

Best Practices That Promote Safety and Holistic Assistance for Immigrant and Refugee Survivors

October 30, 2015

DuPage County, Illinois

Learning Objectives

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

- Employ case strategies and safety planning that offer protection for immigrant survivors in an age of enhanced immigration enforcement
- Identify eligibility for benefits for immigrant survivors and their children and know how to accompany survivors applying for benefits
- Facilitate immigrant victim access to protection orders, child custody, and family court protections

What countries do immigrants in your jurisdiction come from and what languages do they speak?



Illinois Demographics (2013)*

- ❖ Total foreign born population – 1.8 million
- ❖ 14% of the state's 12.8 million people is foreign born
 - 47.2% naturalized citizens
 - 30.7%^ legal permanent residents (2012 data)
 - ~22.4%^ undocumented or temporary visa holders (2012 data)
- ❖ 18.2% rise in immigrant population from 2000 to 2013
- ❖ High proportion of new immigrants
 - 28.5% entered in the 1990s
 - 36.6% entered 2000 or later
- ❖ 27.1% of children in the state under age 18 have one or more immigrant parents
 - 88.9% of these children are native-born U.S. citizens

^ The Department of Homeland Security no longer reports on lawful permanent resident or temporary visa holder statistics

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=IL>
(January 2015)

Illinois – Countries/Regions of Origin (2013)*

- ▶ **Latin America – 45.3%**
 - ▶ Mexico (38%)
 - ▶ Caribbean (1.6%)
 - ▶ El Salvador (0.4%)
- ▶ **Asia – 28.3%**
 - ▶ India (7.4%)
 - ▶ China (4.7%)
 - ▶ Korea (2.6%)
- ▶ **Europe – 21.4%**
 - ▶ Poland (7.8%)
 - ▶ Italy (1.3%)
 - ▶ Germany (1.3%)
- ▶ **Africa – 3.6%**
 - ▶ Western Africa (1.4%)
- ▶ **Canada – 1.2%**
- ▶ **Oceania – 0.2%**

*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=IL>
(January 2015)

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

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

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.**
- 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)

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

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
- Latina college students
 - experience the highest incidents of attempted rape compared to White, African American, and Asian college students
- Victimization of immigrant children also high
 - child sexual abuse

Best Practice: Screen for Immigration Related Abuse

- Immigration Related Abuse as a Lethality Factor
 - 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
 - Lethality factor can 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)

Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%; U visa 26.7%
- Perpetrators got the victim arrested for domestic violence
 - VAWA self-petitioners 15.4%; U visa 7.5%
- Traffic stops
 - VAWA self-petitioners 28.6%; U visa 26.7%

DHS' Roles

- Protecting vulnerable persons - USCIS
 - Non-citizen crime victims
 - Children
 - Special Immigrant Juvenile Status
 - Deferred Action for Childhood Arrivals
 - Children included in victim's applications
- Adjudicating legal immigration status -USCIS
 - Visas, lawful permanent residency, citizenship
- Admitting persons into the U.S. - CBP
- Removing undocumented immigrants who are high priorities for removal – ICE, CBP



DHS Priorities for Enforcement and Victim Protection: DHS Memos/Guidance

- DHS victim witness protection memo
- Prosecutorial discretion re: care giving parents
- Humanitarian release
- 384 DHS computer system (VAWA, T visas, U visas)
- Memorandum on DHS detention priorities
 - *See Web library for:*
 - Bench Card: DHS Enforcement Priorities Information for State Court Judges
 - DHS Victim Protection Resources and Guidance

Legal Immigration Status Options for Non-citizen Crime Victims and Children

- VAWA self-petition
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver
 - Abused spouses of US citizens with two-year conditional permanent residency
- Asylum
 - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
 - Domestic violence as gender based asylum
- U visa
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity
- T visa and Continued Presence
 - Victims of severe forms of human trafficking
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
 - Deferred action for child arrivals including Dreamers
- DHS Prosecutorial Discretion
 - “low priority” for removal immigrants -- survivors, witnesses, parents, children, elderly, disabled
 - Humanitarian detention release

Materials overview of remedies - <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits>

General VAWA Self-Petitioning Requirements

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

VAWA self-petitioners get:

- Deportation: Protection from deportation soon after filing.
- Immigration Benefits for Children:
 - VAWA self-petitioner's children receive immigration benefits
 - VAWA cancellation parole into US visa process required
- Public Benefits: As qualified immigrants (\approx 3 months)
- Employment authorization:
 - Citizen abuser (\approx 6 months);
 - Lawful permanent resident abuser (\approx 12 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)

Crime Victim (“U”) Visa Requirements

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

Criminal activities covered by the U-visa?

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

U visa victims and their children

- Deportation: Protection from deportation shortly after filing.
- Immigration Benefits for Children:
 - U visa victim's children receive immigration benefits
- Public Benefits:
 - Government funded help open to undocumented immigrants
 - Health care access (no subsidies) upon approval
 - Utah State funded benefits – in state tuition and driver's licenses
- Employment authorization:
 - Upon approval (\approx 7 months);
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency
 - Can apply 3 years after receiving U visa

Temporary protections for immigrants who entered the U.S. as children (DACA)

- Came to the U.S. under the age of sixteen;
- Has resided in the U.S. for a least five years, since June 15, 2007, up to the present time;
- Is **physically present in the U.S. on June 12, 2012**;
- Is currently in school, has graduated from high school or GED, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the U.S.;
- Has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- Is not above the age of thirty-one (31) as of June 12, 2012

Advocate's Role in Filing Immigration Application

- Use screening tool to determine if a “red flag” or complex immigration issue is present
- If red flag comes up when you screen
 - Contact NIWAP for help finding a reliable and experienced immigration lawyer to assist with the preparation of the application
- If there are no red flags- contact NIWAP technical assistance for help preparing application

Screening for Red Flags

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

A New Era In Safety Planning With Immigrant Survivors

Prevention & Safety = Filing Immigration Case Early

- Screen for VAWA, T and U visa eligibility
 - Lawful Presence
- Filing for immigration relief is required for VAWA self-petitioners to become *qualified immigrants* eligible for federal public benefits
- File skeletal immigration applications early
 - Use trauma informed interviewing tool and request for further evidence process
- New strategy – file immigration case before
 - Protection order, divorce, or custody case
 - Victim travels to a new location

Prevention & Safety = Filing Immigration Case Early

- Teach clients to memorize “A” numbers of their VAWA, T, and U visa cases
- Train client to tell DHS officials they encounter about
 - Victimization and primary caretaker of children

Early Victim Identification, Certification, & VAWA/U-visa Filing

- Cut off perpetrator's ability to trigger the victim's deportation
- Help victim secure:
 - Protection from deportation
 - Release from detention
 - Swift adjudication of immigration case for victims detained or in immigration proceedings
- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator
- Set victim on path to legal work authorization

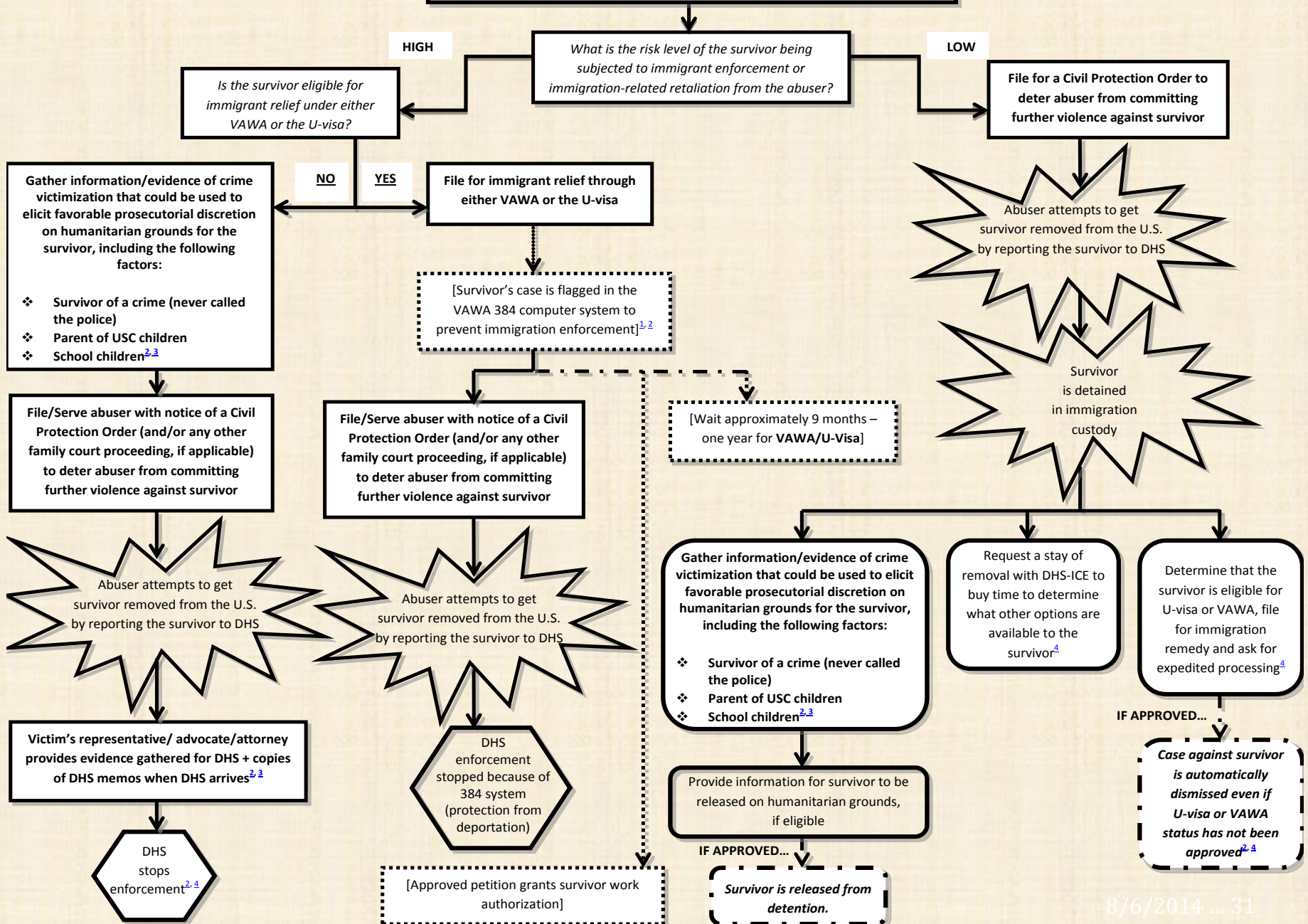
Safety Planning and Action Steps for Immigrant Survivors

- Tools
 - New safety planning flow chart
 - Immigrant victim brochure
- Documentation victim can carry with her
 - Evidence that immigration case has been filed
 - Civil protection order
- Victim must tell DHS enforcement officials that she has children

Safety Planning Challenges Related to Enhanced Immigration Enforcement

- Immigration screening as early as possible is essential
- Cannot assume by name or sight that victim is or is not an immigrant
- Give client the number of consulate notification if she is detained – essential particularly if she has children

IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY



BEST PRACTICES: COLLABORATIONS THAT IMPROVE IMMIGRANT OUTCOMES

NIJ Funded Immigrant Victims and Protection Order Study Findings (2006)*

- With advocate support immigrant victims will use and benefit from justice system assistance
 - 60.9% of victims first learned about protection orders from their advocates
 - 81% got a protection order with help from advocate
 - 96% found them helpful
 - 68.3% of violations of immigrant victims' protection orders were ongoing immigration related threats and abuse

*Mary Ann Dutton, Nawal Ammar, Leslye Orloff, and Darcy Terrell, Use and Outcomes of Protection Orders By Battered Immigrant Women (November 10, 2006)

Best Practice: Advocacy Makes a Difference*

- Safety planning and advocacy work
 - Victims learned about protection orders
 - Advocates assessed lethality
 - Including immigration related abuse
 - Coercive control in the relationship
 - When there was a high risk of lethality, more immigrant victims sought orders
 - With this help, process was easier than women expected

*Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton and Giselle A. Hass, Battered Immigrant Women in the United States and Protection Orders : An Exploratory Research (August 1, 2012)

Barrier: When Service Providers DO NOT Have Accurate Information About....

- Immigrant victims' legal rights to
 - Legal services
 - Life and safety programs including
 - Shelter, transitional housing, and victim services
 - Certain forms of health care
 - Language access
 - Immigration relief
 - Non-discrimination

Research Findings: Benefits of Collaboration

- Collaborations between law enforcement and community based victim advocates improves
 - Language access
 - U visa certification
- Collaborations on
 - Cases (81.3%); Trainings (71.9%); Community Education (69.2%); SART (58.8%); CCR (57.9%); immigrant community outreach (51.5%)

*Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (April 16,2013)

Best Practices:

Characteristics of Effective Partnerships

- Involves advocates from the community
 - Authentic, develop from living realities of the community
 - Have/gain women's trust
 - Help others step forward
- Real relationships with systems personnel
 - Work together on cases/systems reforms
 - On first name basis
 - Communicate with each other regularly

IMMIGRANT LITIGANTS IN FAMILY COURTS

PROTECTION ORDERS



Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- 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
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

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

Custody of Children in Immigrant Families

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

Materials Immigrant Victims and Custody Bench Card -<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law>

Is Immigration Status Relevant to Custody?

- Relevant to: Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
 - Either not filing or withdrawing immigration papers
 - Threats to turn victim in for deportation
 - Part of history of violence
- Not relevant to:
 - Core primary caretaker determination
 - Evaluation of parenting skills
 - Best interests of the child determination
 - Requirements regarding custody awards to non-abusive parent



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

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:
 - Parents of U.S. citizen/Lawful permanent resident children
 - Primary caretaker parents of minor children without regard to the child's immigration status
2. Legal immigrants/naturalized citizens 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 their children.

How Immigrant Parents End Up In Department of Homeland Security Custody

- Abusers/crime perpetrators/employers report them
 - VAWA self-petitions 38.3%; U visas 26.7%
- Traffic stops
 - VAWA self-petitions 28.6%; U visas 30.1%
- Immigration enforcement at the worksite
- CPS, welfare workers, health care providers, others
- Victims call the police for help and police
 - Make a dual arrest
 - Fail to obtain qualified interpreter and arrest the victim
 - Under Secure Communities program all arrested persons reported to DHS

Parental Interest Directive Aug 2013

- If parents are detained:
 - Placement near children and family court
 - Bring parents to family court to participate in cases involving children
 - Facilitate visitation
 - Help children travel with deported parent – obtain passports for children
 - Bring deported parents back to the U.S. for custody and parental rights cases

Custody Involving Immigrant Parents and/or Immigrant Children

- Accurate information about immigration status helps judges issue fair rulings in custody cases where immigration status of a parent or child may be raised
- Tools for Judges
 - Help avoid reliance on incorrect information provided by parties about immigration status & likelihood of detention or deportation
 - Provide accurate information when needed
 - www.Niwap.org/go/sji
 - Direct technical assistance to state court judges, commissioners, magistrates, court staff
 - Bench cards, charts, training materials and webinars
 - In person SJI funded trainings in states/local jurisdictions



Child Support

Unique Economic Challenges for Immigrant Survivors

- Economic insecurity significantly prolongs dependency on their abusers (Ingram et al., 2010)
- Spousal control over filing for immigration relief
 - Work authorization and Drivers' licenses
- Many forms of visas do not allow spouses and children of visa holders to work in the United States
 - Employment visas (H), Student visas (F), Investor visas (E)
- Immigrant crime victims have limited access to public benefits

Economic Relief in Protection Orders

- Spousal and child support
- Rent and mortgage payments
- Utilities payments
- Possession of residence or vehicle (for transportation to work)
- Vehicle payments
- Child care expenses
- Health care insurance

Proof of Non-Custodial Immigrant Parent's Income

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

Proving the Abuser's Income and Ability to Pay

- Lack of immigration status of non-custodial parent is not valid defense
- Employer's Statement and Employer's Affidavit: prima facie evidence of income
- Employer who fails to comply with wage withholding order can be sanctioned under state law
- Non-custodial parent must prove payment of child support for naturalization, cancellation of removal

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



Immigrants and Benefits: True or False

1. Receiving public benefits can harm an immigrant victim's ability to obtain legal immigration status
2. Undocumented immigrant parents can apply for public benefits for immigrant children
3. Immigrants applying for benefits for their children can refuse to provide immigration or social security information about themselves
4. Undocumented victims and children can access transitional housing programs
5. Federally funded health care is available for undocumented immigrants
6. DHS requires universities to ask about immigration status of applicant or enrolling students

What types of services and assistance are open to all persons without regard to immigration status?

Access for All

Both documented and undocumented immigrant survivors can access:

- Legal Services
- Family Court (Divorce)
- Language Access
- Police Assistance
- Protection Orders
- Child Custody and Support
- Have Their Abusers
Criminally Prosecuted
- Assistance for Crime Victims
- Shelter
- Transitional Housing
- Receive Emergency Medical
Care
- Obtain Public Benefits for
Their Children

Attorney General's List of Required Services



- In-kind services
- Provided at the community level
- Not based on the individuals income or resources
- Necessary to protect life and safety

Benefits Available to All Immigrants

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Nutrition programs for those requiring special assistance



Undocumented Immigrant Survivors and Transitional Housing

- Shelter and transitional housing for up to two years
- Victims of domestic violence, child abuse, neglect or abandonment and persons at risk of homelessness
 - Includes sexual assault victims
- Support for application process
- Research report

Federal Benefits Available to ALL Immigrants



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

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

Access to Benefits and Services Grow As Survivors Pursue Immigration Relief

- Filing immigration case leads to
 - Lawful presence
 - Continued presence/HHS certification or eligibility letter
 - State benefits access to some programs in some states
- Prima facie in VAWA , T visa bona fide; and approval of SIJS case leads to Qualified Immigrant Status
 - Federal public benefits
 - Federal Means tested public benefits (5 year bar)
 - State funded benefits
- Health care open to undocumented persons continues to be available to all

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

State Funded Benefits in Illinois

- TANF – Qualified immigrants
- Medicaid/SCHIP – Qualified immigrants & PRUCOL
 - prenatal care; “All Kids” open to children under 300% federal poverty level
 - Lawfully present and undocumented immigrants- same as above; asylum and torture victims receive 24 months of continuous care (can be extended to 36 months for some)
- Food Assistance– Qualified immigrants
- In-State Tuition –
 - Requires diploma/equivalency IL high school + attended IL high school for at least 3 years + resided with parent or guardian while attending high school + affidavit of intent to become permanent resident when eligible
- Child Care
 - Qualified immigrants who entered before Aug. 22, 1996 + TANF
 - Qualified immigrants who entered after Aug. 22, 1996 (VAWA Self-Petitioners, LPRs, immigrant active duty military/veterans and dependents, refugees and trafficking victims)
- Driver’s Licenses– no immigrant restrictions

Technical Assistance and Materials

- Power Point presentations and materials for this training are available at www.niwap.org/go/dupage
- Benefits map: www.niwap.org/benefitsmap
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- Website: www.wcl.american.edu/niwap

QUESTIONS



Thank You!