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NIWAP Newsletter

LSC Regulations

June 2016

Legal advocacy services provide crucial support for survivors of violence against women. These services assist survivors in rebuilding their lives and the lives of their children and achieving a life free of abuse. Over the past two decades, congressional recognition of the central role legal services plays in enabling survivors to attain social, emotional, and economic wellbeing has led to the continuous expansion of access to federally funded legal services for survivors of violence, particularly in the Violence Against Women Reauthorization Act of 2005 (VAWA). This expansion has included providing access to free legal services from programs funded by the Legal Services Corporation (LSC) for immigrant survivors of domestic violence, sexual assault, human trafficking, and other U visa qualifying criminal activities. LSC implemented this expansion in a regulation issued in April 2014 and in a program letter issued on October 30, 2014. This regulation implemented VAWA 2005's expansion of access to legal services to battered immigrants and immigrant crime victims. This newsletter will highlight the expansion in eligibility implemented by the regulation, presence requirements, legal services available to battered immigrants and immigrant crime victims, and suggestions for effective implementation in the field.

Feel free to contact NIWAP (info@niwap.org or 202-247-4457) with any questions on the LSC regulation and immigrant crime victims' legal eligibility for access to government funded legal assistance. More information regarding access to legal services is also available in the [NIWAP web library](#)

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Violence Against Women Act's (VAWA) Expansion of Access to Legal Services for Survivors

LSC, created in 1974, is the largest funder of civil legal aid for low-income populations in the United States. LSC annually distributes funding allocated by Congress to legal services programs throughout the country in furtherance of LSC's mission to promote equal access to justice and provide high quality legal assistance to low-income persons. However, the LSC Act, implementing regulations, and annual appropriations riders govern the types of services grantees may provide and restrict who is eligible for those services. Two decades ago, access to LSC funded legal assistance for immigrants who were not lawful permanent residents was severely limited. Even with significant experience in representing victims of domestic violence in protection order cases, custody cases, and other legal matters, LSC grantees were prohibited from providing critical legal services to most immigrant survivors of domestic violence with tragic results.

In 1996, the "Kennedy Amendment" was passed, allowing LSC funded programs to use non-LSC funds to provide legal services to immigrant victims of domestic violence who were not otherwise eligible for LSC funded services, *provided* that the victim was battered by a spouse or parent. Over the years since 1996, Congress continued to expand VAWA protections for immigrant survivors. A key provision in VAWA 2005, championed by Senators Richard Durbin and Edward Kennedy, expanded access to LSC funded legal representation to all immigrant victims of domestic violence, sexual assault, and human trafficking and immigrant victims of the full range of criminal activities that the U visa for crime victims was designed to protect.

These improvements provided legal protections for crime victims who, because of their immigration status, are especially vulnerable to victimization. As the immigrant population grows in communities, small and large, urban and rural, across the United States, facilitating access to the criminal and civil justice systems for immigrant crime survivors also improves public safety. With access to help from police, prosecutors, lawyers, and courts, immigrant crime victims play an enhanced role in reporting and assisting law enforcement in bringing perpetrators of crime to justice.

For more on the history of the regulation issued by LSC, please visit NIWAP's [web library](#).

Expansion of Eligibility for Legal Services in LSC Regulations and LSC Program Letter 14-3

In April 2014, LSC amended its regulation ([45 C.F.R. § 1626](#)) fully implementing Congress' expansions of immigrant victim access to legal services in VAWA 2000 and 2005. The VAWA 2005 amendments allow any legal service agency receiving LSC funding to use any source of funding the agency receives, including LSC funding to represent immigrant victims of domestic violence, sexual assault, human trafficking or any U visa listed criminal activity. Programs can use LSC funding, VAWA funding, VOCA funding, private foundation, state funding or any other source of program income to represent immigrant survivors.

Under the new regulation, immigrants are eligible to access legal services based on:

- The Anti-Abuse laws **OR**
- Immigration status

Immigrant victims of domestic violence, sexual assault, human trafficking, child abuse, elder abuse and other immigrant survivors of crime can now access legal services under the anti-abuse laws and seek legal assistance *related to their abuse*, regardless of their immigration status. Immigrants who seek legal services based on their immigration status can be assisted by programs for any legal matter and are not limited in the legal services they can receive.

What Kind of Legal Services Can Battered Immigrants and Immigrant Survivors of Crime Receive Regardless of Immigration Status?

While victims who fall within the definition of *severe forms of human trafficking* are not limited in the scope of the legal services they can receive, all other victims receiving services funded by LSC under the anti-abuse section of the regulation may only receive legal assistance needed to “escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse.”

Legal services related to the abuse can include, but are not limited to, assistance in obtaining a protection order, applying for public benefits, applying for immigration relief, securing quality and safe housing, seeking custody or child support, economic relief and any other services related to ameliorating or preventing abuse. Legal service providers may provide a wide range of related legal assistance to immigrant survivors of crime, including representation, advocacy, or counseling to meet the multitude of needs their clients may have.

Applying for immigration relief is not a prerequisite for LSC funded agencies to provide

legal services to undocumented battered immigrants, immigrant victims of sexual assault, abused immigrant children, and immigrant survivors of crime. If the immigrant survivor, after safety planning, determines that they can safely apply for immigration relief, the attorney working with the immigrant survivor must first determine whether obtaining immigration relief is related to the immigrant survivor's ability to overcome or prevent the underlying qualifying abuse. Attorneys helping immigrant survivors apply for immigration relief may assist survivors in pursuing any form of immigration relief for which the victim is eligible. Legal assistance is not limited to VAWA's immigration protections (e.g. self-petitions, T or U visas). Once the survivor is successful in the application for immigration relief and has filed an application to adjust to lawful permanent residency that is not rejected, they may be eligible for LSC funded legal services on all matters, so long as the survivor is the spouse, parent, or under 21-year-old child of a U.S. Citizen.

Who is Eligible to Receive Legal Services Under the Anti-Abuse Laws?

Victims Who are Eligible for LSC Funded Legal Assistance under Anti-Abuse Laws

- | | |
|--|--|
| <ul style="list-style-type: none"> ✓ Battered or subjected to extreme cruelty: <ul style="list-style-type: none"> ○ All victims of domestic violence as defined by state protection order and criminal statutes ○ Victims of extreme cruelty including but not limited to coercive control ○ Victims that have been abused or subjected to extreme cruelty by a parent, step-parent, spouse, former spouse, or a son or daughter ○ Includes victims of heterosexual and same-sex partner violence, married and unmarried victims | <ul style="list-style-type: none"> ✓ Victims of sexual assault ✓ Victims of human trafficking ✓ Victims of severe forms of human trafficking (continued presence and T visas) ✓ U visa criminal activity ✓ Children of all of the eligible victims listed in the anti-abuse regulations |
|--|--|

For a more detailed discussion of eligibility for legal services in the anti-abuse laws, please read *And Legal Services for All: Implementing the Violence Against Women Act of 2005's New Path to Legal Services Corporation Funded Representation for Immigrant Survivors of Domestic Violence, Sexual Assault, Human Trafficking, and Other Crimes*, by Benish Anver, Henrissa Bassey, and Leslye Orloff, available [here](#).

Representation of Battered Immigrants, Immigrant Child Abuse Victims and Unaccompanied Minors

Congress amended VAWA in 2005 to allow recipients of LSC funding to provide related legal assistance to non-citizens who have been battered or subjected to extreme cruelty, as well as to non-citizens whose children, without the active participation of the non-citizen, have been battered or subjected to extreme cruelty. Congress's amendments removed two limitations on VAWA's original language authorizing legal

assistance to non-citizen victims of violence. First, Congress removed the provision prohibiting recipients from using LSC funds to represent non-citizen victims of violence. Second, Congress removed the language requiring that the battery or extreme cruelty be inflicted by the non-citizen's spouse, parent, or member of the spouse's or parent's family. LSC adopted the definition of the term "battered or subjected to extreme cruelty" promulgated by the Department of Justice. 45 C.F.R. § 1626.2(b). For a detailed discussion of battering or extreme cruelty and coercive control, please read *Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases* by Leslye E. Orloff, Brittnay Roberts, and Stefanie Gitler, available [here](#).

In many cases, abandonment and/or neglect of children falls within the scope of abusive behaviors covered by DHS's broad definition of battering or extreme cruelty. LSC has issued a program letter, [LSC Program Letter 14-3](#), to provide guidance on when LSC funds can be used to represent unaccompanied minors entering the United States. The child's circumstances must fall within one of the exceptions in 45 C.F.R. 1626, which include being the victim of battery or extreme cruelty.

Eligibility may vary based on the facts of the individual immigrant child's case. For more information, please see NIWAP's article [here](#) and NIWAP's web page discussing LSC policies on representation of abused immigrant children [here](#).

Access to Legal Services by Survivors of Human Trafficking: Three Distinct Paths

Survivors of Severe Forms of Human Trafficking under the Trafficking Victims Protection Act (TVPA)

LSC funded agencies may provide legal assistance to survivors of "severe forms of trafficking", as defined by the TVPA, even if the trafficking did not take place in the United States, as long as the victim is present in the United States when applying for legal services. The TVPA defines victims of severe forms of human trafficking to include victims who have been recruited, harbored, transported, or obtained for the purpose of a commercial sex act and includes adults compelled to engage in "sex acts" through the use of force, fraud or coercion, minors induced to perform sex acts, and people who are forced or fraudulently recruited, harbored, or transported for labor or services that subject them to involuntary servitude, peonage, debt bondage, or slavery. Victims of severe forms of human trafficking may qualify for continued presence and for T visas, as well as for U visas. LSC funded agencies can represent victims of severe forms of human trafficking on any legal matter; assistance need not be related to the trafficking. The TVPA has authorized LSC funded agencies to provide legal assistance to

trafficking victims’ children and certain family members who have been granted T visas.

Survivors of Trafficking under the Anti-Abuse Laws

The LSC anti-abuse regulations implement the VAWA and TVPA provisions authorizing representation for two additional groups of human trafficking victims:

1. U visa eligible trafficking victims and
2. VAWA 2005 trafficking victims who do not fall within the TVPA’s “severe forms of trafficking person” definitions and who may not be eligible for U visas. This will include, but is not limited to, victims of human trafficking as defined by state anti-trafficking laws who may not be eligible for or able to access U visas, T visas or continued presence.

A significant distinction between these groups is the fact that U visa eligible trafficking victims qualify for legal services representation whether or not they are physically present in the U.S. at the time that they seek legal assistance from an LSC funded agency. Additionally, the legal assistance that can be offered to these victims by LSC funded programs is limited to matters related escaping, ameliorating the effects of or preventing future abuse.

Presence Requirement for Access to Legal Services

One of the important issues the LSC anti-abuse section of the regulation addresses is whether and in which types of cases LSC funded programs can represent immigrant crime victims without regard to whether the crime victim is required to be in the United States at the time the survivor applies for legal services from the LSC funded agency.. The following chart illustrates which immigrant survivors must be present in the United States at the time they apply for legal services and which do not.

| Immigrant Victims and their Presence in the U.S. at the Time They Apply for Legal Services | | | |
|---|---|---------------------------|---|
| LSC Regulation Section | Immigrant Victim Category | Presence Required? | Activity’s Relation to the United States |
| § 1626.2(k)(2) | Human trafficking VAWA LSC 2005 | Yes | Trafficking can take place inside or outside of the U.S. |
| § 1626.2(j) | Severe form of human trafficking (TVPA) | Yes | Trafficking can take place inside or outside of the U.S. |
| § 1626.2(h) | Human trafficking as a U visa crime | No | Trafficking can take place inside or outside of the U.S. |
| § 1626.2(b) | Domestic violence | No | Domestic violence can take place inside or outside of the U.S. |
| § 1626.2(k)(1) | Sexual assault | No | Sexual assault can take place inside or outside of the U.S. |
| § 1626.2 (h) | U visa qualifying criminal activity | No | Qualifying criminal activity can take place inside or outside of the U.S. |
| § 1626.2 (b) | Battering or extreme cruelty | No | Battering or extreme cruelty can take place inside or outside of the U.S. |

In addition to representing survivors who were victimized within the United States, survivors may be represented by an LSC funded agency if they were victimized outside of the United States, so long as the qualifying victimization would have “violated a law of the United States” if the crime victimization had occurred in the U.S. LSC issued [Program Letter 14-3](#) on October 29, 2014 defining the term “violated a law of the United States” to include domestic violence, battering or extreme cruelty, sexual assault, human trafficking, severe forms of human trafficking, and other U visa listed criminal activities, regardless of whether the qualifying criminal activity occurred in the U.S.

Additional Expansions to Legal Services Eligibility

Unmarried Survivors

VAWA 2005 removed the Kennedy Amendment’s spousal restrictions, allowing LSC funded programs to use both LSC and non-LSC funds to provide legal assistance for immigrant survivors of domestic violence, sexual assault, trafficking, and other U visa criminal activities to represent victims of domestic violence who were not married to their abusers.

Survivors in Same Sex Marriages

On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA). The [impact of this decision](#) is that, as a matter of federal law, all marriages performed in the United States are valid without regard as to whether the marriage is between a man and a woman, two men, or two women. As federal government agencies implement *Windsor*, [DHS](#) began granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples. As a result, VAWA self-petitioning is now available to same-sex married couples, including protections for all spouses without regard to their gender, gender identity, or sexual orientation including transgender individuals.

Survivors of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage are now eligible to file VAWA self-petitions. Similarly, immigrant survivors of child abuse or extreme cruelty perpetrated by the child’s U.S. citizen or lawful permanent resident step-parent through a same sex marriage are eligible to self-petition.

How LSC Funded Agencies Can Effectively Implement the New Regulation

Opportunities for LSC funded agencies created by developing collaborative partnerships with victim services agencies

The anti-abuse pathway provides LSC funded agencies an opportunity to reach out to

and to develop relationships with victim services programs in the LSC agencies' service area that have experience and expertise serving immigrant victims of domestic violence, sexual assault, and human trafficking. Many LSC funded agencies have already established these relationships and are models of successful collaboration. Collaboration with victim services programs can help LSC funded agencies with the agency's priority setting process described in 45 C.F.R. Part 1620. Developing relationships with programs that have expertise in serving immigrant survivors can also assist with outreach, community education, case management, safety planning, obtaining U visa certifications, and other critical issues. LSC programs interested in identifying organizations with experience serving immigrant populations in their state should consult the [National Directory of Programs Serving Immigrant Victims](#) developed and maintained by NIWAP.

Other strategies for effective implementation of the LSC regulation include:

- Revising screening and intake procedures
- Removing recordkeeping
- Improving privacy and confidentiality

For a more in depth discussion of these strategies, please see NIWAP's article on the LSC regulation, [here](#).

Additional Resources on Access to Legal Services

- [November 3, 2014 NIWAP Webinar: "And Legal Services for All"](#)
- [Stories of immigrant survivors and their need for legal services](#)
- [Statutes, Regulatory, LSC Grantee Guidance, and Legislative History](#)
- [Training tools and materials](#)
- [Grantee guidance published by the Legal Services Corporation](#)

Visit NIWAP.org for access to our directory of service providers, extensive web library, and information on obtaining technical assistance. NIWAP is here to help!

NIWAP offers technical assistance to advocates, attorneys, Judges, court staff, police, prosecutors, social services and health care providers, and others working with immigrant victims of domestic violence, sexual assault, stalking, and human trafficking. To submit your questions email info@niwap.org or call us at 202-274-4457.

NIWAP addresses the needs of immigrant women, immigrant children and immigrant victims of domestic violence, sexual assault, dating violence, stalking, human trafficking and other crimes by advocating for reforms in law, policy and practice.

NIWAP is a national provider of training, legal and social science research, policy development, and technical assistance to advocates, attorneys, pro bono law firms, law schools, universities, law enforcement, prosecutors, social service and health care providers, justice system personnel, and other professionals who work with immigrant women, children and crime victims. Our work supports those in the field and in government who work to improve laws, regulations, policies, and practices to enhance legal options and opportunities for immigrant women and children.

NIWAP provides training and technical assistance on a broad range of issues of importance to immigrant women and children, including VAWA immigration and confidentiality, family law, protection orders, public benefits, language access, cultural competency, and access to services, including shelter, transitional housing, health care, and education.

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