Protection of Immigrant Crime Victims

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D.C. Superior Court

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Introductions

- Leslye Orloff
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  - Materials: www.niwap.org/go/DCSC2017
  - Web Library: http://niwaplibrary.wcl.american.edu/

Learning Objectives

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

- Know how accurate immigration law information results in just and fair outcomes in family court
- Recognize facts that indicate a party qualifies for:
  - Legal immigration status
  - Protection from deportation as a crime victim
- Understand the role Congress envisioned for judges signing U visa certifications
- Make appropriate findings in state court cases needed for or helpful to an immigrant crime victim's immigration case

Participant Goals

- What do you want to be sure to learn today?

What countries are you seeing immigrant survivors coming from?

District of Columbia Demographics (2015)*

- Total foreign born population – 95,117
- 14.1% of the district's 672,228 people is foreign born
  - 43.8% naturalized citizens
  - ~27.8% legal permanent residents or temporary visa holders
  - ~28.4% undocumented
- 26.3% entered the U.S. since 2010
- 24.4% of children in the state under age 18 have 1 or more immigrant parents
  - 85.7% of children with immigrant parents in the DC are U.S. citizens

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

District of Columbia – Countries/Regions of Origin (2015)*

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

- Latin America –40.3%
  - Caribbean (9.8%)
  - El Salvador (13.4%)
  - Other Central America (8.6%)
  - South America (7.6%)
- Europe – 18.1%
  - Eastern Europe (5.0%)
  - Northern Europe (5.2%)
  - Western Europe (5.3%)
  - Southern Europe (2.5%)
- Canada – 2.7%
- Middle East – 2.4%
- Oceania – 1.3%
- Asia – 23.1%
  - Southeastern Asia – including Philippines, Vietnam (5.3%)
  - South Central Asia – including India, Iran (7.9%)
  - China/Taiwan (4.7%)
- Africa – 14.6%
  - Eastern Africa (7.3%)
  - Western Africa (4.0%)
- Language spoken
  - 17.4% of population speak a language other than English at home
  - 28.6% of foreign born persons are LEP - speak English less than "very well"

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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

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



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%

What barriers and fears prevent immigrant victims from

- Turning to court for help
  - Protection orders
  - Custody cases
  - Child abuse cases
- Reporting crimes to police

If they report…

- They will be deported
- Offender will retaliate
  - Harm them
  - Harm family members
  - Harm children
- Nothing will happen
- Cannot communicate with officers, judges, court staff, attorneys, advocates

Fears & Misconceptions

- Do not trust police/prosecutors
- Economic survival
- Pressures from both families
- Fear of abandoning the home/community
- Fear of losing children
- Religious factors
- Fear of unknown

- Victim believes that if perpetrator deported she has to go with him
  Dangers in the home country
  - Retaliation
  - Ostracism
  - Police
  - Political instability
  - Gender barriers

DHS Priorities for Victim Protection

- DHS victim witness protection memo
- Humanitarian release
  - Pregnant women and nursing mothers
- 384 DHS computer system (VAWA, T visas, U visas)
- Still in effect

Informing Immigrant Victims About Legal Options Under U.S. Immigration Laws

How does attaining legal immigration status benefit survivors?

Benefits for Survivors

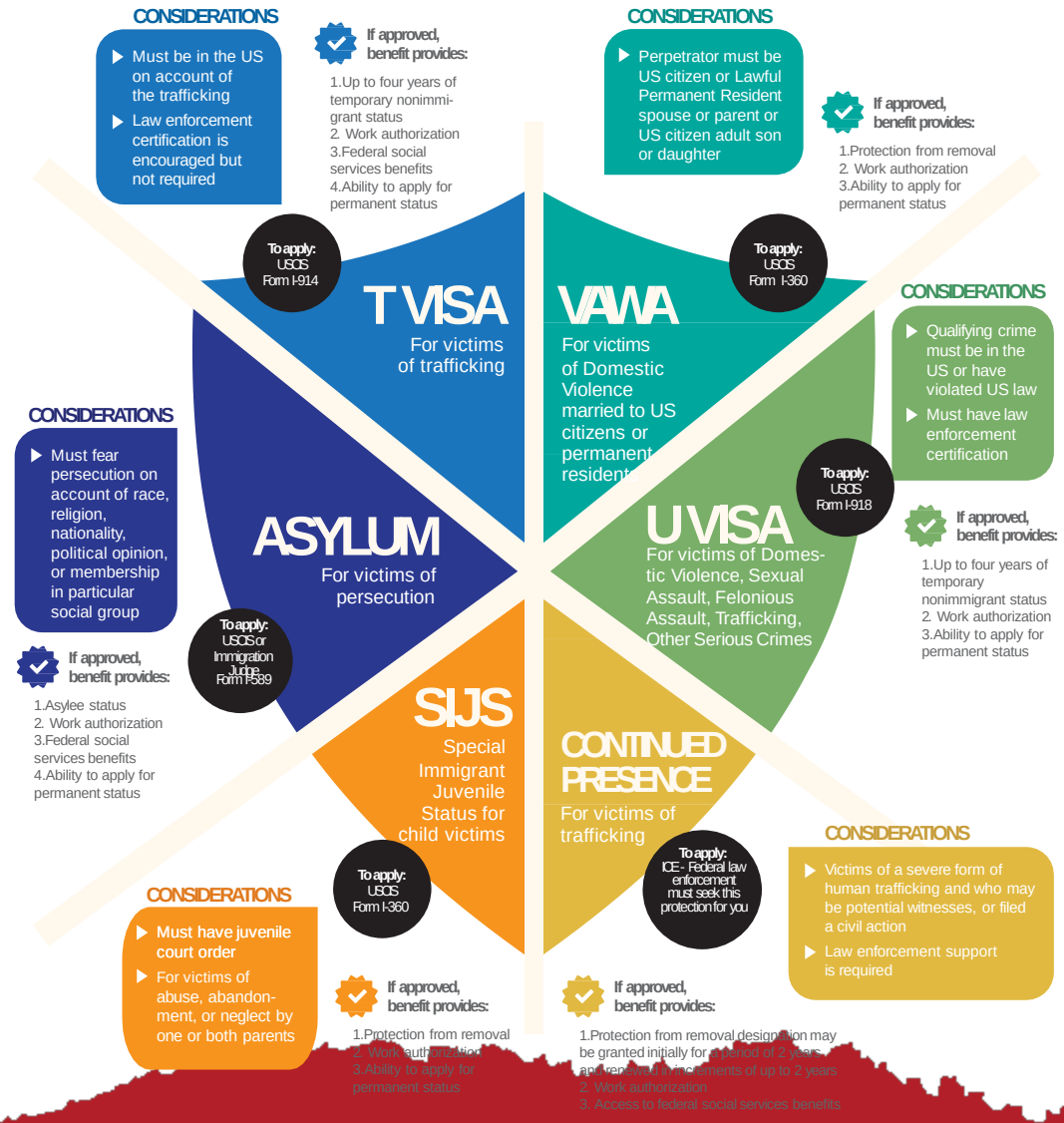
- Protection from deportation
- Enhanced safety for survivors
- Financial independence from perpetrator
- Legal work authorization (7-28 months of filing)
- VAWA confidentiality
- Temporary legal immigration status
- Protections for family members
- Improved outcomes for victims and their children in family court
- Better access to survivor services, health care, and benefits

Immigrant Victims and Children Receive

- Protection from deportation
- Legal work authorization which brings access to drivers licenses upon
  - Approval or wait list approval
- Access to some federal public benefits
  - Varies by immigration case type
- VAWA confidentiality protection upon filing VAWA, T or U visa case

Forms of Immigration Protection for Victims

PROTECTIONS FOR IMMIGRANT VICTIMS



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

- 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
  - 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
- Asylum
  - Well founded fear of persecution on account of race, religion, nationality, political opinion, social group
  - Domestic violence as gender based asylum
- 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
- 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
- DHS Prosecutorial Discretion
  - "low priority" for removal immigrants -- survivors, witnesses, parents, children, elderly, disabled
  - Humanitarian detention release

Materials overview of remedies - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits

Immigration Law's Domestic Violence Definition "Battering or Extreme Cruelty"

Any state crime committed against a family member sufficient for issuance of a protection order including sexual abuse, stalking, threats, attempts AND/OR:

- Emotional abuse;
- Economic abuse;
- Using children;
- *Deportation threats and immigration related abuse*;
- Intimidation;
- Social isolation;
- Degradation;
- Possessiveness;
- Coercive control;
- Harming pets

Victim Protection Help

- Adult/child/elder victims of
  - Domestic violence (battering or extreme cruelty)
  - Sexual assault
  - Human trafficking
  - Dating violence
  - Stalking
  - Many violent crimes
- Child victims of abuse, abandonment and neglect

Immigrant Children in Family Court

- May have options for legal immigration status
  - Child's own application
  - Child included in parent's application
- Immigrant children's best interests are promoted when state courts:
  - Issue detailed findings required for children to apply for Special Immigrant Juvenile Status
  - Sign U visa certifications
  - Award custody to non-abusive parents, family members, guardians
    - Without regard to the custodian's immigrations status
- Distribute U.S. DHS legal rights for victims/children brochures

Inform, Screen, and Initiate Immigration Case Early

Courts

- Can be first responder
- Distribute information
- Provide language access
- Recognized potentially eligible immigrants
  - Requests of counsel
  - Referrals to services
- Know how to access accurate information about immigration laws

Attorneys, Advocates, Case Workers

- Know forms of immigration relief for victims
- Document history of abuse
- Help victim file case ASAP
  - DHS VAWA confidentiality computer system protection
  - Prima Facie evidence
- Effect on safety planning
  - Service of process
  - Victims carry evidence of filing

VAWA Confidentiality

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



Prohibition on disclosure:

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



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)



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

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 (2016)

- 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

When Federal Immigration Laws Create a Role for State Courts: Special Immigrant Juvenile Status and the U Visa

State Courts' Role:

- Make detailed findings
- Federal immigration law role
  - U visa certification
  - Special Immigrant Juvenile Status findings
- Increases courts options for orders re: children and custodial parents, guardians and kinship care:
  - Greater access to state and federal public benefits
  - Can obtain drivers licenses
  - Legal work authorization
  - Protection from deportation

Promoting Access to Justice With Immigrant Communities

- Courts benefit from building relationships with immigrant serving organizations (National Center for State Courts)
- Court as first responder to provide language access
  - DHS brochure distribution educates victims
- U Visa certification builds trust in justice system

Federal Immigration Law Create Three Specific Roles for State Court Judges

- U visa certification
- T visa endorsement
- SIJS required findings

U Visas and U Visa Certification

U Visa for Immigrant Victims

- A victim of qualifying criminal activity is eligible for a U Visa when:
  - The criminal activity occurred in the U.S. **or** violated U.S. law;
  - The victims possesses information about the crime;
  - The victim has been, is being, or is likely to be helpful in the detection, investigation, prosecution, conviction or sentencing of the offense; and
  - The victim has suffered substantial physical or mental abuse as a result of the victimization

U Visa Qualifying Criminal Activity

- Domestic violence
- Sexual assault
- Rape
- Incest
- Prostitution
- Torture
- Felonious assault
- Manslaughter
- Murder
- Female genital mutilation
- Kidnapping
- Abduction
- Trafficking
- Involuntary servitude
- Slave trade
- Being held hostage
- Fraud Foreign Labor Contracting
- Peonage
- False Imprisonment
- Blackmail
- Extortion
- Witness tampering
- Obstruction of justice
- Perjury
- Stalking

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

U Visa Criminal Activities

- Domestic violence 45.9%
- Rape, sexual assault, incest, trafficking 30.4%
- Felonious assault, murder, manslaughter 9.9%
- Kidnapping, being held hostage, unlawful criminal restraint, torture 8.47%
- Blackmail, extortion, perjury, obstruction of justice, attempts, conspiracy, solicitation 5.3%

The U-visa Application Process



Typical length of process = 28 months

Helpfulness in the Regulations

- Under the statute, DHS determines whether a victim:
  - has been helpful, is being helpful or is likely to be helpful in the
    - Detection, or Investigation, or Prosecution, or Conviction or Sentencing
- Any helpfulness is sufficient – DHS states
  - Includes filing for a protection order, OR
  - Rising domestic violence issues in a custody case, OR
  - Any participation in a criminal case

Helpfulness in the Regulations

- Judges, law enforcement and other certifiers
  - May complete U visa certification if they observe or detect a victim's helpfulness
  - Can be a civil, family or criminal case
- The investigation, prosecution or case
  - Can still be ongoing
  - Can be closed
  - May have settled
  - Occurred a long time ago
  - May never have been prosecuted

Examples of Helpfulness

- Calling 911 to report a crime
- Filing a police report
- Providing a statement to police, prosecutor, court
- Seeking a protection order
- Litigating the abuse as part of a custody case
- Appearing at court in a criminal case
- Serving as a witness in a prior prosecution
- Testimony in a sentencing hearing

U Visa Facts and Benefits

- Only 10,000 U-visas can be granted annually
- The U visa grants a temporary 4 year stay
- Work Authorization (4 year)
- 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

Things to Know About Certifying

- "Do I believe this person was a victim of a qualifying crime?"
- "Did the person assist or willing to assist in detection, investigation, conviction, prosecution and/or sentencing?"
- Question is **NOT**:
  - Is/was there a prosecution?
  - Was there an arrest of the offender?
  - Do I have proof beyond a reasonable doubt?
  - Is this within the statute of limitations?
  - Was there a conviction?

New DHS Forms Published Make Judicial Certification Easier

- Judges' certification can occur when the judge signing the certification has
  - Probable cause
  - Made findings
  - Issued a ruling
  - Include the type of proceeding and
  - If orders were issued attach a copy of the order

Minnesota Judicial Ethics Opinion U Visa Certification (June 26, 2015)

- Judge may sign certifications when
  - "adequate basis for the averments made in the certification"
- Certification after the criminal or civil case is completed does not raise impartiality issues
  - In open cases should disclose certification to the parties
- Certification describes immigrant victim's past/present helpfulness -- Does not vouch for character
- In civil and criminal cases whether to sign a U visa certification is a an issue of law that does not implicate judicial ethics codes

Full Opinion Available at: http://www.bjs.state.mn.us/file/advisory-opinions/opinion-2015-2-final.pdf
Hon. Pendleton also published a training update based on the opinion at http://pendletonupdates.com/

Overview Special Immigrant Juvenile Status (SJIS)

- Humanitarian protection that provides a path to lawful permanent residency
- Created by Congress in 1990 to help and protect foreign born children living in the United States
  - who have been abused, or abandoned, or neglected by at least one parent.

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 requires
  - State court with jurisdiction over care, custody, dependency or placemen of the child
  - has issued a court order, finding, or declaration on three statutorily required issues
- The state court order does **not** award SIJS
  - **ONLY DHS can provide legal immigration status**

State Court Findings Needed for SIJS *State Law Applies To Each*

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

Apply State Law

- Best Interests
- UCCJEA – Temporary Emergency Jurisdiction

SIJS: Congressional Goals

- Included a role for state court judges as experts in child best interests, custody, child welfare matters.
- State court expertise:
  - Adjudicating facts of child abuse, neglect and abandonment
  - Issuing orders regarding child care, custody and placement that further the best interests of children
- Only the DHS can issue SIJS & permanent residency
- DHS uses the state court order as <u>evidence</u> in adjudicating the immigration application

SIJS: State and Federal Roles

State Courts With Jurisdiction Over Children

- Issue orders providing evidence to help DHS adjudicate SIJS application
- Make findings of fact **under state law** on
  - Custody, dependency, placement, care of a child
  - Child suffered abuse, abandonment, or neglect by at least one parent
  - Parental reunification
  - Child's best interests

DHS Adjudicators

- Adjudicate application filed by child
- Reviews evidence, including the state court's order, to determine if the child applicant is eligible for SIJS
- Determine if state court order was sought primarily
  - To provide the child relief from harm caused by abuse, abandonment or neglect; OR
  - For immigration purposes

State Courts Regularly Make Custody & Care Determinations

- Who will be the custodian/guardian of the minor
- Who the minor will live with
- Who will receive child support for the child living with them
- Whether the minor will be committed to the custody of the state or private agency for care, treatment, or rehabilitation
- Issue orders directing the child's care
  - Child support, health care, applying for benefits or services for the child

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)

What Kinds of Proceedings Might You See SIJS Eligible Children In?

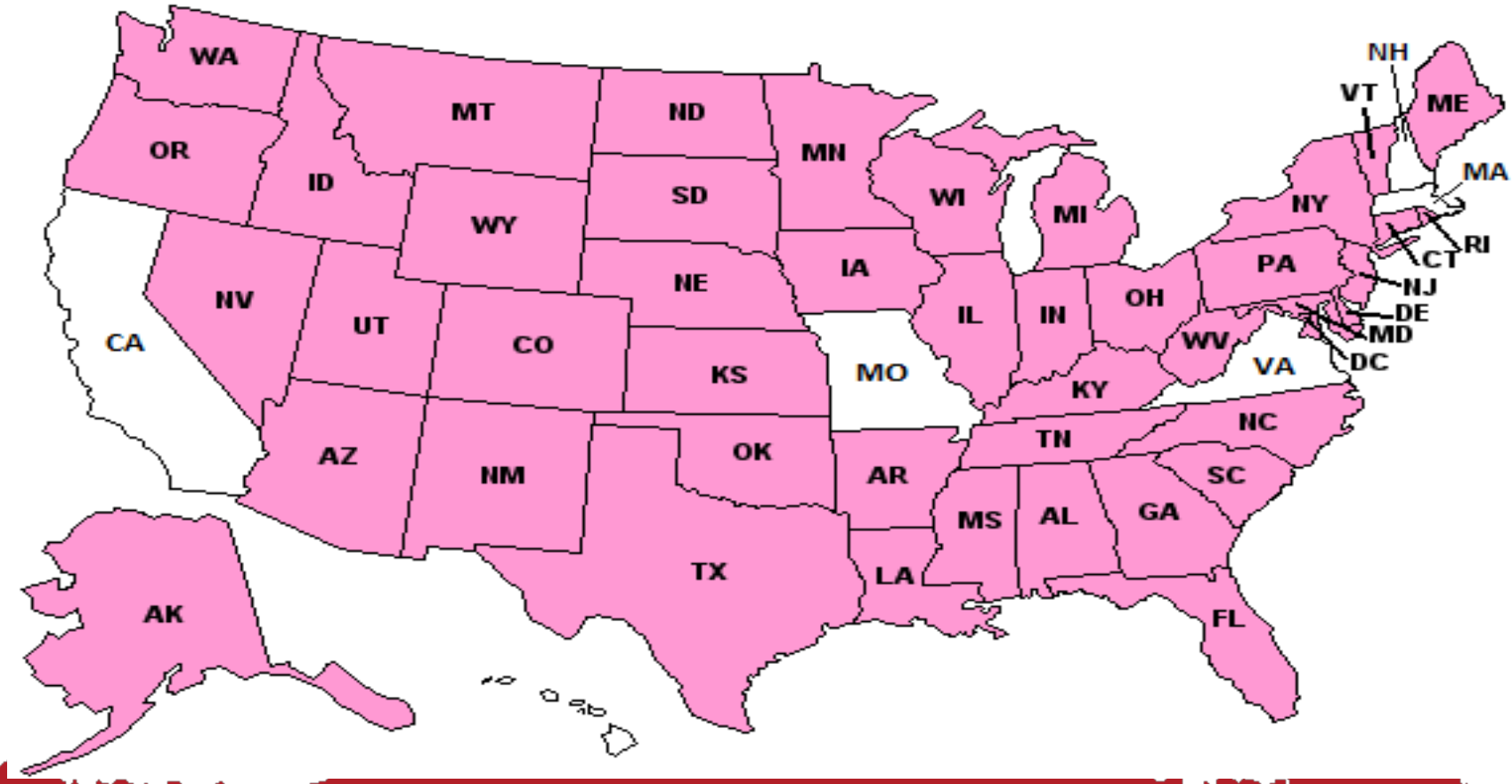
Types of Proceedings With Jurisdiction To Make SIJS Findings:

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

Courts with jurisdiction under state law to make judicial determinations regarding the custody, placement, care of children = *juvenile courts* for SIJS immigration purposes

States With Declaratory Judgment Statutes That Can be Used in SIJS Cases

When under state law the court can take jurisdiction over the care or custody of a child



SIJS in State Courts

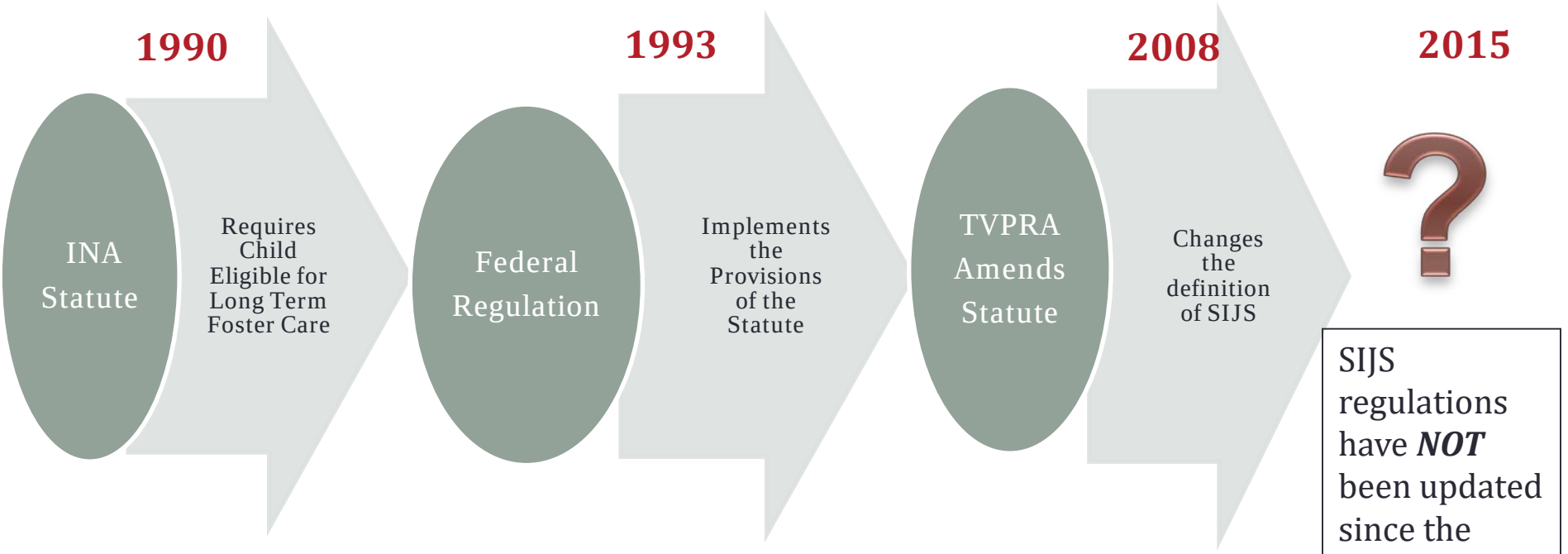
- Many SIJS cases are for 15-17 year old minors
  - State court order + filing before the child ages out
  - Up to age of majority set by state law
- SIJS is an option any time an abused, abandoned or neglected child is not a
  - Citizen or lawful permanent resident

"One ***or*** Both Parent" Requirement



A child can receive SIJS findings if they were abused, abandoned or neglected by one parent and are living with the other parent.

Statute vs. Regulation



SIJS regulations have ***NOT*** been updated since the 2008 amendments

Role of DHS policies and publications

Best Practice for Findings

- Issue orders that demonstrate to DHS that the court made an informed decision
  - Make factual findings regarding abuse, abandonment and/or neglect
  - Separately for each abusive parent
- Finding that the child is in need of protection as a result of having been abused, abandoned or neglected
- Trauma research

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

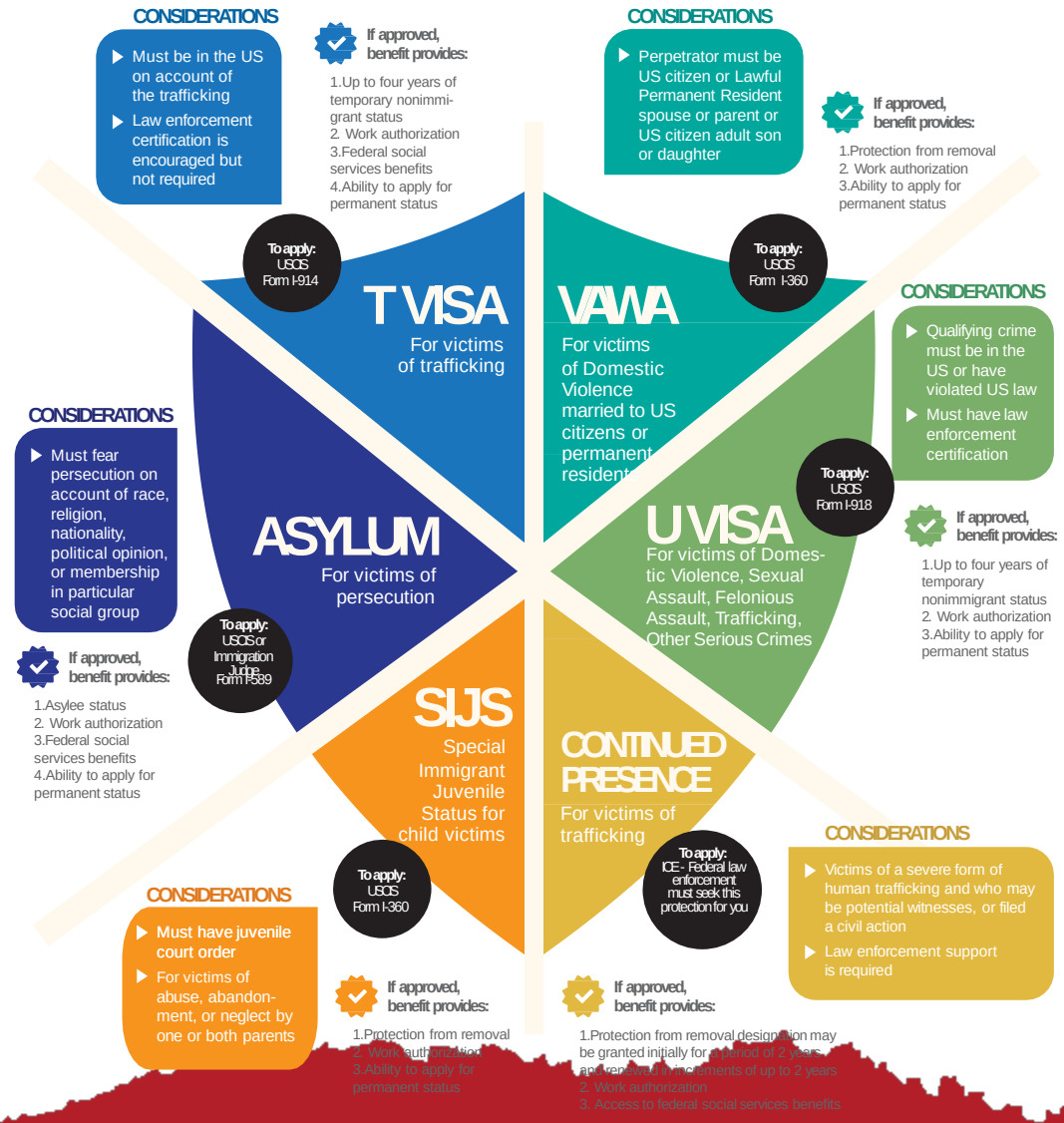
Criminal Issues & SIJ Eligibility

- Juvenile delinquency finding ≠ conviction for immigration purposes
- Juvenile dispositions can have immigration consequences
  - Negative factors in discretionary determinations
  - Some grounds of inadmissibility or deportability do not require a criminal conviction

Is There a Waiver for SIJS Cases

- Waivable Offenses
  - Prostitution
  - Drug abuse or addition,
  - Smuggling
- Non-Waivable Offenses
  - Moral turpitude crimes (theft and shoplifting, murder, spousal or child abuse, fraud, espionage, terrorist activities, genocide, torture)
  - Drug crimes (findings and admissions regarding drugs except simple possession of 30 grams or less of marijuana; controlled substances traffickers)
  - Multiple criminal convictions (does not include juvenile adjudications)

PROTECTIONS FOR IMMIGRANT VICTIMS



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)

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

- 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

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

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**

IMMIGRANT LITIGANTS IN FAMILY COURTS

Immigration status not relevant to jurisdiction in family court cases

- Protection order case
  - Domestic violence crime committed in state or
  - Victim needs protection in state
- Divorce case
  - Residency of party in state
  - Legal immigration status not required to establish residency under state family laws

Immigration status not relevant to jurisdiction in family court cases

- Custody and Guardianship case
  - (UCCJEA, Federal PKPA, Hague Convention) often the home state of children
- Child abuse, neglect, and termination of parental rights
  - Where an abused or neglected child is located.
- Child support case
  - Where child or non-custodial parent lives

Impact of Divorce

- VAWA self-petitioners
  - Must file within two years of final divorce
- Spouses and children of visa holders ends legal immigration status in the U.S.:
  - Students, Persons with legal work visas, Diplomats
- Divorce cuts off access to lawful permanent residency for spouses and children of people seeking lawful permanent residency based on:
  - Employment based
  - Asylees
  - Family based
  - Cancellation of removal

Impact of State Court Orders an the Immigration Case

- Court orders contain evidence of
  - Abuse, abandonment, neglect
  - Family relationships including marriage
- Divorce can result in an immigrant family member being denied immigration relief
  - Tactic used by perpetrators of spouse, child, elder abuse
- Annulment instead of divorce can set up a spouse for a federal marriage fraud prosecution

Custody

Protecting Immigrant Mothers, Protects Children

- Immigrant victims who receive help, including immigration relief, child abuse likelihood drops significantly (77% to 23%).
- Children of help seekers 20% less likely to have abuser threaten them
- One third less likely to have abuser threaten to take them away from their mother

Materials Immigrant Victims and Custody Bench Card -http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law

ABA Center on Children and The Law (1991)

- "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."

Is Immigration Status Relevant to Custody?

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



Myth vs. Fact: Parents Without Legal Immigration Status

Myth

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

Fact

1. DHS policies prevent detention/removal of immigrant parents who are:
   - Parents of U.S. citizen/Lawful permanent resident children
   - Primary caretaker parents of minor children without regard to the child's immigration status
2. Legal immigrants/naturalized citizens are more likely to flee with children, especially when
   - There have been threats of kidnapping children
   - They are dual nationals
   - They travel freely to and from U.S.
3. Abused immigrant parents in family court have a path to immigration relief , work authorization & some benefits
4. Custody does not affect parent's ability to file for or gain immigration benefits for their children.

Dependency, Termination of Parental Rights

How Immigrant Parents End Up In Department of Homeland Security Custody

- Abusers/crime perpetrators/employers report them
  - VAWA self-petitions 38.3%; U visas 26.7%
- Traffic stops
  - VAWA self-petitions 28.6%; U visas 30.1%
- Immigration enforcement at the worksite
- CPS, welfare workers, health care providers, others
- Victims call the police for help and police
  - Make a dual arrest;
  - Fail to obtain qualified interpreter and arrest the victim
  - Under Secure Communities program all arrested persons reported to DHS

Maria Luis Case

- Maria Luis is an undocumented Quiche speaking Guatemalan
- Has 2 children with her in the U.S.
- Youngest was born in the U.S. with respiratory problems
- Maria Luis took Angelica to the emergency room for treatment
  - Was given a Spanish (not Quiche) interpreter
  - Angelica got better, so Maria Luis did not return for the follow up visit
- The hospital reported her to CPS
- CPS arrived with police, took her 2 children who were placed in foster care
  - Maria Luis was detained and turned over to DHS for deportation
- While she in DHS custody, Nebraska sought termination of parental rights
- Deported, parenting plan explained to her in Spanish over the phone
- Found a priest in Guatemala who helped her try to comply with the plan from Guatemala
- Her parental rights to both her children were terminated
- Nebraska Supreme Court Reversed

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

Parental Interest Directive Aug 2013

- If parents are detained:
  - Placement near children and family court
  - Bring parents to family court to participate in cases involving children
  - Facilitate visitation
  - Help children travel with deported parent – obtain passports for children
  - Bring deported parents back to the US for custody and parental rights cases

Lessons Learned

- Due Process: Court documents and proceedings in immigrant parents' native languages
- Preventive Measure: Execute Power of Attorney
- Consular Notification

Custody Involving Immigrant Parents and/or Immigrant Children

- Accurate information about immigration status helps judges issue fair rulings in custody cases where immigration status of a parent or child may be raised
- Tools for Judges
  - Help avoid reliance on incorrect information provided by parties about immigration status & likelihood of detention or deportation
  - Provide accurate information when needed
  - www.Niwap.org/go/sji
  - Direct technical assistance to state court judges, commissioners, magistrates, court staff
  - Bench cards, charts, training materials and webinars
  - In person SJI funded trainings in states/local jurisdictions



PROTECTION ORDERS



NIJ Funded CPO Study Found

- With support immigrant victims will use and benefit from justice system assistance
  - 60.9% did not know about CPOs
  - 81% got CPO with help from advocate/attorney
  - 96% found them helpful
  - 68.3% of violations immigrant related

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

What harms, if any, would occur if the court issues protection orders against both parties?

Large Group Discussion

Effect of protection order issued against immigrant victims

- Increases perpetrators power and coercive control because the victim is one step away from deportation
- Perpetrators who are successful in convincing courts to issue protection orders are often also successful obtaining findings that the victim violated the order
- This can pose serious safety concerns for victims
  - A violation of a protection order is a deportable offense

How Immigrant Victims End Up As Defendants In Protection Order Proceedings

- **Typical Scenarios:** Police arrive at domestic violence incident, perpetrator speaks English,
  - Perpetrator speaks to and/or interprets for the police
  - Outcome A
    - Police see victims injuries but take no action and advise the parties about protection order
    - Perpetrator files for a protection order against the victim
    - Victim is served and then also seeks a protection order
  - Outcome B
    - Perpetrator convinces the police to arrest the non-English speaking victim
- Perpetrators seek such orders against immigrant victims as a tactic to undermine the victim's immigration case

Issue Jurisdictionally Sound and Enforceable Protection Orders

- Perpetrators will ask courts to issue No-Findings protection orders arguing that needed to prevent deportation due to the protection order –
  - *This is legally incorrect*
- Protection orders issued must be jurisdictionally sound
  - Based on abuse finding or
  - Uncontested affidavit of the victim in a civil case
- *Jurisdictionally Sound Civil Protection Orders*
  - http://niwaplibrary.wcl.american.edu/family-law-for-immigrants/protective-orders/CH5.3%20BB%20No%20Findings%20CPOs%20with%20disc.%207.3.13.pdf/view

Beneficial Findings to Include When Issuing Protection Orders

- In contested cases
  - Findings of physical, sexual and emotional abuse of immigrant, their child or step-child
- In all cases showing an:
  - Existence of parent/child or spousal relationship by checking this box on standard court orders
- Include creative remedies

Creative Protection Order Remedies

- Catch all provisions in civil protection order statues opportunity to offer relief designed to help:
  - Curb future abuse, harassment
  - Interfere with abuser/perpetrators ability to exert power and/or coercive control
  - Offer victim remedy-relief for past abuse
  - Help victim overcome victimization and build new post abuse life
- Nexus With Victimization
- Opportunity for courts to counter immigration related abuse and order culturally helpful remedies

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
- Deter parental kidnapping
- Child/Spousal support
  - Affidavit of support
- Health insurance

Victims Who Stay: Full Contact Protection Orders

- Statute authorizes issuance of protection orders that do not require separation of the parties
- Provisions
  - Standard no future abuse protections
  - Counseling
- Relief for many immigrant survivors who stay with abusers until their immigration case approved
  - And they receive work authorization ≈ 7 months to 1 year
- Report: The Central Role of Victim Advocacy for Victim Safety While Victims' Immigration Cases Are Pending

http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/the-central-role-of-victim-advocacy-for-victim-safety-while-victims2019-immigration-cases-are-pending-7-29-14

Remedies that help a victim's VAWA immigration application

- Cooperate in and not withdraw any immigration case filed on the victim's behalf
- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare etc.) concerning the petitioner except
  - Police emergency
  - Subpoena

Remedies that help a victim's VAWA immigration application

- Turn over documents/evidence in abuser's control needed for the victim's immigration case.

- What might some of those documents be?



Helpful Evidence

Evidence of Legal Marriage

- Marriage certificate
- Wedding/family pictures
- Health insurance

Good Faith Marriage

- Children birth certificates
- Love letters
- Copies of joint leases/utility bills
- School records
- Letters and other mail addressed to the victim and to the abuser at the same address

Evidence of Abuse or Extreme Cruelty

- Police, medical, court documents about the relationship
- Protection order
- Affidavits of neighbors, relatives, Friends

Evidence of Abusers Legal Status

- Abuser's green card or passport
- Copy of I-130 petition
- Social security number information

Provisions that Deter Parental Kidnapping

- Not remove the children from the court's jurisdiction
- Turn over passports of parties and/or children
- Sign statement that no visa or passport should be issued to children absent court order
- Supervised visitation
- Bond



Important Economic Provisions

- Maintain and/or pay for health care for victim and children
- Provide one time emergency monetary relief
  - Money to repair locks or broken windows
  - Obtain an unlisted telephone number
  - Relocation assistance
- Pay house insurance, mortgage, rent, utility and/or debt payments
- Taxes
  - Turn over income tax statements
  - Respondent ordered to pay victim ½ of return

Resources for Courts

- Immigrants and Protection Orders Bench Card
  - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/Judges-CPO-Bench-Card.pdf/view

- Creative Methods in Protecting Battered Immigrants
  - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/CreativePOandBatteredImmigrantleo.BA.EY_forSJI.pdf/view

- NIJ research summary: Protection Orders and Battered Immigrants: The Impact of Attorneys and Advocates
  - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/family-law/CPOandBatteredImmigrantsleo_BAFINAL6.20.14.edit.di_EY.FINALforSJI.pdf/view

Immigrant Victims Economic Challenges

Background

- Spousal control over filing for immigration relief
  - Work authorization
  - Drivers' licenses
- Many forms of visas do not allow spouses and children of visa holders to work in the United States
  - Employment visas (H)
  - Student visas (F)
  - Diplomatic visas (A)
  - International organizations G)
  - Investor visas (E)
- Immigrant victims have limited access to the public benefits safety net

Affidavit of Support

- Citizen and LPR spouses submit an *Affidavit of Support* to DHS in family based immigration cases
- The Affidavit of Support
  - Promise to support the family member for up to 10 years or until they become a US citizen (Includes 3 years of tax information, evidence of current employment including self-employment, and proof of income over 125% of poverty)

Affidavit of Support

- Courts have both enforced and relied on the Affidavit of Support to set spousal and child support at levels
  - *Stump v. Stump,* 2005 U.S. Dist. LEXIS 26002 (October 25, 2005)
    - In a case originating in Indiana, the federal court found the financial sponsor liable under form I-864 contract, concluding that the sponsor was obligated to maintain the foreign spouse at 125 percent of the poverty income level.

Immigration Issues Arising in Child Support Cases

- Payment of child support through the court provides a non-citizen parent with a history of child support payments that will be helpful evidence of good moral character for immigration cases
  - Cancellation of removal
  - Naturalization

Immigration Issues Arising in Child Support Cases

- Provides a custodial immigrant parent with evidence of child support that can be used as income in lawful permanent residency cases (avoiding public charge)
  - Proof that they are owed or entitled to these funds
- Importance of court orders maintaining immigrant children on their non-custodial parent's health insurance policies

Immigration Issues Arising in Child Support Cases

- Criminal convictions for willful failure to pay child support can be deportable theft/fraud related offenses as crimes of moral turpitude
- Lack of legal work authorization is not a valid defense to non-payment of child support
  - Asal v. Asal, 960 P.2d 849, 850 – 851 (Okla. 1998)

Importance of Wage Withholding

- Creates documented track record of payment
- Improves safety for immigrant victims
- Courts have found employers who willfully violate wage withholding orders liable to the custodial parent for the amount of child support ordered withheld.
  - State v Filipino, Conn. Super. LEXIS 266 (2000)
  - Belcher v Terry, 420 S.E.2d 909 (1992)
  - Child Support Recovery Srvs., Inc. ex rel S.C. v. Inn at the Waterfront, Inc., 7 P3d 63 (Alas. 2000)

Proof of Non-Custodial Immigrant Parent's Income

- Undocumented workers can be ordered to pay child support based on Child Support Guidelines and
  - Actual earnings, employer's statements
  - Evidence of earning capacity
  - Attributed income (e.g. minimum wage)
- Undocumented workers can and usually pay state and federal taxes on income earned using an IRS issued Tax ID number

Resources for Courts

- Bench Card on Common Issues that Arise from Parties' Immigration Status: Economic Remedies
  - http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts/benefits/Economic-Options-Bench-Card.pdf/view

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"

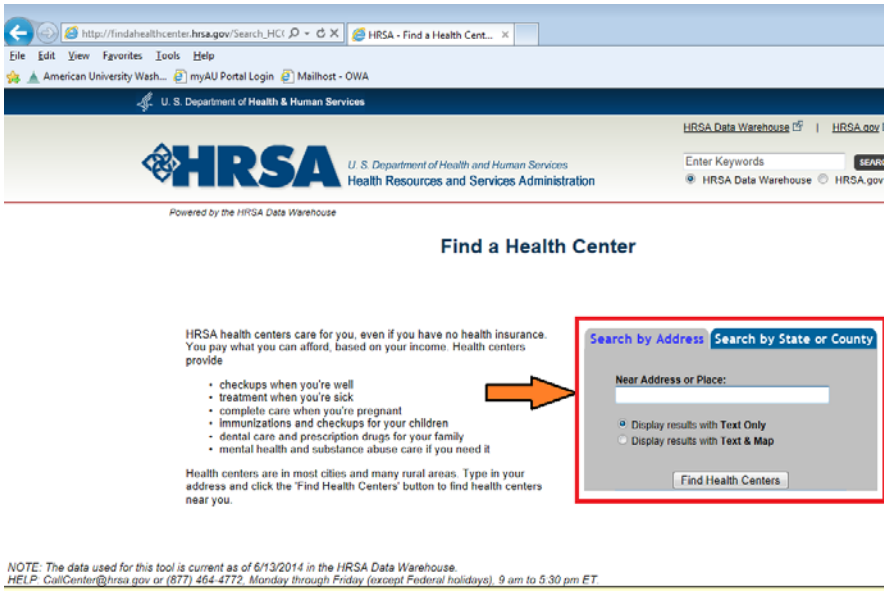
Step 3: Select "Find a Health Center"
Step 4: Search by location

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

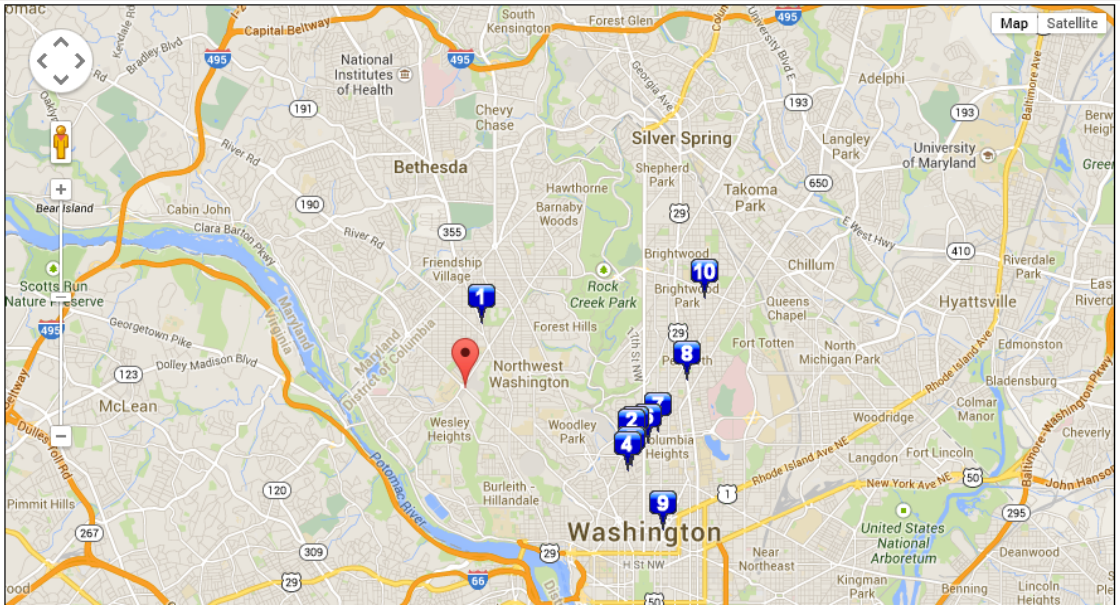
Map all these results

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-



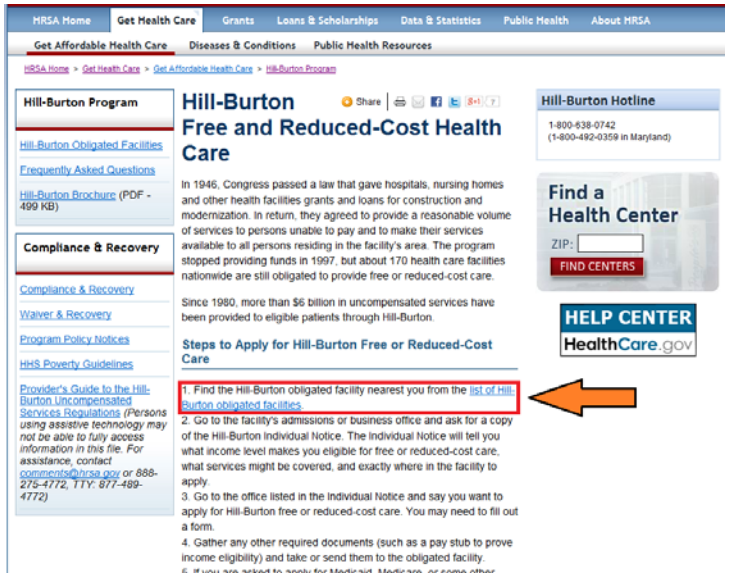
Federally Qualified Health Centers

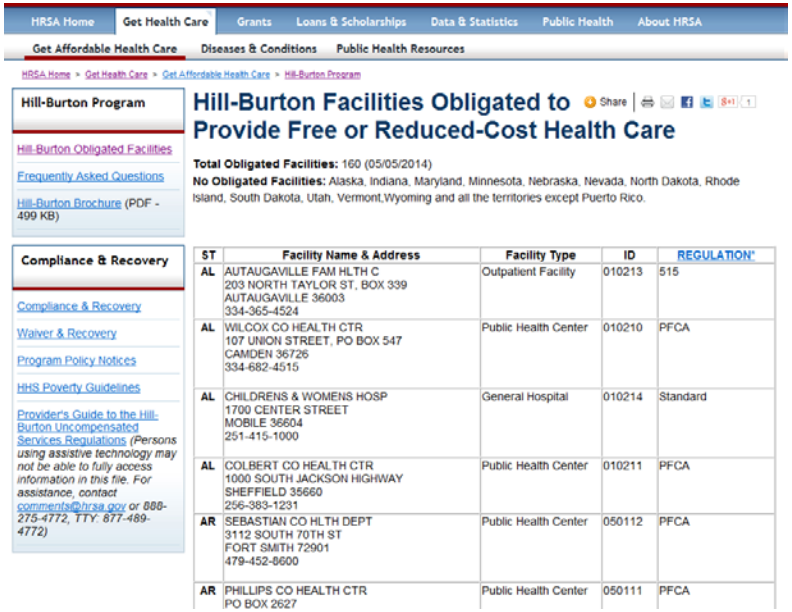
- Primary care
- Diagnostic, laboratory and radiological services
- Prenatal care
- Post-assault health care
- Cancer and other disease screening
- Child wellness services
- Emergency medical and dental services
- Immunizations
- Blood test screening
- Eye, ear and dental screenings for children
- Family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



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

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

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

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

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

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

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
- 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 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
- The District of Columbia offers immigrant access to:
  - Health care
  - Education at UDC
  - Limited driver's licenses

Immigrant Access to Health Care in D.C.

- D.C. Health Care Alliance
  - Open to all adults without regard to immigration status
- Health Care through Immigrant Children's Program
  - Regardless of immigration status
  - If ineligible for federal Medicaid

D.C. Limited Purpose Driver's License

- Resided in D.C. 6+ months
- Do not have or are ineligible for an SSN
- Requires proof of
  - Identity
  - DC Residence
  - Date of birth
- Is not valid for federal purposes

UDC Dream Act (April 15, 2017)

- All persons without regard to immigration status may pay in-state tuition and receive local financial aid for UDC if
  - Attended a D.C. high school for 3 years
  - Graduated from a D.C. high school
  - Received the equivalent of a high school diploma in D.C.

Technical Assistance and Materials

- Power Point presentations and materials for this conference at www.niwap.org/go/DCSC2017
- Judicial Training Manual at www.niwap.org/go/sji
  - **NIWAP Technical Assistance:**
  - Call (202) 274-4457
  - E-mail info@niwap.org
- Web Library: www.niwaplibrary.wcl.american.edu

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Questions



Evaluations



Thank you!