

Legal Options for Immigrant Survivors of Domestic and Sexual Violence: How NIWAP's and ASISTA's Technical Assistance Can Support Your Work

December 8, 2022

LAV Grantee Orientation
NIWAP and ASISTA

NIWAP



Thank you to OVW

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NIWAP



Introductions



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NIWAP

National Immigrant Women's Advocacy Project,
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Introductions



Kirsten Rambo
Executive Director
ASISTA



Learning Objectives

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

- Understand how NIWAP's & ASISTA's technical assistance, trainings, & resources can strengthen your work with immigrant survivors
- Dispel myths by understanding realities and dynamics experienced by immigrant survivors
- Gain insight to some of laws and legal rights that exist to support and increase safety
- Identify immigration options for survivors and crime victims and know how accesses to immigration relief will increase access to public benefits
- Identify unique issues that impact immigrant survivors' safety and outcomes in family law, child custody and support orders

Who NIWAP Provides Technical Assistance To

- Local, State, Federal law enforcement, prosecutors, victim advocates, judges, attorneys and other professionals.
- NIWAP supports professionals in the field working with immigrant crime victims so that they are more effective in helping more victims access more help for which they are legally eligible.



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National Immigrant Women's Advocacy Project at the
American University Washington College of Law



How NIWAP Can Support You

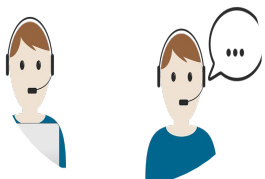


Training and Virtual Training: Develop curricula for in-person and web-based learning designed to meet your specific needs



Resource Hub: Wide range of accessible tools and publications designed to strengthen your response and best practices for serving noncitizen victims using a trauma-informed approach

SUPPORT



Technical Assistance: Consultations with subject matter experts to answer case-specific inquiries, discuss safety planning, develop strategies and policies, and provide case law, legal and evidence based research in support of your work with immigrant survivors

NIWAP

National Immigrant Women's Advocacy Project at the
American University Washington College of Law

Our Mission



**To advance the dignity,
rights, and liberty of
immigrant survivors of
violence.**

Technical Assistance & Intervention



Who Can Access ASISTA's TA?

- Private Members (attorneys & advocates nationwide who represent immigrant survivors of violence)
- OVW Grantees (LAV grantees & STOP sub-grantees)
 - AKA..... You!

Training



Litigation





This past year:
3,030
Immigrant Survivors &
Families Helped

July 2021 - June 2022



... from more than 75
countries across the world



ASISTA invited to
the White House
for VAWA
celebration



4,698
Attorneys &
advocates
trained



The Alliance for Immigrant Survivors (AIS)

- ASISTA is one of four co-chairs
- National network of advocates and allies advocating for policies to provide safety and justice for immigrant survivors of GBV
- Practical resources that can help you
- www.immigrantsurvivors.org

Poll: Let's see who is with us

Please check the box that best describes you:

- A. Legal Services Attorney
- B. Family Law Attorneys
- C. Immigration Attorneys
- D. Attorneys working for Coalitions or Domestic/Sexual Violence Programs
- E. Other – type in the chat



Demographics

NIWAP



United States (2019)*

- ❖ Total foreign born population – 44,932,901
- ❖ 13.7% of the country's ~ 328 million people are foreign born
 - 45% naturalized citizens
 - 28% legal permanent residents
 - 27% temporary visa holders or undocumented immigrants
- 44.4% rise in immigrant population from 2000 to 2018
- ❖ Length of time immigrants have lived in the U.S.
 - 50.7% entered before 1999
 - 24.6% entered 2000 - 2009
 - 24.8% since 2010
- ❖ 25.8% of children under age 18 have one or more immigrant parents
 - 87.9% of these children are native-born U.S. citizens

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

United States– Countries/Regions of Origin & Limited English Proficiency (LEP)(2019)*

- ❖ Latin America – 50.3%
 - ❖ Mexico (24.3%)
 - ❖ Caribbean (10%)
 - ❖ Other Central America (8.4%)
 - ❖ South America (7.5%)
- ❖ Asia – 27.9%
 - ❖ China/Taiwan (6.4%)
 - ❖ India (6%)
 - ❖ Other Southeastern Asia (5.1%)
 - ❖ Philippines (4.6%)
- ❖ Europe – 10.4%
 - ❖ Eastern Europe (4.7%)
- ❖ Africa – 5.5%
- ❖ Middle East – 3.5%
- ❖ Canada – 1.8%
- ❖ Oceania – 0.7%
- ❖ Language spoken
 - ❖ 22% of people in the U.S. speak language other than English at home
 - ❖ 46.4% of foreign born persons are LEP - speak English less than “very well”

*Source: [Migration Policy Institute Data Hub](#) (May 2022)

What is Meaningful Access?

- Meaningful access is defined in the US Department of Justice as:
“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.”

Executive Order 13166

Goal

Provide meaningful access to people with limited English proficiency

Provides

Instruction and guidance about what *Title VI* and *Lau v. Nichols* means for federal agencies and grantees

Encourages

The development of language access plans

DOJ Guidelines on Language Access for Courts

- The use of qualified interpreters:
 - Not limited to courtrooms
 - clerks' offices, file rooms
 - For all parties, defendants and witnesses and when appropriate (e.g., parents of minor crime victims)
 - For all types of proceedings and courts
 - motions, status hearings and trials
 - For court ordered services batterers treatment, therapy, drug counseling
 - LEP individuals should not incur any fees for these services

Dynamics Of Domestic Violence Experienced By Immigrant Survivors

NIWAP



Polling Exercise: Myths and Realities

Abusers of immigrant spouses are more likely to be lawful permanent residents and immigrants than U.S. citizens.



True



False

Connection Between Abuse and Control Over Immigration Status

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

Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses

Abused Immigrant Spouses of U.S. Citizen Husbands

- Abuse rate rises to 59.5% when an immigrant's spouse/former spouse is a U.S. citizen
 - Twice the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses

- Between 2016 and 2017 there was a 391% decline in battered immigrant spouses' willingness to file VAWA self-petitions

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)

- This same research found no change in battered immigrant victim's willingness to seek protection orders

Ammar, N.H., Orloff, L.E., Couture-Carron, A., Immigrant Victims of Interpersonal Violence and Protection Orders, in Civil Court Responses to Intimate Partner Violence and Abuse (2020)

Polling Exercise: Myths and Realities

In over 70% of abusive marriages U.S. citizen husbands refuse to file or withdraw immigration papers they filed to sponsor their abused immigrant spouse for lawful permanent residency.



True



False

Coercive Control Over Immigration Status

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

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." International Review of Victimology 7 93113

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)

Polling Exercise: Myths and Realities

Foreign born girls are twice as likely as U.S. born girls to have experienced sexual assault by the time they are in high school.



True



False

Sexual Assault Rates Among Immigrant Women

- High school-aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
 - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).

Immigration Related Abuse

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

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)

Immigration Options for Immigrant Survivors and Their Children: Screening

NIWAP



Purpose of Immigrant Survivor Protections

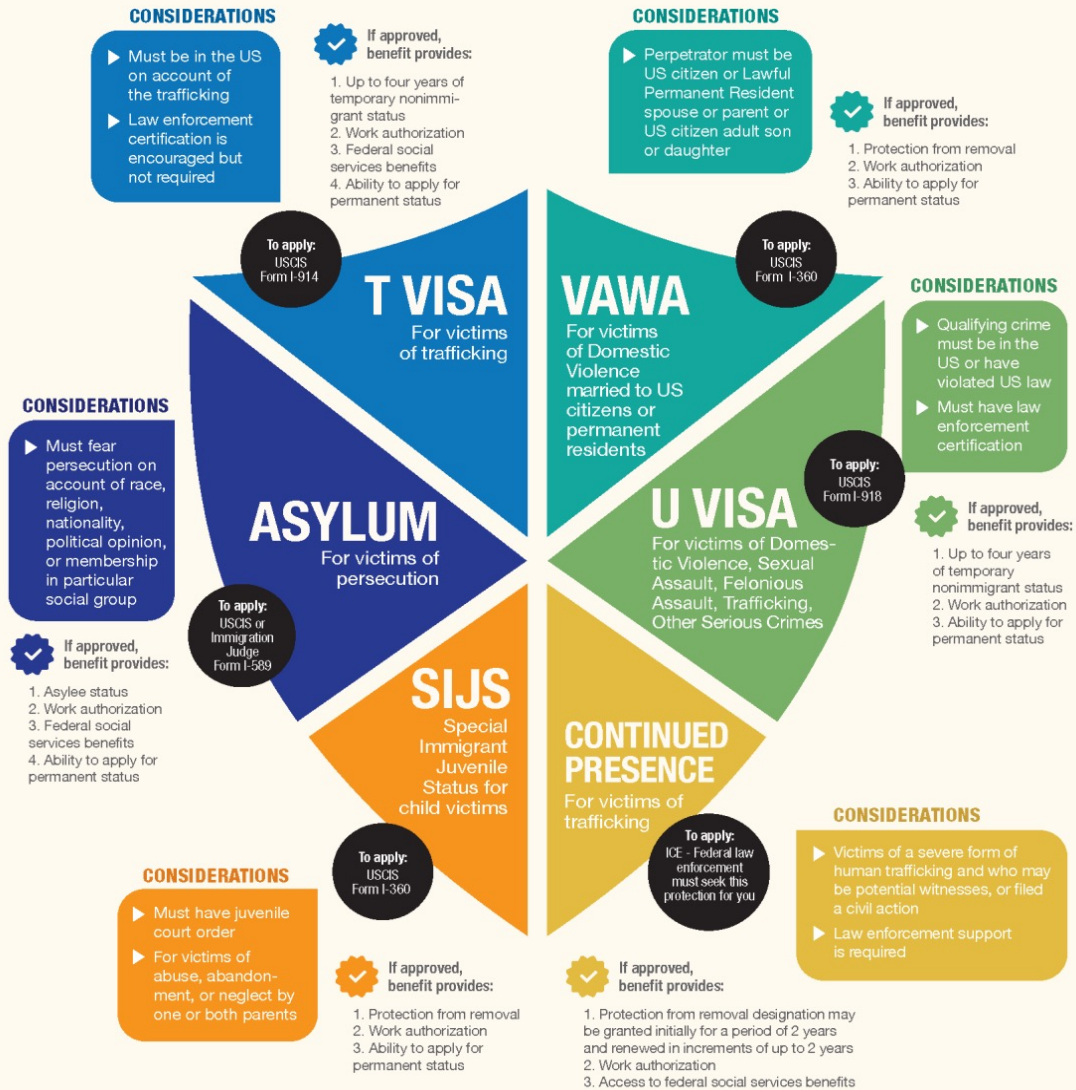
Congress enacted VAWA self-petitioning (1994), the U and T visas (2000) & Special Immigrant Juvenile Status (SIJS) (1990, 2008) to:

- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant crime victims
- Allow survivors to report crimes and seek help from police, prosecutors, and courts without fear of deportation
- Improve access to justice in family/criminal/civil courts for immigrant survivors of
 - Domestic and sexual abuse, stalking, human trafficking, and child/elder abuse
- Enhance safety
- Keep communities safe

What Survivors Can Gain

- Protection from deportation
 - VAWA confidentiality
- Can include family members in application
 - VAWAs, U visas and T visas
- Access to legal immigration status
- Financial independence from perpetrator
 - Legal work authorization
 - Issuance of federally recognized ID
 - Access to some state/federal public benefits beyond programs open to all immigrants

PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

NIWAP



Immigration Relief Available for Immigrant Survivors of —

- Domestic violence (battery or extreme cruelty)
 - Child abuse
 - Sexual assault
 - Rape
 - Incest
 - Prostitution
 - Torture
 - Felonious assault
 - Manslaughter
 - Murder
 - Female genital mutilation
 - Kidnapping
 - Abduction
 - Trafficking
 - Involuntary servitude
 - Slave trade
 - Being held hostage
 - Fraud Foreign Labor Contracting
 - Peonage
 - False Imprisonment
 - Blackmail
 - Extortion
 - Witness tampering
 - Obstruction of justice
 - Perjury
 - Stalking
 - **Parent perpetrated**
 - **Child abuse**
 - **Child neglect**
 - **Child abandonment**
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - Spouse; Parent; Stepparent; 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
- Battered Spouse Waiver if survivor is a conditional resident
- Access to some federal/state benefits = 3 months
- Work authorization = 4–30 months (2022)

Battered Spouse Waiver

- Helps immigrant spouses with 2-year conditional residency (green cards)
- Whose citizen spouse filed a family visa petition for them
- Requires proof of:
 - Battering or extreme cruelty to immigrant spouse or immigrant spouse's child or step-child
 - Good faith marriage
- Waives:
 - Joint filing requirement with abusive citizen spouse
 - Two-year wait to full lawful permanent residence
- Timeline to full lawful permanent residency = 12-25 months (2022)

Forms of Extreme Cruelty

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

Immigration Law Definition of Domestic Violence (Battering or Extreme Cruelty)

Battering

- Physical violence against
 - Spouse/intimate partner
 - Child
- Use of a weapon
- Sexual abuse & assault
- Stalking
- Other acts defined as domestic violence under state law
- Attempts or threats to do any of these actions

Coercive Control = Extreme Cruelty:

- Strategies designed to retain control or establish domination through fear, dependence, deprivation, isolation, immigration related abuse
- Deprivation of basic necessities
- Controlling regulating, monitoring the victim
- Compelling through force, intimidation threats to abstain or engage in conduct against victim's will

Extreme Cruelty:

- Withholding medicine or medical care
- Adultery with a minor
- Financial abuse, seeking to destroy victim's credit
- Accusations of infidelity
- Using children as a tool
- Emotional abuse causing physical or psychological harm

Proof of Extreme Cruelty or Battery

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

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
- Timeline to work authorization, bona fide/waitlist and some very limited benefits = 61 months (2022)

U Visa Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

Attempt, conspiracy or solicitation to commit any of these crimes any similar activity

Who can Certify the U Visa Certification?

- Law enforcement officer
 - Local and State police
 - Federal
 - University
- Prosecutor (State and Federal)
- Judge, Tribal Judge & other Judicial officers
 - e.g. Commissioner, Magistrate, ALJ
- Adult and Child Protective Services
- EEOC, DOL and state labor agencies
- Other authority with responsibility for investigation or prosecution of criminal activity

T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim/survivor under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.S. 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 impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- Work authorization and *many* federal and state public benefits = 3–18 months (2021)

SIJS Eligibility

- Under 21 years of age on date of filing SIJS petition with DHS.
- Unmarried through adjudication of SIJS petition.
- Physically present in the U.S. though adjudication of SIJS petition.
- Jurisdictionally valid juvenile/family court order with required findings and conclusions of law regarding:
 - Dependency or custody of child as defined by state law
 - Best Interests not to return to home country
 - Parental reunification not viable with at least one parent due to abuse, abandonment, neglect of child, or similar basis under state law.Viability through adjudication.
- Eligible for DHS consent.
- Timeline to approval and work authorization = 6 months

Tools & Resources to Help You From ASISTA

- Technical assistance
- Interventions
- Publications:
 - practice advisories
 - practice pointers
- Webinars and other trainings
 - with our staff experts & grant partners
 - [Find our trainings on YouTube](#)
- VAWA Experts listserv: brainstorm with others
- On-site training & TA



Immigration Tools to Help You From NIWAP

- Technical assistance and trainings
- Training Manuals
- Toolkits, how to guides, evidence check lists, samples, and lots of publications with legal citations and research you need
- Online learning modules
- Webinars
- Podcasts

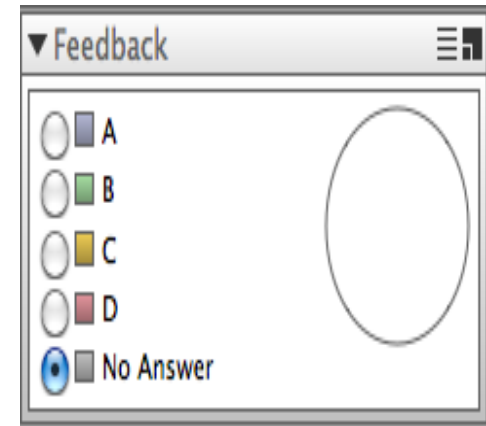
VAWA Confidentiality Protections

NIWAP



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

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



When Survivors are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the survivor arrested for domestic violence
 - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)

Krisztina E. Szabo, David Stauffer, Benish 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)

VAWA Confidentiality Protections

- **Abuser-Provided Information:** DHS, DOJ and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (their family members or associates)
- **Location Prohibitions** to enforcement unless DHS complies with specific statutory and policy safeguards – includes no courthouse immigration enforcement against immigrant crime victims
- **Non-Disclosure:** DHS, DOJ and the State Department cannot disclose VAWA confidentiality protected information to anyone including through civil, family and criminal court discovery of information about or contained in the file of any protected case:
 - VAWA self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

VAWA Confidentiality Prongs Chart

Non- Disclosure

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

Abuser-Provided Information Prohibition

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

Location Prohibitions

Protects:

All Victims

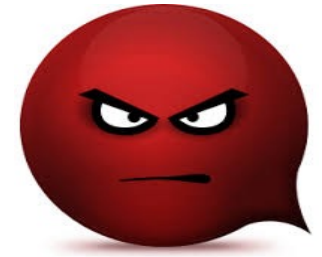
Requires:

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

VAWA Confidentiality Violations



- Each violation sanctions against federal government officials
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Dismissal of the immigration proceeding against the non-citizen

DHS VAWA Confidentiality Computer System

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

DHS Victim Protections For Whom? Statutes/Regulations/Policies

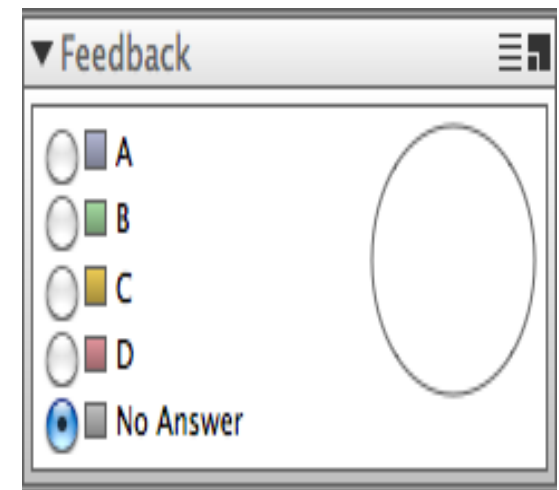
- VAWA confidentiality
 - VAWA self-petition, cancellation, suspension
 - Battered Spouse Waiver
 - U Visas
 - T Visas and Continued Presence
 - Abused spouses of work visa holders who file for VAWA employment authorization; AND
- *All victims abused by a spouse or parent*
- *Protection Order / Letter from Atty*

Can Survivors Be Protected Prior to Filing a VAWA Confidentiality Protected Immigration Case?

- If victim shows evidence that they are in the process of filing a
 - U visa, T visa or VAWA case VAWA confidentiality is triggered and applies
- Evidence might include
 - A letter from an attorney/advocate stating that they are in the process of applying for a VAWA, T or U visa case
 - A copy of a certification
 - A protection order

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

- A. Raise the survivor's immigration status in the case
- B. Obtain information about a survivor's immigration case thorough family court discovery
- C. Both



State and Federal VAWA Confidentiality and Discovery Case Law

- Family law - VAWA and U visa case information not discoverable
- Criminal law – only U visa case certification is discoverable
 - File not in prosecutors' custody or control
- Civil cases not discoverable except potentially as needed to prove damages to a specific individual
 - In chambers review judge can redact

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, stalking



Sensitive Locations

- Enforcement actions by ICE and CBP are not to occur or be focused at sensitive locations:
 - Schools
 - Medical treatment and health care facilities
 - Places of worship
 - Religious or civil ceremonies, e.g. weddings, funerals
 - During a public demonstration, e.g., march, rally, parade

Tools to Help You From NIWAP

- Webinars on VAWA confidentiality
 - Including VAWA confidentiality and state court discovery
- Collection of federal laws, regulations, policies with all citations
- Collection of up to date case law
- How to step-by-step guide on countering and responding to violations
- Manual chapters
- Technical assistance including advocacy with DHS experts

Tools to Help You From ASISTA

- VAWA Confidentiality resources on our website
- VAWA Confidentiality resources at AIS
- In addition to case-specific TA & interventions, trainings, listserv, & more



**Access to Publicly Funded
Programs and Legal Services
Open to All Immigrant Domestic
and Sexual Violence Survivors**

NIWAP



Access for All

Both documented and undocumented immigrant survivors can access:

- Legal services
- Family court (Divorce)
- Language access
- Police assistance
- Protection orders
- Child custody & support
- Have their abusers criminally prosecuted
- Public benefits for their children
- Assistance for crime victims
- Shelter
- Transitional housing
- WIC/school lunch & breakfast
- Primary/Secondary education
- Immunizations
- Emergency medical care
- Care from community & migrant health clinics
- VOCA

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

Federal Benefits Available to ALL Immigrants



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

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



When children qualify and their parents do not:

- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may only ask questions about the child's eligibility
- No questions may be asked about the immigration status of the child's parent if the parent is not applying for additional benefits for themselves

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

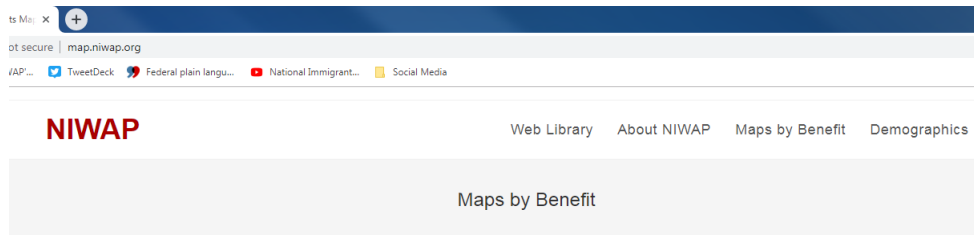
- Qualified Immigrants benefits eligible
 - Lawful permanent residents
 - Includes U visas and SIJS
 - Refugees/Asylees
 - VAWA self-petitioners
 - Trafficking victim with
 - Continued presence or
 - Bona fide determination in T visa case
- Not generally benefits eligible some variation by state
 - Asylum applicants
 - DACA recipients
 - U visa applicants & recipients
 - Work/Student visa holders
 - Undocumented

Many immigrants with work authorization qualify for CAREs Act Rebates and unemployment insurance both state and CAREs Act

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

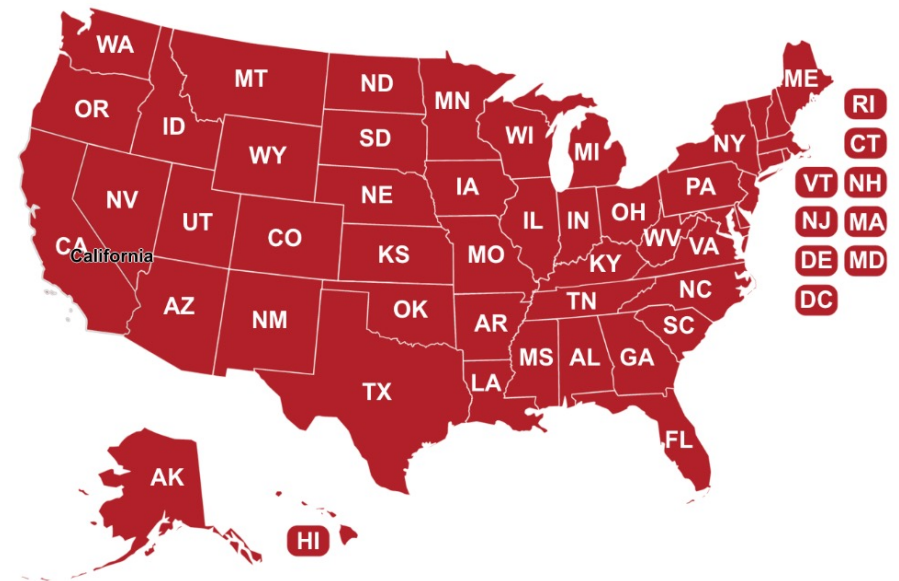
Interactive Public Benefits Map Demonstration



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Web Library About NIWAP Maps by Benefit Demogr

Legal Services



<http://map.niwap.org/>

Click here for your state's detailed chart

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Maps by Benefit

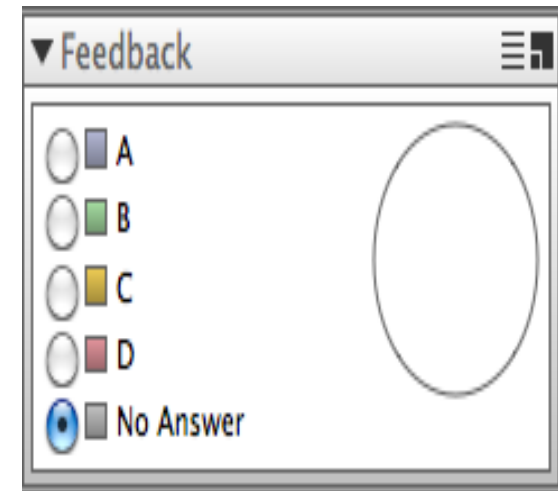
- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License
- Earned Income Tax Credit
- Emergency Shelter
- Emergency Medicaid
- Family Medical Leave
- Federal Education Benefits
- FEMA Assistance
- FEMA Restricted Programs
- Food Stamps
- Health Insurance Exchanges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

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 file for benefits for their citizen or LPR children
 - State welfare worker reporting requirements

Poll: What would you take with you to a public benefits agency with an immigrant survivor?

- A. Copy of the state/federal benefits statute
- B. DHS documents showing how victim is eligible
- C. Relevant state/federal policies
- D. All of the above



Feedback

☐ A

☐ B

☐ C

☐ D

☒ No Answer

Immigrants Exempt From Public Charge

- Victims
 - VAWA, T visas and U visas exempted
 - SIJS children
- Refugees
- Asylees
- DACA
- Visa holders
- Most lawful permanent residents

Resources to Help You From NIWAP

- Online public benefits map
- State by state public benefits screening chart, and detailed charts with citations to federal and state laws, regulations, policies, websites
- State by state charts
 - VOCA compensation and VOCA funded post assault health care
 - Emergency Medicare
 - Forensic Exams
 - Prenatal Care
- Manual chapters, training tools, evidence checklists
- Webinars
- Technical assistance

Directory of Service Providers

- Extensive directory of providers with experience working with immigrant survivors



<https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>

Tools to Help You From ASISTA

- Public charge on our website: resources & trainings
- API-GBV webinar: PUBLIC CHARGE FINAL RULE: HOW WILL IT IMPACT IMMIGRANT SURVIVORS?
- Public charge resources at AIS
- In addition to case-specific TA & interventions, VAWA Experts listserv, & more



Issues That Arise for Immigrant Survivors in Family Law Cases

NIWAP



Family Court Jurisdiction: Immigrant Survivors and Crime Victims

- **Protection orders**
 - Domestic violence crime committed in state or
 - Victim needs protection in state
- **Divorce**
 - Residency of party in state
 - Legal immigration status not required to establish residency under state family laws
- **Custody-Guardianship**
 - UCCJEA, Federal PKPA, Hague Convention) - home state of children
- **Child abuse, neglect, termination of parental rights**
 - Where an abused or neglected child is located.
- **Child support**
 - Where child or non-custodial parent lives

Senjab v. Alhulaibi Nevada Supreme Court (October 21, 2021)

- Unanimous ruling
- Residence for divorce jurisdiction is established by meeting physical presence requirements (of more than 6 weeks in the state)
- Immigration status of the either party not relevant
- Visa holders and others with temporary legal immigration status need only meet residence (not domicile requirements) to file for divorce

Impact of Divorce

- VAWA self-petitioners
 - Must file within two years of final divorce
- Spouses and children of visa holders ends legal immigration status in the United States:
 - Students, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Employment based
 - Asylees
 - Family based
 - Cancellation of removal applicants

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
- Impact on
 - Spousal support
 - Property division

Immigration Law Requires Affidavits of Support

- In family based immigration cases citizen spouses must sign and *Affidavit of Support* for the intending immigrant
 - Ensuring that the intending immigrant will not fall into poverty and rely on public assistance.
- Survivors could have *Affidavits of Support* if their citizen husband ever filed immigration papers
- Enforcing *Affidavits of Support* should be a routine part of divorce cases in mixed immigration status families

State Family Courts Have

- Enforced *Affidavits of Support* as contracts
- Used *Affidavits of Support* to set
 - Spousal support obligations and levels
 - Child support levels
- No duty to mitigate
- Divorce, estrangement or pre-nups **do not** terminate the obligations under the Affidavit of Support
- There is no statute of limitations on enforcement

I-864 Affidavit of Support: Duration and Enforceability

- This responsibility lasts until the non-citizen either:
 - Becomes a U.S. citizen = Naturalizes;
 - Credited with forty (40) hours of work under the Social Security Administration - INA §213A;
 - Ceases to hold be a lawful permanent resident and departs the U.S.;
 - Obtains in removal proceedings a new grant of lawful permanent residency;
 - Dies

Join Our Virtual Community of Practices Family Law Attorneys

- For family law attorneys working with immigrant survivors
- Monthly opportunity to learn and share through interactive discussions
 - Strategies to develop best practices, build community, strengthen skills and discuss emerging issues
 - Ask questions from subject-matter experts and peers
 - To join email – info@niwap.org

Protection Orders and Immigrant Survivors



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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)

Immigrants and Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions
- The definition of domestic violence under U.S. immigration laws is broader than all state protection order and criminal laws

Protection Orders

- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against* abuse provisions” of a protection order is a deportable offense
- Best practices *Padilla* advisals

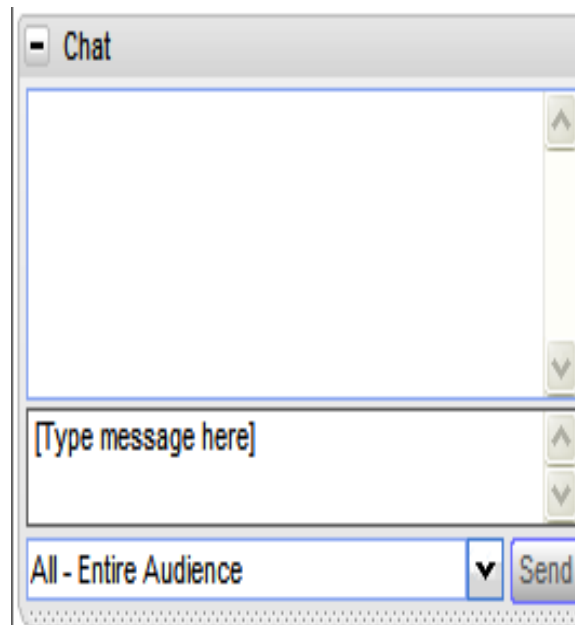
Effect of Protection Order Issued Against Immigrant Survivors

- Increases perpetrators power and coercive control
 - 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 obtaining findings that the victim violated the order

Findings that Survivor Violated a Protection Order Could Cut Off Access to Immigration Relief

- Having an order of protection issued against a noncitizen could prevent them from establishing good moral character that is a requirement for immigration relief - Examples:
 - VAWA self-petition
 - VAWA cancellation of removal
 - Naturalization
 - Exercise of discretion for inadmissibility waivers in VAWA, U and T visa cases

What are some examples of creative protection order remedies you have obtained for your clients?



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/perpetrators 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

Survivors 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
- Many immigrant victims stay with abusers until they get work authorization 30-34%

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 care of child
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Economic relief and health insurance

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

Immigrant Victims and Custody

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University Washington College of Law



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



Myth vs. Fact:

Parents without Legal Immigration Status

Myth	Fact
Deportation is imminent	DHS policies prevent detention/removal of immigrant parents who are crime victims
Parent is likely to flee U.S. with child	US citizens and lawful permanent residents are more likely to flee with children, especially when <ul style="list-style-type: none">- There have been threats of kidnapping children- They are dual nationals- They travel freely to and from U.S.
The parent has no livelihood	Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
Legally present parent must have custody in order to file for benefits for child	Custody does not affect parent's ability to file for or gain immigration benefits for his children

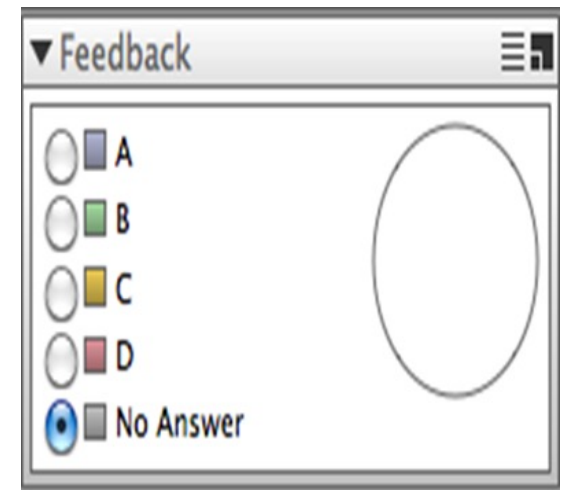
Immigrant Parents and Child Custody

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

Poll: Which parents are the *most* likely to be subjects of immigration enforcement?

- A. Immigrants with orders of removal or notices to appear in immigration court
- B. Undocumented immigrant parents
- C. Immigrants with criminal convictions
- D. Lawful permanent residents



ICE Removal Data

2013

- Convicted criminals 82%
- Repeat immigration violators 7.8%
- Ordered removed and failed to depart 1.6%
- Other immigrants 7.7%

<https://www.ice.gov/doclib/about/offices/ero/pdf/2013-ice-immigration-removals.pdf>

2017

- Criminal convictions 73.7%
- Pending criminal charges 15.5%
- Outstanding notices to appear in immigration court 5.3%
- Ordered removed and failed to depart + reinstatement 2.8%
- Other immigrants 2.6%

<https://www.ice.gov/removal-statistics/2017>

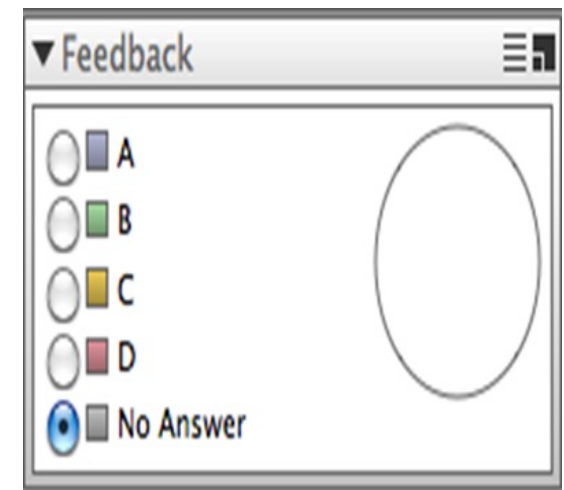
2020

- Criminal convictions/ pending criminal charges 92%

<https://niwaplibrary.wcl.american.edu/pubs/ice-ero-report-2020>

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

- A. U.S. citizens
- B. Undocumented immigrant victim/survivor mothers
- C. Dual national parents
- D. Multiple entry visa holder parents



Flight Risk of Foreign Born Parents with Children

- The Ninth Circuit found that “there is no evidence that undocumented status correlates closely with unmanageable flight risk.”¹

Assessing Risk Factors for International Child Abduction

- Consider whether the other parent:²
 - Has previously abducted or attempted to abduct the child;
 - Has threatened to abduct the child;
 - Has engaged in activities that may indicate a planned abduction including abandoning employment; terminating a lease; or closing bank accounts;
 - Has engaged in domestic violence, stalking, or child abuse;
 - Has refused to follow a child-custody determination; or
 - Has strong family, financial or emotional ties to another country.

1. *Lopez-Valenzuela v. Apaio*, 770 F.3d 772, 786 (9th Cir. 2014).

2. For complete list of risk factors, See Uniform Law Commission, *Uniform Child Abduction Prevention Act*, at 10, (2006), <https://www.uniformlaws.org/viewdocument/final-act-with-comments-7?CommunityKey=c8a53ebd-d5aa-4805-95b2-5d6f2a648b2a&tab=librarydocuments>.

Impact of State Court Orders on Survivor's Immigration Case

- Specific written orders are helpful to immigration adjudicators and immigrant parties
- Court orders contain evidence of
 - Abuse, abandonment, neglect, domestic violence, sexual assault, extreme cruelty
 - Family relationships including
 - Marriage
 - Parent-child relationship
 - Step-parent/step-child relationship

Child Support in Mixed Immigration Status Families



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How Paying Court Ordered Child Supports Helps an Immigrant Parent

- Payment of child support through the court provides a non-citizen parent with a history of child support payments
- Provides custodial parent evidence of income & steps taken to secure support for children helpful when applying for lawful permanent residency
- This is helpful evidence of good moral character for immigration cases for both parents
 - Cancellation of removal
 - Naturalization
 - Obtaining relief in immigration court
 - Exercise discretion & show hardship to family members

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

Importance of Wage Withholding

- Creates documented track record of payment
- Improves safety for immigrant survivors
- 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)*

Proof of Non-Custodial Immigrant Parent's Income

- Undocumented workers can be ordered to pay child support based on
 - Child Support Guidelines
 - Actual earnings
 - Employer's statements
 - Evidence of earning capacity
 - Attributed income (e.g. minimum wage)
- Undocumented workers can pay state & federal taxes on income earned using an IRS issued
 - Tax ID number (ITIN)

Resources to Help You From NIWAP

- Family law community of practice
- Trainings virtual and in-person
- Manual chapters, training tools, evidence checklists, bench cards, legal research publications, briefs
- Technical assistance
- Topics covered include but are not limited to:
 - Custody and Child Support
 - Divorce and Affidavits of Support
 - Protection orders
 - Economic relief
 - Trial strategies

Accessing Help From ASISTA

- [See this flyer](#) for details on how we help you
- Upcoming webinar to orient new/returning OVW grantees, including how to access TA: *tentative date is Thursday, Feb 2, 12-1:30 ET*
- [ASISTA's resources page just for OVW grantees](#) (includes YouTube channel)



Accessing ASISTA TA, Interventions, — & the Experts Listserv

- TA happens via **video call**. (We will happily accommodate your accessibility needs)
- You may already have an ASISTA account.
- Please, do not create an additional account. Instead, please contact Maria at manager@asistahelp.org. Maria will update your grantee status in our database & will give you access to our TA portal & the Experts listserv.



Accessing ASISTA Trainings

- Sample past webinars (you can watch these recordings anytime):
 - [Bias, Equity, and the Impact of Anti-Blackness on Immigrant Survivors](#)
 - [Legal Refresher and Practice Tips: Legal Remedies for Immigrant Survivors](#)
 - [Intermediate/Advanced U Visa Topics](#)
 - [Representing U Visa Clients with Complex Issues](#)
 - [Navigating Systems with your Immigrant Survivor Clients](#)
- Note: Most are also available in Spanish



Accessing ASISTA Trainings (cont'd)

- Next upcoming training (click to register):
 - Preventing and Responding to RFEs and NOIDs for U and VAWA Cases
 - (Weds, Jan 11, 2-4pm ET)



Accessing ASISTA Trainings (cont'd)

- Prefer on-site TA and/or training?
- We may be able to come to your community, or create a custom virtual training for you.
- Contact Staff Attorney Kelly Head at Kelly@asistahelp.org to request this training for your community



Accessing Tools From ASISTA

- Examples of Recent Practice Advisories:
- ASISTA's Practice Alert: Rights of Noncitizens with Significant Mental Health Conditions in Removal Proceedings (Sept. 2022)
- Practice Advisory: Establishing Employment Authorization for T and U Nonimmigrants Without an EAD Card (Updated August 2022)
- VAWA Practice Advisory: VAWA Self-Petition Policy Updates



Accessing ASISTA Tools (cont'd)

- Check out [the ASISTA website](#), including our
 - Resource Library (searchable)
 - Archived Trainings
 - Blog with recent updates
 - ... and more!



Training for Your Community

- Onsite or virtual training
 - Led by a multidisciplinary team
 - Interactive and responsive
 - Customized to meet the needs of your agency
- Available for advocates, attorneys, coalitions, law enforcement, prosecutors, judges, victim service professionals, allied professionals, and others
- To request a training for your community email us at: info@niwap.org



NIWAP Web Library

niwaplibrary.wcl.american.edu

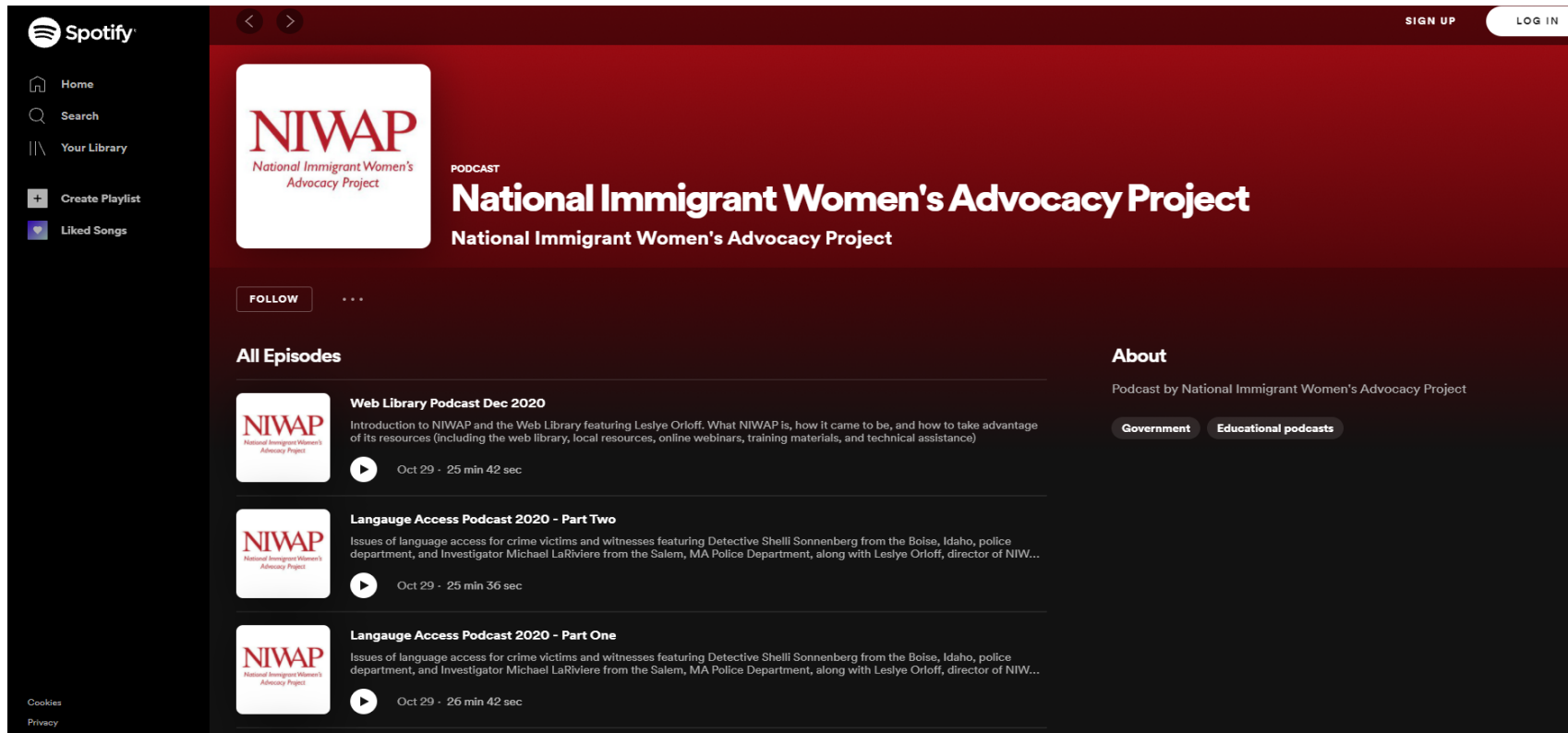


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NIWAP's New Podcast Series

<https://open.spotify.com/show/5SbCodnS6Br28mHtnTdIOk?si=03eea03451964cd2>



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American University Washington College of Law

Directory of Service Providers

- Extensive directory of providers with experience working with immigrant survivors



<https://niwaplibrary.wcl.american.edu/home/directory-programs-serving-immigrant-victims>

Types of Technical Assistance

- Case consultations
- Training materials and practice tools
- Legal research, motions, briefs
- In-person trainings and webinars
- 24/7 web library and training videos
- Help developing policies/protocols
- Strategies for removing systemic barriers
- Community of Practice and Roundtables
- List serves

NIWAP Resources

- NIWAP Web library
- Technical Assistance
- Trainings and Webinars
 - On-line, virtual, in-person
 - Customized
- Communities of Practice
 - Victim advocates, family lawyers
 - Law enforcement/prosecutors, judges
- Materials
 - Bench cards, toolkits, training tools, legal research, multi-lingual outreach materials
- Directory



NIWAP Technical Assistance and Materials

- Training Materials for this training are available at <https://niwaplibrary.wcl.american.edu/lavorientation2022>
- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu