

How the Legal System works (or doesn't) for immigrant survivors

Virginia Sexual and Domestic Violence
Alliance

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Leslye E Orloff

NIWAP, American University Washington
College of Law

www.wcl.american.edu/niwap

Working with Immigrant Survivors

Working Cross-culturally

- Offer help what ever the victim's decision making is:
 - Whether she is willing to prosecute
 - Can offer housing assistance
 - Counseling
 - Emergency Medical Care
 - Community Health Clinics
- or choose to return to abusers relief too
 - Immigration assistance
 - Help necessary to protect life and safety

Working Effectively Cross Culturally

- Ask open-ended questions
- Avoid using legal jargon
- Know Your Own Assumptions and Do Not Use Them
- Offer help to women who choose not to leave
- Allow an immigrant survivor to define:
 - what she needs
 - her fears
 - the barriers she must overcome to seek help
- **She will define these from within her own cultural context**
- **Make a list**

Work with Her Creatively to Address Each Need, Fear, Barrier Creatively Through:

- Education and Support
- Immigrant Rights & Women's Groups
- Her Community/Church Resources
- Victim Services
- Protection Orders
- Counseling
- Public Benefits, Social Services
- Her Own Resources

Keys to Success

- Be Creative
- Respond to Clients Needs
- Allow Battered Immigrant to Choose What She Needs
- Collaboration

Sexual Assault Among Immigrant Women

- Immigrant women are particularly vulnerable to recurrent sexual assault
- School aged immigrant girls are twice as likely to have suffered sexual assault as their non-immigrant peers to have suffered sexual assault
- Increased vulnerability may stem from
 - Increased isolation
 - Break-up & restructuring of families during immigration process
 - younger immigrant girls being actively targeted by sexual assault perpetrators who see them as particularly legally and socially vulnerable

Domestic Violence Prevalence 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

- Abuse rates among immigrant women
- Lifetime as high as 49.8%
- Those married to citizens and lawful permanent residents – 50.8%
- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for victims
 - 72.3% never file immigration papers.
 - The 27.7% who did file had a
 - mean delay of 3.97 years.

Immigration-Related Abuse

- Keeps victims from
 - Seeking help
 - Calling police
 - Cooperating in prosecutions
 - Getting protection order
- Affects victims documented and undocumented
- 65% of immigrant victims report some form of immigration related abuse (NIJ)
- Locks victims in abusive relationships

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

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

Immigrants and Benefits: True or False

1. Receiving public benefits can harm an immigrant victim's ability to obtain legal immigration status
2. Undocumented immigrant parents can apply for public benefits for immigrant children
3. Immigrants applying for benefits for their children can refuse to provide immigration or social security information about themselves
4. Undocumented victims and children can access transitional housing programs
5. Federally funded health care is available for undocumented immigrants
6. DHS requires universities to ask about immigration status of applicant or enrolling students

What types of services
and assistance are open to
all persons without
regard to immigration
status?

All Immigrant Victims Can Access

- Protection Orders
- Shelter
- Transitional Housing
- Child Custody and Support
- Receive Emergency Medical Care
- Police Assistance
- Have Their Abusers Criminally Prosecuted
- Assistance for Crime Victims
- Obtain Public Benefits for Their Children
- Legal Services
- Language Access

Services necessary to protect life and safety

- All immigrant victims are under federal law entitled to non-discriminatory access to programs, services and assistance that 1996 welfare and immigration reforms explicitly exempted and barred states from restricting
 - Treatment of emergency medical conditions (Emergency Medicaid)
 - Short term, non-cash, in-kind disaster relief
 - Many public health services (e.g. community clinics)
 - Programs not included in the definition of federal or state public benefits (e.g. FVPSA, VAWA, Fair Housing)
 - Services necessary to protect life and safety
- Federal preemption

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

- 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
- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Nutrition programs for those requiring special assistance

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

Health Care Open to All Immigrants

- Community and migrant health clinics
 - www.nachc.com
 - www.hrsa.gov
 - Enter zip code
- State funded programs
- Post assault health care paid by VOCA
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid

Federally Qualified Health Centers Offer

- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Well child services
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family planning services
- Preventative dental services
- Pharmaceutical services
- Emergency medical and dental services

State-by-State Health Care Charts

- Emergency Medicaid
- Forensic Examinations
- Post-Assault Health Care
- Pre-Natal Care
- iwp.legalmomentum.org

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

Why is Legal Immigration Status Important?

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
- More access to victim services, health care, benefits

Potential Immigration Remedies

- Applications filed with 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

Conditional Residence & Battered Spouse Waivers

- Battered Spouse Waiver
- Waives the joint filing requirement and two year wait for full lawful permanent residency
- Requires proof of
 - Good faith marriage to U.S. citizen *and*
 - Battered or subjected to extreme cruelty by the citizen spouse
- Court's role:
 - Findings of fact regarding abuse in divorce or custody proceedings
 - Issuance of protection order
 - Information available at court about victim's immigration options

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
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets

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
- Police report, protection order, medical records NOT required
- *All credible evidence* standard of proof

Approved VAWA petitions

- Protection from deportation and detention
 - deferred action status.
- Legal work authorization
 - 6 months if abuser citizen spouse (26.1%)
 - If abusive spouse is lawful permanent resident
 - 1 year 46.8% to 13-18 months 27.1%
- Ability to apply for lawful permanent residency through VAWA

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.

Requirements for a T visa

- Must be victim of a severe form of trafficking in persons
- Victim must be physically present in U.S., American Samoa, or Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of the trafficking
- Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking; OR
- Has not attained the age of 18; AND
- Would suffer extreme hardship involving unusual and severe harm upon removal

A severe form of trafficking in persons

- Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.

Force, Fraud, or Coercion

- Debt servitude
- Surveillance
- Physical barriers
- Threats to safety
- Physical isolation from protections
- Psychological isolation
- Threats to deport or contact law enforcement

Human Trafficking simplified

- Process-
 - Recruiting,
 - Transporting,
 - Obtaining,
 - Moving
- Means-
 - Force,
 - Fraud, or
 - Coercion
- End-
 - Labor or
 - Commercial Sex

Trafficking v. Smuggling

- Crime against a person
- Contains an element of coercion
- Subsequent exploitation
- Trafficked people treated as victims
- Unauthorized border crossing
- No coercion
- Facilitated entry by another person
- Smuggled people treated as criminals

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
- Prostitution
- Female Genital Mutilation (FGM)
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- Any similar activity

What protection is there for family of U Visa applicants?

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

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
 - Adult Protective Services Worker
 - EEOC
 - Department of Labor

“Investigation or Prosecution” Includes:

- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing

Why “Criminal Activity” not limited to “Crimes”?

- U visa protection available even when:
 - Investigation does not result in prosecution
 - Victim helpful in investigation does not testify at trial
 - Perpetrator has diplomatic immunity
 - Abuser eludes arrest
 - Criminal case dismissed
 - Victim comes forward makes report and police or prosecutors decide not to prosecute
 - Prosecution but no conviction
 - Victim of listed criminal activity but another crime prosecuted
 - Prosecution cannot take place (diplomats, no extradition)

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

The U-Visa Process

- Government official signs certification
- Child and/or child's parent filed U-visa application
- DHS adjudication – grants/denies U-visa
- After 4 years some will qualify for lawful permanent residence
- Can apply for citizenship 5 years after receiving lawful permanent residency

Role of certifying officials

- Court's Role:
 - Sign U-visa certifications for victim
 - Make findings about the criminal activity, injuries, helpfulness
 - Inform litigants about the U-visa
- Police Role
 - Sign U-visa certifications for victims
 - Take police reports (obtain interpreters)
 - At the crime scene
 - When victims later come forward to make a report
 - Include details about the criminal activity, injuries, helpfulness
 - Inform litigants about the U-visa

Which U-Visa Recipients Can Obtain Lawful Permanent Residence?

- Did not unreasonably refuse to cooperate in the detection, investigation or prosecution of criminal activity;
 - DHS determines whether the victim's non-cooperation was unreasonable AND
- Humanitarian need; OR
- Family unity: OR
- Public Interest

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

Screening and Safety Planning In the Context of Immigration Enforcement

VAWA Protections In a Time of Increased Immigration Enforcement

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Need to be aware of local law enforcement practices regarding immigrants
- Transportation issues for victims
 - To courts
 - To services
- Secure communities and the dangers of dual arrest

Victims safety concerns

- How perpetrator will respond to service in CPO case
- Rethink case strategy and timing
 - Early identification of victims who qualify for VAWA, T or U immigration benefits essential
 - VAWA confidentiality protections
 - New DHS policies

DHS Humanitarian Release

2007 expanded in 2008

- Breastfeeding mothers
- Sole/primary caregivers of children
- Screening in detention done
 - In English/Spanish
 - Oral and writing
- Release as
 - Order of recognizance
 - Order of supervision
 - Alternatives to Detention

DHS Memos

- DHS Enforcement priorities
 - Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
 - Low priority immigrants vs. high priority immigrants (3.3.2011)
 - Prosecutorial discretion (6.17.2011)
 - DHS and White House Directives regarding immigration case processing (8.18.11)
 - Protections for immigrants who came to US as children (6.15.12)
- Protections for crime victims
 - Initiation of VAWA confidentiality computer check system (12.21.10)
 - Prosecutorial discretion for crime victims (6.17.2011)

DHS VAWA Confidentiality Computer System

- Directs use of new “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims

DHS Prosecutorial Discretion Not to Initiate

Removal Against Crime Victims and Witnesses

- Minimize the effect that immigration enforcement may have on the willingness and ability of
 - Victims of crime
 - Witnesses to crime
 - Individuals pursuing legitimate civil rights complaints
 - To call the police and pursue justice
- Designed to stop immigration officials from acting
 - When local police make dual arrests
 - Leading to victims being arrested and having their fingerprints turned over to DHS

DHS and White House Working to Ensure

Enforcement Conforms to DHS Priorities

- In the *civil immigration* context DHS is confronted with more *administrative violations* than resources
- By favorably exercising prosecutorial discretion, DHS decides not to assert the **full** scope of its enforcement authority available to the agency in “low priority” cases on a case by case basis
- Prioritize use of enforcement personnel, detention space and removal assets on:
 - National security
 - Border security
 - Public safety
 - Integrity of the immigration system

Positive factors

- Length of time in US (including lawful presence)
- Circumstances of arrival, manner of entry
- Presence in the U.S. since childhood*
- Pursuit of education: US high school/college
- Person/close family, 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 has 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

Factors to Consider-Negative

- 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
- Whether the person poses a national security or public safety concern

White House and DHS

Announcements (August 18, 2011)

- Requires DHS attorneys to review all immigration court cases and
 - “Totality of the circumstances”
 - Case by case review
 - Administratively close “low priority cases”
 - With ability to apply for work authorization
 - Includes review final orders of removal in compelling cases
- Future cases screened for priority and removal not initiated if “low priority”
- Three tier system

Temporary protections for immigrants who entered US as children

- Came to the United States under the age of sixteen;
- Has resided in the United States 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 United States;
- 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

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

Safety Planning Challenges Related to Enhanced Immigration Enforcement

- 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

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 benefits 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

Creative Remedies

What creative protection order remedies might help an immigrant victim?

Creative Protection Order Remedies

- Catch all provisions included in all state statutes
- Offer any additional relief that may potentially
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrators ability to exert power and/or control
 - Offer victim remedy-relief for past abuse
 - Help victim overcome victimization and build new post abuse life
- Nexus With Victimization
- Opportunity for courts to counter immigration related abuse

Victims Who Stay -- Full Contact Protection Orders

- No state's protection order statute requires separation of the parties
- In virtually every state victims cannot violate their own protection orders
 - Contrary to statutory intentions; and
 - Against public policy to prosecute abused women for complicity in violating their own orders.
- Provisions
 - No abuse
 - Counseling

Suggestions For Court Orders That Help VAWA

Applicants -- Examples

- Cooperate in and not withdraw any immigration case filed on the victim's behalf
- Turn over documents/evidence in abuser's control that she needs for her immigration case. E.g.,
 - Passports
 - Identification documents
 - Copies of documents from any immigration case filed on the victim's or the children's behalf
 - Love letters
 - Family photos

A protection order or discovery can help a victim obtain needed evidence:

- Marriage certificate
- Wedding/family pictures
- Birth certificates
- Love letters
- Copies of joint leases/utility bills
- Police, medical, court documents about the relationship,
- Copy of abuser's green card or passport

Protection order or discovery continued

- School records
- Medical records
- Employment records
- Social security number information
- Health insurance
- Children's birth certificates
- Letters and other mail addressed to the victim and to the abuser at the same address
- Copy of I-130 petition

Catch-all Provisions Preventing Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare etc.) concerning the petitioner except
 - Police emergency
 - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities

Creative Remedies in Protection Orders

- Catch-all Provisions for CPOs
 - Respondent Shall:
- sign DHS Freedom of Information Act request
- pay costs of petitioner's immigration case
- turn over to petitioner information, documents, or copies of documents
- Cooperate in and not withdraw any immigration case filed on the victim's behalf

Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order.
- Supervised visitation
- Bond

Important Economic Provisions

- Maintain medical, car, house insurance, mortgage, rent, utility and/or debt payments
- Child support and spousal support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)
- Taxes
 - Turn over income tax statements
 - Victim named trustee for receipt of tax return funds, respondent ordered to sign check
 - Victim awarded exclusive right to claim children as tax exemptions
 - Respondent pays victim ½ of return

Technical Assistance and Materials

- PowerPoint Presentations and Materials for This Conference At--
- http://iwp.legalmomentum.org/reference/additional-materials/iwp-training-powerpoints/june-22-2012-richmond-va/folder_contents
- NIWAP Technical Assistance
- call (202) 274-4457 or
- e-mail niwap@wcl.american.edu
- Website: www.wcl.american.edu/niwap