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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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 USCs 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\textsuperscript{th} birthday
- Self-petitioner and abuser can remain together
- Bigamy/innocent spouse
- Police report, protection order, medical records \textbf{NOT} required
- \textit{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.