

National Symposium

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Hope, Help, and Healing:

A Catholic Response to Domestic
Violence and Abuse



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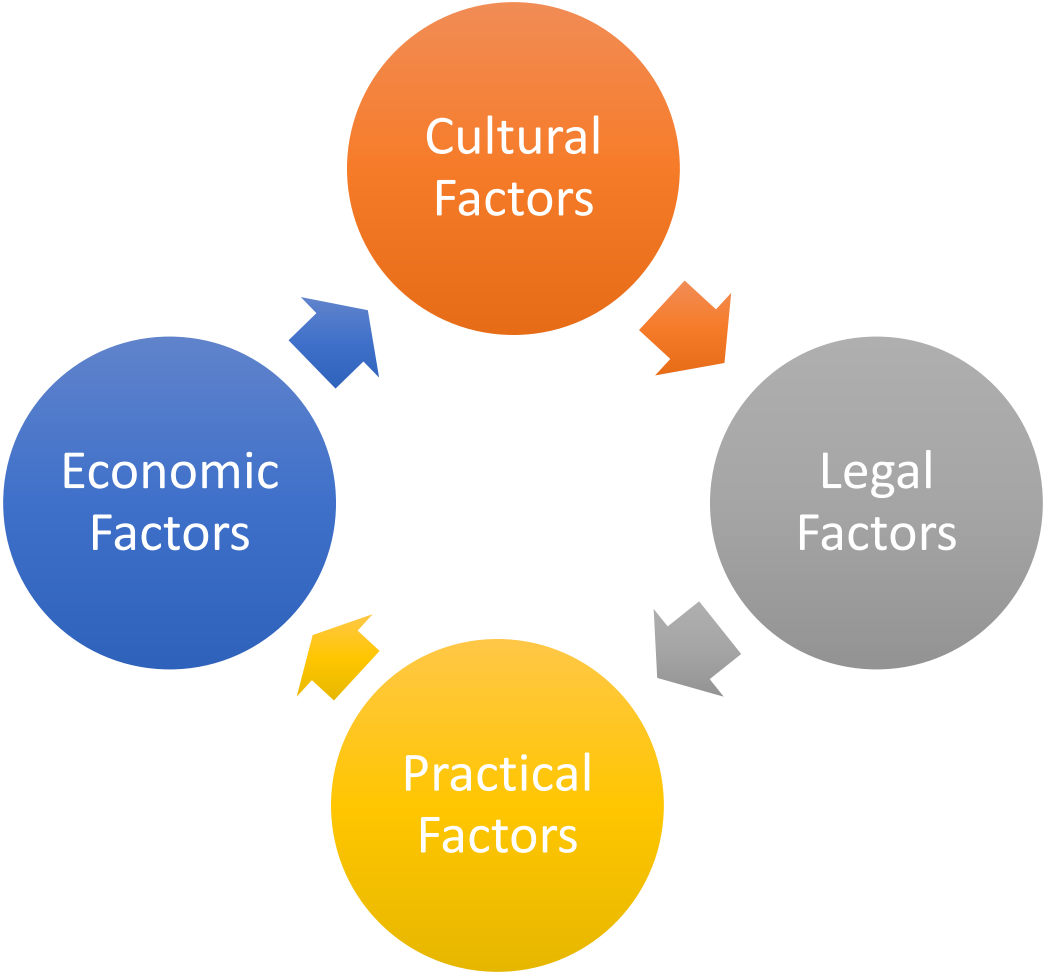
Who is in the room?

- Work with victims of domestic abuse and sexual assault?
- Work with immigrants?
- Have direct experience helping a survivor?

Barriers to Accessing Services

Trauma Informed Approach to
Serving Survivors of Domestic
Abuse

Barriers to Accessing Services



Abuser-Related Risks

- Abusers use further control victims by:
 - Using their immigration status (or lack of) to further their control and abuse
 - Taking advantage of barriers for victims with limited English proficiencies
 - Filing protective orders against them so they have to show up in court
 - Calling the police and falsely accusing them of crimes
 - Once police are called, if following protocol the intervention may result in ICE being called

Legal Options for Victims of Domestic Violence

- Violence Against Women Act (VAWA)
- U visa
- T visa
- Special Immigrant Juvenile Status (SIJS)
- Asylum

Violence Against Women Act: VAWA

- Offshoot of family-based immigration
- Self-petitioning for:
 - Abused spouse of USC or LPR
 - Abused child of USC or LPR
 - Abused parent of adult USC
 - Non-abused spouse of USC or LPR whose children have been abused by the USC or LPR spouse
- VAWA is gender-neutral

ELIGIBILITY OVERVIEW FOR VAWA SELF-PETITIONERS

- Abuser relative is USC or LPR;
- Self-Petitioner has relationship to abuser (spouse, child, parent);
- In spousal case, marriage entered into in good faith;
- Battery or extreme cruelty by USC or LPR relative;
- Past or present residence with USC/LPR relative;
- Current residence in US; in some circumstances, may apply from abroad ; and
- Good moral character for 3 years preceding petition

U Visa

- To help victims of crimes
 - Available to victims of certain criminal activity who assist government officials in investigating and/or prosecuting the crime
- To help law enforcement prosecute crimes
 - Strengthens ability of law enforcement to investigate and prosecute such crimes as domestic violence, sexual assault, and trafficking, while offering protection to victims

U Visa Eligibility

- Victim of a qualifying crime
- Substantial physical or mental abuse resulting from the crime
- Helpfulness of the applicant
 - Possesses information about the crime
 - Has been, is being, or will be helpful to law enforcement in the prosecution and/or investigation
- Admissible (most grounds waivable)

Qualifying Crimes List

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting
- Being Held Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- ❖ *Attempt, conspiracy, solicitation to commit any of the above*
- ❖ *Any related crimes or similar activity*

Purpose of T Visa

- To help victims of human trafficking
 - Available to victims of trafficking who comply with reasonable requests for assistance from law enforcement
- To help law enforcement prosecute trafficking
 - Strengthens ability of law enforcement to investigate and prosecute trafficking crimes, while offering protection to victims

T Eligibility Requirements

- Victim of a severe form of trafficking in persons
- Physically present in U.S. due to trafficking
- Complied with reasonable requests for assistance from law enforcement (if over 18)
- Would suffer extreme hardship involving unusual and severe harm if removed from U.S.
- Has not committed a severe form of trafficking in persons offense
- Admissible to the U.S.

Special Immigrant Juvenile Status

- For immigrant children who are victims of abuse, abandonment or neglect
- Abuse may have occurred in the U.S. or abroad
- Provides a pathway to legal permanent residence
- Intersection between state court and immigration law

Asylum

- Protection for persons fleeing persecution on basis of race, religion, nationality, political opinion, and membership in a particular social group
- Persecuted in the past, and/or has “well-founded fear” of future persecution
- Outside country of nationality

•Your Role in Helping Survivors

Best Practices

- Connect with Services
 - <http://www.immigrationadvocates.org/nonprofit/legaldirectory/>
 - NIWAP registry
- Don't Over promise
- Help and Support the Survivor and the Process
 - Supporting declarations
 - Helping documents
 - Safety Planning

U.S. Department of Homeland Security Victim Protection Priorities

Department of Homeland Security's Roles



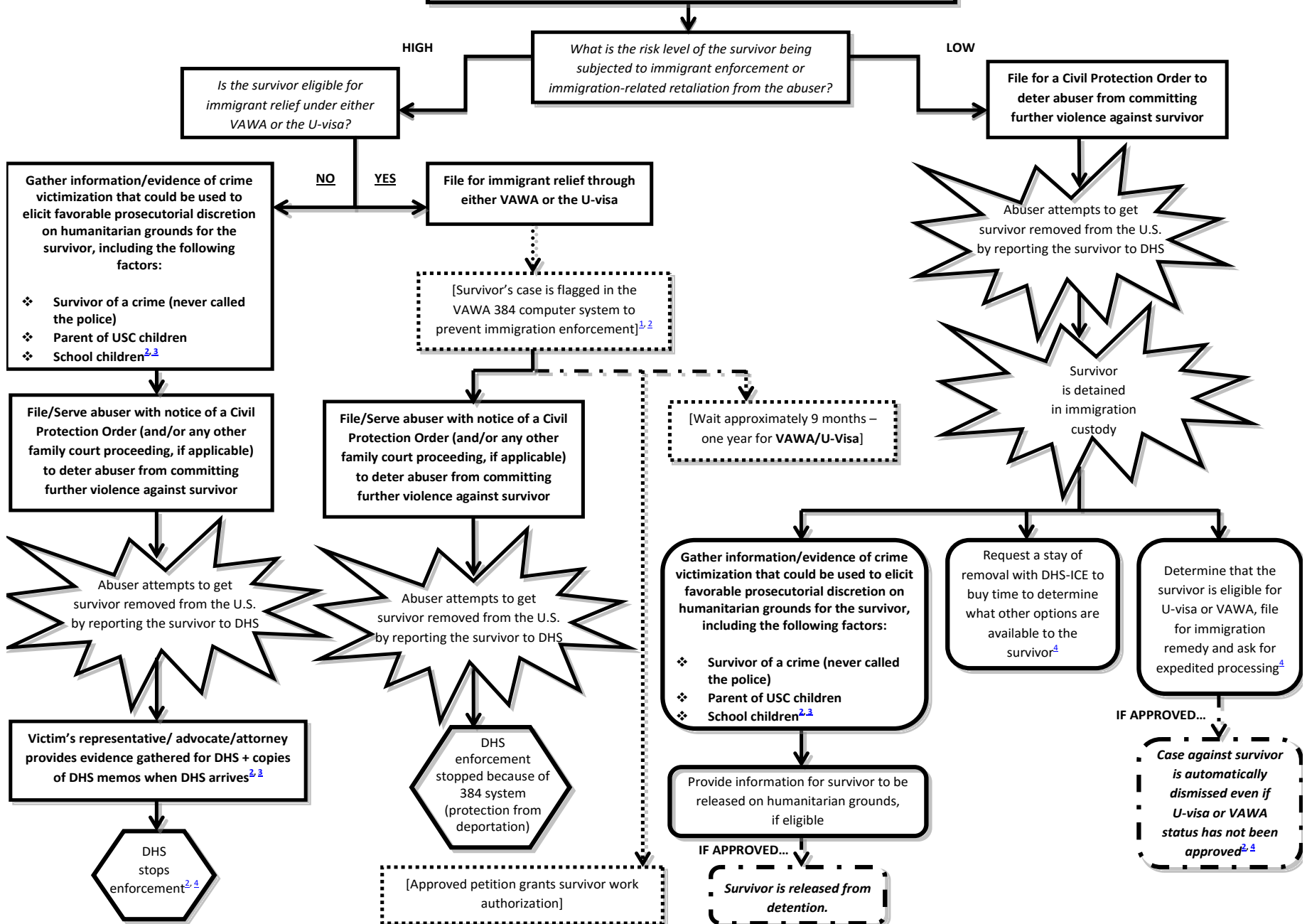
Homeland
Security
Blue Campaign

- Protecting vulnerable crime victims and children
 - non-citizen crime victims
 - Children
 - SJIS – abused, abandoned, neglected
 - DACA
 - Children included in victim's applications
 - Adjudicating legal immigration status
 - Visas, lawful permanent residency, citizenship
- Remove undocumented immigrants from the U.S. who are high priorities for removal

DHS Priority on Victim Protection

- DHS policies that protect survivors and immigrant parents from deportation
- Special DHS computer system offers more solid protection if immigration case filed
- How these policies affect safety planning

IMMIGRANT SURVIVOR WALKS THROUGH THE DOOR OF YOUR AGENCY



Issues That Arise for Immigrant Victims in Protection Order and Custody Cases

Protection Orders and Immigration Status

- Issuance of a protection order has no effect on immigration status of the abuser
- Violation of a protection order is a deportable offense
 - Violations of “ the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable”
 - Not custody and support provisions
- If a protection order is issued against a victim it can place her one-step away from deportation

Creative Protection Order Remedies

- Catch all provisions included in all state statutes
- Offer any additional relief that may potentially
 - Curb future abuse, harassment
 - Interfere with abuser/perpetrators ability to exert power and/or 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

What Are Some Examples of Creative Protection Order Relief That Would be Helpful to an Immigrant Victim?

Victims Who Stay: Full Contact Protection Orders

- No state's protection order statute requires separation of the parties
- In virtually every state victims cannot violate their own protection orders
 - Contrary to statutory intentions; and
 - Against public policy to prosecute abused women for complicity in violating their own orders.
- Provisions
 - No abuse
 - Counseling

Suggestions for Court Orders that help VAWA applicants: Examples

- Turn over documents/evidence in abuser's control that she needs for her immigration case. E.g.,
 - Passports
 - Identification documents
 - Copies of documents from any immigration case filed on the victim's or the children's behalf
 - Love letters
 - Family photos

A protection order or discovery can help a victim obtain needed evidence:

- Marriage certificate
- Wedding/family pictures
- Birth certificates
- Love letters
- Copies of joint leases/utility bills
- Police, medical, court documents about the relationship,
- Copy of abuser's green card or passport

Protection order or discovery continued

- School records
- Medical records
- Employment records
- Social security number information
- Health insurance
- Children's birth certificates
- Letters and other mail addressed to the victim and to the abuser at the same address
- Copy of I-130 petition

Catch-all Provisions Preventing Immigration Related Abuse

- Defendant must obtain prior court approval before contacting any government agency (immigration officials, CPS, IRS, Welfare etc.) concerning the petitioner except
 - Police emergency
 - Subpoena
- Cooperate in and not withdraw any case he has filed for petitioner with immigration authorities

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 medical, car, house insurance, mortgage, rent, utility and/or debt payments
- Child support and spousal support
- Injunctions against third party institutions not to respond to acts by the abuser that would harm her (banks, retirement funds, utility companies)
- Taxes
 - Turn over income tax statements
 - Victim named trustee for receipt of tax return funds, respondent ordered to sign check
 - Victim awarded exclusive right to claim children as tax exemptions
 - Respondent pays victim $\frac{1}{2}$ of return

Reading and Resources

- Creative Protection Order Remedies for Protecting Battered Immigrants <http://niwaplibrary.wcl.american.edu/pubs/creative-cpo-batimms/>
- Protection Orders and Battered Immigrants: The Impact of Attorneys and Advocates <http://niwaplibrary.wcl.american.edu/pubs/battered-imms-cpo-advocacy/>
- Bench Card: Immigrants and Protection Orders <http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immigrantscpos/>

Custody of Children in Immigrant Families

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



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

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.

Access to Benefits and Services Grows
As CHILDREN and Victims Pursue
Immigration Relief



True or False

1. Receiving public benefits can harm an immigrant victim's ability to obtain legal immigration status
2. Undocumented immigrant parents can apply for public benefits for immigrant children
3. Undocumented victims and children can access transitional housing programs
4. Federally funded health care is not available for undocumented immigrants
5. DHS requires schools and universities to ask about immigration status of applicant or enrolling students

Help Open to All Immigrants Without
Regard to Immigration Status



- Health Care through
 - Emergency Medicaid
 - VOCA
 - Community & Migrant Health Clinics
- www.hrsa.gov
- Enter zip code
- State funded health care
 - Benefits map
 - www.niwap.org/benefitsmap

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



CLINIC provides legal, management, and advocacy assistance to the almost 300 faith and community-based non-profits in our network and promotes the rights and protects the dignity of immigration through national projects and advocacy.

For community education resources: cliniclegal.org/communityed

NIWAP's Technical Assistance and Materials

- **NIWAP Technical Assistance:**

- Call (202) 274-4457

- E-mail niwap@wcl.american.edu

- Web Library: www.niwaplibrary.wcl.american.edu

- Directory:

- <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

- Training: Police, Prosecutors, Judges, Attorneys, Advocates

- Subjects: Family, Public Benefits, Immigration, Language Access, Holistic Legal /Social Services

To find more resources on domestic violence and abuse

Dropbox <http://bit.ly/DVSymposiumImmigrationPanel>