

Legal Protections and Help for Immigrant Survivors of Domestic and Sexual Violence and Their Children: The Central Role of Advocates and Attorneys

July 15-16, 2019
Columbia, Missouri

This project was supported by Grant No. 2015-TA-AX-K043 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the Department of Justice, Office on Violence Against Women.

Faculty Introductions and Opening

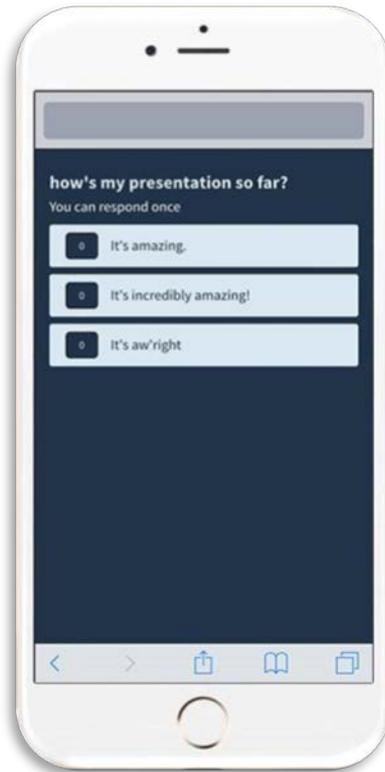


What are the questions regarding legal protections for immigrant and refugee survivors you want to be sure are answered by the end of this conference?

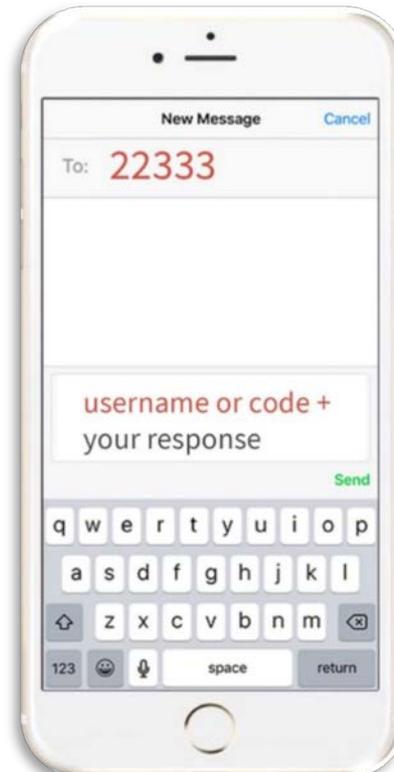


HOW TO USE POLL EVERYWHERE

You can respond to the poll



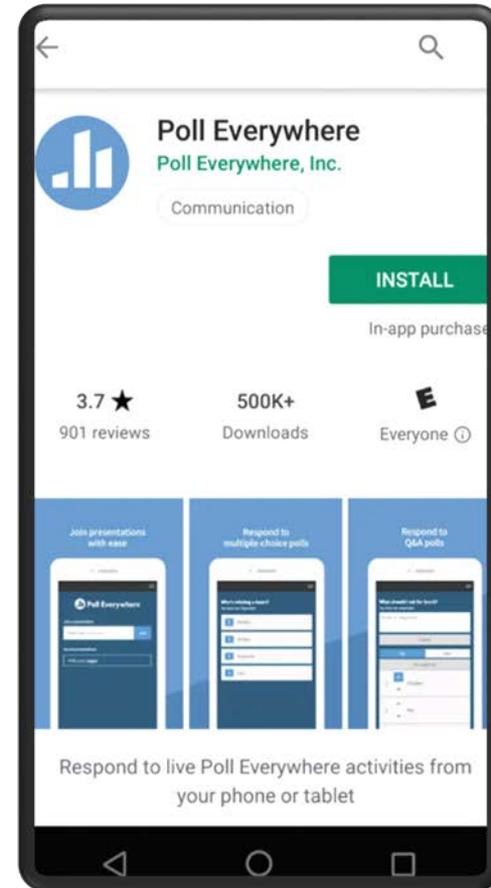
App 📱



Text 📱

How to use Poll Everywhere via App

1. Go to your app store and download the application



NIWAP

NIWAP

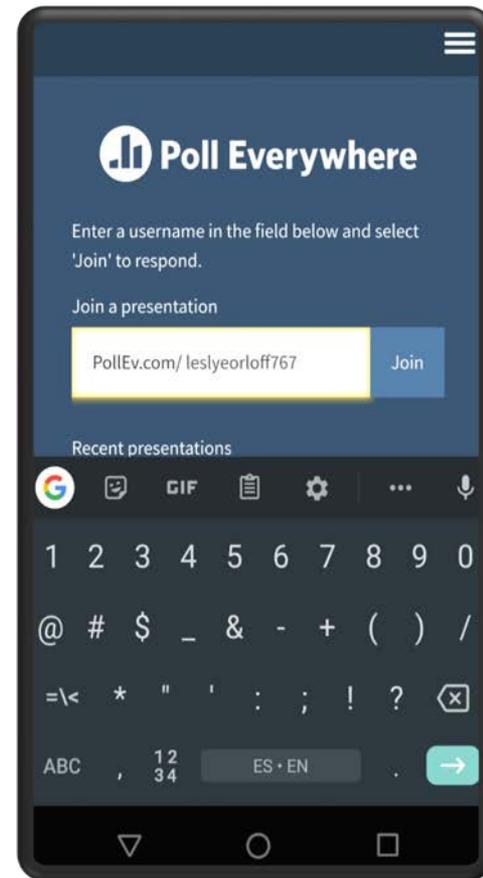
National Immigrant Women's Advocacy Project American
University Washington College of Law



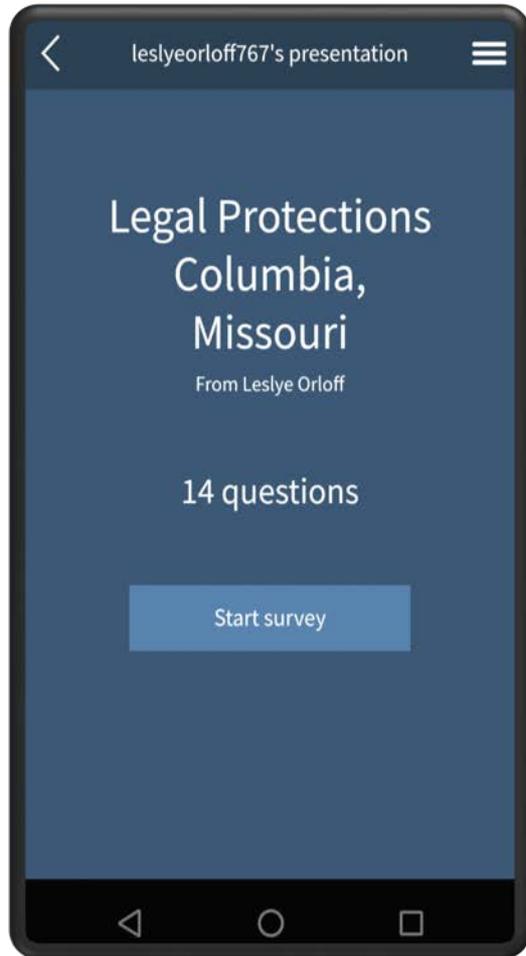
HOW TO USE POLL EVERYWHERE VIA APP

2. Once the app is installed you need to join the poll

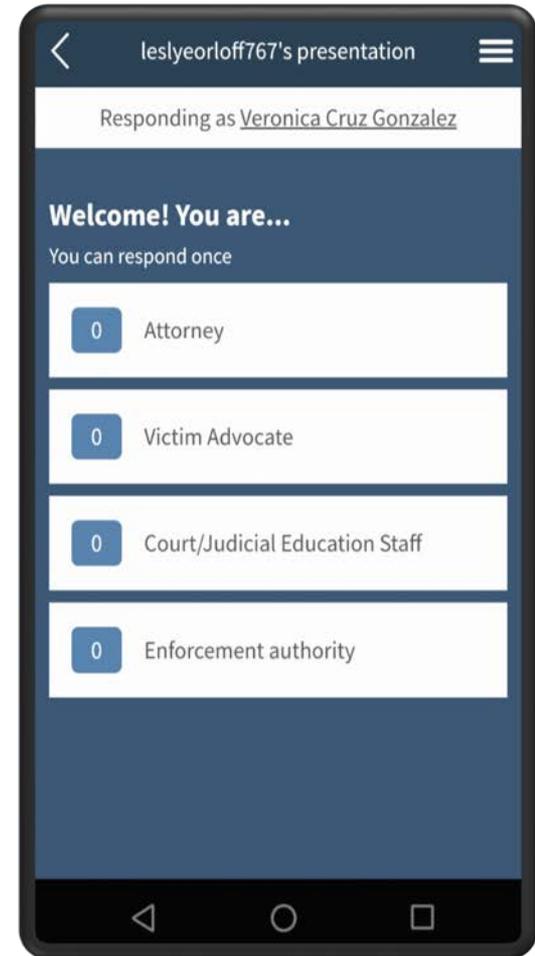
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HOW TO USE POLL EVERYWHERE VIA APP

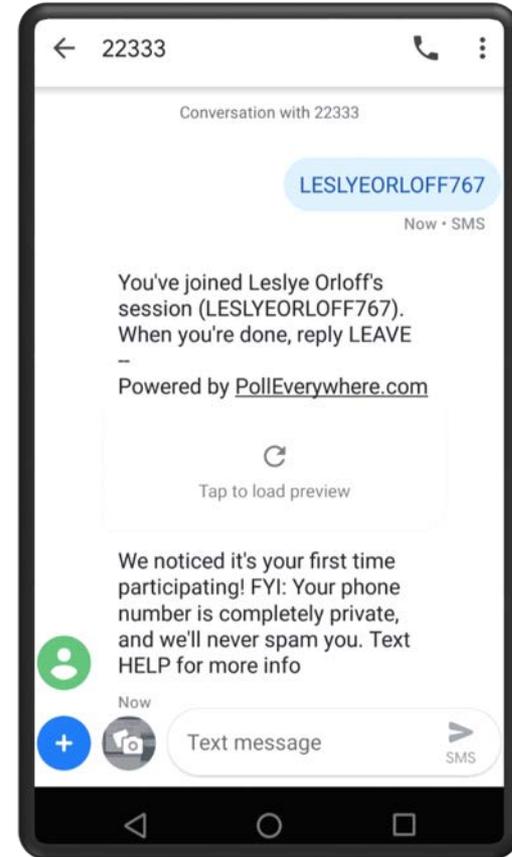


3. You will find 14 questions that you must answer when you are requested to during the webinar



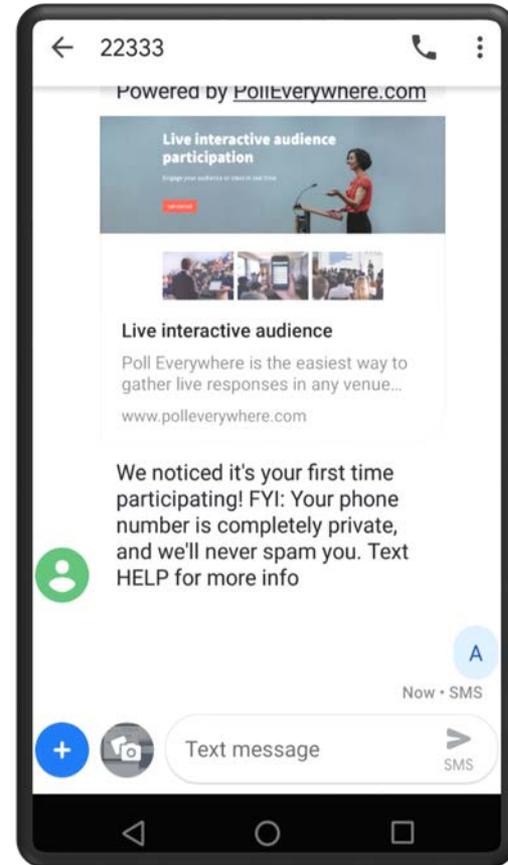
HOW TO USE POLL EVERYWHERE VIA TEXT MESSAGE

- Send **LESLYORLOFF767** to **22333**
- You will receive a confirmation message



HOW TO USE POLL EVERYWHERE VIA TEXT MESSAGE

- Once you received the confirmation message you will be able to send your answer for each of the 14 questions at the time they appear in this presentation.



LET'S TRY!!!

Remember!!

App  [PollEv.com/leslyeorloff767](https://www.poll-ev.com/leslyeorloff767)

Text [LESLYEORLOFF767](https://www.poll-ev.com/leslyeorloff767) to [22333](https://www.poll-ev.com/leslyeorloff767), once joined [A,B,C,D](https://www.poll-ev.com/leslyeorloff767) ...

Welcome!

Answer on
the left



Feedback

A

B

C

D

No Answer



- A. Victim Advocate
- B. Attorney
- C. Court staff
- D. Coalition Staff
- E. Other

Learning Objectives

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

- Understand dynamics and barriers immigrant survivors encounter
- Be familiar with the full range of protections immigrant survivors of domestic and sexual violence & children are legally eligible to access
- Know how to assist immigrant and refugee survivors accessing housing, public benefits, legal service and justice system help in a trauma informed manner

Demographics

What countries are you seeing immigrant survivors coming from?

Missouri Demographics (2017)*

- ❖ Total foreign born population – 257,102*
- ❖ 20% of the state's 5.7 million people are foreign born
 - 48.2% naturalized citizens
 - ≈40.5% lawful permanent residents or temporary status**
 - ≈59.5% undocumented**
- ❖ 70.0% rise in immigrant population from 2000 to 2017
- ❖ 8.2% of children in the state under age 18 have 1 or more immigrant parents
 - 92.1% of children with immigrant parents in the state are U.S. native

**Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MO> (Feb. 2018)*

***Source: <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles>*

Missouri– Countries/Regions of Origin and Limited English Proficiency (2017)*

- ▶ Asia–35.8%
 - ▶ China (7.8%)
 - ▶ India (7.6%)
 - ▶ Philippines (4.3%)
 - ▶ Vietnam (3.3%)
 - ▶ Korea (2.8%)
- ▶ Latin America 28.8%
 - ▶ Mexico (16.5%)
 - ▶ Brazil (1.6%)
 - ▶ El Salvador (1.5%)
- ▶ Europe –18.9%
 - ▶ Germany (2.9%)
 - ▶ United Kingdom (2.3%)
- ▶ Africa – 9.2%
- ▶ Middle East – 4%
- ▶ Canada – 2.0%

Limited English Proficiency (Speak English less than very well)

- ▶ Naturalized citizens 26.4%
- ▶ Non-citizens 49.3%

Languages Spoken at Home

- ▶ Spanish (147,568)
- ▶ Chinese (25,369)
- ▶ German (24,485)
- ▶ Arabic (12,371)
- ▶ Vietnamese (11,132)
- ▶ French (10,008)

**Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MO>
(Feb. 2018)*

DYNAMICS OF DOMESTIC AND SEXUAL VIOLENCE EXPERIENCED BY IMMIGRANT SURVIVORS IN MISSOURI

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

Major Challenges in working with Immigrant Victims of Crime

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

Fears & Misconceptions

- ▶ Do not trust police/prosecutors
- ▶ Economic survival
- ▶ Pressures from both families
- ▶ Fear of abandoning the home/community
- ▶ Fear of losing children
- ▶ Religious factors
- ▶ Fear of unknown
- ▶ Victim believes that if perpetrator deported she has to go with him
- ▶ Dangers in the home country
 - ▶ Retaliation
 - ▶ Ostracism
 - ▶ Police
 - ▶ Political instability
 - ▶ Gender barriers

Small group discussion

- How do these concerns differ when you are working with:
 - An Immigrant?
 - A Refugee?

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

Importance of Immigration Status

- Ability to work legally
- Protection from deportation and removal
- 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 citizenship

Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from perpetrator
 - Legal work authorization (3-48 months from filing)
 - Issuance of federally recognized ID
- VAWA confidentiality

Department of Homeland Security



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

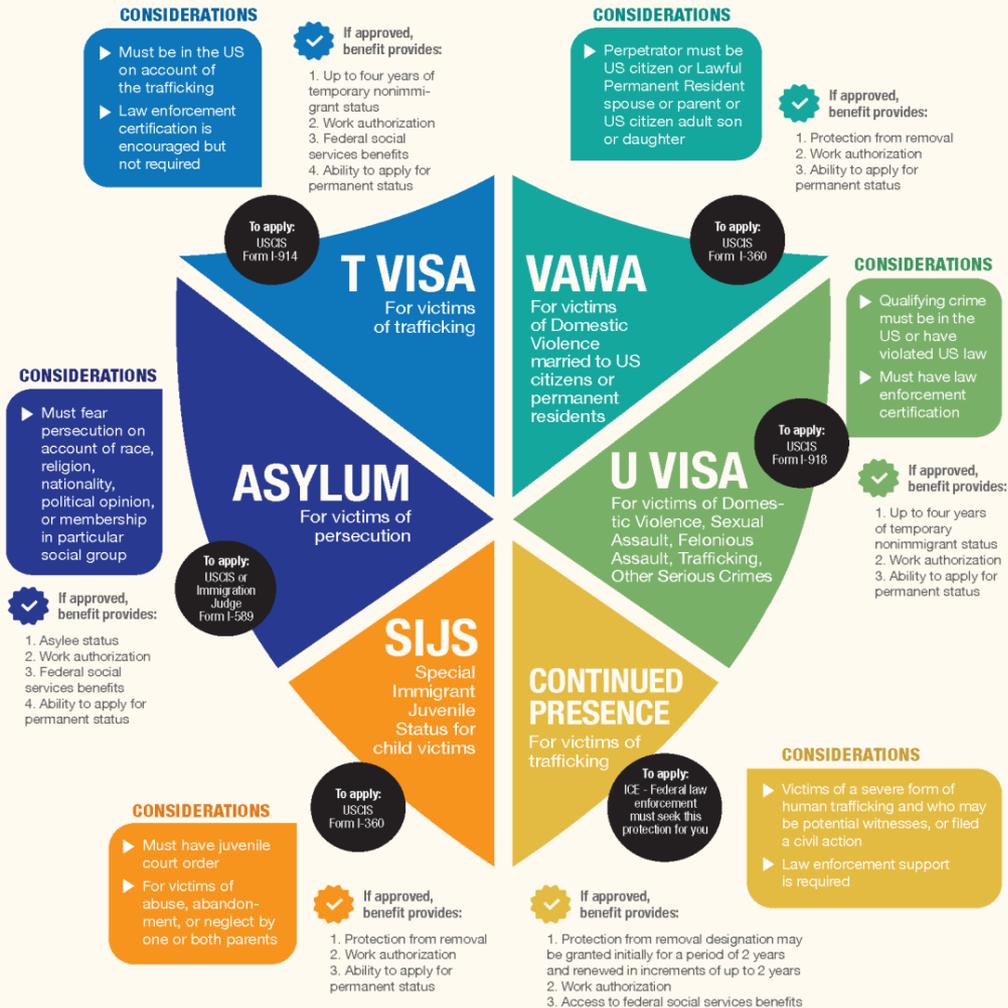
- High school aged immigrant girls
 - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
 - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women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

Immigration Options for Immigrant Survivors and Their Children: Screening

By the End of This Session You Will Be Able to:

- Identify the forms of immigration relief immigrant crime victims and their children qualify for
- Screen for immigration relief eligibility
- Understand the differences between victim based immigration remedies survivors may be eligible for

PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

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

DHS Immigration Options for Victims of Crime Brochure



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

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 = 4-18 months (2019)**

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 formal protection = 4-6 months**
(2019)

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 = 6 – 36 months**

(2019)

T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.D. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking.
Exceptions
 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- **Timeline to formal protection = 3-12 months (2019)**

Protections for Abused Children and Family Members

- VAWA self petitioner = Abused Child, Parent of abused child, Abused parent
 - Family included: applicants' children and an under 21 year old child can include their parent
- U and T visa applicant = Child victim or their parent
 - Family included:
 - Under 21: spouse, children, parents, unmarried siblings under 18
 - Over 21: spouse and children
- Special Immigrant Juvenile Status = child victim
 - Family included: None

Immigrant Adult and Child Victims Who File for Immigration Relief Receive

- Protection from deportation
- Legal work authorization and access to drivers' licenses upon
 - Approval or wait list approval
- Access to some federal public benefits
 - Varies by immigration case type, state, and benefit
- VAWA confidentiality protection upon filing VAWA, T or U visa case

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

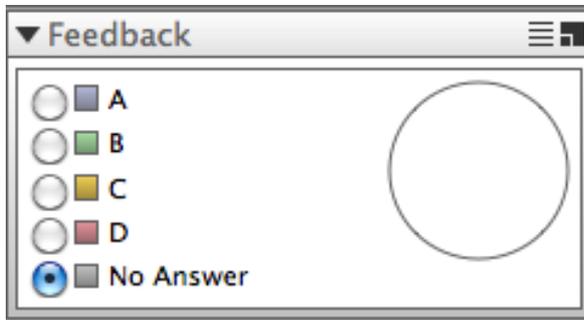
Case Scenario (Handout)

Clara met Eduardo a naturalized U.S. citizen when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse, took Clara to the hospital and placed the children in the care of the state.

What forms of immigration relief would Clara qualify for:

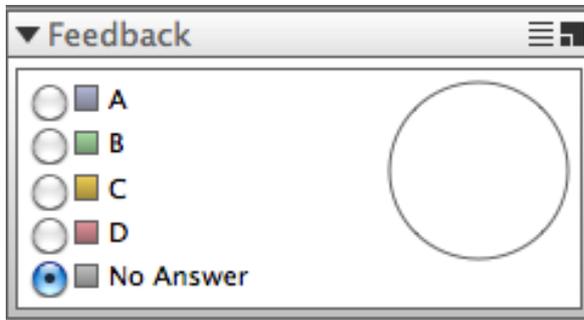
Using your clickers please check:

- A. U visa
- B. VAWA self-petition as the parent of Lupe
- C. T visa
- D. All of the above



What forms of immigration relief would Lupe and Miguel qualify for:

Using your clickers please check:



- A. Both can VAWA self-petition
- B. Both qualify for a U visa
- C. Lupe qualifies for a T visa
- D. All of the above

Violence Against Women Act Immigration Relief

- **Many Immigrant Victims of Domestic Violence, Sexual Assault and Other Crimes Are Eligible for Immigration Relief**

Purpose of Crime Victim Protections

Congress enacted VAWA self-petitioning (1994) and the U and T visas (2000) to:

- Enhance victim safety
- Allow victims to report crimes and seek help from courts without fear of deportation
- Improve access to justice from family/criminal/civil courts for victims of domestic & sexual violence and child/elder abuse
- Improves survivors options for stability & economic security
Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Keep communities safe

Story: How Immigration Relief for Victims Improves Community Safety

Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
 - 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

Large Group Discussion

- When a victim comes to your agency for help how do you approach what to do first?
- How might the information about immigration relief and immigration related abuse impact
 - The strategy
 - Victim safety

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

Value of Filing Early

- File victim's immigration case ASAP
 - DHS VAWA confidentiality computer system
 - Sufficient evidence for prima facie
- Benefits for victims of early filing
 - Protection from deportation
 - Safer for victim to cooperate in criminal case
 - Earlier access to work authorization
 - State benefits in some states or speeds access
 - Better position in family law case
 - Can use the Requests for Further Evidence process to supplement application

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
- Role of VAWA confidentiality laws
- Importance of sufficient evidence for prima facie case

Prevention & Safety = Filing Immigration Case Early

- Give victims a letter stating that they are in the process of filing a VAWA, T or U visa immigration case
- File immigration case before
 - Protection order, divorce, or custody case
 - Victim travels to a new location
- Particularly when the victim is receiving immigration related threats

VAWA CONFIDENTIALITY, VICTIM SAFETY, AND CASE STRATEGY IN CASES OF IMMIGRANT SURVIVORS



Raise Your Hand if...

- You have worked with domestic violence or sexual assault victim survivors who have received
 - Received threats of deportation from perpetrators
 - Been contacted by immigration enforcement officials

When Victims 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 victim 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

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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

Bars Limiting Reliance Upon Information Provided by a Perpetrator

- The government cannot gather and/or use information provided solely by:
 - A domestic violence or child abuser
 - A sexual assault or stalking perpetrator
 - A trafficker
 - The perpetrator of any U visa listed crime
 - The perpetrator's family member
 - Other persons associated with the perpetrator
 - (ICE 2007)
- To take an adverse action against a victim
- 8 U.S.C. 1367(a)(1)

Adverse Actions Include Using Perpetrator Provided Information To...

- Deny a victims immigration case
- Detain a victim
- Deport a victim
- Initiate an immigration enforcement action against a victim
- Seek out, question, arrest, or detain a victim

DHS Cannot ---

- Contact an abuser
- Seek information from an abuser
- Call an abuser as a witness
- Use information obtained solely from an abuser against the victim in the victim's immigration case

DHS cannot rely on information *solely* provided by the perpetrator

- Information provided *solely* by prohibited sources **must** be independently corroborated by DHS
 - Adverse information about the victim from a prohibited source should be treated as “**inherently suspect**” (DHS Directive 11/1/2013)
 - “If the officer believes there is any credible evidence that the alien may be eligible for VAWA benefits or T or U” VAWA confidentiality applies (ICE 2007)

DHS Victim Protections For Whom?

Statutes/Regulations/Policies

- VAWA confidentiality
 - VAWA self-petition, cancellation, suspension
 - Battered Spouse Waiver
 - U Visas
 - T Visas
 - Abused spouses of work visa holders who file for VAWA employment authorization
 - *All victims abused by a spouse or parent*

Statute Does Not Require Filing For VAWA Confidentiality Protections To Apply To:

- Domestic violence victims
- Child abuse victims
- Immigrant parents of child abuse victims
- Victims of family violence perpetrated by another family member residing in the same household
- Best practice to file as soon as possible
 - A well documented case

Can Victims 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

What problems have you seen or might you be concerned about in your work to ensure these provisions work to protect the immigrant victim you are working with?

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

All DHS Memo 002-02-001

- “Whenever a DHS officer or employee receives *adverse information* from a spouse, family member of a spouse, or unknown private individual, the employee will check the Central Index System (CIS) for the COA ‘384’ flag. Employees will be sensitive to the fact that the alien at issue may be a victim and that a victim-abuser dynamic may be at play.”

VAWA Confidentiality 384 Red Flag System and Prohibitions on Release of Information Apply to Following Cases

- VAWA self-petition
 - VAWA self-petitioner
 - Battered spouse waivers
 - VAWA Cuban Adjustment Act
 - VAWA Haitian Refugee Immigration Fairness Act
 - VAWA Nicaraguan Adjustment & Central American Relief Act
- VAWA cancellation of removal
- VAWA suspension of deportation
- U visa applicants
- T visa applicants
- VAWA work authorization abused spouses of visa holder applicants

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

VAWA Confidentiality Enforcement

- Is enforced in a variety of ways
 - Complaints filed with the office of civil rights at the Department of Homeland Security
 - The prohibited sensitive locations bar

Next Section: Discuss VAWA Confidentiality's Sensitive Location Enforcement Bars and Non- Disclosure Protections

VAWA CONFIDENTIALITY PROTECTIONS AT COURT AND IN VICTIMS' FAMILY LAW CASES

Protected Locations

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Location Prohibitions

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Requires:

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How might VAWA
confidentiality
protections affect family
court cases and state
courts ?

Why is VAWA Confidentiality Important at Courts?

- Promotes access to justice and just and fair outcomes in state courts
- Perpetrators may attempt to use state court discovery to obtain federal VAWA confidentiality protected information
- Prohibited immigration enforcement locations for victims include courthouses
- ICE policies limit courthouse enforcement in civil and family court cases

What other locations did
Congress deem protected so that
immigrant victims can receive the
help they need?

Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - 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



Prohibiting immigration enforcement against victims at sensitive locations was designed to...

- Ensure that abusers and criminals cannot use the immigration system against their victims stopping victims from:
 - Accessing civil and criminal justice system help
 - Protection courthouses, family justice centers, and supervised visitation centers
 - Obtaining help from shelters, rape crisis centers, victim services, and community-based organizations

Locational Prohibitions

- Enforcement actions at VAWA Confidentiality protected sensitive locations actions are not to be taken:
 - “[A]bsent clear evidence that the alien is not entitled to victim-based benefits”
 - Actions taken must “be handled properly given that they may ultimately benefit from VAWA’s provisions”
 - Officers are to follow a specific process aimed at protecting victims that includes obtaining advance permission from a supervisor or ICE general counsel for enforcement actions at statutorily protected sensitive locations
- John P. Torres and Marcy Forman, Interim Guidance Relating to Officer Procedure Following the Enactment of VAWA 2005 (January 22, 2007)

Additional Protections for All Immigrants

- Sensitive Location Protections
- Immigration and Customs Enforcement (ICE) Limitations on Courthouse Enforcement
- Victims receive
 - These protections + VAWA confidentiality

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
- Very limited exceptions:
 - Exigent circumstances
 - Prior approval by a designated supervisor
 - Other law enforcement action led ICE/CBP there

How might information
about sensitive location
policies affect
--your advocacy
-- custody cases
--protection order
cases?

Are Courthouses Sensitive Locations?

- Courthouses are not considered sensitive locations
- Exception: VAWA confidentiality statutes and DHS policies treat courthouses as sensitive locations with regard to victims
- DHS required to certify to the immigration judge that VAWA confidentiality not violated
 - Immigration case can be dismissed

January 2018 ICE Courthouse Enforcement Policy: Targeted Immigrant Limitation

- Civil immigration enforcement at courthouses will only occur when
 - ICE officers have information that leads them to believe that a *targeted immigrant* will be present at a courthouse
- Limit enforcement to targeted a targeted immigrant who
 - Has criminal conviction(s)
 - Has an criminal case open against them
 - Is a gang member
 - Is a threat to national security or public safety
 - Has been ordered removed and failed to depart, or
 - Has re-entered the country illegally after being removed

Thinking about the past 5 years, what percent of the victims you work with have criminal convictions, open criminal cases or have been ordered removed?

Answer on the left



▼ Feedback

A

B

C

D

No Answer



- A. None
- B. Under 10%
- C. 11-25%
- D. Over 25%
- E. Over 40%

January 2018 Policy: Persons Who are Not Targets

- Will not subject to immigration enforcement persons who are not targets including
 - Witnesses
 - Family members
 - People accompanying others to to court
 - Victims

Civil Immigration Enforcement Action Defined

- Action by immigration enforcement action regarding an individual to:
 - Apprehend
 - Arrest
 - Interview
 - Stop
 - Search

January 2018 Policy:

Avoid Non-Criminal Proceedings

- Avoid enforcement in courthouses or areas within a courthouse that are dedicated to non-criminal proceedings
 - Applies to courts and cases
 - Family cases
 - Civil cases
- Requires Field Office Director/Special Agent in Charge Approval
 - Will involve screening for VAWA confidentiality protected victim's cases

Policy Directives: Immigration Enforcement at Courthouses

- Civil enforcement actions at courthouses will be planned
- Minimize impact on court proceedings
- Take place in non-public areas
- Be conducted in collaboration with court staff and security
- Use non-public entrances and exits
- Substantial efforts will be made to not alarm the public

VAWA confidentiality is likely violated when a DHS official comes to the courthouse in response to a “tip” from the perpetrator and arrests a victim who has come to court.....

- A. Seeking a protection order
- B. For a child custody case
- C. For an eviction case when the perpetrator stopped paying rent required in a protection order
- D. As a State’s witness in a criminal case
- E. All of the above

Steps Courts Are Taking

- Restrict activities that interfere with courtroom operations
- Enforcement restricted to non-public areas of the courthouse*
- Courts ask ICE to coordinate with court security staff and use of non-public entrances & exits*
- Some courts do not allow ICE into courtrooms
- No enforcement in civil and family proceedings absent written authorization from ICE Field Office Director or Special Agent in Charge*
- No interruptions during court proceedings or until case is completed
- No enforcement against victims, witnesses, family members, people accompanying others to court*
- Call courthouse security if ICE fails to comply with court orders

Advocacy and Representation Best Practices

Victim Witness DHS Memo 2011

Continuing Effect Confirmed 4/19

- Goal: “Minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice.”
- “Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”
- Crime victims and witnesses should receive “release from detention and deferral or a stay of removal.”

Victims for Which VAWA Confidentiality Will Offer Less Protection

- Victims with criminal histories
 - Including arrests
- Victims with outstanding deportation orders
- Victims eligible for VAWA, T or U who have not filed their immigration case

Small Group Discussion

Clara met Eduardo a naturalized U.S. citizen when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to the U.S. to live with him. When they arrived in the U.S. Eduardo took Clara, Miguel and Lupe's passports and became physically and sexually abusive of Clara and abusive of Miguel who tried to protect his mother from Eduardo's abuse. Eduardo also physically beat Lupe when he said she "misbehaved". Within a year following their arrival in the U.S. Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors call the police for help, Clara talked to police when they arrived. The police arrested Eduardo for attempted murder and child abuse. **He has been released on bail. Clara has been referred to your agency for help obtaining a protection order.**

With the knowledge you have about VAWA confidentiality

- What steps might you take to prepare for Clara's protection order case?
- If you encounter ICE at the courthouse looking for Clara, what would you do?

What to Take to Court When Accompanying an Immigrant DV/SA Victim

- A# or Letter from advocate/attorney stating that victim is in the process of filing a
 - VAWA, T or U visa case
- Police Reports
- Copy of the U/T certification
- VAWA confidentiality policies
 - ICE, DHS
- Evidence of abuse include copies of protection orders, photos, documentation of the perpetrator's criminal case

When Violations Happen

- **Advocate on the spot! Provide -**
 - Proof of victimization,
 - Written copy of the
 - VAWA confidentiality statute
 - DHS policy
 - DHS complaint system
 - DHS 384 system
- **Collect information about the violating officer**
 - Name
 - Agency
 - Badge Number



When Violations Happen

- **Work it up the chain to a supervisor**
- **File a formal complaint-**
 - Penalties of up to \$5000 per incident against the violating officer individually
 - Also disciplinary actions
- **Advocate to mitigate harm for victim**
- **Call NIWAP for technical assistance**

Advocacy Strategies Using VAWA Confidentiality

- Prepare for victims appearing in civil and criminal court cases
- Teach clients to
 - Memorize “A” numbers of their VAWA, T, and U visa cases
 - Tell DHS about victimization
- Build collaborative working relationships with police and prosecutors
 - Who can take the lead on communication with DHS about your client’s case

What types of working relationships do you or your agency have with law enforcement and prosecutors?

VAWA CONFIDENTIALITY AND STATE COURT DISCOVERY



Raise Your Hand if...

- The perpetrator in a family court case you have worked on tried
 - Raise the victims immigration status in the case
 - Obtain information about the victim's immigration case through discovery

VAWA Confidentiality Non-Disclosure Protections

- Prohibits disclosure of any information about
 - The existence of the case
 - Actions taken in the case
 - Information contained in the case file
- Disclosure prohibited to all persons, not just the perpetrator
 - Limits family and criminal court discovery
- Protections apply from the time of filing permanently unless
 - Case denied on the merits
 - All appeal options have been completed

VAWA Confidentiality Statutes and DHS Policies and Regulations

- Protect Information About Victim's Immigration Case
- Prohibit disclosure of any information about
 - The existence of a VAWA, T or U visa application
 - Decisions made in the case
 - Information contained in the #A file
 - Disclosure prohibited to all persons, not just the perpetrator
- What's discoverable?
 - U/T certification only and only in some criminal cases

Disclosure Exceptions

- Limited disclosure in narrow circumstances
 - Disclosure to law enforcement or national security officials
 - Solely for a legitimate law enforcement or national security purpose; and
 - In a manner that “protects the confidentiality of such information”

Hawke v. Dep't of Homeland Security

(N.D. CA, 2008) – VAWA Self-Petition Case

(Judicial review exception)

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

Federal VAWA Confidentiality Implementing Regulations

- 8 C.F.R. 214.14 (3)(2)
 - “Agencies receiving information under this section, whether governmental or non-governmental, are bound by the confidentiality provisions and other restrictions set out in 8 U.S.C. 1367”
- Chevron v NRDC (S. Ct. 1984)
 - Considerable weight and deference required of federal regulations

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

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

EEOC v Koch (5th Circuit)

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

State v. Marroquin-Aldana – Criminal Case

2014 ME 47, ¶ 20, 89 A.3d 519, 525

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

People v. Alvarez Alvarez- Criminal Case

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

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

Eduardo and Clara: Discoverable or Not?

Eduardo seeks discovery of:

- Information contained in the victims VAWA self-petition case file in any state court case
- Clara's immigration case file
 - Criminal case
 - Family court case
- The U visa certification in a
 - Criminal Case
 - Family case
- Information about the existence of Clara's VAWA self-petition or U visa case in a
 - Protection order or custody proceeding
 - Criminal prosecution

VAWA Confidentiality Resources

- Webinars
- Training materials
- Manual chapters guiding step-by-step victim advocacy
- Legislative History
- DHS implementing policies
- Brochures
- Technical assistance

Immigration Options for Immigrant Survivors and Their Children: Screening

What are all of the forms of immigration relief that immigrant survivors you have worked with qualified for?

Potential Immigration Remedies

- Applications filed with DHS
 - VAWA self petition
 - Battered spouse waivers
 - Work authorization for abused spouses of work visa holders
 - U-visa (crime victims)
 - T-visa (victims of trafficking)
 - Special Immigrant Juvenile Status
- Forms of relief from removal- granted by Immigration Judge
 - VAWA cancellation of removal
 - VAWA suspension of deportation

Battered Spouse Waivers

- For survivors with a 2 year conditional residency card
- Waives the joint filing requirement and two year wait for full lawful permanent residency
- Requires proof of
 - Good faith marriage to U.S. citizen or permanent resident *and*
 - Battered or subjected to extreme cruelty
 - To spouse, child, step-child

General VAWA Self-Petitioning Requirements

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

VAWA Self-Petitioning: Facts

- Must file case within 2 years of marriage termination
- Bigamy + unknowing immigrant “spouse”
- Child abuse up to age of 25 to file
- Step-children up until divorce
- Any credible evidence standard of proof (police report, protection order, medical records NOT required)

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 Battering or Extreme Cruelty

- “Being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence” 8 C.F.R. §204.2(c)(1)
- Based on what state family courts have consider to be extreme cruelty in divorce, alimony, support and custody cases

WHAT KINDS OF EVIDENCE COULD YOU
HELP A VICTIM COLLECT/DEVELOP TO
PROVE IN HER IMMIGRATION CASE –

EXTREME CRUELTY?

BATTERING?

Small group discussion

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

What could be evidence of a good faith marriage?

Good Faith Marriage

- Children
- Love Letters
- Photos from family vacations
- Evidence documenting that they lived together

WHICH OF THE FOLLOWING HELPS PROVE A SPOUSAL OR PARENT CHILD RELATIONSHIP?

- A. Child's birth certificate
- B. Child's health care, school, baptismal records
- C. Victim's affidavit
- D. Marriage License
- E. All of the above

Benefits of VAWA Protections

- **Deportation:** Protection from deportation shortly after filing.
- **Immigration Benefits for Children:**
 - VAWA self-petitioners' children receive immigration benefits – no separate petition needed
- **Public Benefits:** As qualified immigrants (\approx 3 months), may qualify for additional state funded benefits – See Public Benefits Map
- **Employment Authorization:**
 - Citizen abuser (\approx 6 months);
 - Lawful permanent resident abuser (currently \approx 18 months)
- **VAWA Confidentiality:** 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 (\approx 5+ years-depends on when a visa is available)

U Visa for Immigrant Victims

- A victim of qualifying criminal activity is eligible for a U Visa when:
 - The criminal activity occurred in the U.S. **or** violated U.S. law;
 - The victims possesses information about the crime;
 - The victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the offense; and
 - The victim has suffered substantial physical or mental abuse as a result of the victimization

Department of Homeland Security



- DHS Video 1

U Visa Regulations Definitions

Although terms are used interchangeably

- As a matter of law (U visa regulations)
 - Helpfulness in the “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - “Crime” always means
 - “criminal activity”
- “Criminal activity” chosen to offer early access to justice system protection
 - Improving stability for crime victims

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	

U Visa Statistics

11 / 2011

% of U Visas	Criminal Activity
76.1% = Domestic Violence, Sexual Assault, Child/Elder Abuse, Human Trafficking	
9.9%	Felonious Assault, Murder, Manslaughter
8.47%	Kidnapping, Being Held Hostage, Unlawful Criminal Restraint, Torture
5.3%	Blackmail, Extortion, Perjury, Obstruction of Justice, Attempts, Conspiracy, Solicitation

Certification Required From:

*DHS U and T Resource Guide states:
“law enforcement” & “law enforcement agencies” =*

- Federal, state, and local
 - Law enforcement
 - Prosecutors
 - Judges, Magistrates, Commissioners
 - Civil protection order
 - Divorce, Civil &
 - Criminal cases
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies



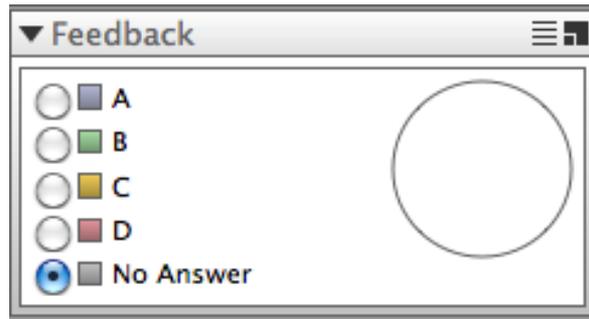
Supplement B, U Nonimmigrant Status Certification

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-918
OMB No. 1615-0104
Expires 02/28/2019

Why would victims seek U visa certification from state courts?

Using your clickers please check:



- A. Only justice system contact a custody, protection order, civil employment or child welfare case
- B. No language access to police when victim called for help
- C. Judge observed victim's attendance and participation in criminal case
- D. All of the above

Criminal Case Examples: Evidence of Helpfulness

- Evidence in case that the victim:
 - Called 911
 - Participated in a criminal investigation
 - Identified perpetrator at line up
 - Testified before a grand jury or at trial
 - Appearance in a case
 - Attended criminal court hearings in the case
 - Victim impact statement
 - Testimony at sentencing

Family/Civil Case Examples: Evidence of Helpfulness

- Filed and/ or appeared at hearing for full protection order
- Plead and or testified about abuse or sexual assault in a court case (e.g. protection order, divorce, custody, small claims, housing, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal or EEOC investigation
- Serving the perpetrator with notice of a
 - temporary protection order
 - A case in which the pleadings contain allegations of facts that constitute domestic violence, sexual assault or other U visa criminal activities

According to DHS, a U/T Visa Certification Tells USCIS Only 3 Things:

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing

Helpfulness Requirement Met *Even When:*

- Victim reports a crime and there's no further investigation or prosecution
- Perpetrator absconds or is deported
- Perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order or custody but domestic violence is not being criminally prosecuted

Not Required

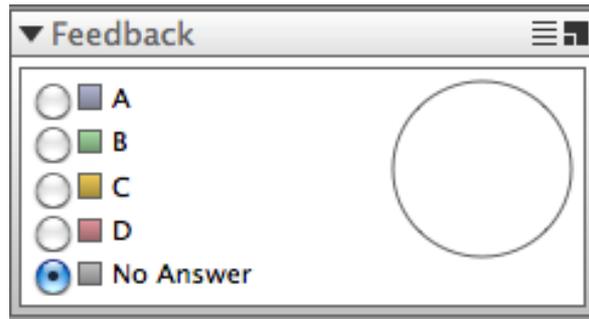
- Conviction
- Charges filed
- Offender arrested
- Testimony at trial
- Necessary witness
- Within statute of limitations
- Offender is identified
- Offender alive

Victim-
centered
approach

What evidence of helpfulness might you include on the U visa certification form?

Using your clickers please check:

- A. The fact that Clara sought and you issued a protection order
- B. Testimony Clara provided at a contested hearing
- C. You learned in the CPO case that Clara spoke to police at the crime scene and gave information for the police report
- D. All of the above



U Visa Facts and Benefits

- Only 10,000 U visas can be granted annually – Currently there is a waitlist of 110,000 visas
- Work authorization Via Deferred Action Status (4-6 years)
- The U visa grants a temporary 4 year stay
- Limited state benefits in a few states
- Lawful permanent residency 3 years after U visa if:
 - Continued cooperation or does not unreasonably refuse to cooperate; and
 - humanitarian need, family unity or public interest
- U.S. Citizenship after 5 years of lawful permanent residency+ proof of good moral character

U Visa Application Process

Filing to decision:

Decision to receipt of U Visa (48+ months):

Certification

Application &
supporting
documentation

Decision by
DHS

Large Group discussion

- How do VAWA self petitions and U visas differ in
 - Key application requirements?
 - How they benefit survivors?

Comparison: VAWA vs. U-visa

VAWA Self-Petition

- 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 for 1 year
- Green card after approval if abuser is a citizen, or 3+ years wait if abuser is LPR

U-visa

- 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

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 = 6 – 36 months**

(2019)



Raise Your Hand if...

- You have worked on a case where both the immigrant victim and her child were abused by the child's father?

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) OR
 - 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

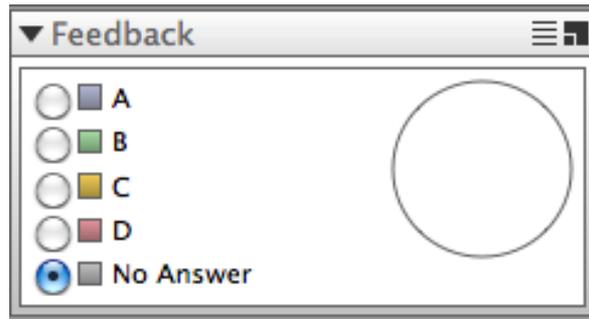
Home country not in child's best interests

- Identify each potential custodian in U.S. and home country
- Apply state best interests factors to each placement
- States in court order the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
 - Example of factors VAWA Extreme hardship

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

In the Clara and Eduardo Scenario in which of the following cases could the court NOT issue SIJS findings for Lupe as part of the court's order?
Using your clickers please check:



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

T Visa for Trafficking Victims

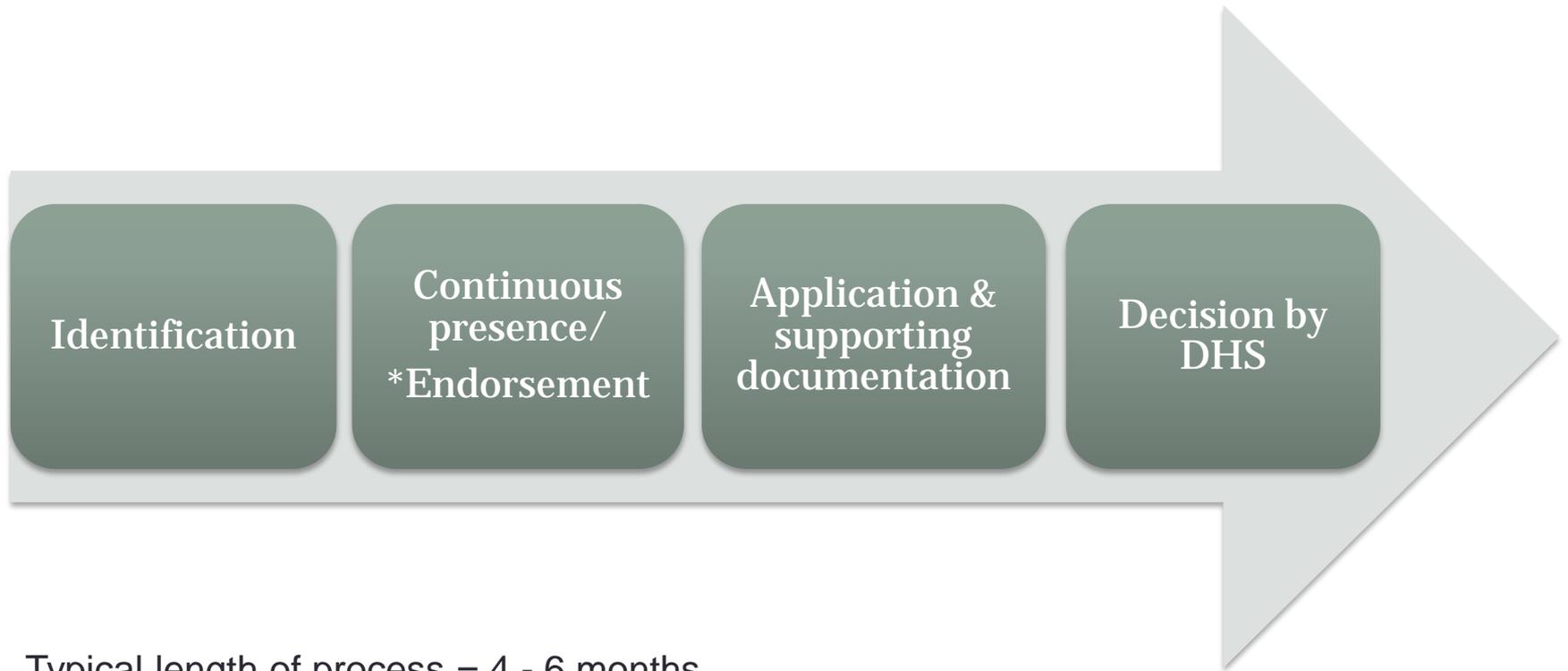
- A victim of a severe form of trafficking in persons
 - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.D. on account of trafficking
- Victim must comply with reasonable requests for helpfulness in investigating or prosecuting trafficking.
Exceptions
 - Under age 18
 - Physical or psychological trauma impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- **Timeline to formal protection = 3-12 months (2019)**

What are Severe Forms of 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/)

The T Visa Application Process



Typical length of process = 4 - 6 months

Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Act	Means	Purpose
<ul style="list-style-type: none">• Recruits• Entices• Harbors• Transports• Provides• Obtains• Advertises• Maintains• Patronizes• Solicits• Benefits, financially or by receiving anything of value	<ul style="list-style-type: none">• Force• Fraud• Coercion	<ul style="list-style-type: none">• Commercial Sexual Activity

Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Act	Means	Purpose
<ul style="list-style-type: none">• Recruits• Harbors• Transports• Provides• Obtains• Benefits, financially or by receiving anything of value	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• Involuntary servitude• Peonage• Debt Bondage• Slavery

Other Victim's Options

- How victim based remedies compare with
 - DACA
 - Asylum

Advocates' and Attorneys' Role in Helping Survivors of Domestic and Sexual Violence File VAWA and U Visa Immigration Cases

HOW CAN ADVOCATES HELP VICTIMS AND ATTORNEYS IN VAWA AND U VISA IMMIGRATION CASES?

- A. Help obtain certifications for U visa cases
- B. Help the victim write their declaration
- C. Help with evidence collection
- D. All of the above
- E. None of the above

Helping Survivors File VAWA and U Visa Cases

- Best Practices – Victim Advocate & Lawyer collaboration
- When lawyers with expertise working with immigrant Survivors are not available due to:
 - Long waiting list
 - Not available (Rural)
- Victim advocates can assist survivors with VAWA and U visa immigration cases
 - With tools and help from attorney or TA provider

What Advocates Can Do

- Screening and identifying survivors
- Helping survivors obtain identity documents
- Assist survivors with writing a declaration using the trauma informed tool
- 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

Helping Victims Prove

- Battering, sexual assault or extreme cruelty
 - VAWA/U
- Good faith marriage
 - VAWA
- Spouse or parent/child relationship
 - VAWA
 - U when children/spouse of victim also applying
- Their story of experiencing domestic or sexual violence for their affidavit

What Attorneys Can Do

- Review intake, facts of the case and issue spot
- Provide legal advice and determine the best immigration remedy based on the survivors needs and desires
- Review affidavit/declaration draft
- Identify any additional information needed
- Work with advocate to obtain additional information
- Finalize affidavit
- Fill the immigration forms
- Draft Cover Letter
- Draft Index
- Assemble and submit application package

Unlawful Practice of Law

- The unauthorized practice of immigration law occurs when those who are not attorneys or accredited representatives:
 - Provide legal assistance to applicants or petitioners in immigration matters
 - Charge more than a nominal fee
 - Hold themselves out to be qualified in legal matters
- *Notarios* are not attorneys in the US
- Who can represent immigrants in removal proceedings
<https://www.justice.gov/sites/default/files/eoir/legacy/2009/10/06/WhoCanRepresentAliensFactSheet10022009.pdf>
- 8 C.F.R. §292.1 defines who may represent immigrants before DHS

Trauma Informed Evidence Collection and Collaboration

Building Trust

- Take a trauma-informed approach that is sensitive to the victim's trauma history
- Non-judgmental attitude
- Remind survivors of confidentiality, not only within your relationship
- Explain VAWA Confidentiality protection for immigration applications
- Be mindful of non-verbal cues
- Cultural sensitivity

Process of Trauma-Informed VAWA, U Visa or T Visa Story Collection

1. Recognize the client as whole human being and as a survivor
2. Support client's self-regulation
3. Understand client's behavior through a trauma lens
4. Titrate client's exposure to traumatic memories
5. Recognize the impact of exposing the trauma and its effects
6. Use techniques for grounding and soothing
7. Validate completing the process as success
8. Referral for trauma services in collaboration, as needed

Interview Goals

- Develop emotional safety plan for generating the story
- Invite the initial telling/writing of the story of “*What happened to me?*” and “*How did it change me?*” and “*How did law enforcement help?*”
- Elaborate the story
 - Standard tools for eliciting additional information
 - Reading and re-reading the story
 - Validate and support the emotional response

Standardized Tools: Assessing “*What happened to me?*”

Multiple types of trauma exposure

- Structured Life Events Screening Questionnaire (SLESQ)

Domestic Violence

- Conflict Tactics Scale (CTS-2)
- Psychological Maltreatment of Women
- Coercive Control Scale (IPV Coercion Measure)
- Danger Assessment

Indigenous Trauma

- Additional traumatic effects based on oppression and discrimination

Standardized tools:

Assessing “*How did it change me?*” (Impact of battering or extreme cruelty)

- IPV (Intimate Partner Violence) Threat Appraisal and Fear Scale
- PTSD Checklist (PCL-C)
- Patient Health Questionnaire (PHQ-9; depression)

Writing Intervention

- Writing intervention
 - *Process* by which advocate helps the survivor writes her/his story –trauma history
 - *Why* writing (or story telling) interventions can help survivors heal from trauma

Immigration Story Writing Intervention

- **Affidavit = A Survivor's "Story"**
 - **Unique opportunity for trauma informed healing**
 - Most important pieces of evidence submitted
 - DHS hears directly from the survivor, in her voice
 - Less affidavit, than "story" of the survivor's experience
 - Getting the full story for the immigration case can be a traumatic experience for survivors
 - The goal is to develop an approach that:
 - Obtains more complete information
 - Improves outcomes and helps survivors heal

Trauma Informed Approach to Story Writing

Story Writing Intervention

- Process by which advocate/attorney supports and helps survivors write their own story
- By capturing trauma history through narrative, survivors are helped to heal from trauma
- What research tells us about importance of writing the trauma narrative

Story Writing Intervention Method

1. Invite the survivor to write/tell her story

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

2. Follow up with interview

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

3. Edit together

- Story + structured interview responses into affidavit

4. Survivor reads back the final story

Immigration Story Writing Intervention

Step 1

1. Invite the survivor to write/tell her story

- Develop safety and trust
- Support, Witness, Listen without judgment
- Allow space for silences
- Create space for the victim to tell her story
- Schedule time to listen more than talk
- Goal: story can be shared with another in a nonjudgmental, supportive context

Immigration Story Writing Intervention

Step 2

2. Structured Interview Questionnaire for Immigration (SIQI) with Survivor

- Obtain information about additional incidents, effects of incidents, detail of previously reported incidents in-depth details as needed
- Follow up questions from Step 1: Assume that not all of story will come out in first telling
- SIQI available at:
<http://niwaplibrary.wcl.american.edu/pubs/trauma-informed-siqi/>

Immigration Story Writing Intervention

Step 3

3. Edit to create affidavit

- Integrate open-ended story and
- Structured Interview Questionnaire for Immigration (SIQI)
- Meet with client to clarify timeline, details
- Be ready to address the victims' difficulty with exposure to the story

Immigration Story Writing Intervention

Step 4

4. Survivor reads back affidavit to you

- Coherent narrative
- The whole story
- How it affected the survivor

Types of Cases That Could be Strengthened By This Approach

- Immigration
 - VAWA
 - U Visa
 - SIJS
 - T Visa
- Family Law
 - Custody
 - Protection Order
 - Divorce
 - Economic Relief
- Civil Cases
 - Workplace based sexual assault/harassment

Goal of Tools for Conducting Trauma Informed VAWA, U Visa or T Visa Applications

- To develop a coherent narrative of client's
 - abusive relationship or
 - crime victimization experiences;
- Include lifetime trauma exposure
 - How trauma history impacts the survivor's reaction to the victimization that led to immigration application
- The crime victimization trauma
 - forms the basis of her U Visa Certification or T Visa Declaration.

Sharing Ideas & Discussion

- What opportunities do structured interviews following story writing create for survivor's healing and strengthening her immigration case?
- Family Lawyers how might this approach help in your family law cases?

A Note About Interpreter & Translators

- Plan ahead for interpretation needs
- Survivor writing in her own language
- Train your interpreters and translators
 - Domestic violence and sexual assault training
 - Interpreter training
 - Trauma training
- Be Creative

Preparing for Story Collection

- Do your homework
 - Read police reports, protection order, pleadings in custody cases
 - Review medical records
 - Locate other available evidence
- Carefully describe to the client what the story collection session will entail
 - Make sure both you and the client have set aside the adequate time

Helping Survivors in Crisis

- Techniques you can use to help survivors:
 - Self-regulation techniques you can use
 - Breathing techniques
 - Other techniques
 - Additional resources on crisis care:
www.niwap.org/go/trauma-materials

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

Tools to Help You

- Trauma informed interview tool
- Evidence checklists
- Manual chapters on VAWA and U visa
- Webinars and online learning
 - On VAWA and U visas
 - Video on helping survivors who go into crisis reliving trauma while writing their story for their immigration case
- NIWAP's TA (202) 274-4457 or info@niwap.org

Providing and Advocating for Language Access

Title VI of the Civil Rights Act 1964

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving *Federal financial assistance*.

Civil Rights Act of 1964, Title VI, 42 U.S.C. § 2000d

What is Meaningful Access?

- Meaningful access is defined in the US Department of Justice's own Language Access plan 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”

Title VI of the Civil Rights Act 1964

Meaning:

- If an organization receives any federal funds
- All aspects of the organization must take reasonable steps to provide meaningful access to programs, benefits, and services offered by the organization to persons with limited English proficiency (LEP)

Americans with Disabilities Act and Section 504 of the Rehabilitation Act

- Regardless of funding source the ADA requires
 - Entities (state/local governments, businesses, and non profits organizations) that serve the public are required to provide ASL interpreters, and other auxiliary aids, to ensure effective communication with deaf and hard of hearing individuals.
 - 28 C.F.R. S28 C.F.R. S35.160 (b)(2)
- Must ensure that communication with people who are Deaf or hard of hearing is equally effective as communication with people without disabilities

Who's covered?

1. Federally conducted programs
2. State/local government grantees
3. Non-governmental organization grantees



Any Federal Funding

- What agencies could be sources of federal funding for your work and work of other agencies that victims need help from in your community?

Any Federal Funding – Includes Funds From:

- Office for Victims of Crime (OVC)
- Office on Violence Against Women (VAWA)
- Family Violence Prevention and Services Act (FVPSA)
- Health and Human Services funded programs (HHS)
- Office of Juvenile Justice and Delinquency Prevention (OJJDP)
- Bureau of Justice Assistance (BJA)
- Bureau of Justice Statistics (BJS)
- Community Capacity Development Office (CCDO)
- National Institute of Justice (NIJ)
- Other examples agencies in your community have?

Policy Guidance Four Factors

67 Fed. Ref. 41455

Could one of these factors outweigh the others when you are working with immigrant crime victims?

1. Number or proportion of LEP individuals served or encountered in the eligible service population
2. Frequency of contacts
3. The nature and importance of the program, activity or services
4. Resources available → However, there is Dept. of Justice guidance that lack of resources is no excuse for failure to comply.

We Can't Afford Language Access

Financial limitations do not provide an exemption from language access requirements. Investigators will look at:

1. Demonstrated previous success
2. Whether other essential services are being restricted or defunded
3. Whether additional revenues secured or technology used
4. Whether the grantee has an implementation plan
5. Nature and impact on LEP persons

Key Role of Advocacy for Immigrant and LEP Survivors

- Research has found that with support from advocates and attorneys who
 - Provide/help secure language access
 - Are knowledgeable about legal rights of immigrant survivors
- Immigrant and LEP survivors will
 - Access services, protection orders, immigration relief and justice system help

Signs An Agency Needs a Language Access Policy and Plan

- Relying on relatives, children, or friends to interpret for clients
- Only bilingual staff are used as interpreters, in addition to the other staff job responsibilities
- No formal arrangements are in place to hire competent interpreters
- Staff does know how to contract for interpretation services
- Staff are turning away LEP individuals
- No translated materials

Language Access to Law Enforcement Assistance

Best practices to successfully investigate
and prosecute cases involving non-
English speaking victims

DOJ Model Guidance

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

DOJ Sample Policy Center City Police Department

DOJ and Exigent Circumstances

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

DOJ Requirements for Investigations & Interrogations

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

The Difference Between --

- Securing the Scene
- Interviewing victims and witnesses



On Scene Considerations

- Separating parties
- Use of two interpreters
- Is the abuser threatening in a different language or making intimidating gestures?
- Headset and background noise
- Consider cultural differences (ex. matriarchal vs. patriarchal)
- Be aware of the perception of an implicit bias

Language Access At the Court House For Limited English Proficient Survivors



DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010) - Interpreters

- LEP individuals are to be provided qualified interpreters
 - For all parties, defendants and witnesses and all persons whose presence is necessary or appropriate (e.g., parents of minor crime victims)
 - In ALL court room proceedings whether civil, criminal, administrative, includes motions and status hearings
 - LEP individuals should not incur any fees for these services

DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010) - Interpreters

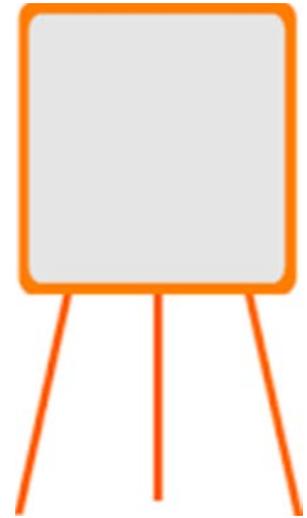
- LEP individuals are to be provided qualified interpreters
 - Not restricted to court rooms, also other court functions including:
 - Clerks offices, records room
 - Alternative dispute resolution
 - *Pro se* clinics
 - All interactions with court appointed personnel (e.g. batterers treatment, guardians ad litem, court psychologists, testing)

Nebraska Maria Luis Case

Maria Luis is an undocumented Quiche-speaking Guatemalan who had 2 children with her in the U.S. the youngest (Angelica) was born in the U.S. with respiratory problems. Maria Luis took Angelica to the emergency room for treatment and she was given a Spanish (not Quiche) interpreter. She thought she was told to bring the child back for a follow up visit if Angelica did not get better. The hospital said that she was told to bring the child back for a follow up appointment. Angelica got better, so Maria Luis did not return for the follow up visit. The hospital reported her to CPS. CPS arrived with police, took her 2 children who were placed in foster care. Maria Luis was detained and turned over to DHS for deportation. While she in DHS custody, Nebraska sought termination of parental rights. The notice that arrived in detention was not in her native language and DHS did not take her to the dependency court proceeding. Maria Luis was deported to Guatemala and Nebraska called her to explain her parenting plan explained to her in Spanish over the phone. She found a priest in Guatemala who helped her try to comply with the plan from Guatemala. Her parental rights to both her children were terminated her children remained in foster care.

Maria Luis Case

- Let's read over the fact pattern
- In your small groups–
 - List all the points at which language access should have been provided to Maria
 - List what you could do for Maria



Large Group Discussion



How would you advocate
for Maria...

- At the hospital?
- The role CPS played?
- With regard to Maria's consulate?
- With the police?
- When Maria was detained?

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

A Family Reunited



DOJ Vital Documents Translation Requirements

- Translation Requirements for Documents
 - All languages spoken by the lesser of 5% of population or 1000 individuals
 - When fewer than 50 persons = 5% written notice in that language of right to receive oral interpretation
- What are examples of vital documents?

Large Group Discussion

- What steps have you taken to secure language access for your LEP client from other agencies in your communities?

Case Planning with LEP, Deaf and Hard of Hearing Victims

- Provide language access to your agency's services
- Make language access to other agencies services a central part of your case planning
- Benefits
 - Build relationships that foster language access and better assistance to immigrant and LEP survivors

Language Resources

- Language line
- Video remote interpretation
- Video relay interpretation
- Department interpreters line developed in response to large local refugee population
- Immigrant community based organization partners
- Health care providers
- School systems
- Court systems



Advocacy and Legal Options for Survivors of Sexual Assault, Dating Violence and Stalking on Campus

Objectives

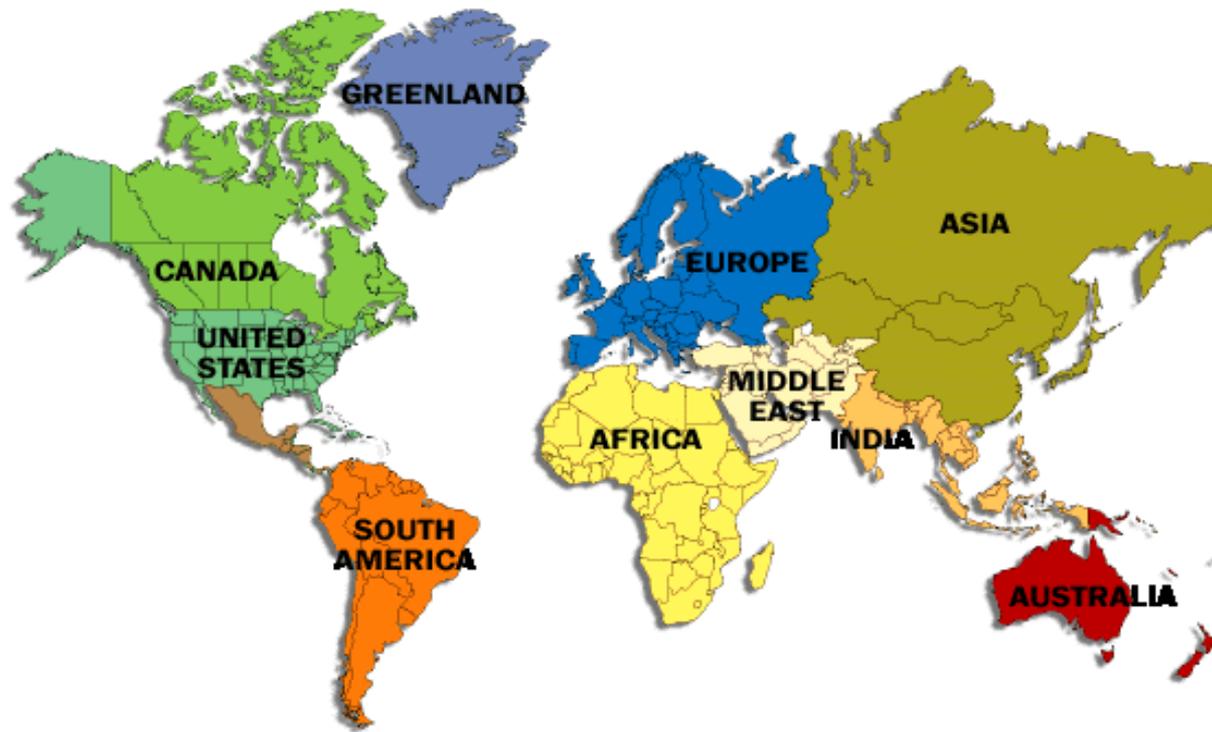
By the end of this plenary you will be able to:

- List 5 interim measures helpful to foreign born student victims
- Identify at least 4 actions you can take to encourage post-secondary schools to provide legal rights information to foreign born students
- Explain when campus police may provide U visa certification

Foreign Born Students' Presence in the U.S.

- Student visa holders (F, M, J)
- DACA students
- Undocumented students
- VAWA, T and U visa students
- Students on other visas
 - Children of workers and diplomats
- Lawful permanent residents & citizens

What Regions of the World Send the Most Foreign Student Visa Holders?



Top Countries of Student Visa Holders

- China – 331,371
- India – 146,336
- South Korea – 87,384
- Saudi Arabia – 80,941
- Canada ≈ 35,000
- Japan – 26,187
- Vietnam -25,982
- Taiwan – 23,503
- Mexico ≈ 22,000
- Brazil ≈ 20,000

- Department of Homeland Security,
Student and Exchange Visitor Program
(March 35, 2015) available at
<https://www.ice.gov/sites/default/files/documents/Document/2015/by-the-numbers.pdf>

Foreign Born Students in U.S. Schools

- F-1 and M-1 student visa holders (1.13 million)
 - 8,979 different schools
 - 45% female
- J-1 exchange visitors (200,799)
 - 1,444 different schools
 - Department of Homeland Security, Student and Exchange Visitor Program (March 35, 2015) available at <https://www.ice.gov/sites/default/files/documents/Document/2015/by-the-numbers.pdf>
- 61% of undocumented students who arrive in the U.S. under the age of 14 go to college
 - Passel, Jeffrey, and D'vera Cohn. "A Portrait of Unauthorized Immigrants in the United States." *Pew Hispanic Research Center*. N.p., 14 Apr. 2009. Web. 27 Jan. 2013

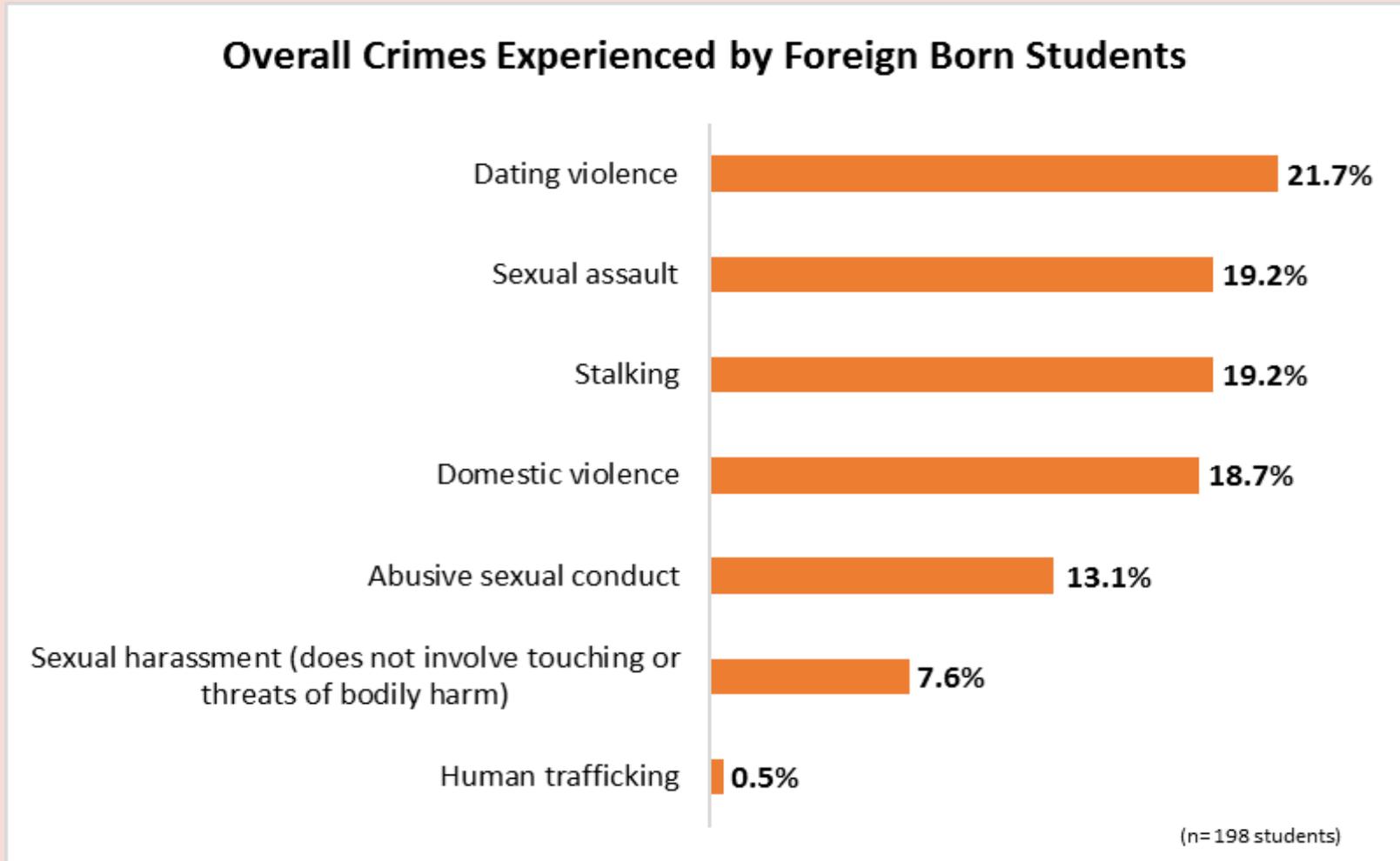
F, M, and J Visas

- F-1: *Full-time* students in academic programs
 - Primary, high school, college, and university
- M-1: *Full-time* students in vocational and language programs
 - Up to time listed on I-20 visa
 - Not to exceed 1 year + 30 days to leave the country
- J-1: Exchange visitors, including scholars, participating *full-time* in an approved exchange program
 - High school, university, college
 - Approved for specific levels of education and subjects
 - Usually only last for a semester up to a year
- Full time = generally 12 credit hours

Foreign Born Student Survivors: NIWAP's Spring 2016 Survey

- Eleven agencies from six states:
 - 73% = victim advocacy organizations
 - 27% = universities and colleges
- Programs served a total of 12,039 foreign born students including:
 - 198 victims of sexual assault, dating violence, stalking, domestic violence and sexual harassment
 - On campus - 84.3%
 - Off campus - 15.7%
 - Davis, Amanda and Leslye Orloff. “National Findings on University and College Responses to Foreign-born Student Victims” (October 27, 2016).

Types of Crime Victimization Experienced By Foreign Born Students Programs Reported Working With



- **Resource:** Davis, Amanda and Leslye Orloff. “National Findings on University and College Responses to Foreign-born Student Victims” (October 27, 2016).

Foreign Born Student Survivors Reporting to Law Enforcement

- 48.4% of those who did report, reported to campus or local police
- Of the crimes reported when the crime was committed:
 - Off campus the reporting rate was 57.1%
 - On campus the reporting rate was 47.9%
 - **Resource:** Davis, Amanda and Leslye Orloff. “National Findings on University and College Responses to Foreign-born Student Victims” (October 27, 2016).

To Whom Do Foreign Born Students Report?

- Most
 - Campus police - 54.8%
 - Other students – 36.6%
 - Campus staff – 36.6%
- Least – 9.3% each of the following:
 - Student organizations
 - Campus healthcare
 - Campus faith-based organizations/community
 - **Resource:** Davis, Amanda and Leslye Orloff. “National Findings on University and College Responses to Foreign-born Student Victims” (October 27, 2016).

Deterrents to Reporting

- 72.5% - Fear of perpetrator retaliation
- 52.5% - Fear they won't be believed
- 45% - Fear of being ostracized by students
- 42.5% - Fear of deportation
- 42.5% - Fear they would be blamed
- 40% - Fear they will be ostracized by cultural community

Deterrents to Reporting

- 37.5% - Did not know their legal rights
- 37.5% - Fear of how school officials will treat them
- 25% - Did not know what happened was a crime
- 20% - Believed they could not continue in school if they reported the crime

What protections does Title IX offer student victims of domestic violence, dating violence, sexual assault or stalking?

- All students Pre-K to post-secondary
- Applies to academic, educational, extracurricular, athletic and other school programs
- If offender is a fellow student applies off school ground or outside of the educational program or activity
- Requires interim measures

Small Group Discussion and Report Back

- What interim measures do student survivors need?
- What additional interim measures would immigrant survivors need?

NIWAP's Findings: Foreign Born Student Interim Measures

- 66.7% counseling & help getting first appointment
- 44.4% on-campus medical/mental health services
- 55.6% off-campus medical/mental health services
- 33.3% changes in housing, dining, on campus employment, and safety escorts

Interim Measures for Foreign Born Students

- Victimization creates
 - U visa eligibility
 - Eligibility for victim/witness protection
 - Includes sexual harassment cases
- Screen all foreign students for immigration relief eligibility for:
 - U visa, VAWA self-petition, T visa (student or parent)
 - DACA (student under 31)
 - SIJS (student under 18 and in some states 21)

Interim Measures for Foreign Born Students

- Schools should be required to:
 - Inform student victims about immigration protections including the U visa
 - Refer victims to programs with expertise serving immigrant victims
 - Provide U visa certification from campus police
 - Provide on campus health care for victims
 - Work with SANE/SART experts in the community to secure forensic exams
 - Provide interpreters to foreign born students reporting and seeking help following abuse

U Visa Certification by:

- Campus law enforcement
- Campus security officials with investigative authority



Poll of Participants on

- U visa certification by campus police

NIWAP's Survey Found

- Few schools provide any legal rights information about victim based immigration options including the U visa
- Campus police have received little training on and seldom sign U visa certifications

F Visa and Interim Measures

- Full time students in academic programs
- USCIS may authorize exceptions to full-time schedule requirement for:
 - Academic reasons
 - Medical conditions, including:
 - “physical or mental abnormality, disease, or disability serious in a degree or permanent in nature amounting to a substantial departure from normal well-being”
- May not be for more than an aggregate of 12 months
 - This is a total of 12 months for student’s full F-1 history
 - Includes time off taken in high schools or prior universities

M Visa and Interim Measures

- Vocational and language study
- USCIS may authorize exceptions
 - To full course of study requirement; and
 - May extend the M-1 visa beyond the date listed on the student's visa (I-20 form)
 - Reduction in course load and time off together cannot last longer than an aggregate of 5 months
- Exceptions granted only for:
 - A compelling medical reason

J Visa and Interim Measures

- Exchange visitors with foreign residency requirement
- Visa granted by the Department of State
- USCIS responsible for approving visa exceptions to full-time schedule requirement for:
 - Bona fide academic reasons
 - Medical conditions including:
 - “physical or mental abnormality, disease, or disability serious in a degree or permanent in nature amounting to a substantial departure from normal well-being”
- Reduced course load and leave of absence must not interfere with student’s ability to complete their study/training within 24 months of receiving the J-1 visa

NIWAP's Findings: Foreign Born Student Interim Measures

- 44.4% received incompletes, leaves of absences or permission to drop out of school
- Academic accommodations
 - 55.6% change/reschedule exams; more time to complete assignments, final projects
 - 44.4% change classes, transfer sections
 - 33.3% tutoring

What Advocates & Students Need to Know

- Changes in course load and leaves of absence can lead to loss of student visa
- Limited exceptions to student visa requirements available
- Filing U visa early after victimization can provide path to lawful permanent residency and more options for students
 - Visa holders, DACA and undocumented students

Access to Publicly Funded Assistance, Legal Services, and Public Benefits by Immigrant Domestic and Sexual Violence Survivors

By the End of This Session You Will Be Able to:

- Help immigrant victims access assistance open to all persons without regard to immigration status
- Understand the connection between the form of immigration relief a victim pursues and the public benefits access a victim receives
- Know how to look up which victims qualify for which public benefits in Missouri

Immigrants and Benefits: True or False

1. Federally funded health care is available for undocumented immigrant victims
2. DHS requires universities to ask about immigration status of applicant or enrolling students
3. Undocumented victims and children can access transitional housing programs

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

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



Federal Benefits Available to ALL Immigrants



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

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

Undocumented Immigrant Survivors Have a Legal Right to Access Shelter and Transitional Housing



Benefits Available to all Immigrants Include:

- Shelter and transitional housing, victim services, counseling, and intervention for:
 - Victims of:
 - Domestic violence
 - Sexual assault
 - Stalking
 - Dating violence
 - Human trafficking
 - Child abuse
 - Other abuse
 - Homeless
 - Runaway or homeless youth
 - Abandoned children

HUD, DOJ and HHS Confirmed in August 2016

- Housing providers must not turn away immigrants based on their immigration status from:
 - Emergency shelter
 - Transitional housing
 - Rapid re-housing

Applies to Government Funded Housing

- Violence Against Women Act
- Family Violence Prevention and Services Act
- Victims of Crime Act
- Housing and Urban Development funded
 - Emergency Solutions
 - Continuum of Care Programs

HUD Office Of Special Needs Assistance Programs

- Emergency Solutions Grant (ESG) and Continuum of Care (CoC) funded programs are open to all with no immigrant restrictions
 - Street Outreach Services
 - Emergency Shelter
 - Rapid Re-Housing
 - HOME Program
 - Safe Haven
 - Housing Trust Fund
 - Rural Housing Stability Program
 - Mortgage Insurance for Rental and Cooperative Housing Section 221(d)(3) and (d)(5)

Anti-Discrimination Protections

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

Raise your hand if --

- You have worked with an immigrant survivor turned away from transitional housing?
 - What criteria were immigrant victims being asked to provide to be accepted into the transitional housing programs that turned them away?

Common Criteria

- Residence in the city/county
- Homelessness/at risk of homelessness
- Employment/self-sufficiency criteria
- Cannot be an active substance abuser
- No sex offender criminal record

Advocacy Preparation: Small Group Activity

- How would you help immigrant victims show:
 - Group 1: Residence in the city/county
 - Group 2: Domestic violence, sexual assault, stalking, or victimization
 - Group 3: Evidence of employment
 - Group 4: Evidence of self-sufficiency

Report Back



Evidence of Victimization or Homelessness: Examples

- Victim's statement
- Police reports
- Medical or court records
- U-Visa/VAWA application
- Photographs, recordings of abuse
- Protection order
- Evidence of poor rental history/evictions

Evidence of Self-Sufficiency

- Evidence of employment
 - Documentation of income from employment
 - Tax ID number
 - Employer's statement court form
 - Letter from employer with photo attached
- Evidence of other income
 - Child support, benefits citizen/lawful permanent resident children receive
- Evidence that taking steps toward employment
 - Filed VAWA self-petition, U visa, taking ESL classes

With Good Victim Advocacy --

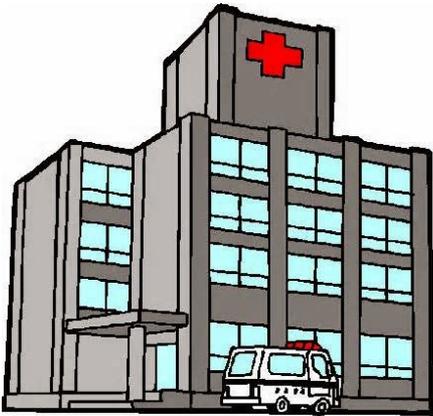
- Many/Most immigrant survivors can prove
 - They are on a path to self-sufficiency
 - They have resided in the jurisdiction
 - They are at risk of homelessness
 - Lack of active substance abuse
 - Lack of criminal history

Access to Health Care

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

Emergency Medicaid

- Available only in cases where the person needs treatment for medical conditions with acute symptoms that could:
 - place the patient's health in serious jeopardy;
 - result in serious impairment of bodily functions;
or
 - cause dysfunction of any bodily organ or part



Health Care Open to All Immigrants

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



How to find free health clinics in your area



Step 1: In IE, go to www.hrsa.gov

Step 2: Select “Get Health Care”

Step 3: Select “Find a Health Center”

Step 4: Search by location

OR

Step 3: Select “Find out more about Hill-Burton...”

Step 4: Select “Hill-Burton Obligated Facilities”



Federally Qualified Health Centers

- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Child wellness services
- Emergency medical and dental services
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family planning services
- Preventative dental services
- Pharmaceutical services
- Mental health treatment
- Substance abuse services

Resources:

Healthcare for Immigrant Victims

- State by state charts
 - VOCA funded post assault health care
 - Emergency Medicare
 - Forensic Exams
 - Prenatal Care

Short Term, Non-Cash, In-Kind Emergency Disaster Assistance

- No immigrant restrictions
 - Search and rescue
 - Emergency medical care, mass care and shelter
 - Clearance of roads, temporary bridges
 - Public health/safety and further risk information
 - Essential needs: food, water, medicine
 - Reductions of immediate threats to life, safety, property, public health

ACCESS TO BENEFITS AND SERVICES GROWS AS CHILDREN AND VICTIMS PURSUE IMMIGRATION RELIEF



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

Federal Benefits Immigrant Restrictions

- Only programs that as a matter of law have immigrant restrictions are those categorized as:
 - “federal public benefits” or
 - “federal means-tested public benefits”

Only considered a Federal Public Benefit if:

- Payment made or assistance provided directly to:
 - An individual
 - A household
 - A family eligibility unit

Examples of “Federal Public Benefits”

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

Who are “Qualified Immigrants”?

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

Immigration Relief Expands Benefits Access

VAWA self-petition (3 months)

- Qualified Immigrant
 - Self-petitioner and children

Battered spouse waiver

- Qualified Immigrant

Continued Presence (6 months)

- Benefits access like refugees
- Need HHS certification

T visa (6 months)

- Benefits access like refugees with HHS certification
- Qualified Immigrant with bona fide determination

U visa

- Health care exchanges as lawfully present upon wait-list approval
 - (4-6 years)
- Qualified immigrant at lawful permanent residency (17 years)

Special Immigrant Juvenile

- Health care based on lawful presence upon filing
- Qualified Immigrant upon approval + receipt of lawful permanent residency (1-3 yrs)

Deferred Action for Childhood Arrival (DACA)

- No access to health care exchanges or subsidies

How do *immigrant survivors* prove that they are “qualified immigrants”?

- Family-based immigration cases
 - Prima facie determination in VAWA self-petition or cancellation
 - Approved VAWA self-petition or VAWA suspension/cancellation
 - Approved visa petition filed by an abusive spouse or parent
- Trafficking victims
 - Bona fide determination in a T visa case
 - Approved T visa
 - Continued Presence
- Special Immigrant Juvenile Status
 - Upon receipt of lawful permanent residency status through SIJS

Additional requirements for a battered immigrant spouse or child to be a “qualified immigrant”:

- The child’s immigrant parent must not have actively participated in the battery or cruelty
- There must be a “substantial connection” between the battery or extreme cruelty and the need for the public benefit sought
- The battered immigrant or child no longer resides in the same household as the abuser.

“Substantial Connection” Exists When

- Access to benefits helps ensure the safety of the survivors, their children or a parent
- A survivor had to leave her job for safety reasons
- The survivor loses a dwelling or a source of income following separation
- The survivor needs medical attention or mental health counseling or has become disabled
- The survivor’s fear of the abuser jeopardizes the survivor’s ability to take care of her children

“Substantial Connection” Exists When Public Benefits Are Needed...

- To alleviate nutritional risk or need resulting from the abuse or following separation
- When the survivor has lost her job or earns less because
 - of the battery or cruelty or
 - because of involvement in legal proceedings
- To provide medical care during a pregnancy resulting from the relationship with the abuser
- To replace medical coverage or health care services lost following separation.

Survivors of Human Trafficking

- To be eligible for benefits, survivors of trafficking:
 - Must receive certification from the Office of Refugee Resettlement (ORR) that they are eligible for benefits as victims of trafficking; *Or*
 - Have received bona fide determinations in their T visa case making them qualified immigrants
- Benefits agencies must accept ORR certification letter in place of typical Immigration documentation
- Also eligible for refugee programs

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

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

Battered Immigrant Access to Public and Assisted Housing

Which of the following is **NOT** is Eligible for Public and Assisted Housing?

- Legal permanent residents
- Bona fide T visas
- U visa applicants/recipients
- VAWA self-petitioners
- Asylum recipients

HUD List of VAWA Self-Petitioners

- Victims with VAWA self-petition I-360 filed
 - Children included in VAWA self-petition
- VAWA cancellation of removal and VAWA suspension of deportation applicants
 - Victims' children are not included in these applications
 - Will only appear in SAVE system if have work authorization
- Victims with approved I-130 visa petitions filed by their abusive spouse or parent
 - Children included in I-130 visa application filed for victim

How Housing Providers Are to Complete DHS -SAVE System Online

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

Post secondary educational grants and loans

- Battered immigrant self-petitioners and their children are qualified immigrants eligible to receive DOE funded grants and loans
- Universities are to accept DHS/Immigration Judge
 - Documentation of VAWA self-petition/cancellation status
- On FAFSA check “eligible noncitizen” and provide “A” number
- Explains no-match with DOE/DHS computer system and
 - DOES NOT require verification
- DHS documents must be current at each time of re-application
- Students remain eligible after age of majority unless
 - VAWA case is denied

LIHEAP and DOE Weatherization

- LIHEAP – Heating, Cooling & Crisis Assistance and Single Family LIHEAP DOE Weatherization
 - VAWA self-petitioners
 - T Visa bona fide
 - Continued Presence
 - SJIS upon receipt of lawful permanent residence
- LIHEAP & DOE Weatherization Assistance
 - Multi-Unit Dwellings – no immigration restrictions

Disaster Relief and Immigrants

- FEMA Individual Family Grant Program and Disaster Unemployment Assistance – 1 family member is a --
 - Citizen, or
 - Qualified immigrant
 - Prima facie/approved VAWAs
 - T bona fide
 - Continued presence
 - Lawful permanent residents
 - Refugees/asylees
- Emergency Food Stamps
 - Continued presence and T bona fide
 - Otherwise very limited

The Five Year Bar

- Due to 1996 welfare reform, qualified immigrants, including battered immigrant women, that enter the United States after August 22, 1996 are ineligible for “federal means-tested public benefits” for the first five years of holding qualified status.
- Certain immigrants are not subject to the five year bar including:
 - Refugees,
 - Asylees
 - Amerasian immigrants
 - Cuban/Haitian entrants,
 - Immigrants granted withholding of deportation
 - Victims of severe forms of human trafficking

Federal Means-Tested Public Programs

Have Most Limited Immigrant Access:

- **TANF**
 - 5 yr. bar if entered the U.S. after August 22, 1996
- **SSI**
 - Lawful permanent residents only if 40 quarters or work credit + “qualified immigrant” status and 5 year bar if entered the U.S. after August 22, 1996
 - Refugee
 - Trafficking victim
 - Veteran and “qualified immigrant” spouses, children
- **Food Stamps**
 - “Qualified Immigrants” 5 year bar post August 22, 1996 and children
- **Medicaid and Child Health Insurance Program**
 - Health Care reform opened up access to immigrants who are “lawfully present”

Child Care: Immigrant Restrictions Depend on Funding source CCDF vs. TANF

Child Care Development Fund

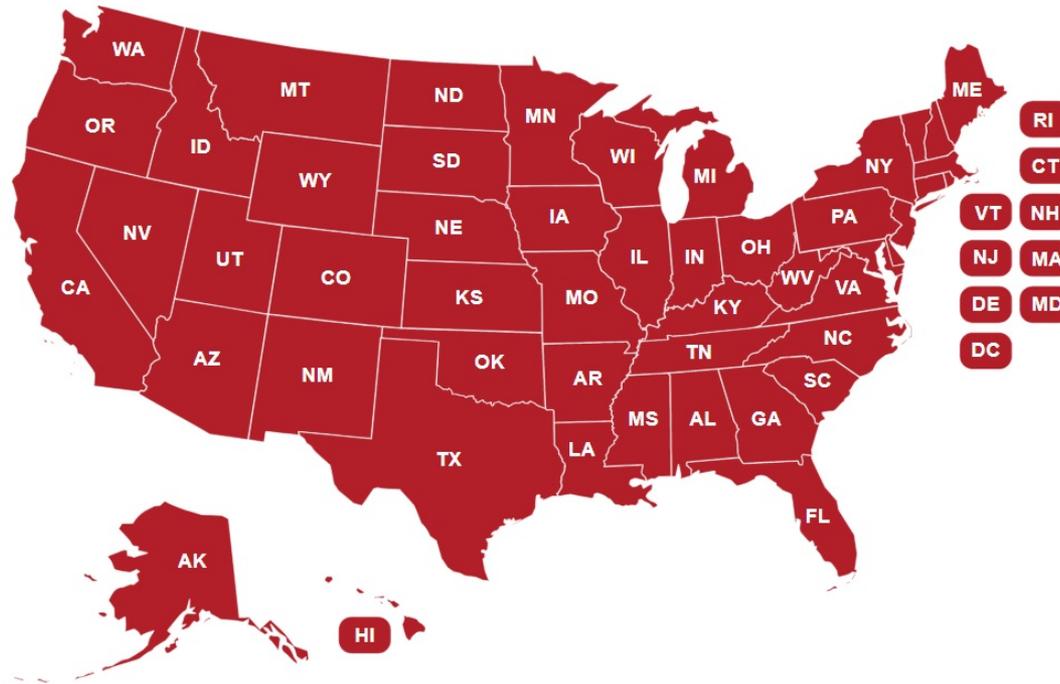
- Only the citizenship/immigration status of the child considered (child is the primary beneficiary of the child care benefit)
- Open to “qualified immigrants” and victims of trafficking and their children
- CCDF child care open to all without immigration restrictions if
 - Subject to public educational or Head Start standards, or
 - Eligibility determined by a non-profit organization
- State agencies *cannot require* an SSN from persons seeking CCDF-funded child care and cannot deny the benefit to families that do not provide an SSN (even if TANF funds included in CCDF)

Small Group Discussion: Clara, Eduardo and Lupe

- What benefits in Missouri could each qualify for?
 - Assuming Lupe and Clara can self-petition
 - If Miguel qualifies for SIJS
 - If they receive waitlist approval in their U visa case
 - If Clara and Eduardo file T visas

Demographics

🏠 > Demographics



Access to Public Benefits in Missouri

- TANF & TANF funded childcare
 - T visas, VAWA self-petitioners (& their children)
 - SIJS children, U visas 5 years after lawful permanent residency
- Food Stamps
 - T visas (& their children)
 - Under 18 children of VAWA self-petitioners
- Health Insurance Exchange
 - T visas (& their children) - subsidies
 - VAWA self-petitioner (& children) - no subsidies
 - SIJS applicant children – no subsidies

Access to Public Benefits in Missouri

- Educational Grants/Loans (FAFSA)
 - T visas, VAWA self-petitioners (& their children)
 - SIJS children, U visas after lawful permanent residency
- SSI
 - T visas (& their children)
- Public and Assisted Housing & Vouchers
 - T visas (& their children)
 - VAWA self-petitioner (& children)

PROTECTION ORDERS



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

- 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

How Immigrant Victims End Up As Respondents In Protection Order Proceedings

Police arrive at domestic violence incident, perpetrator speaks English

- Perpetrator speaks to and/or interprets for the police
- Outcome A
 - Police see victim's injuries but take no action and advise the parties about protection order
 - Perpetrator files for a protection order against the victim
 - Victim is served and then also seeks a protection order
- Outcome B
 - Perpetrator convinces the police to arrest the non-English speaking victim

Effect of Protection Order Issued Against Immigrant Victims

- 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
- This poses serious safety concerns for immigrant victims

Issuance of a Protection Order Against an Immigrant Victim

- Can prevent the victim from establishing good moral character that is a requirement for immigration relief -
Examples:
 - VAWA self-petition
 - VAWA cancellation of removal
 - Naturalization

Beneficial Findings to Include When Issuing Protection Orders

- In contested cases
 - Findings of physical, sexual and emotional abuse of immigrant, her child or step-child
- In all cases showing an:
 - Existence of parent/child or spousal relationship by checking this box on standard court orders
- Include creative remedies

Creative Protection Order Remedies

Victims Who Stay: No Unlawful Contact Protection Orders

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

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

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

Catch All Protection Order Provisions

- Courts can order 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 to counter immigration related abuse and order culturally helpful remedies

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
- Health insurance

Using Catch-all Provisions to Stop Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare, etc.) concerning the petitioner except
 - Police emergency
 - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities (e.g. work visa holders, I-130s)

Relay Race – Creative Protection Orders



Creative Protection Order Relay Race

- Work as a team to develop a list of creative protection order remedies that would be particularly helpful to immigrant victims
- Pick a representative for your team
- Teams will go one by one proposing remedies
- Teams lose when they
 - Run out of creative remedies
 - Duplicate a remedy proposed by another team
 - Propose a traditional remedy and cannot explain to the judge why it is particularly helpful for immigrant victims

Using Catch-all Provisions to Stop Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare, etc.) concerning the petitioner except
 - Police emergency
 - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities (e.g. work visa holders, I-130s)

Remedies That Help a Victim's Immigration Application

- Turn over documents/evidence in abuser's control needed for the victim's immigration case.
- What might some of those documents be?



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

Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order
- Supervised visitation
- Bond

Important Economic Provisions

- Maintain medical, car, house insurance, mortgage, rent, utility and/or debt payments
- Child support and spousal support
- Enforce Affidavit of Support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)

Important Economic Provisions

- Maintain and/or pay for health care for victim and children
- Provide one time emergency monetary relief
 - Money to repair locks or broken windows
 - Obtain an unlisted telephone number
 - Relocation assistance
- Pay house insurance, mortgage, rent, utility and/or debt payments
- Taxes
 - Turn over income tax statements
 - Respondent ordered to pay victim 1/2 of refund
 - Victim named trustee for receipt of tax return funds
 - Respondent ordered to sign over check
 - Victim awarded exclusive right to claim children as tax exemptions

Family Law: Custody, Divorce, and Economic Remedies

Better Family Court Outcomes By Affirmatively Addressing Immigration Issues

- ▶ Addressing immigration status issues affirmatively in the family case can
 - ▶ Improve outcomes in family court cases
 - ▶ Prevent or delay family court orders that cut off a party and her children from immigration relief
- ▶ Family court actions can assist with
 - ▶ Helpful evidence for an immigration case
 - ▶ Obtaining from family court judges
 - ▶ SIJS findings for abused immigrant children
 - ▶ Certifications in immigrant crime victim's U visa case

Impact of State Court Orders on the Immigration Case

- Specific written orders are helpful to immigration adjudicators and immigrant parties
- Court orders contain evidence of
 - Abuse, abandonment, neglect
 - Family relationships including marriage
- Divorce can result in an immigrant family member being denied immigration relief
 - Tactic used by perpetrators of spouse, child, elder abuse
- Annulment instead of divorce can set up a spouse for a federal marriage fraud prosecution

Impact of Divorce

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

Custody of Children in Immigrant Families

What issues have you seen arise
in custody cases involving
immigrant victims of domestic
and sexual violence?

Protecting Immigrant Mothers Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status." (September 2004)

<http://niwaplibrary.wcl.american.edu/pubs/co-occurencedvchildabuse/>

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



ABA Center on Children & The Law

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

Myth vs. Fact:

Parents without Legal Immigration Status

Myth

1. Deportation is imminent
2. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. Legally present parent must have custody in order to file for benefits for child

Fact

1. DHS policies prevent detention/removal of immigrant parents who are crime victims
2. US citizens and lawful permanent residents are more likely to flee with children, especially when
 - There have been threats of kidnapping children
 - They are dual nationals
 - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

Immigrant victims involved in custody cases will qualify for one or more of the following:

- Domestic violence/child abuse= VAWA self-petitioning, VAWA defenses against removal in immigration court, Battered spouse waiver, Special Immigrant Juvenile Status
- U visa = Domestic violence, sexual assault, stalking, human trafficking, other U visa crimes
- T visa and continued presence = human trafficking cases

DHS Immigration Enforcement Priorities 2017

- Have been convicted of *any* criminal offense
- Charged with a criminal offense that has not been resolved
- Have committed acts which constitute a chargeable criminal offense
- Are subject to a final order of removal and did not leave the U.S.

DHS Immigration Enforcement Priorities 2017

- Have abused a program related to public benefits
- Fraud, willful misrepresentation with any official matter before the government
- Risk to public safety or national security

How could you use these factors to a survivors advantage in a custody case?

- Immigration protections for victims
- ICE immigration enforcement priorities

Detained Parent Directive Aug. 2017

- If parents are detained:
 - Placement near family court when ongoing family court/child welfare cases
 - Bring parents to family court to participate in cases involving children
 - Alternate: video or teleconference participation
 - Facilitate visitation when required by family/child welfare court order
 - Help children travel with deported parent – obtain passports for children

Small Group Activity - Case

Clara met Eduardo a naturalized U.S. citizen when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara, who was raising her 9 year old son Miguel. Eduardo began regularly coming to visit Clara, who became pregnant and gave birth to a baby girl Lupe. When Lupe turned 1 year old Eduardo decided to bring Clara, Miguel, and Lupe to the U.S. to live with him. Upon their arrival in the U.S., Eduardo took Clara, Miguel, and Lupe's passports and became physically and sexually abusive of Clara. Eduardo's abuse turned toward Miguel when he tried to protect his mother from Eduardo, and Lupe was also physically beaten by Eduardo when he said she "misbehaved". Within a year following their arrival in the U.S., Eduardo forced both Clara and Miguel to work for his family's business and never paid them for their labor. One night when Miguel was 13 and Lupe was 5, Eduardo's rage led to severe beatings with a belt of Miguel and of Lupe. When Clara intervened to protect the children, Eduardo strangled her until she passed out. The neighbors called the police for help. Police arrested Eduardo for attempted murder and child abuse. **Clara has filed a custody case seeking sole custody of the children.**

Discussion

- What factors would the court consider in the custody case?
- What immigration related questions might judges have in this case that you would want to know how to respond to?

Spousal Support and Economic Relief in Family Court Cases

Large Group Discussion

Clara and Eduardo Scenario

- Assume this additional fact:
 - Before coming to the U.S. Clara and Eduardo are married and filed immigration papers for Clara and the children allowing them to legally enter the United States
- How might that affect options for economic relief for Clara and the children?

Affidavits of Support

- Each person who petitions to bring a family member to the U.S. executes a legally enforceable affidavit of support
- Enforced as contract
- Affidavits of support are enforceable decades after the act of immigration is complete
- Provides evidence of ability to pay support

In the Affidavit of Support Submitted to DHS the Signor Accepts the Responsibility:

- As a U.S. citizen or legal permanent resident to financially support the non-citizen relative
 - At 125% of the federal poverty guidelines
 - To prevent immigrant family member from becoming a “public charge”
- “Public charge” is an immigration law term that
 - describes someone who is or is likely to become primarily dependent on the government for income maintenance in the future

2019 HHS Poverty Guidelines for Affidavit of Support

Sponsor's Household Size	100% of HHS Poverty Guidelines*	125% of HHS Poverty Guidelines*
	<i>For sponsors on active duty in the U.S. armed forces who are petitioning for their spouse or child</i>	<i>For all other sponsors</i>
2	\$16,910	\$21,137
3	\$21,330	\$26,662
4	\$25,750	\$32,187
5	\$30,170	\$37,712
6	\$34,590	\$43,237
7	\$39,010	\$48,762
8	\$43,430	\$54,287

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
- Courts have relied on the Affidavit of Support to set spousal and child support obligations

Evidence in Affidavit of Support

- 3 years of tax returns
- Evidence of current employment
 - Including self-employment
- Proof of income sufficient to sustain the immigrant(s) being sponsored at or above 125% of poverty

Enforceability of the Affidavit Support

- Courts have found the Affidavit of Support enforceable and have ordered support payments to a former spouse.
 - *See, Shumye v. Felleke*, 555 F.Supp.2d 1020(N.D. Cal.2008); *Stump v. Stump*, 2005 WL 2757329 (N.D. Ind. Oct. 25, 2005); *Cheshire v. Cheshire*, No. 3:05-cv-00453-TJC-MCR, 2006 WL 1208010, at *2-4 (M.D. Fla. May 4, 2006)
 - *Kumar v. Kumar* A145181 (Cal. App. Div. II, July 28, 2017)(enforceable and no duty to mitigate)
- As part of a family law property settlement, the sponsored immigrant may surrender his or her right to sue to enforce the Affidavit of Support.
 - 71 F.R. 35732, 35740 (June 21, 2006).

Child Support in Mixed Immigration Status Families

What are the immigration related issues you have seen in child support cases?

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

Child Support & Immigration: The Parent Paying Child Support

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

Child Support & Immigration: The Parent Receiving Child Support

- Provides a custodial immigrant parent with evidence of child support that can be used as income in when applying for lawful permanent residency
 - Avoids public charge

Importance of Wage Withholding

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

How Might You Establish A Non-Custodial Immigrant Parent's Income for Child Support Purposes?

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)

Continued Support from NIWAP, Resources, Technical Assistance, Evaluation and Conclusion

Recap NIWAP Resources

- NIWAP Web library
- Technical Assistance
- Directory
- Trainings and Webinars
- Materials
 - Bench cards
 - Toolkits
 - DHS outreach materials



NIWAP Web library

niwaplibrary.wcl.american.edu



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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 Topics

- VAWA, U and T Visas, Gender based asylum, SIJS
- VAWA confidentiality
- U and T Visa certification
- Language access and legal services access
- Immigration allegations in custody, CPOs, and divorce
- Special Immigrant Juvenile Status (SIJS), child abuse, and protective battered immigrant parents
- Public benefits access for immigrant victims
 - Health care, housing, TANF, SNAP, FAFSA, and more
- Serving victim's cultural, religious, and immigration needs
- Providing trauma informed help for immigrant survivors

NIWAP's Unique Resources

- Provide safety and/or case planning strategies
- Interactive benefits/demographics map
- Resource web library
- National Service Provider Directory
 - State by state

Interested in Joining the Community of Practice or Roundtable

- Application available at:
www.niwap.org/go/COApplication
- To register for the Law Enforcement & Prosecution U Visa Roundtable, visit
<http://www.niwap.org/go/LEAroundtables>
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Technical Assistance and Materials

- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Web Library: www.niwaplibrary.wcl.american.edu

Evaluations

