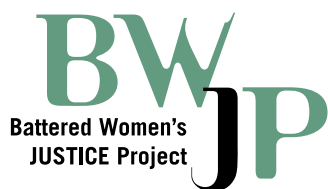


Assisting Immigrant Victims of Domestic Violence



PROSECUTOR'S GUIDE



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For Further Assistance For technical assistance on working with battered immigrant women and immigrant victims of crime, sexual assault and trafficking or for referrals in your community to programs with this expertise, contact the National Network to End Violence Against Immigrant Women: <http://www.immigrantwomennetwork.org>



Introduction

This guide is intended to give a brief overview of the issues prosecutors should consider when handling cases involving immigrant victims. **This guide will:**

- Explore relevant immigration laws and terms.
- Examine the challenges immigrant crime victims face navigating the justice system.
- Identify how prosecutors can most effectively proceed with cases involving immigrant crime victims.

KEY DEFINITIONS AND CONCEPTS

Key Definitions and Concepts

BCIS: Bureau of Citizenship and Immigration Services in the U.S. Department of Homeland Security (DHS). BCIS handles all immigration service and adjudication functions formerly performed by INS, including decisions on immigrant visa petitions, VAWA petitions, and other applications such as T and U visas, asylum and refugee applications.

BICE: Bureau of Immigration and Customs Enforcement is also under DHS. BICE focuses on the movement of goods and people and includes the enforcement and investigative functions previously undertaken by INS, such as immigration inspection and border patrol. It also includes the enforcement and investigative functions of the Customs Service.

United States Citizen: A U.S. Citizen is someone who is either born in the U.S., born abroad to a U.S. Citizen, naturalized as a U.S. Citizen, or automatically becomes a U.S. Citizen when a parent or both parents become naturalized.

Lawful Permanent Resident: An immigrant who has established a permanent right to live and work in the U.S. and to travel outside the country, also referred to as "LPR" status or "greencard" holder. LPR status lasts throughout life and the greencard holder is eligible to apply for U.S. Citizenship after they have held this status for 3 to 5 years. A Lawful Permanent Resident can be deported if convicted of certain crimes.

Undocumented Persons: An immigrant who has entered the U.S. without detection and without any documentation, or an immigrant who has entered the U.S. with fraudulent documents or with appropriate documentation that has expired. These individuals are sometimes referred to as "illegal aliens."

Non-Immigrant Visas: A document that enables an individual to come to the U.S. for a temporary period and for a specific purpose, including the following visas: tourist, student, business visitor and diplomat.

Deportation: An action undertaken to remove an immigrant from the U.S., also known as "Removal." Deportation usually involves a hearing before an immigration judge, also known as a "Removal Proceeding." Once deported, an individual may not return to the U.S. for five years. However, an individual can decide to leave the U.S. voluntarily, without a hearing. This is considered a "voluntary deportation" and does not have the same five-year ban on returning.

Justice System Challenges for Immigrant Crime Victims

Due to their lack of access to culturally responsive services, immigrant victims of domestic violence are at greater risk of longer exposure to and greater impact from domestic violence. Immigrant victims of domestic violence, sexual assault and other crimes face a number of challenges in navigating the criminal justice system.

These include:

- Fear of deportation
- Language barriers
- Misinformation about the police and U.S. legal system
- Fear of being ostracized by their ethnic, religious or cultural community
- Need for economic survival
- Fear of losing custody of children

Many documented as well as undocumented immigrant crime victims lack information about the U.S. legal and social services systems and fear that any interaction with these systems will lead to their deportation. This possibility can make them especially vulnerable to victimization. This fear is often heightened in domestic violence situations by abusers who may use a victim's immigration status as part of the abuse.

Examples of immigration-related abuse include:

- Threats that the police will report the victim to BICE if she calls for help.
- Threats or attempts to have the victim deported.
- Interference with the victim's efforts to obtain legal status, such as:
 - Threats to and acts to withdraw the victim's immigration papers.
 - Calls to the immigration authorities to turn the victim in or to have the victim's immigration case denied.

PREPARE Prepare to Assist Immigrant Crime Victims and Witnesses

1 Build Relationships with Community-Based Service Providers.

Ideally, prosecutors will reach out to community-based domestic violence and immigrant service organizations when beginning to work with immigrant victims. Doing so may alleviate some of the challenges prosecutors may face in handling these cases. The issues of safety, housing and custody are difficult enough for domestic violence victims; when working with battered immigrant women these issues are often complicated by language, culture and immigration status as well. To handle these cases effectively, prosecutors need to identify and develop partnerships with communities and organizations that may help inform and address these and other issues.

Cultural Issues

To begin the work of initiating partnerships prosecutors should:

- Identify the various population groups in the community.
- Locate the agencies and organizations in the community that serve these population groups and identify willing and committed individuals within the different agencies with whom to collaborate.
- Find immigrant organizations in the area that battered immigrant women and other immigrant victims may contact.
 - They can help prosecutors better understand the immigrant victim's experience and challenges.
 - They can assist in identifying interpreters and providing services for immigrant victims.
 - These resources help prosecutors build better cases.

Language Issues

The absence of language accessibility is a major issue for immigrant victims. Prosecutors without multilingual staff should, as a first step, develop a referral list of interpreters. Again, this is best done in partnership with immigrant and community agencies. All interpreters should be trained on domestic violence issues and dynamics.

If a prosecutor has difficulty locating an interpreter, there are some general guidelines to understand:

- Although it may feel as though there is no other choice, do not use the children as interpreters. This places children in an unduly burdensome situation and may add to their risk as well as compound the impact of the domestic violence on them.
- Do not assume that the person who accompanies the victim is a safe interpreter to use. Find out who they are, assess whether they pose any safety risk to the victim or witness, assess their relationship with the abuser/defendant, and determine if they are charging any fee to the client.
- Assess volunteers from the community. Find out whether they have any connection to the abuser.
- Make sure the battered immigrant woman is comfortable with the interpreter. In some cases, immigrant victims will not want anyone from their community to be involved. In those situations, volunteers from the community may not be a good option.
- Do not assume that because someone knows the language and the culture that they are not biased or that they are good interpreters. If something does not feel right, look into it.
- In the cases where no person who speaks a given language is available in the community, or the victim is not comfortable with those that do:
 - Establish an arrangement with organizations outside the area that have access to those languages and can assist over the phone. Some organizations across the country have successfully established these types of agreements; for example, a program in Miami will call a program in Los Angeles to access an interpreter for various Asian languages; or
 - Establish a contract with a telephone language line service. However, be mindful that these interpreters are often not familiar with domestic violence.

2 Understand the Remedies Available Under Immigration Laws.

VAWA Self-Petitioning

- Applies to battered immigrant women who are married to U.S. citizens or lawful permanent residents.
- Allows immigrant victims of domestic violence to file their own petitions for lawful permanent residency without the cooperation of their abuser.
- Also allows immigrant parents to file petitions for themselves and their children if the children are abused. This includes spouses who were not abused or former spouses who are parents of children abused by a parent who is a citizen or lawful permanent resident.
- The requirements a victim must show include the following:

Victim of Domestic Violence — self-petitioners must prove they suffered battery or extreme cruelty while married. This can be shown through the submission of civil protection orders, police and court records, affidavits of school officials, clergy, social workers, and shelter staff. Photographs of injuries and other credible evidence would also be accepted.

Relationship with U.S. citizen or lawful permanent resident — this can be shown through a marriage certificate. If divorced, the petitioner must demonstrate that the divorce was within the past 2 years and was due to domestic violence.

Where they reside and where the abuse takes place — the victim does not have to reside with the abusive partner at the time the petition is filed, but does have to show that they resided together during the marriage. This is usually shown through utility bills, leases, or bank statements that contain both names and the address.

Good faith marriage — the victim can prove this from pictures, love notes or letters.

Good moral character — victims need to show that they have not been arrested and convicted of a crime, including domestic violence. This is usually done by submitting a local police clearance or state-issued criminal background check from each locality or state, within or



outside the U.S., in which the victim lived for six or more months during the three years immediately preceding the filing of the self-petition. A victim may choose to submit fingerprints instead.

It is not necessary for a U.S. citizen or lawful permanent resident spouse or parent to have filed any paperwork previously.

Battered Spouse Waivers

- Available for immigrant victims who have conditional residency (a conditional temporary 2-year green card).
- Conditional residency was obtained through a case filed by her abusive citizen or legal resident spouse or parent.
- In this case, a battered spouse can petition to have the conditions removed and have her conditional residency changed to permanent residency without her abuser's knowledge or participation in the process.

Cancellation of Removal/Suspension of Deportation Under VAWA

- Covers battered spouses or children of U.S. citizens or lawful permanent residents who are in deportation or removal proceedings.
- Allows battered immigrants and the immigrant parents of an abused child to close their deportation/removal proceedings and gain lawful permanent residency without participation of the abuser.
- For some battered immigrants, cancellation of removal is the only VAWA option. These include:
 - Parents of abused children, who may or may not have been abused themselves, who were never married to their child's abuser.

- Child abuse and incest victims who were abused while they were under 21 years old and who are now over 21 years old.
- Child abuse cases where the child may not be able to establish residence with the abuser.
- Abused spouses divorced more than 2 years before filing for VAWA protection.
- Abused spouses and children of deceased permanent residents who died before the self-petition was approved or filed.
- Abused spouses or children whose citizen or permanent resident parent gave up citizenship or lost status more than 2 years before the battered immigrant could file for VAWA protection.

U Visa

- Applies to a limited group of immigrant crime victims who have suffered substantial physical or emotional injury as a result of being subjected to specific crimes committed against them in the U.S., including battered immigrants who are victims of domestic violence by spouses, and those currently not covered under the VAWA provisions, such as:
 - Victims abused by boyfriends and other persons who are not their spouse or parent.
 - Victims abused by a boyfriend, spouse or parent who is a student, non-immigrant visa holder, a diplomat or an undocumented immigrant.

The U visa will also help immigrant victims:

- of rape or sexual assault (including in the workplace),
- of incest, female genital mutilation and a number of other crimes,

- who are nannies abused by their employees, and
 - who are held hostage by a spouse, family member or an employer.
- Obtaining a U visa is more difficult than seeking relief under VAWA because to qualify, the battered immigrant must suffer substantial physical or emotional injury and must be cooperative with law enforcement. To obtain the visa, a victim needs a law enforcement official (police officer, prosecutor, judge, EEOC or other federal or state officials investigating or prosecuting criminal activity) to certify that they believe the applicant is a victim of a covered crime and has been helpful, is being helpful or is likely to be helpful to an investigation or prosecution of criminal activity. The abuser/accused does not have to be convicted for the victim to qualify.
 - If granted, the immigrant victim receives a legal immigration visa which may lead to lawful permanent residency if certain conditions are met. U visa recipients can get work authorization, but not public benefits.

T Visa

- Applies to victims who have been trafficked into the U.S. for labor or commercial sex purposes. The victims must be willing to cooperate with the investigation or prosecution of the crime.
- If granted, the immigrant victim receives a legal immigration visa which may lead to lawful permanent residency, access to public benefits and work authorization.



PROCEED Proceed Appropriately

1 Understand the Impact of Criminal Convictions and Consider Other Options.

Understand that immigrant victims and witnesses applying for relief under the Violence Against Women Act (VAWA self-petition and VAWA cancellation of removal) must demonstrate good moral character — a criminal conviction could negatively affect an immigration case. Criminal convictions can also cause lawful permanent residents to lose their green cards or be denied naturalization.

There will be cases when the immigrant victim's risk of harm will actually increase if the abusive partner is convicted. A conviction for misdemeanor domestic assault makes the abusive partner deportable and when deported the victim will not be able to track the abuser's whereabouts. In many situations, the abusive partner is able to reenter the U.S. undetected and seek out the victim for retaliation. Prosecutors should explore these concerns with the victim and in these cases may wish to consider a diversion program for the abusive partner. This way the victim will be able to monitor his actions and take steps to ensure safety.

2 Carefully Investigate Cases Involving Arrests of Battered Immigrant Women for Crimes Against Their Abusers.

Indications that an immigrant victim was acting in self-defense should be carefully investigated. Identifying the primary aggressor in a domestic violence case is always important, but when working in immigrant communities, it is especially critical. To petition for lawful status under VAWA, the victim must show good moral character. Any conviction, even for a minor offense, could jeopardize the victim's petition. If the victim decides to plead guilty, make sure she fully understands the potential immigration consequences.

Language limitations can interfere in determining the primary aggressor. Often, only one of the parties in a domestic violence case speaks English. Train law enforcement officers to correctly determine the primary aggressor by using a neutral interpreter to conduct a thorough interview with both parties and all witnesses. Do not assume that the person at the scene who volunteers to translate is a safe interpreter to use — s/he may be a party to the abuse. If no impartial interpreter is available, use a language telephone line to obtain an interpreter. Never use children as interpreters.

3 Explain Services Available to Immigrant Victims of Crimes and Make Referrals.

Inform victims who may be immigrants that you do not report immigrants to BICE and that all victims have access to the justice system and can obtain a protection order, shelter and social services regardless of immigration status. Explain that the victim has options to address the violence in her life and may have remedies available to her under immigration laws. Refer victims to community-based organizations with expertise in serving immigrant victims or to immigration attorneys.

4 Provide Victims with Court Records When Appropriate.

To access immigration remedies immigrant victims will need to show battery or extreme cruelty. Often, the best proofs are well-documented police reports and court records, which may contain crime scene photos, medical records, witness statements and copies of protection orders. If requested, provide copies of the report when appropriate.

5 Encourage and Assist Immigrant Victims to Obtain Necessary Documents.

Because a victim's immigration status is often used against her, it is important that the victim, especially in domestic violence cases, obtain whatever documentation she can, including:

- Children's birth certificates
- Immigration papers filed for the victim or their children
- Identification cards, passports, children's passports
- Marriage license
- Tax returns, utility bills, bank statements
- Family photos
- Love letters

Often the abusive partner or perpetrator holds these documents. Assisting the victim in collecting these safely is critical for the victim's ability to access services and obtain whatever immigration relief is available to them and their children. Prosecutors should encourage and assist the victim to obtain these documents.

In addition, provide immigrant victims with certification that indicates that the prosecutor's office handled their case and that the victim has been, is being or is willing to help in the investigation or prosecution of the criminal activity. This enables the victim to obtain a U visa or, in cases involving human trafficking, a T visa. **A sample U Visa certification form can be found on the back cover.**

Addendum A - U Visa VAWA 2000 created additional relief for immigrant victims of crime. One of the important innovations to come out of VAWA 2000 was the creation of the U visa. The U visa is a crime victim visa, given to immigrant victims of certain types of crime. The crimes covered under the U visa include:

Rape	Being held hostage, peonage	Witness tampering
Torture	Involuntary servitude	Obstruction of justice
Trafficking	Slave trade	Perjury
Incest	Kidnapping	Attempt, conspiracy or
Domestic violence	Abduction	solicitation to commit any of the
Sexual assault	Unlawful criminal restraint	above crimes
Abusive sexual conduct	False imprisonment	Any similar activity in violation of
Prostitution	Blackmail	federal, state or local law
Sexual exploitation	Extortion	
Female genital cutting	Manslaughter	

U VISA CERTIFICATION FORM

I, _____, hereby affirm the following:
(NAME)

- 1** I am a: (CHECK ONE)
- Federal official
 - State official
 - Local official (municipal, district, county)
 - INS officer* (see 2B below)

- Specifically, I am a: (CHECK ONE)
- Law Enforcement Officer
 - Prosecutor
 - Judge
 - Other Investigating Authority

JOB TITLE

NAME OF EMPLOYER

STREET ADDRESS/LOCATION

CITY, STATE & ZIP CODE

TELEPHONE

2A I am responsible or the agency for which I work is responsible for investigating (or overseeing the investigation of) criminal activity involving or similar to violations of (some or all of) the following types of offenses under Federal, State or local criminal laws: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy or solicitation to commit any of these crimes OR

2B I am an INS officer with information not limited to immigration violations related to criminal activity described above or similar criminal activity.

3 The criminal activity at issue in this case may involve (but is not limited to) possible violations of the following criminal laws: (PROVIDE STATUTE OR CODE CITATION(S) AND OFFENSE NAME(S))

and based on my expertise and understanding of these laws, I have determined that these laws fall within the list of offenses set forth in Question #2 or is similar activity violating Federal, State or local criminal law.

4 It is suspected that this criminal activity occurred on or about: (SPECIFY AS MUCH AS POSSIBLE DATE(S) AND LOCATION(S) OF CRIMINAL ACTIVITY)

5 I affirm that _____:
(NAME OF U VISA APPLICANT)**

- (CHECK ALL THAT APPLY)
- has been helpful;
 - is being helpful;
 - is likely to be helpful

in an/the investigation and/or prosecution of this criminal activity.

6 I affirm that _____:
(NAME OF U VISA APPLICANT)**

possesses relevant information relating to this criminal activity. This information includes (but is not limited to) the following: (PROVIDE BRIEF DESCRIPTION OF INFORMATION)

** If the U visa applicant is under the age of 16, please certify that the applicant's parent, guardian or "next friend" meets these requirements.

7 I affirm that this criminal activity occurred:

- (CHECK ALL THAT APPLY)
- in the United States (including Indian country and military installations);
 - in territories and possessions of the United States; OR
 - outside the United States, but violated United States' laws.

Certification for applicant's spouse, child or parent

8 This investigation and/or prosecution would be harmed without the assistance of

(NAME OF APPLICANT'S SPOUSE, CHILD OR PARENT)

who is the _____ spouse _____ child _____ parent of the applicant listed above.

SIGNATURE

DATE