

Faculty Introductions

- Leslye Orloff, American University, Washington College of Law
- Prosecutor Christopher Freeman
- Lieutenant Giovanni Veliz

NIWAP

• Investigator Michael LaRiviere



A Special Thanks to the Office on Violence Against Women

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Learning Objectives

By the end of this Plenary, you will have a better understanding of:

- The U and T visa programs to effectively enhance work of law enforcement and prosecutors with immigrant victims
- Enhancing officer/victim/community safety through language access and certification programs
- Strategies to help build collaborations and best practices for working with law enforcement partners, victim advocates and attorneys

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General Caveats

- Women, men, and children can qualify for U Visas
- Victims of almost all violent crimes, and many other crimes are eligible to apply for U Visas
- That said, many examples that will be used throughout this presentation will refer to female victims of domestic violence and/or sexual assault

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Participant
Goals and Expectations

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What, if anything, do you know about immigration relief for immigrant victims? NIWAP National Immigrant Women's Advocacy Project. National Immigrant Women's Advocacy Project.	
DEMOGRAPHICS National Immigrant Women's Advocary Project, 8	
Nebraska Demographics (2017)* Nebraska Demographics (2017)* Total foreign born population – 143,331 7.5% of the state's 1.8 million people are foreign born 39.3% naturalized citizens ≈34.2% lawful permanent residents or temporary legal status** ≈26.5% undocumented** 92.0% rise in immigrant population from 2000 to 2017 16.9% of children in the state under age 18 have 1 or more immigrant parents 85.4% of children with immigrant parents in the state are U.S. native. **Geometry Property Computing State (Property Computing C	

	es/Regions of Origin and Proficiency (2017)*
 ▶ Latin America -53.8% ▶ Mexico (36.8%) ▶ El Salvador (6.3%) ▶ Cuba (2.5%) ▶ Asia -24.9% ▶ India (4.0%) ▶ China (3.6%) ▶ Vietnam 3.4%) ▶ Africa -9.1% ▶ Europe - 7.5 % ▶ Middle East - 3.0% ▶ Canada - 1.3% 	Limited English Proficiency (Speak English less than very well) Naturalized citizens 42.4% Non-citizens 65.4% Languages Spoken at Home Spanish (139,740) Vietnamese (5,640) Chinese (5,368) Arabic (6,534) Nepali, Marathi, or other Indic language (5,191) German (4,992) French (4,147)
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DYNAMICS AND BARRIERS FOR IMMIGRANT SURVIVORS NIWAP National Immigrant Women's Advocasy Project. Washington College of Law

What barriers and fears prevent immigrant victims from seeking help?

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Major Challenges in Working with Immigrant Victims of Crime

- Fear of Deportation
- Language
- Retaliation
- · Fear of losing their children
- Lack of knowledge of legal rights
- Do not trust that advocates, attorneys, police, prosecutors, judges will help them



Importance of Immigration Status

- · Ability to work legally
- Protection from deportation and removal
- Ability to obtain a driver's license and social security number.
- Better access to justice, housing and public services
- Break from isolation/ Gain Independence
- Ability to travel to and from the U.S. (with some exceptions)
- Path to lawful permanent residency and ultimately citizenship



VIOLENCE AGAINST WOMEN ACT PROTECTIONS FOR IMMIGRANT SURVIVORS

Immigration Related Abuse

- Refusal to file immigration papers on spouse/ child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in have her case denied



Best Practice: Screen for Immigration Related Abuse

- Immigration Related Abuse
 - 10 times 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

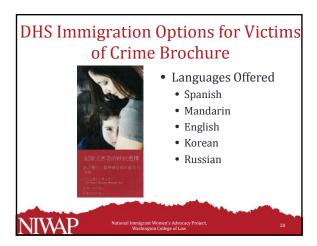


Sexual Assault Rates Among Immigrant Women

- 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).
- Latina college students
 - Experience the highest incidents of attempted rape compared to White, African American and Asian college children.
 - Kalof, L., Ethnic Differences in Female Sexual Victimization, 4 Sexuality and Culture 75-97 (2000).

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Potential Immigration Remedies

- Applications filed with DHS
 - VAWA self petition
 - Battered spouse waivers
 - Work authorization for abused spouses of work visa holders
 - U-visa (crime victims)

 - T-visa (victims of trafficking)Special Immigrant Juvenile Status
- Forms of relief from removal- granted by Immigration Judge
 - VAWA cancellation of removal
 - VAWA suspension of deportation



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 Spou

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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

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Immigrant Adult and Child Victims Who File for Immigration Relief Receive

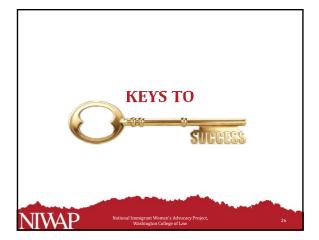
- Protection from deportation
- Legal work authorization and access to drivers' licenses upon
 - Approval or wait list approval
- Access to some federal public benefits
 - Varies by immigration case type, state, and benefit
- VAWA confidentiality protection upon filing VAWA, T or U visa case



Purpose of Immigration Relief for Survivors

- Improves access to justice
- Helps build community policing and relationships
- Increases prosecution of perpetrators
- Allows victims to report crimes without fear of deportation
- Keeps communities safe





Keys to Success

- Build multidisciplinary collaborations
- Understand protections for victims through VAWA Confidentiality
- Support victims applying for immigration relief
 - o Screening, applying early, and having certification practices
- Provide language access
- Connect survivors to public benefits





Best Practices to Enhance Collaboration

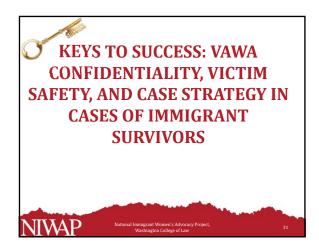
- Training across disciplines
- Open communication
- Understanding roles of each partner
- Sharing of policies and procedures
- Developing working groups
- Email groups
- Participation/inclusion in high risk teams

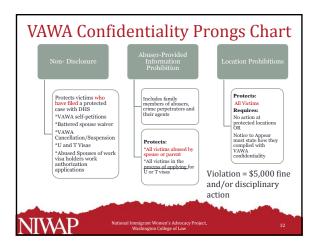


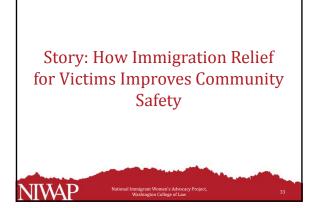
What does collaboration look like?

- Having designated points of contact
- Collaboration on projects/grants etc
- Presence at community events/meetings
- Seek out and build relationships with leaders in the immigrant community
- Joint Public Service Announcements
- Having a mission statement that speaks to inclusion

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Immigration Relief Available for **Immigrant Victims of -** Kidnapping Abduction Domestic violence • Extortion -- Child abuse · Witness tampering Sexual assault Trafficking Obstruction of justice • Perjury • Involuntary servitude • Incest Slave trade Stalking Prostitution • Being held hostage Parent perpetrated • Torture · Fraud Foreign Labor Child abuse - Child neglect · Felonious assault • Peonage Manslaughter Child abandonment · False Imprisonment • Murder Blackmail • Female genital mutilation $\label{lem:lempt} \textbf{Attempt, conspiracy or solicitation to commit any}$ of these crimes or any similar activity VIVAP

January 2018 ICE Courthouse Enforcement Policy

Limit enforcement to targeted immigrant

- Criminal convictions, gangs, national security, public safety, orders of removal
- Will not target witnesses or people accompanying to court
- $\boldsymbol{-}$ Enforcement in family law and other non-criminal
 - Should generally be avoided AND
 - Requires Field Office Director/Special Agent in Charge Approval



DHS VAWA Confidentiality Computer System

- DHS "red flag" "384" computer system to identify victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Victims of domestic violence
 - Crime victims
 - Human trafficking victims





Potential Immigration Remedies

- Applications filed with DHS
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Battered Spouse Waivers

- For survivors with a 2 year conditional residency card
- Waives the joint filing requirement and two year wait for full lawful permanent residency
- · Requires proof of
 - Good faith marriage to U.S. citizen or permanent resident and
 - Battered or subjected to extreme cruelty
 - To spouse, child, step-child



General VAWA Self-Petitioning Requirements

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



VAWA Self-Petitioning: Facts

- Must file case within 2 years of marriage termination
- Bigamy + unknowing immigrant "spouse"
- Child abuse up to age of 25 to file
- Step-children up until divorce
- Any credible evidence standard of proof (police report, protection order, medical records NOT required)



Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion
- Deportation threats
- Deportation timeats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets



Immigration Law Definition of Battering or Extreme Cruelty

- "Being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence." 8 C.F.R.§204.2(c)(1)
- Based on what state family courts have consider to be extreme cruelty in divorce, alimony, support and custody cases

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Proof of Extreme Cruelty or Battery

- Self-petitioner's declaration
- Others' declarations (family, neighbors, friends, faith communities, workplace, school)
- Domestic abuse service providers (shelters, crisis lines, support groups)
- Protection orders
- Criminal court records
- E-mails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Medical records (injuries, scars, PTSD, migraines, insomnia)
- Vet records
- Counselors (marriage, religious, mental health)
- Police reports



Good Faith Marriage

- Children
- · Love Letters
- Photos from family vacations
- · Evidence documenting that they lived together



Benefits of VAWA Protections

- **Deportation:** Protection from deportation shortly after filing.
- Immigration Benefits for Children:
 - $-\,$ VAWA self-petitioners' children receive immigration benefits no separate petition needed
- Public Benefits: As qualified immigrants (≈ 3 months), may qualify for additional state funded benefits See Public Benefits Map
- Employment Authorization:
 - Citizen abuser (≈ 6 months);
- Lawful permanent resident abuser (currently ≈ 18 months)
- <u>VAWA Confidentiality:</u> protections against the release of information and reliance on abuser provided information
- Lawful Permanent Residency:
 - Citizen perpetrator apply upon approval (1 year)
 - Lawful permanent resident perpetrator (* 5+ years-depends on when a visa is available)



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U Visa for Immigrant Survivors

- A victim of <u>qualifying criminal activity</u> is eligible for a U Visa when:
 - The criminal activity occurred in the U.S. or violated U.S. law;
 - The victims possesses information about the crime;
 - The victim has been, is being, or is likely to be <u>helpful</u> in the detection, investigation, prosecution, conviction or sentencing of the offense; and
 - The victim has suffered substantial physical or mental abuse as a result of the victimization



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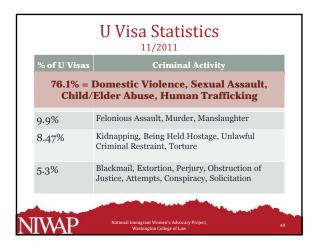
U Visa Regulations Definitions Although terms are used interchangeably

- As a matter of law (U visa regulations)
 - Helpfulness in the "investigation or prosecution" always means
 - "Detection, investigation, prosecution, conviction, or sentencing"
 - "Crime" always means
 - · "criminal activity"
- "Criminal activity" chosen to offer early access to justice system protection
 - Improving stability for crime victims



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Criminal Case Examples: Evidence of Helpfulness

- Evidence in case that the victim:
 - ➤ Called 911
 - > Participated in a criminal investigation
 - > Identified perpetrator at line up
 - > Testified before a grand jury or at trial
 - > Appearance in a case
 - > Attended criminal court hearings in the case
 - Victim impact statement
 - > Testimony at sentencing



Family/Civil Case Examples: Evidence of Helpfulness

- Filed and/ or appeared at hearing for full protection order
- Plead and or testified about abuse or sexual assault in a court case (e.g. protection order, divorce, custody, small claims, housing, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal or EEOC investigation
- Serving the perpetrator with notice of a
 - temporary protection order
 - A case in which the pleadings contain allegations of facts that constitute domestic violence, sexual assault or other U visa criminal activities



According to DHS, a U/T Visa Certification Tells USCIS Only 3 Things:

- Certifier believes the applicant is a victim of a qualifying criminal activity
- Victim had knowledge of the criminal activity
- Victim was, is, <u>or</u> is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing



Helpfulness Requirement Met *Even* When:

- Victim reports a crime and there's no further investigation or prosecution
- Perpetrator absconds or is deported
- Perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order or custody but domestic violence is not being criminally prosecuted



Not Required

Survivor-

approach

- Conviction
- · Charges filed
- Offender arrested
- Testimony at trial
- Necessary witness
- Within statute of limitations
- Offender is identified
- · Offender alive



U Visa Facts and Benefits

- Only 10,000 U visas can be granted annually Currently there is a waitlist of 110,000 visas
- Work authorization Via Deferred Action Status (4-6 years)
- The U visa grants a temporary 4 year stay
- Limited state benefits in a few states
- <u>Lawful permanent residency</u> 3 years after U visa if:
 - Continued cooperation or does not unreasonably refuse to cooperate; and
 - humanitarian need, family unity or public interest
- <u>U.S. Citizenship</u> after 5 years of lawful permanent residency+ proof of good moral character



Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children
- · Under the age of majority under state law
- · Victims of abuse, abandonment, or neglect
 - By at least one parent
- To apply must submit required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- Findings
 - Not in child's best interests to return to home country
 - Reunification with abusive parent not viable
- Timeline to formal protection = 6 36 months (2019)

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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 impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- Timeline to formal protection = 3-12 months (2019)



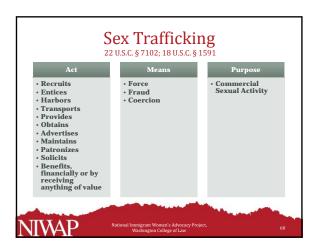
What are Severe Forms of Human Trafficking?

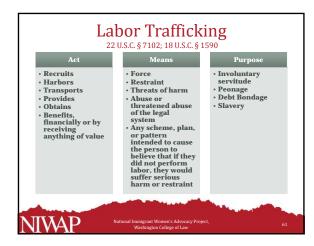
- Sex Trafficking: in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- Labor: The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery

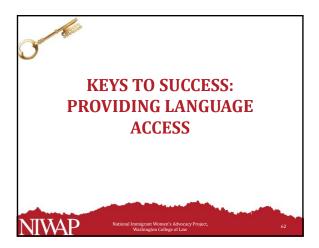
(Federal Law—"Victims of Trafficking and Violence Prevention Act of 2000 can be found at www.oip.usdoi.gov/vawo/laws/vawo2000/)

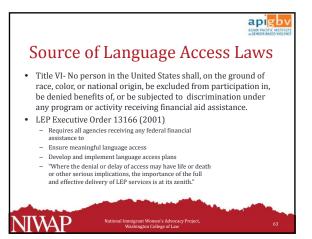
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What is Meaningful Access? • Meaningful access is defined in the US Department of Justice's own Language Access plan as: "Language assistance that results in accurate, timely and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed or inferior, as compared to programs or activities provided to English proficient individuals"

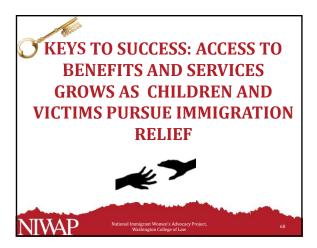
DOJ Model Guidance Federally funded programs provide free language access to: LEP persons who request it Inform members of the public that language assistance is available free of charge Language access provided in persons primary language DOJ Sample Policy Center City Police Department DOJ Approach to language access outline in: Steps for Obtaining Interpreters



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Interpretation Best Practices • Evaluation systems • Interpreter uses a dictionary, takes notes • Interpreter comfortable with subject matter of the case • Address cultural experiences ahead of time • Ensure that they do not know the parties - If using telephonic interpreters: first ask where they are located • Team interpreting and interpreter breaks

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Access for All Both documented and undocumented immigrant survivors can access: Legal Services Assistance for Crime Victims Shelter Family Court (Divorce) Transitional Housing Language Access WIC/school lunch & breakfast Police Assistance Primary/Secondary education **Protection Orders** Child Custody & Support Immunizations Emergency medical care Have Their Abusers Care from community & Criminally Prosecuted migrant health clinics Public Benefits for Their VOCA Children NIWAP

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



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Federal Benefits Available to ALL Immigrants



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

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When children qualify and their parents do not:

- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may only ask questions about the child's eligibility
- No questions may be asked about the immigration status of the child's parent if the parent is not applying for additional benefits for themselves

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HUD/DOJ/HHS Letter

- HUD, DOJ, and HHS confirmed in a joint letter that federally funded housing providers must not turn away individuals based on their immigration status from programs, services, or assistance necessary to protect life or safety
- Examples of such programs and services:
 - Short-term shelter or housing assistance
 - Crisis counseling or intervention programs
 - Medical and public health services necessary to protect life or safety



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



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



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Immigrant Survivors' Legal Rights to Access Federal and State Funded Benefits





Access to Health Care in Nebraska

- Health Insurance Exchange
 - T visas/continued presence(& their children) subsidies
 - VAWA self-petitioner with prima facie and U visa victims with wait-list approval
 - Adults who entered prior to 8/22/1996 subsidies
 - Entered after 8/22/1996 subsidies for children; adults no subsidies for the first 5 years after prima facie
 - SIJS applicant children subsidies
- Prenatal care = no immigration restrictions



Access to Public Benefits in Nebraska

- SSI
 - T visas (& their children)
- Public and Assisted Housing & Vouchers
 - T visas (& their children)
 - VAWA self-petitioner (& children)
- Educational Grants/Loans (FAFSA)
 - T visas, VAWA self-petitioners (& their children)
 - SIJS children, U visas after lawful permanent residency

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Post-Secondary Education Nebraska In-State Tuition Residence

- Home in Nebraska 180 days + pending application to attain lawful status with DHS, OR
- Resided in the state while attending high school and graduated, and
 - 3 years residence prior to graduation; and
 - Provided the post-secondary institution an affidavit of intern to file for permanent residence at the earliest opportunity



Federal Persons already receiving SSI before 8/22/96 or whose SSI apps were pending Persons who are blind or have disabilities who were lawfully residing in the U.S. on 8/22/96 and are now "qualified" LPRs with 40 quarters of work LPRs who entered after 8/22/96 have the additional burden of being "qualified" for 5 years State VAWA self-petitioners = 5 states U visa applicants = 5 states T visa bona fide = all states

Importance of Victim Advocacy

- Benefits law complex
- Need trained advocates and attorneys
- Importance of accompanying immigrant and LEP victims applying for benefits
- Need to prepare, bring copies of relevant laws and advocate
- Link benefits providers to legally correct information about benefits immigrant victims qualify to receive



Working Effectively Cross Culturally

- Ask open-ended questions
- · Avoid using legal jargon
- Know our Own Assumptions and Do Not Use Them
- Offer help to survivors who choose not to leave
- Allow an immigrant survivor to define:
 - what she needs
 - her fears
 - the barriers she must overcome to seek help
- She will define these from within her own cultural context
- · Make a list



National Immigrant Women's Advocacy Project Resources



Types of Technical Assistance

• Case consultations

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- Training materials and practice tools
- Legal research, motions, briefs
- In-person trainings and webinars
- 24/7 web library and training videos
- Help developing policies/protocols
- Strategies for removing systemic barriers
- Community of Practice and Roundtables
- List serves



Public Benefits

- NIWAP's public benefits map
 - http://map.niwap.org/
- NIWAP's public benefits charts
 - http://niwaplibrary.wcl.american.edu/allstate-public-benefits-charts/



NIWAP Topics

- VAWA, U and T Visas, Gender-based asylum, SIJS
- · VAWA confidentiality
- U and T Visa certification
- Language access and legal services access
- Immigration allegations in custody, CPOs, and divorce
- Special Immigrant Juvenile Status (SIJS), child abuse, and protective battered immigrant parents
- Public benefits access for immigrant victims
 - Health care, housing, TANF, SNAP, FAFSA, and more
- Serving victim's cultural, religious, and immigration needs
- Providing trauma informed help for immigrant survivors



Interested in Joining the Community of Practice or Roundtable

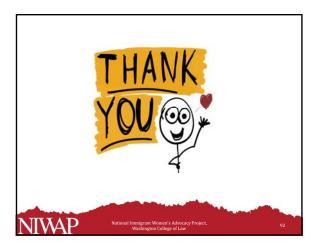
- Application available at: http://niwap.org/go/COPapplication
- To register for the Law Enforcement & Prosecution U Visa Roundtable, visit http://niwap.org/go/LEAroundtables/



Technical Assistance and Materials

- Power Point presentations and materials for this conference at
 - http://niwaplibrary.wcl.american.edu/september-2019-nebraska-law-enforcement/
- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu





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