

# **Using the Law to Empower Victims**

## **Presentation at the Culture and Compassion Conference**

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## **Immigrant Women Program Web and Technical Assistance Resources**

**Website**

**[www.legalmomentum.org/iwp](http://www.legalmomentum.org/iwp)**

**Resource Library:**

**[www.iwp.legalmomentum.org](http://www.iwp.legalmomentum.org)**

**Technical Assistance:**

**(202) 326-0040**

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# National Network to End Violence Against Immigrant Women

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# Why is Legal Immigration Status Important?

## The Importance of Immigration Status

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

# Why learn about immigration?

- To effectively advocate for clients
- To avoid unwittingly jeopardizing clients
- To assist clients in preparing for immigration matters
- To correct misinformation and allay fears

# Rights of Noncitizens

- To be represented by an attorney
- To a hearing with an immigration judge, with some exceptions
- To request release from detention by paying a bond

***Noncitizens must assert these rights.***

## Potential Immigration Remedies

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

## General VAWA Self-Petitioning Requirements

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

## Forms of Extreme Cruelty

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

## Factors that can constitute extreme cruelty

- Correlate strongly with physical & sexual abuse
  - Isolation
  - Intimidation
  - Economic Abuse
  - Employment Related Abuse
  - Immigration related abuse
- Threats to
  - Kill or cause bodily harm
  - Harm children or family members
  - Take away children
  - Withdraw financial support

## VAWA self-petitioning available

- Must file within 2 years of marriage termination
- When abuser has committed bigamy
- Child abuse up to age of 25 to file
- Step children up until divorce
- Police report, protection order, medical records  
NOT required
- *All credible evidence* standard of proof

## Approved VAWA petitions bring

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

## Crime Victim (“U”) Visa Requirements

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

# Criminal activities covered by the “U” visa?

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

# Who can certify?

- Police officer
- Prosecutor
- Judge
- Immigration Officer
- Other authority with responsibility for investigation or prosecution of criminal activity
  - Adult/child protection worker
  - EEOC, US Department of Labor
  - State Departments of Labor
  - University/Military Police

## “Investigation or Prosecution” Includes:

- Detection
- Investigation
- Prosecution
- Conviction
- Sentencing

# The U-visa Process

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

# **Information In the U-visa Certification:**

- Identify the victim
- Note injuries observed
- Facts of victim's helpfulness
  - Current or past
  - Willingness to be helpful
- Any family members who are perpetrators
- Goal:
  - Identification of the crime, the victim and initiation of the process

# **Beyond Certification: Victim Must Prove:**

- Substantial physical or mental harm
  - As a result of the criminal activity
- Lack of criminal history
  - Victim must disclose criminal history
  - Immigration law definition of “aggravated felony”
  - Waivers available – DHS discretion
  - No waiver if history of espionage or terrorism
  - Victim will be fingerprinted
- Immigration history including violations
  - Misrepresentation on an immigration application
  - Removal proceedings
- Relationship to family members
  - who may also receive U-visas

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

- Did not unreasonably refuse to cooperate in the detection, investigation or prosecution of criminal activity; AND
  - Humanitarian need; OR
  - Family unity: OR
  - Public Interest
- DHS adjudication of
  - Cooperation
  - Reasonableness of non-cooperation
- Can apply to naturalize
  - after 5 years lawful permanent residency

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

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

## Screening for Red Flags

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

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

# T VISA

# What is Human Trafficking?

- **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
- **Labor:** 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.

(Federal Law—"Victims of Trafficking and Violence Prevention Act of 2000 can be found at [www.ojp.usdoj.gov/vawo/laws/vawo2000/](http://www.ojp.usdoj.gov/vawo/laws/vawo2000/))

# Three Elements of Trafficking

1  
PROCESS  
Recruiting  
OR  
Harboring  
OR  
Obtaining a Person

2  
MEANS  
By Force  
OR  
Fraud  
OR  
Coercion

3  
END  
For the purpose of  
Involuntary  
Servitude  
OR  
Debt Bondage  
OR  
Slavery  
OR  
Sex Trade

# What is a T-Visa?

- Enables certain victims of human trafficking to live and work in the US for three years.
  - Can apply for adjustment of status to lawful permanent resident.
- Can petition to have spouses and children accompany.
- Cap of 5,000 visas annually.
  - Between 2001 and 2005 **only 1084** visas were issued.

# Who is eligible for a T Visa?

- Individual is, or has been, a victim of a severe form of human trafficking;
- Is present in the US, American Samoa, Northern Marianas on account of trafficking;
- Has complied with reasonable request for assistance in investigation or prosecution of acts of trafficking; and
  - Children under 18 do not have to meet this criterion
- Would suffer extreme hardship involving unusual and severe harm upon removal.

## Social Service Provision

Adult victims of a severe form of trafficking may be eligible for valuable social service benefits:

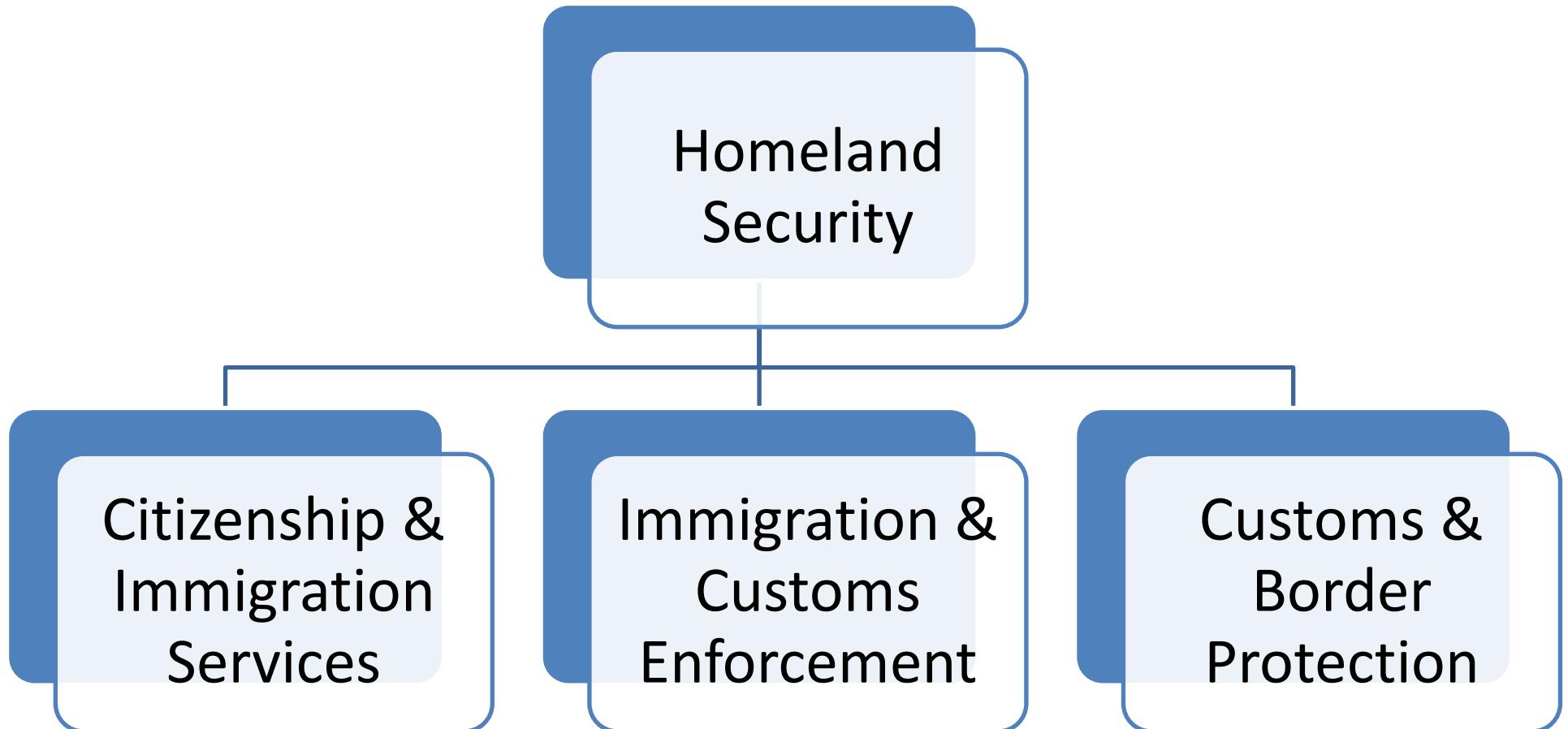
- Interpretation
- Safety planning
- Housing
- Food
- Clothing
- Medical care and health education
- Mental health care
- Legal and immigration services
- ESL training
- Independent living skills
- Job placement and employment education

## 5 Minute Screening Questions

1. Is the person allowed to leave the place of work?
2. Has the person been physically and/or sexually abused?
3. Has the person been threatened?
4. Does the person have a passport and other documents?
5. Has the person been paid for his/her work or services?
6. How many hours does the person work a day?
7. What are/were the living conditions?
8. How did the person find out about the job?
9. Who organized the person's migration?
10. What would the person like to see happen?

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

# Immigration System



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

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Undermines community policing
- Victims safety concerns
  - Transportation
  - Timing of help offered
  - Maintaining custody of children
- Early identification of victims who qualify immigration benefits essential

## Early Identification Is Crucial for Victim Safety

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

## **New Release From Detention Homeland Security Policy (August 20, 2010)**

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

## August 2010 DHS Policy

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

## **Early Victim Identification AND Filing of VAWA, U-Visa, or T-Visa Filing**

- Cuts off perpetrator's ability to trigger the victim's deportation
- Helps victim secure
  - Protection from deportation
  - Release from detention
  - Swift adjudication of immigration case for victims detained or in immigration proceedings
  - Dismissal without prejudice of immigration proceedings
- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator

## DHS Humanitarian Release

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

## VAWA Confidentiality

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

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

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

# How To Respond If DHS Comes

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

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

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