Webinar



SEXUAL VIOLENCE COUNSELING, ADVOCACY, AND PREVENTION EDUCATION

Part 1: Best Practices to Support Immigrant Victims, and Increase Participation in the Criminal Justice System

March 31, 2022



Introduction



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The National Immigrant Women's Advocacy Project Brochure

MISSION

NIWAP amplifies the voices of immigrant survivors of abuse and their advocates and builds the capacity of professionals to eliminate the systemic barriers faced by survivors.



At NIWAP, we envision a world with equitable access to justice for immigrant abuse survivors and their children to heal and thrive.

NIWAP BY THE NUMBERS

- **8,500**+ personalized answers to technical assistance calls
- 5,500+ legal professionals helped
- 440 training events conducted
- 29,780 people trained by NIWAP
 11,000+ subscribers to our newsletter
- 665 publications created
- 615,000+ downloads of NIWAP materials from our free web library

**Data reported from January 2012-April 2019

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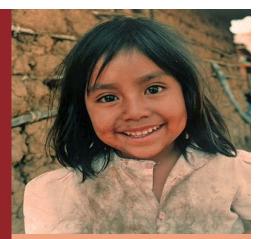


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NIWAP

The National Immigrant Women's Advocacy Project

American University Washington College of Law



Who We Are

- The National Immigrant Women's Advocacy Project (NIWAP) at American University Washington College of Law
- Provide technical assistance and advocacy organization that promotes the implementation and use of:
 - laws, policies, and practices to improve legal rights, services, and assistance for immigrant victims of domestic violence, sexual assault, stalking, human trafficking, child abuse and other crimes.





General Caveats

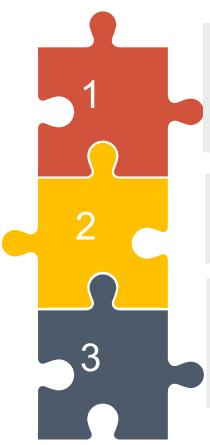
- Women, men and children can qualify for immigration protections under the Violence Against Women Act (VAWA)
- That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault

Terminology survivors and victims



Learning Objectives

By the end of this webinar participants will be better able to



Screen and help eligible victims of domestic and sexual violence file for VAWA, T and U visa and SIJS immigration relief

Help victims receive protection under VAWA confidentiality laws

Understand the role advocates can play helping victims filing VAWA, T and U visa cases



Slides and Supplementary Materials



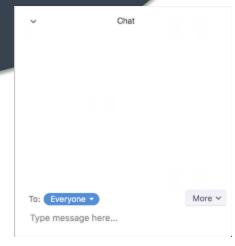
Materials for this Webinar: https://niwaplibrary.wcl.american.com/webinar-series-middlesex-march2022

Dynamics of Domestic and Sexual Violence Experienced by Immigrant Survivors in New Jersey





What barriers and fears prevent immigrant and refugee survivors from seeking help?







Challenges Immigrant Survivors Encounter

- Fear of Deportation
- Lack of language access
- Retaliation
- Fear of losing their children
- Lack of knowledge of legal rights
- Do not trust that advocates, attorneys, police, prosecutors, judges will help them



How does filing for immigration relief help immigrant domestic and sexual violence survivors?

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Importance of Immigration Status

- Ability to have employment authorization
- Protection from deportation and removal
- Access to VAWA Confidentiality protections
- Ability to obtain a driver's license and social security number
- Better access to housing and public services
- Break from isolation/ Gain Independence
- Ability to travel to and from the U.S. (with some exceptions)
- Path to lawful permanent residency and ultimately U.S. citizenship



Immigration Related Abuse

- Refusal to file immigration papers on spouse/ child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
 - Threats/attempts to have her deported
 - Calls to DHS to turn her in have her case denied



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



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)



Best Practice: Screen for Immigration Related Abuse

- 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

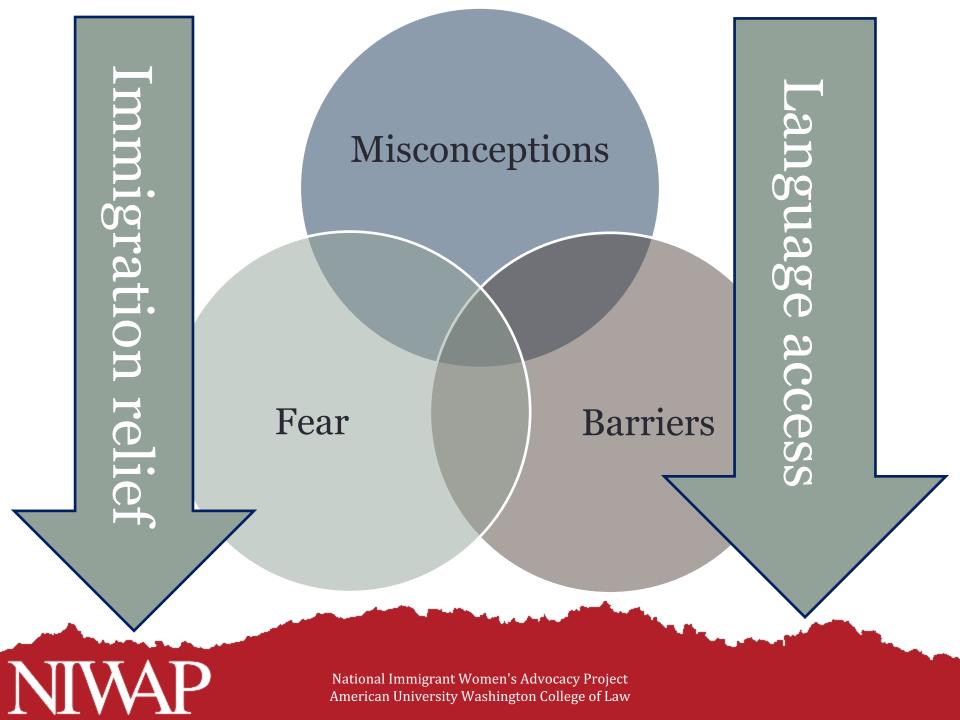
*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)



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).
- Latina college students
 - Experience the highest incidents of attempted rape compared to White, African American and Asian college students
 - Kalof, L., Ethnic Differences in Female Sexual Victimization, 4 Sexuality and Culture 75-97 (2000).





Improving Immigrant Victim Safety Through Early Screening

- Know forms of immigration relief immigrant survivors qualify for
- Document history of abuse
- Know differences between immigration options
- Incorporate into safety planning
 - How victim can safely carry DHS document copies



VAWA Confidentiality Prongs

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 (and their family members)

Location Prohibitions:

• Locational prohibitions to enforcement unless there is compliance with specific statutory and policy safeguards

Non-Disclosure:

 Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone



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



Immigration Options for Immigrant Survivors and Their Children



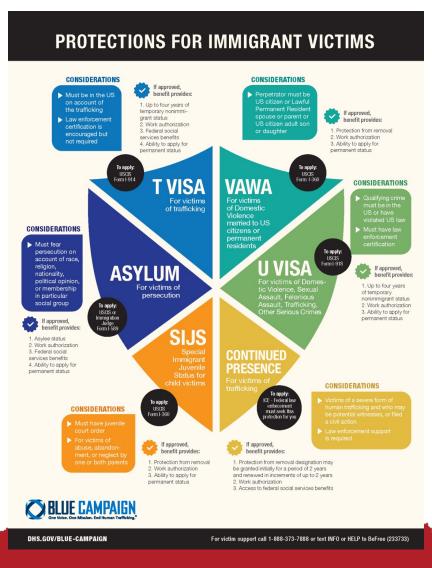


Legislative Intent

- We want crimes reported to police
- Improved community policing helps everyone
- No one should be a victim of crime
- Offenders prey upon the most vulnerable in our communities, often immigrants
- Without victims reporting crimes, we won't know about the most dangerous offenders
 - Domestic violence
 - Sexual Violence
 - Stalking



Primary Immigration Protections for Victims





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



What Victim Advocates Can Do

- Screening and identifying survivors
- Helping survivors obtain identity documents
- Assist survivors in a trauma informed manner with writing a declaration
- Providing a letter of support/ expert affidavit of services provided
- Collaborating with certifiers to obtain U visa certification
- Flagging for immigration inadmissibility
- Collecting other evidence

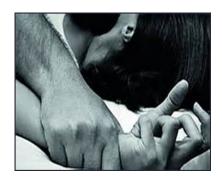


Case Strategies That Promote Victim Participation in Civil and Criminal Cases

- Changes in case strategy- when possible an immigration case should be filed before:
 - CPO, family or criminal court case
 - Victim travels to new location
 - Victim experiencing immigration related threats
- Key role of VAWA confidentiality laws



VAWA Self-Petition: Protection for Immigrant Survivors of Domestic and Sexual Abuse by Abusive Spouses and Parents or Adult Children





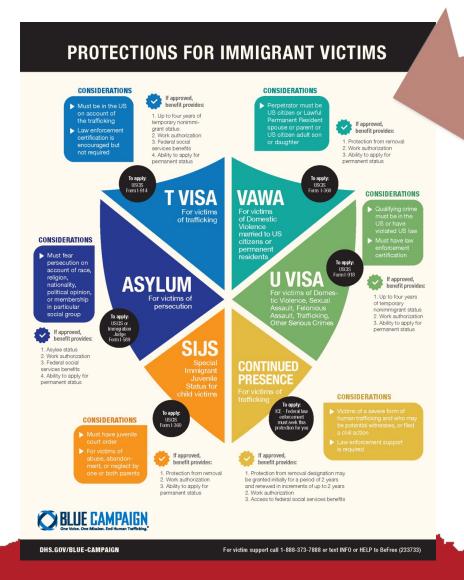
Poll: Raise your hand if the you have worked on family violence case where involving an immigrant victim whose perpetrator was a ---



- Citizen or lawful permanent resident spouse;
- Citizen or lawful permanent resident parent (step-parent); or
- Over 21-year-old citizen child



Immigration Protections for Victims





Violence Against Women Act(VAWA) Self Petition: Overview

- Provides immigration relief to certain victims of battery and/or extreme cruelty
- Survivor can submit own petition without abuser's knowledge or cooperation
- Cooperation with law enforcement NOT required



Who Can File for VAWA Self-Petition?

- **Spouse**—The abused spouse or **former spouse** of a U.S. citizen or lawful permanent resident (child may be included)
- **Child**—The abused child(ren) and **step-children** of a U.S. citizen or lawful permanent resident
- **Parent** The abused parent(s) of a U.S. citizen over the age of 21.



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
- Timeline to formal protection = 18 -24 months (2022)

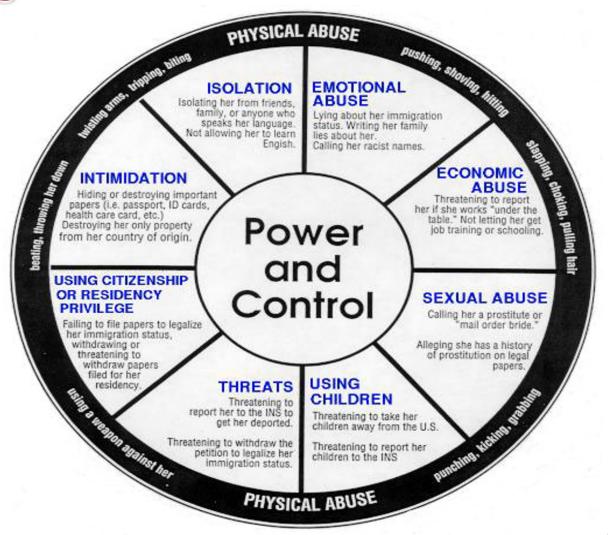


Immigration Law Definition of Domestic Violence = Battering or Extreme Cruelty

- "Battery or Extreme Cruelty"
- Includes:
 - All forms of abuse covered in state civil protection order statute
 - All forms of abuse that constitute domestic violence under states criminal laws
 - Forms of abuse that constitute extreme cruelty
 - No physical harm, crime, attempted crime required



Immigrant Power and Control Wheel





VAWA Self-Petitioning Facts

- Survivor allowed to "Self-Petition" without the support of the abusers
- Information from the abuser cannot be used against the victim/confidential
- Non-citizen children of survivor protected
- Can apply with undocumented or temporary legal status
- Approved Self-Petition typically leads to lawful permanent residency (LPR)



Approved VAWA Self-Petitioners

- <u>Deportation</u>: Protection from deportation soon after filing.
- Immigration Benefits for Children:
 - VAWA self-petitioner's children receive immigration benefits
 - VAWA cancellation parole into US visa process required
- <u>Public Benefits</u>: As qualified immigrants (≈ 3 months) <u>Employment authorization</u>:
 - Citizen abuser (≈ 6 months);
 - Lawful permanent resident abuser ($\approx 18-24$ months).
- <u>VAWA confidentiality</u>: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency
 - Citizen perpetrator apply upon approval (1 year)
 - Lawful permanent resident perpetrator (≈ 3+ years)



Effect of Marriage, Divorce, or Age of a Child

- Must file within 2 years of marriage termination/death
- Bigamy exception
- Children abused under age 21 have up to age of 25 to file
- Step-children must file before divorce
- At least one incident of battering/extreme cruelty occurred during the marriage
 - Abusive spouse could have become a U.S. citizen or Lawful Permanent Resident before or after the abuse

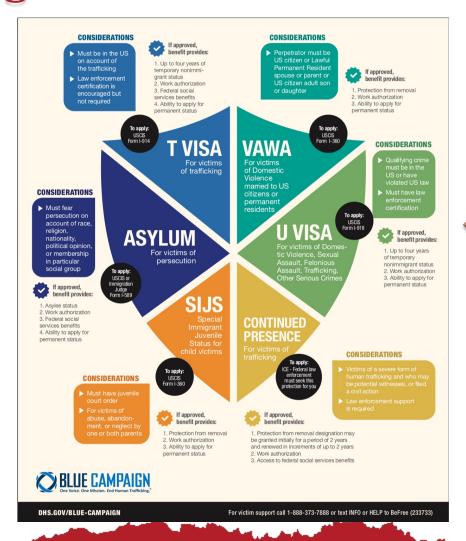


U Visa: Protection for Immigrant Crime Victims





Immigration Protections for Victims





Goals of Immigration Relief

Increase victim participation in prosecutions

prove

Community- police relations

Reporting of crime

Safety of victims, communities, and police



U Visa Basics

- The U Visa grants a temporary 4 year stay
- Only 10,000 U Visas awarded per year
- Application for a U Visa requires a certification from a designated government official
- U visa Certification is one part of the overall application
 - Victim must submit additional documentation and proof in their full application



DHS Immigration Options for Victims of Crime Brochure

- Languages Offered
 - Spanish
 - Mandarin
 - English
 - Korean
 - Russian



U Visa Eligibility

The victim will indicate that they satisfy the three eligibility components in their U visa application (I-918 form).

The person is a U visa victim

- Victim of a qualifying criminal activity
- Victim possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Victim is "Helpful"

 Victim "has been, is being, or is likely to be helpful" in "detection, investigation, prosecution, conviction, or sentencing"

Victim suffered harm

• Substantial physical or mental harm as a result of the qualifying criminal activity



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	
	These are general categories, and not specific crimes or citations to a criminal code.	



Why "Criminal Activity" and Not Limited to "Crimes"?

U visa protection available even when:

- Investigation does not result in prosecution
- Survivor/Victim helpful in investigation does not testify at trial
- Abuser eludes arrest
- Criminal case dismissed
- Survivor/Victim comes forward makes report and police or prosecutors decide not to prosecute
- Prosecution but no conviction
- Survivor/Victim of listed criminal activity but another crime prosecuted
- Prosecution cannot take place (diplomats, no extradition)



Who Can Certify?

"law enforcement" & "law enforcement agencies" =

- Federal, state, and local
 - Police, sheriffs, FBI, HIS,
 ATF
 - Prosecutors
 - Head of agency or designee
 - Judges, Magistrates,
 Commissioners

- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government agencies with investigative authority

There is **NO** statute of limitations on signing a certification. However, there is a **six month** window after signing the certification in which the U visa application must be filed.



Determining Helpfulness

- Certifying agency determines "helpfulness"
- No degree (or timing) of helpfulness required
 - DHS regulations 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 automatically preclude U visa eligibility, particularly when crime connected to the abuse
- · The investigation or prosecution can still be ongoing
- Certification can be "revoked"



Helpfulness

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



The following are **Not Required** in order to certify that a victim has been helpful

- Certification signed within the statute of limitations of the qualifying criminal activity
- 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

Victimcentered approach



U Visa Facts and Benefits

- Only 10,000 U visas can be granted annually Currently there is a waitlist
- Work authorization via Bona Fide Determination or Deferred Action Status
- The U visa grants a temporary 4 year stay
- Limited state benefits in a few states
- <u>Lawful permanent residency</u> 3 years after receiving U visa if:
 - Continued cooperation or does not unreasonably refuse to cooperate; and
 - humanitarian need, family unity or public interest
- <u>U.S. Citizenship</u> after 5 years of lawful permanent residency+ proof of good moral character



Immigrant Victims of Human Trafficking and the T Visa





Primary Immigration Protections for Victims









Top Venues/Industries for Sex Trafficking

- Illicit massage/Spa businesses
- Pornography
- Residence based commercial sex
- Hotel/motel based
- Escort services
- Online advertising venue unknown
- Street-based

National Human Trafficking Hotline (2015-2019) https://humantraffickinghotline.org/states



Major Labor Trafficking Venues

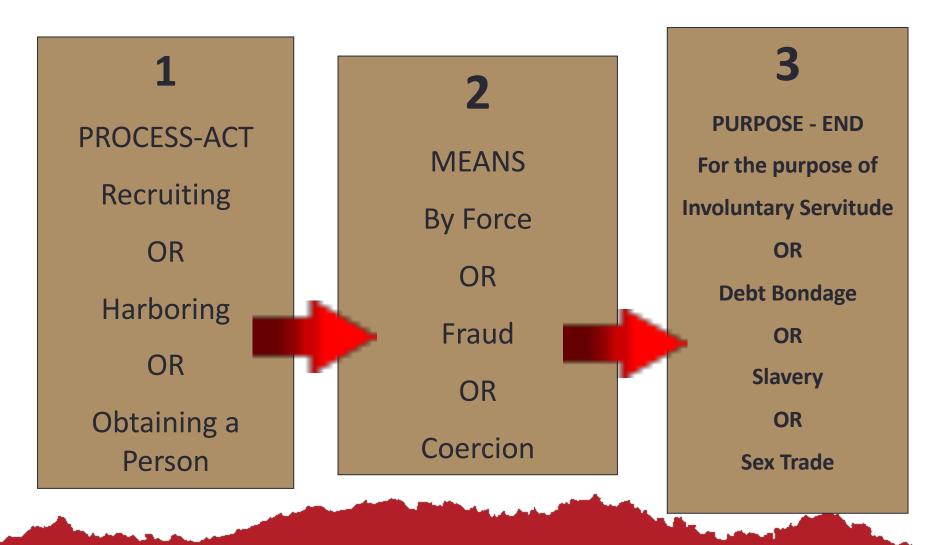
- Regulated & unregulated industries
- Low-wage industries
- Hidden & public
- Sexual & non-sexual services
- Gender differences by venue
- 4% trafficked in multiple venues

- Private Residence/Domestic Servitude 37%
- Agriculture 19%
- Restaurants 14%
- Hospitality 10%
- Construction 10%
- Carnivals/Fairs 7%
- Factories 4%
- Assisted Living 3%
- Strip Clubs 2%
- Massage Parlors 1%

Colleen Owens et al., Understanding the Organization, Operation, and Victimization Process of Labor Trafficking in the United States (2014), https://www.urban.org/research/publication/understanding-organization-operation-and-victimization-process-labor-trafficking-united-states



Three Federal Elements of Trafficking





Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Process -Act

- Recruits
- Entices
- Harbors
- Transports
- Provides
- Obtains
- Advertises
- Maintains
- Patronizes
- Solicits
- Benefits, financially or by receiving anything of value

Means

- Force
- Fraud
- Coercion

 Proof of force, fraud, or coercion not required for sex trafficked children under 18.

Purpose-End

- Commercial Sexual Activity
- A commercial sex act is any sexual act for which something of value is given or received
 - Money
 - Drugs
 - Food
 - Shelter
 - Clothing
 - Transportation



Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Process-Act

- Recruits
- Harbors
- Transports
- Provides
- Obtains
- Benefits, financially or by receiving anything of value

Means

- Force
- Restraint
- Threats of harm
- Abuse or threatened abuse of the legal system
- Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint
- No federal exception for minors

Purpose-End

- Involuntary servitude
- Peonage
- Debt Bondage
- Slavery



Coercion 22 U.S.C. § 7102(3)

- Threats of serious harm to or physical restraint against any person; *OR*
- Any scheme, plan or pattern intented to caus a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; OR
- The abuse or threatened abuse of the civil, criminal, or administrative legal process
 - DHS, CPS, IRS, police, divorce, custody, courts



Process/Acts of Trafficking

- Does not require crossing a border
- Recruitment through
 - Marriage
 - Dating App Marriage broker
 - Adoption
 - Guardianship
- Promise of shelter, housing
- Victim isolated, physically held, locked in
- Make victim financially dependent



Means: Force, Fraud, Coercion

- Actual and treats of physical/sexual abuse
 - To victim, children, or family member
- Threats of deportation, take passport, immigration papers,
 IDs
- Cut victim off from her children
- Make victim homeless, deprived of food
- Financial, psychological, reputational harms
- Force the victim to commit crimes
 - Prostitution, commercial sex, drug offenses, identity theft, credit card fraud, auto theft....
- GOAL: make victim stay/loss of free will



Means: Traffickers Use of Fraud

- Bait and Switch
 - Enters into a marriage/result = domestic servitude
 - –Applied for a job in a bar/result = brothel
 - Job in a factory/result=locked into factory from outside each day
 - Job as a nanny/result=forced to work unpaid hours



End/Purpose: Commercial Gain

- Involuntary servitude
- Commercial sex
- Debt bondage
- Slavery
- Peonage use of labor bound in servitude because of a debt
 - Example owes debt to the trafficker for their housing, food, clothing, transportation



When can being forced to work by a spouse, intimate partner, parent or step-parent constitute labor trafficking?

- Domestic servitude =
- An expectation that the victim's life is to fulfill the orders of the trafficker
 - Demand from the trafficker to perform domestic labor at an unreasonable level
 - Unreasonable working hours
 - Constant availability to labor regardless of health or energy

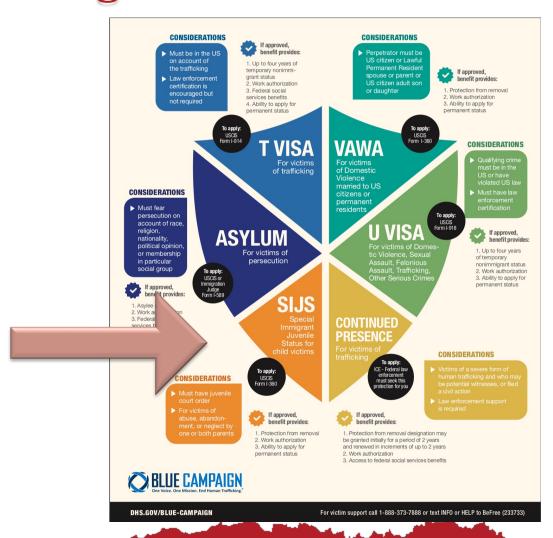


Special Immigrant Juvenile Status (SIJS): For Immigrant Children Who Have Experienced Abuse, Neglect, or Abandonment





Immigration Protections for Victims





Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, or neglect
 - By at least one parent
- To apply must submit required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- Findings
 - Not in child's best interests to return to home country
 - Reunification with abusive parent not viable
- Timeline to formal protection = 12 36 months (2019)



State Court Findings Needed for SIJS *State Law Applies To Each*

- The court has jurisdiction to issue orders regarding the care, custody, or placement of an immigrant child (under age of majority and unmarried) with
 - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend, adopting parent) <u>OR</u>
 - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to at least ONE PARENT'S abuse, abandonment, or neglect



Decisions about Care and Custody of Children Arise in Family Court Proceedings

- Civil protection order cases
- Custody cases
- Divorce cases
- Paternity and child support cases
- Adoption cases
- Motions for declaratory judgements
- Bench Book chapters on each case type



Home Country Not in Child's Best Interests

- Judges identify each potential custodian in U.S. and home country
- Court order applies state best interests factors to each placement
- States in court order the factual findings that support chosen placement
- Judges make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Order should compare the supports, help, services child needs
 U.S vs. home country



Finding: Reunification Not Viable

- 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
- Changes in circumstances can occur
 - But not granting full legal/physical custody to abusive parent



Must Have Holistic Approach

Survivors are better served when you address their needs holistically













Building Trust Establishing the Relationship

- Respect confidentiality
- Believe and validate experiences
- Acknowledge injustices
- Respect autonomy
- Culturally responsive
- Trauma-Informed advocacy
- Help plan for future safety
- Promote access to support services
- Explain VAWA confidentiality protections





A Note About Interpreters & Translators

- Must provide language access per Title VI
- Plan ahead for interpretation needs
- Train your interpreters and translators in:
 - Domestic violence and sexual assault training
 - Interpreter training
 - Trauma training
- Be creative



Strengthening Your Ability to Support Survivors Through This Process

- Be aware of your own emotional reactions to the stories you are hearing
- Take breaks and care for yourself during the process
- So you can effectively be there for the survivor
- Self-regulation techniques you can use



Join Us for Part 2

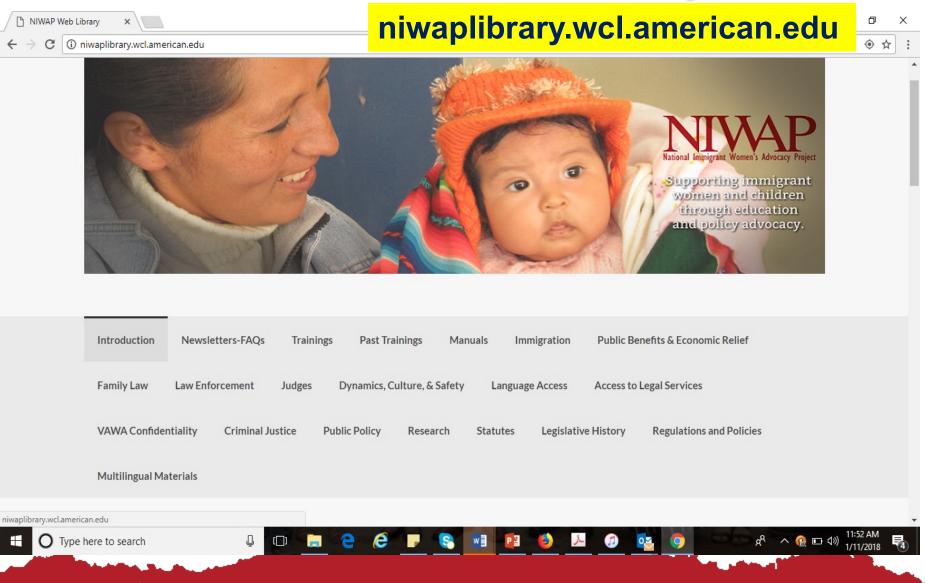
Legal Rights of Immigrant Survivors: Public Benefits, and Protection Order

April 28, 2022

10:00 - 11:30 EST



NIWAP Web library





Upcoming Free Webinar

- Understanding Helpfulness for U Visa Certification and the Ongoing Assistance Requirement
- April 13, 2022 3:00PM to 4:30EST
- Register:
 https://zoom.us/webinar/register/WN g6

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Interested in Joining the Community of Practice or Roundtable

- Application available at: <u>www.niwap.org/go/COPapplication</u>
- To register for the Law Enforcement & Prosecution U Visa Roundtable, visit https://www.surveymonkey.com/r/RT2022Registeration
- Email Rocio Molina at Molina@wcl.American.edu



Resources

- Technical Assistance
 - Call: 202.274.4457
 - Email: niwap@wcl.american.edu
 - Web Library: https://niwaplibrary.wcl.american.edu/
- Materials for
- https://niwaplibrary.wcl.american.edu/webinar-seriesmiddlesex-march2022
 - VAWA Self- Petition Webinar
 - Roll call training videos
 - DHS Victim Centered Approach





CENTER FOR EMPOWERMENT

SEXUAL VIOLENCE COUNSELING, ADVOCACY, AND PREVENTION EDUCATION



