

# Working With Immigrant and Refugee Survivors

Transitional Housing Conference

National Network to End Domestic Violence

August 9-10, 2018

San Diego, California

# Learning Objectives

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

- Understand dynamics and barriers immigrant survivors encounter
- Be familiar with the full range of protections immigrant survivors of domestic and sexual violence & children are legally eligible to access
- Know how to assist immigrant and refugee survivors accessing housing, public benefits, legal service and justice system help

What are the questions regarding legal protections for immigrant and refugee survivors you want to be sure are answered by the end of this conference?

# Demographics

**What countries are you seeing  
immigrant survivors coming  
from?**

# US Demographics (2016)\*

- ❖ Total foreign born population – 43,739,345
- ❖ 13.5% of the country's ~323.1 million people are foreign born
  - 48.6% naturalized citizens
  - ~31% legal permanent residents (DHS data)
  - ~4.4% temporary visa holders
  - ~16% undocumented (includes pending VAWA, Us, Ts, SIJS)
  - 40.6% rise in immigrant population from 2000 to 2014
  - 21.6% of U.S. population speak a language other than English at home
- ❖ Length of time immigrants have lived in the U.S.
  - 54.7% entered before 1999
  - 26.7% entered 2000 -2009
  - 18.6% entered 2010 or after
- ❖ 25.2% of children under 6 have one or more immigrant parents
- ❖ 25.8% of children under age 18 have one or more immigrant parents
  - 88% of these children are native-born U.S. citizens

*\*Source: Migration Policy Institute Data Hub (July 2018) and DHS Population Estimates (November 2016)*

# US – Countries/Regions of Origin & Limited English Proficiency (LEP)(2018)\*

- ▶ Asia – 28.1%
  - ▶ China/Taiwan (6.2%)
  - ▶ India (5.6%)
  - ▶ Philippines (4.4%)
  - ▶ Vietnam (3.1%)
  - ▶ Korea (2.4%)
- ▶ Latin America – 51.0%
  - ▶ Mexico (26.5%)
  - ▶ Other Central America (4.7%)
  - ▶ South America (6.8%)
  - ▶ Caribbean (9.8%)
  - ▶ El Salvador (3.2%)
- ▶ Europe – 10.9%
  - ▶ Eastern Europe (4.9%)
- ▶ Oceania – 0.6%
- ▶ Africa – 4.9%
- ▶ Middle East – 2.7%
- ▶ Non-U.S. North America – 1.8%
- ▶ Language spoken
  - ▶ 21.6% of people in the U.S. speak language other than English at home
  - ▶ 49.1% of foreign born persons are LEP - speak English less than “very well”

*\*Source: Migration Policy Institute Data Hub (January 2017)*

# DYNAMICS AND BARRIERS FOR IMMIGRANT AND REFUGEE SURVIVORS



# What barriers and fears prevent immigrant and refugee victims from seeking help?

# Major Challenges in working with Immigrant Victims of Crime

- Fear of Deportation
- Language
- Retaliation
- Fear of losing their children
- Lack of knowledge of legal rights
- Do not trust that advocates, attorneys, police, prosecutors, judges will help them

# Fears & Misconceptions

- ▶ Do not trust police/prosecutors
- ▶ Economic survival
- ▶ Pressures from both families
- ▶ Fear of abandoning the home/community
- ▶ Fear of losing children
- ▶ Religious factors
- ▶ Fear of unknown
- ▶ Victim believes that if perpetrator deported she has to go with him
- ▶ Dangers in the home country
  - ▶ Retaliation
  - ▶ Ostracism
  - ▶ Police
  - ▶ Political instability
  - ▶ Gender barriers

# Small group discussion

- How do these concerns differ when you are working with:
  - An Immigrant?
  - A Refugee?

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

# Importance of Immigration Status

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

# Purpose of Immigration Relief for Survivors

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

# Department of Homeland Security





# Immigration Related Abuse

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

# 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

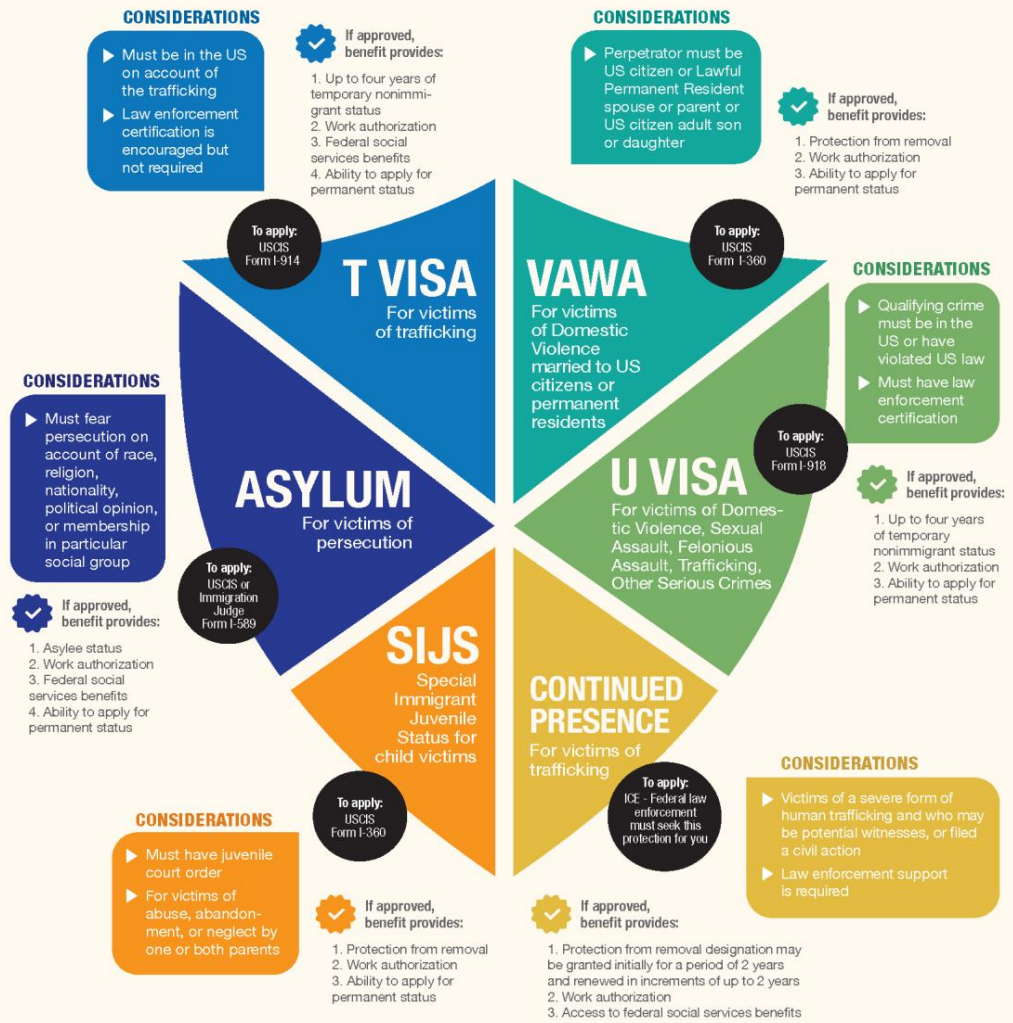
- High school aged immigrant girls
  - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
  - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).
- 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)

# PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

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

# DHS Immigration Options for Victims of Crime Brochure



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

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

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

Krisztina E. Szabo, David Stauffer, Benish Anver, *Authorization For VAWA Self-Petitioners and U Visa Applicants*, NIWAP (Feb. 12, 2014) and Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff and Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Victims* (2017)



**VAWA CONFIDENTIALITY,  
VICTIM SAFETY, AND CASE  
STRATEGY IN CASES OF  
IMMIGRANT SURVIVORS**



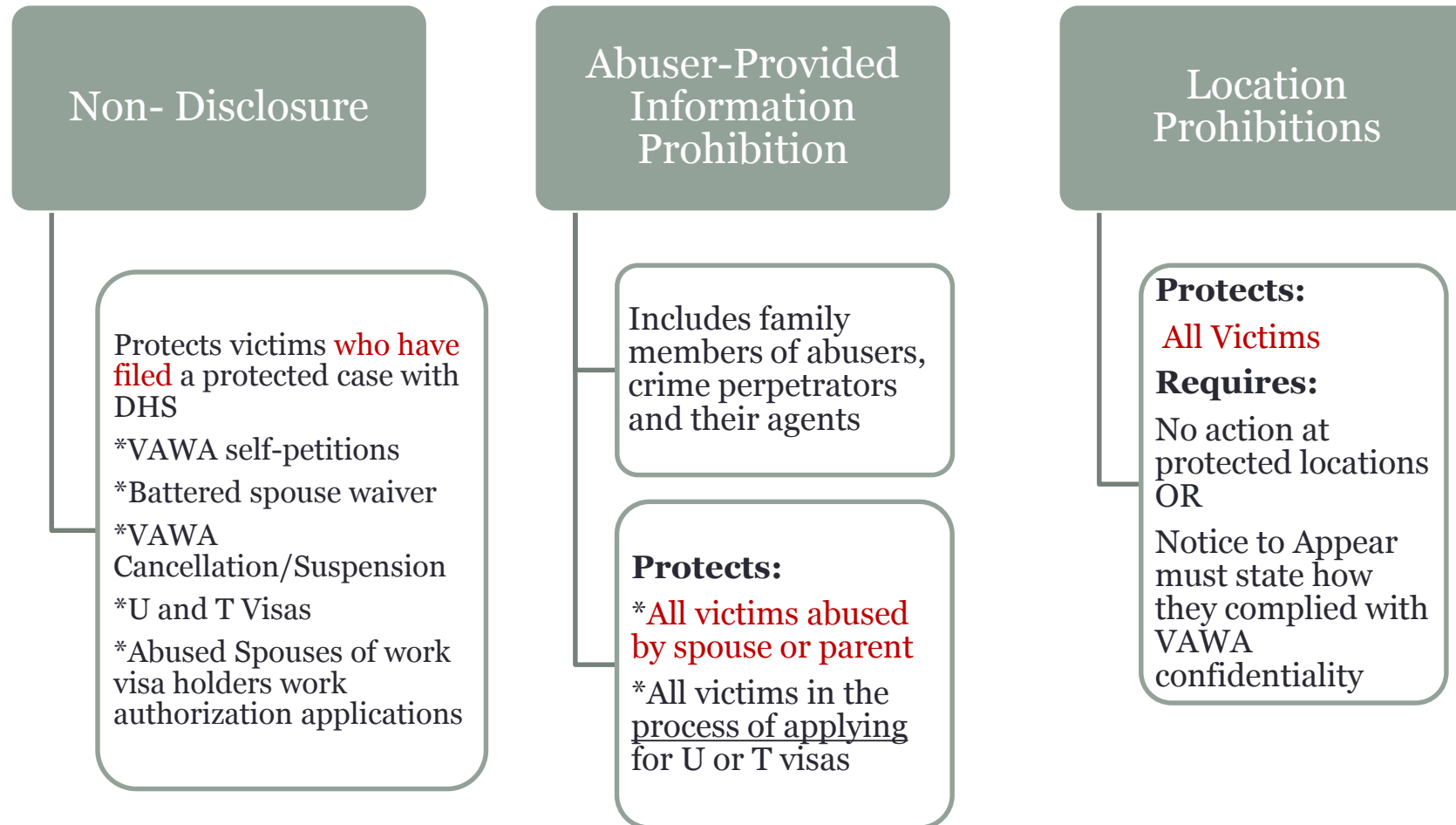
## **Raise Your Hand if...**

- You have worked with domestic violence or sexual assault victim clients who have received
  - Received threats of deportation from perpetrators
  - Been contacted by immigration enforcement officials

# VAWA Confidentiality Prongs

- **Abuser-Provided Information:** DHS, DOJ and the State Department are barred from taking action against a victim based *solely* upon information provided by abusers and crime perpetrators (and their family members)
- **Location Prohibitions:** Enforcement locational prohibitions unless comply with specific statutory and policy safeguards
- **Non-Disclosure:** Unless one of the enumerated exceptions apply, DHS, DOJ and the State Department cannot disclose VAWA information to anyone

# VAWA Confidentiality Prongs Chart



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

# Relying on Information Provided by: Abuser, Perpetrator, Trafficker

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

# DHS cannot rely on information *solely* provided by the perpetrator

- Information provided *solely* by prohibited sources **must** be independently corroborated by DHS
  - Adverse information about the victim from a prohibited source should be treated as “**inherently suspect**” (DHS Directive 11/1/2013)
  - “If the officer believes there is any credible evidence that the alien may be eligible for VAWA benefits or T or U” VAWA confidentiality applies (ICE 2007)

# Locational Prohibitions

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



# January 2018 ICE Courthouse Enforcement Policy

Limit enforcement to targeted immigrant

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



# DHS VAWA Confidentiality Computer System

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

# Prohibitions on Release of Information

## Apply to Following Cases

- VAWA self-petition
  - VAWA self-petitioner
  - Battered spouse waivers
  - VAWA Cuban Adjustment Act
  - VAWA Haitian Refugee Immigration Fairness Act
  - VAWA Nicaraguan Adjustment & Central American Relief Act
- VAWA cancellation of removal
- VAWA suspension of deportation
- U visa applicants
- T visa applicants
- VAWA work authorization abused spouses of visa holder applicants

# Protecting Information About a Survivor's Immigration Case

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

# VAWA Confidentiality Violations



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

# Improving Immigrant Victim Safety Through Early Screening

- Know forms of immigration relief immigrant survivors qualify for
- Document history of abuse
- Know differences between immigration options
- Incorporate into safety planning
  - How victim can safely carry DHS document copies

# Value of Filing Early

- File victim's immigration case ASAP
  - DHS VAWA confidentiality computer system
  - Sufficient evidence for prima facie
  - Enhances victim safety
  - Speeds access to state and federal benefits

# Benefits of Early Filing

- Protection from deportation
- Safer for victim to cooperate in criminal case
- Earlier access to work authorization
- Speeds access benefits safety net and drivers licenses
- Better position in family law case
- Can use the Requests for Further Evidence process to supplement application
  - Part of a trauma informed approach

# Prevention & Safety = Filing Immigration Case Early

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



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

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

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

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

# Victims for Which VAWA Confidentiality Will Offer Less Protection

- Victims with criminal histories
  - Including arrests
- Victims with outstanding deportation orders
- Victims eligible for VAWA, T or U who have not filed their immigration case

# Small group activity

- Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother. Maura at age 15 left home and moved in with Juan, a U.S. citizen, who started battering Maura when she became pregnant with their child. During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer and the police arrested Juan. , and the officer referred her to your program and told her she should seek a protection order. From a safety planning perspective ---
  - What steps would you take to help Maura?
  - In what order?

# When Violations Happen

- **Advocate on the spot! Provide -**
  - Proof of victimization,
  - Copy of the statute
  - DHS policy
  - DHS complaint system
  - DHS 384 system
- **Collect information about the violating officer**
  - Name
  - Agency
  - Badge Number



# When Violations Happen

- **Work it up the chain to a supervisor**
- **File a formal complaint-**
  - Penalties of up to \$5000 per incident against the violating officer individually
  - Also disciplinary actions
- **Advocate to mitigate harm for victim**

# Sensitive Locations

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

# VAWA Confidentiality Resources

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