Building a Safety Net for Immigrant Crime Victims: Eligibility for Public Benefits, Housing, Confidentiality and More

Hawaii Immigrant Justice Center at Legal Aid of Hawaii

March 15, 2017

Learning Objectives

By the end of this training participants will be able to:

- Screen for immigration relief eligibility
- Advocate for VAWA confidentiality protections for immigrant survivors
- Know the publicly funded assistance open to all immigrants
- Accompany survivors in accessing the full range of benefits for which they are eligible

What countries are you seeing immigrant survivors coming from?

Hawaii Demographics (2015)*

- Total foreign born population – 253,414
- 17.7% of the state's 1.43 million people is foreign born
  - 57.8% naturalized citizens
  - ~33.9% legal permanent residents or temporary visa holders

(http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/HI)

  - ~8.3% undocumented
- 19.4% rise in immigrant population from 2000 to 2015
- 28.1% of children in the state under age 18 have 1 or more immigrant parents
  - 84.2% of children with immigrant parents in the state are U.S. citizens

Source: http://www.migrationinformation.org/datahub/state.cfm?ID=HI (March 2017)

Hawaii – Countries/Regions of Origin and Limited English Proficiency (2015)*

- Asia – 79.7%
  - China (10.7%)
  - Japan (8.8%)
  - Korea (6.8%)
  - Philippines (47.1%)
  - Vietnam (3.5%)
  - Other southeastern Asia (1.5%)
- Oceania – 6.6%
- Latin America – 5.7%
  - Central America & Mexico (3.2%)
- Europe – 4.9%
- Canada 1.2%

- Limited English Proficiency

(Speak English less than very well)

  - Naturalized citizens 47.1%
  - Non-citizens 62.6%

Source: http://www.migrationinformation.org/datahub/state.cfm?ID=HI (March 2017)

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

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

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**.
- 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

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
- Latina college students
  - experience the highest incidents of attempted rape compared to White, African American, and Asian college students
- Victimization of immigrant children also high
  - child sexual abuse

Best Practice: Screen for Immigration Related Abuse

- Immigration Related Abuse as a Lethality Factor
  - 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
  - Lethality factor can 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%; U visa 26.7%
- Perpetrators got the victim arrested for domestic violence
  - VAWA self-petitioners 15.4%; U visa 7.5%
- Traffic stops
  - VAWA self-petitioners 28.6%; U visa 26.7%

Basic Immigration Relief:

Screening for Immigration Relief and Understanding the various forms of relief available to immigrant survivors

How does attaining legal immigration status benefit survivors?

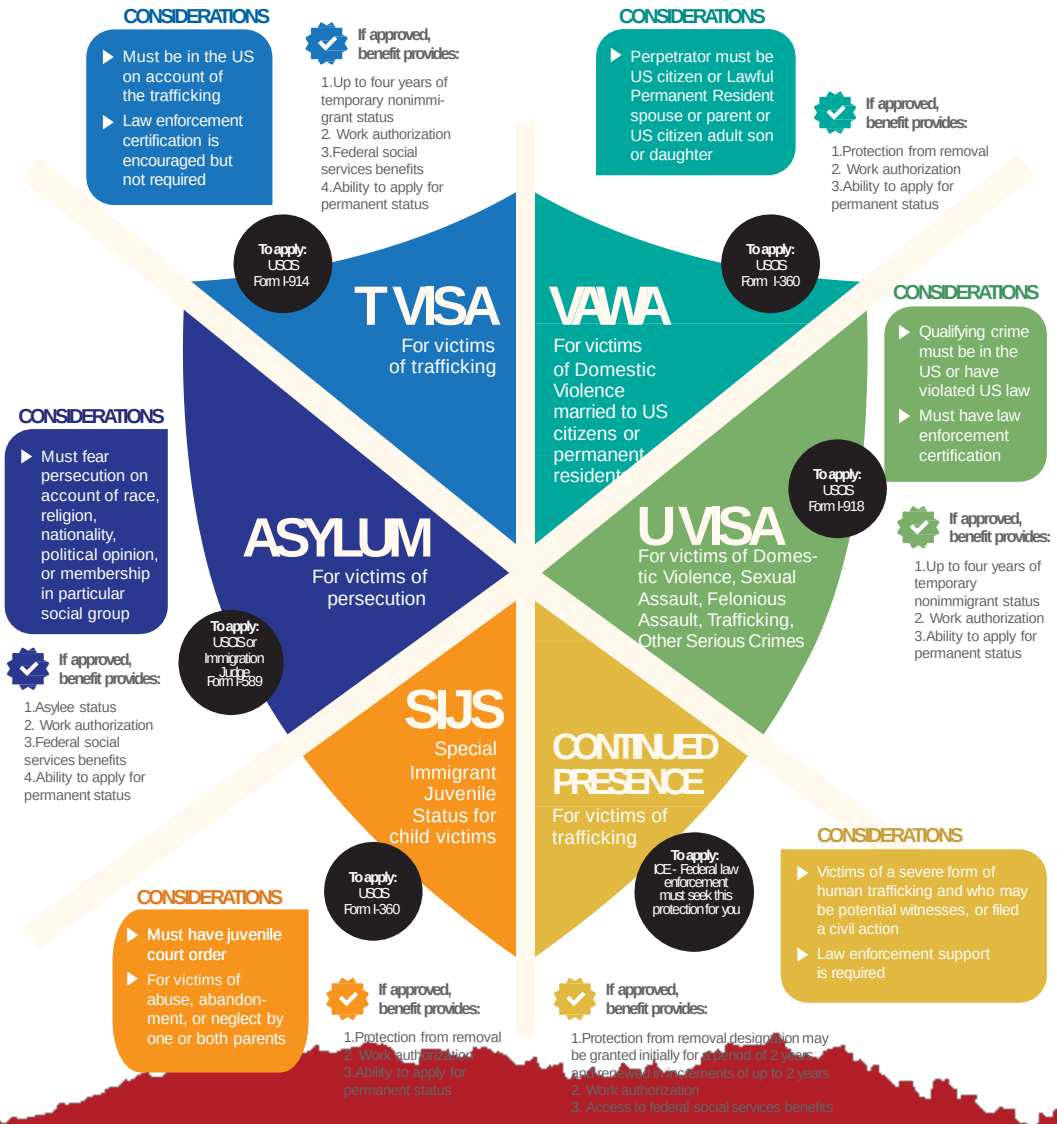
Benefits for Survivors

- Protection from deportation
- Enhanced safety for survivors
- Financial independence from perpetrator
- Legal work authorization (7-24 months of filing)
- VAWA confidentiality
- Temporary legal immigration status
- Protections for family members
- Greater ability to gain/maintain custody of her children
- Better access to survivor services, health care, and benefits

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



NIWAP

DHS.GOV/BLUE-CAMPAIGN

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

Battered Spouse Waivers

- 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

General VAWA Self-Petitioning Requirements

- Subjected to Battery or Extreme Cruelty
- By a U.S. Citizen or Permanent Resident
  - spouse;
  - parent; or
  - adult son/daughter (over 21)
- With Whom Self-Petitioner Resided
  - No time period required
- Good Moral Character
- Good Faith Marriage

VAWA self-petitioners get:

- Deportation: Protection from deportation soon after filing.
- Immigration Benefits for Children:
  - VAWA self-petitioner's children receive immigration benefits
  - VAWA cancellation parole into US visa process required
- Public Benefits: As qualified immigrants (≈ 2 months) Employment authorization:
  - Citizen abuser (≈ 6 months);
  - Lawful permanent resident abuser (≈ 12 months).
- VAWA confidentiality: protections against the release of information and reliance on abuser provided information
- Lawful permanent residency
  - Citizen perpetrator apply upon approval (1 year)
  - Lawful permanent resident perpetrator (≈ 3+ years)

Crime Victim ("U") Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful
- 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 Facts and Benefits

- Only 10,000 U-visas can be granted annually
  - Waitlist approval backlog 62,000 visas
- The U-visa grants a temporary 4 year stay
- Work authorization (≈ 28 months)
- Limited state benefits
- Lawful permanent residency after 3 years if
  - Cooperation or not unreasonably refuse to cooperate
  - + humanitarian need, family unity or public interest
- U.S. citizenship after 5 years of lawful permanent residency+ proof of good moral character

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

Special Immigrant Juvenile Status (SIJS)

- Immigration relief for unmarried children under the age of majority under state law who have been
  - Victims of abuse, abandonment, neglect
  - By at least **one parent**
- State Court Findings Required As Evidence
  - Court order regarding the child care, custody, dependency or placement of an immigrant child with
    - An individual (e.g. non-abusive parent, grandparent, kinship care, guardian, next friend) *OR*
    - State agency, private agency, including foster care system
  - Reunification of the child is not viable with a parent due to the parent's abuse, abandonment, or neglect
  - It is not in the child's best interest to return to their home country

Types of Proceedings SIJS findings

- Custody
- Divorce
- Legal Separation
- Motions for a declaratory judgment
- Dependency
- Delinquency
- Termination of parental rights
- Guardianship
- Paternity
- Child support

What Children with SIJ Status Receive

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

What Children with SIJ Status Receive

- At approval:
  - Lawful Permanent Residency (separate but usually concurrent filing)
  - Legal work authorization
    - Brings access to state issued driver's licenses and identification cards
  - Eligible for citizenship after 5 years
  - Post secondary educational grants and loans, public and assisted housing
  - Food stamps (only until the immigrant child turns age 19)

SIJS' may NEVER file family petition for either of the child's natural parents

U Visa vs. SIJS

U Visa

- Suffered substantial physical or mental abuse as a result of the victimization
- No findings regarding viability of reunification
- Less family law implications
- Benefits: Very Limited only health care at 28 months

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

Continued Presence

- Temporary lawful immigration status
  - For victims of severe forms of human trafficking
  - Victim of human trafficking who is a potential witness in investigation or prosecution of a trafficker
- Requested by federal law enforcement
  - Can be on behalf of state and local LEAs
  - One year, can be renewed
  - Can have family members join them

Severe Forms of Human Trafficking

- Labor trafficking -
  - Recruitment, harboring, provision or obtaining
  - A person for labor or services
  - Through force, fraud or coercion
  - For the purpose of involuntary servitude, peonage, debt bondage or slavery
- Sex trafficking
  - Commercial sex act induced by
    - Induced by force, fraud or coercion
    - Performed by a minor under age 18

Continued Presence - Benefits

- Temporary legal status in the U.S.
- Work authorization
- Access to public benefits – like refugees
  - State and federal
- Family members can join
- Can travel within the U.S.
- Does not lead directly to permanent legal status

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

T Visa Benefits

- While Case is Pending
  - Protection from deportation and removal
  - VAWA Confidentiality
  - Programs and services necessary to protect life and safety
- Upon receiving a bona fide determination or continued presence
  - All federal and state public benefits
  - Health Care Exchanges
  - Receives work authorization
  - Drivers licenses
- Upon Approval
  - Immigration benefits for children (and unmarried siblings if applicant is under age 21)
  - Eligible for lawful permanent residence after 3 years

Benefits Access Comparison

U visa

- 28 month wait for:
  - Health care exchange access
    - Subsidies in HI
  - 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

Temporary protections for immigrants who entered the U.S. as children (DACA)

- Came to the U.S. **under the age of sixteen**;
- Has **resided in the U.S. for a least five years, since June 15, 2007, up to the present time**;
- Is **physically present in the U.S. on June 12, 2012**;
- Is currently **in school**, has **graduated from high school** or GED, or is an **honorably discharged veteran** of the Coast Guard or Armed Forces of the U.S.;
- Has **not been convicted** of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- Is **not above the age of thirty-one (31) as of June 12, 2012**

Screening for Red Flags

- Alcohol abuse
- **Drug trafficking**
- Drug abuse or addiction
- Illegal gambling
- **False testimony for immigration purposes**
- Penal confinement
- Genocide, torture, killings, violations of religious freedom
- **Child Protective Services intervention**
- Communicable disease
- Physical or mental disorder
- **Any criminal convictions**
- Unlawful voting
- Prostitution
- Human trafficking
- Money laundering
- **Terrorist activities**
- Espionage
- Communist
- Immigration violation
- Misrepresentation for immigration purposes
- Stowaway
- **"Alien smuggling"**
- Draft evasion
- **Previously deported**
- International child abduction
- Polygamy

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



Immigrants and Benefits: True or False

1. Undocumented victims and children can access transitional housing programs
2. Federally funded health care is available for undocumented immigrants
3. DHS requires universities to ask about immigration status of applicant or enrolling students

What types of services and assistance are open to all persons without regard to immigration status?

Access for All

Both documented and undocumented immigrant survivors can access:

- Legal Services
- Family Court (Divorce)
- Language Access
- Police Assistance
- Protection Orders
- Child Custody and Support
- Have Their Abusers Criminally Prosecuted
- Assistance for Crime Victims
- Shelter
- Transitional Housing
- Receive Emergency Medical Care
- Obtain Public Benefits for Their Children

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



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 Open to All Immigrants

- Community and migrant health clinics
  - www.nachc.com
  - www.hrsa.gov
  - Enter zip code
- State funded programs
- Post-assault health care paid by VOCA
- Immunizations, testing, and treatment of communicable diseases
- Emergency Medicaid



Community and Migrant Health Clinics: HRSA Funded

How to find free health clinics in your area



Step 1: In IE, go to www.hrsa.gov
Step 2: Select "Get Health Care"

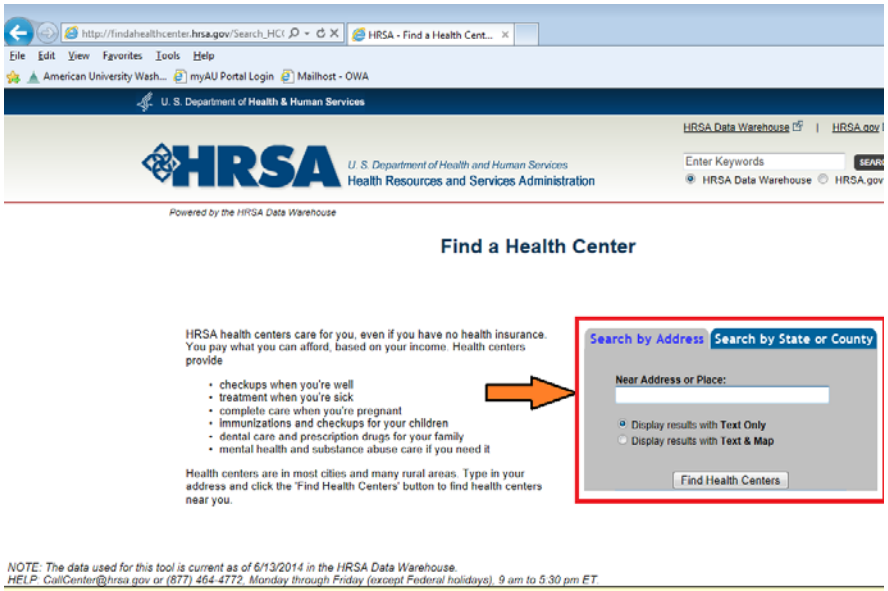
Step 3: Select "Find a Health Center"
Step 4: Search by location

OR

Step 3: Select "Find out more about Hill-Burton…"
Step 4: Select "Hill-Burton Obligated Facilities"



Health Center Locator



Enter your zip code to see a list or map of health centers nearby.



Sample Search Results

HRSA U. S. Department of Health and Human Services
Health Resources and Services Administration

Enter Keywords SEARCH
HRSA Data Warehouse HRSA.gov

Powered by the HRSA Data Warehouse

Find a Health Center

Download Health Centers and Look-Alikes Report by State (PDF) Download Health Centers and Look-Alikes Raw Data (Text File) Print Email Help

Text Only Text & Map Start a New Search

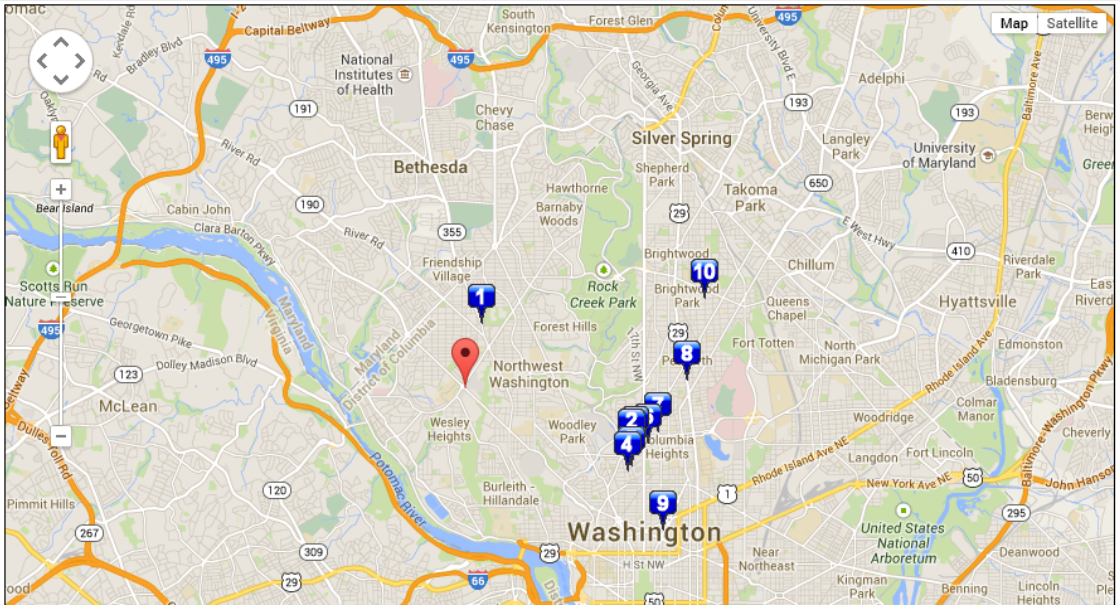
Map all these results

Health Centers
near Washington, DC 20016
Results 1 - 10 of total 20. Page 1 of 2

1 **FRIENDSHIP PLACE HEALTH CENTER**
(~ 0.98 miles away)
4713 Wisconsin Ave Nw, WASHINGTON, DC 20016-4609
202-364-1419
http://WWW.UNITYHEALTHCARE.ORG
Get directions to this site from this site
Map this result

2 **CHRIST HOUSE 5TH HEALTH CENTER**
(~ 2.61 miles away)
1717 Columbia Rd Nw, WASHINGTON, DC 20009-2803
202-588-8101
http://WWW.UNITYHEALTHCARE.ORG
Get directions to this site from this site
Map this result

3 **Columbia Road Health Center**
(~ 2.64 miles away)
1660 Columbia Rd Nw, WASHINGTON, DC 20009-



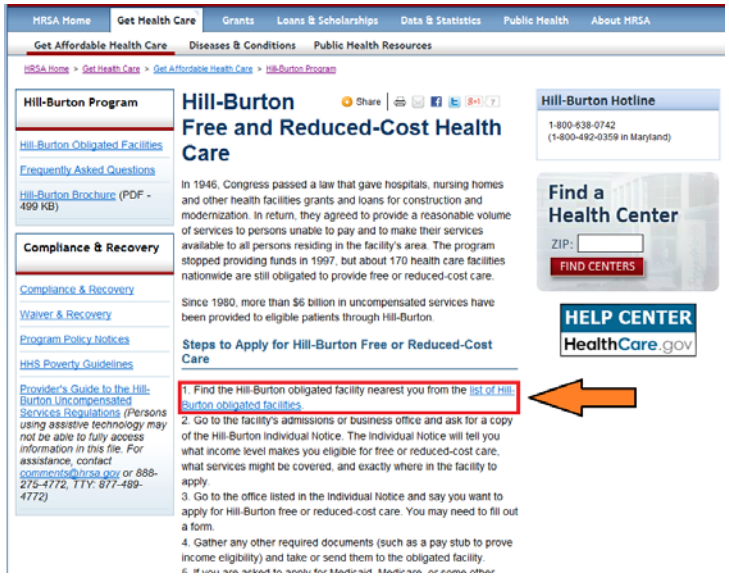
Federally Qualified Health Centers

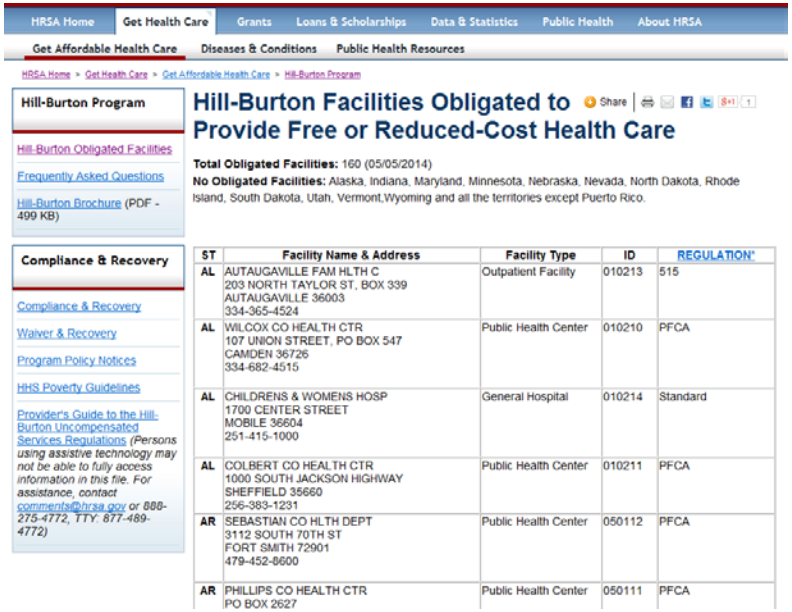
- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Child wellness services
- Emergency medical and dental services
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family planning services
- Preventative dental services
- Pharmaceutical services
- Mental health treatment
- Substance abuse services

Hill-Burton

Please note: Not all states and regions have Hill-Burton obligated facilities.

Select "list of Hill-Burton obligated facilities" to see the nationwide list.





Emergency Medicaid

- Available only in cases where the person needs treatment for medical conditions with acute symptoms that could:
  - place the patient's health in serious jeopardy;
  - result in serious impairment of bodily functions; or
  - cause dysfunction of any bodily organ or part



Emergency Shelter and Transitional Housing



Poll: Experiences With Immigrant Survivors Access to Transitional Housing Programs

- Immigrant victims of
  - Domestic violence
  - Sexual assault
  - Human trafficking

NIWAP Research: Immigrant Victim Transitional Housing Acceptance Rates

Type of Crime	% Accepted	# Accepted	% Denied	# Denied
Domestic Violence	47.1%	1759	52.9%	1979
Sexual Assault	5.8%	29	94.2%	466
Human Trafficking	78.5%	146	21.5%	40
Abused/Abandoned /Run Away Children	80.8%	51	19.2%	12

Large Group Discussion

- What criteria do transitional housing programs in your state/community require for admission?

NIWAP Research: Reasons Immigrant Victims Turned Away From Transitional Housing

Primary Reasons Immigrant Domestic and Sexual Violence Victims Were Turned Away from Transitional Housing		
	Domestic Violence	Sexual Assault
Immigrant victim lacked the required documentation of immigration status	34.4%	99.4%
When documentation was required the program sought evidence of one of the following:		
Documentation related immigraton status	84.1%	99.4%
Documentation of current employment or ability to work	56.0%	98.9%
An employment authorization document as proof of legal work authorization	52.9%	98.9%
Did not have a driver's license*	45.0%	98.8%
Program required documentation that the victim did not have	33.2%	87.0%
Immigrant applicant was undocumented	25.6%	90.0%
Immigrant victim did not meet the formal income requirements	23.7%	85.8%
The battered immigrant applicant failed to present governement issued I.D.	18.3%	86.1%
They were told that the evidence presented of being self-sufficient was insufficient	9.0%	85.7%
They were not a victim of domestic violence	n/a	85.6%
They did not speak English	2.9%	3.1%

Undocumented Immigrant Survivors Have a Legal Right to Access Shelter and Transitional Housing



No Immigrant Status Requirements

- Undocumented immigrant survivors have a legal right to access shelter and transitional housing
- Open to all persons without regard to:
  - Immigrant status
  - Citizenship
  - Nationality
  - English language abilities

Open to All persons Without Regard to:

- Immigration status
- Citizenship
- Nationality
- English language abilities

Benefits Available to all Immigrants Include:

- Short-term shelter or housing assistance, victim services counseling, and intervention for:
  - Victims of:
    - Domestic violence
    - Sexual assault
    - Stalking
    - Dating violence
    - Human trafficking
    - Child abuse
    - Other abuse
  - Homeless
  - Runaway or homeless youth
  - Abandoned children

HUD Stated in 2001

- Both emergency shelter and transitional housing are:
  - Necessary to protect life and safety
- Transitional housing is by its nature:
  - Short-term
  - A bridge toward permanent housing

HUD/DOJ/HHS Letter

- HUD, DOJ, and HHS confirmed in a joint letter that federally funded housing providers must not turn away individuals based on their immigration status from programs, services, or assistance necessary to protect life or safety
- Examples of such programs and services:
  - Short-term shelter or housing assistance
  - Crisis counseling or intervention programs
  - Medical and public health services necessary to protect life or safety

2016 HUD SNAPS Notice

- These Emergency Solutions Grant (ESG) and Continuum of Care (CoC) funded programs have **no** immigrant restrictions
  - Street Outreach Services
  - Emergency Shelter
  - Safe Haven
  - Rapid Re-Housing
- Transitional housing that meets the in-kind, community level, and life or safety tests
  - No immigration restrictions
  - **Exception:** When there are rental assistance payments made for participant *because regulations require income test*; immigration restrictions

Applies to Government Funded Programs

- Federally funded under
  - Violence Against Women Act
  - Family Violence Prevention and Services Act
  - Victims of Crime Act
  - HUD-funded
    - Emergency Solutions
    - Continuum of Care Programs

Transitional Housing

- When transitional housing meets the in-kind, community level, and life and safety tests
  - Unit is owned or leased by the grantee and used to provide transitional housing
  - Must be open to all; No immigration restrictions
- Exception: Grantee paying rental assistance payments for participant *when regulations require income test*

HUD, DOJ and HHS Confirmed in August 2016

- Housing providers must not turn away immigrants based on their immigration status from:
  - Emergency shelter
  - Transitional housing
  - Rapid re-housing

HUD Office Of Special Needs Assistance Programs

- Emergency Solutions Grant (ESG) and Continuum of Care (CoC) funded programs are open to all with no immigrant restrictions
  - **Street Outreach Services**
    - Provides essential services connecting unsheltered homeless individuals and families with emergency shelter, housing, or critical services and providing them with urgent, non-facility based care
  - **Emergency Shelter**
    - Among other things, this program provides a range of essential services for individuals and families in emergency shelter

HUD Programs and Immigrants Eligibility

- **Rapid Re-Housing**
  - Housing relocation and stabilization services and/or short or medium term housing/rental assistance to help families shelters or in places not meant for human habitation moves them as quickly as possible into permanent housing
- **HOME Program**
  - HOME is the largest federal block grant to state and local governments designated exclusively to create affordable housing to low-income households
- **Safe Haven**
  - Supportive housing serving hard-to-reach homeless persons with severe mental illness who have been living on the street and not previously able or willing to participate in housing or supportive services.

HUD Programs and Immigrants Eligibility

- **Housing Trust Fund**
  - Affordable housing program that complements existing federal, state and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low-and very low-income households, including homeless families
- **Rural Housing Stability Program**
  - Re-house or improve the housing situations of persons who are homeless or in worst housing situation; stabilize the housing of individuals and families who are at risk of becoming homeless
- **Mortgage Insurance for Rental and Cooperative Housing Section 221(d)(3) and (d)(5)**
  - Insurance program for new construction under which landlords agree to provide housing for low and moderate income families

Applies to Government Funded Housing

- Violence Against Women Act
- Family Violence Prevention and Services Act
- Victims of Crime Act
- Housing and Urban Development funded
  - Emergency Solutions
  - Continuum of Care Programs

Anti-Discrimination Protections

- No discrimination based on:
  - Title VI/FVPSA- race, color, and national origin
  - Fair Housing Act-race, color, national origin, religion, sex, familial status, and disability
  - VAWA- race, color religion, national origin, sex, gender identity, sexual orientation, and disability
  - HUD Section 109- race, color, national origin, sex, and religion

NNEDV/OVW Admission Criteria

- Survivor actively fleeing abusive relationship or situation (e.g., employment, housing where rape occurred)
- 18 or older or legally emancipated
- Willing and desiring to participate in transitional housing program and meet with staff on mutually determined schedule
- Willing to create individualized safety plan with help of victim advocate
- Able to live 24/7 independently

Common Criteria

- Residence in the city/county
- Homelessness/at risk of homelessness
- Employment/self-sufficiency criteria
- Cannot be an active substance abuser
- No sex offender criminal record

Advocacy Preparation: Small Group Activity

- How would you help immigrant victims show:
  - Group 1: Residence in the city/county
  - Group 2: Domestic violence, sexual assault, stalking, or victimization
  - Group 3: Evidence of employment
  - Group 4: Evidence of self-sufficiency

Report Back



Evidence of Residency: Examples

- Victim's statement
- Postmarked mail received at a residence in the jurisdiction
- School, health, court records with address
- Copies of police reports
- Letters from neighbors, shelter, victim advocate, social worker, faith based organization staff

Evidence of Victimization or Homelessness: Examples

- Victim's statement
- Police reports
- Medical or court records
- U-Visa/VAWA application
- Photographs, recordings of abuse
- Protection order
- Evidence of poor rental history/evictions

Evidence of Self-Sufficiency

- Evidence of employment
  - Documentation of income from employment
  - Tax ID number
  - Employer's statement court form
  - Letter from employer with photo attached
- Evidence of other income
  - Child support, benefits citizen/lawful permanent resident children receive
- Evidence that taking steps toward employment
  - Filed VAWA self-petition, U visa, taking ESL classes

Battered Immigrant Access to Public and Assisted Housing

Housing Act Section 214 Quiz

- Which is the following programs does **NOT** have immigrant access restrictions under Section 214 of the Housing and Community Development Act ?
  - Public housing
  - Section 8 vouchers
  - Project-based Section 8
  - Low Income Housing Tax Credit
  - Section 514 and 516 Farm Labor Housing programs

"Section 214" Restricted HUD Programs

- Public Housing
- Housing Choice Voucher Program
- Section 8 Project-Based Housing
- Section 236 Housing
- Section 235 Homeownership Housing
- Rent Supplement Housing
- Housing Development Grants (HoDAG)
- Section 23 Leased Housing Program

"Section 214" Restricted RD Programs

- Section 514 and 516 Farm Labor Housing programs
- Section 502 home loan program
- Section 504 rehabilitation loan and grant program
- Section 521 Rental Assistance Program
- RD Voucher Program

Housing Programs That Are Not Restricted by Section 214

- Low Income Housing Tax Credit (LIHTC)
- Section 202 Housing for the Elderly
- Section 811 Housing for the Disabled
- Section 221 (d)(3)
- Indian Housing
- CDBG
- HOME
- HOPWA
- McKinney-Vento/HEARTH Act*
- Rental Rehabilitation
- HOPE 2
- Section 515 Rural Rental Housing Program (without Rental Assistance)
- Rural Housing Preservation Grants
- Section 538 Multi-family Loan Guarantees

Which of the following is **NOT** is Eligible for Section 214 Housing?

- Legal permanent residents
- Bona fide T visas
- U visa applicants/recipients
- VAWA self-petitioners
- Asylum recipients

Section 214 Eligible Immigrant Categories

- U.S. Citizens/U.S. Nationals
- Lawful Permanent Residents
- VAWA self-petitioners
- Refugees and Asylees
- Parolees
- Persons granted withholding of removal/deportation
- Victims of trafficking – Continued presence and T visa bona fide
- Persons granted admission for emergent or public interest reasons
- Persons granted amnesty under the Immigration Reform and Control Act of 1986
- Immigrants eligible for registry who entered the U.S. before June 30, 1948
- Lawful U.S. residents under the Compacts of Free Association with the Marshall Islands, Micronesia, Palau and Guam
- Immigrants admitted for lawful temporary residence prior to January 1, 1982

VAWA Self-Petitioners

- VAWA self-petitioners were made eligible to receive "federal public benefits" as part of the Immigration Reform & Immigrant Responsibility Act of 1996.
- However, VAWA self-petitioners were not among the categories of eligible immigrants listed in Section 214 of the Housing & Community Development Act.
- In 2003 Congress directed HUD and the Department of Homeland Security to work together to provide VAWA self-petitioner access to 214 housing programs

VAWA Self-Petitioners

- HUD issued a legal memo confirming that VAWA self-petitioners have "satisfactory immigrant status" when applying for Section 214 housing.
  - Housing providers must verify immigrant status by using the SAVE system
  - Documents to verify VAWA self-petitioner's status
  - VAWA protections apply
- HUD PIH issued notice for public housing authorities on VAWA self-petitioner verification procedures.

HUD List of VAWA Self-Petitioners

- Victims with VAWA self-petition I-360 filed
  - Children included in VAWA self-petition
- VAWA cancellation of removal and VAWA suspension of deportation applicants
  - Victims' children are not included in these applications
  - Will only appear in SAVE system if have work authorization
- Victims with approved I-130 visa petitions filed by their abusive spouse or parent
  - Children included in I-130 visa application filed for victim

SAVE Program

- The SAVE Program provides immigration status information to authorized agencies providing federally funded benefits
- VAWA confidentiality: DHS does not place victims into SAVE until they receive work authorization
  - VAWA cases require housing provider to "Institute Additional Verification"
  - DHS conducts this additional verification in a VAWA confidentiality compliant manner
  - VAWA confidentiality protections apply to VAWA, Battered Spouse Waiver, T, and U visa, and abused Visa Holder Spouse work authorization applications

How Housing Providers Are to Complete DHS -SAVE System Online

1) Enter into SAVE the VAWA immigrant victim's:
   - Name + A# + Date of birth
2) System issues "Match" or "No Match" response
3) If "No Match" - Click "Institute Additional Verification" AND Enter in the note field either
   - "Verify VAWA Self-Petition" or "Verify I-130 Visa Petition" AND
   - Upload copy of the victim's DHS document:
     - I-360 VAWA self-petition
     - I-130 Family-based visa petition
     - I-797 Notice of Action: Used for receipt notice, prima facie determination, and approval notice

Directions for the SAVE Program

- The DHS response
  - 3-5 business days; and
  - No longer than a month
- DHS confirmation of VAWA self-petitioning status then the victim is --
  - *"Immediately eligible for housing and no evidence of battery or extreme cruelty shall be requested or collected"*

Steps When DHS Verifies Approved I-130 Visa Petition

- These are cases in which DHS will not have adjudicated battering or extreme cruelty as part of the DHS case
- Petitioner submitting the family-based visa petition must provide the housing provider evidence of
  - "battering or extreme cruelty"
  - DHS any credible evidence rules apply - 8 U.S.C. 1154(a)(1)(J)

Definition "Battering or Extreme Cruelty"

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

Any Credible Evidence of Battery or Extreme Cruelty

- Affidavits/Statements of the victim, witnesses, advocates
- Medical records
- Photographs of injuries
- Helpful but not required:
  - Police reports
  - Protection orders
  - Criminal court or family court records
- "Any Credible Evidence" standard allows victims the greatest flexibility to prove abuse in the safest way possible
  - Recognizes dangers of perpetrator controlled evidence
- Specific forms of evidence cannot be required
- Housing provider decides the credibility of the evidence

VAWA Rule 2016 and Immigrant Survivors

- VAWA's housing protections apply to survivors regardless of immigration status
- VAWA does not supersede housing program eligibility requirements
- VAWA amendment clarifying that lease bifurcations and post-lease bifurcation rights apply to tenants AND residents

Be Prepared to Advocate…

- For survivor and children remaining in the unit when perpetrator is removed
- Based on a child's or survivor's legal status to avoid proration and include the survivor as a qualified immigrant in the subsidy

What To Bring With You to Advocate

- 8 U.S.C. 1641(c)
- 2003 Budget Bill Report Language
- Letter from DHS to HUD 2007





Housing Resources

- Government publications, regulations, policies
- NIWAP materials



Immigrant Survivors' Legal Rights to Access Federal and State 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

Immigrant Benefits Classifications

- Citizens
- "Qualified Immigrants"
  - Entering U.S. before Aug. 22, 1996
  - Entering U.S. on or after Aug. 22, 1996 subject to 5 year bar on federal means tested public benefits (e.g. TANF, Medicaid, Child Care, SSI, Food Stamps)
  - Can access federal public benefits that are not means tested (e.g. public and assisted housing, FAFSA student grants/loans)
- Lawfully Present
  - Health care access is provided and states can opt to offer certain federal or state funded benefits to lawfully residing immigrants (most often prenatal and child health care)
- PRUCOL (Permanently Residing Under Color of Law)
- Undocumented Immigrants

Immigration Relief Expands Benefits Access

VAWA self-petition

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

Battered spouse waiver

- Qualified Immigrant
- Can avoid deeming

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

Family Based Visa Petition Approved + Battering or Extreme Cruelty

- Public and Assisted Housing
- Not required to file for VAWA

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 exchanges or subsidies under ACA

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
  - Bona fide 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

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
  - SIJS recipients of lawful permanent residency

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

Hawaii -Education

- An immigrant that is legally able to reside within the U.S. may establish residency in Hawaii.
- Hawaiian residents are eligible to receive in-state tuition and apply for financial assistance
- Legally able to reside does include:
  - Trafficking victims with (CP or bona fide T) and HHS certification
- Should include immigrants with lawful presence
  - Qualified immigrants
  - COFA
  - SIJS applicants

Hawaii -Education

- DACA students are undocumented students who meet the following requirements are considered residents of Hawaii for purposes of tuition, financial assistance, and university program participation:
  - Domiciled in Hawaii and been physically present for a year;
  - Attended a public high school in the U.S. for 3 years, and graduated from a U.S. public high school or the equivalent; and
  - Filed for DACA or legal immigrants status or filed affidavit with the school affirming student's intent to file when able

Federal Means-Tested Public Programs Have Most Limited Immigrant Access:

- **TANF**
  - 5 yr. bar if entered the U.S. after 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
- **Food Stamps**
  - "Qualified Immigrants" 5 year bar post August 22, 1996 and children
- **Medicaid and Child Health Insurance Program**
  - Health Care reform opened up access to immigrants who are "lawfully present"

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,
  - Asylees
  - Amerasian immigrants
  - Cuban/Haitian entrants,
  - Immigrants granted withholding of deportation
  - Victims of severe forms of human trafficking

State Option

- States have the option to provide state funded benefits to immigrants
- Hawaii has opted to do this for several benefits programs

TANF -Hawaii

- State Funded TANF – During 5 year bar
  - VAWA self-petitioners
    - Applicants and their children
  - SIJS children when receive lawful permanent residency status
  - Battered spouse waiver applicants
    - No Deeming
  - Compact Of Free Association (COFA)
- Federal TANF
  - Bona fide T Visas and Continued Presence

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)

Federal TANF Funded Child Care

- "Qualified immigrants" who entered the U.S. before Aug. 22, 1996.
- 5 year bar applied to all other qualified immigrants
- Refugees and asylees
- Persons granted withholding of removal
- Amerasian immigrants
- Cuban/Haitian entrants
- Survivors of trafficking and their children
- Veterans and active duty military personnel, their spouses, un-remarried surviving spouses, and children, who are "qualified" immigrants

TANF Child Care - Hawaii

- Child Care Development Fund
  - Open to all immigrants
- TANF funded child care
  - Qualified immigrants who
    - Entered before 8/22/96 or
    - Are receiving state funded TANF
    - VAWA self-petitioners and SIJS lawful permanent residents
  - COFA
  - T bona fide
  - Continued presence

Federal Food Stamps
No Hawaii Program

- Qualified immigrant children under 18 regardless of date of entry
  - Children included in VAWA self-petitions
  - T visa bona fide
  - SIJS children with lawful permanent residency
- Qualified immigrants who receive a disability benefit, regardless of date of entry
- Qualified immigrants living in the US for five years
- Trafficking victims adults and children
  - With HHS certification
  - T bona fide and Continued Presence

Federal -SSI

- Persons already receiving SSI before 8/22/96 or whose SSI apps were pending
- Persons who are blind or have disabilities who were lawfully residing in the U.S. on 8/22/96 and are now "qualified"
- LPRs with 40 quarters of work
- LPRs who entered after 8/22/96 have the additional burden of being "qualified" for 5 years

State Funded SSI- Hawaii

- Qualified immigrants
  - VAWA self-petitioners
  - T Bona Fide
  - SIJS lawful permanent residents
- Continued Presence
- Who are
  - Seniors
  - Disabled
  - Blind
- Receive Aid to Aged, Blind and Disabled (AABD)

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 qualified immigrants low income non-pregnant adults
    - State option to provide Medicaid to lawfully present pregnant women and children

Health Care Reform Has No Effect On:

- Undocumented immigrants
  - Exempt from individual mandates
  - Cannot purchase from state insurance exchanges & no tax credit
  - No Medicare, Medicaid or CHIP
  - Only
    - HHS funded unrestricted health care
    - Emergency Medicaid
    - VOCA

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

State Option -- Medicaid and CHIP for "lawfully residing" children and pregnant women

- Lawfully present + Medicaid state residency rules
- Lawfully present =
  - Lawful permanent residency
  - Qualified immigrants
  - Approved visa petition + application for lawful permanent residency filed
  - Persons fleeing persecution (e.g. refugees, asylees, withholding, conditional entrants
  - Humanitarian immigrants (e.g. Cuban Haitian Entrants, TPS, DED, Deferred Action Status)
    - U visa conditional approvals
    - SIJS applicant children
  - Parolees (lawfully present) if parole for 1yr +

Hawaii – Medical Assistance

- Lawfully residing
  - Children and pregnant women
  - COFA
- Seniors and people with disabilities who are
  - Qualified immigrants
  - Parolees
  - Non-immigrants
  - COFA

Hawaii – Medical Assistance

- All lawfully present persons
- Under 100% Federal Poverty Level
- Receive state premium assistance in addition to federal subsidies under the health care market place
- Applies to
  - VAWA self-petitioners
  - Trafficking victims (CP and T bona fide)
  - COFA
  - SIJS applicant children
  - U visa wait list approvals

Driver's Licenses - Hawaii

- Under the REAL ID Act, evidence of lawful status is required for driver's license to be a federally recognized form of identification
  - T visa bona fide
  - Continued Presence
  - Immigrants with work authorization
    - Approved VAWA self-petitioners
    - Waitlist approved U visa victims
    - SJIS applicants for lawful permanent residency

Limited Purpose Driver's Licenses - Hawaii

- Available to immigrants without lawful presence
- Must prove
  - Identity and
  - Residency in Hawaii

LIHEAP and DOE Weatherization

- LIHEAP – Heating, Cooling &Crisis Assistance and Single Family LIHEAP DOE Weatherization
  - VAWA self-petitioners
  - T Visa bona fide
  - Continued Presence
  - SJIS upon receipt of lawful permanent residence
- LIHEAP & DOE Weatherization Assistance
  - Multi-Unit Dwellings – no immigration restrictions

Lunch

Immigrants and Benefits: 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 for immigrant children
3. Immigrants applying for benefits for their children can refuse to provide immigration or social security information about themselves

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

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

HUD Social Security Number Requirements

- HUD rules re: SSNs, 24 C.F.R. part 5, Subpart B
- For most HUD programs, every member of an applicant household **must** disclose their SSNs to be eligible for assistance. This requirement applies to:
  - Public Housing
  - Any program under Section 8 of the Housing Act of 1937
  - Section 202 Supportive Housing for the Elderly
  - Section 811 Supportive Housing for Persons with Disabilities;
  - Any program under 24 C.F.R. parts 215, 221, 236, or 290
  - Homeowner assistance

HUD SSN requirements (cont'd)

- To verify SSNs, an applicant must produce:
  - For public housing and vouchers
    - An original SSN card;
    - An original SSA-issued document containing the applicant's name and SSN; or
    - An original document issued by a federal, state, or local gov't agency containing the applicant's name and SSN
  - For HUD multifamily housing
    - SSN card or other documents showing SSN
- The housing provider transmits the applicant's name, SSN, and date of birth to HUD.
- HUD validates the SSN against the SSA's database.

HUD SSN Requirements (cont'd)

- The SSN disclosure requirements do **not** apply to applicants who do not contend eligible immigration status
  - 24 C.F.R. § 5.216; HUD Notice PIH 2012-10 (Feb. 14, 2012)
- A housing provider may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend eligible status
  - HUD Notice PIH 2012-10 (Feb. 14, 2012)

Does a Housing Provider Report Status to ICE?

- USCIS cannot use documents checked against the SAVE database to mount any enforcement investigation
- **PHAs** that "know" that someone contending eligibility for Section 8 or Public Housing programs is in the country illegally must report that information to USCIS on a quarterly basis

Defining "Know"

- "KNOW" has a very narrow definition
  - A finding of fact or conclusion of law made by the PHA as part of a formal determination that is subject to administrative review on the applicant's claim, AND the finding is supported by a determination by USCIS or the Executive Office of Immigration Review (EOIR), such as a Final Order of Deportation
- Reporting is *not triggered by:*
  - An oral or written admission by the immigrant;
  - A worker's suspicion, assumption, or firm conviction about the person's immigration status;
  - A response from USCIS to a SAVE inquiry that fails to confirm an applicant's immigration status or that shows an immigrant status that would make the applicant ineligible; or
  - A formal finding that the person is ineligible for a benefit.

Importance of Accompaniment

- Federal Reporting Requirements
- Widespread Problems Nationally
  - Turned away at the door
  - No language access
  - Denied benefits for citizen children
  - VAWA eligible denied benefits
  - PRUCOL state benefits
- Need witnesses and documentation of treatment by benefits workers

How might accompanying an immigrant victim applying for benefits help overcome these barriers?

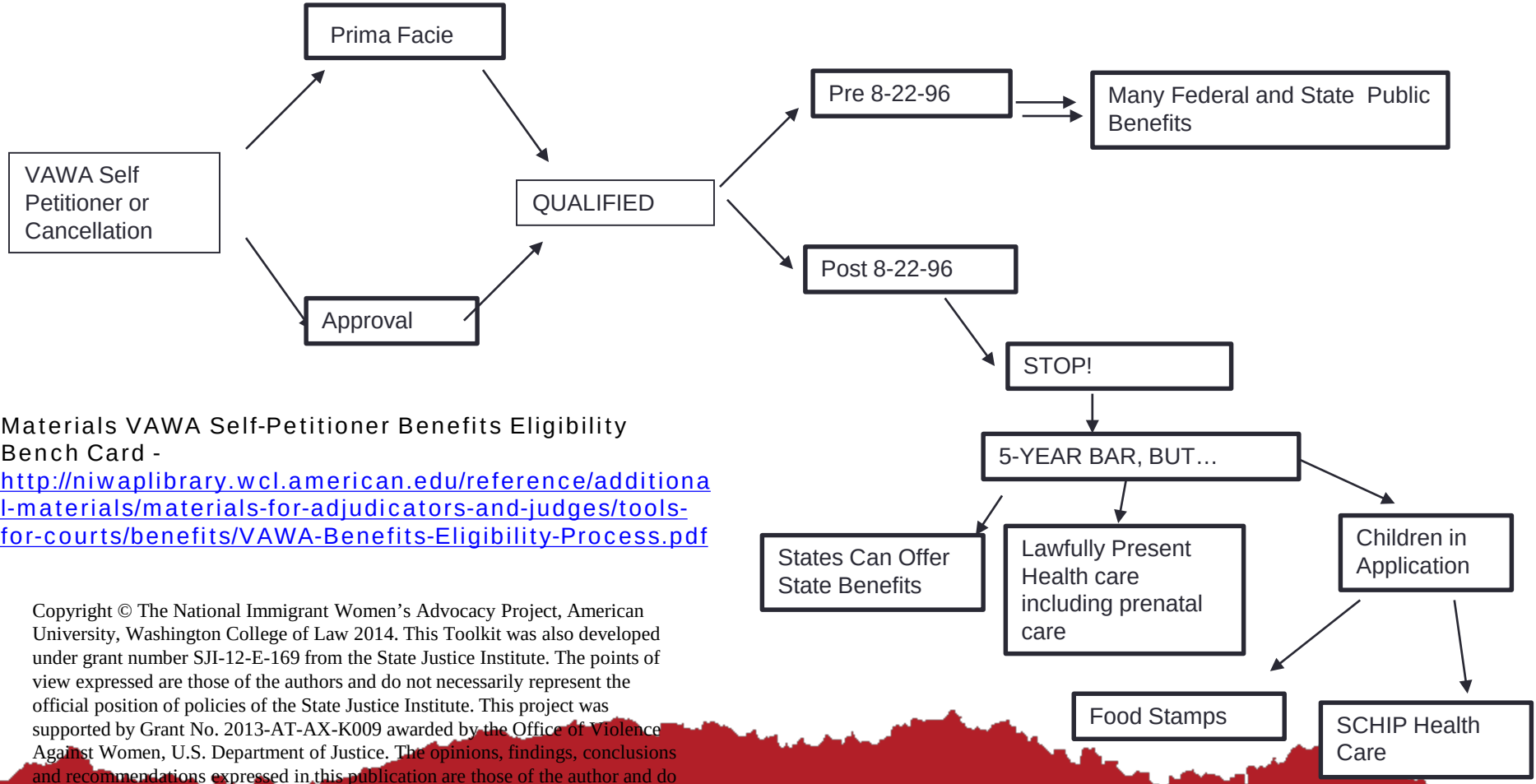
Role Play

- Adina has applied for and received a prima facie determination in a VAWA self petitioning case she included her undocumented daughter in her application
- Prepare to accompany Adina to apply for public benefits
- What problems do you want to be prepared for?

Access to Federal and State Public Benefits for Battered Immigrant Spouses and Children of U.S. Citizens or Lawful Permanent Residents

Abused Family Members Who Have/Will Not Or Do Not Qualify to File Self-Petitions and Parents Abused By 21+ Year Old Sons or Daughters

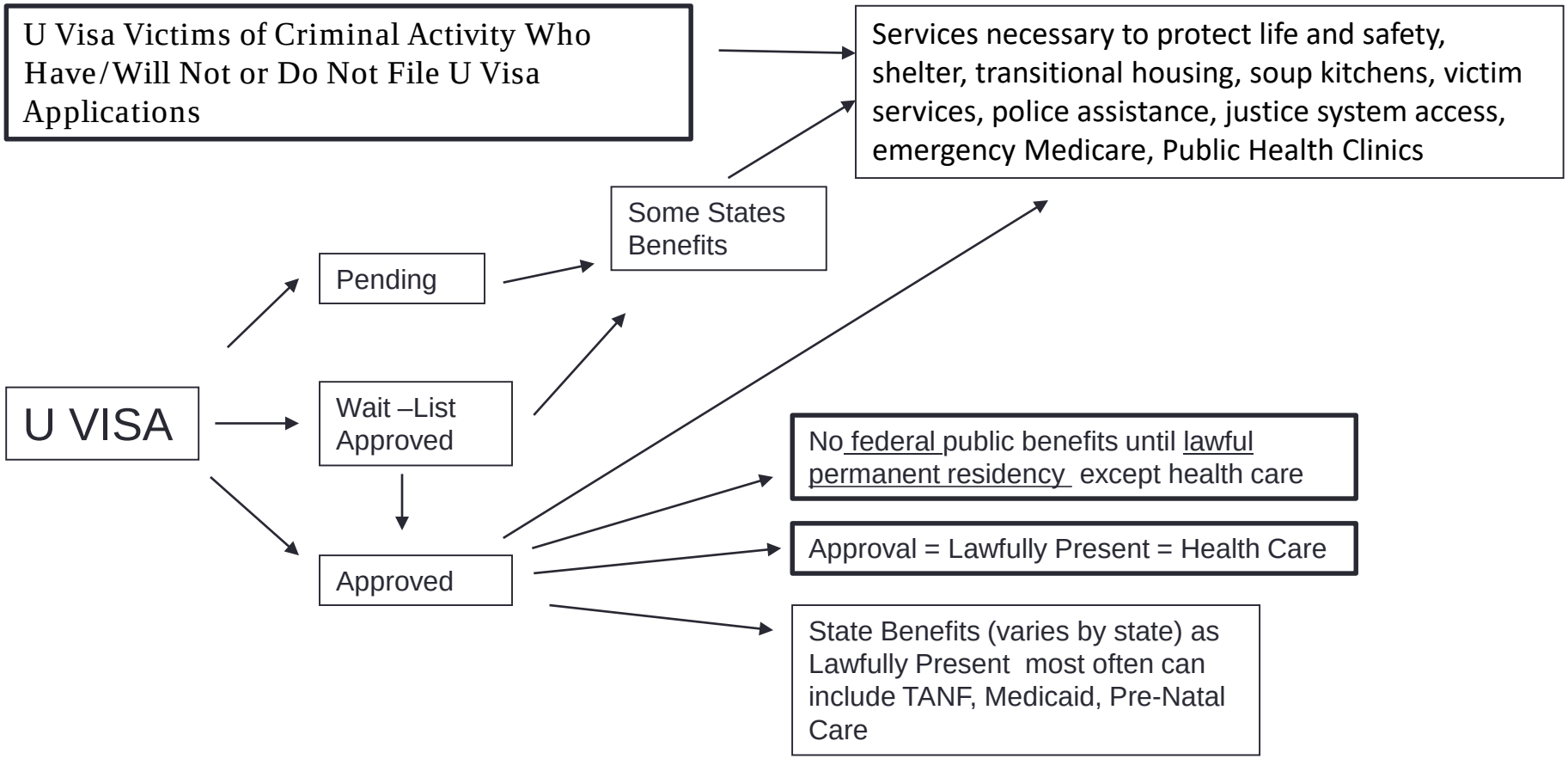
→ Services necessary to protect life and safety, shelter, transitional housing, soup kitchens, victim services, police assistance, justice system access, emergency Medicare, Public Health Clinics



Materials VAWA Self-Petitioner Benefits Eligibility Bench Card - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/VAWA-Benefits-Eligibility-Process.pdf

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Access to Federal and State Public Benefits for U Visa Victims

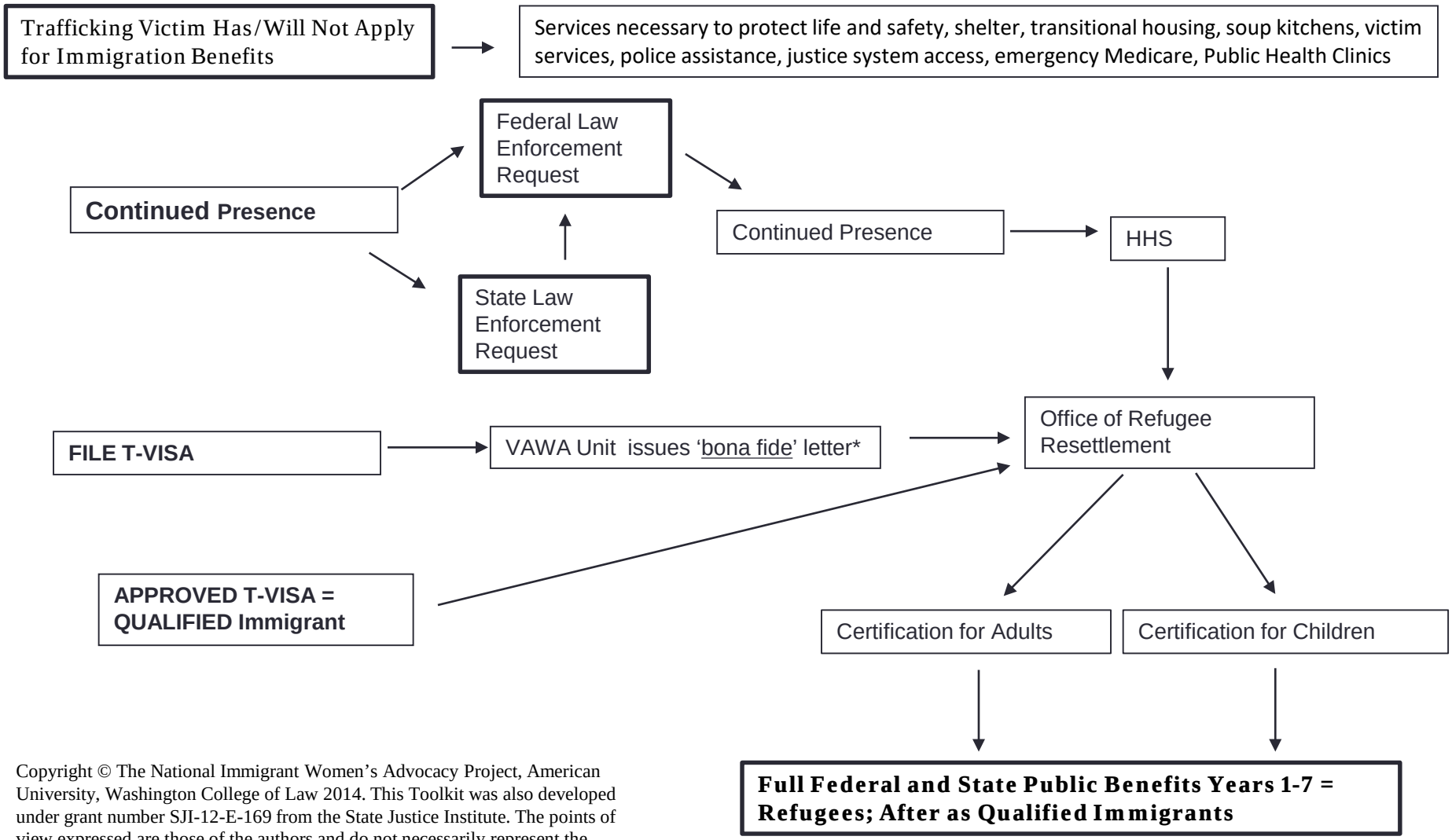


Materials U Visa Benefits Eligibility Bench Card - http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/U-Visa-Victim-Benefits-Eligibility-Process.pdf

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NIWAP

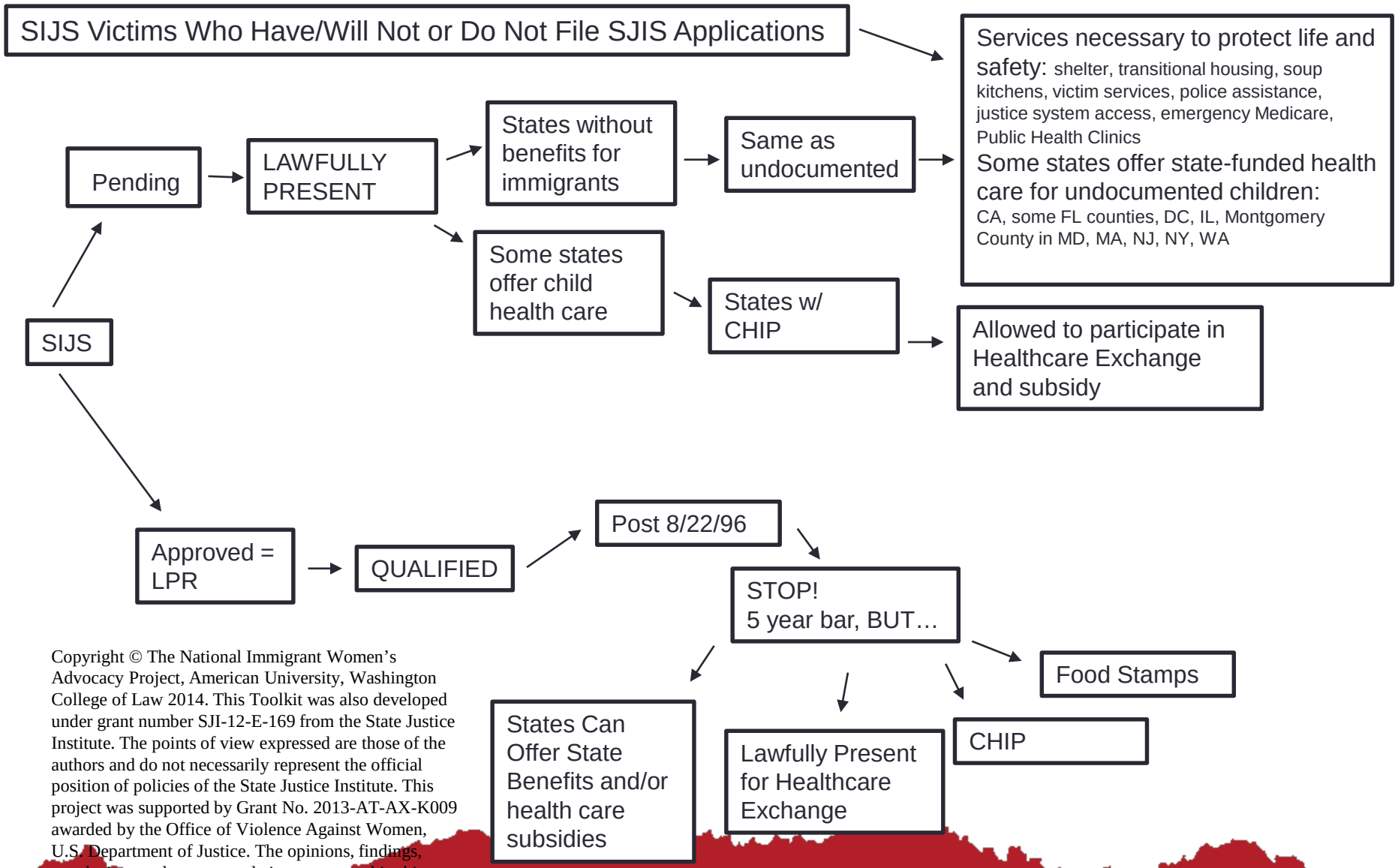
Access to Federal and State Public Benefits for Victims of Human Trafficking



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Materials T Visa Benefits Eligibility Bench Card - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/Trafficking-Victims-Benefits-Eligibility-Process.pdf

Federal & State Public Benefits for Special Juvenile Immigrant Status (SIJS) Victims



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VAWA CONFIDENTIALITY

Large Group Discussion

- What are some of your concerns about immigrant victim safety?
- Have you used VAWA confidentiality provisions to protect survivors you work with?

Brief History of the Evolution of VAWA Confidentiality

Immigration Act of 1990

"The Attorney General shall, by regulation, establish measures to protect the confidentiality of information concerning any abused alien spouse or child, including information regarding the whereabouts of such spouse or child"

VAWA I (1994)

- Barred from disclosing information about victims served
- Mandated postal confidentiality of address information of domestic violence survivors and domestic violence shelter programs
- Studies on
  - Survivors address information disclosure protection
  - Confidentiality of communications between domestic violence survivors and counselors
  - Recordkeeping

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)

- VAWA confidentiality
  - Prohibited reliance on abuser/family member provided information in any case without regard to whether the victim immigration relief eligible
  - Prohibited on use and disclosure of information in VAWA immigration case
  - Disciplinary sanctions and fines
- Access to public benefits for battered immigrants
- VAWA cancellation of removal

VAWA 2000

Expanded VAWA confidentiality protections to U visa crime survivors

VAWA III (2005)

- Extended VAWA confidentiality to include full range of survivors protected
  - All VAWA self-petitioners, VAWA cancellation, T and U visa applicants
  - VAWA Unit can make referrals to victim and legal services
- Applies to DOJ, DHS, and State
- Protects drivers license information for crime victims whose confidential address is critical for their safety

Early Identification of Victims and VAWA Confidentiality

Webinar: February 24, 2017

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 self-petitioners, VAWA cancellation/suspension, T visa, U visa, Battered Spouse Waiver, Abused Visa Holder Spouses

VAWA Confidentiality Prongs

Non- Disclosure

Protects victims who have filed a protected case with DHS

Abuser-Provided Information Prohibition

Includes family members of abusers, crime perpetrators

Protects:

*All victims abused by as 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

Immigration Options for Immigrant Crime Victims and Children

(Red = VAWA Confidentiality Protected Case)

- 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
- VAWA 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
- 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
- Abused Spouse of Visa Holders
  - Spouses battered or subjected to extreme cruelty by spouses with the following visas: A(diplomats), E(3)(Austrailian specialty occupation workers), G (foreign gov- Int'l orgs), H (work visas)
- 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
- Asylum
  - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
  - Domestic violence as gender based asylum

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):
    - Information can only be used if verified
    - Must complete required ICE form filed in the victim's case documenting publicly verified information (ICE Policy 2007and DHS Instruction 11/1/13)
  - "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)

DHS VAWA Confidentiality Computer System

- Directs use of "red flag" "384" computer system to identify victim 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

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, Locational Prohibitions: Preventative Strategies

- Provide victims with proof of victimization
- Work with DHS and local law enforcement to screen for victimization
- Prevent and not pursue actions against victims
- Train personnel who work at prohibited locations
- File skeletal immigration applications
- Advise victim and everyone working with the victim about these protections…they may need to advocate on the spot
- Distribute copies of DHS policies

Prohibition on disclosure:

- **Information about the existence of the case**
- **Any information contained in the case**
- **Action taken on the case by DHS**



NIWAP

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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

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

Narrow Disclosure Exceptions

- Limited disclosure in narrow circumstances
  - Disclosure to law enforcement, national security officials, immigration case judicial review
    - Solely for a legitimate law enforcement or national security purpose; and
    - In a manner that "protects the confidentiality of such information"
  - Benefit granting or public benefits purposes
  - Congressional oversight and data collection
    - Omitting personally identifying information
  - Adult victim waived confidentiality protections

VAWA Confidentiality Violations

- Each violation
  - Disciplinary action and/or
  - $5,000 fine for the individual
- Violations also include making a false certifications in a Notice to Appear
- VAWA Confidentiality Enforcement Guidance CRCL (2008)



VAWA Confidentiality Violations Effect on Immigration Court Proceedings

- Can result in dismissal of the immigration proceeding against the non-citizen (VAWA 2005 legislative history)



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 for release from detention/jail, termination of immigration proceedings, granting immigration relief**

Group Activity on Enforcement

- You (as a table) are either a) a DHS agent or b) a victim advocate as assigned. The scene takes place in a courtroom where a judge is hearing protection order cases. The DHS agent comes to the courthouse to arrest the victim who is with the victim advocate.
  - What would you do to convince the DHS agent not to arrest your immigrant victim client – Victim Advocate
  - What would the DHS agent have to show to arrest the victim without violating VAWA confidentiality –DHS agent

Prevention & Safety = Filing Immigration Case Early

- Screen for VAWA, T and U visa eligibility
  - Lawful Presence
- Filing for immigration relief is required for VAWA self-petitioners to become *qualified immigrants* eligible for federal public benefits
- File immigration applications early
  - With sufficient evidence of abuse
  - Use trauma informed interviewing tool
- New strategy – file immigration case before
  - Protection order, divorce, or custody case
  - Victim travels to a new location

IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY

What is the risk level of the survivor being subjected to immigrant enforcement or immigration-related retaliation from the abuser?

HIGH

Is the survivor eligible for immigrant relief under either VAWA or the U-visa?

NO

Gather information/evidence of crime victimization that could be used to elicit favorable prosecutorial discretion on humanitarian grounds for the survivor, including the following factors:

- **Survivor of a crime (never called the police)**
- **Parent of USC children**
- **School children**[2,3]

File/Serve abuser with notice of a Civil Protection Order (and/or any other family court proceeding, if applicable) to deter abuser from committing further violence against survivor

Abuser attempts to get survivor removed from the U.S. by reporting the survivor to DHS

Victim's representative/ advocate/attorney provides evidence gathered for DHS + copies of DHS memos when DHS arrives[2,3]

DHS stops enforcement[2,4]

YES

File for immigrant relief through either VAWA or the U-visa

[Survivor's case is flagged in the VAWA 384 computer system to prevent immigration enforcement][1,2]

File/Serve abuser with notice of a Civil Protection Order (and/or any other family court proceeding, if applicable) to deter abuser from committing further violence against survivor

Abuser attempts to get survivor removed from the U.S. by reporting the survivor to DHS

DHS enforcement stopped because of 384 system (protection from deportation)

[Approved petition grants survivor work authorization]

[Wait approximately 9 months – one year for **VAWA/U-Visa**]

LOW

File for a Civil Protection Order to deter abuser from committing further violence against survivor

Abuser attempts to get survivor removed from the U.S. by reporting the survivor to DHS

Survivor is detained in immigration custody

Gather information/evidence of crime victimization that could be used to elicit favorable prosecutorial discretion on humanitarian grounds for the survivor, including the following factors:

- **Survivor of a crime (never called the police)**
- **Parent of USC children**
- **School children**[2,3]

Provide information for survivor to be released on humanitarian grounds, if eligible

IF APPROVED…

Survivor is released from detention.

Request a stay of removal with DHS-ICE to buy time to determine what other options are available to the survivor[4]

Determine that the survivor is eligible for U-visa or VAWA, file for immigration remedy and ask for expedited processing[4]

IF APPROVED…

Case against survivor is automatically dismissed even if U-visa or VAWA status has not been approved[2,4]

Prevention & Safety = Filing Immigration Case Early

- Teach clients to memorize "A" numbers of their VAWA, T, and U visa cases
- Give clients letters from your agency
  - Explaining victimization and
  - In process of filing immigration case
- Immigrant victims carry
  - Prima facie determinations
  - U visa certifications

Early Victim Identification, Certification, & VAWA/U-visa Filing

- Cut off perpetrator's ability to trigger the victim's deportation
- Help victim secure:
  - Protection from deportation
  - Release from detention
  - Swift adjudication of immigration case for victims detained or in immigration proceedings
- Provide victim security & support
- Victim can more safely cooperate in criminal case against perpetrator
- Set victim on path to legal work authorization

Safety Planning Challenges Related to Enhanced Immigration Enforcement

- Immigration screening as early as possible is essential
- Cannot assume by name or sight that victim is or is not an immigrant
- Give client the number of consulate notification if she is detained – essential particularly if she has children

Research Findings: Benefits of Collaboration

- Collaborations between law enforcement and community based victim advocates improves
  - Language access
  - U visa certification
  - Law enforcement advocacy with ICE on cases of immigrant victims
- Collaborations on
  - Cases (81.3%); Trainings (71.9%); Community Education (69.2%); SART (58.8%); CCR (57.9%); immigrant community outreach (51.5%)

*Natalia Lee, Daniel J. Quinones, Nawal Ammar & Leslye E. Orloff, National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access (April 16,2013)

Best Practices: Characteristics of Effective Partnerships

- Involves advocates from the community
  - Authentic, develop from living realities of the community
  - Have/gain women's trust
  - Help others step forward
- Real relationships with systems personnel
  - Work together on cases/systems reforms
  - On first name basis
  - Communicate with each other regularly

Resources

- **U-Visa Legal Advocacy: Overview of Effective Policies and Practices** (December 12, 2013)
  - LAV grantee lessons learned successful collaborations with law enforcement
- **Immigrant and Limited English Proficient Victims' Access to the Criminal Justice System: The Importance of Collaboration** (2013)

Using VAWA Confidentiality's Non-Disclosure Protections in Family Court Proceedings

Have you had a case in which a perpetrator sought information about a VAWA, T visa or U visa case in a state court proceeding?

Raise your hand if the perpetrator sought this information in a ---



- Criminal case
- Employment case
- Family law case

What kind of family law case?

Prong 1: Protecting Information About a Survivor's Immigration Case

- Prohibits disclosure of any information about
  - The existence of a VAWA, T or U visa application
  - Information contained in the A file
- Helps survivors who have suffered
  - Battering or extreme cruelty
  - Human trafficking
  - Sexual assault, stalking and other U visa listed crimes
- Disclosure prohibited to all persons, not just the perpetrator

Prong 1: Disclosure Exceptions

- Limited disclosure in narrow circumstances
  - Disclosure to law enforcement or national security officials
    - Solely for a legitimate law enforcement or national security purpose; and
    - In a manner that "protects the confidentiality of such information"

Prong 1: Exceptions to Disclosure

- Judicial review in a manner that protects the confidentiality of the information
- Benefit granting or public benefits purposes
- Congressional oversight and data collection
  - Omitting personally identifying information
- Adult victim waived confidentiality protections

When Does VAWA Confidentiality Protection End?

- Limitation to disclosure ends when application for relief is denied based on **substantive grounds** and all opportunities for appeals have been exhausted.

DHS VAWA Confidentiality Policies

- All DHS policies (2013)
  - VAWA Confidentiality required training
- Immigration and Custom Enforcement Policy (2007)
- U.S. Citizenship and Immigration Services Policies (1997)
- Immigration Judges Policies (1997)

Federal Court Case Law on VAWA Confidentiality

Hawke v. Dep't of Homeland Security
(N.D. CA, 2008) – VAWA Self-Petition Case

- VAWA self-petitioning case
- Protects cases:
  - Denials not based on the merits; and
  - Procedural denials or withdrawals of applications continue to receive full scope of VAWA confidentiality protections
- The exception to VAWA confidentiality for a "judicial review of a determination" applies only to immigration cases

Hawke continued---

- 6th Amendment right to compulsory process does not permit access to absolutely privileged information
- *"Primary purposes of the VAWA confidentiality provision, namely to prohibit disclosure of confidential application materials to the accused batterer"*

Demaj v. Sakaj (D. Conn, 2012) – U Visa Case

- *Although relevant to credibility & impeachment, discovery barred as contrary to the purpose of VAWA confidentiality which is to --*
- Prevent disclosure of documents & information in a protected case file from being used by alleged criminals
- Stop perpetrators' actions to interfere with & undermine a victim's immigration case:
  - Including claims that victim's application was fraudulent or
  - That DHS wrongly approved the victim's U visa case

Demaj v. Sakaj (D. Conn, 2012) – U Visa Case

- Efforts to obtain information through the custody case constituted the kind of interference with the victim's immigration case that was barred by the federal statute
- VAWA confidentiality applies to protect the case file contents, including in cases when
  - the victim discloses in state court that DHS has approved her protected immigration case

EEOC v Koch

- 5th Circuit remand because District Court failed to consider
  - How discovery of U visas might intimidate victims outside of the case before the court
  - Compromising the U visa programs and law enforcement investigations and prosecutions more broadly
  - Koch was an employment case where victims could maintain anonymity
    - Until liability phase of the case
  - That is not possible in a family court case

VAWA Confidentiality

- Strategies in Family Court Cases

Strengthen Options

- By filing victim's immigration cases before serving the perpetrator in a family court case
- Can decide to raise immigration status as part of victim's case
  - Immigration related abuse
  - Show victim on path to stability

Existence **v.** Content

VAWA Confidentiality: Make your Record

- Decide if you want to raise survivor's immigration status as part of your case
- Use motion in limine to offensively prevent discovery or disclosure protected case
- If raised by perpetrator
  - object and make VAWA confidentiality arguments
- Make court aware of case law and memos and offer to brief the issue
- If not granted, create record for appeal ask for specific findings and conclusions of law

Be Prepared: Make your Record

- Decide if you want to raise survivor's immigration status as part of your case
- Use motion *in limine* to offensively prevent discovery or disclosure protected case
- If raised by perpetrator
  - object and make VAWA confidentiality arguments
- Make court aware of case law and memos and offer to brief the issue
- If not granted, create record for appeal ask for specific findings and conclusions of law

Educate the Judge

- Provide context of VAWA:
  - Promote the reporting, investigating and prosecuting of violent crime
  - Allow women to escape abuse
- Strict confidentiality protections
  - Prohibits "use by or disclosure to anyone . . . of any information"
  - Disclosure must be in a manner that continues to protect the confidentiality of the information

Tools to Use In State Court

- *Hawke v. Dep't of Homeland Security* factsheet
- Sample Motion *in Limine* and Brief
- Government Memoranda and Factsheets
  - All DHS Policy Memo (11/1/2013)
  - ICE VAWA Confidentiality Memo (1/22/2007)
  - INS VAWA Confidentiality Memo (5/5/1997)
  - EOIR Procedures for Immigration Judges (1997)

Rule 11 Sanctions

- Designed to deter malicious behavior, abuses, and bad faith acts by
  - Attorneys and pro se parties
- Striking pleadings, written motions, or other papers
- Disciplinary sanctions
- When the claims, defenses, or legal contentions are meant to:
  - Harass;
  - Cause unnecessary delay; or
  - Increase the cost of litigation

Threats: Deportation and Criminal Prosecution

- An attorney who threatens criminal prosecution to a person involved in the same civil case commits moral turpitude, and the attorney's belief in the person's guilt is no defense, and not even a mitigating factor
- Threatening criminal prosecution in order to force a settlement of a civil action is illegal, improper and unprofessional

Small Group Activity

- If you were a judge asked to limit discovery of –
  - The existence of a VAWA, T, and U visa case
  - Information filed in the federal immigration case file
  - Action taken in such a case
- Make a list of all of the questions you would imagine a court would have in a family court case

Report Back

Case Strategy: Steps

1. Object based on relevance
2. Argue that discovery is part of the pattern of immigration related abuse
3. Argue not discoverable under Hawke and Demaj, distinguish Koch
4. Consider motion in limine to keep out
   - Information about immigration status, VAWA or U visa case out of family court case
5. Judge conducts in camera review

Technical Assistance and Materials

- Power Point presentations and materials for this conference at http://niwaplibrary.wcl.american.edu/hawaii2017/
- **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail info@niwap.org

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Questions



Evaluations



QUESTIONS



Thank You!