

Immigrant Survivors Legal Rights, Protections, Options and Opportunities Under Immigration, Family and Public Benefits Laws

Gulf Coast Center for Nonviolence

August 14, 2018

Biloxi, Mississippi

Learning Objectives

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

- Identify and screen immigrant survivors early for immigration relief
- Promote access to public benefits and publically funded services that immigrant victims are eligible to receive
- Help immigrant victims win custody of children and obtain protection

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

Demographics

Mississippi Demographics (2016)*

- ❖ Total foreign born population – 58,766
 - ❖ 2% of the state's 3 million people are foreign born
 - 40% naturalized citizens
 - ≈17.5 lawful permanent residents and temporary status
 - ≈42.5% undocumented
- <http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/MS>
- ❖ 47.3% rise in immigrant population from 2000 to 2016
 - ❖ 5% of children in the state under age 18 have 1 or more immigrant parents
 - 88.9% of children with immigrant parents in the state are U.S. native.

*Source: <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MS>
(Feb. 2018)

Mississippi– Countries/Regions of Origin and Limited English Proficiency (2016)*

- ▶ Americas – 47.9%
 - ▶ Mexico (30%)
 - ▶ South America (4.2%)
 - ▶ Canada (3.1%)
- ▶ Asia – 31.2%
 - ▶ China (6.7%)
 - ▶ India (6.1%)
 - ▶ Philippines (6%)
 - ▶ Vietnam (5.5%)
 - ▶ Japan (2.4%)
- ▶ Europe – 8.9%
 - ▶ Germany (2.5%)
 - ▶ United Kingdom (1.7%)

- ▶ Africa – 5.4%
- ▶ Middle East – 3.2%

Limited English Proficiency
(Speak English less than very well)

- ▶ Naturalized citizens 26.9%
- ▶ Non-citizens 51.8%

Languages Spoken at Home

- ❖ Spanish (67,256)
- ❖ Vietnamese (5,951)
- ❖ French (3,983)
- ❖ Mandarin or Cantonese (3,740)
- ❖ German (3,116)
- ❖ Tagalog (2,837)
- ❖ Arabic (2,114)

*Source: <https://www.migrationpolicy.org/data/state-profiles/state/language/MS>
(Feb. 2018)

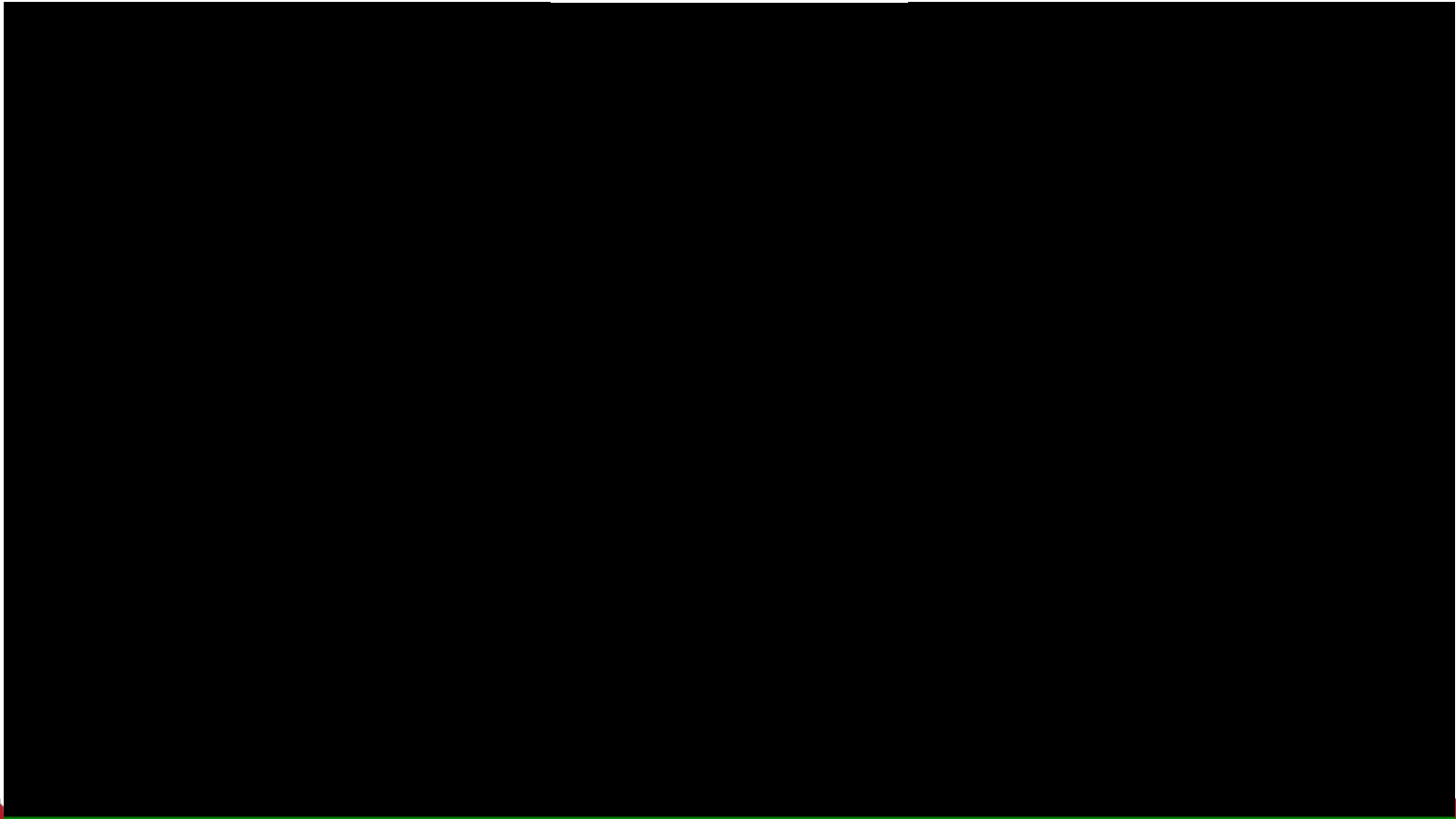
DYNAMICS AND BARRIERS FOR IMMIGRANT AND REFUGEE SURVIVORS

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

Major Challenges in working with Immigrant Victims of Crime

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

Department of Homeland Security



Immigration Related Abuse

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

Connection Between Abuse and Control Over Immigration Status

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

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

Coercive Control Over Immigration Status

- Among abusive spouses who could have filed legal immigration papers for survivors:
 - 72.3% never file immigration papers
 - The 27.7% who did file had a mean delay of **3.97 years.**
- 65% of immigrant survivors report some form of immigration related abuse (NIJ, 2003)

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

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



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)

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).

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

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

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

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



Raise Your Hand if...

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

VAWA Confidentiality Prongs

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

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

Locational Prohibitions

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



January 2018 ICE Courthouse Enforcement Policy

Limit enforcement to targeted immigrant

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

DHS VAWA Confidentiality Computer System

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

Prohibitions on Release of Information and VAWA Confidentiality Red Flag System Cases

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

Protecting Information About a Survivor's Immigration Case

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

VAWA Confidentiality Violations



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

Improving Immigrant Victim Safety Through Early Screening

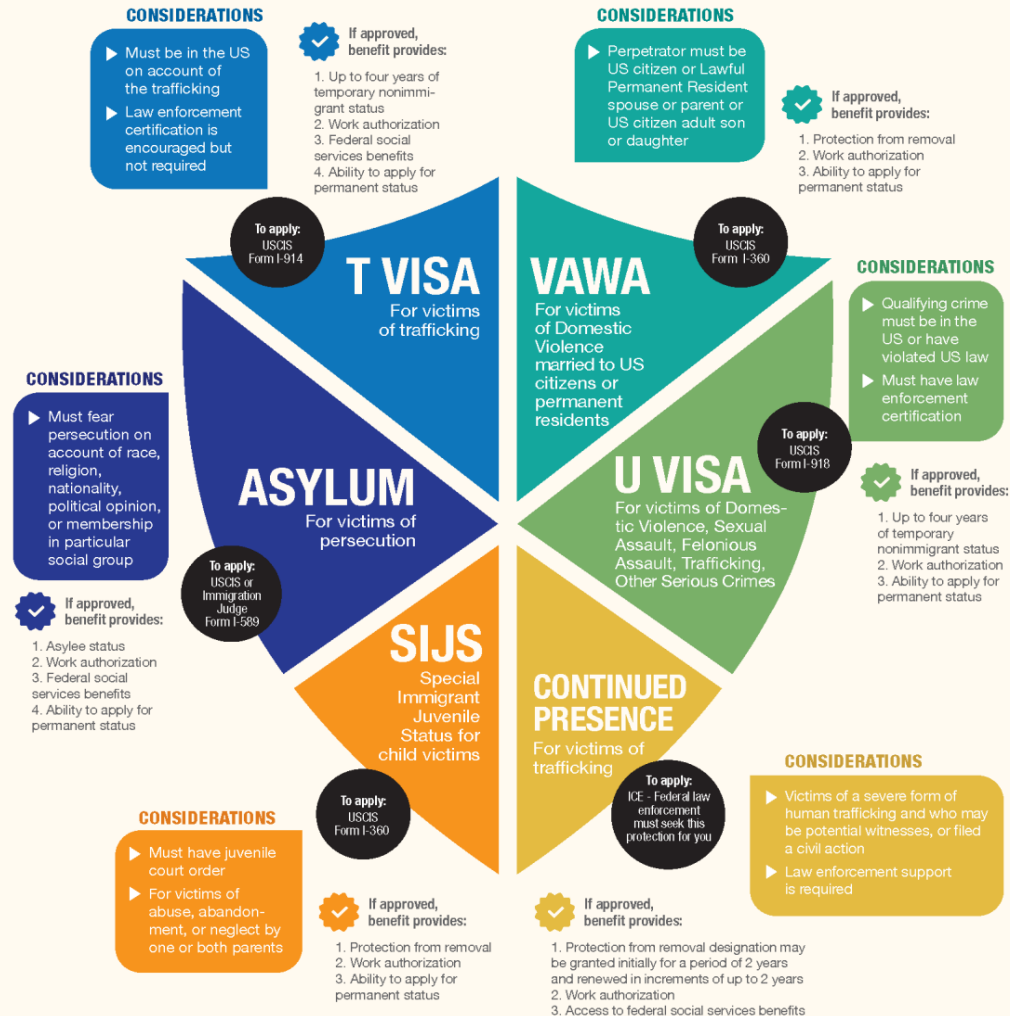
- Know forms of immigration relief immigrant survivors qualify for
- Document history of abuse
- Know differences between immigration options
- Incorporate into safety planning
 - How victim can safely carry DHS document copies

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

Violence Against Women Act Protections for Immigrant Survivors

PROTECTIONS FOR IMMIGRANT VICTIMS



DHS.GOV/BLUE-CAMPAIGN

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

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

Importance of Immigration Status

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

Purpose of Immigration Relief for Survivors

- Improves access to justice
- Helps build community policing and relationships
- Increases prosecution of perpetrators
- Allows victims to report crimes without fear of deportation
- Keeps communities safe

Potential Immigration Remedies

- Applications filed with DHS
 - VAWA self petition
 - Battered spouse waivers
 - Work authorization for abused spouses of work visa holders
 - U-visa (crime victims)
 - T-visa (victims of trafficking)
 - Special Immigrant Juvenile Status
- Forms of relief from removal- granted by Immigration Judge
 - VAWA cancellation of removal
 - VAWA suspension of deportation

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

Forms of Extreme Cruelty

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

VAWA self-petitioning available

- If case filed within 2 years of marriage termination
- Bigamy + unknowing immigrant “spouse”
- Child abuse up to age of 25 to file
- Step children up until divorce
- Credible evidence standard of proof (police report, protection order, medical records NOT required)

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 ($\approx$ 3 months)
- Employment authorization:
 - Citizen abuser ($\approx$ 6 months);
 - Lawful permanent resident abuser ($\approx$ 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 ($\approx$ 3+ years)

U Visa Requirements

- Victim of a qualifying criminal activity
- Has been, is being, or is likely to be helpful in
 - Detection, investigation, prosecution, conviction or sentencing
- Suffered substantial physical or mental abuse as a result of the victimization
- Possesses information about the crime
- Crime occurred in the U.S. or violated U.S. law

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



Large Group Discussion

- Have you helped victims obtain U Visa Certifications?
- From whom?
- What has been your experience with U visa certification requests?

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 Certification Considerations

- What criminal activity occurred?
- Identify the victim or indirect victim
 - Note injuries observed, if any
- Determine helpfulness of the victim
- Determine if any family members were implicated in the crime

U-visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
 - Waitlist approval backlog 110,000 visas
- The U-visa grants a temporary 4 year stay
- Work authorization (≈ 36-48 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

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, or dependency
 - By at least **one parent**
- Eligibility requires state court jurisdiction over
 - the care, custody, or dependency of the child
 - has issued a court order, finding, or declaration on three statutorily required issues

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

State Court Findings Needed for SIJS

State Law Applies To Each

- The court issued orders regarding the care or custody, 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
- It is not in the child's best interest to return to their home country
 - Best caregiver identification/often not necessary to compare countries
- Reunification of the child is not viable with a parent due to the parent's abuse, abandonment, neglect, or dependency

All of the Following are Potentially Eligible for SIJS

- A minor who is:
 - Abused, abandoned or neglected
 - In the U.S.
 - In the home country
 - Living with their
 - Non-abusive parent; Guardian
 - Adopted parent; State foster care
 - Federal foster care (ORR)
 - Child included in their mother's U visa application

What Children with SIJ Status Receive

- While case is pending:
 - Protection from deportation and removal
 - Health care exchanges (no subsidies)
 - Services necessary to protect life and safety
- At approval: ($\approx$ 6-12 months)
 - Can apply for Lawful Permanent Residency (separate but usually concurrent filing)
 - Legal work authorization & driver's licenses
- When granted Lawful Permanent Residency
 - Eligible for citizenship after 5 years

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

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

Small Group Activity

Hypothetical Case
Immigration Relief

Maura is 17 years old and from Mexico. She came to the U.S. at age 5, crossing the border with her mother; her father abandoned Maura when she was 3 months old. When Maura was 15 years old, her mother married Jose, a lawful permanent resident abuser.

After enduring 5 years in the abusive household and sexual advances from her step-father, Maura left home and moved in with Juan a U.S. citizen, who started battering Maura when she became pregnant with their child.

During an incident of abuse, the neighbors heard Maura screaming and called the police. When they arrived, Maura described the incident to the police officer, but fearing that she would get deported, she did not appear at the hearing on the domestic violence charge. The charge was amended to misdemeanor battery. Juan pled no contest and was convicted of battery.

For what forms of immigration relief is Maura eligible to receive?

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



Immigrants and Benefits: True or False

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

Access for All

Both documented and undocumented immigrant survivors can access:

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

Attorney General's List of Required Services

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

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

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



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

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

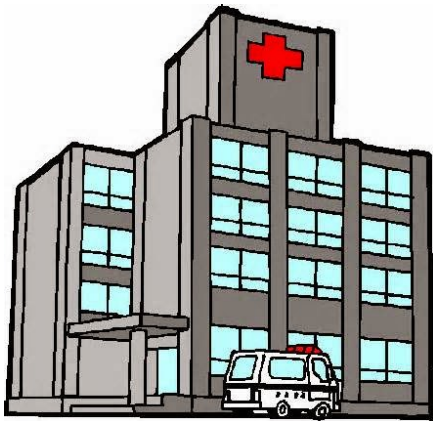
Health Care Open to All Immigrants

- 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



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

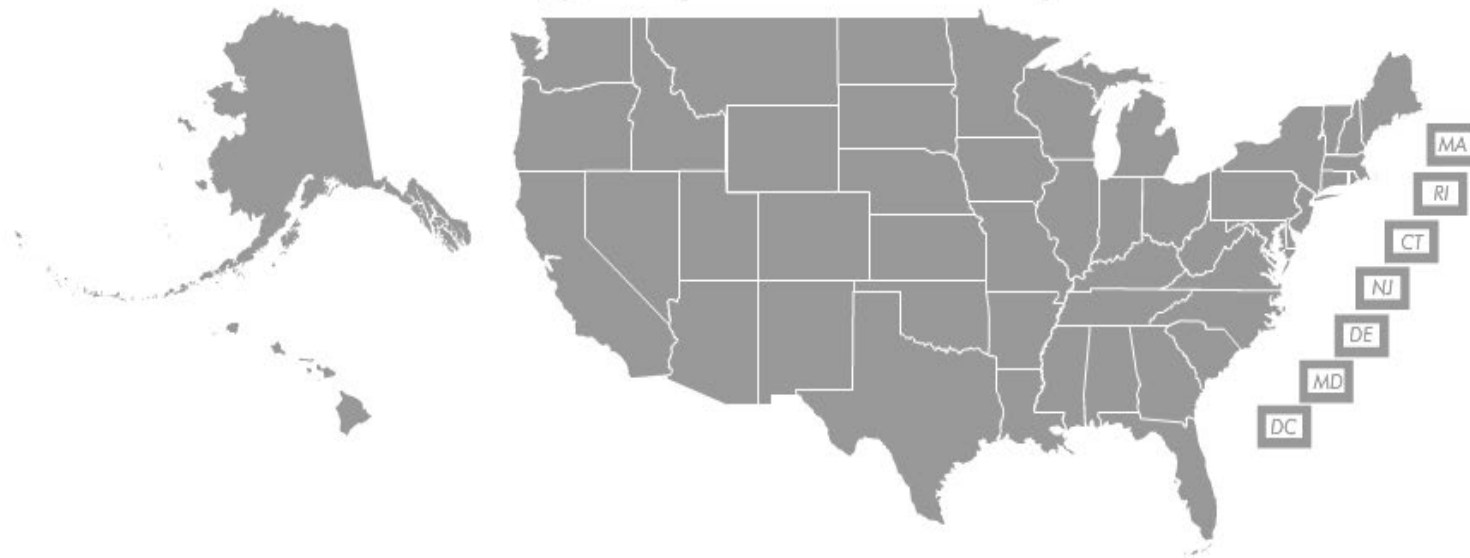


Resources:

Healthcare for Immigrant Victims

- State by state charts
 - Post assault health care
 - Emergency Medicare
 - Forensic Exams
 - Prenatal Care

NIWAP Demographics Map



Demographics

TANF

Health Care

Post-Assault Care

Pre-Natal Care

Emergency Medicaid

Forensic Exams

Child Care

Driver's Licenses

Food Programs

In-State Tuition

SSI

Energy/Weatherization

If you have additional questions or need technical assistance on immigrant victim access to federal and state public benefits, contact NIWAP by e-mail at info@niwap.org or by phone at 202-274-4457.

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

Immigration Relief Expands Benefits Access

VAWA self-petition

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

Battered spouse waiver

- Qualified Immigrant

Continued Presence

- Benefits access like refugees
- Need HHS certification

T visa

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

U visa

- No federal benefits until lawful permanent residency + 40 quarters approval

Special Immigrant Juvenile

- Health care exchange upon filing
- Qualified Immigrant upon lawful permanent residency

Deferred Action for Childhood Arrival (DACA) and Undocumented

- No benefits access

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
- 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

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

Public and Assisted Housing & SAVE

- At filing VAWA self-petitioners = satisfactory status for public and assisted housing
- VAWA confidentiality: DHS does not place victims into SAVE until they receive work authorization
- How to complete SAVE for VAWA self-petitioners
 - Enter into SAVE the VAWA immigrant survivor's:
 - Name + A# + Date of birth
 - System issues “Match” or “No Match” response
 - 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

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

Benefits for Victims in Mississippi

- TANF and TANF funded child care
 - Lawful permanent residents with 40 quarters
 - VAWA Self-petitioners, SIJS, U visa
 - Continued presence, T bona fide, Refugees, Asylees (5 year limit)
- SNAP
 - VAWA prima facie children
 - VAWA prima facie adults if entered before 8/22/96 or 5 year bar
 - T visa and Continued presence with HHS certification
 - Refugees and Asylees
 - SIJS with lawful permanent residency while under 18
- LIHEAP – Federal Weatherization Assistance
 - VAWA prima facie
 - T bona fide and continued presence with HHS certification
 - U visas and SIJS with lawful permanent residence

Benefits for Victims in Mississippi

- Health Care Exchanges
 - VAWA prima facie
 - T visa and Continued presence with HHS certification
 - U visas with wait list approval
 - SIJS applicant children
- Subsidized Health Care
 - Lawful permanent residency + 40 quarters
 - Self-petitioners, SIJS, U visas – exception military
 - VAWA prima facie if entered before 8/22/96
 - T visas and Continued presence with HHS certification – 7 year limit

Benefits for Victims in Mississippi

- Driver's License –Federally Recognized ID
 - At lawful permanent residency or
 - With valid visa (e.g. U visa, T visa, work visa)
- Shelter and Transitional Housing –no immigration restrictions
- Public and Assisted Housing
 - VAWA applicants
 - T visa and continued presence with HHS certification
 - SIJS/U visa with lawful permanent residency
- Education – Federal FAFSA
 - VAWA prima facie
 - T visa and Continued presence with HHS certification
 - SIJS children and U visas with lawful permanent residency

Benefits for Victims in Mississippi

- FEMA Federal No immigration restrictions
 - Short-term non cash emergency disaster relief
 - 1 month of D-SNAP with no immigration restrictions
- FEMA Restricted programs
 - Individual and Household Program and Disaster Unemployment Assistance
 - VAWA prima facie
 - T bona fide and continued presence with HHS certification
 - SIJS and U with lawful permanent residency

Large Group Discussion

- Have you worked with immigrant survivors who had difficulty accessing any of these programs?
- Did you accompany when they applied?

Importance of Victim Advocacy

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

IMMIGRANT VICTIMS, CUSTODY AND PROTECTION ORDERS

Is Immigration Status Relevant to Custody?

- Relevant to: Immigrant crime victim presents evidence of immigration related abuse, power and control suffered
 - Either not filing or withdrawing immigration papers
 - Threats to turn victim in for deportation
 - Part of history of violence
- Not relevant to:
 - Core primary caretaker determination
 - Evaluation of parenting skills
 - Best interests of the child determination
 - Requirements regarding custody awards to non-abusive parent



ABA Center on Children & The Law

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

Myth vs. Fact:

Parents without Legal Immigration Status

Myth

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

Fact

1. DHS policies prevent detention/removal of immigrant parents who are crime victims
2. US citizens and lawful permanent residents are more likely to flee with children, especially when
 - There have been threats of kidnapping children
 - They are dual nationals
 - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief, work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for his children.

Immigrant Parents and Child Custody

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

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

Detained Parent Directive Aug 2017

- If parents are detained:
 - Placement near family court when ongoing family court/child welfare cases
 - Bring parents to family court to participate in cases involving children
 - Alternate: video or teleconference participation
 - Facilitate visitation when required by family/child welfare court order
 - Help children travel with deported parent – obtain passports for children

PROTECTION ORDERS



Protection Orders

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

Use Creative Remedies to...

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

National Immigrant Women's Advocacy Project Resources

NIWAP Web library

niwaplibrary.wcl.american.edu



Introduction

Newsletters-FAQs

Trainings

Past Trainings

Manuals

Immigration

Public Benefits & Economic Relief

Family Law

Law Enforcement

Judges

Dynamics, Culture, & Safety

Language Access

Access to Legal Services

VAWA Confidentiality

Criminal Justice

Public Policy

Research

Statutes

Legislative History

Regulations and Policies

Multilingual Materials

niwaplibrary.wcl.american.edu

Type here to search



Types of Technical Assistance

- Case consultations
- Training materials and practice tools
- Legal research, motions, briefs
- In-person trainings and webinars
- 24/7 web library and training videos
- Help developing policies/protocols
- Strategies for removing systemic barriers
- Community of Practice and Roundtables
- List serves

NIWAP Topics

- VAWA, U and T Visas, Gender based asylum, SIJS
- VAWA confidentiality
- U and T Visa certification
- Language access and legal services access
- Immigration allegations in custody, CPOs, and divorce
- Special Immigrant Juvenile Status (SIJS), child abuse, and protective battered immigrant parents
- Public benefits access for immigrant victims
 - Health care, housing, TANF, SNAP, FAFSA, and more
- Serving victim's cultural, religious, and immigration needs
- Providing trauma informed help for immigrant survivors

Interested in Joining the Community of Practice or Roundtable

- Application available at:
www.niwap.org/go/COPapplication
- To register for the Law Enforcement & Prosecution U Visa Roundtable, visit
<http://www.niwap.org/go/LEAroundtables>
[/](#)

Technical Assistance and Materials

- **Materials for this training:**
 - www.niwap.org/go/Biloxi-18
- **NIWAP Technical Assistance:**
 - Call (202) 274-4457
 - E-mail niwap@wcl.american.edu
- **Web Library:**
www.niwaplibrary.wcl.american.edu

