

# NIWAP



# *Best Practices for Serving Immigrant Survivors of Domestic and Sexual Violence in Rural Communities*

**Reno, Nevada  
January 23, 2025**

Rural Grantee Orientation

# NIWAP

National Immigrant Women's Advocacy Project  
American University Washington College of Law

# Introduction



**Rafaela Rodrigues**

Assistant Director

National Immigrant Women's Advocacy Project,  
American University Washington College of Law

*This project was supported by Grant No. 15JOVW-21-GK-02208-MUMU awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.*

# Learning Objectives

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

- Assist immigrant survivors filing VAWA, T, U visa, or SIJS cases including obtaining 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 qualify in your state for state or federal public benefits
- Access technical assistance, training materials, resources and trainings offered by NIWAP to support your work.

# Who We Are

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



# NIWAP Resources

- NIWAP Web library
  - Directory
  - Public Benefits Interactive Map & Demographics
  - Materials: Bench cards, toolkits, training tools, legal research, multi-lingual outreach materials
- Technical Assistance
  - Cases, policies, strategies
  - Email, phone, zoom
- Trainings and Webinars
  - On-line, virtual, in-person
  - Customized
- Communities of Practice
  - Victim advocates, family lawyers, National Judicial Network
  - Law enforcement/prosecutors

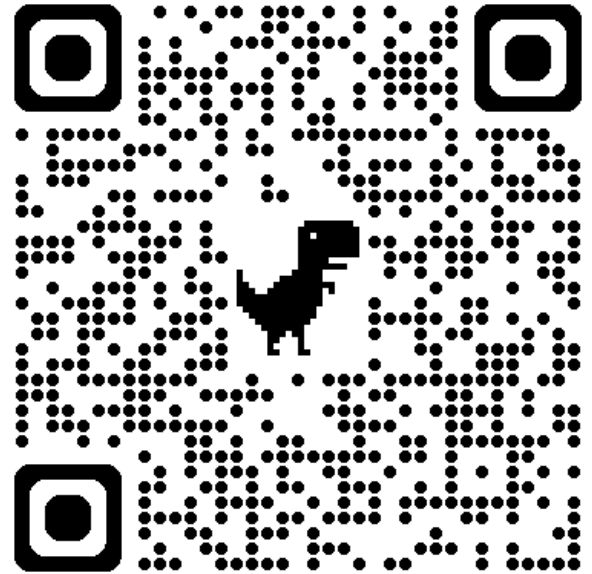


# Technical Assistance Topics

- Immigration relief
  - VAWA, U and T visas, Battered Spouse Waiver, Special Immigrant Juvenile Status, and Naturalization for Survivors
- U and T visa certification by government officials
- VAWA Confidentiality
- Issues that arise for immigrant survivors in family court cases
  - Including protection orders, custody, divorce, support
- Access to legal services and public benefits
  - E.g. housing, healthcare, driver's licenses, food assistance, education
- Language access for Limited English Proficient survivors
  - To help from law enforcement, prosecutors, courts, victim services
- Prosecution strategies
  - Discovery, Victim Disclosures, and Expert Witness
- Providing trauma informed assistance to immigrant survivors
- Serving survivors' cultural, religious, and immigration related needs

# 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>





# Immigration Relief Overview and Screening

# U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

## Immigration Protections for Noncitizen Victims of Crime and Abuse

### T VISA CONSIDERATIONS

- ▶ Must be in the U.S. on account of human trafficking
- ▶ Law enforcement declaration is encouraged but not required



#### If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Access to federal and state benefits and services
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.

To apply: USCIS Form I-914

**T VISA**  
For victims of human trafficking

### VAWA CONSIDERATIONS

- ▶ Have suffered battery or extreme cruelty perpetrated by your U.S. citizen or Lawful Permanent Resident spouse or parent or your U.S. citizen adult son or daughter
- ▶ Petitioners and perpetrators may be of any sex or gender



#### If approved, benefit provides:

- Lower priority for removal
- Work authorization
- Access to federal and state benefits and services (possibly sooner than approval)
- Ability to apply for permanent residency
- Ability for children of self-petitioning spouses or children to receive permanent residency, even if not already in the U.S.

To apply: USCIS Form I-360

**VAWA**  
For victims of domestic violence and abuse

### ASYLUM CONSIDERATIONS

- ▶ Must fear persecution on account of race, religion, nationality, political opinion, or membership in a particular social group
- ▶ If in removal proceedings, may need to file Form I-589 with the immigration judge

To apply: USCIS Form I-589

**ASYLUM**  
For victims of persecution

### SIJ

Special Immigrant Juvenile classification for child victims under 21 years of age

### SIJ CONSIDERATIONS

- ▶ Must be a victim of abuse, abandonment, neglect, or a similar basis under state law by one or both parents
- ▶ Must have a juvenile court order with the required determinations

To apply: USCIS Form I-360

### U VISA

For victims of domestic violence, sexual assault, felonious assault, human trafficking, and other qualifying crimes



#### If approved, benefit provides:

- Ability to apply for permanent residency

To apply: USCIS Form I-918

### U VISA CONSIDERATIONS

- ▶ Qualifying crime must have occurred in the U.S. or violated U.S. law
- ▶ May apply from the U.S. or while abroad
- ▶ Must have law enforcement certification



#### If approved, benefit provides:

- Up to four years of temporary nonimmigrant status
- Work authorization
- Ability to apply for permanent residency
- Ability for qualifying family members to receive derivative nonimmigrant status, even if not already in the U.S.



**NIWAP**

# Immigration Relief Available for Immigrant Victims of:

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



# 2013 and 2017 Research Found Increased Justice System Participation

- VAWA Self-Petitioners
  - 62% participate in criminal investigations and prosecutions
  - 63% seek civil protection orders
  - 60% turn to the courts for child custody orders
- U Visa Victims
  - 70% participate in active criminal prosecutions and investigations
    - 29% willing to cooperate if their criminal cases went forward
  - 67% seek protection orders
  - 64% seek custody orders

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rodrigues et al. *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey* (May 3, 2018); Leslye Orloff, et. al., *U Visa Victims and Lawful Permanent Residency 5* (September 6, 2012)



## After VAWA Self-Petitioners and U Visa Victims Receive Work Authorization and Deferred Action

- 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
- Victim's Lives Improve
  - 300% increase in jobs paying at least minimum wage
  - 226% increase in victims taking ESL classes
  - Education achievement: GEDs 35%; AA & BA 38%; Advanced degrees 19%, Vocational education 21%
  - More involved in children's school (660%); easier to make decisions (432%); calmer (300%); more focused (280%);



# 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

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

## Battering

- Physical violence against
  - Spouse/intimate partner
  - Child
- Use of a weapon
- Sexual abuse & assault
- Stalking
- Other acts defined as domestic violence under state law
- Attempts or threats to do any of these actions

## Coercive Control = Extreme Cruelty:

- Strategies designed to retain control or establish domination through fear, dependence, deprivation, isolation, immigration related abuse
- Deprivation of basic necessities
- Controlling regulating, monitoring the victim
- Compelling through force, intimidation threats to abstain or engage in conduct against victim's will

## Extreme Cruelty:

- Withholding medicine or medical care
- Adultery with a minor
- Financial abuse, seeking to destroy victim's credit
- Accusations of infidelity
- Using children as a tool
- Emotional abuse causing physical or psychological harm



# 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**

# 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
  - Requires certification from a government official – e.g., law enforcement, prosecutor, judge, EEOC, APS, CPS, FBI
- 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 – 48 -62 months**

# T Visa for Trafficking Victims

- A victim of a severe form of trafficking in persons
  - Sex or labor trafficking involving victim under 18 or and adult subject to force, fraud or coercion
- Victim is physically present in the U.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**

# 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.

# 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

▼ Feedback

A

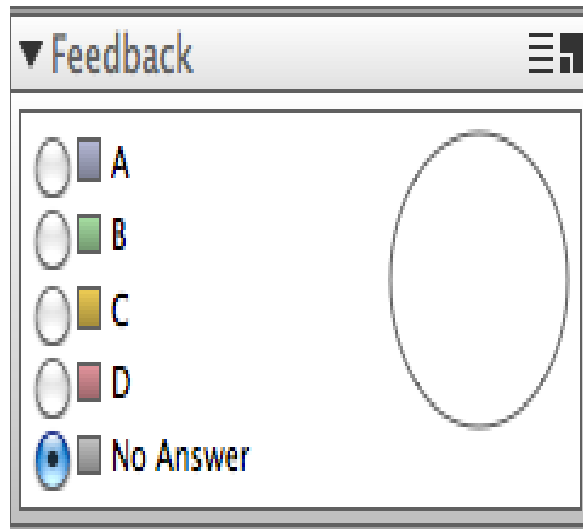
B

C

D

No Answer

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



Feedback

A

B

C

D

No Answer

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



# What forms of immigration relief would Miguel qualify for:

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

Feedback

A

B

C

D

No Answer



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

- TANF: T visa eligible
  - VAWA (unless state funded 5 yr bar); SIJS (8 yrs); U (26 yrs)
- 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 eligible
  - VAWA (3 mo); SIJS (1-3 yr), U visa (21 years)



# Large Group Discussion

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

# 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

# Value of Filing Early

- File the victim's immigration case early
  - DHS VAWA confidentiality computer system
  - Sufficient evidence for prima facie/bona fide
  - Supplement with more evidence as soon as available do not wait for request for further evidence
- Benefits for victims of early filing:
  - Protection from deportation
  - Safer for victims to cooperate in criminal cases
  - Speeds access to work authorization/public benefits
  - Better position in the family law case

# 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 evidence for bona fide/prima facie

# VAWA Confidentiality in State Court Proceedings

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



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

# 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

Krisztina 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)*

# VAWA Confidentiality Prongs Chart

## Non-Disclosure

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

## Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators and their agents

### Protects:

- \***All victims abused by spouse or parent**
- \***All victims in the process of applying for U or T visas**

## Location Prohibitions

### Protects:

**All Victims**

### Requires:

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





# 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
- Works best for survivors with pending VAWA, T or U visa, Battered Spouse Waivers, & work authorization for abused spouse of work visa holder cases

# 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



# 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

# 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, civil, 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

# 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



# 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

**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

# 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



# 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
    - Must file when under age 18
    - 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

# 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



# 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

# Importance of Accompanying Immigrants in Applying for Public Benefits

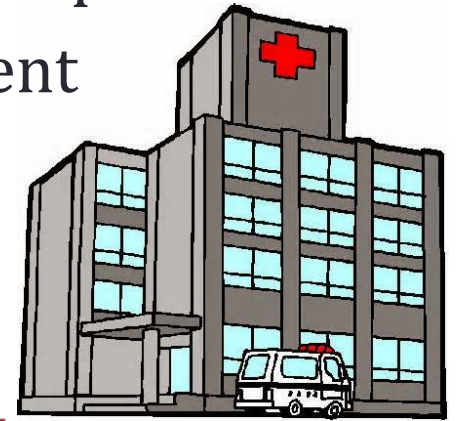
- Help educate state benefits workers
- Accompanying immigrant applicants helps
  - Children and survivor get what they are legally entitled to access
    - Varies by state, immigration status, benefits program
  - Helps undocumented parents/guardians file for benefits for their eligible citizen and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

# Large Group Discussion

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

# 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





# 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



# Shelter and Transitional Housing Large Group Discussion

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



# 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



# Housing Programs Open to All Persons With No § 214 Immigration Restrictions:

- 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
- Section 515 Rural Rental Housing Program (without Rental Assistance)
- Rural Housing Preservation Grants
- Section 538 Multi-family Loan Guarantees
- HOPE 2

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



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

- Qualified Immigrants benefits eligible
  - Lawful permanent residents
    - Includes U visas and SIJS
  - Refugees/Asylees
  - VAWA self-petitioners
  - Trafficking victim with
    - Continued presence or
    - Bona fide determination in T visa case
- Not generally benefits eligible some variation by state
  - Asylum applicants
  - DACA recipients
  - U visa applicants & recipients
  - Work/Student visa holders
  - Undocumented

# 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

# 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






# 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

# 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



# 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

# 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

# Immigrants Eligible for Public & Assisted Housing

- 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

# 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

# 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

# Public Benefits Eligibility by States





# 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

# 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

# Interactive Public Benefits Map

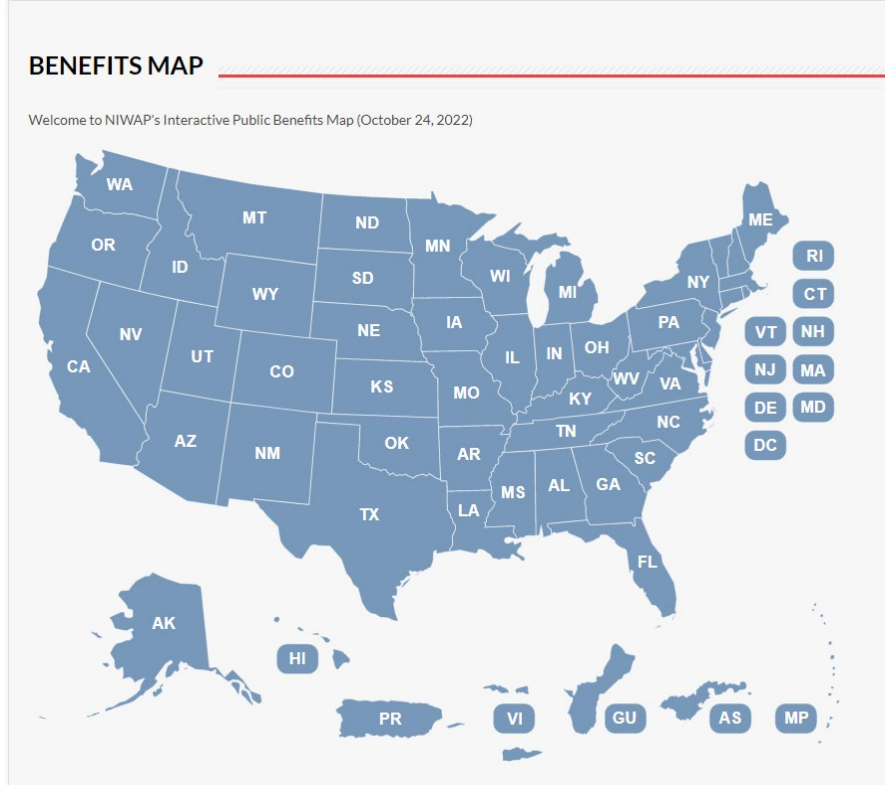
## State-By-State

Hide fields Filter Group Sort ...

	Ben...	STATE & TERRITORY	Benefit Name	VAWA Self-Petitioner
1	309	Florida Public Benefits	Child Care - TANF Funded	Eligible for TANF funded child care if receiving TANF.
2	308	Florida Public Benefits	Child Care: Child Care Development Fund (CCDF)	Eligible for CCDF
3	310	Florida Public Benefits	Children's Health Insurance Program (CHIP)	Eligible up to age 19 upon prima facie determination ...
4	311	Florida Public Benefits	Earned Income Tax Credits (EITC)	Eligible with conditions upon receipt of work ...
5	313	Florida Public Benefits	Emergency Medicaid	Eligible.
6	315	Florida Public Benefits	Family Medical Leave Act - State Law	No state law, federal law applies.
7	316	Florida Public Benefits	Federal Education Student Aid, Grants, and Loans	Eligible upon prima facie determination.

30 records um 13017

Airtable Download



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

# 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

# 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?

Issuance of a protection order is a deportable offense ?



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
  - Need Padilla warnings
- Do not agree/litigate CPOs filed against victims
- Victims should not be charged with violation of orders issued for their own protection

# 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

# Victims Who Stay: No Unlawful Contact Protection Orders

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

# 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

# Custody of Children in Immigrant Families

Tool: Immigrant Victims and Custody Bench Card

# 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



# 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



# Raise Your Hand - Myth vs. Fact:



- **Survivor Parents Without Legal Immigration Status**
  - Deportation is imminent
  - Are likely to flee U.S. with child
  - Has no livelihood possibilities
- **Legally present parent** must have custody in order to file for benefits for child

# Myth vs. Fact:

## Parents without Legal Immigration Status

### Myth

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

### Fact

1. DHS policies prevent detention/removal of immigrant parents who are crime victims
2. US citizens and lawful permanent residents are more likely to flee with children, especially when
  - There have been threats of kidnapping children
  - They are dual nationals
  - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

# 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

# Safe Locations for Victims: Helpful For Visitation Exchange

## VAWA Confidentiality

- Victims protected at courthouses in connection with civil/family/criminal cases related to
  - Domestic violence, sexual assault, trafficking, stalking
- Shelters, rape crisis centers
- Supervised visitation centers
- Family Justice Centers
- Programs serving victims

## DHS Policy 10/27/21 At or Near:

- Schools and universities
- Medical or mental health care facilities
- Places of worship, religious events, weddings, funerals
- Places where children gather
- Social services: e.g., crisis, domestic violence, child advocacy, food banks, victim services, shelters, supervised visitation, family justice centers...
- Disaster/emergency response offered including family reunification
- Ongoing parade, demonstration, rally

# Divorce and Economic Support

# 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

# 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
  - Can set victim up for marriage fraud investigation
- Impacts
  - Spousal support
  - Property division

# 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.



# Child Support & Immigration: Helps Immigration Cases of Both Parents

- Lack of legal work authorization is not a valid defense to non-payment of 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

# 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)

# Technical Assistance and Materials

- Power Point presentations and materials for this conference at
  - <http://niwaplibrary.wcl.american.edu/RuralGrantees2024>
- Victim Advocate Training Materials
  - <https://niwaplibrary.wcl.american.edu/pubs/victim-advocate-training-mats>
- 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)