

# **Policies & Practices that Enhance the Legal Rights of Immigrant Domestic Violence Victims**

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## Domestic Violence Prevalence Rates and Severity

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

## Sexual Assault Among Immigrant Women

- Immigrant women also have high rates of sexual assault particularly during the first two years after arrival in the U.S.
- Victimization of immigrant children also high including child sexual abuse
- Multiple immigrant populations studied

## Connection Between Abuse and Control Over Immigration Status

- Immigrant women lifetime abuse rates as high as 49.8%
- U.S. citizen spouse/ former spouse abuse rate rises to 59.5%
- Almost three times the national average

## The Power of Control Over Immigration Status

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

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

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

## Immigration Related Abuse as a Lethality Factor

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

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

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



## Immigration Status Affects Willingness to Call Police

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

## *Protecting Immigrant Mothers, Protects Children*

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

## **NIJ Funded Study on Immigrant Victims and Protection Orders Found**

- With advocates support immigrant victims will use and benefit from justice system assistance
  - 60.9% first learned about CPOs from their advocates
  - 81% got CPO with help from advocate
  - 96% found them helpful
  - However, 68.3% of violations immigrant related abuse

# **Federal and State Funded Services Open to All Victims Without Regard to Immigration Status**

## **Open to all immigrant victims (including the undocumented)**

- Protection Orders
- Emergency Shelter
- Transitional Housing
- Legal Services
- Child Custody and Support
- Services for Domestic Violence, Child and Elder Abuse, Sexual Assault and Crime Victims
- Adult and Child Protective Services
- Police Assistance
- Have Their Abusers Criminally Prosecuted
- Emergency Medicaid

## Emergency Medicaid

- Every state enacted Emergency Medicaid Program
- Governed by federal law
- Federal definition of “emergency medical condition” used in most state law
- Available only in cases where the person needs treatment for medical conditions with acute symptoms that could:
  - place the patient’s health in serious jeopardy;
  - result in serious impairment of bodily functions; or
  - cause dysfunction of any bodily organ or part.

## What Various States Offer Under Federal Emergency Medicaid

- Labor and Delivery (emergency and most states normal)
- Severe and acute
- Urgent pharmacy needs
- Mental health
- Inpatient substance abuse
- 72 hour release of drugs without prior approval
- Not covered:
  - Continuation of services
  - Limited to current medical condition

# Health Care Open to All Immigrants

- Community health clinics
- State funded programs
- Post assault health care paid by VOCA funds
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



## Federally Qualified Health Centers Offer

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

# Federally Qualified Health Centers

- Community Health Centers
- Migrant Health Centers
- Open to all persons
- Including immigrants
- Provide health care to underserved populations
  - unable to pay for health care
- [www.nachc.com](http://www.nachc.com)
- [www.hrsa.gov](http://www.hrsa.gov)
  - go to “find a health center”
  - enter zip code

## Victims of Crime Act

- Generally victim must report within 72 hours
- Generally victim must cooperate with law enforcement
- Manner of reimbursement varies from state to state
  - Paying for service from onset
  - Billing victim and then reimbursing
  - Billing victim & only covering services directly related to the criminal investigation

## Victims of Crime Act Provides Funding

- Provides grants to states for eligible crime victim compensation programs
- Some programs cover medical expenses
- Covers post-assault health care for victims regardless of immigration status
- Varying policies
  - Initial forensic exam
  - Follow-up exams
  - Psychological treatment
  - Prescribed medicines

**Assistance for all immigrants  
Necessary to Protect Life and Safety**

- Offered in-kind, at the community level, and not based on the individuals income or resources –
  - Crisis counseling and intervention
  - Child and adult protection services
  - Violence and abuse prevention
  - Victim assistance
  - Treatment of mental illness or substance abuse
  - Help during adverse weather conditions
  - Soup kitchens
  - Community food banks
  - Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children (\*Includes emergency shelter and transitional housing up to two years.\*)
  - Nutrition programs for seniors and those requiring special assistance

# Why is Legal Immigration Status Important?

## The Importance of Immigration Status

- Severs dependence on potential abusers
- Protection from immigration detention and deportation
- Ability to work legally
- Improved access family law remedies, such as protection orders and custody
- Path to lawful permanent residency and ultimately citizenship
- Increased access to public benefits, including housing
- Ability to travel to and from the U.S. (with some exceptions)

## Potential Immigration Remedies

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



## General VAWA Self-Petitioning Requirements

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

## Forms of Extreme Cruelty

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

## **Factors that can constitute extreme cruelty**

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

## VAWA self-petitioning available

- If case filed within 2 years of marriage termination
- Bigamy
- Child abuse up to age of 25 to file
- Step children up until divorce
- Police report, protection order, medical records NOT required
- *All credible evidence* standard of proof

## Approved VAWA petitions

- Protection from deportation and detention  
–deferred action status.
- Legal work authorization
- Ability to apply for lawful permanent residency through VAWA

## Crime Victim (“U”) Visa Requirements

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

## Criminal activities covered by the “U” visa?

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

# The U-visa Process

1. Certification
2. Application
3. Approval – Deferred Action
4. U-Visa status 4 years
5. Some will qualify for lawful permanent residence



## **U-visa Certification: Considerations For Law Enforcement**

- Identify the victim
  - Note injuries observed
- Helpfulness of the victim
  - Current or past
  - Willingness to be helpful
- Any family members implicated in the crime
- **Goal: Identification of the crime, the victim and initiation of the process**

## Which U-Visa Recipients Can Obtain Lawful Permanent Residence?

- Did not unreasonably refuse to cooperate in the detection, investigation or prosecution of criminal activity; AND
  - Humanitarian need; OR
  - Family unity: OR
  - Public Interest
- Homeland Security review of cooperation and the reasonableness of non-cooperation is required for lawful permanent residency
- After 5 years lawful permanent residency can apply for naturalization

## **Factors That Harm Victim Access to VAWAs Immigration Protections**

- Criminal History
- Purchase/use of false documents
- Immigration/Benefits Fraud
- Other Red Flags

## Screening for Red Flags

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

# Comparison VAWA vs. U-visa

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

# **VAWA Protections In a Time of Increased Immigration Enforcement**

## **VAWA Protections In a Time of Increased Immigration Enforcement**

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Undermines community policing
- Victims safety concerns
  - Transportation
  - Timing of help offered
  - Maintaining custody of children
- Early identification of victims who qualify for VAWA, T or U immigration benefits

## **Early Identification and U-Visa Certification by Government Official Is Crucial for Victim Safety**

- Victims who are eligible for
  - VAWA
  - T-visas
  - U-visas
- Victims with pending/approved visa applications
  - Work
  - Family
- Sole and primary caretaker parents



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

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

## **DHS Humanitarian Release**

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

## **New Release From Detention Homeland Security Policy**

(August 20, 2010)

- Applies to Homeland Security Detention
  - Initiation and prosecution of removal of immigrants
  - Homeland Security detention
- Release for immigrants with a filed, pending or approved applications for immigration benefits
  - U visa,
  - T-Visa
  - VAWA,
  - Family Petition
  - Other

## August 2010 DHS Policy

- Dismissal without prejudice of removal case if DHS believes the applicant is likely to receive an immigration benefit
- Unless applicant
  - Has criminal convictions or misconduct
  - Is a threat to public safety or national security
  - Evidence of fraud
- Importance of Predominant Aggressor Determination

## VAWA Confidentiality

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

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

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

## How To Respond If DHS Comes

- Follow obligations under federal/state law and grant requirements not to disclose privileged or confidential information about victims
- Know if your program is a VAWA confidentiality protected location
- Disclosure only required if warrant or court order
- Subpoena is not a court order
  - DHS cannot obtain a warrant or subpoena without violating VAWA confidentiality if you are a protected location
- File complaint with DHS Office of Civil Rights and Civil Liberties

## **Safety Planning Challenges Related to Enhanced Immigration Enforcement**

- Immigration screening as early as possible essential
- Cannot assume by name or sight that victim is or is not an immigrant
- Changes in strategy – Immigration case filed before
  - CPO, family or criminal court case
  - Victim travels to new location
- Due to VAWA Confidentiality DHS enforcement officers cannot see that VAWA, T or U case exists



# Access to Public Benefits

## Qualified Immigrants and Federal Public Benefits

- **All qualified immigrants can access some federal public benefits**
- **Which benefits they can access depends on**
  - Immigration status
  - When they entered the United States pre/post 8/22/96?
  - What benefits are offered by the state
  - Whether they meet heightened program requirements for some programs
- **NILC State Benefits Charts**
  - State funded TANF, Health Care, Food Stamps, SSI
- **Legal Momentum State-by-State Charts**
  - Forensic Exams
  - Emergency Medicaid
  - Post Rape-Post Assault Health Care
  - Prenatal Care

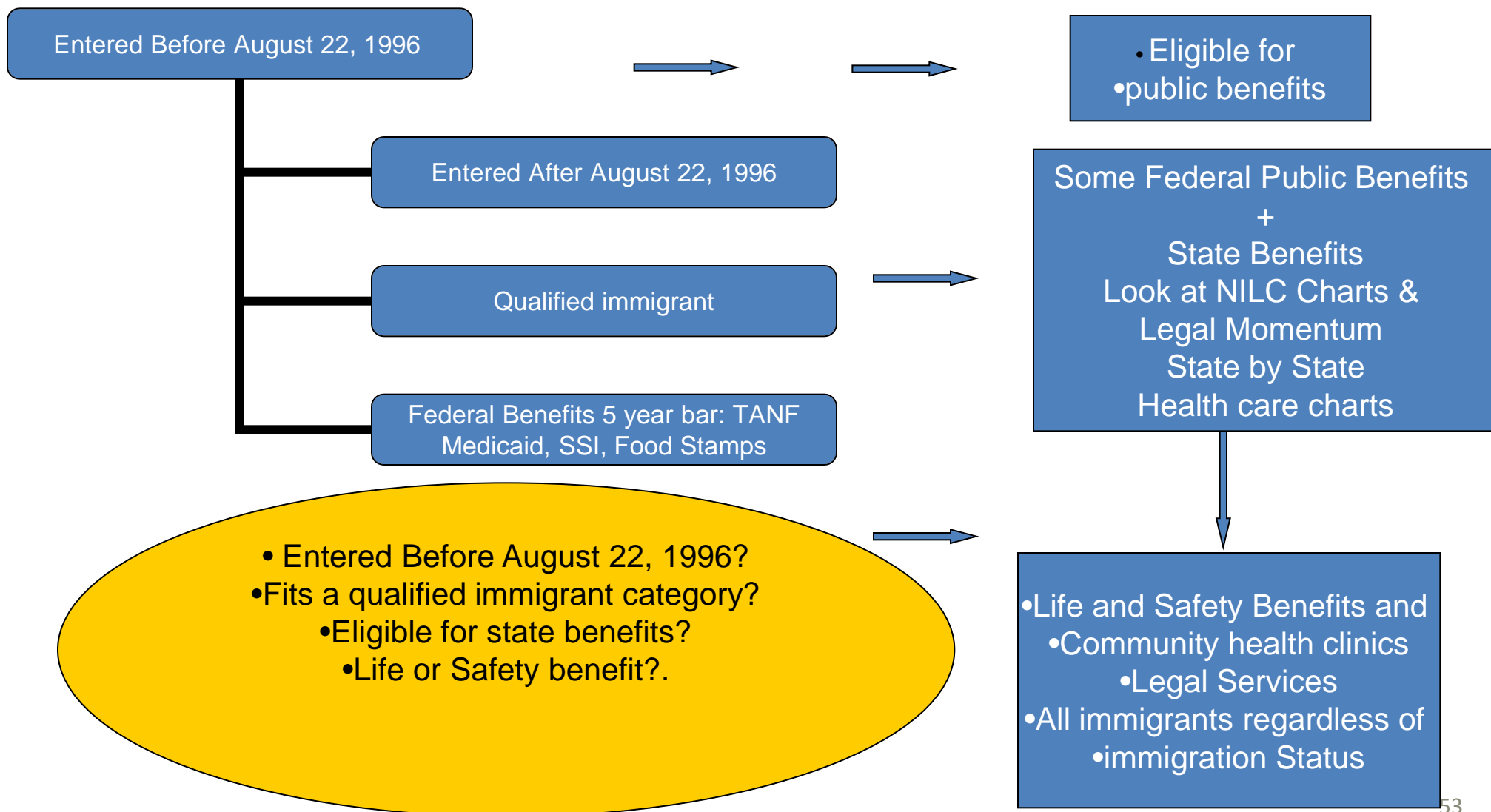
## Potential Barriers:

- Immigrant benefit categories;
- Language access barriers;
- Verification barriers;
- Fear of Deportation;
- Benefits agency officials with incorrect information about legal rights to access benefits for
  - immigrant victims and
  - their children.

## Immigrant Benefit Classifications

- Citizens
- Qualified Immigrants
  - Entering US before Aug. 22, 1996
  - Entering US on or after Aug. 22, 1996 subject to 5 year bar on federal means tested public benefits (e.g. TANF, Medicaid, Child Care, SSI, Food Stamps)
- Prucol (Permanently Residing Under Color of Law)
  - States can opt to offer state funded benefits to persons residing under color of law
  - NILC charts
- Undocumented Immigrants

# How to determine whether an immigrant is eligible for public benefits



## Qualified Immigrants

- Lawful Permanent Resident (LPR)
- Refugee, Asylee, Withholding of Deportation/Removal, Conditional Entrant status
- Paroled into U.S. for at least 1 Year
- Cuban/Haitian Entrant
- Amerasians
- Veterans of certain US military Action
- Battered Spouse and Children of battered child and child of battered spouse
- Victim of a severe form of trafficking

## Partial List of Federal Public Benefits/Community Programs Open to All Qualified Immigrants

- Public and Assisted Housing
- Social Security
- Head Start
- Post-Secondary Education
- Social Services Block Grant Funded Programs

## Federal Means-Tested Public Program Access Limited By:

- Immigration status, entry date, difficult program requirements
- TANF (5 yr bar post 8/22/96)
- Medicaid (5 yr bar post 8/22/96)
- SCHIP qualified immigrant children no bar (ICHEA)
- Food Stamps (very restricted except qualified immigrant children under 18 eligible)
- SSI (most restrictive)



**Family Court  
Working to Safeguard Custody and Parental  
Rights of Immigrant Victims**

## **Immigration Status and Immigrants in Family Court**

- Name the various ways immigration status and being an immigrant can play out in family law court.

## Intersections in Family Law Court

- Immigrant Access to family court
  - Jurisdiction
  - VAWA confidentiality and DHS
  - Language and cultural barriers
- Civil Protection orders
  - Creative remedies for immigrants
  - Immigration consequence of violating protection orders

## Impact of Divorce On:

- VAWA self-petitioners
  - Must file within two years of final divorce
  - Bigamy/innocent spouse not a bar
- Spouses and children of:
  - Students
  - Persons with legal work visas
  - Diplomats
- Spouses/children of people seeking lawful permanent residency
  - Employment based
  - Asylees
  - Family based
  - Cancellation of removal applicants

## Issues With Annulment

- VAWA self-petitioning
  - Must file within two years of annulment judgment
  - Does not matter who files
- Impact on
  - Spousal support
  - Property division
- Annulment can lead to immigration marriage fraud finding that
  - Permanently bars approval of any visa petition
  - Ground of Deportation

## Intersections in Family Law Court

- Creative protection orders
  - immigration specific remedies
- Violation of protection order deportable offense
- Abusers raise immigration status to win custody
- Detention and termination of parental rights for immigrant victims

## Abuser's Raising Immigration Status of Non-abusive Immigrant Parent in Custody Proceedings

- Overcome laws prohibiting awarding child custody to abusers
- Argue benefits of citizenship
- Highlight ability to financially support child
- Driver's license and ability to care for child
  - CA must be legally present
- Abusers will try to use discovery in the family law case to obtain information about VAWA immigration case
  - Hawke v. U.S.
  - Legal Momentum's tool kit for family lawyers

## **Effect of Increased Immigration Enforcement on Immigrant Mothers**

- **Case Examples**
- **Maria Luis, Nebraska**
- **Encarnacion, Missouri**



## Immigrant Parents' Constitutional Right to Custody of Their Children

- Constitution right to custody absent finding of unfitness
- Overriding presumption that parent child relationship is constitutionally protected and
- In child's best interest to stay with/be reunited with their parent
- Applies to all families without regard to
  - Immigration status; and
  - Whether or not the parent is
    - In immigration detention or deported
- Child's best interests not comparison of natural vs. adoptive parent's
  - cultures, countries, or financial means

# A Family Reunited



## **Overview of Child-Welfare System: Process**

- Report called in to hotline or child taken in on emergency basis
- In-person investigation
- Child removed from home or voluntary services provided
- Dependency process
- Family maintenance or reunification
- Permanency planning

## Challenges of Reunification for Immigrant Parents and Victims

- Lack of language access to system
- Lack of information about immigrant parent victim's legal rights
- Limited or lack of eligibility for public-funded services
- Limited timeframe for filing termination of parental rights (TPR) petitions under the Adoption and Safe Families Act
  - conflict with immigration case time frames

## Lessons Learned From the Maria Luis Case

- Due Process: Court documents and proceedings in immigrant parents' native languages
- Improper for Court to weigh where children "better off"
- Consular Notification, Consular Notification, Consular Notification!!!
- Preventive Measure: Execute Power of Attorney

## Challenges of Reunification for Detained or Deported Parents

- Limited ability to participate in court proceedings and case plan
  - New DHS procedures to facilitate court appearances
- Limited cooperation or communication between DHS and child welfare agencies
- Difficulty of communicating with detained immigrants new procedures
- Challenges in finding relative placement (both domestic and international)
- Making travel arrangements for children

## Safety Planning and Action Steps for Immigrant Mothers

- Understand and intervene early in child welfare system
- Developing plan to ensure care of children if detained
- Power of Attorney appointing guardianship
- Timing of immigration and family court cases
- Documentation victim can carry with her
  - Evidence that immigration case has been filed
  - Civil protection order

## Solutions Review

- Advocacy for victims in all immigration enforcement actions
- Prevents unnecessary child welfare system involvement
- Execute power of attorney
- Carry information about immigration filings
- Client must tell DHS that she is a primary caretaker of children
- Give client phone number of her government's consular office
- Increased collaboration among immigration and family attorneys, consulates, community-based organizations, and service providers
- Build relationships with child welfare staff and immigration enforcement personnel.



# For further assistance

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