


Ensuring Access to Shelter and Services for Immigrant Survivors

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A close-up portrait of Rosie Hidalgo, a woman with short, curly, grey hair, looking directly at the camera with a slight smile. She is wearing a dark-colored top. The background is dark and out of focus.

Lead by example
CHERISH
OUR FAMILIES
Crear Comunidad
Alcanzar nuestros sueños
Create Change

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Introduction

Immigrant victims of domestic violence, sexual assault, and trafficking often face additional challenges and barriers when seeking assistance and safety. It is well known that perpetrators of these crimes often exploit a victim's immigration status as a tool of abuse and control in order to make them too fearful to seek safety and justice. This includes threatening to report survivors to Immigration and Customs Enforcement (ICE) to have them deported and have their children taken away from them. Additionally, abusers often take advantage of the situation, particularly if an immigrant survivor has limited English proficiency, to misrepresent the laws and protections afforded to victims in the United States, and to tell them that they do not have any rights.

It is imperative that domestic violence and sexual assault organizations not only ensure access to their services to all survivors, regardless of immigration status, but that they also proactively reach out to immigrant communities to let them know that the services are available to them and that they are welcomed. Otherwise, programs run the risk of sharpening the tools of abusers who take advantage of the increased fear and uncertainty to further exploit and abuse immigrant victims.

A recent survey that was completed by more than 700 advocates and attorneys from around the country revealed heightened uncertainty and fear among immigrant survivors of domestic violence and sexual assault.¹ Additionally, we have received inquiries from service providers seeking more information about the laws and policies that ensure

Casa de Esperanza has chosen to use "@" in place of the masculine "o" when referring to people or things that are either gender neutral or both masculine and feminine in make-up. This decision reflects our commitment to gender inclusion and recognizes the important contributions that both men and women make to our communities.

1. "Key Findings: 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors" available at: <http://nationallatinonetwork.org/images/2017%20Advocate%20and%20Legal%20Service%20Survey%20Key%20Findings.pdf>

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access to services for undocumented immigrants. As a result, this seems like an opportune time to provide some general guidance on these issues with links to additional resources.

VAWA, and other victim-centered legislation

Since the enactment of the Violence Against Women Act (VAWA) in 1994, VAWA has always included vital protections for immigrant survivors of domestic violence and sexual assault. Congress recognized that the abusers of immigrant victims often use their victims' dependent immigration status or lack of immigration status as a tool of abuse, leaving the victim too afraid to seek services or report the abuse to law enforcement. As a result, Congress created the VAWA self-petition process to assist victims married to abusive spouses who are U.S. citizens or lawful permanent residents and who use their control over the victims' immigration status to keep them trapped in an abusive situation (e.g., by failing to petition for them and thus intentionally leaving victims without legal immigration status and without legal work authorization).² Subsequently, when VAWA was reauthorized in 2000, in conjunction with the passage of the Trafficking Victims Protection Act (TVPA), Congress created, in a bipartisan fashion, two additional remedies for immigrant survivors. The U visa was established to assist noncitizen victims of certain eligible crimes (including domestic violence, sexual assault, and trafficking) who are willing to assist in the investigation or prosecution of a crime.³ Additionally, the T visa was established to assist victims of human trafficking.

In creating these new remedies for immigrant victims, Congress recognized the importance of fostering cooperation between undocumented victims and law enforcement agencies or other agencies tasked with investigating crimes. Additionally, Congress recognized that providing a pathway to safety for immigrant victims was also in "keeping with the humanitarian interests of the United States."⁴ Special confidentiality provisions were also included in VAWA to protect immigrant survivors.⁵ During subsequent reauthorizations of VAWA in 2005 and 2013, Congress continued, in a bipartisan manner, to support and strengthen immigration

2. For a general overview and additional information about the VAWA self-petition and other remedies for immigrant survivors, see the Immigration section of womenslaw.org found at <https://www.womenslaw.org/laws/federal/immigration>; See also the chart by the National Immigrant Women's Advocacy Project, "Comparing Forms of immigration Relief for Immigrant Victims," found at <http://library.niwap.org/wp-content/uploads/2015/IMM-Chart-ImmReliefFormsComparison-06.19.12.pdf> (updated 2017)

3. For additional information, see the Department of Homeland Security "U and T Visa Law Enforcement Resource Guide," found at <https://www.dhs.gov/publication/u-visa-law-enforcement-certification-resource-guide>.

4. Congress stated that the purpose of creating these provisions was to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking [...] and other crimes [...] committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." See section 1513(a)(2)(A), Public Law No: 106-386, 114 Stat. 1464

5. More information about VAWA confidentiality provisions for immigrant victims is found here: <http://niwaplibrary.wcl.american.edu/vawa-confidentiality-protections-training-materials/>

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remedies and confidentiality protections for immigrant survivors.

While these immigration remedies can provide a critical pathway to safety for many immigrant survivors, the reality is that most immigrant victims of domestic violence, sexual assault, stalking, and trafficking are unable to learn about their rights and access these protections unless they are able to obtain the assistance of a trained advocate, as well as additional supportive services that are trauma-informed and linguistically accessible. Therefore, domestic violence and sexual assault service providers play a critical role in providing a life-changing bridge to safety and well-being for immigrant survivors and their children.

Ensuring Access to Services Necessary for the Protection of Life or Safety

Nonetheless, some advocates or service providers express uncertainty as to whether their program can serve undocumented immigrants. When Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, also known as the “welfare reform law,” they placed additional restrictions on the ability of immigrants to access certain federal public benefits. However, it is important to remember that Congress specifically created an exception for services “necessary for protections of life or safety,” recognizing that these services should remain accessible to all regardless of immigration status.⁶ In 2001, the Attorney General issued an order reiterating the criteria established in PRWORA and specifying the types of programs, services, or assistance determined to be necessary for the protection of life or safety. Recently, in 2016, the Attorney General and the Secretaries of the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Health and Human Services (HHS), issued a joint letter to recipients of federal funding highlighting these long-standing provisions, consolidating information about relevant programs and services, and reminding service providers of the requirement to ensure access, regardless of immigration status, to services necessary for the protection of life or safety.⁷ This includes services such as emergency shelter; short-term housing assistance, including transitional housing for up to two years; crisis counseling; and abuse prevention and intervention programs.

6. In particular, Congress established a 3-part test for determining which programs, services, or assistance fall within this exception: “Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General’s sole and unreviewable discretion after consultation with the appropriate Federal agencies and departments, which (i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and (iii) are necessary for the protection of life or safety.” 8 U.S.C. §§ 1611(b)(1)(D); 1621(b)(4).

7. Available at: <https://www.justice.gov/ovw/file/883641/download>

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The letter issued by these three federal agencies also clarifies that there are many federal programs that do not fall under the definition of “federal public benefit,” and therefore were not restricted by PRWORA. For example, the Department of Justice’s Office for Victims of Crime clarified that Victims of Crime Act (VOCA) victim compensation benefits should not be denied to anyone on the basis of immigration status.⁸

Non-discrimination provisions

Furthermore, according to federal nondiscrimination provisions, recipients of federal funds must agree not to discriminate in the provision of services. Title VI of the Civil Rights Act of 1964,⁹ and its implementing regulations, provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. So, unless federal law requires screening for the immigration status of recipients (like PRWORA does for Temporary Assistance for Needy Families)¹⁰ and has included it in the eligibility criteria, a service program would not have a valid basis to turn someone away from their services based on perceived or actual immigration status and it would be discriminatory to single out particular people for exclusion based on national origin.

Title VI of the Civil Rights Act also requires that recipients of federal funding take reasonable steps to ensure meaningful access to services for individuals with limited English proficiency (LEP).¹¹ This is critical since it will not be possible to provide adequate information and support to assist immigrant survivors if a service program does not provide adequate language access for individuals with limited English proficiency. For additional tools and resources to improve language access, you can use [this language access toolkit](#) that was developed by Casa de Esperanza to help service providers improve meaningful access for LEP individuals.

Additionally, federal agencies that provide funding to domestic violence and sexual assault service providers have developed additional guidance regarding their obligation to make services accessible to all survivors, regardless of immigration status. The Family Violence Pre-

8. See Letter from Joye Frost, Acting Director, Office for Victims of Crime, to Cassie T. Jones, Executive Director, Alabama Crime Victims’ Compensation Commission (July 2, 2010), available at <http://library.niwap.org/wp-content/uploads/OJP-OVC-Letter-on-Access-to-VOCA-Victim-Compensation-7.2.2010.pdf>

9. 42 U.S.C. 2000d, et seq.

10. Nonetheless, it is important to keep in mind that in families with mixed immigration status, those individuals who meet eligibility criteria (such as U.S. citizen children) remain eligible for federal public assistance even if others in the family do not meet the qualifications to obtain those benefits.

11. Additional information and resources are available at www.LEP.gov.

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vention and Services Program of HHS, Administration for Children and Families, recently issued revised federal regulations regarding implementation of the Family Violence Prevention and Services Act (FVPSA), which went into effect in January 2017. The regulations specifically state that “All FVPSA-funded services must be provided without requiring documentation of immigration status because HHS has determined that FVPSA-funded services do not fall within the definition of federal public benefit that would require verification of immigration status.”¹² Furthermore, the Civil Rights Division of HHS provides additional information on their website about access to HHS-funded services for Immigrant Survivors of Domestic Violence found [here](#).

The Office on Violence Against Women (OVW) of the U.S. Department of Justice also provides guidance to OVW grantees clarifying that policies that exclude victims (or policies that have the impact of excluding victims) from receiving safe shelter, advocacy services and other assistance based on, among other things, their actual or perceived immigration status constitute activities that compromise victim safety and are prohibited with OVW grant funds.¹³

Resources for service providers on confidentiality protections

In light of increased immigration enforcement activities, service providers have inquired about the confidentiality and due process protections afforded to immigrant survivors and victim service agencies that assist them. It is important for domestic violence shelters and transitional housing programs, as well as other victim service providers, to make sure that they develop protocols and provide staff training to protect the confidentiality and access to services of immigrant survivors. The Asian Pacific Institute on Gender Based Violence created an [FAQ](#) on Immigration Enforcement and Victim Services Programs, which covers important information about confidentiality protections pursuant to VAWA, VOCA and FVPSA, as well an [advisory](#) regarding the impact of safe harbor laws on victim services programs.

12. 45 CFR § 1370.5(d), published in the Federal Register, Vol. 81, No. 212, Nov. 2, 2016.

13. The OVW guidance for grantees states the following: “Activities that may compromise victim safety OVW has found that certain activities may have the effect of jeopardizing victim safety, deterring or preventing physical or emotional healing for victims, or allowing offenders to escape responsibility for their actions. As such, the following are examples of activities that are prohibited with OVW grant funds. 1) Procedures or policies that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their actual or perceived sex, age, immigration status [emphasis added], race, religion, sexual orientation, gender identity, mental health condition, physical health condition, criminal record, work in the sex industry, or the age and/or sex of their children. If victim services are not available to all victims, then the program is compromising safety for those victims who are not eligible for services. Policies that do not directly exclude victims may still have the impact of excluding them. For example if a program uses criminal background checks as part of their screening process, it may deter victims with a criminal history from coming forward. Programs that require social security numbers or state issued identification, employment, or income may not be accessible to undocumented immigrant victims. In addition, all OVW grantees are subject to the nondiscrimination condition of 42 U.S.C. 13925(b) (13).” See Department of Justice, Office on Violence Against Women, “FY 2017 Solicitation Companion Guide: OVW Grant Programs and Post-Award Information”, p.4, available at <https://www.justice.gov/file/29686/download>

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Ongoing, comprehensive support for survivors and providers

The nation's commitment to prevent and end domestic violence, sexual assault, stalking, dating violence, and trafficking requires a commitment to providing access to safety and justice for all survivors, including those from underserved and marginalized communities. It is imperative that service providers continue to enhance outreach and access to services in order to provide a pathway to safety and well-being for immigrant survivors and their children. Additional information and resources for enhancing advocacy and safety planning for immigrant survivors is available [here](#). If your organization would like to request additional information, training, or technical assistance to improve access to services for immigrant survivors, we are here to help.