

Access to Legal Services and Family Law Protections for Immigrant Survivors

By the End of This Session You Will Be Able to:

- Help immigrant victims of domestic and sexual violence secure help from lawyers working at Legal Services Corporation and Legal Assistance for Victims funded agencies
- Support immigrant victims seeking relief in custody, protection order and other family law cases

Large Group Discussion

- What has been your experience securing legal representation for immigrant victims of domestic and sexual violence in your state or community?
- If your client was denied help by a legal services program, why were they told they could not be served?

Access to Legal Assistance for Victims (LAV) Funded Legal Services

Legal Assistance for Victims (LAV) Restrictions to Representation

- Age requirements
- Representation is limited to direct victim of
 - Domestic violence;
 - Sexual assault;
 - Dating violence; and/or
 - Stalking
 - Includes trafficking victims who are also victims of the above

LAV Representation Considerations

- Location of the abuse is not relevant to representation
- Immigration status of the victim not relevant
- In cases of child victims of sexual assault, stalking or dating violence can represent the child, an abused parent, but not a non-abused parent in family court

Domestic Violence and Sexual Assault Survivors' Access to Legal Services Corporation (LSC) Funded Legal Services



Prior to Issuance of Legal Services Corporation (LSC) Regulations Implementing VAWA 2005

- There was uncertainty about whether LSC funded programs could represent immigrant survivors of domestic violence, sexual assault and human trafficking because
 - LSC regulations from 1997 did not permit representation
 - However, representation was allowed under
 - VAWA 2005
 - LSC program letter 2006

As a Result...

- 20.6% of immigrant crime survivors were turned away from LSC funded programs
 - Based on their lack of legal immigration status.
- 26.1% of immigrant survivors were turned away because the LSC program was uncertain whether they could represent immigrant survivors.
- [Sofia Vivero, Leslye E. Orloff, Daniel J. Quinones, Benish Anver and Charles Palladino Report to the Legal Services Corporation: Immigrant Victims of Domestic Violence, Sexual Assault and Human Trafficking and Access to Legal Services](#)

Legislative and Regulatory History

- 1996 Kennedy Amendments
- 1997 LSC Kennedy Amendment Regulations
- 2000 Victims of Trafficking & Violence Protection Act
 - created the U and T visas
- VAWA 2005 expanded LSC representation to immigrant victims of
 - Battery, extreme cruelty, sexual assault, human trafficking and any U visa criminal activity
- 2006 LSC Program Letter
- 2014 LSC Final Regulations

2014 LSC Regulations Implementing VAWA 2005

2014 LSC Regulation Implements VAWA 2000 and VAWA 2005

- Issued in April 2014
- Implements VAWA 2000 and 2005's expanded protections for immigrant survivors
- Creates two paths an immigrant can pursue to receive assistance from any LSC funded program.
 - 1. Representation under Anti-Abuse Laws under 45 C.F.R. § 1626.4 or**
 - 2. Representation based on Immigration Status under 45 C.F.R. § 1626.5.**

Importance of Access to Legal Assistance under Anti-Abuse Laws

- LSC funded programs can represent the following immigrant survivors **without regard to the survivor's immigration status**
 - Domestic violence
 - Child abuse
 - Elder abuse
 - Sexual Assault
 - Human trafficking
 - Other U visa criminal activity
- **Representation is available whether or not the survivor has filed for or plans to file for VAWA related or any other form of immigration relief.**

Understanding the Difference Between the
Two Paths:
Anti-Abuse Statutes and Legal Immigration
Status Based Eligibility

Eligible for LSC Funded Legal Assistance

Under Anti-Abuse Laws – Survivors of:

- Battering or extreme cruelty
 - (domestic violence)
- Abuse or extreme cruelty by a parent, step-parent, spouse, former spouse, intimate partner
- Sexual assault
- Human trafficking including severe forms of human trafficking
- A U visa listed criminal activity
- Children of all eligible survivors listed above

Definition of “battering or extreme cruelty”

- Battered or subjected to extreme cruelty includes, *but is not limited to*,
 - being a victim of any act or threatened act of violence
 - including forceful detention
 - which results or threatens to result in physical or mental injury
 - psychological or sexual abuse or exploitation
 - including rape, molestation, or incest (if the victim is a minor).
- Under DHS’ broad approach
 - abusive actions = acts that are part of an overall pattern of violence.

Benefits of this broad definition

- Adults
- Children
- Elder abuse survivors

Eligibility for LSC Funded Legal Assistance Based on Immigration Status

- Filed for lawful permanent residency and
 - are the spouse, child (under 21 unmarried) or parent of 21+ child of a U.S. citizen
- Citizen or lawful permanent resident
- Refugee
- Asylee
- Limited other groups

Eligibility for LSC Funded Legal Assistance Based on Immigration Status

✓ Immigrants who filed for lawful permanent residency and are:
-the spouse of a U.S. citizen
-the parent of an over 21-year old U.S. citizen son or daughter
-the under 21 year old unmarried child of a U.S. citizen

✓ U.S. Citizen children, lawful permanent resident children and other children of applicants who also have any of the other forms of immigrations statuses listed

✓ Conditional entrants admitted prior to April 1, 1980.

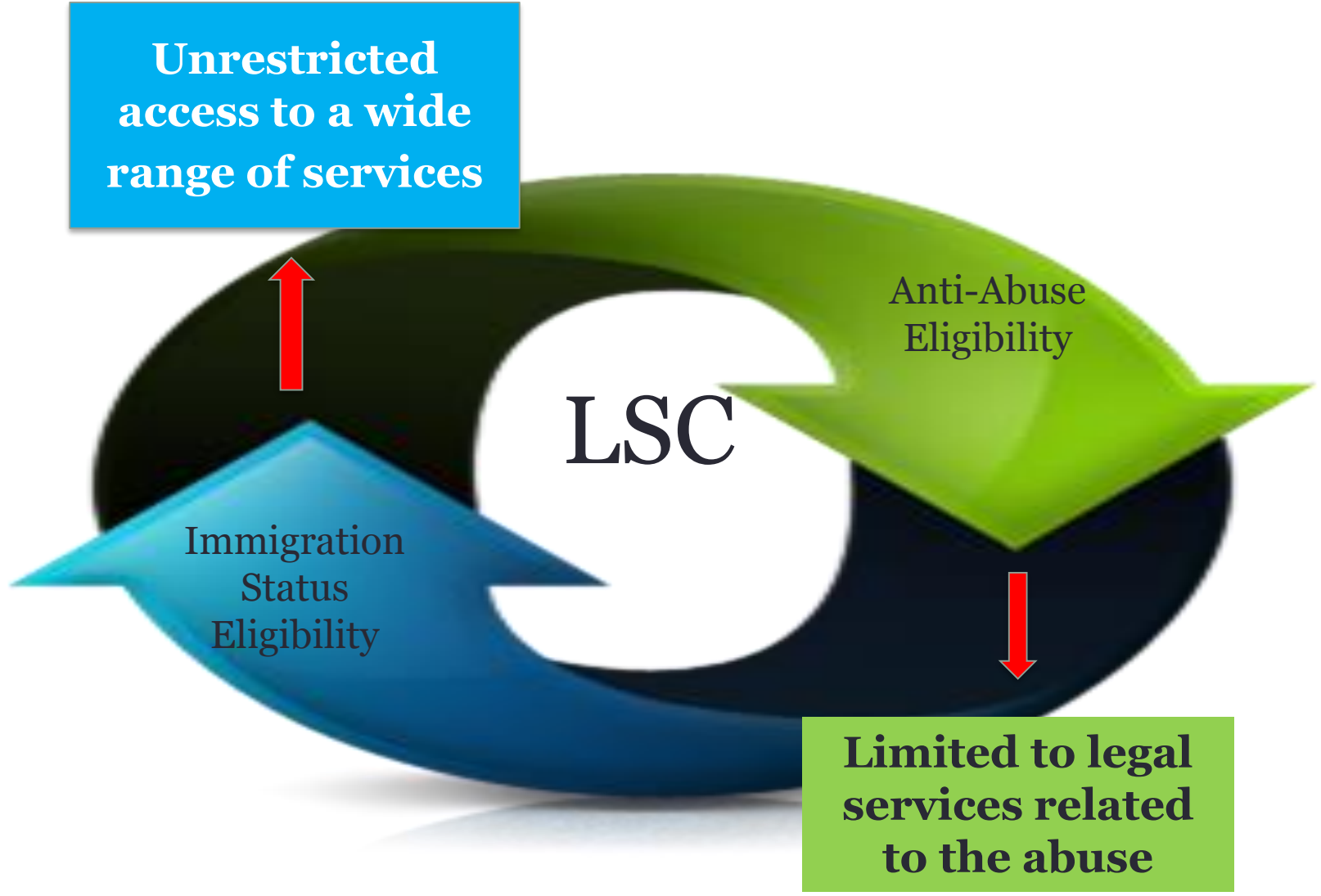
✓ Members of the Texas Band of Kickapoo

✓ Citizens of Palau, Micronesia, and the Marshall Islands who reside in the U.S.

✓ Approved Refugees and Asylees
✓ Lawful and conditional permanent residents
✓ Persons granted deferral of removal/deportation

✓ Canadian-born American Indians who are at least of 50% Indian by blood.

✓ IRCA 1986 Agricultural workers
✓ Agricultural laborers (H-2A)
✓ Forestry workers (H-2B)



Differences in Representation

Relationship of Representation to Abuse:

- Representation under **anti-abuse** regulations = **only include legal assistance directly related to abuse.**
- Representation based on **immigration status** = *any form of legal assistance* offered by the LSC funded agency.

Legal Services “Related to the Abuse” Under Anti-Abuse Statutes

- Legal services needed to:
 - escape from the abusive situation,
 - ameliorate the current effects of the abuse, or
 - protect against future abuse,so long as the recipient can show the necessary connection of the representation to the abuse.”

45 C.F.R. 1626.4(b)(2)(2014)

Categories of Related Legal Assistance

Article: www.niwap.org/go/legalservices

- Family Law
- Housing
- Privacy, Safety Confidentiality
- Workplace Safety
- Public Benefits
- Health Care
- Help from police and prosecutors
- Employment law
- Education laws
- Landlord and Tenant
- Crime victim services
- Language Access
- Americans with Disabilities protections

Eligibility Under Anti-Abuse Statutes & Services Available

- LSC representation does not require the survivor seek help from LSC funded attorneys on an immigration case to receive other legal services.

Access to Legal Services Under Anti-Abuse Eligibility is Not Exclusive

Some immigrant survivors that are initially eligible to receive legal representation for services “related to abuse” can eventually move from the anti-abuse based eligibility for legal services based on immigration status for greater access to a wide range of legal services

Survivors Who Could Potentially Switch Paths

- U Visa holders who have filed for lawful permanent residency
- VAWA self-petitioners who have filed for lawful permanent residency and who have a
 - U.S. citizen spouse
 - Over 21 year old U.S. citizen child

Moving from one Path of Eligibility to Another

- Example: a DV survivor can access representation under anti-abuse regulations, including applying for immigration relief. Once the LSC funded attorney files the survivor's VAWA self-petition, T or U visa application, the survivor may become eligible for legal assistance under the LSC immigration status path when she is able to file for lawful permanent residency.

Why it is important to know what services are available under each pathway

- A survivor who is
 - eligible for assistance under anti-abuse laws
 - Files for immigration status

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Becomes eligible for unrestricted legal services based on immigration status
- If your client is only eligible for services under anti-abuse statutes, work with your client to determine if she is comfortable and if it is safe to pursue immigration relief to expand access to legal services

Additional Provisions in the 2014 LSC Regulations

- Confirms unmarried survivors' eligibility for LSC funded legal services
- Eligibility for immigrant survivors in same sex marriages
- Changes in recordkeeping and intake procedures to facilitate access to representation under anti-abuse laws

Opportunities for Collaboration Between LSC Funded Agencies and Service Providers



IF YOU ARE WITH A NON-LSC AGENCY DO YOU HAVE A
RELATIONSHIP WITH THE LSC FUNDED AGENCY IN
YOUR SERVICE AREA?

If you are with an LSC agency which of the following agencies do you have existing relationships with?

Raise your hand
if you have
worked with:



- A. Domestic violence programs
- B. Sexual assault programs
- C. Immigrant community based agencies
- D. Trafficking survivors programs

Collaboration Between LSC Funded Agencies and:

- Survivor services agencies
- DV/SA coalitions
- Survivor advocates
- Community based programs

Why is Collaboration Important?



- Develop agency's priority case setting process
- Community outreach & education
- Safety planning
- Case management
- Obtaining U certifications
- Counseling & therapy for client
- Trauma informed services for client
- Court accompaniment
- Access to survivor services
- Language access and interpretation services
- Preparing affidavits and gathering evidence for client's VAWA, T or U application

LSC Funded Agencies' Priority Setting Process: Where You Can Make a Difference

- Priority Setting Process = how LSC funded agencies determine types of services needed in the community
- Opportunity for involvement by
 - Survivor and immigrant serving agencies
- Reported to LSC in agency's implementation plan

Resources and Materials

- www.niwap.org/go/legalservices
- PowerPoint
- Access to Legal Services
 - Legislative and Regulatory History
 - Legal Services Corporation Program Letters
- Article: *And Legal Services for All*
- Brochure: *Access to Publicly Funded Legal Services for Immigrant Survivors*
- www.niwaplibrary.wcl.american.edu

IMMIGRANT LITIGANTS IN FAMILY COURTS

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.

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

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

Child/Spousal Support Affidavit of Support

- Citizen spouses submit an Affidavit of Support in family based immigration cases
- The Affidavit of Support
 - Promise to support the family member for up to 10 years or until they become a US citizen
 - Includes 3 years of tax information, evidence of current employment including self-employment, and proof of income over 125% of poverty
- Courts have relied on the Affidavit of Support
 - To set spousal and child support levels
 - Enforce affidavits of support as contracts
 - No duty to mitigate

PROTECTION ORDERS



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

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
- Require perpetrator to pay
 - Rent/Mortgage
 - Health insurance
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support