



WEBINAR

AND LEGAL SERVICES FOR ALL: NEW 2014 LEGAL SERVICES CORPORATION REGULATIONS IMPLEMENTING VAWA 2005'S IMMIGRANT CRIME SURVIVORS' ACCESS TO LEGAL SERVICES


Presented by: U.S. Department of Justice Office on Violence Against Women in partnership with the National Immigrant Women's Advocacy Project (NIWAP), The National Legal Aid and Defender Association (NLADA), and The California Coalition Against Sexual Assault (CALCASA)

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- Raise hand
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- PowerPoint slides
- Polling Questions
- Phone

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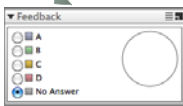
Resources and Webinar Materials

- www.niwap.org/go/legalservices
- PowerPoint
- Access to Legal Services
 - Legislative and Regulatory History
 - Legal Services Corporation Program Letters
- Article: *And Legal Services for All*
- Brochure: *Access to Publicly Funded Legal Services for Immigrant Survivors*
- www.niwaplibrary.wcl.american.edu

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Let's see who is on the webinar with us. Please check the box that best describes you:

Answer on the left



A. Legal Services Lawyer

B. Other Lawyers

C. Domestic violence/sexual assault survivor advocate

D. Other

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Learning Objectives

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

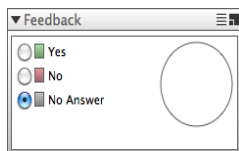
- Increase LSC and OVW grantees awareness of the expanded categories of eligible immigrant crime victims LSC funded programs can serve.
- Help clients navigate access to LSC funded legal assistance under LSC anti-abuse regulations and VAWA 2005.
- Identify immigrant survivors who are able to move from qualifying for legal representation limited to issues related to abuse to full representation by filing for lawful permanent residency.
- Understand the range of legal assistance "directly related" to the abuse or crime victimization that can be provided to victims receiving help under anti-abuse regulations.
- Develop and sustain collaborations between lawyers and advocates and other service providers that support immigrant survivors and involve these service providers in the LSC agencies' process for prioritizing the types of cases they will handle.



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Have you worked with immigrant survivors who have been successful in receiving help from LSC funded programs?



Answer on the left



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RM3



If your client was denied help by an LSC funded program, why were they told they could not be served?



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RM3 Are there other participants in addition to attorneys who have DV clients?
Robin Murphy, 10/8/2014

Prior to Issuance of LSC Regulations Implementing VAWA 2005

- There was uncertainty about whether LSC funded programs could represent immigrant survivors of domestic violence, sexual assault and human trafficking because
 - LSC regulations from 1997 did not permit representation
 - However, representation was allowed under
 - VAWA 2005
 - LSC program



As a Result...

- 20.6% of immigrant crime survivors were turned away from LSC funded programs
 - Based on their lack of legal immigration status.
- 26.1% of immigrant survivors were turned away because the LSC program was uncertain whether they could represent immigrant survivors.
- Link to the report:
<http://www.lsc.gov/sites/lsc.gov/files/LSC/pdfs/2.%20Appendix%201%20LSC%20Report%20on%20Immigrant%20Crime%20Victim%20Access%20-%20NIWAP%206%2018%2013.pdf>



Access to Legal Services: Legislative and Regulatory History Overview



Access to Legal Services Background

- 1996 Kennedy Amendments
- 1997 LSC Kennedy Amendment Regulations
- 2000 Victims of Trafficking & Violence Protection Act
 - created the U and T visas
- VAWA 2005 expanded LSC representation to immigrant victims of
 - Battery, extreme cruelty, sexual assault, human trafficking and any U visa criminal activity
- 2006 LSC Program Letter
- 2014 LSC Final Regulations



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U Visa Criminal Activities

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

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



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2014 LSC Regulations Implementing VAWA 2005



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2014 LSC Regulation Implements VAWA 2000 and VAWA 2005

- Issued in April 2014
- Implements VAWA 2000 and 2005's expanded protections for immigrant survivors
- Creates two paths an immigrant can pursue to receive assistance from any LSC funded program.

1. Representation under Anti-Abuse Laws under 45 C.F.R. § 1626.4 or

2. Representation based on Immigration Status under 45 C.F.R. § 1626.5.



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Why Are the LSC New Regulations Crucial?

- VAWA 2000 and 2005 expanded access
 - Was not included in LSC's prior regulation
- Low income immigrant crime survivors have a significant need to receive a wide range of legal services from LSC funded agencies.
 - Custody issues, protection orders, public benefits, immigration relief, etc.
- Access is key in providing survivors with
 - safety, economic security, maintaining family unity through custody, protection from ongoing abuse



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Importance of Access to Legal Assistance under Anti-Abuse Laws


- LSC funded programs can represent the following immigrant survivors **without regard to the survivor's immigration status**
 - Domestic violence
 - Child abuse
 - Elder abuse
 - Sexual Assault
 - Human trafficking
 - Other U visa criminal activity
- **Representation is available whether or not the survivor has filed for or plans to file for VAWA related or any other form of immigration relief.**



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Understanding the Difference Between the Two Paths: Anti-Abuse Statutes and Legal Immigration Status Based Eligibility



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Survivors Who are Eligible for LSC Funded Legal Assistance under Anti-Abuse Laws

<ul style="list-style-type: none"> ✓ Survivors that were battered or subjected to extreme cruelty, including all survivors of domestic violence, even those who were not married or related to the perpetrator ✓ Survivors that have been abused or subjected to extreme cruelty by a parent, step-parent, spouse, former spouse ✓ Survivors of sexual assault ✓ Survivors of human trafficking 	<ul style="list-style-type: none"> ✓ Survivors of severe forms of human trafficking (continued presence and T visas eligible) ✓ Survivors of U visa criminal activity that has occurred in the United States or has violated United States law ✓ Children of all of the eligible survivors listed in the anti-abuse regulations
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Eligibility for LSC Funded Legal Assistance Based on Immigration Status

<ul style="list-style-type: none"> ✓ Immigrants who filed for lawful permanent residency and are: -the spouse of a U.S. citizen -the parent of an over 21-year old U.S. citizen son or daughter -the under 21 year old unmarried child of a U.S. citizen ✓ Conditional entrants admitted prior to April 1, 1980. ✓ Citizens of Palau, Micronesia, and the Marshall Islands who reside in the U.S. ✓ Canadian-born American Indians who are at least of 50% Indian by blood. 	<ul style="list-style-type: none"> ✓ U.S. Citizen children, lawful permanent resident children and other children of applicants who also have any of the other forms of immigrations statuses listed ✓ Members of the Texas Band of Kickapoo ✓ Approved Refugees and Asylees ✓ Lawful and conditional permanent residents ✓ Persons granted deferral of removal/deportation ✓ IRCA 1986 Agricultural workers ✓ Agricultural laborers (H-2A) ✓ Forestry workers (H-2B)
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Access to Legal Services Under Anti-Abuse Eligibility is Not Exclusive

Some immigrant survivors that are initially eligible to receive legal representation for services “related to abuse” can eventually move from the anti-abuse based eligibility for legal services based on immigration status for greater access to a wide range of legal services



What are some examples of when an immigrant who was eligible to access legal services under the anti-abuse statutes could then transition to eligibility under immigration status?



← Type your answer in the chat box



Categories of Related Legal Assistance

Article: www.niwap.org/go/legalservices

- Family Law
- Privacy, Safety Confidentiality
- Workplace Safety
- Public Benefits
- Health Care
- Access help from police and prosecutors
- Employment law
- Education laws
- Landlord and Tenant
- Crime victim services
- Language Access
- Americans with Disabilities protections



Survivors Who Could Potentially Switch Paths

- U Visa holders who have filed for lawful permanent residency
- VAWA self-petitioners who have filed for lawful permanent residency and who have a
 - U.S. citizen spouse
 - Over 21 year old U.S. citizen child



Moving from one Path of Eligibility to Another

- Example: a DV survivor can access representation under anti-abuse regulations, including applying for immigration relief. Once the LSC funded attorney files the survivor's VAWA self-petition, T or U visa application, the survivor may become eligible for legal assistance under the LSC immigration status path when she is able to file for lawful permanent residency.

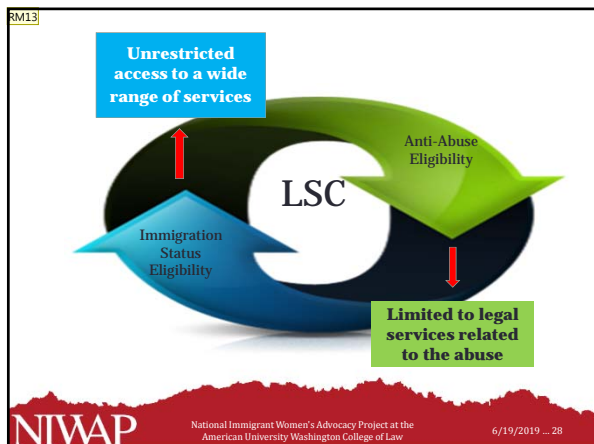


Differences in Representation

Relationship of Representation to Abuse:

- Representation under **anti-abuse** regulations = **only include legal assistance directly related to abuse.**
- Representation based on **immigration status** = **any form of legal assistance** offered by the LSC funded agency.





Legal Services "Related to the Abuse" Under Anti-Abuse Statutes

- Legal services needed to:
 - escape from the abusive situation,
 - ameliorate the current effects of the abuse, or
 - protect against future abuse,so long as the recipient can show the necessary connection of the representation to the abuse."

45 C.F.R. 1626.4(b)(2)(2014)

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What kind of legal services fall under the "related to the abuse" standard?

Type your answer in the chat box

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RM13 still have a concern that severe trafficking and T visa section allows full representation
Robin Murphy, 10/8/2014

Eligibility Under Anti-Abuse Statutes & Services Available

- LSC representation does not require the survivor seek help from LSC funded attorneys on an immigration case to receive other legal services.



Why it is important to know what services are available under each pathway

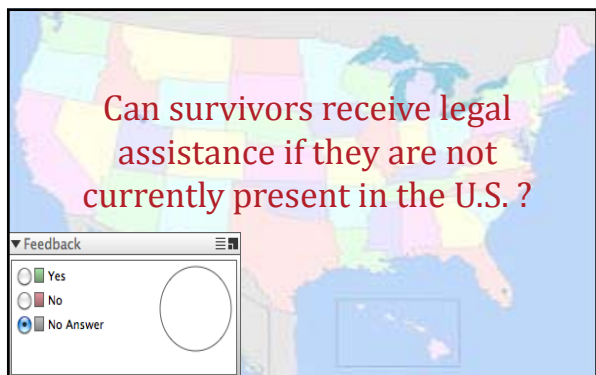
- A survivor who is
 - eligible for assistance under anti-abuse laws

↓

 - Files for immigration status → Becomes eligible for unrestricted legal services based on immigration status
- If your client is only eligible for services under anti-abuse statutes, work with your client to determine if she is comfortable and if it is safe to pursue immigration relief to expand access to legal services



Can survivors receive legal assistance if they are not currently present in the U.S. ?



Domestic Violence and Access to Legal Services

- The LSC rule adopted the broad definition of “domestic violence” developed by the U.S. Department of Homeland Security (DHS) in its VAWA self-petitioning regulations.
 - Domestic violence = battery or extreme cruelty



Definition of “battering or extreme cruelty”

- Battered or subjected to extreme cruelty includes, **but is not limited to**,
 - being a victim of any act or threatened act of violence
 - including forceful detention
 - which results or threatens to result in physical or mental injury
 - psychological or sexual abuse or exploitation
 - including rape, molestation, or incest (if the victim is a minor).
- Under DHS’ broad approach
 - abusive actions = acts that are part of an overall pattern of violence.




Benefits of this broad definition

- Adults
- Children
- Elder abuse survivors




**Distinctions Between Various
Paths to LSC Funded
Representation Available to
Survivors of Human Trafficking**



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**Human Trafficking Victims Have 3
Ways to Access Legal Representation**

- TVPA- Severe forms of human trafficking
 - Continued presence
 - T visa bona fide cases
- Trafficking as a U visa qualifying criminal activity
- Trafficking under VAWA 2005 legal services amendments



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**Survivors of Human Trafficking & Their
Families' Access to Legal Services**


- Severe forms of human trafficking survivors
- The Trafficking Victims Protection Act
 - authorized LSC funded agencies to provide legal assistance to:
 - trafficking survivors' family members who have been granted derivative T visas
 - LSC funded agencies can now assist children and family members of an immigrant survivor of trafficking.



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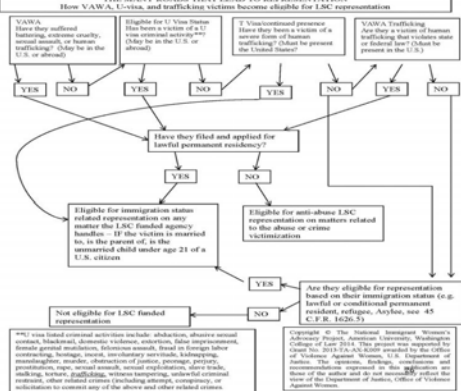
PATHWAYS TO REPRESENTATION FLOW CHART

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/november-3-2014-and-legal-services-for-all-webinar/Pathways-Flowchart.pdf/view>



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THE MANY ROADS THAT LEAD TO REPRESENTATION How VAWA, U-visa, and trafficking victims become eligible for LSC representation



VAWA
Have they suffered battery, extreme cruelty, sexual assault, or human trafficking? (May be in the U.S. or abroad)

T
Eligible for U-visa status
Has been a victim of a U-visa covered activity?¹ (May be in the U.S. or abroad)

T
Visa/continued presence
Have they been a victim of a crime that is human trafficking? (Must be present in the United States?)

VAWA Trafficking
Are they a victim of human trafficking? (Must be present in the U.S.)

Have they filed and applied for lawful permanent residency?


YES
Eligible for investigation status related representation on any matter the LSC funded agency handles - IF the victim is married to, is the parent of, or is the unmarried child under age 21 of a U.S. citizen

NO
Eligible for anti-abuse LSC representation on matters related to the abuse or crime victimization

YES
Are they eligible for representation based on their immigration status (e.g. lawful or conditional permanent resident, refugee, Asylee, see 45 C.F.R. 1626.3)

NO
Not eligible for LSC funded representation

1) U-visa covered activities include: abduction, abusive sexual contact, blackmail, forced labor, forced prostitution, false imprisonment, female genital mutilation, false personation, fraud in foreign labor contracting, hostage taking, involuntary servitude, kidnapping, manslaughter, murder, obstruction of justice, peonage, property, prostitution, rape, sexual assault, sexual exploitation, slave trading, stalking, torture, trafficking, witness tampering, witness intimidation, other related crimes (including attempt, conspiracy, or solicitation to commit any of the above and other related crimes)



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Additional Provisions in the 2014 LSC Regulations

- Confirms unmarried survivors' eligibility for LSC funded legal services
- Eligibility for immigrant survivors in same sex marriages
- Changes in recordkeeping and intake procedures to facilitate access to representation under anti-abuse laws



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Availability of LSC Funded Representation to Same Sex Marriage Domestic Violence Survivors

- *U.S. v. Windsor* (June 26, 2013)
 - Struck down portion of Defense of Marriage Act
 - As a matter of federal law
 - Same sex marriages recognized
 - DHS: VAWA self-petitioning available to survivors in same sex marriages



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What changes in intake procedures would be helpful in facilitating immigrant access under the new LSC regulations?



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Opportunities for Collaboration Between LSC Funded Agencies and Service Providers

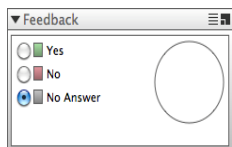


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**IF YOU ARE WITH A NON-LSC AGENCY
DO YOU HAVE A RELATIONSHIP WITH
THE LSC FUNDED AGENCY IN YOUR
SERVICE AREA?**



← Answer on the left



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**If you are with an LSC agency which of the following
agencies do you have existing relationships with?**

Raise your hand if
you have worked
with:



- A. Domestic violence programs
- B. Sexual assault programs
- C. Immigrant community based agencies
- D. Trafficking survivors programs



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**Collaboration Between LSC Funded
Agencies and:**

- Survivor services agencies
- DV/SA coalitions
- Survivor advocates
- Community based programs



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Why is Collaboration Important?



- Develop agency's priority case setting process
- Community outreach & education
- Safety planning
- Case management
- Obtaining U certifications
- Counseling & therapy for client
- Trauma informed services for client
- Court accompaniment
- Access to survivor services
- Language access and interpretation services
- Preparing affidavits and gathering evidence for client's VAWA, T or U application

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LSC Funded Agencies' Priority Setting Process: Where You Can Make a Difference

- Priority Setting Process = how LSC funded agencies determine types of services needed in the community
- Opportunity for involvement by
 - Survivor and immigrant serving agencies
- Reported to LSC in agency's implementation plan

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QUESTIONS?



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 - Web Library: www.niwaplibrary.wcl.american.edu
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 - Call Robin C. Murphy (202) 452-0620 ext. 238
 - Email r.murphy@nlada.org

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THANK YOU!

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