

# Expanding Legal Representation of Immigrant Survivors in Immigration and Family Law

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# Learning Objectives

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

- Help immigrant domestic violence and child abuse victims obtain family court relief and address issues that arise in their family court including
  - Custody
  - Protection orders,
  - Findings in Special Immigrant Juvenile Status cases, and
  - U visa certifications
- Provide or secure representation of immigrant victims under VAWA 2005 and 2014 Legal Services regulations and policies
- Accompany immigrant victims applying for public benefits that they and/or their children are eligible to receive

Questions you would like answered  
by the end of this workshop?

What countries do immigrants in your jurisdiction come from and what language do they speak?





# Ohio Demographics (2013)\*

- ❖ Total foreign born population – 477,337
- ❖ 4.1% of the state's 11.5 million people is foreign born
  - 51.2% naturalized citizens
  - ~33.2%^ legal permanent residents (2012 data)
  - ~15.6%^ undocumented or temporary visa holders (2012 data)
- ❖ 40.7% rise in immigrant population from 2000 to 2013
- ❖ High proportion of new immigrants
  - 22.1% entered in the 1990s
  - 47.1% entered 2000 or later
- ❖ 7.7% of children in the state under age 18 have one or more immigrant parents
  - 87% of these children are native-born U.S. citizens

^ The Department of Homeland Security no longer reports on lawful permanent resident or temporary visa holder statistics

\*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=OH>  
(January 2015)

# Ohio – Countries/Regions of Origin (2013)\*

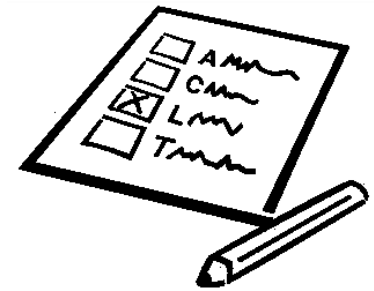
- ▶ Asia – 40.1%
  - ▶ India (9.9%)
  - ▶ China/Taiwan (8.1%)
  - ▶ Korea (2.4%)
  - ▶ Lebanon (1.2%)
- ▶ Europe – 23.3%
  - ▶ Germany (3.6%)
  - ▶ United Kingdom (2.8%)
  - ▶ Italy (1.6%)
  - ▶ Eastern Europe (12.1%)
- ▶ Latin America – 20.2%
  - ▶ Mexico (10.7%)
  - ▶ Caribbean (2.5%)
  - ▶ El Salvador (0.8%)
- ▶ Africa – 12.5%
  - ▶ Eastern Africa (4.5%)
  - ▶ Western Africa (4.3%)
- ▶ Canada – 3.3%
- ▶ Oceania – 0.4%

\*Source: <http://www.migrationinformation.org/datahub/state.cfm?ID=OH>  
(January 2015)

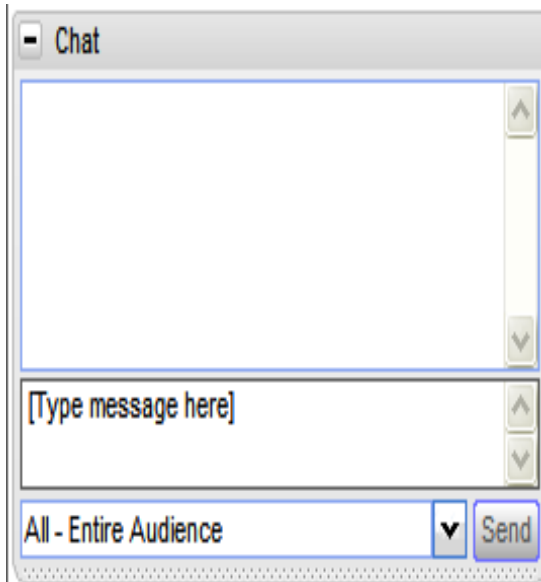
# Immigration Relief for Immigrant Crime Victims

# WHAT FORMS OF IMMIGRATION RELIEF HAVE IMMIGRANT CLIENTS YOU WORK WITH BEEN ELIGIBLE TO RECIEVE?

- U Visa
- T Visa
- VAWA Self-Petition
- SIJS
- None



# WHAT TYPES OF CASES HAVE YOU ASSISTED THEM WITH?



- Custody
- Protection order
- Immigration
- Public benefits

# Legal Immigration Status Options for Non-citizen Crime Victims and Children

- VAWA self-petition
  - Abused spouses/children of US citizens and lawful permanent residents
  - Abused parents of U.S. citizens over 21 years of age
- VAWA cancellation of removal
  - Abused spouses/children of US citizen and lawful permanent residents protection from deportation
- Battered spouse waiver
  - Abused spouses of US citizens with two-year conditional permanent residency
- Asylum
  - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
  - Sexual assault and domestic violence as gender based asylum
- U visa
  - Has been, is being or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing
  - Substantial harm from criminal activity
- T visa and Continued Presence
  - Victims of severe forms of human trafficking (sex and/or labor)
- Special Immigrant Juvenile (SIJS)
  - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action (DACA)
  - Deferred action for child arrivals including Dreamers
- DHS Prosecutorial Discretion
  - “low priority” for removal immigrants -- survivors, witnesses, parents, children, elderly, disabled
  - Humanitarian detention release

# VAWA SELF-PETITIONING

OMB No. 1845-0022, Expires 09-30-08

## I-485, Application to Register Permanent Residence or Adjust Status

**For USCIS Use Only**

Applicant Name	Returned	Receipt
Apt. #	Resubmitted	

# Battered Spouse Waivers

(VAWA 2005 defines as self-petitioners)

- For survivors with a 2 year conditional residency card
- Waives the joint filing requirement and two year wait for full lawful permanent residency
- Requires proof of
  - Good faith marriage to U.S. citizen or permanent resident *and*
  - Battered or subjected to extreme cruelty
    - To spouse, child, step-child
- Benefits access exclusion from deeming



# 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



# Forms of Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sexual Abuse
- Coercion
- Deportation threats
- Immigration related abuse
- Intimidation
- Social Isolation
- Degradation
- Possessiveness
- Harming pets
- Includes threats, attempts

What kinds of evidence could you use to prove extreme cruelty?

# Proof of Extreme Cruelty or Battery

- Self-petitioner's declaration
- Others' declarations (family, neighbors, friends, faith communities, workplace, school)
- Domestic abuse service providers (shelters, crisis lines, support groups)
- Protection orders
- Criminal court records
- E-mails, notes, letters, voicemails
- Photos: injuries, broken windows, furniture
- Medical records (injuries, scars, PTSD, migraines, insomnia)
- Vet records
- Counselors (marriage, religious, mental health)
- Police reports

# 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 Get:

- VAWA confidentiality upon filing with some protection against deportation
- Public benefits access within 2 months of filing for themselves and their children
- Includes access to
  - Post secondary educational grants and loans
  - Public and assisted housing
  - Health care exchanges
  - Subsidized health care (5 year unless pre 1996 entrants)
  - Children get food stamps- SNAP
  - TANF (permanent bar imposed by the state)
- What states fund what benefits see <http://niwap.org/benefitsmap/>

# Battered spouses and children applying for VAWA get following protections

- 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)
  - Health care exchanges (no subsidies during 5 year bar)
- Employment authorization: (currently  $\approx$  7 months)
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency
  - Citizen perpetrator apply upon approval (6 months to 1 year)
  - Lawful permanent resident perpetrator ( $\approx$  1.5 to 2 years)



# Reading and Resources

- Battering and extreme cruelty  
<http://niwaplibrary.wcl.american.edu/pubs/imm-qref-extremecrueltyincpofamlawcases/>
- Evidence Check List for Immigrant Victims Applying for VAWA Self-Petitioning  
<http://niwaplibrary.wcl.american.edu/pubs/evidence-checklist-vawaselfpetition/>
- Flowchart: VAWA Self-Petitioning Eligibility for Elder Abuse Survivors  
<http://niwaplibrary.wcl.american.edu/pubs/flowchart-vawa-selfpet-elder-abuse/>
- Flowchart: VAWA Self-Petitioning Eligibility for Abused Children  
<http://niwaplibrary.wcl.american.edu/pubs/flowchart-vawa-selfpet-child-abuse/>
- Flowchart: VAWA Self-Petitioning Eligibility for Adults  
<http://niwaplibrary.wcl.american.edu/pubs/flowchart-vawa-selfpet-adults/>
- Chapter 3.3: Preparing the VAWA Self-Petition and Applying for Residence  
<http://niwaplibrary.wcl.american.edu/pubs/ch3-3-selfpetitionprep/>

# THE U-VISA FOR CRIME VICTIMS

# Crime Victim (“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

# Criminal activities covered by the U-visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Stalking
- Prostitution
- Female Genital Mutilation
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment
- Fraud in Foreign Labor Contracting
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- Any similar activity

# U Visa Criminal Activities

- Domestic violence 39.4-45.9%
- Human trafficking – labor 25% , sex 24.2%
- Rape, sexual assault, incest 9.3%
- Felonious assault, murder, manslaughter 9.9%
- Kidnapping, being held hostage, unlawful criminal restraint, torture 8.47%
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation 5.3%

# 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



# 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

# The U-visa Process

- Government official signs certification
- Victim files U-visa application
- DHS adjudication – grants/denies U-visa
- U visa wait-list approval– 20 months
- Receives U visa – 2-3 years later
- Can apply for green card 3 years after receiving U visa
- Can apply for citizenship 5 years after green card

# Which U-Visa Recipients Can Obtain Lawful Permanent Residence?

- Did not **unreasonably refuse** to cooperate in the detection, investigation or prosecution of criminal activity; AND
  - Humanitarian need, OR
  - Family unity, OR
  - Public interest
- Homeland Security review of cooperation and the reasonableness of non-cooperation is required for lawful permanent residency

# U Visa Applicants and their Children get the following protections

- 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
  - Health care access (no subsidies) upon approval ( $\approx$  20 months);
- Employment authorization:
  - Upon approval ( $\approx$  20 months);
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency
  - Become lawfully present upon applying for lawful permanent residency
  - Can apply 3 years after receiving U visa

# Comparison: VAWA vs. U-visa

## VAWA Self-Petition

- Abuser: spouse, former spouse, parent, 21+ USC child
- Abuser USC or LPR
- Children included
- No cooperation with law enforcement required
- No proof of harm
- Criminal involvement can cut off access to relief
- Qualified immigrant = public benefits
- One year wait for work authorization
- Protection from deportation for 1 year
- Green card after approval if abuser is a citizen, or 3+ years wait if abuser is LPR

## U-visa

- Abuser: anyone
- Any status
- Children included
- Cooperation in detection, investigation or prosecution required
- Substantial physical or emotional abuse
- Crimes can be waived
- PRUCOL less benefits access
- One year wait for work authorization
- If in immigration proceedings, case expedited
- Green card after 3 years if can show cooperation + either humanitarian need, public interest or family unity

# Reading and Resources

- U-Visas: Victims of Criminal Activity  
<http://niwaplibrary.wcl.american.edu/pubs/ch3-6-uvisa/>
- U Visa flowchart  
<http://niwaplibrary.wcl.american.edu/pubs/u-visa-flowchart/>
- U Visa Toolkit for Law Enforcement Agencies and Prosecutors  
<http://niwaplibrary.wcl.american.edu/pubs/lea-u-visa-toolkit/>

# The T Visa for Trafficking Victims

# Human Trafficking

- Generally: use of force, fraud and/or coercion to exploit a person for profit.
- Federal statute: TVPA 2000
  - Labor and sex trafficking
- Every state now has their own Human Trafficking statute



# T Visa Requirements

- Survivors of human trafficking who
- (1) Is or has been a victim of a severe form of human trafficking
  - End: trafficker obtains sex or labor
  - Adult victims must prove force, fraud or coercion
- (2) Are physically present in the United States on account of the trafficking,
- (3) Comply with any reasonable request for assistance with an investigation or prosecution, and
- (3) Would suffer extreme hardship involving unusual and severe harm upon removal from the United States

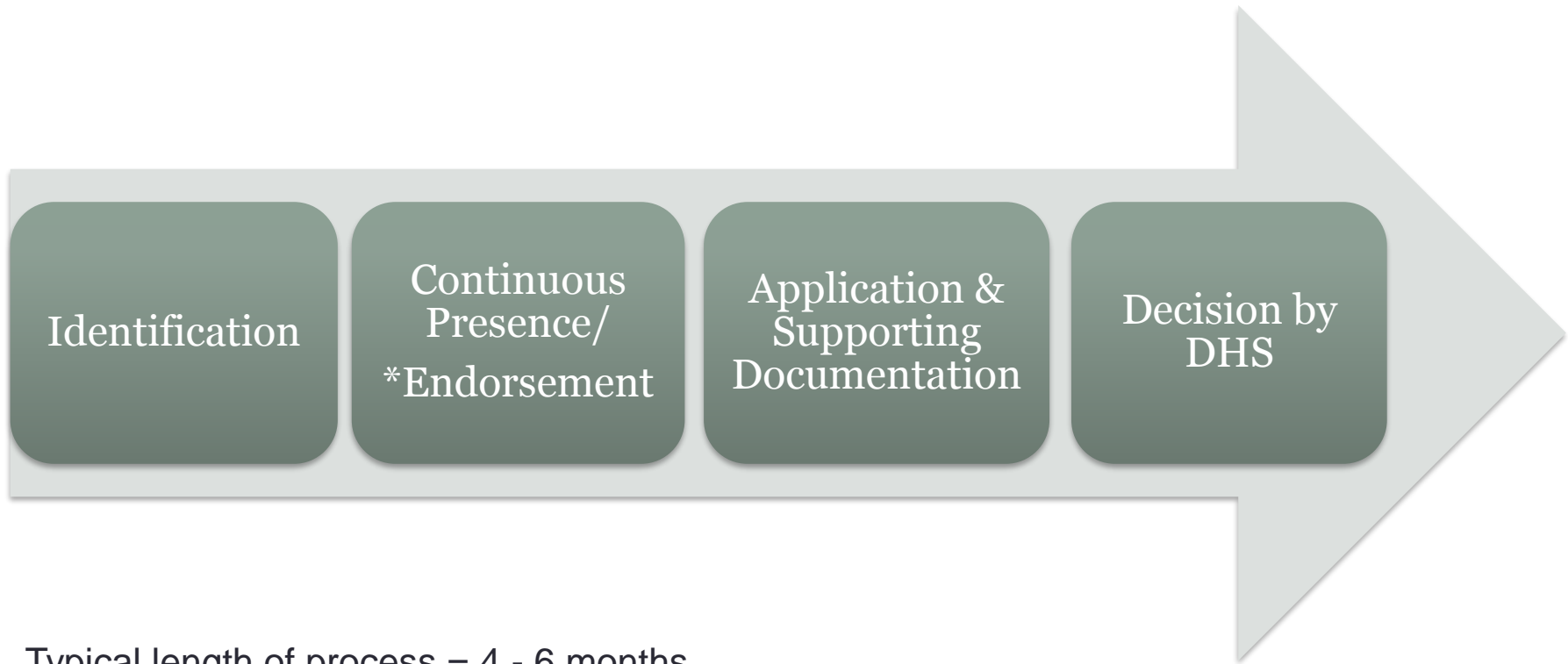
# Human Trafficking Simplified

- Process:
  - Recruiting,
  - Transporting,
  - Obtaining,
  - Moving
- Means:
  - Force,
  - Fraud, or
  - Coercion
- End:
  - Labor or
  - Commercial Sex

## Common Examples of Force, Fraud, or Coercion

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>• Debt servitude</li><li>• Surveillance</li><li>• Physical barriers</li><li>• Physical isolation from protections</li></ul> | <ul style="list-style-type: none"><li>• Psychological isolation</li><li>• Threats to deport or contact law enforcement</li><li>• Threats to safety</li></ul> |
|---|--|

# The T Visa Application Process



Typical length of process = 4 - 6 months

# T Visa Applicants and Their Children get the following protections

- Deportation: Protection from deportation shortly after filing.
- Immigration Benefits for Children:
  - T visa victim's children receive immigration benefits
- Public Benefits: Same as refugees for first 7 years, then as qualified immigrants
  - Health care access to exchanges and subsidies
- Employment authorization:
  - Upon approval (4-6 months)
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency
  - Become lawfully present upon applying for lawful permanent residency
  - Can apply 3 years after receiving U visa

# Benefits Access Comparison

## U visa

- 20 month wait for:
  - Health care exchange access
    - No subsidies
  - Work authorization
  - Driver's license
  - All other benefits not available until 5 years after lawful permanent residency
- Get services necessary to protect life and safety

## T visa

- 4 months wait for:
  - Health care subsidized
  - Work authorization
  - Drivers license
  - TANF
  - Food stamps
  - FAFSA
  - Public and assisted housing

# **SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)**

# SIJS Requirements

- Must be under the jurisdiction of a “juvenile” court
  - Federal statute accepts applications up to 21 years old but the age of majority is 18 in most states
  - Must be unmarried
- Must have qualifying state court order that:
  - Places the child with an individual, entity, or agency; and
  - Makes three findings based on state law
    - That the child was abused, abandoned, or neglected by one or both parents;
    - That reunification with the abusive parent is not viable; and
    - That it is not in the child’s best interest to be returned to the child’s home country
- All as defined under state law

# Court Order: Custody, Dependency, Placement

- Declaring the minor is dependent on the court\*; **OR**
- Placing the child in the care, custody or guardianship of:
  - An individual person;
    - Order should include in the name of the person and their relationship to the child
      - Parent, family member, friend, next friend, other
  - A state agency or department; OR
  - A private agency

*\*Statutory Amendment 2008, no longer requires the child is dependent on the state, the child may be placed with an individual including relatives.*



# All of the Following are Potentially Eligible for SIJS

- A minor who is:
  - Abused, abandoned or neglected
    - In the U.S.
    - In the home country
  - Living with their
    - Non-abusive parent
    - Guardian
    - Adopted parent
    - State foster care
    - Federal foster care (ORR)

# Immigrant Children Eligible for SIJS

- Case before the court involving care, placement, custody, dependency of a child:
  - Child without a U.S. birth certificate or lawful permanent residency
  - When there is evidence of abuse, abandonment, or neglect by one parent
  - Foreign born child may be SIJS eligible
- The state court order does **not** award SIJS
  - **ONLY DHS can provide legal immigration status**

# SIJS Findings Possible In ...

- Divorce
- Custody
- Legal separation
- Child support
- Child abuse
- Termination of parental rights
- Paternity
- Adoption
- Protection order
- Guardianship
- Motions for Declaratory Judgments
- Dependency
- Delinquency

Procedural Issues: May require consolidation of cases to attain ability to make needed findings

Order must be issued before the age of majority in the state

# SIJS and State Court Jurisdiction

- Any state court with personal jurisdiction over a child *and*
- Subject matter jurisdiction to issue state court orders that affect the *care or custody* of a child
- Must follow state service of process requirements for type of proceeding
  - Consular notification may be required and is helpful
- Age of majority set by state law
- Benefits for older teens of orders state courts have jurisdiction to issue

# Jurisdiction Under the UCCJEA

- Home state jurisdiction
  - 6 months in the state
  - Foreign country counts as a “home state”
- Temporary emergency jurisdiction
  - Can be asserted when the immigrant child present in the state and is abandoned or abused
  - Temporary emergency jurisdiction can ripen into full continuing jurisdiction

# Finding: Abused, Abandoned, OR Neglected by one OR Both Parents

- Finding must be based on the state court definition of abuse, abandonment, or neglect or similar basis under state law.
- Qualifying activity may have happened in the US or in the child's home country
  - The state law definition should be applied to the facts
- States have multiple statutory definitions of these terms
  - Any state definition can be applied for SIJ purposes

# NO Contact – VAWA 2005

- DHS may not inquire about details of the abuse from youth applicant
- DHS may not contact abusive parent(s)

# Ohio Abuse, Abandonment, and Neglect Statutory Definitions

- Physical abuse of a child
  - Rev. Stat. §§ 2151.031; 2919.22
- Sexual abuse/exploitation of a child
  - Rev. Stat. §§ 2151.031; 2907.01; 2919.22
- Neglect
  - Rev. Stat. § 2151.03(A)
- Abandonment (same as neglected)
  - Rev. Stat. §§ 2151.03(A); 2151.011



# Ohio UCCJEA Definitions

- Ohio Revised Code, Title 31, Chapter 3127
- Abandoned
  - § 3127.01(1)
- Abuse and Neglect definitions are the same as the Revised code definitions

# Finding: Reunification Not Viable

- Order must include the finding that reunification with the parent is not viable
- Does not require termination of parental rights
- Viability of reunification does not necessitate no contact with parent – Visitation can occur
- Means granting the abusive parent custody is not envisioned by the court as a viable option
- Changes in circumstances can occur
  - But not granting full legal/physical custody to abusive parent

# Finding: Best Interests of the Child

- Not in the child's best interests to be returned to the child's or the child's parent's home country
- Apply state best interest factors - custody/placement
  - Immigration status of petitioning caregiver is irrelevant
- Factors include
  - Risk of danger to the child
  - Family support system
  - Emotional well being - Educational resources
  - State laws that preclude or discourage placement with abusive parent
- Country conditions may be helpful not required

# What Children with SIJ Status Receive

- While case is pending

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

- At approval

- 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 Visa vs. SIJS

## U Visa

- Cannot file for immigration relief for abusive parent
- Suffered substantial physical or mental abuse as a result of the victimization (Child abuse)
- No findings regarding viability of reunification
- Less family law implications
- Benefits: Limited includes Health Care

## SIJS

- Cannot file for immigration relief for abusive parent
- Abuse, abandonment, neglect by family court
  - Can include extreme cruelty
- Requires finding that reunification not viable
- Greater family law implications
- Benefits: Same as lawful permanent resident

# Issues That Arise for Immigrant Victims in Family Law Cases

# Family Court Jurisdiction: Immigrant Victims

- **Protection orders**
  - Domestic violence crime committed in state or
  - Victim needs protection in state
- **Divorce**
  - Residency of party in state
  - Legal immigration status not required to establish residency under state family laws
- **Custody-Guardianship**
  - (UCCJEA, Federal PKPA, Hague Convention) - home state of children
- **Child abuse, neglect, termination of parental rights**
  - Where an abused or neglected child is located.
- **Child support**
  - Where child or non-custodial parent lives

# 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

# Protection Orders and Immigrant Victims

# Protection Orders and Immigration Status

- Issuance of a protection order has no effect on immigration status of the abuser
- Violation of a protection order is a deportable offense
  - Violations of “ the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable”
  - Not custody and support provisions
- If a protection order is issued against a victim it can place her one-step away from deportation

# Effect of protection order issued against immigrant victims

- Increases perpetrators power and coercive control because the victim is one step away from deportation
- Perpetrators who are successful in convincing courts to issue protection orders are often also successful obtaining findings that the victim violated the order
- This can pose serious safety concerns for victims
  - **A violation of a protection order is a deportable offense**

What types of creative protection order remedies have you sought in cases of battered immigrants?

# Creative Protection Order Remedies

- Catch all provisions included in all state statutes
- Offer any additional relief that may potentially
  - Curb future abuse, harassment
  - Interfere with abuser/perpetrators ability to exert power and/or control
  - Offer victim remedy-relief for past abuse
  - Help victim overcome victimization and build new post abuse life
- Nexus With Victimization
- Opportunity for courts to counter immigration related abuse

# Victims Who Stay: Full Contact Protection Orders

- No state's protection order statute requires separation of the parties
- In virtually every state victims cannot violate their own protection orders
  - Contrary to statutory intentions; and
  - Against public policy to prosecute abused women for complicity in violating their own orders.
- Provisions
  - No abuse
  - Counseling

# Suggestions for Court Orders that help VAWA applicants: Examples

- Turn over documents/evidence in abuser's control that she needs for her immigration case. E.g.,
  - Passports
  - Identification documents
  - Copies of documents from any immigration case filed on the victim's or the children's behalf
  - Love letters
  - Family photos



# A protection order or discovery can help a victim obtain needed evidence:

- Marriage certificate
- Wedding/family pictures
- Birth certificates
- Love letters
- Copies of joint leases/utility bills
- Police, medical, court documents about the relationship,
- Copy of abuser's green card or passport

# Protection order or discovery continued

- School records
- Medical records
- Employment records
- Social security number information
- Health insurance
- Children's birth certificates
- Letters and other mail addressed to the victim and to the abuser at the same address
- Copy of I-130 petition

# Catch-all Provisions Preventing Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare etc.) concerning the petitioner except
  - Police emergency
  - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities

# Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order.
- Supervised visitation
- Bond

# Important Economic Provisions

- Maintain medical, car, house insurance, mortgage, rent, utility and/or debt payments
- Child support and spousal support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)
- Taxes
  - Turn over income tax statements
  - Victim named trustee for receipt of tax return funds, respondent ordered to sign check
  - Victim awarded exclusive right to claim children as tax exemptions
  - Respondent pays victim  $\frac{1}{2}$  of return

# Reading and Resources

- Creative Protection Order Remedies for Protecting Battered Immigrants  
<http://niwaplibrary.wcl.american.edu/pubs/creative-cpo-batimms/>
- Protection Orders and Battered Immigrants: The Impact of Attorneys and Advocates  
<http://niwaplibrary.wcl.american.edu/pubs/battered-imms-cpo-advocacy/>
- Bench Card: Immigrants and Protection Orders  
<http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immigrantscpo/>

# Custody of Children in Immigrant Families

# Protecting Immigrant Mothers, Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Materials Immigrant Victims and Custody Bench Card -<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law>



# 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



# Best Interests and Immigration

- Not factors:
  - Immigration status
  - English language proficiency
- Laws discouraging award of custody to abuser apply equally to immigrant victims
- Immigration information distracts the judge from best interest factors in the statute
- Immigrant victims in custody cases will qualify for
  - VAWA, U visa
  - DHS victim/witness protections
  - Humanitarian Release

# ABA Center on Children & The Law

- “Parties should not be able to raise, and courts should not consider, immigration status of domestic violence victims and their children in civil protection order, custody, divorce or child support proceedings.”
- “Batterers whose victims are immigrant parents use threats of deportation to avoid criminal prosecution for battering and to shift the focus of family court proceedings away from their violent acts...When the judicial system condones these tactics, children suffer.”
- “This ... will ensure that children of immigrant domestic violence victims will benefit from ...laws (like presumptions against awarding custody or unsupervised visitation to batterers) in the same manner as all other children.”

# Myth vs. Fact:

## Parents Without Legal Immigration Status

### Myth

1. Deportation is imminent
2. Parent is likely to flee U.S. with child
3. The parent has no livelihood
4. Legally present parent must have custody in order to file for benefits for child

### Fact

1. DHS policies prevent detention/removal of immigrant parents who are:
  - Parents of U.S. citizen/Lawful permanent resident children
  - Primary caretaker parents of minor children without regard to the child's immigration status
2. Legal immigrants/naturalized citizens are more likely to flee with children, especially when
  - There have been threats of kidnapping children
  - They are dual nationals
  - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for their children.

# How Immigrant Parents End Up In Department of Homeland Security Custody

- Abusers/crime perpetrators/employers report them
  - VAWA self-petitions 38.3%; U visas 26.7%
- Traffic stops
  - VAWA self-petitions 28.6%; U visas 30.1%
- Immigration enforcement at the worksite
- CPS, welfare workers, health care providers, others
- Victims call the police for help and police
  - Make a dual arrest;
  - Fail to obtain qualified interpreter and arrest the victim
  - Under Secure Communities program all arrested persons reported to DHS

# Immigrant Parents and Child Custody

In re Interest of Angelica L., 277 Neb. 984 (2009)

- Parents have a Constitutional right to custody (absent unfitness)
- Applies to all families without regard to:
  - Undocumented immigration status
  - Immigration detention
  - Deportation
- Overriding presumption that:
  - Parent-child relationship is constitutionally protected
  - In children's best interest to stay with/be reunited with their parent(s)
- Child's best interests is most important
  - A comparison of natural vs. adoptive parent's cultures, countries or financial means is not to be made

# Parental Interest Directive Aug 2013

- If parents are detained:
  - Placement near children and family court
  - Bring parents to family court to participate in cases involving children
  - Facilitate visitation
  - Help children travel with deported parent – obtain passports for children
  - Bring deported parents back to the US for custody and parental rights cases

# Reading and Resources

- Family Court Bench Card on Issues that Arise in Custody Cases Involving Immigrant Parents, Children, and Crime Victims  
<http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immigrants-custody/>
- How to get a detained parent to court  
<http://niwaplibrary.wcl.american.edu/pubs/detained-parent-to-court/>



# Child Support

# If you have gotten child support what type of case did you receive the award in?

- Protection order
- Child custody
- Divorce
- Child support action

# Immigrant Victims' Economic Challenges

- Many forms of visas do not allow spouses and children of visa holders to work in the United States
  - Employment visas (H)
  - Student visas (F)
  - Diplomatic visas (A)
  - International organizations (G)
  - Investor visas (E)
- Immigrant crime victims have limited access to public benefits

# Work Authorization for Spouses of Immigrant Visa Holders (3/8/16)

- **A-1, A-2, and A-3**: Foreign government *diplomats* and *officials* + immediate family members, attendants, servants, personal employees;
- **E-3**: *Australian specialty occupation* workers;
- **G-1, G-2, G-3, G-4, G-5**: *Employees of foreign governments and international organizations* officials + immediate family members, attendants, servants, personal employees
- **H-1B, H-1B1, H-2A, H-2B, H-3, H-4**: *Specialty occupation workers*, Free Trade Agreement professionals from Chile and Singapore, temporary agricultural and non-agricultural workers, trainees and special education exchange visitors, and immediate family members of specialty occupation workers

# To File

- Applicant is on an A, E, G or H visas
- One of the following required
  - Marriage to spouse with A, E, G, H visa OR
  - Death of visa holder w/in 2 years
  - Dissolution of marriage or abusive spouse lose of status w/in 2 years +
    - Connection to the abuse
- Battering or extreme cruelty by A, E, G, or H visa holder of the immigrant spouse or the immigrant spouse's child/step-child
  - Abuse only proven on initial application

# Other requirements/facts

- 2 year work authorization
- May not remarry and file for or renew work authorization
- Must reside in the US to file
- Any credible evidence
- VAWA confidentiality
- Can renew in two year increments so long as continue to meet the requirements
- Can request DHS seek proof of abuser's visa status

# Affidavit of Support

- Citizen & Lawful permanent resident spouses submit an Affidavit of Support to the Department of Homeland Security in family based immigration cases
- The Affidavit of Support
  - Promise to support the family member for up to 10 years or until they become a US citizen
- Includes:
  - 3 years of tax information,
  - evidence of current employment including self-employment, and
  - proof of income over 125% of poverty

# Affidavit of Support

- Courts have relied on the Affidavit of Support as
  - Evidence of income,
  - ability to pay &
  - obligation to support spouse/child
  - Walsh v. Walsh, 764 N.E.2d 1103 (Ohio Ct. App. 2001)



# Immigration Issues Arising in Child Support Cases

- Payment of child support through the court provides a non-citizen parent with a history of child support payments that will be helpful evidence of good moral character for immigration cases
  - Cancellation of removal
  - Naturalization
  - Relief in immigration court can be used to show hardship to family members

# Immigration Issues Arising in Child Support Cases

- Court ordered child support provides a custodial immigrant parent with evidence of child support that can be used as income in lawful permanent residency cases (avoiding public charge)
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies

# Immigration Issues Arising in Child Support Cases

- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related offenses as crimes of moral turpitude
- Lack of legal work authorization is non a valid defense to non-payment of child support
  - *Asal v. Asal*, 960 P.2d 849, 850 – 851 (Okla. 1998)
- Courts have found employers who willfully violate wage withholding orders liable to the custodial parent for the amount of child support ordered withheld.
  - *State v Filipino*, Conn. Super. LEXIS 266 (2000)
  - *Belcher v Terry*, 420 S.E.2d 909 (1992)
  - *Child Support Recovery Srvs., Inc. ex rel S.C. v. Inn at the Waterfront, Inc.*, 7 P3d 63 ( Alas. 2000)

# Proof of Non-Custodial Immigrant Parent's Income

- Undocumented workers can be ordered to pay child support based on Child Support Guidelines and
  - Actual earnings
  - Employer's statements
  - Evidence of earning capacity
  - Attributed income (e.g. minimum wage)
- Undocumented workers can pay state and federal taxes on income earned using an IRS issued Tax ID number

# Immigrant Crime Victim Access to Legal Services

# VAWA 2005 Granted Access to Legal Services for Immigrant Victims

- Program Letter implementing VAWA 2005 issued in 2006
- However, old 1997 regulations that conflicted with VAWA 2005 were not updated until 2014

# As a Result...

- 20.6% of immigrant crime survivors were turned away from LSC funded programs
  - Based on their lack of legal immigration status.
- 26.1% of immigrant survivors were turned away because the LSC program was uncertain whether they could represent immigrant survivors.
- Link to the report:  
<http://www.lsc.gov/sites/lsc.gov/files/LSC/pdfs/2.%20%20Appendix%20I%20%20LSC%20Report%20on%20Immigrant%20Crime%20Victim%20Access%20-%20NIWAP%206%2018%2013.pdf>

# 2014 LSC Regulations Implementing VAWA 2005



# 2014 LSC Regulation Implements VAWA 2000 and VAWA 2005

- Issued in April 2014
- Implements VAWA 2000 and 2005's expanded protections for immigrant survivors
- Creates two paths an immigrant can pursue to receive assistance from any LSC funded program.
  - 1. Representation under Anti-Abuse Laws under 45 C.F.R. § 1626.4 or**
  - 2. Representation based on Immigration Status under 45 C.F.R. § 1626.5.**

# Legal Assistance under Anti-Abuse Laws

- LSC funded programs can represent the following immigrant survivors **without regard to the survivor's immigration status**
  - Domestic violence
  - Child abuse
  - Elder abuse
  - Sexual Assault
  - Human trafficking
  - Other U visa criminal activity
- **Representation is available whether or not the survivor has filed for or plans to file for VAWA related or any other form of immigration relief.**

# Understanding the Difference Between the Two Paths: Anti-Abuse Statutes and Legal Immigration Status Based Eligibility

## Survivors Who are Eligible for LSC Funded Legal Assistance under Anti-Abuse Laws

- ✓ Survivors that were battered or subjected to extreme cruelty, including all survivors of domestic violence, even those who were not married or related to the perpetrator
- ✓ Survivors of severe forms of human trafficking (continued presence and T visas eligible)
- ✓ Survivors that have been abused or subjected to extreme cruelty by a parent, step-parent, spouse, former spouse
- ✓ Survivors of U visa criminal activity that has occurred in the United States or has violated United States law
- ✓ Survivors of sexual assault
- ✓ Children of all of the eligible survivors listed in the anti-abuse regulations
- ✓ Survivors of human trafficking

# Categories of Related Legal Assistance

**Article:** [www.niwap.org/go/legalservices](http://www.niwap.org/go/legalservices)

- Family Law
- Privacy, Safety  
Confidentiality
- Workplace Safety
- Public Benefits
- Health Care
- Access help from  
police and prosecutors
- Employment law
- Education laws
- Landlord and Tenant
- Crime victim services
- Language Access
- Americans with  
Disabilities protections

# Eligibility for LSC Funded Legal Assistance Based on Immigration Status

✓ Immigrants who filed for lawful permanent residency and are:  
-the spouse of a U.S. citizen  
-the parent of an over 21-year old U.S. citizen son or daughter  
-the under 21 year old unmarried child of a U.S. citizen

✓ U.S. Citizen children, lawful permanent resident children and other children of applicants who also have any of the other forms of immigrations statuses listed

✓ Conditional entrants admitted prior to April 1, 1980.

✓ Members of the Texas Band of Kickapoo

✓ Citizens of Palau, Micronesia, and the Marshall Islands who reside in the U.S.

✓ Approved Refugees and Asylees  
✓ Lawful and conditional permanent residents  
✓ Persons granted deferral of removal/deportation

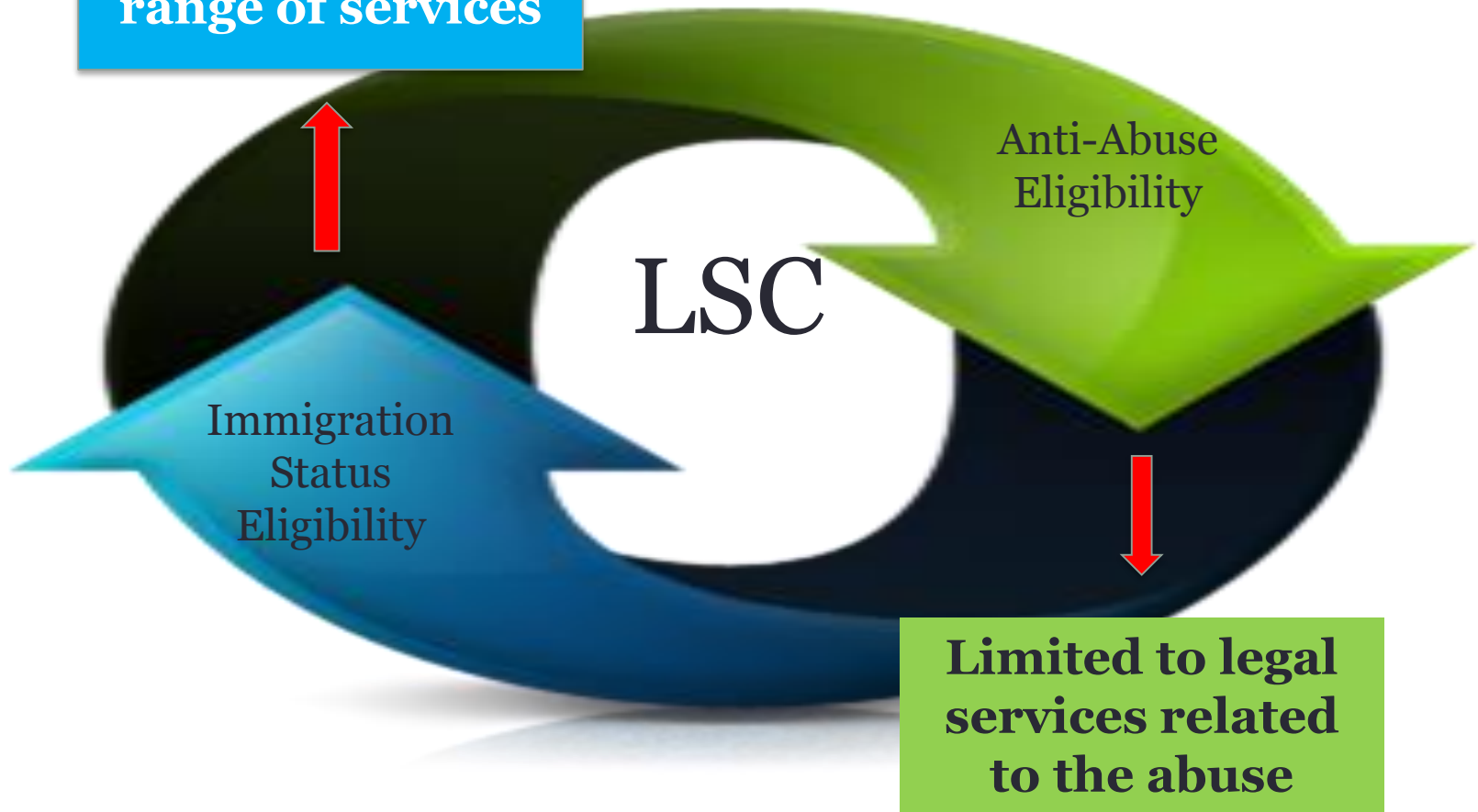
✓ Canadian-born American Indians who are at least of 50% Indian by blood.

✓ IRCA 1986 Agricultural workers  
✓ Agricultural laborers (H-2A)  
✓ Forestry workers (H-2B )

# Access to Legal Services Under Anti-Abuse Eligibility is Not Exclusive

Some immigrant survivors that are initially eligible to receive legal representation for services “related to abuse” can eventually move from the anti-abuse based eligibility for legal services based on immigration status for greater access to a wide range of legal services

**Unrestricted  
access to a wide  
range of services**





# Survivors Who Could Potentially Switch Paths

- U Visa holders who have filed for lawful permanent residency
- VAWA self-petitioners who have filed for lawful permanent residency and who have a
  - U.S. citizen spouse
  - Over 21 year old U.S. citizen child



Can survivors receive legal assistance if they are not currently present in the U.S. ?

# Immigrant Survivors and Their Presence in the U.S. at the Time They Apply for Legal Services

LSC Regulation Section	Immigrant Survivor Category	Presence required?
§ 1626.2(k)(2) and § 1626.4(a)(1)(ii)	Human trafficking as defined by VAWA 2005	<b>YES</b>
§ 1626.2(j)	Severe form of Human Trafficking (TVPA)	<b>YES</b>
§ 1626.4(a)(1)(i) and § 1626.2(h)	Human Trafficking as a U visa crime	NO
§ 1626.2(b)	Domestic Violence	NO
§ 1626.2(k)(1)	Sexual Assault	NO
§ 1626.4(a)(1)(i) and § 1626.2(h)	U visa qualifying crimes	NO
§ 1626.4(a)(1)(i) and 1626.2(b)	Battering or Extreme cruelty	NO

# Program Letter 14-3 (October 29, 2014)

- Can represent adult and child immigrant victims of battery, extreme cruelty, sexual assault, human trafficking, U visa criminal activities
- Without regard to where the victimization occurred
  - U.S., Home country, During immigration to the U.S.
- Relatives covered by anti-abuse statutes also qualify
  - E.g. parent of trafficking or U visa victim or VAWA self-petitioner
- Should be among the LSC funded agencies priorities
- Representation can include
  - Asylum cases for victims
  - SIJS representation of abused children

# **ACCESS TO BENEFITS AND SERVICES GROWS AS CHILDREN AND VICTIMS PURSUE IMMIGRATION RELIEF**



# True or False

1. Receiving public benefits can harm an immigrant victim's ability to obtain legal immigration status
2. Undocumented immigrant parents can apply for public benefits their children are eligible for
3. Undocumented victims and children can access transitional housing programs
4. Federally funded health care is not available for undocumented immigrants
5. DHS requires schools and universities to ask about immigration status of applicant or enrolling students

# Help Open to All Immigrants Without Regard to Immigration Status

# Attorney General's List of Required Services



- In-kind services
- Provided at the community level
- Not based on the individuals income or resources
- Necessary to protect life and safety



# Benefits Available to All Immigrants

- Crisis counseling and intervention
- Child and adult protection services
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children
- Nutrition programs for those requiring special assistance



# Undocumented Immigrant Survivors and Transitional Housing

- Shelter and transitional housing for up to two years
- Victims of domestic violence, child abuse, neglect or abandonment and persons at risk of homelessness
  - Includes sexual assault victims
- Support for application process
- Research report

# Federal Benefits Available to ALL Immigrants



- Elementary and Secondary education
- School lunch and breakfast
- WIC
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



- Health Care through
  - Emergency Medicaid
  - VOCA
  - Community & Migrant Health Clinics

[www.hrsa.gov](http://www.hrsa.gov)

Enter zip code

# **When children qualify and their parents do not:**

- If a child qualifies for benefits as a citizen or qualified immigrant the benefits granting agency may only ask questions about the child's eligibility
- No questions may be asked about the immigration status of the child's parent if the parent is not applying for additional benefits for themselves

# **Immigrant Survivors' Legal Rights to Access Federal Funded Benefits**

# Qualified Immigrant Access to Federal Public Benefits

- All qualified immigrants can access some federal public benefits
  - Which benefits they can access depends on:
    - Immigration status
    - When they entered the United States
    - Whether they meet heightened program requirements for some programs
    - What benefits are offered by the state

# Federal Benefits Immigrant Restrictions

- Only programs that as a matter of law have immigrant restrictions are those categorized as:
  - “federal public benefits” or
  - “federal means-tested public benefits”



# Only considered a Federal Public Benefit if:

- Payment made or assistance provided directly to:
  - An individual
  - A household
  - A family eligibility unit

# Examples of “Federal Public Benefits”

- **US Agency Funded/Provided:**
  - Grants
  - Contracts
  - Loans
  - Professional or commercial licenses
    - Drivers licenses
- **Federally Funded Benefits for**
  - Retirement
  - Welfare
  - Health
  - Disability
  - Postsecondary education
  - Public or assisted housing
  - Food assistance or
  - Unemployment

# Immigration Options and Benefits Available

## VAWA self-petition

- Prima facie = Qualified Immigrant
- Self-petitioner and children

## Battered spouse waiver

- Qualified Immigrant
- Can avoid deeming

## T visa

- Benefits access like refugees (7 years) need HHS certification
- Qualified Immigrant with bona fide determination

## Continued Presence

- Benefits access like refugees
- Need HHS certification

## U visa

- Lawfully present upon wait list approval

## Family Based Visa Petition

## Approved + Battering or Extreme Cruelty

- Qualified Immigrant
- Not required to file for VAWA

## Special Immigrant Juvenile

- Qualified Immigrant upon approval and receipt of lawful permanent residency

## Deferred Action for Childhood Arrival (DACA)

- No access to exchanges or subsidies under ACA
- No public benefits

# Application for VAWA, T, U, SIJS improves immigrant access to public benefits

- Screen for eligibility
- Lawful Presence
  - Screening + Filing
    - Prima facie determination VAWA
    - Case pending SIJS
    - Bona Fide (T)
    - Wait List Approval (U)
- During processing some survivors become qualified immigrants with access to federal public benefits
  - VAWA battered prima facie determination
  - T visa bona fide
  - SIJS approval

# Who are “Qualified Immigrants”?

- Lawful permanent residents
- Refugees and asylees
- Cuban/Haitian entrants
- Veterans
- Amerasians
- Trafficking victims filing for or with T visas
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
- Persons granted withholding of deportation or cancellation of removal
- Persons who (or whose children) have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent

# How do *immigrant survivors* prove that they are “qualified immigrants”?

- Family-based immigration cases
  - Prima facie determination in VAWA self-petition or cancellation
  - Approved VAWA self-petition or VAWA suspension/cancellation
  - Approved visa petition filed by an abusive spouse or parent
- Trafficking victims
  - Prima facie determination in a T visa case
  - Approved T visa
  - Continued Presence
- Special Immigrant Juvenile Status
  - Upon receipt of lawful permanent residency status through SIJS

# Additional requirements for a battered immigrant spouse or child to be a “qualified immigrant”:

- The child’s immigrant parent must not have actively participated in the battery or cruelty
- There must be a “substantial connection” between the battery or extreme cruelty and the need for the public benefit sought
- The battered immigrant or child no longer resides in the same household as the abuser.

# “Substantial Connection” Exists When

- Access to benefits helps ensure the safety of the survivors, their children or a parent
- A survivor had to leave her job for safety reasons
- The survivor loses a dwelling or a source of income following separation
- The survivor needs medical attention or mental health counseling or has become disabled
- The survivor’s fear of the abuser jeopardizes the survivor’s ability to take care of her children



# “Substantial Connection” Exists When Public Benefits Are Needed...

- To alleviate nutritional risk or need resulting from the abuse or following separation
- When the survivor has lost her job or earns less because
  - of the battery or cruelty or
  - because of involvement in legal proceedings
- To provide medical care during a pregnancy resulting from the relationship with the abuser
- To replace medical coverage or health care services lost following separation.

# Survivors of Human Trafficking

- To be eligible for benefits, survivors of trafficking:
  - Must receive certification from the Office of Refugee Resettlement (ORR) that they are eligible for benefits as victims of trafficking; *Or*
  - Have received bona fide determinations in their T visa case making them qualified immigrants
- Benefits agencies must accept ORR certification letter in place of typical Immigration documentation
- Also eligible for refugee programs

# VAWA 2013

## Public Charge Exemption

- VAWA self-petitioners and U and T visa holders
- Can access public benefits and services with no impact on any future immigration case
- USCIS was accepting waivers to public charge for VAWA, U and T visas

# Partial List of Federal Public Benefits/Community Programs Open to All “Qualified Immigrants”

- Public and assisted housing
- Post-secondary educational grants & loans
- Access to most subsidized child care
- Low income and residential energy assistance programs
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals
- Adoption assistance
- Foster care
- Social services block grant programs
- Supportive housing for the elderly or disabled

# Education

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

# Post secondary educational grants and loans

- Battered immigrant self-petitioners and their children are qualified immigrants eligible to receive DOE funded grants and loans
- Universities are to accept DHS/Immigration Judge
  - Documentation of VAWA self-petition/cancellation status
- On FAFSA check “eligible noncitizen” and provide “A” number
- Explains no-match with DOE/DHS computer system and
  - DOES NOT require verification
- DHS documents must be current at each time of re-application
- Students remain eligible after age of majority unless
  - VAWA case is denied

# Federal Means-Tested Public Programs

## Have Most Limited Immigrant Access:

- **TANF**

- None in Ohio unless entered before August 22, 1996

- **SSI**

- Lawful permanent residents only if 40 quarters or work credit + “qualified immigrant” status and 5 year bar if entered the U.S. after August 22, 1996

- Refugee

- Trafficking victim

- Veteran and “qualified immigrant” spouses, children

# Federal Means-Tested Public Programs

## Have Most Limited Immigrant Access:

- **Food Stamps**

- “Qualified Immigrants” children and adults who entered before August 22, 1996/or completed 5 yr bar

- **Medicaid and Child Health Insurance Program**

- Health Care reform opened up exchanges to immigrants who are “lawfully present”
  - Federally funded Medicaid after the 5 year bar
  - No bar for T visa bona fide and continued presence trafficking victims



# The Five Year Bar

- Due to 1996 welfare reform, qualified immigrants, including battered immigrant women, that enter the United States after August 22, 1996 are ineligible for “federal means-tested public benefits” for the first five years of holding qualified status.
- Certain immigrants are not subject to the five year bar including: refugees, persons granted asylum, Amerasian immigrants, Cuban/Haitian entrants, immigrants granted withholding of deportation and victims of trafficking.

# Food Stamps

- Qualified immigrant children under 18 regardless of date of entry
- Qualified immigrants who receive a disability benefit, regardless of date of entry
- Qualified immigrants living in the US for five years

# Immigrants and Health Care Reform

- Naturalized citizens same as U.S. Born Citizens
- Legal Immigrants
  - Subject to individual mandate and tax penalties (unless low income)
- Lawfully present immigrants
  - May purchase from state insurance exchanges (no wait)
  - Eligible for tax credits & cost-sharing reductions (no wait)
  - Eligible for state's temporary high risk pools and basic health plans
  - 5 year bar to Medicaid for all post 8/22/96 entering qualified immigrants in Ohio

# Immigrants and Health Care Reform

- Citizen or lawfully present children of undocumented immigrant parents
  - May purchase child-only coverage on state insurance exchanges
  - Are eligible for premium tax credits and reduced cost-sharing
  - May be eligible for Medicaid or CHIP

# Child Care: Immigrant Restrictions Depend on Funding source CCDF vs. TANF

## Child Care Development Fund

- Only the citizenship/immigration status of the child considered (child is the primary beneficiary of the child care benefit)
- Open to “qualified immigrants” and victims of trafficking and their children
- CCDF child care open to all without immigration restrictions if
  - Subject to public educational or Head Start standards, or
  - Eligibility determined by a non-profit organization
- CCDF parents have the right to choose their child care provider, (e.g. relative, a family child care home, or child care center)
- Provider may be required to have an SSN
- State agencies *cannot require* an SSN from persons seeking CCDF-funded child care and cannot deny the benefit to families that do not provide an SSN (even if TANF funds included in CCDF)

# Access to Housing for Immigrant Survivors of Domestic Violence and Sexual Assault

# Qualified Battered Immigrant Eligibility for Public and Assisted Housing

- At least one eligible family member
  - Can be a citizen child
- Mixed Families
- Proration
- Advocacy required for qualified battered immigrant access

# Battered Immigrants and Access to Public Housing

- 8 U.S.C. 1641(c)
- Battered immigrants
  - who establish prima facie cases
  - who have approved VAWA applications or family-based petitions
- Are “qualified immigrants” for the purposes of receiving federal public benefits, including Public and assisted housing



# Social Security Numbers

- Are not required to apply for public housing
- Refusal to provide a social security number that has not been issued is not grounds for rejecting the application

## State Funded Benefits in Ohio

- **TANF & and TANF Funded Child Care**
  - Only pre August 22, 1996 entrants
- **Medicaid/SCHIP**
  - Only pre August 22, 1996 entrants
  - Access to the health care exchanges under federal law – no subsidies
    - VAWA self-petitioners with prima facie determinations
    - Wait list approved U visa victims
    - SIJS children
- **Screen 20+ year olds and DACA eligible**

# State Funded Benefits in Ohio

- Driver's Licenses
  - Not available to undocumented immigrants
  - Available to immigrants with employment authorization
    - DACA, T visas, U wait list approval, VAWA approvals
  - Can provide USCIS documentation
- In-State Tuition
  - T visa holders
  - VAWA self-petitioners upon approval
    - Prima facie may not be enough to show permission for temporary residence
  - DACA may qualify as having the right to reside temporarily in the U.S.
  - U visas –extremely limited

# U Visa Victims Get (OH):

- Before filing:
  - Health care open to undocumented immigrants
- Upon filing: protection from deportation
- Upon wait list approval
  - Work authorization
    - Driver's License
  - Health care exchanges – no subsidies
  - In-State tuition –
    - only if financially dependent on an Ohio Resident who is a citizen, permanent resident, asylee, refugee, or limited categories of visa holders

# VAWA Self-Petitioners Get (OH):

- Before filing:
  - Health care open to undocumented immigrants
- Upon filing: protection from deportation
- Upon approval:
  - Work authorization
  - Ohio driver's license
  - Ohio in-state tuition
- Upon Prima Facie Determination
  - Post secondary educational grants and loans (Federal)
  - Public and assisted housing (Federal)
  - Health care exchanges (Ohio is on the federal marketplace)  
Children get food stamps- SNAP (Federal)
  - LIHEAP (Federal)

# T Visa and Continued Presence Trafficking Victims Get (OH):

- Before filing:
  - Health care open to undocumented immigrants
- Upon filing: protection from deportation
- Upon Bona Fide Determination
  - Work authorization, Driver's license, Ohio In-state tuition
  - Post secondary educational grants and loans (Federal)
  - Public and assisted housing (Federal)
  - Food stamps- SNAP (Federal)
  - TANF and TANF Funded child care (Federal)
  - Access to healthcare marketplace, no subsidies
  - LIHEAP (Federal)
  - SSI- only eligible during first 7 years after status is granted (Federal)

# SIJS Get (OH):

- Before Filing
  - Healthcare open to undocumented immigrants
- Upon Filing
  - Protection from deportation
  - Work authorization (If they also file LPR application because they are not in removal proceedings)
    - Driver's licenses
    - In state tuition based on work authorization
- Upon Approval of SIJS
  - Health care exchanges – no subsidies
- Upon Approval of lawful permanent residency (LPR)
  - All benefits available to LPRs

# Technical Assistance and Materials

- Power Point presentations and materials for this conference at [www.niwap.org/go/Ohio2016](http://www.niwap.org/go/Ohio2016)
- **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail [info@niwap.org](mailto:info@niwap.org)
- Web Library: [www.niwaplibrary.wcl.american.edu](http://www.niwaplibrary.wcl.american.edu)



# Questions



# Evaluations



Thank you!