

NIWAP



Legal Protections for Immigrant Survivors of Domestic and Sexual Violence That Enhance Victim and Community Safety

North Platte, Nebraska

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Community Safety Forum

NIWAP

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

Introduction



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Learning Objectives

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

- Identify immigrant survivors eligible for victim-based immigration relief - VAWA, T, U visa, or SIJS cases
- Know which publicly funded benefits and services are open to all persons without regard to immigration status
- Help survivors with victim-based immigration cases gain greater access to public benefits that they and their children are legally eligible to receive
- Access technical assistance, training materials, resources and trainings offered by NIWAP to support your work.

Who We Are

- The National Immigrant Women's Advocacy Project (NIWAP) American University Washington College of Law
- We provide training and technical assistance to
 - Attorneys, victim advocates, Local, State, Federal law enforcement, prosecutors, judges, and other professionals
 - Serving immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking, child/elder abuse and other crimes
 - Our goal is to increase immigrant crime victims' safety, justice system participation, and ability to rebuild their lives and thrive



NIWAP Resources

- NIWAP Web library
 - 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



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

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>

Immigration Relief Overview and Screening

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

Immigration Protections for Noncitizen Victims of Crime and Abuse

T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply: USCIS Form I-914

T VISA

For victims of human trafficking

To apply: USCIS Form I-360

VAWA

For victims of domestic violence and abuse

ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

ASYLUM

For victims of persecution

To apply: USCIS Form I-589



If approved, benefit provides:

- Asylee status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for spouse and children to receive asylum, even if not already in the U.S.

SIJ

Special Immigrant Juvenile classification for child victims under 21 years of age

To apply: USCIS Form I-360

SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

U VISA

For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes

To apply: USCIS Form I-918

U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



If approved, benefit provides:

- Ability to apply for permanent residency



If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



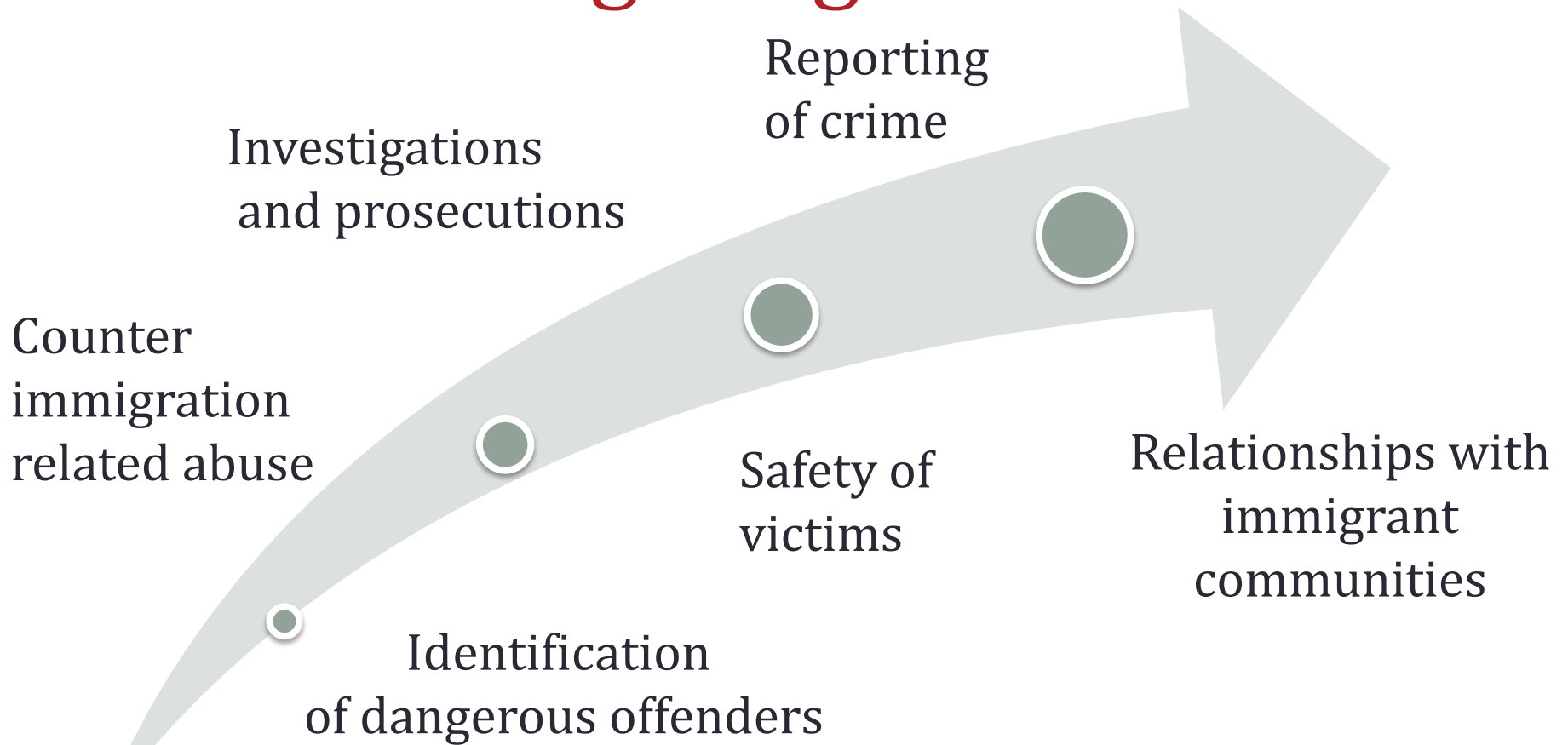
Center for Countering Human Trafficking

Immigration Relief Available for Immigrant Victims of:

- Domestic violence
 - Child abuse
 - Elder abuse
 - Sexual assault
 - Stalking
 - Rape
 - Abusive sexual contact
 - Sexual Exploitation
 - Incest
 - Prostitution
 - Video voyeurism
 - Female genital mutilation
 - Felonious assault
 - Aggravated Robbery
 - Manslaughter
 - Murder
 - Hate Crimes
 - Kidnapping
 - Abduction
 - Trafficking
 - Involuntary servitude
 - Slave trade
 - Being held hostage
 - Torture
 - Fraud Foreign Labor Contracting
 - Peonage
 - False Imprisonment
 - Blackmail
 - Extortion
 - Witness tampering
 - Obstruction of justice
 - Perjury
 - Parent perpetrated
 - Child abuse
 - Child neglect
 - Child abandonment
- Attempt, conspiracy or solicitation to commit any of these crimes or any similar activity**

Why do you think these forms of immigration relief exist for victims of crime?

Immigration Relief as a Crime Fighting Tool



Screening

Immigration-related abuse...

10x 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)

Department of Homeland Security Victim Centered Approach Victim-Witness 2011 Memo

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.”

Large Group Discussion

How do these immigration programs enhance community safety?

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
- Victim's Lives Improve
 - 300% increase in jobs paying at least minimum wage
 - 226% increase in victims taking ESL classes
 - Education achievement: GEDs 35%; AA & BA 38%; Advanced degrees 19%, Vocational education 21%
 - More involved in children's school (660%); easier to make decisions (432%); calmer (300%); more focused (280%);

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
- **2023 time to work authorization = 4-34 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)

2023 time to approval 17.5 to 29 months

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
 - By at least **one parent**
- To apply must submit the required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- **2023 time to work authorization = 6 months**

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
 - Requires certification from a government official – e.g., law enforcement, prosecutor, judge, EEOC, APS, CPS, FBI
- 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
- **2023 time to work authorization – 48 -62 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
- **2023 time to work authorization = 18 months**

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:

- A. U visa
- B. Included in Lupe's VAWA self-petition
- C. T visa
- D. All of the above

Feedback

A

B

C

D

No Answer

What forms of immigration relief would Miguel qualify for:

- A. VAWA self-petition
- B. U visa
- C. T visa
- D. SIJS

Feedback

A

B

C

D

No Answer

What forms of immigration relief would Lupe *NOT* qualify for:

Feedback

A

B

C

D

No Answer

- A. VAWA self-petition
- B. U visa
- C. Special Immigrant Juvenile Status (SIJS)
- D. T visa

Benefits Impact of Immigration Relief Options for Clara, Lupe and Miguel – Examples NE

- Subsidized Health Care: T visas OTIP letters eligible
 - Children up to age 19: VAWA prima facie (3 months), SIJS filing
 - Clara: VAWA (5 years); U visa (26 years)
- TANF: T visa OTIP letters eligible
 - VAWA (5 year bar); SIJS (8 years); U (26 years)
- SNAP: T eligible & OTIP Children– Clara and children
 - Children up to age 19: VAWA prima facie (3 months), SIJS (3-5 years);
 - Clara: VAWA (5-10years); U visa (26-31 years)
- Housing: T visa, OTIP Letter VAWA self-petition eligible
 - SIJS (3-5 years), U visa (21/years)
- Education (FAFSA): T visa eligible OTIP Letter
 - VAWA (3 months); SIJS (3-5 years), U visa (21 years)

Specialized Team of Adjudicators

- Trained on family violence, sexual assault, human trafficking dynamics
- Expertise on victimization
- Use series of background checks over time
- Congressional Research Service found low levels of fraud in the program

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

How Does Information About Protected Areas From Immigration Enforcement Help In Family Courts Cases?

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

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

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 FQHCs 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



Know About OTIP Letters

- The Office of Trafficking in Persons (OTIP) at HHS issues:
 - Certification Letters to foreign national adults
 - Bona fide T applicants and Continued Presence (CP)
 - Eligibility Letters to foreign national children
 - Must file when under age 18
 - No DHS application required- may have (CP)
- OTIP Letters provide access to public benefits, as refugees, for life
- Must be accepted by Federal and State agencies

When children qualify and their parents/guardians do not:

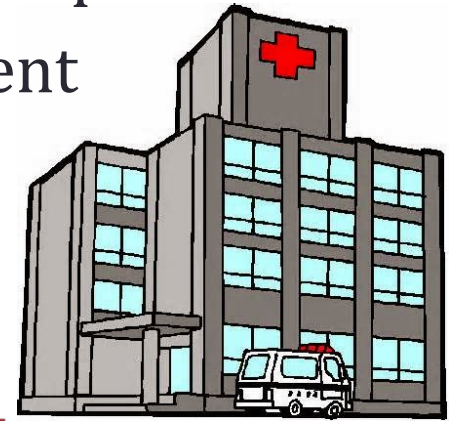
- If a child qualifies for benefits as a citizen or qualified immigrant
 - the benefits granting agency *may only ask questions* about the child's eligibility
- Although questions about income may be asked
 - *No questions may be asked* about the immigration status of the child's parent if the parent is not applying for additional benefits for themselves
 - Must provide accurate income information and keep it up to date. If not = fraud

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



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,” “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

Five-Year Bar:

Federal Means-Tested Benefits

- Qualified immigrants, including battered immigrants, who 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
- Applies to:
 - Medicaid, CHIP, TANF (Including Child Care), SSI, SNAP
- States can provide state funded benefits during bar

Interactive Public Benefits Map

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

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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

Benefits in Nebraska

- **Health Care**
 - Exchanges: VAWA, CP, T visa, OTIP Letters, U visa bona fide, SIJS applicants
 - Medicaid Adults: Pregnant qualified immigrants
 - VAWA, CP, T visa, lawful permanent residents (LPRs)
 - CHIP : Until 19 - VAWAs, CP, T visa, LPRs, OTIP letters
- **SSI (most limited):** CP, T visa,
 - VAWA, SIJS, and U visa lawful permanent residents (5 year bar+ 40 quarters work)
- **Driver's License Federally Recognized**
 - T visa bona fide, CP, OTIP Letters
 - Work authorization: VAWA, U visa waitlist, SIJS, DACA

Benefits in Nebraska

- Housing
 - Transitional – all victims + homeless + abused children
 - Public and Assisted: VAWA applicants, CP, T visas, SIJS/U Visa – LPRs
- LIHEAP
 - LIHEAP – VAWA, CP, T visa, SIJS/U Visa LPRs
- FEMA
 - Emergency assistance: everyone
 - Individual Households Program: VAWA, T visa, CP
 - Individual & Family Grant Program: VAWA, T visa, CP, SIJS & U Visa-LPRs
 - US Small Business Administrations Loans: VAWA, T visa, CP
 - Disaster Unemployment Assistance: VAWA, T visa, CP, SIJS & U visa-LPRs
 - Emergency Food Stamps: T visa, CP, SIJS & U visa-LPRs (5 year bar + after 40 quarters of work credit)

Benefits in Nebraska

- TANF and TANF Funded Child Care:
 - Continued Presence (CP), T visas
 - VAWA (5 yrs); Lawful permanent residents (LPR): SIJS (8 yrs) and U visa (25+ yrs)
- Child Care Development Fund – no restrictions
- SNAP: Eligible only: CP, T visas and Child VAWA self-petitioners
 - Child-LPRs (SIJS 8 yr wait)
 - Adults – 5 year bar + 40 quarters work credit
- Education
 - Federal: VAWA, CP, T visa applicants, SIJS & U visa-LPRs
 - In-State tuition: If pending immigration case for lawful status + 180 days residence in NE; or graduated NE high school with 3 years residence in NE & affidavit will apply for LPR

PROTECTION ORDERS AND FAMILY COURT PROTECTIONS



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

- 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

True or False?

Issuance of a protection order is a deportable offense ?



True



False

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
 - Need Padilla warnings
- Do not agree/litigate CPOs filed against victims
- Victims should not be charged with violation of orders issued for their own protection

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

Victims Who Stay: No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions:
 - No abuse
 - No immigration related 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

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



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.

Safe Locations for Victims: Helpful 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

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 & 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 vs. Divorce

Technical Assistance and Materials

- Power Point presentations and materials for this conference at
 - <https://niwaplibrary.wcl.american.edu/north-platte-ne24/>
- **NIWAP Technical Assistance**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu