

Voices from the Margins: Effective Advocacy for Immigrant Survivors

May 14, 2018

In Partnership with the WOCN

Learning Objectives

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

- Understand the full range of protections immigrant survivors of domestic and sexual violence, stalking and dating violence are legally eligible to receive
- Identify and craft solutions for overcoming systemic barriers encountered by immigrant survivors and build these into STOP RFPs
- Facilitate representation by programs with expertise serving immigrant survivors in the STOP grant making process

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

Large Group Discussion

- What systems barriers and fears prevent immigrant victims from accessing justice system help?

Fears & Misconceptions

- ▶ Victim believes that she will be deported
- ▶ Do not trust justice system
- ▶ Economic survival
- ▶ Believe they will lose custody of children
- ▶ Fear of unknown
- ▶ Language barriers
- ▶ Believe cannot access services and benefits that in fact legally available
- ▶ Family, religious, cultural, concerns/pressure
- ▶ Victim believes that she Dangers in the home country
 - ▶ Retaliation
 - ▶ Ostracism
 - ▶ Police
 - ▶ Political instability
 - ▶ Gender barriers

Department of Homeland Security



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)

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

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).
- Latina college students
 - Experience the highest incidents of attempted rape compared to White, African American and Asian college students
 - Kalof, L., Ethnic Differences in Female Sexual Victimization, 4 Sexuality and Culture 75-97 (2000).

Best Practice: Screen for Immigration Related Abuse

- 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)

Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
 - VAWA self-petitioners 38.3%
 - VAWA petitioners arrested at crime scene instead of the abuser 15.4%
 - U visa victims 26.7%

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014)

Barrier: When Service Providers DO NOT Have Accurate Information About....

- Immigrant victims' legal rights to
 - Legal services
 - Life and safety programs including
 - Shelter, transitional housing, and victim services
 - Certain forms of health care
 - Language access
 - Immigration relief
 - Non-discrimination

LOOKING AT THE NEEDS OF YOUR STATES POPULATION HOLISTICALLY

INCLUDING LANGUAGE ACCESS NEEDS OF LIMITED ENGLISH PROFICIENT (LEP) VICTIMS



Source of Language Access Laws

- Title VI- No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial aid assistance.
- LEP Executive Order 13166 (2001)
 - Requires all agencies receiving any federal financial assistance to
 - Ensure meaningful language access
 - Develop and implement language access plans
 - “Where the denial or delay of access may have life or death or other serious implications, the importance of the full and effective delivery of LEP services is at its zenith.”

DOJ LEP Directive to State Courts on Federal Civil Rights Requirements (8/20/2010) - Interpreters

- LEP individuals are to be provided qualified interpreters
 - For all parties, defendants and witnesses and all persons whose presence is necessary or appropriate
 - E.g. parents of minors and crime victims
 - In ALL court room proceedings whether civil, criminal, administrative or other.
 - LEP individuals should not incur any fees for these services.
 - Not restricted to court rooms, also other court functions including:
 - Clerks offices, Records room
 - Alternative dispute resolution
 - All interactions with court appointed personnel such as guardians ad litem or court psychologists
 - *Pro se* clinics

DOJ Model Guidance for Law Enforcement

- Police provide free language access to:
 - LEP persons who request it
 - *When officer decides it is helpful to the criminal investigation or prosecution*
- Police will inform members of the public that language assistance is available free of charge
- Language access provided in persons primary language

STOP Administrators Role: Large Groups Discussion

- Steps your agency has taken or that STOP Administrators can take to promote language access

Role of STOP Administrators

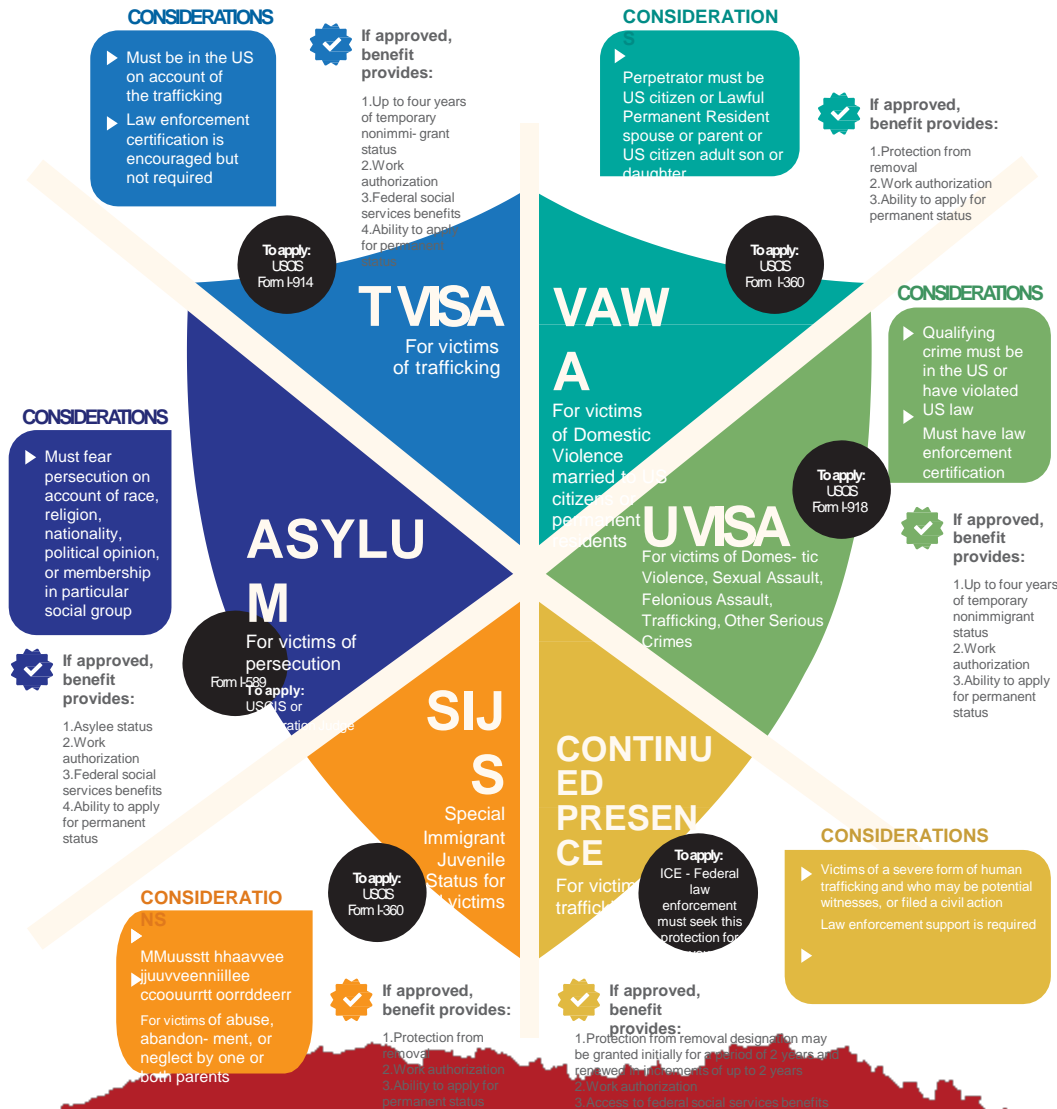
Facilitating language access

- All grantees should be required to have language access plans that address crucial needs
- Grant application should ask whether the agency has a language access plan
 - Asking what steps they take to provide language access
- Should require that budgets include a line item for interpretation and translation
- Require grantees to have implemented a language access plan by the end of the grant

Improving Immigrant Victim Safety Through Early Screening

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

PROTECTIONS FOR IMMIGRANT VICTIMS



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

- VAWA self-petition (8-12 months)
 - 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 and suspension of deportation
 - 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
- Abused Spouse of Visa Holders
 - Spouses battered or subjected to extreme cruelty by spouses with the following visas: A(diplomats), E(3)(Australian specialty occupation workers), G (foreign gov- Int'l orgs), H (work visas)
- U visa (28-36 months)
 - 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 & Continued Presence
 - Victims of severe forms of human trafficking
 - Cooperation with reasonable requests f
 - Extreme hardship involving unusual and severe harm
- Special Immigrant Juvenile (SIJS)
 - Children abused, battered, abandoned or neglected by one or both parents
- Deferred Action for Childhood Arrivals (DACA)
 - Under age 31 on 6.15.12
 - Under 16 on entry
 - Continuously present since 6.15.07
 - In school, graduated or GEP

Qualifying Criminal Activity

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

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

Certification Required From:

*DHS U and T Resource Guide states:
“law enforcement” & “law enforcement agencies” =*

- Federal, state, and local
 - Law enforcement
 - Prosecutors
 - Judges, Magistrates, Commissioners
 - Civil protection order
 - Divorce, Civil &
 - Criminal cases
- Departments of Labor (DOL) and the Equal Employment Opportunity Commission (EEOC)
- Child and Elder Abuse investigators and agencies
- Other government agencies

VAWA Confidentiality Prongs

Non-Disclosure

Protects victims who have filed a protected case with DHS

Violation = \$5,000 fine and/or disciplinary action

Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators

Protects:
*All victims abused by a spouse or parent
*All victims in the process of applying for U or T visas
*Abused spouses of visa holders with VAWA work authorization filed

Location Prohibitions

Protects:
All Victims
Requires:
No action at protected locations OR
Notice to Appear must state how they complied with VAWA confidentiality



DHS VAWA Confidentiality Computer System

- Directs to check for “384” computer system flag that identifies victims who have already filed for or have been granted victim-based immigration relief
- Reminds immigration officers, agents, attorneys about immigration law protections for
 - Survivors of domestic violence
 - Crime victims survivors
 - Human trafficking survivor

Locational Prohibitions

- Enforcement actions are not to be taken unless the action is certified in advance through a specific process aimed at protecting victims:
 - A shelter
 - Rape crisis center
 - Supervised visitation center
 - Family justice center
 - Victim services program or provider
 - Community based organization
 - Courthouse in connection with any
 - Protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking



Relying on Information Provided by: Abuser, Perpetrator, Trafficker

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

January 2018 ICE Courthouse Enforcement Policy: Targeted Immigrant Limitation

- Civil immigration enforcement at courthouses will only occur when
 - ICE officers have information that leads them to believe that a targeted immigrant will be present at a courthouse
- To be targeted an immigrant must
 - Have criminal conviction(s)
 - Be gang members
 - Be a threat to national security or public safety
 - Have been ordered removed and failed to depart, or
 - Have re-entered the country illegally after being removed

Protecting Information About a Survivor's Immigration Case

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

What Victim's Attorneys, Prosecutors and Courts Need to Know:

- VAWA Confidentiality statute and policies
 - Any release (e.g. judge, prosecutor)
 - Only “in a manner that protects the confidentiality of such information”
- Federal and state court case law
 - Denied discovery in criminal & family court cases
 - If court orders any discovery =very limited
 - U certification itself with personally identifying information redacted

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



Access for All

Both documented and undocumented immigrant survivors can access:

- Legal Services
- Family Court (Divorce)
- Language Access
- Police Assistance
- Protection Orders
- Child Custody & Support
- Have Their Abusers Criminally Prosecuted
- Public Benefits for Their Children
- Assistance for Crime Victims
- Shelter
- Transitional Housing
- WIC/school lunch & breakfast
- Primary/Secondary education
- Immunizations
- Emergency medical care
- Care from community & migrant health clinics
- VOCA

In-Kind Services Necessary to Protect Life and Safety Open to All Immigrants

- Child and adult protection services
- Crisis counseling and intervention
- Violence and abuse prevention
- Victim assistance
- Treatment of mental illness or substance abuse
- Help during adverse weather conditions
- Soup kitchens
- Community food banks
- Shelter & transitional housing assistance
- Nutrition programs for those requiring special assistance



Immigration Relief Expands Benefits Access

VAWA self-petition

- Qualified Immigrant (2-3 months after filing)
 - Self-petitioner and children

Battered spouse waiver

- Qualified Immigrant

Continued Presence

- Benefits access like refugees
- Need HHS certification

T visa

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

U visa

- Lawfully present upon wait-list approval

Special Immigrant Juvenile

- Health care due to lawful presence upon filing
- Qualified Immigrant upon approval and receipt of lawful permanent residency

Deferred Action for Childhood Arrival (DACA)

- No access to health care exchanges or subsidies

Undocumented

- No federal public benefits
- Some states limited state benefits for victims

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

Importance of Victim Advocacy

- Benefits law complex
- Need trained advocates and attorneys
- Importance of accompanying immigrant and LEP victims applying for benefits
- Need to prepare, bring copies of relevant laws and advocate
- Link benefits providers to legally correct information about benefits immigrant victims qualify to receive

**FAMILY COURT CASES INVOLVING
IMMIGRANT DOMESTIC VIOLENCE,
SEXUAL ASSAULT, DATING VIOLENCE
AND STALKING VICTIMS**

Impact of Divorce

- VAWA self-petitioners
 - Must file within two years of final divorce
 - Step-children must file before divorce
- Ends legal immigration status for spouses and children of visa holders:
 - Students, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of :
 - Asylees
 - Employment visa holders
 - Family based visas
 - Cancellation of removal
- Annulment instead of divorce can lead to Federal marriage fraud charges against the victim

Protection Orders

- All persons are eligible to receive civil protection orders without regard to the immigration status of any party or child
- Protection order issuance = no effect on immigration status
- A conviction *or finding* of violation of the “*protection against abuse provisions*” of a protection order is a deportable offense
- Immigrant victims and their children often need creative protection order remedies using the state catch all provisions

Creative Remedies to...

- Stop immigration related abuse
- Protect victims still living with their abusers
- Obtain documents the victim needs for an immigration case or for care of child
- Deter parental kidnapping
- Child/Spousal support
 - Affidavit of support
- Health insurance

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

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.

STOP Administrators Role: Large Group Discussion

- Steps your agency has taken or that STOP Administrators can take to overcome barriers and promote:
 - Access to services and legal relief for immigrant and LEP survivors in your state
 - Re: law enforcement, prosecutors, courts, victim services

Opportunities for STOP Administrators

- Fund holistic legal and social services for immigrant survivors
- RFP requires language access plans or that they be developed under the grant
- Fund training for grantees on immigrant victims legal rights and language access
- Identify programs in state with expertise serving immigrant survivors and bring them into the STOP process
 - Tool <http://NIWAP.org/directory>

Opportunities for STOP Administrators

- Training on U/T visa certification for
 - Law enforcement
 - Prosecutors
 - Judges
- Encourage/require certification practices in RFPs or by end to the grant for grantees
- Help break silos and encourage collaboration between immigrant serving and mainstream programs
- Require collaborations/coalitions funded have a work plan on improving access for immigrant and LEP survivors

Technical Assistance and Materials

- Power Point presentations and materials for this conference at <http://niwap.org/go/WOCNSTOP18>
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

Thank You!