



# **Understanding Immigration Law, VAWA Protections and Impacts of Current Policies on Survivors of Gender-Based Violence**

**Board Training for the  
Ohio Domestic Violence Network  
Columbus, Ohio  
April 22, 2025**



# Faculty Introduction and NIWAP Resources

- **Leslye E. Orloff**, Adjunct Professor and Director, NIWAP, American University, Washington College of Law
- 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



# Join a NIWAP Community of Practice

- Family Law Attorneys COP  
[www.surveymonkey.com/r/FamCOP2023](https://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:

- Identify survivors who are eligible for legal immigration status
- Help ensure that immigrant survivors receive VAWA confidentiality protections
- Ensure that ODVN staff and the programs ODVN serves know how to access up-to-date information needed to help immigrant survivors access all of the benefits, services, and legal protections they are legally entitled to receive

# LEGAL IMMIGRATION OPTIONS

# Ohio (2022)\*

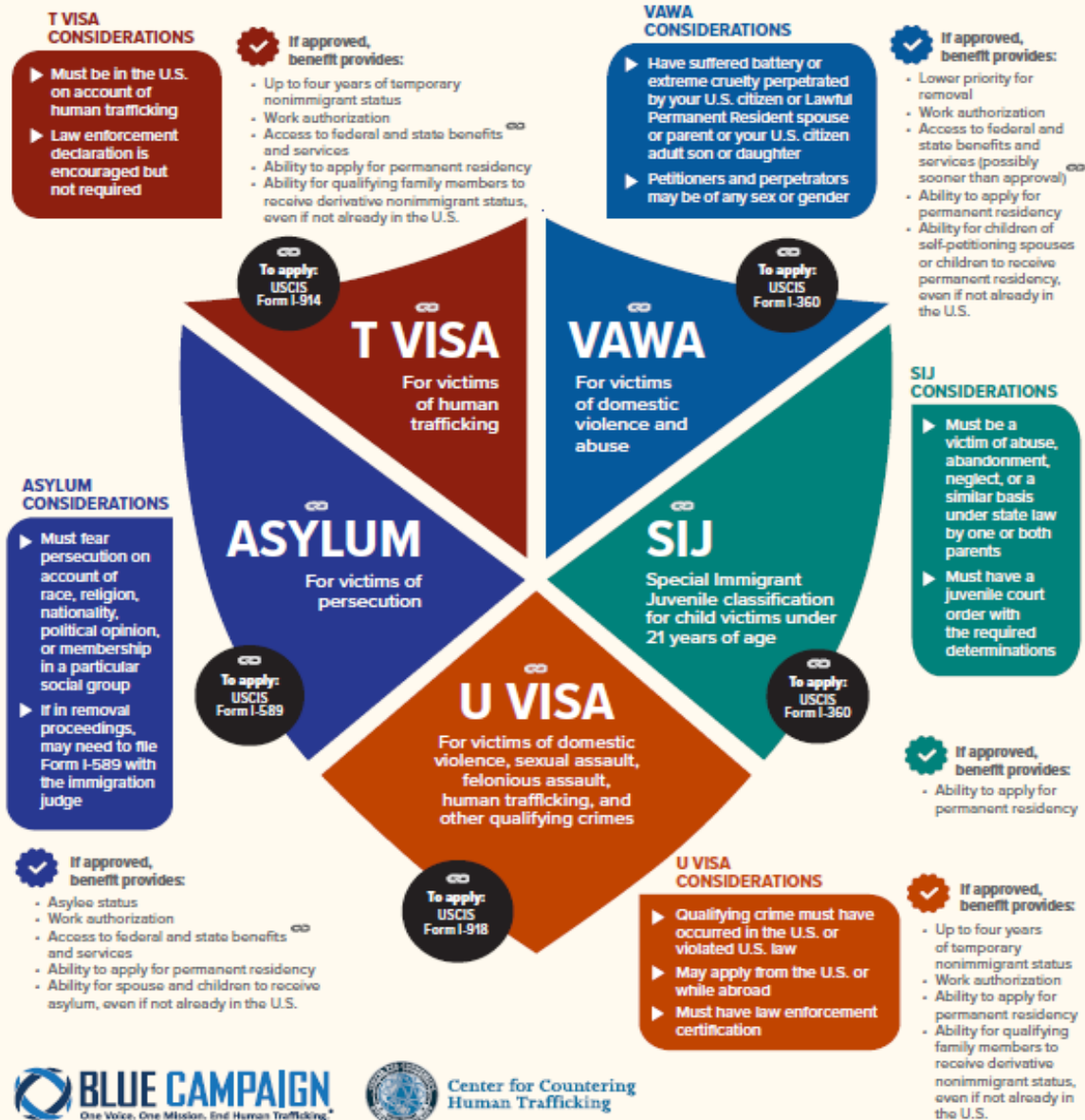
- ❖ Total foreign-born population – 585,938
- ❖ 5% of the state's ~ 11.8 million people are foreign born
  - 54.4% naturalized citizens
  - 25% legal permanent residents (as of 2019)\*
  - 20.6% temporary visa holders or undocumented immigrants
- 72.7% rise in immigrant population from 2000 to 2022
- ❖ Length of time immigrants have lived in the U.S.
  - 32.7% entered before 1999
  - 24.0% entered 2000 - 2009
  - 43.3% since 2010
- ❖ 10.4% of children under age 18 have one or more immigrant parents
  - 84.3% of these children are native-born U.S. citizens

*\*Source: Migration Policy Institute Data Hub (July, 2024) and  
Lawful Permanent Residents MPI and DHS (2022)*



# U.S. Legal Immigration Benefits for Noncitizen Victims of Crime and Abuse

## U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS



Center for Countering Human Trafficking

DHS.GOV/BLUECAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233732)  
All U.S. Citizenship and Immigration Services (USCIS) forms can be found at: [www.uscis.gov/forms/all-forms](https://www.uscis.gov/forms/all-forms)

# Immigration Relief Available for Immigrant Victims of ---

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



# Benefits for Survivors

- Legal immigration status
- Financial independence from the perpetrator
  - Legal work authorization (6 months to 5 years from filing)
  - Issuance of federally recognized driver's licenses and IDs
  - Victims' increased eligibility for federal and state benefits & services
  - Affidavits of support enforcement
- VAWA confidentiality
  - Protection from removal

# 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
- *2025 time to work authorization ≈ 4-42 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)
- *2025 time to approval ≈ 24 to 29 months*

# Special Immigrant Juvenile Status (SIJS)

- Immigration legal remedy 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
- *2025 time to work authorization ≈ 6 months*

# U Visa Requirements

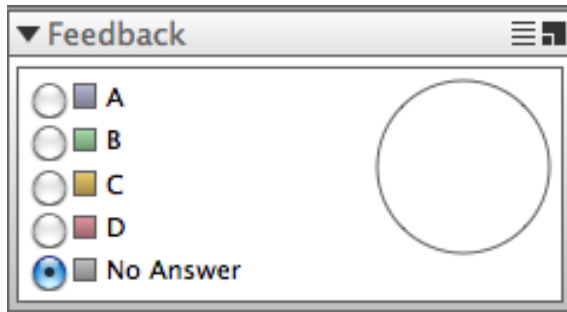
- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
  - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- *2025 time to work authorization  $\approx$  39.2 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.S. 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
  - *2025 time to work authorization ≈ 6 months*

## Poll: True or False?

- DHS recognizes that human trafficking can occur in domestic violence relationships?
  - A. True
  - B. False



# Involuntary Servitude in Domestic Violence Relationships

## 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).”



# Familial Trafficking

- 2 in 5 trafficking cases reported annually to federal trafficking taskforces involve child sex trafficking
- Over 62.7% of sex trafficked children their trafficker is a family member
  - Parent, grandparent, aunt, uncle, cousin, sibling
  - With 45.8% parent or guardian
- 65% of sex trafficked children come from unstable homes or compromised parenting
  - Almost 20% have a history of child abuse or neglect
- Up to 34% of sex trafficked children are trafficked by an intimate partner
- Cole, J., & Sprang, G. Sex trafficking of minors in metropolitan, micropolitan, and rural communities. Child Abuse & Neglect (2014), <http://dx.doi.org/10.1016/j.chiabu.2014.07.015>

# Protections for Survivors' Children and Family Members

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

# 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 immigration 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 of abusers to use immigration to gain an advantage in family court

# Mental Health Benefits of Work Authorization and Deferred Action

- VAWA and U visa victims report increases in:
  - It being easier to make decisions 432%
  - Sleeping better & being calmer– 300%
  - Being more focused – 280%
  - More independent – 261%
  - Standing up for themselves 225%
  - Having more energy – 188%
  - Being less depressed 183%
  - More at ease – 162%
  - More hopeful 130%

Orloff, Magwood, Campos-Mendez, & Hass, Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status (June 2021)

# Education and English Language Learning

- 226% increase in victims taking ESL classes
- 167% increase in working to improve English speaking abilities
- 60% attend social events with people in the U.S.
- 35% obtain GEDs
- 38% pursue AAs and Bas
- 21% receive vocational education
- 19% advanced degrees

Orloff, Magwood, Campos-Mendez, & Hass, Transforming Lives: How the VAWA Self-petition and U Visa Change the Lives of Victims and their Children After Work-Authorization and Legal Immigration Status (June 2021)

# VAWA Confidentiality's Protections for Immigrant Survivors: What You Need to Know

# VAWA Confidentiality Prongs

## Non- Disclosure

Protects victims **who have filed** a protected case with DHS

Violation = \$5,000 fine and/or disciplinary action

## Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators and their agents

### Protects:

- \***All victims abused by a spouse or parent**
- \*All victims in the process of applying for U or T visas
- \*Abused spouses of visa holders with VAWA work authorization filed

## Location Prohibitions

### Protects:

**All Victims**

### Requires:

No action at protected locations  
OR

Notice to Appear must state how they complied with VAWA confidentiality

# VAWA Confidentiality Violations

- Each violation
  - Disciplinary action and/or
  - \$5,000 fine for the individual
- VAWA Confidentiality Implementation Guidance (1997, 2005, 2007, 2008, 2013, 2019, 2021, 2025)
- ICE required to:
  - Check for “384” flag before enforcement actions
  - Not rely upon perpetrator provided information
  - Obtain supervisor approval
  - Certify compliance to immigration judge
    - Violations can be basis for dismissal of removal action





# Bars Limiting Reliance Upon Information Provided by a Perpetrator

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

All DHS Memo 002-02-001.1 Rev.00.1  
(May 29, 2019) Confirmed (Jan. 2025)

- States that the VAWA Confidentiality prohibited source and non-disclosure protections apply to victims who *are seeking, are in the process of preparing an application, have filed for, and have been approved* for a victim-based form of immigration relief covered by 8 U.S.C. 1367

# VAWA Confidentiality 8 U.S.C. 1367

## All DHS Directive 002-02-001.1 (2019)

- Protections apply “*even if the alien has not applied for or does not intend to apply* for a victim-based application or petition”
- “If a *DHS employee suspects* that the provisions and relevant policy were not followed, the employee immediately *brings the issue to the attention of his or her immediate supervisor* rather than issuing the NTA.”
- “[I]t is clear that Congress intended that arrests of aliens at such locations to be handled properly given that they may ultimately benefit from VAWA’s provisions”

# Key 2025 Policies

- Enforcement at Protected Areas (Jan. 20, 2025) & Courthouse Enforcement (Jan. 2025) Policies
  - Sensitive location policies cancelled
  - Require supervisor approval for courthouse enforcement in noncriminal cases and courthouses
- Interim guidance on Victims 11005.4 Jan. 31, 2025
  - Revoked 2011 and 2021 Policies That Required:
    - Prosecutorial discretion for victims who had filed victim-based immigration cases with limited exceptions
    - ICE/CBP look for indicia/evidence of victimization and consider this as a positive factor
    - Seek expedited adjudication of victim's cases
  - *Required ongoing adherence to VAWA confidentiality statutes and implementing policies*

Poll 3: At which protected locations are victims protected against immigration enforcement?  
Check all that apply



- A. Shelters
- B. Rape crisis centers
- C. Supervised visitation centers
- D. Family justice centers
- E. Victim services program/provider
- F. Community based organization

# VAWA Community Based Locations Definition

“(5) Community-based organization. The term “community-based organization” means a nonprofit, nongovernmental, or tribal organization that serves a specific geographic community that—

- (A) focuses primarily on domestic violence, dating violence, sexual assault, or stalking;
- (B) has established a specialized culturally specific program that addresses domestic violence, dating violence, sexual assault, or stalking;
- (C) has a primary focus on underserved populations (and includes representatives of these populations) and domestic violence, dating violence, sexual assault, or stalking; or
- (D) obtains expertise, or shows demonstrated capacity to work effectively, on domestic violence, dating violence, sexual assault, and stalking through collaboration.”

# Are Courthouses Protected Locations?

## 8 U.S.C. Sec.1229(e)(2)(B) – INA 239(e)

- Generally prohibits immigration enforcement at Courthouses **against victims**:
  - “(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15) [8 USCS § 1101(a)(15)].”



Poll 3: VAWA confidentiality is likely violated when a DHS official comes to the courthouse in response to a “tip” from the perpetrator and arrests a victim who has come to court.....

Check all that apply

- A. Seeking a protection order
- B. For a child custody case
- C. As a witness in a criminal case
- D. In an eviction case when the perpetrator stopped paying rent in violation of a family court order





# VAWA Confidentiality Protected Case Types = Red

- VAWA self-petition
  - Abused spouses/children of US citizens & permanent residents
  - Abused parents of over 21 year old US citizens
- VAWA cancellation of removal/ VAWA suspension of deportation
  - Abused spouses/children of US citizen and permanent residents protection from removal
- Battered spouse waiver
  - Abused spouses of US citizens with two-year conditional permanent residency
- U visa
  - Has been, is being or is likely to be helpful in detection, investigation, prosecution, conviction or sentencing
  - Substantial harm from criminal activity
- T visa and Continued Presence
  - Victims of severe forms of human trafficking
- Abused Spouse of Visa Holders
  - Spouses battered or subjected to extreme cruelty by spouses with the following visas: A(diplomats), E(3)(Australian specialty occupation workers), G (foreign gov-Int'l orgs), H (work visas)
- Special Immigrant Juvenile (SIJS)
  - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
  - Deferred action for child arrivals including Dreamers
- Asylum
  - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
  - Domestic violence as gender-based asylum

# 8 U.S.C. Section 1367 and DHS Policies and Regulations on VAWA Confidentiality

- Protects all information in immigration files about a VAWA confidentiality protected victim
- Prohibits disclosure of any information to anyone not just the perpetrator about
  - The existence of the victim's VAWA confidentiality protected immigration cases
  - Decisions made in the cases
  - All Information contained in the victim's #A file
  - Protects the person and all their immigration cases

# When Non-Disclosure Protections Begin & End

## All DHS Instruction 002-02-001.1 (2019)

- Any information related to noncitizens who are “seeking or who have been approved for immigration status” under the U visa, T visa, or other VAWA immigration programs may not be disclosed.
- This includes protection of the victim’s “information that has not yet been included in a [DHS] database.”
- “provides protection as soon as a DHS employee has reason to believe that the alien may be the beneficiary of a pending or approved victim-based application or petition”
- Protections apply from the time of filing permanently unless
  - Case denied on the merits
  - All appeal options have been completed
  - Victim naturalizes

# Non-Disclosure Exceptions

- To law enforcement and national security
  - Solely for purposes related to their work
- Judicial review of the victim's immigration case
- Public benefits granting agencies
- Chair and ranking member of House and Senate Judiciary committees without personally identifying information
- All adults in case waive confidentiality
- With victim's permission connecting victim with victim services
- Anonymous information -census rules apply
- All only in a manner that continues to protect the confidentiality of the information

# What is discoverable in a state court?

- Criminal case
  - U visa and T visa case
    - The request for certification letter
    - The U or T visa certification itself
  - VAWA self-petition, VAWA cancellation, VAWA suspension cases
    - Nothing
- Family Case
  - Nothing
- Civil Employment Case
  - Multiple victims redacted certifications may be discoverable

# Notification of That Victim Has VAWA Confidentiality Protections

- Does this mean that immigrant victims are protected from removal?
- Is there a difference when victims have children here who were born abroad vs in US?
- How do immigration enforcement officials know that someone is a victim?
- Are there helpful tools that cite current laws and policies?

# New Tools Demonstration

- Letters that advocates and attorneys can provide to victims
- Letters for law enforcement and prosecutors and their agency staff to provide to victims
- Letters that advocates and attorneys at protected locations can provide should they encounter ICE



# Impact on Survivors and Their Children: Importance of Family Court Remedies and Safety Planning



# 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
- Violations of protective CPO provisions = deportable offense
  - Dangers of issuing CPOs against victims
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

# 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. Less risk for victims with pending victim-based immigration cases and over 2 years in the US
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 can receive child support & have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for their children.

# Impact of Divorce

- VAWA self-petitioners:
  - Spouse must file within two years of final divorce
- Ends legal immigration status for spouses and children of visa holders:
  - Students, Work Visa Holders, Diplomats
- Annulment instead of divorce can lead to a marriage fraud finding and potential prosecution
- Divorce cuts off immigrant spouses and children from lawful permanent residency based on:
  - Asylum, employment, family relationships, cancellation of removal
- Immigrant spouse can enforce affidavit of support in divorce proceedings

# Housing and Benefits Options For Immigrant Survivors

# Open to All Immigrant Victims of Crime and Abuse

- Legal Services
- Family Court (Divorce)
- Interpreters/Translators
- Police Assistance
- Protection Orders
- Child Custody & Support
- Their Abusers Can Be Criminally Prosecuted
- Public Benefits for Their Eligible Children
- SANE Exams
- 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

# In-Kind Necessary to Protect Life and Safety Services Open to All Immigrants (8 U.S.C. Section 1611(b)(1)(D)) (66 Federal Register 3613)

- 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



# Who are “Qualified Immigrants”?

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





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

- Public and assisted housing
- Real ID driver’s licenses and IDs
- Supportive housing for the elderly or disabled
- Post-secondary educational grants & loans
- Most subsidized childcare
- 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

# Question and Answer Session

# Technical Assistance and Materials

- Power Point presentations and materials for this training at
  - <https://niwaplibrary.wcl.american.edu/odvn-staff-board-2025/>
- **NIWAP Technical Assistance**
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)