Early Identification of Victims and VAWA Confidentiality

Webinar: February 24, 2017



Improving Immigrant Victim Safety Through Early Screening

- Know forms of immigration relief immigrant survivors qualify for
- Document history of abuse
- Know differences between immigration options
- File victim's immigration case ASAP
 - DHS VAWA confidentiality computer system
 - Sufficient evidence for prima facie
- Incorporate into safety planning
 - How victim can safely carry DHS document copies





Immigration Options for Immigrant Crime Victims and Children

(Red = VAWA Confidentiality Protected Case)

- <u>VAWA self-petition</u>
 - Abused spouses/children of US citizens and lawful permanent residents
 - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
- <u>VAWA suspension of deportation</u>
 - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- <u>Battered spouse waiver</u>
 - Abused spouses of US citizens with twoyear conditional permanent residency
- <u>U visa</u>
 - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
 - Substantial harm from criminal activity

- T visa and Continued Presence
 - Victims of severe forms of human trafficking
- Abused Spouse of Visa Holders
 - Spouses battered or subjected to extreme cruelty by spouses with the following visas: A(diplomats), E(3)(Austrailian specialty occupation workers), G (foreign gov- Int'l orgs), H (work visas)
- <u>Special Immigrant Juvenile (SIJS)</u>
 - Children abused, battered, abandoned or neglected by one or both parents
- <u>Deferred Action (DACA)</u>
 - Deferred action for child arrivals including Dreamers
- <u>Asylum</u>
 - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
 - Domestic violence as gender based asylum



PROTECTIONS FOR IMMIGRANT VICTIMS

CONSIDERATIONS If approved, benefit provides: Must be in the US on account of 1.Up to four years of the trafficking temporary nonimmigrant status ▶ Law enforcement 2. Work authorization certification is 3.Federal social encouraged but services benefits not required 4. Ability to apply for permanent status To apply: USOS Form I-914 **TVISA** For victims of trafficking **CONSIDERATIONS** Must fear persecution on account of race, religion, **ASYLUM** nationality, political opinion, or membership For victims of in particular persecution | social group To apply: USOS or If approved, Immigration Form 1589 benefit provides: 1.Asylee status 2. Work authorization 3.Federal social services benefits 4. Ability to apply for permanent status child victims To apply: USCIS **CONSIDERATIONS** Form I-360 Must have juvenile

CONSIDERATIONS

▶ Perpetrator must be US citizen or Lawful Permanent Resident spouse or parent or US citizen adult son or daughter

> To apply: USOS

Form I-360



Protection from removal
 Work authorization
 Ability to apply for permanent status

VAVA

For victims of Domestic Violence married to US citizens or permanent resident

CONSIDERATIONS

- Qualifying crime must be in the US or have violated US law
- Must have law enforcement certification

To apply: UVSA For victims of Domes-

If approved, benefit provides:

 1.Up to four years of temporary nonimmigrant status
 2. Work authorization
 3.Ability to apply for permanent status

CONTINUED PRESENCE

For victims trafficking

To apply: ICE- Federal law enforcement must seek this protection for you

tic Violence. Sexual

Assault, Trafficking,

Other Serious Crimes

CONSIDERATIONS

- Victims of a severe form of human trafficking and who may be potential witnesses, or filed a civil action
- Law enforcement suppo is required

If ap

If approved,

benefit provides:

1.Protection from removal

2. Work authorization

3. Ability to apply for

permanent status

If approved, benefit provides:

- 1.Protection from removal designation may be granted initially for a period of 2 years and renewed in increments of up to 2 years
 2. Work authorization
- 3. Access to federal social services benefits



For victims of



VAWA Confidentiality Prongs

- Abuser-Provided Information: DHS, DOJ and the State Department are barred from taking action against a victim based solely upon information provided by abusers and crime perpetrators (and their family members)
- Location Prohibitions: Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- Non-Disclosure: Unless one of the enumerated exceptions apply,DHS, DOJ and the State Department cannot disclose VAWA information to anyone
 - VAWA self-petitioners, VAWA cancellation/suspension,
 T visa, U visa, Battered Spouse Waiver, Abused Visa
 Holder Spouses





VAWA Confidentiality Prongs

Non-Disclosure

Protects victims who have filed a protected case with DHS

Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators

Protects:

- *All victims abused by as spouse or parent
- *All victims in the <u>process</u> of applying for U or T visas
- *Abused spouses of visa holders with VAWA work authorization filed

Location Prohibitions

Protects:

All Victims

Requires:

No action at protected locations OR

Notice to Appear must state how they complied with VAWA confidentiality





Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - 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, stalking







Relying on Information Provided by: Abuser, Perpetrator, Trafficker

- The government cannot gather and/or use information provided solely by:
 - an abuser;
 - trafficker;
 - crime perpetrator or
 - People closely associated with the perpetrator (e.g. family members) (ICE 2007)
- To take an adverse action against a victim includes
 - Arrests for civil immigration violations
 - Placing the an immigrant in removal proceedings or detention
 - Seeking or using information provided by the perpetrator in the victim's immigration case





DHS cannot rely on information *solely* provided by the perpetrator

- Information provided solely by prohibited sources must be independently corroborated by DHS
 - Adverse information about the victim from a prohibited source should be treated as "inherently suspect" (DHS Directive 11/1/2013):
 - Information can only be used if verified
 - Must complete required ICE form filed in the victim's case documenting publicly verified information (ICE Policy 2007and DHS Instruction 11/1/13)
 - "If the officer believes there is any credible evidence that the alien may be eligible for VAWA benefits or T or U" VAWA confidentiality applies (ICE 2007)





Protecting Information About a Survivor's Immigration Case

- Prohibits disclosure of any information about
 - The existence of the case
 - Actions taken in the case
 - Information contained in the case file
- Disclosure prohibited to all persons, not just the perpetrator
- Protections apply from the time of filing permanently unless
 - Case denied on the merits
 - All appeal options have been completed





Prohibitions on Release of Information Apply to Following Cases

- VAWA self-petition
 - VAWA self-petitioner
 - Battered spouse waivers
 - VAWA Cuban Adjustment Act
 - VAWA Haitian Refugee Immigration Fairness Act
 - VAWA Nicaraguan Adjustment & Central American Relief Act
- VAWA cancellation of removal
- VAWA suspension of deportation
- U visa applicants
- T visa applicants
- VAWA work authorization abused spouses of visa holder applicants





Narrow Disclosure Exceptions

- Limited disclosure in narrow circumstances
 - Disclosure to law enforcement, national security officials, immigration case judicial review
 - Solely for a legitimate law enforcement or national security purpose; and
 - In a manner that "protects the confidentiality of such information"
 - Benefit granting or public benefits purposes
 - Congressional oversight and data collection
 - Omitting personally identifying information
 - Adult victim waived confidentiality protections





VAWA Confidentiality Violations

- Each violation
 - Disciplinary action and/or
 - \$5,000 fine for the individual
- Violations also include making a false certifications in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)





What to Do When Violations by DHS Happen

Advocate on the spot-provide

- Proof of victimization
- Copy of the statute
- DHS enforcement policy
- DHS complaint system
- DHS 384 system



- Name
- Agency
- Badge Number
- Work it up the chain to a supervisor
- File a formal complaint-
 - Penalties of up to \$5000 per incident against the violating officer individually
 - Disciplinary actions
- Advocate for release from detention/jail, termination of immigration proceedings, and/or granting immigration relief
- Call ICE Hotline 1-888-351-4024







Technical Assistance and Materials

- PowerPoint presentations and materials for this webinar at
 - www.niwap.org/go/vawaconfidentiality
- NIWAP Technical Assistance:
 - Call (202) 274-4457
 - E-mail <u>niwap@wcl.american.edu</u>
- Web Library:
 - http://niwaplibrary.wcl.american.edu/

