


**Strengthening Community and Organization Responses:**  
**Serving Immigrant Victims of Intimate Partner Violence, Sexual Assault, and Stalking**

Portland, Oregon  
 October 5, 2023

For Attorneys and Victim Advocates



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## Introductions



**Leslye Orloff**  
 Executive Director  
 NIWAP




**Norma Mendoza**  
 Multicultural Program  
 Director  
 CFVC



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## Who We Are

- The National Immigrant Women's Advocacy Project (NIWAP) American University Washington College of Law
- We provide training and technical assistance to
  - Local, State, Federal law enforcement, prosecutors, victim advocates, judges, attorneys 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




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## NIWAP <http://niwaplibrary.wcl.american.edu>

• Training Materials for:	• Language Access
• Law Enforcement	• Multilingual Materials
• Prosecutors	• Immigration
• Systems Based Victim Advocates	• Family and Criminal Law
• Judges	• VAWA Confidentiality
• Attorneys/Victim Advocates	• Public Benefits, Legal Services & Economic Relief
• Statutes, Regulations, Policies & Government Publications	• Dynamics, Culture, Collaboration & Safety




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## Join a NIWAP Community of Practice

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



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## Learning Objectives

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

- Screen survivors for immigration relief eligibility using a trauma-informed approach
- Assist immigrant survivors in filing VAWA, T, U visa, or SIJS cases and obtain U/T visa certification and SIJS judicial determinations
- Ensure survivors receive VAWA confidentiality protections, civil protection orders and custody awards
- Identify which immigrant victims and their children in Oregon qualify for state or federal public benefits

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

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## Oregon (2019)\*

- ❖ Total foreign born population – 410,552
- ❖ 9.7% of the country's ~ 4.2 million people are foreign born
  - 41% naturalized citizens
  - 29% legal permanent residents
  - 30% temporary visa holders or undocumented immigrants
  - 41.7% rise in immigrant population from 2000 to 2019
- ❖ Length of time immigrants have lived in the U.S.
  - 52.4% entered before 1999
  - 24.3% entered 2000 - 2009
  - 23.3% since 2010
- ❖ 22.3% of children under age 18 have one or more immigrant parents
  - 87.8% of these children are native-born U.S. citizens

\*Source: Migration Policy Institute Data Hub (August 2021) and Lawful Permanent Resident estimates MPI and DHS (2022)

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## Oregon – Countries/Regions of Origin & Limited English Proficiency (LEP)(2019)\*

- ❖ Latin America – 42.6%
  - ❖ Mexico (33.7%)
  - ❖ Other Central America (4.8%)
- ❖ Asia – 30.8%
  - ❖ Other Southeastern Asia (7.1%)
  - ❖ China/Taiwan (7%)
  - ❖ Vietnam (5.6%)
  - ❖ India (4.4%)
- ❖ Europe – 13.5%
  - ❖ Eastern Europe (6.4%)
- ❖ Africa – 4.2%
- ❖ Middle East – 3.1%
- ❖ Canada – 3.7%
- ❖ Oceania – 2.1%
- ❖ Language spoken
  - ❖ 15.5% of people in the state who speak a language other than English at home
  - ❖ 41.5% of foreign born persons are LEP - speak English less than "very well"

\*Source: Migration Policy Institute Data Hub (August 2021)

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## Oregon-Languages Spoken at Home (2019)\*

- ❖ Spanish (366,785)
- ❖ Chinese (including Mandarin, Cantonese) (33,598)
- ❖ Vietnamese (27,598)
- ❖ Russian (20,823)
- ❖ German (17,161)
- ❖ Korean (13,759)
- ❖ Tagalog (including Filipino) (12,923)
- ❖ French (including Cajun) (11,924)
- ❖ Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (9,467)
- ❖ Japanese (8,465) Source: <https://www.migrationpolicy.org/data/state-profiles/state-language/OR> (August 2021)
- ❖ Arabic (7,417)
- ❖ Amharic, Somali, or Other Afro-Asiatic Languages (6,460)
- ❖ Persian (including Farsi, Dari) (4,608)
- ❖ Hindi (4,532)
- ❖ Nepali, Marathi, or Other Indic Languages (4,270)
- ❖ Thai, Lao, or Other Tai-Kadai Languages (4,250)
- ❖ Yiddish, Pennsylvania Dutch or Other West Germanic Languages (4,103)

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## Oregon-LEP (2019)\*

- ❖ Limited English Proficiency (Speak English less than very well)
  - ❖ Naturalized citizens – 31.1%
  - ❖ Noncitizens – 51.3%
- ❖ Limited English Proficiency by language spoken at home
  - ❖ Vietnamese (56.8%)
  - ❖ Thai, Lao, or Other Tai-Kadai Languages (45.8%)
  - ❖ Korean (45.7%)
  - ❖ Chinese (including Mandarin, Cantonese) (43.3%)
  - ❖ Spanish (34.4%) Source: <https://www.migrationpolicy.org/data/state-and/iles/state-language/OR> (August 2021)
  - ❖ Tagalog (including Filipino) (33.2%)
  - ❖ Amharic, Somali, or Other Afro-Asiatic Languages (31.9%)
  - ❖ Japanese (31.8%)
  - ❖ Telugu (31.6%)
  - ❖ Arabic (28.7%)
  - ❖ Russian (26.7%)

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## Executive Order 13166

**Goal**


Provide meaningful access to people with limited English proficiency

**Provides**

Instruction and guidance about what Title VI and Lau v. Nichols means for federal agencies and grantees

**Encourages**

the development of language access plans




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## What is Meaningful Access?

- Meaningful access is defined in the US Department of Justice 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.”



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## DOJ Guidelines on Language Access for Courts

- The use of qualified interpreters:
  - Not limited to courtrooms
    - Clerks' offices, file rooms
  - For all parties, defendants and witnesses and when appropriate (e.g., parents of minor crime victims)
  - For all types of proceedings and courts
    - Motions, status hearings and trials
  - For court ordered services batterers treatment, therapy, drug counseling
  - LEP individuals should not incur any fees for these services




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## Dynamics of Domestic Violence Experienced by Abused Immigrants




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## Department of Homeland Security



- DHS Dynamics Video



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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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## Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
  - Lifetime as high as 49.8%
  - Those married to citizens and lawful permanent residents – 50.8%
  - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). *Battered Immigrants and U.S. Citizen Spouses*

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## 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).

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## Immigration-Related Abuse

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

\*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, *Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications* (Summer 2000)

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## Purpose Crime Victim-Based Immigration Relief

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

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

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## 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
  - 22% help other victims report abuse and seek help/justice
- Significant reductions in abusers using the victim's immigration status as a tool to perpetuate abuse
  - 74% decline in immigration-related abuse
  - 78% decline in threats to snatch/cut off access to children
  - 65% decline in efforts to use the immigration status of the victim to gain an advantage in family court

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## Immigration Relief Overview and Screening

### Immigration Protections for Noncitizen Victims of Crime and Abuse

### Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
  - Child abuse
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking
- **Parent perpetrated**
  - Child abuse
  - Child neglect
  - Child abandonment

**Attempt, conspiracy, or solicitation to commit any of these crimes or any similar activity**

### Types of Qualifying Criminal Activity

- Conviction of criminal activity is not required
  - Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes
- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:
  - Hate crimes
  - Video voyeurism
  - Elder abuse/abuse of adults with disabilities
  - Child abuse
  - Robbery or aggravated robbery could be similar to felonious assault depending on the evidence and state law definition

### Benefits for Survivors

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

### 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

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## 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**

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## 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
- **2023 time to work authorization – 60-62 months**

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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.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**

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## Protections for Abused Children and Family Members

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

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## Clara and Eduardo Case Scenario

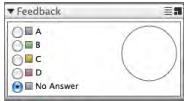
Clara met Eduardo a lawful permanent resident when he came back to his hometown to visit his family in El Salvador. Eduardo started dating Clara who was raising her 9 year old son Miguel. After Clara became pregnant and gave birth to a baby girl Lupe, Eduardo decided to bring Clara, Miguel and Lupe to 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.

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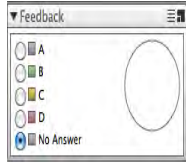
### What forms of immigration relief would Clara qualify for:



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

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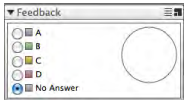
### What forms of immigration relief would Lupe NOT qualify for:



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

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### What forms of immigration relief would Miguel qualify for:



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

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### Time to Deferred Action and Work Authorization Clara, Miguel, and Lupe

- VAWA self-petition (requires marriage)
  - Eduardo U.S. Citizen
    - 3 months work authorization
    - 34 months deferred action
  - Eduardo Lawful Permanent Resident – 34 months
- T Visa – 18 months
- SIJS – 6 months
  - For Lupe as a victim of child abuse by Eduardo
  - For Miguel if abandoned by his natural father
- U visa – 60-62 months

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### Benefits Impact of Immigration Relief Options for Clara, Lupe, and Miguel - Examples

- TANF: T visa and VAWA self-petitioners eligible
  - SIJS (8 years); U (26 years)
- SNAP: T eligible – Clara and children
  - Children: VAWA prima facie (3 mo), SIJS (1-3 years);
  - Clara: VAWA (5yr); U visa (26 yr)
- Housing: T visa, VAWA self-petition eligible
  - SIJS (1-3yr), U visa (21/yr)
- Education (FAFSA): T visa
  - VAWA (3 mo); SIJS (1-3 yr), U visa (21 years)

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### True or False?

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

True

False

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## List of Exemptions from Public Charge

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



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## Public Charge Determination

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



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## Large Group Discussion

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



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## Improving Immigrant Victim Safety Through Early Screening

- Know forms of immigration relief immigrant survivors qualify for
- Document history of abuse
- Know the differences between immigration options
- Incorporate into safety planning



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## Value of Filing Early

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



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## Case Strategies That Promote Victim Participation in Civil and Criminal Cases

- When possible an immigration case should be filed before:
  - CPO, family, or criminal court case
  - Victim travels to a new location
  - Victims experiencing immigration-related threats
- Role of VAWA confidentiality laws
- Importance of sufficient evidence at filing to receive prima facie or bona fide determination




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### Advocacy and Best Practices


- Give victims a letter stating that they are in the process of filing a VAWA, T, or U visa immigration case
- File the immigration case before:
  - Protection order, divorce, or custody case
  - Victim travels to a new location
- Particularly when the victim is receiving immigration-related threats



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## VAWA Confidentiality in State Court Proceedings




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

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




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### Immigration-Related Abuse

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

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




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### VAWA Confidentiality Prongs Chart

Non-Disclosure	Abuser-Provided Information Prohibition	Location Prohibitions
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	Includes family members of abusers, crime perpetrators and their agents  <b>Protects:</b> *All victims abused by spouse or parent *All victims in the process of applying for U or T visas	<b>Protects:</b> All Victims <b>Requires:</b> 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




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### DHS VAWA Confidentiality Computer System

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



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## VAWA Confidentiality Violations

- Each violation
  - Disciplinary action and/or
  - \$5,000 fine for the individual
- Violations also include making false certifications in a *Notice to Appear*
- VAWA Confidentiality Enforcement Guidance CRCL (2008)
- ICE required to certify compliance to immigration judge = violations can be the basis for dismissal



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## 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-qualifying crime
  - The perpetrator's family member
  - Other persons associated with the perpetrator
    - (ICE 2007)
- To take an adverse action against a victim
- 8 U.S.C. 1367(a)(1)

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## Adverse Actions Include Using Perpetrator-Provided Information To...

- Deny a victim's immigration case
- Detain a victim
- Deport a victim
- Initiate an immigration enforcement action against a victim
- Seek out, question, arrest, or detain a victim

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## DHS Cannot ---

- Contact an abuser
- Seek information from an abuser
- Call an abuser as a witness
- Use information obtained solely from an abuser against the victim in the victim's immigration case

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## DHS Victim Protections For Whom? Statutes/Regulations/Policies

- VAWA Confidentiality
  - VAWA self-petition, cancellation, suspension
  - Battered Spouse Waiver
  - U Visas
  - T Visas and Continued Presence
  - Abused spouses of work visa holders who file for VAWA employment authorization
  - *All victims abused by a spouse or parent*

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## Can Survivors Be Protected Prior to Filing a VAWA Confidentiality Protected Immigration Case?

- If a victim shows evidence that they are in the process of filing a
  - U visa, T visa, or VAWA case VAWA confidentiality is triggered and applies
- Evidence might include:
  - A letter from an attorney/advocate stating that they are in the process of applying for a VAWA, T, or U visa case
  - A copy of a certification
  - A protection order


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### VAWA Sensitive Location Prohibitions

- Enforcement actions are not to be taken unless the action specific procedures designed to protect victims are followed:
  - A shelter
  - Rape crisis center
  - Supervised visitation center
  - Family justice center
  - Victim services program or provider
  - Community based organization
  - Courthouse in connection with any
    - Protection order case, child custody case, civil, or criminal case involving or related to domestic violence, sexual assault, trafficking, or stalking



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### Sensitive Locations

- Enforcement actions by ICE and CBP are not to occur or be focused at sensitive locations:
  - Schools
  - Medical treatment and healthcare facilities
  - Places of worship
  - Religious or civil ceremonies, e.g. weddings, funerals
  - During a public demonstration, e.g., march, rally, parade

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

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

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### VAWA Confidentiality Non-Disclosure Protections

- Prohibits disclosure of any information about
  - The existence of the case
  - Actions taken in the case
  - Information contained in the case file
- Disclosure is prohibited to all persons, not just the perpetrator
  - Limits family and criminal court discovery
  - U/T certification likely discoverable in criminal cases
- Protections apply from the time of filing permanently unless
  - Case denied on the merits
  - All appeal options have been completed

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### Large Group Discussion

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

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### VAWA Confidentiality Law's Statutory Disclosure Exceptions

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### Limited Disclosure in Narrow Circumstances – Law Enforcement

- Disclosure to law enforcement or national security officials
  - Solely for a legitimate law enforcement or national security purpose; and
  - In a manner that “protects the confidentiality of such information”

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### Raise Your Hand - True or False?

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

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### Limited Disclosure in Narrow Circumstances – Judicial

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

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### Hawke v. Dep't of Homeland Security (N.D. CA, 2008) – VAWA Self-Petition Case (Judicial Review Exception)

- VAWA Confidentiality Protects cases:
  - All cases unless denied on the merits
- Judicial exception applies to appeals of victim's immigration case
  - Does not apply to civil, family, or criminal court proceedings
- 6<sup>th</sup> Amendment right to compulsory process does not permit access to absolutely privileged information
- “Primary purposes of the VAWA confidentiality provision, namely *to prohibit disclosure of confidential application materials* to the accused batterer”

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### Other Limited Exceptions

Public Benefits	Anonymous Information	Victim Directed
<ul style="list-style-type: none"> <li>• Federal, state and local public benefits agencies, and to private agencies providing public benefits</li> <li>• Determine eligibility for public benefits</li> </ul>	<ul style="list-style-type: none"> <li>• Congressional oversight same privacy protections as census</li> </ul>	<ul style="list-style-type: none"> <li>• Victim can authorize DHS to refer them for help to victim service providers</li> <li>• Must have consent from all adult victims to waive confidentiality</li> </ul>

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### Demaj v Sakaj (D. Conn, 2012) U Visa/Custody Case

- Although relevant to credibility and impeachment
- Family court discovery barred as contrary VAWA confidentiality purpose --
  - Prevent disclosure of documents & information in a protected case file to alleged criminals
  - Stop perpetrator's actions to interfere with & undermine a victim's immigration case
- Seeking to obtain protected information through discovery in a custody case = interference with the victim's immigration case barred by the federal statute
- VAWA confidentiality applies to protect the case file contents, including in cases when
  - The victim discloses in state court that DHS has approved her protected immigration case

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### *EEOC v Koch (5<sup>th</sup> Circuit)*

- In civil discovery court must consider
  - How discovery of U visas might intimidate victims outside of the case before the court
  - Compromising the U visa program and law enforcement investigations and prosecutions more broadly
  - Koch: limited discovery crafted to maintain anonymity may be allowable
  - That is not possible in a family or criminal court case



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### *State v. Marroquin-Aldana* Criminal Case

2014 ME 47, ¶ 20, 89 A.3d 519, 525

- “Insufficient justification” to disclose additional documentation when the defense had the certification form
- Provided defense opportunity to cross-examine victim and call credibility into question
- Court noted the “high level of protection” given to documents filed with immigration



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### *People v. Alvarez Alvarez* Criminal Case

No. G047701, 2014 WL 1813302, at \*5 (Cal. Ct. App. May 7, 2014), review denied (July 16, 2014)

- “The visa was a tangential, collateral issue, and allowing evidence about it invited speculation about the legal status...which was completely irrelevant to this case.”
- The trial court was well within its discretion in excluding reference to the U visa



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### *Motion in Limine*

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



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### *Advocacy and Best Practices*

- Screen victims as early as possible for immigration relief eligibility
- Give survivors a letter stating that they are in the process of filing a VAWA, T or U visa immigration case
- In some cases safety improved if immigration case is filed first before:
  - Protection order, divorce, or custody case
  - Victim travels to a new location
  - Particularly when the survivor is receiving immigration-related threats
  - Must file with sufficient prima facie evidence



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### **Helping Victims Filing for Immigration Relief**




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## Small Group Activity

How would you help a survivor prove extreme cruelty in a VAWA self-petition case?



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## Forms of Extreme Cruelty


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



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

<p><b>Battering</b></p> <ul style="list-style-type: none"> <li>• Physical violence against             <ul style="list-style-type: none"> <li>• Spouse/intimate partner</li> <li>• Child</li> </ul> </li> <li>• Use of a weapon</li> <li>• Sexual abuse &amp; assault</li> <li>• Stalking</li> <li>• Other acts defined as domestic violence under state law</li> <li>• Attempts or threats to do any of these actions</li> </ul>	<p><b>Coercive Control = Extreme Cruelty:</b></p> <ul style="list-style-type: none"> <li>• Strategies designed to retain control or establish domination through fear, dependence, deprivation, isolation, immigration related abuse</li> <li>• Deprivation of basic necessities</li> <li>• Controlling regulating, monitoring the victim</li> <li>• Compelling through force, intimidation threats to abstain or engage in conduct against victim's will</li> </ul>	<p><b>Extreme Cruelty:</b></p> <ul style="list-style-type: none"> <li>• Withholding medicine or medical care</li> <li>• Adultery with a minor</li> <li>• Financial abuse, seeking to destroy victim's credit</li> <li>• Accusations of infidelity</li> <li>• Using children as a tool</li> <li>• Emotional abuse causing physical or psychological harm</li> </ul>
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## Large Group Discussion


- What could be evidence of a good-faith marriage?
- What evidence could you use to prove a spousal or parent-child relationship?



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## Good Faith Marriage


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



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## Proof of Parent-Child Relationship

- Child's birth certificate
- Child's health care, school, baptismal records
- Victim's affidavit
- Marriage license
- Court orders



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### Effect of Marriage, Divorce, or Age of a Child

- Must file within 2 years of marriage termination/death
- Stepchildren remain eligible after divorce
- Bigamy exception
- Children abused under the age 21 have up to age of 25 to file
- At least one incident of battering/extreme cruelty occurred during the marriage
  - Abusive spouse could have become a U.S. citizen or Lawful Permanent Resident before or after the abuse

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### Approved VAWA Self-Petitioners

- **Deportation:** Protection from deportation soon after filing.
- **Immigration Benefits for Children:**
  - VAWA self-petitioner's children receive immigration benefits
  - VAWA cancellation parole into US visa process required
- **Public Benefits:** As qualified immigrants (≈ 3 months) **Employment authorization:**
  - Citizen abuser (≈ 6 months);
  - Lawful permanent resident abuser (≈ 34 months).
- **VAWA confidentiality:** protections against the release of information and reliance on abuser provided information
- **Lawful permanent residency**
  - Eligible to apply upon approval

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### U Visas Promote Trust and Access to Justice: U Visas and U Visa Certification

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### U Visa Requirements

Victim	Helpfulness	Harm
<ul style="list-style-type: none"> <li>• Qualifying criminal activity</li> <li>• Possesses information about the crime</li> <li>• Criminal activity occurred in U.S. or violated U.S. law</li> </ul>	<ul style="list-style-type: none"> <li>• Victim has been, is being, or is likely to be helpful in:                             <ul style="list-style-type: none"> <li>• Detection</li> <li>• Investigation</li> <li>• Prosecution</li> <li>• Conviction</li> <li>• Sentencing</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Substantial physical or mental abuse as a result</li> </ul> <div style="border: 1px solid black; padding: 5px; text-align: center; margin-top: 10px;">                     This is not a part of the certification                 </div>

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### Qualifying Criminal Activity

Abduction	Hostage	Sexual Assault
Abusive Sexual Contact	Incest	Sexual Exploitation
Blackmail	Involuntary Servitude	Slave Trade
Domestic Violence	Kidnapping	Stalking
Extortion	Manslaughter	Torture
False Imprisonment	Murder	Trafficking
Felonious Assault	Obstruction of Justice	Witness Tampering
Female Genital Mutilation	Peonage	Unlawful Criminal Restraint
Fraud in Foreign Labor Contracting	Perjury	Prostitution
Rape	Attempt, conspiracy or solicitation to commit crime or similar activity	
	These are general categories, and not specific crimes or citations to a criminal code.	

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### Types of Qualifying Criminal Activity

- Conviction of criminal activity is not required
  - Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.
- Qualifying criminal activity includes any similar activity where the elements of the crime are substantially similar. Examples:
  - Hate crimes
  - Video voyeurism
  - Elder abuse/abuse of adults with disabilities
  - Child abuse
  - Robbery or aggravated robbery could be similar to felonious assault depending on the evidence and state law definition

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## Who Can Certify?

*"law enforcement" & "law enforcement agencies" =*

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



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## Which Judicial Officers Can Certify?

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




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## Large Group Discussion

Why might a victim come to a judge for certification?




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## Why Victims Seek Judicial Certifications

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



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Why did Congress design the U visa to authorize multiple agencies to provide U visa certification?






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## U Visa Facts

- Only 10,000 U visas can be granted annually
- Bona Fide determination with work authorization 4-5 years after filing
- The U visa grants a temporary 4-year stay
- Only some U visa holders will qualify for lawful permanent residency– no guarantee
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character




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### Who Can Apply?

- Victim of qualifying criminal activity
- Parents and guardians can apply as an “indirect victim” if:
  - The direct victim is a child under 21 years of age and/or
  - The direct victim is incompetent, incapacitated, or deceased due to murder or manslaughter
- Indirect victims must demonstrate that they were, are being, or are likely to be helpful
- When the victim is a child, the helpfulness requirement can be met by a “next friend” or family member being helpful
- Bystander victimization – very limited


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### Definition of “Helpfulness”

8 C.F.R. 214.14(b)(3)

Applicant

Has been

Is being

Is likely to be

}

helpful

{

detection


investigation

prosecution

conviction

sentencing


A victim *has been, is being, or is likely to be* helpful to law enforcement, prosecutors, judges, or other government officials


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### Determining Helpfulness

- Certifying agency determines “helpfulness”
- No degree (or timing) of helpfulness required
  - *DHS adjudicates helpfulness based on– totality of the circumstances*
- Any agency may complete U Visa certification as soon as they assess victim’s helpfulness
- Victim’s criminal history does not preclude U visa eligibility, particularly when crime connected to the abuse
- The investigation or prosecution can still be ongoing
- Certification can be “revoked”



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### Small Group Activity

What helpfulness might a victim provide to:


- Law enforcement
- Prosecutors
- Judge
- Child or adult protective services
- A state or federal labor enforcement agency


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### Example of Helpfulness May Include:

Calling 911	Having a Rape Kit performed	Providing a description of offender or their whereabouts
Allowing photographs to be taken	Filing for a protection order	Bringing a minor victim to court
Providing a statement about “other bad acts”	Providing evidence of abuse in a custody, child welfare, or divorce case	Testifying at a bond hearing, trial, or sentencing


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### The following are **Not Required** in order to certify that a victim has been helpful

- Certification signed within the statute of limitations of the qualifying criminal activity
- Conviction
- Charges filed
- Offender arrested/prosecuted
- Victim provides testimony at trial
- Victim is a necessary witness
- Offender is identified
- Offender alive
- Case involving offender is open or closed



Victim-centered approach


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## DHS Promotes a Victim-Centered Approach

- Includes practices that build trust, help stabilize victims, and minimize victimization and additional trauma. Equally values
  - The identification and stabilization of victims, including providing immigration relief, and
  - The detection, investigation, and prosecution of perpetrators of serious crimes.
- Promoted by use of qualified interpreters

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### Part 6. Certification

I am the head of the agency listed in Part 2, or I am the person in the agency who was specifically designated by the head of the agency to issue a U Nonimmigrant Status Certification on behalf of the agency. ~~Under penalty of perjury~~, I certify, under penalty of perjury, that the individual identified in Part 3, is or was a victim of one or more of the crimes listed in Part 3. I certify that the above information is complete, true, and correct to the best of my knowledge, and that I have made and will make no promises regarding the above victim's ability to obtain a visa from U.S. Citizenship and Immigration Services (USCIS), based upon this certification. ~~Whether or not the victim was a victim of a crime or a victim of an investigation or prosecution of the qualifying criminal activity of which he or she is a victim, I will justify USCRS.~~

Judges can amend the form  
Examples: Based upon ...

- My findings of fact or ruling in [name type of proceeding]
- Probable cause
- My issuance of a protection order
- My sentencing of the defendant
- My having presided over a criminal case

**REMEMBER:** This is a certification that you believe the applicant was a victim of a crime.

Certification provides evidence to DHS.

DHS adjudicates and decides whether to grant the victim immigration relief.

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## Immigration Relief and Human Trafficking

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## T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
- 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
- Can include certain family members

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## Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Process - Act	Means	Purpose - End
<ul style="list-style-type: none"> <li>Recruits</li> <li>Entices</li> <li>Harbors</li> <li>Transports</li> <li>Provides</li> <li>Obtains</li> <li>Advertises</li> <li>Maintains</li> <li>Patronizes</li> <li>Solicits</li> <li>Benefits, financially or by receiving anything of value</li> </ul>	<ul style="list-style-type: none"> <li>Force</li> <li>Fraud</li> <li>Coercion</li> </ul> <p><b>Proof of force, fraud, or coercion not required for sex trafficked children under 18.</b></p>	<ul style="list-style-type: none"> <li>Commercial Sexual Activity</li> <li>A commercial sex act for which something of value is given or received                             <ul style="list-style-type: none"> <li>Money</li> <li>Drugs</li> <li>Food</li> <li>Shelter</li> <li>Clothing</li> <li>Transportation</li> </ul> </li> </ul>

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## Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Process - Act	Means	Purpose - End
<ul style="list-style-type: none"> <li>Recruits</li> <li>Harbors</li> <li>Transports</li> <li>Provides</li> <li>Obtains</li> <li>Benefits, financially or by receiving anything of value</li> </ul>	<ul style="list-style-type: none"> <li>Force</li> <li>Restraint</li> <li>Threats of harm</li> <li>Abuse or threatened abuse of the legal system</li> <li>Any scheme, plan, or pattern intended to cause the person to believe that if they did not perform labor, they would suffer serious harm or restraint</li> <li><b>No federal exception for minors</b></li> </ul>	<ul style="list-style-type: none"> <li>Involuntary servitude</li> <li>Peonage</li> <li>Debt Bondage</li> <li>Slavery</li> </ul>

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## Involuntary Servitude in a Domestic Violence Relationship

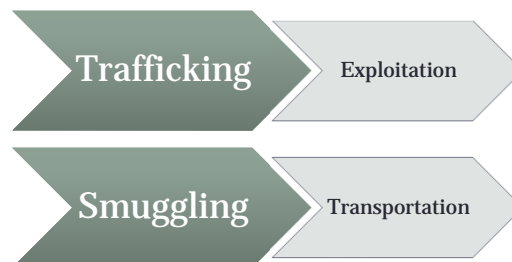
<https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-2>

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

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## Raise Your Hand

- If you have requested a T visa declaration on behalf of a trafficking victim client?
- Who have you approached for T visa declarations in your cases?



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## T Visa Eligibility

- 4 Year visa
  - Victim of severe form of trafficking
  - In the US or territories on account of trafficking
  - Respond to reasonable requests for collaboration with investigation and prosecution unless victim is under 18
    - "Trauma Exception" to cooperation requirement
  - Hardship upon return to home country
- May apply for lawful permanent residence after either 3 years or investigation/prosecution is concluded

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## T Visa Declaration

- Identify type of trafficking (sex, child sex, labor)
- Describe the victimization
- Identify the relationship with the crime detected, under investigation, being prosecuted, conviction or sentencing, and dates
- Comments on potential for retaliation or revenge from trafficker if victim is removed from U.S.
- Dates of trafficking
- Statutory citations to crimes
- Information about victims involvement in case(s) against trafficker
- Names and relationship of any family members involved in the human trafficking

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## 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
    - 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

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### HHS Child Eligibility Letters

- TVPA requires government officials to report to Office on Trafficking in Persons with 24 hours of having credible information that an immigrant child “may be a victim of trafficking”
- HHS reviews Requests For Assistance (RFAs) and connects potential victims of trafficking with state and federal benefits and services
- Must file child’s RFA before age 18
- Receive interim assistance for up to 90 days
- Eligibility letters give child trafficking victims access to benefits and services to the same extent as refugees indefinitely
  - Access to benefits throughout the time the child is applying for continued presence, T visa, or U visa



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### Continued Presence

- Temporary immigration status for any victim of human trafficking *who may be a potential witness*
  - Sex and/or labor trafficking
- Victim (and certain family) remain lawfully in the U.S. during investigation or prosecution into human trafficking
- Granted for 2 years, can be renewed
  - Receive work authorization, public benefits and services
- **State and local law enforcement, prosecutors and judges should refer victims to federal authorities** who are authorized to file continued presence applications for trafficking victims with DHS



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### Federal Agencies That Can Request Continued Presence

- Homeland Security Investigations (HSI)
- Federal Bureau of Investigations (FBI)
- Department of State Diplomatic Service
- U. S. Attorney’s Offices
- DOJ Civil Rights and Criminal Sections
- U.S. Marshals Service
- U.S. Department of Labor
- Equal Employment Opportunity Commission



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### Large Group Discussion

Which state or local agencies in your communities have relationships with any of these federal agencies to request continued presence for victims of human trafficking?



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### U.S. Department of Labor

- Deferred action available to victims and witnesses of forced labor and labor exploitation
- OSHA and Wage & Hour U visa certifications



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### Special Immigrant Juvenile Status (SIJS)



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## Raise Your Hand

If you have requested SIJS judicial determinations from a family court judge for children of your domestic violence victim clients?



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## Large Group Discussion

How does seeking SIJS for a domestic violence or sexual assault survivor's child help the immigrant survivor?

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## Special Immigrant Juvenile Status (SIJS)

- Humanitarian immigration relief for under 21 year old unmarried children who cannot be reunified with one or both parents who...
  - Abused, abandoned or neglected the child
- **State court order is a required filing prerequisite**
- Provide evidence for child's immigration case
- The state court order reflects judge's expertise on children's best interests
- State court order does **not** grant immigration status

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## SIJS Judicial Determinations Can Be Issued When Family Court Judge Awards Custody

- Child is dependent on a juvenile court or legally committed *to or placed under the custody of* an agency or department of State, or *an individual* or entity appointed by a State court.
- Reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law (through adjudication by USCIS)
- Child's best interest would not be served by being returned to his or her country of origin.

8 U.S.C. § 1101(a)(27)(f)

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

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

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## In the Clara and Eduardo Scenario in which of the following cases could the court **NOT** issue SIJS findings for Lupe as part of the court's order?



- A protection order case in which the order grants Clara custody
- A custody case brought by Clara
- The criminal prosecution of Eduardo
- A child welfare case in which the court made findings of Eduardo's abuse and placed the children with Clara

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### Best Practices to Address in SIJS Orders

- Make findings as to:
  - The age of the child and the evidence relied upon
  - The child’s parentage, naming each parent specifically
  - That the parent’s identity is unknown (e.g., rape)
  - Abuse, abandonment, neglect suffered & impact on child
    - Address each occurring abroad and/or in the U.S.
  - Details of who the court awarded custody to and why
  - Include no-contact and other protective provisions
- Cite and apply only state law as to:
  - Definitions of abuse, abandonment, neglect, similar basis
  - Best interest
  - Jurisdiction

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## Trauma-Informed Interviewing and Collaboration

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### WHAT IS TRAUMA?

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## TRAUMA

Traumatic Event    Re-experience    Avoidance    Unable to Function    Month (at least)    Arousal




**Intense fear**

Traumatic experiences can have a different impact depending on the person’s character




**Helplessness**

Traumatic experience typically overwhelms an individual mentally, emotionally, and physically



**Loss of control**

Trauma is based in the individual’s perception of the event and does not have to come from a huge catastrophic event



**Threat of annihilation**

An event or experience overwhelms normal coping mechanisms

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### TYPES OF TRAUMA

<b>INDIVIDUAL AND INTERGENERATIONAL TRAUMA</b>	<b>COMMUNITY, CULTURAL AND SYSTEMS INFLICTED TRAUMA</b>	<b>COLLECTIVE TRAUMA DIRECTED AT A SPECIFIC GROUP</b>	<b>COUNTRY OF ORIGIN, IMMIGRATION STATUS, AND HISTORICAL TRAUMA</b>
Individual incidents that cause adverse effects on survivors  Trauma that is inflicted and passed down within communities and within families	Community, cultural norms and systems are part of, and can further exacerbate trauma	Members of a group can face trauma as a collective because of their membership in a particular group	Members of a group can face trauma as a collective because of their membership in a particular group

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### BARRIERS AND FEARS OF GBV VICTIMS TO SEEK HELP

- Language Barriers
- Cultural Barriers
- Legal Barriers
- Economic Barriers
- Fear for safety
- Fear of deportation
- Fear of losing the custody of her children



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The rules, expectations and attitudes that shape our societies exist beneath the surface  
Our values and beliefs dwell down at the base of the iceberg, forming the foundation of how we view the world

**SURFACE CULTURE**

- Food
- Music
- Games
- Holidays
- Fashion
- Dances
- Language
- Festival
- Literature

**DEEP CULTURE**

**Communications Styles and Rules:**

- Talia Emotions
- Body language
- Eye Contact
- Personal Space
- Gestures
- Handling and Displaying of Emotion

**Notions of:**

- Gender and Masculinity
- Time
- Beauty
- Foregoing
- Leadership
- Religion
- Parent and Future
- Resource and Justice

**Concepts of:**

- Time
- Beauty
- Parent and Future
- Resource and Justice

**Attitudes toward:**

- Sexual Customs
- Children
- Older
- Work
- Age
- Competition vs. Cooperation
- Authority
- Arrests

**Approaches to:**

- Religion
- Courtship
- Raising Children
- Marriage
- Decision Making
- Problem Solving

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## Trust and Confidentiality

- Take a trauma-informed approach sensitive to the victim's trauma history
- Have a non-judgmental attitude
- Remind survivors of confidentiality, not only within your relationship
- Explain VAWA Confidentiality protections
- Be mindful of non-verbal cues

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## Safety and Trustworthiness

- Connection
- Safety and Trust
- Honesty, Responsibility and Humility

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## Large Group Discussion

For those of you who work within law enforcement or victim witness in District Attorney's offices-- How might trauma impact crime victims?

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## Impact of Trauma on Crime Victims

- Trauma impacts a survivor's brain and the way it processes and retains information can lead to difficulty:
  - Telling their story in a chronological manner
  - With credibility
  - Testifying in court
  - Example of coping mechanisms
    - Forgetting, dissociation, depression, substance dependency

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## Law Enforcement and Prosecutors Are Challenged With Two Goals


- Trauma Informed and Victim Centered Approaches
- Community Safety and Evidence-based Prosecutions

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### BECOMING TRAUMA-INFORMED


Adapting practices, policies, physical spaces and more to make services more accessible for everyone. This is especially important for people who have lived experiences of trauma, including staff



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### TRAUMA

Attending to survivors' emotional as well as physical safety Assist survivors in strengthening their own psychological capacities to deal with the multiple complex issues that they race in accessing safety, recovering from the traumatic effects current crime and other lifetime abuse and rebuilding their lives



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## Large Group Discussion

What does being trauma-informed mean to you, --in providing services to survivors of domestic violence, sexual assault, and stalking?

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### TRAUMA-INFORMED PRACTICES

- Awareness**  
Basic understanding of trauma and how trauma impacts survivors, understanding trauma triggers and unique vulnerabilities of trauma survivors, consciously avoid re-traumatization.
- Safety**  
Physical and Emotional Access to shelters, housing, safety plans, Access to Legal Protection, Access to primary health care and specialist gender-based violence services.
- Trustworthiness**  
Confidentiality and privacy for victims and survivors.
- Empowerment**  
Accessible information about rights and entitlements, including free access to qualified and impartial interpreters and the translation of documents. Prioritizing survivor/ victim decision making.
- Inclusiveness for all**  
Including individuals from historically marginalized groups and people with disabilities.

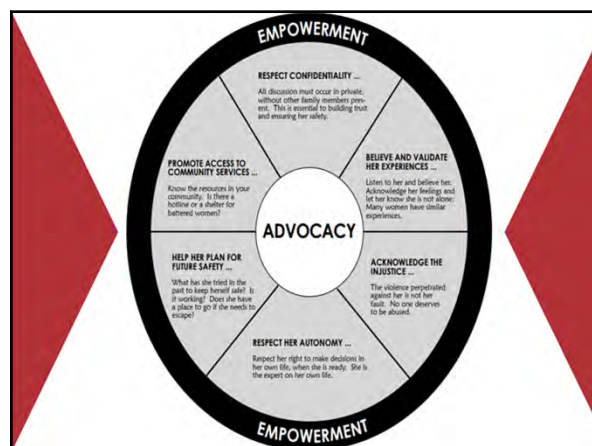
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### Partnering Up and Power Sharing

- Lifting up survivors to increase their capacity
- We need to meet the survivor where they are at
- Let them defined what justice is for themselves



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### Collaborative Relationship: Building A Supportive Connection

- Human Connection
  - Establish empathic and warm connection
  - Attunement to client “where she/he is,” - nonverbal, body cues
- Attention to Safety and Ongoing Risk
- Building Relationship
  - Non-judgment and validation of the client’s expertise and life experience – including cultural, social, political context
  - Honor your own expertise and experience
  - Acknowledge areas of not knowing
- Clear, but not Rigid, Boundaries
  - Confidentiality of client information not only within your relationship, but explain VAWA confidentiality protection for immigration applications

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### EVERYONE FEELS VALUED AND RESPECTED INCLUSION


- Individuals feel valued when others treat them like they are important and receive the same services
- Provide similar opportunities
- Provide fair and unprejudiced treatment of different categories of people
- Factors associated with respecting others are equity and non-discrimination
- Commit to helping victims heal
- Trauma- informed approach
- Have an environment inclusive, welcoming, destigmatizing, and nontraumatizing



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### RECOGNIZE YOUR OWN TRAUMA HISTORIES AND ADDRESS VICARIOUS TRAUMA.

- Advocates may have faced many of the same difficulties as the survivors they serve.
- Shared your experiences might help to be more mindful of survivors’ own traumas, and allow you to connect with survivors. But it also put you at risk for compassion fatigue.
- Advocates need self-care in order to strengthen themselves and to continually provide effective services.
- Find avenues for debriefing within your team to minimize vicarious trauma.



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### ADVOCACY ISN’T:

- Getting frustrated because things are not moving as fast as you would like to.
- Referring a victim to agencies she doesn’t want to.
- Thinking that her reactions are inappropriate.
- Believing you are a super-hero.
- Encouraging the victim to think of herself only as a victim.

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### ADVOCACY ISN’T:

- Forgetting that the victim is in crisis.
- Rescuing a victim and encouraging her to dependent on you.
- Thinking you can protect a victim.
- Thinking you’ll be the influence that changes the victim’s life.
- Pressing a woman to deal with issues she is not ready to confront.
- Trying to have a friendship with the victim.

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### Meet Survivors Where They Are At



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### Learning About A Survivor's Trauma Can Strengthen Your Case

- Protection orders
- Testimony
- Family law case
- VAWA self-petition
- U visa
- T visa

### Patience and Difference Timeframes for Difference Purposes

### Identification of Traumatic Experience

- Principles
  - Know why you are interested in identification of trauma:
    - What will you do with the information?
  - Knowing the details of (some) of the traumatic experience(s) may not be necessary
  - Recognize that many people may not have previously disclosed traumatic experiences to anyone
  - Disclosing trauma can trigger emotions, memories of the historical trauma and traumatic reactions
  - Know how to manage emotional dysregulation

### Writing Intervention

- Writing intervention
  - *Process* by which attorney/advocate helps victim writes her/his story – trauma history
  - *Why* writing (or telling) interventions can help victims heal from trauma

## A Survivor's "Story"

- Most important pieces of evidence submitted
- Opportunity for DHS to hear directly from the survivor, in her Voice
- The adjudicator should be able to understand and feel what survivor felt after being subjected to abuse or crime victimization
- Less of a formal affidavit, but rather "stories" of the survivor's experience

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## Standardized Tools: Assessing "What Happened to Me?"

- Multiple types of trauma exposure
  - Structured Life Events Screening Questionnaire (SLESQ)
- Domestic Violence
  - Conflict Tactics Scale (CTS-2)
  - Psychological Maltreatment of Women
  - Coercive Control Scale (IPV Coercion Measure)
  - Danger Assessment
- Indigenous Trauma
  - Additional traumatic effects based on oppression and discrimination

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## Standardized Tools: Assessing "How did it change me?" (Impact of battering or extreme cruelty)

- IPV (Intimate Partner Violence) Threat Appraisal and Fear Scale
- PTSD Checklist (PCL-C)
- Patient Health Questionnaire (PHQ-9; depression)

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## Helping Survivors in Crisis

- Techniques you can use to help survivors:
  - Self-regulation techniques you can use
  - Breathing techniques
  - Other techniques
  - Additional resources on crisis care:  
<https://niwaplibrary.wcl.american.edu/hands-on-trauma-crisis-training>

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## Large Group Discussion

What are some ways that you can provide opportunities for cultural-specific healing?

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## ADAPT PROGRAMS AND SERVICES TO MEET SURVIVORS' TRAUMA AND MENTAL HEALTH NEEDS



**Meditation classes**



**Mindfulness: Meditation,  
Art and Creativity**

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**CREATE OPPORTUNITIES FOR SURVIVORS TO DISCUSS THEIR RESPONSES TO TRAUMA**

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**EMPOWERING SURVIVORS TO HEAL AND MEET THEIR NEEDS**

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**TAKE CARE OF YOURSELF AS AN ADVOCATE**

Advocates need to feel emotionally safe themselves in order to support survivors' emotional safety. Not doing so can lead to burnout, high levels of stress, and loss of passion ("compassion fatigue") for the work we do. It is inevitable that advocates indirectly experience the trauma of the individual they're helping.

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**For More on Self-Care View NIWAP's Webinar**

- National Judicial Network Webinar – Protecting Against Vicarious Trauma: Tools and Strategies for Providers Working with Survivors of Domestic Violence, Sexual Assault, and Trafficking (January 31, 2023)
- <https://niwaplibrary.wcl.american.edu/njn-webinar-vicarious-trauma-jan-31-2023>
- Includes materials and connects you with research, resources and tools

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**Working Towards a Common Goal**

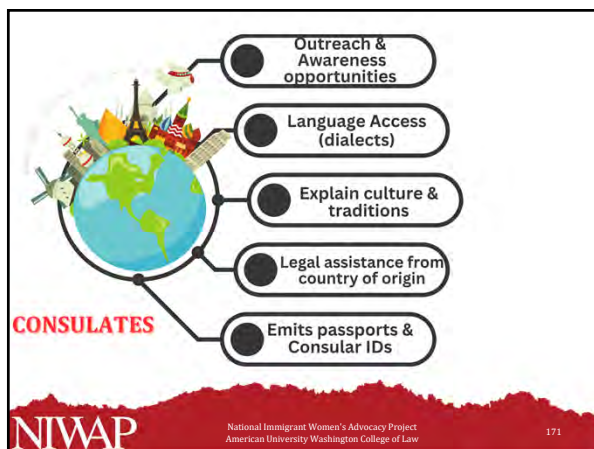
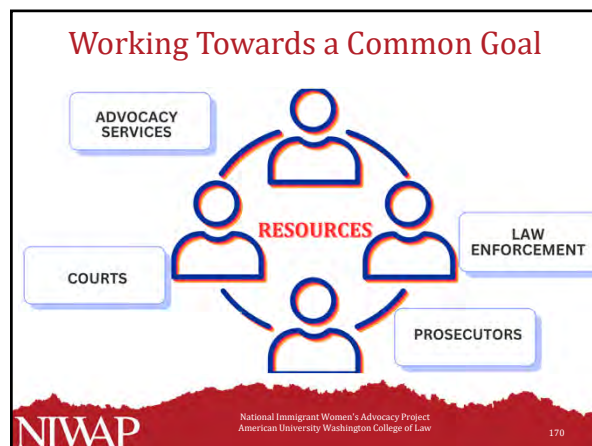
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**TRAUMA-INFORMED PRACTICES**

- Awareness**  
Basic understanding of trauma and how trauma impacts survivors, understanding trauma triggers and unique vulnerabilities of trauma survivors, consciously avoid re-traumatization
- Safety**  
Physical and Emotional: Access to shelters, housing, safety plans. Access to legal protection. Access to primary health care and specialist gender-based violence services
- Trustworthiness**  
Confidentiality and privacy for victims and survivors
- Empowerment**  
Accessible information about rights and entitlements, including free access to qualified and impartial interpreters and the translation of documents. Prioritizing survivor/ victim decision making
- Inclusiveness for all**  
Including individuals from historically marginalized groups and people with disabilities

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### CHEROKEE FAMILY VIOLENCE CENTER (CFVC)

**Domestic violence is a crime!**  
Remember the requirements for you:  
RAZA, COLOR, RELIGION, SEX, AGE, ETNICIDAD,  
NACIONALIDAD O CONDICIÓN INMIGRATORIA.

**...You Have Legal Rights.**

CFVC is a registered, non-profit agency in Canton, Georgia, that has been providing services to victims of domestic violence and their children since 1986.

CFVC provides services based on best practice which is focused on the safety of the victim and their family.

The mission of CFVC is to enhance the safety of those impacted by intimate partner violence through services that empower victims while advocating for a community standard of zero tolerance for violence in the home.

CFVC has fought for victims by providing around-the-clock emergency assistance, offering safety and support and engaging in educating the public through outreach and legal advocacy.

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### MULTICULTURAL PROGRAM OF CFVC

**(La Violencia Doméstica es un delito!**  
Recuerde que los requisitos son:  
RAZA, COLOR, RELIGION, SEXO, EDAD, ETNICIDAD,  
NACIONALIDAD O CONDICIÓN INMIGRATORIA.

**...Usted tiene derechos.**

In 2003, CFVC created a Multicultural Program to assist domestic violence immigrant victims in Cherokee County, with a particular emphasis within the Latino/Hispanic community.

The Multicultural Program have served 893 immigrant victims of domestic violence from 87 different countries of origin.


CFVC seeks to ensure that immigrant victims and survivors of domestic violence have access to linguistically and culturally appropriate services through our Multicultural Program, developed specifically to properly meet the needs of immigrant victims and survivors.

**1-800-33-HAVEN (4-2836)**

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### Questions for Today

1. What are the problems in our collaborations regarding immigrant domestic and sexual violence victims?
2. What are the barriers to fixing the problems?
3. What are some ways that we have fixed broken relationships in the past?
4. What are the benefits of collaboration to address the needs of immigrant domestic and sexual violence victims?



### Large Group Discussion

What are the problems in our collaborations regarding immigrant domestic and sexual violence victims?




### Problems We Face

- Inadequate responses to community members who are in danger
- Immigrant survivors may lack trust or confidence in legal system
- Perpetrators may exploit immigrant victims without detection for extended time
- Challenges connecting people to u-visa, t-visa, and VAWA relief
- *What problems do you face?*



### Barriers to Fixing the Problem

What Stands In The Way




### Large Group Discussion

What are the barriers to fixing the problems?



### Barriers to Success

- A history of past failures and broken promises?
- Lack of trust?
- Lack of cooperation between agencies?
- Inadequate resources?
- *What barriers have you experienced?*



## How have we overcome our challenges?

Ways We Have Fixed Broken Relationships In The Past



## How to Build Trust for the Victim to Collaborate with:





## Large Group Discussion

What are the barriers to fixing the problems?



## 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 community & migrant health clinics
- VOCA




## Attorney General's List of Required Services



- In-kind services
- Provided at the community level
- Not based on the individual's income or resources
- Necessary to protect life and safety



### Federal Benefits Available to ALL Immigrants



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

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### 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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### Raise Your Hand: True or False?

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



 True

 False

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### 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

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### Importance of Accompanying Immigrants in Applying for Public Benefits

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

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### What to Bring with you to Advocate

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




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## Large Group Discussion

Where can immigrant survivors receive health care that is subsidized without regard to immigration status?





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## 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





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## Health Care Open to All Immigrants

- Community and migrant health clinics
  - [www.nachc.com](http://www.nachc.com)
  - [www.hrsa.gov](http://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




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## Federally Qualified Health Centers



- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Child wellness services
- Emergency medical and dental services
- Mental health treatment
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family planning services
- Preventative dental services
- Pharmaceutical services
- Substance abuse services



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## Access to Shelter, Transitional Housing and Permanent Housing





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## HUD, DOJ and HHS Confirmed in August 2016

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



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## Anti-Discrimination Protections

- No discrimination based on:
  - Title VI/FVPSA- race, color, and national origin
  - Fair Housing Act- race, color, national origin, religion, sex, familial status, and disability
  - VAWA- race, color religion, national origin, sex, gender identity, sexual orientation, and disability
  - HUD Section 109- race, color, national origin, sex, and religion

## Benefits Available to all Immigrants Include:

- Short-term shelter or housing assistance, victim services counseling, and intervention for:
  - Victims of:
    - Domestic violence
    - Sexual assault
    - Stalking
    - Dating violence
    - Human trafficking
    - Child abuse
    - Other abuse
  - Homeless
  - Runaway or homeless youth
  - Abandoned children

## Large Group Discussion

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

## NIWAP Research: Reasons Immigrant Victims Turned Away From Transitional Housing

Primary Reasons Immigrant Domestic and Sexual Violence Victims Were Turned Away from Transitional Housing		
	Domestic Violence	Sexual Assault
Immigrant victim lacked the required documentation of immigration status	34.4%	99.4%
When documentation was required the program sought evidence of one of the following:		
Documentation related immigration status	84.1%	99.4%
Documentation of current employment or ability to work	56.0%	98.9%
An employment authorization document as proof of legal work authorization	52.9%	98.9%
Did not have a driver's license*	45.0%	98.8%
Program required documentation that the victim did not have	33.2%	87.0%
Immigrant applicant was undocumented	25.6%	90.0%
Immigrant victim did not meet the formal income requirements	23.7%	85.8%
The battered immigrant applicant failed to present government issued I.D.	18.3%	86.1%
They were told that the evidence presented of being self-sufficient was insufficient	9.0%	85.7%
They were not a victim of domestic violence	n/a	85.6%
They did not speak English	2.9%	3.1%

## Transitional Housing

- When transitional housing meets the in-kind, community level, and life and safety tests
  - Unit is owned or leased by the grantee and used to provide transitional housing
  - Must be open to all; No immigration restrictions
- Exception: Grantee paying rental assistance payments for participant *when regulations require income test*

## Multiple Choice:

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

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



## For Information and Locating Low Income Housing Tax Credit Housing

- <https://www.vawahome.com/>
- More than 6 million apartments nationally
- Map with apartment locations
  - <https://www.vawahome.com/what-is-lihtc>



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## Reminder: Housing Programs *That Are Not Restricted* by Section 214

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



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




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

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Qualified Immigrants benefits eligible           <ul style="list-style-type: none"> <li>– Lawful permanent residents               <ul style="list-style-type: none"> <li>• Includes U visas and SIJS</li> </ul> </li> <li>– Refugees/Asylees</li> <li>– VAWA self-petitioners</li> <li>– Trafficking victim with               <ul style="list-style-type: none"> <li>• Continued presence or</li> <li>• Bona fide determination in T visa case</li> </ul> </li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Not generally benefits eligible some variation by state           <ul style="list-style-type: none"> <li>– Asylum applicants</li> <li>– DACA recipients</li> <li>– U visa applicants &amp; recipients</li> <li>– Work/Student visa holders</li> <li>– Undocumented</li> </ul> </li> </ul> |
|--|--|



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## 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



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## 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




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### 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



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### 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



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### 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



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### Raise Your Hand: True or False?

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



True



False




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### Education

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




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### Multiple Choice:

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




**A** Lawful permanent residents, refugees & asylum recipients

**B** VAWA self-petitioners

**C** U visa applicants/recipients

**D** Bona Fide T visa

**E** Continued Presence



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## Section 214 Eligible Immigrant Categories

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



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## "Section 214" Restricted HUD Programs

- Public Housing
- Housing Choice Voucher Program
- Section 8 Project-Based Housing
- Section 236 Housing
- Section 235 Homeownership Housing
- Rent Supplement Housing
- Housing Development Grants (HoDAG)
- Section 23 Leased Housing Program



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## "Section 214" Restricted RD Programs

- Section 514 and 516 Farm Labor Housing programs
- Section 502 home loan program
- Section 504 rehabilitation loan and grant program
- Section 521 Rental Assistance Program
- RD Voucher Program



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## VAWA Self-Petitioners Eligible for Public and Assisted Housing

- Victims with VAWA self-petition filed
  - Children included in VAWA self-petition
- VAWA cancellation of removal and VAWA suspension of deportation applicants
  - Victims' children are not included in these applications
  - Will only appear in SAVE system if have work authorization
- Victims with approved I-130 visa petitions filed by their abusive spouse or parent
  - Children included in I-130 visa application filed for victim



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## Large Group Discussion

What has been your experience assisting VAWA self-petitioners and T visa applicants in accessing public and assisted housing?



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## SAVE Program

- The SAVE Program provides immigration status information to authorized agencies providing federally funded benefits
- VAWA confidentiality: DHS does not place victims into SAVE until they receive work authorization
  - VAWA cases require housing provider to "Institute Additional Verification"
  - DHS conducts this additional verification in a VAWA confidentiality compliant manner
  - VAWA confidentiality protections apply to VAWA, Battered Spouse Waiver, T, and U visa, and abused Visa Holder Spouse work authorization applications



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### How Housing Providers Are to Complete DHS -SAVE System Online

- 1) Enter into SAVE the VAWA immigrant victim's:
  - Name + A# + Date of birth
- 2) System issues "Match" or "No Match" response
- 3) If "No Match" - Click "Institute Additional Verification" AND Enter in the note field either
  - "Verify VAWA Self-Petition" or "Verify I-130 Visa Petition" AND
  - Upload a copy of the victim's DHS document:
    - I-360 VAWA self-petition
    - I-130 Family-based visa petition
    - I-797 Notice of Action: Used for receipt notice, prima facie determination, and approval notice



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### Non-Work SSNs Example VAWA Self-Petitioners

- HUD regulations require that public and assisted housing recipients provide a Social Security Number.
- VAWA self-petitioners can request a non-work social security number from SSA.
- The victims' advocate or attorney should simultaneously request that the Public Housing Authority which received the victims' application for public or assisted housing issue a letter that the victim can request a non-work social security number from SSA.



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### Be Prepared to Advocate...

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



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### Public Benefits Eligibility by States



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### The Five-Year Bar

- Due to 1996 welfare reform, qualified immigrants, including battered immigrant women, that enter the United States after August 22, 1996 are ineligible for "federal means-tested public benefits" for the first five years of holding qualified status.
- Certain immigrants are not subject to the five year bar e.g.:
  - Refugees,
  - Asylees
  - Amerasian immigrants
  - Cuban/Haitian entrants,
  - Immigrants granted withholding of deportation
  - Victims of severe forms of human trafficking
    - T visas, T bona fide, continued presence and OTIP letters



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### State Option

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



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## Interactive Public Benefits Map Demonstration: State-By-State

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

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## 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

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## Federally Recognized Driver's Licenses and IDs

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

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## Individual Taxpayer Identification Number (ITIN) Purpose

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

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## Small Group Activity

Choose a state and navigate on the public benefits map to find what type of public benefits your client is eligible for.

- Groups 1:
  - Clara as a U visa recipient
- Groups 2:
  - Clara as a VAWA Self-petitioner
- Group 3:
  - Lupe as a Special Immigrant Juvenile Status recipient
- Group 4:
  - Miguel as a T-visa recipient

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## Benefits in Oregon- TANF, Child Care, Food

- TANF
  - VAWA, Continued Presence (CP), T visas
  - Domestic violence victims eligible, no immigrant restrictions
  - Lawful permanent residents (LPR) 5 year bar unless domestic violence: SIJS (8 yrs) and U visa (25+ yrs)
- Child care
  - TANF same as above
  - Child Care Development Fund – no restrictions
- SNAP
  - CP, T visas
  - Children, elderly, disabled adult:
    - VAWA self-petitioners and LPRs (e.g. U visa and SIJS)
- WIC – open to all no restrictions

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### Benefits in Oregon – Lawfully Present Can Purchase on Exchange

- Qualified immigrants
  - VAWAs, T visa bona fide, T visas, refugees, asylees, LPRs
- Visa holders who have not violated the terms of their visas
- Parolees
- SIJS applicant children
- Temporary protected status
- Deferred action (e.g. Continued Presence, U visa bona fide; but not DACA)
- Immigrants with pending applications for lawful permanent residency
- Asylum/Convention Against Torture applicants with work authorization




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### Benefits in Oregon - Health

- **CHIP:** Until 19 – Child health care and prenatal care available under Cover All Kids to all children without regard to immigration status
- **Adults Medicaid:** Continued Presence, T visas
  - VAWAs and Lawful permanent residents (SIJS, & U visas)
    - Pre 8/22/96 entrants eligible
    - Post 8/22/96 entrants after 5 year bar
  - Full scope health care and prenatal care available to all pregnant adults




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### Benefits in Oregon – Housing, FEMA

- Housing
  - Transitional – all victims + homeless + abandoned/run away children
  - Public and Assisted: VAWA applicants, T visas, OTIP letters, Continued Presence (CP), Lawful permanent residents (LPRs) (e.g. SIJS and U visa)
- LIHEAP
  - Weatherization Assistance Program (WAP) - no immigrant restrictions
  - LIHEAP – VAWA, T visa, OTIP, CP, LPRs (e.g. SIJS & U visa)
- FEMA - Emergency assistance: everyone
  - VAWA, T visa, OTIP, CP, and LPRs (e.g. SIJS and U visa) eligible for:
    - Individual Households Program; Individual & Family Grant Program; US Small Business Administrations Loans; Disaster Unemployment Assistance
  - Emergency SNAP: T visa, CP, OTIP
    - Under 18 or after 5 year bar: VAWAs; & LPRs (e.g. SIJS and Us) also requires 40 quarters of work credit




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### Benefits in Oregon - Education

- Education
  - Federal: VAWA, Continued Presence, T visa applicants, Lawful permanent residents (e.g.. SIJS & U visas)
  - In-State tuition and enrollment fees & may be eligible for some scholarships:
    - Prior to diploma or leaving high school before receiving a diploma
    - Attended Oregon high school for 3 years; OR
    - Attended U.S. high school for 5 years; OR
    - Within 3 years of enrollment got a GED in Oregon; AND
    - Has applied for an ITIN; AND
    - Shows intention to become a citizen or LPR by showing application or statement of intent to apply as permitted under federal law




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### Benefits in Oregon – Licenses and SSI

- **Oregon Driver's License/ID** available to all persons living in Oregon without regard to immigration status
  - Federally recognized – at work authorization
    - T visa bona fide, T visa, Continued Presence, OTIP Letter; DACA, deferred action (SIJS, VAWA, U visa bona fide/waitlist), and lawful permanent residents
- **Oregon Professional and Occupational Licenses**
  - All persons without regard to immigration status
  - With SSN or ITIN
- **SSI (most limited):** Continued Presence, T visa, OTIP Letter
  - Lawful permanent residents (e.g. VAWA, SIJS & U visa)
    - If lawfully residing on 8/22/96 and now disabled
    - Post 8/22/96 entrants 5 year bar+ 40 quarters work credit



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### Raise Your Hand: True or False?

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





True



False




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## Issues That Arise For Immigrant Survivors In Family Law Cases



## PROTECTION ORDERS





### 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)





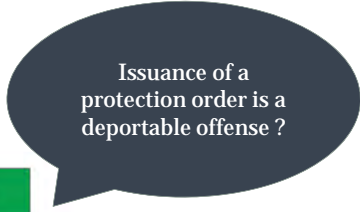
### Immigrants and Protection Orders


- 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?


 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
- Victims should not be charged with violation of orders issued for their own protection



## Best Practices

- Ask for Issuance of Padilla advisals in protection order cases
- In cases in which parties seek protection orders against each other:
  - When one party is pro se and the other is represented consider appointing counsel for the unrepresented party



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## Large Group Discussion

What are the dangers of issuing a protection order against a domestic violence victim?



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## Effect of Protection Order Issued Against Victims

- Increases perpetrator's power and coercive control
- Harmful to victims and their children
- Can lead to the perpetrator gaining custody of children
  - Impact of domestic violence on child's brain development
- This can pose serious safety concerns for victims



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## Effect of Protection Order Issued Against *Immigrant* Victims

- Victim is one step away from deportation
- A violation of a protection order is a deportable offense
  - Findings enough – conviction not required
- Perpetrators who are successful getting CPOs against their victims – Often will also prove violations
- Undermines access to victim-based immigration relief which requires proof of good moral character
  - VAWA self-petition, VAWA cancellation, Naturalization



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## Importance of Self-Defense and Primary Aggressor Determinations

- Importance of determining was there an offense
- Was as person acting in self-defense
- Who is the primary aggressor in the relationship
  - When the party against whom a protection order is sought may be the victim
  - This is particularly important for immigrant victims



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## 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



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## Victims Who Stay: No Unlawful Contact Protection Orders

- No state's protection order statute requires separation of the parties
- Provisions:
  - No abuse
  - No unlawful contact
  - Batterer's treatment



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## Small Group Creative Protection Order Exercise

- Meet in small groups to develop list of creative protection order remedies helpful for immigrant victims specifically
- Split room in 2 – competition to see which side runs out of remedies first
- Judge Collins rule on whether proposed remedies are immigrant specific



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## 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



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## Custody of Children in Immigrant Families

Tool: Immigrant Victims and Custody Bench Card



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## Protecting Immigrant Mothers Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Ammar, Orloff, Hass and Dutton, "Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status," (September 2004)  
<http://niwaphlibrary.wcl.american.edu/pubs/co-occurrencechildabuse/>



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## Large Group Discussion

What are the immigration-related issues you have seen perpetrators raise against victims in custody cases?  
– For each issue raised poll attendees for similar experiences




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### 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



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### ABA Center on Children & The Law

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

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### Raise Your Hand - Myth vs. Fact: Parents without Legal Immigration Status

- Deportation is imminent
- Parent is likely to flee U.S. with child
- The parent has no livelihood
- Legally present parent must have custody in order to file for benefits for child


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### Myth vs. Fact: Parents without Legal Immigration Status

<p><b>Myth</b></p> <ol style="list-style-type: none"> <li>1. Deportation is imminent</li> <li>2. Parent is likely to flee U.S. with child</li> <li>3. The parent has no livelihood</li> <li>4. Legally present parent must have custody in order to file for benefits for child</li> </ol>	<p><b>Fact</b></p> <ol style="list-style-type: none"> <li>1. DHS policies prevent detention/removal of immigrant parents who are crime victims</li> <li>2. US citizens and lawful permanent residents are more likely to flee with children, especially when                     <ul style="list-style-type: none"> <li>– There have been threats of kidnapping children</li> <li>– They are dual nationals</li> <li>– They travel freely to and from U.S.</li> </ul> </li> <li>3. Abused immigrant parents in family court have a path to immigration relief, work authorization &amp; some benefits</li> <li>4. Custody does not affect parent's ability to file for or gain immigration benefits for his children.</li> </ol>
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### Immigrant Victims Involved in Custody Cases Will Qualify for One of These Remedies



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### Who Is Likely to be Removed?

Year	Criminal Convictions Pending Criminal Charges:	Other Immigration Violations:
• FY 2016	• 91.7%	• 8.3%
• FY 2017	• 89.2%	• 10.8%
• FY 2018	• 87.1%	• 12.9%
• FY 2020	• 92%	• 8%

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### Department of Homeland Security Victim Witness 2011 Memo – still effective

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.”

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### Civil Immigration Enforcement Priorities (DHS Memo, Sept. 30, 2021)

- Terrorism, espionage, or threat to national security
- Threat to Border Security if
  - Apprehended while attempting to unlawfully enter the U.S.; or
  - Apprehended inside the U.S. after unlawfully entering after November 1, 2020
- *Current* threat to public safety due to serious criminal conduct
  - Individual assessment based on totality of the circumstances
  - Gravity and sophistication of the offense, conviction, sentence
  - Nature and degree of harm
  - Serious prior criminal record; Use of dangerous weapons

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### Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities (Sept. 30, 2021) and  
Trasviña ICE OPLA (May 27, 2021) Memos

- *Crime victim, witness, party in legal proceedings*
- *Person is likely to be granted humanitarian or other immigration relief (temporary or permanent)*
- *Impact on family in U.S. of loss of caregiver/provider*
- *Advanced/tender age/pregnancy*
- *Poor health or serious medical condition*

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### Mitigating Factors In Favor of Declining Enforcement

DHS Enforcement Priorities (Sept. 30, 2021) and  
Trasviña ICE (May 27, 2021) Memos

- Lengthy presence in U.S.;
- Military or public service by immigrant or family member
- History of work in **the** U.S.
- Pursuit or completion or education in the U.S.
- Time since offense, rehabilitation, conviction vacated or expunged

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### Examples: Mitigating Factors

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

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### ICE Parental/Guardian Interests Directive July 2022

- Requires affirmative and ongoing inquiries about and identification of parents/legal guardians of minor children and incapacitated adults
- Status as a caregiver parent/legal guardian impacts:
  - Decision to detain, initial placements, transfers of parents
  - Rights to family visitation & child welfare services/programs
    - ICE to comply with and facilitate court-ordered visitation
  - Unless parent is the abuser, ICE is required to accommodate efforts to make arrangements for children
  - If court orders custody or return of child, ICE will in most cases release parent/guardian
  - ICE is required to bring parents/guardians to court and establish communication with courts

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## Immigrant Parents and Child Custody

*In re Interest of Angelica L., 277 Neb. 984 (2009)*

- Parents have a constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
  - Undocumented immigration status
  - Immigration detention
  - Deportation
- Overriding presumption that:
  - Parent-child relationship is constitutionally protected
  - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
  - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

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## Visitation

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

<p><b>VAWA Confidentiality</b></p> <ul style="list-style-type: none"> <li>• Victims protected at courthouses in connection with civil/family/criminal cases related to                     <ul style="list-style-type: none"> <li>– Domestic violence, sexual assault, trafficking, stalking</li> </ul> </li> <li>• Shelters, rape crisis centers</li> <li>• Supervised visitation centers</li> <li>• Family Justice Centers</li> <li>• Programs serving victims</li> </ul>	<p><b>DHS Policy 10/27/21 At or Near:</b></p> <ul style="list-style-type: none"> <li>• Schools and universities</li> <li>• Medical or mental health care facilities</li> <li>• Places of worship, religious events, weddings, funerals</li> <li>• Places where children gather</li> <li>• Social services: e.g., crisis, domestic violence, child advocacy, food banks, victim services, shelters, supervised visitation, family justice centers...</li> <li>• Disaster/emergency response offered including family reunification</li> <li>• Ongoing parade, demonstration, rally</li> </ul>
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## Large Group Discussion

What impact could knowledge about protected locations have on how you ask judges to craft visitation orders in immigrant survivors' cases?

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## Divorce and Economic Support

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## Impact of Divorce

- VAWA self-petitioners:
  - Spouse must file within two years of final divorce
  - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
  - Students, Work Visa Holders, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
  - Employment
  - Asylum
  - Family relationships
  - Cancellation of removal

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## Annulment Instead of Divorce

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



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## Large Group Discussion

What forms of economic relief have you sought on behalf of immigrant survivors and their children?

- What obstacles or barriers have you encountered?



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## Affidavits of Support

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



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## Child Support in Mixed Immigration Status Families



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## Large Group Discussion

What are the immigration-related issues you have seen in child support cases?



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## Child Support & Immigration: The Parent Paying Child Support

- Payment of child support through the court provides a non-citizen parent with a history of child support payments
- This is helpful evidence of good moral character for either parent's immigration cases
  - Cancellation of removal
  - Naturalization
  - Obtaining relief in immigration court
    - Can be used to show hardship to family members



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## Immigration Issues Arising in Child Support Cases

- Lack of legal work authorization is not a valid defense to non-payment of child support
- Can order child support, but not a job search, of an undocumented non-custodial parent
- Can order non-custodial parent to obtain an ITIN and pay taxes
- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related crimes of moral turpitude

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## Importance of Wage Withholding

- Courts have found employers who willfully violate wage withholding orders liable to the custodial parent for the amount of child support ordered withheld.
  - *State v Filipino*, Conn. Super. LEXIS 266 (2000)
  - *Belcher v Terry*, 420 S.E.2d 909 (1992)
  - Child Support Recovery Srvs., Inc. ex rel S.C. v. Inn at the Waterfront, Inc., 7 P3d 63 (Alas. 2000)

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## NIWAP Web library

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## Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwaplibrary.wcl.american.edu/Portland-Attny-Advocate2023>
- Judicial and Family Lawyer Training Materials at <http://niwaplibrary.wcl.american.edu/sji-jtn-materials/>
  - 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)

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## Evaluation

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