

NIWAP



***Serving Immigrant Victims of
Domestic and Sexual Violence, Stalking and Child
Abuse: Holistic, Trauma Informed Best Practices***

For Victim Advocates and Attorneys

**Salt Lake City, Utah
September 19, 2024**

NIWAP

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

Faculty

- Leslye E. Orloff, Adjunct Professor and Director
- Rafaela Rodrigues, Assistant Director
- National Immigrant Women's Advocacy Project, American University, Washington College of Law

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- We provide Training & 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 the 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
- 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>

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

Improve victim safety and economic security through immigration relief, public benefits access in Hawaii, and identifying co-occurring human trafficking

Obtain U & T visa certifications, SIJS judicial determinations, and assist survivors filing for immigration relief

Ensure survivors receive VAWA confidentiality protections, civil protection orders, custody awards, and economic relief

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



Utah (2021)*

- ❖ Total foreign-born population – 278,336
- ❖ 8.3% of the state's ~ 3.3 million people are foreign born
 - 44.6% naturalized citizens
 - 31% legal permanent residents (as of 2019)
 - 24.4% temporary visa holders or undocumented immigrants
- 75.4% rise in immigrant population from 2000 to 2021
- ❖ Length of time immigrants have lived in the U.S.
 - 42.7% entered before 1999
 - 25.3% entered 2000 - 2009
 - 32.1% since 2010
- ❖ 16.4% of children under age 18 have one or more immigrant parents
 - 90.6% of these children are native-born U.S. citizens

**Source: Migration Policy Institute Data Hub (November, 2023) and Lawful Permanent Resident estimates MPI and DHS (2022)*

Utah – Countries/Regions of Origin & Limited English Proficiency (LEP)(2021)*

- ❖ Latin America – 57%
 - ❖ Mexico (35.5%)
 - ❖ South America (13.5%)
 - ❖ Other Central America (6.4%)
- ❖ Asia – 18.7%
 - ❖ Southeastern Asia (8.3%)
 - ❖ South Central Asia (5.5%)
 - ❖ Eastern Asia (5.2%)
- ❖ Europe – 11%
 - ❖ Eastern Europe (4.3%)
- ❖ Africa – 4.6%
- ❖ Oceania – 3.7%
- ❖ Canada – 2.6%
- ❖ Middle East – 2.4%
- ❖ Language spoken
 - ❖ 15.3% 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](#) (November, 2023)*

Utah - Languages Spoken at Home (2021)*

- ❖ Spanish (313,381)
- ❖ Portuguese (17,291)
- ❖ Chinese (including Mandarin, Cantonese) (15,873)
- ❖ Ilocano, Samoan, Hawaiian, or Other Austronesian Languages (15,099)
- ❖ German (9,324)
- ❖ Vietnamese (8,435)
- ❖ Russian (7,791)
- ❖ French (including Cajun) (7,790)
- ❖ Tagalog (including Filipino) (7,507)
- ❖ Native Languages of North America (7,292)
- ❖ Arabic (6,472)
- ❖ Japanese (5,497)
- ❖ Thai, Lao, or Other Tai-Kadai Languages (4,710)
- ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (3,710)
- ❖ Korean (3,576)
- ❖ Nepali, Marathi, or Other Indic Languages (3,300)
- ❖ Yoruba, Twi, Igbo, or Other Languages of Western Africa (2,706)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/U> (November, 2023)

Utah - LEP (2021)*

- ❖ Limited English Proficiency (Speak English less than very well)
 - ❖ Naturalized citizens – 30.6%
 - ❖ Noncitizens – 50.3%
- ❖ Limited English Proficiency by language spoken at home
 - ❖ Vietnamese (55.4%)
 - ❖ Swahili or Other Languages of Central, Eastern, and Southern Africa (46.1%)
 - ❖ Thai, Lao, or Other Tai-Kadai Languages (38.5%)
 - ❖ Tagalog (including Filipino) (37.6%)
 - ❖ Chinese (including Mandarin, Cantonese) (36.6%)
 - ❖ Japanese (34.9%)
 - ❖ Spanish (33.3%)
 - ❖ Native Languages of North America (31.4%)
 - ❖ Russian (26.4%)
 - ❖ Portuguese (20.2%)

* Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/UT> (November, 2023)

“Meaningful Access”

“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”

Limited English Proficiency (LEP): A Federal Interagency Website, <https://www.lep.gov>

DOJ Law Enforcement Model Guidance

- Police provide free language access to:
 - LEP persons who request it
 - When officer decides it is helpful to the criminal investigation or prosecution
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in person's primary language

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<https://www.lep.gov>

DOJ Sample Policy Center City Police Department

DOJ and Exigent Circumstances

- Use the most reliable *temporary* interpreter available to address exigent circumstances
 - Fleeing suspect
 - Weapons
 - Life threatening to the officer, the victim, or the public

DOJ Requirements for Investigations & Interrogations

- “A qualified interpreter shall be used for any interrogation or taking of a formal statement where the suspect or witness’ legal rights could be adversely impacted”
- U.S. Department of Justice Sample Limited English Proficiency Guidelines from Office of Justice Programs “Center City Police Department” <http://niwaplibrary.wcl.american.edu/pubs/sample-limited-english-proficiency-guidelines-from-the-office-of-justice-programs>
 - Police reports
 - Criminal interrogations
 - Crime witness interviews
- Vital written materials translated into primary language
 - Miranda warnings & Know your rights brochures

*What can you do if a
police report was taken
without using a qualified
interpreter?*

When Police Report Not Taken

- If a police report was not taken in your victim client's case or
- It contains misinterpreted information –
- Have the report amended

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

Raise Your Hand: The Courts in Your Area Routinely Provide Interpreters in....

- Criminal cases
- Protection orders
- Custody case
- Divorce cases
- Child welfare cases
- Civil cases

Role of Lawyers and Advocates – Language Access Advocacy

- Plan & provide notice to the court and other agencies in advance about your client's interpretation needs
- Educate other both governmental and nongovernmental agencies about their language access responsibilities
- Build relationships with agencies in your community
- File complaints with Federal Coordination and Compliance Section, DOJ, Office of Civil Rights.
 - [Contact the Civil Rights Division | Department of Justice](https://civilrights.justice.gov) at <https://civilrights.justice.gov>

Research has found...

- With support from advocates and attorneys who
 - Provide/help secure language access
 - Are knowledgeable about legal rights of immigrant survivors
- Immigrant and LEP survivors will
 - Seek protection orders, help from courts, access services, and apply for immigration relief

Mary Ann Dutton, Nawal Ammar, Leslye Orloff, and Darci Terrell, Use and Outcomes of Protection Orders by Battered Immigrant Women: Revised Final Technical Report to the National Institutes of Justice (November 19, 2006)

- When state courts provide language access, issue SIJS judicial determinations and sign U visa certifications
 - Immigrant victims of domestic violence, sexual assault, human trafficking and child abuse are willing to seek protection orders and help from family courts at significantly higher rates

Nawal H. Ammar, Leslye E. Orloff, and Amanda Couture-Carron, Immigrant Victims of Interpersonal Violence and Protection Orders, In Civil Court Responses to Intimate Partner Violence and Abuse (2020)

Learn more about language access...

- Speaking Justice: Providing Language Access in the Courts – Webinar & Training Materials Language Access (April 2, 2024)
 - <https://niwaplibrary.wcl.american.edu/language-access/>
 - Webinar with DOJ
 - DOJ resources on language access to
 - Courts and assistance from police and prosecutors
 - Language access laws and policies

Dynamics of Domestic Violence Experienced by Abused Immigrants

Department of Homeland Security



- DHS Dynamics Video

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)

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

NCJFCJ Model Code

Coercive Control

- Range of abusive behaviors beyond physical violence
 - Problematic and dangerous parenting
 - Intimidation, implicit/explicit threats, or compels compliance
 - Purpose of restricting victim's safety or autonomy, trapping them, or using cultural practices/beliefs or immigration status to instill fear and maintain control over the victim

See Revised Chapter Four: Families and Children Model Code on Domestic and Family Violence (December 30, 2022)

<https://www.ncjfcj.org/publications/revised-chapter-four-families-and-children-model-code-on-domestic-and-family-violence/>

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).

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)

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

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
 - 60% seek protection orders and/or custody
 - 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

IMMIGRATION RELIEF OVERVIEW AND SCREENING

Large Group Discussion

How do VAWA's immigration protections benefit immigrant victims and their children ?

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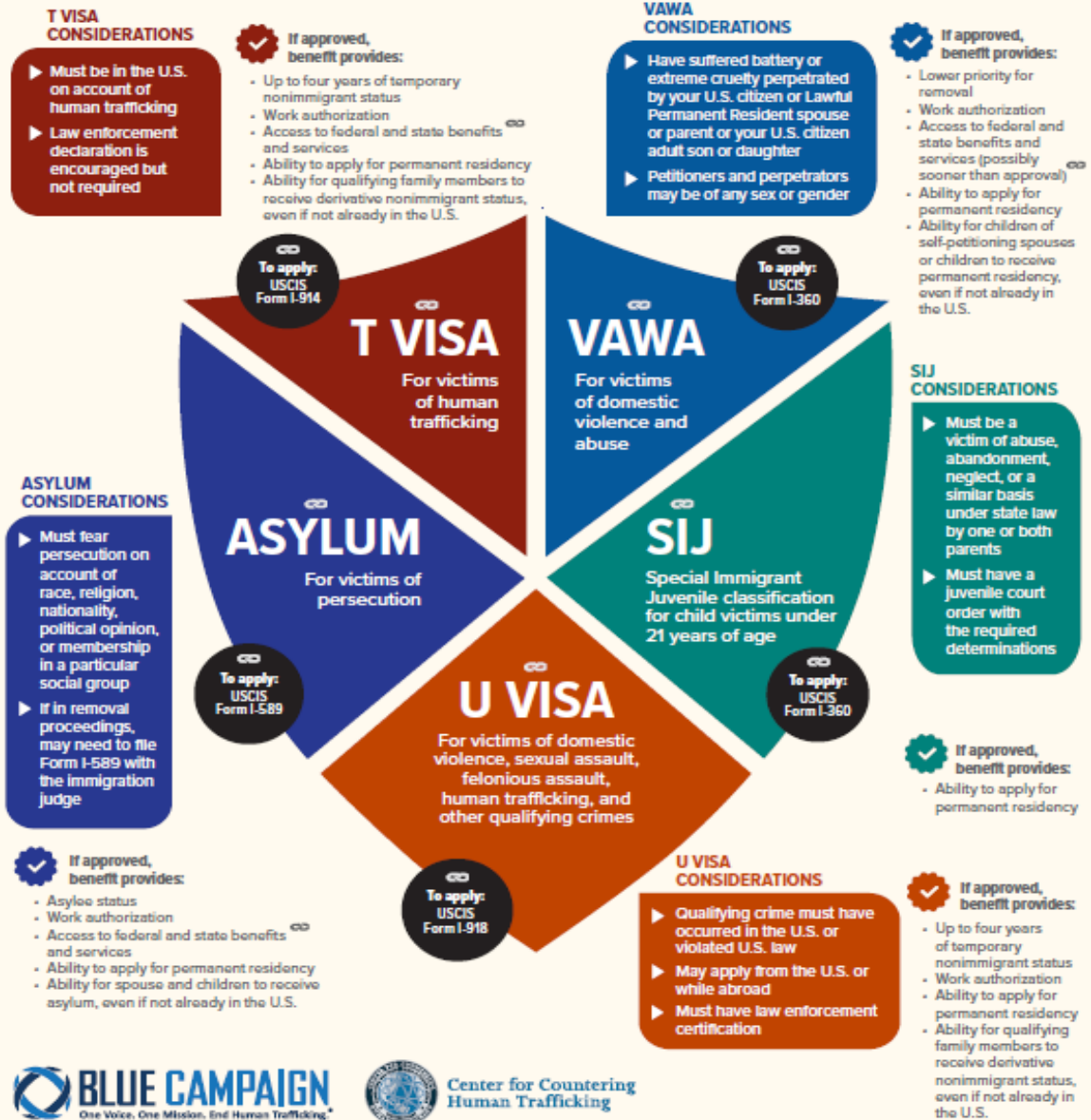
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- Improve community policing and community relationships
- Increase prosecution of perpetrators of crimes against immigrant victims
- Keep communities safe

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

U.S. Immigration Benefits for NONCITIZEN CRIME VICTIMS

Immigration Protections for Noncitizen Victims of Crime and Abuse



Center for Countering Human Trafficking

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

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
- 2024 time to work authorization = 4-40 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)
- 2024 time to approval 31.5 months

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 perpetrated by at least one parent
- To apply must submit a judicial determination (findings + conclusions of law) from a state court with jurisdiction over the care, custody, or dependency of the child:
 - Awarding custody, placement, dependency of the child
 - Not in the child's best interests to return to the child or their parent's home country
 - Reunification with the parent who maltreated the child not viable due to abuse, abandonment, neglect, or similarly state law basis
- 2024 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
- 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
- 2024 time to work authorization – 58 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
- 2024 time to work authorization = 17 months

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

Clara and Eduardo Case Scenario -1

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.

Clara and Eduardo Case Scenario -2

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.

Clara and Eduardo Case Scenario - 3

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?

Use Infographic Handout

What forms of immigration relief
would Lupe NOT qualify for?

Use Infographic Handout

What forms of immigration relief would Miguel qualify for?

Use Infographic Handout

Helping Victims Filing for Immigration Relief

Immigration Relief Benefits Impact - UT

Work Authorization

- T visa – 6-12 months
- Continued Presence
 - 3-4 months
- OTIP child letter – 1 month
- VAWA self-petition
 - Citizen abuser – 3 months
 - LPR abuser – 40 months
- SIJS – ≈6 months
- U visa – ≈ 4-5 years

Public benefits Access

- T visa – 6-12 months
- Continued Presence - 3-4 months
- OTIP child letter – 1 month
- VAWA self-petition
 - 3 months
 - 5 year bar (Adults – SNAP, Medicaid)
- SIJS – CHIP at filing
 - Education, housing, TANF (LPR 3-5 years)
- U visa – CHIP 3-5 yrs @bona fide
 - @ LPR (20+ yrs) – 5 yr bar TANF, Medicaid, SNAP (40 Quarters)

Helping Victims Filing VAWA Self-Petitions

Small Group Activity

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

Forms of Extreme Cruelty

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

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

NCJFCJ Model Code

Coercive Control

- Range of abusive behaviors beyond physical violence
 - Problematic and dangerous parenting
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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?

Helpful Evidence

- Good faith marriage
 - Children
 - Love letters
 - Photos from family vacations
 - Evidence documenting that they lived together
- Parent child relationship
 - Child's birth certificate
 - Child's health care, school, baptismal records
 - Victim's affidavit
 - Marriage license
 - Court orders

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

VAWA Self-Petitioners – Timing to Relief

- 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 upon approval (≈ 40 months).
- VAWA confidentiality: At filing protections against the release of information & reliance on abuser provided information
- Lawful permanent residency
 - Eligible to apply upon approval

ASSISTING VICTIMS FILING U VISA CASES AND OBTAINING U VISA CERTIFICATIONS

U Visa Requirements

Victim

- Qualifying criminal activity
- Possesses information about the crime
- Criminal activity occurred in U.S. or violated U.S. law

Helpfulness

- Victim has been, is being, or is likely to be helpful in *any of the following*:
 - Detection
 - Investigation
 - Prosecution
 - Conviction
 - Sentencing

Harm

- Substantial physical or mental abuse as a result

This is not a part of the certification.

Immigration Relief Available for Immigrant Victims of ---

- Domestic violence
 - Child abuse
 - Sexual assault
 - Rape
 - Incest
 - Prostitution
 - Torture
 - Felonious assault
 - Manslaughter
 - Murder
 - Female genital mutilation
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 - Being held hostage
 - Fraud Foreign Labor Contracting
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 - False Imprisonment
 - Blackmail
 - Extortion
 - Witness tampering
 - Obstruction of justice
 - Perjury
 - Stalking
- Attempt, conspiracy, or solicitation to commit any of these crimes or any similar activity**

Similar Criminal Activity

- 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 include felonious assault, depending on the evidence and state law definition

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

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
- Procedures for judicial certification in closed vs. open cases

Large Group Discussion

Why might a victim come to a judge for certification?

Why Victims Seek Judicial Certifications

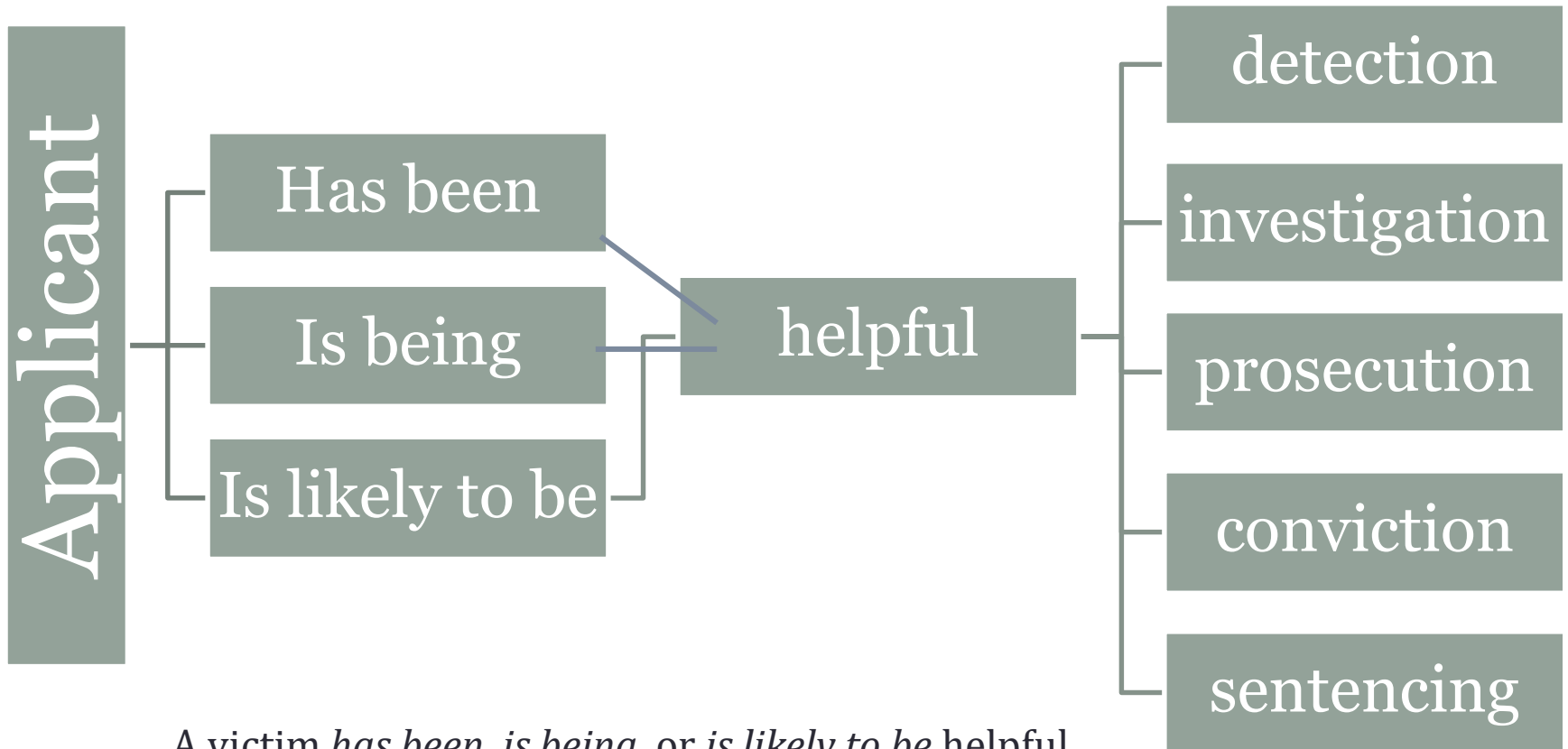
- Only justice system contact a custody, protection order, civil employment or child welfare case
- No language access to police when victim called for help
- Police did not investigate and case never sent to prosecutor
- Judge observed victim's attendance and participation in criminal case

Who can apply?

- Parents and guardians can apply as an “indirect victim” if:
 - The direct victim is a child under 21 years of age and/or is incompetent, incapacitated, or deceased due to murder or manslaughter
 - They demonstrate helpfulness
- 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

Definition of “Helpfulness”

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



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

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”

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

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

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

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

U Visa Facts - Timing

- Only 10,000 U visas can be granted annually
 - Identify if victim's children qualify for other humanitarian forms of immigration relief
- Bona Fide determination with work authorization 4-5 years after filing
- The U visa (20+ year wait) grants a temporary 4-year stay
- Many U visa holders after 3 years will qualify for lawful permanent residency
 - Humanitarian need, family unity, public interest
- U.S. citizenship can only be attained after lawful permanent residency for 5 years + proof of good moral character

IMMIGRATION RELIEF AND HUMAN TRAFFICKING

T Visa Requirements

Applicant is a victim of severe form of human trafficking

- Refers to the federal definition of human trafficking

Applicant is in the U.S. because of trafficking

- Not necessary that the victim came to the U.S. because of trafficking; can be in the U.S. for the investigation

Responds to “reasonable requests for collaboration”

- Trauma exception in specific cases

Hardship upon return to home country

Sex Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1591

Process -Act

- Recruits
- Entices
- Harbors
- Transports
- Provides
- Obtains
- Advertises
- Maintains
- Patronizes
- Solicits
- Benefits, financially or by receiving anything of value

Means

- Force
- Fraud
- Coercion
- **Proof of force, fraud, or coercion not required for sex trafficked children under 18.**

Purpose-End

- **Commercial Sexual Activity**
- **A commercial sex act is any sexual act for which something of value is given or received**
 - Money
 - Drugs
 - Food
 - Shelter
 - Clothing
 - Transportation

New Regulations

Expanded Explanation– Commercial Sex

Commercial sex act means any sex act on account of which *anything of value* is given to or received by any person.

- DHS explains that “[a]nything of value’ does not always have an exact monetary value” and includes but is not limited to:
 - “safety, protection, housing, immigration status, work authorization, or continued employment.”

2024 Preamble: 89 Fed. Reg. 34864, at 34872.

Labor Trafficking

22 U.S.C. § 7102; 18 U.S.C. § 1590

Process-Act

- Recruits
- Harbors
- Transports
- Provides
- Obtains
- Benefits, financially or by receiving anything of value

Means

- Force
- Restraint
- Threats of harm
- Abuse or threatened abuse of the legal system
- 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
- **No federal exception for minors**

Purpose-End

- Involuntary servitude
- Peonage
- Debt Bondage
- Slavery

*How does USCIS
describe labor
trafficking occurring
within families?*



Updated Involuntary Servitude Definition

- A condition of servitude
 - Induced by means of any scheme, plan, or pattern
 - Intended to cause a person to believe that, if the person did not enter into or continue in such condition
 - That person or another person would
 - Suffer serious harm or physical restraint
- A condition of servitude induced by the abuse or threatened abuse of legal process.

8 C.F.R. § 214.201

Large Group Discussion

- What would involuntary servitude look like in your domestic violence cases?

Involuntary Servitude Continued

- Includes a condition of servitude in which the victim is forced to work for the trafficker by the use or threat of:
 - Physical restraint, or
 - Physical injury, or
 - By the use or threat of coercion through the law or the legal process.
- This definition encompasses those cases in which the trafficker holds the victim in servitude
 - By placing the victim in fear of physical restraint or injury or legal coercion.

8 C.F.R. § 214.201

Involuntary Servitude in a Domestic Violence Relationship

- Abuser/Trafficker controls victim's liberty creating conditions of servitude
- Expectation that the victim's life fulfills the trafficker's orders
 - E.g., demand from the trafficker to perform domestic labor at an unreasonable level, including unreasonable working hours, and/or constant availability to labor regardless of health or energy;
- Lack of control over the victim's own wages (or not paid) despite laboring under the trafficker's demands; or
- The imposition of unequal living arrangements as part of a campaign of force, fraud, and coercion
 - E.g., unequal sleeping arrangements, living arrangements, or access to nourishment.

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

Raise Your Hand

- How often have you worked with domestic violence victims who based who have also experienced sex or labor trafficking?
 - Often
 - Sometimes
 - Once
 - Never



Definition Includes “Attempted Trafficking”

- The preamble to the 2024 T Visa Rule and DHS policy Manual include protections for victims of attempted trafficking
 - Cases where the applicant has not performed labor or services or a commercial sex act
 - When the victim can prove they are otherwise eligible for a T visa and
 - But/for some intervention or victim’s escape the perpetrator would have trafficked them
- 2016 Preamble: 81 Fed. Reg. 92266, at 92271

T Visa Final Rule Highlights

- New Bona Fide Determination process –
 - Stays removal, benefits access, work authorization
 - Submit any needed additional evidence before 8/28/24
- VAWA confidentiality and exempt from Public Charge
- Trauma informed definitions of:
 - Coercion, commercial sex act, involuntary servitude, serious harm, trauma exception, and extreme hardship
- Details reasonable request factors and exempts
 - Minors and adults unable to cooperate due to physical or psychological trauma

T Visa Facts

- T Visa is a temporary visa for 4 years
- May apply for lawful permanent residence after either 3 years or after the investigation or prosecution is concluded
- Applicants are encouraged to submit a Law Enforcement Declaration along with their application, but it is not required

Raise Your Hand

- If you have helped a victim obtain a
 - T visa declaration?
 - Continued presence?
 - Office of Trafficking in Persons Child Eligibility Letter?



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 victim's involvement in case(s) against trafficker
- Names and relationship of any family members involved in the human trafficking

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
- When under 18 year old victim applies for a T visa USCIS makes OTIP referral

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

Continued Presence (CP)

- Temporary immigration status (2 years) provided to victims of trafficking who are “sponsored” by federal law enforcement
- Law enforcement initiates application immediately after identifying victim; cooperation is not required
- Upon approval, Dept. of Health and Human Services issues letter that allows victim to:
 - Access federal and state benefits
 - Receive work authorization
- Not long-term immigration relief must file T visa

Federal Agencies That Can File Continued Present Requests

- Department of Homeland Security
 - Local HSI Victim Assistance Coordinator (VAC) or Victim Assistance Specialist (VAS)
- Federal Bureau of Investigations (FBI);
- U.S. Department of State Diplomatic Security Service (DSS);
 - U.S. Attorneys' Offices;
- U.S. Department of Justice (DOJ)
 - U.S. Attorneys' Offices, Civil Rights Division, Criminal Section;
- U.S. Marshals Service;
- U.S. Department of Labor (DOL);
- Equal Employment Opportunity Commission (EEOC).

Trafficking Case Timing

- Office of Trafficking in Persons – Child Eligibility Letters
 - Within a month and possible interim assistance
- Continued Presence
 - Within months of federal agency’s application
- T visa
 - Bona fide determination – likely under a year
 - T visa 17 months

Advocates Role

- Screen for victim eligibility
 - U visa, VAWA, T visa
 - Screen victim's children for eligibility for Special Immigrant Juvenile Status
- Use trauma informed tool to get information for affidavit
- Collaborate with victim's attorney on case
- Obtain a U or T visa certification from law enforcement, prosecutor, or judge
- Help victim make a police report(s)

“FIRST DO NO HARM”
TRAUMA-INFORMED HELP FOR
IMMIGRANT SURVIVORS

Large Group Discussion

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

Safety Through Early Screening

- Identify which forms of immigration relief an immigrant survivor qualifies for
- Know the differences between immigration options
- Document history of abuse
- Incorporate into safety planning

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

Promote Victim Participation

- Try to file immigration case before:
 - Protection order, family, or criminal court case
 - Victim travels to a new location
 - Particularly when victims are experiencing immigration-related threats
- Role of VAWA confidentiality laws
 - Letter stating victim is in the process of filing a VAWA, T visa or U visa case
- Importance of sufficient evidence at filing to receive prima facie or bona fide determination

What is trauma?

*Trauma results from “an event, series of events, or set of circumstances that is **experienced** by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional, or spiritual well-being.”*

Ann Lynsen, *Trauma and Violence*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, <https://www.samhsa.gov/trauma-violence>

Responses to Trauma

- Can include a wide-range of individual responses that may change over time
- Traumatic responses may challenge law enforcement and prosecutors
- Trauma may be one of several, interconnected explanations for victim behavior
- Responses are a result of the offender's infliction of the trauma

Common Responses to Trauma

Lack of
earnest
resistance

Crying,
laughing,
flat affect

Calm or
unemotional
responses

Inconsistent
/ piecemeal
memories

Delayed
disclosure

Self-blame

See, e.g., Edna B. Foa, et al., Common Reactions to Trauma, National Center for Posttraumatic Stress Disorder

Common Responses to Trauma

Cont'd

Minimization

Continued
contact with
offender

Returning to
“normal”
behaviors

Delayed report

Reluctance /
refusal to
participate in
the process

Recantation /
testify for
defendant

Id.

Common Cognitive Reactions

- Difficulty concentrating
- Difficulty making decisions
- Flashbacks or preoccupations
- Memory disturbances or amnesia
- Changes in hygiene
- A sense that things aren't real
- Worrying
- Changes in sleeping or eating
- Withdrawal or neediness

*Common reactions to traumatic events, MITMedical,
<http://medweb.mit.edu/mentalhealth/mh-reactions.html>*

Previous Trauma

- Survivors may have been victimized multiple times in their lives; many have experienced physical or sexual abuse as children
- Survivors may have experienced more than one form of abuse as an adult
- An estimated 68% of women who have been physically assaulted by an intimate partner have been sexually assaulted as well

Judith McFarlane, & Ann Malecha, Sexual Assault Among Intimates: Frequency, Consequences, and Treatments (Oct. 2005)

Poly-Victimization

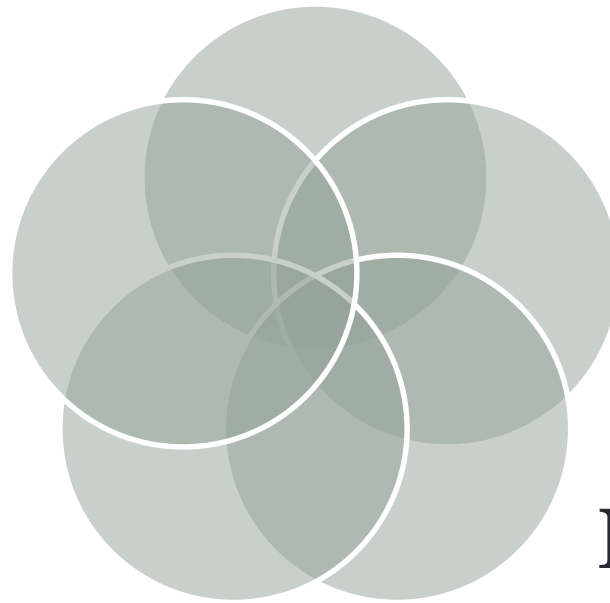
Human
trafficking

Stalking

Sexual
assault

Child
abuse

Domestic
violence



How do you provide culturally-responsive care?

Placing the crime victim's priorities, needs, and interests at the center of the work with the victim; providing nonjudgmental assistance, with an emphasis on self-determination, and assisting victims in making informed choices;...

Glossary. OFF. OF JUST. PROGRAMS,
<https://ovc.ojp.gov/sites/g/files/xyckuh226/files/model-standards/5/glossary.html> (last visited Feb. 9, 2023).

...ensuring that restoring victims' feelings of safety and security are a priority and safeguarding against policies and practices that may inadvertently re-traumatize victims. A victim-centered approach should also incorporate a trauma-informed, survivor-informed, and culturally competent approach.

Id.

What are common priorities,
needs, and interests of victims?

How can we assist in restoring a
victim's feelings of safety and
security?

Trauma-Informed Tools

Immigration
relief

Language
access

Culturally-
responsive
services

Survivor-led
programs

Immigration Story Writing

- Affidavit = A Survivor's "Story"
 - Most important pieces of evidence submitted
 - Research on importance of writing the trauma narrative
 - DHS hears directly from the survivor
 - Can be a traumatic experience for survivors
 - The goal is to develop an approach that:
 - Obtains more complete information
 - Improves outcomes and helps survivors heal

Story Writing

Intervention Method

Invite the survivor to write/tell her story

- Support, witness, listen without judgment, allow space
- Goal: story comes out unedited/uninterrupted

Follow up with interview

- Structured Interview Questionnaire for Immigration (SIQI)
- Take notes for follow up during story telling interview

Edit together

- Story + structured interview responses into affidavit

Survivor reads back the final story

Standardized Tools:

Assessing “What happened to me?”

- Multiple types of trauma exposure
 - Structured Life Events Screening Questionnaire (SLESQ)
 - Stalking behaviors [SLII]
- 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

Standardized tools:

Assessing “How did it change me?”

- Articulating the 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)

Resources

Working with Immigrant Victims

- [Advocate's and Attorney's Tool for Developing a Survivor's Story: Trauma-Informed Approach](#)
 - This resource from National Immigrant Women's Advocacy Project (NIWAP) provides guidance on how people working with survivors can collect their stories.
- [Trauma Informed — Structured Interview Questionnaires for Immigration Cases \(SIQI\)](#)
 - This resource from NIWAP was developed by drawing upon evidence-based research on violence against women, coercive control, trauma, and acculturation
 - Languages: Spanish, Chinese, Russian, English
- [How to Prepare Your Case Through a Trauma-Informed Approach: Tips on Using the Trauma Informed Structured Interview Questionnaires for Family Court Cases \(SIQI\)](#)

Moving Forward

Know your shield of immigration relief options

Screen early to promote safety and stability

Identify co-occurring human trafficking

Support victims to articulate the reality of their experience using a trauma informed approach

VAWA CONFIDENTIALITY IN STATE COURT PROCEEDINGS

Raise Your Hands: If you have 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

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



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



Raise Your Hands: If the perpetrator in a family court case you have worked on tried to ...

- A. Raise the victim's immigration status to gain advantage in the case
- B. Obtain information about or contained in a victim's immigration case file through family court discovery



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

VAWA Confidentiality Law's Statutory Disclosure Exceptions

Limited Disclosure in Narrow Circumstances – Law Enforcement

- Disclosure to law enforcement, prosecutors, 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”

Raise Your Hand - True or False?

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



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

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
- 6th 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”

Other Limited Exceptions

Public Benefits

Federal, state and local public benefits agencies, and to private agencies providing public benefits

Determine eligibility for public benefits

Anonymous Information

Congressional oversight same privacy protections as census

Victim Directed

Victim can authorize DHS to refer them for help to victim service providers

Must have consent from all adult victims to waive confidentiality

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

EEOC v Koch (5th 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

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

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

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
- Sample:
<https://niwaplibrary.wcl.american.edu/pubs/conf-vawa-samp-motionlimine/>

Lunch Break

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

Raise Your Hand - True or False?

Violation 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
 - Victims should not consent to issuance of a protection order against them
 - Victims should not be charged with violation of orders issued for their own protection
 - Best Practice – Padilla advisals in all CPO cases

Raise Your Hands: Which the following are deportable offenses?



- A. Domestic violence criminal conviction
- B. Finding in a custody case that a protection order was violated by further abuse of the victim
- C. Criminal conviction for violating a protection order
- D. Agreeing to diversion in a protection order enforcement case where upon violation diversion turns into a conviction

Large Group Discussion

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

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 in convincing courts to issue protection orders are often also successful in obtaining findings that the victim violated the order
- Undermines access to victim based immigration relief which requires proof of good moral character
 - VAWA self-petition, VAWA cancellation, Naturalization

Importance of Self-Defense and Primary Aggressor Determinations

- Importance of determining was there an offense
- Was a 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

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

Raise Your Hand: Why Might Victims Not Separating From Their Abusers Seek Protection Orders?



- A. Living in extended families
- B. Limited housing options
- C. Awaiting legal work authorization
- D. To curb abuse
- E. Help shift power and control in relationship

The Majority of Immigrant Victims Stay With Their Abusers ...

- Until the victim receives work authorization as part of their immigration case or their case is approved
- Percent who leave before receiving work authorization or approval
 - VAWA self-petitioners 33.9%
 - U visa victims 30.1%

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

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 rules on whether proposed remedies are immigrant specific

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

Helpful Evidence

Evidence of Legal Marriage

- Marriage certificate
- Wedding/family pictures
- Health insurance

Good Faith Marriage

- Children birth certificates
- Love letters, cards, text, emails
- Copies of joint leases/utility bills
- School records
- Letters and other mail addressed to the victim and to the abuser at the same address

Evidence of Abuse or Extreme Cruelty

- Police, medical, court documents about the relationship
- Protection order
- Affidavits of neighbors, relatives, friends

Evidence of Abusers Legal Status

- Abuser's green card or passport
- Copy of I-130 petition
- Social security number

CUSTODY OF CHILDREN IN IMMIGRANT FAMILIES

Tool: Immigrant Victims and
Custody Bench Card

What are the immigration-related issues you have seen perpetrators raise against victims in custody cases?

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



Raise Your Hand - Myth vs. Fact Exercise:

- When a Parent Lacks Legal Immigration Status
 - Deportation is imminent
 - The parent has no livelihood
- A legally present parent must be awarded custody in order to file for immigration benefits for their child



Myth vs. Fact:

Parents without Legal Immigration Status

Myth

1. Deportation is imminent
2. The parent has no livelihood
3. 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 granted custody and/or who are crime victims
2. Abused immigrant parents have a path to immigration relief, work authorization & some benefits
3. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

Poll: Which parents are the *most* likely to be removed from the U.S. by DHS?



- A. Immigrants with orders of removal
- B. Undocumented immigrant victim parents
- C. Immigrants with criminal convictions
- D. Immigrants with notices to appear in immigration court

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

Department of Homeland Security Victim Witness 2011 Memo – still in effect

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.”

Mitigating Factors In Favor of Declining Immigration Enforcement

- Crime victim, witness, party in legal case
- Person likely to be granted humanitarian immigration relief
- Impact on family in U.S. loss of caregiver/provider
- Advanced age, tender age, pregnancy
- Poor health/serious medical condition
- Length of presence in the U.S.
- Military or public service by immigrant or family member
- History of work in U.S.
- Pursuit or completion of education in the U.S.
- Time since offense, rehabilitation, conviction vacated or expunged

Examples: Mitigating Factors

- Post-Nov. 1, 2020 entrants who are
 - Victim of domestic or sexual violence in the U.S.
 - SIJS eligible child
- Criminal convictions
 - 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
 - VAWA's domestic violence victim waiver

Poll: Who is the *least* likely to flee with children from the United States?



- A. U.S. citizens
- B. Undocumented immigrant victim mothers
- C. Dual national parents
- D. Multiple entry visa holder parents

Fact: Legal immigrants/naturalized citizens are more likely to flee with children

- **Particularly when**
 - There have been threats of kidnapping children
 - They are dual nationals
 - They can travel freely to and from U.S.
- The Ninth Circuit found that “there is no evidence that undocumented status correlates closely with unmanageable flight risk.” *Lopez-Valenzuela v. Apaio*, 770 F.3d 772, 786 (9th Cir. 2014).

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 parents/legal guardian impacts
 - Decision to detain, initial placements, transfers of parents
 - Court ordered custody prevents immigration enforcement against parent/guardian
 - ICE required to bring detained parents/guardians to court and establish communication with courts.

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

Trends in Case Law

- Flight risk:
 - Finding that undocumented immigration status does not make an individual a flight risk. *See Huff v. Vallejo*, 347 Ga. App. 127, 817 S.E.2d 696 (2018).
- Ability to provide financially for children
 - Undocumented immigrants “...suffer disadvantages. For example, they cannot enter into an employment relationship. But plenty of people have worked, and thrived, as independent contractors all their lives.” *See Hupp v. Rosales*, 2013 IL App (4th) 130433-U.

Large Group Discussion

What are the places
you typically use for
safe visitation
exchange?

Safe Places 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
- 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.

Large Group Discussion

- What are the benefits of seeking and paying court ordered child support for immigrant parents?

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 immigration cases
 - Cancellation of removal
 - Naturalization
 - Obtaining relief in immigration court
 - Can be used to show hardship to family members

Child Support & Immigration: The Parent Receiving Child Support

- Provides a custodial immigrant parent with evidence of child support that can be used as income in when applying for lawful permanent residency
- Obtaining child support awards can provide helpful evidence of good moral character
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies

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

Importance of Wage Withholding

- Creates documented track record of payment
- Improves safety for immigrant victims
- 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)

Special Immigrant Juvenile Status (SIJS)

Raise Your Hand

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



Large Group Discussion

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

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

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)(J)

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>

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

Return to Home country not in child's best interests

- Identify each potential custodian state law requires the court to consider in U.S. and home country
- Apply state best interests factors to each placement
- Court order states the factual findings that support chosen placement
- Make findings that illustrate why under state best interest factors court is not choosing placements in child's home country
- Compare the supports, help, services child needs U.S vs. home country
- Then, if relevant, address other country conditions
 - Gangs, other harmful factors

Finding: Reunification Not Viable

- Reunification with a parent is not viable due to abuse, neglect, abandonment, or similar state law basis
- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Means granting the abusive parent custody is not envisioned by the court as a viable option
 - Duration: through adjudication of SIJS application
- Changes in circumstances can occur
 - But not granting full legal/physical custody to abusive parent

Apply Same Jurisdiction and Procedural Rules as All Other Cases

- Include a statement of the court's jurisdiction citing the state law under which the court is exercising jurisdiction.
- Follow your state court procedures and note that you do so to demonstrate that the court made an informed decision.

Family and Civil Court Orders Best Practices

Best Practices to for Court 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.
 - Facts of domestic violence, stalking, sexual assault, human trafficking and coercive control
 - Existence of a marriage and termination of marriages
 - Details of who the court awarded custody to and why
 - Include no-contact and other protective provisions
- Cite and apply only state laws:
 - Definitions of domestic violence, abuse, abandonment, neglect, Best interest, Jurisdiction, service upon required parties

**Access to Publicly Funded
Programs and Legal Services
Open to all Immigrant
Survivors**

Raise Your Hand: Which of the following are common obstacles to immigrant survivors obtaining public benefits they are legally eligible to receive?



- A. Agency requires legal work authorization
- B. The victim is eligible, but their attorney/advocate do not know this
- C. Agency wants the victim to provide an SSN
- D. Victim believes that applying for benefits will harm their immigration status options

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

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



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

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

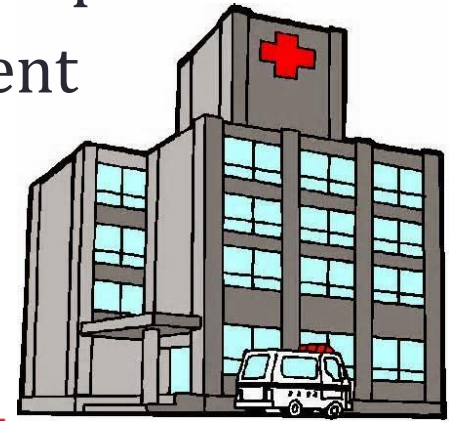


Large Group Discussion

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
 - 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



Mental Health Treatment for Sexual Assault Survivors

- SAMHSA - <https://findtreatment.gov/>
- SAMHSA funded Certified Community Mental Health Clinics
<https://www.thenationalcouncil.org/program/ccbhc-success-center/ccbhc-locator/>
- National Sexual Violence Resource Center
 - <https://www.nsvrc.org/find-help>
- RALIANCE – Rape Crisis Centers
 - <https://www.raliance.org/rape-crisis-centers/>
- RAINN – National Sexual Assault Hotline
 - <https://www.rainn.org/>

Access to Shelter, Transitional Housing and Permanent Housing



Large Group Discussion

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

Transitional Housing Programs Turn Away Immigrant Survivors: Rate & Why

Domestic Violence - 34%

Sexual Assault-99%

- No immigration status documents – DV 84%; SA 99%
- Lacked proof of current employment - DV 56%; SA 99%
- No legal work authorization – DV 53%; SA 99%
- No driver's license – DV 45%; SA 99%
- Survivor was undocumented – DV 25%; SA 90%
- No government issued ID (from U.S.) – DV 18%; SA 86%
- Insufficient evidence of self-sufficiency DV 9%; SA 86%
- Access to Emergency Shelters and Transitional Housing for Battered Immigrants and Immigrant Victims of Crime (June 3, 2014) <https://niwaplibrary.wcl.american.edu/pubs/access-shelters-housing/>

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

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

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

Housing Programs

With No 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
- HOPE 2
- Section 515 Rural Rental Housing Program (without Rental Assistance)
- Rural Housing Preservation Grants
- Section 538 Multi-family Loan Guarantees

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”?

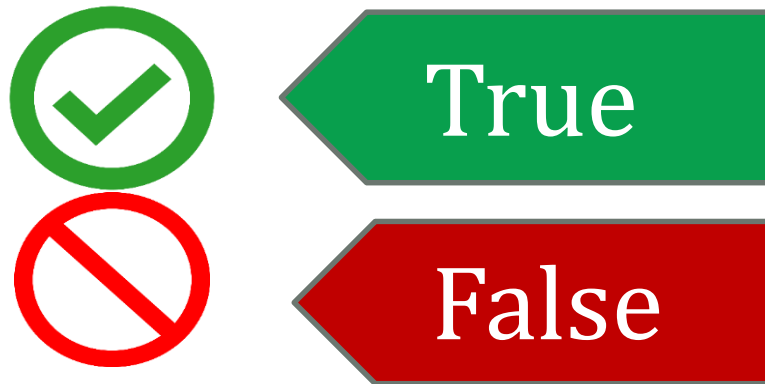
- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- 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 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

Raise Your Hand: True or False?

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



Education

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

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

Large Group Discussion

- Can immigrant survivors who work without work authorization pay taxes on the income they earn?
- If so, how?
- What are the benefits of doing this?

Individual Taxpayer Identification Number (ITIN) Benefits for Survivors

- 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

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

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

“Section 214” Restricted HUD & RD 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
- Emergency Housing Vouchers
 - only one family member need to be eligible
- 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

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

Large Group Discussion

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

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

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

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.

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

Public Benefits Eligibility by States

The Five-Year Bar

- Qualified immigrants, including battered immigrants who entered the U.S. after August 22, 1996 are ineligible for “federal means-tested public benefits” for the first five years of holding qualified status.
- Restricts access to federal means-tested public benefits:
 - TANF, TANF child care, Medicaid, CHIP, SNAP, SSI
- 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 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

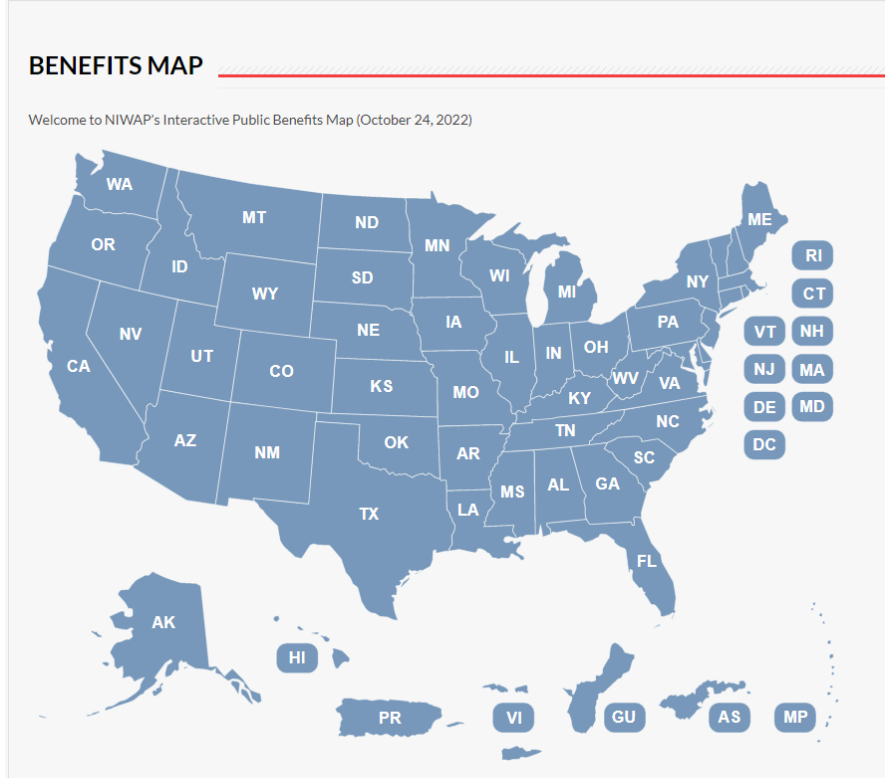
Interactive Public Benefits Map Demonstration: State-By-State

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

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



Benefits in Utah

- TANF - Refugees, T visas & Continued Presence (CP), and VAWA self-petitioners eligible
 - SIJS-Lawful permanent residents (LPR) (3-5 years)
 - U visa -LPR (25+ years)
- Child care
 - TANF same as above
- SNAP:
 - Children, Elderly or Disabled:
 - VAWAs, T visas, CP, Refugees, LPRs (SIJS & U visas)
 - Adults:
 - T visas, CP, Refugees, VAWAs (5 years); LPRs (40 quarters work credit)

Benefits in Utah

- Health Care
 - Exchanges: VAWA, CP, T visa, Refugees, SIJS applicants, U and T visa bona fides, DACA
 - CHIP until 19: Refugees, VAWAs, CP, T visa, U and T visa bona fides, SIJS filed, DACA recipients
 - Live in Utah 180+ days, uninsured, income eligible
 - Full scope adult Medicaid: Refugees, CP, T visa (ORR Letter)
 - VAWAs, LPRs (e.g. U-visa-25+ years; SIJS-5 years)
 - Only after 5-year bar.
- SSI (most limited): CP, T visa (ORR Letter), Refugees
 - VAWA & SIJS, U visa Need LPR +5 year bar+ 40 quarters work

Benefits in Utah

- Education
 - Federal and State: VAWA, T visas, CP , Refugees, LPRs (SIJS & U visas)
 - State: Students eligible without regard to immigration status for state funded post-secondary educational grants, loans, and in-state tuition if
 - Attended 3 years high school in the state and
 - Domiciled in Utah = physical presence + intent to remain
- Driver's License
 - Federally recognized – upon work authorization
 - VAWA approved, T visa bona fide, CP, U visa bona fide, SIJS – LPRs, DACA
 - State issued – 1 year (renewable) with proof of Identify, residency, and fingerprints

Benefits in Utah

- Housing
 - Transitional – all victims + homeless + abused children
 - Public and Assisted: VAWA applicants, T visas/CP (ORR Letter) , LPRs (SIJS/U visa)
- LIHEAP
 - Weatherization everyone
 - LIHEAP – VAWA, T visa/CP (ORR Letter), LPRs (SIJS & U visas)
- FEMA
 - Emergency assistance: everyone
 - Individual Households Program; Individual & Family Grant Program; & US Small Business Administrations Loans
 - VAWA, T visa, CP, LPRs (SIJS & Us)
 - Disaster Unemployment Assistance: Requires work authorization

True or False?

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



True

False

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

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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Evaluation