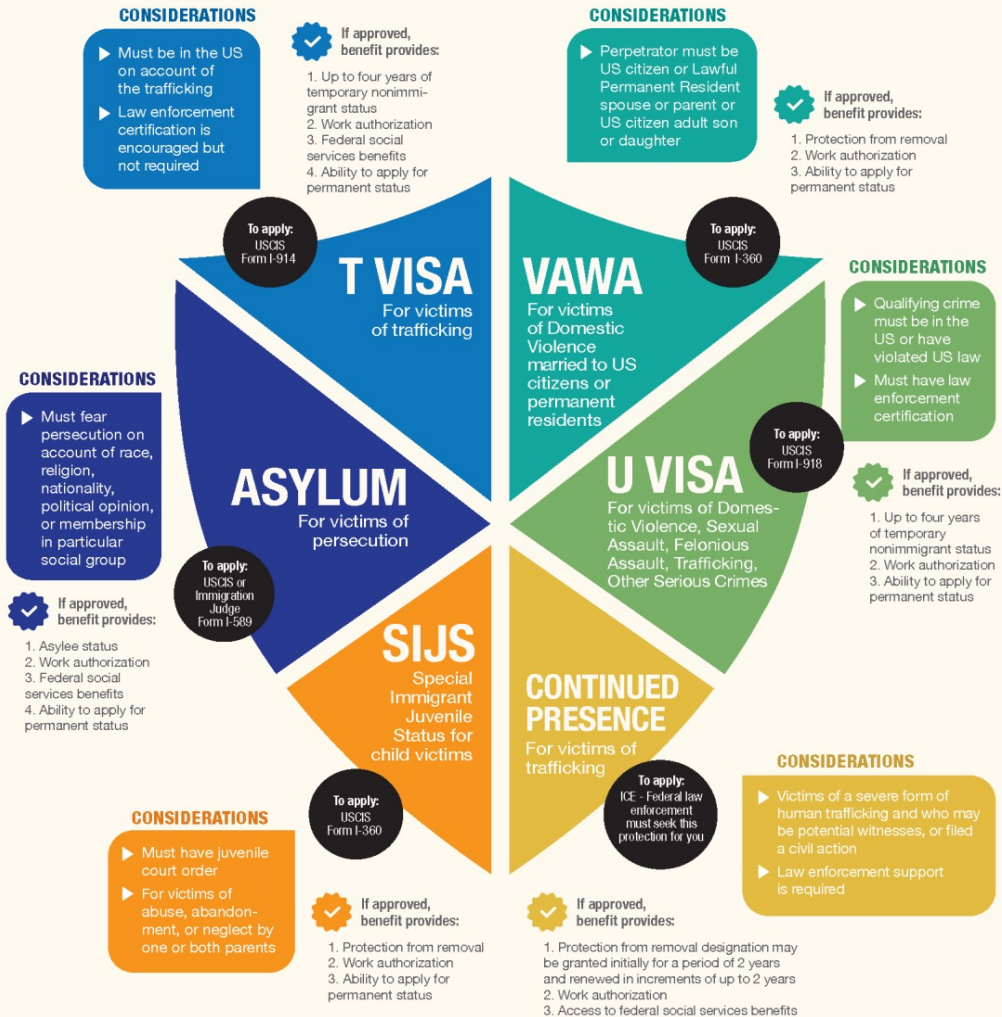


**Discussion:** How does filing for immigration relief help immigrant domestic and sexual abuse survivors?

# Benefits for Survivors

- Protection from deportation
  - VAWA confidentiality
- Can include family members in application
  - VAWAs, U visas and T visas
- Access to legal immigration status
- Financial independence from perpetrator
  - Legal work authorization (3 - 48 months post filing)
  - Issuance of federally recognized ID
  - Access to some state/federal public benefits beyond programs open to all immigrants

# PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

# Immigration Relief Available for Immigrant Survivors of —

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

# 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
- Have work authorization
- Approval timeline (24+ months)

# VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
  - Spouse; Parent; Stepparent; 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
- Access to some federal/state benefits = 3 months
- Work authorization = 4–26 months (2022)

# Forms of Extreme Cruelty

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

# 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 work authorization, waitlist approval, and some very limited state benefits = 61.5 months (2022)**



# 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.S. 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
- **Work authorization and *many* federal and state public benefits = 21 months (2022)**

# Special Immigrant Juvenile Status (SIJS)

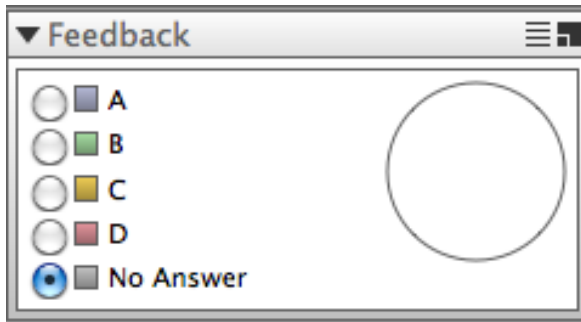
- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, neglect, or dependency
  - By at least **one parent**
- To apply must submit required findings from a state court with jurisdiction over
  - the care, custody, or dependency of the child
- Timeline to approval & deferred action (6-8 months)
- Work authorizarion (12 months) (2022)

# Case Scenario (Handout)

Clara met Eduardo a lawful permanent resident 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.

# What forms of immigration relief would Clara qualify for:

- A. U visa
- B. Included in Lupe's VAWA self-petition
- C. T visa
- D. All of the above



The image shows a 'Feedback' window with a title bar containing a dropdown arrow and the text 'Feedback'. Below the title bar is a list of radio buttons with corresponding colored squares: A (blue), B (green), C (yellow), D (red), and No Answer (grey). The 'No Answer' option is selected, indicated by a blue dot inside its radio button. To the right of the list is a large empty circle.

# 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

Feedback

A

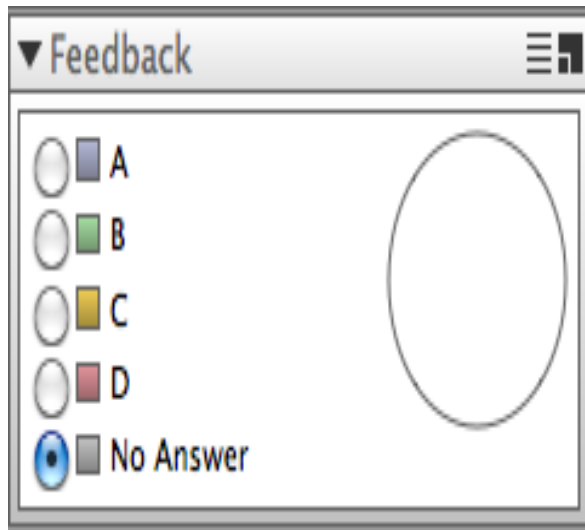
B

C

D

No Answer

# What forms of immigration relief would Lupe *NOT* qualify for:



- A. VAWA self-petition
- B. U visa
- C. Special Immigrant Juvenile Status (SIJS)
- D. T visa

# VAWA CONFIDENTIALITY

## Perpetrators Efforts to Trigger Victim's Removal

- Perpetrators actively reporting victims with pending immigration cases for removal
  - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested when the victim called police for help with domestic violence
  - VAWA self-petitioners rose 2013-2017 from 15.4% -17%
  - U visa rose 2013-2017 from 7.5% -36%

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work 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)



# 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
- **\$5000 fine + job sanctions**

# 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

# 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



# Advocacy and Best Practices

- Screen victims as early as possible for immigration relief eligibility
- Give survivors a letter stating that they are in the process of filing a VAWA, T or U visa immigration case
- In some cases safety improved if immigration case is filed first before
  - Protection order, divorce, or custody case
  - Victim travels to a new location
- Particularly when the survivor is receiving immigration related threats

# Access to Publicly Funded Programs and Legal Services Open to All Immigrant Domestic and Sexual Violence Survivors

# 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

# 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

# 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





# 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

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



# Children and Crime Victims Qualified to Receive Public Benefits— Common Examples

- Qualified Immigrants benefits eligible
  - Lawful permanent residents
    - Includes U visas and SIJS
  - Refugees/Asylees
  - VAWA self-petitioners
  - Trafficking victim with
    - Continued presence or
    - Bona fide determination in T visa case
- Not generally benefits eligible some variation by state
  - Asylum applicants
  - DACA recipients
  - U visa applicants & recipients
  - Work/Student visa holders
  - Undocumented

Many immigrants with work authorization qualify for CAREs Act Rebates and unemployment insurance both state and CAREs Act

# 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

# Federal Benefits Immigrant Restrictions

- Only programs that as a matter of law have immigrant restrictions are those categorized as:
  - “federal public benefits,” “state public benefits” or
  - “federal means-tested public benefits”
- Not a federal or state benefits unless payment is made directly to:
  - An individual
  - A household
  - A family eligibility unit

# Examples of “Federal Public Benefits”

- **US Agency Funded/Provided:**
  - Grants
  - Contracts
  - Loans
  - Professional or commercial licenses
    - Drivers licenses
- **Federally Funded Benefits for**
  - Retirement
  - Welfare
  - Health
  - Disability
  - Postsecondary education
  - Public or assisted housing
  - Food assistance or
  - Unemployment

# Who are “Qualified Immigrants”?

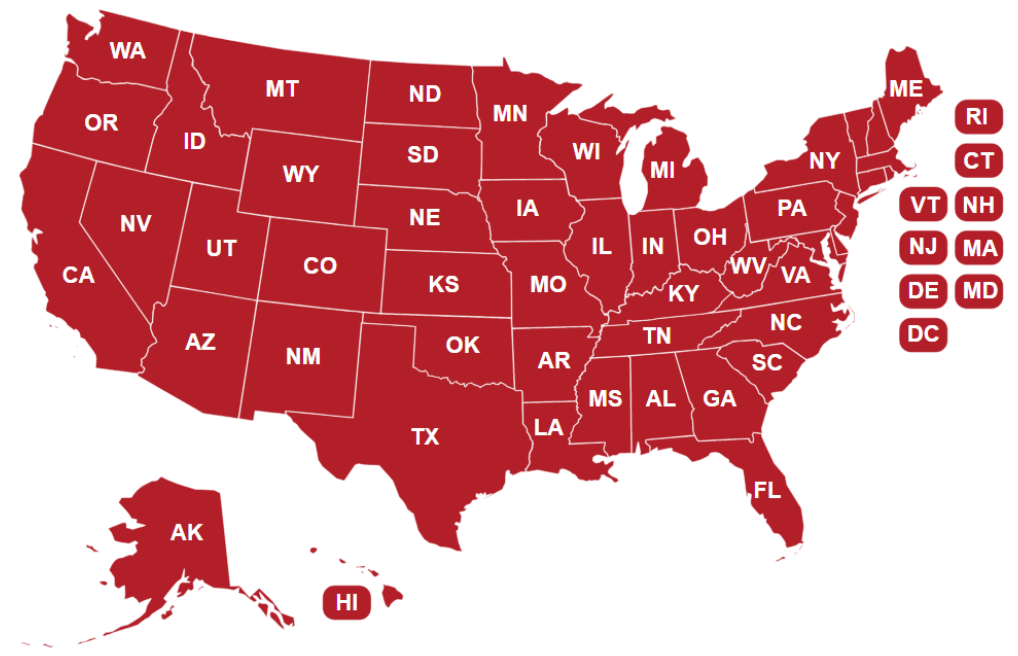
- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- 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

# Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- Public and assisted housing
- Supportive housing for the elderly or disabled
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Receive payments for providing foster care
- FEMA individual family grants and disaster unemployment
- Job opportunities for low income individuals
- Adoption assistance
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Social services block grant programs



<http://map.niwap.org/>



# Maps by Benefit

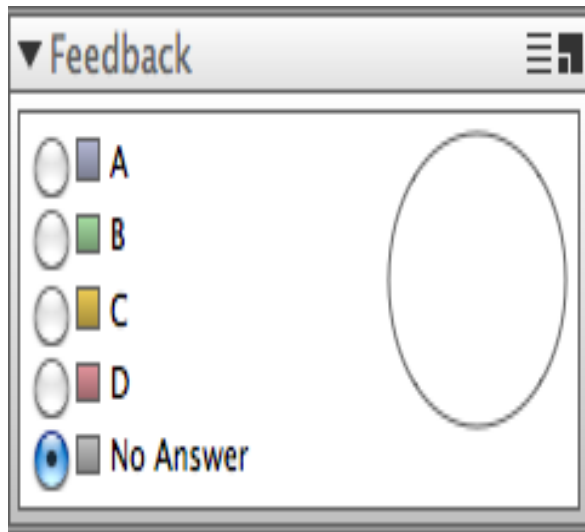
- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License
- Earned Income Tax Credit
- Emergency Housing & Safety Programs
- Emergency Medicaid
- Federal Education Benefits
- FEMA Assistance
- FEMA Restricted Programs
- Food Stamps
- Forensic Costs Coverage
- Income 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
- Unemployment (coming soon)

# Resources:

## Healthcare for Immigrant Victims

- State by state charts
  - VOCA funded post assault health care
  - Emergency Medicare
  - Forensic Exams
  - Prenatal Care

## Poll 5: What would you take with you to a public benefits agency with an immigrant survivor?



▼ Feedback

A

B

C

D

No Answer

- A. Copy of the state/federal benefits statute
- B. DHS documents showing how victim is eligible
- C. Relevant state/federal policies
- D. All of the above

# Importance of Accompanying Immigrants in Applying for Public Benefits

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

# Immigrants Exempt From Public Charge

- Victims
  - VAWA, T visas and U visas exempted
  - SIJS children
- Refugees
- Asylees
- DACA
- Visa holders
- Most lawful permanent residents

# Custody of Children in Immigrant Families

Tool: Immigrant Victims and Custody Bench Card

# 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-occurencedvchildabuse/>



# 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



# ABA Center on Children & The Law

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

# Myth vs. Fact:

## Parents without Legal Immigration Status

### Myth

1. Deportation is imminent
2. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. Legally present parent must have custody in order to file for benefits for child

### Fact

1. DHS policies prevent detention/removal of immigrant parents who are crime victims
2. US citizens and lawful permanent residents are more likely to flee with children, especially when
  - There have been threats of kidnapping children
  - They are dual nationals
  - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

# PROTECTION ORDERS



# NIJ Funded CPO Study Found

With support immigrant victims will use and benefit from justice system assistance

- 60.9% did not know about CPOs
- 81% got CPO with help from advocate/attorney
- 96% found them helpful
- 68.3% of violations immigrant related

Ammar, Orloff, Dutton, and Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research Criminal Justice Review 37:337 (2012)

# Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Issuance of a protection order = no effect on immigration status
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions
- Findings of violation of protection order's protective provisions = deportable offense

# Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes, opportunity to offer relief designed to help:
  - Curb future abuse, harassment
  - Interfere with abuser/perpetrators ability to exert power and/or coercive control
  - Offer victim remedy-relief for past abuse
  - Help victim overcome victimization and build new post abuse life
- Nexus with victimization
- Opportunity for courts to counter immigration related abuse and order culturally helpful remedies

# 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



# Victims Who Stay: No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions
  - No abuse
  - No unlawful contact
  - Batterer's treatment

# Questions and Answers Session

# Technical Assistance and Materials

- NIWAP Technical Assistance:
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library:  
[www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)