

Domestic Violence In the Latino Community: Help Available For Victims

Domestic Violence A Latino Focus
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National Immigrant Women's Advocacy Project
Resource Library: iwp.legalmomentum.org

Learning Objectives

- Understand dynamics of abuse experienced by Latina immigrant victims
- Learn about legal and social service options for immigrant victims
- Be knowledgeable about the series of new immigration policies designed to protect victims from deportation

IMMIGRANT DEMOGRAPHICS

U.S. Immigrant Demographics

- “Immigrant” = born outside the U.S.
- 38.5 million immigrants in U.S (MPI 12/10)
 - 12.5% U.S. population (MPI 12/10)
- 37.4% of Latino population are immigrant
 - (MPI 12/10; Census 2010)
- Among foreign born Latinos
 - 29.1% are citizens (PEW 2009)
 - 28% are lawful permanent residents (PEW 2006)
- Today over 27% of U.S. population are immigrants or children of immigrants
 - (US Census)

Immigrant Demographics

- 80% of immigrants are living in the U.S. legally
- 1/3 of foreign-born population are naturalized U.S. citizens
- 1/3 of permanent residents were at one time undocumented

Children in Immigrant Families

- 85% of immigrant families are “mixed status” (including at least 1 U.S. citizen, often a child)
- 1 in 5 children is the child of an immigrant
- 18% (5 and older) speak a language other than English at home
- 21.7% of Colorado children have at least one immigrant parent
 - At least 86.3% of children with immigrant parents in Colorado are U.S. citizens

DYNAMICS OF DOMESTIC VIOLENCE EXPERIENCED BY BATTERED IMMIGRANTS AND THEIR CHILDREN

Domestic Violence Prevalence and Severity

- U.S. in general: **22.1%** (NIJ)
- Immigrant women: **30-50%**
- Research has found that immigrant victims
 - Stay longer
 - Have fewer resources
 - Sustain more severe physical and emotional consequences of abuse

Research has found

- Immigrant women also have high rates of sexual assault, particularly during the first two years after arrival in the U.S.
- Victimization of immigrant children also high, including child sexual abuse
- Immigrant high school girls are almost twice as likely as their non-immigrant peers to have experienced recurring incidents of sexual assault
- Latina college students experience the highest incidence of attempted rape as compared to White, African American and Asian women college students

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

Coercive Control Over Immigration Status

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

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

ADVOCACY MAKES A DIFFERENCE

NIJ funded research on protection orders and immigrant survivors:

- With advocate's support, immigrant victims will use and benefit from protection orders
 - 60.9% **first** learned about protection orders from their advocates/legal services attorneys
 - 81% chose to seek and received a protection order with help from advocate/attorney
 - Evidence of benefits of safety planning
 - Strong correlation between severity of violence and undocumented immigrant victims' willingness to seek a protection order
 - 96% found them helpful
 - Protection orders reduced violence, but –
 - 68.3% of violations immigrant related abuse

Advocacy Makes a Difference

- Safety Planning and Advocacy Work
 - Victims learned about CPO
 - Advocates assessed lethality
 - When high risk of lethality, more immigrant victims working with sought orders
 - With this help, process was easier than women expected

Advocates are key for immigrant survivors access to services

- Once immigrant survivors with advocate support seek protection orders
- Factors in Immigrant victims calling police for help
- Positive Factors:
 - Length of time in the United States
 - She had spoken to 2 or more persons about the violence
 - (46% know other women victims)
 - Her children witnessed the abuse
 - **She had a protection order**
- Negative Factor:
 - Victim's immigration status

Immigration Status Affects Willingness to Call Police

- Significant difference between victims willingness to call the police related to their immigration status:
 - Stable (citizen/permanent resident) 34.4%
 - Temporary (temporary visa) 16.7%
 - Undocumented 14.8%

Primary support persons with whom battered immigrants are willing to discuss abuse

- Female Friend 49.6%
- Mother 30.1%
- Sister 22.5%
- Another Battered Woman 10.4%
- Shelter Worker 9.5%

Percent receiving services vs. percent disclosing abuse

- Lawyers/Legal Services (50.1% vs. 8.7%)
- Doctor/Nurse/Health Care (59% vs. 4.6%)
- Social Services/Social Worker (58.2% vs. 6%)
- Police (11.9% vs. 8.4%)
- Job Training/ESL (36.7% vs. 1.5% employer)
- Religious organization/worker (5.4% vs. 8.4%)

Children of Immigrant Women Who Received Help Protected Against Child Abuse

- National co-occurrence rate: 30-40%
- Rates among immigrants similar
- Co-occurrence among
 - Help seekers: 23%
 - Abused immigrants who did not seek help: 77%
- Children of help seekers 20% less likely to have abuser threaten them
- 33% less likely to have abuser threaten to take them away from their mother

PUBLIC BENEFITS AND PUBLICALLY FUNDED SERVICES

Both Documented & Undocumented Immigrant Victims Can Access

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

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 & safety**
- Programs covered by this AG order are open to all persons
- State and local governments **CANNOT** impose immigrant access restrictions
- Federal non-discrimination laws apply

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

Other 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

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.

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
- Citizen or lawfully present children of undocumented immigrant parents
 - May purchase child-only coverage on state insurance exchanges
 - Are eligible for premium tax credits and reduced cost-sharing
 - May be eligible for Medicaid or CHIP.

Qualified Immigrants

- Lawful Permanent Resident (LPR)
- Refugee, Asylee, Withholding of Deportation/
Removal, Conditional Entrant status
- Paroled into U.S. for at least 1 Year
- Cuban/Haitian Entrant
- Amerasians
- Veterans of certain US military Action
- VAWA Battered Spouse and Battered Children
- Child of VAWA Battered Spouse
- Victim of a severe form of trafficking

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

- Public and assisted housing
- Post-secondary educational grants & loans
- Social services block grant programs
- Child care
- Adoption assistance
- Foster care
- Low income energy assistance program
- Disability benefits
- Assistance to developmentally disabled
- Job opportunities for low income individuals

Federal Means-Tested Public Programs have most limited immigrant access

- **TANF:** 5 year bar, after 8/22/96
- **SSI:** Refugee/Trafficking victims
 - Lawful permanent residents: only if 40 quarters or work credit and qualified immigrant status for 5+ years if entry after 8/22/96
 - Veterans and qualified immigrant spouses, children
- **Food Stamps**
 - Qualified Immigrants 5 year bar post 8/22/96
- **Medicaid and Child Health Insurance Program**
 - Health Care reform opened up access to immigrants who are “lawfully present”

Food Stamps for Qualified Immigrants

- Children under 18
 - regardless of date of entry
- Receiving disability benefit
 - regardless of date of entry
- Persons who have been qualified immigrants for five years or more
- Refugees or Asylees
- Human Trafficking victims
- Persons credited with 40 quarters of work

Immigrants and Health Care Reform

- Naturalized citizens same as U.S. Born Citizens
- Legal Immigrants
 - Subject to individual mandate and tax penalties (unless low income)
- Lawfully present immigrants
 - May purchase for state insurance exchanges (no wait)
 - Eligible for tax credits and cost-sharing reductions (no wait)
 - Eligible for state's temporary high risk pools and basic health plans
 - 5 year bar to Medicaid for qualified immigrant low income non-pregnant adults
- Undocumented immigrants
 - Exempt from individual mandates
 - Cannot purchase from state insurances exchanges & no tax credit
 - No Medicare, Medicaid or CHIP
 - Only HHS funded unrestricted health care and emergency Medicaid

Potential Immigration Remedies

- Applications filed DHS
 - VAWA self petition
 - Battered spouse waivers (spouses of USCs with conditional permanent residency)
 - U visa
 - T visa (victims of trafficking)
 - Asylum (persecution based on protected classes)
- Forms of relief from removal- granted by Immigration Judge
 - VAWA cancellation of removal
 - VAWA suspension of deportation

Conditional Residence & Battered Spouse Waivers

- Battered Spouse Waiver
- Waives the joint filing requirement and two year wait for full lawful permanent residency
- Requires proof of
 - Good faith marriage to U.S. citizen and
 - Battered or subjected to extreme cruelty by the citizen spouse

General VAWA Self-Petitioning Requirements

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

Approved VAWA petitions

- Protection from deportation and detention
 - deferred action status.
- Legal work authorization
 - 6 months if abuser citizen spouse (26.1%)
 - If abusive spouse is lawful permanent resident
 - 1 year 46.8% to 13-18 months 27.1%
- Ability to apply for lawful permanent residency through VAWA

VAWA Cancellation Elements

- Relationship to abusive party (broader than self-petition)
 - Mother of a child abused by the child's other parent who is a USC or LPR even when no marriage
 - More than 2 years have passed since divorce from the abuser
- Battered or Subject to Extreme Cruelty
- Good moral character
- **Extreme Hardship to return to the home country**
- **Three years physical presence in the U.S.**
- Not inadmissible

Crime Victim (“U”) Visa Requirements

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

Criminal activities covered by the U- visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Prostitution
- FGM
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment
- Obstruction of justice
- Perjury
- Attempt, conspiracy or solicitation to commit any of these crimes
- Any similar activity

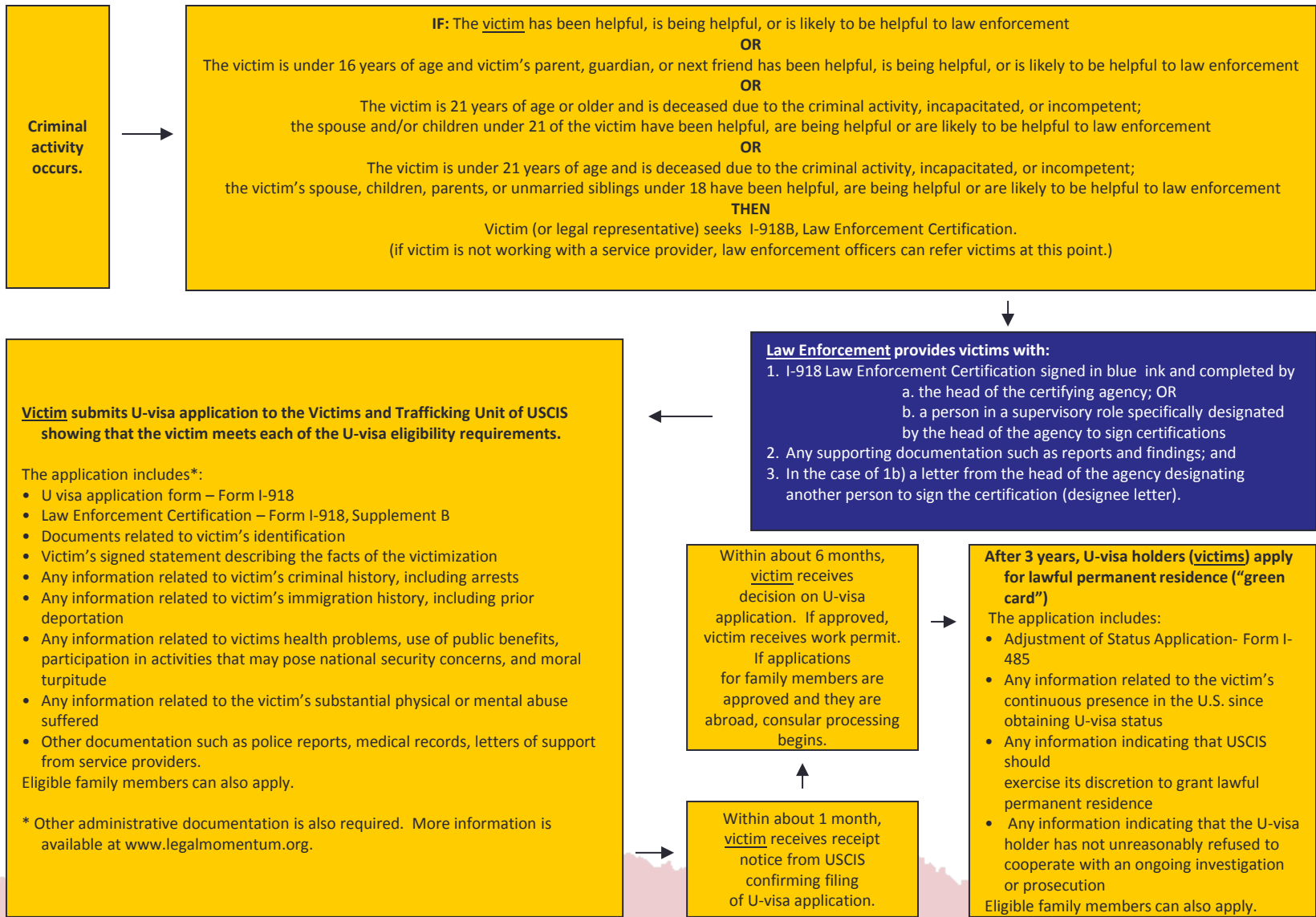
Who can certify?

- Police officer
 - State
 - Local
 - Federal
 - University
- Prosecutor
- Judge
- Immigration Officer
- Other authority with responsibility for investigation or prosecution of criminal activity

The U-Visa Process

- Government official signs certification
- Child and/or child's parent filed U-visa application
- DHS adjudication – grants/denies U-visa
- Approved = receive 4 year U-visa
- After 3 years some will qualify for lawful permanent residence
- Can apply for citizenship 5 years after receiving lawful permanent residency

U-visa Application Victim Flow Chart



Comparison: VAWA vs. U-visa

VAWA Self-Petition

- Abuser: anyone
- Any status
- Children included
- Cooperation in detection, investigation or prosecution required
- Substantial physical or emotional abuse
- Crimes can be waived
- PRUCOL less benefits access
- One year wait for work authorization
- If in immigration proceedings, case expedited
- Green card after 3 years **if** can show cooperation + either humanitarian need, public interest or family unity

U-visa

- Abuser: spouse, former spouse, parent, 21+ USC child
- Abuser USC or LPR
- Children included
- No cooperation with law enforcement required
- No proof of harm
- Criminal involvement can cut off access to relief
- Qualified immigrant = public benefits
- One year wait for work authorization
- Protection from deportation for 1 year
- Green card after approval if abuser is a citizen, or 7 year wait if abuser is LPR

SCREENING AND SAFETY PLANNING IN THE CONTEXT OF IMMIGRATION ENFORCEMENT

VAWA Protections In a Time of Increased Immigration Enforcement

- Increased funding = greater likelihood of DHS response to perpetrator's calls
- Need to be aware of local law enforcement practices regarding immigrants
- Transportation issues for victims
 - to courts
 - to services
- Secure Communities and the dangers of dual arrest

DHS Memos

- DHS Enforcement priorities
 - Halting removal proceedings against immigrants with pending applications likely to be approved (8.20.10 and 2.4.2011)
 - Low priority immigrants vs. high priority immigrants (3.3.2011)
 - Prosecutorial discretion (6.17.2011)
 - DHS and White House Directives regarding immigration case processing (8.18.2011)
 - Protections for immigrants who came to US as children (6.15.2012)
- Protections for crime victims
 - Initiation of VAWA confidentiality computer check system (12.21.2010)
 - Prosecutorial discretion for crime victims (6.17.2011)
- Humanitarian Release (2007-2008)
 - Breastfeeding mothers
 - Sole/primary caregivers of children

Negative Factors to Consider

- Clear risk to national security*
- Serious felons, repeat offenders, or individuals with a lengthy criminal record of any kind*
- Known gang members or other individuals who pose a clear danger to public safety*
- Individuals with an egregious record of immigration violations, including those with a record of illegal re-entry and those who have engaged in immigration fraud*
- Criminal history, including arrests, prior convictions, or outstanding arrest warrants
- Immigration history, including any prior removal, outstanding order of removal, prior denial of status, or evidence of fraud
- Whether the person poses a national security or public safety concern

Positive factors

- Length of time in US (including lawful presence)
- Circumstances of arrival, manner of entry
- Presence in the U.S. since childhood*
- Pursuit of education: US high school/college
- Person/close family, veteran/military particularly combat*
- Community/family ties, contributions
- Ties to/conditions in home country
- Age – minor, elderly*
- USC/LPR spouse, parent, child
- Person who suffers from serious mental or physical disability or serious health condition*
- Primary caretaker of child, person with mental/physical disability, seriously ill parent
- Crime victim or witness*

Other positive factors

- Pregnant or nursing women
- Spouse is pregnant or nursing
- Nationality renders removal unlikely
- Long time lawful permanent residents
- Likely to be granted immigration relief as
 - spouse, child of a citizen or lawful permanent resident
 - Domestic violence, trafficking or victim of other serious crime
 - Crime victim
 - Asylee/refugee
- **Victims and Witnesses** cooperating or has cooperated with federal, state or local law enforcement authorities, such as ICE, federal or state prosecutors, Department of Labor, or National Labor Relations Board, among others

SPECIAL CUSTODY ISSUES WHEN IMMIGRANT PARENTS ARE FOR DETAINED

Emerging Trend: Termination of Parental Rights of Immigrant Parents

- Immigration enforcement against an immigrant parent can lead to loss of child and placement in foster care
- Loss of child when immigrant parent seeks services
 - Example: Hospitals
- Many cases problem compounded by hospitals, police, child protective services and courts not providing
 - Meaningful language access
 - Recent letter from Attorney General Eric Holder to Courts on language access to courts

How Victims End Up In DHS Custody

- Abusers/crime perpetrators report them
- Employers or co-workers report them
- Traffic stops
- Immigration enforcement at the worksite
- Reports by CPS
- Reports by welfare worker
- Reports by health care providers
- Reports by others
- Victims call the police for help and police
 - Make a dual arrest
 - Arrest the victim
 - Language access issues

MARIA LUIS CASE

NIWAP

Immigrant Parents' Constitutional Right to Custody of Their Children

- Constitution right to custody absent finding of unfitness
- Overriding presumption that parent child relationship is constitutionally protected and
- In child's best interest to stay with/be reunited with their parent
- Applies to all families without regard to
 - Immigration status; and
 - Whether or not the parent is
 - In immigration detention or deported
- Child's best interests not comparison of natural vs. adoptive parent's
 - cultures, countries, or financial means

A Family Reunited



Technical Assistance and Materials

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