Advocacy for Immigrant Survivors of Sexual Assault

CALCASA National Conference
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Wednesday, October 20, 2010
Learning Objectives

• Participants will learn how to:
  – identify and work effectively with immigrant sexual assault survivors;
  – address their particular safety planning, language access and cultural needs
  – Identify immigrant survivors who qualify for immigration relief (VAWA, T, U)
Faculty will provide:

• An overview of immigration relief for immigrant survivors with a special focus on immigrant sexual assault survivor access to
  – crime victim U-visas;
  – T-visas for trafficking victims
  – VAWA self-petitioning and cancellation of removal
  – VAWA confidentiality protections
  – Post assault health care and other benefits

• A discussion of immigrant victims legal rights under employment laws.
Introduction

• Faculty
• Participants
  – Work with immigrant SA survivors
  – Work with SA in the workplace
Identifying and Working Effectively With Immigrant Sexual Assault Survivors
Reality Check
Reality Check

Many people experience multiple assaults during the course of their lives.

Responses to each assault will depend on their prior experiences and the resources available (family / friends support, money, job flexibility, family responsibilities, etc.).
The continuum of sexual violence in immigrant communities

- Incest
- Rape
- On the job
- In refugee camps
- While immigrating
- At the border
- Domestic partner
- Forced prostitution
- Men, women, and children
CULTURALLY ENGRAINED SEXUAL VIOLENCE

• Arranged marriages
• To support family
• Honor killings
• Female circumcision
• Forced marriages
• Sex tourism
• Pornography
• Women are expendable
SEXUAL ASSAULT IN IMMIGRANT COMMUNITIES

- No higher rate
- Different concepts/language
- Cultures have different views and understanding of sex, sexual violence and sexual relationships
- Combined, these factors may lead a women to feel shame, isolation and may heighten the trauma after a sexual assault
- REMEMBER THE EMPOWERMENT MODEL
  - Her needs, her fears
  - Resources she wants to access, respect, information
IMPACT OF SEXUAL VIOLENCE

- HIV/AIDS, STDs
- Drug and alcohol abuse as copying mechanism
- Psychological problems which may result in removal
- Pregnancy
- Low self esteem
- Hopelessness, “dejadez”
- Easier to control, re-victimize
- Death/suicide
CHALLENGES TO OVERCOME WHEN ASSISTING IMMIGRANT WOMEN VICTIMS OF CRIME OF VIOLENCE

• Fear of Deportation
• Economic Survival
• Language Barriers
• Misinformation about the U.S. Legal System
• Fear of Being Ostracized
• Fear of Losing Custody or losing her kids to the system
TO REPORT OR NOT TO REPORT…

MYTHS ABOUT P.O

• THEY WILL DEPORT ME
• THEY WILL BELIEVE HIM AND ARREST ME
• HE CAN “BUY” THEM
• THEY WILL NOT TALK TO ME BC I DO NOT SPEAK ENGLISH

• THEY WILL TAKE MY CHILDREN AWAY
• THEY WILL NOT COME OR HELP
• I DO NOT HAVE A RIGHT TO CALL THEM
TIPS FOR ESTABLISHING TRUST

DO NOT SAY...

• What is your immigration status?
• Do you have a green card?
• Are you a citizen?
• Are you “residing” in this county (the word Residing or Resident may lead to confusion).
• Do you have papers?
TIPS FOR ESTABLISHING TRUST

DO SAY…

• I am not immigration and I do not work for INS

• I am here to help you/QUIERO AYUDARTE

• Sexual harassment/assault is a crime in this country and you have rights/TIENES DERECHOS

• I do not need to know your immigration status if you do not feel comfortable. However let me give you first some info about remedies for women that are immigrants and are being abused by their partners or are victims of certain crimes. Talk about VAWA self petitioning and or U visa
Interviewing skills (cont.)

1. At the beginning of the interview
   1. Set clear expectations
   2. Explain your role and what you will try to do
   3. Give her time to ask questions and paraphrase your explanation/understanding
Screening questions

- Has anyone ever hurt you?
- Who hurt you and for how long?
- How old were you?
- Did you ever tell anyone you were being hurt?
- Who did you tell?
- Did you ever report to the police, court, the department of child protection, anyone from any agency that you were being hurt?
- Did anything happen after you reported?
- Have you ever hurt yourself? How do you hurt yourself and how often?
- Have you ever received any counseling, therapy, medical or support services as a result of someone hurting you or after you made a report?
- If you were hurt in your home country, did that have anything to do with your decision to come to the U.S.?
- How would you say the victimization has affected you?
- Closing assessment; Is there anything else you would like to add that I might have missed or that you think is relevant?

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Raid at the workplace

- How many hours did you work?
- Where you free to decide whether to do overtime?
- Did you get paid for overtime?
- Did anything happen if you refuse to work overtime?
- What was the average length of a shift?
- How many shifts did you do back to back?
- Did they take any money from your paycheck?
- Did you inquire into it? What happened?

- Where you forced to buy papers, change papers to work every so often?
- If this happened, did you lose your benefits (seniority, vacation etc)
- Where you able to take vacation/earn vacation?
- Where you free to leave your job? If so, why didn’t you leave your job?
Sexual harassment/assault

• How did your supervisor treat you?
• Was any supervisor that mistreated your peers? How?
• Did any of it ever happen to you?
• Did you complain about it to human resources, other supervisors or peers?
• Did you see supervisors or co-workers flirting with your co-workers, inviting them to go out, calling them names?

• Did this happen to you ever? Did you tell anyone about it? Did anyone see it?
• Did any of your supervisors/co-workers ever ask you out or offer you to go to lunch, call you outside of work, invite you to give you a ride home before or after work?
• What happened if you said no? (potential punishment/retaliation)
• Did your supervisor/co-worker ever touch you in an offensive way or in any manner?
• How many times did it happen? Did anyone see it?
Screen everywhere and connect to everyone

- Community clinics
- Immigration detention centers
- Representation of non-immigration matters
- Raids
  - Large
  - Small scale (neighborhoods, trap-meetings, work, etc)
- CIS/ICE/EOIR may encounter victims
- At the port of entry
- Between ports of entry
- In detention
- In removal proceedings
- During appointments of orders of supervision
- During AOS interviews
- During their own investigations
Addressing Immigrant Victim’s Safety Planning Needs
TALKING ABOUT IT...

• Describe criminal acts with examples
• How women’s rights are protected in the USA
• Who can be helped, how and by whom
• What are your rights as a victim in the USA
• What is considered as sexual assault in this country
• Be visual, use charts, do not make assumptions
PREVENTION IN THE WORKPLACE

INFORMATION
- What is a crime
- Where to ask for help
- Your rights as an employee

OUTREACH WITH ALLIES
- Partner with existing community organizations, community natural leaders, survivors
- Focus group on developing information
PREVENTION–SAFETY

• Work with your partner:
  – Bathroom breaks
  – Special tasks assigned
  – Protect each other
  – Alert supervisors/upper management
    • In writing
    • Call EEOC, Civil Rights office, Local program, police

ASK HER, HELP HER THINK AND PLAN
Interpersonal Victimization and Help-Seeking in a National Sample of Latino Women: Initial Results from the SALAS Study

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\textsuperscript{3}Supported by National Institute of Justice Grant 2007-WG-BX-0051

Presented at the 2009 NIJ Conference Panel Violence against women in minority communities
Victimization Rates – 2000
Latino women

- Any lifetime victimization: 43.5%
- 63% of victimized women had more than one victimization experience

<table>
<thead>
<tr>
<th>Victimization Type</th>
<th>n</th>
<th>Unweighted rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any Physical Assault</td>
<td>443</td>
<td>22.2</td>
</tr>
<tr>
<td>Any Sexual Assault</td>
<td>344</td>
<td>17.2</td>
</tr>
<tr>
<td>Any Stalking Victimization</td>
<td>365</td>
<td>18.3</td>
</tr>
<tr>
<td>Any Threat Victimization</td>
<td>421</td>
<td>21.1</td>
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<tr>
<td>Any Witnessed Victimization</td>
<td>401</td>
<td>20.1</td>
</tr>
</tbody>
</table>
Help–Seeking

• 77% of victimized women sought some type of help, either formal or informal, or both

MORE COMMON
• Informal help–seeking more common than formal help–seeking
### Help-Seeking Behaviors

<table>
<thead>
<tr>
<th></th>
<th>Formal</th>
<th></th>
<th>Informal</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>ANY FORMAL</td>
<td></td>
<td>ANY INFORMAL</td>
</tr>
<tr>
<td><strong>Medical services</strong></td>
<td>34.7%</td>
<td>32.5</td>
<td>Parents</td>
<td>26.6%</td>
</tr>
<tr>
<td><strong>Police</strong></td>
<td>16.9</td>
<td></td>
<td>Friend</td>
<td>21.5</td>
</tr>
<tr>
<td><strong>Restraining order</strong></td>
<td>11.2</td>
<td></td>
<td>Sibling</td>
<td>14.9</td>
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<tr>
<td><strong>Criminal charges</strong></td>
<td>10.9</td>
<td></td>
<td>Other family member</td>
<td>10.0</td>
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<tr>
<td><strong>Social services</strong></td>
<td>9.9</td>
<td></td>
<td>Partner</td>
<td>7.9</td>
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<tr>
<td><strong>ANY FORMAL</strong></td>
<td>32.5</td>
<td></td>
<td>Clergy</td>
<td>5.7</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Children</td>
<td>3.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Coworker</td>
<td>1.7</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>68.9</td>
</tr>
</tbody>
</table>

Chiara Sabina1 & Carlos A. Cuevas2

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## Help-Seeking by Victimization Types

<table>
<thead>
<tr>
<th></th>
<th>No Help</th>
<th>Informal Only</th>
<th>Formal Only</th>
<th>Both</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANY VICTIMIZATION</td>
<td>23.3%</td>
<td>43.8%</td>
<td>7.8%</td>
<td>25.0%</td>
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<tr>
<td>Stalking***</td>
<td>21.0</td>
<td>57.0</td>
<td>2.6</td>
<td>19.3</td>
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<tr>
<td>Physical</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physical assault w/o weapon***</td>
<td>12.1</td>
<td>35.4</td>
<td>14.1</td>
<td>38.4</td>
</tr>
<tr>
<td>Physical assault with weapon**</td>
<td>10.0</td>
<td>45.0</td>
<td>0.0</td>
<td>45.0</td>
</tr>
<tr>
<td>Physical assault childhood***</td>
<td>37.8</td>
<td>39.0</td>
<td>8.5</td>
<td>14.6</td>
</tr>
<tr>
<td>Threat</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Threat w/o weapon***</td>
<td>11.6</td>
<td>44.2</td>
<td>13.7</td>
<td>30.5</td>
</tr>
<tr>
<td>Threat w/ weapon***</td>
<td>11.7</td>
<td>41.7</td>
<td>8.3</td>
<td>38.3</td>
</tr>
<tr>
<td>Sexual</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fondling***</td>
<td>39.8</td>
<td>50.6</td>
<td>2.4</td>
<td>7.2</td>
</tr>
<tr>
<td>Attempted sexual assault**</td>
<td>23.7</td>
<td>52.6</td>
<td>10.5</td>
<td>13.2</td>
</tr>
<tr>
<td>Forced sexual activity***</td>
<td>36.7</td>
<td>33.3</td>
<td>7.8</td>
<td>22.2</td>
</tr>
</tbody>
</table>

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Cultural Factors and Help-Seeking

• Anglo orientation related to an increase in likelihood of formal help-seeking
• Positive religious coping related to an increase in likelihood of informal help-seeking
Take-Home Messages

- High rate of lifetime victimization
- Victimized women are likely to have more than one victimization experience
- Women are not seeking out formal help-seeking services
- Most predominate help sought is from social network
- Victimization in childhood is especially unlikely to result in help-seeking.
History and Purpose of Violence Against Women Act Immigration Provisions
Research Among Immigrant Women Found

- Lifetime domestic abuse rates for immigrant women in the U.S. 33–50%
- 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
- Multiple immigrant populations studied
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

• Research among immigrant victims intimate partner sexual and physical assault found
  – 60.9% of victims seeking help from a victim advocate/attorney did not know about CPOs
  – 81% got them
  • Severity of physical and sexual abuse significantly increased victims willingness to get CPOs
  – 96% found them helpful
  – 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
  – Process with this help was easier than women expected
Factors Affecting Immigrant Victim’s Willingness to Call

• 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%
Immigration Law Historically Gave:

- Employers, Spouses, and Parents
- Control over the immigration status of
- Immigrant worker, spouse and children
- Citizen, permanent resident, work visa holder controls, employer
  - Whether to file
  - When to file
  - Whether immigrant worker or family member can attain or keep legal immigration status
VAWA Immigration Provisions Sought To --

- Sever perpetrator control over
  - Criminal justice system intervention
  - Victim and children
    - Locking them in abusive jobs and/or relationships
    - Keeping them from seeking help
    - Undermining employment and family laws
- Remove threats of deportation as a perpetrator tool to keep victims silent and elude prosecution
- Provide victims access to services, help, healing, safety, and economic security
- Foster early access to justice and immigration protections assistance with crime detection sufficient
Immigration Law Options for Immigrant Sexual Assault Survivors
Potential Immigration Legal Remedies

• Applications filed DHS
  – VAWA self petition*
  – Battered spouse waivers
  – U visa*
  – T visa*
  – Asylum and withholding of removal

• Forms of relief from removal—granted by Immigration Judge
  – VAWA cancellation of removal
  – VAWA suspension of deportation
Immigrant Crime Victim Visas ("U")

• What is it?
  • Legal immigration visa for victims of listed criminal activity who are willing to be helpful in an investigation or prosecution
• Good for four years
  – Extension authorized w/certification that needed to assist in investigation or prosecution
• With employment authorization
• May lead to permanent residency
Crime Victim ("U") Visa Requirements

- Substantial physical or emotional abuse from criminal activity
- Possesses information about criminal activity
  - If victim under 16 on date of crime (parent, guardian or next friend may possess information)
- Criminal activity must have occurred in U.S. or otherwise violate U.S. law
- Certification from government official (signed in the past 6 months) stating that victim has been, is likely to be or is being helpful to an
  - Investigation or prosecution of criminal activity
What protection is there for family of U Visa applicants?

- Adult victims:
  - Spouse
  - Children
- Victims under 21 at time of criminal activity
  - Spouse
  - Children
  - Parents
  - Unmarried siblings under 18 (at the time of filing)
- Includes children born after filing
What crimes are covered under the “U” visa?

- Rape
- Torture
- Trafficking
- Incest
- Domestic violence
- Sexual assault
- Prostitution
- FGM

- Involuntary servitude
- Slave trade
- Being held hostage
- Kidnapping
- Abduction
- Peonage
- False Imprisonment
Crimes Covered -- Continued

• Blackmail
• Extortion
• Manslaughter
• Murder
• Felonious assault

• Witness tampering
• Obstruction of justice
• Perjury

• Attempt, conspiracy or solicitation to commit any of these crimes
Enumerated crimes non-exclusive

- Includes criminal activities where the nature/elements of the offense are substantially similar
- Wide variety of state/federal criminal statutes
- Victim qualifies to U-visa even when:
  - Criminal activity that qualifies for U-visa protection may occur during the commission of another crime not listed
  - Prosecutors/police charge perpetrator for non-listed crime
Why “Criminal Activity” and not limited to “Crimes”?

- U visa protection available even when:
  - Investigation does not result in prosecution
  - Victim helpful in investigation does not testify at trial
  - Abuser eludes arrest
  - Criminal case dismissed
  - Victim comes forward makes report and police or prosecutors decide not to prosecute
  - Prosecution but no conviction
  - Victim of listed criminal activity but another crime prosecuted
  - Prosecution cannot take place (diplomats, no extradition)
U Visa Helps

- Victims of rape and sexual assault
- Abused immigrants who are not covered by VAWA – i.e. date rape, non-intimate partner sexual assault, sexual assault in the workplace, lesbian/gay victims.
- Trafficking and forced prostitution victims
- Victims of FGM committed in the U.S.
- Sexually assaulted employees, abused wives/children/nannies of Diplomats/students/workers
- Non-citizens subject to slave labor
U-Visa Definition of “Physical or Mental Abuse”

- Injury or harm to the victim’s physical person
- Impairment of the emotional or psychological soundness of the victim
- Decided based upon each individual’s experience
What is substantial physical or emotional abuse?

• Case-by-case determination using these factors:
  – nature of the injury inflicted or suffered;
  – severity of the perpetrator’s conduct;
  – the severity of the harm suffered;
  – the duration of the infliction of harm;
  – permanent or serious harm to victim’s
    • appearance,
    • health,
    • physical, or mental soundness
Substantial Abuse (continued)

• No one factor is required
• Can include pre-existing conditions
• Can consider the severity of the perpetrator’s conduct without regard to the impact on the particular victim
Who can certify?

• Police officer
• Prosecutor
• Judge
• Immigration Officer
• State or Federal Agency Employee
Other Federal, State or Local Agencies

- Agencies with criminal investigative jurisdiction
- In areas of expertise
- Including but not limited to
  - Child protection services workers
  - Adult protective services workers
  - EEOC
  - Department of Labor
“Investigation or Prosecution”
Includes Past, Current or Future Cooperation in:

• Detection
• Investigation
• Prosecution
• Conviction
• Sentencing
What is certification?

• Required part of U–visa application
• Signed by the head of agency OR
• Designated supervisor
  – Any persons in supervisory role
  – Anticipates multiple designated supervisors
• Certification includes that
  – U–visa criminal activity occurred (cite violation of U.S./state/local law)
  – Victim has has been, is being, likely to be helpful
Application Process

• Limit of 10,000 principal visas per year
  – (placed on wait list for next year if cap met)
• Seek permanent residency after three years of physical presence. Must show grounds of
  – Public interest,
  – Family Unity or
  – Humanitarian need AND
  – Victim cannot unreasonably refused to cooperate
Other Important Issues

• Grant of U-visa leads to termination of any removal case against victim
  – Dismissal of immigration proceedings NOT automatic by operation of law
• Victims can file from abroad directly at Vermont VAWA Unit
VAWA Self-Petitioning Requirements
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
- Child abuse & sexual assault victims
  - May file based on abuse occurring under age 21
  - Have up to age 25 to file
Impact of Divorce On:

• VAWA self-petitioners
  – Must file within two years of final divorce
  – Bigamy/innocent spouse not a bar

• Spouses and children of:
  – Students
  – Persons with legal work visas
  – Diplomats

• Spouses/children of people seeking lawful permanent residency
  – Employment based
  – Asylees
  – Family based
  – Cancellation of removal applicants
Extreme Cruelty

- Emotional Abuse
- Economic Abuse
- Sex Abuse
- Coercion
- Threats of deportation
- Physical abuse
- Intimidation
- Social Isolation
- Humiliation, insults
- Possessiveness, stalking
- Harm to pets
- Minimizing, Denying & Blaming
VAWA self-petitioning available

Even if:
• Marriage is legally terminated
• Abuser dies
• Abuser is deported or denaturalized

*** so long as no more than 2 years has passed
Range of Sexual Assault Survivors Who Can Self-Petition: Adults

- Spouses
  - Current and former
  - Bigamy/innocent spouse
  - Undocumented parent of child abused by child’s citizen/lawful permanent resident other parent
    - Without regard to the immigration or citizenship status of the child
    - If married (self-petition or VAWA cancellation)
    - If not/never married or over two years since divorce (VAWA cancellation)
  - Separation of victim and abuser not required
  - Children (parents of child self petitioner) attain same benefits as VAWA self-petitioner
- Police report, CPO, medical records NOT required
Range of Sexual Assault and Domestic Violence Victims Covered: Children

- Children abused or sexually abused by their citizen or lawful permanent resident parent
  - Natural born children
  - Adopted children
  - Step-children
  - Abused children can self-petition until 25th birthday
  - Children (parents of child self petitioner) attain same benefits as VAWA self-petitioner

- Flow charts
## Comparison VAWA vs. U–visa

<table>
<thead>
<tr>
<th>VAWA</th>
<th>U–visa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abuser spouse, former spouse, parent, 21+ USC child</td>
<td>Abuser anyone</td>
</tr>
<tr>
<td>Abuser USC or LPR</td>
<td>Any status</td>
</tr>
<tr>
<td>Children included</td>
<td>Children included</td>
</tr>
<tr>
<td>No cooperation with law enforcement required</td>
<td>Cooperation in detection, investigation or prosecution required</td>
</tr>
<tr>
<td>No proof of harm</td>
<td>Substantial physical or emotional abuse</td>
</tr>
<tr>
<td>Criminal involvement can cut off access to relief</td>
<td>Crimes can be waived</td>
</tr>
<tr>
<td>Qualified immigrant = public benefits</td>
<td>PRUCOL less benefits access</td>
</tr>
<tr>
<td>One year wait for work authorization</td>
<td>One year wait for work authorization</td>
</tr>
<tr>
<td>Protection from deportation 1 yr</td>
<td>If in immigration proceedings case expedited</td>
</tr>
<tr>
<td>Green card after approval if abuser is a citizen or 7 yr wait if abuser LPR</td>
<td>Green card after 3 years if can show cooperation + either humanitarian need, public interest or family unity</td>
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</table>
VAWA Cancellation

• Cancellation is only available to people in removal proceedings
• One can be placed in removal for the purpose of cancellation if there are no alternatives
• Denial results in them being ordered removed from the United States.
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
T-Visa For Trafficking Victims
Requirements for a T visa

- Must be victim of a severe form of trafficking in persons
- Complied with reasonable request for assistance in investigation or prosecution OR under 18
- Extreme hardship if removed
A severe form of trafficking in persons means:

- Commercial sex act induced by force, fraud or coercion, or under 18
- Recruitment, harboring, transportation, provision or obtaining for labor or services through force, fraud, or coercion for involuntary servitude, peonage, debt bondage or slavery
Continuous Presence

• Continuous presence finding

• Access to services and public benefits
  – Office of Refugee Resettlement (ORR)
  – If under 18 no certification necessary

• Ends when prosecution ends
Law Enforcement Agency Role

- Victim must contact federal law enforcement agency (LEA)
- BUT can get T visa without LEA endorsement if other evidence available (different than U visa)
- LEA endorsement proves victim has complied with reasonable request
Comparison T–visa vs. U–visa

**Trafficking cases**
- Continued Presence early access to protection and benefits (federal cases only; federal prosecutor files)
- Federal and state cases
- Victim files can include children
- Must prove cooperation, but no mandatory certification
- Must prove extreme hardship involving unusual and severe harm
- Direct access to federal public benefits and work authorization
- Processing times fastest at DHS

- Easy access to lawful permanent residency but high level of cooperation required
- Waivers for crimes

**U visa cases**
- No early access to help unless in removal proceedings
- Federal or state cases

- Victim files can include children
- Mandatory certification
- Ongoing cooperation
- No proof of extreme hardship
- Least access to benefits
- One year delays before work authorization
- Green card after 3 years if can did not reasonably refuse to cooperate + either humanitarian need, public interest or family unity

- Waivers for crimes
VAWA Confidentiality
History of VAWA 1996
Confidentiality Protections

• Despite VAWA immigration protections perpetrators were --
  – Able to stalk victims using immigration authorities
  – Convincing government personnel to disclose information about VAWA cases to abusers; endangering victims
  – Providing information that undermined victim’s immigration case and/or resulted in her immigration arrest, detention, deportation
  – Triggering arrests and enforcement actions at courthouses, shelters
VAWA Confidentiality

- Prohibits reliance on information from an abuser/perpetrator or his family to harm a victim including detention, removal or denial of her case without regard to whether the victim immigration relief eligible
- Prohibits use and disclosure of information about or contained in VAWA, T and U visa immigration cases
- Locational prohibitions on enforcement actions
- Disciplinary sanctions and fines
Locational Prohibitions

• Immigration judge to dismiss case if any part of an enforcement action occurs at
  – 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

• Mandatory training of all DHS officers
In addition to DHS, VAWA Confidentiality applies to
- family court officers,
- criminal court judges, and
- law enforcement officers”

Limited exceptions:
- legitimate law enforcement purpose
- Statistical purposes (without identifiers or locational information)
- Public benefit application purposes
VAWA Confidentiality Violations

- **Consequences of violations**
  - Each violation
    - Disciplinary action and/or
    - $5,000 fine for the individual
  - Dismissal of the immigration proceeding against the non-citizen

- **Violations include**
  - Seeking or using information from a prohibited source
  - Disclosing or permitting disclosure of information in or about any VAWA, T or U visa case
  - Making a false certifications in a Notice to Appear
Sec. 287(g) Added By IIRIRA With VAWA Confidentiality

• Allows state/local law enforcement to “perform functions of immigration officer”

• They are to “perform the function of an immigration officer”

• “Have knowledge of, and adhere to” federal immigration laws
  – All NOT Some

• Subject to sanctions for VAWA confidentiality violation in the same manner at DHS employees
Building Relationships—Who should be in the collaborative

- Police Officers
- Prosecutors
- Legal Services (immigration and domestic violence)
- Community Groups
- Immigrants Rights Community Centers
- Law enforcement Agencies
- Domestic Violence Service Providers
- Judges
- CPS workers
- SANEs and SARTs
Immigrant Victim’s Legal Rights to Access Benefits, Housing, Legal Services, Victim Services and Protections
Both Documented and 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
VAWA 2005 and Legal Services Access for Battered Immigrants

• All legal services programs can use any source of funding
  – Legal Services Corporation
  – VAWA (e.g. LAV, STOP)
  – Foundation funding
  – Private funding

• To represent any victim of domestic violence, sexual assault, trafficking or other U visa listed crime

• Without asking questions about the victim’s immigration status
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 & 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
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
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.
Language Access
What is LEP?

• Limited English Proficiency
  – English is not primary language
  – Limited ability to read, write, speak or understand English
  – Language for LEP individuals can be a barrier
    • Access to benefits or services,
    • understanding and exercising legal rights
    • complying with responsibilities
    • understanding other information provided by Federally funded programs and activities.
  – Determination is by person, not by agency
TITLE VI – LEP Access and Non-Discrimination

• Recipients of federal funding
  – Have a responsibility to take reasonable steps to provide Limited English proficient (LEP) individuals with meaningful access to their programs and activities.
  – Are prohibited from discriminating on the basis of race, color, or national origin. (42 USCS § 2000d)
  – Failure to provide appropriate language assistance to LEP individuals may constitute a form of discrimination on the basis of national origin because, such victims in effect do not have access to the same benefits, services, information or rights provided other victims.
What constitutes reasonable steps to assure meaningful access?

• Four factor analysis to determine what is compliance:
  – Number or proportion of LEP individuals served or encountered in the eligible service population
  – Frequency of contacts
  – The nature and importance of the program, activity or services
    • Determine whether denial or delay of access to services or information could have serious implications for the LEP individual
  – Resources available
Consequences of Non-Compliance with Language Access Requirements

- Informal efforts to encourage voluntary compliance.
- If no voluntary compliance, withdrawing of federal funds.
- Under federal law, LEP persons have no private right of action.
- Use of persons to interpret who are not qualified interpreters, particularly in interactions with the justice system and health care can undermine the ability of those systems to help the victim and prosecute the perpetrator
  - E.g., “conflicting” statements, improper health care treatment
Who NOT to Use as Interpreters

- Children
- Victim’s family members
- Crime perpetrator’s family members
- Crime perpetrator’s interpreter
Health Care Options For Immigrant Victims
Legal Momentum
State-by-State Charts

- Forensic Exams
- Emergency Medicaid
- Post-Assault Health Care
- Prenatal Care
- State by state summary of
  - Eligibility laws
  - Application procedures
  - Who pays based on immigration status
  - Extent of coverage
Health Care For Undocumented Immigrants

• Services necessary to protect life and safety
• Community health clinics
• State funded programs
• Post assault health care paid by VOCA funds
• Emergency Medicaid
Federally Qualified Health Centers

• Community Health Centers
• Migrant Health Centers
• Open to all
• Underserved populations unable to pay
• www.nachc.com
Federally Qualified Health Centers Offer

• Primary care
• Diagnostic, laboratory and radiological services
• Prenatal care
• Post-assault health care
• Cancer and other disease screening
• Well child services
• Immunizations
• Blood test screening
• Eye, ear and dental screenings for children
• Family planning services
• Preventative dental services
• Pharmaceutical services
• Emergency medical and dental services
Forensic Examinations

• If the victim reports crime within a specified time frame (see charts)
  – Significant barrier
• Immigration status of victim not relevant
• Knowledge of manner of reimbursement in your state key to helping victims
VAWA authorized payment

• Provide exam free of charge
• Arrange for victims to receive exam free of charge
• Reimburse victims for the full costs of the exam
  – Must be full cost no deductible
  – Up to one year to file for reimbursement
  – Pay reimbursement within 90 days
  – Information provided at time of exam
  – LEP accessible
• www.ojp.usdoj.gov/vawo/faqforensic.htm
Scope of Medical Exam Paid By State Varies

- Initial forensic exam covered
- Varying policies
  - Follow-up exams
  - Psychological treatment
  - Prescribed medicines
- Apply directly to Victim’s Comp for this and more in many states
- Some states must charge insurance first
  - Safety concerns
Emergency Medicaid

• Every state enacted Emergency Medicaid Program
• Conceptual uniformity
• Governed by federal law
• Federal definition of “emergency medical condition” used in most state law
What Various States Offer Under Federal Emergency Medicaid

- Labor and Delivery (emergency and most states normal)
- Severe and acute
- Urgent pharmacy needs
- Mental health
- Inpatient substance abuse
- 72 hour release of drugs without prior approval
Range of Coverage: Emergency Medicaid

- Inpatient
- Outpatient
- Emergency care
- Not covered:
  - continuation of services
  - Limited to current medical condition
  - Some states mental health care or chronic conditions explicitly excluded
Duration of Condition: Emergency Medicaid

• No definitive federal rule on when emergency condition ends
• Stabilization not necessarily = end of condition
• Focus on whether acute and sufficient severity
• Ongoing chronic conditions likely to be covered
Victims of Crime Act

- Federal funds -- Operated by states
- Available when
  - Crime occurs in state
  - For residents and non-residents of state
- Medical expenses (some)
- Lost wages
- Funeral expenses
Where is VOCA

- Virtually all states
- Without regard to immigration status generally
- Generally need report w/in 72 hours
- Generally victim must cooperate with law enforcement
Post Assault and Prenatal Health Care
State by State Charts

• Examine VOCA, Medicaid and State Funded health care
  – Describes eligibility criteria
    • For all victims
    • By immigration status
  – Amount of Compensation
    • Scope
    • Amount
    • Crimes
  – What is covered
  – Application Process
  – Appeals Process
What Additional Benefits Can “Qualified Immigrant” Survivors Receive
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
    • Before or after 8/22/96
  – Whether they meet heightened program requirements for some programs
  – What benefits are offered by the state
Who are “Qualified Immigrants”?

- Lawful permanent residents*
- Refugees and asylees*
- Persons granted withholding of deportation or cancellation of removal*
- Persons who (or whose child) has been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent*
- Trafficking victims with T visas or continued presence
- Cuban/Haitian entrants
- Veterans*
- Amerasians
- Persons granted conditional entry
- Persons paroled into U.S. one year or more
Partial List of Federal Public Benefits/Community Programs Open to All Qualified Immigrants

• Subsidized Housing Programs
• Public and Assisted Housing
• Social Security
• Head Start
• Post–Secondary Education
• Social Services Block Grant Funded Programs
Federal Means-Tested Public Program Access Limited By:

- Immigration status, entry date, difficult program requirements
- **TANF** (5 yr bar post 8/22/96)
- **Medicaid** (5 yr bar post 8/22/96)
- SCHIP qualified immigrant children no bar (ICHEA)
- **Food Stamps** (very restricted except qualified immigrant children under 18)
- **SSI** (most restrictive)
22 States Offer Some Access to State Funded Benefits

• For immigrants residing in the U.S. under color of law
• PRUCOL (Permanently Residing Under Color of Law)
  – not an immigration status, but a benefit eligibility category
• NILC charts www.nilc.org
Non-qualified Immigrants

• Undocumented immigrants
  • Entered without inspection or
  • Overstayed visas

• Lawfully present immigrants (PRUCOL):
  • Lawful Permanent/Temporary Residents
  • Employment, Student Visas
  • VAWA self-petitioners
  • Cancellation/suspension
  • U and T visas
  • Approved spouse/parent based visa
  • Temporary Protected Status
  • Family Unity Status
  • Tourist visas
  • Lived in the US continuously since before January 1, 1972
    – Other persons in the US with the knowledge of DHS whose departure that agency does not contemplate enforcing.
WHAT YOU NEED TO KNOW

SEXUAL ASSAULT IN THE WORK PLACE
Whose Business is it Anyway?

• Sexual assault programs are the experts on providing services to victims of sexual assault
  – Counseling
  – Systems advocacy
  – Safety planning
Whose Business is it Anyway?

SA programs
- Fewer resources
- Lack of access to workplaces
- No direct connection or partnership with EEOC, Fair Agencies, Workforce development, employment attorneys, unions etc

• Survivors
  – Lack knowledge about the services
  – Concerned about losing their jobs if reporting
  – Concerned about being deported if brought to law enforcement’s attention
INFORMAL HELP SEEKING BEHAVIOR MUST INVOLVE THE COMMUNITY

- SA ADVOCATES
- EMPLOYERS
- UNIONS
- SYSTEMIC RESPONSE
- LEGAL RESPONSE

DIRECT SERVICES, COUNSELING, ADVOCACY
CAN PREVENT, MODIFY CONDITIONS, REMOVE - FIRE HARASSER ETC
LAW ENFORCEMENT, HOSPITALS,
EEOC, EMPLOYMENT LAWYERS, IMMIGRATION CRIMINAL OR CIVIL REMDIES
LACK OF COMPLAINTS – Why?

Wednesday, October 20, 2010
LACK OF COMPLAINTS – Why?

• Cultural Barriers
LACK OF COMPLAINTS – Why?

• Cultural Barriers
• Language Barriers
LACK OF COMPLAINTS – Why?

- Cultural Barriers
- Language Barriers
- Lack of Education & Rights Awareness
LACK OF COMPLAINTS – Why?

• Cultural Barriers
• Language Barriers
• Lack of Education & Rights Awareness
• Shame/Embarrassment Over Traumatic Event
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- Fear of Retaliation
LACK OF COMPLAINTS – Why?

- Cultural Barriers
- Language Barriers
- Lack of Education & Rights Awareness
- Shame/Embarrassment Over Traumatic Event
- Fear of Retaliation
- Fear of Court & Gov’t
IS IT HAPPENING?

- A study done for California State University found that more than 90% of farmworker women reported sexual harassment on the job as a major problem.
TITLE VII CIVIL RIGHTS ACT
PROHIBITION AGAINST DISCRIMINATION
Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of:

• race
• color
• national origin
• sex
• pregnancy
• religion

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HARASSMENT OF OTHER PROTECTED BASES
HARASSMENT OF OTHER PROTECTED BASES

Employers have an affirmative duty to maintain a work environment that is free from harassment. Managers and Supervisors:

- Must treat non sexual harassment incidents with the same seriousness and degree as sexual harassment;
- Supervisors and managers must conduct an inquiry promptly and take corrective action.
LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS
LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS

Two significant Supreme Court rulings, Faragher v. City of Boca Raton and Burlington Industries v. Ellerth made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. The court held that:

The employer is automatically liable for a supervisor’s unlawful harassment if it results in a tangible employment action. Ex: discharge, demotion or undesirable reassignment.
EEOC Options & Response

• EEOC Coverage for undocumented workers
• EEOC Third-Party & Commissioner Charges
• EEOC investigative tools – TRO, subpoenas
• Improved internal processes – bilingual staff, charge prioritization
• Outreach & Education
  – liaisons with consulates
  – partnerships with legal services and community groups
  – Spanish media
  – Outreach materials

Wednesday, October 20, 2010
Tips for Addressing the Needs of Immigrant Workers’ Survivors of Sexual Assault

- Review your outreach plan and partners. Who are you missing in light of this information? Where are you outreaching?
  - Laundry, change checks, food stores, church etc

- Invite Civil Rights Commission or the EEOC to give a presentation to your staff and community members

- Familiarize Staff with the Needs of Immigrants Survivors and refresh your training on cultural competency
Tips for Addressing the Needs of Immigrant Workers’ Survivors of Sexual Assault

• Build Relationships with National & Local Advocates & Service Providers including non-traditional allies such as labor employers, EEOC, Civil Rights, Church, Community centers

• Make Your Information regarding the Complaint Process Accessible – physically, culturally, linguistically and holistically

• Take Action – Ask the question and follow-through!
WHY TO BRING IN EMPLOYERS?

• Immigrant women have reported repeatedly that they want the harassment or assault to stop.

• Encouraging employers to have a zero tolerance for sexual harassment, discrimination and ensuring that this is properly communicated to employees will send the message to immigrant women that there is help when she is ready.

• It is the law and employers will be in a better positions regarding liability if they have implemented an effective policy around sexual harassment.

Wednesday, October 20, 2010
WORKING WITH DETAINED SURVIVORS

• CAN YOU GET IN?
Interviewing skills; not missing the chance!

1. Pre–interviewing
   1. Understand trauma and the effects it has on memory. Multiple victimization issues and triggers may invoke flashbacks or memories of past abuse.
   2. Be patient
   3. Is not personal!
   4. Use active listening skills
Other considerations

- Is the setting completely private?
- Is your interaction audible to anyone else?
- Are doors closed?
- Who is present and why?
- What is the purpose of your inquiries?
- Be specific about legal remedies as it pertains to the case.
- Allow for questions and expect some confusion.
- Tell her confusion is normal (normalize)