

And Legal Services Access for All: Implementing the Violence Against Women Act of 2005's New Path to Legal Services Corporation Funded Representation for Immigrant Survivors of Domestic Violence, Sexual Assault, Human Trafficking, and Other Crimes¹

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“When the great majority of the individuals...of the nation no longer can, or believe they no longer can, get a lawyer, be represented effectively, go to court, settle their disputes in a fair and impartial way, and be treated like every other citizen, we quite simply, have lost the guiding principle of our republic—equal justice under law.”

—John Levi, Chairman, Board of Directors Legal Services Corporation²

I. History and Purpose of Expansion in Access to Legal Services for Survivors of Domestic and Sexual Violence, Including Immigrant Survivors

The Legal Services Corporation (LSC) is the largest funder of civil legal aid for low-income populations in the United States. LSC’s primary goal is to promote equal access to justice.³ Many LSC funded agencies have developed significant experience representing victims of domestic violence in protection order cases, custody cases, and other legal matters. This representation promotes access to justice that is a crucial, and often an initial step, on a path out of poverty and toward safety for low income victims of domestic violence, child abuse, sexual assault and human trafficking.⁴

Congress, in its work on the Violence Against Women Act (VAWA) over the course of almost two decades from 1994 through 2013, recognized the importance of providing legal

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² John G. Levi, Chairman, Board of Directors Legal Services Corporation, Address to American Bar Association House of Delegates at 2013 Annual Meeting (Aug. 13, 2013), (quoting the Honorable Deannell Reece Tacha) (video available at http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/john_g_levi_chair.html) (prepared opening remarks text available at <http://www.lsc.gov/media/in-the-spotlight/chairman-levi-addresses-aba-house-delegates>).

³ Legal Services Corporation Act of 1974, 42 U.S.C. § 2996.

⁴ PETER FINN & SARAH COLSON, NATIONAL INST. OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 4 (1990), available at: <https://www.ncjrs.gov/pdffiles1/Digitization/123263NCJRS.pdf>; Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 807, 813 (1993); MARY ANN DUTTON, NAWAL AMMAR, LESLYE E. ORLOFF, & DARCI TERRELL, USE AND OUTCOMES OF PROTECTION ORDERS BY BATTERED IMMIGRANT WOMEN: REVISED FINAL TECHNICAL REPORT (Nov. 10, 2006) available at <https://www.ncjrs.gov/pdffiles1/nij/grants/218255.pdf>; Nawal Ammar, Leslye E. Orloff, Mary Ann Dutton, Giselle A. Hass, *Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research*, CRIMINAL JUSTICE REVIEW 37(3) 337–359 (Sept. 11, 2012); BRENDA K. UEKERT, TRACY PETERS, WANDA ROMBERGER, MARGARET ABRAHAM & SUSAN KEILITZ, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS’ CAPACITY TO PROVIDE PROTECTION ORDERS (June 30, 2006) available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/216072.pdf>.

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services for survivors of violence against women crimes. VAWA 1994 explicitly included funding for legal services for victims as an authorized purpose for both the STOP and Arrest grant programs.⁵ VAWA 2000 specifically authorized representation of immigrant victims of domestic violence, sexual assault, and stalking by the U.S. Department of Justice Office of Violence Against Women (OVW) funded grantees,⁶ granted access to LSC funded legal services to immigrant victims of human trafficking,⁷ and created the Legal Assistance for Victims (LAV) grant program

to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence.⁸

VAWA 2005 expanded access to legal assistance to victims of dating violence,⁹ added representation in immigration matters as an authorized purpose for the Campus and Rural grant programs,¹⁰ and significantly expanded access for immigrant victims to legal services provided by LSC funded agencies by creating an alternate path to legal representation by LSC funded agencies for immigrant victims of domestic violence, sexual assault, and other U visa listed crimes under anti-abuse laws using LSC and non-LSC funding.¹¹ Congress has continuously expanded legal services access for victims because of the central role legal services plays in providing crucial support toward achieving a life free of abuse and promoting victim's ability to rebuild their lives and the lives of their children and attain social, emotional, and economic wellbeing.¹²

Remembering Mariella

⁵ Violence Against Women Act of 1994, Pub. L. 103-322, §2003(8), 108 Stat. 1902 (codified at 42 U.S.C. § 3796gg-2); §2101(5) (codified at 42 U.S.C. § 3796hh).

⁶ Violence Against Women Reauthorization Act of 2000 § 1512; Pub. L. 106-386, 114 Stat. 1464 (2000) (codified at 42 U.S.C. § 3796gg (2000) (hereinafter "VAWA 2000")).

⁷ Victims of Trafficking and Violence Protection Act of 2000 § 107(b)(1)(B), Pub. L. 106-386, 114 Stat. 1464 (2000) (hereinafter "TVPA 2000") (codified at 42 U.S.C. §3796gg (2000)).

⁸ VAWA 2000 TITLE II—STRENGTHENING SERVICES TO VICTIMS OF VIOLENCE
SEC. 1201(a). LEGAL ASSISTANCE FOR VICTIMS

⁹ Violence Against Women and Department of Justice Reauthorization Act of 2005 § 103, Pub. L. 109-162, 119 Stat. 2960 (2006) (codified at 42 U.S.C. § 3796gg)(hereinafter "VAWA 2005"), available at:

<http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/statutes/VAWA-2005-Senate-House-Passed-Pub.-L.-109-162.pdf>.

¹⁰ VAWA 2005 § 304 (b)(5); VAWA 2005 § 203(b)(2) (2006).

¹¹ VAWA 2005 § 103 (2006).

¹² Legal Services Corporation, *Restrictions on Legal Assistance to Aliens*, 45 C.F.R. § 1626 (2014); Legal Services Corporation Appropriations Act of 1996 § 504(a)(11), ; Legal Services Corporation Act of 1974, 42 U.S.C. § 2996; TVPA 2000 § 1201; see also Sen. Edward M. Kennedy, Address Before the Senate Committee on Appropriations (June 26, 1996), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/regulations/kennedy-amendment/Regulations%20-%20Kennedy%20Amendment%20-%20Amendment%20to%20Exempt%20Battered%20Immigrants%20from%20LSC%20funding%20restrictions.pdf/view>; see also Leslye E. Orloff et al., *Opening a Door to Help: Legal Services Programs' Key Role in Representing Battered Immigrant Women and Children*, 37 CLEARINGHOUSE REV. 37 (May-June 2003).

Mariella Batista was 28 years old when she was shot in front of her 9-year-old son on the steps of a courthouse in Riverside, California.¹³ In 1996, Congress severely limited access to LSC funded legal assistance by immigrants.¹⁴ The restrictions imposed on LSC funded agencies resulted in LSC funded programs being required to turn away most legally present immigrants and virtually all undocumented immigrants who sought representation. Agencies could not provide legal assistance (even through the use of non-LSC funds) to the vast majority of immigrants and immigrant crime victims who were not lawful permanent residents.

Within weeks of the 1996 LSC restrictions taking effect, Mariella Batista, a lawfully present immigrant from Cuba, applied to an LSC funded program for assistance in a custody case brought by her abusive husband.¹⁵ Mariella had suffered years of beatings at the hands of her husband, fled the abuse, and was lured back to her abuser, who ultimately sued Mariella for custody of their child. When she sought legal representation in the custody case her abuser had filed against her, the LSC program she sought help from was forced to deny her representation.¹⁶ Mariella was a low income, working mother who was income eligible for legal services representation. Instead of expert representation from LSC funded lawyers experienced in representing domestic violence victims, Mariella found help from a pro bono attorney with no domestic violence or safety planning experience. The lawyer scheduled a meeting with Mariella on the courthouse steps, on the date of her custody hearing.¹⁷

As Mariella was climbing the courthouse steps where she was told to meet her lawyer, her husband shot her to death.¹⁸ Mariella's case precipitated the passage of an amendment to LSC funding restrictions introduced by Senator Edward Kennedy.¹⁹ The "Kennedy Amendment"²⁰ generally allowed LSC funded programs to use non-LSC funds to provide legal services to immigrant victims of domestic violence who were not otherwise eligible for LSC funded services, provided that the victim was battered by a spouse or parent.²¹

¹³ William Claiborne, *Abused Immigrant Slain After Plea for Legal Services Help is Denied, New Law Limits Federal Program To Lawful Permanent Residents*, WASH. POST, June 5, 1996, at A3, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/stories/Stories%20%20Abused%20Immigrant%20Slain%20AFTER%20Plea%20for%20Legal%20Services%20Help%20is%20Denied.pdf>

¹⁴ Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriation Act of 1996, § 504(a)(11), Pub. L. 104-134, 110 Stat. 1421 (Apr. 26, 1996), available at: <http://www.gpo.gov/fdsys/pkg/PLAW-104publ134/pdf/PLAW-104publ134.pdf>; See also 45 C.F.R. § 1626.5 (1996).

¹⁵ William Claiborne, *Abused Immigrant Slain After Plea for Legal Services Help is Denied, New Law Limits Federal Program To Lawful Permanent Residents*, WASH. POST, June 5, 1996, at A3, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/stories/Stories%20-%20Abused%20Immigrant%20Slain%20AFTER%20Plea%20for%20Legal%20Services%20Help%20is%20Denied.pdf>

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Sen. Edward M. Kennedy, Address Before the Senate Committee on Appropriations (June 26, 1996), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/regulations/kennedy-amendment/Regulations%20-%20Kennedy%20Amendment%20-%20Amendment%20to%20Exempt%20Battered%20Immigrants%20from%20LSC%20funding%20restrictions.pdf/view>

²⁰ 62 Fed. Reg 45755-57 (Aug. 29, 1997).

²¹ See generally, Leslye E. Orloff et al., *Opening a Door to Help: Legal Services Programs' Key Role in Representing Battered Immigrant Women and Children*, 37 CLEARINGHOUSE REV. 37 (May-June 2003).

However, the 1996 Kennedy Amendment left many immigrant victims of domestic violence without access to critical LSC funded representation, including virtually all immigrant victims of intimate partner violence, child abuse, and elder abuse whose perpetrators were not the victim's spouse or parent. Many victims eligible for immigration relief under VAWA,²² without access to the LSC funded representation, needed to raise themselves and their children out of poverty and begin a life of economic security and independence.²³ To redress this problem and ensure that all immigrant victims of domestic and sexual violence, human trafficking and U visa crime would have access to LSC funded legal services, Congress reformed laws governing access to LSC funded legal services to create a new anti-abuse path to representation that was unrelated to and distinct from access to representation based on immigration status.²⁴

Since 2006, LSC funded agencies have been permitted to provide legal assistance to "otherwise ineligible aliens" who are victims of domestic abuse, even if they are not married to the abuser.²⁵ Helaine M. Barnett, the President of LSC, has penned program letters designed to inform and guide LSC funded agencies through the process of accepting for representation immigrant victims of domestic violence, sexual assault, trafficking, and other U visa listed criminal activities, regardless of the applicant victim's immigration status.²⁶

Despite the passage of the VAWA 2005 LSC amendments and the issuance of a program letter implementing these provisions, many LSC funded agencies remained unaware of the expansions of LSC funded agencies' authority to offer legal assistance to immigrant survivors. As a result, many documented and undocumented immigrant victims of domestic violence, sexual assault, human trafficking, and other U visa criminal activities eligible for representation by LSC funded agencies using LSC funding continued to be turned away based on their immigration or marital status.²⁷ To redress these issues, In April 2014, LSC amended its regulations to fully implement both VAWA 2005²⁸ and the legal assistance available for

²² VAWA self-petitioning and VAWA suspension of deportation (created in VAWA 1994); VAWA cancellation of removal (created by IIRAIRA spell out 1996); U visas and T visas (created by VAWA and TVPA 2000)

²³ See Amanda Baran, *The Violence Against Women Act Now Ensures Legal Services for Immigrant Victims*, 40 CLEARINGHOUSE REV. 538 (Jan. – Feb. 2007).

²⁴ VAWA 2005 § 103.

²⁵ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub.L. 109-162, 119 Stat. 2960 (2006) (hereinafter "VAWA 2005").

²⁶ Letter from Helaine M. Barnett, President, Legal Services Corporation, to All LSC Program Directors, *Violence Against Women Act of 2006 Amendments* (Feb. 26, 2006) (hereinafter "Program Letter 06-2 to All LSC Program Directors") (this letter was written to all Legal Services Corporation Program Directors to inform them of the expanded number of individuals to which they could provide legal assistance, using LSC funds), available at:

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Civil%20Society%20-%20Program%20Letter%202006-2-%20Violence%20Against%20Women%20Act%202006%20Amendments.pdf>

²⁷ SOFIA VIVERO, LESLYE E. ORLOFF, DANIEL J. QUINONES, BENISH ANVER, & CHARLES PALLADINO, REPORT TO THE LEGAL SERVICES CORPORATION: IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND HUMAN TRAFFICKING AND ACCESS TO LEGAL SERVICES (June 19, 2013) (hereinafter "NIWAP Report to LSC"), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Appendix-I-LSC-Report.pdf>

²⁸ Legal Services Corporation, Restrictions on Legal Assistance to Aliens, 78 Fed. Reg. 51696, 51697 (proposed Aug. 21, 2013)(to be codified at 45 C.F.R. pt. 1626), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/2014-lsc-regulations/2013-20040.pdf>; see also Legal Services Corporation, Restrictions on Legal Assistance to Aliens, 79 Fed. Reg. 21861, 21861-62 (Apr. 18, 2014)

trafficking victims created by VAWA 2000. These LSC regulations implement the two avenues an immigrant can pursue to attain assistance from any LSC funded program. These two paths to representation are: *Representation under Anti-Abuse laws*,²⁹ *or Representation based on immigration status*.³⁰

II. The Importance of Immigrant Crime Victim Access to Legal Services

“There is no class of women who are immune from the horrors of domestic violence.” – Senator Edward Kennedy

Today, legal services programs in communities across the country are working in jurisdictions with growing immigrant populations. The accelerated growth of immigrant communities over the past thirty years has drastically altered the demographic landscape with many immigrants living in regions of the United States in which immigrants had not historically settled.³¹ With the increased access to legal representation from LSC funded programs created by Congress in VAWA 2005, that have been implemented by LSC in the 2014 anti-abuse regulations, LSC funded programs are now able to more effectively serve immigrant crime victims in their communities. The new LSC regulations create an opportunity for LSC funded programs to improve their services to immigrant survivors of domestic violence, sexual assault, human trafficking, and U visa qualifying crimes and to build relationships with victim services programs in their community with expertise serving immigrant survivors.

An understanding of immigrant demographics and the dynamics of crime victimization suffered by immigrant women and children provides helpful background. In 2012, 13% of persons living in the United States were foreign born³² and over half (51.3%) of the foreign born population are female.³³ Among foreign born persons, 45.8% are naturalized citizens³⁴ and 54.2% are non-citizens³⁵ (32.6% lawful permanent residents³⁶ and 21.6% temporary residents or undocumented immigrants). Of the under 18 year-old children population in the United States,

(codified at 45 C.F.R. § 1626), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/2014-lsc-regulations/LSC%20regulations%20April%202014.pdf>

²⁹ 45 C.F.R. § 1626.4 (2014).

³⁰ 45 C.F.R. § 1626.5 (2014).

³¹ For state by state immigrant demographics and step-by-step instructions on how to determine the immigrant demographics in your service area, see Benish Anver, Leslye Orloff, Jelena Kolic, & David Stauffer, *Translation Requirements for Vital Documents, Intake and Notice of LEP Assistance for DOJ and HHS Grantees Serving Immigrant Crime Victims* 8-34 (Mar. 9, 2014), available at: <http://niwaplibrary.wcl.american.edu/language-access/language-identification-tools-1/vital-documents-information-and-determining-translation-needs-for-service-providers/Translation%20for%20Vital%20Documents%20LEP%20Final.pdf>; See also National Immigrant Women’s Advocacy Project *Interactive State by State Demographics Map*, http://niwap.org/niwap_main/benefitsmap/

³² According to the Migration Policy Institute, the term "foreign born" refers to people residing in the United States at the time of the population survey who were not U.S. citizens at birth. The foreign-born population includes naturalized U.S. citizens, lawful permanent immigrants (or green-card holders), refugees and asylees, certain legal nonimmigrants (including those on student, work, or some other temporary visas), and persons residing in the country without authorization.

³³ Migration Policy Institute, *State Immigration Data Profiles* (2013), available at: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/US>

³⁴ *Id.*

³⁵ *Id.*

³⁶ 13.3 million lawful permanent residents in the United States in 2012 account for 32.6% of the foreign born population in the United States, see http://www.dhs.gov/sites/default/files/publications/ois_lpr_pe_2012.pdf

24.8% have one or more foreign born parents.³⁷ Among low income children, 30.8% have one or more foreign born parents.³⁸ Of U.S. Citizen children born in the United States, 88% have immigrant parents.³⁹

Lack of legal immigration status and dependence on family members and employers to attain legal immigration status and work authorization leave immigrant women vulnerable to sexual and domestic violence. Compared to immigrant men, immigrant women are 38% more likely than men to attain lawful permanent residency through a family based visa and 64.6% are more likely to come to the United States as a dependent spouse of a work visa holder.⁴⁰ When an immigrant woman is dependent on her spouse for immigration status, the likelihood of the spouse exerting coercive control and perpetrating immigration related abuse rises, resulting in domestic abuse rates among immigrant women in the U.S. at 33-50%.⁴¹

In the employment context, immigrant women are a majority of workers in the informal economy. They are very often childcare workers, elder and home health care providers, domestic workers, hotel and restaurant workers, office cleaners, farm and food processing industry workers. Participation in these job sectors combined with lack of immigration status and limited English proficiency too often create vulnerability to discriminatory employment practices that include low or unpaid wages, little or no employee benefits, unsafe working conditions, and susceptibility to discrimination, sexual harassment, sexual exploitation and mistreatment.⁴²

2012 National Survey on Immigrant Crime Victim Access to LSC Funded Legal Services

In November of 2012, the National Immigrant Women's Advocacy Project (NIWAP) at American University, Washington College of Law conducted a national survey on access to legal services by immigrant crime victims and their children.⁴³ The goal of the survey was to better understand the needs of immigrant survivors for legal representation and the extent they were successful in accessing legal assistance from LSC funded programs between January 2009 and November 2012. There were 189 organizations from 43 different states who participated in the

³⁷ <http://www.migrationpolicy.org/data/state-profiles/state/demographics/US>

³⁸ *Id.*

³⁹ Chiamaka Nwosu, Jeanne Batalova, & Gregory Auclair, *Frequently Requested Statistics on Immigrants and Immigration in the United States* (Apr. 18, 2014), available at: <http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states/#7>

⁴⁰ KELLY JEFFREYS, OFFICE OF IMMIGRATION STATISTICS, DEPARTMENT OF HOMELAND SECURITY, CHARACTERISTICS OF FAMILY-SPONSORED LEGAL PERMANENT RESIDENTS: 2004 (see Table 1: Demographic Characteristics of All LPRs and Family-Sponsored Principal LPRs: Fiscal Year 2004) (Oct. 2005), <https://www.dhs.gov/xlibrary/assets/statistics/publications/FSFamSponsoredLPR2004.pdf>.

⁴¹ Mary Ann Dutton, Leslye Orloff, & Giselle Aguilar Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy* 7 GEO. J. ON POVERTY L. & POL'Y 30-49 (2000).

⁴² Seventy-seven percent of Latina immigrant workers report that sexual harassment is a major problem at work. See Southern Poverty Law Center, *Under Siege: Life for Low Income Latinos in the South* (April 2009), <http://www.splcenter.org/get-informed/publications/under-siege-life-for-low-income-latinos-in-the-south>.

⁴³ SOFIA VIVERO, LESLYE E. ORLOFF, DANIEL J. QUINONES, BENISH ANVER, & CHARLES PALLADINO, REPORT TO THE LEGAL SERVICES CORPORATION: IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND HUMAN TRAFFICKING AND ACCESS TO LEGAL SERVICES (June 19, 2013) (hereinafter "NIWAP Report to LSC"), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Appendix-I-LSC-Report.pdf>

survey. Many (46%) of the agencies participating in the survey reported working with over 50 immigrant victims between January 2009 and November 2012. Survey participants collectively represented or provided advocacy assistance to over 18,000 immigrant crime victim clients who were living at or under 125% of the poverty level for their family size.⁴⁴

The survey found that the vast majority of victims who sought legal services were victims of domestic violence (44.8%) and abusive sexual assault (37.1%).⁴⁵ The majority of immigrant victim clients seeking legal services assistance had children living with them. The numbers were as follows: 30.2% had one child; 32.3% 2 children and 37.5% three or more children.⁴⁶

The report discovered important information about the legal needs of immigrant victims of domestic violence, sexual assault and human trafficking. The findings illustrate that victim's legal needs coincide strongly with the types of legal services offered by LSC funded programs across the country and include but extend significantly beyond assistance with immigration matters. The percentages of clients needing the following types of legal services can be summarized as follows:

Family Law: Emergency protection orders (63.4%); full protection orders (65.5%); custody (56.5%); child support (53.4%); spousal support 30.5%); and property division (35.5%).⁴⁷

Public Benefits: Housing (55.7%); Cash Assistance (53.3%); Health Care (65.2%); Nutrition Assistance (75.3%); Child Care (53.6%); Educational Grants/Loans (26.3%); SSI (16.3%) and Language access to gov't and social services (77.9%)⁴⁸

Immigration relief: VAWA self-petitions (46.1%); U visas (55.5%); T visas or continued presence (8.9%); and VAWA cancellation/suspension (12.0%); Battered Spouse Waivers (32.1%)
Access to work authorization (65.7%) and Immigration Enforcement related help (9.0%)⁴⁹

When immigrant crime victims sought access to LSC funded programs significant numbers were told by LSC funded programs that the immigrant crime victims were turned away for the following reasons:⁵⁰

- LSC programs accept cases of immigrant crime victims 53.3%
- Do not accept cases of immigrant crimes victims 20.6%
- Not sure if the LSC program accepts cases of immigrant victims 26.1%

The survey included questions pertaining to which categories of immigrant crime victims the LSC funded program accept. The following graph reveals the types of cases accepted. The

⁴⁴ *Id.* at 14.

⁴⁵ *Id.* at 15.

⁴⁶ *Id.* at 16.

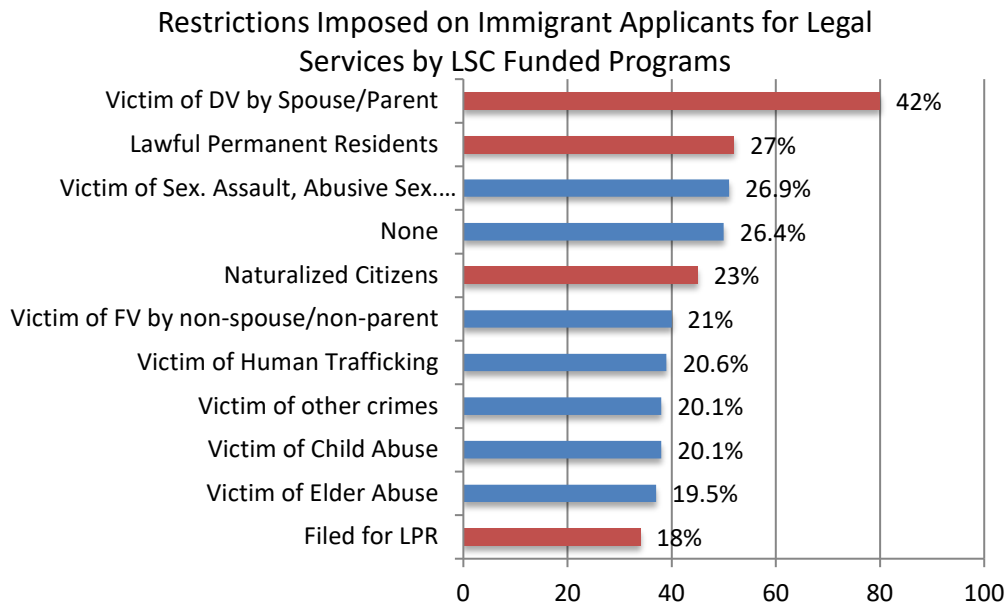
⁴⁷ *Id.* at 16-17.

⁴⁸ *Id.* at 18-20.

⁴⁹ *Id.* at 19-21.

⁵⁰ *Id.* at 21.

red bars indicate types of cases, which were accepted under the old law and are still acceptable. The blue bars, on the other hand, indicate the types of cases acceptable under the new law. “None” means the program accepted cases of immigrant victims and no restrictions were imposed and the LSC funded programs accepts cases of immigrant crime victims consistent with VAWA 2005.⁵¹



This research found that to a large extent when cases of immigrant crime victims were accepted by LSC funded programs they were predominantly the types of cases that LSC funded programs could accept under the pre VAWA 2005 LSC rules (the Kennedy Amendment). Three of the top five results were the types of cases accepted under the old rule, while five of the bottom six results are acceptable under VAWA 2006 and the Trafficking Victims Protection Act.

This national survey found that low income immigrant crime victims had significant need to receive legal services from LSC funded agencies. They sought representation on many legal issues that have been traditionally core services provided in the areas of family law and public benefits law by LSC funded programs throughout the country. They also had needs for help with immigration matters the resolution of which is key to victim safety, economic security, maintaining custody of children and protection from retaliation by their perpetrators through triggering initiation of immigration enforcement actions against victims.⁵² The survey also found that that programs were accepting cases of the new types of immigrant clients LSC programs were authorized to serve under the TVPA 2000 and VAWA 2005. Only 26.4% of programs took cases of immigrant crime victims without restriction. The rates at which programs were accepting cases of immigrant victims of non-spousal domestic violence (21%); human trafficking (20.6%) and sexual assault (26.9%).

⁵¹ *Id* at 21-22.

⁵² KRISZTINA E. SZABO, DAVID STAUFFER, BENISH ANVER, & LESLYE E. ORLOFF, EARLY ACCESS TO WORK AUTHORIZATION FOR VAWA SELF-PETITIONERS AND U VISA APPLICANTS 9-10 (Feb. 12, 2014), available at: <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>

LSC's new 2014 anti-abuse regulations will play an important role in improving access to representation by LSC funded agencies for the full range of immigrant victims of domestic violence, sexual assault, human trafficking and other U visa listed criminal activities. Implementing these new LSC regulations provide LSC funded programs the opportunity to reform intake policies, conduct outreach, establish partnerships with victim services programs working with immigrant survivors, train staff and accept immigrant survivors for representation in family law, public benefits, immigration and other matters.

III. Immigrant Victim Eligibility for Representation By LSC Funded Agencies Under VAWA 2005 and LSC's 2014 Anti-Abuse Regulations

The 2014 amendments to the Legal Services Corporation's regulations governing immigrant access to legal assistance from LSC funded agencies implement the Congressional intent behind the legal services access amendments passed as part of VAWA 2000, VAWA 2005 and TVPA.⁵³ LSC's 2014 regulations address the following issues, which will each be discussed more fully below:

- Two co-equal paths to representation by LSC funded agencies open to immigrants. To qualify for representation immigrants must be either be --
 - Eligible based on immigration status; *OR*
 - Eligible under Anti-Abuse laws
- Legal Services Corporation's adoption of the Department of Homeland Security's (DHS) definition of domestic violence to be "battering or extreme cruelty."
- Rules governing when and whether victims seeking or receiving representation from LSC funded programs are required to be present in the United States.
- Availability of representation to immigrant crime victims without regard to whether or not they are married to their perpetrators and the effect of the U.S. Supreme Court decision in *Winston*.
- The distinctions between the various paths to LSC representation available to victims of human trafficking.
- Paths to representation including an immigrant victim's ability to move between receiving representation as a crime victim and receiving representation as an eligible immigrant.
- The range of legal assistance "directly related" to the abuse or crime victimization that can be provided to victims receiving help under anti-abuse regulations.

Representation Under Anti-Abuse Laws Or Based on Immigration Status

⁵³ Legal Services Corporation, Restrictions on Legal Assistance to Aliens, 78 Fed. Reg. 51696, 51697 (proposed Aug. 21, 2013)(to be codified at 45 C.F.R. pt. 1626), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/2014-lsc-regulations/2013-20040.pdf>; see also Legal Services Corporation, Restrictions on Legal Assistance to Aliens, 79 Fed. Reg. 21861, 21861-62 (Apr. 18, 2014) (codified at 45 C.F.R. § 1626), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/2014-lsc-regulations/LSC%20regulations%20April%202014.pdf>

VAWA 2005 created statutory authority directing LSC funded agencies to provide legal services and representation to immigrant victims of domestic violence, sexual assault, human trafficking, or U visa qualifying crimes on a wide range of legal matters related to the abuse or crime victimization the immigrant applicant for legal services suffered.⁵⁴ In April 2014, the LSC amended its regulations to fully implement both VAWA 2005 and the legal assistance available for trafficking victims created by VAWA 2000. These LSC regulations create two avenues an immigrant can pursue to attain assistance from any LSC funded program. These two paths to representation are:

- Representation under Anti-Abuse laws⁵⁵, or
- Representation based on immigration status.⁵⁶

There are a few ways in which the legal services representation under anti-abuse laws under 45 C.F.R. Section 1626.4 differs from representation under immigrant access laws under 45 C.F.R. Section 1626.5. The primary differences are:

- **Relationship of Representation to Abuse:**
 - Representation under anti-abuse laws and regulations may only include legal assistance directly related to abuse.
 - Representation under immigration status law and regulations can be for any form of legal assistance offered by the LSC funded agency without limitation.
- **Asylum**
 - Representation in asylum matters may be permissible based on the facts of the case under anti-abuse regulations because attaining legal immigration status can be central to an immigrant victim's ability to overcome the crime victimization suffered. The asylum case may, from a safety planning perspective, be a safer option for a particular immigrant survivor compared to applying for a U visa. The asylum case for a particular victim may also have the best chance of success and would be the soundest remedy to pursue from a legal ethical perspective.
 - Representation in asylum matters is not authorized for persons receiving legal services under immigration status regulations.

There are also significant similarities:

- Neither path to LSC representation requires that the victim seek help from LSC funded attorneys on an immigration case. Illustrations include:
 - Immigrants with pending applications for lawful permanent residency may have received help in filing that application from a pro bono or other non-LSC program lawyer.

⁵⁴ VAWA 2005 § 103.

⁵⁵ 45 C.F.R. § 1626.4 (2014).

⁵⁶ 45 C.F.R. § 1626.5 (2014).

- An immigrant victim of sexual assault may have filed a police report on a rape case, but is not able to obtain U visa certification and will not be pursuing a U visa. The victim can receive assistance in obtaining a sexual assault protection order, securing help in getting her university to agree to a flexible class load or exam schedule or other related legal assistance.

Of the population of immigrant crime victims that are eligible to receive legal representation under the anti-abuse statutes, a subset can move from the anti-abuse path to legal representation to eligibility for legal services based on immigration status. Understanding which immigrant crime victims could become eligible to move from anti-abuse to immigration status as a basis for LSC program representation can be important for some immigrant survivors. It is particularly helpful to immigrant survivors who need legal assistance that does not fit within the types of legal services assistance that meet the definition of being “directly related to the abuse.” Early filing of a victim’s immigration case promotes earlier access to attaining a form of immigration status that qualifies for LSC representation based on the immigration status of the applicant.

The most common case in which this will occur will involve an immigrant victim of domestic violence, sexual assault, or human trafficking, whose case is accepted for representation under anti-abuse regulations. Once the LSC funded attorney files the victim’s VAWA, T or U visa case and the case is approved, the victim will either be immediately eligible or will eventually become eligible to file for lawful permanent residency. VAWA self-petitioners whose abusers are U.S. citizen spouses, parents or over 21 year-old children are immediately eligible to apply for lawful permanent residency once the VAWA self-petition has been approved. As soon as the victim’s application for lawful permanent residency is pending, the victim’s basis for representation by the LSC agency can shift from representation under anti-abuse laws to immigration status based representation. A VAWA self-petitioner with a pending lawful permanent residency application can benefit from the broader range of legal services representation offered by the LSC funded agency, if there are services unrelated to the abuse that she could benefit from receiving.

Additionally, VAWA self-petitioners whose abusers are their lawful permanent resident spouse or parent, T visa and U visa recipients must wait until they have filed their application for lawful permanent residency and until such time are limited to receiving representation from the LSC funded agency that is directly related to abuse. Wait times for VAWA self-petitioners vary by the victim’s country of origin and, in April 2014, ranged from nine (9) months to two (2) years. T and U visa recipients must wait for three (3) years before they become eligible to apply for lawful permanent residency based on having received a T or U visa.

The following examples illustrate when victims originally represented under the LSC anti-abuse regulations 45 C.F.R. Section 1626.4 could become eligible for full LSC representation under immigration regulations 45 C.F.R. Section 1626.5.

An immigrant abused by their U.S. Citizen spouse could initially qualify for legal representation related to her abuse under the anti-abuse statutes. Once that representation has commenced, the attorney could assess her eligibility for immigration relief either as a VAWA

Self-Petitioner or as a U visa applicant. If the victim's self-petition or U visa application is approved, the victim will become eligible to file for lawful permanent residency. The point in the case in which a victim is eligible to file for lawful permanent residency varies by case type:

- Self-petitioners whose abusers are their citizen spouse, ex-spouses, parents, step-parents or over 21 year old children – no waiting time
- Self-petitioners whose abusers are their lawful permanent resident spouses, ex-spouses or parents – wait time: 9 months to 2 years depending on the victim's country of origin. Can be faster if the abusive spouse or parent previously filed and withdrew an immigration case on the victim's behalf
- U visas – wait time: 3 years after receipt of the victim's U visa.

Under the LSC regulations, immigrant crime victims would become eligible for LSC representation as immigrants under 45 C.F.R. Section 1626.5 when –

- VAWA self-petitioners –
 - The victim files their application for lawful permanent residency and
 - Their abuser is their U.S. citizen spouse or former spouse
 - Their abuser is their citizen child
 - Their abuser is their lawful permanent resident spouse or former spouse AND the victim has a U.S. Citizen child (no age limit is placed on the child).
- U visa recipients—
 - The victim who has had a U visa for three years files their application for lawful permanent residency and they have a U.S. citizen spouse or child. The age of the citizen child is not relevant to LSC eligibility.

An immigrant victim of elder abuse is eligible for legal assistance under the anti-abuse statutes as a victim of battering or extreme cruelty, domestic violence, sexual assault, human trafficking or another U visa qualifying crime (e.g., extortion, involuntary servitude, being held hostage, etc.).⁵⁷ The elder abuse victim who receives representation under the anti-abuse regulations can receive representation on wide range of legal issues related to the abuse (e.g. protection order, immigration relief, access to victim services, health care, etc.) If the elder abuse victim qualifies for and applies for immigration relief, there will come a point in the case in which the victim would be able to switch to representation based on immigration status. The following are the elder abuse scenarios most likely to be encountered by LSC funded programs:

- VAWA Self-Petition
 - An immigrant victim of elder abuse (battering, extreme cruelty or sexual assault) is being abused by his or her over 21 year old U.S. Citizen son or daughter. Based on this abuse they are eligible to apply for immigration relief as a VAWA Self Petitioner.
 - Once granted the VAWA Self-Petition is approved and the elder abuse victim applies for lawful permanent residency they become eligible for

⁵⁷ For an in-depth discussion of how immigrant victims of elder abuse qualify for and benefit from U visas, see Leslye Orloff, Rocio Molina, Maria Jose Fletcher, Carolyn S. Ronis, & Aditi Kumar, Toolkit for Adult Protective Services' Use of the U Visa (Feb. 2014), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/adult-protective-services/APSTOOLKIT.pdf>

- LSC funded representation as an immigrant parent of a citizen child with a pending application for lawful permanent residency.
 - An immigrant is a victim of elder abuse (battering, extreme cruelty or sexual assault) perpetrated by the victim’s U.S. citizen spouse who files a VAWA self-petition. As the spouse of a U.S. citizen they can file their VAWA self-petition and simultaneously file an application for lawful permanent residency. Once the lawful permanent residency application is filed the elder abuse victim is LSC funded immigration based representation.
- U Visa
 - The immigrant victim of elder abuse may qualify for a U visa if the abuse qualifies as one of the U visa qualifying criminal activities.
 - Three years after being granted the U visa the victim is eligible to file for lawful permanent residency. Once the immigrant files their application for lawful permanent residency if the U visa victim has a
 - U.S. citizen child or spouse, they become eligible based on their immigration status for LSC funded representation. In the case of a U.S. citizen child, the age of their U.S. citizen child (over or under 21) is not relevant to this determination.

These examples are important to keep in mind when working with an immigrant victim of crime because, while they may be initially limited to legal representation related to the abuse when they first qualify under the anti-abuse statutes, attorneys can work with them to pursue immigration relief related to their abuse, which would help them access critical services and benefits, including access to unrestricted legal services based on immigration status.

The tables below detail the different groups of immigrants and immigrant victims that are, under LSC regulations and federal statutes, eligible for LSC funded legal assistance either under Anti-Abuse laws⁵⁸ (regardless of immigration status) or based on immigration status.⁵⁹ The following immigrants qualify for legal services from LSC funded agencies based on their immigration status and may receive any type of legal assistance they require.

Eligibility for LSC Funded Legal Assistance Based on Immigration Status

- | | |
|---|---|
| <ul style="list-style-type: none"> ✓ Immigrants who filed for lawful permanent residency and are: <ul style="list-style-type: none"> ○ The spouse of a U.S. citizen⁶⁰; ○ The parent of an over 21-year old U.S. citizen son or daughter⁶¹; or ○ An IRCA agricultural worker. | <ul style="list-style-type: none"> ✓ Conditional entrants admitted prior to April 1, 1980⁶⁶ ✓ Lawful and conditional permanent residents ✓ Persons granted deferral of removal/deportation⁶⁷ |
|---|---|

⁵⁸ 45 C.F.R. § 1626.4 (2014).

⁵⁹ 45 C.F.R. § 1626.5 (2014).

⁶⁰ 45 C.F.R. § 1626.5 (2014).

⁶¹ 45 C.F.R. § 1626.5(b) (2014).

⁶⁶ 45 C.F.R. § 1626.5 (c)-(d) (2014).

⁶⁷ 45 C.F.R. § 1626(e)(2014).

- ✓ Citizens of Palau, Micronesia, and the Marshall Islands, who reside in the U.S.⁶²
- ✓ Canadian-born American Indians who are at least of 50% Indian by blood⁶³
- ✓ Indigent foreign nationals in a Hague Convention Case⁶⁴
- ✓ Members of the Texas Band of Kickapoo⁶⁵
- ✓ Children of immigrants included in these applications
- ✓ Nonimmigrant agricultural laborers (H-2A workers) and forestry workers (H-2B workers)⁶⁸ (wages, housing, transportation, etc.)
- ✓ Refugees and Asylees
- ✓ Citizen, lawful permanent resident and other children of applicants who also have any of the other forms of immigration statuses listed here

Some victims of domestic or sexual violence, child abuse, elder abuse or human trafficking will be eligible to receive legal representation under LSC regulations based on their immigration status. The categories on the chart above they are most likely to fall into include, but are not limited to, victims who:

- Have pending adjustment of status applications based on family based or employment based immigration cases;
- Are lawful permanent residents without regard to how they attained lawful permanent residency. This may or may not be have been crime victimization related;
- Conditional permanent residents whose abusive spouses initiated immigration cases on the immigrant spouse's behalf that led the immigrant spouse receiving conditional permanent residency. Battered immigrant conditional permanent residents qualify for legal representation under immigration status eligibility and LSC funded lawyers can represent them in removing conditions and attaining full lawful permanent residency without regard to the grounds for removal of conditions. These grounds may or may not include a battered spouse waiver. Further conditional residents can receive any form of legal assistance without any requirement that the assistance offered be related to the abuse the victim suffered;
- Immigrants who are victims of domestic violence or child abuse or whose children have been victims of child abuse who have been awarded VAWA cancellation of removal or suspension of deportation;
- Battered immigrant victims of spouse or child abuse who have been granted refugee or asylee status; and
- Immigrant victims of severe forms of human trafficking who have received certification from the U.S. Department of Health and Human Services (HHS)

⁶² 45 C.F.R. § 1626.5 (f); *see also* 45 C.F.R. § 1626.10(a)(2) (2014).

⁶³ 45 C.F.R. § 1626.5 (f); *see also* 45 C.F.R. § 1626.10(b) (2014).

⁶⁴ 45 C.F.R. § 1626.5 (f); *see also* 45 C.F.R. § 1626.10(e) (2014); *see also* 42 U.S.C. § 11607(b).

⁶⁵ 45 C.F.R. § 1626.5 (f); *see also* 45 C.F.R. § 1626.10(c) (2014).

⁶⁸ 45 C.F.R. § 1626.5 (f); *see also* 45 C.F.R. § 1626.11 (2014).

through continued presence, a bona fide determination, or approval of a T visa case.

In addition to eligibility based on immigration status, immigrants who are victims of crime may also be eligible to receive access to legal services from LSC funded agencies based on anti-abuse laws, regardless of their immigration status. Victims receiving services under anti-abuse regulations may only receive legal assistance 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.”⁶⁹

Victims Who are Eligible for LSC Funded Legal Assistance under Anti-Abuse Laws⁷⁰

- | | |
|--|---|
| <ul style="list-style-type: none">✓ Battered or subjected to extreme cruelty⁷¹:<ul style="list-style-type: none">○ All victims of domestic violence (battered or subjected to extreme cruelty), including those who were not married to the perpetrator○ Victims that have been abused or subjected to extreme cruelty by a parent, step-parent, spouse, former spouse, or a son or daughter○ Includes both victims of heterosexual and same-sex partner violence | <ul style="list-style-type: none">✓ Victims of sexual assault⁷²✓ Victims of human trafficking⁷³✓ Victims of severe forms of human trafficking (continued presence and T visas)⁷⁴✓ U visa criminal activity that has occurred in the United States or has violated United States law⁷⁵✓ Children of all of the eligible victims listed in the anti-abuse regulations |
|--|---|

Representing Victims of Domestic Violence, Battering or Extreme Cruelty

Current VAWA legislation and LSC regulations authorize LSC funded programs under anti-abuse regulations to represent immigrant victims of domestic violence and sexual assault

⁶⁹ 45 C.F.R. § 1626.4(b)(2) (2014).

⁷⁰ See Catherine Longville & Leslye E. Orloff, *Access to Publicly Funded Legal Services for Battered Immigrants* (2014), available at: http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/genera-information/AccessToLegalServices_KSleoBA_6.23.14FINAL.edit.diFINALforOVW.docx

⁷¹ As defined in 45 C.F.R. § 1626.2. This definition is identical to the definition of battering or extreme cruelty in immigration regulations (see 8 C.F.R. §204.2(c)(1)(vi)); see also Leslye E. Orloff, Brittney Roberts, & Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases* (Oct. 13, 2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/reports-memos-social-science-research-and-related-data/Extreme-Cruelty-BIA-training-memo.pdf>

⁷² As defined at 42 U.S.C. § 13925(a)(29).

⁷³ Refers to human trafficking that includes, but is broader than “severe forms of human trafficking” or “sex trafficking” and could include crimes that violated a state or federal law. To qualify for legal representation by an LSC funded agency, the trafficking may have occurred inside or outside of the U.S., but the victim must be present in the United States at the time of the application for legal services.

⁷⁴ 45 C.F.R. § 1626.4(a)(2014); see also 22 U.S.C. § 7105(b)(1)(c) (defining “severe forms of trafficking”).

⁷⁵ U visa listed crimes are any of the following: abduction, abusive sexual contact, blackmail, domestic violence, extortion, false imprisonment, female genital mutilation, felonious assault, fraud in foreign labor contracting, hostage, incest, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, perjury, prostitution, rape, sexual assault, sexual exploitation, slave trade, stalking, torture, trafficking, witness tampering, unlawful criminal restraint, other related crimes (including attempt, conspiracy, or solicitation to commit any of the above and other related crimes). INA §101(a)(15)(U)(iii). It is important to note that all victims of U visa criminal activities (including trafficking) can receive LSC representation if there is evidence supporting their U visa eligibility; see 45 C.F.R. § 1626.3 (2014).

without regard to the victim’s immigration status. Representation is available whether or not the victim has filed for or plans to file for VAWA related or any other form of immigration relief. The LSC rule adopts the definition of “domestic violence” developed by the U.S. Department of Homeland Security (DHS) in the VAWA self-petitioning regulations. Both immigration relief and legal services representation are open to immigrants who suffer “battering or extreme cruelty.”⁷⁶ LSC anti-abuse regulations authorize LSC funded agencies to represent immigrant crime victims who have been “subject to battery or extreme cruelty by a spouse, parent, or member of their spouse’s or parent’s family residing in the same household,” and the parents of immigrant crime victims who have faced battery or extreme cruelty by a spouse, parent or member their spouse’s or parent’s family residing in the same household.⁷⁷

Battered or subjected to extreme cruelty includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury and psychological or sexual abuse or exploitation, including rape, molestation, or incest (if the victim is a minor).⁷⁸ In its 1996 regulations regarding VAWA self-petitions, the Immigration and Naturalization Service (INS), the predecessor agency to DHS, recognized a broad definition of battering and extreme cruelty.⁷⁹ DHS adjudicators working under DHS regulations and policies understand that other abusive actions may also be acts of violence that may not initially appear violent, but that are part of an “overall pattern of violence” and that listing which types of abuse qualify as battering and extreme cruelty would limit potentially eligible immigrant victims from applying if they did not see the type of abuse they suffered listed in the regulation.⁸⁰

DHS and INS recognized, in issuing regulations and policy memoranda, that it was not possible to anticipate all of the different types of abuse that could qualify as battering and extreme cruelty.⁸¹ Applying this DHS approach, the range of abusive acts that could qualify as battering and extreme cruelty is broad, allowing many needy immigrant crime victims to qualify for access to legal services. In the context of child applicants for LSC representation under anti-abuse regulations, LSC’s adoption of the DHS approach to battering or extreme cruelty would allow LSC funded programs to represent immigrant children who have been abandoned or neglected by one or more of their immigrant parents whether or not the children additionally suffered physical or sexual abuse.⁸²

⁷⁶ 61 Fed. Reg. 13061, 13065-66 (1996), 8 C.F.R. § 204.2(c)(1)(vi); *see also* Leslye E. Orloff, Brittnay Roberts, & Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases 6* (Oct. 13, 2013) (citing *In re CA. S.*, 828 A.2d 184 (2002), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/reports-memos-social-science-research-and-related-data/Extreme-Cruelty-BIA-training-memo.pdf>)

⁷⁷ 45 C.F.R. § 1626.4- 1626.5 (2014).

⁷⁸ 45 C.F.R. § 1626.2(f)–(g) (2014).

⁷⁹ 61 Fed. Reg. 13061, 13066 (1996).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *See* Leslye E. Orloff, Brittnay Roberts, & Stefanie Gitler, *Battering and Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases 6* (Oct. 13, 2013) (citing *In re CA. S.*, 828 A.2d 184 (2002), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/reports-memos-social-science-research-and-related-data/Extreme-Cruelty-BIA-training-memo.pdf>)

Abandonment and neglect of children falls within the scope of abusive behaviors within the broad DHS definition of battering or extreme cruelty in many cases related to immigrant children. Eligibility may vary based on the facts of the individual immigrant child's case.⁸³ Factors programs should consider in determining whether a child's neglect or abandonment constitute extreme cruelty should include both an examination of the harm suffered by the child experiencing neglect or abandonment and the severity of the parents' actions towards the child and would include, but not be limited to, at a minimum, some of the following types of considerations:⁸⁴

- the child's age, physical and mental health;
- any preexisting conditions the child may have that may have been aggravated by the abandonment or neglect;
- how the neglect or abandonment affected the child;
- whether the neglect or abandonment of the child caused mental injury;
- whether the neglect was a series of acts that, if taken together, establish a pattern of extreme cruelty, even when no single act alone rises to that level;
- Whether the abandonment or neglect would qualify for mandatory child abuse reporting under state law; or
- the severity of the parents' conduct in abandoning or neglecting the child

Each of these factors should be considered at the time of the neglect or abandonment, at the time of application, and against the background of the totality of the circumstances of immigrant child's life.

Though it may appear that these definitions, on their face, are narrow, LSC funded agencies are authorized to provide legal assistance that is directly related to escaping abuse, ameliorating the effects of the abuse, or preventing future abuse for immigrant victims in all of the aforementioned categories. The approach taken by the LSC anti-abuse regulations builds upon the approach LSC originally took in implementing VAWA 2005's provisions granting access to representation by LSC funded programs. A 2006 Memorandum from LSC's president informed LSC funded programs that both non-LSC and LSC funding could be used to provide legal assistance to immigrant victims of abuse, regardless of the victim's immigrant status.⁸⁵ Legal assistance authorized by VAWA that programs can provide to immigrant victims includes

legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty described [...].”Under this definition of legal assistance, LSC funded agencies can assist these types of victims, utilizing

⁸³ The question of whether immigrant children who suffered abuse, abandonment or neglect that occurred exclusively outside of the United States qualify for legal representation under the LSC regulations is an open question. See *infra* notes 90-91 and the corresponding discussion in the section *The Extent to Which the Majority of Immigrant Victims Eligible for and Receiving Representation under Anti-Abuse Laws Are Not Required to be Present in the U.S.*

⁸⁴ This list is derived from the DHS U visa regulations discussion of physical or mental abuse; see Department of Homeland Security, *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53014, 53018 (Sept. 17, 2007), available at: http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf

⁸⁵ See Program Letter 06-2 to All LSC Program Directors, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Civil%20Society%20-%20Program%20Letter%2006-2-%20Violence%20Against%20Women%20Act%202006%20Amendments.pdf>

both non-LSC and LSC funds, to provide legal assistance related to accessing public benefits, attaining a desired immigration status, attaining quality housing, and any “other matters related to the abuse that are offered to other clients of the LSC agency.”⁸⁶

The Extent to Which the Majority of Immigrant Victims Eligible for and Receiving Representation under Anti-Abuse Laws Are Not Required to be Present in the U.S.

One of the important issues the LSC anti-abuse regulations addresses is whether and in which types of cases LSC funded programs can represent immigrant crime victims without regard to whether the crime victim is in the United States at the time the victim applies for legal services from the LSC funded agency. The anti-abuse regulations generally followed the approach taken by Congress and DHS on cases involving immigrant crime victims. In cases of immigration relief under VAWA, victims filing VAWA self-petitions can file either from inside the United States or abroad.⁸⁷ VAWA 2000 removed all U.S. geographic restrictions on the location of the victim when filing a VAWA self-petition.⁸⁸ Similarly, both the U visa statute and regulations recognize that U visa applicants do not need to be in the United States to file for U visa immigration relief.⁸⁹ Additionally, the approach taken by LSC in the anti-abuse regulations mirrors the approach taken by Congress with VAWA confidentiality protections against reliance upon perpetrator provided information to harm a victim and the prohibition against immigration enforcement at prohibited locations both apply to all immigrant victims of domestic violence, sexual assault, human trafficking and all U visa crimes without regard to whether the victim has ever filed an immigration case.⁹⁰ Here, access to legal services is available to most immigrant crime victims without regard to whether they are present in the U.S. at the time of application.

Prior to October 2014, there appeared to be an inconsistency between the preamble to the LSC regulations and the language of the regulation itself with regard to the extent to which LSC funded agencies can represent immigrant victims of battering, extreme cruelty, or sexual assault when the abuse occurred abroad. The preamble notes that the final rule was adjusted to “reflect that although the criminal activity giving rise to eligibility under VAWA does not need to occur in the United States, the crime must have violated the law of the United States.” However, the regulation itself appears to limit representation to instances in which the abuse occurred in the United States or violated U.S. law.⁹¹ This inconsistency created an open question as to whether victims who suffer battering, extreme cruelty or sexual assault can be represented.

⁸⁶ NIWAP Report to LSC, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Appendix-I-LSC-Report.pdf>

⁸⁷ VAWA 2000 § 1503(b)(3), 8 U.S.C. § 1534(a)(1)(A)(v)(2000) (provided that the victim “is a spouse, intended spouse, or child living abroad of a citizen who... is an employee of the United States Government; is a member of the uniformed services...; or has subjected the [victim] or the [victim’s] child to battery or extreme cruelty in the United States; and is eligible to file a petition under clause (iii) or (iv), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii) or (iv), as applicable”) available at: <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/statutes/VAWA-TVPR-2000-whole-bill.pdf>

⁸⁸ *Id.*

⁸⁹ 72 Fed. Reg. 53014, (Sept. 17, 2007), available at: http://niwaplibrary.wcl.american.edu/immigration/u-visa/regulations/UVISA_interim-regs-Fed-Reg.pdf

⁹⁰ 8 U.S.C. § 1364.

⁹¹ 45 C.F.R. § 1626.4(c)(2014).

The type of cases this ambiguity potentially included the following nonexclusive examples: under immigration laws battered immigrant self-petitioners may file for immigration relief from either in the U.S. or abroad; spouses and children abused by U.S. government employees or members of the U.S. uniformed service living abroad qualify to file self-petitions from abroad including when all of the abuse occurred outside of the United States; victims of sexual assault in the process of immigration to the United States; or immigrant victims of domestic violence who fled their home countries to escape spouse abuse.

The preamble to the LSC regulations recognizes that immigrant victims of domestic violence and sexual assault are eligible for LSC funded program representation without any requirement that the abuse have occurred in the United States. Program Letter 14-3, issued on October 29, 2014, confirmed this by defining the term “violated a law of the United States” as used in 45 C.F.R. § 1626.4(c) to include domestic violence, battering or extreme cruelty, sexual assault, human trafficking, severe forms of human trafficking and other U visa listed criminal activities, whether or not the qualifying activity occurred in the United States.⁹² In discussing the relationship between the abuse that makes an immigrant eligible for representation by LSC funded agencies and the United States, Program Letter 14-3 clarifies that, under section 1626.4(c)(1), the “qualifying activity *does not have to have occurred in the United States.*”⁹³

Under the regulations there are three categories of human trafficking victims eligible for LSC funded representation:

- Victims of severe forms of human trafficking as defined by the TVPA;
- U visa trafficking victims; and
- VAWA LSC 2005⁹⁴ trafficking victims.

The VAWA LSC 2005 trafficking victims will be trafficking victims who are trafficking victims as defined under state law or trafficking victims described in the TVPA or the U visa who at the time of the application to the LSC funded agency have not provided and do not plan to provide helpfulness to law enforcement required under the TVPA and U visa statutes. Two of these categories of human trafficking victims must be present in the U.S. at the time of their application to the LSC funded agency for representation: TVPA and VAWA LSC 2005 trafficking victims,⁹⁵ but the trafficking could have occurred inside or outside the United States.⁹⁶ U visa trafficking victims are eligible for representation without regard to where the criminal activity occurred and whether the victim is physically present in the United States at the time of application for LSC funded assistance. When reading the regulation with this Program

⁹² Program Letter from Ronald S. Flagg, General Counsel and Vice President for Legal Affairs, Legal Services Corporation, to All Executive Directors, *Assessing Eligibility of Aliens Under 45 C.F.R. § 1626.4(c)(1)* (Oct. 29, 2014)(hereinafter “Program Letter 14-3”), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Program%20Letter%202014-3.pdf/view>

⁹³ *Id.* at 2 (emphasis in original).

⁹⁴ The term “VAWA LSC 2005” is used to refer to the category of human trafficking victims granted access to LSC funded representation through the VAWA 2005 statute, in addition to the human trafficking victims eligible for representation through the severe forms of human trafficking and U visa provisions.

⁹⁵ 45 C.F.R. § 1626.4(c)(2)(ii) (2014).

⁹⁶ 79 Fed. Reg. 21861, 21864 (“LSC agreed that it would be inconsistent with the plain language of the INA, VAWA, 2005, and the TVPA and its progeny to require that an alien have been trafficked into or within the United States to qualify for legal assistance from an LSC-funded recipient”).

Letter, the requirement that an activity “violated a law of the United States” means that, “as long as the activity giving rise to eligibility meets one of the definitions [cited in § 1626.2], the individual may be eligible for legal assistance under one of the anti-abuse statutes.”

The following chart outlines which immigrant victims must be present in the United States at the time they apply for legal services and which do not.

**Immigrant Victims and their Presence in the U.S.
at the Time They Apply for Legal Services**

LSC Regulation Section	Immigrant Victim Category	Presence Required?	Activity’s Relation to the United States
§ 1626.2(k)(2)	Human trafficking VAWA LSC 2005	Yes	Trafficking can take place inside or outside the U.S.
§ 1626.2(j)	Severe form of human trafficking (TVPA)	Yes	Trafficking can take place inside or outside the U.S.
§ 1626.2(h)	Human trafficking as a U visa crime	No	Trafficking can take place inside or outside the U.S.
§ 1626.2(b)	Domestic violence	No	Domestic violence can take place inside or outside of the U.S.
§ 1626.2(k)(1)	Sexual assault	No	Sexual assault can take place inside or outside of the U.S.
§ 1626.2 (h)	U visa qualifying criminal activity	No	Qualifying criminal activity can take place inside or outside of the U.S.
§ 1626.2 (b)	Battering or extreme cruelty	No	Battering or extreme cruelty can take place inside or outside of the U.S.

Availability of LSC Funded Representation to Unmarried Victims and Victims in Same Sex Marriages

The 1996 Kennedy Amendment that partially lifted LSC immigrant restrictions, allowing representation of battered immigrants when the domestic violence perpetrator was the immigrant victim’s spouse or parent. Many LSC funded programs worked under the Kennedy Amendment which, for almost a decade, restricted LSC representation in cases of intimate partner violence to victims abused by their spouses.⁹⁷ Following passage of VAWA 2005, LSC funded programs were no longer subject to the Kennedy Amendment’s spousal restrictions, yet many programs continued to turn away battered immigrant victims of domestic violence whose perpetrators were not their spouses.⁹⁸ LSC funded agencies may utilize both LSC and non-LSC funds to provide legal assistance for immigrant victims of domestic violence, sexual assault, trafficking, and other violent crimes. LSC funded agencies may use LSC funds or non-LSC funds to represent victims

⁹⁷ 62 Fed. Reg 45755-57 (Aug. 29, 1997).

⁹⁸ NIWAP Report to LSC, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Appendix-I-LSC-Report.pdf>

of domestic violence who were not married to their attacker.⁹⁹ This includes victims of sexual assault, female genital mutilation, and victims of trafficking who may be ineligible for T visa protection and all U-visa qualified immigrants and related family members,¹⁰⁰ and victims of severe forms of human trafficking.¹⁰¹

Additionally, on June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA).¹⁰² The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including DHS, have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples.¹⁰³ As a result of the decision in *Windsor*, VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation), particularly including:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage are now eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child’s immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse’s gender in a same-sex relationship.

The Distinctions between the Various Paths to LSC Funded Representation Available to Victims of Human Trafficking

LSC funded agencies may provide legal assistance to victims of severe forms of trafficking, as defined by the TVPA, and human trafficking, as defined by VAWA 2005, even if the trafficking did not take place in the United States, as long as the victim is present in the United States when applying for legal services.¹⁰⁴ The TVPA defines victims of severe forms of human trafficking to include victims who have been recruited, harbored, transported, or obtained for the purpose of a commercial sex act.¹⁰⁵ Eligible victims of severe forms of trafficking include adults compelled to engage in “sex acts” through the use of fraud or coercion, minors induced to perform sex acts, and people who are forced or fraudulently recruited, harbored, or transported for labor or services that subject them to involuntary servitude, peonage, debt bondage, or slavery.¹⁰⁶ Additionally, the TVPA has authorized LSC funded agencies to provide legal

⁹⁹ VAWA 2005 § 104(a)(1)(A) (2005).

¹⁰⁰ See Amanda Baran, *The Violence Against Women Act Now Ensures Legal Services for Immigrant Victims*, 40 CLEARINGHOUSE REV.538 (Jan. – Feb. 2007).

¹⁰¹ TVPA 2000 § 107(b)(1)(B); 42 U.S.C. § 7105(b)(1) (2000).

¹⁰² *U.S. v. Windsor*, 133 S.Ct. 2675 (2013).

¹⁰³ Department of Homeland Security, *Implementation of the Supreme Court Ruling on the Defense of Marriage Act* (last visited July 15, 2014), available at: <http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>

¹⁰⁴ 79 Fed. Reg. 21872 § 1626.4(c)(2)(ii) (2014).

¹⁰⁵ TVPA 2000 § 103(8)(2000).

¹⁰⁶ *Id.*

assistance to trafficking victims' family members who have been granted derivative T visas, which means that LSC funded agencies can now assist children and family members of an immigrant victim of trafficking.¹⁰⁷

Eligible victims of trafficking include victims who have been recruited, harbored, transported, or obtained for the purpose of a commercial sex act. Eligible victims of severe forms of trafficking include adults compelled to engage in "sex acts" through the use of fraud or coercion, minors induced to perform sex acts, and people who are forced or fraudulently recruited, harbored, or transported for labor or services that subject them to involuntary servitude, peonage, debt bondage, or slavery. LSC funded agencies may represent victims of all these aforementioned crimes.

The ability of LSC funded programs to represent immigrant trafficking victims is not limited to immigrant victims of severe forms of human trafficking as defined by the TVPA. The LSC anti-abuse regulations also authorize representation for two additional groups of human trafficking victims:

- VAWA 2005 trafficking victims, which include VAWA's "trafficking" definition, incorporates a larger amount of crimes than TVPA's "sex trafficking" and "severe forms of trafficking person" definitions.
- Trafficking victims who are U visa eligible who qualify for legal services representation whether or not the abuse occurred in the U.S. and whether or not the victim is present in the U.S. at the time that they seek legal assistance from an LSC funded agency.

Representation in Any Legal Matter "Directly Related" to the Abuse or Crime Victimization

LSC funded agencies are authorized to provide legal assistance that is directly related to a victim's abuse, battery, or experience of cruelty.¹⁰⁸ LSC has determined that directly related legal assistance means "any legal assistance that will assist victims of abuse in their escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse."¹⁰⁹ In the preamble to the final anti-abuse rule, LSC discusses the fact that it expects LSC funded agencies to interpret the term "directly related" broadly.¹¹⁰ This approach is similar to the approach LSC took in the original regulations implementing the Kennedy Amendment¹¹¹ and is

¹⁰⁷ TVPA 2003 § 107 (2003).

¹⁰⁸ Program Letter 06-2 to All LSC Program Directors, available at:

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Civil%20Society%20-%20Program%20Letter%2006-2-%20Violence%20Against%20Women%20Act%202006%20Amendments.pdf>

¹⁰⁹ *Id.*

¹¹⁰ See 45 C.F.R §1626 (2014).

¹¹¹ 62 Fed. Reg. 45755 (1997), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/regulations/Civil%20Society%20-%204755%20Legal%20Services%20Corporation-%2045%20CFR%20Part%201626-%20Restrictions%20on%20Legal%20Assistance%20to%20Aliens-%2062%20FR%2045755%20Final%20Rule.pdf>

consistent with VAWA's legislative history.¹¹² In addition to recommending that directly related legal assistance be interpreted broadly, LSC, in the preamble to the regulations, also noted that the examples of directly related legal advice it listed in the regulation was intentionally meant to be "illustrative rather than exhaustive."¹¹³

LSC funded agencies now have the opportunity to assist immigrant crime victims in: obtaining lawful permanent residency or citizenship status, immigration relief available to immigrant crime victims, divorces, protective orders, public benefits, housing, and employment and offer pro-bono clinics, provide legal advice and referrals, and conduct intakes.¹¹⁴ Therefore, LSC funded agencies are now authorized to provide related legal assistance such as representation, advocacy, or counseling under a multitude of situations. LSC explained that "the key factor for recipients to consider in determining whether a requested service is "related legal assistance" is the connection between the assistance and the purposes for which assistance can be given: escaping abuse, ameliorating the effects of the abuse, or preventing future abuse."¹¹⁵ As a result of this approach, there are a broad range of services that LSC funded agencies can provide to immigrant victims of domestic abuse, sexual assault, human trafficking, and U visa related crimes.

It is critical to note that seeking immigration relief is not a prerequisite or a requirement of representation by an LSC funded agency under the anti-abuse regulations. If a victim chooses not to apply for immigration relief, immigrant victims of domestic violence, sexual assault, human trafficking or U visa qualifying crimes can and should receive a wide range of other legal assistance from LSC funded agencies related to their abuse. Applying for immigration relief is not a threshold legal service that must be provided by LSC funded agencies in order to provide other related services, such as family law related or public benefits related legal assistance.

Legal assistance in obtaining immigration relief is a critical service for those victims who wish to pursue it. Some immigrant victims will, for victim safety reasons, choose not to apply for immigration relief. This will occur most commonly in U and T visa cases where police reports and law enforcement cooperation is a required part of the immigration case. For some victims, reporting and cooperation with law enforcement may be too dangerous or may be extremely difficult due to the victim's culture, religion, or country of origin, including the repercussions that may occur if the victim files a police report against the rapist, trafficker or perpetrator.

If the immigrant victim is willing to apply for immigration relief, the attorney working with the immigrant victim must first determine whether obtaining immigration relief is related to

¹¹² See Leslye E. Orloff & Janice Kaguyutan, *Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER SOC. POL'Y & L. 96 (2002), available at:

http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/vawa-self-petition-and-cancellation/research-reports-and-data/VAWA_Offering_Helping_Hand_History.pdf

¹¹³ 79 Fed. Reg. 21861, 21868 (2014) (during the notice and comment period, several comments regarding the inclusion of "related legal assistance" were submitted), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/2014-lsc-regulations/LSC%20regulations%20April%202014.pdf>

¹¹⁴ 42 U.S.C. § 2996.

¹¹⁵ 79 Fed. Reg. 21861, 2168 (2014), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/2014-lsc-regulations/LSC%20regulations%20April%202014.pdf>

the immigrant victim’s ability to overcome or prevent the underlying qualifying abuse. Once it is determined that applying for immigration relief for the immigrant victim qualifies as “related legal assistance,” the attorney has an ethical obligation to pursue immigration relief that the immigrant victim is most likely to successfully obtain and the application process for obtaining that relief will be safe and not traumatic for the client.

The LSC Anti-Abuse regulations codify the approach taken by both the Kennedy Amendment regulations¹¹⁶ and a 2006 LSC policy memorandum provided that LSC funded agencies may provide legal assistance that is related to helping immigrant victims of crime “escape” from the domestic violence, sexual assault, trafficking, or covered criminal activity, “ameliorate their effects” or preventing against future domestic violence, sexual assault, trafficking, or criminal activity.¹¹⁷ For example, an individual may not be denied unemployment benefits because the individual left work or was discharged because of circumstances resulting from the individual - or his/her child - being a victim of domestic violence, a sexual assault, or stalking and thus, an LSC funded agency may provide representation to such an individual.

The lists below provide examples of the various types of legal assistance with which LSC funded agencies can assist victims of domestic abuse, elder abuse, stalking, sexual assault, human trafficking, or other U visa listed criminal activity.¹¹⁸

Family Law

- Divorce
- Civil protection orders
- Terminations of parental rights
- Child custody
- Adoption
- Child protective services cases
- Unaccompanied minors
- Delinquency proceedings
- Child support
- Spousal support
- Division of property

Safety, privacy, and confidentiality

- Violence Against Women Act
- Maintaining health insurance while under the perpetrator’s health insurance
- Health insurance portability and accountability act
- Family violence prevention and services act

- Victims of crime act funding/assistance
- Family educational rights and privacy act
- Sexual assault protection orders
- Privileged communications under state or federal laws
- State landlord and tenant laws
- State employment laws
- State health care laws
- Safety planning (include interpreter/safety issues)
- Civil protection orders for domestic violence, stalking, vulnerable adult
- School, housing or landlord no contact orders
- General no trespass order
- State education laws
- Laws governing access to medical or forensic examinations and health care

Workplace safety

¹¹⁶ 62 Fed. Reg 45755-57 (Aug. 29, 1997).

¹¹⁷ Program Letter 06-2 to All LSC Program Directors, available at:

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Civil%20Society%20-%20Program%20Letter%2006-2-%20Violence%20Against%20Women%20Act%202006%20Amendments.pdf> .

¹¹⁸ See 45 C.F.R. §1626 (2014) (It should be noted that this list, like the list of examples in the final rule, is not exhaustive and is included here as a guide for LSC funded agencies and advocates working with immigrant victims about the range of legal services available under the final rule).

- Practical safety accommodations
- Title VII or state law remedies
- Americans with disabilities act
- Leave laws
- Safety & other issues for h-2 visa immigrants

Income security and mitigating financial losses

- Public benefits laws including
- TANF, SSI or state income maintenance
- Health care (e.g. affordable care act, Medicaid, Medicare, emergency Medicaid, SCHIP, substance abuse and mental health programs)
- Housing (emergency shelter, transitional housing, public and assisted housing)
- Nutrition assistance (SNAP, WIC)
- Child care (TANF or child care development fund)
- Heating assistance (LIHEAP)
- Assistance to refugees
- Assistance from social services block grant funded programs
- Disaster assistance
- Victim-specific restitution
- Crime victims compensation (except Nevada and Alabama)

Navigating Multiple Paths to Legal Representation

The flow chart (figure 1) was developed to assist LSC funded legal services providers in identifying the various routes to legal representation to immigrant crime victims. The graphic provides an overview of the following:

- Paths to legal representation;
- Whether the victim needs to be in the U.S. when filing;
- How the path to legal representation differs between anti-abuse regulations and immigration status based representation once the a victim files an application for lawful permanent residency; and
- Whether the victim can receive any form of legal representation or whether representation is limited to matters related in some way to the abuse.

IV. Implementation Opportunities for LSC Funded Programs To Expand Help for Low Income Immigrant Victims of Domestic Violence, Sexual Assault, Human Trafficking and Other U Visa Listed Criminal Activities

The following section discusses opportunities that the new LSC regulations provide for LSC funded programs working to implement the 2014 anti-abuse regulations.

Education laws

- Title IX
- No Child Left Behind Act
- Individuals with Disabilities Education Act
- Section 504: protecting students with disabilities
- Department of education policy on post-secondary educational grants and loans for immigrant survivors and their children

Employment laws

- Title VII / state equivalent
- EEOC complaint
- EEOC's help for immigrant victims
- Private cause of action
- Family and medical leave act / state equivalent
- Americans with disabilities act
- Helping the victim seek a transfer of the perpetrator from shared employment,
- Having the perpetrator fired based on the workplace violence and/or address
- Workplace retaliation, create safer work environment/ sexual harassment training,
- Compensate survivor for emotional suffering

Opportunities for LSC Funded Agencies Created by Developing Collaborative Partnerships with Victim Services Agencies

The anti-abuse pathway in the regulations provide LSC funded agencies an opportunity to reach out to and develop relationships with victim services programs in the LSC agencies' service area that have experience and expertise serving immigrant victims of domestic violence, sexual assault, and human trafficking. Many LSC funded agencies have already established these relationships and are models of successful collaboration.¹¹⁹ Collaboration with victim services programs can help LSC funded agencies with outreach, community education, case management, safety planning, obtaining U visa certifications¹²⁰, and other critical issues for which immigrant victims services programs have expertise.

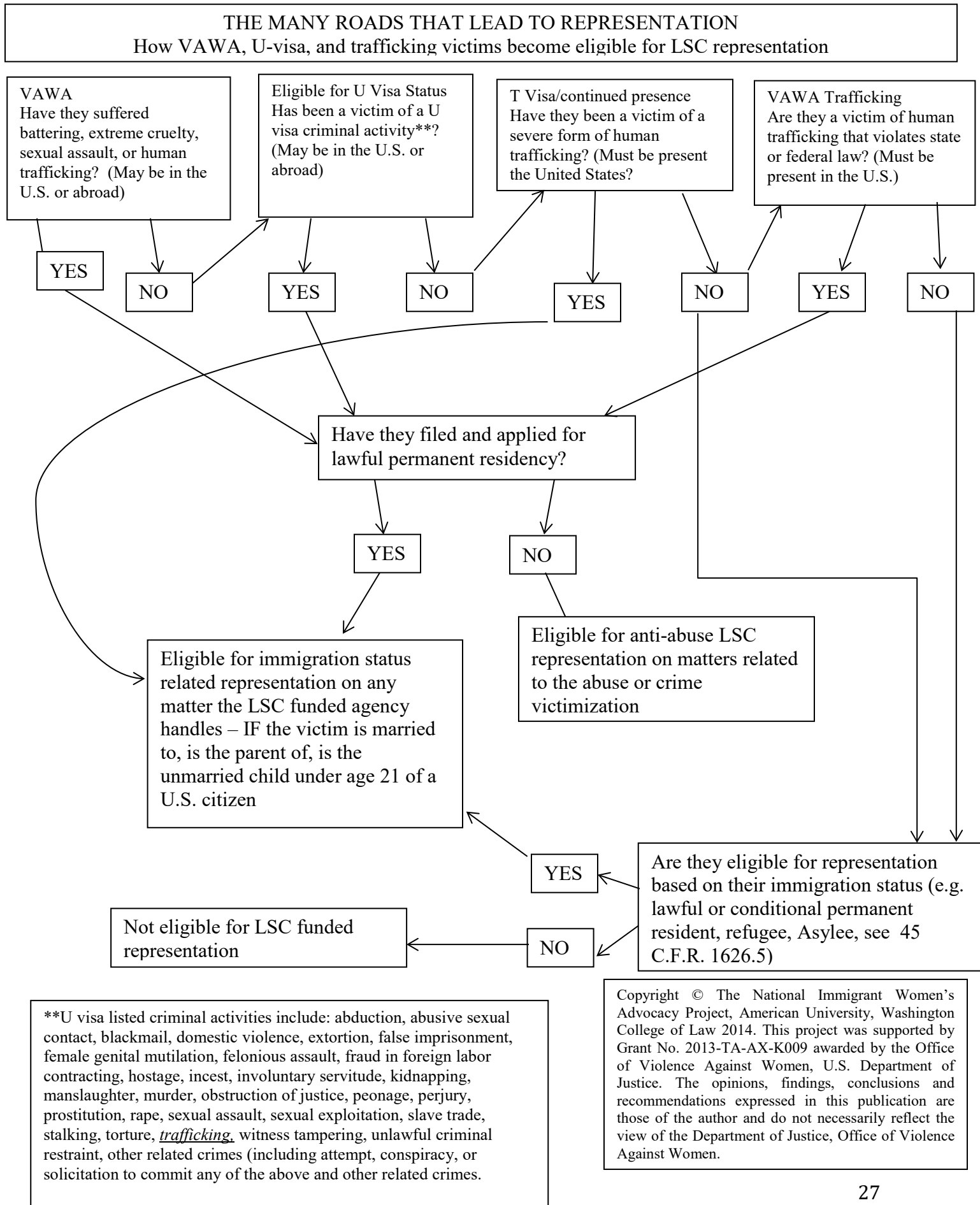
Victim advocates can assist legal services attorneys with:

- Outreach;
- Community education;
- Case management;
- Counseling and therapy for the client;

¹¹⁹ Although there are many collaborative partnerships between LSC funded agencies and local victim services programs across the country, NIWAP, through technical assistance, has encountered the following programs that have successfully established collaborative relationships in their states: Legal Aid Foundation of Los Angeles (CA), Bay Area Legal Services (CA), Legal Aid Society of NY (NY), South Brooklyn Legal Aid (NY), Texas RioGrande Legal Aid, Inc. (TX), and Legal Aid of North Carolina (NC).

¹²⁰ GISELLE HASS, KAREN MONAHAN, EDNA YANG AND LESLYE E. ORLOFF, U-VISA LEGAL ADVOCACY: OVERVIEW OF EFFECTIVE POLICIES AND PRACTICES (Dec. 12, 2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/research-reports-and-data/Practice-and-Policy-Brief.pdf/view>

Figure 1.



- Trauma informed services for clients;
- Safety planning;
- Court accompaniment;
- Access to victim services
- Language access and identification of qualified interpreters;
- Preparing victim affidavits for the victim’s VAWA or U visa case;
- Obtaining U visa certification,¹²¹ and
- Playing an important role in informing immigrant victims and women in immigrant communities about VAWA related immigration relief.

LSC programs interested in identifying organizations with experience serving immigrant populations in their state should consult the National Directory of Programs Serving Immigrant Victims developed and maintained by the National Immigrant Women’s Advocacy Project, American University, Washington College of Law.¹²² Victim services programs should identify the LSC funded agencies in their community offering legal services to low income populations.¹²³ We recommend that both LSC programs and victim services agencies looking to establish partnerships that facilitate access to legal services and access to justice for immigrant and limited English proficient victims put together a package of materials explaining immigrant crime victim’s rights to access legal services and immigrant crime victims legal rights more generally.¹²⁴

Victim’s services agencies and LSC funded programs are encouraged to contact each other to develop a relationship and process for working together on cases of immigrant crime victims. As programs implement LSC’s 2014 anti-abuse regulations, it is important that LSC agencies include other organizations with expertise serving immigrant victims of domestic violence, sexual assault, and human trafficking in the LSC funded agency’s priority setting process that the LSC funded agency uses in developing the agency’s implementation plan. The priority setting process is the process by which LSC funded programs determine the types of legal assistance that are needed in the community that the LSC funded program will offer. Once an agency’s priorities are set, those priorities are reported to LSC in the agency’s implementation plan. Historically, in many communities, victim services agencies and programs serving immigrant survivors have not been included in the LSC priority setting process. Victim services

¹²¹ Giselle Hass, Karen Monahan, Edna Yang and Leslye E. Orloff, *U-Visa Legal Advocacy: Overview of Effective Policies and Practices* (December 12, 2013), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/research-reports-and-data/Practice-and-Policy-Brief.pdf/view>

¹²² For a list of programs with expertise serving immigrant victims developed for the Office on Violence Against Women, DOJ, please visit: <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

¹²³ For a list of LSC funded agencies in your area, please visit: <http://www.lsc.gov/local-programs/program-profiles>

¹²⁴ These materials should include a copy of the 2014 legal services regulations; NIWAP’s brochure on access to LSC funded legal assistance for immigrant crime victims, see Catherine Longville & Leslye E. Orloff, *Access to Publicly Funded Legal Services for Battered Immigrants* (2014), available at: http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/genera-information/AccessstoLegalServices_KSleoBA_6.23.14FINAL.edit.dFINALforOVW.docx; information about the immigrant demographics in the community: for state by state immigrant demographics and step-by-step instructions on how to determine the immigrant demographics in your service area, see Benish Anver, Leslye Orloff, Jelena Kolic, & David Stauffer, *Translation Requirements for Vital Documents, Intake and Notice of LEP Assistance for DOJ and HHS Grantees Serving Immigrant Crime Victims* 8-34 (Mar. 9, 2014), available at: <http://niwaplibrary.wcl.american.edu/language-access/language-identification-tools-1/vital-documents-information-and-determining-translation-needs-for-service-providers/Translation%20for%20Vital%20Documents%20LEP%20Final.pdf>

providers¹²⁵ and immigrant community based agencies should request that LSC programs in their state include them in the priority setting process. LSC funded programs should identify and reach out to programs serving immigrant victims and invite them to join the priority setting process for the LSC funded agency. The priority setting process and the implementation plan for LSC funded agencies going forward should address the needs of immigrant and underserved crime victims covered by VAWA.¹²⁶

Revising Screening and Intake Procedures

Under the LSC regulations LSC funded agencies can determine how they will conduct their intake processes in the ways they determine are the most effective at identifying clients who are eligible for services and whose cases are within the agency's priority areas."¹²⁷ With the issuance of anti-abuse regulations LSC has implemented Congressional priorities expressed in the Violence Against Women Act and the Trafficking Victims Protection Act to increase access to legal services and access to justice for immigrant crime victims.

LSC funded agency intake and screening procedures should be revised to should focus determining eligibility based on victimization first and then only turn to immigration status inquiries after determining victimization for victims who are referred to their agency. In the final rule, LSC reminded recipients that the Office of Legal Affairs "stated that once a recipient determined that an individual has a legal need that would qualify for the exceptions of the anti-abuse statutes to the alienage requirement, the recipient does not need to inquire into the citizenship or immigration status of that individual."¹²⁸ The issue of whether an immigrant crime victim additionally qualifies under immigration grounds of eligibility can be addressed at a later stage of representation if the victim may need such eligibility to secure legal assistance on an issue that is not related to the abuse. If an immigrant applicant is not initially referred to the LSC funded agency as a crime victim, then the agency should determine eligibility based on immigration status.

LSC funded agencies should allow immigrant victims applying for legal assistance under anti-abuse regulations to prove their eligibility for representation using any credible evidence available to the victim. The VAWA *any credible evidence* standard used by DHS and other federal agencies in cases domestic violence and other crime victims.¹²⁹ Following the lead of DHS, LSC programs should avoid requiring any particular documents to prove abuse or crime victimization.¹³⁰ The information upon which LSC programs rely regarding each of these forms

¹²⁵ VAWA defines victim services providers at VAWA 2013 42 U.S.C. 13925(a)(43).

¹²⁶ As defined in VAWA 2013 42 U.S.C. 13925(a)(39).

¹²⁷ *Id.*

¹²⁸ 79 Fed. Reg. 21861, 21869 (2014), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/2014-lsc-regulations/LSC%20regulations%20April%202014.pdf>

¹²⁹ For a complete legislative history of the VAWA any credible evidence standards, see Leslye E. Orloff, Kathryn C. Isom, and Edmundo Saballos, *Mandatory U Visa Certification Unnecessarily Undermines the Purpose of the Violence Against Women Act's Immigration Protections and Its "Any Credible Evidence" Rules- A Call for Consistency*, 10 GEO. J. GENDER & L. 619 (2010).

¹³⁰ Documentary requirements impose significant barriers to access to services and assistance for immigrant crime victims. See e.g. MEAGHAN FITZPATRICK, BENISH ANVER, DAVID STAUFFER, KRISZTINA SZABO, & LESLYE ORLOFF, ACCESS TO EMERGENCY SHELTERS AND TRANSITIONAL HOUSING FOR BATTERED IMMIGRANTS AND IMMIGRANT VICTIMS OF CRIME 20-

of crime victimization should be listed in a notation to the file, but documentary evidence need not be required or retained. Agency intake procedures can direct that a notation be made to the file of the factual basis for eligibility determination including credible evidence of abuse from the victim's statements or injuries observed by the interviewer. The Interim Guidance issued by the Attorney General and the DOJ governing benefits adjudications in cases of immigrant victims provides useful guidance on the broad range of evidence victims should be able to provide to prove victimization.¹³¹ This approach allows victims to safely meet each proof requirement in their application allowing them to use evidence safely accessible to them.

The LSC regulations included a helpful discussion in the preamble to the proposed regulations that is consistent with DHS¹³² and other federal agency interpretations recognizing how difficult it can be for immigrant crime victims, particularly those who suffer domestic violence, workplace violence, or abuse by a trafficker to provide proof and documentation that may be under the control of the perpetrator.

“..[T]he standard permits recipients to make a judgment that an Alien, who may not possess evidence at intake, will be able to do so after further investigation. Third, the rule allows eligibility based on statements taken from an alien, which may, in some cases, be the only evidence available during intake. Fourth, the rule accounts for the reality that the facts underlying eligibility assessments in abuse cases will often be fluid by calling for recipient staff to continue to assess eligibility beyond the intake process and to reverse eligibility determinations when appropriate. Fifth, the rule does not permit a recipient to delay in making eligibility determinations in order to provide assistance to an ineligible alien.”¹³³

21 (June 3, 2014), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/housing/Transitional%20Housing%20Report%20FINAL%2006.3.14.pdf/view>

¹³¹ Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 63 Fed. Reg. 61344, 61370 (November 17, 1997).

¹³² Department of Justice, Immigration and Naturalization Service, Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13061, 1366 (Mar. 26, 1996) (It should be noted that the Immigration and Naturalization Service, under the Department of Justice, issued this guidance in 1996. The Department of Homeland Security and the United States Citizenship and Immigration Service have adopted this guidance in its application of the any credible evidence standard), available at: <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/regulations/1996VAWAregsself-petition.pdf/view>

The rule provides that evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. This rule also provides that other forms of credible evidence will be accepted, although the Service will determine whether documents appear credible and the weight to be given to them.

¹³³ 78 Fed. Reg. 51700. This approach that allows programs to base eligibility on the victim applicant's credible statements to the agency is the approach that has also been adopted by state protection order statutes, which do not require as a matter of law evidence of domestic violence beyond the victim's testimony about the facts of the abuse. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*,

To facilitate the immigrant victim access to services from LSC funded agencies that VAWA 2005 envisioned, LSC funded agencies should adopt the approach that DOJ and the Attorney General took when it followed the DHS lead in applying the VAWA any credible evidence standard for immigrant victim's public benefits access. The DOJ issued guidance recommending that any credible evidence of abuse submitted by an applicant for federal public benefits.¹³⁴ The DOJ guidance noted that

Evidence of battery or extreme cruelty...includes, but is not limited to, reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, and other social service agency personnel; legal documentation, such as an order of protection against the abuser or an order convicting the abuser of committing an act of domestic violence that chronicles the existence of abuse; evidence that indicates that the applicant sought safe-haven in a battered women's shelter or similar refuge because of the battery against applicant or his or her child; or photographs of the visibly injured applicant, child, or (in the case of an alien child) parent supported by affidavits. An applicant may also submit sworn affidavits from family members, friends or other third parties who have personal knowledge of the battery or cruelty. Additionally, an applicant may submit his or her own affidavit, under penalty of perjury (it does not have to be notarized), describing the circumstances of the abuse, and the benefit provider has the discretion to conclude that the affidavit is credible, and, by itself or in conjunction with other evidence, provides relevant evidence of sufficient weight to demonstrate battery or extreme cruelty.¹³⁵

LSC funded agencies should accept any credible evidence that falls within the broad array of evidence accepted by DHS in VAWA self-petitioning, U visa, battered spouse waiver, and human trafficking cases and by DOJ with regard to immigrant victims' applications for public benefits related to the abuse that victims have suffered. Federal and state benefits granting agencies and DHS are required, under the law, to accept any credible evidence from a victim proving abuse or crime victimization. LSC funded programs should follow this approach, under which it would be impermissible to deny access to legal services by requiring victims to present any specific pieces of evidence (e.g. police reports, medical records or orders of protection) as corroborative evidence of eligibility. Instead, programs should accept any credible evidence of abuse or crime victimization submitted by the victim to prove abuse as sufficient evidence under the LSC regulations.¹³⁶

21 HOFSTRA L. REV. 801, 1045-46 (1993). *State statutes e.g.* Ariz. Rev. Stat. §13-3602; Del. Code Ann. tit. 10 §1043, §1045 §1041; Fla. Stat. Ann. §741.30; Ga. Code Ann. §19-13-4, §19-13-3; 750 ILCS 60/214, 60/201; Me. Rev. Stat. tit. 19-A §4007, §4005; Mich. Comp. Laws Ann. §600.2950; N.Y. Fam. Ct. Act §842, 812; Tex. Fam. Code §85.021, 82.002.

¹³⁴ Department of Justice, Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, AG Order No. 2129-97, 62 Fed. Reg. 61344, 61369 (Nov. 17, 1997), available at: http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/c_FR-1997%20interim%20verif%20guidance%20DOJ_OVW%2011.15.04.pdf

¹³⁵ *Id.*

¹³⁶ For a non-exclusive list of the types of evidence an immigrant crime victims might offer to prove eligibility, see Leslye E. Orloff, Benish Anver, & Charles Palladino, *Comments on Proposed Rule Updates to the Legal Service Corporation Regulation on Legal Assistance to Aliens 45 CFR Part 1626 – 78 Fed.Reg. 51696 (Aug. 21, 2013) (Oct. 21, 2013)*,

Removing Recordkeeping

The LSC recently removed the recordkeeping requirement that LSC funded agencies keep or retain copies and supporting documentation for U-visa, T-visa and “any other grant of immigration status” for victims receiving legal services from LSC funded organizations.¹³⁷ LSC recommended that, if an immigrant victim presents evidence of immigration status, recipients should records the type of evidence they were shown, the applicant’s alien registration number (“A number”), the date of the document, and the staff member that was shown the document.¹³⁸ However, to protect privacy and confidentiality, it is recommended that least of amount of evidence be utilized to demonstrate that the victim is eligible for U-Visa, T-Visa, or another type of immigration status. Additionally, if an LSC funded program is presented with evidence documenting an applicant’s immigration status, they are required to protect that information both under client confidentiality and VAWA confidentiality.

Improving Privacy and Confidentiality

Immigrant victims of domestic violence are understandably hesitant to share private information. In addition to attempting to escape their perpetrators, they may worry about being reported to a law enforcement agency that may deport them. Moreover, for immigrant crime victims’ confidentiality, privacy, VAWA immigration confidentiality, privileged communications are essential components of providing effective legal representation to an immigrant crime victims. For the aforementioned reasons, the LSC letters, Kennedy Amendments, and additional LSC regulations have prohibited LSC funded agencies from asking immigrant victims of crime about their immigration status.¹³⁹ Thus, intake procedures should be changed so that immigrant victims are first questioned about the crime committed against them rather than their immigration status.¹⁴⁰

V. Conclusion

LSC was designed in recognition of indigent population’s heightened vulnerability and need for critical legal services. Congress has recognized that legal representation is often an immigrant victim of domestic violence’s sole pathway out of poverty and abuse. Continuing to expand the types of legal services for which immigrant victims of domestic violence are eligible, will secure for them a future free of domestic violence, sexual assault, and trauma, and filled with economic productivity, employment opportunities, and the core tenet behind VAWA, the Kennedy Amendments, and the Legal Services Corporation - justice.

available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/2014-lsc-regulations/LSC%20VAWA%20Comments%2010-21-13%20NIWAP%20FINAL.pdf>

¹³⁷ *Id.*

¹³⁸ 79 Fed. Reg. at 21870 (2014), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/2014-lsc-regulations/LSC%20regulations%20April%202014.pdf>

¹³⁹ See Amanda Baran, *The Violence Against Women Act Now Ensures Legal Services for Immigrant Victims*, 40 CLEARINGHOUSE REV. 538 (Jan. – Feb. 2007).

¹⁴⁰ See NIWAP Report to LSC, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/civil-society/Appendix-I-LSC-Report.pdf>