

# **IMMIGRANT BATTERED MOTHERS, CUSTODY AND CHILD SUPPORT**

Advocacy for Battered Mothers Challenges and Strategies

**BATTERED WOMEN'S JUSTICE PROJECT**

**SAN DIEGO, CALIFORNIA**

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# Please Note

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# **BASIC IMMIGRATION RELIEF:**

## **SCREENING FOR IMMIGRATION RELIEF AND UNDERSTANDING THE VARIOUS FORMS OF RELIEF AVAILABLE TO IMMIGRANT VICTIMS**

# Learning Objectives

- *Understand the basic immigration relief available to immigrant victims*
- *Screen for immigration relief and undertake/participate in preparation of the immigration case*
- *Identify cases which require immigration attorney representation*
- *Learn how to help immigrant survivors file VAWA self-petition and U-visa applications and how doing so benefits the custody case*

# WHY IS LEGAL IMMIGRATION STATUS IMPORTANT?

Small group discussion

# Benefits for Victims

- Protection from deportation
- Enhanced safety for victim
- Financial independence from perpetrator
- Legal work authorization
- VAWA confidentiality
- Temporary legal immigration status
- U-visa protections for vulnerable family members
- Greater ability to gain/maintain custody of her children
- Better access to victim services, health care, and benefits

# Potential Immigration Remedies

- Applications filed with DHS
  - VAWA self petition
  - Battered spouse waivers
  - U-visa (crime victims)
  - T-visa (victims of trafficking)
  - Special Immigrant Juvenile Status
  - Deferred Action for Childhood Arrivals (DACA)
- 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



# HOW MIGHT YOU DEFINE “EXTREME CRUELTY”?

# Forms of Extreme Cruelty

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

# Factors that can constitute extreme cruelty

- Correlate strongly with physical & sexual abuse
  - Isolation
  - Intimidation
  - Economic abuse
  - Employment related abuse
  - Immigration related abuse
- Threats to kill or cause bodily harm
- Threats to harm children or family members
- Threats to take away children
- Threats to take away money

# WHAT KINDS OF EVIDENCE COULD A VICTIM SUBMIT TO PROVE BATTERING OR EXTREME CRUELTY?

Small group discussion

# Proof of Extreme Cruelty or Battery

- Self-petitioner's declaration
- Others' declarations (family, neighbors, friends, faith communities, workplace, school)
- Domestic abuse service providers (shelters, crisis lines, support groups)
- Protection orders
- Criminal court records
- E-mails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Medical records (injuries, scars, PTSD, migraines, insomnia)
- Vet records
- Counselors (marriage, religious, mental health)
- Police reports

# VAWA self-petitioning available

- If case filed within 2 years of marriage termination
- Bigamy?
- Child abuse up to age of 25 to file
- Step children up until divorce
- Credible evidence standard of proof (police report, protection order, medical records NOT required)

# VAWA self-petitioners get:

- Deportation: Protection from deportation soon after filing.
- Immigration Benefits for Children:
  - VAWA self-petitioners' children receive immigration benefits
  - VAWA cancellation parole into US visa process required
- Public Benefits: As qualified immigrants ( $\approx 3$  months)
- Employment authorization:
  - Citizen abuser ( $\approx 6$  months);
  - Lawful permanent resident abuser ( $\approx 12$  months).
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency
  - Citizen perpetrator apply upon approval (1 year)
  - Lawful permanent resident perpetrator ( $\approx 5+$  years)

# Crime Victim (“U”) Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law



# Criminal activities covered by the U-visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Stalking
- Prostitution
- Female Genital Mutilation
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment
- Fraud in Foreign Labor Contracting
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- Any similar activity

# Who can certify?

- Police officer
  - Local and State police
  - Federal
  - University
- Prosecutor (State and Federal)
- Judge
- Immigration Officer
- Adult and Child Protective Services
- EEOC, DOL and state labor agencies
- Other authority with responsibility for investigation or prosecution of criminal activity

# “Investigation or Prosecution” Includes:

- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing

# What the U-visa Certification Form Asks From a Certifier:

- What criminal activity occurred?
- Identify the victim
  - Include any findings regarding injuries
- Helpfulness of the victim
  - Current,
  - Past, OR
  - Willingness to be helpful
- Any family members implicated in the crime

# Victim Must Additionally Prove:

- Physical or mental abuse as a result of the criminal activity
- Disclose criminal history, if any:
  - Immigration law definition of “aggravated felony”
  - Discretionary waivers available
  - No waiver if history of espionage or terrorism
  - Victim will be fingerprinted
- Immigration history including violations, if any:
  - Misrepresentation on an immigration application
  - Removal proceedings
- Information about family members who may also receive U-visas

# The U-visa Process

- Government official signs certification
- Victim files U-visa application
- DHS adjudication – grants/denies U-visa
- U visa or wait-list approval
- Can apply for green card after 3 years
- Can apply for citizenship 5 years after green card
- Benefits:
  - U visa recipients are lawfully present for federal health care purposes.
  - Some states give benefits upon filing of the U visa

# Comparison: VAWA vs. U-visa

## VAWA Self-Petition

- 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 for 1 year
- Green card after approval if abuser is a citizen, or 3+ years wait if abuser is LPR

## U-visa

- 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

# Screening for Red Flags

- Alcohol abuse
- **Drug trafficking**
- Drug abuse or addiction
- Illegal gambling
- False testimony for immigration purposes
- Penal confinement
- Genocide, torture, killings, violations of religious freedom
- **Child Protective Services intervention**
- Communicable disease
- Physical or mental disorder
- **Any criminal convictions**
- Unlawful voting
- Polygamy
- Prostitution
- Human trafficking
- Money laundering
- Terrorist activities
- Espionage
- Communist
- Public charge
- Immigration violation
- Misrepresentation for immigration purposes
- Stowaway
- **“Alien smuggling”**
- Draft evasion
- **Previously deported**
- **Unlawfully present**
- **Unlawful entry**
- International child abduction



# Immigration Relief Tools

- Glossary of terms
- Red flags list
- Identifying survivors screening tool
- Remedies comparison screening tool
- Self-petitioning flow charts for adults/children
- U-visa flow chart
- Evidence checklists:
  - Self-petitioning
  - U-visa

# Screening Exercise: Use the following tools to screen for immigration relief eligibility

- Immigration screening tool
- Red Flag List
- Flow charts
  - Adult self-petitioner
  - Child self petitioner
  - U-visa

# Small Group Activity

Hypothetical Case  
Immigration Relief

Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother. When Maura was 15 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 5 years in the abusive household and sexual advances from her stepfather, Maura left home and moved in with her boyfriend Juan, who started battering Maura when she became pregnant with their child. During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer, but fearing that she would get deported, she did not appear at the hearing on the domestic violence charge. The charge was amended to misdemeanor battery. Juan pled no contest and was convicted of battery.

**For what form of relief, if any, is Maura eligible to receive?**

# Maura Case Study

- **For what form of relief, if any, is Maura eligible to receive?**

# Large Group Report Back

- What form of relief did you determine Maura is eligible to receive?
- What factor affect which form of immigration relief would be most beneficial for Maura and why?
- Any other facts you wanted to know?HeeH
- Did you find the materials useful?
- Are there any additional materials you would like to screen clients?

# Custody of Children in Immigrant Families



# Learning Objectives

- *To ensure immigrant parents understand the risks associated with being undocumented in the family law context and take precautions*
- *To understand how screening for immigration relief eligibility and initiating a VAWA or U visa immigration case helps abused immigrant mothers*
  - *gain custody and*
  - *avoid detention and deportation*



# Best Interests and Immigration

- Not factors:
  - Immigration status
  - English language proficiency
- Laws discouraging no award of custody to abuser apply equally to immigrant victims
- Immigration information distracts the judge from best interest factors in the statute
- Immigrant victims in custody cases will qualify for
  - VAWA, U visa
  - DHS victim/witness protections
  - Humanitarian Release

# Is immigration status relevant to custody?

- Relevant to: Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
  - Either not filing or withdrawing immigration papers
  - Threats to turn victim in for deportation
  - Part of history of violence
- Not relevant to:
  - Core primary caretaker determination
  - Evaluation of parenting skills
  - Best interests of the child determination
  - Requirements regarding custody awards to non-abusive parent

# ABA Center on Children & The Law

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

# Facts

- Lack of legal immigration status does not mean
  - Deportation is eminent
  - Parent is likely to flee U.S.
  - Victim parent does not qualify for immigration relief
- Legal immigrants/naturalized citizens are more likely to flee with children
  - When have been threats of kidnapping children
  - When they are dual nationals
  - Because they can travel freely to and from U.S.

# Myths

- Myth: Need to be awarded custody to give child immigration benefits
  - FACT: Parent can apply for child to have immigration benefits whether or not they have custody
    - Timing of citizenship may differ with custody
- Myth: Undocumented parent cannot receive public benefits for the child
  - FACT: Incorrect, they can apply for “child only” benefits

# Myths and Facts

- MYTH:
  - Undocumented parent cannot financially support child
- FACTS:
  - Immigrant victim would have work authorization but batterer never filed papers (Catch 22)
- Immigrant victim parents are likely eligible for immigration benefits that include:
  - legal work authorization
  - some access to benefits
- Child/Spousal support can be ordered
- Economic relief
  - Housing
  - Health care

# Myths and Facts

- MYTH: Parent undocumented, detained or deported can be a basis for termination of parental rights?
- FACT: Constitutional right to custody absent unfitness
- Overriding presumption that parent child relationship is constitutionally protected and
- In child's best interest to stay with/be reunited with their parent
- Applies to all families without regard to
  - Immigration status; detention or deportation
- Child's best interests not comparison of natural vs. adoptive parent's cultures, countries, or financial means

**PROTECTING IMMIGRANT VICTIMS AND  
PRIMARY CARETAKER PARENTS  
AGAINST DETENTION, IMMIGRATION  
ENFORCEMENT, AND DEPORTATION**



# How Victims End Up In DHS Custody

- Abusers/crime perpetrators report them
- Employers or co-workers report them
- Traffic stops
- Immigration enforcement at the worksite
- Reports by CPS
- Reports by welfare worker
- Reports by health care providers
- Reports by others
- Victims call the police for help and police:
  - Make a dual arrest
  - Arrest the victim
  - Don't address language access issues

# Immigrant Parents' Constitutional Right to Custody of Their Children

- Constitutional right to custody absent unfitness
- Overriding presumption that:
  - Parent-child relationship is constitutionally protected
  - In children's best interest to stay with/be reunited with their parent(s)
  - Cultural comparisons improper
- Applies to all families without regard to:
  - Undocumented immigration status
  - Immigration detention
  - Deportation
- **Child's best interest is most important**  
In re Interest of Angelica L., 277 Neb. 984 (2009)



# DHS Priorities for Enforcement and Victim Protection

## DHS Memos – Guidance

- Humanitarian release
  - Breastfeeding mothers
  - Sole/primary caregivers of children
  - Parents of children – citizens and green cards
- DHS victim witness memo
- VAWA Confidentiality DHS computer system
- Prosecutorial discretion/DHS detention priorities
- Parental interest directive

# Parental Interest Directive Aug 2013

- Factors that prevent detention of parents – DHS screens for
  - Parent or legal guardian of citizen or legal permanent resident child
  - Primary caretaker of a minor child
- If parent detained
  - Placement near children and family court
  - New DHS procedures to bring parents to family court to participate in cases involving children
  - Facilitate visitation
  - Help children travel with deported parent –obtain passports for children
  - Bring deported parents back to the US for custody and parental rights cases

# Prosecutorial Discretion Positive Factors

- Length of time in U.S. (including lawful presence)
- Circumstances of arrival, manner of entry
- Presence in the U.S. since childhood\*
- Pursuit of education: U.S. high school/college
- Person/close family, a veteran/military particularly combat\*
- Community/family ties, contributions
- Ties to/conditions in home country
- Age – minor, elderly\*
- USC/LPR spouse, parent, child
- Person who suffers from serious mental or physical disability or serious health condition\*
- Primary caretaker of child, person with mental/physical disability, seriously ill parent
- Crime victim or witness\*

# Other positive factors

- Pregnant or nursing women
- Spouse is pregnant or nursing
- Nationality renders removal unlikely
- Long-time lawful permanent residents
- Likely to be granted immigration relief as:
  - Spouse, child of a citizen or lawful permanent resident
  - Domestic violence, trafficking, or victim of other serious crime
  - Crime victim
  - Asylee/refugee
- **Victims and Witnesses** cooperating or have cooperated with federal, state, or local law enforcement authorities such as ICE, federal or state prosecutors, Department of Labor, or National Labor Relations Board, among others

# Negative Factors to Consider

- Clear risk to national security
- Serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind
- Known gang members or other individuals who pose a clear danger to public safety
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud
- Criminal history, including arrests, prior convictions, or outstanding arrest warrants
- Immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud

# Temporary protections for immigrants who entered the U.S. as children (DACA) (handout)

- Came to the U.S. **under the age of sixteen**;
- Has **resided in the U.S. for a least five years** preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- Is currently **in school**, has **graduated from high school** or GED, or is an **honorably discharged veteran** of the Coast Guard or Armed Forces of the U.S.;
- Has **not been convicted** of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- Is **not above the age of thirty**.



# A New Era In Safety Planning With Immigrant Survivors

# Safety Planning and Action Steps for Immigrant Survivors

- Tools
  - New safety planning flow chart
  - Immigrant victim brochure
- Documentation victim can carry with her
  - Evidence that immigration case has been filed
  - Civil protection order
- Victim must tell DHS enforcement officials that she has children

# Safety Planning Challenges Related to Enhanced Immigration Enforcement

- Immigration screening as early as possible is 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
- Give client the number of consulate notification if she is detained – essential particularly if she has children

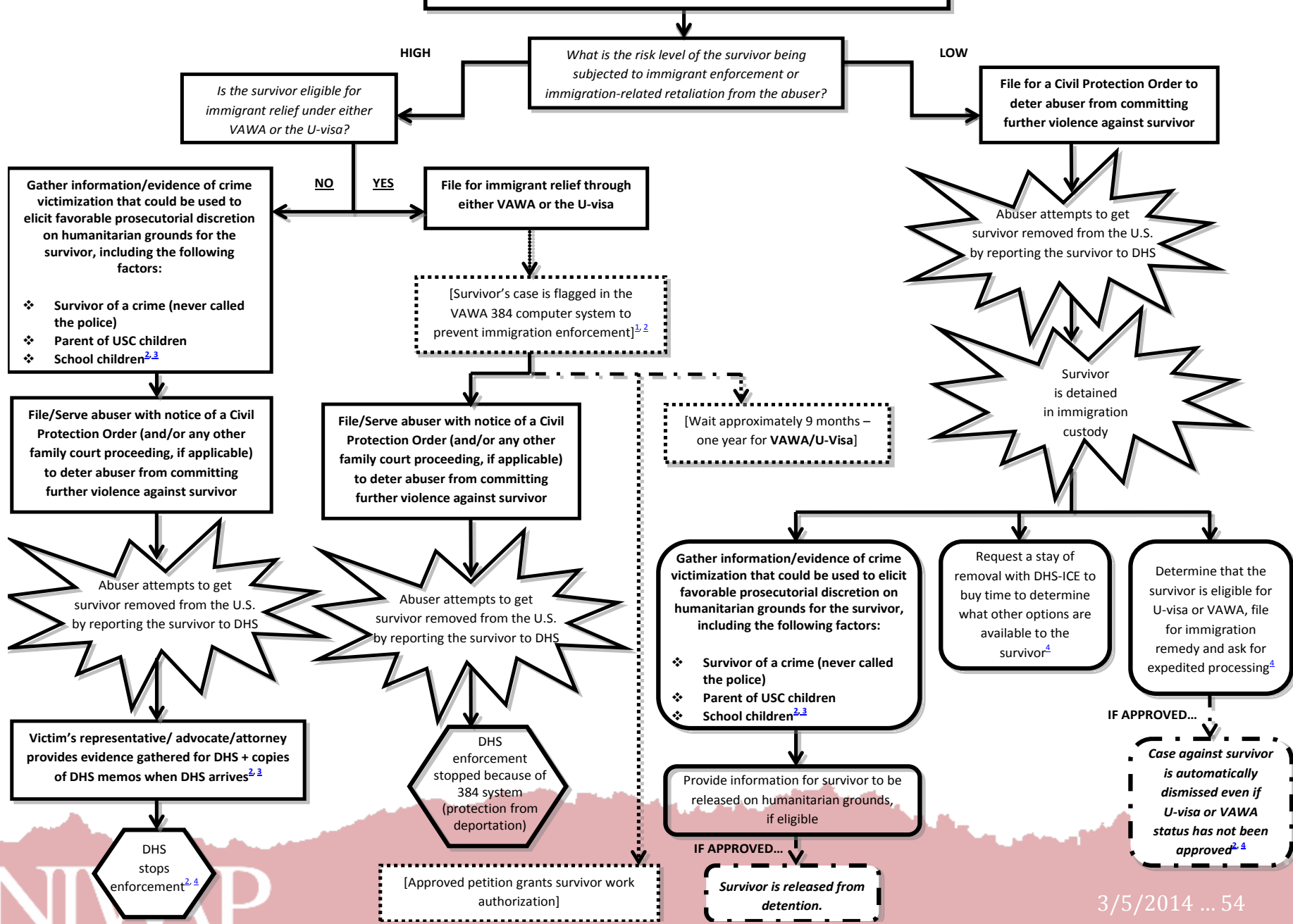
# Application for VAWA, T or U immigration status improves immigrant victims' access to public assistance

- Screen for immigration case already filed
- Screening + Filing (VAWA, T, or U) =
  - Lawful Presence
- Filing for immigration relief is required for VAWA self-petitioners to become *qualified immigrants* eligible for federal public benefits

# Early Victim Identification, Certification, & VAWA/U-visa Filing

- Cut off perpetrator's ability to trigger the victim's deportation
- Help victim secure:
  - Protection from deportation
  - Release from detention
  - Swift adjudication of immigration case for victims detained or in immigration proceedings
- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator
- Set victim on path to legal work authorization

# IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY



# VAWA Confidentiality

- **Non-Disclosure:** DHS cannot disclose VAWA information to anyone
  - Victims with VAWA confidentiality-protected cases filed
- **Abuser-Provided Information:** DHS barred from making inadmissibility or deportability decisions based solely upon information provided by abusers, including family members of abusers
  - All victims
- **Location Prohibitions:** Enforcement locational prohibitions
  - All persons

# Location 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



# Where else is DHS not supposed to conduct enforcement activities?

- Schools
- Places of Worship
- Funerals
- Religious Activities

# Preventing the Victim's Detention

- Preparing the survivor
  - Memorize A#
  - Carry proof of victimization
- Your role
  - File skeletal immigration applications
- Inform other professionals about VAWA confidentiality
  - At courthouses
  - Other protected locations
  - Give copies of DHS memos
    - 384 Computer system
    - Victims memo
- Format for receiving this information

# When Violations Happen

- Advocate on the spot---provide:
  - Proof of victimization
  - Copy of the VAWA confidentiality statute
  - DHS enforcement policy
  - DHS complaint system
  - DHS 384 system
- Collect information about the violating officer:
  - Name
  - Agency
  - Badge Number
- Work it up the chain to a supervisor
- File a formal complaint:
  - Penalties of up to \$5,000 per incident against each violating officer
  - Also disciplinary actions
- Advocate for release from detention/jail, termination of immigration proceedings, granting immigration relief

# SMALL GROUP ACTIVITY

- How would you prepare Maura to prevent immigration enforcement if either Jose or Juan called DHS or local police to turn her in as undocumented?
- How would you argue that DHS should not pursue immigration enforcement against her?

Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother. When Maura was 15 years old, her mother married Jose, a lawful permanent resident abuser. After enduring 5 years in the abusive household and sexual advances from her step-father, Maura left home and moved in with her boyfriend Juan, who started battering Maura when she became pregnant with their child. During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer, but fearing that she would get deported, she did not appear at the hearing on the domestic violence charge. The charge was amended to misdemeanor battery. Juan pled no contest and was convicted of battery.

# Report Back on Enforcement Strategies

# Tools for Advocacy:

- DHS Victim-Witness Prosecutorial Discretion Policy
- DHS Prosecutorial Discretion Policy
- DHS Broadcast on 384 Computer System
- Parental Discretion Policy
- Judges U Visa Certification Toolkit
- DHS Roll Call U and T Visa Videos

# Economic Relief for Immigrant Victims: Child Support and Spousal Support





# Particular Benefits of Obtaining Court Ordered Child Support for Immigrant Victims As Early As Possible

- Wage withholding
  - safe avenue of support for victims
- Creates ongoing obligation to pay child support and accruing debt for unpaid child support
- Provides immigrant victims with evidence of income due that helps her immigration case
- If child support is not paid, this can put the victim in a better position in future child custody litigation

# Economic Relief in Protection Orders

- Spousal and child support
- Rent and mortgage payments
- Utilities payments
- Possession of residence or vehicle (for transportation to work)
- Vehicle payments
- Child care expenses
- Health care insurance

# Immigration Consequences of Criminal Convictions for Failure to Pay Child Support

- Good moral character requires proof to DHS that immigrant is supporting their children:
  - Naturalization
  - Cancellation of removal
  - VAWA immigration relief
- When victim has child support order in place
  - Improves outcomes for her own immigration case
  - Can lead to lump sum payment to custodial parent of all court ordered child support unpaid in the past

# Proving the Abuser's Income and Ability to Pay

- Lack of immigration status of non-custodial parent is not valid defense
- Employer's Statement and Employer's Affidavit: prima facie evidence of income
- Employer who fails to comply with wage withholding order can be sanctioned under state law

# Technical Assistance and Materials

- Power Point presentations and materials for this conference at [niwap.org/go/ivat](http://niwap.org/go/ivat)
- **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- Website: [www.wcl.american.edu/niwap](http://www.wcl.american.edu/niwap)



# QUESTIONS & ANNOUNCEMENTS

# EVALUATIONS

**Thank you!**