

Training for Vermont Service Center Adjudicators

July 29, 2021

Leslye E. Orloff

Judge Rosemary Collins (Ret.)

Introduction of Presenters

- Leslye E. Orloff
 - Adjunct Professor, Director, National Immigrant Women's Advocacy Project, American University, Washington College of Law
 - Helped draft legislation (VAWA I, II, III, IV, VAWA confidentiality, TVPRA, IMBRA, benefits, legal services)
 - 17 years experience of family law domestic violence litigation
- Judge Rosemary Collins (Ret.)
 - Presiding Judge, Family Division
 - Presiding Judge, Domestic Violence Coordinated Courts Division
 - DOJ, Office on Violence Against Women Mentor Court
 - 17th Judicial Circuit Rockford, Illinois

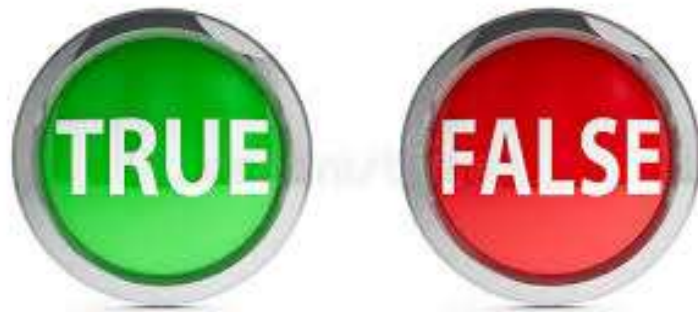
Learning Objectives

- Understand the dynamics of victimization in different contexts, including domestic violence, sexual assault, child abuse, and elder abuse
- Appreciate the impact of traumatization on memory and credibility
- Recognize various forms of immigration relief for survivors of crime and abuse & the different evidentiary standards required for each

Dynamics of Domestic Violence and Sexual Assault Experienced by Immigrant Victims

POLL #1: MYTHS AND REALITIES

Abusers of immigrant spouses are more likely to be lawful permanent residents and immigrants than to be U.S. citizens



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

Department of Homeland Security



POLL #2: MYTHS AND REALITIES

- In over 70% of abusive marriages U.S. citizen husbands refuse to file or withdraw immigration papers they filed to sponsor their abused immigrant spouse for lawful permanent residency.



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)

POLL #3: MYTHS AND REALITIES

- Tips from perpetrators and traffic stops are of the two most common ways immigrant victims of domestic and sexual violence become targets of immigration enforcement.



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 when victims called police for help
 - 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%

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

Immigration Related Abuse

- Refusal to file immigration papers on spouse/child/parent's behalf
- Threats or taking steps to withdraw an immigration case filed on the survivor's behalf
 - Family or work based visas
- Forcing survivor to work with false documents
- Threats/attempts to have her deported
- Calls to DHS to turn her in – have her case denied



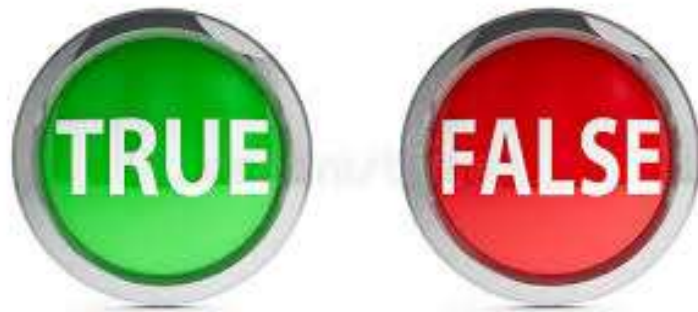
Immigration Related Abuse

- 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
- Corroborates existence of physical and sexual abuse
- May predict abuse escalation

*Mary Ann Dutton, Leslye E. Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

POLL #4: MYTHS AND REALITIES

- Foreign born girls are twice as likely as U.S. born girls to have experienced sexual assault by the time they are in high school.



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).

Definition of Sexual Assault

- Includes non-consensual genital, anal, or oral penetration of the victim by a part of the assailant's body or by an object, or vice versa and includes unwanted rough sex
- May be accomplished with force, threat of force, or without the victim's consent
 - May also be unable to consent due to age, mental capacity, intoxication, etc.
- Sexual assault includes rape (including acquaintance rape, rape by a stranger, rape within a marriage or intimate relationship)
- Sexual assault also includes incest, child sexual abuse, exhibitionism, voyeurism, obscene phone calls, fondling, forced watching of pornography, sexual harassment, and forced prostitution

Culture and Reporting of Sexual Assault

- Police don't respond to calls
- Police don't take a report or won't allow the victim to file a complaint
- Victim isn't taken for a forensic exam to collect evidence
- Interpreters
 - Lack of a qualified interpreter
 - Gender of interpreter inhibits reporting
 - Used the perpetrator as the interpreter
- Fear
 - Especially if the perpetrator is a spouse
 - Fear of deportation
- Marital rape may not be a criminal offense in the country of origin
- Culturally, survivors may not feel comfortable talking about sex, much less sexual assault

Domestic Violence



Violence

- Physical assaults
- Sexual abuse
- Threats



Abuse

- Economic
- Psychological
- Emotional
- Cyber Violence



Coercive Control

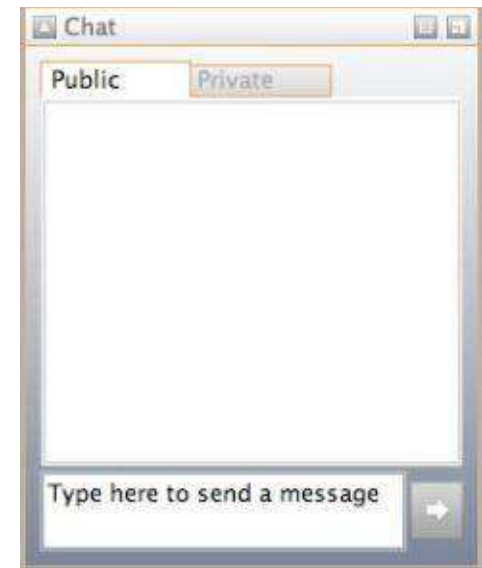
- Restricting freedoms
- Degradation
- Forced compliance



Video Clip From Waitress

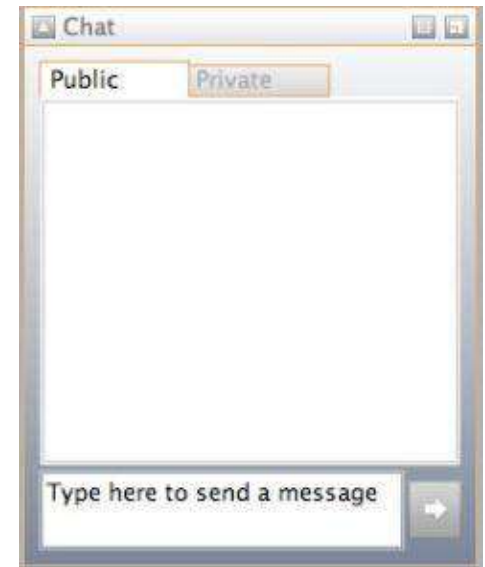
Large Group Discussion

- What concerns do you have for Jenna?
- How Might the statements/behaviors of Early affect Jenna?
- What might Early do if Jenna does not comply with his rules/demands?



Additional Facts and Discussion

- Jenna is from another country and married to Earl a citizen who never filed immigration papers.
- Jenna wants to remain in the U.S.
- Earl the abusive spouse threatens to turn her into DHS if she reports abuse or leaves.
- How would the additional facts affect your answers to the previous discussion



Domestic Violence

- 29% of women and 10% of men in the U.S. have experienced rape, physical violence, and/or stalking by a partner and reported an impact on their functioning.
- Firearms = most common weapon used by males to murder females in 2015. 64% of women killed by a firearm were murdered by male intimate partners.

Stalking and Domestic Violence

- The majority of stalking victims are stalked by someone they know, often a current or former intimate partner.
- 74% of those stalked by a former intimate partner reported violence and/or coercive control during the relationship.

Boy on the Stairs

- PSA Clip

<https://www.youtube.com/watch?v=Ab17RIxpl4Q>

The Effects of Domestic Violence on Children Vary and Include:

- **Physical** – injuries, health concerns
- **Emotional** – fear, reverting to safe behaviors, anxiety, self-blame
- **Social** – problems interacting with peers, high risk behaviors
- **Neurological** – effects on brain development
- **Cognitive** – school performance issues, anxiety/depression, PTSD

Behaviors of Abusive Parent

- Exposure to domestic violence
- Role model – rigid inappropriate roles, abusive tactics
- Undermining victim parent
- Isolating, limiting resources, restricting choices
- Threatening harm or removal of children (pets)
- Focus on their (the abusive parent's) needs
- Engendering fear in children

What is Trauma?

- Individual trauma results from...
 - An event, series of events, or set of circumstances
 - That is experienced by an individual as physically or emotionally harmful or threatening and
 - That has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being.

What Do We Mean by Trauma?

- **Individual Trauma:**
- Trauma is the **unique individual experience of an event or enduring condition**, in which:
 - The individual experiences a threat to life or to his or her psychic or bodily integrity (or to a loved one), and
 - The individual's coping capacity and/or ability to integrate his or her emotional experience is overwhelmed.

Many survivors experienced multiple forms of trauma(trauma throughout the lifespan)

- Domestic violence
- Physical assault
- Sexual assault
- Human trafficking
- Child abuse
- Torture
- Workplace abuse

Collective Trauma

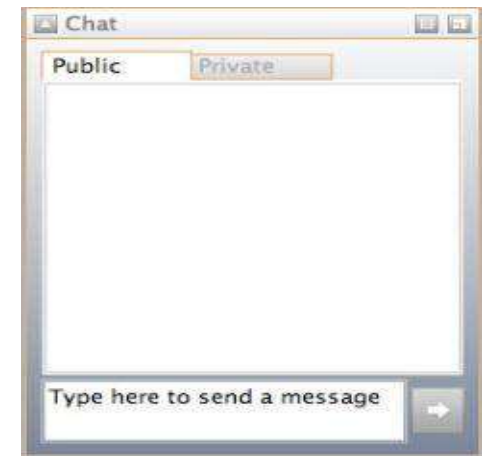
- Cultural and historical trauma can impact individuals and communities across generations and how the individual experiences a trauma.
- Culture can influence:
 - The types of trauma people experience;
 - How people interpret their experiences;
 - How they express (or don't express) their pain;
 - The resources and constraints available to them; and
 - What they find supportive and healing.
- Attending to cultural considerations is an essential part of being trauma-informed.

Secondary Trauma

- Aka Vicarious or bystander trauma
- Consequences of exposure to victimization can be similar to distress suffered by victims
- May affect other family members
 - Contemplated in the U visa regulation for family members and bystanders
- Those who work with victims
 - Adjudicate their cases including at the VSC
 - Provide victims advocacy and legal services

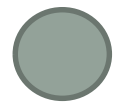
Importance of Self Care when Dealing with Emotional Topics

- Physical Activity
- Adequate Sleep and Rest
- Good Nutrition
- Nurturing Relationships
- Tending the Mind



What will you do for self care?

Domestic Violence and Trauma



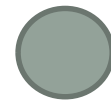
Violence

- Physical assaults
- Sexual abuse
- Threats



Abuse

- Economic
- Psychological
- Emotional
- Cyber Violence



Coercive Control

- Restricting freedoms
- Degradation
- Forced compliance



Immigration Law Definition of Domestic Violence

- “Battery or Extreme Cruelty”
- Includes
 - **All forms of abuse and all relationships** covered in state **civil protection order statutes**
 - All forms of abuse that constitute **domestic violence under state criminal laws**
 - **Plus** – Forms of abuse that are extreme cruelty
 - No physical harm or crime required
 - Chosen by Congress based on state family court extreme cruelty findings in divorce, alimony, support and custody cases

Immigration Law Definition of Battering or Extreme Cruelty

- Being the victim of **any act or a threatened act of violence**, including any forceful detention, **which results or threatens to result in physical or mental injury**.
- Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor) or forced prostitution **shall be considered acts of violence**.
- **Other abusive actions may also be acts of violence under this rule.** Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence” 8 C.F.R.§204.2(c)(1)

Immigration Law's Domestic Violence Definition “Battering *or* Extreme Cruelty”

- Includes threats and attempts of harm (battering, sexual assault, stalking) *and/or*
- *Extreme Cruelty -- Examples*
 - Emotional abuse
 - Economic abuse
 - Using children
 - Deportation threats and immigration-related abuse
 - Intimidation
 - Social isolation
 - Degradation
 - Possessiveness
 - Harming pets
 - Coercive control

Evan Stark: Control tactics include isolation, deprivation, exploitation, and regulation, having the effects of:

- Depriving victim of resources and support systems
- Rules remain in play even when the perpetrator is absent physically
- Micro-managing victim behavior by establishing “rules” for everyday living
- Victims feel abuse is all-encompassing and their partner is omnipresent
 - Compelling obedience
 - Exploiting the victim

“Rules” as Indication of Coercive Control

- Abusers use rules to justify tactics
- Must comply or face punishment
- Arbitrary rules change frequently



- Don't tell anyone about the abuse
- You cannot leave
- Don't complain

Coercive Control Tactics

- Threatening to report/turn over the victim to Department of Homeland Security
- Attempt to interfere in victims' immigration case filed by the abuser
- Hiding, destroying, or restricting access to identification and other important documents
- Giving victim misinformation about immigration status, process and/or available relief

Recognizing Evidence of Domestic Violence

- Pattern based behaviors
- History of violence
- Meaning of violence to victim
 - Coded threats/messages to victims

Context is Critical

- Context means
 - Intent
 - Meaning
 - Effect
- Who is doing what to whom and with what impact
 - Not meant to excuse behavior
 - Helps identify primary aggressor

U Visa: Substantial Harm Factors

72 Fed. Reg. 53018

- Nature of the physical or mental injury
 - Inflicted or suffered
- Severity of the perpetrator's conduct
- Severity of the harm suffered
- The duration of the infliction of the harm
- Extent to which there is *permanent* **or** *serious* harm to the victim's
 - Appearance; ***or***
 - Health; ***or***
 - Physical soundness; ***or***
 - Mental soundness

Substantial Harm 72 Fed. Reg. 53018

- No single factor is a prerequisite
- No requirement that harm be permanent
- For those with a pre-existing physical or mental injury or condition
 - Consider aggravation
 - Compounding effect
- A series of acts taken together may be considered to constitute substantial physical or mental abuse
 - Even where no single act alone rises to that level

Poll 5:
What substantial harm factors listed in the regulations would coercive control contribute to?

- A. Severity of the harm suffered
- B. Severity of the perpetrator's conduct
- C. Duration of the infliction of the harm
- D. Serious harm to the victim's mental soundness
- E. All of the above

Research Substantial Harms of Workplace Trauma

- Workplace abuse can cause significant emotional injury associated with trauma
- Inability to leave job where abuse is occurring causes significant emotional distress
- Empirical research on workplace abuse, harassment, bullying, physical and sexual violence and abuse can cause:
 - Headaches
 - Heart-related health issues
 - Miscarriage,
 - Physical impairments
 - Exhaustion
 - Clinical mental health symptoms: hopelessness, helplessness, depression, disassociation, sleeplessness, and loss of will, identity and/or self-esteem
 - Substance abuse

Risk Factors: Some of the factors related to lethality

Danger Assessment – by Jacquelyn C. Campbell, Ph.D., R.N. <https://www.dangerassessment.org/About.aspx>



- Prior domestic violence
- Access to a firearm
- Threats to kill
- Forced sex
- Estrangement
- Non-fatal strangulation
- Unemployed not seeking a job
- Stepchild of abuser in the home
- Stalking

Courts and Lethality Risks

Risk is Dynamic. It Changes Overtime

- Victims recognize non-lethal more than lethality factors.
- Balancing safety and victim autonomy



Domestic Violence Dynamics

- Although the domestic violence rates are numerically close between U.S. born and foreign born women, **the dynamics are quite different** for immigrant battered women.
- Fear of the police
 - As immigration enforcement increases police observe declines in victims making police reports and assisting in criminal investigations and prosecutions with 47% of victims reporting fear of deportation as the reason
 - Do not know that their spouse cannot bribe U.S. law enforcement

Language Barriers: Impact on Documentation of Abuse

- When immigrant victims call police for help
 - **Sexual assault** - 9.6% no police reports taken; did not use qualified interpreter; 61% of these cases victim had visible injuries.
 - **Domestic violence** – 10.4% no police reports taken; no qualified interpreter; 83.4% of victims had visible injuries.
 - **Human trafficking** - 11% no police reports taken; no qualified interpreter; 91.5% had visible injuries.

Impact on Evidence: When Agencies Fail to Comply with Title VI Language Access Laws

- When police do not obtain qualified interpreters at crime scenes
 - No police reports
 - Inaccurate police reports
 - Arrest victims
- When agencies do not use qualified interpreters
 - Victims do not learn about legal rights
 - Unqualified interpreters can
 - Intimidate victims and breach confidentiality
 - Create “inconsistencies” that would not otherwise exist
 - Fail to understand differences in dialects



Poll 6:
What traps immigrant
victims in abusive
relationships? (Check
all that apply)

- A. Fear of deportation/removal
- B. Fear of losing children
- C. Lack of legal work authorization
- D. Language barriers
- E. Did not know about help available

Why Immigrant Victims Do Not Leave?

- Fear of:
 - Removal/Deportation
 - Losing children
 - Losing current immigration status
 - Economic insecurity for self and children
 - Perpetrator's retaliation against
 - Victim and/or children
 - Family members in the U.S. or home country
 - Being cut off from family or community
 - Contacting police, courts, attorneys

Culture and Language Barriers

- Language barriers
- Do not know of help for victims in the US
- No access to culturally competent therapist
- Culture impacts
 - Willingness to reveal information or details about the abuse
 - How, when, if emotion is expressed
 - Stigma about seeing a therapist or having told others about the abuse

Lack of Access to Driver's Licenses Can Limit Reporting and Help Seeking

- No driver's license until
 - Work authorization (31 states)
 - Deferred action (3 states)
 - Prima facie (1 state)
 - Limits access particularly in rural areas and smaller communities to
 - Health care and therapy
 - Attorneys and victim services
 - Law enforcement and prosecutors

Judge Collins: What helps you as a judge tell the difference between fraud and the effects of trauma on victims and witness?



SAMHSA: Behavior As Adaptation

- “An essential component of being trauma-informed is to understand these behaviors
- not as character flaws or symptoms of mental illness,
- but as strategies or behavioral adaptations developed to cope with the physical and emotional impact of past trauma.”

Trauma Impacts Memory

- Great stress during a traumatic event inhibits memory for peripheral details
- “Normal” for victims of trauma not to remember complete details, particularly dates
- Problem is more acute for victims of repeated abuse
 - Remember the gist but confuse details of incidents
- Struggle to describe linear narratives
 - Impaired by going into survival mode
- Traumatic memories are encoded in images, sounds, flashes, smells, bodily sensations

Understanding Behavior Through a Trauma Lens

- **Trauma experiences and reactions are not the same in all survivors**
- Minimizing the trauma
- Gaps in memory are common and protective
- Victims trying to function on a daily basis
- Reluctant to suffer pain of reliving the trauma
- “Shutting down” or being emotionally disengaged
- Fear of reporting
 - Might just share only part of story
 - Cautious when seeking help
- Shame or stigma limits disclosure

Understanding Behaviors

- Traumatic memory is stored differently (difficult to describe in clear chronological order)
- Testimony may be affected by trauma's effects on memory and demeanor, therefore impacting traditional notions of credibility.
- Many aspects of the application and adjudication process can trigger fear/trauma responses and aggravate pre-existing conditions
- Abusers often use the immigration case and court process to continue intimidation.

Survivor's Memories Improve Over Time

- As the mind begins to process the traumatic experience
- Talking and therapy help survivors retrieve painful memories
 - Need access to culturally and linguistically appropriate treatment
- With healing and treatment victims remember more details

Trauma and Credibility

- What someone untrained in trauma can mistake trauma's artifacts for lack of credibility
- Actually are corroborating evidence of the effects of having suffered trauma
- Inconsistencies are foreseeable side effects of trauma

Common Evidentiary Inconsistencies In Cases of Trauma Victims

- Domestic violence cases -- common evidentiary inconsistencies between
 - Hospital reports
 - Police reports
 - Victim's statement or testimony
- Sexual assault cases –
 - Victim will retell details of the rape and
 - Not be able to remember race of perpetrator
- Inconsistencies created by
 - Unqualified “interpreters”
 - Perpetrator's control of
 - Police report
 - Report to health care professional
 - Information in prior application

Poll 7:
In which of the following cases is understanding trauma and its affect on victims an important part of VAWA unit adjudications?

- A. Totality of the circumstances in VAWA self-petitions
- B. Substantial harm in U visa adjudications
- C. Cooperation exception for physical and emotional trauma in T visa cases
- D. Adjudicating inadmissibility waiver requests in VAWA self-petition, U and T visa cases
- E. All of the above

Role of Trauma in T visa cases

- INA Sec. 101(a)(15)(T)(iii): Creates cooperation exception due to psychological or physical trauma
- T & U Adjustment Regulation considers “severe traumatization” as one factor for why a victim might refuse to cooperate [73 Fed. Reg. 75560]
- From Blue Campaign website: “DHS understands how difficult it can be for victims to come forward and work with law enforcement due to their trauma.”

Any Credible Evidence Rules Apply to VAWA, T and U Visa Cases

INS Paul Virtue 1998 Memo

- Evaluate evidence submitted in light of the problem battered women can have safely accessing documents
- Give victims ample opportunity to add to the evidence submitted
- No score cards
- Determine credibility of evidence on the facts of that case only
 - understanding limitations of victims and they evidence they can safely access

No requirement of any specific quantity of harm or abusive incidents

- Like civil protection orders
- One incident sufficient
- Eligibility can be established on pattern
- Avoids seeking details about every incident
- Provides avenue to relief while reducing re-traumatizing victim
 - INS Paul Virtue, Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children
HQ 90/15-P, HQ 70/8-P

Striking A Balance: Goal of Credible Evidence

- Allow victims to garner what evidence they can to prove their VAWA or U visa case
 - Reduce danger to victims
- Prohibit the requirement of any specific form of evidence
 - Central role of victim's affidavit
- Give adjudicators discretion to decide:
 - If the evidence submitted taken viewed in its totality is credible
 - What weight to give evidence
 - If evidence submitted establishes eligibility
 - By a preponderance of the evidence

Requests for Further Evidence Should

- Be issued after balancing what could be provided against the minimum needed to meet the eligibility threshold
- Be crafted to identify what is the evidence gap that needs to be filled
- Provide sufficient detail about the kinds of evidence needed
- Articulate why evidence submitted is not sufficient
 - and what is needed
- Be cognizant that requiring specific types of evidence can compromise victim safety to obtain it
- Design RFEs to seek only what is needed to avoid unnecessarily re-traumatizing victims
- Understand how VAWA confidentiality can impact initial case filings

How Immigration Enforcement Affects VAWA and U Visa Cases

- If victim seeks a protection order before filing VAWA or U visa case
 - Abuser retaliates by calling DHS
- No protection from deportation until VAWA or U visa case filed
- Attorneys-Advocates encouraged to file VAWA-U visa initial application quickly
- Effect on level of detail included in initial file
- Role of the Request for Evidence (RFE) Process

Victim Protection From Deportation Affect on VAWA and U Visa Cases

- ICE Victim Witness Memo
- Little protection until a victim's case is filed with USCIS
- VAWA Confidentiality
 - “384” Computer Red Flag
 - Applies to Cases Filed
- Explains why some victims file skeletal applications

VAWA Confidentiality

- In 1996 Congress created special protections for victims of domestic violence against
 - Disclosure of information
 - Use of information provided directly or indirectly by their abusers
- Congress extended these protections to U and T visa victims (2000) and all VAWA self-petitioners (2005)
- DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005)
<http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerptshr-3402-09-22-2005>

VAWA Confidentiality Designed To:

- Ensure that abusers and criminals cannot use the immigration system against their victims:
- VAWA confidentiality violations examples include:
 - Encouraging immigration enforcement officers to immigration enforcement, detention, removal of victims
 - Abused use DHS to obtain information about the existence of, action taken in, and information contained in the victims' protected immigration case
 - Interfering with or undermining the victim's immigration cases
 - Calling perpetrators as witnesses or relying on their statements
 - Relying upon information that originates from prohibited source

Avoiding Fruit of the Poisonous Tree

Poll 8:
Which of the following
would not lead to a potential
VAWA confidentiality
violation?

- A. Relying on a tip the Fraud unit received (FDNS)
- B. Considering an affidavit of the abusive spouse that ICE trail attorney submitted and put in the “A” file
- C. Information in a federal criminal database
- D. Relying on a marriage fraud finding by USCIS in an I-130 marriage based application case

Sanctions for VAWA Confidentiality

- Each immigration official is required to make an independent determination if the source of the information is a prohibited source
 - Abuser, their family, or their agents
- Seek supervisor review of adverse information
 - Including from “third party”
 - Helps avoid sanctions
- Sanctions
 - \$5,000 fine per incident
 - Job sanctions
 - CRCL investigation

POLL #9: MYTHS AND REALITIES

- After filing for VAWA self-petition or U visa immigration relief immigrant victims are more likely to turn to the justice system for help.



Immigration Status Affects Willingness to Call Police

- Significant difference between victims willingness to call the police related to their immigration status:
 - Stable (citizen/permanent resident) 34.4%
 - Temporary (temporary visa) 16.7%
 - Undocumented 14.8%

Factors Affecting Battered Immigrant's Willingness to Call Police for Help

- Positive Factors:
 - Length of time in the United States
 - When children witnessed abuse women were three times more likely to call the police for help
 - Having a protection order
 - Having filed a VAWA self-petition or U visa application
 - Women who had spoken to more than one person about the violence were over 5 times more likely to call for help

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
 - 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 immigration status of the victim to gain advantage in family court

2013 and 2017 Research Found Increased Justice System Participation

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

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

Economic Impact of Work Authorization and Deferred Action for VAWA Self-Petitioners and U Visa Applicants

- 300% increase in jobs that pay at least minimum wage
- 542% increase in formal sector jobs that deduct taxes
- 43% security jobs with health insurance, sick leave, vacation pay
- 43% of victims working in the informal sector pay taxes using tax IDs

Education and English Language Impact of Work Authorization and Deferred Action

- 226% increase in victims taking ESL classes
- 167% increase in working to improve English speaking abilities
- 60% attend social events with people in the U.S.
- 35% obtain GEDs
- 38% pursue AAs and Bas
- 21% receive vocational education
- 19% advanced degrees

Work Authorization and Deferred Action Lead to Improvements for Children

- 6.6 fold increase in victim's involvement in their children's schools
- Increases in victim's children
 - 101% being more socially active
 - 134% pursuing their own interests

Mental Health Benefits of Work Authorization and Deferred Action

- VAWA and U visa victims report increases in:
 - It being easier to make decisions 432%
 - Sleeping better & being calmer– 300%
 - Being more focused – 280%
 - More independent – 261%
 - Standing up for themselves 225%
 - Having more energy – 188%
 - Being less depressed 183%
 - More at ease – 162%
 - More hopeful 130%

Improved Community Engagement After Work Authorization and Deferred Action

- 13 fold increase in reengagement with the victim's cultural community in the US
- 80% increase in engaging with people outside of the abuser's family in the community, friends and neighbors
- 22% volunteer in their communities
- At lawful permanent residency
 - 159% increase in socializing with people from the US
 - 126% adopting US social norms

Further Improvements at Lawful Permanent Residency For Children

- 65% children's grades improve
 - Up from 29% increase at work authorization
- 125% decrease in children's' disciplinary problems
- 80% are less aggressive

Improvements in Health and Safety at Lawful Permanent Residency

- 77% reduction in sexual assault or attempted sexual assault at work
- 51% receive preventative health care
- 40% have fewer medical problems
- 40% find it easier to make decisions
- 47% are more familiar with and know how to access community resources

Violence Against Women Act (VAWA) Immigration Protections History, Purpose and Key Adjudication Elements

Historical Development of Battered Immigrant and Immigrant Crime Victim Protections

- Spousal sponsorship rooted in the legal concept of marriage
- 1907-1922 USC woman lost citizenship if married foreign born husband
- In 1952, the INA became gender neutral, but kept sponsorship scheme
- Control of immigration process could be in hands of a batterer, abusive employer, trafficker
- VAWA, T and U-visa immigration provisions were enacted to address the problem

LO1

Bill and Aparna should I use or delete this

Leslye Orloff, 1/8/2015

VAWA Has Historically Been Bipartisan-Key Leaders

- 1994- Simpson, Hatch, Morella, Lamar Smith, Kennedy, Biden, Schroeder, Schumer
- IIRAIRA 1996 – Lamar Smith, Simpson, Kennedy, Schroeder, Biden
- 2000– Abraham, Hatch, Kennedy, Biden, Hyde, Chris Smith, Wellstone, Brownback, McCollum, Conyers
- 2005 – Sensenbrenner, Conyers, Spector, Biden, Kennedy, Leahy, Durbin

VAWA Self-Petitioning

Historical Context of VAWA Immigration Legislation

“Eliminating domestic violence is especially challenging in immigrant communities, since victims often face additional cultural, linguistic and immigration barriers to their safety. Abusers of immigrants- spouses or children are liable to sue threats of deportation to trap them in endless years of violence. Many of us have heard horrific stories of violence in cases where the threat of deportation is used against spouses and children – if you leave me, I’ll report you to immigration authorities, and you will never see your children again.” ...

*Senator Kennedy. VAWA 2005 Congressional
Testimony*

VAWA, T and U Visa Legislative History: Senator Biden Senate Congressional Record 10/11/2000



- *“The single most important provision we add to the Violence Against Women Act is the battered immigrant women provision”*
- *Abusers “are brought to justice and the battered immigrants also escape abuse without being subject to other penalties.”*

Violence Against Women Act of 1994 -- Purpose

- Federal role in stopping
 - Domestic violence
 - Sexual assault
 - Trafficking in persons
- By meeting two equally important goals
 - Increasing justice system's role in offender accountability
 - Victim assistance, protection and services
- Designed to help ALL victims
 - Immigration relief key component of legislation
 - Builds upon 1990 Battered Spouse Waiver

VAWA Self-Petition Designed to --

- Provide a battered spouses access to immigration relief they were already entitled to
- Stop abuser/perpetrator use of immigration law as a weapon
- Sever abuser/ perpetrator's control over
 - Criminal justice system intervention
 - Victim and children
 - Locking victims in abusive family relationships
 - Keeping victims from leaving abusive employers
 - Stopping victims from seeking help
- Provide victims access to justice, services, help, healing, safety, and economic security
- New York case

*Excerpts of speech of Hon. John
Conyers, Jr.*

“Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims to avoid criminal prosecution.”

Re: VAWA 2005 (12/18/2005)

Reason VAWA Works for Immigrant Victims

- Stops perpetrator retaliation through deportation
- Severs economic dependence on perpetrator through legal work authorization
- More crime victims are willing to
 - Leave perpetrators
 - Cooperate with law enforcement in crime detection, investigation and prosecution
- Victims more successful in accessing
 - The criminal and civil justice systems
 - Being awarded custody and protecting children from abuse
 - Victim services and support

VAWA 1994 -Immigration

- Created provisions for immigrants to “self-petition” to obtain lawful permanent residence and receive protection from deportation
 - Without spousal sponsorship
 - If subject to “battery or extreme cruelty”
 - By a U.S. citizen or lawful permanent resident spouse or parent
- VAWA any credible evidence standard

Subsequent legislation--

- VAWA confidentiality and public benefits access (1996) and legal services (2013)
- Filing VAWA self-petitions from abroad
- Self-petitioning by (2005)
 - Child abuse and incest victims abused prior to age 21 have until age 25 to file
 - Elder abuse victims abused by citizen 21+ children
- Age-out protection for child self-petitioners and child derivatives (2005)
- Children adjust with parents (2005)
- Help for surviving children of VAWA self-petitioners who died (2013)

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

***Battering and
Extreme Cruelty
A Deeper Dive***

Definition Modeled After

- State civil protection order statutes
- International law domestic violence definitions
- **What do activities qualify as domestic violence under state protection order laws?**

“Battering or Extreme Cruelty”

Includes:

- Crimes that would support issuance of a protection order or would be considered domestic violence crimes under state laws constitute “battery”
- Includes attempts, treats, conspiracy or solicitation
 - National Council of Juvenile and Family Court Judges Model Domestic Violence Code (1994)
 - ABA Commission on Domestic Violence State by State Protection Order Chart

Includes activity that “threatens to result in physical or mental injury”

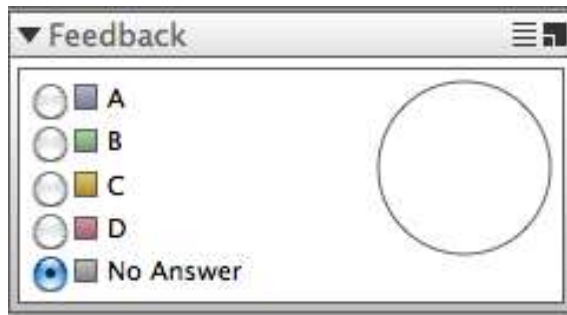
- Threats to Kill
- Threats to do bodily harm
- Threats to harm children
- Threats to abduct children
- Threats to harm family members
- Threats to harm family pets
- Threats to harm friends, employers

VAWA Self-Petitioning Regulations

- “No limit on the time that may have elapsed since the last incident of qualifying abuse”
- “Acts that in and of themselves do not initially appear violent, may be a part of an overall pattern of violence
- Totality of the evidence to be considered
- “Proven flexible and sufficiently broad to encompass all types of domestic battery or extreme cruelty”

Poll 10:
What are common examples of
coercive control from VAWA or U
visa domestic violence cases?
Check all that apply

- A. Social isolation
- B. Monitoring phone and/or internet use
- C. Following/stalking the victim
- D. Sleep deprivation
- E. Religious/cultural persecution



Evidence of Coercive Control

- Social isolation
- Religious persecution
- Monitoring phone and internet use
- Monitoring/controlling movement, whereabouts
- Showing up at victim's work/school
- Restricting what spouse eats
- Cutting off access to medication
- Sleep deprivation
- Threats of deportation
- Abuse in front of the children
- Threatening to take away the children
- Threatening physical violence
- Displaying weapons
- Causing spouse's involuntary commitment to mental institution
- Threats to commit suicide

State Family Law Findings on Extreme Cruelty

- The following factors also constitute or contribute to findings of “extreme cruelty”
 - Using children as a tool
 - Prevent spouse from obtaining medical treatment
 - Accusations of adultery
 - Stealing spouses property or money
 - Harassment
 - Domination
 - Physical and verbal intimidation
 - Alienating parent from child
 - Hiding or destroying personal sentimental items
 - Excessive public fighting and cursing

Good Faith Marriage

Self-petitioner must --

- Within 2 years of filing the self-petition
 - Have been in a good faith marriage with a citizen or lawful permanent resident spouse
 - Including if the spouse died; **OR**
 - Related to the battering or extreme cruelty
 - The marriage was terminated,
 - The spouse lost or renounced citizenship
 - The spouse lost lawful permanent resident status; **OR**
- Be an intended spouse in the case of a citizen or lawful permanent resident bigamist
 - Immigrant spouse was unaware of the bigamy when they went through a marriage ceremony

Heterosexual and Same-Sex Marriages Treated Equally Under the Law

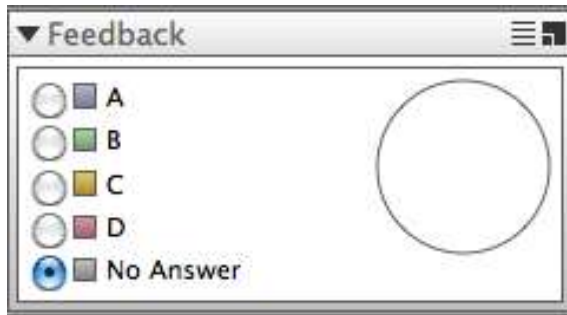
- Some immigrants in same-sex marriages come from countries where hiding sexual preference was required to avoid death
- People in same-sex marriages may have had previous heterosexual marriages and had children
- Male victims due to abuse and shame may be less likely to
 - Seek police intervention or press charges
 - Have friends who know about sexual preferences particularly bi-sexuality

Good Faith Marriage

Standard of proof: whether at the time of entering into the marriage, the couple intended to establish a life together?

- Intent *at the time of the marriage*
- Their subjective state of mind
- May or may not have a basis in love
- Did they intend to establish a life together
- Separation, even after a short marriage
 - Is not proof that marriage was fraudulent

Poll 11:
What facts provide evidence
of a good faith marriage?



- A. Children
- B. Battering or extreme cruelty
- C. Love letters
- D. Coercive control
- E. All of the above

Evidence of Good Faith Marriage

- Children
- *The battering or extreme cruelty*
- Coercive Control
- Residence with the abuser
- Evidence about
 - How the parties met
 - How the relationship developed
 - Burden of proof higher for shorter marriages
- No need for ongoing documentation from the time of marriage to
 - Time of separation or present date

Why Self-Petitioners May Lack “*Traditional Evidence*” of Good Faith Marriage

- 1998 Paul Virtue memo recognizes problems for battered women safely accessing documentary evidence
- Victim may have fled the marital home
- Abusive spouse
 - Controls finances, important documents
 - Did not put the victim spouse’s name on the lease, mortgage, utility bills, titles to cars
- Obtaining *traditional evidence* can tip off the perpetrator
- Lack of *traditional evidence* can be corroborating evidence of
 - Battering
 - Extreme cruelty
 - Coercive control
- Civil protection order can be used to obtain traditional evidence

U Visas: Legislative History and Important Training Issues

U & T Visas Help Government and Help Victims

- Multiple Goals
 - Benefits the government so that it can detect, investigate or prosecute
 - Crimes
 - Violations of federal and states laws
 - Remove threats and fear of deportation so that the victims can come forward to help enforce the law
 - Protects all family violence victims and victims of many other crimes
- Without a U visa
 - Undermines government's case
 - Rewards perpetrator
 - Hurts victim
 - Endangers communities and law enforcement

VAWA, T and U Visa Legislative History:

House Congressional Record 10/6/2000

- VAWA and the TVPA are *“important bipartisan pieces of legislation that together advance the cause of justice for crime victims and truly offer the prospect of improving public safety.”*
 - (Rep. Henry Hyde)
- *“[G]rant nonimmigrant visas to victims who would face a significant possibility of retribution or other harm if they were forced to leave”*
 - (Rep. Chris Smith)
- *“Allow immigrants to safely escape the violence and bring their abusers to justice”*
 - (Rep. Jackson-Lee)

U Visa Statute:

VAWA 2000 Section 1513(a)

- *“Immigrant women and children are often targeted to be victims of crimes committed against them in the United States”*
- “The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability ... to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking..., and other crimes ... committed against [noncitizens], while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. ”

U-Visa Requirements

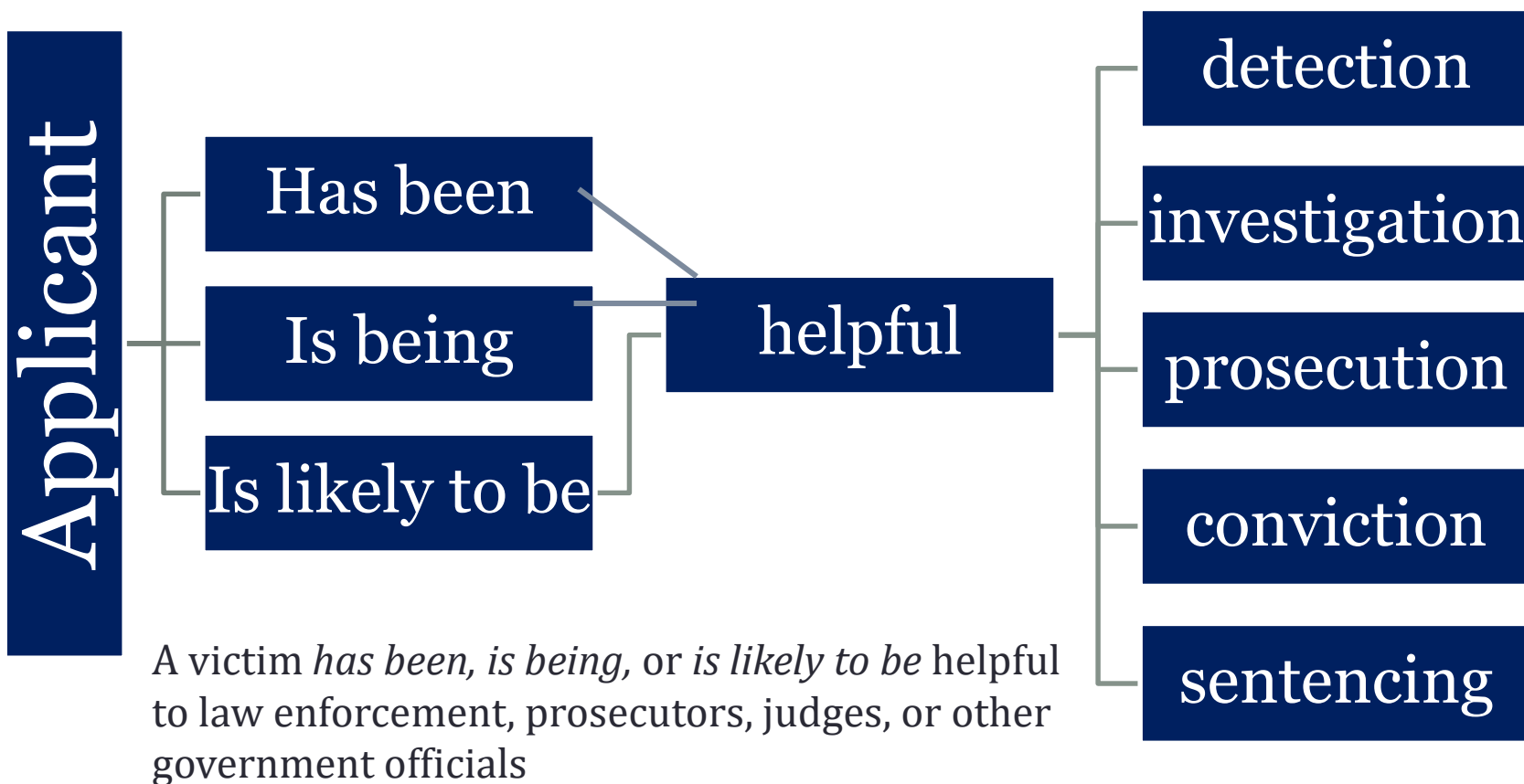
- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - **Detection**, investigation, prosecution, conviction ***or*** sentencing 8 C.F.R. 214.14 (a)(5)
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law
- Suffered substantial physical or mental abuse as a result of the victimization

Importance of Detection of U Visa Criminal Activities to Law Enforcement

- Case Examples
 - Burglary of a bakery
 - Domestic violence perpetrated by gang member
 - Terrorist identified because of sexual assault
- Certification form requests code section “investigated or prosecuted”
 - Statute and regulations include detection
- Stories From the Field: The Crime Fighting Effectiveness of the U Visa (August 27, 2020)
 - <https://niwaplibrary.wcl.american.edu/pubs/u-visa-crime-fighting-stories>

Definition of “Helpfulness”

INA 245(m)(1); 8 U.S.C. 1255(m)(1) and 8 C.F.R 214.14(b)(3)



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
 - Prosecution could be for different offense
- Victim provides testimony at trial
- Victim is a necessary witness
- Offender is identified
- Offender alive



Victim-centered approach

Examples of “Helpfulness”

Providing a description of offender

Having a Rape Kit performed

Seeking a civil protection order

Allowing photographs to be taken

Giving information about the offender’s whereabouts

Bringing a minor victim to a Child Advocacy Center

Providing a statement about “other bad acts”

Reporting crime in another case against the perpetrator

Testifying at a bond hearing, trial, or sentencing

Who Can Certify?

“law enforcement” & “law enforcement agencies” =

- Federal, state, and local
 - Police, sheriffs, FBI, HSI, ATF
 - Prosecutors
 - Head of agency or designee
 - Judges, Magistrates, Commissioners
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse agencies
- Other government agencies with investigative authority

There is **NO** statute of limitations on signing a certification. However, there is a **six month** window after signing the certification in which the U visa application must be filed.

Which Judicial Officers Can Certify?

- Federal, state, & local
 - **Judges, Magistrates, Commissioners, Judicial Referees, Masters, Alderman, ALJs, Surrogates, Chancellors**
 - Others with delegated decision-making authority
- Judges certify in cases
 - They presided over
 - Adjudicated by other judges at their court
- Certification based on helpfulness to courts
 - Detection (family/juvenile/civil/criminal)
 - Pleadings
 - Testimony
 - Attending court
 - Seeking orders
 - Working with police/prosecutors
 - Conviction/Sentencing (criminal)

Why Congress Made Judges Certifiers

- Cases where only justice system contact is the protection order, custody or child welfare case
- Instances where no crime scene language access when victim called for help
- Judge observes victim's participation in court cases criminal, civil, family
- Builds trust in the justice system

Judges detect “Criminal Activities” and “Helpfulness” In Wide Range of Court Cases

- Family
 - Civil Protection
 - Custody
 - Divorce
 - Paternity
 - Adoption
- Juvenile
 - Child Abuse, Neglect, or Termination of Parental Rights
 - Delinquency
- Criminal
- Probate
 - Elder / Dependent Adult Abuse
 - Guardianship
 - Conservatorship
- Civil
 - Employment
 - Tort damages against a perpetrator
 - Landlord-tenant

Criminal Case Examples: Evidence of Helpfulness

- Evidence in a case that the victim:
 - Called 911
 - Participated in a criminal investigation
 - Identified perpetrator at line up
 - Testified before a grand jury or at trial
 - Appearance in a case
 - Attended criminal court hearings in the case
 - Victim impact statement
 - Testimony at sentencing

Family/Civil Case Examples: Evidence of Helpfulness

- Filed and/or appeared at hearing for civil protection order
- Plead and/or testified about abuse or sexual assault in a court case
 - (i.e., protection order, divorce, custody, small claims, child welfare, housing, employment)
- Evidence in case that victim called the police, made a police report, cooperated in a criminal or EEOC investigation
- Serving the perpetrator with notice of a
 - Temporary and/or full protection order
 - A case in which the pleadings contain allegations of facts that constitute domestic violence, sexual assault, child abuse, stalking, or other U visa criminal activities

Note on VAWA Statutes and Regulations

Conflicts: Regulations Overruled by Statute

- VAWA's any credible evidence rules overruled battered spouse waiver regulations
 - VAWA 1994 § 40702(a) overruled: 8 CFR § 216.5 (e)(3)
- Deletion of U.S. residency requirement for VAWA self-petitioners allowing filing from abroad
 - VAWA 2000 § 1503(b) overruled : 8 CFR § 204.2(c)(1)(i)(C) and (D) and 8 CFR § 204.2(c)(1)(v)
- A self-petitioners remarriage does not preclude approval of a VAWA self petition
 - VAWA 2000 § 1507(b) overruling 8 CFR § 204.2(c)(1)(ii)
- Deleted extreme hardship requirement for VAWA self-petitioners
 - VAWA 2000 §§ 1503(b) and (c) overruling : 8 CFR §§ 204.2(c)(1)(i)(G) and (viii)
- Self-petitioning regulations requiring residence proof of residence of a battered spouse or child with the abuser requirement:
 - VAWA 2000 § 1503 overruled 8 CFR § 204.2(c) (1) (v); § 204.2(c)(2)(iii); 8 CFR. § 204.2(e)(1)(v); § 204.2(e)(2)(iii).
- Retrieving priority dates for child self petitioners
 - VAWA 2000 § 1502(d) overruled 8 CFR § 204.2(a)(4)
- Good Moral Character for VAWA cancellation/suspension parallel to special VAWA inadmissibility waivers
 - VAWA 2005 § 822(c) overrule 8 CFR § 204.2(c)(1)(vii)

Statutes With No Implementing Policies or Regulations

- VAWA, T and U visa victims not subject to reinstatement of removal
 - VAWA 2005 § 813(b)
- Cooperation exception for T visa victim for psychological and physical trauma
 - VAWA 2005 § 801(a)(2)

Resources

- Materials related to this training
 - <https://niwaplibrary.wcl.american.edu/vawa-unit-vsc>
- NIWAP Web Library
 - <http://niwaplibrary.wcl.american.edu/>
 - Training materials
 - Webinars
 - Access to statutes, regulations, government memos and publications
 - National online directory of programs serving immigrant survivors
- Questions and Technical Assistance
 - (202) 274-4457
 - niwap@wcl.american.edu or info@niwap.org



Closing and evaluation