

DOMESTIC VIOLENCE and IMMIGRATION ISSUES

Immigrant Survivors and Their Children:

*Assisting Survivors With Immigration Case Filings and
Anticipating Issues In Preparation for Court*

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WILMU Webinar Series

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Faculty Introductions



Hon. Loretta Young
Commissioner
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Wilmington, Delaware



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Learning Objectives

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

- Understand the vulnerabilities and unique needs of immigrant victims of domestic violence
- Recognize the common ways that perpetrators may use a victim's immigration status as a form of coercive control and abuse
- Counter perpetrators' attempts to use victim's immigration status to gain advantage in family court cases;
- Stabilize victims by obtaining U and T visa certifications and SIJS findings from authorized agencies and courts
- Assist victims in filing VAWA self-petitions

Poll: Let's see who is on the webinar with us

Please check the box that best describes you:

- A. Family Law Attorneys
- B. Immigration Attorneys
- C. Paralegals/Legal Aid Staff
- D. Victim advocates/coalition staff
- E. Other – type in the chat



POLL

Dynamics Of Domestic Violence Experienced By Battered Immigrants

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

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)

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 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)

Perpetrators Efforts to Trigger Victim's Removal

- Perpetrators actively reporting victims with pending immigration cases for removal
 - VAWA self-petitioners 38.3%; U visa 25%
- Perpetrators got the victim arrested when the victim called police for help with domestic violence
 - VAWA self-petitioners rose 2013-2017 from 15.4% -17%
 - U visa rose 2013-2017 from 7.5% -36%

Krisztina E. Szabo, David Stauffer, Benish Anver, *Work 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)

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 include courts, victim services, shelters, require compliance with 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
 - Impacts state court discovery
- *DHS notifies staff through “384” computer system*

State and Federal VAWA Confidentiality and Discovery Case Law

- Family law - VAWA and U visa case information not discoverable
- Criminal law – only U visa case certification discoverable
 - File not in prosecutors' custody or control
- Civil cases not discoverable except potentially as needed to prove damages to a specific individual
 - In chambers review judge can redact

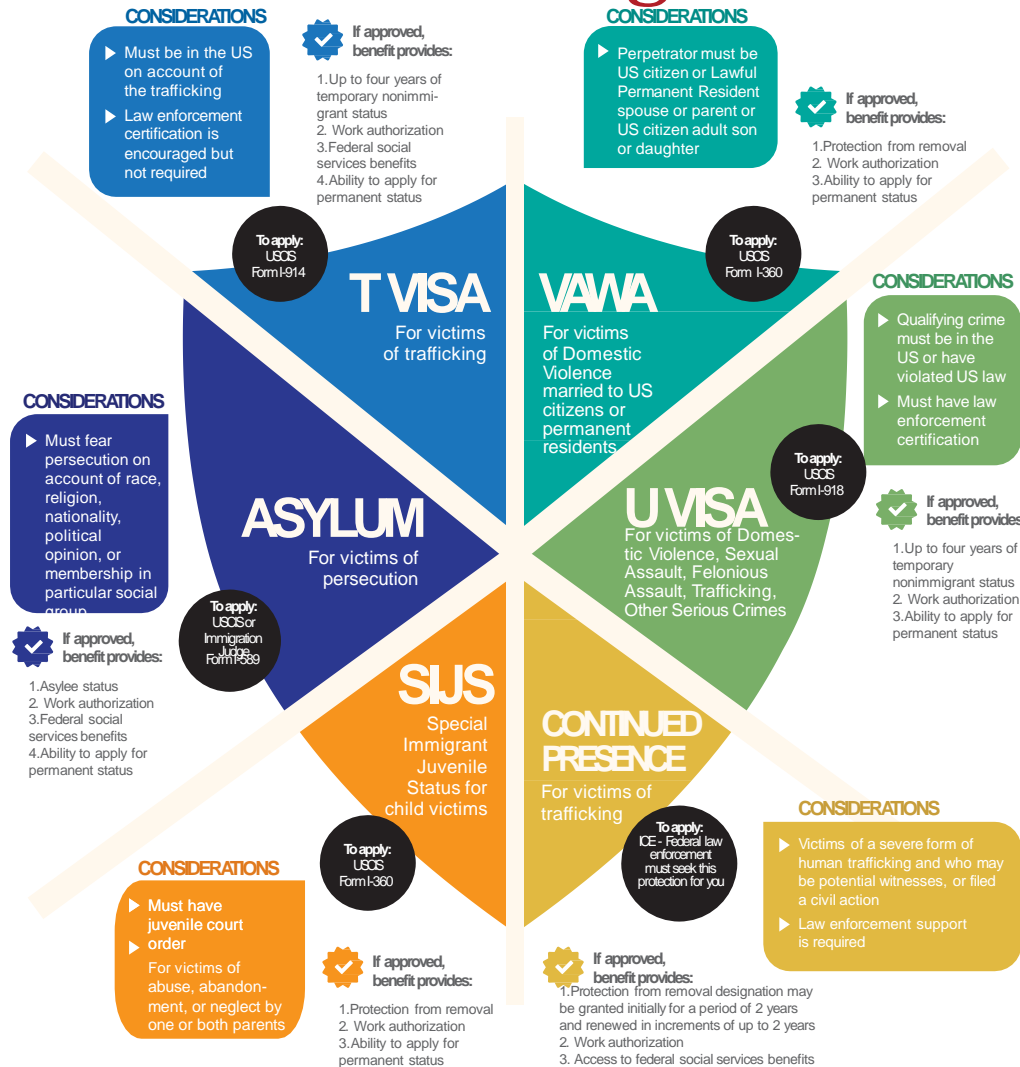
Immigration Relief for Immigrant Crime Victims: Role of Victim Services, Law Enforcement, and Lawyers

Purpose of Crime Victim Protections

Congress enacted VAWA self-petitioning (1994), the U and T visas (2000) & Special Immigrant Juvenile Status (SIJS) (1990, 2008) to:

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

Protections For Immigrant Victims



DHS.GOV/BLUE-CAMPAIGN

When you identify immigrant victims, they and their children will qualify for one or more of the following:

Abuse	Form of Immigration Relief
Domestic violence Child abuse Child abandonment or neglect	VAWA self-petitioning VAWA defenses against removal in immigration court Battered spouse waiver Special Immigrant Juvenile Status (Child only no family members)
Domestic violence/child abuse Sexual assault, Stalking, Human trafficking, Other U visa criminal activities	U visa
Human Trafficking	T visa Continued presence

VAWA SELF-PETITIONING

OMB No. 1841-0023, Expires 09-30-2008
**I-485, Application to Register
Permanent Residence or Adjust Status**

For USCIS Use Only

Applicant Name	Returned	Receipt
App. #	Resubmitted	

Battered Spouse Waiver

- Helps immigrant spouses with 2-year conditional residency (green cards)
- Whose citizen spouse filed a family visa petition for them
- Requires proof of:
 - Battering or extreme cruelty to immigrant spouse or immigrant spouse's child or step-child
 - Good faith marriage
- Waives:
 - Joint filing requirement with abusive citizen spouse
 - Two-year wait to full lawful permanent residence
- Timeline to full lawful permanent residency = 12-24 months (2021)

VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
 - Parent (Children abused under age 21 have up to age 25 to file)
 - Spouse 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
- **Timeline to work authorization = 4–24 months (2021)**
- Family Court Bench Card on Immigration Rights of Battered Spouses, Children and Crime Victims (2013) <https://niwaplibrary.wcl.american.edu/pubs/judg-tkit-bchcrdvictimsimmrights10-11-13>

What could constitute “extreme cruelty”?



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

- Any state crime committed against a family member sufficient for issuance of a protection order including sexual abuse, stalking, threats, attempts *and/or*
 - Emotional abuse
 - Economic abuse
 - Abusing children
 - Deportation threats and immigration-related abuse
 - Intimidation
 - Social isolation
 - Degradation
 - Possessiveness
 - Harming pets
 - Coercive control

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

Battering

- Physical violence against
 - Spouse/intimate partner
 - Child
- Use of a weapon
- Sexual 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 based on fear, dependence deprivation
- Isolation
- Deprivation of basic necessities
- Controlling regulating, monitoring 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

VAWA self-petitioning --

- Must file within 2 years of marriage termination
- Available when perpetrator is a bigamist
- Children abused under age 21 have until they turn 25 to file
- Step children must file prior to divorce
- Credible evidence standard of proof
 - (police report, protection order, medical records NOT required)

VAWA Self-Petitioners Receive

- Deportation: Protection from deportation shortly after filing.
- Immigration Benefits for Children:
 - VAWA self-petitioners' children receive immigration benefits
 - VAWA cancellation parole into US visa process required
- Public Benefits: As qualified immigrants (2-3 months)
 - Housing, FAFSA, SNAP (for children) Health care exchanges
 - 5 year bar to health subsidies, TANF
- Employment authorization: (3-24 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 1 years)

PROTECTION FOR ABANDONED AND ABUSED IMMIGRANT CHILDREN:

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

Special Immigrant Juvenile Status (SIJS)

- Humanitarian immigration relief for 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
- The state court order reflects judge's expertise on children's best interests
- State court findings do **not** grant immigration status

SJIS Humanitarian Relief for Children

- Immigration relief for unmarried children
- Under state law age of majority at SIJS finding
- Under the age of 21 when child files SIJS case
- Victims of abuse, abandonment, neglect, or dependency
 - By at least **one parent**
- To apply must submit required findings from a state court with jurisdiction over
 - the care, custody, or dependency of the child
- **Timeline to approval = 6 – 36 months (2021)**
- Special Immigrant Juvenile Status Bench Book (2018)
<https://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents>

State Court SIJS Findings Applying State Law

- The court has jurisdictions to issue orders regarding care, custody, or placement of an immigrant child (under age of majority and unmarried) with
 - An individual (e.g. non-abusive parent, grandparent, guardian, adopting parent) OR
 - State agency, private agency, including foster care system
- It is not in the child's best interest to return to their home country
- Reunification of the child is not viable with a parent due to at least ONE PARENT'S abuse, abandonment, or neglect

SIJS Timing

- Court has jurisdiction to issues orders until the child reaches age of majority
- Must obtain SIJS findings from state court while still a “child” the court has jurisdiction over
 - Defined by state law
- Then child has until they turn age 21 to filed SIJS case with DHS minors
- SIJS is an option any time an abused, abandoned or neglected and child is not a
 - Citizen or lawful permanent resident

What Children with SIJ Status Receive

- While case is pending

- Protection from deportation and removal
- As lawfully present children – health care exchanges (no subsidies)
- Programs and services necessary to protect life and safety

- At approval

- Legal work authorization
- Lawful permanent residency
- Eligible for citizenship after 5 years
- Food stamps, Post secondary educational grants and loans, public and assisted housing

SIJ's may NEVER file family petition their natural parents

U Visas Applications

U Visa Requirements and Process

- 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
- **Timeline to work authorization and deferred action =**
 - **4–6 years (shortening with 2021 bona fide process)**

U Visa Certification and T Visa Declaration Toolkit for Federal, State, and Local Judges (2021)
<https://niwaplibrary.wcl.american.edu/pubs/judges-u-and-t-certification-toolkit-2>

U Visa Qualifying Criminal Activity

- Domestic violence
- 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

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

What protection is there for family of U Visa applicants?

- Adult victims:
 - Spouse
 - Children
- Victims under 21 at time of criminal activity
 - Spouse
 - Children
 - Parents
 - Unmarried siblings under 18 (at the time of filing)

What is substantial physical or emotional abuse?

- Decided based upon each individual's experience
- Case-by-case determination using these factors:
 - nature of the injury inflicted or suffered;
 - *severity of the perpetrator's conduct*;
 - the severity of the harm suffered;
 - the duration of the infliction of harm;
 - permanent or serious harm to victim's
 - appearance,
 - health,
 - physical, and mental soundness

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

U Visa Regulations Definitions

Although terms are used interchangeably

- *Helpfulness required for certification*
 - Was helpful, is helpful, is likely to be helpful in the “investigation or prosecution” always means
 - “Detection, investigation, prosecution, conviction, or sentencing”
 - To provide early access “crime” always means
 - “criminal activity”
- *After certification & filing ongoing responsibility to provide assistance/cooperation reasonably requested by law enforcement/prosecutors*
 - Cannot unreasonably refuse to cooperate

Helpfulness Requirement Met

Even When:

- Victim reports a crime and there's no further investigation or prosecution
- Perpetrator absconds or is deported
- Perpetrator is being prosecuted for a different crime
- Victim is not needed as a witness
- Victim is dead (indirect victim is applying)
- Perpetrator is dead
- The criminal case did not result in a guilty plea or conviction
- Victim is applying for a civil protection order or custody but domestic violence is not being criminally prosecuted

U Visa Applicants Recieve

- Deportation: Protection from deportation shortly after filing.
- Immigration Benefits for Children:
 - U visa victim's children receive immigration benefits
- Public Benefits:
 - Government funded help open to undocumented immigrants
 - Some states offer some state-funded benefits, see public benefits map <https://niwaplibrary.wcl.american.edu/interactive-public-benefits-map>
- Employment authorization:
 - At bona fide determination or waitlist approval
 - In next year waiting time will be reduced to well below 5 years
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency: After 3 years as a U visa holder

Immigrant Victims of Human Trafficking and the T Visa

Familial Trafficking

- Over 62.7% of sex trafficked children their trafficker is a family member
 - Parent, grandparent, aunt, uncle, cousin, sibling
 - With 45.8% parent or guardian
- Up to 34% of sex trafficked children are trafficked by an intimate partner
- Cole, J., & Sprang, G. Sex trafficking of minors in metropolitan, micropolitan, and rural communities. *Child Abuse & Neglect* (2014), <http://dx.doi.org/10.1016/j.chiabu.2014.07.015>

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.S. 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 impede helpfulness/cooperation
- Removal from the U.S. would cause extreme hardship
- **Timeline to work authorization = 12-18 months (2021)**
- DHS, Recognizing Human Trafficking in the Courts Room (2015)
<https://niwaplibrary.wcl.american.edu/pubs/dhs-recognizing-human-trafficking-victims-in-the-courtroom>

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

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**

When can being forced to work
by a spouse, intimate partner,
parent to step-parent constitute
labor trafficking?

Coexisting Involuntary Servitude & Domestic Violence

- Condition of involuntary servitude induced by
 - Means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not do or continue the work, that person or another person would suffer serious harm or physical restraint, or abuse of legal process (& threats)
 - Can occur in intimate partner, spousal, parent child and roommate relationships
 - Can include domestic servitude and sexual exploitation
- Threats of abuse
 - Physical, mental, emotional, sexual, intimidation, coercive control
- Lead to compelled or coerced labor or services or force, fraud or coercion
- Domestic labor can constitute forced labor amounting to involuntary servitude
 - Involving force, fraud or coercion
 - Goal of securing forced labor = condition of servitude

T Visa Applicants Recieve

- Deportation: Protection from deportation shortly after filing.
- Immigration Benefits for Children:
 - T visa victim's children receive immigration benefits
- Public Benefits:
 - Government funded help open to undocumented immigrants
 - Upon receipt of HHS certification (bona fide or continued presence) same benefits as refugees
 - For details see November 10, 2021 webinar
- Employment authorization:
 - At bona fide determination or continued presence (1 year);
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency
 - After 3 years in T visa status or when case is concluded

Issues That Arise for Immigrant Victims in Family Law Cases – Divorce and Custody

Impact of Divorce

- VAWA self-petitioners
 - Must file within two years of final divorce
- Spouses and children of visa holders ends legal immigration status in the United States:
 - Students, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
 - Employment based
 - Asylees
 - Family based
 - Cancellation of removal applicants

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
- Impact on
 - Spousal support
 - Property division

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



Myth vs. Fact:

Parents without Legal Immigration Status

Myth	Fact
Deportation is imminent	DHS policies prevent detention/removal of immigrant parents who are crime victims
Parent is likely to flee U.S. with child	US citizens and lawful permanent residents are more likely to flee with children, especially when <ul style="list-style-type: none"> - There have been threats of kidnapping children - They are dual nationals - They travel freely to and from U.S.
The parent has no livelihood	Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
Legally present parent must have custody in order to file for benefits for child	Custody does not affect parent's ability to file for or gain immigration benefits for his children

Protection Orders and Immigrant Survivors



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
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions
- The definition of domestic violence under U.S. immigration laws is broader than all state protection order and criminal laws

Effect of Protection Order Issued Against Immigrant Victims

- Increases perpetrators power and coercive control
 - 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 obtaining findings that the victim violated the order

Findings that Victim Violated a Protection Order Could Cut Off Access to Immigration Relief

- Having an order of protection issued against a noncitizen could prevent them from establishing good moral character that is a requirement for immigration relief - Examples:
 - VAWA self-petition
 - VAWA cancellation of removal
 - Naturalization
 - Exercise of discretion for inadmissibility waivers in VAWA, U and T visa cases

National Judicial Network: Peer to Peer

- Judges encountering human trafficking and immigrant victims in the courts
- Opportunity to engage in discussions with other judges
- Receive latest information
- Judges only training opportunities
- Expert faculty
- Webinars and training materials
- <https://www.surveymonkey.com/r/VGY9VJM>

Attorneys Invitation: Community of Practice

- Family Law Community of Practice
To Apply Email Rocio Molina at:
Molina@wcl.American.edu
- Law Enforcement & Prosecution U Visa
Roundtable – To apply visit
<https://www.surveymonkey.com/r/RT2022>
[Registration](#)

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