Domestic Violence Dynamics and Legal Options in Cases Involving Immigrant Litigants

November 30, 2017

Albuquerque, New Mexico

Learning Objectives

By the end of this workshop 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 access legally correct information, practice tools, resources, and on-line training materials on legal rights and options to help immigrant victims

Demographics

What countries are you seeing immigrant survivors coming from?

New Mexico Demographics (2015)

- Total foreign born population = 196,995 (= 9.4% of the state's 2,085,109 population)
  - 36.3% naturalized citizens
  - 60.4% lawful permanent residents or temporary visa holders
  - 3.26% undocumented
- 40.9% entered the U.S. in 2000 or later
- 21.9% of children under 18 have one or more immigrant parents
  - 78.1% of these children are U.S. Citizens

http://www.migrationpolicy.org/data/state-profiles/state/demographics/NM (April 2017)

New Mexico – Countries/Regions of Origin (2015)*

- Latin America - 76.9%
  - Mexico (70.8%)
  - Other Central America (2.6%)
  - South America (1.5%)
- Caribbean - 2.1%
- Canada - 1.7%
- Africa - 1.9%
- Europe - 7.5%
- Asia - 11.0%
  - Eastern China (3.6%)
  - South Central Asia (2.9%)
  - Southeastern Asia (4.4%)
- Limited English Proficiency (Speak English less than very well)
  - Naturalized citizens 36.8%
  - Non-citizens 64.3%

*Source: http://www.migrationinformation.org/datahub/state.cfm?ID=NM (April 2017)

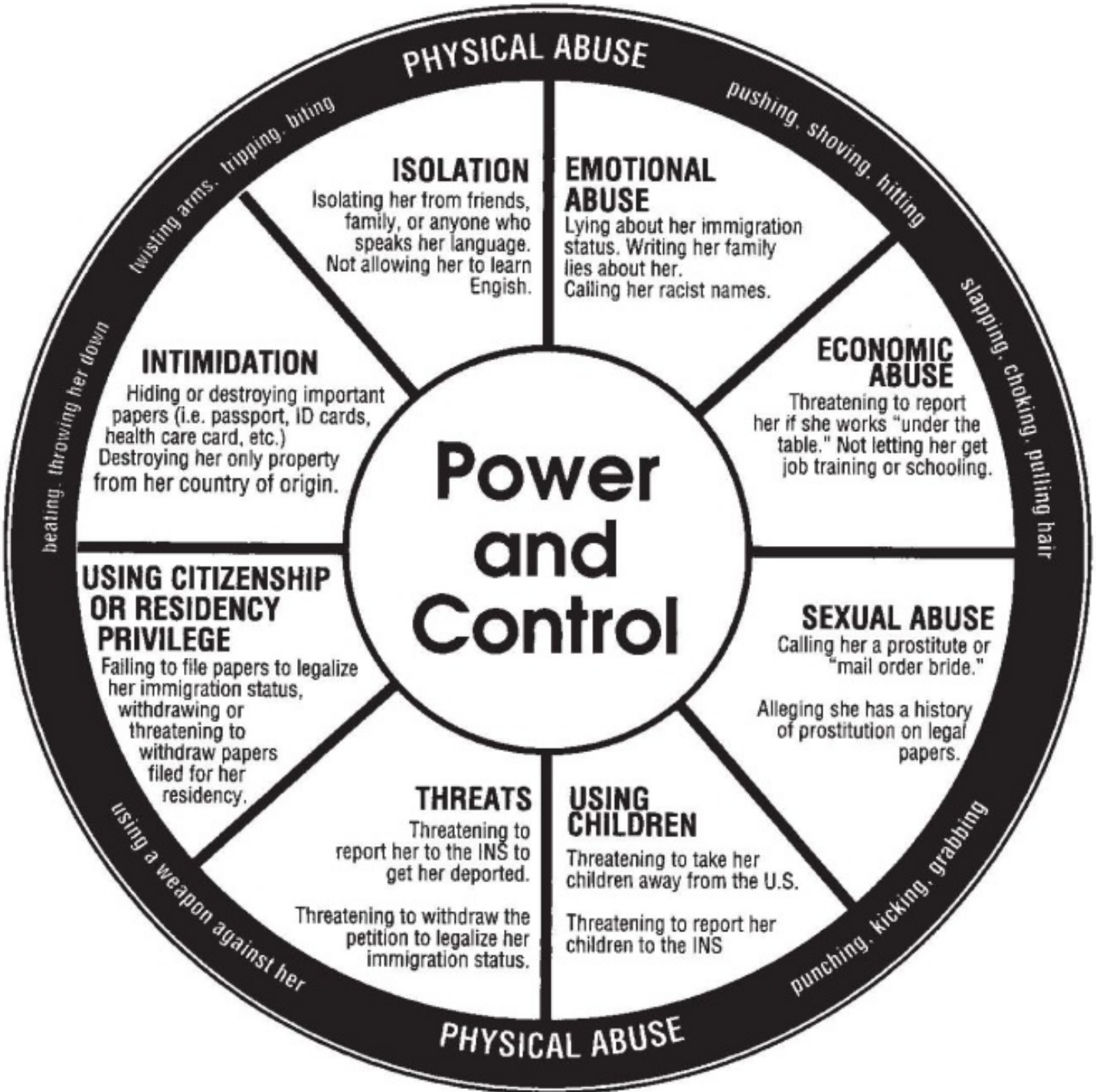
DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS

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


PHYSICAL ABUSE
pushing, shoving, hitting
slapping, choking, pulling hair
punching, kicking, grabbing
using a weapon against her
beating, throwing her down
twisting arms, tripping, biting
Power and Control
ISOLATION
Isolating her from friends, family, or anyone who speaks her language. Not allowing her to learn Engish.
EMOTIONAL ABUSE
Lying about her immigration status. Writing her family lies about her.
Calling her racist names.
ECONOMIC ABUSE
Threatening to report her if she works "under the table." Not letting her get job training or schooling.
SEXUAL ABUSE
Calling her a prostitute or "mail order bride."
Alleging she has a history of prostitution on legal papers.
USING CHILDREN
Threatening to take her children away from the U.S.
Threatening to report her children to the INS
THREATS
Threatening to report her to the INS to get her deported.
Threatening to withdraw the petition to legalize her immigration status.
USING CITIZENSHIP OR RESIDENCY PRIVILEGE
Failing to file papers to legalize her immigration status, withdrawing or threatening to withdraw papers filed for her residency.
INTIMIDATION
Hiding or destroying important papers (i.e. passport, ID cards, health care card, etc.)
Destroying her only property from her country of origin.
PHYSICAL ABUSE

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
  - 72.3% never file immigration papers
  - The 27.7% who did file had a mean delay of **3.97 years**.

Hass, Dutton and Orloff (2000). "Lifetime prevalence of violence against Latina immigrants: Legal and Policy Implications." International Review of Victimology 7 93113

- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

*Edna Erez and Nawal Ammar, Violence Against Immigrant Women and Systemic Responses: An Exploratory Study (2003)

Connection Between Abuse and Control Over Immigration Status

- Abuse rates among immigrant women
  - Lifetime as high as 49.8%
  - Those married to citizens and lawful permanent residents – 50.8%
  - U.S. citizen spouse/former spouse abuse rate rises to 59.5%
- Almost three times the national average

Hass, G. A., Ammar, N., Orloff, L. (2006). Battered Immigrants and U.S. Citizen Spouses

Sexual Assault Rates Among Immigrant Women

- High school aged immigrant girls
  - Twice as likely to have suffered sexual assault as their non-immigrant peers, including recurring sexual assault
  - Decker, M., Raj, A. and Silverman, J., Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation, 13 Violence Against Women 498, 503 (2007).
- Latina college students
  - Experience the highest incidents of attempted rape compared to White, African American and Asian college students
  - Kalof, L., Ethnic Differences in Female Sexual Victimization, 4 Sexuality and Culture 75-97 (2000).

Best Practice: Screen for Immigration Related Abuse

- Immigration Related Abuse
  - 10 times higher in relationships with physical/sexual abuse as opposed to psychological abuse*
  - May predict abuse escalation
  - Corroborates existence of physical and sexual abuse

*Mary Ann Dutton, Leslye Orloff, and Giselle Hass, Characteristics of Help-Seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications (Summer 2000)

Risks of Removal for Victims

- Perpetrators actively reporting for removal victims with pending immigration cases
  - VAWA self-petitioners 38.3%
  - VAWA petitioners arrested at crime scene instead of the abuser 15.4%
  - U visa victims 26.7%
- Traffic stops
  - VAWA self-petitioners 28.6%
  - U visa victims 26.7%

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

Courts Can Play a Role

- Identify potentially eligible immigrants
- Distribute information
  - DHS brochures
  - Non-profit Legal Services Agencies
- Provide language access
- Know how to obtain accurate information about current immigration laws, policies and practices
  - Technical assistance through NIWAP's Judicial Education Network



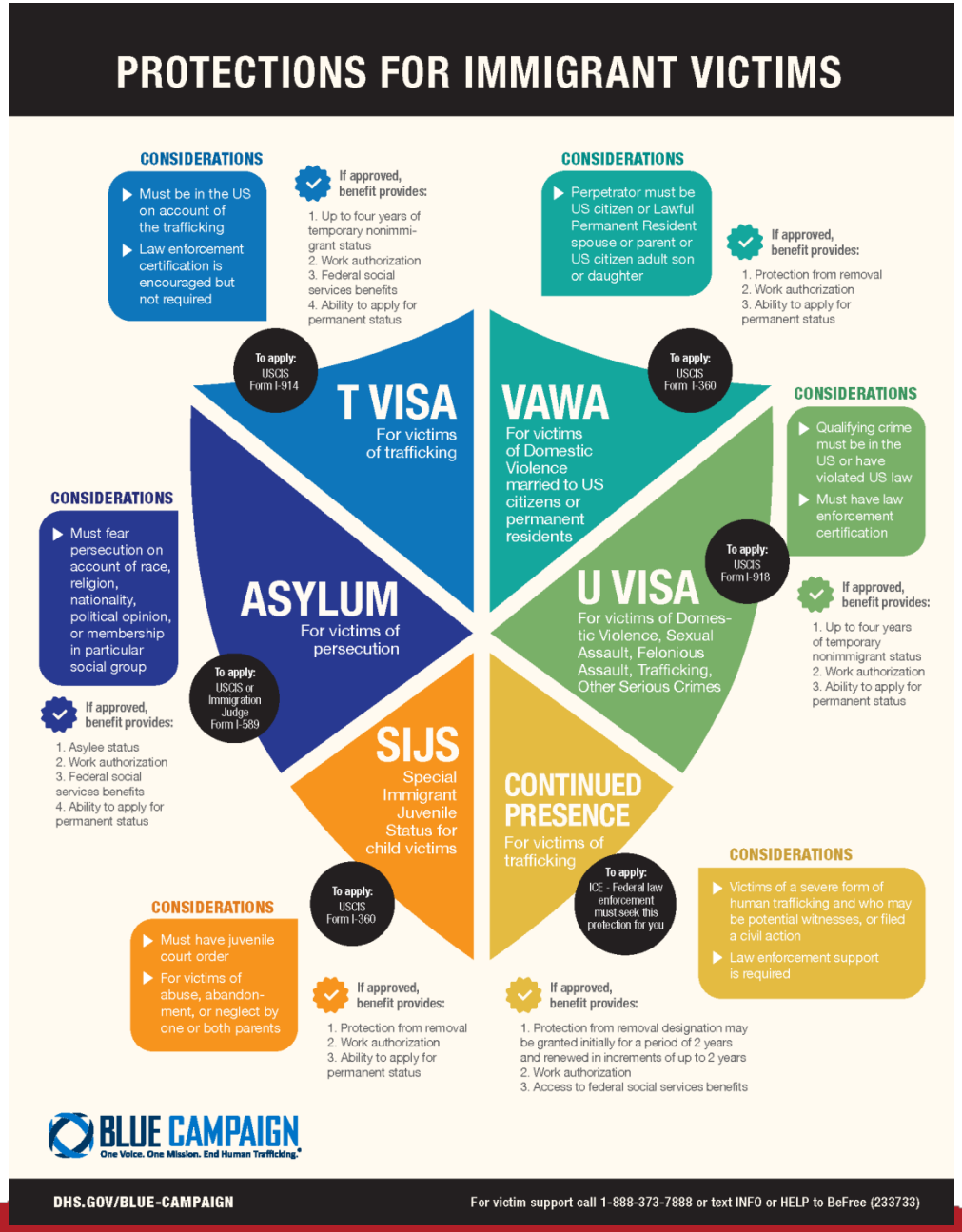
Judicial Findings

- Make detailed findings
  - Family relationships
    - Marriage
    - Parent child relationship
  - Battering, extreme cruelty, child abuse, elder abuse, child abandonment, neglect, sexual assault, stalking
- Federal immigration law role
  - U visa certification
  - Special Immigrant Juvenile Status findings
- Apply and cite state laws

IMMIGRATION OPTIONS FOR IMMIGRANT SURVIVORS

Forms of Immigration Status

- Citizen – generally through birth, naturalization, derivation
- Lawful Permanent Resident
  - Family - 65%
  - Employment – 15%
  - Humanitarian relief
  - Lottery
- Conditional permanent resident
- Refugees, Asylees
- Non-immigrants (e.g. student, tourist, diplomat)
- Deferred Action
- None (undocumented, overstayed visa)


PROTECTIONS FOR IMMIGRANT VICTIMS
CONSIDERATIONS
Must be in the US on account of the trafficking
Law enforcement certification is encouraged but not required
If approved, benefit provides:
1. Up to four years of temporary nonimmigrant status
2. Work authorization
3. Federal social services benefits
4. Ability to apply for permanent status
To apply: USCIS Form I-914
T VISA
For victims of trafficking
CONSIDERATIONS
Perpetrator must be US citizen or Lawful Permanent Resident spouse or parent or US citizen adult son or daughter
If approved, benefit provides:
1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status
To apply: USCIS Form I-360
VAWA
For victims of Domestic Violence married to US citizens or permanent residents
CONSIDERATIONS
Must fear persecution on account of race, religion, nationality, political opinion, or membership in particular social group
If approved, benefit provides:
1. Asylee status
2. Work authorization
3. Federal social services benefits
4. Ability to apply for permanent status
To apply: USCIS or Immigration Judge Form I-589
ASYLUM
For victims of persecution
CONSIDERATIONS
Qualifying crime must be in the US or have violated US law
Must have law enforcement certification
To apply: USCIS Form I-918
U VISA
For victims of Domestic Violence, Sexual Assault, Felonious Assault, Trafficking, Other Serious Crimes
If approved, benefit provides:
1. Up to four years of temporary nonimmigrant status
2. Work authorization
3. Ability to apply for permanent status
CONSIDERATIONS
Must have juvenile court order
For victims of abuse, abandonment, or neglect by one or both parents
To apply: USCIS Form I-360
SIJS
Special Immigrant Juvenile Status for child victims
If approved, benefit provides:
1. Protection from removal
2. Work authorization
3. Ability to apply for permanent status
CONTINUED PRESENCE
For victims of trafficking
To apply: ICE - Federal law enforcement must seek this protection for you
If approved, benefit provides:
1. Protection from removal designation may be granted initially for a period of 2 years and renewed in increments of up to 2 years
2. Work authorization
3. Access to federal social services benefits
CONSIDERATIONS
Victims of a severe form of human trafficking and who may be potential witnesses, or filed a civil action
Law enforcement support is required
BLUE CAMPAIGN
One Voice. One Mission. End Human Trafficking.
DHS.GOV/BLUE-CAMPAIGN
For victim support call 1-888-373-7888 or text INFO or HELP to BeFree (233733)

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

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 and their agents

Protects:

*All victims abused by a spouse or parent

*All victims in the process of applying for U or T visas

*Abused spouses of visa holders with VAWA work authorization filed

Location Prohibitions

Protects:

All Victims

Requires:

No action at protected locations OR

Notice to Appear must state how they complied with VAWA confidentiality

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

Enforcement prohibited locations



- 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
  - DHS
  - ICE **New courthouse enforcement policies**

Why is VAWA Confidentiality important for state courts?

- Prohibited enforcement locations include courthouses
- Perpetrators are using state court discovery to obtain federal VAWA confidentiality protected information that
  - DHS will not release
  - Cannot be released under federal law

VAWA Confidentiality Violations



- Sanctions for each violation by federal government officials
  - Disciplinary action and/or
  - $5,000 fine for the individual

- Dismissal of the immigration proceeding against the non-citizen

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

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)(Australian 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

Access to Legal Immigration Status

- Provides a path to economic security
  - Work authorization
  - Driver's licenses
  - Financial aid to attend university
  - Health care exchange access
  - Benefits vary by state and form of immigration status
- Removes fear of deportation, promotes stability and facilitates access to:
  - Nurturing family relationships
  - Stable school environment
  - Mentors, role models and community support

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

Qualifying Criminal Activity

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

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

Certification Required From:

DHS U and T Resource Guide states:
"law enforcement" &"law enforcement agencies" =

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

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

Benefits and Services Open to All Immigrant Victims

Which Benefits Which Immigrants Can Access: Why Courts Need to Know

- Courts do not order immigrants to access benefits they are not legally eligible for
- Connect immigrant families and children to benefits and services they qualify for

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

Former Attorney General Janet Reno



- In-kind services
- Provided at the community level
- Not based on the individual's 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
- Emergency shelter or transitional 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

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

Immigration Relief Expands Benefits Access

VAWA self-petition

- Filing = Public/Assisted Housing
- Prima facie = Qualified Immigrant
  - TANF, Education, Health subsidies; SNAP for 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 = health care exchanges no subsidies

Family Based Visa Petition Approved + Battering or Extreme Cruelty

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

Special Immigrant Juvenile

- Eligible for subsidized health care upon filing through age 21

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

Partial List of Federal Public Benefits/Community Programs Open to All "Qualified Immigrants"

- Public and assisted housing
- Post-secondary educational grants & loans
- Driver's Licenses
- 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

National Immigrant Women's Advocacy Project Resources

NIWAP Resources for Judges

- Training
- Technical Assistance for judges and court staff
- Outreach list for judges and courts
- Training materials
  - Bench cards
  - Toolkits
  - DHS outreach materials
  - NIWAP library

NIWAP Topics for Judges

- VAWA, T Visas, U Visas
- Language access
- Immigration allegations in custody, CPOs, and divorce
- SIJS, child abuse, and protective battered immigrant parents
- Public benefits access for immigrant victims
- VAWA confidentiality
- U Visa certification
- Human trafficking

Technical Assistance and Materials

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

Thank you!