

# **Legal Rights of Immigrant Victims of Family Violence: What You Need to Know Today to Help Victims and Their Children**

Arrest Grantee Orientation

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Leslye Orloff,

Immigrant Women Program

Legal Momentum

LEGAL

momentum [www.iwp.legalmomentum.org](http://www.iwp.legalmomentum.org)

Advancing Women's Rights

New York and Washington, D.C.

# National Network to End Violence Against Immigrant Women

[www.immigrantwomennetwork.org](http://www.immigrantwomennetwork.org)

**Legal Momentum: Immigrant Women Program**

Leslye Orloff, Kavitha Sreeharsha, Soraya Fata, Sameera Hafiz

(202) 326-0040, [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org)

<http://www.legalmomentum.org/iwp>

**ASISTA: Technical Assistance Project**

Sonia Parras Konrad, Maria Jose Fletcher, Gail Pendleton, Sally Kinoshita

(515) 244-2469, [questions@asistaonline.org](mailto:questions@asistaonline.org)

<http://www.asistaonline.org>

**Family Violence Prevention Fund**

Leni Marin, Monica Arenas

(415) 262-8900 x16, [leni@endabuse.org](mailto:leni@endabuse.org)

[www.endabuse.org](http://www.endabuse.org)

# Learning Objectives for the Session

- By the end of this training, you will be better able to:
  - Identify immigrant victims eligible to legal immigration status under VAWA and the U-visa
  - Develop skills in working with immigrant victims
  - Promote and develop partnerships and collaborations – a coordinated community response that will work for immigrant victims
  - Move your agency and CCR team toward issuing certifications in U-visa cases

# IWP Technical Assistance

- Substantive areas
  - Immigration law (VAWA, T visas, U-visas, Detention)
  - Criminal law: Assistance with U-visa and T-visa role for law enforcement, prosecutors, judges and advocates
  - Family law (protection orders, custody, divorce)
  - Language Access
  - Access to legal services
  - Public benefits
    - Housing
    - Education
    - TANF
    - Health care

# Types of Technical Assistance

- Case consultations
- Help developing policies/protocols
- Briefs
- Legal research
- Consultations for strategies for removing systemic barriers
- List serves
- Materials

# Services We Offer

- Trainings
  - OVW grantee trainings
  - Summits
  - Seminars/Workshop
- Directory
- List serves

- When you think about working with immigrant victims, what are some of the key areas in which you would like more support or information?

# Dynamics of Domestic Violence Experienced By Immigrant Victims and Their Children



# Immigrant Demographics

- Today 25% of U.S. population are immigrants or children of immigrants
- 80% of immigrants are living in the U.S. legally
- 1/3 of foreign-born population are naturalized U.S. citizens
- 1/3 of permanent residents were at one time undocumented

# New Growth States

- Foreign born population grew between 1990 and 2000 by more than 90%
- Top 10 fastest growing immigrant populations (NC, GA, NV, AR, UT, TN, NE, CO, AZ, KY)
- Other New Growth States (AL, DE, IA, ID, IN, **KS**, MN, MS, OK, OR, SC, WA)

# Children in Immigrant Families

- 85% of immigrant families are “mixed status”, including at least 1 U.S. citizen, often a child
- 1 in 5 children is the child of an immigrant
- 18% (5 and older) speak a language other than English at home

# ***Dynamics of Domestic Violence Experienced By Battered Immigrants***

# Threats About and Fear of Deportation: Primary Barrier

- Unaddressed blocks all access to
  - Victim services
  - Shelter
  - Health Care
  - Police
  - Justice system
- Role of lack of information about US legal and social services system
- Affects both documented and undocumented immigrant victims

# Domestic Violence Prevalence Rates and Severity

- U.S. in general – 22.1% (NIJ)
- \*Immigrant women – 30-50%
- Research has found that immigrant victims
  - Stay longer
  - Have fewer resources
  - Sustain more severe physical and emotional consequences of abuse

# Connection Between Abuse and Control Over Immigration Status

- Research Congress relied upon in enacting VAWA 1994
- Lifetime abuse rate 49.8%

# Abuse Rates Rise When U.S. Born Citizen Marries Immigrant Woman

- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average



# The Power of Control Over Immigration Status

- Of those married to a citizen or lawful resident spouse who could have filed legal immigration papers
- 72.3% never file immigration papers.
- The 27.7% who did file had a mean delay of 3.97 years.

# Immigration-Related Abuse Lock's Immigrant Women in Abusive Relationships

- Keeps victims from
  - seeking help
  - Getting protection order
  - Calling police
  - Cooperating in prosecutions
- NIJ Research found that 65% of immigrant victims report some form of immigration related abuse

# Immigration Related Abuse as a Lethality Factor

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

# Factors Affecting Immigrant Victim's Willingness to Call Police for Help

- Positive Factors:
  - Length of time in the United States
  - She had spoken to 2 or more persons about the violence
    - (46% know other women victims)
  - Her children witnessed the abuse
  - She had a protection order
- Negative Factor:
  - Victim's immigration status

# Immigration Status Affects Willingness to Call Police

- Significant difference between victims willingness to call the police related to their immigration status:
  - Stable (citizen/permanent resident) 34.4%
  - Temporary (temporary visa) 16.7%
  - Undocumented 14.8%

# ***Protecting Immigrant Mothers, Protects Children***

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

# NIJ Funded CPO Study Found

- With advocates support immigrant victims will use and benefit from justice system assistance
- 60.9% did not know about CPOs
- 81% got CPO with help from advocate
- 96% found them helpful
- 68.3% of violations immigrant related about

# Immigration Relief for Immigrant Victims and Their Children: VAWA, U-Visas and T-Visas



# Why is immigration relief critical for immigrant survivors?

# The Importance of Immigration Status

- Ability to work legally
- Improved ability to win custody and protect children
- More access to protection orders
- Breaks isolation
- Protection from deportation and removal
- Better access to housing
- Ability to travel to and from the U.S. (with some exceptions)
- Path to lawful permanent residency and ultimately citizenship

# Potential Immigration Remedies

- Applications filed DHS
  - VAWA self petition
  - Battered spouse waivers (spouses of USCIs with conditional permanent residency)
  - U visa
  - T visa (victims of trafficking)
  - Asylum (persecution based on protected classes)
- Forms of relief from removal- granted by Immigration Judge
  - VAWA cancellation of removal
  - VAWA suspension of deportation

# General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
  - spouse,
  - parent,
  - adult son/daughter (over 21)
- With Whom self-petitioner resided
  - No time period required
- Good Moral Character
- Good Faith Marriage

# Forms of Extreme Cruelty

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

# Proof of Abuser's Status

## U.S. citizenship:

birth certificate naturalization  
certificate  
U.S. passport  
USCIS approval notice  
baptismal certificate

## Permanent residency:

**Alien Registration card**  
**Resident Alien card**  
**Passport stamp (I-551)**  
**USCIS records check based on  
“A”#**  
**Immigration court order**  
**USCIS approval letter**

# VAWA self-petitioning available

- If case filed within 2 years of:
  - Legal termination of the marriage
  - Abuser's death
  - Abuser's deportation or denaturalization

# Self-petitioning continued

- Child self-petitioners
  - Must prove relationship to abusive citizen or lawful permanent resident parent
  - Termination of Parental Rights does not end ability to self-petition
  - Step-children must file while their non-abusive parent is still married to their abusive citizen or lawful permanent resident step-parent



# VAWA issues

- Children (parents of child self petitioner) attain same benefits as VAWA self-petitioner
- Abused children can self-petition until 25<sup>th</sup> birthday
- Self-petitioner and abuser can remain together
- Bigamy/innocent spouse
- Police report, protection order, medical records NOT required
- *All credible evidence* standard of proof

# Approved children included in their parent's VAWA case receive:

- All the same benefits as a VAWA self-petitioner including:
  - Work authorization
  - Benefits eligibility as qualified immigrant
  - Protection from deportation
  - Path to lawful permanent residency and citizenship

# VAWA self-petition process

- Prima facie determination → public benefits
- Approval of VAWA self-petition → employment authorization
- After VAWA approval, file for permanent residency
  - If abuser is U.S. citizen, self-petitioner can immediately seek permanent residency
  - If abuser is permanent resident, self-petitioner may have to wait up to or over 7 years to file

# Approved VAWA petitions

- VAWA self-petitioners receive
- Protection from deportation
  - deferred action status.
- Legal work authorization
- Ability to apply for lawful permanent residency through VAWA
- Naturalization after 3 years

# VAWA Cancellation

- Cancellation is only available to people in *removal proceedings*
- One can be placed in removal for the purpose of cancellation if there are no alternatives
- Denial results in them being ordered removed from the United States.

# VAWA Cancellation Elements

- Relationship to abusive party (broader than self-petition)
  - Mother of a child abused by the child's other parent who is a USC or LPR even when no marriage
  - More than 2 years have passed since divorce from the abuser
- Battered or Subject to Extreme Cruelty
- Good moral character
- Extreme Hardship to return to the home country
- Three years physical presence in the U.S.
- Not inadmissible

# U-Visas For Crime Victims

# Immigrant Crime Victim Visas (“U”)

- Immigration visa
- Employment authorization
- Path to permanent residency
- Includes family members
- Can be undocumented or enter without inspection and still apply



# Understanding Behind U and T visas

- Remove threats of deportation as a tool crime perpetrators could use to keep victims silent and elude prosecution
- If victims are too afraid to come forward -- No prosecutions
- Deportation no longer a tool in the hands of perpetrators
- Need cooperation detection and investigations
  - Not only prosecutions

# Congress recognized that

- Prosecutions are also affected by circumstances beyond victim's control
- Key is her willingness to be or having been helpful to police and prosecutors
- Goal access to legal immigration status as soon as possible for victim
  - DHS Regulations ask certifiers to
    - Confirm victim has information about the criminal activity
    - Provide information about the victim's helpfulness

# Crime Victim (“U”) Visa Requirements

- Substantial physical or emotional abuse from criminal activity
- Possesses information about criminal activity
- Criminal activity must have occurred in U.S. or otherwise violate U.S. Law
- Victim has been, is likely to be or is being helpful to an investigation or prosecution of criminal activity

# What criminal activities are covered under the “U” visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Prostitution
- FGM
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment

## Criminal Activities Covered -- Continued

- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- Any similar activity

# Who might be helped by the U-Visa?

# What is substantial physical or emotional abuse?

- Decided based upon each individual's experience
- Case-by-case determination using these factors:
  - nature of the injury inflicted or suffered;
  - severity of the perpetrator's conduct;
  - the severity of the harm suffered;
  - the duration of the infliction of harm;
  - permanent or serious harm to victim's
    - appearance,
    - health,
    - physical, and mental soundness

# Substantial Abuse (continued)

- No one factor is required
- Can include pre-existing conditions
- Can consider the severity of the perpetrator's conduct even if the actual impact is less than intended by the perpetrator



# Helpfulness in Investigation or Prosecution of criminal activity includes:

- Reporting crime to authorities
- Assistance in detection of criminal activity or perpetrator
- Providing information that
  - Leads to arrest
  - Assists with prosecution
  - Affects sentencing
- Testifying

# Examples: Helpfulness in investigation OR prosecution of “criminal activity”

- A victim calls 911 and/or makes a police report but there is no follow through by law enforcement
- After a report, law enforcement does not have the resources to investigate
- After a report, prosecutors do not charge
- Perpetrator eludes arrest
- Prosecutors prosecute a different crime than that enumerated
- The perpetrator is prosecuted but the victim is not needed to testify
- The defendant is not convicted

# “Investigation or Prosecution” Includes:

- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing

# What is certification?

- Required part of U-visa application
- Signed by agency responsible for detection, investigation or prosecution of criminal activity
- Certification includes that
  - U-visa criminal activity occurred (cite violation of U.S./state/local law)
  - Victim has has been, is being, likely to be helpful
- Cannot receive U-visa without certification

# Who can certify?

- Police officer
- Prosecutor
- Judge
- Immigration Officer
- Other authority with responsibility for investigation or prosecution of criminal activity

# Other Federal, State or Local Agencies

- Agencies with criminal investigative jurisdiction
- In areas of expertise
- Including but not limited to
  - Child Protection Services Worker
  - EEOC
  - Department of Labor

# Who Can Sign Certifications

- DHS regulations anticipate multiple signatories
- To be signed by head of agency OR
- Designated signatory
  - Must have supervisory authority
  - Better to have multiple supervisors signing U-visa certifications
  - Any persons in supervisory role

# What protection is there for family of U Visa applicants?

- Adult victims:
  - Spouse
  - Children (includes those born after application)
- Victims under 21 at time of criminal activity
  - Spouse
  - Children
  - Parents
  - Unmarried siblings under 18 (at the time of filing)



# Application Process

- Limit of 10,000 principal visas per year
  - (placed on wait list for next year if cap met)
- Seek permanent residency after three years of physical presence. Must show grounds of
  - Public interest,
  - Family Unity or
  - Humanitarian need AND
  - Victim cannot unreasonably refused to cooperate

# Lawful permanent residency for U visa holders

- Available to U visa holders who demonstrate
  - Humanitarian Need or
  - Family Unity
  - Public Interest
- Continued cooperation requirement
- Lack of Regulations

# Comparison VAWA vs. U-visa

- Abuser spouse, former spouse, parent, 21+ USC child
- Abuser USC or LPR
- Children included
- No cooperation with law enforcement required
- No proof of harm
- Criminal involvement can cut off access to relief
- Qualified immigrant = public benefits
- One year wait for work authorization
- Protection from deportation 1 yr
- Green card after approval if abuser is a citizen or 7 yr wait if abuser LPR
- Abuser anyone
- Any status
- Children included
- Cooperation in detection, investigation or prosecution required
- Substantial physical or emotional abuse
- Crimes can be waived
- PRUCOL less benefits access
- One year wait for work authorization
- If in immigration proceedings case expedited
- Green card after 3 years **if** can show cooperation + either humanitarian need, public interest or family unity

# Collaboration Between Justice System Personnel and Victim Advocates Supporting Immigrant Women and Children in U-Visa Cases

# Importance of Law Enforcement Role

- VAWA model and history of successful coordinated community responses to domestic violence
- Opportunity to build upon successes in community policing
- Build relationships with immigrant communities
- Advocate collaboration with police and prosecutors key

# Building Relationships- Who should be in the collaborative

- Police Officers
- Prosecutors
- Legal Services (immigration and domestic violence)
- Community Groups
- Immigrants Rights Community Centers
- Law enforcement Agencies
- Domestic Violence Service Providers
- Judges
- CPS workers

# Agenda for CCR to Better Serve Immigrant Victims

- Set up collaborative process in advance of a victim needing certification
- Demonstrate commitment to protecting immigrant crime victims
- Use the opportunity to share resources and strengths
- Collaborate on safety planning
- Develop language access protocols
- Involve culturally and linguistically competent partners who can assist with referrals
- Capitalize on pre-existing relationships
- Understand immigration relief options and immigrant victims legal rights

# Criminal Cases and Immigration Enforcement: Challenges For Immigrant Children and Their Non-Abusive Parents



# Immigration Enforcement and Victim Safety

- Multiple DHS statutorily equal roles
  - Immigration enforcement
  - Granting immigration benefits to those eligible
  - Protecting immigrant victims
- How recent changes in immigration enforcement effect victims
  - Greater likelihood that perpetrator reports will lead to victim arrests
  - Worksite enforcement dangers
  - Public transportation and traffic stops

# Practices That Endanger Immigrant Victims

- Dual arrest
- Mutual protection orders
- Criss-cross protection orders
- Issuance of a protection order against an immigrant victim
- Domestic violence pleas or convictions

# Convictions Under Immigration Law

- Not the same as state law
- Any formal judgment of guilt entered by the court

# Dangers of Protection Orders Issued Against Immigrant Victims

- Violation of protection order a deportable offense
- Domestic violence convictions and protection order violations can bar good moral character can undermine victim's access to VAWA
- Do not agree to protection order against victim

# Criminal Conviction or Protection Order Violation Finding Can Cause

- Loss of lawful permanent residency
- Denial of naturalization
- Denial of lawful permanent residency to an approved VAWA self-petitioner
- Immigration judge to deny VAWA cancellation
- Denial of U or T visa

# What This Means For Safety Planning With Immigrant Victims

- Immigration screening as early as possible essential
- Cannot assume by name or sight that victim is or is not an immigrant
- Changes in strategy – Immigration case filed before
  - CPO, family or criminal court case
  - Victim travels to new location

# VAWA confidentiality

- DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
- DHS cannot disclose VAWA information to anyone (except in limited circumstances)
- Enforcement locational prohibitions

# Immigration judge to dismiss case if any part of an enforcement action occurs at:

- A shelter
- Rape crisis center
- Supervised visitation center
- Family justice center
- Victim services program or provider
- Community based organization
- Courthouse in connection with any
  - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



***Immigrant Victim's Legal  
Rights to Access Benefits,  
Housing, Legal Services,  
Victim Services and  
Protections***

# Both Documented and Undocumented Immigrant Victims Can Access:

- Protection Orders
- Shelter
- Transitional Housing
- Child Custody and Support
- Receive Emergency Medical Care

# All Immigrant Victims Can Access:

- Police Assistance
- Have Their Abusers Criminally Prosecuted
- Assistance for Crime Victims
- Obtain Public Benefits for Their Children
- Legal Services

# Programs Necessary to Protect Life and Safety

# Attorney General's List of Required Services

- in-kind services
- provided at the community level
- not based on the individuals income or resources
- necessary to protect life & safety

# **Benefits Available to All Immigrants, Regardless of Status: Attorney**

## **General's List of Required Services**

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions

- Soup kitchens

# Attorney General's List of Required Services, continued...

- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children (\*Includes emergency shelter and transitional housing up to two years.\*)
- Senior nutrition programs for those requiring special assistance

# Undocumented Immigrant Victims Are Legally Entitled to Access

- Emergency shelter
- Domestic violence shelters
- Other short-term housing of up to two years
- Including Transitional Housing



# Undocumented Immigrant Victims and Transitional Housing

- In transitional housing programs what kinds of barriers, practices, rules might impede immigrant victim access to transitional housing?

# Other Federal Benefits Available to ALL Immigrants

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

# When children qualify and their parents do not:

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

# Mixed Families

- 1 in 5 children (20%) in the U.S. is the native- or foreign-born child of an immigrant.
- Immigrants who do not qualify themselves can file for their children who are
  - U.S. citizens
  - Lawful permanent residents
  - Qualified aliens
- Immigrants applying for benefits only for their eligible children should not be asked and should not answer questions regarding their own immigration status.
- Advocates are encouraged to accompany immigrants to interviews with eligibility workers.