


Serving Immigrant Victims of Domestic and Sexual Violence, Child Abuse, Human Trafficking, and Stalking: Holistic, Trauma Informed Best Practices

For Attorneys and Victim Advocates

Honolulu, Hawaii
May 24, 2024



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Faculty


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- Officer Michael LaRiviere, Salem Police Department



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The National Women's Immigrant Advocacy Project
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Our goal is to increase immigrant crime victims' safety, justice system participation, and ability to rebuild their lives and thrive



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How We Do It

We provide training and technical assistance to:

Local, State, Federal law enforcement, prosecutors, victim advocates, judges, attorneys and other professionals	Improve the response to immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, child/elder abuse and other crimes
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NIWAP Resources

- NIWAP Web library
 - Directory
 - Public Benefits Interactive Map & Demographics
 - Materials: Bench cards, toolkits, training tools, legal research, multi-lingual outreach materials
- Technical Assistance
 - Cases, policies, strategies
 - Email, phone, zoom
- Trainings and Webinars
 - On-line, virtual, in-person
 - Customized
- Communities of Practice
 - Victim advocates, family lawyers, National Judicial Network
 - Law enforcement/prosecutors

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NIWAP <http://niwaplibrary.wcl.american.edu>

<ul style="list-style-type: none"> • Training Materials for: • Law Enforcement • Prosecutors • Systems Based Victim Advocates • Judges • Attorneys/Victim Advocates • Statutes, Regulations, Policies & Government Publications 	<ul style="list-style-type: none"> • Language Access • Multilingual Materials • Immigration • Family and Criminal Law • VAWA Confidentiality • Public Benefits, Legal Services & Economic Relief • Dynamics, Culture, Collaboration & Safety
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Technical Assistance Topics

- Immigration relief
 - VAWA, U and T visas, Battered Spouse Waiver, Special Immigrant Juvenile Status, and Naturalization for Survivors
- U and T visa certification by government officials
- VAWA Confidentiality
- Issues that arise for immigrant survivors in family court cases
 - Including protection orders, custody, divorce, support
- Access to legal services and public benefits
 - E.g. housing, healthcare, driver's licenses, food assistance, education
- Language access for Limited English Proficient survivors
 - To help from law enforcement, prosecutors, courts, victim services
- Prosecution strategies
 - Discovery, Victim Disclosures, and Expert Witness
- Providing trauma informed assistance to immigrant survivors
- Serving survivors' cultural, religious, and immigration related needs

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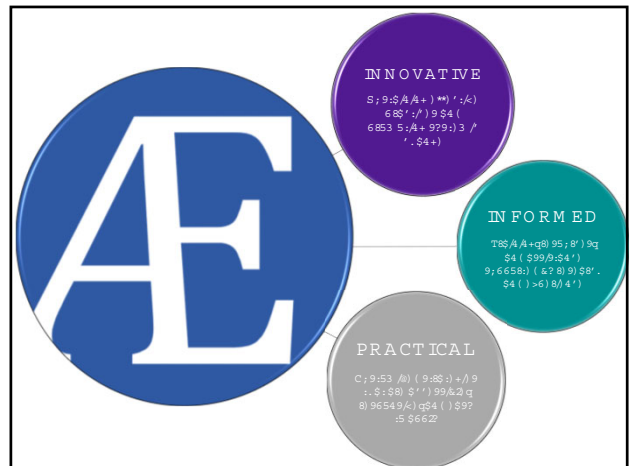
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- Family Law Attorneys COP
www.surveymonkey.com/r/FamCOP2023
- Victim Advocates COP
<https://www.surveymonkey.com/r/VictimAdvocateCOPApp>
- Roundtable for Law Enforcement, Prosecutors and System-based Advocates
<https://www.surveymonkey.com/r/LERoundtable>
- National Judicial Network: Forum on Human Trafficking and Immigrants in State Courts (Judicial Officials only)
<https://niwaplibrary.wcl.american.edu/pubs/njn-outreach-letter>

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<div style="text-align: center; margin: 10px 0;"> </div> <p style="text-align: center; font-weight: bold;">T 8 \$ / 4 / 4 + E <) 4 : 9</p> <p style="font-size: 0.8em;">Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals</p>	<div style="text-align: center; margin: 10px 0;"> </div> <p style="text-align: center; font-weight: bold;">P \$ 8 : 4) 8 9 . / 6 9 g I 4 / : / \$: / <) 9</p> <p style="font-size: 0.8em;">Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training</p>

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Learning Objectives

By the end of this training, you will be better able to:

- Screen survivors for immigration relief eligibility using a trauma-informed approach
- Improve victim safety and economic security through immigration relief, public benefits access in Hawaii, and identifying co-occurring human trafficking
- Obtain U & T visa certifications, SIJS judicial determinations, and assist survivors filing for immigration relief
- Ensure survivors receive VAWA confidentiality protections, civil protection orders, custody awards, and economic relief

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Survivor's Story

"I did not know who to ask for help. I thought the police would arrest me," said Heidi whose working day would start at 4 a.m. and end at midnight.

[\[ZOOM RECORDING LINK\]](#)

*Link is currently to survivor's story on Legal Aid website; Zoom recording happening on 5/2.

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DYNAMICS: THE REALITY OF HUMAN TRAFFICKING AND CO-OCCURRING CRIMES

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Learning Objectives

- Describe common tactics traffickers use to recruit, exploit, and maintain victims
- Identify intersections between human trafficking and domestic violence, child abuse, sexual assault, and stalking.
- Analyze how offender tactics and culture may impact immigrant survivors

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A Severe Form of Human Trafficking TVPA, 22 U.S.C. § 7102(11)

Act	Means	Purpose
<ul style="list-style-type: none"> • Recruit • Harbor • Transport • Provide • Obtain 	<ul style="list-style-type: none"> • Force • Fraud • Coercion 	<ul style="list-style-type: none"> • Commercial sex • Involuntary servitude • Peonage • Debt bondage • Slavery

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Coercion

22 U.S.C. § 7102(3)

- Threats of serious harm to or physical restraint against any person;
- Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
- The abuse or threatened abuse of the legal process.

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Serious Harm

22 U.S.C. 7102(3)

Any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

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Totality of the Circumstances

Serious Harm

- Physical or nonphysical
- Psychological
- Financial
- Reputational

Circumstances

- The surrounding circumstances

Victim

- Same background
- In the same circumstances

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The victim's vulnerabilities are relevant in determining whether the physical or legal coercion or threats thereof could plausibly have compelled the victim to serve.

United States v. Kozminski, 487 U.S. 931, 933, 108 S. Ct. 2751, 2755, 101 L. Ed. 2d 788 (1988)

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Individualized Analysis

Victim's background

Victim's vulnerabilities

Offender's tactics

Victim's circumstances

Types of harm

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Establishing the Charge

Victim's background

Surrounding circumstances

Offender tactics

Establish "force, fraud, or coercion"

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HT Power & Control Wheel

Adapted from the Duluth Model

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How might this look if the victim is an immigrant, undocumented, or if they are not proficient in English?

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Immigration Power & Control Wheel

Adapted by Futures Without Violence and Ayuda

POWER & CONTROL

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Involuntary Servitude in a Domestic Violence Relationship

<https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>

- Violates federal & state anti-trafficking laws
- Forced to work by use/threat of
 - physical restraint or physical injury
 - Coercion through law or legal process
- Goal of abuser to subject victim to a condition of servitude

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Conditions of Servitude

3 USCIS-PM B.2(B)(4)]

- “An expectation that the victim’s life fulfills the orders of the trafficker (such as a demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and constant availability to labor regardless of health or energy);
- Lack of control over the victim’s own wages despite laboring under the trafficker’s demands; or
- The imposition of unequal living arrangements as part of the campaign of force, fraud, and coercion (for example, unequal sleeping arrangements, living arrangements, or access to nourishment).”

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Coercive Control

Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - 27.7% who filed had a mean delay of 3.97 years.
 - Immigration related abuse 10X higher in relationships involving physical/sexual assault vs psychological abuse

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." International Review of Victimology 7 93113; Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

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NCJFCJ Model Code

Coercive Control

- Range of abusive behaviors beyond physical violence
 - Problematic and dangerous parenting
 - Intimidation, implicit/explicit threats, or compels compliance
 - Purpose of restricting victim’s safety or autonomy, trapping them, or using cultural practices/beliefs or immigration status to instill fear and maintain control over the victim

See Revised Chapter Four: Families and Children Model Code on Domestic and Family Violence (December 30, 2022)
<https://www.ncjfcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/>

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“FIRST DO NO HARM” TRAUMA-INFORMED HELP FOR IMMIGRANT SURVIVORS

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Learning Objectives

- Identify common responses to trauma
- Improve disclosures of traumatic events by building trust and rapport
- Conduct effective trauma-informed interviews

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What is trauma?

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*Trauma results from "an event, series of events, or set of circumstances that is **experienced** by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being."*

Ann Lynsen, *Trauma and Violence*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, <https://www.samhsa.gov/trauma-violence>

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Responses to Trauma

- Can include a wide-range of individual responses that may change over time
- Traumatic responses may challenge law enforcement and prosecutors
- Trauma may be one of several, interconnected explanations for victim behavior
- Responses are a result of the offender's infliction of the trauma

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Common Responses to Trauma

Lack of earnest resistance	Crying, laughing, flat affect	Calm or unemotional responses
Inconsistent / piecemeal memories	Delayed disclosure	Self-blame

See, e.g., Edna B. Foa, et al., Common Reactions to Trauma, National Center for Posttraumatic Stress Disorder

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Common Responses to Trauma

Cont'd

Minimization	Continued contact with offender	Returning to "normal" behaviors
Delayed report	Reluctance / refusal to participate in the process	Recantation / testify for defendant

Id.

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Common Cognitive Reactions

- Difficulty concentrating
- Difficulty making decisions
- Flashbacks or preoccupations
- Memory disturbances or amnesia
- Changes in hygiene
- A sense that things aren't real
- Worrying
- Changes in sleeping or eating
- Withdrawal or neediness

Common reactions to traumatic events, MITMedical, <http://medweb.mit.edu/mentalhealth/mh-reactions.html>

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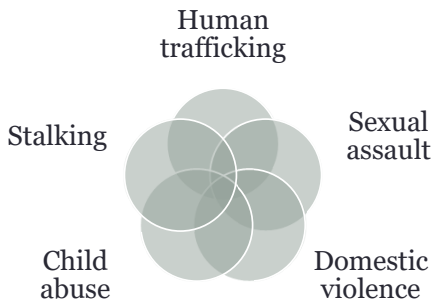
Previous Trauma

- Survivors may have been victimized multiple times in their lives; many have experienced physical or sexual abuse as children
- Survivors may have experienced more than one form of abuse as an adult
- An estimated 68% of women who have been physically assaulted by an intimate partner have been sexually assaulted as well

Judith McFarlane, & Ann Malecha, *Sexual Assault Among Intimates: Frequency, Consequences, and Treatments* (Oct. 2005)

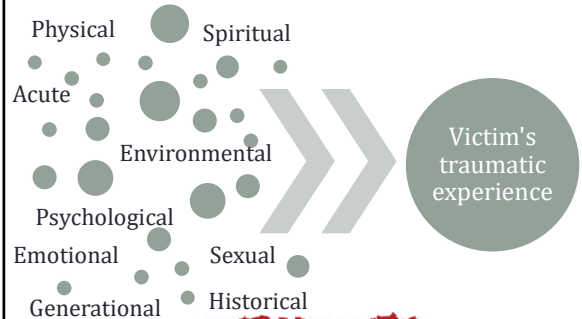
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Poly-Victimization



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Trauma



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Environmental Trauma

Environmental trauma can be triggered by feelings of neglect, helplessness, and loss from observed and felt conflict in the social and physical environment that has negative health implications for a person, family, or community.

(American Counseling Association, 2011)

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Spiritual Trauma

- Impacts a person's sense of meaning, view of God or gods, and one's concept of self. It can affect the nature of understanding good and evil, justice, pain, and suffering.
- Impacts one's inner belief system that gives meaning and purpose to a person's existence and place in the world. It alters the connection the individual once had with God, deities, the sacred, a higher power, universal energy, or nature.

- Tabitha Gallerani, LCSW

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Cultural Trauma

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JEFFREY C. ALEXANDER ET. AL, CULTURAL TRAUMA AND COLLECTIVE IDENTITY (University of California Press, Mar 22, 2004)

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How do you provide culturally-responsive care?

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Placing the crime victim's priorities, needs, and interests at the center of the work with the victim; providing nonjudgmental assistance, with an emphasis on self-determination, and assisting victims in making informed choices;...

Glossary. OFF. OF JUST. PROGRAMS, <https://ovc.ojp.gov/sites/g/files/xyckuh226/files/model-standards/5/glossary.html> (last visited Feb. 9, 2023).

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...ensuring that restoring victims' feelings of safety and security are a priority and safeguarding against policies and practices that may inadvertently re-traumatize victims. A victim-centered approach should also incorporate a trauma-informed, survivor-informed, and culturally competent approach.

Id.

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What are common priorities, needs, and interests of victims?

How can we assist in restoring a victim's feelings of safety and security?

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Trauma-Informed Tools

Immigration relief

Language access

Culturally-responsive services

Survivor-led programs

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Immigration Story Writing

- Affidavit = A Survivor's "Story"
 - Most important pieces of evidence submitted
 - Research on importance of writing the trauma narrative
 - DHS hears directly from the survivor
 - Can be a traumatic experience for survivors
 - The goal is to develop an approach that:
 - Obtains more complete information
 - Improves outcomes and helps survivors heal

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Story Writing

Intervention Method

Invite the survivor to write/tell her story

- Support, witness, listen without judgment, allow space
- Goal: story comes out unedited/uninterrupted

Follow up with interview

- Structured Interview Questionnaire for Immigration (SIQI)
- Take notes for follow up during story telling interview

Edit together

- Story + structured interview responses into affidavit

Survivor reads back the final story

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Standardized Tools:

Assessing "What happened to me?"

- Multiple types of trauma exposure
 - Structured Life Events Screening Questionnaire (SLESQ)
 - Stalking behaviors [SLII]
- Domestic Violence
 - Conflict Tactics Scale (CTS-2)
 - Psychological Maltreatment of Women
 - Coercive Control Scale (IPV Coercion Measure)
 - Danger Assessment
- Indigenous Trauma
 - Additional traumatic effects based on oppression and discrimination

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Standardized tools:

Assessing "How did it change me?"

- Articulating the impact of battering or extreme cruelty
- IPV (Intimate Partner Violence) Threat Appraisal and Fear Scale
- PTSD Checklist (PCL-C)
- Patient Health Questionnaire (PHQ-9; depression)

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Resources

Working with Immigrant Victims

- [Advocate's and Attorney's Tool for Developing a Survivor's Story: Trauma-Informed Approach](#)
 - This resource from National Immigrant Women's Advocacy Project (NIWAP) provides guidance on how people working with survivors can collect their stories.
- [Trauma Informed — Structured Interview Questionnaires for Immigration Cases \(SIQI\)](#)
 - This resource from NIWAP was developed by drawing upon evidence-based research on violence against women, coercive control, trauma, and acculturation
 - Languages: Spanish, Chinese, Russian, English
- [How to Prepare Your Case Through a Trauma-Informed Approach: Tips on Using the Trauma Informed Structured Interview Questionnaires for Family Court Cases \(SIQI\)](#)

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08/06/2014 ... 53

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Moving Forward

Identify co-occurring human trafficking

Support victim/survivors articulate the reality of their experience

Implement trauma-informed, culturally-responsive practices

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IMMIGRATION RELIEF OVERVIEW AND SCREENING

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Learning Objectives

- Identify immigration options VAWA, T visa, U visa, Special Immigrant Juvenile Status (SIJS)
- Analyze different immigration options by how they impact access to work authorization & public benefits

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Large Group Discussion

How do VAWA's immigration protections benefit immigrant victims and their children ?

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Legislative Intent

Congress enacted VAWA self-petitioning (1994), the U and T visas (2000, 2005, 2008) & Special Immigrant Juvenile Status (SIJS) (1990,2008) to improve:

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U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS™

Immigration Protections for Noncitizen Victims of Crime and Abuse

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Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	

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Similar Criminal Activity

- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:
 - Hate crimes
 - Video voyeurism
 - Elder abuse/abuse of adults with disabilities
 - Child abuse
 - Robbery or aggravated robbery could include felonious assault, depending on the evidence and state law definition

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Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from the perpetrator
 - Legal work authorization (6 months to 2 years from filing)
 - Issuance of federally recognized driver's licenses and IDs
 - Increased access to federal and state public benefits
- VAWA confidentiality

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VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - spouse; parent; or citizen adult son/daughter (over 21)
- With whom Self-Petitioner Resided
 - No time period required
- Good Moral Character
- Good Faith Marriage
- VAWA cancellation of removal has similar eligibility requirements
- 2023 time to work authorization = 4-34 months

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Battered Spouse Waivers

- For domestic violence survivors, provides for waiver of the "condition" placed on the status of immigrant spouses of marriages less than two years old
- Waives both the joint filing requirement and two year wait for full lawful permanent resident status
- Requires proof that:
 - Marriage to a U.S. citizen or permanent resident entered into in good faith and
 - Spouse or child was battered or subjected to extreme cruelty
 - Child can include step-child
 - Immigration and Nationality Act § 216(c)(4)
- 2023 time to approval 17.5 to 29 months

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Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, neglect, or dependency
 - By at least one parent
- To apply must submit the required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- 2023 time to work authorization = 6 months

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U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- 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
- 2023 time to work authorization – 60-62 months

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T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.D. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking.
 - Exceptions
 - Under age 18
 - Physical or psychological trauma impedes helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- 2023 time to work authorization = 18 months



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Protections for Abused Children and Family Members

- VAWA self-petitioner = Abused child, stepchild, parent or parent of an abused child can apply for the family:
 - Over 21: applicants' children/stepchildren
 - Under 21: Can include their parent and their children
- U and T visa applicant = Victim/parent of an abused child can apply for family:
 - Over 21: spouse and children/stepchildren
 - Under 21: spouse, children, stepchildren, parents, unmarried siblings under 18
- Special Immigrant Juvenile Status = child victim
 - Family included: None



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Clara and Eduardo Case Scenario

Clara met Eduardo a lawful permanent resident when he came back to his hometown to visit his family in El Salvador. Eduardo started dating, Clara who was raising her 9-year-old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse.



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Clara and Eduardo Case Scenario

Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.



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What forms of immigration relief would Clara qualify for?



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What forms of immigration relief would Lupe NOT qualify for?



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What forms of immigration relief would Miguel qualify for?

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Deferred Action and Work Authorization

- VAWA self-petition (requires marriage)
 - Eduardo U.S. Citizen
 - 3 months work authorization
 - 34 months deferred action
 - Eduardo Lawful Permanent Resident – 34 months
- T Visa – 18 months
- SIJS – 6 months
 - For Lupe as a victim of child abuse by Eduardo
 - For Miguel if abandoned by his natural father
- U visa – up to 5 years

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Benefits Impacts

- TANF: T visa and VAWA self-petitioners eligible
 - SIJS-LPR (5 years); U-LPR (25+ years)
- SNAP: T eligible – Clara and children
 - Children: VAWA prima facie (3 months), SIJS (5 years);
 - Clara: VAWA-LPR (63 months); U visa-LPR (25+ yr.)
- Housing: T visa, VAWA self-petition eligible
 - SIJS-LPR (5 years), U visa-LPR (20+ years)
- Education (FAFSA): T visa
 - VAWA (3 months); SIJS-LPR (5 years), U visa-LPR (20+ years)

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Large Group Discussion

When a victim comes to your agency for help how do you approach what to do first?

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Safety Through Early Screening

- Identify which forms of immigration relief an immigrant survivor qualifies for
- Know the differences between immigration options
- Document history of abuse
- Incorporate into safety planning

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Value of Filing Early

- File the victim's immigration case ASAP
 - DHS VAWA confidentiality computer system
 - Sufficient evidence for prima facie/bona fide
- Benefits for victims of early filing:
 - Protection from deportation
 - Safer for victims to cooperate in criminal cases
 - Earlier access to work authorization
 - Speeds access to public benefits
 - Better position in the family law case
 - Can submit additional evidence as it becomes available before adjudication

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After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- Increased justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 60% seek protection orders and/or custody
 - 22% help other victims report abuse and seek help/justice
- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
 - 74% decline in immigration-related abuse
 - 78% decline in threats to snatch/cut off access to children
 - 65% decline in efforts to use the immigration status of the victim to gain an advantage in family court

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Promote Victim Participation

- Try to file immigration case before:
 - Protection order, family, or criminal court case
 - Victim travels to a new location
 - Particularly when victims are experiencing immigration-related threats
- Role of VAWA confidentiality laws
 - Letter stating victim is in the process of filing a VAWA, T visa or U visa case
- Importance of sufficient evidence at filing to receive prima facie or bona fide determination

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Moving Forward

Know your shield of immigration relief options

Analyze the impact of immigration relief options

Screen early

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U VISAS PROMOTE TRUST AND ACCESS TO JUSTICE: U VISAS AND U VISA CERTIFICATION

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Learning Objectives

Describe how certifying early can benefit investigations and prosecutions

Increase U visa certifications by educating certifiers of their role in improving immigrant survivors' access to justices

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U Visa Facts

- Only 10,000 U visas can be granted annually
- Bona Fide determination with work authorization 4-5 years after filing
- The U visa grants a temporary 4-year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character

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U Visa Requirements

Victim	Helpfulness	Harm
<ul style="list-style-type: none"> Qualifying criminal activity Possesses information about the crime Criminal activity occurred in U.S. or violated U.S. law 	<ul style="list-style-type: none"> Victim has been, is being, or is likely to be helpful in <i>any of the following</i>: <ul style="list-style-type: none"> Detection Investigation Prosecution Conviction Sentencing 	<ul style="list-style-type: none"> Substantial physical or mental abuse as a result <div style="background-color: #800000; color: white; padding: 5px; text-align: center; font-weight: bold;">This is not a part of the certification.</div>

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Who can apply?

- Parents and guardians can apply as an "indirect victim" if:
 - The direct victim is a child under 21 years of age and/or is incompetent, incapacitated, or deceased due to murder or manslaughter
 - They demonstrate helpfulness
- When the victim is a child, the helpfulness requirement can be met by a "next friend" or family member being helpful
- Bystander victimization – very limited

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Definition of "Helpfulness"

8 C.F.R 214.14(b)(3)

Applicant

Has been

Is being

Is likely to be

helpful

detection

investigation

prosecution

conviction

sentencing

A victim *has been, is being, or is likely to be* helpful to law enforcement, prosecutors, judges, or other government officials

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Determining Helpfulness

- Certifying agency determines "helpfulness"
- No degree (or timing) of helpfulness required
 - DHS adjudicates helpfulness based on– totality of the circumstances
- Any agency may complete U Visa certification as soon as they assess victim's helpfulness
- Victim's criminal history does not preclude U visa eligibility, particularly when crime connected to the abuse
- The investigation or prosecution can still be ongoing
- Certification can be "revoked"

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Small Group Activity

What helpfulness might a victim provide to:

- Law enforcement
- Prosecutors
- Judge
- Child or adult protective services
- A state or federal labor enforcement agency

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Helpfulness May Include:

Calling 911	Having a Rape Kit performed	Providing a description of offender or their whereabouts
Allowing photographs to be taken	Filing for a protection order	Bringing a minor victim to court
Providing a statement about "other bad acts"	Providing evidence of abuse in a custody, child welfare, or divorce case	Testifying at a bond hearing, trial, or sentencing

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Not Required

- Within the statute of limitations
- Conviction
- Charges filed
- Offender arrested/prosecuted
- Victim provides testimony at trial
- Victim is a necessary witness
- Offender is identified
- Offender alive
- Case involving offender is open or closed

Victim-centered approach

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Large Group Discussion

Q and A with U visa certifiers

- Law enforcement
- Prosecutor

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Part 6. Certification

I am the head of the agency listed in Part 2, or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. ~~Based upon investigation of the facts, I certify, under penalty of perjury, that the individual identified in Part 1, is or was a victim of one or more of the crimes listed in Part 3. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. I further certify that if the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will notify USCIS.~~

Judges can amend the form
Examples: Based upon ...

- My findings of fact or ruling in [name type of proceeding]
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case

REMEMBER: This is a certification that you believe the applicant was a victim of a crime.

Certification provides evidence to DHS.

DHS adjudicates and decides whether to grant the victim immigration relief.

1. Signature of Certifying Official (sign in ink)
2. Date of Signature (mm/dd/yyyy)
3. Daytime Telephone Number
4. Fax Number

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IMMIGRATION RELIEF AND HUMAN TRAFFICKING

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Learning Objectives

- Differentiate between T Visa and U Visa qualifications
- Provide Continued Presence to eligible trafficking victims to improve human trafficking investigations
- Identify the need and benefits of procuring Child Eligibility Letters from the Office of Trafficking in Persons (OTIP)

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T Visa Requirements

- Applicant is a victim of severe form of human trafficking
 - Refers to the federal definition of human trafficking
- Applicant is in the U.S. because of trafficking
 - Not necessary that the victim came to the U.S. because of trafficking; can be in the U.S. for the investigation
- Responds to "reasonable requests for collaboration"
 - Trauma exception in specific cases
- Hardship upon return to home country

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T Visa Facts

- T Visa is a temporary visa for 4 years
- May apply for lawful permanent residence after either 3 years or after the investigation or prosecution is concluded
- Applicants are encouraged to submit a Law Enforcement Declaration along with their application, but it is not required

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A Severe Form of Human Trafficking

TVPA, 22 U.S.C. § 7102(11)

The term "severe forms of trafficking in persons" means--

(A) sex trafficking in which a commercial sex act is induced by **force, fraud, or coercion**, or in which the person induced to perform such act has not attained 18 years of age; or

(B) 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.

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Trafficking

Exploitation

Smuggling

Transportation

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Raise Your Hand

- If you have requested a T visa declaration on behalf of a trafficking victim client?
- Who have you approached for T visa declarations in your cases?



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T Visa Declaration

- Identify type of trafficking (sex, child sex, labor)
- Describe the victimization
- Identify the relationship with the crime detected, under investigation, being prosecuted, conviction or sentencing, and dates
- Comments on potential for retaliation or revenge from trafficker if victim is removed from U.S.
- Dates of trafficking
- Statutory citations to crimes
- Information about victim's involvement in case(s) against trafficker
- Names and relationship of any family members involved in the human trafficking

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T Visa Final Rule Highlights

- New Bona Fide Determination process –
 - Stays removal, benefits access, work authorization
 - Submit any needed additional evidence before 8/28/24
- VAWA confidentiality and exempt from Public Charge
- Trauma informed definitions of:
 - Coercion, commercial sex act, involuntary servitude, serious harm, trauma exception, and extreme hardship
- Detailed list of factors – reasonable requests from government - Minors exempt
- Broad interpretation of physical presence

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Know About OTIP Letters

- The Office of Trafficking in Persons (OTIP) at HHS issues:
 - Certification Letters to foreign national adults
 - Bona fide T applicants and Continued Presence (CP)
 - Eligibility Letters to foreign national children
 - No DHS application required- may have (CP)
- OTIP Letters provide access to public benefits, as refugees, for life
- Must be accepted by Federal and State agencies
- When under 18 year old victim applies for a T visa USCIS makes OTIP referral

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HHS Child Eligibility Letters

- TVPA requires government officials to report to Office on Trafficking in Persons with 24 hours of having credible information that an immigrant child “may be a victim of trafficking”
- HHS reviews Requests For Assistance (RFAs) and connects potential victims of trafficking with state and federal benefits and services
- Must file child's RFA before age 18
- Receive interim assistance for up to 90 days
- Eligibility letters give child trafficking victims access to benefits and services to the same extent as refugees indefinitely
 - Access to benefits throughout the time the child is applying for continued presence, T visa, or U visa

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Continued Presence (CP)

- Temporary immigration status provided to victims of trafficking who are “sponsored” by federal law enforcement
- Law enforcement initiates application immediately after identifying victim; cooperation is not required
- Upon approval, Dept. of Health and Human Services issues letter that allows victim to:
 - Access federal and state benefits
 - Receive work authorization

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Continued Presence (CP), Cont'd.

- Granted for 2 years; can be renewed
- Does not guarantee any form of long-term immigration relief
- T Visa application is typically filed while the victim has CP
- Can be revoked

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How can local or state law enforcement utilize Continued Presence?

- Collaborate with federal partners since the paperwork must be filed by a federal law enforcement agency
- Good point of contact: Local HSI Victim Assistance Coordinator (VAC) or Victim Assistance Specialist (VAS)

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What countries do victims and children in your courts come from?

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Hawaii (2021)*

- ❖ Total foreign born population – 270,345
- ❖ 18.8% of the state's ~ 1.4 million people are foreign born
 - 61.5% naturalized citizens
 - 28% legal permanent residents (as of 2019)
 - 10.5% temporary visa holders or undocumented immigrants
- 27.4% rise in immigrant population from 2000 to 2021
- ❖ Length of time immigrants have lived in the U.S.
 - 54.2% entered before 1999
 - 20.3% entered 2000 - 2009
 - 25.5% since 2010
- ❖ 29.1% of children under age 18 have one or more immigrant parents
 - 84.8% of these children are native-born U.S. citizens

*Source: Migration Policy Institute Data Hub (September, 2023) and Lawful Permanent Resident estimates MPI and DHS (2022)

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Hawaii- Countries/Regions of Origin & Limited English Proficiency (LEP)(2021)*

- ❖ Asia – 77.2%
 - ❖ Philippines (45.2%)
 - ❖ China/Taiwan (10.9%)
 - ❖ Japan (7.9%)
 - ❖ Korea (6.4%)
 - ❖ Other Southeastern Asia (6%)
- ❖ Oceania – 10.5%
- ❖ Latin America – 4.6%
- ❖ Europe – 4.1%
- ❖ Canada – 1.9%
- ❖ Africa – 1%
- ❖ Middle East – 0.6%
- ❖ Language spoken
 - ❖ 25.9% of people in the state who speak a language other than English at home
 - ❖ 47.4% of foreign born persons are LEP - speak English less than “very well”

*Source: Migration Policy Institute Data Hub (September, 2023)

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Hawaii-LEP (2019)*

- ❖ Limited English Proficiency (Speak English less than very well)
 - ❖ Naturalized citizens – 43.3%
 - ❖ Noncitizens – 54.1%
- ❖ Limited English Proficiency by language spoken at home
 - ❖ Vietnamese (68.1%)
 - ❖ Chinese (including Mandarin, Cantonese) (59%)
 - ❖ Korean (58.9%)
 - ❖ Thai, Lao, or Other Tai-Kadai Languages (57.5%)
 - ❖ Tagalog (including Filipino) (46.3%)
 - ❖ Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (43.7%)
 - ❖ Japanese (43.9%)
 - ❖ Russian (30.8%)
 - ❖ Portuguese (28%)
 - ❖ Spanish (21.9%)

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DOJ Model Guidance

- Police provide free language access to:
 - LEP persons who request it
 - When officer decides it is helpful to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in person's primary language

Limited English Proficiency (LEP): A Federal Interagency Website, <https://www.lep.gov>

DOJ Sample Policy Center City Police Department

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“Meaningful Access”

“Language assistance that results in accurate, timely and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior, as compared to programs or activities provided to English proficient individuals”

Limited English Proficiency (LEP): A Federal Interagency Website, <https://www.lep.gov>

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DOJ and Exigent Circumstances

- Use the most reliable *temporary* interpreter available to address exigent circumstances
 - Fleeting suspect
 - Weapons
 - Life threatening to the officer, the victim, or the public

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DOJ Requirements for Investigations & Interrogations

- “A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness’ legal rights could be adversely impacted”
 - Police reports
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings & Know your rights brochures

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“Qualified Interpreter”

“When considering whether an interpreter is qualified, the LEP plan discourages use of police officers as interpreters in interrogations except under circumstances in which the LEP individual is informed of the officer’s dual role and the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview.”

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What can you do if a police report was taken without using a qualified interpreter?

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Role of Lawyers and Advocates – Language Access Advocacy

- Plan and provide notice to the court and agencies in advance about your client’s interpretation needs
- Educate other programs about their language access responsibilities
- Build relationships with agencies in your community
- If a police report was not taken in your victim client’s case or it contains misinterpreted information – have the report amended
- File complaints with Federal Coordination and Compliance Section, DOJ, Office of Civil Rights. [Contact the Civil Rights Division | Department of Justice at https://civilrights.justice.gov](https://civilrights.justice.gov)

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Research has found...

- With support from advocates and attorneys who
 - Provide/help secure language access
 - Are knowledgeable about legal rights of immigrant survivors
- Immigrant and LEP survivors will
 - Seek protection orders, help from courts, access services, and apply for immigration relief
- When state courts provide language access, issue SIJS judicial determinations and sign U visa certifications
 - Immigrant victims of domestic violence, sexual assault, human trafficking and child abuse are willing to seek protection orders and help from family courts at significantly higher rates

Mary Ann Dutton, Navah Ammar, Leslye Orloff, and Darci Terrell, Use and Outcomes of Protection Orders by Battered Immigrant Women: Revised Final Technical Report to the National Institutes of Justice (November 19, 2006)

Navah H. Ammar, Leslye E. Orloff, and Amanda Couture-Carron, Immigrant Victims of Interpersonal Violence and Protection Orders, In Civil Court Responses to Intimate Partner Violence and Abuse (2020)

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VAWA CONFIDENTIALITY IN STATE COURT PROCEEDINGS

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Poll: Have you worked with survivors who have received ...

- A. Threats of deportation from perpetrators
- B. Been contacted by immigration enforcement officials



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Immigration-Related Abuse

- 25% of perpetrators actively report the victim for removal
 - Rises to 38% for VAWA self-petitioners
- 36% of perpetrators get immigrant and limited English proficient (LEP) victims calling for help arrested for domestic violence
- U visa applicants have higher future crime reporting rates

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff and Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Victims* (2017)




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VAWA Confidentiality Prongs Chart

Non-Disclosure	Abuser-Provided Information Prohibition	Location Prohibitions
Protects victims who have filed a protected case with DHS *VAWA self-petitions *Battered spouse waiver *VAWA Cancellation/Suspension *U and T Visas *Abused Spouses of work visa holders work authorization applications	Includes family members of abusers, crime perpetrators and their agents Protects: *All victims abused by spouse or parent *All victims in the process of applying for U or T visas	Protects: All Victims Requires: No action at protected locations OR Notice to Appear must state how they complied with VAWA confidentiality


Violation = \$5,000 fine and/or disciplinary action



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DHS VAWA Confidentiality Computer System



- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, and attorneys about immigration law protections for:
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivor



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VAWA Confidentiality Violations


- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Violations also include making false certifications in a *Notice to Appear*
- VAWA Confidentiality Enforcement Guidance CRCL (2008)
- ICE required to certify compliance to immigration judge = violations can be the basis for dismissal

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VAWA Sensitive Location Prohibitions

- Enforcement actions are not to be taken unless the action specific procedures designed to protect victims are followed:
 - 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, or stalking




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Poll: Has the perpetrator in a family court case you have worked on tried to ...

- A. Raise the victim's immigration status in the case
- B. Obtain information about a victim's immigration case through family court discovery

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Large Group Discussion

- What, if anything is discoverable in a state family, criminal, or civil court case when a victim has filed a ---
 - U visa application
 - T visa application
 - VAWA self-petition
 - Petition for SIJS

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VAWA Confidentiality Law's Statutory Disclosure Exceptions

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Limited Disclosure in Narrow Circumstances – Law Enforcement

- Disclosure to law enforcement, prosecutors, or national security officials
 - Solely for a legitimate law enforcement or national security purpose; and
 - In a manner that “protects the confidentiality of such information”

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Raise Your Hand - True or False?

VAWA confidentiality's judicial exception applies to State Court judges hearing criminal, family, and/or civil court matters.



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Limited Disclosure in Narrow Circumstances – Judicial

- A judicial exception applies only to appeals of the victim's immigration case
- Exception does not extend to state or federal judges hearing other civil, family, or criminal court matters

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Hawke v. Dep't of Homeland Security (N.D. CA, 2008) – VAWA Self-Petition Case (Judicial Review Exception)

- VAWA Confidentiality Protects cases:
 - All cases unless denied on the merits
- Judicial exception applies to appeals of victim's immigration case
 - Does not apply to civil, family, or criminal court proceedings
- 6th Amendment right to compulsory process does not permit access to absolutely privileged information
- “Primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer”

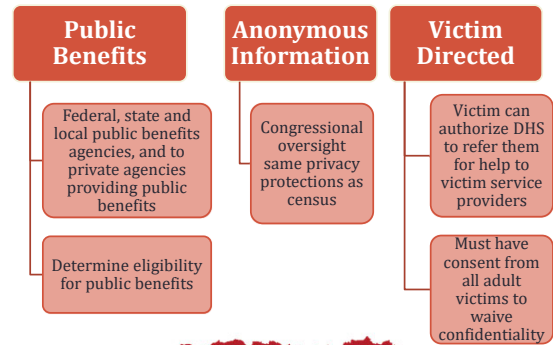
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Other Limited Exceptions



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Demaj v Sakaj (D. Conn, 2012) U Visa/Custody Case

- Although relevant to credibility and impeachment
- Family court discovery barred as contrary VAWA confidentiality purpose --
 - Prevent disclosure of documents & information in a protected case file to alleged criminals
 - Stop perpetrator's actions to interfere with & undermine a victim's immigration case
- Seeking to obtain protected information through discovery in a custody case = interference with the victim's immigration case barred by the federal statute
- VAWA confidentiality applies to protect the case file contents, including in cases when
 - The victim discloses in state court that DHS has approved her protected immigration case

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EEOC v Koch (5th Circuit)

- In civil discovery court must consider
 - How discovery of U visas might intimidate victims outside of the case before the court
 - Compromising the U visa program and law enforcement investigations and prosecutions more broadly
 - Koch: limited discovery crafted to maintain anonymity may be allowable
 - That is not possible in a family or criminal court case

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State v. Marroquin-Arauna Criminal Case

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- “Insufficient justification” to disclose additional documentation when the defense had the certification form
- Provided defense opportunity to cross-examine victim and call credibility into question
- Court noted the “high level of protection” given to documents filed with immigration

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People v. Alvarez Alvarez Criminal Case

No. G047701, 2014 WL 1813302, at *5 (Cal. Ct. App. May 7, 2014), review denied (July 16, 2014)

- “The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status...which was completely irrelevant to this case.”
- The trial court was well within its discretion in excluding reference to the U visa

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Motion in Limine

- Precluding irrelevant or prejudicial evidence
- Limiting disclosure of confidential records
- Restricting testimony or questions
 - Collateral questions, not necessarily about immigration status
- Excluding Personally Identifiable Information (PII)

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ISSUES THAT ARISE FOR IMMIGRANT SURVIVORS IN FAMILY LAW CASES

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PROTECTION ORDERS



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NIJ Funded CPO Study Found

With support immigrant victims will use and benefit from justice system assistance

- 60.9% did not know about CPOs
- 81% got CPO with help from advocate/attorney
- 96% found them helpful
- 68.3% of violations immigrant related

Ammar, Orloff, Dutton, and Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research Criminal Justice Review 37:337 (2012)

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Immigrants and Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- Immigrant victims and their children often need creative protection order remedies using the state catch-all provisions

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True or False?

Issuance of a protection order is a deportable offense ?



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Protection Orders and Immigration Considerations

- Violation of a protection order is a deportable offense
 - Can lead to loss of lawful permanent residency and other immigration consequences for the perpetrator
 - A finding of violation of the protective provisions of a protection order in any context can trigger deportation including findings in civil contempt cases and admissions for diversion
- Victims should not be charged with violation of orders issued for their own protection

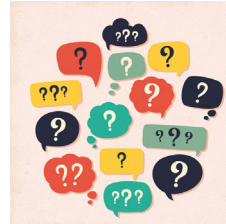
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Poll: Which of the following is a deportable offense?



- Domestic violence criminal conviction
- Finding in a custody case that a protection order was violated by further abuse of the victim
- Criminal conviction for violating a protection order
- Agreeing to diversion in a protection order enforcement case where upon violation diversion turns into a conviction
- All of the above

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Best Practices

- Ask for Issuance of Padilla advisals in protection order cases
- In cases in which parties seek protection orders against each other:
 - When one party is pro se and the other is represented consider appointing counsel for the unrepresented party

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Large Group Discussion

What are the dangers of issuing a protection order against a domestic violence victim?

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Effect of Protection Order Issued Against Immigrant Victims

- Victim is one step away from deportation
- A violation of a protection order is a deportable offense
 - Findings enough – conviction not required
- Perpetrators who are successful in convincing courts to issue protection orders are often also successful in obtaining findings that the victim violated the order
- Undermines access to victim based immigration relief which requires proof of good moral character
 - VAWA self-petition, VAWA cancellation, Naturalization

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Importance of Self-Defense and Primary Aggressor Determinations

- Importance of determining was there an offense
- Was as person acting in self-defense
- Who is the primary aggressor in the relationship
 - When the party against whom a protection order is sought may be the victim
 - This is particularly important for immigrant victims

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Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes, opportunity to offer relief designed to help:
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrator's ability to exert power and/or coercive control
 - Offer victim remedy relief for past abuse
 - Help victim overcome victimization and build new post-abuse life
- Nexus with victimization
- Opportunity for courts to counter immigration-related abuse and order culturally helpful remedies

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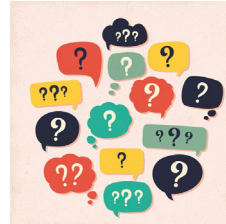
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Poll: Why Might Victims Not Separating From Their Abusers Seek Protection Orders?

(Check all that apply)



- Living in extended families
- Limited housing options
- Awaiting legal work authorization
- Curb abuse
- Help shift power and control in relationship

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The Majority of Immigrant Victims Stay With Their Abusers ...

- Until the victim receives work authorization as part of their immigration case or their case is approved
- Percent who leave before receiving work authorization or approval
 - VAWA self-petitioners 33.9%
 - U visa victims 30.1%

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Victims Who Stay: No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions:
 - No abuse
 - No unlawful contact
 - Batterer's treatment

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Small Group Creative Protection Order Exercise

- Meet in small groups to develop list of creative protection order remedies helpful for immigrant victims specifically
- Split room in 2 –competition to see which side runs out of remedies first
- Judge Collins rule on whether proposed remedies are immigrant specific

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Use Creative Remedies to...

- Stop immigration-related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for the care of a child
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

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Helpful Evidence

Evidence of Legal Marriage

- Marriage certificate
- Wedding/family pictures
- Health insurance

Good Faith Marriage

- Children birth certificates
- Love letters, cards, text, emails
- Copies of joint leases/utility bills
- School records
- Letters and other mail addressed to the victim and to the abuser at the same address

Evidence of Abuse or Extreme Cruelty

- Police, medical, court documents about the relationship
- Protection order
- Affidavits of neighbors, relatives, friends

Evidence of Abusers Legal Status

- Abuser's green card or passport
- Copy of I-130 petition
- Social security number

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In CPOs for Immigrant Survivors

- Special Immigrant Juvenile Status
 - When CPO includes custody of a child who was abused, abandoned, or neglected by one of the child's natural or adoptive parents
- U Visa Certification
 - Victims of criminal activity
- Trafficking victims
 - Office of Trafficking in Persons (OTIP) reports for child trafficking victims
 - T Visa Declarations

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CUSTODY OF CHILDREN IN IMMIGRANT FAMILIES

Tool: Immigrant Victims and Custody Bench Card

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Immigration Relief Promotes Better Family Court Outcomes

- After filing
 - Mothers seek protection orders –include children
 - VAWA self-petitioners 63%; U visas 67%
 - Mothers seek custody orders
 - VAWA self-petitioners 60%; U visas 64%
 - Co-occurring child abuse declines from 77% to 23%
- After work authorization and deferred action
 - 78% decline in threats to snatch/cut off access to children

Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Survivors and Their Children After Employment Authorization and Legal Immigration Status (June 8, 2021) <https://niwaplibrary.uclamerican.edu/pubs/transforming-lives-final-report>; Kristina E. Saabo, David Stauffer, Beulah Anver, Authorization For VAWA Self-Petitioners and U Visa Applicants, NIWAP (Feb. 12, 2014) and Rodrigues et al. Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey (May 3, 2018); Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004) <http://niwaplibrary.uclamerican.edu/pubs/co-occurrenceofchildabuse/>

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What are the immigration-related issues you have seen perpetrators raise against victims in custody cases?

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Is Immigration Status Relevant to Custody?

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



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Raise Your Hand - Myth vs. Fact Exercise: Parents Without Legal Immigration Status?

- Deportation is imminent
- The parent has no livelihood
- Legally present parent must have custody in order to file for benefits for child



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Myth vs. Fact:

Parents without Legal Immigration Status

- | Myth | Fact |
|---|---|
| 1. Deportation is imminent | 1. DHS policies prevent detention/removal of immigrant parents who are crime victims |
| 2. The parent has no livelihood | 2. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits |
| 3. Legally present parent must have custody in order to file for benefits for child | 3. Custody does not affect parent's ability to file for or gain immigration benefits for his children. |



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Who Is Likely to be Removed?

Year	Criminal Convictions Pending Criminal Charges:	Other Immigration Violations:
• FY 2016	• 91.7%	• 8.3%
• FY 2017	• 89.2%	• 10.8%
• FY 2018	• 87.1%	• 12.9%
• FY 2020	• 92%	• 8%



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Civil Immigration Enforcement Priorities (DHS Memo, Sept. 30, 2021)

- Terrorism, espionage, or threat to national security
- Threat to Border Security if
 - Apprehended while attempting to unlawfully enter the U.S.; or
 - Apprehended inside the U.S. after unlawfully entering after November 1, 2020
- *Current* threat to public safety due to serious criminal conduct
 - Individual assessment based on totality of the circumstances
 - Gravity and sophistication of the offense, conviction, sentence
 - Nature and degree of harm
 - Serious prior criminal record; Use of dangerous weapons



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Department of Homeland Security Victim Witness 2011 Memo – still effective

Goal: “Minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”

- “Absent special circumstances or aggravating factors, it is *against* ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”
- Crime victims and witnesses should receive “release from detention and deferral or a stay of removal.”



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Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities (Sept. 30, 2021) and
Trasviña ICE OPLA (May 27, 2021) Memos

- *Crime victim, witness, party in legal proceedings*
- *Person is likely to be granted humanitarian or other immigration relief (temporary or permanent)*
- *Impact on family in U.S. of loss of caregiver/provider*
- *Advanced/tender age/pregnancy*
- *Poor health or serious medical condition*



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Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities (Sept. 30, 2021) and Trasviña ICE (May 27, 2021) Memos

- Lengthy presence in U.S.;
- Military or public service by immigrant or family member
- History of work in the U.S.
- Pursuit or completion of education in the U.S.
- Time since offense, rehabilitation, conviction vacated or expunged

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Examples: Mitigating Factors

- Post-Nov. 1, 2020 entrants who are
 - Victim of domestic or sexual violence in the U.S.
 - SIJS eligible child
- Victim arrested for domestic violence
 - Victim called police, no qualified interpreters
 - Victim arrested, to get out of jail plead guilty
- Victim arrested for stealing baby food when fleeing abuser

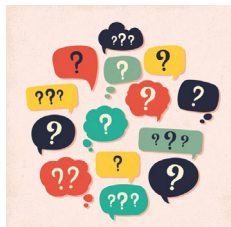
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Poll: Who is the *least* likely to flee with children from the United States?



- U.S. citizens
- Undocumented immigrant victim mothers
- Dual national parents
- Multiple entry visa holder parents

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Fact: Legal immigrants/naturalized citizens are more likely to flee with children

- **Particularly when**
 - There have been threats of kidnapping children
 - They are dual nationals
 - They can travel freely to and from U.S.
- The Ninth Circuit found that “there is no evidence that undocumented status correlates closely with unmanageable flight risk.” *Lopez-Valenzuela v. Apaio*, 770 F.3d 772, 786 (9th Cir. 2014).

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ICE Parental/Guardian Interests Directive July 2022

- Requires affirmative and ongoing inquiries about and identification of parents/legal guardians of minor children and incapacitated adults
- Status as a caregiver parents/legal guardian impacts
 - Decision to detain, initial placements, transfers of parents
 - Rights to family visitation & child welfare services/programs
 - ICE to comply with and facilitate court ordered visitation
 - Unless parent is the abuser, ICE required to accommodate efforts to make arrangements for children
 - If court orders custody or return of child, ICE will in most cases release parent/guardian
 - ICE required to bring parents/guardians to court and establish communication with courts

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Immigrant Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
 - Undocumented immigration status
 - Immigration detention
 - Deportation
- Overriding presumption that:
 - Parent-child relationship is constitutionally protected
 - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
 - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

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Trends in Case Law

- Flight risk:
 - Finding that undocumented immigration status does not make an individual a flight risk. *See Huff v. Vallejo*, 347 Ga. App. 127, 817 S.E.2d 696 (2018).
- Ability to provide financially for children
 - "...illegal aliens suffer disadvantages. For example, they cannot enter into an employment relationship. But plenty of people have worked, and thrived, as independent contractors all their lives." *See Hupp v. Rosales*, 2013 IL App (4th) 130433-U.

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Visitation

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What are the places
you typically use for
safe visitation
exchange?

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How Does Information About Protected Areas From Immigration Enforcement Help In Family Courts Cases?

VAWA Confidentiality

- Victims protected at courthouses in connection with civil/family/criminal cases related to
 - Domestic violence, sexual assault, trafficking, stalking
- Shelters, rape crisis centers
- Supervised visitation centers
- Family Justice Centers
- Programs serving victims

DHS Policy 10/27/21 At or Near:

- Schools and universities
- Medical or mental health care facilities
- Places of worship, religious events, weddings, funerals
- Places where children gather
- Social services: e.g., crisis, domestic violence, child advocacy, food banks, victim services, shelters, supervised visitation, family justice centers...
- Disaster/emergency response offered including family reunification
- Ongoing parade, demonstration, rally

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DIVORCE AND ECONOMIC SUPPORT

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Impact of Divorce

- VAWA self-petitioners:
 - Spouse must file within two years of final divorce
 - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
 - Students, Work Visa Holders, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Employment
 - Asylum
 - Family relationships
 - Cancellation of removal

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Annulment Instead of Divorce

- Annulment can lead to a marriage fraud finding that:
 - Permanently bars approval of any visa petition
 - Is a ground for deportation
 - Can lead to an unfavorable exercise of discretion by an immigration judge not to grant immigration relief
- Impacts
 - Spousal support
 - Property division

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Large Group Discussion

What forms of economic relief have you sought on behalf of immigrant survivors and their children?

- What obstacles or barriers have you encountered?

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Affidavits of Support

- Each person who petitions for a family member to immigrate to the United States must execute a legally enforceable affidavit of support. 8 U.S.C. § 1182(a)(4)(C)(ii)
 - Contractually committed to support sponsored family member at annually at 125% of Federal Poverty Guidelines
- Affidavits of Support are enforceable as contracts by the sponsored immigrant
- Support obligation lasts till immigrant spouse
 - Naturalizes, dies, earns 40 quarters of work credit, or gives up lawful permanent residency and leaves the U.S.

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What are the benefits of seeking and paying court ordered child support for immigrant parents?

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Child Support & Immigration: The Parent Paying Child Support

- Payment of child support through the court provides a non-citizen parent with a history of child support payments
- This is helpful evidence of good moral character for immigration cases
 - Cancellation of removal
 - Naturalization
 - Obtaining relief in immigration court
 - Can be used to show hardship to family members

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Child Support & Immigration: The Parent Receiving Child Support

- Provides a custodial immigrant parent with evidence of child support that can be used as income in when applying for lawful permanent residency
- Obtaining child support awards can provide helpful evidence of good moral character
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies

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Immigration Issues Arising in Child Support Cases

- Lack of legal work authorization is not a valid defense to non-payment of child support
- Can order child support, but not a job search, of an undocumented non-custodial parent
- Can order non-custodial parent to obtain an ITIN and pay taxes
- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related crimes of moral turpitude



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Importance of Wage Withholding

- Creates documented track record of payment
- Improves safety for immigrant victims
- Courts have found employers who willfully violate wage withholding orders liable to the custodial parent for the amount of child support ordered withheld.
 - State v Filipino, Conn. Super. LEXIS 266 (2000)
 - Belcher v Terry, 420 S.E.2d 909 (1992)
 - Child Support Recovery Srvs., Inc. ex rel S.C. v. Inn at the Waterfront, Inc., 7 P3d 63 (Alas. 2000)



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Special Immigrant Juvenile Status (SIJS)



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Raise Your Hand

If you have requested SIJS judicial determinations from a family court judge for children of your domestic violence victim clients?




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Large Group Discussion

How does seeking SIJS for a domestic violence or sexual assault survivor's child help the immigrant survivor?



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Special Immigrant Juvenile Status (SIJS)

- Humanitarian immigration relief for under 21 year old unmarried children who cannot be reunified with one or both parents who...
 - Abused, abandoned or neglected the child
- **State court order is a required filing prerequisite**
- Provide evidence for child's immigration case
- The state court order reflects judge's expertise on children's best interests
- State court order does **not** grant immigration status



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SIJS Judicial Determinations Can Be Issued When Family Court Judge Awards Custody

- Child is dependent on a juvenile court or legally committed **to or placed under the custody of** an agency or department of State, or **an individual** or entity appointed by a State court.
- Reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law (through adjudication by USCIS)
- Child's best interest would not be served by being returned to his or her country of origin.
8 U.S.C. § 1101(a)(27)(J)

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Family Court Cases That Include Decisions About Care & Custody of Children

- Dependency/Delinquency
- Civil protection order cases
- Custody cases
- Divorce cases
- Paternity and child support cases
- Adoption cases
- DHS states: All are of the above = *Juvenile courts*
 - Juveniles = all children
- SIJS Bench Book has chapters on each case type
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>

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In the Clara and Eduardo Scenario in which of the following cases could the court **NOT** issue SIJS findings for Lupe as part of the court's order?



- A protection order case in which the order grants Clara custody
- A custody case brought by Clara
- The criminal prosecution of Eduardo
- A child welfare case in which the court made findings of Eduardo's abuse and placed the children with Clara

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Return to Home country not in child's best interests

- Identify each potential custodian state law requires the court to consider in U.S. and home country
- Apply state best interests factors to each placement
- Court order states the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
- Then, if relevant, address other country conditions
 - Gangs, other harmful factors

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Finding: Reunification Not Viable

- Reunification with a parent is not viable due to abuse, neglect, abandonment, or similar state law basis
- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Means granting the abusive parent custody is not envisioned by the court as a viable option
 - Duration: through adjudication of SIJS application
- Changes in circumstances can occur
 - But not granting full legal/physical custody to abusive parent

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Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state law under which the court is exercising jurisdiction.
- Follow your state court procedures and note that you do so to demonstrate that the court made an informed decision.

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Best Practices to Address in SIJS Orders

- Make findings as to:
 - The age of the child and the evidence relied upon
 - The child’s parentage, naming each parent specifically
 - That the parent’s identity is unknown (e.g., rape)
 - Abuse, abandonment, neglect suffered & impact on child
 - Address each occurring abroad and/or in the U.S.
 - Details of who the court awarded custody to and why
 - Include no-contact and other protective provisions
- Cite and apply only state law as to:
 - Definitions of abuse, abandonment, neglect, similar basis
 - Best interest
 - Jurisdiction



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Access to Publicly Funded Programs and Legal Services Open to all Immigrant Survivors



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Access for All

Both documented and undocumented immigrant survivors can access:

<ul style="list-style-type: none"> ▪ Legal Services ▪ Family Court (Divorce) ▪ Language Access ▪ Police Assistance ▪ Protection Orders ▪ Child Custody & Support ▪ Have Their Abusers Criminally Prosecuted ▪ Public Benefits for Their Children 	<ul style="list-style-type: none"> ▪ Assistance for Crime Victims ▪ Shelter ▪ Transitional Housing ▪ GED ▪ WIC/school lunch & breakfast ▪ Primary/Secondary education ▪ Immunizations ▪ Emergency medical care ▪ Care from community & migrant health clinics ▪ VOCA
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Attorney General’s List of Required Services



- In-kind services
- Provided at the community level
- Not based on the individual’s income or resources
- Necessary to protect life and safety




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Federal Benefits Available to ALL Immigrants



- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



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In-Kind Services Necessary to Protect Life and Safety Open to All Immigrants

- Child and adult protection services
- Crisis counseling and intervention
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Shelter & transitional housing assistance
- Nutrition programs for those requiring special assistance





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Raise Your Hand: True or False?

Immigrants applying for benefits for their children can refuse to provide immigration or social security information about themselves.



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When children qualify and their parents/guardians do not:

- If a child qualifies for benefits as a citizen or qualified immigrant
 - the benefits granting agency *may only ask questions* about the child's eligibility
- Although questions about income may be asked
 - *No questions may be asked* about the immigration status of the child's parent if the parent is not applying for additional benefits for themselves
- Must provide accurate income information and keep it up to date. If not = fraud

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Importance of Accompanying Immigrants in Applying for Public Benefits

- Help educate state benefits workers
- Accompanying immigrant applicants helps
 - Children and survivor get what they are legally entitled to access
 - Varies by state, immigration status, benefits program
 - Helps undocumented parents/guardians file for benefits for their eligible citizen and immigrant children
 - State welfare worker reporting requirements

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What to Bring with you to Advocate

- The law indicating the benefit (you can find it on NIWAP's Public Benefit Map)
- Check also <https://www.benefits.gov/>
- Documentation of income eligibility
 - See links by program on state screening charts
- Documents from DHS
 - If eligibility requires immigration status



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Large Group Discussion

Where can immigrant survivors receive health care that is subsidized without regard to immigration status?

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Emergency Medicaid

- 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
- Includes COVID-19 testing and treatment



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Health Care Open to All Immigrants

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







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Access to Shelter, Transitional Housing and Permanent Housing






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HUD, DOJ and HHS Confirmed in August 2016

- Housing providers must not turn away immigrants based on their immigration status, citizenship, nationality, or English language proficiency from:
 - Emergency shelter
 - Transitional housing
 - Rapid re-housing




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Anti-Discrimination Protections

- No discrimination based on:
 - Title VI/FVPSA- race, color, and national origin
 - Fair Housing Act- race, color, national origin, religion, sex, familial status, and disability
 - VAWA- race, color religion, national origin, sex, gender identity, sexual orientation, and disability
 - HUD Section 109- race, color, national origin, sex, and religion



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Large Group Discussion

- Have you worked with immigrant victims who were turned away from transitional housing?
- On what basis?




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NIWAP Research: Reasons Immigrant Victims Turned Away From Transitional Housing

Primary Reasons Immigrant Domestic and Sexual Violence Victims Were Turned Away from Transitional Housing		
	Domestic Violence	Sexual Assault
Immigrant victim lacked the required documentation of immigration status	34.4%	99.4%
When documentation was required the program sought evidence of one of the following:		
Documentation related immigration status	84.1%	99.4%
Documentation of current employment or ability to work	56.0%	98.9%
An employment authorization document as proof of legal work authorization	52.9%	98.9%
Did not have a driver's license*	45.0%	98.8%
Program required documentation that the victim did not have	33.2%	87.0%
Immigrant applicant was undocumented	25.6%	90.0%
Immigrant victim did not meet the formal income requirements	23.7%	85.8%
The battered immigrant applicant failed to present government issued I.D.	18.3%	86.1%
They were told that the evidence presented of being self-sufficient was insufficient	9.0%	85.7%
They were not a victim of domestic violence	n/a	85.6%
They did not speak English	2.9%	3.1%



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Transitional Housing

- When transitional housing meets the in-kind, community level, and life and safety tests
 - Unit is owned or leased by the grantee and used to provide transitional housing
 - Must be open to all; No immigration restrictions
- Exception: Grantee paying rental assistance payments for participant *when regulations require income test*

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Multiple Choice:

Which of the following programs does NOT have immigrant access restrictions under Section 214 of the Housing and Community Development Act?

- A** Public housing
- B** Section 8 vouchers
- C** Project-based Section 8
- D** Low Income Housing Tax Credit
- E** Section 514 and 516 Farm Labor Housing programs

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Reminder: Housing Programs

That Are Not Restricted by Section 214

- *Low Income Housing Tax Credit (LIHTC)*
- Section 202 Housing for the Elderly
- Section 811 Housing for the Disabled
- Section 221 (d)(3)
- Indian Housing
- CDBG
- HOME
- HOPWA
- McKinney-Vento/HEARTH Act*
- Rental Rehabilitation
- HOPE 2
- Section 515 Rural Rental Housing Program (without Rental Assistance)
- Rural Housing Preservation Grants
- Section 538 Multi-family Loan Guarantees

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Access to Benefits and Services Grows as Children and Victims Pursue Immigration Relief



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Children and Crime Victims Qualified to Receive Public Benefits— Common Examples

- | | |
|--|--|
| <ul style="list-style-type: none"> • Qualified Immigrants benefits eligible <ul style="list-style-type: none"> – Lawful permanent residents <ul style="list-style-type: none"> • Includes U visas and SIJS – Refugees/Asylees – VAWA self-petitioners – Trafficking victim with <ul style="list-style-type: none"> • Continued presence or • Bona fide determination in T visa case | <ul style="list-style-type: none"> • Not generally benefits eligible some variation by state <ul style="list-style-type: none"> – Asylum applicants – DACA recipients – U visa applicants & recipients – Work/Student visa holders – Undocumented |
|--|--|

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Qualified Immigrant Access to 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
 - Whether they meet heightened program requirements for some programs
 - What benefits are offered by the state

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Federal Benefits Immigrant Restrictions

- Only programs that as a matter of law have immigrant restrictions are those categorized as:
 - “federal public benefits,” “state public benefits” or
 - “federal means-tested public benefits”
- Not a federal or state benefits unless payment is made directly to:
 - An individual
 - A household
 - A family eligibility unit

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Examples of “Federal Public Benefits”

- **US Agency Funded/Provided:**
 - Grants
 - Contracts
 - Loans
 - Professional or commercial licenses
 - Drivers licenses
- **Federally Funded Benefits for**
 - Retirement
 - Welfare
 - Health
 - Disability
 - Postsecondary education
 - Public or assisted housing
 - Food assistance or
 - Unemployment

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Who are “Qualified Immigrants”?

- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- VAWA: Persons who (or whose children) have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent

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

- Public and assisted housing
- Supportive housing for the elderly or disabled
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Receive payments for providing foster care
- FEMA individual family grants and disaster unemployment
- Job opportunities for low income individuals
- Adoption assistance
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Social services block grant programs

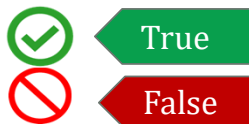
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Raise Your Hand: True or False?

DHS requires universities to ask about the immigration status of applicants or enrolling students.



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Education

- DHS does not require universities to ask about immigration status of applicant or enrolling students
- Immigrants eligible for student federal student loans
 - VAWA self-petitioners and their children
 - Permanent residents including SIJS
 - Trafficking victims
 - Refugees/asylees
 - SIJS recipients of lawful permanent residency

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Multiple Choice:

Which of the following immigrants NOT eligible for Public and Assisted Housing?



- A** Lawful permanent residents, refugees & asylum recipients
- B** VAWA self-petitioners
- C** U visa applicants/recipients
- D** Bona Fide T visa
- E** Continued Presence

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Section 214 Eligible Immigrant Categories

- U.S. Citizens/U.S. Nationals
- Lawful Permanent Residents
- VAWA self-petitioners
- Refugees and Asylees
- Parolees
- Persons granted withholding of removal/deportation
- Victims of trafficking – Continued presence and T visa bona fide
- Persons granted admission for emergent or public interest reasons
- Persons granted amnesty under the Immigration Reform and Control Act of 1986
- Immigrants eligible for registry who entered the U.S. before June 30, 1948
- Lawful U.S. residents under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam
- Immigrants admitted for lawful temporary residence prior to January 1, 1982

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"Section 214" Restricted HUD Programs

- Public Housing
- Housing Choice Voucher Program
- Section 8 Project-Based Housing
- Section 236 Housing
- Section 235 Homeownership Housing
- Rent Supplement Housing
- Housing Development Grants (HoDAG)
- Section 23 Leased Housing Program
- Emergency Housing Vouchers
 - only one family member need to be eligible

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"Section 214" Restricted RD Programs

- Section 514 and 516 Farm Labor Housing programs
- Section 502 home loan program
- Section 504 rehabilitation loan and grant program
- Section 521 Rental Assistance Program
- RD Voucher Program

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VAWA Self-Petitioners Eligible for Public and Assisted Housing

- Victims with VAWA self-petition filed
 - Children included in VAWA self-petition
- VAWA cancellation of removal and VAWA suspension of deportation applicants
 - Victims' children are not included in these applications
 - Will only appear in SAVE system if have work authorization
- Victims with approved I-130 visa petitions filed by their abusive spouse or parent
 - Children included in I-130 visa application filed for victim

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Large Group Discussion

What has been your experience assisting VAWA self-petitioners and T visa applicants in accessing public and assisted housing?

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SAVE Program

- The SAVE Program provides immigration status information to authorized agencies providing federally funded benefits
- VAWA confidentiality: DHS does not place victims into SAVE until they receive work authorization
 - VAWA cases require housing provider to "Institute Additional Verification"
 - DHS conducts this additional verification in a VAWA confidentiality compliant manner
 - VAWA confidentiality protections apply to VAWA, Battered Spouse Waiver, T, and U visa, and abused Visa Holder Spouse work authorization applications

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How Housing Providers Are to Complete DHS -SAVE System Online

- 1) Enter into SAVE the VAWA immigrant victim's:
 - Name + A# + Date of birth
- 2) System issues "Match" or "No Match" response
- 3) If "No Match" - Click "Institute Additional Verification" AND Enter in the note field either
 - "Verify VAWA Self-Petition" or "Verify I-130 Visa Petition" AND
 - Upload a copy of the victim's DHS document:
 - I-360 VAWA self-petition
 - I-130 Family-based visa petition
 - I-797 Notice of Action: Used for receipt notice, prima facie determination, and approval notice

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Non-Work SSNs

Example VAWA Self-Petitioners

- HUD regulations require that public and assisted housing recipients provide a Social Security Number.
- VAWA self-petitioners can request a non-work social security number from SSA.
- The victims' advocate or attorney should simultaneously request that the Public Housing Authority which received the victims' application for public or assisted housing issue a letter that the victim can request a non-work social security number from SSA.

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Be Prepared to Advocate...

- For survivor and children remain in the unit when perpetrator is removed
- Based on a child's or survivor's legal status able to avoid proration and include the survivor as a qualified immigrant in the subsidy
- DHS or immigration judge (not HUD adjudicate battering or extreme cruelty
 - Exception: family petition (I-130) filed by abuser

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Public Benefits Eligibility by States

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The Five-Year Bar

- Due to 1996 welfare reform, qualified immigrants, including battered immigrant women, that enter the United States after August 22, 1996 are ineligible for "federal means-tested public benefits" for the first five years of holding qualified status.
- Certain immigrants are not subject to the five year bar e.g.:
 - Refugees,
 - Asylees
 - Amerasian immigrants
 - Cuban/Haitian entrants,
 - Immigrants granted withholding of deportation
 - Victims of severe forms of human trafficking
 - T visas, T bona fide, continued presence and O'TIP letters

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State Option

- States have the option to provide some state funded benefits to immigrants
 - During the 5 year bar and/or
 - Those who are abused
- Varies by state and type of benefit
 - Can be important to look up neighboring states
- Advocacy includes safety planning during the 5 year bar



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Interactive Public Benefits Map Demonstration: State-By-State

State	Public Benefit	Eligibility	
08	Public Public Benefits	CHOP Care - TANF Funded	Eligible for TANF Funded CHOP Care & Housing TOST.
38	Public Public Benefits	CHOP Care CHOP Care Development Fund (CCDF)	Eligible for CCDF
39	Public Public Benefits	Children's Health Insurance Program Cash	Eligible up to age 19 upon prime face determination...
31	Public Public Benefits	Earned Income Tax Credit (EITC)	Eligible with conditions upon receipt of work...
37	Public Public Benefits	Emergency Medicaid	Eligible
33	Public Public Benefits	Family Medical Leave Act - FMLA Law	No state law, federal law applies.
37	Public Public Benefits	Higher Education Student Aid, Grants, and Loans	Eligible upon prime face determination.

<https://niwaplibrary.wcl.american.edu/benefits-map>



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Maps by Benefit

- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License, IDs, & Professional Licenses
- Earned Income Tax Credit
- Emergency & Transitional Housing & Safety Programs
- Emergency Medicaid
- Family Medical Leave
- Federal Education Benefits
- FEMA Assistance & Restricted Programs
- Food Stamps
- Health Insurance Exchanges
- Income Tax Credits
- Legal Services
- Medicaid
- Prenatal Care
- State Education Benefits
- Supplemental Security Income
- VOCA
- Weatherization & Energy Assistance
- WIC
- Unemployment Insurance



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Federally Recognized Driver's Licenses and IDs

- Under the REAL ID Act, evidence of lawful presence is required for driver's license to be a federally recognized form of identification
 - T visa bona fide
 - Continued Presence
 - Immigrants with work authorization
 - Approved VAWA self-petitioners, SIJS, DACA
 - Bona fide or waitlist approved U visa victims
 - Lawful permanent residents



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Individual Taxpayer Identification Number (ITIN) Purpose

- A tax-processing number issued by the IRS to ensure that people pay taxes even if they do not have a Social Security number (SSN) and regardless of their immigration status.
- Complying with federal tax laws.
- Can open an interest-bearing bank account.
- Helps secure a driver's license.
- Proof of "good moral character" for immigration applications
- Immigrants can use tax returns to document their work history and physical presence in the U.S. in future immigration applications



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Small Group Activity

Choose a state and navigate on the public benefits map to find what type of public benefits your client is eligible for.



- Groups 1:
 - Clara as a U visa recipient
- Groups 2:
 - Clara as a VAWA Self-petitioner
- Group 3:
 - Lupe as a Special Immigrant Juvenile Status recipient
- Group 4:
 - Miguel as a T-visa recipient



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Benefits in Hawaii

- TANF
 - VAWA, Continued Presence (CP), T visas
 - SIJS (3 yrs) and U visa (25+ yrs) lawful permanent residents
- Child care
 - TANF same as above
 - Child Care Development Fund – no restrictions
- SNAP
 - CP, T visas
 - Child VAWA self-petitioners and SIJS child-LPRs
- Education
 - Federal: VAWA, CP, T visa applicants, SIJS-LPRs
 - In-State tuition & scholarships: If in U.S. 3 yrs. + 12 months residence in HI no immigrant restrictions

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Benefits in Hawaii

- **Health Care**
 - Exchanges: VAWA, CP, T visa, U visa bona fide, SIJS applicants
 - State Premium Subsidies: Under 100% FLP & lawfully present
 - VAWA, CP, T visa, U bona fide, SIJS applicants
 - CHIP: Until 19 - VAWAs, CP, T visa, U visa bona fide, SIJS applicants
 - Full scope adult Medicaid if pregnant, seniors, disabled, or after federal 5 year bar if: VAWA, CP, T visa, U visa bona fide; SIJS
 - Breast and cervical cancer screening no immigrant restrictions
- **SSI (most limited):** CP, T visa, VAWA, SIJS, and U visa lawful permanent residents (5 year bar+ 40 quarters work)
 - HI: Seniors & persons with disabilities Aid to Aged, Blind, Disabled
 - VAWA, CP, T visa, and SIJS and U visa Lawful permanent residents
- **Hawaii Driver's License** with proof of identity and HI residency
 - Federally recognized – work authorization
 - VAWA approved, T visa bona fide, CP, U visa waitlist, SIJS –LPRs, DACA

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Benefits in Hawaii

- Housing
 - Transitional – all victims + homeless + abused children
 - Public and Assisted: VAWA applicants, CP, T visas, SIJS – LPRs
- LIHEAP
 - Weatherization and Hawaii Electric Light's Special Medical Needs and Ohana Energy Gift Programs – No Immigrant Restrictions
 - LIHEAP – VAWA, CP, T visa, SIJS LPRs
- FEMA
 - Emergency assistance: everyone
 - Individual Households Program: VAWA, T visa, CP
 - Individual & Family Grant Program: VAWA, T visa, CP, SIJS & U Visa-LPRs
 - US Small Business Administrations Loans: VAWA, T visa, CP
 - Disaster Unemployment Assistance: VAWA, T visa, CP, SIJS & U visa-LPRs
 - Emergency Food Stamps: T visa, CP, SIJS & U visa-LPRs (after 40 quarters of work credit)

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Raise Your Hand: True or False?

Receiving public benefits can harm an immigrant victim's ability to obtain legal immigration status.



True



False

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List of Exemptions from Public Charge

- VAWA self-petitioners;
- VAWA cancellation of removal;
- VAWA suspension of deportation;
- Battered spouse waiver;
- Abused approved family-based visa applicants (I-130);
- VAWA NACARA,
- HRIFA or Cuban Adjustment;
- U visa;
- T visa applicants and holders*
- Refugees;
- Asylees;
- Special Immigrant Juvenile Status (SIJS);
- (DACA) applicants;
- Amerasians;
- Afghan and Iraqi military translators;
- certain Cuban and Haitian adjustment applicants;
- certain Nicaraguans and Central Americans under NACARA;
- Registry applicants;
- Soviet and Southeast Asian Lautenberg parolees;
- Certain visa holders**;
- Green Card holders

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Public Charge Determination

- USCIS will review the following:
 - Non-citizen age, health, family status, financial status (including assets and resources), education, and skills;
 - Form I-864, *Affidavit of Support Under Section 213A of the INA*
 - Whether the person themselves (not a family member) received or are receiving:
 - Supplemental Security Income (SSI); Cash assistance for income maintenance Temporary Assistance for Needy Families (TANF); State or local income assistance "General Assistance"; or Long-term institutionalization at government expense.
- Other public benefits are excluded from the public charge determination – examples include:
 - Food stamps, nutritional assistance, CHIP, Medicaid, public or assisted housing, educational grants and loans

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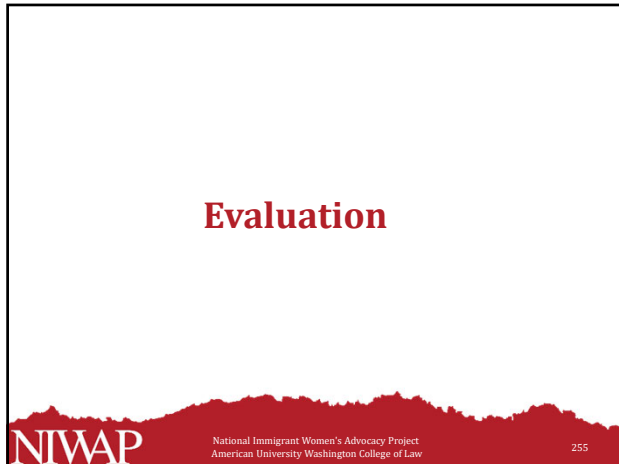
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Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/Portland-Attny-Advocate2023>
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