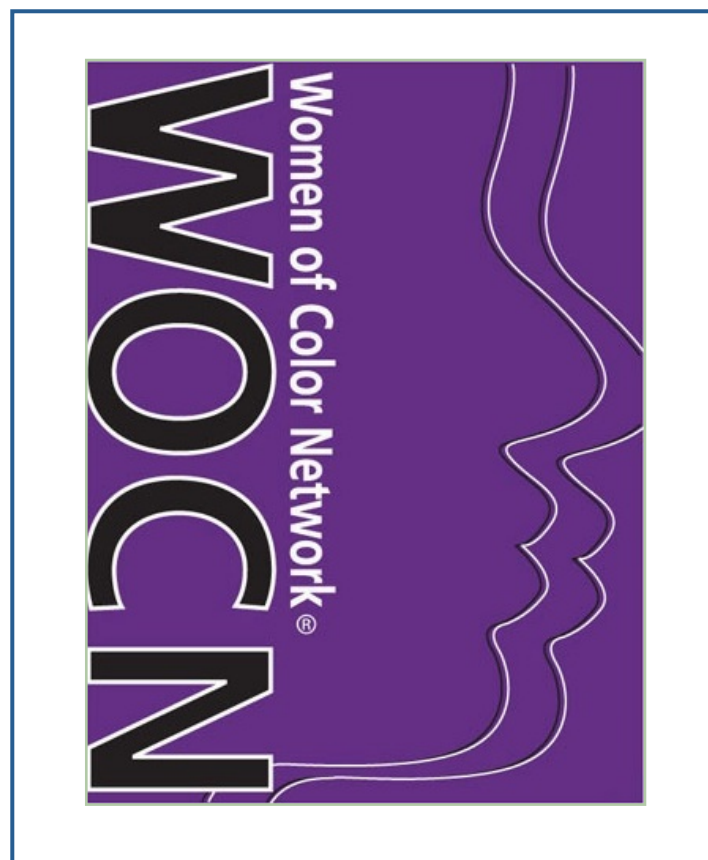


THE WOMEN OF COLOR NETWORK/FVPSA
EXPANDING LEADERSHIP OPPORTUNITIES IN THE DOMESTIC VIOLENCE
FIELD FOR MEMBERS OF UNDERREPRESENTED GROUPS PROJECT
2010-2015

LEADERSHIP ACADEMY MANUAL



INCREASING THE PRESENCE OF MARGINALIZED
POPULATIONS IN LEADERSHIP ROLES

Creating a window to knowledge, skills, advocacy and
confidence in fostering diverse leadership across the U.S.,
Sovereign Nations & U.S. Territories

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Glossary of Terms^{1 2}

By Leslye E. Orloff, Rebecca Story, Joanne Lin, Carole Angel, and Deborah Birnbaum³

To understand immigration law, it is crucial for an attorney or advocate to understand the most commonly used terminology. The following brief descriptions of terms are relevant to assisting battered immigrants. Terms are organized alphabetically.

Adjustment of Status – An individual with an approved immigrant visa (family, employment, diversity lottery, special immigrant juvenile, special immigrant religious worker), or an approved self-petition under VAWA may, under certain circumstances, file an application (Form I-485) for permanent resident status without leaving the United States. This process is called adjustment of status. In all cases, DHS has discretion whether or not to grant lawful permanent residence. If DHS grants adjustment of status, the individual will then receive a Resident Alien Card (*commonly referred to as a “green card”, see definition below*) and will become a lawful permanent resident.

A-File – This is the immigration case file created by DHS. It contains the immigrant’s “Alien Registration Number,” which is the immigration case file number. This number always starts with the letter “A”. All foreign born persons who have attained legal immigration status, naturalized or ever been detained or placed in immigration court proceedings will have “A” numbers. Finding a safe way to attain or copy down this number can be very helpful when an immigrant victim is abused by an immigrant spouse, parent or family member.

Alien – This is a term that is offensive to some, but should be understood in the context of how the term is used in the Immigration and Nationality Act, other statutes, the code of federal regulations, and the Department of Homeland Security or other government policy memoranda. The Immigration and Nationality Act defines the term ‘alien’ as any person who is not a citizen or national of the United States. Practically speaking, this term covers a broad group of people including but not limited to permanent residents, refugees, asylees, people granted other forms of legal immigration visas, people who enter with visas and then overstay, and people who enter the U.S. without inspection.

Asylum – Asylum is humanitarian immigration relief given to individuals present in the United States who meet the requirements for “refugee” status. (*See “Refugee” definition below.*) In general, asylum seekers must file within one year of first entering the U.S. although an applicant may qualify for an exception to this rule. If an asylum seeker’s application is not approved by DHS, she will automatically be referred to immigration enforcement authorities and placed in removal proceedings where she will have the opportunity to renew her asylum application before an immigration judge. Denial of an asylum application by an immigration judge results in an order of removal from the United States. See Chapter ____ on Asylum.

Attorney General – A reference that may, in fact, actually mean the Secretary of Homeland Security. While the Homeland Security Act of 2002⁴ transferred functions of the Immigration and Naturalization Service (INS) from the Department of Justice to the Department of Homeland Security, it did not change every authority-delegation reference in the Immigration and Nationality Act (INA) and other laws. Instead, it included a savings provision⁵ stating that statutory, regulatory, and other references relating to an agency that is transferred to DHS, or delegations

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² Some of the entries on this list were adapted from and reprinted with the permission of the Immigrant Legal Resource Center.

³ This chapter was prepared with the assistance of Lacy Carra, Kavitha Sreeharsha, Cecilia Olavarria, Moira Fisher Preda, and Joyce Noche.

⁴ Pub. L. No. 107-296, 116 Stat. 2135 (2002) See INA §245, 8 USC §1255 with respect to bases of eligibility and ineligibility.

⁵ Homeland Security Act at §1512(d)

of authority that precede such transfer shall be deemed to refer, as appropriate, to DHS (and its officers), or to its corresponding organizational units.

Battered Spouse Waiver – Conditional permanent residents who are victims of abuse may be able to get a waiver to exempt them from needing their spouse’s signature on their petition to remove the conditions on their status and become a lawful permanent resident. The applicant must also prove that their marriage to a United States citizen was entered into in good faith. They must submit an affidavit containing information about their relationship and a declaration regarding the abuse. They should also submit any other evidentiary support for the abuse that they may have.⁶ [See “Conditional Permanent Residence”].

Battery or Extreme Cruelty – This is the term used in United States immigration law to define domestic violence. Victims of battery or extreme cruelty can be eligible to receive the special immigration relief available to victims of domestic violence. “*Battery or extreme cruelty*” is a form of abuse inflicted upon another person that includes, but is not limited to, any actions that cause or threaten to cause physical, mental, psychological, or emotional harm, and any actions or inaction that is a part of an overall pattern of abuse, power, or control.⁷ These include acts that destroy the peace of mind and happiness of the injured party or cause distress and humiliation to the injured party. Rape, molestation, forced prostitution, incest, and other forms of sexual abuse are also considered forms of battery.⁸

Bona Fide T-Visa⁹ -- The bona fide determination is a DHS determination that a T-visa application is complete and establishes prima facie eligibility for T nonimmigrant status. DHS makes this determination early on in the adjudication. Receipt of a bona fide determination allows T-visa applicants to obtain certification from HHS which allows them to access public benefits.

Cancellation of Removal – Cancellation of removal is a discretionary form of relief that certain non-citizens in removal proceedings may request.¹⁰ If granted, cancellation of removal accords the applicant permanent resident status. Under VAWA, certain abused spouses, children, and parents of abused children are eligible for a special form of cancellation of removal when the abuser is a U.S. citizen or a lawful permanent resident.

Child – Under immigration laws the definition of child is different than under many state family law statutes. The immigration law definition of child is important because children can be eligible to receive legal immigration status based upon their relationship to a parent who is a citizen or lawful permanent resident or who received legal immigration status. Under immigration law a person qualifies as a child of someone if they are:

- Under the age of 21;
- Unmarried; and
- Biologically the child, whether legitimated or not;
- A stepchild as long as the marriage creating the step-relationship occurred before the child attained 18 years of age; or
- A child adopted while under the age of 16; or when the child was an orphan.¹¹

Civil Protection Order (CPO) – A justice system family court remedy initiated by a victim to protect herself/himself from future abuse. All persons are entitled to this protection regardless of immigration status. It is a particularly valuable remedy for battered immigrant women because it can be crafted to uniquely address and counter abuse, power, and control in her relationship.¹² Since the victim initiates the process, she need not rely on the criminal courts and may obtain a CPO regardless of whether there is a criminal prosecution of her abuser. Protection orders may contain a wide range of remedies aimed at reducing ongoing abuse, control, and harassment. These may include: granting the victim custody of children and ordering the abuser to pay child support, ordering

⁶ See also Chapter 3.5 of the Breaking Barriers Manual, “Additional Remedies Under VAWA: Battered Spouse Waiver”

⁷ See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (holding any act of physical abuse constitutes domestic violence while “extreme cruelty” refers to “all other nonphysical manifestations of domestic abuse”)

⁸ See 8 C.F.R. § 204.2(c)(1)(vi) for CIS regulations defining “battery and extreme cruelty.” See also Chapter 3.5 of the Breaking Barriers Manual, “Additional Remedies Under VAWA: Battered Spouse Waiver”

⁹ 8 C.F.R. §214.11

¹⁰ ICE is the agency charged with the enforcement of immigration laws.

¹¹ INA §101(b)(1), 8 U.S.C. §1101(b)(1) Not only are these terms of art as defined in the statute, but there is substantial case law interpretation with respect to these different categories.

¹² See also Chapter 14 of this Manual “Protection Orders for Immigrant Victims of Sexual Assault.”

that the abuser leave the family home, prohibiting the abuser from contacting or harassing the victim's other family members, directing him to hand over important documents, including immigrations documents to the victim, and not interfering with her immigration application. A victim can obtain an emergency or temporary protection order (also called TPO) that typically lasts 14- 30 days, as well as a full protection order that usually lasts 1-3 years and is renewable. (Please note: law differs by state).

Conditional Permanent Residence – When immigrants who are spouses of U.S. citizens are married for less than two years at the time of their interview with DHS to receive permanent residency, DHS grants them conditional permanent residency instead of full, unrestricted lawful permanent residency. This requirement was created to prevent marriage fraud. While most conditional permanent residents immigrate to the U.S. through marriage to a U.S. citizen, some immigrant investors are also given conditional permanent residence and are also subject to the two-year filing requirement.

A conditional permanent resident has all the privileges of a lawful permanent resident, but has only a temporary status for two years. A conditional permanent resident must file a petition to remove conditions two years after becoming a conditional permanent resident. This petition is filed using Form I-751. Generally the petition to remove conditions must be filed jointly with both spouses signing the form. However, if a joint petition is not possible due to divorce, domestic violence, or extreme hardship, the conditional permanent resident may file a request for a waiver of the joint-petition filing requirement.¹³ (See “battered spouse waiver”). Spouses of lawful permanent residents generally do not receive conditional permanent status because by the time their priority date comes up (see definition below), they usually have been married for more than two years, and thus receive full lawful permanent residency.

Continuous Physical Presence – This term refers to the requirement that an immigrant must show that they have continuously lived in the United States, without leaving the country, for a specified period of time in order to qualify for certain forms of relief. Continuous Physical Presence must be proven in order to establish eligibility for various forms of immigration relief, including adjustment of status to a lawful permanent resident based on a T-visa, U-visa, and cancellation of removal (including VAWA cancellation of removal).

Continued Presence – Continued Presence is a temporary form of protection provided to certain victims of a severe form of trafficking. Continued presence is technically not an immigration status, but rather refers to the government's use of a variety of mechanisms, such as deferred action and parole, to protect a victim from removal in the short-term. Victims can not directly request Continued Presence, but rather it must be requested by federal law enforcement officials on behalf of the victim. Continued Presence allows the victim to receive work authorization as well as certification through HHS for access to public benefits and social services.

Cuban Adjustment Act of 1966 – The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and the general requirements for lawful permanent residency must be met. Spouses and children are also eligible to receive lawful permanent residency through the Cuban Adjustment Act, regardless of their citizenship and/or place of birth provided that they are residing with their spouse or parent who is a Cuban Adjustment Act applicant in the United States. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban even if he never applied for lawful permanent residency under the Cuban Adjustment Act. VAWA CAA self-petitioners are not required to show that they are currently residing with the spouse or parent in the United States.¹⁴ (See VAWA section at end of this chapter).

Customs and Border Patrol (CPB) – This is the division of the Department of Homeland Security that oversees borders and ports.

¹³ INA § 216(c)(4), 8 U.S.C. § 1186(c)(4).

¹⁴ “An alien who was the spouse of any Cuban alien described in this section and has resided with such spouse shall continue to be treated as such a spouse for 2 years after the date on which the Cuban alien dies (or 2 years after the date of enactment of VAWA 2005, whichever is later), or for 2 years after the date of termination of the marriage (or 2 years after the date of enactment of VAWA of 2005, whichever is later) if there is demonstrated a connection between the termination of the marriage and the battering or extreme cruelty by the Cuban alien. VAWA 2005.§823.

Deferred Action Status – Deferred Action Status is an agreement by Department of Homeland Security personnel that they will not take action to remove (deport) an individual from the United States. It is an exercise of prosecutorial discretion making the immigrant’s case a lower priority for removal. Deferred action does not however, give the immigrant victim any form of legal immigration status.¹⁵ In VAWA self-petitioning cases this status is often granted along with approval of the VAWA self-petition. U-visa victims receiving interim relief are also granted deferred action status. In trafficking cases deferred action is assessed as part of continued presence. Once a victim obtains their U-visa, T-visa or their lawful permanent residency based on their approved VAWA self-petition, they no longer need deferred action status to avoid deportation and remain legally in the United States. Deferred action status in cases of VAWA, T and U-visa victims is granted by the VAWA unit at the Vermont Service Center. (See VAWA Unit).

Department of Homeland Security – Formerly the Immigration and Nationality Service, this agency administers and enforces immigration laws. United States Citizenship and Immigration Service (“USCIS”), a division of DHS, oversees adjudications of immigration benefits. Another division of DHS, called the United States Immigration and Customs Enforcement (“ICE”), handles immigration enforcement, detention, and removal. United States Customs and Border Patrol (“CBP”) is the division that oversees borders and ports.

Derivative – The derivative is a term describing specified family members of an applicant for whom the applicant (called the principal applicant) is asking that DHS grant legal immigration status benefits along with the immigration benefits that the principal applicant is seeking for themselves. Derivative family members are able to obtain lawful immigration status by virtue of the principal applicant’s qualification for immigration relief. Whether or not a derivative may qualify for the same immigration relief depends on the underlying application of the principal applicant and the relationship between the principal applicant and her family member. The family relationships that qualify for immigration benefits as derivatives typically include a spouse, child, and parent and siblings of a principal applicant under 21 years. VAWA self-petitioners and T and U-visa applicants can help certain derivative family members attain legal immigration status through their immigration case. Which family members varies depending on the type of immigration benefit or benefits that a victim qualifies to receive. When victims qualify for multiple forms of immigration benefits, which family members can apply along with the victim can be a factor in the victim’s decision about which immigration benefit to apply for.

Department of Homeland Security (DHS) – This department administers and enforces the immigration laws. There are seventeen components to the department, including Immigration and Customs Enforcement (ICE), Citizen and Immigration Services, (CIS), and Customs and Border Protection (CBP).

Deportation – This term was used prior to 1996 to describe what is now called removal. (*See “removal” explanation below*).

Documented immigrants – They reside in the U.S. pursuant to a valid visa, and either entered the U.S. with valid visas or obtained status after entry. Those entering on immigrant visas are often petitioned for by a family member or an employer. Some obtain visas to become lawful permanent residents. Other examples of documented immigrants¹⁶ include individuals holding tourist visas, student visas, exchange visitor visas, or employment visas.

Emergency Medicaid – Emergency Medicaid is available in all cases where a person needs treatment for medical conditions with acute symptoms that could place a patient's health in serious jeopardy, result in serious impairment of bodily functions, or cause dysfunction of any bodily organ or part.¹⁷ This definition includes all labor and delivery during childbirth. Emergency medical assistance must be provided to all immigrants regardless of their immigrant status.

¹⁵ “New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status.” New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

¹⁶ Immigration experts may refer to immigrants with these visas as “non-immigrants.”

¹⁷ Social Security Act, Title XIX § 103(v)(3), 42 U.S.C. § 1396b(v)(3).

Employment Authorization – All non-U.S. citizens and those who are not lawful permanent residents are required to receive permission from the Department of Homeland Security in order to accept employment. Some temporary forms of legal immigration statuses, such as H-1B visas, T-visas, and U-visas allow the status holder to work. Some other forms of temporary legal immigrant statuses, such as tourist visas and student visas, do not allow for employment. If an immigrant is in a status that allows for work only with a specific employer, he or she will not need anything other than the visa approval notice as evidence of employment authorization. If he or she is in a status that allows for work without restrictions, he or she generally may obtain an employment authorization card by filing a request on a Form I-765. Employment authorization documents are normally valid for one year. Employment authorization is not a “stand alone” benefit. It is only granted to a person who has demonstrated eligibility for some type of temporary or pending immigrant status. There is special employment authorization available for battered spouses of immigrants who come to the United States under specified work related visas – “A” visas (diplomats); “E(iii)” visas (Australian Investor); “G” visas (international organization); or “H” visas (temporary workers).¹⁸

Employment Based Petitions¹⁹ – The eligible categories based on employment, as described by USCIS,²⁰ are:

EB-1 Priority workers

- Foreign nationals of extraordinary ability in the sciences, arts, education, business or athletics
- Foreign national that are outstanding professors or researchers
- Foreign nationals that are managers and executives subject to international transfer to the United States

EB-2 Professionals with advanced degrees or persons with exceptional ability

- Foreign nationals of exceptional ability in the sciences, arts or business
- Foreign nationals that are advanced degree professionals
- Qualified alien physicians who will practice medicine in an area of the U.S. which is underserved. Read more about this particular program.

EB-3 Skilled or professional workers

- Foreign national professionals with bachelor's degrees (not qualifying for a higher preference category)
- Foreign national skilled workers (minimum two years training and experience)
- Foreign national unskilled workers

EB-4 Special Immigrants

- Foreign national religious workers
- Employees and former employees of the U.S. Government abroad

From the USCIS website “Immigration Through Employment”²¹”

Only a limited number of employment visas can be issued each year. Applicants may therefore have to wait several years between filing the application and the issuance of an employment based visa.

Executive Office for Immigration Review (EOIR) – A branch of the Department of Justice that includes the Board of Immigration Appeals (BIA), Office of the Chief Immigration Judge (and all the immigration judges), and the Office of the Chief Administrative Hearing Office (OCAHO).

Extreme Hardship – Suffering extreme hardship is a requirement to obtain several different types of immigration relief,²² such as cancellation of removal under VAWA. These forms of relief require proof of hardship over and above the general economic and social disruptions in an immigrant’s home country. The applicant must show that they would suffer extreme hardship if removed from the United States.²³ Victimization related factors can be used

¹⁸ INA § 106, 8 U.S.C. § 1106.

¹⁹ INA §101(a)(15)(E), 8 U.S.C. §1101(a)(15)(E) (2008).

²⁰ USCIS website: “Immigration through Employment” (last visited August 13, 2008),

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=84096138f898d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD>

²¹ *Id.*

²² E.g. hardship waiver of the two-year joint filing requirement INA §216(c)(4), 8 U.S.C. § 1186a(c)(4); See also Chapter 9 of this Manual “VAWA Cancellation of Removal”

²³ See Chapter 9 of this Manual “VAWA Cancellation of Removal” for more information including the factors that can prove extreme hardship non-VAWA immigration cases.

as proof of extreme hardship for immigrant victims.²⁴ Proof of extreme hardship is needed before an immigration judge will grant cancellation of removal under VAWA.

Family-Based Petition – A U.S. citizen or lawful permanent resident files a family-based visa petition to start the process that will enable his or her family member (spouse, child, parent, adult son or daughter, sibling) to immigrate, or lawfully remain, in the United States and become a lawful permanent resident. Family and employment based immigration applications have long processing times. When an application is filed for an immigrant visa the applicants are assigned a priority date for the immigration case (usually the date they filed). They must wait for their priority date to become current before they can apply for lawful permanent residency.

Fiancé(e)s of U.S. Citizen (K-1 visa) – An immigrant granted a fiancé visa (K-1 visa) is allowed to come to the United States to conclude a valid marriage with a U.S. citizen within 90 days after entry.²⁵

Food Stamps – The Food Stamps program provides vouchers to low-income individuals so that they can use the benefits to buy food. Food Stamps eligibility for most non-citizens was eliminated by PRWORA as of August 22, 1996. Battered immigrants who entered after August 22, 1996 must be in “qualified immigrant” status for five years in order to receive food stamps. All “qualified immigrant” children under 18 are immediately eligible for food stamps regardless of date of entry. It is important to note that for immigrant victim self-petitioners this means that undocumented children included in their mother’s self-petition are eligible to receive food stamps once their mother’s VAWA self-petition has received a prima facie determination.

Freedom of Information Act – The U.S. Freedom of Information Act (FOIA) is a law ensuring public access to U.S. government records. FOIA carries a presumption of disclosure. If the government refuses to disclose information, it has the burden of explaining why that information may not be released. Upon written request, agencies of the United States government are required to disclose those records, unless they can be lawfully withheld from disclosure under one of nine specific exemptions in the FOIA. This right of access is ultimately enforceable in federal court. As part of a protection order, a family court case, or a bond order, courts can order an abuser who has filed immigration papers for his spouse, child, or parent to complete a FOIA request that releases information in the immigration case that was filed on the victim’s behalf by the abuser to the victim, her representative or lawyer.

Good Moral Character (GMC) – For many immigration remedies, it is necessary to show that a person has “good moral character” and has not committed certain crimes or engaged in other activities such as prostitution or illegal gambling. Good moral character is not precisely defined in the immigration laws, but Section 101(f) of the Immigration and Nationality Act lists certain acts that preclude someone from establishing good moral character.

Green Card (Lawful Permanent Resident Card) – Popular term for the I-551, the card that shows a person is a lawful permanent resident. Lawful permanent residency cards may be permanent “10-years”. Although these cards on their face state that they end in 10 years, lawful permanent residency does not end at that time. The immigrant with lawful permanent residency needs only to file to receive a new card once every 10 years. The application for a new card needs to be filed before the old card expires. Some immigrant victims seeking help will have a lawful permanent residency card with an end date two years after the card was issued. These immigrant victims have “conditional permanent residency”, and may qualify for a “battered spouse waiver” and will not need to file a

²⁴ The following list of abuse related factors is provided in the VAWA cancellation regulations. 8 C.F.R. §§ 1240.20(c) and 1240.58(c): The nature and extent of the physical and psychological consequences of abuse ; the impact of the loss of access to the U.S. courts and criminal justice system (including, but not limited to, the ability to obtain and enforce orders of protection, criminal investigations and prosecutions, and family law proceedings or court orders regarding child support, , maintenance, child custody, and visitation); The applicant’s or applicant’s child’s need for social, medical, mental health, or other supportive services, which would not be available or reasonably accessible in the foreign country; The existence of laws and social practices in the home country that would penalize the applicant or applicant’s child for having been victims of domestic violence or have taken steps to leave an abusive household; The abuser’s ability to travel to the home country, and the ability and willingness of authorities in the home country to protect the applicant and/or the applicant’s child from future abuse; The likelihood that the abuser’s family, friends, or others acting on the abuser’s behalf in the home country would physically or psychologically harm the applicant or the applicant’s children. Other factors can also contribute to Extreme Hardship (See Cancellation of Removal Chapter) See also INS Memorandum from Paul Virtue, INS General Counsel, *Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children* (October 16, 1998).

²⁵ INA §101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i); 8 CFR §214.2(k).

“VAWA self-petition.” See “adjustment of status,” “conditional permanent residency,” “Self-petition,” and “battered spouse waiver.”

Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) – HRIFA provides that Haitians (natives, citizens, and nationals) who were continuously physically present in the United States since before December 1, 1995, can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and the general requirements for lawful permanent residency are met. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA if they are Haitian and in the United States on the date the application is filed. HRIFA allows applicants to prove continuous presence even when they were absent from the United States for a time period of up to 180 days. (See “continuous presence”). Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian even if the abusive Haitian spouse or parent never applied for lawful permanent residency under HRIFA. (See VAWA section at end of this chapter).

The Hague Convention on the Civil Aspects of International Child Abduction Convention²⁶ - the “Hague Convention” is a treaty that was created to assist in the prevention of *international* child abduction and the return of abducted children. Currently, at least 54 member countries have signed the Convention.²⁷ The treaty only applies between countries when both countries are parties to the Convention. If a country has not formally joined the Hague convention, the treaty does not apply, and a parent must use alternate methods to have the child returned. Parents, rather than governments, must institute legal proceedings on their own to seek the safe return of their children. To invoke the convention, a child must be “wrongfully removed or retained” from his or her “habitual residence”, the abduction must be reported within one year of the abduction, and the child must be below the age of sixteen. The parent must then file an application seeking the return of the child with authorities of the foreign country and seek legal representation in the country where the child has been abducted to pursue legal action through that country’s legal system.

Immediate Relative – For the purposes of a family-based visa petition and a self-petition under VAWA, this term means the children under 21 years, spouse and parent of a U.S. citizen, or the parents of an adult U.S. citizen (21 years and over). Because of their close relationship to U.S. citizens, they are allowed to immediately file for lawful permanent residence once they have an approved immigrant visa, and are exempt from the numerical limitations (that cause waiting lists) imposed on immigration to the United States.

Immigration and Customs Enforcement (ICE) – This is the largest investigative arm of the Department of Homeland Security. Its officers are involved with immigration enforcement, detention, and removal within the interior of the nation. Composed of functions of the former Customs Service, Federal Protective Service, and the investigative and enforcement functions of the former INS (other than those border functions assumed by CUSTOMS AND BORDER PROTECTION (CBP), ICE is a subdivision of the Directorate of BORDER AND TRANSPORTATION SECURITY, the other two being CBP and the Transportation Security Administration. Additionally, trial attorneys who represent DHS in removal proceedings before immigration judges are ICE employees.

Immigrant Visa –An individual born outside of the United States, who is eligible, may apply for an immigrant visa, allowing him or her to legally enter the U.S. and remain here indefinitely as a permanent resident. (See “non-immigrant visa” for legal immigration status to remain temporarily).

Immigration and Nationality Act (INA) – The primary federal statute that governs the process of immigration and the treatment of immigrants in the United States.

²⁶ Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89

²⁷ For an up-to-date list, see http://travel.state.gov/family/abduction/hague_issues_1487.html. . Member States include: Argentina, Australia, Austria, Bahamas, Belgium, Belize, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China (Hong Kong and Macau only), Columbia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Mauritius, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Peru, Poland, Portugal, Romania, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Ukraine, United Kingdom (Bermuda, Cayman Islands), United States, Uruguay, Venezuela, and Zimbabwe.

Immigration Judge (IJ) – The person responsible for presiding over immigration court proceedings.²⁸ Immigration judges are employed by the Executive Office for Immigration Review (EOIR); a division of the Department of Justice.

Inadmissibility (INA section 212(a)); Grounds of – An individual who seeks admission into the United States or to receive lawful permanent residency must meet certain eligibility requirements to receive a visa and eventually be legally *admitted* into the United States. Grounds for *inadmissibility* include health related grounds, criminal and related grounds, security and related grounds, likelihood of becoming a public charge, not meeting labor certification and qualifications, and illegally entering the country. The Attorney General, through an immigration judge, will make a ruling when admissibility/inadmissibility is a factor in a case that is in immigration court. An immigration officer deciding cases (e.g. visa applications, VAWA self-petitions) for the Department of Homeland Security will make inadmissibility determinations on cases they are adjudicating.

Inspection – The process that all persons must go through when they arrive at the U.S. border, at airports, at seaports and at pre-flight inspection stations. A person is questioned and asked to present proof of his or her right to enter the country. At the end of the process of inspection, a person is either ADMITTED, REMOVED, PAROLED into the country, or allowed to withdraw their application for admission and depart voluntarily.

Lawful Permanent Residency (LPR) – A lawful permanent resident is a foreign-born individual who has the right under U.S. immigration law, to live and work permanently in the United States. Lawful permanent residents can still be put in removal proceedings and deported, particularly if they are convicted of crimes. Naturalization protects against deportation and therefore victims should be encouraged to naturalize as soon as eligible. An individual who has a green card is either a lawful permanent resident or a conditional permanent resident. See “adjustment of status.”

Legacy INS – A reference to the Immigration and Naturalization Service (e.g., “a legacy INS memo”) that acknowledges its status as the predecessor to the DEPARTMENT OF HOMELAND SECURITY.²⁹

Medicaid and State Child Health Insurance Program (SCHIP)³⁰ – The Medicaid program provides health insurance to low-income individuals. The State Child Health Insurance Program (SCHIP) provides health care to low-income children. Under PRWORA, most individuals who entered the United States after August 22, 1996, are barred from receiving all non-emergency Medicaid for the first five years after they become qualified immigrants.³¹

NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997³²

VAWA NACARA 202 creates self-petitioning for Nicaraguan or Cuban battered spouses and children who have been subjected to extreme cruelty by Nicaraguan or Cuban abusers who are unable to adjust their status to lawful permanent residency due to their abuser’s failure to file for lawful permanent residency for himself. The battered spouse or child must have been physically present in the United States on the date the application is filed (which must have been before July 5, 2007).

²⁸ INA §101(b)(4), , 8 U.S.C. § 1101(b)(4); INA § 240, 8 U.S.C. §1229a.

²⁹ New Jargon Alert: “Legacy INS” ” posted on AILA Info-Net. Doc. No. 03060442 (June 4, 2003).

³⁰ See 8 U.S.C. § 1641 (2004) for the definition of Qualified Alien, Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, A.G. Order No. 2353-2001. 66 Fed. Reg. 3,613 (Jan. 16, 2001) (specifying emergency Medicaid Eligibility)

³¹ Whether an immigrant victim of sexual assault or domestic violence will qualify for Medicaid covered health care services will depend on the victim’s immigration status, when they attained any legal immigration status, their state of residence and date of first entry into the United States. Persons who attained “qualified alien” including legal permanent resident status before August 22, 1996 will have the most access to Medicaid funded health care services. VAWA self-petitioners are an example of persons who may qualify but may have to wait 5 years if they entered the U.S. after 1996. Some states have chosen to offer access to funded health care to “qualified immigrants” who otherwise would have to wait 5 years. Other states offer funded health care to persons “permanently residing in the United States under color of law” which would include immigrant victims of sexual assault who have received interim relief in U-visa cases. For further information and state-by-state charts on health care options for immigrant victims, see chapter 17 of this manual “Access to Health Care for Immigrant Victims of Sexual Assault”. For state-by state chart on access to a range of public benefits see NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

³² See Appendix B.

VAWA NACARA 203 self-petitioning offers protection from deportation and access to lawful permanent residence for abused immigrants who were the spouses and children of El Salvadoran, Guatemalan and Eastern European abusers at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation of removal, asylum, or temporary protected status under NACARA 203. VAWA NACARA 203 also allows battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant or the spouse or child filed an application to suspend or cancel the removal.

Naturalization – This is the process by which foreign-born persons, including lawful permanent residents, obtain citizenship. Requirements include a period of continuous residence in the U.S. and physical presence in the United States, an ability to read, write, and speak English, and good moral character. Some requirements can be waived depending on the circumstances. Immigrants married to U.S. citizens can apply for Naturalization after 3 years in lawful permanent residency. Other immigrants have to wait 5 years to file for naturalization. Immigrant victims who attain lawful permanent residency through VAWA can file to naturalize after 3 years (3 years only applies to petitioners who had USC abusers and LPR abusers).

Non-immigrant Visas – “Non-immigrant” visas are issued to persons granted permission to remain temporarily (not permanently) in the United States. If an immigrant is granted permission to live permanently in the United States they will receive an “immigrant” visa. (See “immigrant visa.”) Many different classes of non-immigrant visas are available to individuals intending to enter the United States temporarily. (*See examples and explanations below under “visa”*).

Notice to Appear (NTA) – A document issued by the Department of Homeland Security to commence immigration removal proceedings against an immigrant in immigration court.³³ The Notice to Appear³⁴ is usually issued by an immigration enforcement official and served on the immigrant who DHS believes is not legally present in the United States. If an immigrant victim has been arrested or detained by immigration officials, the NTA will often be issued and served on the immigrant before the immigrant victim is released from DHS custody. Once the NTA has been issued it has to be filed with the immigration court for removal proceedings to be opened against an immigrant.³⁵

ORR – Department of Health and Human Services Office of Refugee Resettlement (ORR). The Office of Refugee Resettlement oversees refugee resettlement assistance programs and programs for victims of trafficking. This assistance includes, among other things, cash and medical assistance, employment preparation and job placement, skills training, English language training, legal services, social adjustment and aid for victims of torture.³⁶

Parental Kidnapping Prevention Act (PKPA)³⁷ – The Parental Kidnapping Protection Act (PKPA) was designed to discourage interstate conflicts, deter interstate abductions, and promote cooperation between states about interstate custody matters. As part of the Violence Against Women Act of 2000, the PKPA’s definition of “emergency jurisdiction” was broadened to cover domestic violence cases consistent with the UCCJEA, which is the Uniform Child Custody Jurisdiction and Enforcement Act³⁸ (see explanation below under this term). The PKPA tells courts when to honor and enforce custody determinations issued by courts in other states or Native American tribal jurisdictions. Unlike the UCCJEA, the PKPA does not instruct courts as to when they should exercise jurisdiction over a new custody matter. Instead, the court must follow the PKPA when 1) they are deciding whether to enforce a custody determination made by a court in another state or tribe; 2) they are deciding whether to exercise jurisdiction even though there is a custody proceeding already pending in another jurisdiction, and 3) they are asked to modify an existing custody or visitation order from another jurisdiction.

³³ INA §239, 8 U.S.C. § 1229.

³⁴ The Notice to Appear replaced the Order to Show Cause previously used to initiate deportation cases.

³⁵ Notices to Appear that have been issued in violation of VAWA confidentiality statutory protections can be cancelled. See Chapter 3 of this Manual “VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections “

³⁶ For more information, please see <http://www.acf.hhs.gov/programs/orr/mission/functional.htm>.

³⁷ See 28 U.S.C. § 1738A (2000).

³⁸ The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is newer legislation enacted in many states to update the prior Uniform Child Custody Jurisdiction Act. As of June 2007, the UCCJEA has been enacted in 46 states, the District of Columbia, and U.S. Virgin Islands. As of June 2007, four states have not yet adopted the UCCJEA: Massachusetts, Missouri, New Hampshire and Vermont. Uniform Family Law Update, June 2007, <http://nccusl.org/Update/Docs/JEBUFL/Jun%2007%20JEB%20Newsletter.pdf>. These states instead continue to use their prior version of the Uniform Child Custody Jurisdiction Act.

Parole – Parole is permission by the Department of Homeland Security that allows an immigrant to physically enter the United States temporarily for urgent humanitarian reasons or for significant public benefit. The entry is not a formal admission to the United States.³⁹ VAWA victims applying from abroad can receive parole into the United States once their application has been approved. This provision can also be used to help bring their children or other family members who qualify for VAWA relief into the country.

Permanent Resident – See “Lawful Permanent Resident.”

Prima Facie Determination – Battered immigrants filing VAWA self-petitions who can establish a "prima facie" case are considered "qualified aliens" for the purpose of eligibility for public benefits. The VAWA Unit of the Vermont Service Center at the Department of Homeland Security reviews each petition initially to determine whether the self-petitioner has addressed each of the requirements necessary to receive a self-petition. If DHS officials believe she has set forth a valid case they issued an order that is called a prima facie determination. If DHS makes a prima facie determination, the self-petitioner will receive a Notice of Prima Facie Determination. The notice provides evidence of immigration status that may be presented to state and federal agencies that provide public benefits.

Priority Date – The date that the application for an immigrant visa is filed becomes the priority date to establish an immigrant’s place in line to wait for a visa and to determine when the person can apply for lawful permanent residency. This means the date on which a person submitted documentation establishing prima facie eligibility for an immigrant visa. For family-based immigrants, a person’s priority date is the date on which he or she filed the family-based visa petition.⁴⁰ If the immigrant relative has a priority date on or before the date listed in the Visa Bulletin, then he or she is currently eligible for an immigrant visa. For employment-based cases, it is the date of the filing of the LABOR CERTIFICATION application, or if no labor certification is required, the date the immigrant visa petition is filed.⁴¹ In VAWA self-petitioning cases immigrant victims can use as their priority date the date that their abusive citizen or lawful permanent resident spouse or parent filed any prior family based visa petition for them, whether or not that case was ever decided and whether or not that case was withdrawn by the abuser. This allows the immigrant victim to resume the place in line they would have had if their abuser had not withdrawn or had followed through on the original family-based visa petition.

PRUCOL⁴² – PRUCOL stands for "permanently residing in the United States under color of law." PRUCOL is a term that generally describes immigrants whom the Department of Homeland Security (DHS) knows are in the United States, but whom the DHS is not taking steps to deport or remove from the country. Some states extend access to health care and some other public benefits to PRUCOL immigrants.⁴³

PRWORA and IIRAIRA – The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or Welfare Reform Act)⁴⁴ and the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA)⁴⁵ substantially altered most immigrants’ eligibility to receive many public benefits. These laws eliminated eligibility for most immigrants for Supplemental Security Income (SSI)⁴⁶ and Federal Food Stamps,

³⁹ INA §212(d)(5)(A); 8 USC §1182(d)(5)(A); 8 C.F.R. § 212.5.; New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

⁴⁰ 8 C.F.R. §204.1(c).

⁴¹ 8 C.F.R. §204.5(d).

⁴²“Permanently Residing Under Color Of Law”-Prior to the passage of the Personality Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.) those who were permanently residing in the United States under color of law (PRUCOL’s) were eligible to receive federal public benefits. This group consisted of immigrants whom CIS was aware of their presence in the United States. The PRWORA cut off access to federal public benefits for this group of immigrants, but several states have passed laws providing access to state-funded Temporary Assistance for Needy Families (TANF) for PRUCOL’s. See NATIONAL IMMIGRATION LAW CENTER, *States Providing Benefits to Immigrants Under 1996 Welfare & Immigration Laws -- State Responses*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 2-1, 14 (1998).

⁴³ See chapter 17 of this manual “Access to Health Care for Immigrant Victims of Sexual Assault”.

⁴⁴PRWORA see supra note 95.

⁴⁵Illegal Immigration Reform and Immigration Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (codified as amended at 8 U.S.C. § 1101 et seq.)

⁴⁶ SSI is a cash benefit program for low-income disabled, blind and elderly individuals.

limited access to certain other federal programs (including Medicaid funded health care), and gave states the discretion to determine whether immigrants can qualify for state and local public benefits programs.

Public Charge – This term describes immigrants who at the time of admission are likely to become primarily dependent on the U.S. government for financial support because of their health, education, assets, or family status.⁴⁷ If an immigrant is deemed likely to become a public charge they are thereby inadmissible.⁴⁸ Immigration officials and immigration judges are barred from considering any public benefits received by immigrant victims who attained immigration relief through VAWA or victims eligible for immigration benefits related to their having been victims of family violence in making public charge determinations.⁴⁹ Likewise, DHS does not consider public benefits received by trafficking victims when making public charge determinations.

Qualified Immigrant – Category created by PRWORA solely to assess eligibility for public benefits purposes. Inclusion in this category is determined by immigration status. Qualified immigrants have more access to federal public benefits than many other immigrants, but less access than citizens. Which federal or state funded public benefits they are eligible to receive depends on their: immigration status, state, date of first entry into the United States, and the specific benefit they are seeking. The most difficult benefits to access are federal means tested public benefits that not all qualified immigrants can access – Temporary Aid to Needy Families, Medicaid, State Child Health Insurance Program (SCHIP), Food Stamps and Supplemental Security Income (SSI). Under the statute qualified immigrants are called “qualified aliens.”

Refugee – An individual who is unable or unwilling to return to her country because of past persecution or a well-founded fear of future persecution on account of her race/ethnicity, religion, nationality, membership in a particular social group, or political opinion. An individual who is outside the U.S. and meets this definition can be admitted to the United States as a refugee. An individual already in the United States must apply for and be granted asylum to receive protection as a refugee. (*See “asylum” above*).

Removal – Removal, also known as deportation, is the process through which a non-citizen who is determined to be unlawfully in the U.S. is ordered to leave the United States and is returned to his or her country of origin by U.S. immigration officials. In some cases the person is removed to a third country that agrees to accept them.

Removal Proceedings – Formerly known as deportation proceedings, this is the process by which immigrants are required to appear before an immigration judge. The immigrant has an opportunity to request relief if eligible. The proceedings may result in an immigrant obtaining status or being ordered removed (deported). The judge can make other procedural orders as well.

Second Preference – This refers to the immigrant visa category for family-based petitions of spouses, children, and unmarried sons or daughters of lawful permanent residents.

Section 245(i) – Congress first enacted INA §245(i) in 1994 to allow non-citizens who were present in the United States without lawful immigration status and who were otherwise eligible for permanent residence (through a family or employment-based petition) to apply to adjust their status to that of a lawful permanent resident without requiring them to physically leave the United States.⁵⁰ The section imposed a penalty fee (up to \$1,000) in addition to the normal fees for processing the applications from. The provision initially expired in January 1998, but was extended in 2000 and expired again on April 30, 2001. Upon expiration of this provision, most non-citizens who are out of legal immigration status are ineligible to adjust status and must leave the country, unless their immigrant visa petition or application for labor certification was filed prior to April 30, 2001. VAWA self-petitioners, however are eligible to adjust status to that of a lawful permanent resident even if they are undocumented.

⁴⁷ INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(4)(B). *See also* 64 Fed. Reg. 28689-01 (May 26, 1999).

⁴⁸ INA § 212(a)(4)(B), 8 U.S.C. § 1182(a)(15)(F). *See also* 64 Fed. Reg. 28689-01 (May 26, 1999).

⁴⁹ INA §212 (p); *See also* field Guidance on Deportability and Inadmissibility on Public Charge Grounds, INS, 64 Fed. Reg. 28,689 (May 26, 1999).

⁵⁰ Under immigration law, leaving and returning to the United States whether required as part of a visa application or not, often has harsh consequences. Leaving the United States after having been unlawfully in the United States can trigger application of multi-year bars to reentry (e.g. 3, 10 or more years). Immigrants who remain in the United States and have not left or are not required to leave can attain lawful permanent residency without risking separation from children and family members in the United States. For this reason, it is important to advise victims for VAWA immigration benefits against international travel.

Self-Petition – Under the Violence Against Women Act, certain abused spouses, children, or parents or parents of abused children can file their own petitions to obtain lawful permanent resident status confidentially and without the cooperation of an abusive spouse, parent, or son or daughter if the abuser is a U.S. citizen or lawful permanent resident. Victims of elder abuse, battered spouse waiver applicants, VAWA Cuban adjustment applicants, VAWA HRIFA (Haitian), VAWA NACARA (Nicaraguans, Cubans, Salvadorans, Guatemalans, Former Soviet Union nationals) are included in the category of VAWA self-petitioners. Children of the self-petitioner can also obtain legal immigration status by being included in their parent’s self-petition. Undocumented immigrant children included in their parent’s self-petition are called “derivatives” or “derivative beneficiaries” because they derive a benefit from their parent’s application for legal immigration status. (See *VAWA Immigration Relief* at end of chapter).

SSI – Supplemental Security Income (SSI) is a program that provides cash assistance to low-income individuals who are aged, blind, or disabled. After the enactment of PRWORA, an otherwise eligible person could be denied SSI cash assistance solely on the basis of his/her immigration status. The only battered immigrants who are currently eligible to receive SSI are those who were lawful permanent residents and were receiving SSI on August 22, 1996, or those who fit into one of the other categories of eligible immigrants.

State Child Health Insurance Program – See Medicaid

State Parental Kidnapping Statutes – Parental kidnapping statutes are generally designed to ensure parents equal access to their children by criminally sanctioning a parent who hides the child from the other parent. Currently almost every state makes custodial interference by parents or relatives of the child a crime. While these statutes may share similarities in name, purpose, and structure, statutory provisions concerning the definition of lawful custodian, the availability of statutory exceptions or defenses, and the severity of the criminal penalties vary greatly between states. In counseling, a survivor who has already left or wishes to leave that state with her children should carefully consult the state statutes in the client’s home state and the state to which the client is considering moving to best inform the client of the potential legal ramifications of her decision to flee. For immigrant victims it is particularly important to avoid any criminal convictions that can complicate a victim’s ability to attain VAWA or U-visa related immigration relief.⁵¹

Stay of Deportation/Stay of Removal – A stay of removal is an administrative decision by the government to stop temporarily the deportation or removal of an immigrant who has been ordered removed or deported from the United States.⁵² Victims who were granted U-visa interim relief were granted stays of removal.⁵³

Suspension of Deportation – Suspension of deportation is terminology that was used prior to 1996, to refer to what is now called “cancellation of removal” (see above). Some immigrant victims will have old deportation orders, in cases initiated prior to 1992 and will need to file motions to reopen those immigration cases. For this reason post 1996 VAWA related immigration laws continue to refer to, cite to, and make amendments to VAWA suspension of deportation. Citations to Immigration and Naturalization Act Section 244 (a)(3) (“as in effect on March 31, 1997” or “as in effect before the Title III-A effective date of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996”) are references in statute to VAWA suspension of deportation and NOT “temporary protected status.”⁵⁴

TANF – Temporary Assistance for Needy Families (TANF) provides cash payments, vouchers, social services, and other types of assistance to families in need. PRWORA gives states the option to grant TANF to immigrant families. Most states have decided to provide assistance to qualified immigrants who were in the United States before August 22, 1996, and many are also providing access to TANF for those who entered after August 22, 1996, following the expiration of the five-year bar.⁵⁵ Other states have decided to offer state-funded TANF to certain

⁵¹ See Chapter 6.6 of Breaking Barriers “Appendix” for further information and the state criminal parental kidnapping statutes charts.

⁵² See 8 §CFR 241.6, 1241.6.

⁵³ “New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status.” New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 53016 (Sept. 17, 2007).

⁵⁴ Many codifications of the Immigration and Nationality Act are incorrect with regard to this section.

⁵⁵ NATIONAL IMMIGRATION LAW CENTER, *Temporary Assistance for Needy Families: Welfare Reform and Immigrants*, in IMMIGRATION & WELFARE RESOURCE MANUAL: 1998 EDITION, Tab 3E-1 (1998).

categories of immigrants or battered immigrants who would otherwise have no access to benefits, regardless of immigration status. (See “PRUCOL”)

Undocumented – Undocumented immigrants are individuals that do not have lawful immigration status granting them permission to reside in the United States. Some are individuals who entered the United States without being inspected by immigration authorities (i.e. illegally crossed the border). Others entered the U.S. on valid immigration visas but they stayed beyond their period of authorized stay. Some forms of temporary legal immigration status (See “non-immigrant visas.”) also place restrictions on the holder’s activities while in the United States, such as barring them from working in the U.S. or requiring them to attend a particular school or maintain employment with a particular employer. Individuals who fail to comply with the terms of their visa (i.e. working when they are not allowed or failing to attend school when they are required) become undocumented.

Unlawful Entrants – Individuals who entered the U.S. without admission are unlawful entrants and may be inadmissible. Depending on their date of entry and the relief they apply for, applicants, such as victims of domestic violence, may qualify for an exception to this inadmissibility criteria for unlawful entry.⁵⁶

U.S. Citizen (USC) – An individual may become a U.S. citizen through several means. An individual born in the United States or in certain U.S. territories such as Guam, U.S. Virgin Islands, and Puerto Rico is automatically a citizen at birth. Additionally, an individual born abroad may acquire or derive U.S. citizenship through a U.S. citizen parent or parents. Many lawful permanent residents apply through the naturalization process to become a U.S. citizen. Finally, certain people serving in active-duty status for the U.S. military may qualify for expedited U.S. citizenship.

United States Citizenship and Immigration Services (CIS) –The division of the Department of Homeland Security (DHS) responsible for adjudicating immigration benefits. CIS adjudicates a range of applications filed for immigrants seeking legal immigration status including: visas, asylum, and naturalization applications. Cases of immigrant victims filing VAWA self-petitions, U and T-visa applications, battered spouse waivers and battered spouse work authorizations are all adjudicated by CIS.

Uniform Child Custody Jurisdiction Act (UCCJA)⁵⁷ – Original state laws governing jurisdictional determinations in interstate custody cases. The UCCJA, or its successor statute the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), discussed next, must be considered anytime a victim is considering moving across state lines with her children.

The UCCJA was created to promote common practices among the states with regard to jurisdiction over, and enforcement of child custody determinations. The goal was to foster a uniform approach that would result in fewer conflicting court rulings regarding the same children; minimizing or preventing parental kidnapping, jurisdictional conflicts, and re-litigation of custody decisions issued by courts in other states. The UCCJA’s primary purpose is to help determine which court has appropriate jurisdiction over a custody matter by using the four following bases as a guide: home state, significant connection, emergency, and more appropriate forum. The UCCJA was not as effective in achieving these goals as expected and it contained few protections for battered women. As a result many jurisdictions began to replace the UCCJA with improved UCCJEA protections. The versions of the UCCJA or UCCJEA adopted in each state can vary slightly from the model code, but all state family laws include either a UCCJA or UCCJEA.

Uniform Child Custody Uniform and Enforcement Act (UCCJEA)⁵⁸ This is the successor statute to the UCCJA and is designed to be more helpful in preventing abductions of children. Like the UCCJA, the UCCJEA also utilizes the four jurisdictional bases of home state, significant connection, emergency, and more appropriate forum. However, unlike the UCCJA, the UCCJEA prioritizes home state jurisdiction. It also expands the basis for emergency jurisdiction to more fully include and protect a battered parent’s decision to escape from her abuser with her children. While a temporary emergency jurisdiction order that a battered woman receives is still subject to the

⁵⁶ INA § 212(a)(6)(A); 8 U.S.C. § 1182(a)(6)(A).

⁵⁷ Drafted by the National Conference of Commissioners on Uniform State Laws, and by it approved and recommended for enactment in all the states at its conference meeting July 22-Aug. 1, 1968; see also 28 U.S.C. § 1738A(c).

⁵⁸ Uniform Child-Custody Jurisdiction and Enforcement Act (1997), 9(1A) U.L.A. 657 (1999); See also 28 U.S.C. § 1738A(c)(2)(C).

actual “home” state’s issuance of a final custody order, the factors a “home” state must consider in declining jurisdiction offer greater protection for survivors of domestic violence. For example, a court may consider whether domestic violence had occurred, and is likely to continue, and which state could best protect the parties and the child.

Violence Against Women Act (VAWA) – In 1994, Congress enacted the Violence Against Women Act. This was the first piece of federal legislation that articulated the role of the federal government in stopping violence against women. VAWA brought about far-reaching reforms in the criminal and civil justice system’s approach to domestic violence, sexual assault, stalking, dating violence and trafficking. VAWA’s dual goals were to enhance protection and help for victims and to hold perpetrators accountable for their crimes. VAWA provides grants to governmental and non-governmental programs helping victims, creates federal crimes, enforces state issued protection orders, provides immigration relief and offers confidentiality and privacy protections to victims. VAWA was designed to offer protection to all victims of violence against women, explicitly including underserved victims (e.g. immigrants, women of color, disabled, rural victims). To further this goal and remove control over immigration status and threats of deportation as tools that could be used by abusers, traffickers and crime perpetrators to avoid or undermine criminal investigations and prosecutions, VAWA 1994, 2000 and 2005 each contained immigration relief.

VAWA Unit of the Vermont Service Center – The Citizenship and Immigration Services (CIS) Vermont Service Center, houses the specially trained unit at the Department of Homeland Security that is responsible for adjudicating VAWA cases filed by immigrant victims of violence against women. The VAWA Unit adjudicates a wide range of violence against women related applications including: VAWA self-petitions, T-visas, U-visas, adjustments (lawful permanent residency applications), and employment authorizations related to VAWA cases (VAWA Cuban, VAWA NACARA, VAWA HRIFA petitions, battered spouse waivers, parole of VAWA petitioners and their children, children of victims who have received VAWA cancellation). Spouses who have been battered or subjected to extreme cruelty perpetrated by their non-immigrant A visa holder, E iii visa holder, or G visa holder, or H visa holder spouse, and children of the battered spouses can also receive employment authorization from the VAWA Unit.⁵⁹

VAWA Confidentiality – VAWA created this provision to prevent batterers and crime perpetrators from accessing VAWA self-petitioners’ information through DHS. Under VAWA confidentiality, immigration enforcement agents are also prohibited from using information from an abuser to act against an immigrant victim. Additionally, VAWA confidentiality bars enforcement actions at protected locations including shelters, victim services programs, rape crisis centers, courthouses, family justice centers, supervised visitation centers and community based organizations.⁶⁰

Visa – The term visa has two meanings. A person who has attained legal immigration status in the United States is colloquially called a “visa” holder. A “visa” is also an official document issued by the U.S. Department of State at an embassy or consulate abroad. A visa grants an individual permission to request entry into the United States at a port of entry. If permission is granted, the applicant is admitted into the United States in a particular status, such as U nonimmigrant status. Visas may be *immigrant* visas that allow the individual who qualifies to live and work permanently in the United States – lawful permanent residency. Or they may be nonimmigrant visas. An individual having a residence in a foreign country that he or she has no intention of abandoning, who wishes to enter the United States temporarily, will be issued a temporary visa referred to in immigration law as a *non-immigrant* visa. Nonimmigrant visas include, but are not limited to:

A-Visa –This temporary visa is issued to diplomats, ambassadors, public ministers, employees or consular officers who have been accredited by a foreign government that is recognized by the United States and accepted by the President or the secretary of state. The A-visa includes the immigrant’s immediate family. The immigrant’s personal employees, such as nannies, also receive an A-visa.⁶¹

⁵⁹ INA § 106(a); 8 U.S.C. § 1105(a)

⁶⁰ For a full discussion of VAWA confidentiality protections See Chapter 3 of this Manual “VAWA Confidentiality: History, Purpose and Violations VAWA Confidentiality Protections “.

⁶¹ INA § 101(a)(15)(A), 8 U.S.C. § 1101(a)(15)(A).

B-Visa – This temporary visa is issued to tourists (business or pleasure). Tourists are generally admitted to the U.S. for no longer than six months.⁶²

F-Visa – This temporary visa is available to bona fide students who are coming to the United States temporarily and who are pursuing a full course of study at an established college, university, or other academic institution. The spouse and minor children of the student also receive F-visas.⁶³

G-Visa – The G-visa is available to representatives and employees of international organizations. The visa is also available to members of the individuals' immediate family, personal employees of the individual, and the immediate families (e.g. spouses and children) of the personal employees.⁶⁴

H-Visa – This is the temporary visa available to individuals who come to the United States temporarily to perform services or labor. This also includes a range of workers from technology industry workers to fashion models. The spouse and minor children of the immigrant also receive a specific type of H-Visa.⁶⁵

J -Visa – This temporary visa is issued to exchange visitors and foreign physicians. J-visa holders can include scholars, teachers, professors, leaders in a field, among others, coming to the United States temporarily. Some J-visa holders are subject to a two-year foreign residency requirement. They are required to leave the United States for two years and are barred from seeking H-Visa status or lawful permanent residency before complying with this requirement. The visa holder's spouse and minor children can also receive J-Visas.⁶⁶

T-Visa – This visa is available to individuals who are victims of severe forms of trafficking in persons and who are willing to assist in the investigation and prosecution of their traffickers. Severe forms of trafficking include sex trafficking and transporting, harboring, or obtaining a person for labor by force, fraud, or coercion. For an immigrant under 21, the spouse, children, unmarried siblings under 18, and parents can receive T-visas as derivative beneficiaries. (See "*derivative*" above). For T-visa applicants 21 years of age or older, the spouse and children of the individual can qualify to derive protection as T-visa recipients.⁶⁷ At the end of three years in T nonimmigrant status or if the Attorney General certifies that the investigation has concluded, T-visa recipients may apply for lawful permanent residency.

U-Visa – This visa is available to individuals who are victims of substantial physical or mental harm as a result of having been a victim of criminal activity. In order to receive a U-visa, victims must provide a certification from a federal, state, or local law enforcement official, prosecutor, or judge establishing that the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of criminal activity. Victims are eligible whether or not the perpetrator is convicted, whether or not criminal prosecution is initiated, whether or not the perpetrator is served with a warrant, and whether or not they are called as a witness in the prosecution as long as they are helpful in an investigation. For an immigrant under 21 years of age, the spouse, children, unmarried siblings under 18, and parents can receive U-visas based upon the immigrant crime victim's receipt of U-visa. (See "*derivative.*") For an immigrant 21 years of age or older, the spouse and children of the immigrant can receive U-visas as derivatives.⁶⁸

⁶² INA § 101(a)(15)(B), 8 U.S.C. § 1101(a)(15)(B)

⁶³ INA § 101(a)(15)(F), 8 U.S.C. § 1101(a)(15)(F).

⁶⁴ INA § 101(a)(15)(G), 8 U.S.C. § 1101(a)(15)(G).

⁶⁵ INA § 101(a)(15)(H), 8 U.S.C. § 1101(a)(15)(H).

⁶⁶ INA § 101(a)(15)(J), 8 U.S.C. § 1101(a)(15)(J).

⁶⁷ INA § 101(a)(15)(T), 8 U.S.C. § 1101(a)(15)(T).

⁶⁸ INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U).

APPENDIX A



UN Photo 159745/J. Isaac

An Asian View of Cultural Differences

Dr. Mai Van Trang

*We live in time.
We are always at rest.
We are passive.
We like to contemplate.
We accept the world as it is.*

*We live in peace with nature.
Religion is our first love.
We delight to think about the meaning of life.
We believe in freedom of silence.
We lapse into meditation.
We marry first, then love.
Our marriage is the beginning of a love affair.
It is an indissoluble bond.
Our love is mute.
We try to conceal it from the world.*

*Self-denial is a secret to survival.
We are taught from the cradle to want less and less.
We glorify austerity and renunciation.
Poverty is to us a badge of spiritual elevation.
In the sunset years of life we renounce the world
and prepare for the hereafter. **

*You live in space.
You are always on the move.
You are aggressive.
You like to act.
You try to change it according to your blueprint.*

*You try to impose your will on her.
Technology is your passion.
You delight in physics.
You believe in freedom of speech.
You strive for articulation.
You love first, then marry.
Your marriage is the happy end of a romance.
It is a contract.
Your love is vocal.
You delight in showing it to others.*

*Self-assertiveness is the key to your success.
You are urged every day to want more and more.
You emphasize gracious living and enjoyment.
It is to you a sign of degradation.
You retire to the fruits of your labor.*

* Dr. Mai Van Trang, as quoted in Dr. Carolyn Williams. *Reasons for Living and Hoping*, ICCB, 1990:64

Latina Women in the US

Rocio Molina

Outline

- **Strength in context of family and collective rather than the individual**
 - **Children**
 - **Additional Barriers they face**
 - **Language**
 - **Immigration**
 - **Culture norms**
 - **Religion**
 - **When and if they leave the abuser**
 - **Who they seek support from**
 - **Difference and Similarities with Mainstream victims of abuse**
 - **Variables of a Latino woman reacting to domestic abuse**
-

When facing domestic abuse, Latina women may often times differ than women in mainstream culture by additional barriers they face, how they self identify within the family context and when and who they seek support from.

Many Latino households have strict traditional roles where the man is the breadwinner and the woman is caretaker of the home. Her successes are measured within her roles as wife and mother, based on the happiness and comfort of her family. Her husband and children come first. Her decisions are often based on cultural norms and practices, such as family unity or religious beliefs.

Many Latina women, particularly immigrant women, depend heavily on their partner for financial support. Because of these roles, the abuser has total access to the family's checkbook which equates to additional power and control over her and her options within an abusive relationship. If she knows little to no English and lives away from the big city she will face a language barrier with the outside world particularly when seeking services. If a Latino woman is undocumented and/or in the process of applying for immigration status, our immigration laws make her even more dependent on her spouse. She may think she cannot leave her abusive spouse otherwise she loses her legal path to residency. She is likely not have or could jeopardize her employment authorization in the U.S. Without immigration status, not only is her ability to work outside the home limited, but she is unable to legally drive. Because of these additional barriers, Latina victims are less likely to leave an abusive relationship.

Many Latina women are unfamiliar with our legal system. Their native countries do not view domestic violence as a public safety issue and therefore hesitate to report violence to law enforcement. Many Latina immigrant women that come to the U.S. are honest hard working women who would under any other ordinary circumstance never violate the law, yet because of their spouse or desperate

circumstances, they come to the U.S. unlawfully. They are taught by their abusive spouse and society that they are “illegal” and undesirable. The fear of deportation is constant and immigrant Latina women make their decision based on that fear. Like most immigrant mothers, Latina victims of abuse fear separation from their children. When their abusive spouse threatens them, “If you call the police for help they will deport YOU!” that fear is real.

Differences and Similarities

When facing domestic abuse Latina women seek extended family support only to feel loved and maintain their sense of belonging. She will look for closeness with her parents and siblings, maybe cousins, aunts and uncles. However, she will probably prevent them from knowing what is really happening in her life. She will try to keep it to herself even when they ask questions about comments her children make to the grandparents or when the family sees that she is not being treated properly. She will try to cover up the situation as much as possible because one day her husband will change and she does not want the family to have the “wrong” impression.

Like most domestic abuse survivors, Latina women will blame themselves for the initial outbursts or signs of violence. She may think that she deserves to be insulted, yelled at, or slapped because she was unable to please him the way she should. Maybe she should not have asked the wrong question; or maybe she took too long at the store; or she should know how he likes his food. She should try to do better in the future.

Latina women will also blame his upbringing. As an example she may think, “It is not his fault that his father was an alcoholic and he was raised by an abusive father who would hit his mother and punish him physically for any insignificant reason and his mother taught him to respect his father regardless of his actions.”

Like all victims of abuse she will believe that all his threats will come true. She will believe that he is going to take her children away; she will believe that nobody is going to help her because she is such an ignorant woman, and she will believe that she will never find anybody who can love her or like her. She will fear that she will never be able to support herself and her children and they will end up in the streets. She will worry that she will never be able to earn a decent salary because she does not know how to do anything. And she will be terrified that he will find her and kill her and her children.

Latina women may often consider the consequences to their partners when facing their alternatives to free themselves from an abusive situation. Is he going to lose his job? Is he going to have a criminal record that will make things more difficult for him? How is he going to pay for a lawyer, court costs, bail, etc? What is his family going to think about her? How can she do this to the man who feeds her and supports her? How can she do this to the father of her children?

She will believe his promises of changing his behavior in the future. She really believes that he loves her and he will make an effort to be better. It is likely that she will be convinced that the more jealous he is,

the more he loves her. She will do her best not to upset him in hopes of sustaining and extending a peaceful period for as long as she can.

Variables of a Latina woman reacting to domestic abuse

The most important variable is her immigration status. If she does not have legal status, she constantly fears deportation and separation from her family. She cannot legally work, she cannot access public benefits, she cannot obtain a driver's license, rent an apartment or cash a check, making her less likely to report abuse.

Other variables are her level of education and socio-economic status in her country of origin. When a woman comes from a family of low socio-economic status, she is more likely to have a low education level. She will avoid the legal process because she is not confident of her knowledge and her alternatives in this new country. She is more dependent on her husband's income, she does not have other resources, and she will not put her extended family in financial stress. She can only hold low earning jobs that will not pay enough to support herself and her children. If she does not have legal immigration status, she will be less likely to have the ability to work. Even when she has started the separation or divorce process, she is more likely to go back to her abusive husband again and again, maybe because of her desire to be loved and fear of being by herself without any support.

When a woman comes from a family of middle or high socio-economic status, she will have a higher level of education and be more confident of the legal system and her ability to understand it. She will have her family's financial support and probably speak English, or at least understand it. She knows that she can get educated or advance in her education in this country and obtain a job that will help sustain her children. She will be able to weigh her alternatives.

Middle Eastern & North African Immigrant Women in the US
Pari Farmani

The Modern usage of the term “Middle East” normally applies to 16 countries, including Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, the Palestinian Territories, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen. Sometimes, the people of Central Asia, the Caucasus, and North Africa are also considered or may self-identify as “Middle Eastern.” These groups include people from the following countries: Afghanistan, Algeria, Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Libya, Morocco, Tajikistan, Tunisia, Turkey, Uzbekistan and Western Sahara. At least 30 different languages and many more dialects are spoken by these populations. Despite the belief that everyone from the region is Muslim, Middle Eastern refugees and immigrants in the United States practice a variety of different religions. The chart below briefly summarizes the language and religious diversity of Middle Eastern immigrants and refugees living in the U.S.:

COUNTRY	LANGUAGE(S) SPOKEN	PREDOMINANT RELIGIONS
Bahrain	Arabic, English, Farsi, Urdu	Muslim, Christian
Egypt	Arabic	Muslim, Coptic Christian
Iran	Farsi, Turkic, Kurdish	Muslim, Baha’i, Jewish, Zoroastrian
Iraq	Assyrian, Kurdish, Arabic	Muslim, Christian
Israel	Hebrew, Arabic, English	Jewish, Muslim, Christian
Jordan	Arabic, English	Muslim, Christian
Kuwait	Arabic, English	Muslim, Christian
Lebanon	French, Arabic, English, Armenian	Muslim, Christian
Oman	Arabic, English, Baluchi, Urdu	Muslim, Hindu
Palestinian Territories	Arabic	Muslim, Jewish, Christian
Qatar	Arabic	Muslim, Christian
Saudi Arabia	Arabic	Muslim
Syria	Arabic, Kurdish, Armenian, Aramaic, Circassian, French	Muslim, Druze, Christian, Jewish
United Arab Emirates	Arabic, Farsi, English, Hindi, Urdu	Muslim, Christian, Hindu
Yemen	Arabic	Muslim, Jewish, Christian, Hindu
GREATER MIDDLE EAST		
Afghanistan	Dari, Pashto, Turkic, Balochi, Pashai	Muslim
Algeria	Arabic, French, Berber	Muslim, Christian, Jewish
Armenia	Armenian, Yezidi, Russian	Christian (Armenian Apostolic), Yezidi
Azerbaijan	Azeri, Lezgi, Russian, Armenian	Muslim, Russian Orthodox, Armenian Orthodox, Jewish
Kazakhstan	Kazakh, Russian	Muslim, Russian Orthodox, Protestant
Kyrgyzstan	Kyrgyz, Uzbek, Russian, Dungun	Muslim, Russian Orthodox
Libya	Arabic, Italian, English	Muslim
Morocco	Arabic, Berber, French	Muslim, Christian, Jewish
Tajikistan	Tajik, Russian	Muslim
Tunisia	Arabic, French	Muslim, Christian, Jewish
Turkey	Turkish, Kurdish	Muslim, Christian, Jewish
Uzbekistan	Uzbek, Russian, Tajik	Muslim, Eastern Orthodox
Western Sahara	Hassaniya Arabic, Arabic	Muslim

The earliest Middle Eastern immigrants came to the U.S. nearly a century ago, and were primarily Christian Lebanese, Christian Palestinians, and Christian Syrians. As of 2010, Middle Eastern immigrants were considered one of the fastest growing groups in the U.S. and represented 2.2 percent of the total (documented) immigrant population (estimates put the total population at 830,000 – 1.4 million individuals)¹, reflecting the diversity summarized above. California, Michigan, and New York are currently home to the largest populations of Middle Eastern immigrants and refugees. It is estimated that an additional 150,000 undocumented Middle Eastern immigrants live in the U.S.² Many from this population enter the U.S. with temporary visas as tourists or students or with temporary work visas and never return to their country of origin after their visas have expired.

As with all other immigrant communities, violence against women is prevalent among people of Middle Eastern origin. It is generally a cultural taboo, however, to discuss these issues at all, especially outside of the nuclear or extended family. There is a specific taboo placed on individuals who seek mental health services as it is sometimes believed that anyone visiting a psychologist, psychotherapist, psychiatrist, or counselor must be crazy and mentally unstable. For these reasons, the number of *reported* cases of domestic violence, sexual assault, trafficking and other forms of violence against women among these communities may be uncharacteristically low.

Since September 11th, there has been increased public interest and media attention on Middle Eastern immigrants, but unfortunately, much of this attention has been negative. This negative attention in the form of racial profiling, hate crimes, and widespread misinformation has increased fear and distrust of law enforcement and social services among Middle Eastern communities. Because of the number of authoritarian regimes in the Middle East, many Middle Eastern immigrants and refugees come to the U.S. with a pre-existing distrust of all authority figures. In the post-9/11 political context, this distrust has been further exasperated and has further decreased the likelihood that a Middle Eastern immigrant woman will report violence in her home to authorities or social service providers for fear that she, her family members, or her spouse may be deported or indefinitely detained. This fear is prevalent among ALL Middle Eastern communities, documented or undocumented, lawful permanent residents or naturalized citizens. Furthermore, in cases of domestic violence, sexual assault, dating violence, trafficking, or sexual harassment, it may be especially difficult for unmarried Muslim Middle Eastern immigrant and refugee women to confide in a social service provider because of the Islamic taboo placed on pre-marital sex.

Compared to other immigrant and refugee groups, Middle Easterners tend to speak English (or have some knowledge of English) and have higher levels of education. Regardless, for the population that has limited English proficiency, language access continues to be a problem when accessing services, as it is wrongfully assumed that all Middle Eastern people speak Arabic, and are therefore provided with Arabic speaking translators. Despite their high levels of education, participation in the labor force among Middle Eastern immigrant and refugee women in the U.S. is low in comparison to employment rates among other immigrant women. If employed, Middle Eastern immigrant women tend to work in the education, health, social services, arts, and entertainment industries. It is important to remember that despite the fact that much of this community belongs to the middle or upper middle class, low employment numbers mean that Middle Eastern immigrant women are very dependent on their spouses for financial support and stability.

¹ Migration Policy Institute

² USCIS & The Census Bureau, 2010

South Asian Women in the US

Aparna Bhattacharyya

The South Asian community is extremely diverse in many ways. The South Asian Community usually consists of individuals from Bangladesh, Bhutan, India, Pakistan, Nepal and Sri Lanka. Many include Afghanistan and the Maldives in the definition of South Asian as well. South Asians speak over 17 languages and over 200 dialects. There are a number of religions represented in South Asia which include but are not limited to Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Sikhism and Zoroastrianism. With each religion there may be different dietary practices. For example, most Hindus will not eat beef, Muslims and Jews do not eat pork, and Sikhs do not necessarily have a restriction on eating any kind of meat. Some Hindus do not eat any meat depending on what state they are from. For example, a Hindu from Gujarat is more likely to be totally vegetarian than a Hindu from West Bengal. Jains are the most strict when it comes to their views on vegetarianism. Their goal is to do the least amount of harm (Ahimsa) when interacting with the world. For these reasons, they may not eat onions, potatoes or any other root vegetable whose harvest is disruptive to other forms of life. In other words, when you dig up the ground to harvest a potato, onion, or root vegetable, there are many insects and other life forms that will be harmed in the harvesting of this vegetable, so many Jains will not eat this particular vegetable to avoid doing more harm to other life forms. Please note: there are always exceptions to the rule and each individual may choose to eat or not eat certain things for reasons other than religion.

South Asians are strongly represented on almost every continent. Many South Asians were brought to the United States, the Caribbean, Africa, and South America as indentured servants, for manual labor and railroad workers in the early 1700s and 1800s. There are a number of articles documenting the challenges South Asians, more specifically Asian Indian individuals faced when coming to the United States.¹ In the United States, immigration laws have changed throughout the years to exclude Asians and South Asians from entering the country, gaining citizenship, or to even having U.S. citizenship and property revoked and taken away based on solely being Asian.

Due to the complex identities of South Asians, it is hard to give an accurate short profile. In India alone, there are cultural and religious differences based on states of origin, for example, individuals from Gujarat, South India, Bengal, and Punjab all speak different languages and have some different cultural practices. There will also be many commonalities. While they may each have the same religion, the way the religion is practiced varies from state to state and family to family (this could include the views on vegetarianism as part of a religious practice or which religious festivals are most important to celebrate).

Due to British colonization and its aftermath, there is a lot of religious conflict between the South Asian countries. To this day, there are often acts of violence based on religion and political boundaries. This can play out in how a woman you are working with may interact with you or someone who might practice a different religion or be from another region of South Asia. Like many communities that are small, there is concern regarding confidentiality when another

¹ See "Sikh Farmers in California," at <http://www.sikhpioneers.org/SikhFarmers.html> and "The History of Indians in the US," at http://www.shamit.org/Articales/history_of_indians_in_the_us.htm.

member from the community is involved. It will take time to build trust. South Asians do not like to air their dirty laundry to strangers because it is often seen as a cultural taboo.

Historically, women/daughters were not legally allowed to get inheritance or have property rights, so many South Asian women dealing with divorce or separation may tend to focus on jewelry because it is traditionally how South Asians provided security blankets for their daughters when they married into their husband's family. It was traditionally viewed that daughters were more of a burden for a family since they were often married off and then become a part of their husband's family. Many South Asians focus on having boys as a blessing under the belief that the sons will take care of them when they get older. This is changing in South Asia, but there are many who still hold on to this belief. This can play out in women continuing to have children until there is a boy child to differential treatment of boys and girls in the same household.

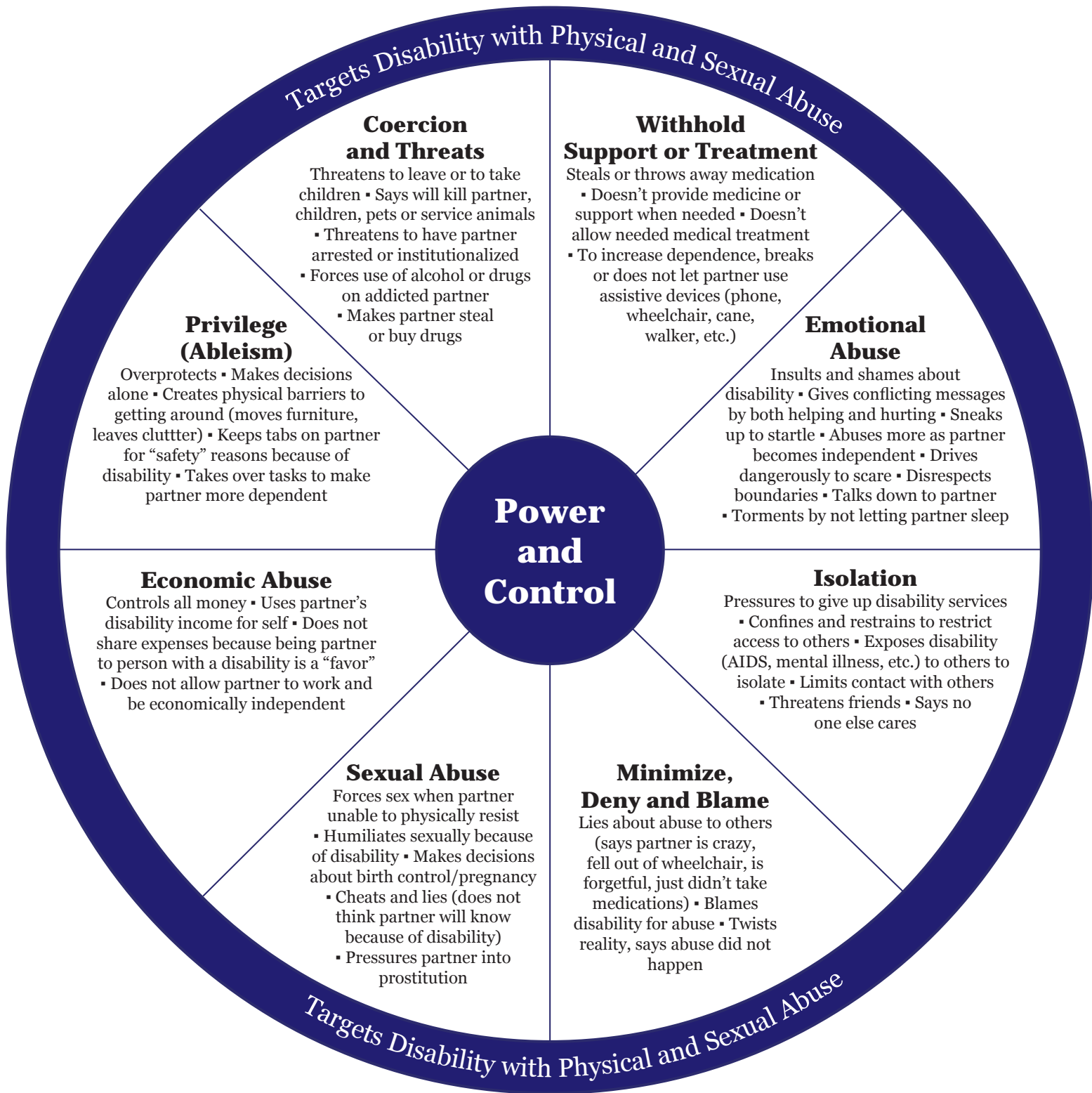
Like all communities, violence against women is prevalent at similar rates as it is throughout the world. There are domestic violence homicides that may play out in the form of acid burnings, kitchen accidents, and honor killings.

Due to religious and cultural beliefs, many women may be hesitant to get divorces and are not quick to come to that decision. They may want community support in working it out since there is often stigma to being divorced and divorce can lead to isolation from community and family. Additionally, depending on immigration status, divorce could lead to loss of immigration status.

South Asians have a large variety of immigration status in the United States. South Asians may have been citizens for many generations, may be here as green card holders, on temporary work visas and can be undocumented. There is a large population that comes to the United States on work visas called H1-B's. This is a temporary work visa, which typically will have a spouse on an H-4 visa. The H-4 visa does not allow the spouse to work so it leaves this spouse vulnerable to being dependant on her H1-B spouse. So for example, an H-4 Spouse who is abused could stay in a shelter for 1 month but will not be able to support herself or her child due to limitation in working. While the Violence Against Women Act of 2005 authorized relief for H-4 spouses to be able to apply for work authorization, there are not regulations on how to apply for this relief. In many states, the day one's immigration status expires, so does their driver's license or any work related licenses. This makes it challenging for immigrant survivors to support themselves or get basic necessities especially in states with poor transportation.

People with Disabilities in Partner Relationships

The Women of Color Network Leadership Academy Chapter 10 Immigrants and Refugees Handouts



Created by



with in-depth input from people with disabilities.

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POWER AND CONTROL TACTICS USED AGAINST IMMIGRANT WOMEN

The following describes some of the ways in which immigrant women are abused, although the experiences of individual victims will vary from case to case.

EMOTIONAL ABUSE:

Lying about her immigration status.

Telling her family lies about her.

Calling her racist names.

Belittling and embarrassing her in front of family and friends.

Causing her to lose face.

Telling her that she has abandoned her culture and become “white,” or “American.”

Preventing her from visiting sick or dying relatives.

Abuser lying about his ability to have the immigration status of his lawful permanent resident abuse victims changed.

ECONOMIC ABUSE:

Forcing her to work “illegally” when she does not have a work permit.

Threatening to report her to BICE if she works “under the table.”

Not letting her get job training or schooling.

Taking the money her family back home were depending upon her to send them.

Forcing her to sign papers in English that she does not understand -- court papers, IRS forms, immigration papers.

Harassing her at the only job she can work at legally in the U.S., so that she loses that job and is forced to work “illegally.”

SEXUAL ABUSE:

Calling her a prostitute or a “mail order bride.”

Accusing her of trying to attract other men when she puts on make-up to go to work.

Accusing her of sleeping with other men.

Alleging that she has a history of prostitution on legal papers.

Telling her that “as a matter of law” in the United States that she must continue to have sex with him whenever he wants until they are divorced.

USING COERCION AND THREATS:

Threatening to report her to BICE and get her deported.

Threatening that he will not file immigration papers to legalize her immigration status.

Threatening to withdraw the petition he filed to legalize her immigration status.

Telling her that he will harm someone in her family.

Telling her that he will have someone harm her family members in her home country.

Threatening to harm or harass her employer or co-workers.

USING CHILDREN:

Threatening to remove her children from the United States.

Threatening to report her children to the INS.

Taking the money she was to send to support her children in her home country.

Telling her he will have her deported and he will keep the children with him in the U.S.

Convincing her that if she seeks help from the courts or the police the U.S. legal system will give him custody of the children. (In many countries men are given legal control over the children and he convinces her that the same will occur here).

USING CITIZENSHIP OR RESIDENCY PRIVILEGE:

Failing to file papers to legalize her immigration status.

Withdrawing or threatening to withdraw immigration papers filed for her residency.

Controlling her ability to work.

Using the fact of her undocumented immigration status to keep her from reporting abuse or leaving with the children.

Telling her that the police will arrest her for being undocumented if she calls the police for help because of the abuse.

INTIMIDATION:

Hiding or destroying important papers (i.e. her passport, her children's passports, ID cards, health care cards, etc.)

Destroying the only property that she brought with her from her home country.

Destroying photographs of her family members.

Threatening persons who serve as a source of support for her.

Threatening to do or say something that will shame her family or cause them to lose face.

Threatening to divulge family secrets.

ISOLATION:

Isolating her from friends, or family members.

Isolating her from persons who speak her language.

Not allowing her to learn English or not allowing her to communicate in a language she is fluent in.

Being the only person through whom she can communicate in English.

Reading her mail and not allowing her to use the telephone.

Strictly time all her grocery trips and other travel times.

Not allowing her to continue to meet with social workers and other support persons.

Cutting off her subscriptions to or destroying newspapers and magazines in her language.

Not allowing her to meet with people who speak her language or who are from her community, culture or country.

MINIMIZING, DENYING, BLAMING:

Convincing her that his violent actions are not criminal unless they occur in public.

Telling her that he is allowed to physically punish her because he is the "man."

Blaming her for the breakup of the family, if she leaves him because of the violence.

Telling her that she is responsible for the violence because she did not do as he wished.

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CULTURE HANDBOOK

**Produced by the Family Violence Prevention Fund as Part of its
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CULTURE HANDBOOK

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ABOUT THIS HANDBOOK

This handbook is designed to be used by advocates and professionals who work with those who are victims of domestic and sexual violence. It provides some basic information on how to understand culture and begin the process of challenging oneself to become more aware of the ways in which culture impacts our work and the lives of those who are victims.

Advocates and professionals are well aware of some of the struggles one can encounter when working with victims who appear different. The handbook gives some guidance on how to understand the complex ways in which people respond to intimate violence. In simple terms, the handbook outlines some basic ways in which to begin the process of becoming aware on both an individual and institutional basis. Neither of these by themselves can lead to empowerment of survivors. Therefore, the handbook stresses the importance of reaching out to and working collaboratively with diverse communities so that the issues of domestic and sexual violence can be owned by one and all.



WHY CONSIDER CULTURE?



Over the last few decades, it is believed that the United States has experienced large scale immigration into the country. While that is true to some extent, the country has always been diverse and home to many different groups of people with differing ideas about domestic violence and sexual assault. As we come across diverse opinions, it becomes important for us to understand how and in what ways culture shapes individuals, families and communities and how they in turn shape culture.

Therefore, if our goal is to ensure that victims are able to make the best decisions for the best outcomes in their attempts to live violence free lives it is important to understand how culture shapes:

- an individual's experience of violence
- whether perpetrators accept responsibility
- whether services are equally accessible to all
- our own responses within the culture of the systems and organizations in which we work



– HOW WE HAVE THOUGHT ABOUT IT

The idea of culture is a few centuries old. Many theories have been generated to explain the notion of culture and what it entails. Theories have associated culture with norms, values and traditions that are passed from generation to generation. Over the years, culture has come to be associated with ethnicity and race in order to explain differences between groups of people. This has led to the development of lists containing characteristics of groups of people. Such an understanding of culture provides many comforts for advocates and professionals working in domestic violence. It helps make immediate sense of behaviors that are different.

While such a formulation was useful at a particular time in history and served many purposes including the colonization of large parts of the world, the relevance of such understanding in the context of complicated global economies is problematic. Thinking of culture as fixed leads us to make generalizations based only upon ethnic or racial identification. Such thinking conveniently overlooks the intersection of other categories such as class, sexual orientation, disability, immigration status etc. Further, none of these categories are fixed in time or one-dimensional. All these categories intersect in individuals and groups differently and change over time as the social and political landscape changes.



Given today's political economy and the continuously changing social contexts, it is important that we revisit old notions of culture as static and embrace the idea that culture is fluid. Culture is not just about norms and values about particular racial or ethnic groups. It is about how the norms and values of a particular group are expressed or thought about in different ways depending upon the socio-economic position, their immigration status or sexual orientation or any number of other axes. Norms and values may also differ for individuals within the same group.

A broad and more critical definition of culture refers to shared experiences that develop and evolve according to changing social and political landscapes. It includes race, ethnicity, gender, sexual orientation, class, immigration, location, time and other axes of identification understood within the historical context of oppression. These categories of attempting to catalog differences have developed and evolved into systems that are oppressive. Additionally they are not isolated from each other—they stand alone, interact and are interdependent as well as mutually reinforcing. Although both groups and individuals within the groups may share commonalities in their experiences of oppression (s), there are also differences in these experiences.

It is precisely because of these reasons that we want to think of subgroups and individuals within the groups as complicated, multi-faceted, and contradictory. Using the most visible markers of identification—race and gender—to come to conclusions based on cultural misinformation (generalized information and stereotypes) is not only misleading but ultimately dangerous and oppressive when working with victims of domestic and sexual violence.



CULTURAL COMPETENCE

Given the critical understanding of culture, the question arises: What do we do when confronted with “cultural” difference? Over the years, many terms have been used to categorize diverse people—multicultural, diversity, cultural awareness, cultural sensitivity, cultural competence and so on. Each of these terms suggests different things to different advocates and professionals or they sometimes mean the same thing. As we grapple with the challenges of understanding difference and power in cultures, each of the terms should be seen as serving various functions at different times in history, as well as being part of a long continuum of developing a critical awareness of difference that does not overlook the interplay of power in all situations.

The term most used today is *cultural competence*. Although problematic in many ways, the term is beneficial as it suggests that there is a set of knowledge, skills and attitudes that can be developed over time in order to work with those who appear and may be different from us. Knowledge can be obtained in many different ways, such as gathering cultural information from websites and informants from diverse communities and interacting with diverse people. Skills can also be developed with practice. There continues to be a wealth of information, strategies and skills that are available to all.

As we have become more aware and critical in our thinking, it is clear that there are many problems with the term cultural competency, especially in the area of domestic and sexual violence. The term suggests that at a fixed point in time we can all become competent by the development of certain skills which can be attained by attending a certain number of trainings or by





being exposed to certain groups and individuals over time. The basic notion that developing “competence” is a lifelong process and is about continuous self-assessments and critical thinking is missing from this term. Also missing is an understanding of how power shapes difference, our knowledge of difference, intersectionality, the ways in which information is gathered, presented and processed and the ways in which we use the skills we develop.

So, we need to remember that cultural competence is a very complex process. It is developed *over time* by engaging in a variety of activities and sources of information. We should always take into account the long history of oppression and people’s experiences of it in their lives. Finally, we should also be aware of and understand our own biased cultural lens.



DEVELOPING CULTURAL COMPETENCY

The following are some principles and assumptions that we should always keep in mind as we develop cultural competency in the area of domestic and sexual violence:

- All cultures contain a spectrum of contradictions: on one end of the spectrum, there may be a perceived widespread acceptance of domestic and sexual violence, while on the other end, there are long standing traditions of resistance to violence against women and children.
- Survivors come from different communities and possess different values and norms. Thus, survivors are unique individuals—their responses to violence and intervention are shaped by a host of factors.
- Competency has to be developed at both the individual and the institutional level—in an effort to balance standardization with flexibility. Institutions have to develop policies and protocols that clearly show the need for building competency at all levels.



- It is essential that education and training be provided to all advocates and professionals in all fields. Training cannot, and should not be, a one time occurrence. Rather, each segment must build on one another with each level adding complexity.
- Domestic violence and sexual violence occur in *every* community and group. Therefore it is critical to recognize and work against institutional disparities that adversely affect underserved communities, especially those disparities that may prohibit equal access to a range of services such as emergency shelter, police protection, etc.
- Competency is a complex process that includes the development of self-awareness of the various filters that influence one's own decisions, his or her cultural biases, and world view. Furthermore, competency requires a willingness to adapt and change these attitudes and biases based upon new information.
- Information on particular cultures provided by informants or obtained from other sources should always be understood critically.
- It is essential to reach out to, work with, and collaborate with different communities and encourage contradictory and diverse perspectives from a variety of people and resources. One voice should not have to represent any particular group of people.
- Culture cannot and should not be used as an excuse for domestic and sexual violence.



INDIVIDUALITY YOU CAN

At the individual level, cultural competency in the area of domestic and sexual violence has to begin with the process of:

- *Recognizing and being aware of one's biases and prejudices.* We all make assumptions and in this area of work, assumptions can be lifesaving. However, assumptions that are unexamined and unchallenged can lead to misinterpretation of facts or acting with arrogance thereby creating further distance between the survivor and the advocate or professional.
- *Listening to and building on the strengths of the survivor* no matter where they are from.
- *Recognizing the power advocates and professionals have over the lives of survivors* and avoiding the imposition of the values of the system or the intervenor.
- *Gathering information on the survivor's interpretation of her culture helps paint a more complete picture of her context:* it helps one understand the power structure of the community she has connections to as well as the level of support that she has within it.
- *Negotiating the acceptance of a different set of values, without imposing our own.* The long and continued history of oppression makes it imperative that we not impose our own values on others who do not share those values. However, there is also recognition that domestic and sexual violence is a worldwide phenomenon. How does one navigate between these two seemingly contradictory ends? We cannot accept that just because



certain behaviors are someone else's practice, we have no right to challenge those practices. Upholding the value that domestic and sexual violence is unacceptable is not about negotiation. Rather, the negotiation lies in *how* we challenge these practices, which makes the difference in when and how someone accepts a new value.

- ***Recognizing our own history and the interdependence and independence of people, lives, histories and contexts*** is essential to shaping the work to end domestic and sexual violence. Instead of looking at ourselves and each individual as existing in a vacuum, it is necessary to place each person within their own specific social, cultural, and historical context and how those contexts interact and have influenced our own. These relationships and inter-relationships have shaped and continue to shape the culture of violence that currently exists. Understanding them is critical to ending violence against women.
- ***Building cooperation and collaboration and reaching out diverse communities both individually and programmatically is essential.*** Community ownership of the issue is essential to promoting safety, accountability and building zero tolerance for sexual and domestic violence.



While developing individual competency is important to serving all survivors, it cannot be sustained for long if there is no organizational support and active engagement with the issue. All organizations have to:

- Critically examine their policies and protocols to check whether they are culturally appropriate and competent so that staff can truly be effective with the survivors and meet their needs.
- Training all staff is essential—staff time and support for such activities is a must. Additionally, organizations should collaborate with diverse agencies and communities to guarantee that the trainings offered are properly developed and respectful to the diverse cultures and backgrounds of the clients served.
- Develop the skills of all staff and not just staff assigned to work with particular populations.
- Ensure that the staff of the program represents the population served.
- Hire, train and ensure that there is space for staff growth and development.
- Provide an atmosphere within the organization that allows staff members to share their thoughts and questions regarding how to best serve diverse populations.
- Critically examine the culture of the organization, the values, the principles and discourses that sustain and organize the work in the agency. (The culture of an organization involves several factors. Some of these





may include but are not limited to the formal structure of the organization, organizational mission, funding sources, and clientele.)

- Develop strategies to understand, analyze and negotiate around challenging issues and practices.
- Create space for critical thinking around norms, values and practices.
- Develop outreach strategies to communities that are underserved through a planned and thoughtful process.
- Outreach is not the end goal but working close with underserved communities and collaborating through shared power is the best response and essential to creating a healthy environment for survivors within the communities.



FOR ALL UNDERSERVED COMMUNITIES:

There is recognition and acknowledgment of the long history of oppression, and the resulting serious institutional disparities with regard to access and treatment of survivors from underserved and marginalized communities. Therefore, it is a moral imperative that all organizations and agencies begin the process of reaching out and collaborating with underserved communities by:

- Examining which communities are in their jurisdiction, their history of service use, current and changing demographics—such as occupational, racial/ethnic groups, age distribution etc.
- Laying out a yearlong plan for reaching out to those communities that are unaware of the existence of providers—all staff have to be actively engaged in the process¹.
- Understanding the history that guides a particular community's perception of services (e.g. domestic violence shelters, police, children's services) and then creating a plan that will meet the needs of individuals from that community.

¹ The National Resource Center on Domestic Violence has a curriculum that helps programs develop an outreach plan.



- Critically assessing how the culture of the agency or organization hampers equal access because of policies and practices that set up an adversarial relationship. Enlist help if needed to aid the process.
- Remembering the difference between cooperation, coordination and collaboration:
 - Cooperation refers only to working together
 - Coordination accounts for power differentials
 - Collaboration refers to power sharing

True collaboration requires patience, commitment and a plan for sustainability. This involves all parties, especially underserved communities.

- Planning for and addressing internal conflicts deemed inevitable.
- Enjoying the rewards:
 - Earn the trust of marginalized and underserved communities.
 - Build collaborative relationships with communities to increase funding sources.
 - Provide services to a wider range of people that are affected by domestic and sexual violence.
 - Work towards a broader and more sustainable vision for ending domestic and sexual violence.



FOR IMMIGRANT COMMUNITIES:

Language and access to appropriate interpretation has to be addressed when attempting to increase accessibility to services and systems in immigrant communities. There is a difference between translation and interpretation although the two are often used interchangeably, they are not the same. Translation refers to written materials that are translated from one language to another; interpretation refers to oral rendition from one language to another where the interpreter goes back and forth between one or more individuals. Both require adequate knowledge of the languages being used as well as the contexts in which they are being used.

It is absolutely essential to have an interpreter when

- The client asks for one.
- If there is any doubt about your effectiveness in communicating.
- If you think it is better for the process if there is an interpreter since the client is better able to communicate in their language.



- If you feel that there are problems in being understood or understanding what the client is saying.

There are essentially three different types of interpreting:

- Simultaneous verbatim interpreting where the message is conveyed from the speaker to the listener as soon as the interpreter is able to make the transformation from the source language to the target. Tone, style and choice of words of the speaker has to be preserved.
- Consecutive verbatim interpreting is where the thoughts are relayed in sequential manner after the speaker finishes a particular thought sequence. Accurate rendering is a must since approximations, running narrations and summaries are not alright. In this method, there is a loss of spontaneity.
- Summary interpreting where the interpreter provides a summary of what is being said. The interpreter can paraphrase and condense what is being said. The interpreter can listen and then provided a much-condensed version. This method is dangerous since the interpreter can choose to omit what they do not want to share.

It is important to interview the prospective interpreter in order to assess their views and biases on a variety of topics. In the context of domestic violence, this is essential because of the possibility of collusion with the perpetrator. There are many websites that offer guidance on the kinds of questions that can enable us



to assess the potential biases that may interfere with an accurate rendition of the events. However, it is important not to expect or place the interpreter in the role of cultural advisor, informant, assistant, broker or confidant. It is not appropriate to ask their opinion on the matter being discussed. An interpreter should be trained on domestic and sexual violence and there should be clear protocols and policies on accountability if there is any evidence of collusion.

When working with an interpreter, it is essential that you remember:

- The communication is between you and the client.
- You should not be aware that the interpreter is even present, so arrange the seating in a way that allows you to talk to the client.
- Use simple, clear language with short sentences.
- Allow for pauses, which will enable the interpreter to interpret.
- Always speak to the client.
- Be patient.
- Do not use relatives or children to interpret.

While interpreters have clear responsibilities, it is yours to assess, review, implement and provide training on domestic and sexual violence so that there is equal access to services. Establishing



clear standards and guidelines can positively guide the interpretation process. However, there may be times when the circumstances do not allow you to find or have an interpreter. In these cases, the following can be helpful:

- Be polite.
- Pay attention.
- Avoid speaking loudly and using slang language.
- Be careful when pantomiming as certain actions, especially around physical violence, can trigger reactions.
- Use simple language.
- Give instructions in the sequence you want them to follow, e.g. look at the form, answer the questions, then take the form and so on.
- Avoid using negatives—“He has been stalking you, hasn’t he?” Replace with “Has John been stalking you?”
- Avoid asking leading questions; ask them to use their own words.
- Record things as they are said.
- Be patient.



THAT WORK WELL ON INTERPRETER ISSUES:

1) MLAM (Multi Lingual Access Model): The Asian Women's Shelter program in San Francisco's innovative program recruits and trains bi-lingual and bi-cultural volunteers from almost thirty different Asian communities. These trained interpreter advocates provide culturally appropriate advocacy and peer support to women in their own languages. The huge success of the program has led to its duplication in five other agencies in the San Francisco community. For further information, please call (415)-751-7110.

2) Natural Helpers: The Asian Pacific Islander (API) Safety Center in Seattle uses a similar model where members from the various API communities to provides interpretation and cultural brokering for victims of domestic and sexual violence. The members are trained on the issues before they provide peer advocacy and support. For more information, call (206) 467-9976.

3) Interpreter Collaborative: The Columbus Coalition Against Family Violence's flagship program recruits and trains volunteers from the various immigrant communities (Somali, Central and



South American countries, East European and Asian) in their catchment area. The trained interpreters provide services as requested. They do not provide cultural brokering. The Collaborative has a system of checks and balances as well as accountability procedures when interpreters do not provide adequate services. For more information, call (614)-722-5985.

Addressing culture is critical to furthering the work on domestic and sexual violence. It is challenging work and there are no simple answers.

All of us own culture as much as culture owns us – we can change things (history has many examples) and it is our responsibility to do so.



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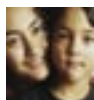
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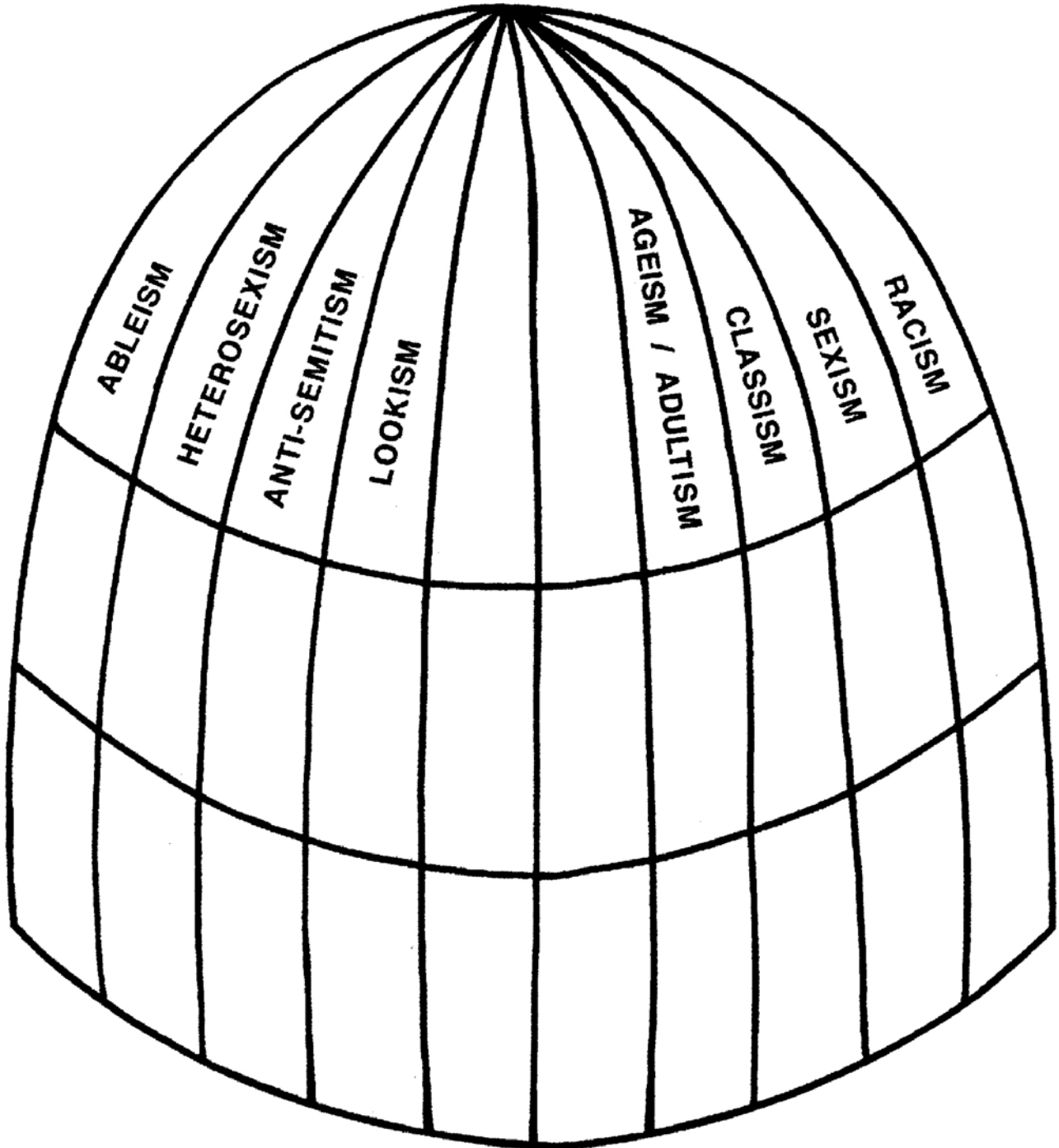
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NOTES



CAGE OF OPPRESSION



Immigrant and Refugee Rights Under Title VI of the Civil Right Act of 1964

Immigrants and refugees are entitled to certified interpreters in the criminal justice system. This provision was made possible through Title VI of the Civil Rights Act of 1964. Interpreters should be made available in all court proceedings and interactions with law enforcement.

Title VI of the Civil Rights Act of 1964 protects people from discrimination based on race, color or national origin in organizations, programs, or activities that receive federal financial assistance. Title VI states that:

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

All programs that receive federal funds are “covered” by Title VI and must adhere to its guidelines. Approximately 30 federal agencies provide financial assistance in the form of funds, training, technical and other assistance to State and local governments, and nonprofit and private organizations. These recipients of federal assistance, in turn, operate programs and deliver benefits and services to individuals (known as “beneficiaries”) to achieve the goals of the federal legislation that authorizes the programs. Federally assisted programs address such broad and diverse areas as:

- elementary, secondary, and higher education
- health care, social services, and public welfare
- public transportation
- parks and recreation
- natural resources and the environment
- employment and job training
- housing and community development
- law enforcement and the administration of justice
- agriculture and nutrition

There are many forms of illegal discrimination based on race, color, or national origin that can limit the opportunity of minorities to gain equal access to services and programs and are prohibited by Title VI. Among other things, in operating a federally assisted program, a recipient cannot, on the basis of race, color, or national origin, either directly or through contractual means:

- deny program services, aids, or benefits
- provide a different service, aid, or benefit, or provide them in a manner different than they are provided to others
- segregate or separately treat individuals in any matter related to the receipt of any service, aid, or benefit

In 2000, the President signed Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.” The Executive Order requires federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. Additionally, any states, localities and organizations receiving federal funding are required to provide meaningful access to LEP individuals. (A federal website has been developed to focus on the issue of meeting the needs of those with Limited English proficiency, see www.LEP.gov.)

Do you have problems at home?

Read about your rights in this country.



Surviving Domestic Abuse in the USA
1-800-799-SAFE (7233)

Women have rights in the USA.

There is help available!

This booklet explains how you and your children can get help to survive the abuse at home. See the following information:

1. What is domestic abuse _____ Page 1-4
2. Immigration law and your rights as a survivor _____ Page 5-8
3. Family law and your rights about protection orders _____ Page 9-11
4. Welfare benefits _____ Page 12

Inform Yourself!

If you are being abused in your home by your intimate partner, you have the right to receive the following services, regardless of your immigration status:

1. Emergency shelter services and programs that provide protection to survivors of domestic violence and their children.
2. An order from the Court to protect you and your children from your abusive partner.
3. A court can grant you custody of your children and child support.
4. A divorce decree even if your husband does not agree.
5. Police assistance.
6. Emergency medical care.
7. Public benefits for your U.S. citizen children.
8. The possibility to obtain immigration status without the assistance of your partner in a confidential manner.

If you are an advocate or immigration specialist and you would like detailed information about topics discussed in this flyer please go to <http://www.legalmomentum.org> or call (202) 326-0040.

1. Physically abusing your wife or intimate partner is a crime in this country.

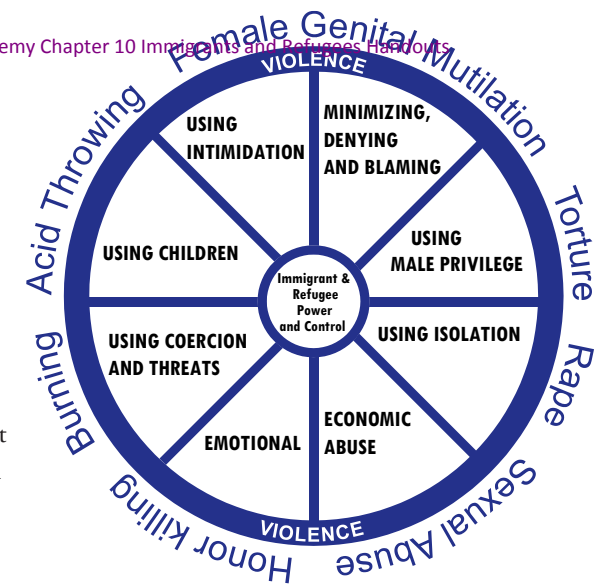


Domestic Violence

The Women of Color Network Leadership Academy Chapter 10 Immigrants and Refugees Harbors

What is domestic violence?

- Domestic Violence is a pattern of abusive behaviors aimed at manipulating and controlling the victim.
- These behaviors may include physical and sexual assaults but also verbal or emotional abuse.
- The victim may feel frightened, that she has no control over her life, and may blame herself for the abuse.



What causes domestic violence

- Many abusive partners do not accept responsibility for their abusive behaviors. Often times, they excuse their actions by blaming stress, abuse of alcohol, loss of control, or the behavior of the victim.
- Victims of domestic violence stay everyday in abusive relationships among other things, because of love, fear for their lives, fear of deportation, worry about their children, lack of financial stability and lack of support.

Abusers may use the following tactics to control their victims:

INTIMIDATION: Terrorizing the victim with actions or gestures. Yelling or threatening.

ISOLATION: Controlling who the victim goes out with, where, when, and why. Not allowing her to learn English, drive, get a job. Not allowing her to call her family in her home country or limiting her contact with the outside world.

EMOTIONAL ABUSE: Making her feel bad about her body, her intelligence, or the way she looks. Making her believe that she is not worth anything and that the abuse is because of her behavior and actions.

THREATS: Threatening to call the police or immigration if she doesn't do what he wants. Inventing crimes and deceiving her into believing that she is going to go to jail. Threatening to take the children away, divorcing her or not filing immigration papers or withdrawing the case if he has already filed.

ACTING LIKE A TYRANT: Treating her like a servant; making all the important decisions, making her do things she does not want to do.

ECONOMIC ABUSE: Not letting her work; making her work unlawfully; giving her an allowance to buy food without giving her access to more money or bank accounts, taking her paycheck and not giving her any or limited money.

SEXUAL ABUSE: Forcing her to have sex against her will; treating her like a sex object, forcing her to do things that make her feel dirty or ashamed.

USING THE CHILDREN: Making her feel guilty and responsible for everything that happens to the children. Insulting her or humiliating her in front of the children. Taking away her authority as a parent and pitting the children against her. Threatening to report her children to immigration. Threatening to have her deported and she will never see her children again.

Domestic violence affects your children

One of the major concerns for us as parents is to make sure that our children experience a childhood of happiness. Children who witness the abuse endured by their mother are often traumatized.

The following are some of the consequences that witnessing domestic violence has for children:

- Low self-esteem, a belief that nobody loves them and being afraid of being left alone.
- Impulsive and violent behaviors such as hitting, biting, pushing, insulting other people, and breaking toys.
- Behaving as if he or she is an adult, trying to solve the family's problems, and trying to tell you what to do so you do not have anymore problems with your partner.
- Low grades in school, having nightmares, depression, feeling ashamed, anxiety, eating disorders, insomnia induced trauma.
- The child uses unhealthy methods to escape family problems such as using drugs, alcohol, and running away from home. Attempting to commit suicide, joining a gang, or exhibiting criminal behaviors in general

There is help available for your child. Ask the advocate at the nearest shelter or domestic abuse program about obtaining professional counseling. There are special children advocates and counselors that will work with your child regardless of immigration status.

Safety planning for immigrant women

The Women of Color Network Leadership Academy Chapter 10 Immigrants and Refugees Handouts

Your safety is the most important thing!

All the laws and social programs for survivors of domestic abuse have one goal in common: that you are safe in your own home. You are the key to ensure the success of this goal. Be proactive, think ahead! Here are some tips that may help you in the future:

- Plan how to escape your house in the event that the physical violence escalates.
- Memorize emergency numbers such as 911, and teach your children how to dial 911. Make a safety plan with them so that they know how to act in the event the violence escalates.
- Talk about what is happening with people you trust and talk about how they can help you when you need it.
- Prepare a bag with some money, copies of the house and car keys, important papers including originals or copies of your immigration papers, passports, birth certificates and other documents from your country of origin, medicines that you or your children need etc. Leave the bag at a family member or friend's home, the church or another place you feel is safe in case of emergency. It will be easier and safer to leave the home in case of an emergency without worrying about collecting things you need to take with you.
- Contact a domestic violence advocate. She will be able to help you design a safety plan that best fits your situation. Anything you say to the advocate is strictly confidential. For a chart on safety planning see page 13.

If you would like more information about local services and how to contact a local advocate, call the free national emergency line at 1-800-799-SAFE (7233). Your call will be strictly confidential.

Myths and Realities

MYTH #1

Domestic violence is a private family business.

Reality:

Domestic violence is a crime. You deserve the same protection, help, and services that any victim of physical or sexual assault, receives in this country.

MYTH #2

Women are responsible for the abuse they suffer because they provoke it.

Reality:

Domestic violence is a pattern of behaviors that abusers use to impose their will and control

their victims. YOU are not responsible for your abusers' behavior and you DO NOT deserve to be abused by anyone.

MYTH #3

Domestic violence is a consequence of alcohol or drug abuse.

Reality:

Many abusers don't abuse alcohol or drugs, likewise, many individuals who do abuse alcohol or drugs are not abusers. In general, abusers use alcohol or drugs as an excuse for their violence instead of assuming the responsibility for their actions.

MYTH #4

If I leave my abuser he will get custody of my

children because I do not have immigration papers.

Reality:

In general, the judge is interested in protecting the children and looking after their best interests. The court will consider whether any of the parents is abusive towards the other parent or the children and view this as a negative factor against the abusive parent in the custody case.

MYTH #5

If I don't have immigration papers, I don't have the right to receive social or legal services.

Reality:

All immigrant victims of domestic violence, regardless of their immigration status, have the

right to emergency shelter services and services from legal and social services agencies who work with survivors of domestic violence.

MYTH #6

If I call the police they will deport me because I am undocumented.

Reality:

The police have the obligation to protect victims independently of their immigration status. If you do not call or talk to the police, they will not be able to intervene and help you. The police can inform the abuser that in this country you have rights, and that he cannot commit crimes against you (or hurt you) without being punished by the law.

Protection Under Immigration Law

Legal remedies for immigrant women and children survivors of domestic violence

The Violence Against Women Act (also known as VAWA) contains special immigration provisions that protect abused immigrant women and their children. The following are the forms in which VAWA may protect you and your children:

1. Waiver application to change from conditional resident status to permanent resident status without your abusive spouse's help and without waiting two years.
2. Self-Petition as a battered spouse or child of a United States citizen or lawful permanent resident
3. Self-Petition as the abused parent of a United States citizen or lawful permanent resident child over 21 years of age
4. U visa for immigrant survivors of certain crimes of violence
5. Work permit for women and children who came to the United States on their husband or parent's non immigrant work visa such as A, E, G, and H.
6. Cancellation of removal under VAWA if you are in deportation proceedings
7. The opportunity to re-open your prior order of deportation case if you qualify for a remedy under VAWA.
8. Asylum based on gender.

1. Protections for immigrant women and children with conditional legal permanent resident status:

- If your Legal Permanent Resident Card has "CRI" on it, this means that you are a "conditional" Legal Permanent Resident. You probably have an expiration date on said card of less than 2 years from the date it was issued.
- The law says that 90 days before the anniversary of your interview for legal permanent residency, your husband and you should jointly send certain forms so you can become a legal permanent resident without conditions.
- If you were abused during your marriage, and you are a conditional resident, you may be able to apply for a waiver, allowing you to file for legal permanent residency without the

assistance of your spouse. You do not have to wait until the two years after obtaining your conditional residency. As soon as you know your spouse will not be helping you to finish the immigration process and he is being abusive, you are eligible to file. You could also include your children in your application for a waiver.

2. Self-Petitioning under VAWA:

This remedy protects immigrant survivors of domestic violence, allowing them to obtain the lawful permanent residency in the United States without the assistance of their abusive spouse or parent as the sponsor.

Who can self-petition under VAWA?

There are five requirements that the immigrant survivor must prove; see the summary below and remember some exceptions may apply:

1. **Marriage to a United States Citizen or a Lawful Permanent Resident:**
 - a. You have to prove that you are married or have been married within the past two years to a United States citizen or United States lawful permanent resident;
 - i. If your US Citizen spouse died within the past two years, you are still eligible.
 - ii. If your spouse lost his status within the past two years due to an incident of domestic violence you still qualify.
 - b. Children under 21 years of age can self petition on their own if their abusive parent (biological, adoptive or step) is or was during the past two years a United States citizen or lawful permanent resident.
 - c. If your children are over 21 years but less than 25 years of age they could qualify if they can show a connection between not having sent the petition on time and the abuse they suffered.
2. **You were married in good faith:**
 - a. You will need to prove that you did not have the intent to commit fraud by entering into the marriage only to obtain immigration status.
 - b. If the abuser has committed bigamy (being married to more than two women at the same time) you could qualify if you married in good faith.
3. **You resided together:**
 - a. Mail sent to you, your partner or both of you, statements, bills, letters from the landlord or neighbors that knew of you residing with your abuser may be enough.
4. **You have suffered physical or sexual abuse or extreme mental cruelty:** (verbal, psychological or emotional abuse).
5. **You are a person of good moral character:**
 - a. If you or your children committed a crime that is connected or has been the result of being a victim of domestic violence you can still qualify, but you should consult an attorney before filing anything.

To qualify for these protections you do not have to live in the United States. If you or your children are living outside of the United States, you can still qualify but will probably need the services of an immigration expert.



3. Protections for abused parents under VAWA:

If your child is older than 21 years of age, he/she is a United States citizen and you have been abused (battered or subjected to extreme cruelty) by your adult child, you could qualify for special protection under VAWA as a parent who has been abused by your US citizen adult children.

4. The U-Visa for survivors of certain crimes of violence:

If you don't qualify for self-petitioning under VAWA but you have been the victim of a specific crime of violence such as domestic violence, rape, sexual assault, trafficking, kidnapping, or other violent crime by a stranger or your partner, boyfriend/girlfriend, spouse, co-worker, employer, or anyone else, you could qualify for other immigration remedies like the U-Visa.

Who qualifies for a U-Visa?

In order to qualify for a U-Visa you have to prove the following:

1. You have been the victim of a specific crime of violence and you have suffered substantial physical or mental abuse as a result of such crime.
2. You have information about the crime.
3. The criminal activity occurred in the United States or violates United States laws.
4. You have been, are being, or will be helpful in the investigation or prosecution of the criminal activity. A government official certifies that you were helpful, are helpful or are likely to be helpful to a Federal, State, or local law enforcement official, prosecutor, judge, immigration official or other government authority investigating or prosecuting criminal activity.
5. The immigration status of your aggressor is not relevant to your qualifying for this remedy. You can include your spouse and children who can receive legal immigration status by being included in your application.

5. Special immigration protections for women and children dependent on their abuser's non-immigrant work visa:

Under VAWA 2005, you can obtain employment authorization if you have a non-immigrant visa that depends upon your abuser's non-immigrant visa that he obtained related to his work.

If your abuser has any of the following non immigrant visas: Visa A (Diplomatic), E(iii) Treaty Trader, G (employees of a foreign government), or H (business visa of multiple categories) and during your marriage you have been abused by your spouse, you could qualify for employment authorization.

This provision does not create complete independence from the abuser's principal immigration visa but it can help you to qualify for a work permit so you and your children are more financially independent. This may lead to your finding work through which you could obtain your own immigration visa or this can be the first step before you apply for a U visa.

If your abuser loses the immigration status, divorces you, or revokes his visa you will no longer qualify for the employment authorization. Please read the U-Visa section to see if you could qualify for an additional remedy.

6. Special note for immigrant women and children who are currently in deportation proceedings or have been previously deported:

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If you are detained by immigration and you have been a victim of domestic violence you could qualify for Cancellation of Removal under VAWA or for the U-Visa even if you are in detention. You should tell the immigration official that you have been a victim of domestic violence. See appendix for information card.

Also, if you fear for your life in the event of being deported to your country of origin because you were persecuted, tortured, raped, the victim of female genital mutilation or abused due to being a woman or because of your beliefs regarding women's rights etc., you should communicate this immediately to the immigration official or judge and request gender asylum.

You can ask to speak to an attorney immediately or to an immigration judge.

Remember, you do not have any obligation to sign any paper and you should not sign anything without the advice of your attorney. If you sign any papers without consulting with your attorney, you could be signing papers that could negatively impact your chance of staying in this country lawfully.

Finally, if you have been deported at the border or in the United States, or have been convicted of certain crimes, it is very important that you consult with an attorney or domestic violence advocate who is an expert in immigration concerning your immigration options before filing any of these remedies.

7. Protection for immigrant women that suffer persecution for being women in their home countries:

There are immigration laws that protect people when:

- they have suffered persecution in their home country due to political or religious beliefs, or for being part of a special social group;
- the government was part of the persecution and could not protect the person and;
- there is a provable risk that those people were killed or tortured if they return.

If you have suffered rape, genital mutilation, etc. in your home country or have been persecuted and tortured due to your beliefs regarding women's rights and fear of being tortured or killed if you return, you might be able to ask for asylum in this country.

These cases are very difficult to prove and you should contact an immigration attorney before sending any application for asylum.

Questions and answers about civil protection orders

“What is a civil protection order?”

It is a process in which the victim of the domestic violence that has been physically abused, threatened with physical harm or has the fear of being assaulted asks a judge to order her aggressor to stop the abuse.

“What is going to happen if I request a protection order?”

- In most states, the judge reviews your petition for protection and if he/she decides there is a possibility that you were assaulted, the judge will give you a temporary protection and schedule a hearing to decide whether the protection should be permanent.
- During the hearing for permanent protection, you and your abuser will be present. You will have an opportunity to prove to the Court that your partner assaulted you in the past and that you need protection from your partner in the future.
- Your abuser will also have an opportunity to defend himself against your allegations
- Often, the assaults occur in the

intimacy of the home. You will be able to tell the judge what happened. If you have wounds, bruises, torn clothes, things that he broke, people that saw or heard you screaming etc., you can present this to the judge so that your testimony is more credible.

- State laws allow judges to give you many kinds of remedies in your protection order including: removing the abuser from the home you share, custody of your children, money for child support and repairs for things the abuser broke. The abuser will usually receive visitation rights. Ask the judge for all the things you need to survive the abuse. Do not forget to take the opportunity to ask that the judge order your partner to return your immigration documents, passport, birth certificate, and other important papers and possessions.

“If I don’t speak English very well, who can help me?”

There are domestic violence advocates who work in family violence centers that can assist you with the entire process. Some domestic violence programs have bilingual staff or access to interpreters. You should also request an interpreter from the Judge that can interpret for you during the hearing.

“Would the judge call immigration or deport me if I ask for protection?”

No. The judge that will preside over the protection order hearing is not an immigration judge. Also, this judge should not alert the immigration authorities because his role is to make sure that you and your children are safe and protected.

“He has all my immigration papers, what is going to happen with my immigration case?”

Don’t forget to include in the order for protection that the abuser must do the following:

1. Continue with your immigration case
2. NOT contact immigration enforcement
3. Pay any future additional fees that you must pay for your immigration application.
4. Sign a document called the Freedom of Information Act (FOIA), to allow you to see where his and your immigration case is and what is in the file.
5. Give you your immigration documents, copies of his passport or green card, and turn over to you copies or originals of documents and evidence that you may need to prove your immigration case if you are planning on filing a self petition under VAWA.

“He threatens me with returning to his country with my children if I ask for help”

Please make sure to express this fear to the judge. It is possible to include provisions in the protection order to prevent international parental kidnapping. These can include giving you the children’s passports, posting a money bond and the judge signing an order telling the embassy of his country not to issue visas or passports to your children. If you are afraid that the risk is imminent, ask the judge to order that child visitations be supervised.

“If I change my mind or want to live with him, can I return to live with him and still have my order protect me?”

Yes. You can receive a protection order even when you continue living together. That order will tell your abuser not to hurt, harm, abuse or threaten you in the future. If you are living apart when you receive the protection order and you change your mind or want to live with your partner you can and the provisions that tell him not to hurt, threaten or abuse you are still valid. However, you can request that the judge modify the order to better respond to your current needs. In most of the States, the protection order lasts 1 to 3 years.



Protection Under Family Laws

In the United States, you have a right to:

- Ask the court for help with or without an attorney, regardless of your immigration status.
- File for divorce without the agreement of your abuser and request the division of the marital property.
- Petition for an order of protection with or without a provision stating that he stay away from you. You can obtain a protection order although you plan to stay with your abuser.
- Petition for child and spousal support, even if you or your partner do not have immigration status.
- Leave your house in case of danger without losing your rights to your children or property.

Specific advantages of a civil protection order

Among others, the order can protect you in the following ways:

- Forbidding the respondent from assaulting, harassing, and threatening you as well as forbidding him from going near you, your children, or your place of employment or place or religious worship in the future.
- Ordering the abuser (respondent) to turn in all his weapons (firearms or arms) to law enforcement.
- The respondent return all your personal property in his possession and any other items included on the list the judge ordered be given to you.
- Order the respondent:
 - not to contact immigration
 - to continue your immigration case
 - to surrender the documents necessary for the victim to self-petition under VAWA, such as his social security number, birth certificate, alien number or A number, electricity and water bills with his name, documents that prove joint residence, birth certificates of the children, baptism certificates, and marriage certificate etc.
- Request in the order of protection that the respondent have supervised visitation if there is risk of international kidnapping, and also that the respondent give back pertinent documentation such as children's passports.

- Request in the order of protection that the respondent pay child support. You can also request spousal support that lasts until you can work legally.

Remember: after you receive the order you should work with an advocate to develop a safety plan for what steps you will take to enforce the order so that the order is not just a piece of paper. Don't forget to contact an advocate and to call 911 if he violates the protection order.

Public assistance for all immigrants

Regardless of your immigration status and because you are a victim/survivor of domestic violence you and your children qualify for the following public assistance:

- Domestic Violence prevention and intervention services including counseling and the right to go to a shelter
- Short-term housing services such as emergency shelter and transitional housing for minors, survivors of Domestic Violence, and the homeless.
- Any other type of help in order to guard your life or your personal safety
- Other necessary medical services in order to safeguard life and personal safety such as emergency services, mental health services, drug abuse services, and disability services etc.
- Community Food pantries, public kitchens, nutrition programs for seniors, and services for people with special needs
- Once you send your Self-Petition, while your case is being decided, if everything is in order, you will receive a notification from immigration establishing the "prima facie" status of your case. With this notification you will be able to apply for public benefits. You can receive public and assisted housing and educational benefits immediately. Depending on the state where you live and whether you have been in the U.S. since August 1996, you may be able to obtain other public benefits as well.

For more information, please call the nearest shelter or family violence center. To obtain the phone number of your local shelter of family violence center please call the free national emergency hotline at 1-800-799-SAFE (1-800-799-7233)



Survival & Safety Goals

This table should only be a point of reference and it should be modified according to your needs. Think ahead! You know better than anyone how to be safe. Think of all the possible situations you may encounter and plan accordingly.

PLACES	ACTION PLAN	IMPORTANT NUMBER OR NAMES
HOME	Avoid closed places where you can't escape. Avoid the kitchen where there are potential weapons such as knives. Other:	Talk to a neighbor you trust and come up with a signal like a candle in the window or a certain light turned on in the house that tells her she needs to call the police. Teach your children to dial 911 and to hide in a secure place if there is violence.
WORK		
SCHOOL		
FAMILY		
STREET		
IN GENERAL		

Protection Card for Immigrant Survivors of Crimes of Violence

The Women of Color Network Leadership Academy Chapter 10 Immigrants and Refugees Handouts

I have been abused by my partner. I do not wish to talk to you without calling an immigration lawyer. Please do not ask me any questions nor to sign any papers without my attorney being present.

Yo soy una víctima de los malos tratos. No deseo hablar con usted sin un abogado. Por favor no me hagan preguntas ni me pidan que firme papeles hasta que mi abogado esté presente.

Telephone: 1-800-799-7233





Created by ASISTA, a program of the Iowa Coalition Against Domestic Violence and The Immigrant Women Project of Legal Momentum

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IMMIGRANTS' ACCESS TO PROGRAMS AND SERVICES NECESSARY TO PROTECT LIFE AND SAFETY AND POST ASSAULT HEALTH CARE¹

General

U.S. based domestic violence and homeless shelters, rape crises centers, crime victim services, transitional housing programs, food banks, emergency health care and other programs and facilities are designed to serve women and children of every class, race, ethnicity, religion and national origin and, as such, they will not deny access to help, support, protection and safety to victims of domestic violence, sexual assault, child abuse, elder abuse or human trafficking regardless of immigration status. Federal legislation, regulations, policy directives, and executive orders uniformly recognize and affirm the right of *any* person in the country to have protection from domestic violence, sexual assault, human trafficking and/or crime victimization and provide all persons with access to services necessary to protect their life and safety. Additionally, the Department of Homeland Security strongly encourages that enforcement officers use prosecutorial discretion when determining whether to pursue an enforcement action for violation of civil immigration laws against crime victims and advises that enforcement actions should not take place at sensitive locations such as domestic violence shelters, rape crisis centers, family justice centers, community based organizations, courthouses, visitation centers, schools, funerals, and religious institutions.

Basis for Access Under Federal Law

PRWORA

Under the Personal Responsibility and Work Opportunities Act of 1996 (PRWORA), if a publicly funded program or service is necessary for the protection of life and safety, it is exempt from restrictions on immigrant access to federal, state and local public benefits. These programs include but are not limited to police, fire, emergency medical technician and ambulatory services, emergency Medicaid, emergency shelter, transitional housing, soup kitchens, disaster relief, access to the courts and victim services. Under the supremacy clause of the United States Constitution, after the passage of PRWORA, federal preemption laws do not permit states to regulate in the field of public benefits provided to immigrants without obtaining affirmative federal authority to do so.

The PRWORA gives the U.S. Attorney General the authority to exempt certain programs from any restrictions on immigrant access to services and benefits, regardless of whether the programs offering these services are state, locally, privately or federally funded. On January 16, 2001, the U.S. Attorney General issued final regulations specifying what community programs were necessary for the protection of life and safety under PRWORA. The Attorney General's final regulations deem the following non-exhaustive list of programs that are as a matter of federal law required as a matter of federal law to be open to all persons without regard to immigration status because they are necessary to protect the life and safety of all community members, including immigrants. Programs open to all persons including immigrants:

- Are community-based,
- Offer in-kind² services,
- Offer services to all persons without regard to the applicant's economic means; and
- Provide services or assistance that is necessary for the protection of life and safety.

¹ Collaboratively developed by RAKSHA, Pennsylvania Immigrant & Refugee Women's Network (PAIRWIN), Vida Legal Assistance, and Legal Momentum.

² "In-kind" services are those that involve the provision of goods or services, not cash payments, to persons. These services could include food, clothing, shelter, legal assistance, counseling, protection orders and victim services.

Programs deemed under federal law to be necessary to protect life and safety include and are not limited to the following types of programs:

- ***Crisis counseling and intervention programs.*** Includes domestic violence, rape crisis, mental health counseling and treatment for domestic abuse and sexual assault survivors and child and elder abuse survivors.
- ***Services and assistance relating to child protection.*** Includes services to child abuse, incest and sexual assault victims.
- ***Adult protective services.*** Includes services to elder abuse victims, elder victims of human trafficking, and elder victims of crime. Elder abuse victims include victims of physical, sexual, and psychological abuse, neglect, abandonment, financial exploitation by another person or entity, and/or stalking.
- ***Violence and abuse prevention.*** Includes domestic violence, sexual assault, child abuse, incest, elder abuse, trafficking and crime victim related outreach, education and prevention activities.
- ***Services to victims of domestic violence or other criminal activity.*** Includes the full range of services, assistance and treatment for victims of domestic violence, sexual assault, incest, child and elder abuse, trafficking and crime victim services. This includes full access to protections offered by state and federal courts in civil, criminal, family and protection order matters.
- ***Treatment of mental illness or substance abuse.*** Immigrant victims of domestic violence, sexual assault, incest, trafficking and family violence can access mental health treatment programs that are necessary to protect life and safety.
- ***Programs to help individuals during periods of adverse weather conditions.*** Earthquakes, tornados, hurricanes, floods, wildfires, heat, dam failures, landslides, nuclear power plant emergencies, thunderstorms, tsunamis, volcanoes, and winter storms.
- ***Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children.*** U.S. Department of Housing and Urban Development defines short term shelter or housing assistance to include emergency shelter and transitional housing of up to two years duration. Victims of sexual assault may qualify for emergency shelter and transitional housing as child abuse, elder abuse or domestic violence victims or because they are homeless.
- ***Soup kitchens and community food banks.*** Soup kitchens are defined as established feeding operations that provide food for the needy homeless. Food banks are public or charitable institutions that provide food or edible commodities to food pantries, soup kitchens, hunger relief centers, or other food center that provide food to needy persons.³
- ***Senior nutrition programs and other nutritional programs for persons requiring special assistance.*** Examples include the Women Infants Children Program, public education and school meals program, summer meals and medial assistance for people with AIDS.
- ***Medical and public health services and mental health disability or substance abuse assistance necessary to protect life and safety.*** This provision assures access to Emergency Medicaid and other services for the treatment and prevention of diseases and injuries.⁴

³ 7 U.S.C. § 7501.

⁴ In addition to the benefits guaranteed by PRWORA, immigrant victims are guaranteed a range of health services under federal and state law regardless of immigration status. Further information about these medical and public health services, some of which are discussed later in the article, can be obtained in the Breaking Barriers Manual. ORLOFF, LESLYE & AMANDA BARON, *Access to Health Care for Immigrant Victims of Sexual Assault*, in BREAKING BARRIERS ch. 17.

- ***Activities designed to protect the life and safety of workers, children and youths or community residents.*** Includes police, fire department, emergency medical personnel, and access to courts and to federal and state agencies responsible for enforcing labor laws. In the health care context, services include immunizations for children and adolescents, AIDS and HIV services and treatment, tuberculosis services and treatment for sexually transmitted diseases.

EMTALA

The Emergency Medical Treatment and Active Labor Act (EMTALA)⁵ is also often referred to as the federal “antidumping” statute. This law protects persons without health insurance from being denied life-saving medical treatment. EMTALA applies to any hospital with an emergency room participating in Medicare. It requires that any time a person comes to the emergency room for help, the hospital makes a determination of whether that person has an emergency medical condition or is in active labor. If so, the hospital must provide treatment sufficient to stabilize the condition. In addition, the law requires that patients whose emergency medical condition has stabilized not be transferred without the written certification of the physician on duty that the medical benefits of transfer outweigh the increased health risks to the individual due to lack of availability of medical treatment. These protections can be very important for victims of sexual assault and domestic violence who have low-income, lack health insurance, or are immigrants who do not otherwise qualify for Medicaid-funded health care. EMTALA also provides for penalties including loss of the right to participate in Medicare, and fines up to \$50,000, against hospitals and doctors who do not comply with EMTALA’s requirements.

COMMUNITY HEALTH CENTERS

Pursuant to the Omnibus Budget Reconciliation Act of 1990 the federal government provides grants to Federally Qualified Health Centers⁶ (FQHCs), otherwise known as Community Health Centers. Community health centers and migrant health centers fill the gap for many sexual assault and domestic violence victims who cannot otherwise access health care services. Community health centers are local, non-profit, community-owned health care providers serving low income and medically underserved communities. The national network of health centers provides high-quality, affordable primary care and preventive services, and often provide on-site dental, pharmaceutical, mental health, and substance abuse services. More importantly, the FQHCs improve access to care for millions of persons living in the United States regardless of their insurance status, immigration status or ability to pay. It is through community health centers that victims who do not qualify for Medicaid can receive health care.

Health Centers who receive FQHC grants must provide basic health services and services that help ensure access to basic health and social services. Such services include:

- ***Primary care;***
- ***Diagnostic, laboratory, and radiological services;***
- ***Prenatal care;***
- ***Post-assault health care;***

⁵ 42 U.S.C. §1395dd (2007).

⁶ Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508 § 4161 (1990). For more information on FQHCs, see Claudia Schlosberg, *Immigrant Access to Health Benefits: A Resource Manual* 19-20 (Doreena Wong ed., The Access Project and National Health Law Program 2002).

- *Cancer and other disease screening;*
- *Well child services;*
- *Immunizations against vaccine-preventable diseases;*
- *Screening for elevated blood lead levels, communicable diseases and cholesterol;*
- *Eye, ear and dental screenings for children;*
- *Family planning services;*
- *Preventive dental services;*
- *Emergency medical and dental services; and*
- *Pharmaceutical services.*

FAIR HOUSING ACT

Domestic violence shelters and homeless are covered by the Fair Housing Act, which prohibits discrimination on the basis of race, national origin, color, religion, sex, familial status or disability. Discrimination in access to shelter services or other failures to comply with the Fair Housing Act could put a shelter at risk of becoming subject to lawsuits or government enforcement actions. To protect against this, it is advisable that shelters develop protocols for screening potential residents that are not based on any discriminatory factors prohibited under the Act such as race, national origin, language capabilities or immigration status.

MCKINNEY HOMELESS ACT

In the eyes of the law, domestic violence shelters are considered homeless shelters because they assist battered women who would otherwise be homeless. Some domestic violence programs receive McKinney Homeless Act funds as programs which facilitate movement of homeless individuals and families to more permanent housing within two years. This Act places no alienage restrictions on who can access emergency shelter and short-term transitional housing facilities, nor does it require operators to inquire into the immigration status of its residents.

LEGAL SERVICES

LSC funded programs are allowed to provide legal counsel to undocumented immigrants if they have been battered or subjected to extreme cruelty by a spouse or parent, or a family member of their spouse or parent living in the same household.⁷ The Violence Against Women Act (VAWA) expanded the scope of services that Legal Services Corporation (LSC) grantees can provide to victims of domestic violence, sexual assault, trafficking and certain other crimes, regardless of their immigration status. First, grantees are now permitted to use both LSC and non-LSC funds to provide services to an undocumented immigrant that are "directly related" to the prevention of, or obtaining relief from, the battery or cruelty, sexual assault or trafficking, or the crimes such as those listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act or whose.⁸ Previously, such legal assistance by grantees was allowed only if supported wholly with non-LSC funds. Second, recipients are permitted to provide "related legal

⁷ Leslye E. Orloff et al., *Opening a Door to Help Legal Services Programs*, 37 J.L. POVERTY & POL'Y, 36, 36-45 (May-June 2003).

⁸ 8 USC 1101(a)(15)(U)(iii).

assistance" to otherwise ineligible immigrants who are victims of domestic abuse even if they are not married to (or the child of) their abusers. Previously, such assistance was allowed only if the domestic abuse was perpetrated by the spouse (or parent) of the victim. Third, grantees may provide related legal assistance, supported with LSC funds, to immigrant victims in addition to those who have been battered or subject to extreme cruelty.⁹ This includes victims of sexual assault or trafficking, immigrants who qualify for a U-visa or T-visa, and any immigrant whose child has been battered or subjected to extreme cruelty, sexual assault, or trafficking.

Federal Preemption of State Laws

The United States Constitution's supremacy clause requires that federal legislation in the field of public benefits preempt any state legislation that restricts access to these benefits provided under federal law. PRWORA fully controls and occupies the field determining as a matter of federal law what publically funded benefits and services are to be open to immigrants. PRWORA requires that programs necessary to protect life and safety be open to all persons without regard to immigration status. Laws passed by state and local governments, whatever their terms, do not have the legal effect of denying non-citizens access to federal public benefits and to access the federally guaranteed programs necessary to protect life and safety and the federally guaranteed access to health care, housing and legal services discussed above.¹⁰ Federal law only provides one area in which states are authorized to enact state laws limiting immigrant access and discriminating among immigrants with regard to "programs of general cash public assistance."¹¹ Congress does not provide state and local governments with the authority to limit state and local government non-cash benefits.

DHS Prosecutorial Discretion and Enforcement Recommendations

Through a series of memos,¹² the Department of Homeland Security has strongly indicated that undocumented immigrants should continue to have access to federally guaranteed life saving programs and should be encouraged to report crimes and assist law enforcement in the detection, investigation and prosecution of criminal activity perpetrated against them. Law enforcement officials are strongly discouraged from pursuing immigration enforcement against immigrant crime victims and witnesses and from undertaking enforcement actions at sensitive locations (schools, religious institutions, funerals) and must comply with federal Violence Against Women Act confidentiality laws that prohibit enforcement actions at domestic violence shelters, rape crisis centers, victim services, community based organizations, courthouses, family justice centers and visitation centers. If immigration enforcement officials rely on perpetrator provided information to initiate or pursue enforcement actions against crime victims the immigration case can be dismissed by DHS or an immigration judge. Additionally, DHS has indicated that enforcement officers should take special care to exercise prosecutorial discretion when deciding whether to pursue actions against pregnant or nursing women, minors and elderly individuals, victims of domestic violence, trafficking, or other serious crimes, individuals who suffer from a serious mental or physical disability, and individuals with serious health conditions. DHS maintains that absent special circumstances, enforcement actions should not be taken against victims or witnesses to a crime.

Non-Profit Charitable Organizations

⁹ Letter from Helaine M. Barnett, President, Legal Services Corporation, to all Legal Services Corporation Program Directors (Feb. 21, 2006), available at <http://iwp.legalmomentum.org/cultural-competency/access-to-legal-services>.

¹⁰ See *League of United Latin American Citizens v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997).

¹¹ 8 U.S.C. § 1101(a)(3)

¹² John Morton, Director, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011); John Morton, Director, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011); John Morton, Assistant Secretary, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions (August 20, 2010); John Morton, Director, Civil Immigration Enforcement Priorities for the Apprehension, Detention, and Removal of Aliens (March 2, 2011); U.S. Citizenship and Immigration Services, Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator's Field Manual (AFM) New Chapter 10.3(j): AFM Update AD 11-16 (February 4, 2011); Memorandum from Peter S. Vincent, Principal Legal Advisor, Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (Sept. 25, 2009); Memorandum from Julie L. Myers, Assistant Secretary of ICE, Prosecutorial and Custody Discretion (Nov. 7, 2007); Memorandum from William I. Howard, Principal Legal Advisor, VA WA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367 (Feb. 1, 2007); Director John P. Torres and Director Marcy M. Forman, Interim Guidance Related to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007).

Victim assistance and victim services programs are required, as a matter of law, to offer their services equally to all victims, without regard to the victim's immigration status. Non-profit charitable organizations are specifically exempted from Department of Homeland Security verification and reporting requirements. Congress explicitly confirmed that nonprofit charitable organizations have no legal obligation to inquire about or report the immigration status of persons who seek their services.

What Does This Mean? The Risk of Prosecution for Discrimination and Loss of Federal Funding

All programs that provide services necessary to protect life and safety, HHS funded health programs that federal law requires be open to all persons, legal services for victims, and housing programs for the homeless or subject to fair housing laws must serve all persons regardless of immigration status. State laws cutting immigrants off from programs and services guaranteed under federal law are constitutionally preempted. Although some undocumented immigrants will remain ineligible for certain federal benefits and state cash benefits programs, agencies that deny federally guaranteed programs and services to immigrants risk being in violation of Title VI for national origin discrimination. Title VI of the Civil Rights Act of 1964 "prohibits discrimination on the basis of race, color, or national origin in any program or activity, whether operated by state, local, or private entity, that receives federal funds or other federal financial assistance."¹³ Programs that deny undocumented immigrants federally guaranteed access to services and assistance that the applicant is otherwise eligible to receive based on the applicant's race, color, national origin, immigration status or ethnic surname programs violate Title IV. Programs that violate Title IV can lose federal funding. Programs can also violate Title IV if they act "upon the assumption that applicants with these characteristics are illegal aliens," or if they impose "additional eligibility requirements on ethnic or racial minorities because of their ethnicity or race."¹⁴ Domestic violence shelters, sexual assault crisis centers, and similar programs should continue to provide services and benefits to immigrant victims regardless of immigration status in order to ensure federal funding and compliance with federal law.

Collaboratively developed by RAKSHA, Pennsylvania Immigrant & Refugee Women's Network (PAIRWIN), Vida Legal Assistance, and Legal Momentum.

¹³ Nondiscrimination Advisory, 62 Fed. Reg. 61,360 attachment 2 (Nov. 17, 1997)

¹⁴ *Id.*



QUICK REFERENCE SHEET
**Requirements for Serving Immigrant Victims of
Domestic Violence**
Drafted 5/6/2011

Domestic violence programs receiving any federal funds or other federal financial assistance (see Citations 1-7):

- Must provide services equally to persons without regard to immigration status
- Are prohibited from discriminating on the basis of race, color, or national origin (including language capabilities) in any program or activity
- Are prohibited from giving disparate treatment on the basis of race, color, or national origin (including language capabilities) in any program or activity
- Must provide meaningful access to their programs and services to individuals with limited English proficiency (LEP.) Compliance entails ensuring the availability of interpretation and translation services for LEP individuals in the delivery of services
- Are exempt from immigration verification requirements under the Welfare Reform Act
- Cannot be penalized for failing to verify, under the Welfare Reform Act, the immigration status of any individual served

Domestic violence programs that provide shelter, regardless of whether they receive federal funds (see Citations 8-9) :

- Are prohibited from discriminating on the basis of race, national origin (including language capabilities), color, religion, sex, familial status, or disability

Domestic violence programs receiving Family Violence Prevention and Services Act (FVPSA) funds (see Citations 10-11):

- Must serve victims of family violence, domestic violence, and dating violence without regard to their immigration status
- Are prohibited from inquiring about immigration status of individuals when screening them for services
- Are prohibited from requiring any individual seeking services to provide verification of immigration status
- Are prohibited from releasing information to any entity about the immigration status of any individual receiving services
- Are prohibited from discriminating on the basis of race, national origin (including language capabilities), color, religion, sex, age, or disability

Domestic violence programs using Temporary Assistance to Needy Families (TANF) funds to provide client assistance (see OVW-approved article "Access To Programs And Services That Can Help Battered Immigrants," pg. 4, 1st paragraph under the heading "IIRAIRA and Reporting Requirements"):

- Must utilize TANF client assistance funds for individuals without regard to their immigration status, so long as they otherwise qualify and direct payments are not made to individuals seeking services

Domestic violence programs receiving funding through the U.S. Department of Housing and Urban Development (HUD) for non-permanent housing, including the Emergency Shelter Grant, the Supportive Housing Program, or Shelter Plus Care (see Citation 12):

- Must make services that are supported through these funds available to all needy individuals, including undocumented immigrants, so long as individual income and resources are not used a determinants for eligibility for these services. NOTE: Performing rent calculations is not considered an eligibility determinant, in this case.

Federal laws, orders, and regulations cited

1. 42 U.S.C. 2000d and 42 U.S.C. 2000d-1 (part of Title VI of the Civil Rights Act of 1964) – <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap21-subchapV.pdf> - see pages 3968 and 3970
2. Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency (part of Title VI of the Civil Rights Act of 1964) – <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap21-subchapV-sec2000d-1.pdf> - see pages 3971-3972
3. 8 U.S.C. 1611(a) and 8 U.S.C. 1611(b) – <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title8/pdf/USCODE-2010-title8-chap14-subchapI-sec1611.pdf> - see pages 496-497
4. 8 U.S.C. 1642(a) through 8 U.S.C. 1642(d) – <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title8/pdf/USCODE-2010-title8-chap14-subchapIV-sec1642.pdf> - see pages 515-516
5. U.S. Attorney General Order No. 2353-2001: Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation – http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=01-1158-filed.pdf – see pages 3613-3616
6. U.S. Attorney General Order No. 2129-97: Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 – <http://www.gpo.gov/fdsys/pkg/FR-1997-11-17/pdf/97-29851.pdf> - see pages 61344-61346
7. U.S. Attorney General Order No. 2049-96: Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation – <http://www.gpo.gov/fdsys/pkg/FR-1996-08-30/pdf/96-22233.pdf> - see pages 45985-45986
8. 42 U.S.C. 3601, 42 U.S.C. 3602(b), 42 U.S.C. 3602(e), and 42 U.S.C. 3604 (part of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988) – <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap45-subchapI.pdf> - see pages 4597-4601
9. 24 CFR Subtitle B, Ch. I, 100.1 through 100.80: Discriminatory Conduct Under the Fair Housing Act – <http://www.gpo.gov/fdsys/pkg/CFR-2010-title24-vol1/pdf/CFR-2010-title24-vol1-part100.pdf> - see pages 637-642
10. 42 U.S.C. 10406 from Family Violence Prevention and Services Act (FVPSA) – <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap110-sec10406.pdf> - see pages 6621-6622
11. 45 CFR Subtitle A, 80.1 through 80.3: Nondiscrimination Under Federal Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964 – <http://www.gpo.gov/fdsys/pkg/CFR-2010-title45-vol1/pdf/CFR-2010-title45-vol1-part80.pdf> - see pages 292-295
12. 24 CFR Subtitle A, 1.1 through 1.4: Nondiscrimination Under Federal Programs Receiving Federal Assistance Through the Department of Housing and Urban Development – Effectuation of Title VI of the Civil Rights Act of 1964 – <http://www.gpo.gov/fdsys/pkg/CFR-2010-title24-vol1/pdf/CFR-2010-title24-vol1-part1.pdf> - see pages 7-10

Federal Pre-emption of Laws Discriminating by Immigration Status¹
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Executive Summary

Although the power to regulate immigration and to enact immigration laws rests exclusively with the federal government, in recent years a number of state laws and local ordinances have been enacted designed to involve state and local officials in immigration enforcement and to cut off access to programs, benefits, and services to non-citizens including undocumented immigrants. Between 2005 and 2009, there has been a five-fold increase in the enactment of state laws designed to accomplish these goals.³ The recent immigration law passed in Arizona, SB 1070, is one example of this trend.

Victim services providers and government entities serving victims in states and communities across the country are concerned about the impact that state laws or local ordinances imposing immigrant access restrictions have on immigrant victims and the agencies that serve them. Many governmental and non-governmental programs in states and communities with state or local laws imposing immigrant access restrictions are Office on Violence Against Women (OVW) grantees. Both victim services and justice system programs that serve

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² This paper is still in development this is the April 2011 version.

³ See *Lozano v. City of Hazleton*, 620 F.3d 170, 201 (3rd Cir. 2010) citing National Conference on State Legislatures, 2009 State Laws Related to Immigrants and Immigration January 1-December 31, 2009.

immigrant victims are seeing how state and local legislation imposing immigration based restrictions result in immigrant victims being less likely to seek services, to make police reports, and to cooperate with prosecutors.

Programs are faced with conflicting sets of laws and obligations. State laws or local ordinances require that victims without specific forms of immigration status be turned away from services. Federal anti-discrimination, violence against women and victim services laws and funding prohibit denial of services based upon the applicant's national origin, language abilities, or immigration status. Federal laws also require that certain types of services, including particularly services necessary to protect life and safety be open to all persons without regard to immigration status.

Federal law controls the extent to which local ordinances and state laws can limit access to programs and services that all persons, including all non-citizens, have a federally guaranteed right to access for assistance. In 1996, Congress passed the Personal Responsibility and Work Opportunity Act of 1996 ("PRWORA")⁴ completely reforming the laws governing access to federal and state public benefits for non-citizens. Under the Supremacy Clause of the United States Constitution, after the passage of PRWORA, federal preemption laws do not permit states to regulate in the field of public benefits provision to immigrants without obtaining affirmative federal authority to do so. Any state or local law that purports to restrict immigrant access to benefits more than allowable under federal law is unconstitutional.

⁴ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 [Stat.](#) 2105 (1996).

Under federal law, there are categories of programs and services exempt from any and all federal, state, or local restrictions based on the applicant's immigration or citizenship status. The U.S. Department of Justice issued regulations interpreting and implementing PRWORA's complex elements.⁵ As the following analysis of PRWORA's legal requirements demonstrates, PRWORA guarantees that services and assistance necessary to protect life and safety and other services exempted from immigration restrictions under PRWORA (e.g. HHS funded health care provided by community clinics) are to be open to all persons, citizens and non-citizens alike, without regard to immigration status even when the programs providing services receive no federal funding.

The bar against imposing immigrant status based restrictions on these programs applies when the program receives solely or any combination of funding from federal, state, local or non-governmental sources. Thus, programs providing forms of assistance or services that federal law requires be open to all person without regard to citizenship or immigration status, must offer their services to all persons even when they are fully funded with state and/or private funding, and despite local legislation to the contrary.

This paper provides guidance for state and local services providers and government entities serving crime victims about federal government requirements when state and local laws and ordinances conflict with federal law. This memorandum addresses three issues of crucial importance for non-citizen victims of violence against women and crime victims who need access to life saving services. First, the Personal Responsibility and Work Opportunity Act of

⁵ See Programs Necessary For Protection of Life or Safety, 66 Fed Reg. 66, No. 10 at 3613-16 (Jan. 16, 2001) Interim Guidance on Verification, **AG Order No. 2129-97, 62 Fed Reg 61415 (Nov. 17, 1997)** ("Verification Guidance"), 62 Fed. Reg. 61,344, 61,361 (1997). No final guidelines were ever completed. Thus, the Interim Guidelines are still in effect; Determination of Situations that Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits, AG Order No. 2097-97, 62 Fed Reg. 142, 39874-75 (1997).

1996 (“PRWORA”) forbids State and local governments from restricting on grounds of immigration status benefits that are (a) provided in-kind, (b) necessary for the preservation of life and safety, *and* (c) open to applicants regardless of income level, even if such programs are funded entirely from state funds. Second, any state or local government law or ordinance that restricts benefits on the basis of immigration status is pre-empted by PRWORA unless the state legislation falls within the narrow realm of state legislation specifically authorized by PRWORA.⁶ Third, states and other beneficiaries of the Victims of Crime Act (“VOCA”) may generally make payments to immigrant crime victims under VOCA without verifying immigration status.

II. PRWORA Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”) dramatically overhauled the public welfare system in an effort to “promote work over welfare and self-reliance over dependency.”⁷ PRWORA’s welfare reforms included dramatic reductions in immigrant access to federal and state public benefits. However, Congress acknowledged that there were certain categories of needed assistance offered at the federal, state and local levels that all vulnerable persons, both immigrants and citizens, must remain eligible to

⁶ Prior to the passage of PRWORA in 1996 federal law did not place limitations on state and local governments’ ability to grant access to general assistance and other state-funded benefits to immigrants whether they were documented or undocumented. PRWORA restructured immigrant access to benefits defining “federal public benefits,” “federal means tested public benefits,” and “state or local benefits.” PRWORA gave states discretion to expand “state or local benefits” eligibility for non-qualified immigrants and also gave states discretion to limit state public benefits eligibility for many qualified immigrants, non-immigrants (persons residing legally in the United States on immigrant visas), and certain immigration parolees. PRWORA § 412(a), 8 U.S.C. § 1622(a). States were barred from restricting access to “state or local benefits” to exempt qualified immigrants listed in PRWORA § 412(b), 8 U.S.C. § 1622(b). For a full discussion of state authority to grant and deny “state and local benefits” to certain immigrants, *see* Soraya Fata, Leslye E. Orloff and Monique Drew, Access To Programs And Services That Can Help Victims of Sexual Assault and Domestic Violence, in Leslye Orloff et. al. “Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault” (Legal Momentum, February 2011). <http://iwp.legalmomentum.org/reference/additional-materials/public-benefits/memos-and-tools-for-advocates/public%20benefits%20chapter%20ver%202010.pdf/view?searchterm=drew>

⁷ H.R. REP. NO. 104-725, at 261 (1996).

access. Congress therefore included provisions ensuring that specific types of programs remained open to all immigrants and were not subject to PRWORA’s immigration status restrictions. To help those in need, the bill “retains protections for those who experience genuine and intractable hardship.”⁸ A series of federal laws, federal regulations, and guidance confirm that undocumented immigrants and immigrant victims of violence against women are legally entitled to non-discriminatory access to a range of government funded benefits, services and assistance that are explicitly exempted from immigrant access restrictions. The federal laws, regulations, and policies that grant access to federal and state funded benefits, assistance and services without regard to the victim’s immigration status include but are not limited to:

- The Violence Against Women Act (VAWA),
- Orders issued by the U.S. Attorney General,
- The Family Violence Prevention and Services Act,
- The Fair Housing Act,
- Laws governing Federally Qualified Health Centers,⁹ Migrant Health Clinics,¹⁰ and Rural Health Clinics,¹¹
- The McKinney Homeless Act.

The balance struck by Congress *within* PRWORA is codified at Title 8 §§ 1611 and 1621 of the United States Code. Three major categories remain open to all immigrants regardless of status. First, programs that do not fall within the definition of “federal public benefits” or “state or local public benefits” under the statute remain unrestricted. Second, PRWORA also exempted important categories of federal public benefits and state public benefits from the federal

⁸ *Id.*

⁹ 42 U.S.C. §254b et seq.

¹⁰ 42 U.S.C. §254b.

¹¹ 42 U.S.C. §1395x(aa).

PRWORA’s immigration restrictions. Exempt programs include emergency Medicaid, in-kind emergency disaster relief, immunizations, treatment of communicable diseases, and programs that are *necessary for the protection of life or safety*. With regard to programs necessary to protect life and safety PRWORA created a *categorical* exemption from both the “federal public benefits” and “state and local benefits” definitions for all programs that – (a) are necessary for the preservation of life or safety; (b) provide in-kind goods or services; and (c) are not means-tested. Programs that fall within this “life and safety benefits” definition are categorically exempted from immigrant restrictions and therefore must be open to persons without regard to the person’s immigration status.¹² PRWORA gives as examples soup kitchens, temporary emergency housing, and other similar programs. Finally, as a result of PRWORA, state and local governments may not impose additional burdens on the provision of any non-cash public benefits, whether or not they are necessary for the preservation of life and safety or open to all applicants, under both field and conflict pre-emption theories.¹³

III. PRWORA properly interpreted prevents denial of in-kind services necessary for the preservation of life and safety to any person without regard to immigration status

Title 8 § 1611(b) of the United States Code provides that immigrants who are not “qualified aliens”¹⁴ may not receive “federal public benefits”. “Qualified alien” is a defined term

¹² 8 U.S.C. § 1611(b)(4); 8 U.S.C. § 1621(b)(4).

¹³ See Section IV, *infra*.

¹⁴ The term “qualified immigrant” is used interchangeably with the term “qualified alien” in this memo.

whose meaning is narrower than all immigrants -- it refers to immigrants with who meet one of the conditions specified in 8 U.S.C. § 1641.¹⁵

Under PRWORA¹⁶ only “qualified immigrants” can access state and local benefits. Immigrants who are not “qualified immigrants” can only access “state and local benefits” if the state passes a post August 22, 1996 law specifically authorizing access to state and local benefits for non-qualified immigrants. Federal laws govern the ability of states to impose immigrant restrictions that limit access to state or locally funded benefits programs and services. Under federal law, states may not restrict cash assistance benefits to qualified immigrants more narrowly than the federal government itself does.¹⁷ States are also prohibited from placing immigrant access limitations on programs and services that fall outside of the federal law definition of “state and local benefits.”

PRWORA carves out an exception from the “federal public benefits” and “state and local benefits” definitions for in-kind benefits necessary for the preservation of life and safety that are to be open to applicants regardless of immigration status.¹⁸ Congress, in PRWORA, specifically provided that the United States Attorney General be statutorily given the sole authority to interpret, implement, and determine the range of life and safety programs and services that are to be open to all persons as a matter of federal law¹⁹. The Attorney General exercised this

¹⁵ The list of immigrants who are qualified immigrants under 8 U.S.C. § 1641 are: lawful permanent residents, conditional residents, asylees, refugees, immigrants paroled into the United States for a period of at least one year, persons granted withholding of deportation, persons granted conditional entry into the United States under [8 U.S.C. 1153 \(a\)\(7\)](#), Cuban Haitian Entrants, trafficking victims, and immigrant victims of battery or extreme cruelty perpetrated by the victims’ U.S. citizen or lawful permanent resident spouse, former spouse, parent, step-parents, or a family member residing in the same household as the victim who have filed an application for immigration benefits and have received either an approval or a prima facie determination.

¹⁶ See 8 U.S.C. § 1621

¹⁷ See 8 U.S.C. § 1624(b).

¹⁸ See 8 U.S.C. § 1611(b); 8 U.S.C. § 1621; 8 U.S.C. § 1624(b). Just as with § 1611, § 1621 carves out an exception for life and safety benefits.

¹⁹ See 8 U.S.C. § 1624(b).

authority.²⁰ The Attorney General’s interpretation concludes that life and safety benefits *may not be denied* to undocumented immigrants, unless some provision of federal law other than PRWORA (8 U.S.C. § 1611(a)) so provides.²¹ PRWORA is the most restrictive federal authority on this issue. No other federal authority forbids organizations from providing life and safety assistance. Thus, the maximal reach of PRWORA’s restrictions permits provision of a significant range services necessary to protect life and safety services to all persons seeking services regardless of immigration status. Federal law does impose an important requirement on programs providing life and safety services -- that agencies providing life and safety services not discriminate on the basis of immigration status.²²

When a state or municipality passes a law that conditions life and safety benefits on an applicant’s immigration status, the effect of such a law would be to require programs offering any of the services that are necessary to protect life and safety under federal law to verify immigration status of applicants for assistance in order to comply with state law. Immigrants who are not qualified under the state law would be turned away. Immigrants who are qualified under the state law, but who nevertheless could not prove that they are qualified, would be turned away. United States Citizens who could not prove that their citizenship status would also be

²⁰ See Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation (“Life and Safety Regulations”), 66 Fed. Reg. 3613.

²¹ See Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation (“Life and Safety Regulations”), 66 Fed. Reg. 3613.

²² The Department of Justice’s concerns regarding the risks of discrimination based on either national origin or race led to recommendations that no inquiries be made into an individual applicant’s immigration status unless the program providing assistance first determines that the benefit being sought is as a matter of law a “federal public benefit,” “a federal means-tested public benefit,” or a “state or local benefit.” If the assistance sought falls within PRWORA’s definitions for one of these federal, state or local benefits, agencies should next determine whether the applicant is otherwise eligible for the benefit before asking any questions about immigration status. Only if the program is a federal, state or local public benefit and if the applicant would meet all of the other program requirements to receive the benefit should questions be asked regarding the applicant’s eligibility based upon immigration or citizenship status. Interim Guidance on Verification, 62 Fed. Reg. 61415 (Nov. 17, 1997) (“Because the process of verifying an individual’s status as a U.S. citizen, U.S. non-citizen national or qualified immigrant raises significant issues involving privacy and anti-discrimination protections, no verification of an applicant’s status as a U.S. citizen, U.S. non-citizen national or qualified immigrant should be undertaken where benefits are not contingent on such status.”)

turned away. It is likely that the measure would have a disparate impact on minority racial groups.

The U.S. Department of Justice advises that providers should not attempt to ascertain beneficiaries' immigration status, as such an attempt is an invasion of privacy, risks discrimination, and risks error.²³ PRWORA preempts the ability of states to impose restrictions on access to programs and services that as a matter of federal law are to be open to all persons, including both documented and undocumented immigrants. For programs in states or communities that pass state or local laws that attempt to restrict access to federally guaranteed programs and understanding of federal preemption laws will enable programs serving immigrant victims to continue providing benefits and services to immigrant victims secure in the knowledge that they are complying with federal law.

The relevant portions of 8 U.S.C. § 1624 are reproduced in full:

[Title]: Authority of States and political subdivisions of States to limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance

(a) In general: Subject to subsection (b) of this section and notwithstanding any other provision of law, a State or political subdivision of a State is authorized to prohibit or otherwise limit or restrict the eligibility of aliens or classes of aliens for programs of general cash public assistance furnished under the law of the State or a political subdivision of a State.

(b) Limitation: The authority provided for under subsection (a) of this section may be exercised only to the extent that any prohibitions, limitations, or restrictions imposed by a State or political subdivision of a State are not more restrictive than the prohibitions, limitations, or restrictions imposed under comparable Federal programs [...]

²³ Interim Guidance on Verification, 62 Fed. Reg. 61415 (Nov. 17, 1997).

By its terms, 8 U.S.C. § 1624 prohibits discrimination on the basis of immigration status if the discrimination is more restrictive than a comparable federal scheme in the issuance of public aid. The comparable federal scheme -- indeed, the identical federal scheme -- permits nondiscriminatory provision of life and safety benefits and forbids discrimination in the provision of life and safety benefits.²⁴ Thus, this section of PRWORA prohibits state and local governments from imposing discriminatory restrictions on the provision of life and safety benefits in the same manner as it imposes this prohibition on federal government benefits and assistance.

The following discussion is designed to assist programs in responding to counterarguments that programs serving immigrant victims may face from state or local authorities:

States are only barred from restricting “qualified alien” access to benefits: 8 U.S.C. § 1624 (b) only limits state and local governments’ ability to discriminate among classes of *qualified* aliens as defined in PRWORA. Thus, one may mistakenly assert that it has no bearing on a state and local government’s power to deprive immigrants who are not qualified aliens of benefits. However, both “alien” and “qualified alien” have well established meanings in immigration law.²⁵ Congress is presumed to act intentionally when it uses a word in one section of an Act but not another.²⁶ Here, Congress used the word “alien”, as opposed to “qualified alien”. Under established rules of statutory construction, by choosing the word “alien” Congress

²⁴ Interim Guidance on Verification, 62 Fed. Reg. 61360 (Nov. 17, 1997).

²⁵ See 8 U.S.C. § 1641(b) (defining “qualified alien”) and 8 U.S.C. § 1101(a)(3) (“The term ‘alien’ means any person not a citizen or national of the United States.”).

²⁶ See *Rodriguez v. United States*, 480 U.S. 522, 525 (1987).

is presumed to have meant the definition of the term “alien” that applies throughout immigration law “The term ‘alien’ means any person not a citizen or national of the United States.”²⁷

By choosing the term “alien,” Congress intended that 8 U.S.C. § 1624(b) place a restriction on the extent to which state and local governments were authorized to limit benefits access for persons who are not citizens or nationals of the United States. 8 U.S.C. § 1624(b) assures that no action by a states and local governments will have the legal effect of imposing immigrant access restrictions interfere with a non-citizens ability to access benefits and programs legally available to them under federal law. Laws passed by state and local governments, what ever their terms, do not have the legal effect of denying non-citizens to access federal public benefits and to access federally guaranteed programs -- emergency Medicaid, in-kind emergency disaster relief, immunizations, treatment of communicable diseases, health care offered by federally qualified health centers and programs that are *necessary for the protection of life or safety*.

States are only prohibited from discriminating among immigrants in cash benefits programs: 8 U.S.C. § 1624(b) limits the powers granted in 8 U.S.C. § 1624 (a). However, 8 U.S.C. § 1624(a) only provides for a state’s power to discriminate among immigrants “for programs of general *cash* public assistance” (emphasis added). One may wrongly interpret that the limitation in subsection 8 U.S.C. § 1624(b) also only applies to *cash* public assistance and that state and local governments may provide non-cash public benefits on a more restrictive basis than the federal government. Additionally, since life and safety benefits are also provided in-kind states may incorrectly interpret 8 U.S.C. § 1624(b) to allow states to impose greater restrictions on life and safety benefits than the federal government does. However, this

²⁷ 8 U.S.C. § 1101(a)(3).

interpretation ignores the fact that under PRWORA does not give states and local governments any authority to restrict non-cash benefits and argues that there are no limits on the state and local government exercise of authority in limiting non-cash benefits.

8 U.S.C. § 1624’s title is “Authority of States and political subdivisions of States to limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance.” 8 U.S.C. § 1624 is part of a subchapter which comprehensively outlines the eligibility of aliens and qualified aliens for state public benefits.²⁸ 8 U.S.C. § 1624 is the *only* part of the subchapter granting state and local government *any* authority to limit assistance.²⁹ The expression of one thing is the exclusion of others.³⁰ Congress nowhere else provides state and local governments with the authority to limit state and local government non-cash benefits.

After PRWORA, state and local governments need affirmative federal authority to regulate in the field of public benefit provision to immigrants.³¹ PRWORA provided states on option to limit cash assistance to non-citizens so long as qualified aliens were entitled under the state law to the same level of access to state cash assistance as qualified aliens are to federal cash assistance. Even as PRWORA limited the use of federal cash funds making federal cash benefits only open to qualified immigrants, the federal government scheme explicitly permits federal funds to be used for services and benefits necessary to protect life and safety.³² Reading 8 U.S.C. § 1624 to permit state and local governments entirely to withhold life and safety benefits but not to provide a scheme of cash benefits more restrictive than the federal government’s would be a perverse reversal of priorities.

²⁸ See 8 U.S.C. § 1621 *et seq.*

²⁹ See 8 U.S.C. § 1621 *et seq.*

³⁰ *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993).

³¹ See *League of United Latin American Citizens v. Wilson*, 997 F. Supp. 1244, 1255 (“LULAC”) (C.D. Cal. 1997) (“Congress’ intention to displace state power in the area of regulation of public benefits to immigrants is manifest in the careful designation of the limited instances in which states have the right to determine alien eligibility for state or local public benefit.”) This is discussed at greater length in Section IV, below.

³² See 8 U.S.C. § 1611.

There is no federal authority permitting any person, agency or government entity to restrict immigrants from accessing life and safety benefits. Further, state and local government law or executive action permitting state or local government officials, agencies and individuals in the state to restrict immigrant access to benefits and services necessary to protect life and safety violate PRWORA and therefore are invalid under the United States Constitution's Supremacy Clause. The Department of Justice has issued guidelines that provide a response to state and local authorities for agencies providing services and assistance to immigrant victims that are necessary to protect life and safety. The Department of Justice's guidelines advise:

“Because the process of verifying an individual's status as a U.S. citizen, U.S. non-citizen national or qualified alien raises significant issues involving privacy and anti-discrimination protections, no verification of an applicant's status as a U.S. citizen, U.S. non-citizen national or qualified alien should be undertaken where benefits are not contingent on such status.”³³

Since as a matter of federal law the following programs are not “federal public benefits” or “state or local benefits” no person's access to these programs is *contingent on immigration status* —

- Emergency Medicaid;
- In-kind emergency disaster relief;
- Immunizations, treatment of communicable diseases;
- Health care offered by federally qualified health centers; and
- Programs and services that are *necessary for the protection of life or safety*.

IV. Pre-emption

³³ Interim Guidance on Verification, 62 Fed. Reg. 61415 (Nov. 17, 1997).

In communities across the country programs providing a range of services and assistance to immigrant victims of domestic violence, sexual assault, human trafficking, and other crimes are faced with the question of how to comply with conflicting state and federal laws governing what services can be provided to non-citizen victims. Federal law and the U.S. Constitution anticipated, and federal preemption law was designed to resolve such conflicts. Courts recognize three types of cases in which Congressional legislation pre-empts state or local laws.

- First, in express pre-emption, a state or local law is pre-empted because a Congressional Act expressly provides for pre-emption.³⁴
- Second, in field pre-emption, a state or local law is pre-empted because Congress has occupied or been entrusted with an entire field.³⁵
- Third, in conflict pre-emption, a state or local law is pre-empted because it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”³⁶

Congress has occupied the field of the provision of all federal, state and local public benefits to immigrants. Congress has left open a narrow exception that allows state or local governments to pass laws that restrict access to “cash” benefits based on immigration status. 8 U.S.C. § 1624(a) provided that states follow the conditions established in Title 8 § 1624(b) of the U.S. Code which prohibit states from limiting immigrant access to cash benefits more than is allowable under federal law. However, PRWORA pre-empts any state or local government restrictions placed on non-cash services, benefits or public assistance based on immigration status. This includes any laws that attempt to restrict the provision of benefits deemed necessary to protect health and safety by PRWORA and by the implementation guidance issues by the U.S.

³⁴ *English v. General Elec. Co.*, 496 U.S. 72, 78 (1990).

³⁵ *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

³⁶ *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

Attorney General. However, the federal prohibition on states imposing immigrant restrictions also includes any measure restricting non-cash aid, even if the aid is means tested or not necessary for the preservation of life and safety, or both. State or local measures are not expressly pre-empted. PRWORA contains no provisions forbidding companion state regulations, and includes two provisions that expressly permit states to pass law regulating immigrant access to benefits.

1. 8 U.S.C. § 1624 allows states to impose restrictions on “general cash public assistance furnished under the law of the State or a political subdivision of a State” so long as these restrictions are not more restrictive than the federal law’s restrictions with the effect that qualified immigrants have the same access to state funded and federally funded cash benefits .
2. 8 U.S.C. § 1621 allows states to offer state funded benefits to immigrants who are not qualified immigrants and to qualified immigrants who are subject to a five year bar on access to federal means-tested public benefits.

Although PRWORA did not expressly pre-empt all state action, it set forth a federally determined scheme under which all other state or local legislative measures other than those expressly listed above are pre-empted under both “field” and “conflict” preemption laws.

A. In the Personal Responsibility and Work Opportunity Act of 1996, Congress occupied the field of legislation and regulations on non-cash aid to immigrants

Field pre-emption occurs where Congress regulates a field so pervasively “as to make reasonable the inference that Congress left no room for the States to supplement it.”³⁷ In *Lozano v. City of Hazleton* the Court found that field pre-emption also occurs where an Act of Congress “touch[es]

³⁷ *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (internal citations omitted); *Lozano* recently reversed in part a district court that had held that a regulation of employment was a regulation of immigration under this standard. *Lozano v. City of Hazleton*, 620 F.3d 170, 206 (3d Cir. 2010).

a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.”³⁸ Immigration is such a field.³⁹ However, the U.S. Supreme Court in *DeCanas v. Bica* also cautioned that not “every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* preempted by this constitutional power.”⁴⁰ Rather, the Court further defined immigration as “essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain”.⁴¹ Case law also establishes a presumption against field pre-emption in fields that traditionally belong to the states’ police powers,⁴² “unless that was the clear and manifest purpose of Congress”.⁴³

In *U.S. v. State of Arizona* the U.S. Court of Appeals for the 9th Circuit discussed the role of “conflict preemption” and “impossibility preemption” providing further useful direction:

“[E]ven if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute.’ ... Conflict preemption has two forms: impossibility and obstacle preemption... Impossibility preemption exists ‘where it is impossible for a private party to comply both state and federal law.’ ... Obstacle preemption exists ‘where ‘under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’ ... To determine whether obstacle preemption exists, the Supreme Court has instructed us that we employ our ‘judgment, to be informed by examining the federal statute as a whole and identifying its purposes and intended effects.’ ... [T] here can be no constitutional application of a statute that, on its face, conflicts with Congressional intent and therefore is preempted by the Supremacy Clause.”⁴⁴ (Internal citations omitted).

³⁸ *Lozano v. City of Hazleton*, 620 F.3d 170, 204 (3d Cir. 2010) quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (alterations in original).

³⁹ *Id.*; *U.S. v. State of Arizona*, ____ F.3d_4805, 4818 (9th Cir. 2011).

⁴⁰ *DeCanas v. Bica*, 424 U.S. 351, 354 (1976).

⁴¹ *Id.* at 355.

⁴² *Lozano*, 620 F.3d at 204, citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).

⁴³ *U.S. v. State of Arizona*, ____ F.3d_4805, 4812 (9th Cir. 2011); *Wyeth v. Levine*, 129 S. Ct. 1187, 1194-95 (2009).

⁴⁴ *U.S. v. State of Arizona*, ____ F.3d_4805, 4813-4814 (9th Cir. 2011);

Although immigration law is an area of law over which federal authority has been firmly established, states have been permitted, in some limited instances, to regulate issues involving immigrants. The cases relevant to understanding whether, and to what extent, states can regulate immigrant access to benefits and services that are to be open to immigrants in the state involve an analysis of the complete scheme of regulation Congress established in PRWORA.⁴⁵ Two cases have analyzed whether PRWORA's scheme regulating federal, state and local benefits and regulating federal, state, local and privately funded services offered to immigrants preempts state law. In *LULAC*, the Federal District Court for the Central District of California flatly held that PRWORA pre-empted the regulation of benefits to immigrants, permitting only those regulations specifically authorized by PRWORA.⁴⁶ The measure, which the LULAC COURT invalidated, sought to prohibit "public entities" from providing social services to immigrants whom the entity has determined are in the United States in violation of federal immigration law.⁴⁷

In *Equal Access to Education v. Merten*, the Eastern District of Virginia held that Congress had not completely occupied the field of immigrant admission to state universities.⁴⁸ The case is distinguishable on its facts, however, and the court illustrates why: "the scheme PRWORA creates pertains to benefits not at issue here."⁴⁹ Under *Merten* and Department of Homeland Security Policies, state universities may accept applications from, admit, and enroll

⁴⁵ The court in *U.S. v. State of Arizona*, outlines the approach courts should take in analyzing whether and to what extent PRWORA preempts state and local laws that attempt to restrict immigrant access to federal, state and local benefits and to services that immigrants can access. *U.S. v. State of Arizona*, ___ F.3d 4805, 4831 (9th Cir. 2011). Under the conflict preemption approach laid out by this 9th Circuit case, state and local laws that cut immigrants off from benefits and services PRWORA provides to immigrants, are preempted by federal law to the same extent that the Immigration and Nationality Act preempt state laws aimed at enforcing immigration laws.

⁴⁶ *LULAC*, 997 F. Supp. at 1255.

⁴⁷ *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 792 (C.D. Cal. 1995) quoting California Proposition 187 (1994).

⁴⁸ 305 F. Supp. 2d 585, 605 (E.D. Va. 2004).

⁴⁹ 305 F. Supp. 2d 585, 605 (E.D. Va. 2004).

students, including undocumented immigrant students.⁵⁰ *Merten*, recognized that Congress had ousted the states from the field of determining immigrant eligibility for benefits, “including even state benefits.”⁵¹ Thus, any state law or ordinance that attempts to restrict immigrant access to benefits or services that is not explicitly authorized by PRWORA is impermissible. PRWORA authorized states to regulate only with regard to two issues. PRWORA, in 8 U.S.C. § 1624, gave states and local governments the ability to limit and to provide state funded cash public assistance to some but not all classes of immigrants, so long as state laws do not discriminate among immigrants in ways that are more restrictive than PRWORA’s federal public benefits scheme. PRWORA in 8 U.S.C. § 1621 also explicitly authorizes states to benefit to immigrant who do not have access to the federal public benefits safety net. Outside of these two explicitly authorized areas, states cannot regulate. If states pass laws designed to restrict immigrant access to state or locally funded benefits or to limit immigrant access to services, that PRWORA and the U.S. Attorney General exempts from the federal, state and local public benefits definitions and immigrant restrictions, such laws are invalid. All state actions aimed at limiting access to programs and services necessary to protect life and safety are clearly also impermissible.

Some recent cases not decided under PRWORA are also instructive. It is important not to read them out of context as they address whether statutes different from PRWORA occupy a given field. Such inquiries are apt to turn on particular statutory provisions and language; and provisions and language entirely different from PRWORA may well occupy a field -- or fail to -- without having any particular impact on for whether PRWORA occupies the field of federal, state and local benefits and assistance immigrants are eligible to receive.

⁵⁰ U.S. Immigration and Customs Enforcement, *Aliens Who May Be Unlawfully Present In The United States And Their Access To Public Post-Secondary Educational Institutions*, July 6, 2010.

http://iwp.legalmomentum.org/reference/additional-materials/public-benefits/education-financial-aid/DHS_SEVP%20Info%20Undocumented%20Student%2007%2002%2010.pdf/view

⁵¹ 305 F. Supp. 2d 585, 605 (E.D. Va. 2004).

In *Villas at Parkside Partners v. City of Farmers Branch*, a city sought to require housing providers and employers to verify immigration status of their tenants or employees.⁵² The court held that this was an impermissible *immigration* regulation because it appropriated one Congressional classification of aliens for use in a local regulatory scheme in which Congress did not contemplate this classification would be used.⁵³ Faced with a similar ordinance, the Federal District Court for the Southern District of California held that plaintiffs were likely to show that the immigration measure was field pre-empted, and therefore issued a Temporary Restraining Order against its enforcement.⁵⁴ Finally, although the U.S. Court of Appeals for the 3rd Circuit in *Lozano* held that the provisions at issue (very similar to those at issue in *Villas at Parkside Partners*) were preempted, it held that Congress had not occupied the field those provisions also occupied.⁵⁵ In *DeCanas v. Bica*, petitioners challenged a California law forbidding the employment of unlawful immigrants.⁵⁶ The Court held that this was not an immigration measure because it only affected unlawful immigrants (and thus was not a determination of the conditions under which a legal entrant may remain), and used the federal government's definition of unlawful presence (and thus was not a determination of who should be admitted into the country).⁵⁷

⁵² 701 F. Supp. 2d 835, 855 (N.D. Tex. 2010).

⁵³ 701 F. Supp. 2d 835, 855 (N.D. Tex. 2010).

⁵⁴ *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1056 (S.D. Cal. 2006). Some other recent opinions have addressed state measures that required employers to verify the immigration status of their employees. *E.g. Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856 (9th Cir. 2009), *cert. granted*, --- U.S. ---, 130 S. Ct. 3498 (2010) (No. 09-115) (holding that measure requiring employers to verify immigration status is not pre-empted); *See Gray v. City of Valley Park*, No. 4:07CV00881, 2008 WL 294294 (E.D.Mo. Jan. 31, 2008), *aff'd on other grounds*, 567 F.3d 976 (8th Cir. 2009) (same). *But see Chamber of Commerce v. Edmondson*, 594 F.3d 742 (10th Cir. 2010). To resolve this conflict, the Supreme Court has granted certiorari. *See Chicanos Por La Causa, Inc., v. Napolitano*, --- U.S. ---, 130 S. Ct. 3498 (2010). The decision may provide more substantive law of pre-emption in the immigration context.

⁵⁵ *Lozano*, 620 F.3d at 204.

⁵⁶ *DeCanas v. Bica*, 424 U.S. 351, 354 (1976); *Lozano*, 620 F.3d at 204, *citing Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).

⁵⁷ *DeCanas v. Bica*, 424 U.S. 351, 352-53 (1976).

The only court that has specifically addressed the issue of whether PRWORA occupies the field of public benefits, including life and safety benefits for immigrants held that the federal law established by PRWORA did fully occupy the field.⁵⁸ Addressing the question of whether PRWORA occupies the field of educational benefits (post-secondary educational grants and loans) to immigrants, the court in *Merten* stated that it did.⁵⁹ However, the *Merten* court additionally held that PRWORA did not occupy the field of admission to university.⁶⁰ No other court addressed the issue. All federal cases agree that PRWORA occupies the field of provision of public benefits to immigrants, and thus the subset of provision of life and safety benefits to immigrants.

B. State and local government laws and ordinances regulating non-cash aid by immigration status creates an impermissible conflict with federal law

Several states and local jurisdictions across the country have passed or are attempting to pass laws designed to cut off access to non-cash benefits programs and other services available in the state based upon the applicant's immigration status. State law is pre-empted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."⁶¹ Immigration law as a whole evinces careful balancing of several competing policy objectives.⁶² Given this careful balance, courts are especially likely to find, in this area, that state or local law, which prioritizes one federal policy objective (immigration enforcement) over another important federal policy objective (offering protection to crime victims and prosecuting criminals) is conflict pre-empted.⁶³

⁵⁸ *LULAC*, 997 F. Supp. at 1255.

⁵⁹ *Merten*, 305 F. Supp. 2d at 605.

⁶⁰ *Merten*, 305 F. Supp. 2d at 605.

⁶¹ *Hines* 312 U.S. at 67.

⁶² *E.g. Lozano*, 2010 WL 3504538 at *32-33 (discussing IRCA); *see also* Brief of Plaintiff United States of America, *United States v. Arizona*, D. Ariz. CV 10-1413-PHX-SRB. ¶¶ 14-17.

⁶³ *E.g. Lozano*, 2010 WL 3504538 at *32-33; *accord United States v. Arizona*, 703 F. Supp. 2d.

PRWORA carefully balances the need to deter undocumented immigration with the government responsibility for promoting health and safety, with concerns about basic fairness towards undocumented immigrants. As PRWORA balances these important issues, it also weighs the administrative burdens for federal, state and local, governmental and private entities involved in providing benefits and services to immigrants and immigrant crime victims.⁶⁴ Since individualized verification is complex and time-consuming, DOJ advises providers not to verify if an alien is a “qualified alien” until after the agency has:

- 1) Determined that the program or service being provided is a “federal public benefit” or “state or local benefits”⁶⁵ under PRWORA’s definitions;⁶⁶ and
- 2) Determined that the non-citizen is otherwise be eligible to receive aid.⁶⁷

Only after it is determined that the program from which a victim is seeking services is a “federal public benefit” or “state or local benefit” and the applicant qualifies to receive benefits from the program, should a benefits provider verify the applicant’s U.S. Citizen or qualified immigrant status. Since the process of verifying eligibility raise “significant issues involving privacy and anti-discrimination protections, no verification of an applicant’s status as a U.S. citizen, U.S. non-citizen national, or qualified alien should be undertaken where benefits are not contingent on such status.”⁶⁸

980, 995 (D. Ariz. 2010); *U.S. v. State of Arizona*, ___ F.3d 4805, 4813-14 (9th Cir. 2011).

⁶⁴ H.R. REP. NO. 104-725, at 261 (1996).

⁶⁵ PRWORA gave states discretion to expand state public benefits eligibility for non-qualified immigrants and also gave states discretion to limit state public benefits eligibility for many qualified immigrants, persons residing legally in the United States on immigrant visas, and certain immigration parolees. PRWORA § 412(a), 8 U.S.C. § 1622(a).

⁶⁶ Interim Guidance on Verification, 62 Fed. Reg. 61415 (Nov. 17, 1997).

⁶⁷ *Id.*

⁶⁸ 62 Fed. Reg. 61347 (Nov. 17, 1997). When verification is conducted the Interim Guidance on Verification encourages programs administering benefits to rely primarily on review of government issued documents that provide evidence of eligibility and if the document provided “reasonably appears on its face to be genuine and to relate to the person presenting it ... the provider should accept the document as conclusive evidence ... and should not verify status further.” Interim Guidance on Verification, 62 Fed. Reg. 61348 (Nov. 17, 1997).

PRWORA and the Immigration and Nationality Act are both the types of statutes in which Congress provides that a certain thing be done only insofar as another competing objective is not harmed.⁶⁹ When states and local jurisdictions enact laws or ordinances designed to restrict non-citizen access to services necessary to protect life and safety or other federally guaranteed benefits, assistance or services, these laws fail to take into account any other competing Congressional objectives and instead focus exclusively on deterring unlawful immigration. Congressional objectives include but are not limited to curbing violence against women, fighting crime, protecting public health, and offering services necessary to protect life and safety to all persons. Thus, when a state laws impose requirements that explicitly or effectively limit non-citizen access to programs and services deemed by the U.S. Attorney General to be necessary to protect life and safety or other programs or services (e.g. health care offered by federally qualified health centers) such laws undermine Congressional objectives and are federally preempted. This law “stands as an obstacle to the accomplishment and execution of the *full* purposes and objectives of Congress.”⁷⁰

⁶⁹ See Henry M. Hart, Jr. & Albert M. Sacks, *The Legal Process: Basic Problems in the Making and Application of Law* 1377; accord Frank H. Easterbrook, *The Role of Original Intent in Statutory Construction*, 11 Harv. J.L. & Pub. Pol’y 59, 63 (1988) (“To use an algebraic metaphor, law is like a vector. It has length as well as direction. We must find both, or we know nothing of value. To find length we must take account of objectives, of means chosen, and of stopping places identified. All are important”); Catherine L. Fisk and Deborah C. Malamud, *The NLRB in Administrative Exile: Problems with its Structure and Function and Suggestions for Reform*, 58 Duke L. J. 2013, 2036 (2009). Cf. *United Steelworkers of America v. Weber*, 443 U.S. 193, 197 (1979) (holding that Title VII sought to end discrimination against minorities only insofar as it left management discretion to discriminate on their behalf).

⁷⁰ *Hines* 312 U.S. at 67 (emphasis added).

Comparing Forms of Immigration Relief for Immigrant Victims of Crime¹

This chart is a basic outline of various forms of immigration relief² available to immigrant crime victims including domestic violence, sexual assault and trafficking victims. This chart is for informational purposes only and should not be used to practice immigration law. The chart will help an attorney or advocates determine which form of relief best meets the needs of their client.³

	U-visa	T-visa	Continued Presence	VAWA self-petition	Battered spouse waiver
How and When Does it Provide Authorization to Accept Employment?	An applicant receives employment authorization upon approval of the U visa application by USCIS ⁴	An applicant receives employment authorization upon receipt of a <i>bona fide</i> determination from USCIS (after filing but before approval).	An applicant receives employment authorization upon approval.	An applicant receives employment authorization upon filing if the abuser is a U.S. Citizen and the applicant has jointly filed an application for lawful permanent residency (Application to Register Permanent status or Adjust Status Form I-485) as an immediate relative of a U.S. Citizen. Otherwise, an applicant receives employment authorization upon approval.	Receipt of application for a battered spouse waiver of the joint filing requirement (Petition to Remove Conditions on Residence Form I-751) extends conditional lawful permanent residence, which provides evidence of lawful work authorization. This extension lasts one year and is renewable.

¹ Legal Momentum and the National Immigrant Women's Advocacy Project, (NIWAP, Inc) 2012.

² Of the applications listed on this chart, T and U visas, and approval of a battered spouse waiver provide legal immigration status. Those individuals with legal immigration status who are or who become inadmissible or deportable may not necessarily be comprehensively protected from deportation. Continued presence and deferred action received as a result of an approved VAWA self-petition do not provide lawful immigration status although those individuals are a lower priority for deportation.

³ An individual may apply for more than one form of relief if eligible. The VAWA Unit (adjudicating VAWA, T and U) will process each application separately. Upon approval of one petitions, the others will then be denied.

⁴ The U.S. Citizenship and Immigration Services (USCIS) is the agency within the Department of Homeland Security (DHS) responsible for deciding requests for legal immigration status and naturalization.

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	U-visa	T-visa	Continued Presence	VAWA self-petition	Battered spouse waiver
How and when will the applicant receive some limited protection against deportation? ⁵	Upon being granted a U visa or having received U interim relief and deferred action.	Upon being granted a T-visa or having previously been granted continued presence.	Upon being awarded continued presence.	Upon approval of the VAWA self-petition the victim is granted deferred action status	Conditional residency offers protection against deportation. ⁶
Process	The applicant files U-visa (Form I-918) at the VAWA Unit of Vermont Service Center of USCIS.	The applicant files T-visa (Form I-914) at the VAWA Unit of Vermont Service Center of USCIS.	ICE ⁷ Special Agent in Charge sends to Office of International Affairs' Law Enforcement Parole Branch, which sends the approval to USCIS to process employment authorization.	The applicant files the VAWA self-petition (Form I-360) at the VAWA Unit of Vermont Service Center of USCIS.	Applicant files the battered spouse waiver (Form I-751) either at the VAWA Unit of Vermont Service Center (USCIS) or at California Service Center of USCIS depending on in which state the applicant resides.
Qualifying Family Beneficiaries (still must potentially meet other requirements)	Qualifying family members for victims <u>over</u> 21 include spouses and children under 21. Qualifying family members of victims <u>under</u> 21 include spouses, children, parents, and unmarried siblings under 18.	Qualifying family members for victims <u>over</u> 21 include spouses and children under 21, and if facing retaliation parents and unmarried sibling under age 18. Qualifying family members of victims <u>under</u> 21 include spouses, children,	Qualifying family members for victims <u>over</u> 21 include spouses and children under 21. Qualifying family members of victims <u>under</u> 21 include spouses, children, parent, and unmarried siblings under 18.	Children under age 21 at the time of filing.	Children who have conditional resident status may apply with a conditional resident parent. However, if the battered immigrant's child did not receive conditional residency that child cannot obtain legal permanent residence through the parent's

⁵ Only citizens are fully protected from deportation. Non-citizens including those with visas and lawful permanent residency can be deported if they are convicted of committing crimes. Additionally, some immigrants who have received deferred action (agreement by DHS that their removal is a low priority) may still become subject to enforcement actions. Thus, the protections against deportation listed here may not provide full protection for immigrant victims.

⁶ Conditional residents can be deported if they commit crimes, leave the U.S. for more than 6 months during a year and if they do not apply for or are denied lawful permanent residency toward the end of their two year conditional residency status.

⁷ Immigration and Customs Enforcement (ICE) is one of two agencies within DHS responsible for immigration enforcement, detention and removal. The other DHS agency with immigration enforcement authority is U.S. Customs and Border Patrol (CBP).

	U-visa	T-visa	Continued Presence	VAWA self-petition	Battered spouse waiver
		parents, and unmarried siblings under 18.	A qualifying family members may receive parole if that individual faces retaliation as a result of the victim's cooperation.		battered spouse waiver application.
Qualifying criminal activity	Qualifying U-visa criminal activity includes but is not limited to domestic violence (including child abuse and elder abuse), sexual assault, and human trafficking. An applicant may be a victim of any qualifying criminal activity. ⁸	This visa is only available to victims of a "severe form of trafficking in persons".	This protection is only available to victims of a "severe form of trafficking in persons".	Self-petitioners must be have been subject to battery or extreme cruelty, which includes forms of emotional abuse and does not have to rise to the level of a criminal activity.	Battered spouse waiver applicants must have been subject to battery or extreme cruelty, includes forms of emotional abuse and does not have to rise to the level of a criminal activity.
Requirement of applicant's cooperation with law enforcement	<u>An applicant must submit a U-visa certification (Form I-918 Supplement B) signed by a designated law enforcement officer, judge, prosecutor or other state or federal government official involved in detection, investigation, or prosecution of criminal activity. An applicant</u>	An applicant must submit proof of reasonable cooperation with a trafficking investigation or prosecution and may submit a law enforcement certification on Form I-914 Supplement B as proof. <u>The law enforcement</u>	Only law enforcement may request that ICE request continued presence for someone who is cooperating with an investigation or prosecution. A request for continued presence is	None.	None.

⁸ Qualifying criminal activity includes rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law. This list also includes attempts or conspiracy to commit any of the listed activities.

	U-visa	T-visa	Continued Presence	VAWA self-petition	Battered spouse waiver
	may be certified if he or she is a victim of a qualifying criminal activity and has been, is being, or is likely to be helpful in an investigation or prosecution. Certification is encouraged as soon as possible and certifying helpfulness does not hinge on a case proceeding beyond detection or investigation of a crime.	<u>certification is not required.</u> Proof of continued presence may be submitted as secondary evidence. Certification is encouraged as soon as possible and certifying cooperation does not hinge on a case proceeding beyond detection or investigation of a crime.	encouraged as soon as possible and does not hinge on a case proceeding beyond detection or investigation of a crime.		
Require proof of applicant's good moral character	No.	Proof of good moral character is not required for the T-visa application but is required to be granted lawful permanent residency.	No.	Proof of good moral character is required to self-petition.	No
Requirement that applicant faces extreme hardship if returning to home country	There is no requirement of extreme hardship.	An applicant must prove "extreme hardship involving unusual and severe harm upon removal."	There is no requirement of extreme hardship.	No.	No.
Other Requirements of the Applicant	The applicant suffered substantial physical or mental abuse as a result of the qualifying crime.	The applicant is physically present in the U.S. on account of trafficking.	None.	The abuser must be the spouse, intended spouse, have been a spouse within 2 years of filing, parent (or step parent) of the victim. ⁹ The abuser must be a Lawful Permanent Resident or a U.S.	The applicant must be a conditional permanent resident to apply. The applicant must also demonstrate that the applicant married the abuser spouse in good faith.

⁹ Elder abuse victims abused by their over 21 year old adult U.S. Citizen abusive sons or daughters are also statutorily eligible to self-petition although at the date of publication, no regulations or guidance has been published to implement this provision.

	U-visa	T-visa	Continued Presence	VAWA self-petition	Battered spouse waiver
				Citizen. For victims whose abuser is a spouse, the victim must also show good faith marriage. The applicant must also show he or she resided with the abuser at some point during the marriage.	
Caps	Cap of 10,000 for each fiscal year. USCIS has never reached the cap but they may in FY '10.	Cap of 5,000 visas for each fiscal year. USCIS has never reached the cap and is unlikely to reach it in the upcoming fiscal years.	No cap.	No cap.	No cap.
Inadmissibility Waivers Available So That The Victim Can Receive Lawful Permanent Residency	Discretionary waiver of inadmissibility available if it is in the public or national interest. No waiver is available for participants in Nazi persecution, genocide, torture or extrajudicial killing.	There is an exception to the public charge grounds of inadmissibility. A discretionary waiver available for other grounds of inadmissibility if inadmissibility is incident to the victimization. No waiver is available if inadmissibility is because of Nazi persecution, genocide, torture or extrajudicial killing; security-related grounds, international child abduction, or renunciation of citizenship to avoid taxation.	Continued presence does not lead to lawful permanent residency so waivers are not applicable.	Waivers of inadmissibility not needed for VAWA self-petitioning process. However, the good moral character self-petitioning requirement is interpreted to require that the victim demonstrate that a waiver would be available and the act is connected to the "abuse". For purposes of lawful permanent residency there are a range of inadmissibility waivers that are available specifically for VAWA self-petitioners. Eligibility requirements for each waiver vary depending on the	Battered spouse waiver applicants have already been deemed to be admissible when they were granted conditional residency. However, as with any lawful permanent resident, any acts triggering a ground of inadmissibility or deportability could result in an applicant being placed in removal proceedings.

	U-visa	T-visa	Continued Presence	VAWA self-petition	Battered spouse waiver
				grounds.	
Processing Times	Varies between 3-18 months. ¹⁰	Varies between 3-18 months. ¹¹	Approximately 1 month.	Varies between 3-18 months. ¹²	Varies between 6-24 months (depending on the service center processing the case).
Renewal	U-visa status may be extended if the U-visa holder is certified by law enforcement to be required for an investigation or prosecution, exceptional circumstances, or because a U-visa holder was unable to apply for lawful permanent residence due a DHS delay in issuing regulations.	T-visa status may be extended if the T-visa holder is certified by law enforcement to be required for an investigation or prosecution, exceptional circumstances, or because a T-visa holder was unable to apply for lawful permanent residence due a DHS delay in issuing regulations.	Continued presence may be extended if it is requested by federal law enforcement.	A VAWA self-petition (Form I-360) approval provides deferred action that protects the victim from deportation and lasts for one year and may be renewed until the self-petitioner is eligible to apply for lawful permanent residence.	A battered spouse waiver (Form I-751) approval extends the applicant's conditional permanent residence for one year. It may be extended annually until the battered spouse waiver application is adjudicated.
Leads to Lawful Permanent Residence	A U-visa holder can apply for lawful permanent residence if there is no affirmative evidence that the victim unreasonably refused to cooperate in an investigation or prosecution, the applicant has maintained continuous presence in the United States for three years, and there is justification	A T-visa holder can apply for lawful permanent residence if the applicant has complied with reasonable requests in the investigation or prosecution (or was under 18 or would suffer extreme hardship), has maintained continuous presence in the United States	No.	Yes. If the abuser is a U.S. Citizen, the self-petitioner can simultaneously file the VAWA self-petition and the application for lawful permanent residency. If the abuser is a lawful permanent resident, the self-petitioner will receive an approved self-petition, deferred action and work	Yes, the approval of the battered spouse waiver grants lawful permanent residence.

¹⁰ Consult with Legal Momentum to determine current processing times.

¹¹ Consult with Legal Momentum to determine current processing times.

¹² Consult with Legal Momentum to determine current processing times.

	U-visa	T-visa	Continued Presence	VAWA self-petition	Battered spouse waiver
	to grant permanent residence based on humanitarian grounds, family unity, or public interest.	for three years (or qualifies to apply earlier because the investigation or prosecution is complete), has good moral character, and is admissible or qualifies for a waiver.		authorization, but must wait for a family preference visa to become available. This can take up to or more than 7 years, but the victim will eventually be eligible for lawful permanent residency.	
Public Benefits	U-visa victims are not qualified immigrants eligible to receive federal public benefits or federal means tested public benefits. In some states U-visa recipients are able to receive some state funded benefits because they are lawfully present. ¹³	Approval of a T-visa makes the victim a qualified immigrant, bona fide determination grants refugee benefits as an HHS certified victim of a severe form of trafficking.	Refugee benefits as an HHS certified victim of a severe form of trafficking.	VAWA self-petitioners who receive a prima facie notice are qualified immigrants eligible to receive federal public benefits. Self-petitioners who entered the U.S. after 8/22/96 must wait 5 years before they can access federal means tested public benefits (e.g. TANF, Food Stamps, SSI, Medicaid). Self-petitioners subject to the 5 year bar may be able to receive state funded benefits. ¹⁴	Conditional residents filing battered spouse waivers are qualified immigrants eligible to receive federal public benefits. Those who entered the U.S. after 8/22/96 must wait 5 years before they can access federal means tested public benefits (e.g. TANF, Food Stamps, SSI, Medicaid). Battered spouse waiver applicants subject to the 5 year bar may be able to receive state funded benefits. ¹⁵
Certified by HHS as a victim of a severe form of trafficking in persons	No.	Yes upon receipt from USCIS of <i>bona fide</i> application determination.	Yes.	No.	No.

¹³ State specific public benefits information is available through the National Immigration Law Center at www.nilc.org.

¹⁴ State specific public benefits information is available through the National Immigration Law Center at www.nilc.org.

¹⁵ State specific public benefits information is available through the National Immigration Law Center at www.nilc.org.



Immigrant Women Program

IMMIGRATION PROTECTION SCREENING CHECKLIST¹

PRELIMINARY QUESTIONS:

- Do you speak English? If not, what languages do you speak fluently?
- What is your immigration status?
- Regarding visa applications,
 - Have you already filed for any of the following:
 - VAWA self-petition
 - Cancellation of removal
 - U-visa application
 - Gender-based asylum application
 - T visa application
 - Has anyone filed any of the following on your behalf:
 - I-130 Family-based visa application
 - Work Visa authorization
 - Are you the derivative of someone else in their visa application for any of the following:
 - Asylum application
 - Refugee application
- When did you first arrive in the U.S.? How long have you been here?
- Why did you come to the U.S.?
- What country do you come from?

¹ This publication was supported by Grant No. 2005-WT-AX-K005 awarded by the Violence Against Women Office, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not reflect the views of the U.S. Department of Justice, Office on Violence Against Women.

- Are you Haitian?²
 - Are you Salvadoran, Guatemalan, or from Eastern Europe?³
 - Are you Cuban?⁴
 - Are you from another country?
- Do you have or have you ever had a work permit or work authorization?
- Have you received any of the following assistance:
- TANF-cash assistance
 - Medicaid
 - Food stamps
 - Public or assisted housing
 - Other assistance, such as counseling
- Is your spouse or parent a veteran?⁵
- Did you meet your spouse through an international matchmaking agency?
- Do you have children? If yes, what is their immigration status?
- Have you ever had a civil protection order against your abuser?
- Did you ever go to a doctor for your injuries or for other treatment, including counseling?
- Did you tell anyone about the abuse, crime, sexual assault, or trafficking? If so, whom?
- Have you ever been detained by anyone? If so, when and by whom?
- By DHS
 - By the police
- Have you ever been arrested or convicted of a crime?

² VAWA allows battered spouses and children (or those who have been subjected to extreme cruelty) who would be eligible for lawful permanent residency under the Haitian Refugee Immigration Fairness Act (HRIFA) but have been unable to attain lawful permanent residency due to the abuser's failure or refusal to file for lawful permanent residency under HRIFA, to file their own self-petitions.

³ Under section 203 of NACARA there are three categories of people who are eligible for NACARA suspension of deportation: (1) Salvadorans who entered the United States before September 20th, 1990, and registered for benefits on or before October 31, 1991 or applied for temporary protected status within the same time period; (2) Guatemalans who entered on or before October 1, 1990 and registered for benefits on or before December 31, 1991; and (3) nationals from certain Eastern European countries who filed for asylum before December 1991. The spouse or children of such immigrants are also eligible. Unmarried sons or daughters over 21 are eligible as long as they entered the United States before October 2, 1990.

⁴ VAWA provides relief for spouses and children who have been battered or subjected to extreme cruelty by an abuser who is eligible for relief under the Cuban Adjustment Act of 1966 (CAA).

⁵ This may affect benefits.

ELIGIBILITY QUESTIONS FOR CERTAIN OPTIONS:

VAWA Self-Petitions

- Are you:
 - Married to a U.S. citizen or a lawful permanent resident and living with your spouse *or*
 - Divorced from a U.S. citizen or lawful permanent resident spouse within the last two years *or*
 - The child of a U.S. citizen or lawful permanent resident *or*
 - The parent of an adult U.S. citizen son or daughter (If you have children, are they biological, adopted, or step children? Who is the father of each of your children?)

and

- Have you or child been physically hurt or suffered emotional harm you consider to be extreme cruelty? If so, by whom? Describe.

and

- Where do you live and where did the abuse occur?⁶

VAWA Cancellation

- How long have you continuously lived in the US?

and

- How did you enter the U.S.?

and

- Have you or your child been physically hurt or suffered emotional harm you consider to be extreme cruelty? Describe.

and

- Was your abuser:
 - Your current or former spouse who is a U.S. citizen or lawful permanent resident *or*
 - Your citizen or lawful permanent resident parent or step parent if you are under the age of 21 *or*
 - The citizen or lawful permanent resident other parent of your abused child?

⁶ The abused did not need to take place in the US if client's abuser, spouse, or parent is an employee of the U.S. government or a member of the U.S. armed forces.

and

- Where did the abuse occur?

and

- What would happen to you and your child if you were deported?

Battered Spouse Waiver

- What is your spouse's immigration status?

and

- How did you and your spouse meet? Did you have a marriage ceremony? Did you reside together? Was your spouse married to anyone else while married to you? Do you have documentation of the marriage?

and

- What is your immigration status?

and

- Have you or child been physically hurt or suffered emotional harm you consider to be extreme cruelty? If so, by whom? Describe.

U Visa

- Were you a victim of any of the following crimes? Describe the impact of the crime on you.
 - Rape
 - Torture
 - Trafficking
 - Incest
 - Domestic violence
 - Sexual Assault
 - Prostitution
 - Sexual Exploitation
 - Female Genital Mutilation (FGM)
 - Being held hostage
 - Slave trade, involuntary servitude, or kidnapping
 - False imprisonment
 - Perjury

and

- What do you know about the crime?

and

- Where did the crime occur?

and

- Have you ever made a police report, spoken to police or prosecutors, or participated in any trial before a judge?

T Visa

- Are you a victim of trafficking⁷?

and

- On account of such trafficking, are you physically present in the U.S., American Samoa, the Commonwealth of the Northern Mariana Islands, or a port of entry?

and

- Have you ever made a police report, spoken to police or prosecutors, or participated in any trial before a judge, or shown willingness to assist a trafficking investigation?⁸

and

- What would happen upon removal to your home country?

⁷ The Trafficking and Violence Protection Act defines trafficking as “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 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.”

⁸ Alternatively, the client can satisfy this requirement if the client is under 18. If the client’s physical or psychological trauma makes it difficult to cooperate with law enforcement, the client may be eligible for a waiver of this requirement.

Work Authorization for Battered Spouses of Work Visa Holders (INA §106)

How did you and your spouse meet? Did you have a marriage ceremony? Did you reside together? Was your spouse married to anyone else while married to you? Do you have documentation of the marriage?

and

What is your spouse's immigration status?⁹

and

Have you been physically hurt or suffered emotional harm you consider to be extreme cruelty? If so, by whom? Describe.

Gender Based Asylum

Were you persecuted in your home country or do you have a fear of persecution in your home country?¹⁰

and

Was the persecution motivated, at least in part, by gender?

and

What was your country's role/involvement in your persecution? If the persecution was not by the country, how did your country respond your persecution?

and

Do you have a safe option to relocate within your home country?

and

Did you tell anyone about the sexual assault/persecution?

⁹ Immigration and Nationality Act §106 states that the spouse should be a principal alien admitted under INA §101(a)(15)(A), (E)(iii), (G), or (H).

¹⁰ Rape generally meets the standard of persecution. *Ali v. Ashcroft*, 394 F.3d 780, 787 (9th Cir. 2005). Past persecution generally only creates a presumption of a well founded fear of persecution that may be rebutted by the government. Past persecution only qualifies an applicant for relief when there is extraordinary persecution such that the victim should not be required to return to the country for humanitarian reasons regardless of whether or not there is a fear of future persecution. See *Matter of Chen*, 20 I. & N. Dec. 16 (B.I.A. 1989).

DEFENSES TO DETENTION/DEPORTATION—Other things you should know to best counsel your client?

- Has the Department of Homeland Security, Department of State, or Department of Justice, released your immigration information to anyone?
- Has your abuser, trafficker, crime perpetrator, or family members used your immigration information to become part of an enforcement action or other action which had an impact on you?
- Have you encountered an immigration officer at any of the following locations:
 - Shelter
 - Rape crisis center
 - Victim services programs
 - Community based organization
 - Courthouses
 - Supervised visitation center or family justice center
- What led the immigration officials to find/encounter you?¹¹
- If you have filed VAWA, T or U visa in the past, did the government tell anyone about the existence of information obtained in your case?¹²
- Are you a pregnant woman?
- Are you a nursing mother?
- Do you have a medical condition that requires special attention?
- Are you the sole caretaker of minor children?
- Are you the sole caretaker of sick or special needs relatives?
- Do you need to support a spouse with sick or special needs relatives?
- Do you have any other conditions which require humanitarian concern?

RED FLAGS—To figure out if there could be complications:

- Often Resolvable Issues—Do you have a history with of any the following:
 - Immigration violation
 - Unlawfully present
 - Unlawful entry
 - Failing to voluntarily depart
 - Issued removal order
 - Departure of U.S. since your original entry

¹¹ If abuser sent the immigration official, it is a VAWA confidentiality violation.

¹² If the answer is yes, this is a VAWA confidentiality violation.

- Public charge
 - Prostitution
 - Committing domestic violence, stalking, or violation of a protection order
- Health Issues—Do you have a history with of any the following:
- Communicable disease or lack of vaccination record
 - Physical or mental disorder
 - Alcohol or drug abuse
- Child Related Issues—Do you have a history with of any the following:
- Child Protective Services intervention
 - International child abduction
 - Child abuse or child neglect
- Immigration Violation Issues—Do you have a history with of any the following:
- Entering the US as an international exchange visitor
 - False testimony for immigration purposes
 - “Alien smuggling”¹³
 - Previously deported or removed
 - Marriage fraud
 - Falsely claimed U.S. citizenship
 - Removal without further review
- Crime Issues—Do you have a history with of any the following:
- Drug trafficking
 - Illegal gambling
 - Money laundering
 - Unlawful voting
 - Draft evasion
 - Faced aggravated felony conviction
 - Penal confinement
 - Human trafficking
 - Polygamy
 - Terrorist activities
 - Totalitarian party membership
 - Espionage and sabotage
 - Communist
 - Genocide, torture, killings, violations of religious freedom
 - Nazi persecution, genocide, commission of any act of torture or extrajudicial killing and severe violations of religious freedom
- Have you ever encountered any enforcement actions at a courthouse or shelter?
- Has an enforcement official ever released your protected information?
- Has an enforcement official ever used information provided by your abuser?

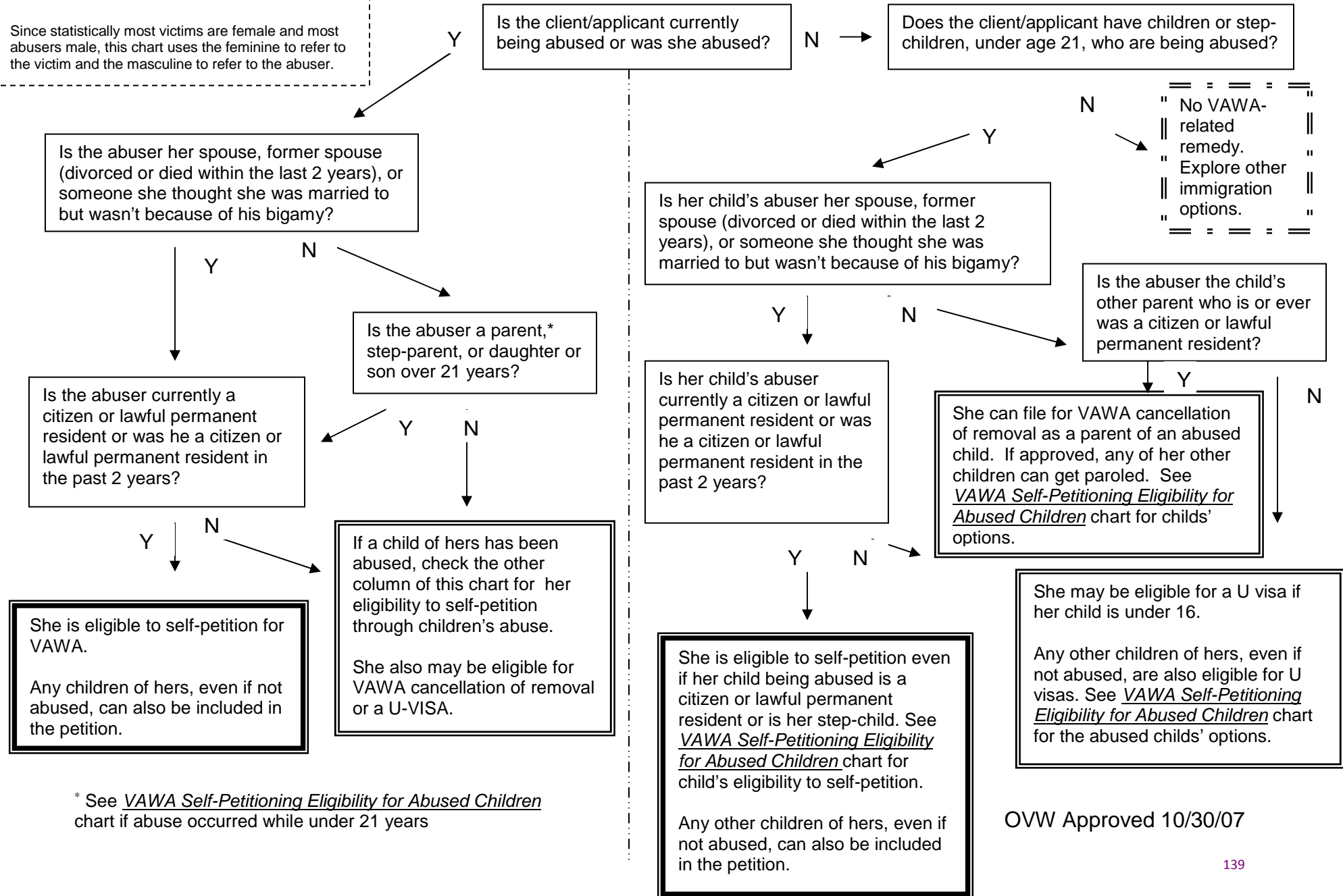
¹³ There is a waiver if the person smuggled was a spouse, parent, son, or daughter of the lawful permanent resident subject to deportation. INA §237(a)(1)(E)(iii).

By Leslye Orloff and Deborah Birnbaum
Legal Momentum, Immigrant Women Program

Violence Against Women Act: VAWA Self-Petitioning Eligibility for Adults

Key
Abused=battered or suffering from extreme cruelty
Y=yes
N=no

Since statistically most victims are female and most abusers male, this chart uses the feminine to refer to the victim and the masculine to refer to the abuser.



* See VAWA Self-Petitioning Eligibility for Abused Children chart if abuse occurred while under 21 years

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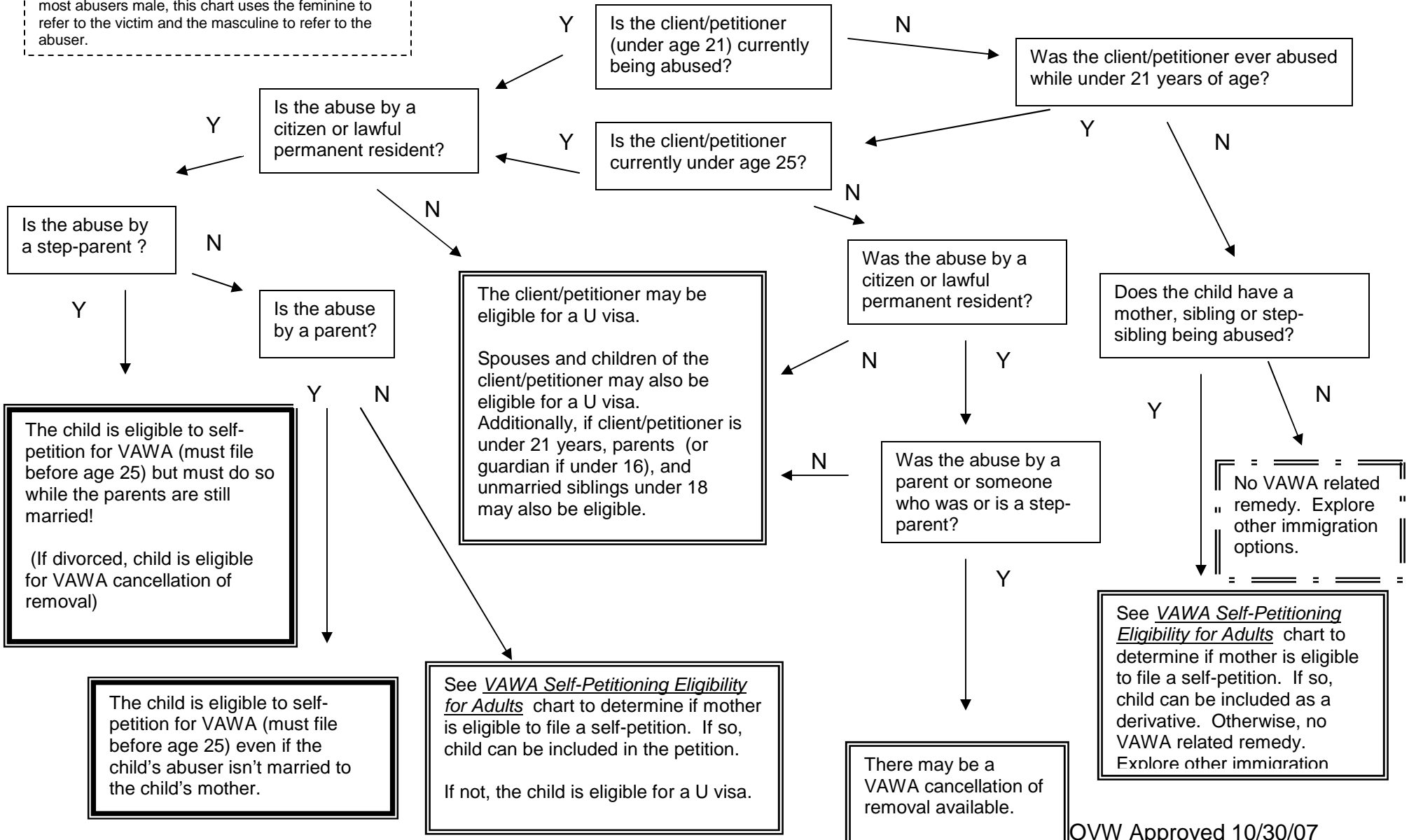
Violence Against Women Act: VAWA Self-Petitioning Eligibility for Abused Children

Key

Abused=battered or suffering from extreme cruelty

Y=yes
N=no

Since statistically most adult victims are female, and most abusers male, this chart uses the feminine to refer to the victim and the masculine to refer to the abuser.



OVW Approved 10/30/07

Evidence List

IMMIGRANT VICTIMS APPLYING FOR VAWA SELF-PETITIONING¹

This is a comprehensive list. In most cases, these documents are not mandatory. However, the more documentation available, the easier it will be for a VAWA self-petitioner to be successful in their application.

1. Proof of applicant’s identity and immigration status

Exists	Brought In	
_____	_____	Birth Certificate of applicant and her children
_____	_____	Copies of passport and I-94 card on behalf of applicant and her children
_____	_____	Other documents received from or sent to the Department of Homeland Security

2. Evidence of spouse’s/parent’s/over 21-year-old child’s U.S. citizenship; or Evidence of spouse’s or parent’s lawful permanent residency

Exists	Brought In	
_____	_____	Birth Certificate (Of U.S. born spouse, parent or over 21-year-old son or daughter)
_____	_____	Naturalization Certificate
_____	_____	Lawful Permanent Resident Card (i.e.- “Green Card”)
_____	_____	Copies of spouse/parent/over 21 year old citizen child’s U.S. passport
_____	_____	US State Department Form FS-240 reporting the birth of a U.S. Citizen outside of the U.S.
_____	_____	I-551 Stamp in Spouse/parent’s passport showing evidence of lawful permanent residence
_____	_____	Declaration for U.S. Consulate official certifying that spouse/parent/over 21 U.S. citizen child is a U.S. Citizen and possesses a valid US passport

¹ This document has been updated and adapted by Legal Momentum and VIDA Legal Assistance. It was adapted from the checklist contained in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Legal Momentum, Washington, D.C. 2004) ADD LINK and Legal Momentum and Organización en California de Líderes Campesinas, “Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual” (Legal Momentum, Washington, D.C. 2002).

3. Evidence of the marital relationship²

Exists	Brought In	
_____	_____	Marriage Certificate

4. Termination of previous marriages

Exists	Brought In	
_____	_____	Divorce decree/ Final order of divorce
_____	_____	Annulment decree
_____	_____	Death certificate of deceased abusive spouse

5. Proof of good faith marriage

Exists	Brought In	
_____	_____	Marriage Certificate
_____	_____	Affidavit from the official who conducted the wedding ceremony
_____	_____	Birth Certificates of children born of the marriage
_____	_____	Affidavit from the applicant recounting the story of the engagement and wedding ceremony, include stories about the home and experiences the two shared
_____	_____	Photographs of the wedding, vacations and other experiences the two shared before and after the wedding
_____	_____	Correspondence including love letters
_____	_____	Cards or letters from the abusive spouse to the applicant's family
_____	_____	Names, addresses, telephone numbers of people that knew the applicant and the abusive spouse as a couple
_____	_____	Letters from the applicant's employer or health care provider asserting that the applicant changed her name after the wedding
_____	_____	Forms of identification (driver's license) indicating the change in applicant's surname after the wedding
_____	_____	Police, court, medical, school or any other documents that provide information reflecting that the applicant and the abuser are or have been a married couple and the time period they resided together.
_____	_____	Signed affidavits from landlords, neighbors, friends, attesting to the fact that the parties reside or resided together.
_____	_____	Insurance policy statements including names of parties and children covered type of coverage (auto, health, life insurance).

² Needed for abused spouses and for abused step-children (evidence of marriage between non-abusive immigrant parent and abusive citizen step-parent).

x | Interviewing and Safety Planning for Immigrant Victims of Domestic Violence

_____	_____	Copies of jointly filed tax forms during the marriage
_____	_____	Bank statements with both the applicant’s and the abusive spouse’s names
_____	_____	Copies of the housing lease with both the applicant’s and the abusive spouse’s names
_____	_____	Mail addressed to both individuals as a couple
_____	_____	Proof of vacations taken together (copies of plane tickets showing they traveled together and sat together, photographs, receipts)
_____	_____	Receipts or payments from large jointly purchased items (cars, house, household appliances, etc.)
_____	_____	Copies of joint membership applications (gym, pool, other organizations)
_____	_____	Automobile registration for jointly owned vehicles
_____	_____	Statements from friends, neighbors, family members, etc.
_____	_____	Copies of utility bills—gas, telephone, electricity, water, etc.
_____	_____	Academic bills or records naming the applicant and abusive spouse as the children’s parents
_____	_____	Children’s medical bills naming the applicant and the abusive spouse as the parents

6. If abusive spouse has died within the last two years, the following is required:

_____	_____	Death Certificate
-------	-------	-------------------

7. If the applicant has divorced their abusive spouse within the last two years, the following is required:

Exists	Brought In	
_____	_____	Final Declaration of Divorce demonstrating the date of final divorce
_____	_____	Copies of the relevant law that the criminal activity has violated
_____	_____	Copies of any arrest warrants
_____	_____	Copies of any complaint reports
_____	_____	Copies of any police reports
_____	_____	Copies of any domestic violence incident report
_____	_____	Affidavit of the pertinent law enforcement officer regarding the nature of the criminal activity

8. If the abusive spouse is engaged in a bigamous relationship, the following is required:

Exists	Brought In	
_____	_____	Marriage Certificate
_____	_____	Copies of the application for the marriage license
_____	_____	Photographs of the wedding ceremony
_____	_____	Affidavit signed by the witnesses present at the wedding ceremony
_____	_____	Affidavit signed by the self-petitioner indicating why she believed that she was legally married to the abuser and that to the best of her knowledge the wedding was legal

9. Proof of parent/child relationship

Exists	Brought In	
For a natural born child:		
_____	_____	Child's birth certificate
_____	_____	Other document establishing that the child is under 21 years of age and listing the parents' names
_____	_____	The parents' marriage certificate
For a child born out of wedlock:		
_____	_____	If the child was born out of wedlock, documents showing legitimation (legal acknowledgment or other evidence or proof that the country where the child was born does not distinguish between children born in and out of wedlock) ³
For an adopted child:		
_____	_____	An adoption decree
_____	_____	Affidavit of adoption and evidence of the abuser's legal custody
For step-children:		
_____	_____	The marriage certificate of the natural parent and the stepparent
_____	_____	If either the child's natural parent or step-parent were previously married, evidence that prior marriage or marriages have been terminated
_____	_____	Child's birth certificate proving the child's relationship with his/her natural parent;
For children included in the victim's self-petition:		
_____	_____	Child's birth certificate, listing the names of the child's parents along with an English translation, where applicable;

³ These requirements will vary depending on the laws of the country where the child was born. See generally, INA § 101(b)(1)(C), 8 U.S.C. § 1101(b)(1)(C); *Matter of Martinez*, 21 I & N Dec. 1035, 1038 (1997); *Matter of Cabrera*, 21 I & N Dec. 589 (BIA 1996); *Matter of Obando*, 16 I & N Dec. 278 (BIA 1977).

If the self-petitioner is the child's father:⁴

- _____ _____ Marriage license or certificate documenting the child's parents were married;
- _____ _____ Evidence of the child's legitimation; or
- _____ _____ Evidence of a bona fide parent-child relationship (pictures, letters).

10. Proof of residence with abusive spouse/former spouse/parent/over 21 year old citizen child

Exists	Brought In	
_____	_____	Birth certificates of children born both in the United States and/or in other countries
_____	_____	Family photographs with family members together
_____	_____	Cards or letters mailed to the petitioner at the residence shared with the abuser (including cancelled postmarks)
_____	_____	Cards or letters mailed to the abuser at the residence shared with the Petitioner (including cancelled postmarks).
_____	_____	Testimony or statements from family friends, landlords, neighbors who knew the family when they lived together. Include names, telephone numbers, and addresses of people that knew the couple
_____	_____	Copies of tax forms
_____	_____	U.S. legal documents with both of the names of the petitioner and the abuser
_____	_____	Documents that indicate the names of the abuser and self-petitioner: employment, school registration, or children's school records
_____	_____	Mail including both the names of the self-petitioner and abuser
_____	_____	Mail separately addressed to the petitioner and the abuser, received on the same day and to the same address
_____	_____	Mortgage payments, rental contracts, receipts from rent payment and related documents
_____	_____	Utility bills
_____	_____	Medical documents or medical bills
_____	_____	Car insurance, health or life insurance that include both names
_____	_____	Credit card bills
_____	_____	Bank statements
_____	_____	Rental agreements, property deeds, or lease agreements indicating jointly owned property
_____	_____	Any correspondence in both names (magazines, newsletters)

⁴ Under U.S. immigration laws proof of a father-child relationship requires submission of additional evidence not required for proving the mother-child relationship.

11. Proof of battering or extreme cruelty

Exists	Brought In	
_____	_____	Personal Statement—Describe in detail what your spouse did to you and how it made you feel. Include emotional, physical and sexual abuse. Emotional abuse can include isolation, threats, insults, economic abuse, threats of deportation and other emotional harm. If your spouse abused you physically and/or sexually describe several of the most severe events or instances in detail. If there were no witnesses to the abuse, and you never filed a police report your personal statement will be critical in the Department of Homeland Securities' decision making process.
_____	_____	Police reports and documented police visits to the residence
_____	_____	Copies of phones bills indicating phone calls made by the petitioner
_____	_____	Official protection order or restraining orders obtained in any U.S. state
_____	_____	Letters of support from priests, teachers, or friends from work
_____	_____	Medical reports or psychological examinations
_____	_____	Statements from witnesses of the abuse or people who knew or learned of any form of abusive behavior (children, neighbors, family members, friends, etc.)
_____	_____	Photographs of the inflicted wounds taken by the petitioner or any other person (lawyer, social worker, or police officer).
_____	_____	The abusive spouse/parent/over 21 year old citizen son or daughter's criminal record documenting criminal conviction for aggression, property destruction or other acts of domestic violence
_____	_____	Adult protective services records documenting the acts of physical, sexual or emotional abuse perpetrated the abusive spouse or over 21-year-old son or daughter
_____	_____	Records from shelters or affidavits stating the date when petitioner entered the shelter and an account of the events that led to seeking refuge
_____	_____	Damaged items or photographs of damaged items (clothes, telephones, etc.)
_____	_____	Any document, report or affidavit signed by a police officer, judge, social worker or service provider
_____	_____	Court orders regarding custody, visitation rights or child care
_____	_____	Criminal court records for fiscal citations or indictment for domestic violence
_____	_____	Medical records for treatment sought due to domestic violence, records of previously existing medical conditions

12. Good moral character

Exists	Brought In	
_____	_____	Statement of the self-petitioner
_____	_____	Local or state police clearance records from the past three years of every city the petitioner has lived in for more than six months.
_____	_____	Fingerprints (may be used as an alternative to the above) ⁵

The following additional forms of evidence may also be submitted. However, this is in addition to the evidence listed above.

_____	_____	Statements from friends, family members, church members or religious leaders, employer, etc. affirming that the applicant is a good person, mother, friend, employee, etc
_____	_____	If the applicant is taking English lessons, a letter from the applicant's instructor; include any awards or certificates received
_____	_____	Documents from teachers at the applicant's children's school, affirming that the petitioner is a good parent and whether the petitioner volunteers time at the school

13. Dependent children to be included in the victim's VAWA Self-Petition

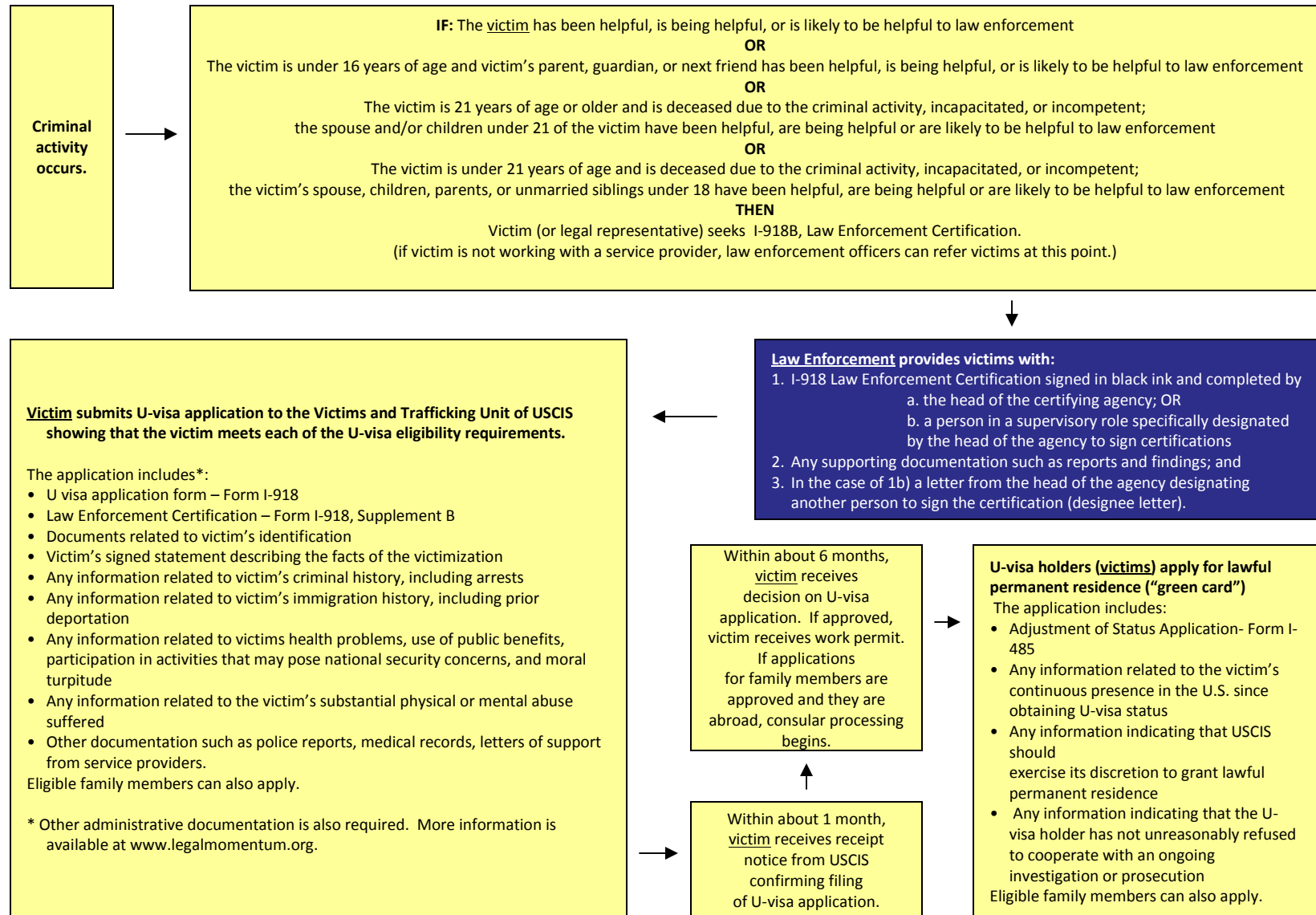
Exists	Brought In	
_____	_____	Birth certificates of the petitioner's children who are not U.S. citizens or lawful permanent residents

14. If the petitioner lives outside of the United States

Exists	Brought In	
_____	_____	Documents stating the name and the address of the employer of the abusive US citizen or lawful permanent resident spouse/parent or US citizen son or daughter
_____	_____	Abuser's pay stubs
_____	_____	Proof of employment
_____	_____	Copy of the abuser's Military I.D.
_____	_____	Copy of the abuser's U.S. Government I.D.
_____	_____	Copies of military orders
_____	_____	Evidence that battering or extreme cruelty occurred in the U.S.

⁵ Fingerprints can be obtained through a state law enforcement agency, the FBI or the Department of Homeland Security (DHS). Victims considering contacting DHS for fingerprints should be referred to an immigration expert with experience working with immigrant victims.

U-visa Application Victim Flow Chart



Prepared by the National Immigrant Victims Access to Justice Partnership (2010). This project was supported by Grant No. 2009-DG-BX-K018 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the United States Department of Justice.

Evidence List

FOR IMMIGRANT VICTIMS APPLYING FOR THE CRIME VICTIM VISA (U VISA)¹

This is a comprehensive list. In most cases, these documents are not mandatory. However, the more documentation available, the easier it will be for a U-Visa applicant to be successful in her application.

Under the Victims of Trafficking and Violence Protection Act of 2000 (“VTVPA”), battered noncitizens and other crime victims may be eligible for a new nonimmigrant visa, the U Visa. This form of relief, if granted, gives the applicant immediate legal status as a nonimmigrant and possible lawful permanent residence in the long-term. The following is a list of the requirements that must be met by an applicant, and some suggestions of evidence that may be offered to meet each requirement. The Department of Homeland Security (DHS) is required to consider “any credible evidence” in its adjudication of an applicant’s case. The suggested evidentiary documents in this memo are meant to be guidelines, and not exhaustive descriptions of the types of evidence that may be offered to support an application under the U Visa.

A. Who is eligible to apply for a U Visa?

Certain battered noncitizens and other noncitizen crime victims who have suffered substantial physical or mental abuse flowing from criminal activity and who are cooperating with government officials investigating or prosecuting such criminal activity.

B. What are qualifying criminal activities?

- Rape
- Torture
- Trafficking
- Incest
- Domestic Violence
- Sexual Assault
- Abusive Sexual Contact
- Prostitution
- Sexual Exploitation
- Female Genital Mutilation
- Being Held Hostage
- Peonage
- Involuntary Servitude
- Slave Trade

¹ This document has been updated and adapted by Legal Momentum and VIDA Legal Assistance from one that was included in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Legal Momentum, Washington, D.C. 2004) [ADD LINK](#) and *Legal Momentum and Organización en California de Líderes Campesinas, “Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual”* (Legal Momentum, Washington, D.C. 2002).

- Kidnapping
- Abduction
- Unlawful Criminal Restraint
- False Imprisonment
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious Assault
- Witness Tampering
- Obstruction of Justice
- Perjury
- Attempt, Conspiracy, or Solicitation to Commit Any of the Above-Mentioned Crimes
- Other state or federal crimes the nature and elements of which are substantially similar

U-visa Application Contents

- ❑ “A Cover Letter: *“The letter should explain how the applicant meets the requirements for the U-Visa. The letter should provide a roadmap to the exhibits filed in support of each U-visa requirement. The cover letter should also provide identification information, including applicant’s full name and date and place of birth. If the applicant’s spouse, child, or parent, will also be seeking U-visas, the cover letter should state this and should list information such as the family members’ names, dates of birth, and relationship to the U-visa victim applicant.*
- ❑ Signed statement from the applicant: *A detailed declaration should describe the criminal activity and how the applicant meets each U-Visa requirement*
- ❑ The Applicant’s Personal Identification Information
- ❑ Form I-918 *Application for U Nonimmigrant Status*
- ❑ Form I-918 Supplement B *U Nonimmigrant Status Certification*
- ❑ Additional evidence to support each U-visa requirement
- ❑ Form I-918 Supplement A *Petition for Qualifying Family Member of a U-1 Recipient* for each family member included with the victim’s application.
- ❑ Form I-765 *Application for Work Authorization* is not required for the U-visa victim applicant but is required for all family members who want employment authorization with accompanying fee or a fee waiver request.
- ❑ Form I-192 *Application for Advance Permission to Enter as a Non-Immigrant* if the applicant is inadmissible with accompanying fee or fee waiver request.²
- ❑ A copy of the applicant’s passport or Form I-193 *Application for Waiver for Passport and/or Visa* with accompanying fee or fee waiver request
- ❑ Biometrics (fingerprinting) fee or fee waiver request
- ❑ Fees: There are no filing fees associated with filing a U-visa (Form I-918). All fees associated with a U-visa application from filing through receipt of lawful permanent residency are by statute required to be waivable for U-visa applicants.³
- ❑ Birth certificates of the applicant and any family members included in the application
- ❑ I-212 waiver application

² The TVPRA 2008, Section 201(d), for which there is currently no rule, assures permanent access to fee waivers of all costs and fees associate with filing an application through final adjudication of the adjustment of status in VAWA self-petition, T-visa, U-visa, VAWA cancellation of removal, and VAWA suspension of deportation cases and for the cases of nonimmigrant derivative victims of domestic violence.

³ 8 C.F.R. § 103.7(c)(5)(i) (2008).

C. What are the requirements that an applicant needs to prove in a U-Visa application and the types of evidence that may be submitted to prove a victim’s eligibility?

An individual applying for a U Visa must establish the following requirements:

1. Applicant is a victim of listed criminal activity:

Exists	Brought In	
_____	_____	Trial transcripts or rulings from criminal case
_____	_____	Trial transcripts or rulings from protection order case
_____	_____	Trial transcripts or rulings from other court or administrative law proceedings
_____	_____	Court documents
_____	_____	News articles
_____	_____	Police reports
_____	_____	Affidavits of victim
_____	_____	Affidavits of witnesses to crime or injuries
_____	_____	Medical records
_____	_____	Ambulance reports
_____	_____	State statute defining crime
_____	_____	Certification from state, federal or local government official

2. Nature of the physical or mental abuse suffered by the victim:

Exists	Brought In	
_____	_____	Reports or affidavits from police
_____	_____	Reports or affidavits from judges or other court officials
_____	_____	Reports or affidavits from medical personnel
_____	_____	Reports or affidavits from school officials
_____	_____	Reports or affidavits from clergy
_____	_____	Reports or affidavits from victim advocates, rape crisis center, shelter, social workers or social services agency personnel
_____	_____	Bond orders
_____	_____	Other court orders or administrative agency orders (e.g. stay away orders, findings documenting facts of criminal activity)
_____	_____	Photographs of injury, crime scene
_____	_____	Medical records from U.S. based provider documenting the diagnosis and treatment of physical injuries
_____	_____	Copies of any ambulance call reports
_____	_____	Records of any 911 calls
_____	_____	Records from a health care provider documenting diagnosis and treatment of mental abuse

<input type="checkbox"/>	<input type="checkbox"/>	Affidavit of applicant detailing the substantial physical abuse and injury and mental abuse and injury suffered as a result of the crime (both what the perpetrator did and how the victim was affected)
<input type="checkbox"/>	<input type="checkbox"/>	Copies of any protection order issued for the applicant or her/his children
<input type="checkbox"/>	<input type="checkbox"/>	Copies of any domestic violence incident report
<input type="checkbox"/>	<input type="checkbox"/>	Affidavits from neighbors, landlords, friends, or family attesting to the criminal activity or having witnessed injuries that resulted from the criminal activity that occurred in the U.S.
<input type="checkbox"/>	<input type="checkbox"/>	Affidavits from police officers or prosecutors detailing the violence that the applicant has endured
<input type="checkbox"/>	<input type="checkbox"/>	Affidavits from victim advocates, shelter workers, battered women’s advocates, counselors or mental health professionals detailing the physical and mental abuse that the applicant has endured

2. Possession of information concerning the criminal activity alleged

Exists	Brought In	
<input type="checkbox"/>	<input type="checkbox"/>	Affidavit of applicant detailing the applicant’s knowledge of the criminal activity
<input type="checkbox"/>	<input type="checkbox"/>	Affidavits from police officers and prosecutors detailing the applicant’s knowledge of the criminal activity
<input type="checkbox"/>	<input type="checkbox"/>	Any documents that may show applicant’s knowledge of the criminal activity
<input type="checkbox"/>	<input type="checkbox"/>	Copies of any police reports
<input type="checkbox"/>	<input type="checkbox"/>	Copies of any statements that the applicant has made to a law enforcement agency
<input type="checkbox"/>	<input type="checkbox"/>	Copies of any complaint reports
<input type="checkbox"/>	<input type="checkbox"/>	Copies of any evidence that was obtained as a result of the applicant’s help
<input type="checkbox"/>	<input type="checkbox"/>	Copies of any documents that the applicant has given to a law enforcement agency
<input type="checkbox"/>	<input type="checkbox"/>	Transcripts of testimony that the applicant has given to a law enforcement agency
<input type="checkbox"/>	<input type="checkbox"/>	Any incriminating photographs that applicant may have
<input type="checkbox"/>	<input type="checkbox"/>	Affidavits from witnesses that may place the applicant at the scene of the criminal activity or attest to the applicant’s knowledge of the criminal activity

3. Crime victim has been helpful, is helpful, or is likely to be helpful to a Federal, State, or local investigation or prosecution

Exists	Brought In	
_____	_____	Affidavit of applicant detailing the applicant's helpfulness with the investigation or prosecution
_____	_____	Affidavit of a law enforcement official, prosecutor, judge, DHS official, or other federal or state authorities that the applicant has been helpful, is helpful, or is likely to be helpful to the investigation or prosecution
_____	_____	Certificate from a law enforcement official, prosecutor, judge, DHS official, or other federal or state authorities (e.g. Adult Protective Service, Child Protective Services, State labor agency staff, the EEOC) that the applicant has been helpful, is helpful, or is likely to be helpful to the detection, investigation, prosecution, conviction or sentencing of criminal activity
_____	_____	Copies of any police reports
_____	_____	Copies of any complaint reports
_____	_____	Copies of any statements that the applicant has made to a law enforcement agency
_____	_____	Copies of any evidence that was obtained as a result of the applicant's help
_____	_____	Copies of any documents that the applicant has given to a law enforcement agency
_____	_____	Transcripts of testimony that the applicant has given to a law enforcement agency
_____	_____	Affidavits of witnesses that applicant has been helpful, is helpful, or is likely to be helpful to a Federal, State, or local investigation or prosecution
_____	_____	Brief description by the applicant's advocate regarding applicant's activities in assisting the investigation or prosecution

4. Certification from a law enforcement official, prosecutor, judge, DHS official, or other federal or state authorities

Exists	Brought In	
_____	_____	Certificate from a law enforcement official, prosecutor, judge, DHS official, or other federal or state authorities (e.g. Adult Protective Service, Child Protective Services, State labor agency staff, the EEOC) that the applicant has been helpful, is helpful, or is likely to be helpful to the detection, investigation, prosecution, conviction or sentencing of criminal activity

5. Criminal activity violated the laws of the United States or occurred in the United States or its territories

Exists Brought In

_____	_____	Certificate from a law enforcement official, prosecutor, judge, INS official, or other federal or state authorities that the criminal activity violated the laws of the United States or occurred in the United States or its territories
_____	_____	Copies of the relevant law that the criminal activity has violated
_____	_____	Copies of any arrest warrants
_____	_____	Copies of any complaint reports
_____	_____	Copies of any police reports
_____	_____	Copies of any domestic violence incident report
_____	_____	Affidavit of the pertinent law enforcement officer regarding the nature of the criminal activity

Sample Questions for Identifying a Trafficked/Enslaved Person

Recruitment

- Was the victim recruited by someone?
- What kind of job abroad was offered to the victim?
- How much money was promised to the victim and by whom?
- Did the victim sign a contract? What were the terms of the contract?
- Was the victim sold? By whom?

Migration

- Was the victim kidnapped or coerced into migration? How?
- How did the victim obtain documents?
- Which documents were obtained?
- How did the victim travel to the U.S.?
- Was a fee paid for organizing the victim's migration? By whom and to whom?

Arrival

- Did the victim have control over his/her identity documents?
- What happened to the victim's identification documents after arrival?
- Did the employer/trafficker use the victim's identity for another purpose?

Working conditions

- Was the victim placed into debt bondage? By whom?
- Were working conditions different than what the victims expected? How?
- Was the victim's movement restricted? How?
- Was the victim living and working at the same place?
- Was the victim chaperoned, guarded, incarcerated?
- Was the victim paid and at what rate?
- How many hours a day did the victim work? Time off? Allowed to rest if sick?
- Was the victim allowed to communicate with family members? Other workers? Make friends?
- Was the victim able to quit working for the employer and get a job somewhere else?
What strategies were used to coerce the victim? (One or all may apply.)Physical Coercion
- Was the victim subjected to pinching, hitting, slapping, punching, kicking, shaking, etc?
- Was the victim subjected to sexual assault, rape, sexual harassment/abuse?
- Was the victim subjected to torture, beatings or other physical violence?
- Was the victim subjected to incarceration, imprisoned or physically isolated? How?
- Was the victim denied medical care, food, clothes and other basic necessities?
- Did the victim attempt to escape from her traffickers? Why?

Psychological Coercion

- Was the victim placed into debt bondage?
- Was the victim subjected to threats of physical abuse, harm or retaliation?
- Were others abused in front of victim?
- Were the victim's family members threatened? How?
- Threats to report victim to authorities for deportation/jail?
- Was the victim verbally abused, humiliated or degraded?
- Did the victim ask their employer if they could leave? Why? Why not? What happened?

T Visa Document Checklist

T visa application (in general)

- A Cover Letter: The letter should explain how the applicant meets the requirements for the T-visa. The letter should be a roadmap to the exhibits filed in support of the requirements.
- Signed statement from the applicant: A detailed declaration should describe the crime victimization and how the applicant meets each T-visa requirement.
- Form I-914 Application for T Nonimmigrant status
- Form I-914 Supplement A *Application for Immediate Family Member of T-1 Recipient* for any family members included (may be added later)
- Form I-765 *Application for Work Authorization* is not required for principal applicant but is required for all family members present in the U.S. who desire work authorization
- Form I-192 *Application for Advance Permission to Enter as a Non-Immigrant if the applicant is inadmissible*
- A copy of the applicant's passport or Form I-193 Applicant for Waiver for Passport and/or Visa with accompanying fee
- Fees: Form I-914 has to filing fees associated with it. However, a biometrics (fingerprinting) fee is required, but applicants may qualify for a fee waiver. In addition, the Form I-765 and Form I-192 require filing fees. Fee waivers are available for the Form I-765, but the filing fee for the Form I-192 is not waivable.
- Any additional evidence to support the applicant's eligibility

Victim of a Severe Form of Trafficking in Persons

Primary Evidence:

- Form I-914B *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*
- Evidence the applicant was authorized Continued Presence as a trafficking victim

Secondary Evidence:

- Statement by applicant describing the victimization, what has been done to report the crime to law enforcement, and what records for the time and place of the crime are available. This statement is a required piece of evidence if the applicant does not submit primary evidence of victimization.
- Civil and Criminal Trial transcripts
- Civil and Criminal Court documents
- Police Reports
- News articles
- Reimbursement forms for travel to and from court
- Witness Affidavits
- Photographs
- Statements from trafficking caseworkers regarding the trauma, fear, or other experiences faced as a result of the trafficking

Evidence of Physical Presence on Account of the Trafficking

- Applicant statement
- Form I-914B *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*
- Evidence applicant was authorized for Continued Presence as a trafficking victim
- Records from a health care provider documenting physical or psychological trauma making them unable to leave the country
- Affidavits from victim advocates, shelter workers, counselors, or mental health professionals detailing any physical or psychological trauma and the effect it had on the applicant's ability to leave the country
- Affidavits from friends, neighbors, social service providers, etc, about the applicant's financial inability to travel.
- Information showing that the applicant's travel documents were seized by the traffickers, such as affidavits from the victim, other victims, or other witnesses
- Affidavits documenting safety concerns preventing a victim from leaving the U.S.

Evidence of Cooperation for Applicants Age 18 and Older:

Primary Evidence:

- Form I-914B *Declaration of Law Enforcement Officer for Victim of Trafficking in Persons*

Secondary Evidence:

- Statement by applicant explaining why the LEA endorsement is not available and outlining good faith efforts to obtain it.
- Trial transcripts
- Court documents
- Police Reports
- News articles
- Reimbursement forms for travel to and from court
- Affidavits from individuals with knowledge of the cooperation
- Documentation setting up meetings and interviews with law enforcement

Evidence of Extreme Hardship

- Affidavit from the victim detailing the victimization, including the nature of the emotional, physical and sexual abuse and the consequences to her physical and psychological well-being if she's removed from the United States
- Affidavits from experts, such as social workers, shelter workers, counselors, or psychologists about the impact of the trafficking on the victim and her children
- Documentation on the impact of the loss of access to the U.S. courts, both the civil and criminal systems (including, but not limited to, the ability to secure criminal investigations and prosecutions, bring civil suits, obtain restitution, and secure protection)
- Court records
- Police records (including police reports and copies of all call tapes)
- "Victim impact statements" provided by the victim for sentencing in a criminal case¹

¹ Victim impact statements, which are used in criminal cases, provide the crime victim with an opportunity to address the sentencing judge about the effect the crime has had on the victim's life and the victim's opinion about the sentence.

- Evidence of the applicant's needs for social, medical, mental health, victim, or other supportive services that would not be available or reasonably accessible in the home country
- Records of counseling programs in which the applicant participated and affidavits from the counselors describing the program and the benefit of the program to the applicant;
- Copies of medical and mental health records that document the trafficking;
- Affidavits from anti-trafficking advocates
- Affidavits from advocates, experts, university professors, or women's groups and other documentation confirming that services parallel to those she is receiving in the United States are lacking in her home country.
- Documentation on the existence of laws, social practices, or customs in her home country that would penalize or ostracize the applicant for having been the victim of trafficking, including the following:
 - Documentation of any serious illness of the victim or and, if appropriate, description of how the illness was caused by or exacerbated by the trafficking;
 - Description of whether similar medical treatment is available to the victim in the victim's home country or why alternative healthcare services there are likely to be less effective,
 - Documentation of the victim's inability to obtain adequate employment in the foreign country
- if the victim's inability to obtain any employment or to obtain adequate employment was a result of or connected to the trafficking. Examples might include (1) the victim's status as a survivor of sexual assault precludes employment; (2) the trafficker's level of power and influence in the home country prevent employers from hiring the immigrant victim; or (3) adequate employment sufficient to support the victim is not open to women in her home country.

VAWA Red Flags¹

Although your client may have a qualifying relationship to a United States citizen or lawful permanent resident and may further qualify for VAWA relief because of battery or extreme cruelty, the following “red flags” are grounds for concern. Any of the following may be cause for denial of a self-petition, a bar to lawful permanent residency, a ground for removal or a bar to cancellation of removal. If any of the following have ever applied to your client, consultation with an immigration attorney who is experienced with VAWA immigration relief is recommended:

<p>Previously deported/removed</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 237(a)(1)(A) • May be bar to lawful permanent residency or admission; May be exception available INA 212(a)(9)(A) • May be ground for removal INA 237(a)(1)(A) and (B) 	<p>Entry as an international exchange visitor</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be bar to lawful permanent residency or admission INA 101(a)(15)(J) • Exceptions INA 212(e) • Waiver available INA 237(a)(1)(A) • May be ground for removal INA 240A(c)(2)
<p>Unlawful entry</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be a bar to lawful permanent residency or admission; Exception may be available INA 212(a)(6)(A) • May be subject to removal INA 237(a)(1)(B) 	<p>Unlawfully present</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be a bar to lawful permanent residency or admission; Exception may be available INA 212(a)(9)(B) • May be subject to removal INA 237(a)(1)(B) and (C)
<p>Failure to Voluntarily Depart</p> <ul style="list-style-type: none"> • May be ineligible for cancellation of removal; May be exception available INA 240B(d) 	<p>Removal Order Issued</p> <ul style="list-style-type: none"> • Removal order must be rescinded before attaining lawful permanent residency
<p>Immigration violation (violation of law or conditions)</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be ground for removal INA 237(a)(1)(B) and (C) • Not a bar to cancellation of removal 	<p>Departure since original entry</p> <ul style="list-style-type: none"> • May trigger previous bar to lawful permanent residency
<p>Falsely claiming citizenship (U.S.)</p> <ul style="list-style-type: none"> • Not a bar to petition approval • Bar to lawful permanent residency or admission; No waiver; Extremely limited exception INA 212(a)(6)(C)(2) • Ground for removal; No waiver; Extremely 	<p>False testimony for immigration purposes</p> <ul style="list-style-type: none"> • May be a bar to petition approval; May be an exception available INA 101(f)(6) • May be a bar to approval; May be a waiver available INA 212(a)(6)(C) • May be a bar to cancellation of removal;

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<p>limited exception INA 237(a)(3)(D)</p> <ul style="list-style-type: none"> Bar to cancellation of removal; No waiver; Extremely limited exception INA 240A(b)(2)(A)(iv) 	<p>May be an exception available INA 240A(b)(1)(B) and (2)(A)(iv)</p>
<p>Misrepresentation for immigration purposes</p> <ul style="list-style-type: none"> May be a bar to petition approval INA 101(f) May be bar to lawful permanent residency or admission; May be waiver available INA 212(a)(6)(C) May be ground for removal; May be waiver available INA 237(a)(3)(C) May be bar to cancellation of removal; May be exception available INA 240A(b)(2)(A)(iv) 	<p>Public charge</p> <ul style="list-style-type: none"> Not a bar to petition approval May be bar to lawful permanent residency or admission; May be exceptions available INA 212(a)(4) May be ground for removal; May be exception available INA 237(a)(5)
<p>Expedited Removal (Removal without further review)</p> <ul style="list-style-type: none"> Limited administrative review INA 235 Limited judicial review INA 242 	<p>International child abduction</p> <ul style="list-style-type: none"> May be bar to petition approval INA 101(f) May be bar to lawful permanent residency or admission; May be exception available INA 212(a)(10)(c) May be bar to cancellation of removal; May be exception available INA 240A(b)(1)(C) and (2)(A)(iv)
<p>Crime of child abuse</p> <ul style="list-style-type: none"> May be ground for removal; Waiver not available INA 237(a)(2)(E)(i) May be bar to cancellation of removal INA 240A(b)(1)(C) and (2)(A)(iv) 	<p>Child Protective Services intervention (child neglect-no conviction)</p> <ul style="list-style-type: none"> May be a bar to petition approval; Exception may be available INA 101(f)
<p>“Alien” smuggling</p> <ul style="list-style-type: none"> May be bar to petition approval; May be exception available INA 101(f)(3) May be bar to lawful permanent residency or admission; May be exception or waiver available INA 212(a)(6)(E) May be ground for removal; May be exception or waiver available INA 237(a)(1)(E) May be bar to cancellation of removal; May be exception available INA 240A(b)(1)(C) and (2)(A)(iv) 	<p>Marriage fraud</p> <ul style="list-style-type: none"> May be bar to petition approval INA 204(a) and (c) May be bar to lawful permanent residency or admission INA 212(a)(6)(c)(i) May be ground for removal INA 237(a)(1)(G) May be bar to cancellation of removal INA 240A(b)(2)(A)(iv)
<p>Penal confinement (result of conviction)</p> <ul style="list-style-type: none"> May be a bar to petition approval; May be an exception available INA 101(f) 	<p>Polygamy</p> <ul style="list-style-type: none"> May be a bar to finding of bona fide marriage INA 204 May be a bar to lawful permanent residency
<p>Any criminal convictions</p> <ul style="list-style-type: none"> May be bar to petition approval; May be exception available INA 101(f)(3) May be bar to lawful permanent residency or admission; May be waiver available INA 212(a)(2) May ground for removal; Limited 	<p>Aggravated felony conviction</p> <ul style="list-style-type: none"> May be bar to petition approval; Limited possibility of exception INA 101(f)(8) May be bar to lawful permanent residency or admission; Waiver available (limited) INA 212(a)(i) May be ground for removal INA

<p>exceptions and waivers available INA 237(a)(2)</p> <ul style="list-style-type: none"> • May be bar to cancellation of removal INA 240A(b)(2)(A)(iv) 	<p>237(a)(2)(A)(iii)</p> <ul style="list-style-type: none"> • May be subject to expedited removal; INA 238 • May be limited judicial review to removal INA 242 • May be bar to cancellation of removal INA 240A(b)(2)(A)(iv) • Identify any criminal convictions (some state misdemeanors are aggravated felonies under immigration law)
<p>Crimes of domestic violence, stalking or violation of protection order</p> <ul style="list-style-type: none"> • May be ground for removal; May be waiver available, INA 237(a)(2)(E) • May be bar to cancellation of removal; May be exception INA 240A(b)(1)(C) and (2)(A)(iv) 	<p>Human trafficking</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 101(f) • May be bar to lawful permanent residency or admission INA 212(a)(2)(H) • May be ground for removal INA 237(a)(2) • May be bar to cancellation of removal INA 240A(b)(1)(C) and (2)(A)(iv)
<p>Habitual Drunkard (Alcohol abuse)</p> <ul style="list-style-type: none"> • May be a bar to petition approval INA 101(f)(1) 	<p>Prostitution</p> <ul style="list-style-type: none"> • May be bar to petition approval; May be exception available INA 101(f)(3) • May be bar to lawful permanent residency or admission; May be waiver available INA 212(a)(2)(D) • May be ground for removal INA 237(a)(2) <p>May be bar to cancellation of removal; May be exception available INA 240A(b)(1)(C) and (2)(A)(iv)</p>
<p>Physical or mental disorder</p> <ul style="list-style-type: none"> • May be a bar to lawful permanent residency; May be a waiver available INA 212(a)(1)(A)(iii) 	<p>Communicable disease</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be a bar to lawful permanent residency or admission or admission; May be a waiver available INA 212(a)(1)(A)(i)
<p>Drug abuse or addiction</p> <ul style="list-style-type: none"> • Not a bar to petition approval unless there has been a conviction for possession (limited exception) • May be a bar to lawful permanent residency or admission INA 212(a)(1)(iv) • Ground for removal INA 237(a)(2)(B)(ii) • Bar to cancellation of removal INA 240A(b)(2)(A)(iv) 	<p>Lack of vaccination record</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be a bar to lawful permanent residency or admission; May be exception or waiver available INA 212(a)(1)(A)(ii)
<p>Controlled Substance Traffickers (Drug trafficking)</p> <ul style="list-style-type: none"> • Bar to petition approval; No waiver INA 101(f) • Bar to lawful permanent residency or admission; No waiver INA 212(a)(2)(C) • Ground for removal; No waiver INA 	<p>Unlawful voting</p> <ul style="list-style-type: none"> • May be a bar to petition approval; May be an exception available INA 101(f) • May be bar to lawful permanent residency or admission; May be an exception available INA 212(a)(10)(D) • May be ground for removal; May be an exception available INA 237(a)(6)

<p>237(a)(2)(B)(i)</p> <ul style="list-style-type: none"> • Bar to cancellation of removal; No waiver INA 240A(b) (2)(A)(iv) 	
<p>Money laundering</p> <ul style="list-style-type: none"> • May be bar to petition approval, INA 101(f) • May be bar to lawful permanent residency or admission, INA 212(a)(2)(l) • May be ground for removal; INA 237(a)(2) • May be bar to cancellation of removal; INA 240A(b)(1)(C) and (2)(A)(iv) 	<p>Illegal gambling</p> <ul style="list-style-type: none"> • Income principally from gambling INA 101(f)(4) • Two(2) convictions for gambling INA 101(f)(5) • May be a bar to petition approval
<p>Stowaway</p> <ul style="list-style-type: none"> • Not a bar to petition approval • Bar to lawful permanent residency or admission INA 212(a)(6)(D) • May be ground for removal INA 237(a)(1)(B) • Not a bar to cancellation of removal 	<p>Draft evasion</p> <ul style="list-style-type: none"> • Not a bar to petition approval • May be bar to lawful permanent residency or admission; No waiver if there is a bar INA 212(a)(8)(B) • May be ground for removal INA 237(a)(1)(A)
<p>Nazi persecution, genocide, commission of any act of torture or extrajudicial killing and severe violations of religious freedom</p> <ul style="list-style-type: none"> • Bar to petition approval INA 101(f)(9) • Bar to lawful permanent residency or admission; No waiver for immigrants INA 212(a)(3)(E) and (2)(G) • Ground for removal; No waiver INA 237(a)(4)(D) and (E) • Bar to cancellation of removal INA 240A(b)(1)(B) and (2)(A)(iv) 	<p>Totalitarian Party Membership (Communist)</p> <ul style="list-style-type: none"> • May be bar to lawful permanent residency or admission; Exceptions available; INA 212(a)(3)(D)
<p>Terrorist activities</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 101(f) • Bar to lawful permanent residency; No waiver available INA 212(a)(3)(B) • May be ground for removal INA 237(a)(4)(B) or (1)(A) • May be ineligible for cancellation of removal INA 240A(c)(4) 	<p>Espionage and Sabotage</p> <ul style="list-style-type: none"> • May be bar to petition approval INA 101(f) • May be bar to lawful permanent residency or admission; Waiver only available for nonimmigrants INA 212(a)(3)(A) • May be ground for removal INA 237(a)(4)(A) • May be ineligible for cancellation of removal INA 240A(c)(4)

IMMIGRANT VICTIM'S RIGHTS & PROTECTIONS

Basic Rights and Protections if You Are Subject to an Enforcement Action

- You have the right to remain silent, even if officials ask you to speak
- You have the right to an attorney
- You have the right to request to see a search warrant before letting law enforcement officials into your home
- You have the right to see a judge and have a hearing
- You have the right to speak to your home country's consulate
- You have the right to be treated humanely
- You have the right to tell immigration enforcement officials that you are a crime victim or a witness to a crime. Immigration officials have the discretion to not enforce immigration laws against an individual who is a crime victim or witness.
- You have the right to find out why you are being arrested
- Enforcement officials are advised against conducting enforcement actions near sensitive community locations such as schools, places of worship, funerals or other religious ceremonies except when the investigation involves terrorism or matters of public safety.

Basic Rights and Protections if You Are Detained

- You have the right to telephone a lawyer
- You have the right to the facility's immigration law resources
- You have the right to a list of affordable legal services
- You have the right to access physical and mental health care
- You have the right to ask for humanitarian release from immigration detention if you are the primary caretaker of children, are pregnant or are nursing
- You have a right to opt out of sharing your personal information through the Online Detainee Locator

System if you are a victim of domestic violence, sexual assault, human trafficking or other serious crime. Inform enforcement officials that you are a victim of a crime and are afraid that the perpetrator will be able to find you through ODLS. They should provide you with an opportunity to call someone who is a safe contact.

VAWA Confidentiality Protections

- The government cannot disclose any information about the existence or contents of an immigration case filed by an immigrant crime victim, including a VAWA self-petition, U-visa, or T-visa. This protection ends only if the application for relief is denied on substantive grounds and all appeals have been exhausted.
- Enforcement officials can not use information provided solely by an abuser, trafficker, U-visa crime perpetrator, or a member of their family to seek, arrest, detain, or deport you. Victims receive this protection whether or not they have filed for immigration relief related to their victimization.
- Enforcement actions are not to be taken at shelters, rape crisis centers, victim services programs, community based organizations, courthouses, supervised visitation centers, and family justice centers.
- If there is an enforcement action at one of these places, any immigration case brought as a result of such action can be dismissed by the immigration judge and the immigration enforcement agent must certify under oath to the immigration judge that VAWA confidentiality was not violated.

Inform immigration and law enforcement officials and your attorney if you are a crime victim or if you have filed for a VAWA self-petition, U-visa, or T-visa

- Domestic violence, child abuse, elder abuse, sexual assault, abusive sexual contact, human trafficking, restrictions on ability to come and go from your home or workplace, blackmail,

extortion of money or labor, assault, battery and threats or coercion to convince you not to help law enforcement and prosecutors are crimes in the United States. If you have been mistreated, abused or harmed by anyone, consult with a crime victim advocate or an attorney as this mistreatment may make you eligible for immigration protection.

- To locate an advocate or an attorney with expertise helping immigrant crime victims, go to: <http://iwp.legalmomentum.org/reference/service-providers-directory>.
- Immigration officials are encouraged to use prosecutorial discretion not to detain, deport or enforce immigration laws against you if you are a victim of domestic violence, sexual assault, trafficking, or other serious crime.
- If you have filed a U-visa, T-visa, or VAWA self-petition your case will be flagged in the Department of Homeland Security (DHS) Central Index System that will notify immigration enforcement that you have VAWA confidentiality protection and that they should not stop, detain or remove you.
- If a deportation case is pending against you or you are detained and you have filed a VAWA self-petition, a U-visa or a T-visa application, the decision on your pending immigration case will be expedited.
- If there are no investigations or serious adverse factors (e.g. criminal history, terrorism) in your case and you are eligible for immigration relief, the immigration case against you should be dismissed.

VICTIM GUIDELINES IN AN ENFORCEMENT ACTION

Stay calm. Do not run.

- Request and write down the officer's name, badge, license plates and agency identification.

You are required to provide proof of your immigration status if you are not a U.S. Citizen

- All non-U.S. citizens must carry evidence of their immigration status.
- An immigration enforcement agent may ask you for proof of status. If you have such proof, you should provide it to the law enforcement agent.

- If you are in the process of applying for immigration relief as an immigrant victim of domestic violence, sexual assault, trafficking or other crime you should tell the officer about this and give them your immigration case number (it begins with the letter A). You should memorize this number and if it is safe to do so, write it here:

You have the right to speak to an attorney, and should call one during or after any enforcement action.

- If you do not have lawful permanent residence (a green card), memorize or carry your attorney's phone number. Also memorize or carry your victim advocate's number so they can help you reach an attorney.
- If you do not already have an attorney, ask immigration authorities to give you a list of low-cost and free legal services in your area.

You do not have to speak to immigration or law enforcement before speaking to an attorney.

- If you are questioned, you have the right to remain silent and to decline to answer any questions even after being arrested.
- If you say "I choose to remain silent, and will not answer any questions without a lawyer," the officers are legally required to stop asking you questions until you have a lawyer with you.
- If you do talk, tell the truth. DO NOT LIE.

If there is a search, pay attention and take notes.

- Request and write down the officer's name, badge, license plates and agency identification.
- Get a receipt for any property taken.

Immigration officials should ask you questions that could lead to the use of prosecutorial discretion not to seek immigration enforcement against you and/or to give you humanitarian release from detention.

- Tell immigration officials: if you have children you are caring for; if you or your spouse is pregnant, if you or your spouse is nursing, or if you are caring for disabled or severely ill relatives. In such cases immigration officials have policies that can keep you from being placed in immigration detention and separated from your

children and that can lead to a faster decision in your immigration case.

- If you are denied humanitarian release you can seek relief before an Immigration Judge, who has the ability to release you from detention.
- Tell immigration officials: if you are a crime victim or witness of a crime, if you are a minor or are elderly, if you have a U.S. citizen or permanent residence spouse, child, or parent, if you have lived in the United States since you were a young child, if you are enrolled in or have graduated from a high school or college in the United States, and if you, your spouse, parent or child has served in the U.S. military, reserves, or national guard. In such cases, tell this to immigration officials and ask for prosecutorial discretion. Informing enforcement officials of these facts helps them to decide that they should not pursue an enforcement action against you.

You have the right to a phone call after you are arrested.

- You have the right to make a local phone call.
- Work with your advocate to plan whom you will call if you are detained for immigration reasons
- The police are not allowed to listen to a call with your lawyer.
- If you are a foreign national, you are entitled to call your consulate or to have the deportation officer inform the consulate of your arrest.

RESOURCES FOR VICTIMS AND FAMILY MEMBERS

- **Attorneys / Pro Bono Links**
 - <http://www.nationalimmigrationproject.org/ReferralPage/ReferralPage.html> (state-by-state listings for immigration, criminal defense, and other attorneys who handle immigration issues).
 - <http://www.usdoj.gov/eoir/probono/states.htm> (state-by-state list of attorneys providing free legal services to detained individuals)

- <http://iwp.legalmomentum.org/reference/service-providers-directory> (state-by-state list of victim advocacy programs, immigrant organizations and pro bono/low bono legal assistance for immigrant crime victims)

• **To find out where a friend or family member is detained:**

- call 202.732.3100, or
- visit <http://www.ice.gov/about/dro/contact.htm>
- If you are a crime victim and are concerned that your abuser will use the detainee locator system to find you, you may opt out of being listed in the system and have the right to alternatively contact friends or family so they will know where you are

• **Lists of immigration detention centers available at**

- www.ice.gov/pi/dro/facilities.htm
- <http://detentionwatchnetwork.org/dwnmap> (includes interactive map)

• **Hotlines for Victims of Crime**

- National Organization for Victim Assistance
1.800.879.6682
- National Domestic Violence Hotline
1.800.799.7233
- <http://www.ojp.usdoj.gov/ovc/help/numb.htm>
- National Sexual Assault Hotline
1.800.656.4673

• **Resources and Technical Assistance for Immigrant Crime Victim Advocates and Attorneys**

- Immigrant Women Program at Legal Momentum – 232.326.0040; iwp@legalmomentum.org;
- ASISTA
515.244.2469, www.asistahelp.org
- National Immigration Project of the National Lawyer's Guild
617.227.5495, www.nationalimmigrationproject.org
- Resource libraries on immigrant victim's legal rights available at: www.iwp.legalmomentum.org and www.asistahelp.org

Collaboratively developed by RAKSHA, Pennsylvania Immigrant & Refugee Women's Network (PAIRWIN), Donna Irwin, D.Irwin Consulting, and Laura Waters and Leslye Orloff of Legal Momentum.

Working with Survivors that are High Risk of Immigration Enforcement Action

All documented and undocumented immigrants are at risk for Immigration Enforcement Action, whether or not they violated U.S. criminal laws. In August 2011, the Department of Homeland Security (DHS) announced the Department will focus their resources on persons who are most dangerous to our communities and at the same time provide special sensitivity to victims of domestic violence, other crime victims, people suffering from serious physical or mental illness, are disabled, elderly, pregnant or nursing or that demonstrate that they are the primary caretakers of children. It is important that a survivor communicate that she is victim of abuse as early and as often as possible to anyone taking immigration enforcement action against her.

DO's

Be proactive with news in your community and how it will affect immigrant survivors; know your jurisdiction.

Explain the importance of avoiding any criminal activity, even driving without a driver's license or using someone else's Social Security number can increase her risk for law enforcement officials to detain and arrest her.

Review with her the basic rights in case of detention:

Most importantly remember she has the right to:

Right to remain silent, even if officials ask her to speak

Right to request an attorney

(See Legal Momentum's "Basic Rights and Protections if You are Subject to an Enforcement Action")

Assist her in making a Safety Plan in case of Immigration Enforcement Action

It is important to **Share** with Immigration Enforcement Officials if she has been victimized by abuse or a crime, if she has U.S. Citizen children, married to USC or LPR, if she pregnant or nursing or if she has any other special needs

Contact an attorney, legal advocate or someone from the list of the non- governmental agencies provided to her by Immigration Officials

Encourage her to be able to document the length of time she has been present in the U.S. (examples: filing taxes with IRS, obtaining library card, bank records, etc.)

DONT'S

Never **Lie** to Law Enforcement or Immigration Enforcement Officials.

Sign any document which she does not understand; officers may attempt to get detainees to sign voluntary departure agreement, it is important that such agreements are only signed after her rights and options have been explained to her by someone else other than immigration officers.

IF SHE HAS APPLIED FOR A VICTIM BASED IMMIGRATION REMEDY

- It is important for her to inform immigration and local law enforcement officials that she is a crime victim or that she has filed for VAWA self-petition, U-visa, or T-visa as early and safely as possible.
- Encourage the applicant to know her A#, which is her file number with immigration, if she has filed for VAWA self-petition, U-visa, or T-visa her case will be flagged in the Department of Homeland Security (DHS) Central Index System, this will notify Immigration Enforcement Officials that she has VAWA confidentiality protections and they should not detain or remove her.
 - When section 384 of IIRIRA confidentiality applies:
 - Immigration officials cannot release information related to the applicant.
 - Immigration officials cannot rely on information from the abuser in making their determination of her case, this applies whether or not she has filed for immigration relief
- If possible the survivor should carry a copy of the I-797 receipt notice from USCIS

IF SHE HAS NOT YET APPLIED FOR A VICTIM BASED IMMIGRATION REMEDY

- Encourage the survivor to gather or apply for VAWA or U-visa as soon possible, especially if she is at risk because her abuser is threatening to contact Immigration Enforcement Officials.
- If she is working with an attorney or legal advocate it is important that her advocate know the special circumstances of her case. You may be vital in assisting her gather evidence for her application.
- Many times a survivor may ready to file, but she should have access to documents that show evidence of victimization, if they exist in case she is at risk for Immigration Enforcement Action.

**Harboring and Transportation of Undocumented Persons:
Information for Domestic Violence, Sexual Assault and Victim Services Agencies**

By: Kilpatrick Townsend & Stockton LLP, Laura Waters and Leslye E. Orloff

I. INTRODUCTION

Victims of domestic violence constitute a significant proportion of crime victims in the United States¹ and an overwhelming number of domestic violence victims are women.² Furthermore, acts of domestic violence are “terribly exacerbated in marriages where one spouse is not a [United States] citizen and the non-citizen’s status depends on his or her marriage to the abuser.”³ In these cases, a battered immigrant’s ability to lawfully remain in the United States may oftentimes depend on her relationship to her spouse and the spouse’s willingness to submit an immigrant relative petition on her behalf.⁴

To help protect undocumented immigrants against domestic violence, the federal government has established certain safeguards to encourage undocumented women to report, and fully cooperate in the investigation of, incidents of domestic abuse without fear of arrest or removal from the United States.⁵ These protections guarantee that all women, without regard to immigration status, have access to programs and services necessary to protect their life and safety, such as domestic violence shelters, emergency medical service and victim assistance programs.⁶

¹ Shannan Catalano, Intimate Partner Violence in the United States, U.S. Department of Justice, Bureau of Justice Statistics (2007).

² Family Violence Statistics: Including Statistics on Strangers and Acquaintances, U.S. Department of Justice, Bureau of Justice Statistics (2005) (noting that women represent 84% of spouse abuse victims and 86% of victims of abuse at the hands of a boyfriend or girlfriend).

³ Leslye E. Orloff & Janice v. Kaguyutan, Offering a Helping Hand: Legal Protections for Battered Immigrant Women: A History of Legislative Responses, 10 Am. U.J. Gender Soc. Pol’y & L. 95, 97 (2001) (quoting H.R. Rep. No. 103-395, at 26-27 (1993)).

⁴ *Id.*

⁵ *See, e.g.*, Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386 §§ 1501-13 (2000) (hereinafter, *VAWA 2000*).

⁶ *See, e.g.*, Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

As a result, domestic violence shelters and other programs that serve abuse victims are designed to serve battered women of every class, race, religion and background in the United States and, as such, they must not deny access to protection and safety to immigrant victims of domestic violence who may be undocumented.⁷ In fact, in many cases, the protection of victims of spousal abuse who are cultural minorities requires greater vigilance on the part of domestic violence agencies because immigrant women are often treated with suspicion and cultural insensitivity by society. As undocumented immigrant women are unauthorized to work in the United States and are often dependent upon their abusers for financial support and possibly legal residency status, they represent an insular minority that is most susceptible to continuing violence. Threats of deportation are the largest single concern of all immigrant, refugee or non-English speaking women who seek help fleeing violence in the home. This fear is largely exacerbated by the incorrect information that is provided to battered women by the batterers, and it is the primary reason why few seek any help unless the violence against them has reached “crisis proportions.”⁸

In order to assist battered immigrant women in overcoming these barriers, shelter workers should work to build bridges, exchange information and create relationships with persons who are bicultural and bilingual, in order to improve their ability to play an important role in assisting battered immigrant women in obtaining relief and placing trust in the American legal system. Further, domestic agencies should lead the way in providing greater cultural sensitivity to battered immigrant women during the process of assistance and support in light of their unique circumstances.

The ability of domestic violence agencies to assist undocumented immigrants, however, is somewhat difficult to reconcile against federal and state laws that make it a crime for individuals or entities to knowingly harbor, shield or transport undocumented immigrants. In addition to federal statutes that make it illegal to harbor or transport undocumented persons, a number of state legislatures, including those in Arizona, Utah, Georgia, Indiana and Alabama have either enacted or proposed laws that would impose harsh criminal penalties for shielding undocumented immigrants from state or local authorities.

Several factors support the notion that domestic violence shelters should continue to assist all victims, including those who reveal that they are undocumented, despite the potential criminal liability associated with knowingly harboring or transporting an undocumented immigrant. First, federal legislation broadly supports undocumented victims of domestic abuse and has consistently evolved to provide greater protection to battered immigrants. As a result, domestic violence shelters that turn away undocumented women may risk losing their federal funding. Second, this federal legislation preempts any state immigration legislation denying undocumented immigrants access to life saving programs and services. Finally, a survey of case

⁷ Shelter workers should note that, like all those born in the continental United States, Alaska and Hawaii, those born in Puerto Rico, Guam and the U.S. Virgin Islands, as well as American Samoans are all considered United States citizens, eligible for all the rights and privileges which citizenship has to offer. Such persons must not be considered undocumented persons.

⁸ C.F. Klein & Leslye E. Orloff, “Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law,” 21 Hofstra Law Review, 4 Summer 1993 at 1022.

law regarding U.S. Bureau of Citizenship and Immigration Services (formerly the U.S. Immigration and Naturalization Service) (“CIS”) proceedings reveals that the services traditionally provided by domestic violence agencies make it unlikely that shelter workers acting within the scope of their employment will face prosecution for harboring or transporting undocumented immigrants.

II. RECENT STATE LAWS ADDRESSING THE HARBORING AND TRANSPORTATION OF UNDOCUMENTED PERSONS

In recent years, while federal lawmakers have repeatedly struggled with and failed to pass comprehensive immigration reform, state and local governments have increasingly responded with immigration measures of their own. Most notably, in July 2010, the Arizona legislature enacted the Support Our Law Enforcement and Safe Neighborhoods Act,⁹ which has been characterized as the “nation’s toughest bill on illegal immigration.”¹⁰ The legislation, which was introduced as Arizona Senate Bill 1070, and is commonly referred to as “SB 1070,” has received national and international attention and has generated considerable controversy by critics who argue that its provisions promote racial profiling. Additionally, the passage of SB 1070 has prompted other states, such as Utah, Georgia, Indiana, and Alabama, to enact similar state immigration laws and has caused other state legislatures consider the adoption of stricter immigration statutes.

A. Arizona

Among other things, SB 1070 requires a state or local Arizona law enforcement officer to ask about the immigration status of an individual the officer has stopped or detained for other reasons if the officer has reasonable suspicion to believe that the individual is present in the United States unlawfully.¹¹ SB 1070 also makes it illegal for individuals or entities to knowingly “harbor” or “shield” undocumented immigrants within the state of Arizona.¹²

Although SB 1070 provides law enforcement officers with the discretion not to ask about an individual’s legal status if such an inquiry would hinder or obstruct an investigation,¹³ SB 1070 provides no specific legal protection for those operating domestic violence shelters or similar facilities. Instead, the only individuals with immunity from prosecution for harboring or shielding undocumented immigrants under SB 1070 are child protective services workers and “first responders,” such as paramedics or emergency medical technicians.¹⁴ Accordingly, SB

⁹ Arizona Senate Bill 1070, Support Our Law Enforcement and Safe Neighborhoods Act (2010) (hereinafter, *SB 1070*).

¹⁰ Randal C. Archibald, Arizona Enacts Stringent Law on Immigration, N.Y. Times, Apr. 24, 2010, at A1, *available at* <http://www.nytimes.com/2010/04/24/us/politics/24immig.html?r=2>.

¹¹ *SB 1070*, supra note 9.

¹² *SB 1070*, supra note 9.

¹³ *SB 1070*, supra note 9.

¹⁴ *SB 1070*, supra note 9.

1070 may undermine the ability of domestic violence shelters, rape crisis centers and other victim services providers to bring a victim to court, to meetings with prosecutors or to the hospital to receive critical treatment for injuries. Moreover, because shelter employees are not specifically granted immunity from prosecution for harboring or shielding undocumented immigrants, there is nothing under SB 1070 that would prevent law enforcement officials from stationing themselves outside of a domestic violence shelter or similar crisis center since undocumented women are entitled to the lifesaving services offered by these facilities under federal law.

On July 6, 2010, the United States filed a lawsuit against the State of Arizona challenging the constitutionality of SB 1070 and arguing that the legislation interferes with matters that are constitutionally reserved for the federal government, conflicts with federal immigration laws and policy and impedes the implementation of Congressional objectives.¹⁵ On appeal, the U.S. Court of Appeals for the Ninth Circuit upheld a temporary district court injunction blocking the enforcement of SB 1070's provisions that: (i) require officers to make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if they possess "reasonable suspicion" that the person is unlawfully present in the United States; (ii) impose criminal penalties for the failure to apply for or carry alien registration papers; (iii) prevent undocumented persons from soliciting, applying for, or performing work; and (iv) authorize the warrantless arrest of immigrants where there is probable cause to believe the person has committed a public offense that makes the person removable from the United States.¹⁶ The Ninth Circuit's decision did not enjoin the enforcement of SB 1070's prohibitions on the harboring or transportation of undocumented persons and SB 1070 continues to remain the focus of significant political and legal debate.

B. Utah

In March 2011, the Utah state legislature enacted the Utah Illegal Immigration Enforcement Act, which was introduced as House Bill 497 and is commonly referred to as "HB 497."¹⁷ Among other things, HB 497 requires that a law enforcement officer verify the immigration status of a person arrested for a felony or a class A misdemeanor and a person booked for class B or C misdemeanor.¹⁸ HB 497 also provides that, in certain situations where the operator of a vehicle has been detained, passengers in the vehicle may also be questioned and their immigration status verified.¹⁹ Additionally, HB 497 also requires verification of immigration status regarding application for public services or benefits provided by a state or

¹⁵ United States of America v. State of Arizona, No. 10-01413 (D. Ariz. *prelim. injunction granted* July 28, 2010); *prelim. injunction aff'd*, No. 10-16645 (9th Cir. April 11, 2011).

¹⁶ *Id.*

¹⁷ Utah House Bill 497, Utah Illegal Immigration Enforcement Act (2011).

¹⁸ *Id.*

¹⁹ *Id.*

local governmental agency or subcontractor, except as exempted by federal law.²⁰ In May 2011, a class action lawsuit was filed by two national civil rights organizations in an effort to enjoin, among other things, the provisions of HB 497 that give law enforcement officers the ability to question people they stop about their immigration status.²¹

C. Georgia

Similarly, in March 2011, the Georgia state legislature passed the Illegal Immigrant Reform and Enforcement Act of 2011, which was introduced as House Bill 87 and is commonly referred to as “HB 87.”²² HB 87 generally provides that if a law enforcement officer has probable cause to believe the suspect has committed a crime, including any traffic offense, the officer is authorized to verify the suspect’s immigration status if the suspect cannot provide identification.²³ In addition, HB 87 also imposes criminal liability on anyone who knowingly harbors or transports undocumented immigrants while committing another crime or using fake identification to gain employment in Georgia.²⁴ Although HB 87 will not become effective until July 1, 2011, some commentators have already witnessed its desired impact in Georgia by noting that a number of undocumented persons are making efforts to leave the state before its provisions take effect.²⁵ On June 2, 2011, the American Civil Liberties Union and other civil rights groups filed a class action suit challenging the constitutionality of HB 87, particularly the provision of HB 87 that permits allows law enforcement officers to check the immigration status of criminal suspects.²⁶ On June 27, 2011, a federal judge issued a temporary injunction against the section that would require law enforcement officers to check the immigration status of those stopped by police if there is probable cause that the suspect has committed a crime and against the section that makes it illegal to transport or harbor undocumented immigrants. The State of Georgia plans to appeal this decision.²⁷

D. Indiana

²⁰ *Id.*

²¹ See Julia Preston, Class-Action Lawsuit Says Utah Immigration Law Violates Civil Rights, N.Y. Times, May 3, 2011, at A20, available at <http://www.nytimes.com/2011/05/04/us/04immigration.html>.

²² Georgia House Bill 87, Illegal Immigrant Reform and Enforcement Act of 2011 (2011).

²³ *Id.*

²⁴ *Id.*

²⁵ See, e.g., Jeremy Redmon & Mario Guevara, Many Immigrants Leaving Georgia Behind, Atlanta Journal-Constitution, June 8, 2011, available at <http://www.ajc.com/news/dekalb/many-immigrants-leaving-georgia-967054.html>.

²⁶ See Stephen Caesar, Georgia Immigration Law Taken To Court, L.A. Times, June 2, 2011, available at <http://articles.latimes.com/2011/jun/02/nation/la-na-georgia-immigration-20110603>.

²⁷ See Kim Severson, Parts of Georgia Immigration Law Blocked, New York Times, June 27, 2011, available at <http://www.nytimes.com/2011/06/28/us/28georgia.html>

In February 2011, Indiana also passed an immigration bill that would make it illegal for anyone to harbor or transport an undocumented immigrant within the state for purposes of “commercial benefit or private financial gain.”²⁸ Although similar to the bills passed by Arizona, Utah, and Alabama, this new law, which is commonly referred to as “SB 590,” indicates that organizations harboring and transporting undocumented persons are only in violation of the law if they stand to gain financially from such harboring or transportation activities.

E. Alabama

In June 2011, Alabama passed its own immigration bill, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which is commonly referred to as “HB 56.” HB 56 prohibits undocumented immigrants who are unlawfully present in the United States from receiving state and local public benefits. HB 56 provides exceptions for primary and secondary school education and state or local public benefits regarding life and safety that are listed in 8 U.S.C. § 1621(b). HB 56 also prohibits undocumented immigrants from enrolling in and attending any public post-secondary education institution in the state. Additionally, HB 56 makes it illegal to conceal, harbor, or shield, or attempt to conceal, harbor, or shield, or conspire to conceal, or shield an alien from detection in any place in Alabama, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the undocumented immigrant has come to, has entered, or remains in the United States in violation of federal law. Finally, HB 56 stays enforcement actions against victims of a crime, children of victims of a crime, and criminal witnesses and their children until the conclusion of all related legal proceedings.²⁹

F. “Knowingly” Harboring Undocumented Persons Under Recent State Immigration Laws

The state immigration laws passed by Arizona, Utah, Georgia, Indiana and Alabama all require that those harboring or transporting undocumented immigrants must be doing so “knowingly” in order for them to be in violation of the law. It would appear that the easiest way for shelters and similar programs and services to escape culpability is by not asking clients about their immigration status. However, as a practical matter, it has become increasingly important in recent years for shelter workers to inquire as to the immigration status of victims seeking their assistance, which could conceivably result in criminal liability for workers who continue to harbor individuals after learning of their undocumented status. It is essential for shelter workers to ask about a victim’s immigration status to ascertain whether, in the event she is not lawfully present in the United States, the victim may qualify for a U visa (for victims of crime), a T visa (for victims of trafficking) or other protection due to the individual’s status as a crime victim.

²⁸ Indiana Senate Bill 590 (2011).

²⁹ Alabama House Bill 56, Beason-Hammon Alabama Taxpayer and Citizen Protection Act (2011).

Additionally, due to recent changes in federal policy regarding the removal proceedings of immigrants with pending or approved immigration applications or petitions,³⁰ it may be useful for shelter workers to ascertain whether a victim is in the process of applying or petitioning for lawful residency in an effort to assist the victim in providing an applicable case number and other relevant information to authorities. Likewise, it may be useful for a shelter worker to inquire as to a victim's immigration status to determine if the victim and/or her children are entitled to certain Medicaid and other related medical insurance coverage offered to individuals lawfully residing in the country.³¹ All of these questions must be answered for a domestic violence shelter or similar service to best aid its clients. It is not a viable solution for shelters to avoid asking clients about their immigration status in light of the protections and options given by federal law to undocumented immigrant crime victims.

III. HARBORING AND TRANSPORTING UNDOCUMENTED PERSONS

As indicated above, it has become increasingly important in recent years for shelter workers to inquire as to the immigration status of victims seeking their assistance, which could conceivably result in criminal liability for workers who continue to harbor individuals after learning of their undocumented status. Shelter workers should be aware that several factors continue to support the notion that domestic violence shelters should strive to assist all victims, including those who reveal that they are undocumented, despite the potential criminal liability associated with knowingly harboring or transporting an undocumented immigrant. First, federal legislation broadly supports undocumented victims of domestic abuse and has consistently evolved to provide greater protection to battered immigrants. As a result, domestic violence shelters that turn away undocumented women may risk losing their federal funding. The Department of Homeland Security (the "DHS") has also released a series of memoranda that discourage enforcement officers from pursuing enforcement actions against immigrant crime victims. Second, under the supremacy clause of the United States Constitution, federal legislation addressing access to benefits to protect life and safety preempts any state legislation that bars access to these same benefits. Finally, a survey of case law regarding CIS proceedings reveals that the services traditionally provided by domestic violence agencies make it unlikely that shelter workers acting within the scope of their employment will face prosecution for harboring or transporting undocumented immigrants.

A. Federal Legislation and DHS Guidelines Support Access to Domestic Violence Shelters for Undocumented Victims of Domestic Abuse

³⁰ See, e.g., U.S. Citizenship and Immigration Services, Memorandum on Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approve Applications or Petitions (Aug. 20, 2010); U.S. Citizenship and Immigration Services, Memorandum on Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings (Feb. 4, 2011).

³¹ See, e.g., National Immigration Law Center, "Lawfully Residing" Children and Pregnant Women Eligible for Medicaid and Children's Health Insurance Program" (Nov. 2010)

The Violence Against Women Act of 1994³², as amended (“VAWA”), the Illegal Immigration Reform and Immigrant Responsibility Act of 1996³³ (“IIRIRA”), the Personal Responsibility and Work Opportunities Act of 1996³⁴ (“PRWORA”), and federal and state confidentiality laws afford significant protection to undocumented women who are victims of domestic abuse. Among other things, VAWA encourages immigrant women to report crimes, including domestic violence, child abuse, sexual assault and human trafficking, regarding of immigration status.³⁵ Subsequently, in addition to preserving the safeguards VAWA afforded to battered immigrant women, IIRIRA and PRWORA also expanded access to public benefits for undocumented women who are victims of domestic abuse and secured certain additional legal protections for battered immigrants.³⁶ VAWA and IIRIRA, as well as certain federal and state confidentiality safeguards, are each discussed in greater detail below.

1. VAWA

VAWA, as enacted in 1994, originally contained a number of important provisions that specifically addressed the problems experienced by battered immigrant women. First, VAWA afforded undocumented women who were the victims of domestic abuse with the ability to independently self-petition for their immigration status.³⁷ Second, VAWA lowered the evidentiary burden that battered immigrants would need to meet with respect to a self-petition for immigration status.³⁸ As a result, VAWA provided that an undocumented woman filing a self-petition would typically only be required to demonstrate: (1) that she married her abuser in good faith; (2) that her abuser is a United States citizen or lawful permanent resident; (3) that she resided with her abuser in the United States; (4) that, during the marriage, either she or her child had been battered or subjected to extreme cruelty by her spouse; (5) that she possesses a good moral character; and (6) that her deportation or removal from the United States would result in extreme hardship to either herself or her children.³⁹ Third, VAWA created the possibility of suspension of deportation for undocumented women and children who were victims of domestic

³² The Violence Against Women Act of 1994, Pub. L. No. 103-222, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C. and 42 U.S.C.) (hereinafter, *VAWA*).

³³ Division C of the Omnibus Appropriations Act of 1996 (H.R. 3610), Pub. L. No. 104-208, 110 Stat. 3009 (hereinafter, *IIRIRA*).

³⁴ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, [Pub.L. No. 104-193](#), 110 [Stat.](#) 2105 (hereinafter, *PRWORA*).

³⁵ *VAWA*, supra note 32.

³⁶ *IIRIRA*, supra note 33.

³⁷ *VAWA*, supra note 32.

³⁸ *Id.*

³⁹ *Id.*

abuse.⁴⁰ Finally, VAWA placed an affirmative duty on domestic violence agencies that receive federal funding to provide services to victims from diverse communities, such as undocumented immigrant women.⁴¹

Despite its significant benefits, VAWA contained several deficiencies, such as: (1) the inability of a battered immigrant woman to file a self-petition if she divorced her abuser prior to filing the petition; (2) the complexity of demonstrating “extreme hardship”; (3) the difficulty of fulfilling the “good moral character” statutory requirement, which effectively denied access to self-petitioners convicted of crimes involving self-defense against their abuser; and (4) denying access to a self-petitioner who was married to a lawful permanent resident who was subsequently convicted and deported in connection with the domestic abuse because of the loss of her spouse’s immigration status.⁴²

Amendments to VAWA that were enacted in 2000 and 2005 helped remedy a number of the inadequacies described above and further demonstrated the federal government’s commitment to protecting battered undocumented women. For example, the 2000 VAWA amendments permitted a divorced undocumented immigrant to self-petition within two years of her divorce, provided the immigrant could prove that the divorce was a direct result of domestic abuse.⁴³ Likewise, the 2000 VAWA amendments made it possible for an undocumented woman to self-petition for immigration status even if her spouse lost his immigration status within a two-year period following the filing due to a conviction arising from the abuse.⁴⁴ The 2000 VAWA amendments also created the U visa, a new visa category that confers legal residency status on individuals who aid in the investigation and prosecution of domestic violence cases and certain other crimes.⁴⁵ The U visa is widely regarded as an extremely important component of the 2000 VAWA amendments because it provides an alternative mechanism to lawful immigration status for undocumented battered women who would otherwise be unable to obtain such status through a VAWA self-petition.⁴⁶ Although a U visa is a temporary nonimmigrant visa, and will not necessarily result in permanent residency status, it includes an employment authorization that is particularly important for many undocumented women.⁴⁷

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See Katerina Shaw, *Barriers to Freedom: Continued Failure of U.S. Immigration Laws to Offer Equal Protection to Immigrant Battered Women*, 15 *Cardozo J.L. & Gender* 663, 671 (2009).

⁴³ *VAWA 2000*, supra note 5.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Shaw, supra note 42, at 672.

⁴⁷ *Id.*

The 2005 VAWA amendments also provided additional remedies to battered immigrant women. Notably, the 2005 VAWA amendments prevented immigration officials from initiating contact with an abuser and from relying on information obtained from an abuser to apprehend or remove undocumented victims of domestic abuse.⁴⁸ In addition, the 2005 VAWA amendments also provides additional access for undocumented battered women by authorizing certain federally funded legal services corporations to represent any victim of domestic abuse, regardless of the victim's immigration or marital status.⁴⁹ Moreover, the 2005 VAWA amendments enable undocumented women with approved VAWA petitions, as well as abused spouses of certain nonimmigrant visa holders, to obtain employment authorizations.⁵⁰

2. PRWORA

Under PRWORA, if a publically funded program or service is necessary for the protection of life and safety, it is exempt from restrictions on immigrant access to public benefits.⁵¹ These programs include but are not limited to police, fire, emergency medical technician and ambulatory services, emergency Medicaid, emergency shelter, transitional housing, access to courts, and victim services. The United States Attorney General is given the authority to exempt certain programs from any restrictions on immigrant access to services and benefits regardless of whether they are state or federally funded. PRWORA initially left out battered immigrants from guaranteed public benefits. As discussed below, IIRIRA amended PRWORA to ensure access for victims of abuse.

3. IIRIRA

IIRIRA has further implemented the ideals set forth in VAWA by PRWORA to provide expanded access to public benefits for undocumented women who are victims of domestic abuse. Previously, PRWORA denied undocumented immigrants access to practically all federally funded benefits and services. However, IIRIRA modified welfare eligibility requirements by granting undocumented women access to publicly funded shelters and services and providing certain battered immigrant women with the legal right to obtain public benefits and assistance.⁵² IIRIRA's amendment of PRWORA further reflects the federal government's belief that all battered women, including undocumented immigrants, are in need of access to domestic violence agencies and shelters and intent to ensure that battered women were allowed these benefits to protect life and safety that they had previously been denied under the original passage of PRWORA.

⁴⁸ Violence Against Women and Department of Justice Reauthorization Act of 2005 (H.R. 3402), Pub. L. No. 109-162 (hereinafter, *VAWA 2005*).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *PRWORA*, supra note 34.

⁵² *Id.*

4. Confidentiality Safeguards

Both VAWA and the 1984 Family Violence Prevention and Services Act (“FVPSA”)⁵³, as amended, provide that any shelter, rape crisis center, domestic violence program or similar victim services program that receives either FVPSA or VAWA funding is barred from disclosing to anyone any information about a victim receiving services, including any information regarding the victim’s location or the fact that the victim is currently or has ever received services from the shelter.⁵⁴ Shelters that violate these confidentiality requirements risk losing federal funding.

In addition, many states have also adopted laws protecting the identity of women seeking services provided by domestic violence shelters.⁵⁵ For example, Section 36-3005 of the Arizona Revised Statutes, which remains unchanged by the enactment of SB 1070, specifically requires that, in order to receive state funding, domestic violence shelters must “require persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify persons served by the shelter.”⁵⁶ Furthermore, Section 36-3009 of the Arizona Revised Statutes imposes civil money penalties on any person or public or private agency that discloses the location or address of any shelter for victims of domestic violence in a manner that identifies the location or address as a shelter and threatens the safety of the shelter’s inhabitants.⁵⁷

5. Impact of VAWA, IIRIRA, PRWORA and Federal and State Confidentiality Safeguards

The scope of federal protection for battered immigrant women set forth in VAWA, the IIRIRA and the FVPSA, as well as the continued evolution of VAWA to provide additional safeguards for undocumented battered women, strongly suggests that it would be inconsistent for federal and state officials to prosecute domestic violence agencies for harboring illegal immigrants. The protection afforded to undocumented victims of domestic abuse has been extended within a variety of federal legislation, including laws that address immigration, welfare and domestic violence matters. Within each of these laws is a central theme that suggests all individuals within the United States, regardless of their immigration status, are entitled to receive protection from domestic violence, and to be free to cooperate in the prosecution of their abusers, without risking deportation or removal. Consequently, even in light of recent aggressive state

⁵³ The Family Violence Prevention and Services Act of 1984, Pub. L. No. 98-457 (codified in 42 U.S.C. Section 10401, et seq.).

⁵⁴ *Id.* See also VAWA, supra note 32.

⁵⁵ Chart of State Confidentiality Laws available at: <http://iwp.legalmomentum.org/reference/additional-materials/vawa-confidentiality/state-confidentiality-laws>

⁵⁶ Ariz. Rev. Stat. § 36-3005 (2011).

⁵⁷ Ariz. Rev. Stat. § 36-3009 (2011).

legislation, it remains unlikely that federal or state officials will prosecute domestic violence agencies for providing legally permissible services to undocumented persons.

6. DHS Guidelines

Through a series of memoranda,⁵⁸ the Department of Homeland Security has strongly indicated that undocumented immigrants should continue to have access to federally guaranteed life saving programs and should be encouraged to report crimes and assist law enforcement in the detection, investigation and prosecution of criminal activity perpetrated against them. Law enforcement officials are strongly discouraged from pursuing immigration enforcement against immigrant crime victims and witnesses and from undertaking enforcement actions at sensitive locations (schools, religious institutions, funerals) and must comply with federal VAWA confidentiality laws that prohibit enforcement actions at domestic violence shelters, rape crisis centers, victim services, community based organizations, courthouses, family justice centers and visitation centers. If immigration enforcement officials rely on perpetrator provided information to initiate or pursue enforcement actions against crime victims the immigration case can be dismissed by DHS or an immigration judge. Additionally, DHS has indicated that enforcement officers should take special care to exercise prosecutorial discretion when deciding whether to pursue actions against pregnant or nursing women, minors and elderly individuals, victims of domestic violence, trafficking, or other serious crimes, individuals who suffer from a serious mental or physical disability, and individuals with serious health conditions. DHS maintains that absent special circumstances, enforcement actions should not be taken against victims or witnesses to a crime. This adds a further layer of protection for domestic violence shelters, as enforcement officers will likely refrain from pursuing actions against victims utilizing their services.

7. Federal Preemption of State Laws

Federal legislation provides undocumented immigrants and all crime victims certain benefits regardless of immigration status. The supremacy clause of the United States Constitution requires that federal legislation in the field of public benefits would also appear to preempt any state legislation that restricts access to these benefits. Applicable law only carves

⁵⁸ See John Morton, Director, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011); John Morton, Director, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011); John Morton, Assistant Secretary, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions (August 20, 2010); John Morton, Director, Civil Immigration Enforcement Priorities for the Apprehension, Detention, and Removal of Aliens (March 2, 2011); U.S. Citizenship and Immigration Services, Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator's Field Manual (AFM) New Chapter 10.3(i): AFM Update AD 11-16 (February 4, 2011); Memorandum from Peter S. Vincent, Principal Legal Advisor, Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal (Sept. 25, 2009); Memorandum from Julie L. Myers, Assistant Secretary of ICE, Prosecutorial and Custody Discretion (Nov. 7, 2007); Memorandum from William I. Howard, Principal Legal Advisor, VAWA 2005 Amendments to Immigration and Nationality Act and 8 U.S.C. § 1367 (Feb. 1, 2007); Director John P. Torres and Director Marcy M. Forman, Interim Guidance Related to Officer Procedure Following Enactment of VAWA 2005 (January 22, 2007).

out one exemption from access to PRWORA programs that are necessary for the protection of life or safety, that permits states to discriminate among immigrants “for programs of general cash public assistance.”⁵⁹ Congress does not provide state and local governments with the authority to limit state and local government non-cash benefits. All federal cases agree that PROWRA occupies the field of provision of public benefits to immigrants, and thus the subset of provision of life and safety benefits to immigrants.⁶⁰ Given that federal law specifically requires that undocumented immigrants be allowed to access crisis counseling and intervention programs, violence and abuse prevention programs, and services to victims of domestic violence, it is unlikely that a shelter or similar service will be in violation of the law for “harboring” or “transporting” an undocumented immigrant solely as a result of providing such programs or services.

B. Domestic Violence Agencies Remain Unlikely Targets for Prosecution for Harboring Illegal Immigrants

Section 274 of the Immigration and Nationality Act (the “INA”) generally prohibits individuals from concealing, shielding or harboring unauthorized individuals who enter and/or remain in the United States.⁶¹ Under Section 274, it is a criminal offense punishable by a fine or imprisonment for any person to “knowingly, or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceal, harbor, or shield from detection, or attempt to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.”⁶² In addition to this provision of the INA, many state legislatures have also enacted legislation, as discussed above, that makes it illegal to harbor or shield undocumented persons within their particular state.

1. Historical Case Law

As early as 1928, federal courts have convicted those who have “conspired” to violate the harboring provisions of the INA. In *Susnjar v. United States*,⁶³ the U.S. Court of Appeals for the Sixth Circuit convicted an individual who had “contracted with aliens” to transport them “secretly” from Canada to the United States. The court acknowledged the “clandestine” manner in which the convicted individual operated to violate the law as definitive of his guilt. Similarly, in 1940, in *United States v. Smith*,⁶⁴ the U.S. Court of Appeals for the Second Circuit convicted a woman for allowing two known undocumented women to reside at her residence while paying

⁵⁹ 8 U.S.C. § 1101(a)(3)

⁶⁰ See *League of United Latin American Citizens v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997).

⁶¹ 8 U.S.C. § 1324 (2011).

⁶² *Id.*

⁶³ *Susnjar v. United States*, 27 F.2d 223 (6th Cir. 1928).

⁶⁴ *United States v. Smith*, 112 F.2d 83 (2nd Cir. 1940).

them to practice prostitution. Additionally, the court accepted evidence that the defendant had instructed the women to lie if they were stopped by the authorities.⁶⁵

By the 1970s, the term “harboring” was no longer confined to “clandestinely shielding or concealing” undocumented persons from the authorities; instead it had come to mean simply “providing shelter to” an individual with knowledge of his or her unlawful presence in the country. Still, those who continued to be prosecuted under the harboring statute were generally involved in some greater, morally questionable activity. For example, in *United States v. Lopez*,⁶⁶ the U.S. Court of Appeals for the Second Circuit convicted the defendant for “harboring” undocumented immigrants, and found that at least twenty-seven undocumented persons were “harbored” at his residences for profit, many of whom had entered the United States with his address in hand. Additionally, the evidence presented satisfied the court that the defendant assisted these same undocumented individuals in obtaining employment, sham marriages, transportation to and from work and assistance in preparing applications for citizenship. In *United States v. Acosta de Evans*,⁶⁷ the U.S. Court of Appeals for the Ninth Circuit convicted an individual for having “harbored” an undocumented person in her apartment. A search of the defendant’s residence by federal authorities revealed four undocumented people who claimed to have only been there “in passing” and one of the defendant’s undocumented relatives, who had been residing with her for over two months. In *United States v. Winnie Mae Mfg. Co.*,⁶⁸ a federal district court held that the prohibition of “harboring” immigrants was not impermissibly vague so as not to apply to the defendants who had allegedly hid undocumented persons in a concealed stairwell or behind a false wall.⁶⁹

During the 1980s, those who were prosecuted under “harboring” undocumented immigrant offenses generally fell into one of two categories: either they were involved in other illegal activities or they took part in the Sanctuary Movement.⁷⁰ In *United States v. Fierros*,⁷¹ the

⁶⁵ *Id.*

⁶⁶ *United States v. Lopez*, 521 F.2d 437 (2nd Cir. 1975).

⁶⁷ *United States v. Acosta de Evans*, 531 F.2d 428 (9th Cir. 1976).

⁶⁸ *United States v. Winnie Mae Mfg. Co.*, 451 F.Supp. 642 (C.D. Cal, 1978).

⁶⁹ *Id.*

⁷⁰ During the 1980s, many domestic church workers and members launched a movement, known as the Sanctuary Movement, to provide shelter for refugees fleeing repressive Central American governments sponsored by the United States. These individuals helped assist and transport undocumented immigrants into the United States by virtue of a “moral necessity” that they believed was based in the Bible. Initially, church members took refugees who sought refuge in their churches directly to the CIS in order for them to obtain political asylum. However, after witnessing the repeated deportation of Central American refugees by the CIS, they soon became disillusioned with the asylum process, and began receiving and assisting undocumented refugees from Central America without notifying the CIS. One of the reasons why Sanctuary Movement participants were actively pursued for prosecution during this time was due to their typically flagrant defiance of immigration laws and their having written or expressed policies of knowingly keeping undocumented persons in their churches as a challenge to the government.

⁷¹ *United States v. Fierros*, 692 F.2d 1291 (9th Cir. 1981).

defendant fell into the first category and the U.S. Court of Appeals for the Ninth Circuit upheld the defendants' convictions for conspiracy to transport and harbor undocumented immigrants. In *Fierros*, the court held that one of the defendants had contracted with a third party to "bring in" agricultural workers from Mexico during the tomato harvest in California and to transport between 250 to 300 undocumented workers from San Diego in buses that were equipped with border patrol scanning devices and preceded by "scout cars." Alternatively, in a significant Sanctuary Movement case, *United States v. Aguilar*,⁷² one of the two defendants convicted for "harboring" undocumented immigrants was found to have knowingly provided a newly arrived undocumented person with a room key to his apartment, which was located behind a church that acted as a sanctuary for refugees fleeing Central America. A government informant testified that the defendant also tore up documents given by border patrol officers to two other undocumented persons coached them to lie to law enforcement officers if they were apprehended, deliberately intending to shield these persons from detection. In a 1992 case, *United States v. Sanchez*,⁷³ the U.S. Court of Appeals for the Eighth Circuit upheld the defendant's conviction for "harboring," "concealing" and "transporting" undocumented immigrants and, additionally, found that the defendant had acquired fraudulent documents for applicants seeking benefits under the Special Agricultural Worker program in exchange for payment.

2. Recent Case Law

Recent federal case law has provided greater guidance on what a prosecutor must prove in order to establish a violation of Section 274 of the INA. In *U.S. v. Shiu Sun Shum*,⁷⁴ the U.S. Court of Appeals for the Fifth Circuit concluded that to demonstrate a violation of the harboring statute, the government must show: "(1) the alien entered or remained in the United States in violation of the law; (2) the defendant concealed, harbored or sheltered the alien in the United States; (3) the defendant knew or recklessly disregarded that the alien entered or remained in the United States in violation of the law; and (4) the defendant's conduct tended to substantially facilitate the alien remaining in the United States illegally."⁷⁵

The harboring provision of the INA, however, is not restricted to only those individuals who smuggle undocumented immigrants into the United States. Rather, as interpreted by courts, the harboring provision can apply to any person who knowingly harbors or shields an undocumented person, which would seemingly include any person who knowingly provides shelter to an undocumented immigrant. Nevertheless, the types of harboring cases that have historically come before the courts have helped provide greater clarity on the sorts of activities that the U.S. Bureau of Citizenship and Immigration Services (the "CIS") seeks to deter when it decides to pursue a violation of the INA's harboring provision. Generally speaking, the CIS has

⁷² *United States v. Aguilar*, 883 F.2d 662 (9th Cir. 1988).

⁷³ *United States v. Sanchez*, 963 F.2d 152 (8th Cir. 1992).

⁷⁴ *U.S. v. Shiu Sun Shum*, 496 F.3d 390 (5th Cir. 2007).

⁷⁵ *Id.* (citing *U.S. v. De Jesus-Batres*, 410 F.3d 154,160 (5th Cir. 2005) (cert. denied, 126 S.C. 1020 (2005))).

traditionally prosecuted violations of the harboring statute when an individual's or entity's unlawful harboring or shielding is either motivated by financial gain or is accompanied by an element of moral turpitude or willful evasion of the immigration laws.

In recent years, the CIS has continued this trend and has increasingly targeted employers who harbor or shield undocumented immigrants for their own private financial gain.⁷⁶ In *U.S. v. Shiu Sun Shum*, for example, the defendant, an executive at an office cleaning company, was found guilty of violating the harboring provision of the INA because he, among other things, provided false identification cards to workers to facilitate background checks so the workers could clean government buildings.⁷⁷ Similarly, in *U.S. v. Zheng*, a defendant employer was found guilty of violating the INA's harboring provision because, among other things, he (1) provided employment and housing for undocumented workers; (2) paid the workers low wages; (3) failed to withhold federal taxes and social security payments; (4) provided false identification cards to workers to facilitate background checks so the workers could clean government buildings; and (5) transferred more than \$200,000 in reported cash to bank accounts in China.⁷⁸ Finally, in *U.S. v. De Jesus-Batres*,⁷⁹ the defendant was found guilty of violating the harboring provision of the INA because he knowingly harbored undocumented immigrants that were smuggled into the United States for a fee by guarding them in his home until the smuggler's fees were paid.⁸⁰ Although by no means exhaustive, these cases demonstrate that the CIS has continued its historical practice of pursuing violations of Section 274 of the INA when the defendant's harboring activities are accompanied by some sort of tangible financial gain or element of moral turpitude.

3. Services Provided by Domestic Violence Agencies

Unlike those individuals or entities that have been traditionally prosecuted for violations of the INA's harboring provision, domestic violence agencies and shelters generally are not motivated by financial gain and do not engage in questionable or potentially illegal activities. Instead, domestic violence shelters focus their efforts on providing food, clothing, shelter and support for all women who have been victims of abuse. In doing so, shelters oftentimes provide, among other things: (1) counseling services, (2) assistance with the enrollment of children in school; (3) help obtaining medical assistance for abuse victims; (4) assistance with legal referrals and with obtaining civil protection orders against batterers, (5) help obtaining affordable housing for victims; and (6) advocacy services with respect to victims' receipt of certain public benefits. These services are not designed to evade federal or state authorities or to violate existing laws,

⁷⁶ See, e.g., *U.S. v. Shiu Sun Shum*, supra note 67.

⁷⁷ *Id.*

⁷⁸ *U.S. v. Zheng*, 306 F.3d 1080 (11th Cir. 2002).

⁷⁹ *U.S. v. De Jesus-Batres*, 410 F.3d 154 (5th Cir. 2005).

⁸⁰ *Id.* at 161.

but are instead aimed at saving women from domestic abuse without regard to a victim's immigration status.

4. Reconciling Applicable Case Law with Domestic Violence Shelter Activities

The history of CIS prosecutions under Section 274 of the INA has shown that the individuals CIS chooses to prosecute are generally engaged in activities that are motivated by financial gain or accompanied by an element of moral turpitude or willful evasion of the immigration laws. It is apparent that the services provided by domestic violence shelters do not share these additional characteristics typically associated with harboring prosecutions. As a result, when comparing the differences in the activities performed by domestic violence shelters with those undertaken by individuals convicted for harboring undocumented immigrants, it becomes increasingly clear that domestic violence agencies are unlikely to face prosecution for harboring undocumented immigrants when they offer shelter and other related humanitarian services to battered immigrant women.

C. Domestic Violence Agencies Remain Unlikely Targets for Prosecution for Transporting Undocumented Immigrants

In serving victims of domestic violence, many shelter workers are often asked by their clients to provide assistance that goes beyond the scope of their duties, such as providing clients with transportation from place to place or, particularly in border towns, helping clients arrange re-entry into the United States. Shelter workers must be aware that providing helpful services such as transportation or assistance in re-entry for clients may constitute the crime of “bringing in” or “transporting” undocumented immigrants under certain specific circumstances. The services that shelter workers regularly provide within the scope of their employment, however, such as providing transportation for children of abuse victims to school, are unlikely to constitute the behavior that is prohibited by these laws. Services that shelters do not regularly provide, such as providing transportation to or from the U.S. border, should be avoided at all costs.

Section 274 of the INA also imposes criminal penalties on any individual who: “(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry . . . regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien; or (ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.”⁸¹ The discussion below of the crime of “bringing in” and

⁸¹ 8 U.S.C. § 1324 (2011).

“transporting” undocumented immigrants demonstrates how workers can be sure to avoid activities which may be subject to such prosecution.⁸²

1. Historical Case Law

a. Overview of the “Bringing In” Undocumented Immigrants Offense

There are several elements that must necessarily exist before one can be charged criminally with “bringing in” undocumented immigrants into the United States. In *United States v. Washington*,⁸³ the U.S. Court of Appeals for the Fifth Circuit held that this offense requires “active conduct” on the part of the defendant, which can include accepting payment from undocumented persons, providing them with false identification, instructing them on how to use identification to clear immigration officials and purchasing airline tickets to the United States for them. The offense of “bringing in” undocumented immigrants “by any means of transportation or otherwise” is not limited to vehicles actually operated or controlled by the defendant.⁸⁴ A private citizen who “uses some public means of transportation to bring an alien into or land one (alien) in the United States may be properly convicted” under Section 274 of the INA.⁸⁵ Additionally, according to the U.S. Court of Appeals for the Ninth Circuit in *Carranza-Chaidez v. United States*, the phrase “by any means of transportation or otherwise” may be interpreted to include providing a guide to bring undocumented persons across the border on foot as part of an overall plan.⁸⁶ Although it has been held that a citizen must have assisted in an undocumented person’s “physical ingress into the United States” in order to be charged for “bringing in” undocumented immigrants, an individual who simply meets an undocumented person on the U.S. side of the border and assists that person’s unlawful entry can be so charged.⁸⁷

⁸² Additionally, shelter workers should note that any transportation provided on one’s “own time” to clients which are not consistent with the shelter’s program or not at the direction of a supervisor and related shelter services, is the sole legal responsibility of the worker.

⁸³ *United States v. Washington*, 471 F.2d 402 (5th Cir. 1973).

⁸⁴ *See, e.g., id.*

⁸⁵ *Id.*

⁸⁶ *Carranza-Chaidez v. United States*, 414 F.2d 503 (9th Cir. 1969).

⁸⁷ *Id.* The court in this case held that the statute is meant to punish those persons who participate in the process of bringing undocumented persons into the United States, and that the offense of doing so does not end the instant an undocumented person sets foot across the border, but continues at least until such person reaches their immediate destination in the United States.

b. Knowledge Requirement for the “Bringing In” Undocumented Immigrants Offense

As with “harboring” offenses, knowledge of an undocumented person’s legal status is necessary for a person to be charged with “bringing in” undocumented immigrants. Domestic violence shelter personnel should note that guilty knowledge may be inferred from an individual’s actions and circumstantial evidence.⁸⁸ For example, in *United States v. Clements*, the U.S. Court of Appeals for the Ninth Circuit held that the defendant’s “earlier association” with three undocumented immigrants in Mexico, and his various actions stemming from that association, supported the inference that subsequently he knowingly, and with requisite intent, brought them into the United States in violation of the statute.⁸⁹

Federal appellate court decisions have also affirmed that the subsequent legitimization of undocumented persons brought into the United States does not “cure” illegal entry.⁹⁰ Accordingly, an individual may violate the law even if he or she unlawfully brings someone into the United States with the intention of helping them apply for legal status. In addition, shelter workers should note that even accompanying a person who has a green card at an unauthorized entry location into the United States could also constitute the crime of “bringing in” aliens and therefore result in criminal liability, as that person could still be deported if he or she enters without inspection. Therefore, domestic violence shelter personnel should be wary of performing tasks for clients entering the United States which, though may be helpful, lie outside the scope of services shelter workers typically provide all abuse victims particularly with respect to transportation.

c. The “Transporting” Undocumented Immigrants Offense

Similarly, the offense of transporting undocumented immigrants also requires that several factors must be present before one can be charged criminally for committing the offense. In *United States v. Salinas-Calderon*,⁹¹ a federal district court articulated that in order for an offense of “transporting” undocumented immigrants to be complete, the following factors must exist: (1) the person charged must have provided transportation of an undocumented person within the United States; (2) the undocumented person must be not lawfully admitted or unlawfully entitled to enter the United States; (3) the person charged must have knowledge that the undocumented person was not lawfully admitted or not lawfully entitled to enter; (4) the person charged must have knowledge or reasonable grounds to believe that the undocumented person’s last entry was within three years (this provision has since been removed from the provisions of Section 274 of the INA); and (5) the person charged must have performed a willful act in furtherance of the

⁸⁸ *United States v. Clemons*, 468 F.2d 909 (9th Cir. 1972).

⁸⁹ *Id.*

⁹⁰ *See, e.g., United States v. Pierre*, 688 F.2d 724 (11th Cir. 1962); *United States v. Hanna*, 639 F.2d 194, 196 (5th Cir. 1981).

⁹¹ *United States v. Salinas-Calderon*, 585 F. Supp. 599 (D.C. Kan, 1984).

undocumented person’s violation of the law. Consequently, domestic violence workers should note that mere transportation of persons known to be undocumented is not by itself sufficient to constitute violation of Section 274 of the INA. Similarly, transportation based on purely humanitarian concerns, such as transportation of a known undocumented person to a hospital following injury or illness or to court to obtain a protection order does not appear to come within the purview of the prohibition⁹² and the transportation must be “in furtherance of” the undocumented person’s violation of the law.⁹³

d. Defining the “In Furtherance Of” Requirement for the Offense of “Transporting” Undocumented Immigrants

In determining when actual “transporting” is “in furtherance of” an undocumented person’s violation of the law, courts have held that there must be a “direct and substantial relationship” between the transportation provided and the furtherance of the undocumented person’s existence in the United States.⁹⁴ It has been held that one must distinguish between acts which are geared more toward the “surreptitious or furtive” transportation of undocumented persons that inhibits government enforcement of immigration laws, and more attenuated incidents involving minimal, employment-related transportation.⁹⁵ If the defendant’s act of transporting an undocumented person is only incidentally connected to the furtherance of the undocumented person’s violation of the law, then courts have generally found that it is “too attenuated” to come within the prohibition of Section 274 of the INA.⁹⁶

The courts have historically provided some important examples of certain acts that do not satisfy the “in furtherance of” element of the offense of “transporting”, undocumented persons. For example, in *United States v. Salinas-Calderon*, a federal district court deemed that a person does not act “in furtherance of” an undocumented person’s illegal presence in the United States in the absence of concealment or harboring, financial remuneration for efforts, smuggling operations, or other factors indicating that the person was acting willfully.⁹⁷ In *United States v. Rodriguez-Rodriguez*,⁹⁸ however, the U.S. Court of Appeals for the Ninth Circuit maintained that whether transportation is provided to an undocumented person gratuitously or for pay is irrelevant under the statute. Additionally, in *United States v. Salinas-Calderon*, the court held that providing transportation to undocumented companions to areas where they may gain employment, thus enabling them to remain in the country, was too attenuated to come within the

⁹² See, e.g., *United States v. Moreno*, 561 F.2d 1321 (9th Cir. 1977).

⁹³ *Id.*

⁹⁴ See, e.g., *United States v. Salinas-Calderon*, supra note 93.

⁹⁵ *United States v. One 1984 Chevrolet Truck*, 682 F. Supp. 1221 (N.D. Ga. 1988).

⁹⁶ *United States v. Salinas-Calderon*, supra note 93.

⁹⁷ *Id.*

⁹⁸ *United States v. Rodriguez-Rodriguez*, 840 F.2d 693 (9th Cir. 1988).

scope of the “in furtherance of” provision in the statute.⁹⁹ Likewise, in *United States v. One 1984 Ford Van*,¹⁰⁰ the U.S. Court of Appeals for the Ninth Circuit held that a vehicle used to transport undocumented persons was not used “in furtherance of” their unlawful presence in the United States where the transportation provided was part of an ordinary required course of employment, such as making the performance of a job possible which is only incidentally connected to furthering the violation of law, if at all.¹⁰¹ Transportation at remote job sites necessarily entails transportation for food, personal items and trips home and is essential to job performance and, as such, also does not constitute a crime of “transporting” undocumented immigrants.¹⁰² Similarly, in *United States v. Merkt*,¹⁰³ the U.S. Court of Appeals for the Fifth Circuit ruled that any citizen intending to assist an undocumented person in obtaining legal status is not acting “in furtherance of” the person’s illegal presence in the country.¹⁰⁴ Provision of transportation by an employer who offered employment and “voluntary” transportation of persons known to have entered the United States unlawfully, however, has been interpreted by federal courts as furthering an undocumented person’s presence in the country and has been deemed a violation of the INA’s transportation provision.¹⁰⁵

e. Knowledge Requirement for the “Transporting” Undocumented Immigrants Offense

With respect to the knowledge required for the offense of “transporting” undocumented immigrants, the words “reckless disregard” have been interpreted by the courts as “having reasonable grounds to believe” that an undocumented person’s entry within the last three years was unlawful.¹⁰⁶ For example, in *United States v. Pruitt*,¹⁰⁷ the U.S. Court of Appeals for the Ninth Circuit held that this definition of “reckless disregard” was not unconstitutionally vague with respect to the offense of “transporting” undocumented immigrants so as to render it void for vagueness.¹⁰⁸

⁹⁹ See, e.g., *United States v. Salinas-Calderon*, supra note 93.

¹⁰⁰ *United States v. One 1984 Ford Van*, 826 F.2d 918 (9th Cir. 1987).

¹⁰¹ *Id.*

¹⁰² *United States v. One 1984 Ford Van*, supra note 102.

¹⁰³ *United States v. Merkt*, 764 F.2d 266 (5th Cir. 1985).

¹⁰⁴ *Id.*

¹⁰⁵ See, e.g., *United States v. One 1982 Chevrolet Crew-Cab Truck*, 810 F.2d 178 (8th Cir. 1987).

¹⁰⁶ See, e.g., *United States v. Pruitt*, 719 F.2d 975 (9th Cir. 1983).

¹⁰⁷ 719 F.2d 975 (9th Cir. 1983).

¹⁰⁸ *Id.*

2. Recent Case Law

Recent federal case law suggests that, much like in recent harboring cases, the CIS has focused on prosecuting individuals under the “bringing in” and “transporting” provisions of the INA in cases where the defendant’s actions result in financial gain or were accompanied by an element of moral turpitude. For example, in *United States v. Reyes-Bosque*, the U.S. Court of Appeals for the Ninth Circuit upheld the defendant’s conviction under Section 274 of the INA after determining that defendant was paid to provide cell phones and automobiles to undocumented persons, and transported such undocumented persons to a “safe house” in the United States once they were smuggled across the border.¹⁰⁹ Similarly, in *United States v. Whittington*, the U.S. Court of Appeals affirmed a defendant’s conviction under Section 274 for aiding and abetting in the “bringing in” of undocumented persons into the United States.¹¹⁰ In *Whittington*, the court noted that, when border patrol officials stopped the defendant near the California and Mexico border, ten undocumented immigrants were found near or inside a small, camouflaged box, resembling a pile of two by fours, that had been built into a trailer attached to the defendant’s pick up truck.¹¹¹ In affirming the defendant’s conviction under Section 274, the court noted that the defendant was motivated by personal financial gain, as he was paid \$1,000 by smugglers to bring the passengers into the United States.¹¹² Likewise, in *U.S. v. Franco-Lopez*, a federal district court upheld a co-defendant’s conviction for conspiring to smuggle undocumented persons into the United States from Mexico after the co-defendant “conceded that he needed money because of various personal and financial problems he was experiencing.”¹¹³

Interestingly, in *United States v. Al Nasser*, the U.S. Court of Appeals for the Ninth Circuit also upheld the defendant’s conviction for bringing two undocumented persons into the United States because, even though the defendant himself did not receive payment for his services, his actions were part of a larger scheme designed to result in personal financial gain.¹¹⁴ In *Al Nasser*, the court affirmed the defendant’s conviction for driving undocumented immigrants into the United States from Mexico.¹¹⁵ The court, in reaching its decision, noted that “even if the defendant did not get paid or expect payment for transporting the undocumented immigrants, he was part of a scheme in which the immigrants had paid money to a ‘coyote’ for the transportation.”¹¹⁶ Accordingly, the court concluded that “this was not an unwise, generous

¹⁰⁹ *United States v. Reyes-Bosque*, 596 F.3d 1017 (9th Cir. 2010).

¹¹⁰ *United States v. Whittington*, 241 Fed. Appx. 388 (9th Cir. 2007), *available at* 2007 WL 2044712.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *United States v. Franco-Lopez*, 709 F.Supp.2d 1152 (D.N.M. 2010).

¹¹⁴ *United States v. Al Nasser*, 555 F.3d 722 (9th Cir. 2009).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

picking up of hitchhikers” because the defendant “knew it was an organized activity involving . . . financial gain.”¹¹⁷

3. Domestic Violence Shelter Context

In light of the applicable case law discussed above, both “bringing in” and “transporting” undocumented immigrants offenses are not likely to pose a significant concern for domestic violence shelter workers. Domestic violence agency workers who serve clients within the scope of their employment in a domestic violence context reduce the risk of being prosecuted under Section 274 of the INA. As in the case of the federal harboring statute, recent CIS prosecutions under the “bringing in” and “transporting” provisions of the INA have generally centered around individuals engaged in activities that are motivated by financial gain or accompanied by an element of moral turpitude or willful evasion of the immigration laws. Accordingly, when comparing the differences in the activities performed by domestic violence shelter workers with those undertaken by individuals convicted for “bringing in” or “transporting” aliens in recent years, it seems apparent that domestic violence shelter workers are unlikely to face prosecution for providing routine and customary transportation services to undocumented persons within the scope of their employment.

IV. CONCLUSION

Despite recent state immigration laws that have prohibited the harboring and transporting of undocumented immigrants, federal legislation guarantees undocumented immigrant victims access to benefits to protect their life and safety. Domestic violence shelters provide critical, and oftentimes life saving, services to immigrant victims and should continue to offer aid to all victims with the knowledge that their actions are supported by federal statutes and policy, as well as a history of favorable case law which indicates that the prosecution of domestic violence shelters is highly unlikely in cases where the actions of shelter workers are not motivated by financial gain or accompanied by an element of moral turpitude. Shelter workers should refrain from “bringing in” aliens, as this action is not within the purview of a domestic violence shelter’s regular activities and therefore poses a greater risk of criminal liability for shelter workers based on historical case law.

¹¹⁷ *Id.*

VAWA Confidentiality

By Leslye Orloff¹

In 1994, the Violence Against Women Act was signed into law and has been expanded over the years to include human trafficking and other violent crimes. In 1996, President Clinton signed into law sweeping immigration legislation known as (IIRAIRA).² Section 384 of this law provides protection to battered immigrants and has been expanded to protect other immigrant crime victims. Congress created the VAWA confidentiality provisions to prevent abusers and other crime perpetrators from using the immigration system as a tool of power and control over their victims or as a means to track and stalk their victim.³ Practitioners continue to report instances in which the perpetrator attempts to discredit a victim in order to deport her or deny her access to legal immigration status. In other instances, perpetrators obtain information about a victim's court case or shelter location as a way to stalk and control their victim. VAWA confidentiality violations create serious, even life-threatening dangers to individuals. They also compromise the trust that immigrant victims place in victim services protections. While these laws are not new, in May 2008 the Department of Homeland Security (DHS) published instructions for filing violations complaints.⁴

The Three Prongs

Confidentiality Requirements: VAWA Confidentiality prevents the Department of Homeland Security (DHS), the Department of State (DOS) and the Department of Justice (DOJ) from releasing information contained in a protected immigration file to the abuser or others.⁵ This information includes the existence of a VAWA confidentiality protected immigration filing, locational information, and information about the victimization. The protected immigration cases include the VAWA self-petition, VAWA cancellation or suspension, battered spouse waiver, T visa, U visa or battered spouse waiver, VAWA Cuban adjustment applicants, VAWA Haitian Refugee Immigration Fairness Act or VAWA Nicaraguan Adjustment and Central American Relief Act Protections. VAWA Confidentiality applies to this information from the time of filing until all final appeal rights are exhausted.⁶

Prohibition Against Reliance on Perpetrator Provided Information: The second prong prohibits the Department of Homeland Security, the Department of Justice and the Department of State (DOS) from using information provided solely⁷ by perpetrator or family member to make take any action or make any adverse immigration

¹ The would like to thank Kavitha Sreeharsha, Senior Staff Attorney Legal Momentum and Hannah F. Little, Director, Immigrant Justice Project, Legal Services of Southern Piedmont, Charlotte, NC, Suzanne Tomatore and Karin Dryhurst for their contributions to this chapter. This paper has been adapted from a previously published article by Kavitha Sreeharsha.

² Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 § 384; 8 U.S.C. § 1367 (2001). In October 2000, Congress amended § 384 to include confidentiality protection for cases filed under INA §101(a)(15)(U), immigrant crime victim cases (U nonimmigrant visas) and T visas.

³ See *Hawke v. Dep't of Homeland Sec.*, 2008 WL 4460241, at *7 (N.D. Cal. Sept. 29, 2008) (“[O]ne of the primary purposes of the VAWA confidentiality provision, namely, to prohibit disclosure of confidential application materials to the accused batterer.”) (citing 151 Cong. Rec. E2607-07 (2005)).

⁴ “Violence Against Women Act (VAWA) Confidentiality Provisions at the Department of Homeland Security”, The Department of Homeland Security, undated.

⁵ IIRAIRA §384 (a)(2); 8 U.S.C. §1367(a)(2).

⁶ See *Hawke*, 2008 WL 4460241, at *7; see also DHS Broadcast Message on New 384 Class of Admission Code, U.S. Citizenship and Immigration Service (Dec. 21, 2010), available at: http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message%20to%20DHS%20384%20COA%20Final%2012.21.10.pdf/at_download/file.

⁷ The policy of USCIS is that if the information can be independently corroborated by an unrelated source, the information may use used. See Virtue, INS Office of Programs, “Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRIRA § 384,” (May 5, 1997). Advocates and attorneys working with immigrant victims need to know that DHS officials may rely upon information in the public record and government databases, even if government officials first became aware of it through an abuser. “Department of Justice Appropriations Authorization Act, Fiscal Years 2006 through 2009: Report of the Committee on the Judiciary, House of Representatives, to accompany H.R. 3402” H.R. Rep. No. 109-233, at 122 (2005).

determination against the crime victim.⁸ This protection extends to those who do not qualify to file, as well as those who have not yet filed cases for immigration relief as long as they are victims of the enumerated crimes, namely VAWA physical abuse or extreme cruelty, a severe form of trafficking in persons under the T-visa, or any of the U-visa qualifying crimes.⁹

Prohibited Enforcement Locations: Finally, VAWA Confidentiality prevents enforcement actions at the following locations:

- Domestic violence shelter;
- Victim services program (including rape crisis centers);
- Community based organizations;
- family justice center;
- supervised visitation center; or
- courthouse if the victim is appearing in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking.¹⁰

If DHS undertakes any part of an enforcement action at a protected location, it must disclose this fact in the Notice to Appear and to the immigration court, and must certify that such action did not violate VAWA confidentiality provisions.¹¹ If the action is not certified, DHS officers face violation penalties.¹²

Anticipating Violations

Though legal protections exist, DHS is the only federal agency that has developed procedures for receiving and processing VAWA Confidentiality complaints. Immigration attorneys and legal advocates should include a VAWA Confidentiality §384 advisory on every eligible application that is statutorily eligible to receive VAWA confidentiality protection that is filed on behalf of an immigrant victim with DHS, DOJ and DOS. Attorneys can also file a G-28 or EOIR-28 in advance of any filing that advises both DHS and any Immigration Court that the client is eligible for VAWA Confidentiality protections. Notice that the case is covered by VAWA Confidentiality protections should be clearly written on both the envelope and cover letter. Without clearly marking filings with an advisory on VAWA Confidentiality, mailroom clerks could easily miss direct the filing in a manner that could lead to VAWA confidentiality violations. This is particularly important when a victim is filing papers in an immigration court proceeding or in an adjustment case or family based visa petition case that is being adjudicated at a local DHS district office. Immigration Courts and Citizenship and Immigration Services of DHS District Offices are less likely to be familiar with VAWA Confidentiality protections than the specially-trained VAWA unit at Vermont Service Center, which processes the majority of the applications eligible for VAWA Confidentiality protections. Common violations include copying the perpetrator on a DHS interview notice, including confidential hearing information in the court's electronic notification system, or failing to close immigration court proceedings.

It is important to assess a victim's safety under the assumption that confidentiality may be breached. If the victim is working with a social service provider, inform that person of potential safety risks and confidentiality violations. In practice, Vermont Service Center allows VAWA self-petitions, T-visas, and U-visas applications to list only the immigration practitioner's or another safe address on the application. Still, most applicants will require a safety plan which the immigration practitioner should design with the social service provider and the victim. The plan should include all the possible locations where safety could be compromised including an interview at DHS, a biometrics appointment, an immigration court appearance, or any other location identified in the immigration application. Upon violation, practitioners should also request a change in appointment date, time, or even location.

If a victim is undocumented, that individual should be prepared that DHS enforcement actions triggered by the perpetrator may occur. Therefore, victims should be advised about the fact that they qualify for VAWA confidentiality protection. They should carry materials documenting eligibility with them and provide them should

⁸ IIRAIRA §384 (a)(1); 8 U.S.C. §1367(a)(1).

⁹ *Id.*

¹⁰ INA § 239(e); 8 U.S.C. §1229(e)

¹¹ *Id.*

¹² IIRAIRA §384 (a)(2); 8 U.S.C. §1367(c).

DHS apprehend them. While a victim need not have filed an application to be eligible for VAWA Confidentiality protection, it can be more difficult to counter enforcement actions when the victim has nothing on file with DHS documenting eligibility. Attorneys and advocates working with immigrant victims should adopt a practice of filing applications for immigrant victims as soon as possible, even if the applications are merely skeletal filings, so that the victim has a receipt notice to protect her against any DHS enforcement action. It is critical to work with social service agencies to identify undocumented victims and move quickly to initiate applications for VAWA, T or U visa immigration relief.

Victim advocates assisting immigrant victims with applications should screen for VAWA immigration relief eligibility and complex “red flag” immigration issues.¹³ While victim advocates may help immigrant victims file VAWA self-petition cases, it is important to identify an attorney with expertise on VAWA, T and U-visa immigration cases who will take cases of immigrant victims with Red Flag issues. Advocates should work with attorneys representing immigrant victims in preparing the victim’s statement for the immigration case and in the collection of evidence needed to support the victim’s application for VAWA, T or U visa immigration relief. Advocates and attorneys should work together to advise undocumented immigrant victims of the danger of encountering DHS on buses, on trains, at courts, at hospitals and in other public locations. Immigration practitioners should provide all the appropriate social service partners with adequate information about VAWA Confidentiality protections in the event that ICE attempts an enforcement action at a protected location.

Because VAWA Confidentiality protections are less known outside of the DHS VAWA Unit, practitioners should leverage existing relationships with local DHS offices, Service Centers, Immigration Courts, criminal courts, protection order courts and family courts, to incorporate VAWA Confidentiality protections into collaborations, discussions, trainings, and advocacy with these agencies. Each of these agencies should develop protocols to ensure immigrant victim protection. DHS is required to train staff of VAWA Confidentiality but it would also be helpful for other agencies to adopt similar policies.

Immediate Advocacy Enforcing the Statute

If a victim becomes subject of a DHS enforcement action, VAWA Confidentiality can be used to protect the victim against detention, issuance of a Notice to Appear, or service of the notice to appear on the immigration court. VAWA Confidentiality can be used to convince DHS to exercise prosecutorial discretion in the course of immigration proceedings and to dismiss or not pursue any immigration enforcement action against an immigrant victim. In immigration court, request a DHS certification under INA section 239(e) and establish that DHS has the burden to prove that no part of the DHS enforcement action was not in violation of VAWA confidentiality. When VAWA Confidentiality violations exist, counsel for the victim should move to terminate proceedings. Subpoena any relevant witnesses including DHS enforcement agents to testify if the motion is contested. When perpetrators try to obtain information about or contained in an immigration case through discovery in a family or criminal court case use the same arguments to oppose the discovery request that you would use the perpetrator were attempting to secure that documentation from DHS. Include arguments related to the Congressional history of this provision and why disclosure of VAWA confidentiality protected information in any context contravenes Congressional intent.

Additional Protections for VAWA Confidentiality-Protected Immigrants

In 2010 and 2011 the Department of Homeland Security issued a range of policy directives and initiated a number of projects designed to significantly increase the DHS role in identifying immigrant crime victims, including victims of human trafficking, domestic violence, sexual assault and other U-visa listed crimes, and helping them secure immigration protections under the Violence Against Women Act and the Trafficking Victims Protection Act. DHS launched agency-wide initiatives, such as the DHS Blue Campaign, to combat human trafficking and assist immigrant victims of violence against women and sexual assault.¹⁴

¹³ For a Red Flag Screening tool go to: http://iwp.legalmomentum.org/immigration/vawa-self-petition-and-cancellation/tools/VAWA_Red%20Flags.pdf/view?searchterm=red+flag

¹⁴ See, Department of Homeland Security, Fact Sheet DHS Blue Campaign (April 2011) available at: http://www.dhs.gov/ynews/gc_1279809595502.shtm (hereinafter “Blue Campaign Fact Sheet”).

DHS policies issued in 2010 and 2011 that improve protections for immigrant victims covered by VAWA confidentiality include:

- **Computerized VAWA Confidentiality “384” Flag:** In 2010 DHS established a new “384” code in the Central Index System database that allows DHS employees to “verify quickly whether an individual is covered by the confidentiality provisions.”¹⁵ This alerts DHS employees that an individual is protected by the VAWA Confidentiality provisions, that immigration enforcement, detention or removal actions are generally not to be taken against these individuals, and that information about victims may not be released.¹⁶ When an individual files for a VAWA self-petition or T or U status, the code in the database will be updated to 384. The code 384 will be maintained on that file indefinitely unless the case is denied on its merits and all final appeal rights are exhausted.¹⁷ This method seeks to allow DHS to “fully comply with and prevent violations” of VAWA Confidentiality.¹⁸ ICE has since encouraged employees who see the code 384 to contact the local ICE Office of Chief Counsel.¹⁹
- **Training of DHS Employees on VAWA Confidentiality:** DHS and the Federal Law Enforcement Training Center are working together on the development of computer-based training curricula. Training on the confidentiality protections afforded victims of trafficking, domestic violence and other crimes will be required of all DHS personnel.²⁰
- **DHS Enforcement Priorities Urge Identification and Protection of Crime Victims:** In June 2011, DHS has decided to focus the use of its enforcement resources on national and border security, public safety, and the integrity of the immigration system.²¹ In furtherance of this mission and the DHS role in victim protection and the prosecution of traffickers, abusers and crime perpetrators, DHS issued policy guidance designed to minimize the effect that immigration enforcement has on the willingness and ability of victims, witnesses, and plaintiffs in non-frivolous civil rights lawsuits²² to call the police and pursue justice.²³
- **Exercise of Prosecutorial Discretion Favorably in Cases of Immigrant Crime Victims and Witnesses:** DHS issued policies in June 2011 that established factors for immigration officers to weigh in the exercise of prosecutorial discretion. Factors that weigh in favor of immigration enforcement include: risk to national security, public safety risk, repeated criminal offenses, known gang activity, and an egregious record of immigration violations.²⁴ Factors that may lead to the favorable exercise of prosecutorial discretion include but are not limited to: crime victimization or witness in a criminal case (domestic violence, human trafficking, and other serious crimes);²⁵ the likelihood of being granted a U-visa, T-visa, or VAWA self-petition; age and circumstances of arrival; length of time in the United States; a U.S. citizen or lawful

¹⁵ Executive Summary, Blue Campaign Stakeholder Meeting with Senior Counselor Alice Hill, at 2 (Dec. 10, 2010), available at: <http://iw.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Stakeholder%20Meeting%20Executive%20Summary%20Dec%2010%202010.pdf> at [download/file](#) (hereinafter “Blue Campaign Memo”).

¹⁶ U.S. Citizenship and Immigration Services, DHS Broadcast Message on New 384 Class of Admission Code (Dec. 21, 2010), available at: <http://iw.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message%20to%20DHS%20384%20COA%20Final%2012.21.10.pdf> at [download/file](#).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ John Morton, Director, U.S. Immigration and Customs Enforcement, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, at 3 (June 17, 2011) (hereinafter “Crime Victims and Witnesses Memo”), available at: <http://iw.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-Prosecutorial-Discretion-Memo-06-17-2011.pdf>

²⁰ Blue Campaign Fact Sheet, *supra* note 89.

²¹ John Morton, Director, U.S. Immigration and Customs Enforcement, Exercising Prosecutorial Discretion Consistent with Civil Immigration Enforcement Priorities of the Agency, at 2 (June 17, 2011), available at: <http://iw.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton%206.17.11prosecutorial-discretion-memo.pdf> (hereinafter “Prosecutorial Discretion Memo”).

²² This includes cases brought for sexual violence, sexual harassment and discrimination in the workplace, to individuals engaged in a protected activity related to civil rights, such as union organizing or landlord-tenant disputes. Crime Victims and Witnesses Memo, *supra* note 94.

²³ *Id.*, at 3.

²⁴ Prosecutorial Discretion Memo, *supra* note 96, at 5.

²⁵ It is important to note that the exercise of prosecutorial discretion is not limited to crimes and victims eligible for immigration relief through VAWA, T or U-Visas. This policy guidance provides DHS officials greater latitude to exercise this discretion in favor of immigrants who are victims or witnesses and extends to any crime, including crimes not listed in the U-visa.

permanent resident parent, spouse, or child; age (minor or elderly); person suffers or is the caretaker for a person with a serious mental or physical disability or health condition; pursuit of high school or college education; and person or spouse is pregnant or nursing.²⁶

- **Release From Detention and Dismissal of Removal Proceedings Involving Crime Victims:** In August of 2010 DHS implemented a policy to release from detention immigrants with filed, pending, or approved applications for U-visas, T-visas, VAWA self-petitions, and VAWA Cancellation of Removal.²⁷ DHS will dismiss removal actions without prejudice if DHS believes the applicant is likely to receive an immigration benefit, unless the applicant has criminal convictions or misconduct, the applicant is a threat to public safety or national security, or there is evidence of fraud.²⁸
- **Expedited Adjudication of VAWA Self-Petitions, T and U-Visa Cases Within 30 or 45 Days:** Immigration and Customs Enforcement (ICE) is required to notify the VAWA Unit at the DHS Vermont Service Center when an immigrant in removal proceedings or in immigration detention has a pending application for immigration benefits, including VAWA, T or U-visa applications.²⁹ ICE in cases of immigrant victims is also directed to send the victim's "A" file, the immigration case file, to the VAWA Unit.³⁰ DHS policies further direct the VAWA Unit to endeavor to adjudicate the victim's application for VAWA, T or U visa immigration relief within 30 days if the victim is detained and within 45 days in the cases of non-detained victims.³¹ However, the VAWA Unit has discretion in its collaboration with ICE that affects the extent to which the VAWA Unit will meet these adjudication targets.³² The VAWA Unit will require that advocates and attorneys working with immigrant victims in detention and in removal proceedings request expedited adjudication based on the following additional factors: severe financial loss to company or individual; extreme emergent situation; humanitarian situation; Department of Defense or national interest situation; USCIS error; and compelling USCIS interest.³³

Safety Steps for Victims With VAWA Confidentiality Protected Cases Filed with DHS

Advocates and attorneys working with immigrant crime victims who have filed cases with DHS for VAWA, T, U or other VAWA Confidentiality protected immigration cases should take the following steps to protect themselves against immigration enforcement, detention and removal:

- **Memorize the "A" Number:** Once any immigration case has been filed the immigrant's case file will be assigned an identification number. This number begins with the letter "A." Victims should be strongly encouraged to memorize this number and if ever stopped by an immigration enforcement official or local police, should tell them the following:
 - They are a crime victim
 - They have filed a VAWA confidentiality protected immigration case with DHS. Provide the officer their "A" number.

²⁶ See Prosecutorial Discretion Memo, at 4.

²⁷ John Morton, Assistant Secretary, U.S. Customs and Immigration Enforcement, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions (August 20, 2010), available at <http://www.ice.gov/doclib/detention-reform/pdf/aliens-pending-applications.pdf> (hereinafter "Pending Applications Memo").

²⁸ *Id.*, at 2.

²⁹ Pending Applications Memo (This memorandum extends to all approved and pending but likely to be approved immigration cases in which the applicant has an immediate basis for immigration relief and includes VAWA, T and U visa cases).

³⁰ *Id.*

³¹ U.S. Citizenship and Immigration Services, Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator's Field Manual (AFM) New Chapter 10.3(i): AFM Update AD 11-16 (PM-602-0029) (February 4, 2011), available at:

<http://www.uscis.gov/USCIS/Outreach/Interim%20Guidance%20for%20Comment/coordination-adjud-removal-proceedings.pdf>;

³² *Id.*

³³ U.S. Citizenship and Immigration Services, Expedite Criteria (June 17, 2011), available at:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=16a6b1be1ce85210VgnVCM1000082ca60aRCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>. Expedite requests made in VAWA confidentiality protected cases are made directly to the VAWA Unit of the Vermont Service Center. E-mail to Leslye Orloff from Lynn A. Boudreau, Assistant Center Director, Vermont Service Center VAWA Unit (March 4, 2011).

- Ask the DHS Official to Check the “384 Red Flag” System: DHS officials have been directed when they encounter a potential victim to check the “Central Index System” for the victim’s name and/or “A” number. All persons who have filed VAWA Confidentiality protected cases will appear in the system. DHS has been instructed not to pursue enforcement actions against crime victims and witnesses, except in limited circumstances that include national security, public safety, history of criminal convictions or history of egregious immigration violations.
- Victims who are pregnant, nursing and/or are the primary caretakers of children: If the victim is the primary caretaker of children, pregnant, or nursing they should also provide that information to the first DHS official they encounter and continue telling this fact to DHS. DHS has policies designed to prevent the detention of these immigrants
- Ask to call their lawyer and/or advocate
- Ask for an interpreter if the victim is limited English proficient.

To help victims, particularly those who are limited English proficient, convey this vitally important information to immigration enforcement officials, advocates and attorneys should provide the client with a page that contains the information described above. This should be written in English and addressed to the DHS or law enforcement official. It should be filled in with the victim’s “A” number and your phone number.

Documenting Violations and Filing Complaints

In order to report VAWA Confidentiality violations, advocates and attorneys should include important facts such as names, dates, locations, and other details of the violation. Details should include the gravity of any violation and the potential lethality to the victim when the abuser, trafficker, or other criminal perpetrator knows how to find his or her victim. Danger to the victim can increase if the perpetrator learns that the victim is in the process of attaining legal immigration status, particularly when the perpetrator has been using deportation threats and power over the victim’s immigration status to control her.

Documentation that a victim qualifies for VAWA Confidentiality protection may include receipt and approval forms from USCIS and an immigration judge or proof of qualifying victimization. If the violation was a DHS arrest in a prohibited location, notes should include conversations with the agent concerning the enforcement action and the VAWA confidentiality violation. If it seems unlikely that DHS would have known about the victim, but for the perpetrator having provided the information, practitioners should note details about any potential communications with the perpetrator, particularly knowledge DHS has that only the perpetrator would have.

In order to make a formal complaint, DHS protocols require practitioners to first speak to supervisors up the chain of command of the officer committing VAWA confidentiality violations. This includes filing a formal complaint letter with accompanying documentation to the supervisor of the local DHS office involved in the VAWA Confidentiality violation to whom the DHS office committing the violation reports. This complaint should also urge that the supervisor to act swiftly to take steps to mitigate any harm to the victim or the victim’s family members that has occurred as a result of the VAWA confidentiality violation. These remedies can include but not be limited to cancellation of an notice to appear, release of the victim and her family members from DHS detention, or dismissal of any immigration enforcement action filed against the victim. The letter should also request that the supervisor assess penalties as provided for under the law against the official committing the VAWA Confidentiality violation including a \$5000 fine and disciplinary action.³⁴ Unanswered complaints should be pursued by filing the some complaint with the District Director or other equivalent head of the office in which the DHS official committing the violation works.

Make a Formal Complaint

If a practitioner has filed a complaint locally and has not received a timely response or the DHS office in which the VAWA confidentiality violation is unreceptive, practitioners should file a formal complaint. DHS has set up procedures for receiving VAWA confidentiality violation complaints.³⁵ Complaints are to be filed with the DHS

³⁴ *Id.*

³⁵ See “Violence Against Women Act (VAWA) Confidentiality Provisions at the Department of Homeland Security”, The Department of Homeland Security, undated.

Office of Civil Rights and Civil Liberties (CRCL). Upon receiving complaints of VAWA confidentiality violations, CRCL assigns the case to a DHS investigator who will be responsible for investigating the complaint, reviewing documentary evidence and interviewing witnesses in connection with the complaint. Providing detailed information to CRCL will facilitate a more effective investigation of the complaint.

Complaints should include appropriate case identifying information including the client's name, date of birth and A number (if the victim has one), information about how the client can be safely contacted, and the practitioner's contact information. The complaint should also briefly outline a procedural history of the case, the facts making the victim eligible for VAWA immigration relief or protection under VAWA confidentiality provisions, a description of the VAWA Confidentiality violation that occurred and the status of any pending family, immigration, or criminal law cases. Practitioners should include as much detail as possible including name(s) and office of the DHS official(s) or employees involved; the date, time and location of violation; what was said or done and by whom; and the names and contact information of witnesses present.

Documentation supporting the complaint may include: copies of DHS filings, approval notices, and other documentation from DHS, documentation of victimization (e.g., medical records, photos, civil protection orders, witness affidavits), and information documenting the violation including summaries of witnesses statements. Finally, the complaint should document efforts to address the complaint through local channels.

Complaints should be addressed to: The Department of Homeland Security, The Office of Civil Rights and Civil Liberties, Review & Compliance Unit, 245 Murray Lane, SW, Building 410, Mail Stop #0800 Washington, DC 20528 or via email at civil.liberties@dhs.gov.

For assistance with urgent advocacy to help immigrant victims subjected to VAWA Confidentiality violations, help developing protocols, litigating in family or criminal court, or filing formal complaints, please contact Legal Momentum's Immigrant Women Program (IWP) at iwp@legalmomentum.org or (202) 326-0040. IWP provides sample briefs and materials, and provides technical assistance on VAWA Confidentiality Violations. In addition, IWP acts as the NGO liaison with DHS on formal complaints. Please inform IWP of any violations and complaints filed so we can ensure improved enforcement of these protections. Further information regarding VAWA confidentiality is available at: www.iwp.legalmomentum.org.

SHELTER VICTIM CONFIDENTIALITY ISSUES UNDER RECENT STATE IMMIGRATION LEGISLATION

By: Kilpatrick Townsend & Stockton LLP, Laura Waters and Leslye E. Orloff

*Collaboratively developed by
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Current as of 7/19/11

A small number of states have passed and attempted to implement state laws designed to make it unlawful to harbor or to transport undocumented immigrants within the state.² In July, 2010, a new law aimed at identifying undocumented immigrants existing within the State of Arizona went into effect. The passing of HB 1070 in Arizona has prompted other states to encourage similar immigration legislation. These bills often make it unlawful for individuals or entities to knowingly harbor or transport undocumented immigrants. Some of the bills require local and state law enforcement to ask about the immigration status of an individual if the officer has reasonable suspicion to believe that the individual is present in the United States without documentation.³ It is important for domestic violence shelters, rape crisis centers, and other programs and services that assist immigrant women, children and crime victims to understand how these bills may or may not affect domestic violence programs and shelters, and their ability to comply with confidentiality requirements under state and federal laws. It is also important for programs to understand that federal law can preempt several of the provisions of these state laws and how programs in states with immigration legislation can continue to operate in a manner that is consistent with federal grant funding and antidiscrimination laws. Equally important is to inform victims about their rights and to conduct safety planning for victims to help them stay safe in their environment.

State immigration legislation may contain provisions regarding harboring of undocumented immigrants, the transportation of such immigrants, and the requirement that law enforcement inquire about immigration status when an individual has been stopped and the officer believes that the person may be undocumented. There are differences between these state immigration bills, for example some provide greater protections for service providers than others, so it is important to know the specific

¹ The authors wish to thank Aparna Bhattacharyya, Donna Irwin, Ho-Thanh Nguyen, and Maria Jose Fletcher for their assistance in developing this document.

² See Appendix of State Laws

³ On July 6, 2010, the United States filed a lawsuit against the State of Arizona challenging the constitutionality of SB 1070 and arguing that the legislation interferes with matters that are constitutionally reserved for the federal government, conflicts with federal immigration laws and policy and impedes the implementation of Congressional objectives.³ On appeal, the U.S. Court of Appeals for the Ninth Circuit upheld a temporary district court injunction blocking the enforcement of SB 1070's provisions that: (i) require officers to make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if they possess "reasonable suspicion" that the person is unlawfully present in the United States; (ii) impose criminal penalties for the failure to apply for or carry alien registration papers; (iii) prevent undocumented persons from soliciting, applying for, or performing work; and (iv) authorize the warrantless arrest of immigrants where there is probable cause to believe the person has committed a public offense that makes the person removable from the United States. *United States of America v. State of Arizona*, No. 10-01413 (D. Ariz. *prelim. injunction granted* July 28, 2010); *prelim. injunction aff'd*, No. 10-16645 (9th Cir. April 11, 2011).

laws that apply to victims of domestic violence, sexual assault, human trafficking, and other crimes, and the programs that serve such victims in your state.⁴

Federal law affords immigrant victims of domestic violence, sexual assault, human trafficking, and other crimes special protections to encourage them to report crimes and help bring cases against their abuser without fear of being deported.⁵ However, state immigration laws may undermine the ability of domestic violence shelters, rape crisis centers and other victim service providers to bring a victim to court, to meetings with prosecutors or to the hospital to receive critical treatment for injuries. Furthermore, because shelter employees are not specifically granted immunity from prosecution for harboring or shielding undocumented immigrants, under some of the new state laws there is nothing under these bills that would prevent law enforcement officials from stationing themselves outside of a domestic violence shelter, a rape crisis center despite the fact that under federal law immigration enforcement activities are prohibited by VAWA Confidentiality provisions.⁶

In light of the enactment of this type of state immigration legislation, it is imperative for shelter employees to understand the federal and state safeguards currently in place with respect to the protection of confidential victim information as well as what to do in the event a law enforcement officer arrives at a shelter and asks about an individual or requests to inspect the facility.

Federal and State Victim Confidentiality Safeguards

Under the federal Family Violence Prevention and Services Act (FVPSA),⁷ the Violence Against Women Act (VAWA),⁸ and the Victims of a Crime Act (VOCA),⁹ any shelter, rape crisis center, domestic violence program or similar victim services program that receives either FVPSA, VAWA, VOCA, or Office of Violence Against Women (OVW) funding is barred from disclosing to anyone any information about a victim receiving services, including any information regarding the victim's location or the fact that the victim is currently or has ever received services from the shelter. Compliance with FVPSA, VAWA, state confidentiality laws, and VAWA special immigration confidentiality provisions is a requirement of all entities receiving funding. Release of confidentially protected information places the programs' funding in jeopardy.

The VAWA immigration confidentiality protections have three prongs:

1. **Nondisclosure Provisions:** The Department of Homeland Security, the Department of Justice and the Department of State cannot disclose any information contained in or about the existence of an immigration case filed by a crime victim seeking VAWA, T-Visa or U-Visa

⁴ See State Confidentiality Chart. Available at: <http://iwp.legalmomentum.org/reference/additional-materials/vawa-confidentiality/state-confidentiality-laws>

⁵ The U.S. Department of Homeland Security has issued a series of policy memoranda designed to prevent the arrest, detention, and removal of non-citizen crime victims and witnesses. For more information on these memos go to <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents>.

⁶ LESLYE E. ORLOFF ET AL., *VAWA Confidentiality: History, Purpose, and Violations VAWA Confidentiality Protections*, in EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT, Ch. 6, available at <http://iwp.legalmomentum.org/reference/additional-materials/vawa-confidentiality/training-materials/Ch3-SA-Man--Confidentiality.pdf>

⁷ The Family Violence Prevention and Services Act of 1984, Pub. L. No. 98-457 (codified in 42 U.S.C. Section 10401, et seq.); Child Abuse Prevention and Treatment Act of 2010, Pub. L. No. 111-320 (codified in 42 U.S.C. 5101, et seq.) (amending and reauthorizing the FVPSA)..

⁸ The Violence Against Women Act of 1994, Pub. L. No. 103-222, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C. and 42 U.S.C.) (hereinafter, *VAWA*); Victims of Trafficking and Violence Protection Act of 2000 ("VAWA 2000"), Pub. L. No. 106-386, Div B, Title V, §1513(d) (2000); Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005"), Pub. L. No. 109-162, Title VIII, Subtitle B, §817 (2006).

⁹ Victims of a Crime Act, 42 USC 10601 et seq. (grantees must certify that they will comply with regulations set forth by 28 CFR Part 22 which prohibits the disclosure of personal identifying information of crime victims).

immigration relief.¹⁰ This protection ends only when the application for the immigration benefit is denied based on the substance of the application and all opportunities to appeal have been exhausted.

2. **Prohibited Source Limitations:** Stops immigration enforcement agencies from using information provided solely by an abuser, trafficker or U visa crime perpetrator, a relative, or a member of their family,¹¹ to take an adverse action regarding admissibility or deportability against an immigrant victim, without regard to whether a victim has ever filed or qualifies to file for VAWA related immigration relief.¹² The victim does not need to have filed an immigration case based upon victimization to be eligible.
3. **Location Prohibitions:** Prohibits enforcement actions at any of the following locations: domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse if the victim is appearing in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking. If any part of an enforcement action took place at any of these locations, DHS must disclose this fact in immigration court proceedings, and must prove that such action did not violate VAWA confidentiality. The victim does not need to have filed an immigration case based upon victimization to be eligible.

The prohibited source and locational prohibitions protect all crime victims regardless of immigration status. The non-disclosure VAWA confidentiality provision protects individuals who are eligible for a VAWA self-petition, battered spouse waiver, VAWA Cuban adjustment, VAWA HRIFA, VAWA NACARA, VAWA cancellation of removal and VAWA Suspension of deportation.¹³ VAWA Confidentiality protects all immigrant victims of domestic violence, sexual assault, human trafficking, and all U visa covered crimes whether or not the victim ever qualifies for or files a VAWA, T or U visa immigration case.

Additionally, most states have their own confidentiality requirements enacted by statute.¹⁴ These state and federal confidentiality and non-disclosure rules and laws, remain unchanged by the enactment of new state immigration legislation. Confidentiality protections were designed to prevent batterers and other crime perpetrators from using the immigration system as a tool of power and control over, or to retaliate against victims. Violations of confidentiality rules create serious, and sometimes life-threatening, dangers to victims of domestic violence, sexual assault, and human trafficking, and compromise the trust that immigrant victims have in the effectiveness of services and legal protection developed to help crime victims. Violations of confidentiality restrictions lead federal and state officials to unknowingly help crime perpetrators to harm, manipulate or retaliate against their victims or otherwise undermine criminal prosecutions. Accordingly, it is important for shelter personnel to continue to abide by these confidentiality safeguards even after a state local immigration enforcement legislation.

¹⁰ IIRAIRA Section 384 (a)(2); 8 U.S.C. 1367(a)(2).

¹¹ *Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRAIRA Section 384.* May 5, 1997, Office of Programs, /s/ Paul W. Virtue, Acting Executive Associate Commissioner. ("Virtue memo"). Available at: http://iwp.legalmomentum.org/vawa-confidentiality/government-memoranda-and-factsheets/c_VAWAConf_DHSGuidanceSec%20384_05.05.97_FIN.pdf

¹² IIRAIRA Section 384 (a)(1); 8 U.S.C. 1367(a)(1).

¹³ For a description of each of these forms of immigration relief see LESLYE E. ORLOFF ET AL., *Introduction to Immigration Relief for Immigrant Victims of Sexual Assault and Glossary of Terms*, in EMPOWERING SURVIVORS: LEGAL RIGHTS OF IMMIGRANT VICTIMS OF SEXUAL ASSAULT, Ch. 6, available at <http://iwp.legalmomentum.org/immigration/introduction-to-immigration-relief-for-immigrant-victims>

¹⁴ See State Confidentiality Chart. Available at: <http://iwp.legalmomentum.org/reference/additional-materials/vawa-confidentiality/state-confidentiality-laws>

How to Respond to Law Enforcement Requests for Confidential Victim Information

Notwithstanding the confidentiality safeguards set forth above, it is conceivable that state or local law enforcement officials or the federal Department of Homeland Security officials may physically arrive at a domestic violence shelter or other program asserting to see crime victims. These federal, state, or local law enforcement officials may cite provisions of recent state immigration legislation or allege that they are given power under federal to seek out and arrest undocumented immigrants, in an attempt to ask about a specific victim or request to inspect the facility. In furtherance of their request, law enforcement officials may present shelter employees with (i) a subpoena, (ii) a court order, (iii) a search warrant or (iv) an arrest warrant.

It is important for programs to understand the difference between these documents and how a domestic violence or victims services program should respond to each in a manner that best protects victims and protects the programs from being at risk to lose funding for violating confidentiality laws or discriminating among program participants or applicants for services.

A *subpoena* is an order that can be requested by an attorney for any reason and is issued by a court clerk requiring a person to appear at a certain date, time, and place to testify as a witness about a case. A subpoena also may require the production of documents.

A *court order* is a legal document issued by a court ordering a person to perform a specific act, prohibiting a person from performing an act, setting a court date, or otherwise legally establishing something.

A *search warrant* is an order signed by a judge, which gives the authorities the limited right to search a specific place for a specific object or materials. A search warrant is issued after the District Attorney or a law enforcement official conveys to a judge that there is “probable cause” to believe that the use of a search warrant will produce evidence. The search must generally be limited to what the search warrant states can be searched.

An *arrest warrant* is a judge’s order to law enforcement officers to arrest and bring to jail a person charged with a crime. An arrest warrant founded on probable cause gives the arresting officer the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. Before entering an establishment to execute an arrest warrant, an officer must have a reasonable belief that the suspect resides at that location and have reason to believe that the suspect is present at the time the warrant is executed.

Shelter Confidentiality Step by Step Guide

If Police, Sheriffs, or Department of Homeland Security Enforcement Officials Come to a Shelter or Service Provider...

1. Ask for the officer's name, badge number, and what department they work for. Do this first because you may not be able to obtain this information at a later point.
 - a. Name _____
 - b. Badge Number _____
 - c. Department _____
2. State that you can not confirm or deny whether anyone is in your facility or has received services from your program. This statement protects your program from putting your federal and possibly state funding in jeopardy. (State confidentiality laws vary. Please see the attached chart).¹⁵
3. If the officer is a federal agent, direct them to the attached Department of Homeland Security memorandums.¹⁶ Particularly point out the memo that describes "victims of domestic violence, trafficking or other serious crimes," as a certain class of individual that warrants particular care when exercising prosecutorial discretion.¹⁷ Also give them a copy of the one page notice from the Department of Homeland Security describing how complaints for violations of VAWA confidentiality are filed.¹⁸
4. Inform your supervisor that the police or DHS enforcement officials are on the premises and have requested to enter or have requested information.
5. Ask the police how you might be able to get in touch with them in the future.

¹⁵ The State Confidentiality Law Chart is attached in this packet. It is current through June 2011. Please make sure to independently confirm your state laws if this chart is used significantly after the above date. Federal Laws that put victim service program funding in jeopardy include the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA). 8 U.S.C. § 1367; 42 U.S.C. § 10402. State Confidentiality Chart available at : <http://iwp.legalmomentum.org/reference/additional-materials/vawa-confidentiality/state-confidentiality-laws>

¹⁶ DHS Broadcast Message on New 384 Class of Admission Code; Available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message%20to%20DHS%20384%20COA%20Final%2012.21.10.pdf/view> (This DHS memo directs DHS officials to identify victims with pending or approved VAWA confidentiality protected cases and to not initiate enforcement, detention or removal actions against these victims); *Memorandum of John P. Torres, Director of the Office of Detention and Removal Operations, Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005*, Jan. 22, 2007. (VAWA confidentiality provisions prohibit the government from relying on information given by the abuser, from disclosing information relating to any immigrant that has filed for a VAWA self-petition, U-Visa, or T-visa, and from enforcing actions at shelters, rape crisis centers, victim services programs, community based organizations, courthouses, supervised visitation centers, or family justice centers without certification under oath that the other provisions have not been violated.) Available at: http://iwp.legalmomentum.org/vawa-confidentiality/government-memoranda-and-factsheets/VAWA%20CONF_Torres%20ICE%20VAWA%20Confidentiality%20Memo_1.22.07.pdf *Memorandum of John Morton, Director, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, June 17, 2011. Available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-CertainVictimsWitnessesandPlaintiffs-Memo-06-17-2011.pdf/view> ; *Memorandum of John Morton, Director, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens*, June 17, 2011. Available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton%206.17.11prosecutorial-discretion-memo.pdf/view> ; *Memorandum of John Morton, Assistant Secretary, Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions*, Aug. 20, 2010. Available at: <http://iwp.legalmomentum.org/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/aliens-pending-applications.pdf/view> ; U.S. Citizenship and Immigration Services, Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator's Field Manual (AFM) New Chapter 10.3(i): AFM Update AD 11-16 (PM-602-0029) (February 4, 2011), available at: <http://www.uscis.gov/USCIS/Outreach/Interim%20Guidance%20for%20Comment/coordination-adjud-removal-proceedings.pdf>.

¹⁷ You should consider printing a packet of these materials so that they are readily available to give to any officer that arrives at your program.

¹⁸ See Violence Against Women Act (VAWA) Confidentiality Provisions at the Department of Homeland Security at http://iwp.legalmomentum.org/reference/additional-materials/vawa-confidentiality/government-memoranda-and-factsheets/VAWA%20CONF_DHS%20Complaint%20Instructions_2008.pdf/view

6. Inform the client and her attorney that the police have been requesting to see her so that she may adjust her safety planning accordingly. This ensures that you maintain confidentiality.
7. Use screening tools to help determine whether the client is eligible for a VAWA self-petition, U visa, or T visa.
 - a. If the victim is eligible but has not filed, help her get assistance filing her VAWA, T or U visa case.
 - b. Any time law enforcement or DHS is seeking a client help the victim locate an attorney with experience representing immigrant victims.
 - c. Let the client and attorney determine the next course of action.
 - d. If the victim has already filed for VAWA, T or U visa relief, contact the officer and inform him or her that under DHS policies the officer is required to check the victim's case against the DHS VAWA 384 computer system. This system was designed to protect crime victims against immigration enforcement action taken against victims and witnesses. Provide the officer with the victim's immigration case "A" number to facilitate locating the case. It can be a violation of DHS policies to pursue enforcement actions against a client after she has filed a VAWA self-petition, U-Visa, or T-Visa.¹⁹

8. If you are handed a subpoena...

9. You do not need to let law enforcement enter.
10. State that you cannot let them in without a warrant.²⁰
11. Read the subpoena carefully. It will tell you the names of the parties, the date, time, and place to appear, and/or the documents sought, and the location and type of court in which the lawsuit will take place.
12. Contact your supervisor if you have not done so already.
13. If the subpoena requires testimony or documents covered by the confidentiality provisions discussed earlier in this brochure, your program should object to the subpoena in writing. In addition to invoking the confidentiality provisions, you can list any other reasons it would be unfair or unjust to have to appear in court or produce documents. Objections should be filed with the court immediately, not on the date appearance or production is required. It is highly recommended that you program consult with an attorney to ensure that objections are made properly and in a timely manner.²¹

14. If you are handed a search warrant...

15. You must obey the warrant.²²

¹⁹ *DHS Broadcast Message on New 384 Class of Admission Code.* (The Department of Homeland Security has started a program that requires DHS officers to discontinue enforcement actions against immigrants that have filed for VAWA self-petition, U-Visa, or T-Visa. The information on these petitioners is red flagged in the Central Index System database with a special code by DHS so that officials know not to take action. "Information about the location, status, or other identifying information of any individual with the code "384" may not be released.")

²⁰ 8 U.S.C. § 1229 (e)(1). (It is unlikely that law enforcement will be able to obtain this warrant because under VAWA confidentiality, for an enforcement action to take place at a victim services program or shelter, the law enforcement agency must include certification under oath confirming that none of the VAWA confidentiality provisions have been violated.)

²¹ If your program does not have an attorney or wants pro bono assistance in opposing the subpoena many larger law firms have programs that will represent your agency free of charge.

²² 8 U.S.C. § 1229 (e)(1). (It is unlikely that law enforcement will be able to obtain this warrant because under VAWA confidentiality, for an enforcement action to take place at a victim services program or shelter, the law enforcement agency must include certification under oath confirming that none of the VAWA confidentiality provisions have been violated.)

16. Contact your supervisor if you have not done so already.
 - a. Supervisor should contact legal counsel
 - b. Supervisor should inform the client so that he or she can contact personal legal counsel. This should be done after law enforcement leaves the premises or in a private location in order to maintain victim confidentiality.
17. Ask to see the officer's identification, the search warrant, and the affidavit accompanying the search warrant. Note the scope of the search identified in the warrant.
18. Make sure the search conducted does not exceed the terms of the search as listed in the warrant. You do not need to grant requests that go beyond the scope of the search warrant.
19. Take notes of the search so that if there is any impropriety it can be used later to challenge any documents or materials obtained improperly during the search. Be calm, however, and do not do anything that may be interpreted as obstruction.
20. You are not required to provide the officer executing the warrant any information written or oral that is not specifically listed in the document.
- 21. If you are handed an arrest warrant...**
22. You must obey the warrant.²³
23. Contact your supervisor if you have not done so already.
24. Ask to see the police officer's identification, and the arrest warrant.
25. Do not offer identifying information about anyone who has stayed at the shelter, or their current location.
26. While responding to the arrest warrant and locating the client, call the client's counsel to inform them of the arrest.
27. Ask police where they are taking the client, the name of the jail or detention center, and any other pertinent information so that it can be immediately relayed to the client's counsel.
28. If possible, counsel for the service provider, counsel for the victim, and the law enforcement agency should work out the details related to the arrest warrant. Some programs will ask to arrange to meet the officer at another location the next day. This gives the client time to make arrangements for safety, for care of her children, and to talk to her attorney.

²³ *Id.*

Appendix

This appendix describes the current state immigration laws with an emphasis on the harboring and transporting provisions that are most likely to concern domestic violence shelters and similar programs.

Alabama

In June 2011, Alabama passed its own immigration bill, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, introduced as House Bill 56. HB 56 prohibits undocumented immigrants who are unlawfully present in the United States from receiving state and local public benefits. The statute provides exceptions for primary and secondary school education and state or local public benefits that are listed in 8 U.S.C. § 1621(b) (these are the PRWORA benefits for life and safety). The bill also prohibits undocumented immigrants from enrolling in and attending any public postsecondary education institution in the state. Additionally, the statute makes it illegal to conceal, harbor, or shield, or attempt to conceal, harbor, or shield, or conspire to conceal, or shield an alien from detection in any place in Alabama, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the undocumented immigrant has come to, has entered, or remains in the United States in violation of federal law. Finally, the bill stays enforcement actions against victims of a crime, children of victims of a crime, and criminal witnesses and their children until the conclusion of all related legal proceedings.²⁴

Arizona

Among other things, SB 1070 requires a state or local Arizona law enforcement officer to ask about the immigration status of an individual the officer has stopped or detained for other reasons if the officer has reasonable suspicion to believe that the individual is present in the United States illegally.²⁵ SB 1070 also makes it illegal for individuals or entities to knowingly “harbor” or “shield” illegal immigrants within the state of Arizona.²⁶

Although SB 1070 provides law enforcement officers with the discretion not to ask about an individual’s legal status if such an inquiry would hinder or obstruct an investigation,²⁷ SB 1070 provides no specific legal protection for those operating domestic violence shelters or similar facilities. Instead, the only individuals with immunity from prosecution for harboring or shielding illegal immigrants under SB 1070 are child protective services workers and “first responders,” such as paramedics or emergency medical technicians.²⁸ Accordingly, SB 1070 may undermine the ability of domestic violence shelters, rape crisis centers and other victim services providers to bring a victim to court, to meetings with prosecutors or to the hospital to receive critical treatment for injuries. Moreover, because shelter employees are not specifically granted immunity from prosecution for harboring or shielding illegal immigrants, there is nothing under SB 1070 that would prevent law enforcement officials from stationing themselves outside of a domestic violence shelter or similar crisis center since undocumented women are entitled to the lifesaving services offered by these

²⁴ Alabama House Bill 56, Beason-Hammon Alabama Taxpayer and Citizen Protection Act (2011).

²⁵ Arizona Senate Bill 1070, Support Our Law Enforcement and Safe Neighborhoods Act (2010) (hereinafter, *SB 1070*).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

facilities under federal law.

On July 6, 2010, the United States filed a lawsuit against the State of Arizona challenging the constitutionality of SB 1070 and arguing that the legislation interferes with matters that are constitutionally reserved for the federal government, conflicts with federal immigration laws and policy and impedes the implementation of Congressional objectives.²⁹ On appeal, the U.S. Court of Appeals for the Ninth Circuit upheld a temporary district court injunction blocking the enforcement of SB 1070's provisions that: (i) require officers to make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if they possess "reasonable suspicion" that the person is unlawfully present in the United States; (ii) impose criminal penalties for the failure to apply for or carry alien registration papers; (iii) prevent undocumented persons from soliciting, applying for, or performing work; and (iv) authorize the warrantless arrest of immigrants where there is probable cause to believe the person has committed a public offense that makes the person removable from the United States.³⁰ The Ninth Circuit's decision did not enjoin the enforcement of SB 1070's prohibitions on the harboring or transportation of undocumented persons and SB 1070 continues to remain the focus of significant political and legal debate.

Georgia

Similarly, in March 2011, the Georgia state legislature passed the Illegal Immigrant Reform and Enforcement Act of 2011, which was introduced as House Bill 87 and is commonly referred to as "HB 87."³¹ HB 87 generally provides that if a law enforcement officer has probable cause to believe the suspect has committed a crime, including any traffic offense, the officer is authorized to verify the suspect's immigration status if the suspect cannot provide identification.³² In addition, HB 87 also imposes criminal liability on anyone who knowingly harbors or transports illegal immigrants while committing another crime or using fake identification to gain employment in Georgia.³³ Although HB 87 will not become effective until July 1, 2011, some commentators have already witnessed its desired impact in Georgia by noting that a number of undocumented persons are making efforts to leave the state before its provisions take effect.³⁴ On June 2, 2011, the American Civil Liberties Union and other civil rights groups filed a class action suit challenging the constitutionality of HB 87, particularly the provision of HB 87 that permits allows law enforcement officers to check the immigration status of criminal suspects.³⁵ On June 27, 2011, a federal judge issued a temporary injunction against the section that would require law enforcement officers to check the immigration status of those stopped by police if there is probable cause that the suspect has committed a crime and against the section that makes it illegal to transport or harbor undocumented immigrants. The state of Georgia plans to appeal this decision.³⁶

Indiana

In February of 2011, Indiana also passed an immigration bill, Senate Bill 590. The new law

²⁹ United States of America v. State of Arizona, No. 10-01413 (D. Ariz. *prelim. injunction granted* July 28, 2010); *prelim. injunction aff'd*, No. 10-16645 (9th Cir. April 11, 2011).

³⁰ *Id.*

³¹ Georgia House Bill 87, Illegal Immigrant Reform and Enforcement Act of 2011 (2011).

³² *Id.*

³³ *Id.*

³⁴ See, e.g., Jeremy Redmon & Mario Guevara, Many Immigrants Leaving Georgia Behind, Atlanta Journal-Constitution, June 8, 2011, available at <http://www.ajc.com/news/dekalb/many-immigrants-leaving-georgia-967054.html>.

³⁵ See Stephen Caesar, Georgia Immigration Law Taken To Court, L.A. Times, June 2, 2011, available at <http://articles.latimes.com/2011/jun/02/nation/la-na-georgia-immigration-20110603>.

³⁶ See Kim Severson, Parts of Georgia Immigration Law Blocked, New York Times, June 27, 2011, available at <http://www.nytimes.com/2011/06/28/us/28georgia.html>

would make it illegal for anyone to harbor or transport an undocumented immigrant for purposes of “commercial benefit or private financial gain.”³⁷ This law, although similar to the bills passed by Arizona, Utah, and Alabama, indicates that organizations harboring and transporting are only in violation of the law if they stand to gain financially from the act. Domestic violence shelters and similar service providers would not be held criminally liable in this instance.

Utah

In March 2011, the Utah state legislature enacted the Utah Illegal Immigration Enforcement Act, which was introduced as House Bill 497 and is commonly referred to as “HB 497.”³⁸ Among other things, HB 497 requires that a law enforcement officer verify the immigration status of a person arrested for a felony or a class A misdemeanor and a person booked for class B or C misdemeanor.³⁹ HB 497 also provides that, in certain situations where the operator of a vehicle has been detained, passengers in the vehicle may also be questioned and their immigration status verified.⁴⁰ Additionally, HB 497 also requires verification of immigration status regarding application for public services or benefits provided by a state or local governmental agency or subcontractor, except as exempted by federal law.⁴¹ In May 2011, a class action lawsuit was filed by two national civil rights organizations in an effort to enjoin, among other things, the provisions of HB 497 that give law enforcement officers the ability to question people they stop about their immigration status.⁴²

³⁷ Indiana Senate Bill 590 (2011).

³⁸ Utah House Bill 497, Utah Illegal Immigration Enforcement Act (2011).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See Julia Preston, Class-Action Lawsuit Says Utah Immigration Law Violates Civil Rights, N.Y. Times, May 3, 2011, at A20, available at <http://www.nytimes.com/2011/05/04/us/04immigration.html>.

LEGAL momentum

The Women's Legal Defense
and Education Fund

State Confidentiality Statutes

Introduction¹

Domestic violence shelters, sexual assault crisis centers, and similar service providers actively promote the safety and healing of victims who turn to them for help. Protecting confidential information about victims is a core responsibility required to promote such victim safety and healing. The Family Violence Prevention and Services Act (FVPSA) and the Violence Against Women Act (VAWA) require that any shelter, rape crisis center, domestic violence program, or similar service, in order to maintain its federal funding, are barred from disclosing to anyone any information about a victim receiving services.² These federal statutes act as integral protections for victims of violent crime that wish to keep their location and records confidential from abusers, crime perpetrators, family, community members, state or local law enforcement, and federal immigration officers.

In addition to federal laws that protect the confidentiality of victims of domestic violence and sexual assault, many states also have statutes in place that protect communications between domestic violence and sexual assault service providers and victims.

The purpose of this state by state survey of state confidentiality laws and protections is to help service providers work with immigrant crime victims to help victims weigh their choices and any safety risks should shelter records be potentially subpoenaed and used against battered immigrant women. This state confidentiality review also helps programs be better prepared should federal immigration officers or state and local law enforcement approach shelters for information about an undocumented immigrant crime victim.³

¹ LESLYE E. ORLOFF ET AL., *VAWA Immigration Cases and Victim/Advocate Confidentiality*, in *SOMEWHERE TO TURN: MAKING DOMESTIC VIOLENCE SERVICES ACCESSIBLE TO BATTERED IMMIGRANT WOMEN* 136-142 (1999).

² The Violence Against Women Act of 1994, Pub. L. No. 103-222, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C. and 42 U.S.C.); The Family Violence Prevention and Services Act of 1984, Pub. L. No. 98-457 (codified in 42 U.S.C. Section 10401, et seq.).

³ For more information regarding concrete steps a shelter should take if approached by state or local law enforcement for information regarding a victim, please see the Shelter Victim Confidentiality Memo Available at: <http://iwp.legalmomentum.org/reference/additional-materials/vawa-confidentiality/state-confidentiality-laws>

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State Statutes

Many state statutes address shelters' responsibilities when approached for information or records about a client. A significant majority of states have statutes in place that protect communications between domestic violence or sexual assault advocates and victims. Under a privilege statute, neither the victim nor the domestic violence counselor can be forced by courts, law enforcement, or immigration officials to reveal information unless the victim waives her privilege. Some states will allow a court to order the release of otherwise privileged information in very limited circumstances. The major circumstances are:

1. A court finds that the probative value of the information outweighs the harm
2. Reports of child neglect or abuse
3. Criminal, mental health, or perjury proceedings against the victim
4. Court actions against the counselor
5. Information in the records is exculpatory evidence about the abuser/defendant.

Even if all communications are not privileged, some states have laws making any information that may identify a victim confidential. Many state and federal grant programs require that grantees maintain confidentiality of identifying information as a requirement for domestic violence program funding. Combining these state confidentiality statutes with federal confidentiality provisions mandated by VAWA and FVPSA, shelters, domestic violence advocates, sexual assault advocates, and other service providers can be assured that they are required to keep client information, records, and whereabouts confidential in order to maintain their state and federal funding. Immigration laws do not have an effect on domestic violence and sexual assault service providers' obligation to maintain victim confidentiality.

Finally, many states provide protection for communications to professionals who may provide counseling or other needed services to victims. The various protections for communications may be between clients and social workers, licensed counselors, mental health professionals, marriage/family counselors, psychiatrists, psychologists/mental health therapists, registered nurses, or school counselors.

If no confidentiality protection exists in your state, consider using the following options when assisting a battered immigrant:

1. Determine if the victim qualifies for VAWA, T-visa, or U-visa relief and if the victim wants to pursue this relief.
2. Discuss with the victim the protections the form of immigration relief for which she qualifies could provide.
3. Assess with the battered immigrant whether you are collecting any information that could be used to harm her if the victim or shelter was ordered to turn over the information to the perpetrator in family court or discovery.
4. If possible, any harmful information should be disclosed to and recorded by another professional at the shelter or program who does have a state recognized confidentiality privilege such as a social worker or physician.
5. Allow the victim to make an informed choice about whether she wants the shelter to maintain information for her. In many cases, information that initially appears to be damaging may not be if advocates collect this information and help the client file

quickly for VAWA, T-visa, or U-visa relief. Once this information is submitted to the INS, it is automatically considered confidential.

- Remember that even if your state does not have a confidentiality statute, shelters and service providers are still legally required to maintain confidentiality under the federal confidentiality provisions in FVPSA and VAWA.

Below is a mini-chart briefly summarizing each state’s confidentiality statutes. The mini-chart is followed by a detailed chart for each U.S. state and territory. For more information please refer to the cited statute for your state.

Table of Most Common Privileged Relationships by State

State	Shelter and Victim	DV Advocate and Victim	SA Advocate and Victim	Attorney and Client	Physician and Patient	Psychotherapist and Patient	Religious	Husband and Wife	Social Worker and Client	Translator/Interpreter and Client	Peer Support Group Counselors	School Counselors	Address Confidentiality Program	Chiropractor and Patient	Human Trafficking Counselor and Victim	Journalist	Accountant and Client
Alabama		X		X	X	X	X	X									
Alaska		X	X	X	X	X	X	X									
Arizona		X		X	X		X	X								X	
Arkansas	X	X		X	X	X	X	X									
California		X	X	X	X	X	X	X	X (human trafficking)			X			X		
Colorado		X	X	X	X		X	X									
Connecticut		X	X	X	X	X	X	X	X	X		X					
Delaware				X	X	X	X	X	X								
D.C.		X		X	X	X	X	X (and domestic partners)							X		
Florida		X	X	X		X	X	X		X					X		X
Georgia				X	X	X		X	X								
Hawaii		X	X	X	X	X	X	X									
Idaho				X	X	X	X	X				X					

State	Shelter and Victim	DV Advocate and Victim	SA Advocate and Victim	Attorney and Client	Physician and Patient	Psychotherapist and Patient	Religious	Husband and Wife	Social Worker and Client	Translator/Interpreter and Client	Peer Support Group Counselors	School Counselors	Address Confidentiality Program	Chiropractor and Patient	Human Trafficking Counselor and Victim	Journalist	Accountant and Client
Illinois*		X	X	X	X	X (only for violent crimes)		X		X			X				
Indiana		X	X	X	X	X	X	X	X			X				X	
Iowa*		X	X	X	X	X						X					
Kansas				X	X	X	X	X				X					
Kentucky			X	X		X	X	X				X					
Louisiana	X			X	X		X	X			X						
Maine			X	X	X	X	X	X									
Maryland				X		X	X	X	X	X		X				X	X
Massachusetts		X	X	X		X	X	X									
Michigan		X	X	X	X	X	X	X								X	
Minnesota		X	X	X	X	X	X	X	X	X							
Mississippi				X	X	X	X	X				X	X				
Missouri	X			X	X	X	X		X			X	X	X			
Montana		X	X	X	X	X	X	X				X					
Nebraska		X	X	X	X	X	X	X					X				
Nevada		X	X	X	X	X	X	X	X			X	X			X	X
New Hampshire		X	X	X	X	X	X	X	X					X			
New Jersey		X	X	X	X	X	X	X	X							X	
New Mexico		X	X	X	X	X	X	X	X								
New York			X	X	X	X	X	X	X					X			
North Carolina	X (agent of the center)	X	X	X	X	X	X	X	X		X	X				X	
North Dakota	X	X	X	X	X	X	X	X									
Ohio				X	X	X	X	X	X			X	X				
Oklahoma				X	X	X	X	X		X (for deaf)	X		X			X	X

State	Shelter and Victim	DV Advocate and Victim	SA Advocate and Victim	Attorney and Client	Physician and Patient	Psychotherapist and Patient	Religious	Husband and Wife	Social Worker and Client	Translator/Interpreter and Client	Peer Support Group Counselors	School Counselors	Address Confidentiality Program	Chiropractor and Patient	Human Trafficking Counselor and Victim	Journalist	Accountant and Client
Oregon				X	X	X	X	X	X	X		X					
Pennsylvania		X		X	X	X	X	X		X	X	X				X	
Rhode Island			X (proposed statute)	X	X	X	X		X	X							
South Carolina				X	X	X											
South Dakota	X	X	X	X	X	X	X	X	X	X		X					
Tennessee	X	X	X	X	X	X	X	X		X						X	
Texas			X	X	X	X	X	X									
Utah			X	X	X	X	X	X								X	
Vermont		X	X	X	X	X	X	X									
Virginia	X	X	X	X	X	X	X	X	X	X							
Washington		X	X	X	X	X	X	X	X		X						
West Virginia	X	X	X	X	X	X			X			X					
Wisconsin		X	X	X	X	X	X	X	X	X		X		X			
Wyoming		X	X	X	X		X	X									
Guam				X	X		X	X							X		
Puerto Rico		X	X	X	X												

* Other relationships covered by confidentiality statutes include: union agent and union member (735 Ill. Comp. Stat. 5/8-803.5) and the stenographer or confidential clerk of a party of a relationship covered by confidentiality statutes and the client (I.C.A. 622.10).

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
Alabama	Confidentiality between advocate and victim.	Ala. Code §§ 30-6-1, 30-6-8	Advocate means an employee or volunteer of a program for victims of domestic violence receiving funds under this chapter who has a primary	- Attorney-client (Rule 502) - Psychotherapist-patient (Rule 503) - Counselor-client (Rule 503A)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>function of rendering advice, counseling, or assistance to victims of domestic violence; who supervises the employees or volunteers of the program; or who administers the program.</p> <p>Exception: when providing evidence in proceedings concerning suspected child abuse or elder abuse.</p>	<ul style="list-style-type: none"> - Husband-wife (Rule 504) - Clergyman privilege (Rule 505)
<p>Alaska</p>	<p>Confidentiality between victim counselor and victim.</p>	<p>Alaska Stat. § 18.66.200-250</p>	<p>Victim counselor means an employee or supervised volunteer of a victim counseling center that provides counseling to victims; who has undergone at least forty (40) hours of training in domestic violence or sexual assault, crisis intervention, victim support, treatment and related areas; or whose duties include victim counseling.</p> <p>Exceptions: If a court or hearing officer determines that the (otherwise confidential) information is necessary and relevant to the facts of the case. No privilege in cases of child abuse, where the victim is about to commit a crime, if the proceeding occurs after the victim’s death, if victims service counselor was sought to enable anyone to commit or plan a crime or to escape detection or apprehension after committing a crime, or if in criminal proceedings against a victim of domestic violence or sexual assault</p>	<ul style="list-style-type: none"> - Lawyer-client (Rule 503) - Physician-patient, Psychotherapist-patient (Rule 504) - Husband-wife (Rule 505) - Communications to clergymen (Rule 506)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>the victim is accused of a crime against a minor or in which the physical, mental, or emotional condition of the victim is raised as a defense of the victim.</p> <p>See also Alaska Stat. § 24.65.130 (West) regarding whom a victim’s advocate may compel by subpoena.</p>	
<p>Arizona</p>	<p>Confidentiality between domestic violence victim advocate and victim.</p> <p>In a civil action, a domestic violence victim advocate shall not be examined as to any communication made by the domestic violence victim to the domestic violence victim advocate.</p>	<p>Ariz. Rev. Stat. §§ 12-2239</p>	<p>Domestic violence victim advocate means a person who is an employee or volunteer at a domestic violence shelter or service provider for victims of domestic violence and who meets the training requirements of this section (30 hours, a portion of which must include an explanation of privileged communication and the reporting requirements prescribed in § 13-3620).</p> <p>Exceptions: This section does not apply to a civil action brought pursuant to title 36, chapter 37.1 relating to the civil commitment of sexually violent persons. Unless the domestic violence shelter or service provider has immunity under other provisions of law, the communication is not privileged if the victim advocate knows or should have known that the victim will give or has given perjurious statements or statements that would tend to disprove the existence of domestic</p>	<ul style="list-style-type: none"> - Husband-wife (§ 12-2231, 12-2232) - Clergyman privilege (§ 12-2233) - Attorney-client (§ 12-2234) - Doctor-patient (§ 12-2235) - Reporter-informant (§ 12-2237)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>violence. The domestic violence victim advocate-victim privilege does not extend to cases in which the domestic violence victim advocate has a duty to report nonaccidental injuries and physical neglect of minors as required by § 13-3620.</p>	
<p>Arkansas</p>	<p>Confidentiality between DV advocates and volunteers who provide direct services to the victim and the victim: all advocates and volunteers who provide direct services to victims must sign a written confidentiality agreement that prohibits the release of the names or other personal and identifying information about the victims who are served at the shelter; and the names or other personal identifying information about the family or household members of the victims who</p>	<p>Ark. Code § 9-4-106(5)</p>	<p>“Advocate” means an employee, supervisor, or administrator of a shelter. “Shelter” means any entity that: provides services including food, housing, advice, counseling, and assistance to victims of domestic abuse and their minor dependent children in this state; and meets the program, fiscal, and training requirements of this chapter.</p> <p>Exceptions: Confidentiality agreement shall not apply to advocates who testify in court, and shall not prevent disclosure from federal grant review, audit, or reporting.</p>	<ul style="list-style-type: none"> - Lawyer-client (Rule 502) - Physician-patient, psychotherapist-patient (Rule 503) - Husband-wife (Rule 504) - Religious privilege (Rule 505)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
	are served at the shelter.			
California	Confidentiality between sexual assault counselor/domestic violence counselor and victim.	West’s Ann. Cal. Evid. Code § 1035.4, 1037-1037.8	<p>“Sexual assault victim counselor” may mean an employee of a rape crisis center, a psychotherapist who has either a master’s degree in counseling or a related field or a related field or has one year’s experience in counseling, at least six months of which is rape crisis counseling, or someone who is supervised by a counselor and has forty (40) hours training.</p> <p>A “domestic violence counselor” includes a person who works for an organization that gives advice or assistance to domestic violence victims. The counselor must have received specialized training in counseling domestic violence victims and has either a master’s in counseling or a similar field, has one year of counseling experience (of which 6 months must be domestic violence counseling), has either forty (40) hours of training and is either supervised by a domestic violence counselor or is a psychotherapist, or a person trained by a domestic violence organization where and meets one of the above listed requirements.</p> <p>Exceptions: The court may compel disclosure of information received by</p>	<ul style="list-style-type: none"> - Lawyer-client (West’s Ann. Cal. Evid. Code § 954) - Spouse-spouse (West’s Ann. Cal. Evid. Code § 971, 980) - Physician-patient (West’s Ann. Cal. Evid. Code § 992) - Educational Psychologist-patient (West’s Ann. Cal. Evid. Code § 1010.5) - Psychotherapist-patient (West’s Ann. Cal. Evid. Code § 1012) - Clergy-penitent (West’s Ann. Cal. Evid. Code § 1032) - Human Trafficking Caseworker-victim (West’s Ann. Cal. Evid. Code § 1038)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>the sexual assault counselor/domestic abuse counselor which constitutes relevant evidence of the facts and circumstances involving an alleged sexual assault about which the victim is complaining and which is the subject of a criminal proceeding if the court determines that the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled. The court may also compel disclosure in proceedings related to child abuse if the court determines the probative value outweighs the effect on the victim, the treatment relationship, and the treatment services if disclosure is compelled.</p> <p>A victim of domestic violence, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a domestic violence counselor if the privilege is claimed by any of the following persons:</p> <ul style="list-style-type: none"> (a) The holder of the privilege. (b) A person who is authorized to claim the privilege by the holder of the privilege. (c) The person who was the domestic violence counselor at the time of the 	

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.</p>	
Colorado	Confidentiality between victim’s advocate and victim.	<p>Colo. Rev. Stat. § 13-90-107</p>	<p>“Victim’s advocate” means a person at a battered women’s shelter or rape crisis organization or a comparable community-based advocacy program for victims of domestic violence or sexual assault: whose primary function is to render advice, counsel, or assist victims of domestic or family violence or sexual assault; who has undergone not less than fifteen (15) hours of training as a victim’s advocate or, with respect to an advocate who assists victims of sexual assault, not less than 30 hours of training as a sexual assault victim’s advocate; and, who supervises employees of the program, administers the program, or works under the direction of a supervisor of the program.</p>	<ul style="list-style-type: none"> - Husband-wife - Attorney-client - Clergy Member communication - Physician-patient - Surgeon-patient - Nurse-patient <p>(C.R.S.A. § 13-90-107(a)-(d))</p>
Connecticut	Confidentiality between battered women’s counselor/sexual assault counselor and victim.	<p>Conn. Gen. Stat. § 52-146k</p>	<p>“Battered women’s counselor” means any person engaged in a battered women’s center who has undergone a minimum of twenty (20) hours of training which shall include, but not be limited to, the dynamics of battering, crisis intervention, communication skills, working with</p>	<ul style="list-style-type: none"> - Attorney-Client (Conn. Gen. Stat. § 46a-12) - Husband-wife (Conn. Gen. Stat. § 52-146) - Privileged communications made to Clergymen (Conn. Gen. Stat. § 52-146B) - Psychologist-patient (Conn.

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>diverse populations, an overview of the state criminal justice system and information about state and community resources for battered women; who is certified as a counselor by the battered women’s center which provided such training; who is under the control of a direct service supervisor of a battered women’s center; and whose primary purpose is the rendering of advice, counsel and assistance to, and the advocacy of the cause of, battered women.</p> <p>“Sexual assault counselor” means any person engaged in a rape crisis center who has undergone a minimum of 20 hours of training which shall include, but not be limited to, the dynamics of sexual assault and incest, crisis intervention, communication skills, working with diverse populations, an overview of the state criminal justice system, information about hospital and medical systems and information about state and community resources for sexual assault victims; is certified as a counselor by the sexual assault center which has provided such training; is under the control of a direct services supervisor of a rape crisis center; and whose primary purpose is the rendering of advice, counseling and assistance to, and the advocacy of the cause of, victims of</p>	<p>Gen. Stat. § 52-146C) - Psychiatrist-patient (Conn. Gen. Stat. § 52-146D) - Interpreter privilege (Conn. Gen. Stat. § 52-146L) - Privileged communication made by or to deaf or hearing impaired person with assistance of operator of special telecommunications equipment (Conn. Gen. Stat. § 52-146M) - Judicial Department employee- - Employee Assistance Program counselor (Conn. Gen. Stat. § 52-146N) - Physician, Surgeon, Health Care Provider-patient (Conn. Gen. Stat. § 52-146O) - Marital and Family Therapist-client (Conn. Gen. Stat. § 52-146P) - Social Worker-client (Conn. Gen. Stat. § 52-146Q) - Government Attorney-public official or employee of public agency (Conn. Gen. Stat. § 52-146R) - Professional Counselor-client (Conn. Gen. Stat. § 52-146S)</p>

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>sexual assault.</p> <p>Exceptions: in matters of proof concerning chain of custody of evidence; in matters of proof concerning the physical appearance of the victim at the time of the injury; or where the battered women’s counselor of sexual assault counselor has knowledge that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed.</p>	
<p>Delaware</p>	<p>No confidentiality provision. However, social workers have privileged communications with respect to their clients.</p>	<p>24 Del. C. § 3913</p>	<p>Exceptions: (1) With the written consent of such person; or in the case of death or disability, the written consent of such person's personal representative;</p> <p>(2) That a licensed clinical social worker shall not be required to treat as confidential a communication that reveals the planning of any violent crime or act;</p> <p>(3) That any licensed clinical social worker who knows or reasonably suspects child abuse or neglect shall make a report to the Division of Child Protective Services of the Department of Services for Children, Youth and Their Families according to § 904 of Title 16;</p> <p>(4) When the person waives the privilege by bringing charges against the licensed clinical social worker.</p>	<ul style="list-style-type: none"> - Lawyer-client (Rule 502) - Mental health provider-patient, - Physician-patient, - Psychotherapist-patient (Rule 503) - Husband-wife (Rule 504) - Religious privilege (Rule 505)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
D.C.	Confidentiality between domestic violence counselor/human trafficking counselor and victim.	D.C. Code Ann. § 14-310	<p>A “domestic violence counselor” includes an employee, contractor, or volunteer of a domestic violence program who renders support, counseling, or assistance to a victim; has undergone at least forty (40) hours of domestic violence counselor training conducted by a domestic violence program; is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or is or is under the supervision of a person who has at least five (5) years of experience rendering support, counseling, or assistance to persons against whom severe emotional abuse or a criminal offense has been committed or is alleged to have been committed, of which at least two (2) years of experience involves victims.</p> <p>“Human trafficking counselor” means an employee, contractor, or volunteer of a human trafficking program who: is rendering support, counseling, or assistance to a victim; has undergone not less than 40 hours of human trafficking counselor training conducted by a human trafficking program that includes dynamics of human trafficking, trauma resulting from human trafficking, crisis intervention, personal safety, risk management, criminal and civil court processes,</p>	<ul style="list-style-type: none"> - Attorney-Client (DC ST § 2-534) - Spouses or Domestic Partners (DC ST § 14-306) - Physician-patient, Mental Health Professional-client (DC ST § 14-307) - Clergy privilege (DC ST § 14-309)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>and resources available to victims; and is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or is or is under the supervision of a person who has a minimum of 5 years of experience rendering support, counseling, or assistance to persons against whom severe emotional abuse or a criminal offense has been committed or is alleged to have been committed, of which at least 2 years of experience involves human trafficking victims.</p> <p>Confidential communications are not waived by the presence of a sign language or foreign language interpreter.</p> <p>Exceptions: as required by statute or by a court of law; as voluntarily authorized in writing by the victim; to other individuals employed by the domestic violence program and third party providers when and to the extent necessary to facilitate the delivery of services to the victim; to the Metropolitan Police Department or other law enforcement agency to the extent necessary to protect the victim or another individual from a substantial risk of imminent and serious injury; to compile statistical or anecdotal information, without personal identifying information, for</p>	

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>research or public information purposes; or for any confidential communications relevant to a claim or defense if the victim files a lawsuit against a domestic violence counselor or a domestic violence program.</p>	
<p>Florida</p>	<p>Confidentiality between sexual assault counselor/trained volunteer/domestic violence advocate and victim.</p>	<p>FSA §§ 90.5035-5036</p>	<p>A “sexual assault counselor” is any employee of a rape crisis center whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault or sexual battery.</p> <p>A “trained volunteer” is a person who volunteers at a rape crisis center, has completed thirty (30) hours of training in assisting victims of sexual violence and related topics provided by the rape crisis center, is supervised by members of the staff of the rape crisis center, and is included on a list of volunteers that is maintained by the rape crisis center.</p> <p>A “domestic violence advocate” means any employee or volunteer who has thirty (30) hours of training in assisting victims of domestic violence and is an employee of or volunteer for a program for victims of domestic violence whose primary purpose is the rendering of advice, counseling, or assistance to victims of domestic violence.</p>	<ul style="list-style-type: none"> - Journalist’s privilege (FSA § 90.5015) - Lawyer-client (FSA § 90.502) - Psychotherapist-patient (FSA § 90.503) - Husband-Wife (FSA § 90.504) - Communications to Clergy (FSA § 90.505) - Accountant-client (FSA § 90.5055) - Interpreters and translators (FSA § 90.606) - Interpreter services for deaf persons (FSA 90.6063)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>Exceptions: A communication between a sexual assault counselor/trained volunteer/domestic violence counselor and a victim is “confidential” if it is not intended to be disclosed to third persons other than: those persons present to further the interest of the victim in the consultation, examination, or interview; those persons necessary for the transmission of the communication; and those persons to whom disclosure is reasonably necessary to accomplish the purposes for which the sexual assault counselor/trained volunteer/domestic violence counselor is consulted.</p>	
<p>Georgia</p>	<p>No confidentiality, but phone service providers are required to keep shelter locations confidential.</p>	<p>OCGA § 46-5-7</p>	<p>Each person, corporation, or other entity that provides telephone service in this state and each person, corporation, or other entity that publishes, disseminates, or otherwise provides telephone directory information or listings of telephone subscribers in this state shall file a plan with the commission setting forth in detail how such person, corporation, or other entity will protect the confidentiality of the address or location of family violence shelters, as defined in Code Section 19-13-20, in this state. Such plan shall describe the manner in which the person, corporation, or other entity will identify all such shelters</p>	<ul style="list-style-type: none"> - Psychiatrist-patient - Psychologist-patient - Social Worker-client - Mental Health Professional-patient - Husband-wife - Privilege between grand jurors - Attorney-client <p>(Ga. Code Ann. § 24-9-21)</p>

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			and the manner in which the person, corporation, or other entity will keep the location and address of such shelters confidential.	
Hawaii	Confidentiality between victim counselor and victim.	Hawaii Rev. Stat. Rules of Evid. Rule § 505.5	<p>A victim counselor is either a sexual assault counselor or a domestic violence victims' counselor. A sexual assault counselor is a person who is employed by or is a volunteer in a sexual assault crisis center, has undergone a minimum of thirty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a social worker, nurse, psychiatrist, psychologist, or psychotherapist, and whose primary function is the rendering of advice, counseling or assistance to victims of sexual assault.</p> <p>A domestic violence victims' counselor is a person who is employed by or is a volunteer in a domestic violence victims' program, has undergone a minimum of twenty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a direct service supervisor of a domestic violence victims' program, and whose primary function is the rendering of advice, counseling, or assistance to victims of abuse.</p>	<ul style="list-style-type: none"> - Lawyer-client - Physician-patient - Psychologist-patient - Spousal - Victim Counselor-victim - Communication to Clergy (Article V. Rules 501-513)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>A victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a victim counselor for the purpose of counseling or treatment of the victim for the emotional or psychological effects of sexual assault, domestic violence, or child abuse or neglect, and to refuse to provide evidence that would identify the name, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim.</p> <p>Exceptions: if the victim counselor reasonably believes the victim has given perjured testimony and a party to the proceeding has made an offer of proof that perjury may have been committed; in matters of proof concerning the physical appearance and condition of the victim at the time of the alleged crime; as to a communication relevant to an issue of breach of duty by the victim counselor or victim counseling program to the victim; to relieve victim counselors of any duty to refuse to report child abuse or neglect, domestic abuse, or abuse of a vulnerable adult, and to refuse to provide evidence in child abuse proceedings; for communications relevant to an issue in proceedings to</p>	

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>hospitalize the victim for mental illness or substance abuse, or in proceedings for the discharge or release of a victim previously hospitalized for mental illness or substance abuse; if the court orders an examination of the physical, mental, or emotional condition of a victim, whether a party or a witness, communications made in the course thereof are not privileged under this rule with respect to the particular purpose of which the examination is ordered unless the court orders otherwise; as to a communication relevant to the physical, mental, or emotional condition of the victim in any proceeding in which the victim relies upon the condition as an element of the victim's claim or defense or, after the victim's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense; in any administrative or judicial proceeding in which the competency or practice of the victim counselor or of the victim counseling program is at issue, provided that the identifying data of the victims whose records are admitted into evidence shall be kept confidential unless waived by the victim. The administrative agency, board or commission shall close to the public any portion of a proceeding, as</p>	

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			necessary to protect the confidentiality of the victim.	
Idaho	No confidentiality.			<ul style="list-style-type: none"> - Physician-Patient privilege - Communication made to a public officer in his or her official capacity - Certified Counselor-client - Psychologist or Psychological Examiner-client - Husband-wife - Attorney-client - Clergy privilege (I.C. § 9-203)
Illinois	<p>Confidentiality between domestic violence advocate or counselor and victim.</p> <p>Confidentiality between personal counselors and victims of violent crimes (735 Ill. Comp. Stat. 5/8-802.2)</p> <p>Confidentiality between rape crisis personnel and victim (735 Ill. Comp. Stat. 5/8-802.1)</p> <p>Disclosure of location of DV</p>	750 Ill. Comp. Stat. 60/227	<p>Domestic violence advocate or counselor means any person (A) who has undergone a minimum of forty hours of training in domestic violence advocacy, crisis intervention, and related areas, and (B) who provides services to victims through a domestic violence program either on an employed or volunteer basis.</p> <p>Confidential communication means any communication between an alleged victim of domestic violence and a domestic violence advocate or counselor in the course of providing information, counseling, or advocacy. The term includes all records kept by the advocate or counselor or by the domestic violence program in the course of providing services to an alleged victim concerning the alleged victim and the services provided. The</p>	<ul style="list-style-type: none"> - Attorney-client (ILCS S Ct Rules of Prof.Conduct, RPC Rule 1.6; Formerly cited as IL ST CH Rule 1.6) - Physician-patient (735 Ill. Comp. Stat. 5/8-802, held unconstitutional by Lebron v. Gottlieb Memorial Hospital but proposed legislation pending) - Personal Counselors of Violent Crime Victims-victims (735 Ill. Comp. Stat. 5/8-802.2) - Interpreter privilege (735 Ill. Comp. Stat. 5/8-911) - Husband-wife (IL ST CH 735 § 5/8-801) - Union Agent-union member (IL ST CH 735 § 5/8-803.5)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
	<p>victim is a class A misdemeanor. (720 ILL Comp. Stat. 5/12-3.6)</p>		<p>confidential nature of the communication is not waived by the presence at the time of the communication of any additional persons, including but not limited to an interpreter, to further express the interests of the domestic violence victim or by the advocate's or counselor's disclosure to such an additional person with the consent of the victim when reasonably necessary to accomplish the purpose for which the advocate or counselor is consulted.</p> <p>Exceptions: in cases that involve the provisions of the Abused and Neglected Child Reporting Act or in cases where failure to disclose is likely to result in an imminent risk of serious bodily harm or death of the victim or another person.</p>	
<p>Indiana</p>	<p>Confidentiality between victim counselor and victim.</p>	<p>IC § 35-37-6-9</p>	<p>Victim counselor means an individual who is an employee or supervised volunteer of a victim counseling center and provides treatment to a victim for an emotional or psychological condition incurred by the victim as a result of a covered act.</p> <p>Exceptions: (a) A victim does not waive the protections afforded by this chapter by testifying in court about an offense. However, if the victim partially discloses the contents of a</p>	<ul style="list-style-type: none"> - Attorney-client (IN ST RPC Rule 1.6) - Physician-patient (IC § 34-46-3-1) - Mental Health Service Provider-patient (IC § 34-46-5-1) - Psychologist-patient (IC § 34-46-2-23) - Clergy privilege (IC § 34-46-3-1) - Spousal privilege (IC § 34-46-3-1)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>confidential communication in the course of testifying, either party may request the court to rule that justice requires the protections of this chapter to be waived, to the extent they apply to that portion of the communication.</p> <p>(b) A waiver under this section applies only to the extent necessary to require any witness to respond to questions concerning the confidential communication that are relevant to the facts and circumstances of the case.</p>	<ul style="list-style-type: none"> - Journalist privilege (IC § 34-46-4-2) - Social workers and counselor privilege (IC § 34-46-2-20)
<p>Iowa</p>	<p>Confidentiality between victim counselor and victim.</p>	<p>Iowa code Ann. § 915.20A</p>	<p>Victim counselor means a person who is engaged in a crime victim center, is certified as a counselor by the crime victim center, and is under the control of a direct services supervisor of a crime victim center, whose primary purpose is the rendering of advice, counseling, and assistance to the victims of crime. To qualify as a “victim counselor”, the person must also have completed at least twenty hours of training provided by the center in which the person is engaged, by the Iowa organization of victim assistance, by the Iowa coalition against sexual assault, or by the Iowa coalition against domestic violence, which shall include but not be limited to, the dynamics of victimization, substantive laws relating to violent</p>	<ul style="list-style-type: none"> - Attorney-client (IA R 5.502) - Physician-patient - Nurse-patient - Mental health practitioner-patient - Stenographer and Confidential Clerk privilege - Counselor-client (I.C.A. § 622.10)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>crime, sexual assault, and domestic violence, crisis intervention techniques, communication skills, working with diverse populations, an overview of the state criminal justice system, information regarding pertinent hospital procedures, and information regarding state and community resources for victims of crime.</p> <p>Exceptions: if a victim has deceased or has been declared to be incompetent; in matters of proof concerning the chain of custody of evidence, in matters of proof concerning the physical appearance of the victim at the time of the injury or the counselor's first contact with the victim after the injury, or where the counselor has reason to believe that the victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed; in a court of law if: the information sought is relevant and material evidence of the facts and circumstances involved in an alleged criminal act which is the subject of a criminal proceeding; the probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the counseling relationship, and the treatment services; the information</p>	

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			cannot be obtained by reasonable means from any other source.	
Kansas	No confidentiality	Ks Stat. Ann. § 65-5810	<p>The confidential relations and communications between a licensed professional counselor and such counselor’s client are placed on the same basis as provided by law for those between an attorney and an attorney’s client.</p> <p>Nothing in this section or in this act shall be construed to prohibit any licensed professional counselor or licensed clinical professional counselor from testifying in court hearings concerning matters of adult abuse, adoption, child abuse, child neglect, or other matters pertaining to the welfare of children or from seeking collaboration or consultation with professional colleagues or administrative superiors, or both, on behalf of the client. There is no privilege under this section for information which is required to be reported to a public official.</p>	<ul style="list-style-type: none"> - Counselor-client (KSA § 65-5810) - Psychotherapist-patient (KSA § 74-5372) - Attorney-client (KSA § 60-426) - Physician-patient (KSA § 60-427) - Marital privilege (KSA § 60-428) - Penitential communication privilege (KSA § 60-429)
Kentucky	Confidentiality between sexual assault counselor and victim.	Ky. R. Evid. § 506	A sexual assault counselor is a person engaged in a rape crisis center, who has undergone 40 hours of training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault.	<ul style="list-style-type: none"> - Counselor-client (KRE § 506) - Psychotherapist-patient (KRE § 507) - Attorney-client (KRE § 503) - Husband-wife (KRE § 504) - Religious privilege (KRE § 505)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>Exceptions: if the client is asserting his physical, mental, or emotional condition as an element of a claim of defense; or, after the client’s death, in any proceeding in which any party relies upon the condition as an element of a claim or defense; or if the judge finds the substance of the communication is relevant to an essential issue in the case, there are no available alternate means to obtain the substantial equivalent of the communication, and the need for the information outweighs the interest protected by the privilege. The court may receive evidence in camera to make findings under this rule.</p>	
<p>Louisiana</p>	<p>Confidentiality between representatives or employees of community shelter and victim.</p>	<p>LSA-R.S. 46:2124.1</p>	<p>Privileged communication means a communication made to a representative or employee of a community shelter by a victim. It also means a communication not otherwise privileged made by a representative or employee of a community shelter to a victim in the course of rendering services.</p> <p>All law enforcement or judicial agencies shall provide a private setting for all interviewing of victims of crime. “Private setting” shall mean an enclosed room from which the occupants are not visible or otherwise identifiable and whose conversations</p>	<ul style="list-style-type: none"> - Spousal privilege (LSA-C.E. Art. 504-505) - Attorney-client (LSA-C.E. Art. 506) - Health care provider-patient (LSA-C.E. Art. 510) - Communications to clergymen (LSA-C.E. Art. 511) - Trained Peer Support Member privilege (LSA-C.E. Art. 518)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>cannot be heard from outside such room. Only those persons directly and immediately related to the interviewing of the victim, specifically the victim, a social worker, psychologist, or other professional, the victim advocate designated by the sheriff's office, or a representative from a not-for-profit victim service organization, including but not limited to rape crisis centers, domestic violence advocacy groups, and alcohol abuse or substance abuse groups providing emotional support to the victim, shall be present, unless the victim requests the exclusion of such person from the interview, and, when appropriate, the parent or parents of the victim.</p>	
<p>Maine</p>	<p>Confidentiality between sexual assault counselor or advocate or rape crisis center and victim.</p>	<p>16 Me. Rev. Stat. Ann. §§ 53-A, 53-B</p>	<p>Sexual assault counselor means a person who has: undergone a program of training from a rape crisis center which shall include, but not be limited to: Law, medicine, societal attitudes, crisis intervention, counseling techniques and referral services; and is either a staff member, paid or unpaid, or under the supervision of a staff member of a rape crisis center.</p> <p>Advocate means an employee or volunteer for a nongovernmental program for victims of domestic or family violence, who has undergone</p>	<ul style="list-style-type: none"> - Attorney-client (MRE Rule 502) - Health Care Professional, Mental Health Professional, Licensed Counseling Professional-patient (MRE Rule 503) - Husband-wife (MRE Rule 504) - Religious privilege (MRE Rule 505)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>at least 30 hours of training, has a primary function with the program, counsels or assists victims, supervises employees or volunteers who perform that function or administer the program.</p> <p>Exceptions: when a court in the exercise of sound discretion deems the disclosure necessary to the proper administration of justice.</p>	
Maryland	No confidentiality	MD Code, Courts and Judicial Proceedings § 9-109		<ul style="list-style-type: none"> - Spousal privilege (MD CTS & JUD PRO § 9-106, 107) - Attorney-client (MD CTS & JUD PRO § 9-108) - Patient-therapist (MD CTS & JUD PRO § 9-109) - Professional Counselor-client (MD CTS & JUD PRO § 9-109.1) - Client-Psychiatric Nursing Specialist (MD CTS & JUD PRO § 9-109.1) - Accountant-client (MD CTS & JUD PRO § 9-110) - Clergy Person privilege (MD CTS & JUD PRO § 9-111) - News Media privilege (MD CTS & JUD PRO § 9-112) - Interpreter privilege (MD CTS & JUD PRO § 9-114) - Social Worker-client (MD CTS & JUD PRO § 9-121)
Massachusetts	Confidentiality between sexual	Mass. Gen. L Ann. Ch. 233	A sexual assault counselor is a person who is employed by or is a volunteer	- Husband-wife (M.G.L.A. 233 § 20)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
	<p>assault counselor and domestic violence victims' counselor and victim; and confidentiality of domestic violence victims' program and rape crisis center locations.</p>	<p>§ 20J, 20K, 20L</p>	<p>in a rape crisis center, has undergone thirty-five hours of training, who reports to and is under the direct control and supervision of a licensed social worker, nurse, psychiatrist, psychologist or psychotherapist and whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.</p> <p>A domestic violence victims' counselor is a person who is employed or volunteers in a domestic violence victims' program, who has undergone a minimum of twenty-five hours of training and who reports to and is under the direct control and supervision of a direct service supervisor of a domestic violence victims' program, and whose primary purpose is the rendering of advice, counseling or assistance to victims of abuse.</p> <p>Exceptions: In criminal actions such confidential communication shall be subject to discovery and shall be admissible as evidence but only to the extent of information contained therein which is exculpatory in relation to the defendant; provided, however, that the court shall first examine such confidential communication and shall determine whether or not such exculpatory</p>	<p>- Communications with Clergymen (M.G.L.A. 233 § 20A) - Psychotherapist-patient (M.G.L.A. 233 § 20B) - Attorney-client (MA R S CT RULE 3:07 RPC Rule 1.6)</p>

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			information is therein contained before allowing such discovery or the introduction of such evidence.	
Michigan	Confidentiality between sexual assault or domestic violence counselor and victim.	Mich. Comp. Laws Ann. § 600.2157a	<p>Sexual assault or domestic violence counselor means a person who is employed at or who volunteers service at a sexual assault or domestic violence crisis center, and who in that capacity provides advice, counseling, or other assistance to victims of sexual assault or domestic violence and their families.</p> <p>Exceptions: Except as provided by section 11 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.631 of the Michigan Compiled Laws, a confidential communication, or any report, working paper, or statement contained in a report or working paper, given or made in connection with a consultation between a victim and a sexual assault or domestic violence counselor, shall not be admissible as evidence in any civil or criminal proceeding without the prior written consent of the victim.</p>	<ul style="list-style-type: none"> - Physician-patient (M.C.L.A. § 600.2157). - Minister, Priest, Christian Science Practitioner privilege (M.C.L.A. § 600.2156) - Reporter-informant (M.C.L.A. § 767.5a(1)) - Attorney-client (M.C.L.A. § 767.5a(2)) - Psychologist-patient (M.C.L.A. § 333.18237) - Husband-wife (M.C.L.A. § 600.2162)
Minnesota	Confidentiality between sexual assault counselor or domestic violence counselor and victim.	MN ST § 13.822; (Minn. Stat. Ann. § 595.02(k): Proposed Legislation)	A sexual assault counselor, for the purpose of this section, means a person who has undergone at least 40 hours of crisis counseling training and works under the direction of a supervisor in a crisis center, whose primary purpose is to render advice,	<ul style="list-style-type: none"> - Attorney-client (52 M.S.A., Rules of Prof.Conduct, Rule 1.6) - Husband-wife - Clergy Member privilege - Licensed Physician, Surgeon, Dentist, Chiropractor-patient - Registered nurse-patient

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>counseling, or assistance to victims of sexual assault.</p> <p>Domestic abuse advocate, for the purposes of this section, means an employee or supervised volunteer from a community-based battered women's shelter and domestic abuse program eligible to receive grants under section 611A.32; that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor's office, or by a city, county, or state agency.</p> <p>Exceptions: in investigations or proceedings related to neglect or termination of parental rights if the court determines good cause exists. In determining whether to compel disclosure, the court shall weigh the public interest and need for disclosure against the effect on the victim, the treatment relationship, and the treatment services if disclosure occurs. Nothing in this clause exempts sexual assault counselors from compliance with the provisions of sections 626.556 (reporting maltreatment of minors) and 626.557 (reporting maltreatment of vulnerable adults).</p>	<p>- Psychologist, consulting psychologist-patient - Licensed Social Worker-client - Interpreter privilege - Chemical Dependency Counselor-client (M.S.A. § 595.02—Proposed Legislation)</p>

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
Mississippi	No confidentiality.	N/A	Address Confidentiality Program: Miss. Code Ann. § 99-47-1.	<ul style="list-style-type: none"> - Licensed Professional Counselor-client (M.S.A. § 73-30-17) - Attorney-client (M.R.E. Rule 502) - Psychologist-patient (M.S.A. § 73-31-29) - Physician-patient (M.R.E. Rule 503) - Psychotherapist-patient (M.R.E. Rule 503) - Husband-wife (M.R.E. Rule 504) - Priest-penitent (M.R.E. Rule 505)
Missouri	Confidentiality between shelters and victims.	V.A.M.S. 455.220	Law requires persons employed by or volunteering services to the shelter to maintain the confidentiality of any information that would identify individuals served by the shelter.	<ul style="list-style-type: none"> - Attorney-client (V.A.M.S. § 491.060(3)) - Religious privilege (V.A.M.S. § 491.060(4)) - Physician-patient (V.A.M.S. § 491.060(5)) - Chiropractor-patient (V.A.M.S. § 491.060(5)) - Dentist-patient (V.A.M.S. § 491.060(5)) - Psychologist-patient (V.A.M.S. § 491.060(5)) - Professional Counselor-client (V.A.M.S. § 337.540) - Social Worker-client (V.A.M.S. § 337.636)
Montana	Confidentiality between advocate and victim.	M.C.A. § 26-1-812	Advocate means an employee or volunteer of a domestic violence shelter, crisis line, or victim's services	<ul style="list-style-type: none"> - Spousal privilege (M.C.A. § 26-1-802) - Attorney-client (M.C.A. § 26-1-

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.</p> <p>Exceptions: if a report is otherwise required by law.</p>	<p>803)</p> <ul style="list-style-type: none"> - Clergy privilege (M.C.A. § 26-1-804) - Doctor-patient (M.C.A. § 26-1-805) - Speech Language Pathologist, Audiologist-client (M.C.A. § 26-1-806) - Psychologist-client (M.C.A. § 26-1-807) - Employee of Education Institution-student (M.C.A. § 26-1-809) - Public Officer privilege (M.C.A. § 26-1-810)
Nebraska	<p>Confidentiality between victim and victim advocate regarding any criminal, civil, legislative, administrative, or other proceeding where the victim advocate is asked to give testimony or produce records, subject to a few exceptions.</p>	Neb. Rev. Stat. § 29-4303	<p>Advocate means any employee or supervised volunteer of a domestic violence and sexual assault victim assistance program or of any other agency, business, or organization that is not affiliated with a law enforcement or prosecutor's office, whose primary purpose is assisting domestic violence and sexual assault victims (Neb. Rev. Stat. § 29-4302).</p>	<ul style="list-style-type: none"> - Attorney-client (Neb. Rev. St. § 27-503) - Physician-patient (Neb. Rev. St. § 27-504) - Licensed Professional Counselor-victim (Neb. Rev. St. § 27-504) - Husband-wife (Neb. Rev. St. § 27-505) - Clergyman privilege (Neb. Rev. St. § 27-506)
Nevada	<p>Confidentiality between victim advocate and victim.</p>	Nev. Stat. § 49.2546	<p>Victim's advocate means a person who works for a nonprofit program that provides assistance to victims with or without compensation and who has received at least 20 hours of relevant training.</p>	<ul style="list-style-type: none"> - Attorney-client (N.R.S. § 49.095) - Accountant-client (N.R.S. § 49.185) - Psychologist-patient (N.R.S. § 49.209)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>The privilege provided pursuant to NRS 49.2547 may be claimed by:</p> <p>(a) The victim;</p> <p>(b) The guardian or conservator of the victim;</p> <p>(c) The personal representative of a deceased victim; and</p> <p>(d) The victim's advocate, but only on behalf of the victim.</p> <p>2. The authority of a victim's advocate to claim the privilege is presumed in the absence of evidence to the contrary. Nev. Rev. Stat. Ann. § 49.2548 (West)</p>	<ul style="list-style-type: none"> - Doctor-patient (N.R.S. § 49.225) - Marriage and Family Therapist-client (N.R.S. § 49.247) - Clinical Professional Counselor-client (N.R.S. § 49.2504) - Social Worker-client (N.R.S. § 49.252) - Confessor-confessant (N.R.S. § 49-255) - News Media privilege (N.R.S. § 49.275) - Counselor, Teacher-pupil (N.R.S. § 49.290-291) - Husband-wife (N.R.S. § 49.295)
<p>New Hampshire</p>	<p>Confidentiality between victim and sexual assault counselor or domestic violence counselor.</p>	<p>NH Rev. Stat. § 173-C:1 to C:10</p>	<p>Domestic violence counselor means any person who is employed or appointed or who volunteers in a domestic violence center who renders support, counseling, or assistance to victims of domestic abuse or attempted domestic abuse, who has satisfactorily completed 30 hours of training in a bona fide program. (N.H. Rev. Stat. Ann. § 173-C:1).</p> <p>Sexual assault counselor means any person who is employed or appointed or who volunteers in a rape crisis center who renders support, counseling, or assistance to victims of sexual assault or attempted sexual assault, who has satisfactorily completed 30 hours of training in a</p>	<ul style="list-style-type: none"> - Attorney-client (NH R Rev Rule 502) - Physician, Surgeon-patient (NH R Rev Rule 503) - Psychologist, Pastoral Counselor-client (NH R Rev Rule 503) - Husband-wife (NH R Rev Rule 504) - Religious Privilege (NH R Rev Rule 505) - Chiropractor-client (NH Rev. Stat. § 316-A:27) - Mental Health Professional-client (NH Rev. Stat. § 330-A:32) - Family Mediator privilege (NH Rev. Stat. § 328-C:9) - Social Worker-client (NH Rev.

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			bona fide program (N.H. Rev. Stat. Ann. § 173-C:1).	Stat. § 330-A:18)
New Jersey	Confidentiality between a victim and a victim counselor.	N.J. Stat. Ann. § 2A:84A-22.15 (West)	Victim counselor means a person engaged in any office, institution or center defined as a victim counseling center by this act, who has undergone 40 hours of training and is under the control of a direct services supervisor of the center and who has a primary function of rendering advice, counseling or assisting victims of acts of violence. Victim counselor includes a rape care advocate as defined in section 4 of P.L.2001, c. 81 (C.52:4B-52) (N.J. Stat. Ann. § 2A:84A-22.14 (West)).	<ul style="list-style-type: none"> - Attorney-client (NJ Stat. Ann. Rule 504) - Psychologist-patient (NJ Stat. Ann. Rule 505) - Physician-patient (NJ Stat. Ann. Rule 506) - Newsperson’s privilege (NJ Stat. Ann. Rule 508) - Marital privilege (NJ Stat. Ann. Rule 509) - Marriage Counselor-client (NJ Stat. Ann. Rule 510) - Priest-penitent (NJ Stat. Ann. Rule 511) - Social Worker-client (NJ Stat. Ann. Rule 518) - Mediator privilege (NJ Stat. Ann. Rule 519)
New Mexico	Confidentiality between victim and victim counselor.	N.M. Stat. Ann. §§ 31-25-1 through -6	Victim counselor means any employee or supervised volunteer of a victim counseling center or other agency, business or organization that provides counseling to victims who is not affiliated with a law enforcement agency or the office of a district attorney, has successfully completed forty hours of academic or other formal victim counseling training or has had a minimum of one year of experience in providing victim counseling and whose duties include victim counseling.	<ul style="list-style-type: none"> - Attorney-client (NMRA Rule 11-503) - Physician-patient (NMRA Rule 11-504) - Psychotherapist-patient (Rule 11-504) - Husband-wife (NMRA Rule 11-505) - Clergy privilege (NMRA Rule 11-506) - Probation Officer, Social Services Worker-client (NMRA Rule 11-509)
New York	Confidentiality	N.Y. C.P.L.R.	Rape crisis counselor means any	- Attorney-client (NY CPLR §

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
	<p>between rape crisis counselor and victim.</p>	<p>4510 (McKinney, Proposed Legislation)</p>	<p>person who has been certified by an approved rape crisis program as having satisfied the training standards specified in subdivision fifteen of section two hundred six of the public health law, and who, regardless of compensation, is acting under the direction and supervision of an approved rape crisis program.</p>	<p>4503- Proposed Legislation) - Spouse privilege (NY CPLR § 4502) - Physician, Dentist, Podiatrist, Chiropractor, Nurse-patient (NY CPLR § 4504) - Clergy privilege (NY CPLR § 4505) - Psychologist-client (NY CPLR § 4507) - Social Worker-client (NY CPLR § 4508)</p>
<p>North Carolina</p>	<p>Confidentiality between victim and agent of a rape crisis center or domestic violence program. Agent cannot disclose any information which the agent acquired during the provision of services to a victim and which information was necessary to enable the agent to render the services.</p>	<p>N.C. Gen. Stat. § 8-53.12</p>	<p>Agent means an employee or agent of a center who has completed a minimum of 20 hours of training as required by the center, or a volunteer, under the direct supervision of a center supervisor, who has completed a minimum of 20 hours of training as required by the center.</p> <p>N.C. Gen. Stat. Ann. § 8-53.12 (West)</p>	<p>- Attorney-client (Rules Civ. Proc., G.S. § 1A-1, Rule 26-Proposed Legislation) - Physician-patient (NC ST § 8-53) - Clergymen-communicants (NC ST § 8-53.2) - Psychologist-client/patient (NC ST § 8-53.3) - School Counselor privilege (NC ST § 8-53.4) - Licensed Marital and Family Therapist-client(s) (NC ST § 8-53.5) - Social Worker privilege (NC ST § 8-53.7) - Counselor-client (NC ST § 8-53.8) - Optometrist-patient (NC ST § 8-53.9) - Peer Support Group Counselors privilege (NC ST §</p>

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
				<p>8-53.10) - Journalist privilege (NC ST § 8-53.11) - Nurse-patient (NC ST § 8-53.13) - Husband-wife (NC ST § 8-56 through 57.1)</p>
<p>North Dakota</p>	<p>Confidentiality between victim and all agents, employees, and volunteers participating in a domestic violence or sexual assault program.</p>	<p>N.D. Cent. Code § 14-07.1-18</p>	<p>Exceptions include: a. A client consents to the release of information that relates only to that client or the client's dependents; b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection; c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or</p>	<p>- Attorney-client (N.D.R.Ev. Rule 502) - Physician-client (N.D.R.Ev. Rule 503) - Psychotherapist-client (N.D.R.Ev. Rule 503) - Husband-wife (N.D.R.Ev. Rule 504) - Religious privilege (N.D.R.Ev. Rule 504)</p>

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.	
Ohio	N/A	N/A	N/A	<ul style="list-style-type: none"> - Attorney-client (R.C. § 2317.02(A)) - Physician, Dentist-patient (R.C. § 2317.02(B)) - Clergy privilege (R.C. § 2317.02(C)) - Husband-wife (R.C. § 2317.02(D)) - School Guidance Counselor-client - Professional Clinical Counselor-client - Professional Counselor-client - Social Worker-client - Independent Social Worker-client - Marriage and Family Therapist or Independent Marriage and Family Therapist-client (R.C. § 2317.02(G)) - Mediator privilege (R.C. § 2317.02(H)) - Chiropractor-patient (R.C. § 2317.02(J)) - When a shelter for victims of domestic violence provides accommodations to a person, the

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
				<p>shelter, on admitting the person, shall determine, if possible, the person's last known residential address and county of residence. The information concerning the address and county of residence is confidential and may be released only to a public children services agency pursuant to section 2151.422 of the Revised Code (R.C. § 3113.40)</p>
<p>Oklahoma</p>	<p>Confidentiality between state and local agencies and victims who have relocated.</p>	<p>22 Okl. Ann. § 60.14.</p>	<p>The purpose of this section is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic abuse, sexual assault, or stalking, to enable interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic abuse, sexual assault, or stalking, and to enable state and local agencies to accept an address designated by the Attorney General by a program participant as a substitute mailing address.</p>	<ul style="list-style-type: none"> - Attorney-client (12 Okl. St. Ann. § 2502—Proposed Legislation) - Accountant-client (12 Okl. St. Ann. §2502.1) - Physician-patient (12 Okl. St. Ann. § 2503) - Psychotherapist-patient (12 Okl. St. Ann. § 2503) - Interpreter for the Deaf or Hard-of-Hearing privilege (12 Okl. St. Ann § 2503.1) - Spousal privilege (12 Okl. St. Ann. § 2504) - Religious privilege (12 Okl. St. Ann. § 2505) - Journalist’s privilege (12 Okl. St. Ann. § 2506) - Peer Support Counseling confidentiality (12 Okl. St. Ann. § 2506.2)
<p>Oregon</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<ul style="list-style-type: none"> - Attorney-client (O.R.S. § 40.225 Rule 503)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
				<ul style="list-style-type: none"> - Psychotherapist-patient (O.R.S. § 40.230 Rule 504) - Physician-patient (O.R.S. § 40.235 Rule 504-1) - Nurse-patient (O.R.S. § 40.240 Rule 504-2) - School Employee-student (O.R.S. § 40.245 Rule 504-3) - Regulated Social Worker-client (O.R.S. § 40.250 Rule 504-4) - Husband-wife (O.R.S. § 40.255 Rule 505) - Clergy Member-penitent (O.R.S. § 40.260 Rule 506) - Counselor-client (O.R.S. § 40.262 Rule 507) - Stenographer-employer (O.R.S. § 40.265 Rule 508A) - Public Officer privilege (O.R.S. § 40.270 Rule 209) - Sign Language Interpreter privilege (O.R.S. § 40.272 Rule 509-1) - Interpreter privilege (O.R.S. § 40.273 Rule 509-2)
<p>Pennsylvania</p>	<p>Confidentiality between a victim and a domestic violence counselor/advocate or a co participant who is present during domestic violence counseling/advocacy.</p>	<p>23 Pa. Cons. Stat. Ann. § 6116, 42 Pa.C.S.A. § 5945.1</p>	<p>A domestic violence counselor/advocate is an individual who is engaged in a domestic violence program, the primary purpose of which is the rendering of counseling or assistance to victims of domestic violence, who has undergone 40 hours of training (23 Pa. Cons. Stat. Ann. § 6102 (West)).</p> <p>Sexual assault counselor means a</p>	<ul style="list-style-type: none"> - Attorney-client (Rules of Prof. Conduct, Rule 1.6, 42 Pa.C.S.A.) - Husband-wife (42 Pa.C.S.A. § 5923) - News Reporter privilege (42 Pa.C.S.A. § 5942) - Clergymen privilege (42 Pa.C.S.A. § 5943) - Psychiatrist, Licensed Psychologist-patient (42

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
	<p>No sexual assault counselor or an interpreter translating the communication between a sexual assault counselor and a victim may, without the written consent of the victim, disclose the victim's confidential oral or written communications to the counselor nor consent to be examined in any court or criminal proceeding.</p>		<p>person who is engaged in any office, institution or center defined as a rape crisis center under this section, who has undergone 40 hours of sexual assault training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling or assistance to victims of sexual assault.</p>	<p>Pa.C.S.A. § 5944) - School Personnel privilege (42 Pa.C.S.A. § 5945) - Peer Support Member privilege (42 Pa.C.S.A. § 5952) - Physician-patient (42 Pa.C.S.A. § 5929) - Interpreter, Translator privilege (63 P.S. § 1725.7) - Crime Stopper, Anticrime Program privilege (42 Pa.C.S.A. 5945.2)</p>
<p>Rhode Island</p>	<p>Confidentiality between victim and sexual assault counselor. (Proposed Statute).</p>	<p>R.I. Const. art. I, § 10</p>	<p>Proposed statute would make communications privileged between sexual assault victim and sexual assault counselor. It would also provide for an in-camera hearing to permit trial judge to determine whether the counselor knows or has possession of material that is exculpatory in nature. An in-camera hearing would also ensure that no sensitive and irrelevant evidence is presented to the trier of fact. This strikes the requisite balance between an accused's constitutional right at</p>	<p>- Attorney-client (Sup.Ct.Rules, Art. V, Rules of Prof.Conduct, Rule 1.6) - Physician-patient (RI ST § 9-17-24) - Clergy privilege (RI ST § 9-17-23) - Interpreter privilege (RI ST § 9-17-25) - Mental Health Counselor-client (RI ST § 5-63.2-18) - Marriage and Family Therapist-client (RI ST § 5-63.2-18)</p>

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>trial and sexual assault victim's need for confidentiality in regard to any conversations between victim and counselor. R.I. Const. art. I, § 10</p> <p>See also <u>Advisory Opinion to the House of Representatives</u>, 469 A.2d 1161, 1166-67 (R.I. 1983)</p> <p>1. "Rape crisis center" shall mean any publicly or privately funded agency, institution, or facility, duly incorporated under the laws of this state, having as its purpose reducing the trauma of sexual assault to sexual assault victims and their families through crisis intervention, counseling, medical and legal information, and dissemination of educational information pertaining to the crime of sexual assault.</p> <p>2. "Sexual assault counselor" shall mean a person who (a) has undergone twenty (20) or more hours of training from a rape crisis center which shall include but not be limited to the following areas: law, medicine, societal attitudes, crisis intervention, counseling techniques, and referral services; and, (b) is either a staff member, or under the supervision of a staff member, of a rape crisis center.</p> <p>3. "Sexual assault victim" shall mean a person who consults a sexual assault counselor for the purpose of securing information, counseling, or</p>	<p>- Psychiatrist, Psychologist-client (Gen.Laws 1956, § 5-37.3)</p>

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			assistance concerning a mental, physical, or emotional condition caused by a sexual assault. 4. “Confidential communication” shall mean any communication between a sexual assault victim and a sexual assault counselor obtained in his or her professional capacity in the course of rendering assistance or counseling to the sexual assault victim.	
South Carolina	N/A	N/A	N/A	<ul style="list-style-type: none"> - Attorney-client (Rule 407, SCACR, Rules of Prof.Conduct, Rule 1.6) - Physician-patient (Code 1976 § 44-115-40) - Mental Health Provider-patient (Code 1976 § 19-11-95)
South Dakota	Any program or shelter must have confidentiality of identity, location, records, and information pertaining to any person to whom services are or were provided, in order to receive funding.	SDCL § 25-10-28 (West 2011)	Any shelter or service programs established pursuant to this chapter shall have as its primary purpose the provision of services to victims of domestic violence or sexual assault, or both, and shall include: (1) Crisis telephone and referral services available twenty-four hours per day, seven days per week; (2) Shelter available twenty-four hours per day, seven days per week; (3) Prevention and education programs periodically available to the local community; (4) Victim advocacy; and (5) Confidentiality of identity, location, records, and information	<ul style="list-style-type: none"> - Attorney-client (SDCL § 19-13-2) - Physician-patient (SDCL § 19-13-6) - Psychotherapist-patient (SDCL § 19-13-6) - Husband-wife (SDCL § 19-13-12) - Religious privilege (SDCL § 19-13-16,17) - School Counselor-student (SDCL § 19-13-21.1 and 2) - Sign Language Interpreter privilege (SDCL § 19-13-31) - Social Worker-client (SDCL § 36-26-30)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			pertaining to any person to whom services are or were provided.	
Tennessee	Confidentiality between domestic violence shelters and rape crisis centers and victims.	Tenn. Code Ann. § 36-3-623	The records of domestic violence shelters and rape crisis centers shall be treated as confidential by the records custodian of such shelters or centers, unless the individual to whom the records pertain authorizes their release; or a court approves a subpoena for the records, subject to such restrictions as the court may impose, including in camera review.	<ul style="list-style-type: none"> - Attorney, Private Investigator-client (TN ST 24-1-209) - Marital privilege (TN ST § 24-1-207) - Clergy privilege (TN ST § 24-1-206) - Physician-patient, Psychiatrist-patient (TN ST § 24-1-207) - News Media privilege (TN ST § 24-1-208) - Interpreter privilege (TN ST § 24-1-210,211)
Texas	Confidentiality between advocate and survivor, or person claiming to be a survivor, except for use in a criminal investigation or proceeding in response to a subpoena issued in accordance with law.	Tex. Govt Code Ann. § 420.071 (Vernon)	Advocate means a person who provides advocacy services as an employee or volunteer of a sexual assault program (Tex. Govt Code Ann. § 420.003 (Vernon)).	<ul style="list-style-type: none"> - Attorney-client (TX R Evid Rule 503) - Husband-wife (TX R Evid Rule 504) - Clergy privilege (TX R Evid Rule 505) - Physician-patient (TX R Evid Rule 509) - Mental Health Professional-patient (TX R Evid Rule 510)
Utah	Confidentiality between a victim and a sexual assault counselor.	U.C.A. 1953 § 77-38-201 to 204	<p>Sexual assault counselor means a person who is employed by or volunteers at a rape crisis center who has a minimum of 40 hours of training in counseling and assisting victims of sexual assault and who is under the supervision of the director or designee of a rape crisis center.</p> <p>Exceptions include: (1) the victim is a minor and the</p>	<ul style="list-style-type: none"> - Husband-wife (UT R Rev Rule 502) - Clergy privilege (UT R Rev Rule 503) - Attorney-client (UT R Rev Rule 504) - Physician-patient (UT R Rev Rule 506) - Mental Health Therapist-patient (UT R Rev Rule 506) - News Reporter privilege (UT R

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>counselor believes it is in the best interest of the victim to disclose the confidential communication to the victim's parents;</p> <p>(2) the victim is a minor and the minor's parents or guardian have consented to disclosure of the confidential communication to a third party based upon representations made by the counselor that it is in the best interest of the minor victim to make such disclosure;</p> <p>(3) the victim is not a minor, has given consent, and the counselor believes the disclosure is necessary to accomplish the desired result of counseling; or</p> <p>(4) the counselor has an obligation under Title 62A, Chapter 4a, Child and Family Services, to report information transmitted in the confidential communication (Utah Code Ann. § 77-38-204 (West)).</p>	<p>Rev Rule 509)</p>
<p>Vermont</p>	<p>Confidentiality between victim and crisis worker</p>	<p>Vt. Stat. Ann. Tit. 12 § 1614(b)</p>	<p>Crisis worker means an employee or volunteer who provides direct services to victims of abuse or sexual assault for a domestic violence program or sexual assault crisis program incorporated or organized for the purpose of providing assistance, counseling or support services; has undergone 20 hours of training and works under the direction of a supervisor of the program, supervises employees or</p>	<ul style="list-style-type: none"> - Attorney-client (VT R Rev Rule 502) - Physician, Dentist, Nurse-patient (VT R Rev Rule 503) - Mental Health Professional-patient (incl. Psychologist, Social Worker) (VT R Rev Rule 503) - Husband-wife (VT R Rev Rule 504) - Religious privilege (VT R Rev Rule 505)

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			volunteers, or administers the program; and is certified by the director of the program.	
Virginia	Confidentiality between programs and individuals providing services to victims of sexual assault or domestic violence and victims.	Va. Code Ann § 63.2-104.1(B)	<p>Programs shall include public and not-for profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence.</p> <p>If release of information described in subsection B is compelled by statutory or court mandate, the service provider shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.</p>	<ul style="list-style-type: none"> - Attorney-client (VA R S CT PT 6 § 2 RPC Rule 1.6) - Marital privilege (VA ST § 8.01-398) - Physician-patient (VA ST § 8.01-399) - Religious privilege (VA ST § 8.01-400) - Interpreter privilege (VA ST § 8.01-400.1, 406) - Mental Health Professional-client (incl. Licensed Professional Counselor, Clinical Social Worker, Psychologist, Marriage and Family Therapist) (VA ST § 8.01-400.2)
Washington	Confidentiality between victim and sexual assault advocate or domestic violence advocate.	Rev. Code of Wash. Ann § 5.60.060	<p>Sexual assault advocate means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.</p> <p>Wash. Rev. Code Ann. § 5.60.060</p>	<ul style="list-style-type: none"> - Attorney, Counselor-client - Spousal privilege - Clergy privilege - Physician, Surgeon, Osteopathic or Podiatric Physician or Surgeon-patient - Public Officer privilege - Peer Support Group Counselor-client - Mental Health Counselor-client - Independent Clinical Social Worker-client - Marriage and Family Therapist-client

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			(West)	(WA ST § 5.60.060)
West Virginia	Confidentially between domestic violence program or shelter and victim, IF the program receives funds from the state.	W.Va. Code § 48-26-701	<p>Shelter or family protection shelter means a licensed domestic violence shelter created for the purpose of receiving, on a temporary basis, persons who are victims of domestic violence, abuse or rape as well as the children of such victims. Family protection program or program means a licensed domestic violence program offered by a locally controlled organization primarily for the purpose of providing services to victims of domestic violence or abuse and their children.</p> <p>Requirement to disclose information pursuant to a court order is an exception to confidentiality.</p>	<ul style="list-style-type: none"> - Attorney-client (Rules of Prof. Conduct, Rule 1.6) - Mental Health Professional-patient (WV ST § 27-3-1— Proposed Legislation) - Licensed Professional Counselor-client (WV ST § 30-31-16) - Social Worker-client (WV ST § 30-30-24) - Physician-patient (W. Va. Code, § 30-3-9)
Wisconsin	Confidentiality between victim and domestic violence or sexual assault advocate.	WSA § 905.045	Advocate means an individual who is an employee of or a volunteer for an organization the purpose of which is to provide counseling, assistance, or support services free of charge to a victim.	<ul style="list-style-type: none"> - Physician-patient - Registered Nurse-patient - Chiropractor-patient - Psychologist-patient - Social worker-patient - Marriage and Family Therapist-patient - Podiatrist-patient - Professional Counselor-patient (W.S.A. 905.04) - Interpreter privilege (W.S.A. 905.015) - Attorney-client (W.S.A. 905.03) - Husband-wife (W.S.A. 905.05) - Clergy privilege (W.S.A.

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
Wyoming	<p>Confidentiality between victim and family violence or sexual assault advocate. Confidentiality provision only relates to examination of a witness.</p>	<p>Wyo. Stat. § 1-12-116(b)(i)</p>	<p>Advocate or family violence or sexual assault advocate means a person who is employed by or volunteers services to any family violence and sexual assault program, who is certified by the program as having undergone at least forty (40) hours of crisis advocacy training and whose work is directed and supervised under a family violence and sexual assault program.</p>	<p>905.06)</p> <ul style="list-style-type: none"> - Attorney-client - Physician-patient - Religious privilege - Husband-wife <p>(W.S.1977 § 1-12-101)</p>
Guam	<p>Confidentiality between trafficking victim and human trafficking caseworker.</p>	<p>9 G.C.A. § 26.40</p>	<p>“Human trafficking caseworker” means a person who is employed by any organization whether financially compensated or not, for the purpose of rendering advice or assistance to victims of human trafficking, who has received specialized training in the counseling of victims of trafficking in persons, and who meets one of the following requirements: (1) holds a bachelor's degree or higher in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of victims of trafficking in persons; or (2) has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under subparagraph (1) or by a psychotherapist. The training,</p>	<ul style="list-style-type: none"> -Attorney-client privilege -Spousal privilege -Physician-patient privilege -Psychotherapist privilege -Clergyman-penitent privilege <p>(6 G.C.A. § 504)</p> <p>-Disclosing location of trafficking victim, trafficking shelter, or domestic violence shelter is a misdemeanor. (9 G.C.A. § 26.41).</p>

State	Confidential Relationships	Applicable Statute	Additional Information	Other Confidential Relationships
			<p>supervised by a person qualified under subparagraph (1), shall include, but need not be limited to, the following areas: history of human trafficking, civil and criminal law as it relates to human trafficking, societal attitudes towards human trafficking, peer counseling techniques, housing, public assistance and other financial resources available to meet the financial needs of trafficking victims, and referral services available to trafficking victims. A portion of this training must include an explanation of privileged communication.</p>	
<p>Puerto Rico</p>	<p>Confidentiality between crime victim and his/her counselor.</p>	<p>T. 32 Ap. I, Rule 26-A</p>	<p><i>Counselor.</i>— Any person duly authorized, certified or licensed by the Commonwealth of Puerto Rico to carry out the functions of a counselor, orientator, consultant, therapist or any employee or supervised volunteer of a help and counseling center that offers treatment and help to crime victims.</p>	<p>-Attorney-client privilege -Spousal privilege -Clergyman-penitent privilege -Physician-patient privilege -Accountant-client privilege (T.32, Ap.I Rules 25-30).</p>
<p>Virgin Islands</p>	<p>No confidentiality</p>			<p>-Attorney-client privilege -Physician-patient privilege -Marital privilege -Priest-penitent privilege (5 V.I.C. § 854-57).</p>

Immigrants & Refugees

WOCN Leadership Academy

- **Icebreaker Exercise:**
- How did you help immigrants and refugees, and what struggles did you have in helping them?
- Did you see any positive outlooks in the survivors and your interactions working with them?
- *Glossary of Terms

Who are immigrants and refugees?

- Documented and undocumented immigrants
- Refugees
- Asylees
- Naturalized citizens

Definition of Refugees

- Flee persecution, often for survival with little planning
- “ Any person who is outside any country of such person’ s nationality... and who is unwilling or unable to return...because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.” (U.N. Definition)

Immigrants in the U.S.

- Major source of population growth and cultural change
 - Immigration = 1/3 of U.S. population growth in past 10 years
 - Settling in a wider variety of geographic locations

Immigrants and advocates

- Respond to new immigrants from different cultures
- Who speak different languages
- Whose immigration status can affect benefits and eligibility

Cultural competence

- Awareness
- Attitude
- Knowledge
- Cross-cultural skills

Awareness

- Do not assume that all immigrants and refugees are the same
- Immigrants have multiple cultural, ethnic, and religious identities
- These experiences and options intersect
 - Affect survivors' needs and
 - Survivors' interaction with the justice and social services systems

Attitude

- Be open-minded
- Ask open-ended questions
- Be patient
- Be supportive
 - Battered immigrants must choose themselves when or whether to leave their abusers
 - Allow the client to define needs and fears

Knowledge

- What should advocates be informed of when working with immigrants and refugees?
 - Culture
 - Religion
 - Language
 - Immigration or citizenship status of the survivor and any children
 - Level of acculturation to the U.S.

Cross-cultural skills

- Allow immigrant survivors to define the barriers that they must overcome to seek help from within their own cultural context

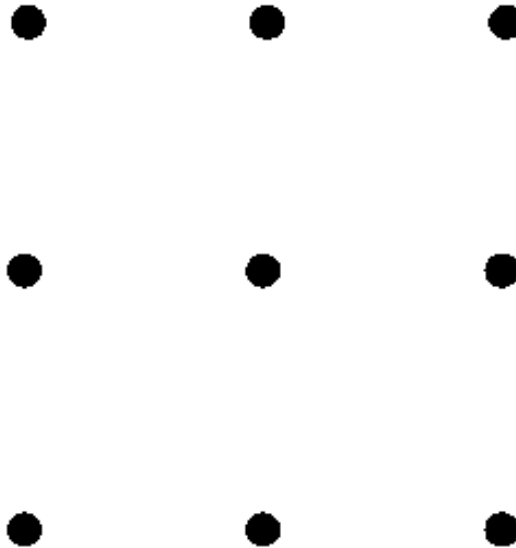
Many complexities

- Cultural, geographic, economic, and political context of the community
- Each immigrant survivor will react, manage, experience, and respond to the pressures of immigration and cultural concerns, family violence and crime victimization in different ways

Discussion questions

- How do you talk to immigrant survivors?
- When observing immigrant survivors what do you see and notice?
- What are some examples of the needs, concerns, and help immigrant survivors articulated that would support them overcoming the effects of victimization that were related to their culture?

- **“Thinking Outside of the Box” Exercise:** Connect all of the dots with 4 straight lines. Do not lift your pencil off the paper. Do not retrace any lines. (The lines may cross if necessary.)



Cultural and Linguistic Barriers to Services

Dynamics of domestic violence
experienced by immigrant and
refugee victims

U.S. Immigrant Demographics

- * “Immigrant” defined as born outside the U.S. (and not a U.S. citizen)
- 35.7 million immigrants in U.S.
- Today over 25% of U.S. population are immigrants or children of immigrants

The Power of Control Over Immigration Status

- Lifetime abuse rates for immigrant women in the U.S. 33-50%
- 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.

Research also has found:

- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
 - Almost three times the national average
- Immigrant victims
 - Stay longer
 - Have fewer resources
 - Sustain more severe physical and emotional consequences of abuse
- High sexual assault rates among immigrant women and girls

How do abusers use culturally or immigrant experience based tools to abuse, gain power, and control?

Immigrant-based tools of power and control

- **Exploiting Immigration related abuse, threats and fear of deportation – Primary barrier**
- Keeps survivors from
 - seeking help
 - Getting protection order
 - Calling police
 - Cooperating in prosecutions
 - Seeking health care
- NIJ Research found that 65% of immigrant survivors report some form of immigration related abuse

Immigrant-based tools of power and control

- **Isolation**

- Preventing survivors from accessing supportive persons in their community and from persons who speak their native language
- Threats to harm a family member in the U.S. or their country of origin
- Destroying personal culturally important belongings
 - Letters, heirlooms, photos, other items brought country of origin
- Threats to bring shame on their family

Immigrant-based tools of power and control

- **Economic abuse**

- Less exposure to the English language and less vocational skills than their abusers
 - May have had less access to educational opportunities in their home country due to gender
- Prevented from learning English or gaining more vocational skills
- Economic dependence on their abuser

Immigrant-based tools of power and control

- **Custody of children**
 - Many battered immigrant women are the primary caretakers of their children, so many worry about losing access to their children
 - Threats of physical harm to children
 - Belief that family courts will favor the abuser in rewarding custody of children

Immigrant-based tools of power and control

- **Misrepresentation of U.S. laws and culture**
 - Instilling belief that
 - Abuse is not illegal unless it occurs in public
 - Violence was provoked and abuse was survivor's own fault
 - Creating more isolation

Immigrant-based tools of power and control

- **Immigrant survivors frequently hold assumptions that**
 - their testimony does not count as valid evidence in court
 - family courts will favor abuser, especially when the abuser is a citizen or has more stable immigration status
 - they do not qualify for social services because immigration or citizenship status

Immigrant-based tools of power and control

- **Sources of misconceptions** include the abuser, the abuser's family, and a lack of interaction between agencies and immigrant communities
 - Programs and services, both governmental and non-governmental, may lack language accessibility, cultural sensitivity, and sufficient accurate information about immigrant legal rights

Other cultural concerns include

- Strong collective family ties
- Each cultural community's sense of duty and concern toward children will manifest itself differently
- Decisions are made in consultation with family
- Speaking out about “private family matters” is discouraged
- Going outside of the family destroys family legacy
- Extended family may judge battered immigrants harshly
- Traditional male and female roles

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

- Positive Factors:
 - Length of time in the United States
 - Speaking to 2 or more persons about the violence
 - (46% know other women victims)
 - When children witnessed the abuse
 - Having a protection order

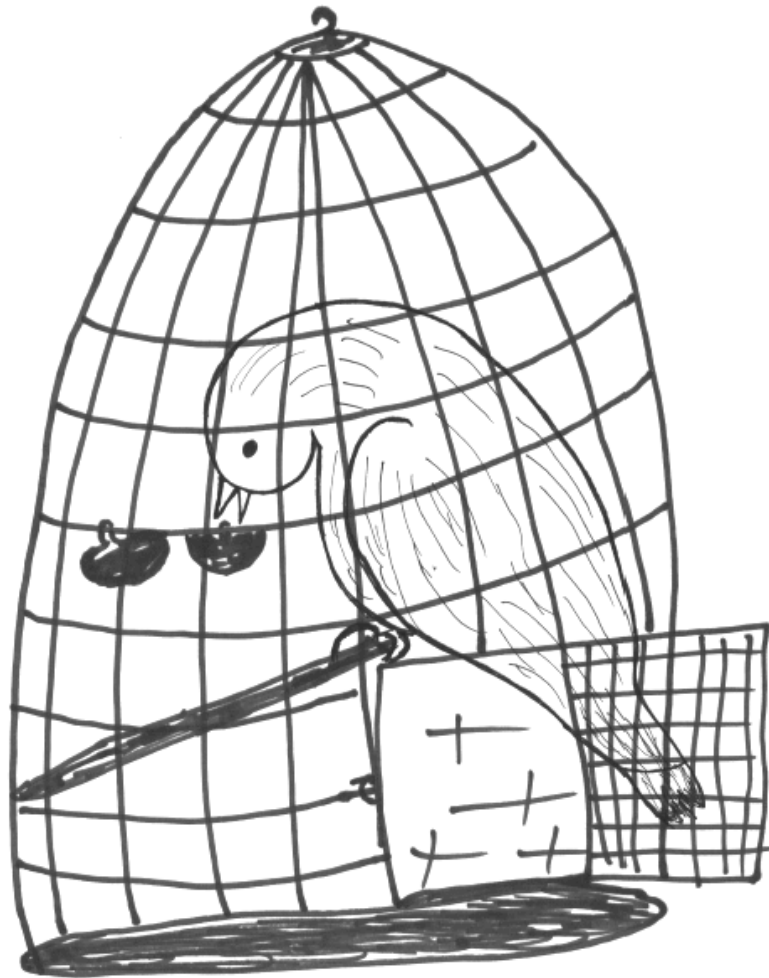
Immigration Status Affects Willingness to Call Police

- Negative Factor:
 - Survivor's immigration status
- 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%

Advocacy Makes a Difference

- Research among immigrant domestic violence survivors found
 - 60.9% of survivors seeking help from a victim advocate/attorney did not know about CPOs
 - 81% got them
 - Severity of physical and sexual abuse significantly increased willingness to get CPOs
 - 96% found them helpful

- **Exercise:** Look at the picture of the bird cage. What do you see?



What are possible cultural and linguistic barriers that immigrants face in accessing DV/SA services?

Language access for immigrants

- According to the 2009 American Community Survey from the U.S. Census Bureau, **24.5 million persons living in the U.S. do not speak English “very well.”**

Cultural and Linguistic Barriers for Immigrant Survivors

- Shelters

- Shelter options may be unfamiliar to immigrant and refugee survivors
- Fear of deportation if approach shelter for help
- Language barriers
- Staff members' lack of knowledge of immigrant legal rights

- Courts

- Legal options such as immigration relief, protection orders, and custody may be unfamiliar to immigrant and refugee survivors
- Fear of going to court
- Language barriers
- Judges who turn immigrant survivors away
- Unfriendly court officials

Cultural and Linguistic Barriers for Immigrant Survivors

- Law enforcement
 - Language barriers
 - Lack of responsiveness
 - No knowledge about victim's legal immigration options
 - Not signing U-visa certification
 - Local police undertaking immigration enforcement
- Other
 - Language barrier—lack of interpreter services
 - Being turned away from public benefits when they and/or their children legally qualify
 - Little cultural competency from professionals who should be helping battered immigrants
 - Lawyers, nurses, doctors, members of the clergy, etc.

Importance of language access

- Services and legal protections effectively closed to victims without language access
- Medical records, counseling records, and police report with incorrectly interpreted information can:
 - Lead to “conflicts” between testimony and written records
 - Undermine survivor/witness credibility
- No access violates federal law

What is LEP?

- Limited English Proficiency
 - English is not primary language
 - Limited ability to read, write, speak or understand English
 - Language for LEP individuals can be a barrier to
 - access to benefits or services,
 - understanding and exercising legal rights
 - complying with responsibilities
 - understanding other information provided by federally funded programs and activities.
 - **Determination is by person, not by agency**

Terminology

- Interpreters – spoken word
- Translators – written word

Title VI

- **Nondiscrimination and LEP access:**
- Title VI prohibits recipients of federal funding from discriminating on the basis of race, color, or national origin. (42 USCS § 2000d)
- Failure to provide appropriate language assistance to LEP individuals may constitute a form of discrimination on the basis of national origin because, in effect they do not have access to the same benefits, services, information or rights.

Title VI

- **Requirement for LEP access:**
- Under Title VI of the federal Civil Rights Act and federal agency regulations implementing Title VI, recipients of federal financial assistance have a responsibility to take **reasonable** steps to provide Limited English proficient (LEP) individuals with **meaningful** access their programs and activities.

What is reasonable access?

- Contingent on numbers/proportion of LEP individuals
- Frequency of contact with program
- The importance of the program or activity to the LEP person (including the consequences of lack of language services or inadequate interpretation/ translation)
- Resources available

Identifying the Need

- LEP individuals in your community may need your help. **Do not** assume that “someone else can help them.”
- Such assumptions resulting in discrimination could jeopardize your agency’s federal funding
- All shelters and service providers should be aware of languages commonly spoken in the community
- Develop appropriate protocols and resources, including ***collaborating*** with immigrant community-based organizations or domestic violence service providers

Implementing LEP Language Requirements

- Assess the language needs of the community
- Develop comprehensive written policy on language access
 - Oral interpretation
 - Translation of written materials
 - Notice about free language access
- Train staff
 - LEP policies and working with interpreters
- Vigilant monitoring & oversight of language assistance program

Interpretation and Translation

- Hire bilingual staff who are trained, competent in the skill of interpreting
- Hire staff interpreters who are trained, competent in the skill of interpreting
- Contract with an outside interpreter service for trained, competent interpreters

Interpretation and Translation

- Arrange formally for services of voluntary community interpreters who are trained, competent in interpreting
- Arrange/contract for use of telephone interpreters
- Written materials that are regularly provided in English to applicants, clients, and public

A qualified interpreter is **not**...

- A friend, child, or other family member of the immigrant survivor
- Untrained

A qualified interpreter...

- Has specialized training about ethics and potential complications of interpreting
- Proficient in and has the ability to communicate accurately in both English and in the other language
- Has knowledge of specialized terms in both languages

A qualified interpreter...

- Understands rules regarding interpreter confidentiality and impartiality
- Adheres to his/her role as an interpreter
- Complies with interpreter ethical rules
- Generally brings a dictionary and a pen pad of paper to write on

Working Effectively with Immigrant and Refugee Populations on Domestic Violence

Special considerations for advocates

What actions can you take in order to become an ally to work effectively with immigrant and refugee communities on domestic violence?

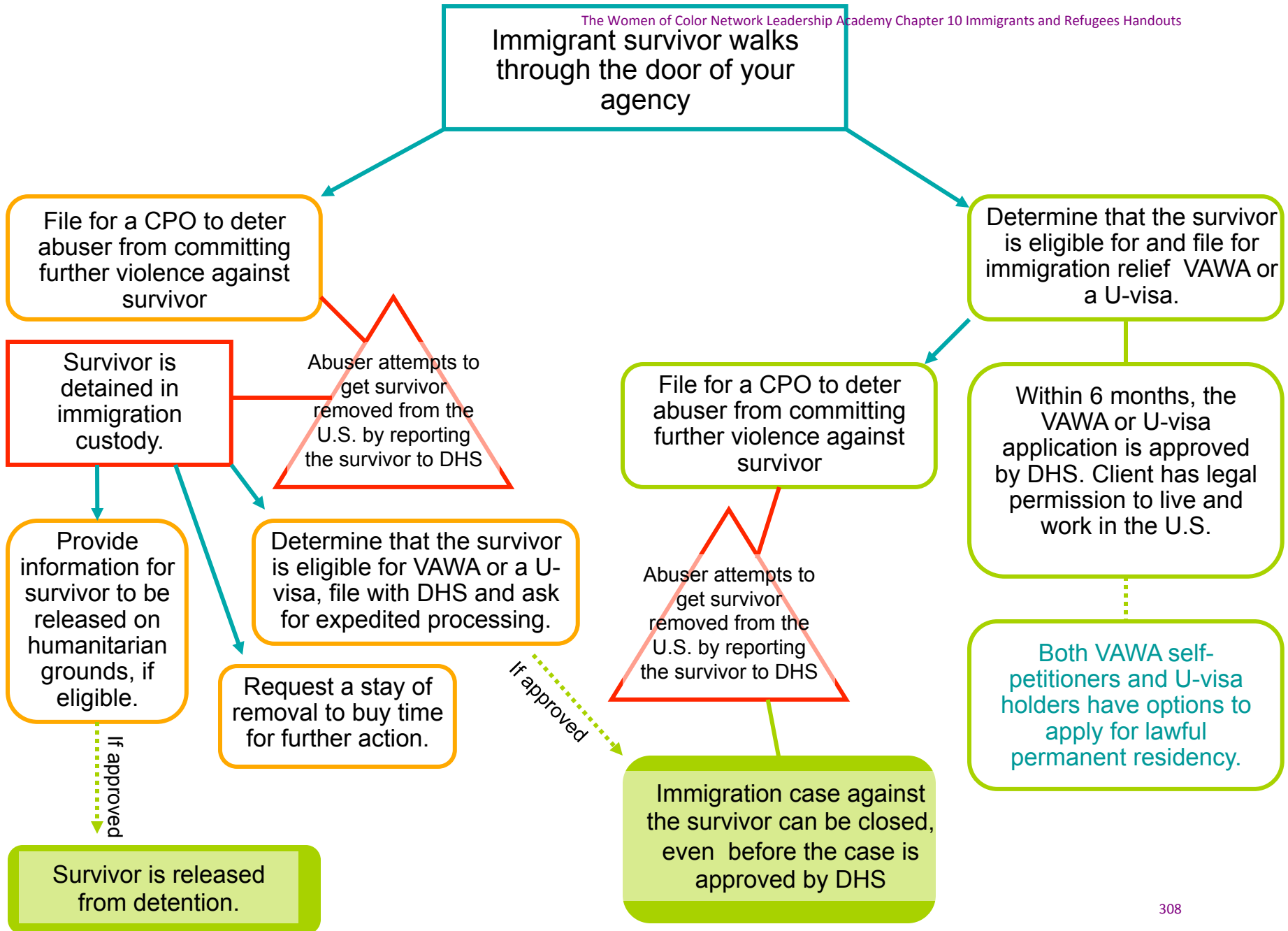
Working effectively as an ally

- Learn about immigrant cultures
 - From immigrant survivors
 - Research
 - Demographics
 - Community-based activities
 - Cultural diversity workshops
 - Community meetings and other activities sponsored by cultural groups
 - One-on-one relationships with advocates and allies working in immigrant communities
- Meet with diverse community leaders to discuss how to work together
 - Includes respected women in immigrant communities
- Develop partnerships and collaborations with immigrant communities
- Establish an open line of communication
- Be trustworthy and respectful
- Resist being afraid to ask questions or to be corrected
- Network with other professionals and community members
- Identify other allies

Working effectively as an ally

- Ideally, these actions will lead to the development of a collaboration and trust relationships between
 - Professionals, police, shelters, the courts, immigrant women's groups, immigrant community-based organizations and leaders
- Advocates should serve as representatives of immigrant survivors and ensure that immigrant concerns and needs represented at the table during coalition work on coordinated community responses

An immigrant survivor walks through the door of your agency. What do you do?



Safety Planning Challenges Related to Enhanced Immigration Enforcement

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

Early Survivor 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

What can programs do to be more welcoming to immigrant survivors?

What can programs and advocates do to be more welcoming to immigrant survivors?

- Institute policies that give immigrant survivors the support that the familiarity of their own culture brings
 - Access to familiar sleeping arrangements and ethnically-specific food at shelters
- Promote learning and understanding of culture among shelter residents

Steps you can take

- Help immigrants overcome the differences in laws and the court system in the U.S.
 - Explain in detail about the laws and court system
 - Take immigrant survivors to court in advance of their case so they can see a courtroom where battered immigrants are receiving court orders to protect them
 - Avoid using legal jargon or abbreviations

Sources for technical assistance

- National technical assistance providers
 - Help advocates working on individual cases with immigrant survivors and on systems reform efforts
- National Immigrant Women's Advocacy Project (NIWAP) was formed to educate, train, offer technical assistance and public policy advocacy, and conduct research that will assist a wide range of professionals working at the Federal, State, and local levels who work with and/or whose work affects immigrant women and children. Our work is designed to promote the development, implementation, and use of laws, policies, and practices that benefit immigrant women and children.