

Praxis International--Rural Technical Assistance on Violence Against Women presents,

# **VAWA Confidentiality and Protections for Immigrant Victims of Domestic Violence**

Leslye Orloff, National Immigrant Women's Advocacy Project (NIWAP)

Wednesday, June 27, 2018

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This training is supported by Grants No. 2015-TA-AX-K030 awarded to NIWAP, and No. 2015-TA-AX-K056 awarded to Praxis International's Rural Project, by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/ program/ exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

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**Leslye Orloff**  
**Director, National Immigrant Women's Advocacy**  
**Project, American University Washington College**  
**of Law**

# Learning Objectives

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

- Screen and help eligible victims of domestic and sexual violence file for VAWA, T and U visa and SIJS immigration relief
- Help victims receive protection under VAWA confidentiality laws
- Understand the role victim advocates can play helping victims filing VAWA, T and U visa cases

# Understanding the Forms of Immigration Relief Available to Immigrant Domestic and Sexual Violence Survivors

How does filing for immigration relief help immigrant domestic and sexual violence victims?

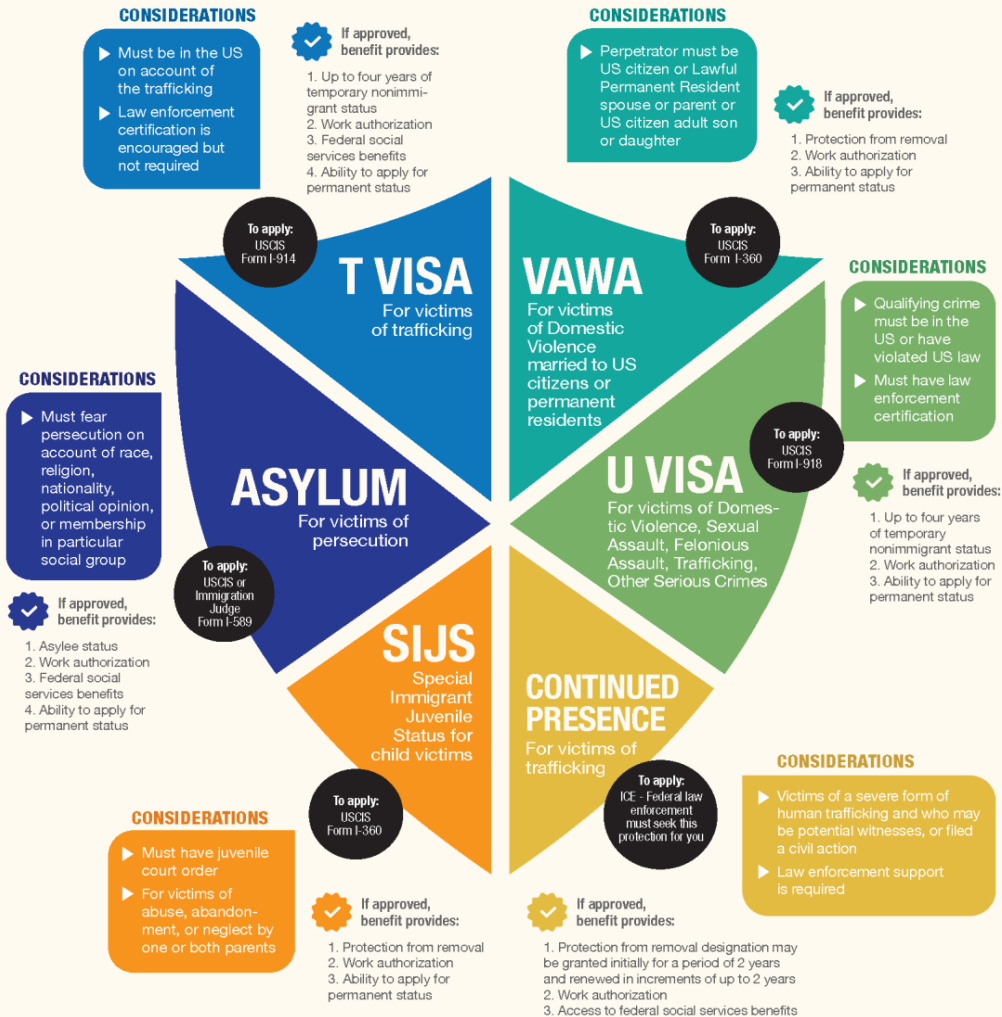
Use Q&A box on webinar screen to respond



# Purpose of Immigration Relief for Survivors

- Improves access to justice
- Helps build community policing and relationships
- Increases prosecution of perpetrators
- Allows victims to report crimes without fear of deportation
- Improves survivors options for stability & economic security
- Keeps communities safe

# PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

# DHS Immigration Options for Victims of Crime Brochure



- Languages Offered
  - Spanish
  - Mandarin
  - English
  - Korean
  - Russian

# When Victims are Subject to Immigration Enforcement the Cause is... (2013 and 2017)

- Perpetrators actively reporting for removal victims with pending immigration cases
  - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested for domestic violence
  - VAWA self-petitioners 15.4% (2013)-17% (2017); U visa 7.5%(2013)-36% (2017)
- Traffic stops
  - VAWA self-petitioners 28.6%; U visa 26.7% (2013) – 39% (2017)

# Importance of Immigration Status

- Ability to work legally
- Protection from deportation and removal
- Ability to obtain a driver's license and social security number
- Better access to housing and public services
- Break from isolation/ Gain Independence
- Ability to travel to and from the U.S. (with some exceptions)
- Path to lawful permanent residency and ultimately citizenship

# 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
- Incorporate into safety planning
  - How victim can safely carry DHS document copies

# Value of Filing Early

- File victim's immigration case ASAP
  - DHS VAWA confidentiality computer system
  - Sufficient evidence for prima facie
- Benefits for victims of early filing
  - Protection from deportation
  - Safer for victim to cooperate in criminal case
  - Earlier access to work authorization
  - State benefits in some states
  - Better position in family law case
  - Can use the Requests for Further Evidence process to supplement application

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

- Changes in case strategy- when possible an immigration case should be filed before:
  - CPO, family or criminal court case
  - Victim travels to new location
  - Victim experiencing immigration related threats
- Role of VAWA confidentiality laws



# **Victim Advocates' Role in Helping Victims of Domestic and Sexual Violence File VAWA and U Visa Immigration Cases**



## **Raise Your Hand...**

If your agency has a working relationship with attorneys who have expertise serving immigrant survivors in VAWA and U visa cases

# WHAT TYPES OF AGENCIES DO THE LAWYERS WITH THIS EXPERTISE WORK FOR IN YOUR COMMUNITY?

- A. Immigration or faith based non-profits specializing in cases of immigrant victims
- B. Family lawyers
- C. Legal services lawyers
- D. All of the above
- E. None of the above

In what ways have you assisted survivors and attorneys to collect evidence to strengthen their immigration application?

Respond in Q&A box

# What Victim Advocates Can Do

- Screening and identifying survivors
- Helping survivors obtain identity documents
- Assist survivors with writing a declaration
- Providing a letter of support/ expert affidavit of services provided
- Collaborating with certifiers to obtain U visa certification
- Flagging for immigration inadmissibility
- Collecting other evidence



## **Raise your hand and tell us...**

If you work in an area where lawyers with expertise on VAWA and U Visa cases are not available

# Helping Victims File VAWA and U Visa Cases

- Best Practices – Victim Advocate & Lawyer collaboration
- When lawyers with expertise working with immigrant victims are not available
  - Long waiting list
  - Not available (Rural)
- Victim advocates can assist victims with VAWA and U visa immigration cases
  - With tools and help from attorney or TA provider

# Screening for Possible “Red Flags”



- Criminal convictions
- Previous deportation/removal from the U.S.
- Failure to voluntarily depart
- Departure since original entry
- “Alien” smuggling
- Marriage fraud
- Prostitution
- Drug or human trafficking
- Falsely claiming citizenship
- False testimony for immigration purposes
- Entry as an international exchange visitor



# Unlawful Practice of Law

- The unauthorized practice of immigration law occurs when those who are not attorneys or accredited representatives:
  - Provide legal assistance to applicants or petitioners in immigration matters
  - Charge more than a nominal fee
  - Hold themselves out to be qualified in legal matters
- *Notarios* are not attorneys in the US
- Who can represent immigrants in removal proceedings  
<https://www.justice.gov/sites/default/files/eoir/legacy/2009/10/06/WhoCanRepresentAliensFactSheet10022009.pdf>
- 8 C.F.R. §292.1 defines who may represent immigrants before DHS

# VAWA self-petitioning

# General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
  - spouse,
  - parent,
  - adult son/daughter (over 21)
- With Whom self-petitioner resided
  - No time period required
- Good Moral Character
- Good Faith Marriage

# VAWA Self-Petitioning Available

- If case filed within 2 years of marriage termination
- Bigamy exception
- Child abuse up to age of 25 to file
- Step children up until divorce
- Credible evidence standard of proof (police report, protection order, medical records NOT required)

# Benefits of VAWA Protections

- **Deportation:** Protection from deportation shortly after filing.
- **Immigration Benefits for Children:**
  - VAWA self-petitioners' children receive immigration benefits – no separate petition needed
- **Public Benefits:** As qualified immigrants ( $\approx$  3 months), may qualify for additional state funded benefits – See Public Benefits Map
- **Employment Authorization:**
  - Citizen abuser ( $\approx$  6 months);
  - Lawful permanent resident abuser (currently  $\approx$  8-12 months)
- **VAWA Confidentiality:** protections against the release of information and reliance on abuser provided information
- **Lawful Permanent Residency:**
  - Citizen perpetrator apply upon approval (1 year)
  - Lawful permanent resident perpetrator ( $\approx$  5+ years-depends on when a visa is available)

# 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

# Why “Criminal Activity” and Not Limited to “Crimes”?

U visa protection available even when:

- Investigation does not result in prosecution
- Survivor/Victim helpful in investigation does not testify at trial
- Abuser eludes arrest
- Criminal case dismissed
- Survivor/Victim comes forward makes report and police or prosecutors decide not to prosecute
- Prosecution but no conviction
- Survivor/Victim of listed criminal activity but another crime prosecuted
- Prosecution cannot take place (diplomats, no extradition)

# Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Female genital mutilation
- Felonious assault
- Manslaughter
- Murder
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Peonage
- Fraud in foreign labor Contracting
- False imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

\*Includes any similar activity where the elements of the crime are substantially similar

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



# Who can certify?

- Police officer
  - Local and State police
  - Federal
  - University
- Prosecutor (State and Federal)
- Judge
- Immigration Officer
- Adult and Child Protective Services
- EEOC, DOL and state labor agencies
- Other authority with responsibility for investigation or prosecution of criminal activity

# Other Federal, State or Local Agencies

- Agencies with civil, criminal, or administrative investigative jurisdiction in their areas of expertise
- Including but not limited to:
  - Child Protection Services Worker
  - Adult Protective Services Worker
  - EEOC
  - Department of Labor
  - AFT, FBI

# What the U Visa Certification Form Asks From a Certifier:

- What criminal activity occurred?
- Identify the victim
  - Include any findings regarding injuries
- Helpfulness of the victim
  - Current,
  - Past, OR
  - Willingness to be helpful
- Any family members implicated in the crime

# U Visa Facts and Benefits

- Only 10,000 U visas can be granted annually – Currently there is a waitlist of 110,000 visas
- Work authorization Via Deferred Action Status ( ≈ 36-48 months)
- The U visa grants a temporary 4 year stay
- Limited state benefits in a few states
- Lawful permanent residency 3 years after receiving U visa if:
  - Continued cooperation or does not unreasonably refuse to cooperate; and
  - humanitarian need, family unity or public interest
- U.S. Citizenship after 5 years of lawful permanent residency+ proof of good moral character

# Helping Victims Prove

- Battering, sexual assault or extreme cruelty
  - VAWA/U
- Good faith marriage
  - VAWA
- Spouse or parent/child relationship
  - VAWA
  - U when children/spouse of victim also applying
- Their story of experiencing domestic or sexual violence for their affidavit

How do you prove battering, sexual assault or extreme cruelty?

Respond in Q&A box

# Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Employment related abuse
- Sexual Abuse
- Coercion & threats
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Minimizing, denying, blaming
- Harming pets
- Coercive control

What could be evidence of a good faith marriage?

Respond in Q&A box



# Good Faith Marriage

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

# WHICH OF THE FOLLOWING HELPS PROVE A SPOUSAL OR PARENT CHILD RELATIONSHIP?

- A. Child's birth certificate
- B. Child's health care, school, baptismal records
- C. Victim's affidavit
- D. Marriage License
- E. All of the above

# Trauma Informed Approach to Story Writing

## Story Writing Intervention

- Process by which advocate/attorney supports and helps survivors write their own story
- By capturing trauma history through narrative, survivors are helped to heal from trauma
- What research tells us about importance of writing the trauma narrative

# Story Writing Intervention Method

## 1. Invite the survivor to write/tell her story

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

## 2. Follow up with interview

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

## 3. Edit together

- Story + structured interview responses into affidavit

## 4. Survivor reads back the final story

# Trauma Informed Legal Advocacy

- Use an approach that helps clients heal
- At the same time strengthens the legal case
- Building a relationship of trust
- Transparency – Explain your role, why you ask certain questions, why you need certain information

# Tools to Help You

- Trauma informed interview tool
- Evidence checklists
- Manual chapters on VAWA and U visa
- Webinars and online learning
  - On VAWA and U visas
  - Video on helping survivors who go into crisis reliving trauma while writing their story for their immigration case
- NIWAP's TA (202) 274-4457 or [info@niwap.org](mailto:info@niwap.org)

# NIWAP web library (niwaplibrary.wcl.american.edu)



# VAWA Confidentiality





## **Raise Your Hand if...**

Any of your domestic violence or sexual assault victim clients have been the subject of an immigration enforcement actions?

# 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 (2)

## 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

# 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

# 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
  - Limits family and criminal court discovery
- Protections apply from the time of filing permanently unless
  - Case denied on the merits
  - All appeal options have been completed

# DHS VAWA Confidentiality Computer System

- Directs use of “red flag” “384” computer system to identify victim who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
  - Victims of domestic violence
  - Crime victims
  - Human trafficking victims

# 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)
  - “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)



# 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



# January 2018 ICE Courthouse Enforcement Policy

Limit enforcement to targeted immigrant

- Criminal convictions, gangs, national security, public safety, orders of removal
- Will not target witnesses or people accompanying to court
- Enforcement in family law and other non-criminal
  - Should generally be avoided AND
  - Requires Field Office Director/Special Agent in Charge Approval

# VAWA Confidentiality Violations



- Each violation sanctions against federal government officials
  - Disciplinary action and/or
  - \$5,000 fine for the individual
- Dismissal of the immigration proceeding against the non-citizen

# Prevention & Safety = Filing Immigration Case Early

- Give victims a letter stating that they are in the process of filing a VAWA, T or U visa immigration case
- File skeletal immigration applications early
  - Use trauma informed interviewing tool and prepare for the requests for further evidence process
- File immigration case before
  - Protection order, divorce, or custody case
  - Victim travels to a new location

# Promoting DV/SA Immigrant Victim Cooperation in Criminal and Use of Civil Justice Systems

- Teach clients to
  - Memorize “A” numbers of their VAWA, T, and U visa cases
  - Tell DHS about victimization
- Police/prosecutors that the lead on communicate with DHS
- Prepare for victims appearing in civil and criminal court cases

# What to Take to Court When Accompanying an Immigrant DV/SA Victim

- A# or Letter from advocate/attorney stating that victim is filing a VAWA, T or U visa case
- Police Reports
- Copy of the U/T certification
- VAWA confidentiality policies
  - ICE, DHS
- Evidence of abuse include copies of protection orders, photos, criminal court subpoenas

# Sensitive Locations

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

# VAWA Confidentiality Resources

- Webinars
- Training materials
- Manual chapters guiding step-by-step victim advocacy
- Legislative History
- DHS implementing policies
- Brochures
- Technical assistance



# National Immigrant Women's Advocacy Project Resources

# Recap NIWAP Resources

- NIWAP Web library
- Technical Assistance
- Directory
- Trainings and Webinars
- Materials
  - Bench cards
  - Toolkits
  - DHS outreach materials



# Interested in Joining the Community of Practice or Roundtable?

- Application available at:  
[www.niwap.org/go/COPapplication](http://www.niwap.org/go/COPapplication)
- To register for the Law Enforcement & Prosecution U Visa Roundtable, visit  
<http://www.niwap.org/go/LEArroundtables/>

# Technical Assistance and Materials

- NIWAP Technical Assistance:
  - Call (202) 274-4457
  - E-mail [niwap@wcl.american.edu](mailto:niwap@wcl.american.edu)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)

