

NIWAP



***Serving Immigrant Victims of
Domestic and Sexual Violence, Child Abuse, Human
Trafficking, and Stalking:
Immigration, Family and Public Benefits Law
Remedies***

Legal Services Providers Conference
New Mexico State Bar Foundation

**Albuquerque, New Mexico
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NIWAP

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NIWAP's Role

We provide training and technical assistance to:

Local, State, Federal law enforcement, prosecutors, victim advocates, judges, attorneys and other professionals

Improve the response to immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, child/elder abuse and other crimes

Technical Assistance Topics

- Immigration relief
 - VAWA, U and T visas, Battered Spouse Waiver, Special Immigrant Juvenile Status, and Naturalization for Survivors
- U and T visa certification by government officials
- VAWA Confidentiality
- Issues that arise for immigrant survivors in family court cases
 - Including protection orders, custody, divorce, support
- Access to legal services and public benefits
 - E.g. housing, healthcare, driver's licenses, food assistance, education
- Language access for Limited English Proficient survivors
 - To help from law enforcement, prosecutors, courts, victim services
- Prosecution strategies
 - Discovery, Victim Disclosures, and Expert Witness
- Providing trauma informed assistance to immigrant survivors
- Serving survivors' cultural, religious, and immigration related needs

NIWAP Resources

- NIWAP Web library
 - <http://niwaplibrary.wcl.american.edu>
 - Directory
 - Public Benefits Interactive Map & Demographics
 - Materials: Bench cards, toolkits, training tools, legal research, multi-lingual outreach materials
- Technical Assistance
 - Cases, policies, strategies
 - Email, phone, zoom
- Trainings and Webinars
 - On-line, virtual, in-person
 - Customized
- Communities of Practice
 - Victim advocates, family lawyers, National Judicial Network
 - Law enforcement/prosecutors



Join a NIWAP Community of Practice

- Family Law Attorneys COP
www.surveymonkey.com/r/FamCOP2023
- Victim Advocates COP
<https://www.surveymonkey.com/r/VictimAdvocateCOPApp>
- Roundtable for Law Enforcement, Prosecutors and System-based Advocates
<https://www.surveymonkey.com/r/LERoundtable>
- National Judicial Network: Forum on Human Trafficking and Immigrants in State Courts (Judicial Officials only)
<https://niwaplibrary.wcl.american.edu/pubs/njn-outreach-letter>

Learning Objectives

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

- Screen for eligibility and assist survivors in applying for immigration relief
- Obtain U & T visa certifications including from judges and SIJS judicial determinations
- Improve victim safety and economic security through immigration relief, public benefits access in New Mexico, and identifying co-occurring human trafficking
- Plan for and respond to immigration issues that arise in family and civil court cases

Demographics

**What
countries
do victims
and
children in
your courts
come from?**



New Mexico (2021)*

- ❖ Total foreign-born population – 192,634
- ❖ 9.1% of the country's ~ 2.1 million people are foreign born
 - 45.4% naturalized citizens
 - 32% legal permanent residents (as of 2019)
 - 22.6% temporary visa holders or undocumented immigrants
- 28.8% rise in immigrant population from 2000 to 2021
- ❖ Length of time immigrants have lived in the U.S.
 - 52.2% entered before 1999
 - 26.3% entered 2000 - 2009
 - 21.5% since 2010
- ❖ 18.3% of children under age 18 have one or more immigrant parents
 - 91% of these children are native-born U.S. citizens

**Source: Migration Policy Institute Data Hub (October, 2023) and Lawful Permanent Resident estimates MPI and DHS (2022)*

New Mexico– Countries/Regions of Origin & Limited English Proficiency (LEP)(2021)*

- ❖ Latin America – 75.2%
 - ❖ Mexico (67.6%)
- ❖ Asia – 11.2%
 - ❖ Southeastern Asia (6.5%)
- ❖ Europe – 7.7%
- ❖ Africa – 2.2%
- ❖ Middle East – 1.6%
- ❖ Canada – 1.6%
- ❖ Oceania – 0.5%
- ❖ Language spoken
 - ❖ 33% of people in the state who speak a language other than English at home
 - ❖ 48.8% of foreign-born persons are LEP - speak English less than “very well”

*Source: *Migration Policy Institute Data Hub (October, 2023)*

New Mexico-Languages Spoken at Home (2021)*

- ❖ Spanish (510,402)
- ❖ Native Languages of North America (97,202)
- ❖ German (5,334)
- ❖ Tagalog (including Filipino) (5,294)
- ❖ Chinese (including Mandarin, Cantonese) (4,730)
- ❖ Vietnamese (4,586)
- ❖ French (including Cajun) (4,014)
- ❖ Arabic (2,584)
- ❖ Korean (2,158)
- ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (1,693)
- ❖ Japanese (1,412)
- ❖ Yoruba, Twi, Igbo, or Other Languages of Western Africa (1,249)
- ❖ Persian (including Farsi, Dari) (1,232)
- ❖ Italian (1,213)
- ❖ Thai, Lao, or Other Tai-Kadai Languages (875)
- ❖ Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (865)
- ❖ Nepali, Marathi, or Other Indic Languages (817)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/NM>
(October, 2023)

New Mexico-LEP (2019)*

- ❖ Limited English Proficiency (Speak English less than very well)
 - ❖ Naturalized citizens – 38%
 - ❖ Noncitizens – 57.8%
- ❖ Limited English Proficiency by language spoken at home
 - ❖ Vietnamese (56.5%)
 - ❖ Swahili (40.3%)
 - ❖ Chinese (including Mandarin, Cantonese) (38.7%)
 - ❖ Korean (35.6%)
 - ❖ Japanese (30.5%)
 - ❖ Spanish (27.1%)
 - ❖ Yoruba, Twi, Igbo, or Other Languages of Western Africa (26.6%)
 - ❖ Arabic (24.6%)
 - ❖ Tagalog (including Filipino) (22.1%)
 - ❖ Native Languages of North America (21.8%)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/NM> (October, 2023)

Role of Lawyers and Advocates – Language Access Advocacy

- Plan and provide notice to the court and other agencies in advance about your client's interpretation needs
- Educate other both governmental and nongovernmental agencies about their language access responsibilities
- Build relationships with agencies in your community
- If a police report was not taken in your victim client's case or it contains misinterpreted information – have the report amended
- File complaints with Federal Coordination and Compliance Section, DOJ, Office of Civil Rights. [Contact the Civil Rights Division | Department of Justice](https://civilrights.justice.gov) at <https://civilrights.justice.gov>

Research has found...

- 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
 - Seek protection orders, help from courts, access services, and apply for immigration relief

Mary Ann Dutton, Nawal Ammar, Leslye Orloff, and Darci Terrell, Use and Outcomes of Protection Orders by Battered Immigrant Women: Revised Final Technical Report to the National Institutes of Justice (November 19, 2006)

- When state courts provide language access, issue SIJS judicial determinations and sign U visa certifications
 - Immigrant victims of domestic violence, sexual assault, human trafficking and child abuse are willing to seek protection orders and help from family courts at significantly higher rates

Nawal H. Ammar, Leslye E. Orloff, and Amanda Couture-Carron, Immigrant Victims of Interpersonal Violence and Protection Orders, In Civil Court Responses to Intimate Partner Violence and Abuse (2020)

Learn more about language access...

- Speaking Justice: Providing Language Access in the Courts – Webinar & Training Materials Language Access (April 2, 2024)
 - <https://niwaplibrary.wcl.american.edu/language-access/>
 - Webinar with DOJ
 - DOJ resources on language access to
 - Courts and assistance from police and prosecutors
 - Language access laws and policies

Dynamics of Domestic Violence Experienced by Abused Immigrants

Department of Homeland Security



- DHS Dynamics Video

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)

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

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).

Immigration-Related Abuse

- 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
- May predict abuse escalation
- Corroborates the 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)

IMMIGRATION RELIEF OVERVIEW AND SCREENING

Large Group Discussion

How do VAWA's immigration protections benefit immigrant victims and their children ?

Purpose Crime Victim-Based Immigration Relief

Congress enacted VAWA self-petitioning (1994), the U and T visas (2000, 2005, 2008) & Special Immigrant Juvenile Status (SIJS) (1990,2008) to:

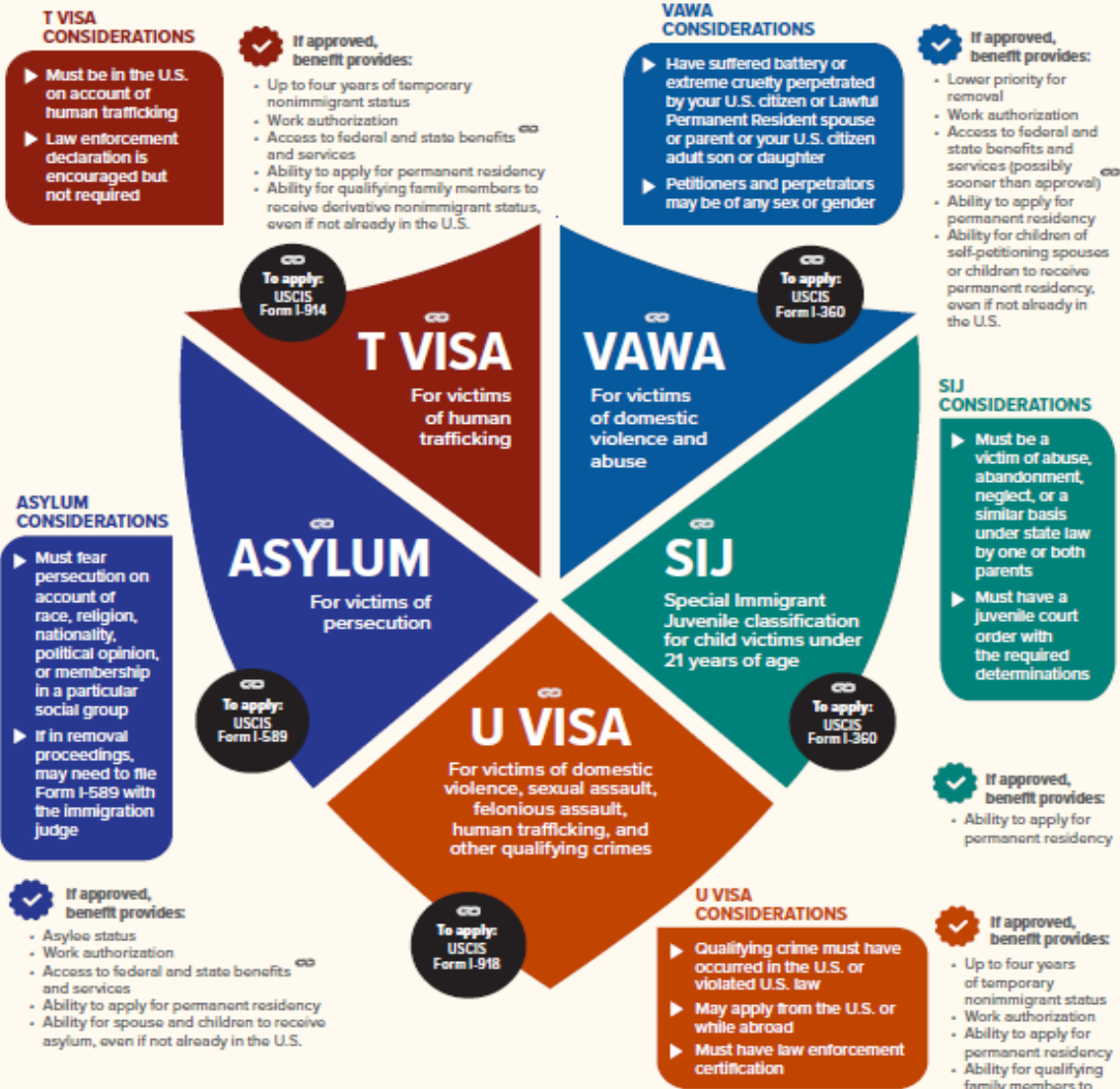
- Enhance victim safety
- Allow victims to report crimes and seek help from police, prosecutors, and courts without fear of deportation
- Improve access to justice in family/criminal/civil courts for immigrant victims of
 - Domestic & sexual violence, stalking, human trafficking and child/elder abuse
- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Keep communities safe

Benefits for Survivors

- Protection from deportation
- Access to legal immigration status
- Financial independence from the perpetrator
 - Legal work authorization (6 months to 2 years from filing)
 - Issuance of federally recognized driver's licenses and IDs
 - Increased access to federal and state public benefits
- VAWA confidentiality

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

Immigration Protections for Noncitizen Victims of Crime and Abuse



Center for Countering Human Trafficking

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

Similar Criminal Activity

- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:
 - Hate crimes
 - Video voyeurism
 - Elder abuse/abuse of adults with disabilities
 - Child abuse
 - Robbery or aggravated robbery could include felonious assault, depending on the evidence and state law definition

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
- 2024 time to work authorization = 4-40 months

Battered Spouse Waivers

- For domestic violence survivors, provides for waiver of the “condition” placed on the status of immigrant spouses of marriages less than two years old
- Waives both the joint filing requirement and two year wait for full lawful permanent resident status
- Requires proof that:
 - Marriage to a U.S. citizen or permanent resident entered into in good faith and
 - Spouse or child was battered or subjected to extreme cruelty
 - Child can include step-child
 - Immigration and Nationality Act § 216(c)(4)
- 2024 time to approval 31.5 months

Immigration Law Definition of Domestic Violence (Battering or Extreme Cruelty)

Battering

- Physical violence against
 - Spouse/intimate partner
 - Child
- Use of a weapon
- Sexual abuse & assault
- Stalking
- Other acts defined as domestic violence under state law
- Attempts or threats to do any of these actions

Coercive Control = Extreme Cruelty:

- Strategies designed to retain control or establish domination through fear, dependence, deprivation, isolation, immigration related abuse
- Deprivation of basic necessities
- Controlling regulating, monitoring the victim
- Compelling through force, intimidation threats to abstain or engage in conduct against victim's will

Extreme Cruelty:

- Withholding medicine or medical care
- Adultery with a minor
- Financial abuse, seeking to destroy victim's credit
- Accusations of infidelity
- Using children as a tool
- Emotional abuse causing physical or psychological harm

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- Under the age of majority under state law
- Victims of abuse, abandonment, neglect, or dependency perpetrated by at least one parent
- To apply must submit a judicial determination (findings + conclusions of law) from a state court with jurisdiction over the care, custody, or dependency of the child:
 - Awarding custody, placement, dependency of the child
 - Not in the child's best interests to return to the child or their parent's home country
 - Reunification with the parent who maltreated the child not viable due to abuse, abandonment, neglect, or similarly state law basis
- 2024 time to work authorization = 6 months

Family Court Cases That Include Decisions About Care & Custody of Children

- Dependency/Delinquency
- Civil protection order cases
- Custody cases
- Divorce cases
- Paternity and child support cases
- Adoption cases
- DHS states: All are of the above = *Juvenile courts*
 - Juveniles = all children
- SIJS Bench Book has chapters on each case type
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>

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
- 2024 time to work authorization – 58 months

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 impedes helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- 2024 time to work authorization = 17 months

Protections for Abused Children and Family Members

- VAWA self-petitioner = Abused child, stepchild, parent or parent of an abused child can apply for the family:
 - Over 21: applicants' children/stepchildren
 - Under 21: Can include their parent and their children
- U and T visa applicant = Victim/parent of an abused child can apply for family:
 - Over 21: spouse and children/stepchildren
 - Under 21: spouse, children, stepchildren, parents, unmarried siblings under 18
- Special Immigrant Juvenile Status = child victim
 - Family included: None

Clara and Eduardo Case Scenario

Clara met Eduardo a lawful permanent resident 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?

What forms of immigration relief
would Lupe NOT qualify for?

What forms of immigration relief would Miguel qualify for?

Who Can Certify in Clara or Miguel's U visa Case?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HIS, ATF
 - Prosecutors
 - Head of agency or designee
 - Judges, Magistrates, Commissioners, other judicial official
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government agencies with investigative authority

Which Judicial Officers Can Certify?

- Federal, state, & local
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
 - Others with delegated decision-making authority
- Judge will need to amend the form

Large Group Discussion

Why might a victim come to a judge for certification?

Why Victims Seek Judicial Certifications

- Only justice system contact a custody, protection order, civil employment or child welfare case
- No language access to police when victim called for help
- Police did not investigate and case never sent to prosecutor
- Judge observed victim's attendance and participation in criminal case

Large Group Discussion

Why is it important to identify human trafficking co-occurring with domestic violence and/or child abuse?

Involuntary Servitude in a Domestic Violence Relationship

<https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>

- Violates federal & state anti-trafficking laws
- Forced to work by use/threat of
 - physical restraint or physical injury
 - Coercion through law or legal process
- Goal of abuser to subject victim to a condition of servitude

Conditions of Servitude

3 USCSIS-PM B.2(B)(4)]

- “An expectation that the victim’s life fulfills the orders of the trafficker (such as a demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and constant availability to labor regardless of health or energy);
- Lack of control over the victim’s own wages despite laboring under the trafficker’s demands; or
- The imposition of unequal living arrangements as part of the campaign of force, fraud, and coercion (for example, unequal sleeping arrangements, living arrangements, or access to nourishment).”

Benefits Impacts – New Mexico

- TANF: T visa and VAWA self-petitioners, LPRs eligible
 - Waits to LPR - SIJS (5 years); U Visa (25+ years)
- SNAP: T eligible – Clara and children
 - Children: VAWA prima facie (3 months), SIJS (5 years);
 - Clara: VAWA-LPR (63 months); U visa-LPR (25+ yr.)
- Housing: T visa, VAWA self-petition eligible
 - SIJS-LPR (5 years), U visa-LPR (20+ years)
- Education (FAFSA): T visa
 - VAWA (3 months); SIJS-LPR (5 years), U visa-LPR (20+ years)

Large Group Discussion

When a victim comes to your agency for help how do you approach what to do first?

Safety Through Early Screening

- Identify which forms of immigration relief an immigrant survivor qualifies for
- Know the differences between immigration options
- Document history of abuse
- Incorporate into safety planning

Value of Filing Early

- File the victim's immigration case ASAP
 - DHS VAWA confidentiality computer system
 - Sufficient evidence for prima facie/bona fide
- Benefits for victims of early filing:
 - Protection from deportation
 - Safer for victims to cooperate in criminal cases
 - Earlier access to work authorization
 - Speeds access to public benefits
 - Better position in the family law case
 - Can submit additional evidence as it becomes available before adjudication

Promote Victim Safety

- Try to file immigration case before:
 - Protection order, family, or criminal court case
 - Victim travels to a new location
 - Particularly when victims are experiencing immigration-related threats
- Role of VAWA confidentiality laws
 - Letter stating victim is in the process of filing a VAWA, T visa or U visa case

After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- Increased justice system involvement
 - 114% increase in willingness to trust the police
 - 36% make police reports regarding future crimes
 - 60% seek protection orders and/or custody
 - 22% help other victims report abuse and seek help/justice
- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
 - 74% decline in immigration-related abuse
 - 78% decline in threats to snatch/cut off access to children
 - 65% decline in efforts to use the immigration status of the victim to gain an advantage in family court

Moving Forward

Know your shield of
immigration relief options

Analyze the impact of
immigration relief options

Screen early

Issues Arising In Family and Civil Court Cases Involving Immigrant Survivors

VAWA CONFIDENTIALITY IN STATE COURT PROCEEDINGS

Poll: Have you worked with survivors who have received ...

- A. Threats of deportation from perpetrators
- B. Been contacted by immigration enforcement officials

Immigration-Related Abuse

- 25% of perpetrators actively report the victim for removal
 - Rises to 38% for VAWA self-petitioners
- 36% of perpetrators get immigrant and limited English proficient (LEP) victims calling for help arrested for domestic violence
- U visa applicants have higher future crime reporting rates

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff and Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Victims (2017)*

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

DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, and attorneys about immigration law protections for:
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivor

VAWA Sensitive Location Prohibitions

- Enforcement actions are not to be taken unless the action specific procedures designed to protect victims are followed:
 - 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, or stalking



Poll: Has the perpetrator in a family court case you have worked on tried to ...

- A. Raise the victim's immigration status in the case
- B. Obtain information about a victim's immigration case through family court discovery

VAWA Confidentiality Law's Statutory Disclosure Exceptions

Limited Disclosure in Narrow Circumstances – Law Enforcement

- Disclosure to law enforcement, prosecutors, 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”

Raise Your Hand - True or False?

VAWA confidentiality's judicial exception applies to State Court judges hearing criminal, family, and/or civil court matters.



Limited Disclosure in Narrow Circumstances – Judicial

- A judicial exception applies only to appeals of the victim's immigration case
- Exception does not extend to state or federal judges hearing other civil, family, or criminal court matters

Large Group Discussion

- What, if anything is discoverable in a state family, criminal, or civil court case when a victim has filed a ---
 - U visa application
 - T visa application
 - VAWA self-petition
 - Petition for SIJS

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, family, 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”

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

Motion in Limine To Keep Information Out of the Case

- Limiting disclosure of confidential records
- Precluding irrelevant or prejudicial evidence
- Restricting testimony or questions
 - Collateral questions, not necessarily about immigration status
- Excluding Personally Identifiable Information (PII)

U Visa Certification By Judges

- Certifications can be made in open and closed cases including at early stages of case and when a civil case whether or not there is a criminal case including when the criminal case is not concluded.

Judicial U Visa Certification in Closed Cases

- Issuing certification after a judge has made findings and issued orders = *administrative function of the court*
- Applies to civil, family, criminal, administrative cases
- Certification can be made by
 - The judge who presided over the case based on the judge's observations, findings, rulings, orders in the case; or
 - Another judge based on court records
- Since the case is closed there is no pending or impending matter
- **Recusal appropriate** - should there be subsequent proceedings involving the same or similar issues and the same victim or accused person.

U Visa Certification From Judges in Pending Cases: Both ex parte communications bars and VAWA Confidentiality 8 U.S.C. § 1367 apply

- Best Practice: Administrative judge or another judge not presiding over the pending case
 - Determines whether the evidence in the court records to support certification of victim's helpfulness
 - This is an administrative function based on court records

U visa Certification Requests From Judges – Pending Cases

- For a victim to request certification from the judge presiding over a pending civil, family, criminal, or administrative case in a manner that complies with VAWA confidentiality (8 U.S.C. §1367)
 - All victims must be adults
 - Cannot waive if it is a child or even on their behalf, and
- All adult victims must sign a waiver of VAWA confidentiality protections of 8 U.S.C. §1367; and
- This waiver would also have to comply with 34 U.S.C. 12291(b)(2) requirements that waivers of confidentiality signed by victims must be:
 - Written, informed, time-limited, and issue specific and only for the purpose of obtaining a ruling on the victim's U visa certification request

PROTECTION ORDERS



Immigrants and 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
- Immigrant victims and their children often need creative protection order remedies using the state catch-all provisions

Raise Your Hand - True or False?

Violation of a Protection Order is a Deportable Offense?



Small Group: Which the following is a deportable offense?



- A. Domestic violence criminal conviction
- B. Finding in a custody case that a protection order was violated by further abuse of the victim
- C. Criminal conviction for violating a protection order
- D. Agreeing to diversion in a protection order enforcement case where upon violation diversion turns into a conviction
- E. All of the above

Protection Orders and Immigration Considerations

- Violation of a protection order is a deportable offense
 - Can lead to loss of lawful permanent residency and other immigration consequences for the perpetrator
 - A finding of violation of the protective provisions of a protection order in any context can trigger deportation including findings in civil contempt cases and admissions for diversion
- Victims should not be charged with violation of orders issued for their own protection

Best Practices

- Ask for Issuance of Padilla advisals in protection order cases
- Attorneys for immigrant victims should not consent to issuance of a protection order against their clients
 - Litigate Self-defense
 - Put on evidence that your clients was not the primary perpetrator of abuse in the relationship
 - Other

Creative Protection Order Remedies

- Catch all provisions in civil protection order statutes, opportunity to offer relief designed to help:
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrator's 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 for courts to counter immigration-related abuse and order culturally helpful remedies

Poll: Why Might Victims Not Separating From Their Abusers Seek Protection Orders?

(Check all that apply)



- A. Living in extended families
- B. Limited housing options
- C. Awaiting legal work authorization
- D. Curb abuse
- E. Help shift power and control in relationship

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

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

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

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 the care of a child
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

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

CUSTODY OF CHILDREN IN IMMIGRANT FAMILIES

Tool: Immigrant Victims and
Custody Bench Card

What are the
immigration-related
issues you have seen
perpetrators raise
against victims in
custody cases?

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



Poll: Which parents are the *most* likely to be removed from the U.S. by DHS?



- A. Immigrants with orders of removal
- B. Undocumented immigrant victim parents
- C. Immigrants with criminal convictions
- D. Immigrants with notices to appear in immigration court

Removal Requires Enforcement Priority and Consideration of Mitigating Factors

- Post-Nov. 1, 2020 entrants who are
 - Victim of domestic or sexual violence in the U.S.
 - SIJS eligible child
- Victim arrested for domestic violence
 - Victim called police, no qualified interpreters
 - Victim arrested, to get out of jail plead guilty
- Victim arrested for stealing baby food when fleeing abuser

Myth vs. Fact:

Parents without Legal Immigration Status

Myth

1. Deportation is imminent
2. The parent has no livelihood
3. 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. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
3. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

Poll: Who is the *least* likely to flee with children from the United States?



- A. U.S. citizens
- B. Undocumented immigrant victim mothers
- C. Dual national parents
- D. Multiple entry visa holder parents

Fact: Legal immigrants/naturalized citizens are more likely to flee with children

- **Particularly when**
 - There have been threats of kidnapping children
 - They are dual nationals
 - They can travel freely to and from U.S.
- The Ninth Circuit found that “there is no evidence that undocumented status correlates closely with unmanageable flight risk.” *Lopez-Valenzuela v. Apaio*, 770 F.3d 772, 786 (9th Cir. 2014).

ICE Parental/Guardian Interests Directive

July 2022

- Requires affirmative and ongoing inquiries about and identification of parents/legal guardians of minor children and incapacitated adults
- Status as a caregiver parents/legal guardian impacts
 - Decision to detain, initial placements, transfers of parents
 - Court ordered custody prevents immigration enforcement against parent/guardian
 - ICE required to bring detained parents/guardians to court and establish communication with courts.

Trends in Case Law

- Flight risk:
 - Finding that undocumented immigration status does not make an individual a flight risk. *See Huff v. Vallejo*, 347 Ga. App. 127, 817 S.E.2d 696 (2018).
- Ability to provide financially for children
 - “...illegal aliens suffer disadvantages. For example, they cannot enter into an employment relationship. But plenty of people have worked, and thrived, as independent contractors all their lives.” *See Hupp v. Rosales*, 2013 IL App (4th) 130433-U.

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

Safe Places for Visitation Exchange

VAWA Confidentiality

- Victims protected at courthouses in connection with civil/family/criminal cases related to
 - Domestic violence, sexual assault, trafficking, stalking
- Shelters, rape crisis centers
- Supervised visitation centers
- Family Justice Centers
- Programs serving victims

DHS Policy 10/27/21 At or Near:

- Schools and universities
- Medical or mental health care facilities
- Places of worship, religious events, weddings, funerals
- Places where children gather
- Social services: e.g., crisis, domestic violence, child advocacy, food banks, victim services, shelters, supervised visitation, family justice centers...
- Disaster/emergency response offered including family reunification
- Ongoing parade, demonstration, rally

DIVORCE AND ECONOMIC SUPPORT

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

Annulment Instead of Divorce

- Annulment can lead to a marriage fraud finding that:
 - Permanently bars approval of any visa petition
 - Is a ground for deportation
 - Can lead to an unfavorable exercise of discretion by an immigration judge not to grant immigration relief
- Impacts
 - Spousal support
 - Property division

Affidavits of Support

- Each person who petitions for a family member to immigrate to the United States must execute a legally enforceable affidavit of support. 8 U.S.C. § 1182(a)(4)(C)(ii)
 - Contractually committed to support sponsored family member at annually at 125% of Federal Poverty Guidelines
- Affidavits of Support are enforceable as contracts by the sponsored immigrant
- Support obligation lasts till immigrant spouse
 - Naturalizes, dies, earns 40 quarters of work credit, or gives up lawful permanent residency and leaves the U.S.



What are the benefits of seeking
and paying court ordered child
support for immigrant parents?

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
 - 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
- Obtaining child support awards can provide helpful evidence of good moral character
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies

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

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)

Family and Civil Court Orders Best Practices

Best Practices to for Court Orders

- Make findings as to:
 - The age of the child and the evidence relied upon
 - The child's parentage, naming each parent specifically
 - That the parent's identity is unknown (e.g., rape)
 - Abuse, abandonment, neglect suffered & impact on child
 - Address each occurring abroad and/or in the U.S.
 - Facts of domestic violence, stalking, sexual assault, human trafficking and coercive control
 - Existence of a marriage and termination of marriages
 - Details of who the court awarded custody to and why
 - Include no-contact and other protective provisions
- Cite and apply only state laws:
 - Definitions of domestic violence, abuse, abandonment, neglect, Best interest, Jurisdiction, service upon required parties

Access to Publicly Funded Programs and Legal Services Open to all Immigrant Survivors

Poll: Which are the most common obstacles to immigrant survivors obtaining public benefits they are legally eligible to receive?

(Check all that apply)



- A. Agency requires legal work authorization
- B. The victim is eligible, but their attorney/advocate do not know this
- C. Agency wants the victim to provide an SSN
- D. Victim believes that applying for benefits will harm their immigration status options

What concerns or hesitations do you or your immigrant victim clients have about applying for public benefits and services?

Raise Your Hand: True or False?

Receiving public benefits can harm an immigrant victim's ability to obtain legal immigration status.



List of Exemptions from Public Charge

- VAWA self-petitioners;
- VAWA cancellation of removal;
- VAWA suspension of deportation;
- Battered spouse waiver;
- Abused approved family-based visa applicants (I-130);
- VAWA NACARA,
- HRIFA or Cuban Adjustment;
- U visa;
- T visa applicants and holders*
- Refugees;
- Asylees;
- Special Immigrant Juvenile Status (SIJS);
- (DACA) applicants;
- Amerasians;
- Afghan and Iraqi military translators;
- certain Cuban and Haitian adjustment applicants;
- certain Nicaraguans and Central Americans under NACARA;
- Registry applicants;
- Soviet and Southeast Asian Lautenberg parolees;
- Certain visa holders**;
- Green Card holders

Public Charge Determination

- USCIS will review the following:
 - Non-citizen age, health, family status, financial status (including assets and resources), education, and skills;
 - Form I-864, *Affidavit of Support Under Section 213A of the INA*
 - Whether the person themselves (not a family member) received or are receiving:
 - Supplemental Security Income (SSI); Cash assistance for income maintenance Temporary Assistance for Needy Families (TANF); State or local income assistance “General Assistance”; or Long-term institutionalization at government expense.
- Other public benefits are excluded from the public charge determination – examples include:
 - Food stamps, nutritional assistance, CHIP, Medicaid, public or assisted housing, educational grants and loans

Raise Your Hand
If you know how immigrant
survivors who work without work
authorization can pay taxes.



Individual Taxpayer Identification Number (ITIN) Benefits for Survivors

- A tax-processing number issued by the IRS to ensure that people pay taxes even if they do not have a Social Security number (SSN) and regardless of their immigration status.
- Complying with federal tax laws.
- Can open an interest-bearing bank account.
- Helps secure a driver's license.
- Proof of “good moral character” for immigration applications
- Immigrants can use tax returns to document their work history and physical presence in the U.S. in future immigration applications

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
- GED
- 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

Federal Benefits Available to ALL Immigrants



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

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



Raise Your Hand: True or False?

Immigrants applying for benefits for their children can refuse to provide immigration or social security information about themselves.



True

False

When children qualify and their parents/guardians 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
- Although questions about income may be asked
 - *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
 - Must provide accurate income information and keep it up to date. If not = fraud

Importance of Accompanying Immigrants in Applying for Public Benefits

- Help educate state benefits workers
- Accompanying immigrant applicants helps
 - Children and survivor get what they are legally entitled to access
 - Varies by state, immigration status, benefits program
 - Helps undocumented parents/guardians file for benefits for their eligible citizen and immigrant children
 - State welfare worker reporting requirements

What to Bring with you to Advocate

- The law indicating the benefit (you can find it on NIWAP's Public Benefit Map)
- Check also <https://www.benefits.gov/>
- Documentation of income eligibility
 - See links by program on state screening charts
- Documents from DHS
 - If eligibility requires immigration status

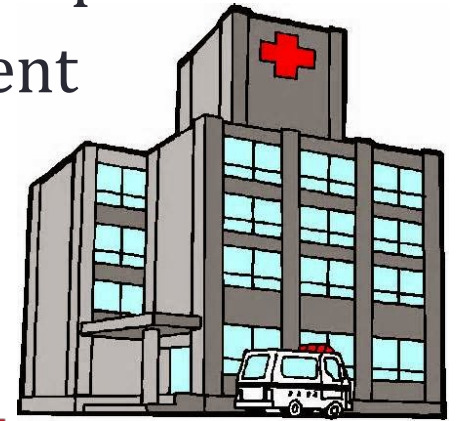


Large Group Discussion

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
 - Includes COVID-19 testing and treatment



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



Mental Health Treatment for Sexual Assault Survivors

- SAMHSA - <https://findtreatment.gov/>
- SAMHSA funded Certified Community Mental Health Clinics
<https://www.thenationalcouncil.org/program/ccbhc-success-center/ccbhc-locator/>
- National Sexual Violence Resource Center
 - <https://www.nsvrc.org/find-help>
- RALIANCE – Rape Crisis Centers
 - <https://www.raliance.org/rape-crisis-centers/>
- RAINN – National Sexual Assault Hotline
 - <https://www.rainn.org/>

Access to Shelter, Transitional Housing and Permanent Housing



Large Group Discussion

- Have you worked with immigrant victims who were turned away from transitional housing?
- On what basis?

Transitional Housing Programs Turn Away Immigrant Survivors: Rate & Why

Domestic Violence - 34%

Sexual Assault-99%

- No immigration status documents – DV 84%; SA 99%
- Lacked proof of current employment - DV 56%; SA 99%
- No legal work authorization – DV 53%; SA 99%
- No driver's license – DV 45%; SA 99%
- Survivor was undocumented – DV 25%; SA 90%
- No government issued ID (from U.S.) – DV 18%; SA 86%
- Insufficient evidence of self-sufficiency DV 9%; SA 86%
- Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime (June 3, 2014) <https://niwaplibrary.wcl.american.edu/pubs/access-shelters-housing/>

HUD, DOJ and HHS Confirmed in August 2016

- Housing providers must not turn away immigrants based on their immigration status, citizenship, nationality, or English language proficiency from:
 - Emergency shelter
 - Transitional housing
 - Rapid re-housing

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

Multiple Choice:

Which of the following programs does NOT have immigrant access restrictions under Section 214 of the Housing and Community Development Act?

- A Public housing
- B Section 8 vouchers
- C Project-based Section 8
- D Low Income Housing Tax Credit
- E Section 514 and 516 Farm Labor Housing programs

Reminder: Housing Programs That Are Not Restricted by Section 214

- *Low Income Housing Tax Credit (LIHTC)*
- Section 202 Housing for the Elderly
- Section 811 Housing for the Disabled
- Section 221 (d)(3)
- Indian Housing
- CDBG
- HOME
- HOPWA
- McKinney-Vento/HEARTH Act*
- Rental Rehabilitation
- HOPE 2
- Section 515 Rural Rental Housing Program (without Rental Assistance)
- Rural Housing Preservation Grants
- Section 538 Multi-family Loan Guarantees

Access to Benefits and Services Grows as Children and Victims Pursue Immigration Relief



Children and Crime Victims Qualified to Receive Public Benefits— Common Examples

- Qualified Immigrants benefits eligible
 - Lawful permanent residents
 - Includes U visas and SIJS
 - Refugees/Asylees
 - VAWA self-petitioners
 - Trafficking victim with
 - Continued presence or
 - Bona fide determination in T visa case
- Not generally benefits eligible some variation by state
 - Asylum applicants
 - DACA recipients
 - U visa applicants & recipients
 - Work/Student visa holders
 - Undocumented

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,” “state public benefits” or
 - “federal means-tested public benefits”
- Not a federal or state benefits unless payment is made 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”?

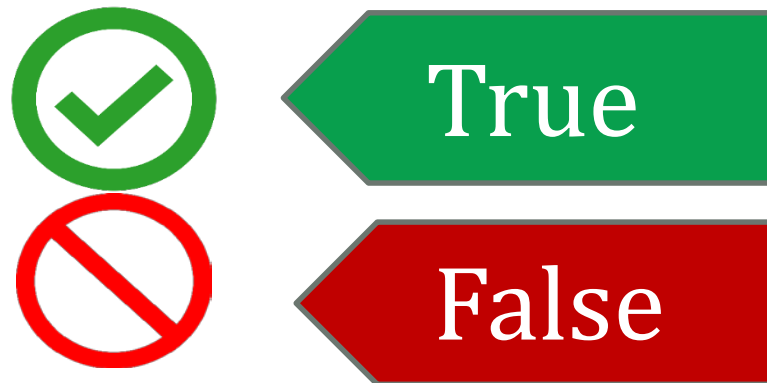
- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- VAWA: 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

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
- FEMA individual family grants and disaster unemployment
- 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

Raise Your Hand: True or False?

DHS requires universities to ask about the immigration status of applicants or enrolling students.



Education

- DHS does not require universities to ask about immigration status of applicant or enrolling students
- Immigrants eligible for student federal student loans
 - VAWA self-petitioners and their children
 - Permanent residents including SIJS
 - Trafficking victims
 - Refugees/asylees
 - SIJS recipients of lawful permanent residency

Multiple Choice:

Which of the following immigrants NOT eligible for Public and Assisted Housing?



A

Lawful permanent residents, refugees & asylum recipients

B

VAWA self-petitioners

C

U visa applicants/recipients

D

Bona Fide T visa

E

Continued Presence

Section 214 Eligible Immigrant Categories

- U.S. Citizens/U.S. Nationals
- Lawful Permanent Residents
- VAWA self-petitioners
- Refugees and Asylees
- Parolees
- Persons granted withholding of removal/deportation
- Victims of trafficking – Continued presence and T visa bona fide
- Persons granted admission for emergent or public interest reasons
- Persons granted amnesty under the Immigration Reform and Control Act of 1986
- Immigrants eligible for registry who entered the U.S. before June 30, 1948
- Lawful U.S. residents under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam
- Immigrants admitted for lawful temporary residence prior to January 1, 1982

“Section 214” Restricted HUD & RD Programs

- Public Housing
- Housing Choice Voucher Program
- Section 8 Project-Based Housing
- Section 236 Housing
- Section 235 Homeownership Housing
- Rent Supplement Housing
- Housing Development Grants (HoDAG)
- Section 23 Leased Housing Program
- Emergency Housing Vouchers
 - only one family member need to be eligible
- Section 514 and 516 Farm Labor Housing programs
- Section 502 home loan program
- Section 504 rehabilitation loan and grant program
- Section 521 Rental Assistance Program
- RD Voucher Program

VAWA Self-Petitioners Eligible for Public and Assisted Housing

- Victims with VAWA self-petition 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 a 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

Be Prepared to Advocate...

- For survivor and children remain in the unit when perpetrator is removed
- Based on a child's or survivor's legal status able to avoid proration and include the survivor as a qualified immigrant in the subsidy
- Obtain letter from PHA for non-work SSN
- DHS or immigration judge (not HUD adjudicate battering or extreme cruelty
 - Exception: family petition (I-130) filed by abuser

Public Benefits Eligibility by States

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 e.g.:
 - Refugees,
 - Asylees
 - Amerasian immigrants
 - Cuban/Haitian entrants,
 - Immigrants granted withholding of deportation
 - Victims of severe forms of human trafficking
 - T visas, T bona fide, continued presence and OTIP letters

State Option

- States have the option to provide some state funded benefits to immigrants
 - During the 5 year bar and/or
 - Those who are abused
- Varies by state and type of benefit
 - Can be important to look up neighboring states
- Advocacy includes safety planning during the 5 year bar

Interactive Public Benefits Map Demonstration: State-By-State

Hide fields Filter Group Sort ...

	Ben...	STATE & TERRITORY	Benefit Name	VAWA Self-Petitioner
1	309	Florida Public Benefits	Child Care - TANF Funded	Eligible for TANF funded child care if receiving TANF.
2	308	Florida Public Benefits	Child Care: Child Care Development Fund (CCDF)	Eligible for CCDF
3	310	Florida Public Benefits	Children's Health Insurance Program (CHIP)	Eligible up to age 19 upon prima facie determination ...
4	311	Florida Public Benefits	Earned Income Tax Credits (EITC)	Eligible with conditions upon receipt of work ...
5	313	Florida Public Benefits	Emergency Medicaid	Eligible.
6	315	Florida Public Benefits	Family Medical Leave Act - State Law	No state law, federal law applies.
7	316	Florida Public Benefits	Federal Education Student Aid, Grants, and Loans	Eligible upon prima facie determination.

30 records um 13017

Airtable Download

BENEFITS MAP

Welcome to NIWAP's Interactive Public Benefits Map (October 24, 2022)

<https://niwaplibrary.wcl.american.edu/benefits-map>



Maps by Benefit

- Cash Assistance (TANF)
- Child Care
- Children's Health Insurance Program
- Driver's License, IDs, & Professional Licenses
- Earned Income Tax Credit
- Emergency & Transitional Housing & Safety Programs
- Emergency Medicaid
- Family Medical Leave
- Federal Education Benefits
- FEMA Assistance & Restricted Programs
- Food Stamps
- Health Insurance Exchanges
- Income Tax Credits
- Legal Services
- Medicaid
- Prenatal Care
- State Education Benefits
- Supplemental Security Income
- VOCA
- Weatherization & Energy Assistance
- WIC
- Unemployment Insurance

Federally Recognized Driver's Licenses and IDs

- Under the REAL ID Act, evidence of lawful presence is required for driver's license to be a federally recognized form of identification
 - T visa bona fide
 - Continued Presence
 - Immigrants with work authorization
 - Approved VAWA self-petitioners, SIJS, DACA
 - Bona fide or waitlist approved U visa victims
 - Lawful permanent residents

Benefits in New Mexico

- TANF: No wait: VAWA, lawful permanent residents (LPRs), Continued Presence (CP), T visas
 - Wait times: SIJS (3 yrs) and U visa (25+ yrs) wait to LPR
- Childcare
 - TANF same as above
 - Child Care Development Fund – no restrictions
- SNAP
 - CP, T visas, Child VAWA self-petitioners, SIJS/U child-LPRs
- Education
 - Federal: VAWA, CP, T visa applicants, SIJS-LPRs
 - In-State tuition & scholarships:
 - 1+ years attending secondary education in NM and
 - Graduated from NM high school or received GED in NM

Benefits in New Mexico

- **Health Care**
 - Exchanges: VAWA, CP, T visa, U/T visa bona fide, SIJS applicants, DACA
 - CHIP: Until 19 - VAWAs, CP, T visa, T bona fide, Refugees, Asylees, lawful permanent residents (LPRs)
 - Full scope adult Medicaid: VAWA, CP, T visa, T bona fide, LPRs
 - Pregnant persons are eligible for state funded medical assistance
- **SSI (most limited):** CP, T visa, T bona fide
 - 5 year bar + 40 quarters work: VAWA, LPRs (E.g. SIJS & U visa LPRs)
- **Driver's License:**
 - New Mexico - with proof of identity, age, and New Mexico state residence
 - Federally recognized – work authorization
 - VAWA approved, T visa bona fide, CP, U visa waitlist, SIJS –LPRs, DACA

Benefits in New Mexico

- Housing
 - Transitional – all victims + homeless + abused children
 - Public and Assisted: VAWA applicants, CP, T visas, Lawful permanent residents (LPRs) (E.g., SIJS and U visa)
- LIHEAP
 - LIHEAP – VAWA, CP, T visa, LPRs (E.g., SIJS and U visa)
- FEMA
 - Emergency assistance: everyone
 - Individual Households Program: VAWA, T visa, CP, LPRs
 - Individual & Family Grant Program: VAWA, T visa, CP, LPRs
 - US Small Business Administrations Loans: VAWA, T visa, CP, LPRs
 - Disaster Unemployment Assistance: VAWA, T visa, CP, LPRs
 - Emergency Food Stamps: T visa, CP, LPRs (after 40 quarters of work credit)

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <https://niwaplibrary.wcl.american.edu/ABQ-Aug-2024>
- **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu