

## Remote Representation of Immigrant Victims in VAWA and U Visa Cases Statewide in New York

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### Expanding Access to Legal Representation for Immigrant Victims

In New York, victim advocacy programs working with survivors of domestic violence, sexual assault, and child abuse regularly encounter underserved immigrant victims who need access to lawyers to assist eligible victims in filing for crime victim based forms of immigration relief created by the Violence Against Women Act (VAWA). It is important that immigrant victims living in outside of New York City in rural communities, small towns, suburban communities, and other cities in the state gain expanded access to the legal representation in VAWA self-petition and U and T visa cases.

According to the 2011-2016 American Community Survey Census data, 23% of the foreign born immigrants in New York State either have temporary forms of immigration relief (e.g., DACA, TPS, or work, student, international organization, or religious organization visas) or are undocumented immigrants. When an victim/survivor of domestic violence, sexual assault, child abuse, elder abuse, stalking or human trafficking is an immigrant who is undocumented or who has only a temporary form of legal immigration status, the victim is very likely eligible for a VAWA, U visa, T visa or SIJS immigration relief.

Federal VAWA confidentiality laws that offer protection from deportation for immigrant victims of abuse work most effectively for immigrant victims who have filed their VAWA, T or U visa application. When the case is filed it is red flagged to inform immigration enforcement officials that the person they are seeking immigration enforcement action against is a victim. Perpetrators of domestic and sexual violence are actively involved in efforts to have victims detained and deported in 38.3% of VAWA self-petitioning cases and 25% of the U visa cases. Further the rate at which perpetrators were able to get immigrant domestic violence victims who called police for help arrested jumped from 7.5% in 2013 to 36% in 2017.<sup>1</sup>

Victims need access to legal representation to file VAWA, U visa and T visa cases as early as possible. In rural communities and smaller cities across the state of New York and across the country, access to legal services and pro bono representation for immigrant victims of domestic violence, child/elder abuse and sexual assault is extremely limited. Additionally, in New York City, attorneys in programs offering free legal services and pro bono law firm representation will be able to help many more immigrant survivors by partnering with victim advocates on VAWA and U visa cases.

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<sup>1</sup> Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) [http://niwaplibrary.wcl.american.edu/pubs/final\\_report-on-early-access-to-ead\\_02-12](http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12) 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)* <http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>

## Remote Representation Model

The National Immigrant Women’s Advocacy Project, American University, Washington College of Law, (NIWAP), working with the California Coalition Against Sexual Assault (CALCASA) in California and several national pro bono law firms have developed, implemented and pilot tested a model for remote representation of immigrant victims in immigration cases that results in high quality legal representation for victims without requiring the victim to travel outside of their community. It also provides representation without requiring the attorney to travel to the victim. This remote representation approach trains experienced community-based bilingual Spanish speaking victim advocates who have been working providing support and assistance to domestic and sexual violence victims to assist victims and law firm pro bono attorneys in collecting evidence immigrant victims need for their VAWA self-petition and U visa immigration cases. This model builds on the skills, expertise and strong relationships of trust that victim advocates has established with both immigrant victims and law enforcement. The victim advocates serve as investigators for the pro bono lawyers. As a result victims in rural communities get representation in VAWA and U visa cases and the lawyers can help many more victims who would not have access to legal representation otherwise. Similar victim advocate collaborations with immigration lawyers have been working effectively in other states for years.

When victim advocates collaborate and help the lawyers collect evidence and particularly the initial draft of the victim’s story for her immigration case affidavit, this approach delivers immigration assistance to the victim in a more culturally sensitive and trauma informed way.<sup>2</sup> Victim advocates have the flexibility to reach victims when and where it works for the victim taking into account the victim’s work schedule and safety needs. This remote representation approach connects community based victim advocates with pro bono lawyers in another part of the state or the country. Once the community based victim advocate identifies a victim who is eligible for VAWA or U visa immigration relief, the advocate screens for eligibility in consultation with NIWAP’s technical assistance expert on victim based immigration relief. The victim advocate helps the victim collect the evidence in support of their case. The technical assistance expert provides guidance and confirms eligibility and works with partner law firms to place the case with a pro bono lawyer. The lawyer prepares and files the victim’s case remotely with direct communication between the victim and the lawyer arranged for by the victim advocate remotely on an as needed basis.

This model can be effectively used to expand legal representation for immigrant victims in VAWA and U visa immigration cases while improving victim safety by cutting off the abuser’s ability to trigger the victim’s deportation, improving victim access to safety-net services (e.g. NY

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<sup>2</sup> See, Trauma Informed – Structured Interview Questionnaires for Immigration Cases (SIQI)(July 12, 2018) <http://niwaplibrary.wcl.american.edu/pubs/siqi-trauma-informed-tool>; Advocate’s and Attorney’s Tool for Developing a Survivor’s Story: Trauma Informed Approach <http://niwaplibrary.wcl.american.edu/pubs/traum-qref-advocatetooldevelopingsurvivorstory-7-10-17>

SNA, cash assistance, is available to VAWA self-petitioners and U visa applicants);<sup>3</sup> and speeds access to legal work authorization for victims.

### **How the Projects Works in California<sup>4</sup>**

The project is a collaboration between NIWAP, CALCASA, victim advocates from several of CALCASA's member rape crisis center programs, and four pro bono law firms. The project partners local victim advocates with pro bono attorneys. NIWAP and CALCSA provide both the victim advocates and the attorneys the trainings, technical assistance, screening tools and resources they need to provide high quality legal representation to victims of domestic violence and sexual assault in VAWA self-petition and U visa cases. NIWAP staff also assist victim advocates in assuring that victims filing VAWA and U visa cases gain access to the public benefits and services immigrant victims are legally entitled to access in the state.

Using an innovative "remote access" model, local Spanish-speaking victim advocates, who are from the communities they serve, work directly with victims of sexual assault and domestic violence, building trusting relationships and meeting victims' advocacy needs. Victim advocates conduct outreach to farmworkers and immigrant victims in the remote, rural communities they serve regarding the project's services and available legal protections and benefits.

Using screening tools victim advocates identify victims who may qualify immigration relief through the VAWA or U visa programs. The victim advocates then consult with NIWAP's attorney who determines eligibility. Then the victim advocates, with training and support from NIWAP and CALCASA, use NIWAP's trauma informed story collection tool to obtain information that the pro bono lawyers will use to develop the victim's immigration case affidavit. The victim advocates also use evidence checklists to collect other information available locally that will be needed for the victim's immigration case including: medical records, photographs, 911 calls, police reports, and U visa certifications from local law enforcement or prosecutors.

Once NIWAP obtains the victim's initial case materials from the victim advocate, NIWAP reviews them, NIWAP's legal interns organize the evidence collected thus far for secure transfer to the firm, and writes up a short description of the case to be used to secure placement of the case with a partner law firm. NIWAP sends a list of cases ready for firm placement to partner law firms and firms notify NIWAP which case(s) they are interested in taking.

Once a case is placed the firm executes the representation agreement with the victim that includes representation by the law firm with investigator assistance from the victim advocate. The pro bono attorney reviews the information initially collected in the case, works with the victim advocate to obtain additional needed information from the client and prepares the victim's VAWA or U visa application, cover letter and all of the needed attachments. The pro bono firm files the VAWA or U visa application and enters their appearance as the victim's counsel.

Throughout this process CALCASA and NIWAP staff provide support and technical assistance to the victim advocates working on the cases and NIWAP provides support and technical

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<sup>3</sup> For the full range of public benefits and services open to immigrant victims in New York see Access to State-Funded Public Benefits in New York for Survivors, Based on Immigration Status

<http://niwaplibrary.wcl.american.edu/pubs/new-york-benefits>

<sup>4</sup> See, Detailed Immigrant Victim Case Timeline Piloted in California as *Appendix A*.

assistance to the law firm attorneys both on the legal aspects of the case and on the firms relationship and collaboration with the victim advocates.

### **Training and Materials Developed to Support the Project**

NIWAP has developed a number of training tools, screening materials, evidence checklists, webinars and two on-line training courses that could be used in New York's adaptation of the project. A full list of training materials on VAWA self-petitioning cases is attached in *Appendix B* and on U visa cases is attached in *Appendix C*. In addition to these tools available on line, NIWAP conducted in-person training for the victim advocates participating in the project and convened smaller virtual training sessions as needed for the advocates and attorneys participating in the project. NIWAP staff also convened mentoring sessions with the pro bono attorneys working on the cases placed by the project.

### **Law Firms Participating in the Project**

NIWAP worked with four national law firms to develop, pilot and implement the remote representation project in California. We have contacted all of the firms and shared with them a copy of the New York COVID-19 Domestic Violence Task Force Report and Addendum. Each of the firms have New York City offices and all are interested in helping implement a version of this remote representation project in New York. They have many suggestions about their colleagues who are pro bono coordinators at other law firms in New York who they believe will also be interested in joining this project. They offered to host a webinar for interested firms to describe their experience with the project, to explain how the model is different from the traditional way pro bono firms typically work on U visa and VAWA self-petitioning cases with local clients, and to help recruit firms to participate in this remote representation model. The firms also offered to share sample case materials and to mentor other firms interested in participating. The firms and the lead pro bono partners working on the project are:

- Susan Hoffman, Public Service Partner, Crowell and Moring LLP
  - (202) 624-2591; Hoffman, Susie [SHoffman@crowell.com](mailto:SHoffman@crowell.com)
- Crystal Doyle, Pro Bon Counsel, DLA Piper
  - (312) 368-7234; [crystal.doyle@dlapiper.com](mailto:crystal.doyle@dlapiper.com)
- Amy Groff, Partner, K & L Gates
  - (717) 231-5876; [Amy.Groff@klgates.com](mailto:Amy.Groff@klgates.com)
- Greg McConnell, Pro Bono Counsel, Winston and Strawn LLP
  - (312) 558-8068; McConnell, Greg [GMcConne@winston.com](mailto:GMcConne@winston.com)

### **Suggestions on How the Project Might be Adapted for New York State**

Adapting the remote representation project NIWAP implemented in California to serve immigrant victims of domestic violence and sexual assault in New York State would require recruiting the following components:

- Two lead organizations with expertise serving immigrant victims in VAWA and U visa cases willing to develop and implement a remote model that includes collaboration with locally based victim advocate and placement of cases with pro bono law firms. One organization should be based upstate and the other in New York City. Both would strive to serve victims across the

state. This would require funding attorney time to run the project, place the cases, mentor firm attorneys and work with local victim advocates.

- NIWAP would participate in the initial year or years of the project to mentor and train the lead organization staff that would be implementing the project, to help work with the pro bono law firms, and support training of the victim advocates. NIWAP could also adapt its existing work products including the online training modules based on recommendations from the lead organizations and the New York Bar and suggestions from partner law firms. Over time as New York based programs gain expertise NIWAP will play a smaller supportive role.
- Collaborations with the New York State Coalition Against Sexual Assault and the New York State Coalition Against Domestic Violence to recruit programs that serve victims across the state whose victim advocates would participate as partners in the project. State funding for domestic violence and sexual assault victim advocacy in the state would need to include prioritizing funding that supports language access and the time that victim advocates would devote evidence collection, identifying and supporting victims in the victim advocates local communities participating in the project.
- Pro bono law firm partners willing to take cases state-wide using the remote representation collaboration model. It is important to note that the state will be best served when law firm project partners that gain experience with this remote model, and apply this approach to cases they work on in New York City. If the Governor and New York State play a leadership role in setting up this model, the net effect will be to expand the numbers of immigrant victims from across the State who gain critically needed access to quality legal representation in VAWA self-petition and U visa cases. Pro bono law firms who collaborate with victim advocates will be able to serve greater numbers of immigrant victims.
  - The traditional pro bono representation model involves the lawyer taking the case, meeting in person with the victim client who must travel to the attorney's office, and doing all of the work on the case in-house at the firm. When pro bono law firms work with victim advocates who assist as investigators with evidence collection, the law firm lawyers will be able to assist many more immigrant victims per attorney hour devoted to the case. This model also has the advantage of building on the trusting relationship that the victim advocate has already established with the client.
- The New York State Bar Association could assist the project by conducting the legal research needed to adapt the retainer agreement being used in the California model to New York attorney client privilege laws. The goal is to set up the agreement so that the victim advocates working on the cases are treated as investigators and come under attorney client privilege. Also the on-line course that was developed to train the pro bono attorneys working on this project is approved for CLE credit in California. Obtaining assistance from the bar to undertake the steps needed to give New York lawyers CLE credit for taking the course will be needed. The course is on a platform hosted by OneJustice in California. NIWAP could work with OneJustice if needed to make any curriculum modifications that may be needed or to connect the New York State Bar Staff with the OneJustice staff responsible for the online training modules. The New York State Bar and other New York Bar associations could play an important role in recruiting pro bono law firms to join the project.