



# **Report to the Legal Services Corporation:**

## **Immigrant Victims of Domestic Violence, Sexual Assault and Human Trafficking and Access to Legal Services**

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## I. Introduction

The National Immigrant Women’s Advocacy Project conducted a national survey and produced this report to better understand how and to what extent the expansions of access to assistance from Legal Services Corporation (“LSC”) funded programs that became law in the Violence Against Women Act of 2006 are being implemented by LSC funded programs across the country. Following the passage of the Violence Against Women Act of 2006 LSC issued Program Letter 06-2 that was distributed to all LSC Program Directors.. Program Letter 06-2 explained to LSC funded programs how the Violence Against Women Act of 2006 “expand[ed] the scope of services that LSC grantees can provide to victims of domestic violence, sexual assault, trafficking and certain other crimes, regardless of their immigration status.”<sup>1</sup>

Congress, in VAWA 2006, eliminated as a matter of law immigration restrictions on access to legal assistance and representation by LSC funded programs for a broad range of immigrant crime victims. These amendments responded to the growing awareness of the added danger immigrant women face when they are denied access to legal services. The Program Letter urged that LSC grantee programs change their intake procedures to ensure that the immigrant crime victims whom Congress sought to assist in the VAWA 2006 amendments would no longer be turned away, due to the victim’s immigration status, from any legal service agencies receiving federal money (e.g. VAWA, VOCA, STOP, OVC and LSC).

Unfortunately, Program Letter 06-2 alone has not had the desired effect of spurring all LSC grantees to change their intake procedures to screen first for eligibility based on victimization and move on to immigration eligibility questions for applicants who are not crime

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<sup>1</sup> Memorandum from Helaine M. Barnett, President, Legal Services Corporation, to All LSC Program Directors, *Violence Against Women Act of 2006 Amendments* (Feb. 21, 2006)(on file with author).

victims or family members of crime victims. Many different LSC grantees across the United States continue to turn away immigrant victims because they lack qualifying immigration status.

NIWAP provides national technical assistance to advocates, attorneys, police, prosecutors, judges and other professionals to whom immigrant survivors turn for help. These professionals serve immigrant victims of the following crimes, their children, and non-abusive family members. Our work focuses on providing technical assistance, training, legal research, strategy consultations, and public policy advocacy assistance for immigrant women and children living in poverty and for immigrant victims of domestic violence, sexual assault, human trafficking, stalking, dating violence, elder abuse, child abuse and other criminal activities described in the U visa. Immigration and Nationality Act Section 101(a)(15)(U).

Through NIWAP's national technical assistance, training, and the research we conducted, we have confirmed that many immigrant crime victim survivors continue to be denied assistance from LSC funded programs due to their immigration status. Each year NIWAP staff conducts trainings on immigrant victims' legal rights at trainings held in jurisdictions across the country. Since March 2006, NIWAP's Director has conducted 163 trainings for 11,181 attendees. These trainings took place in 85 different cities in 26 states. These trainings very often include a discussion of the VAWA 2006 amendments allowing LSC funded programs to provide representation and assistance to immigrant victims of domestic violence, sexual assault, human trafficking, and other U visa criminal activities. Frequently at these trainings, NIWAP's Director, Leslye Orloff, has been approached by attorneys working at LSC funded agencies informing her that their agencies are not accepting cases of immigrant victims unless

- The victim qualifies for representation based on the victim's immigration status;
- or
- The applicant is a victim of domestic violence abused by their spouse.

The attorneys ask for documentation they can bring back to their programs to educate them about the VAWA 2006 changes and are provided with a copy of the 2006 Program Letter 06-2.

NIWAP routinely distributes the program letter at all of the trainings we conduct for advocates and attorneys. We additionally distribute the LSC Program Letter 06-2 through NIWAP's web library at <http://niwaplibrary.wcl.american.edu/>. From 2010 through December 2012, 1,358 copies of this LSC program letter have been downloaded from NIWAP's web library.

NIWAP recommends that LSC regulations be amended to fully implement the access to legal services corporation funded representation for immigrant crime victims that became law in VAWA 2006. The language from the 1997 regulation should be adjusted to reflect the language from the VAWA 2006 statute and Program Letter 06-2. Amending the regulations will reduce confusion by LSC funded programs about which immigrants they can represent and confirm that immigrant victims of battering or extreme cruelty, domestic violence, sexual assault, child abuse, elder abuse, human trafficking, and other criminal activities listed in the U visa can access representation from attorneys working for LSC funded programs. The regulations should include language requiring programs to revise their screening and intake procedures to screen for crime victimization prior to seeking information about immigration status eligibility and should clearly direct programs that they can represent immigrant crime victims without regard to the victim's immigration status or intention to file for immigration relief.

This recommendation is supported by NIWAP's national training and technical assistance experience, findings from a national survey regarding access to representation from LSC funded programs conducted in November of 2012 (results reported below), and the legislative history of the Violence Against Women Act of 2006's Legal Services amendments.

Sections II and III of this report discuss legislative history of the VAWA 2006 amendments. Section IV reports NIWAP's findings from a national survey we conducted in November of 2012. Section V provides recommendations regarding regulations, reforms in intake procedures, and publication of an interlineated statute to assist LSC grantees (Appendix A). Finally, Appendix B contains illustrative stories from a compilation that was collected and submitted to Congress in 2005 that became part of the legislative history of VAWA 2006's Legal Services Corporation amendments.

## **II. Historical Background of VAWA & Legal Services Funding and Accessibility**

The goal of VAWA was to provide access to safety and assistance to immigrant victims of abuse. In 1996, Congress severely restricted the ability of LSC funded programs to serve immigrants.<sup>2</sup> The effect of the 1996 amendments was to not allow LSC funded programs to use any of their funds, regardless of their source, to serve certain categories of immigrants including immigrant victims of domestic violence, sexual assault, child abuse, trafficking, and other crimes. As a result of the 1996 LSC restrictions immigrant domestic violence victims began to be turned away for LSC funded programs across the country. The harm of domestic violence victims was incalculable and in at least one case directly resulted in the death of an immigrant victim. Mariella Bautista was shot on the courthouse steps in Los Angeles where she was sent

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<sup>2</sup> Omnibus appropriations bill for fiscal year (FY) 1996 (Pub. L. No. 104-134, I 10 Stat. 1321)

by the lawyer she obtained who did not have expertise in safety planning and domestic violence to which she turned when she was denied representation at the local legal services agency.<sup>3</sup> This case contributed to passage of the Kennedy Amendment in 1996,<sup>4</sup> which permitted LSC programs to use non-LSC funding to provide limited legal representation to immigrant victims of intimate partner violence perpetrated by a spouse. The Trafficking Victims Protection Act of 2000<sup>5</sup> added trafficking victims to the list of immigrants who could be receive LSC funded representation. The Kennedy Amendment helped many battered immigrants but ironically would not have extended LSC representation to Bautista. It was not until the VAWA 2006 amendments<sup>6</sup> that the full range of immigrant victims who had suffered domestic violence, sexual assault, and other mostly violent crimes listed in the U visa, were provided the ability to access legal representation from LSC funded programs. Beginning in 1996 significant numbers of immigrant crime victims were denied access to the most experienced LSC funded legal services providers and who were well versed in the issues abused immigrants faced were unable to provide crucial legal services.

The Kennedy Amendment in 1996 was the first step toward remedying this problem. The amendment specifically stated that LSC funded programs could only use non-LSC funds to allow the use of use non-LSC funds to provide legal services to immigrant victims of domestic violence that were not otherwise eligible for LSC funded services, provided that they were

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<sup>3</sup> William Claiborne, *Abused Immigrant Slain After Plea for Legal Services Help is Denied: New Law Limits Federal Program to Lawful Permanent Residents*, Los Angeles Times, June 5, 1996 A3 (Appendix D). Available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/access-to-legal-services-for-immigrant-victims/stories/Bautista%20LA%20times%201996.PDF/view>

<sup>4</sup> Section 502(a)(2)(C) of the FY1997 Omnibus Consolidated Appropriations Bill (the "Kennedy Amendment") and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ; Pub. L. 104-208 (1996)

<sup>5</sup> Section 107 of the Trafficking Victims Protection Act of 2000 (division A of Public Law 106-386),

<sup>6</sup> Section 104 of the "Violence Against Women and Department of Justice Reauthorization Act of 2005 (PUBLIC LAW 109-162—JAN. 5, 2006)

battered by a spouse or parent; or a member of the spouse's family that resided in the same household as the battered immigrant. The Kennedy Amendment provided access to life saving legal assistance from LSC funded legal services programs for many immigrant victims of spousal and child abuse. However, this legal assistance could only be provided with non-LSC funding and was not available to the full range of family violence victims that were offered immigration protections and access to public benefits under VAWA 1994<sup>7</sup> (VAWA self-petitioners and VAWA suspension of deportation applicants) and the Illegal Immigration and Immigrant Responsibility Act of 1996 (VAWA cancellation of removal,<sup>8</sup> benefits access for abused immigrant spouses, parents and family members as qualified aliens<sup>9</sup>). Over time as Congress expanded protections for immigrant crime victims to include immigrant victims of sexual assault, human trafficking, and other crimes listed in the U visa<sup>10</sup> and to cover immigrant victims of elder abuse<sup>11</sup> these new groups of also needed access to LSC funded legal services. not meet the original goals of VAWA, which meant to provide access to remedies because many immigrant victims that did not fit into this narrow exception were unable to secure legal assistance in preparing their applications for VAWA relief.

### **III. VAWA 2006: Changes in Access to LSC for Battered Immigrant Women**

In light of the lack of services to immigrant women after VAWA 2000 and the limited availability that the Kennedy Amendment provided, the reauthorization of VAWA in 2006 changed the laws governing access to legal services for LSC funded programs. It removed

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<sup>7</sup> Subtitle G—Protections for Battered Immigrant Women and Children of the Violence Against Women Act of 1994, Pub. L. 103-322 (1994)

<sup>8</sup> Section 304 of the Illegal Immigration and Immigrant Responsibility Act of 1996; Pub. L. 104-208 (1996).

<sup>9</sup> Section 501 of the Illegal Immigration and Immigrant Responsibility Act of 1996; Pub. L. 104-208 (1996).

<sup>10</sup> Section 1513 of the Violence Against Women Act of 2000; Public Law 106-386 (2000)

<sup>11</sup> Section 816 of the “Violence Against Women and Department of Justice Reauthorization Act of 2005 (PUBLIC LAW 109-162—JAN. 5, 2006)



restrictions to access to services for all immigrant victims of domestic violence, sexual assault, human trafficking and other U-visa crimes.<sup>12</sup> Since January 2006, LSC funded programs have been allowed to use any source of funding, including LSC funding, to provide legal assistance to immigrant victims.<sup>13</sup> Under the law, victims are able to receive services related to the abuse, meaning “legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty described [...]” This definition includes representation in family, public benefits, immigration, housing and any other matters related to the abuse that are offered to other clients of the LSC agency. Although a policy memo informing programs about the change in the law was written and distributed by LSC President Helaine M. Barnett in February 2006<sup>14</sup>, there continue to be LSC funded programs that are not accepting cases brought by immigrant victims. Some of these programs turn away victims based on immigration status, while others turn away domestic violence victims if the victim is not married to the abuser. This contradicted the practice that was called for in LSC President Helaine M. Barnett’s Program Letter 06-2, which stated “[t]he VAWA 2006 Amendments became effective upon enactment, thus, LSC grantees may provide services beginning January 5, 2006 to previously ineligible applicants for services notwithstanding LSC’s alien eligibility regulations at 45 CFR Part 1626.”<sup>15</sup> The current regulation in place does not reflect the language of the VAWA 2006 Amendments, nor does it reflect the change in practices outlined in the LSC’s Program Letter 06-2. As a result, immigrant victims have either been turned away from legal services that they have a legal right to access or

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<sup>12</sup> Violence Against Women Act, Pub. L. 103-322 (2006).

<sup>13</sup> See Barnett Memorandum, *supra* note 1, at 2.

<sup>14</sup> See generally Barnett Memorandum, *supra* note 1.

<sup>15</sup> *Id.* at 1.

are discouraged because they fear being asked about their immigration status, again contravening the very purpose of VAWA.

The VAWA 2006 Amendments expanded the class of immigrant victims that legal services were available to. It included those that were already eligible under the Kennedy Amendment, and expanded coverage to victims of sexual assault or trafficking or to those who qualified for a U-visa.<sup>16</sup> VAWA 2006 amendments also covered an immigrant's child that was battered or subjected to extreme cruelty, sexual assault, or trafficking in the United States or a child that was otherwise eligible for a U-visa without regard to the immigration status of the parent.<sup>17</sup> Since VAWA self-petitioners, U visa and T visa victims are allowed to include the following family members in their applications, these family members would also be eligible representations by LSC funded programs. Appendix C contains a complete list of the kinds of immigration or benefits applications under which an immigrant crime victim and/or the family members they include in their application may be eligible to receive. Family members that are eligible to be included in a victim's application are:

- VAWA self-petitioning adults (children who are under 21 at the time a victim files a self-petition);
- VAWA self-petitioning children (parents and children)
- U visa victim adult (spouse, children)
- U visa victim child (spouse, parent, children, certain siblings).
- T visa adult (spouse, children)
- T visa child (spouse, parent, children, certain siblings).

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<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.*

The services available to this expanded class of immigrant victims must fall under the “related legal assistance,” which is defined in the statute as “legal assistance directly related to the prevention of, or obtaining relief from the cruelty, sexual assault or trafficking, or the crimes listed in’ section 101(a)(15)(U) of the INA.”<sup>18</sup> The LSC noted that its interpretation of “related legal assistance” was that “grantees may provide legal assistance to help the affected alien or child to escape from the domestic violence, sexual assault, trafficking, or covered criminal activity, to ameliorate their effects or to protect against future domestic violence, sexual assault, trafficking, or criminal activity.”<sup>19</sup>

The current LSC regulations reflect the limited scope of services that was available under VAWA and the Kennedy Amendment in 1997. Amending the regulations to make them consistent with the broad scope of VAWA 2006<sup>20</sup> is greatly needed as reflected in the research findings reported in the following section. By making the statute, regulations and Program Letter consistent will alleviate confusion in the field regarding who has access to legal services and who does not, which again yields a reduced number of immigrants being served adequately and in accordance with the law.

#### **IV. NIWAP Survey Findings Regarding Lack of Access to LSC Services**

In November of 2012 the National Immigrant Women’s Advocacy Project at American University, Washington College of Law conducted a national survey on access to legal services by immigrant crime victims and their children. A survey was designed by NIWAP staff in order to get a better sense of the types of cases advocates and attorneys who work with immigrant

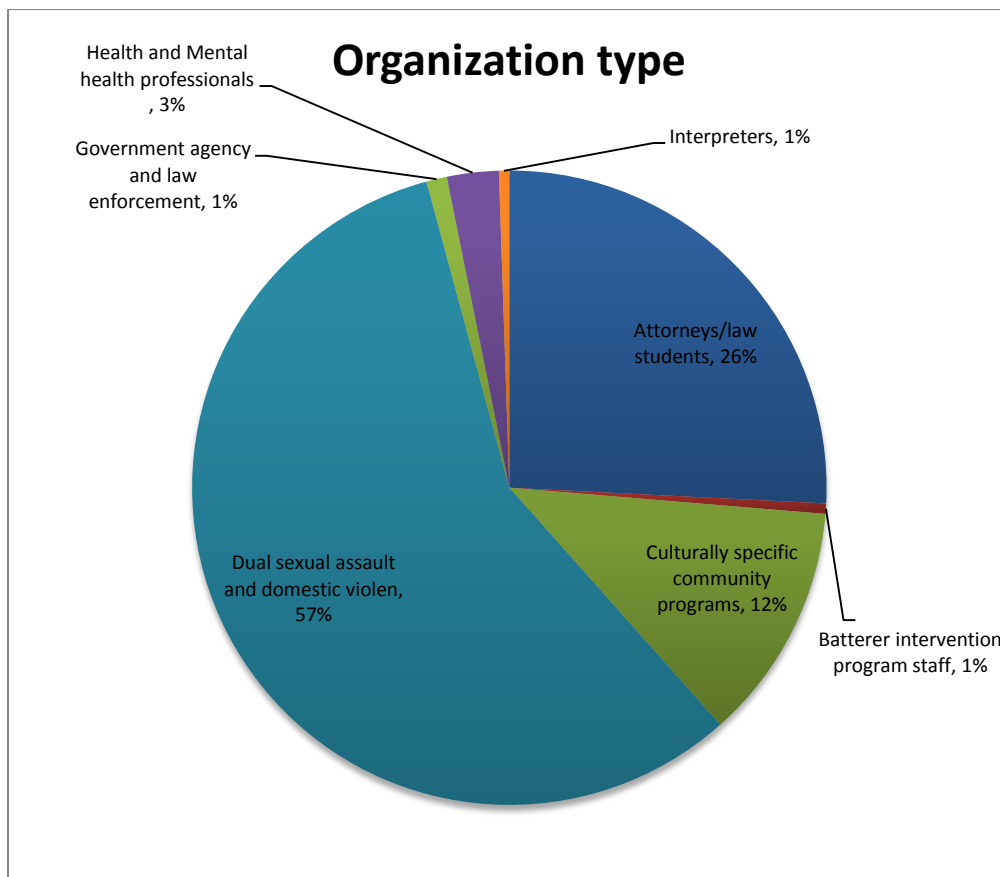
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<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.*

<sup>20</sup> 45 C.F.R. § 1626.

victims have been trying to deal with in relation to getting assistance for victims from LSC funded organizations. There were 189 organizations from 43 different states who participated in the survey. The advocates, attorneys and government personnel who participated in this survey work with immigrant victims via a wide variety of organizations. Survey respondents were largely one of the following types of organizations serving immigrant victims:



The highest percentage of responses was received from the following regions:

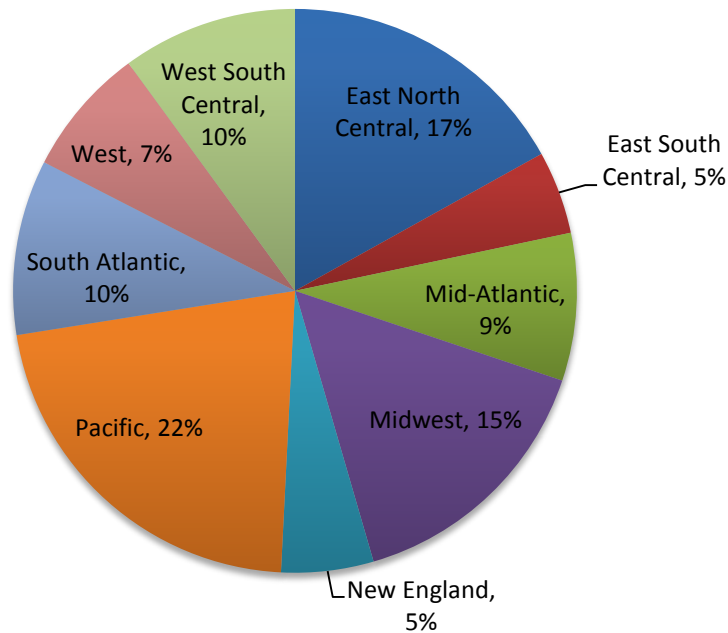
- 21.7% - Pacific region (California, Oregon, Washington, Alaska, Hawaii)
- 18% - East North Central region (Wisconsin, Michigan, Illinois, Indiana, and Ohio)

- 15.3% - Midwest region (North Dakota, Iowa, Kansas, Minnesota, Missouri, and Nebraska)
- 10.6% - South Atlantic (Florida, Georgia, South Carolina, North Carolina, Virginia, and West Virginia)

The regions with the lowest amount of surveyors include:

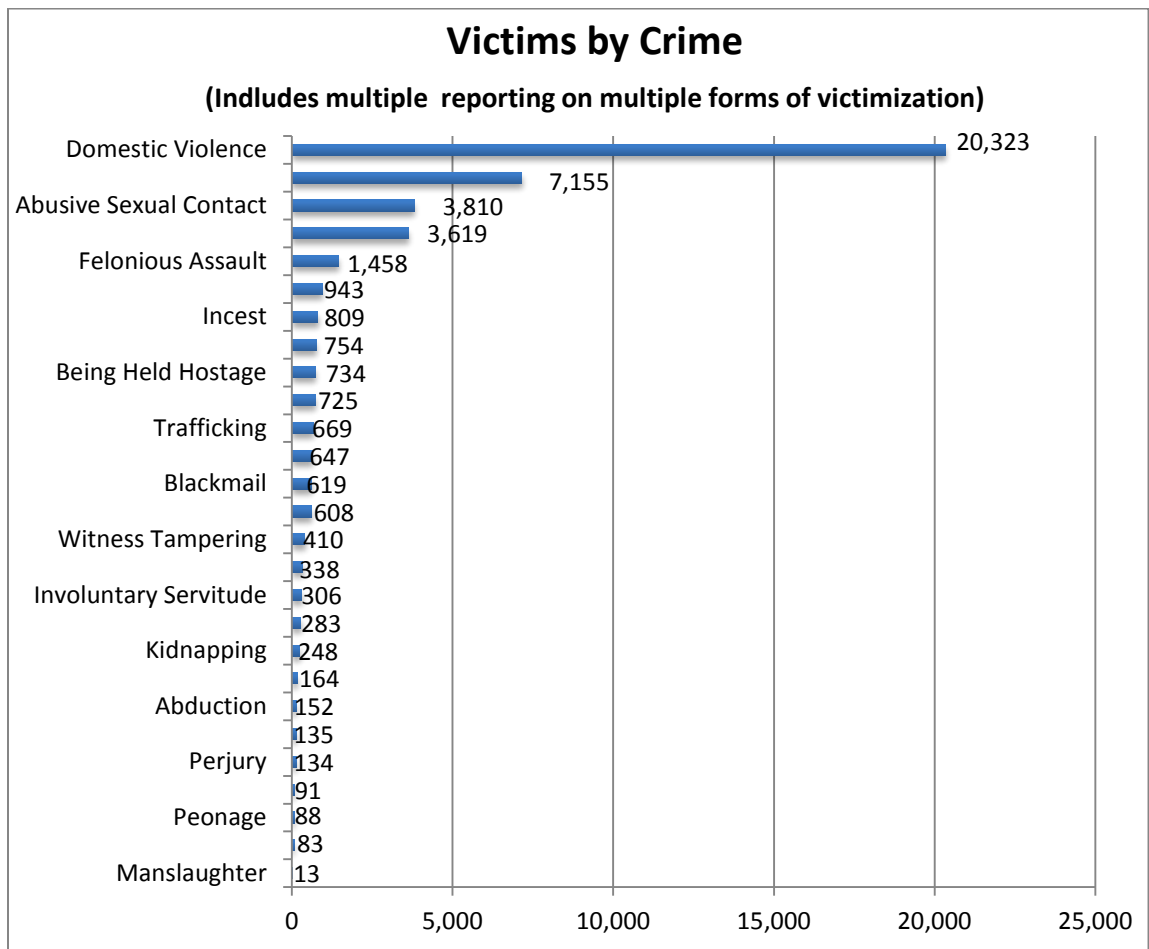
- 9.5% - West South Central (Texas, North Carolina, Louisiana, and Arkansas)
- 7.9% - Mid Atlantic (DC, Maryland, New York, Pennsylvania, New Jersey)
- 6.9% - West (New Mexico, Nevada, Colorado, Montana, Idaho, Arizona)
- 5.3% - New England (Connecticut, Massachusetts, and New Hampshire)
- 4.8% - East South Central (Kentucky, Tennessee, and Alabama)

## Respondents by Region

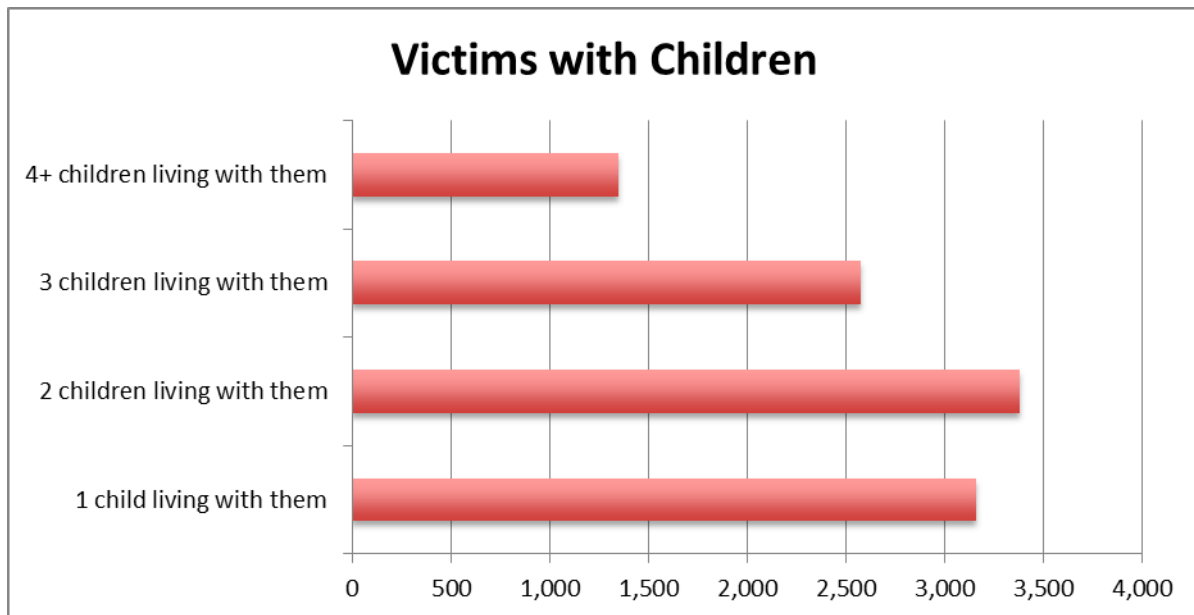


Our questions focused on the victims these programs served during an almost four year period starting in January 2009 and ending in November 2012. Of the 192 participants, 46.1% of the organizations responding to the survey had worked with over 50 immigrant victims during the aforementioned timespan. Another 18% had worked with between 21-49 victims and the remaining 35.9% had worked with fewer than 20 immigrant victims during this time frame. These 192 agencies reported that they collectively had over 18,000 immigrant crime victim clients who were living 125% of the poverty level for their family size.

To understand the types of crime victimization suffered by immigrant crime victims that programs participating in the survey were reporting, the survey asked for the number of victims that experienced the following types of criminal activity: manslaughter, murder, peonage, slave trade, perjury, female genital mutilation, abduction, extortion, kidnapping, obstruction of justice, involuntary servitude, prostitution, witness tampering, blackmail torture, trafficking, false imprisonment, being held hostage, sexual exploitation, incest, unlawful criminal restraint, felonious assault, rape, abusive sexual contact, sexual assault, domestic violence, and attempt, conspiracy, or solicitation to commit any of the previously mentioned crimes. The total number of cases of each of the following categories of crime victims that participating organizations reported on were:



The survey attempts to pinpoint the types of legal issues immigrant victims need help with. Through the survey, we were able to discover that a significant amount of immigrant victims were seeking help with issues related to family law, public benefits, and immigration. The agencies participating in the survey reported that 10,465 of their immigrant crime victim clients had children. The numbers of children these clients had are reported in the chart below:



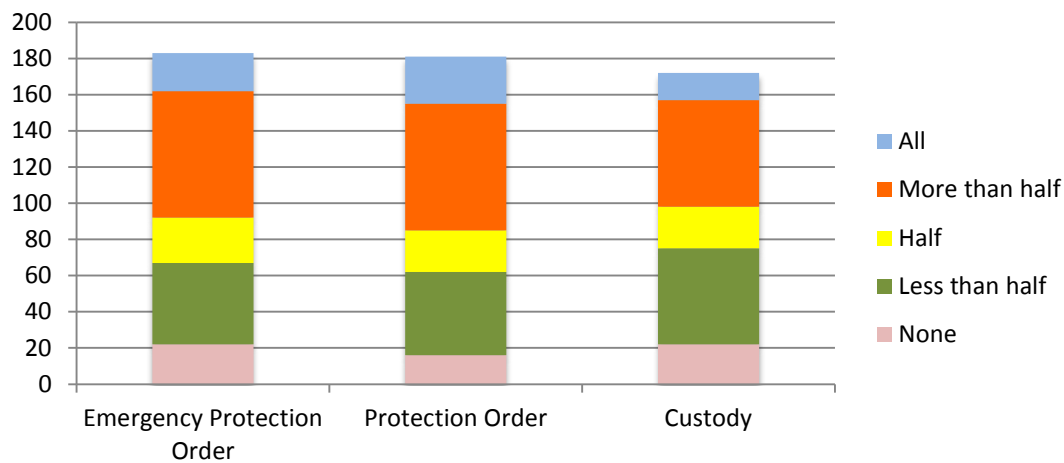
Survey participants were asked to report on the proportion of their immigrant victim clients over the past four years that needed help with family law issues including protection orders, custody and economic relief. The responses were as follows:

- 63.4% - Responded that half or more than half of the immigrant victims they had served needed, received, or had been granted Emergency Protection Orders.
- 65.7% - Responded that half or more than half of the immigrant victims they had served needed, received, or had been granted a Protection Order.
- 56.47% - Responded that half or more than half of their immigrant victim clients needed or had received help with obtaining a custody order.
- 53.4% - Responded that half or more than half of their immigrant victim clients needed or had received help in obtaining Child Support.

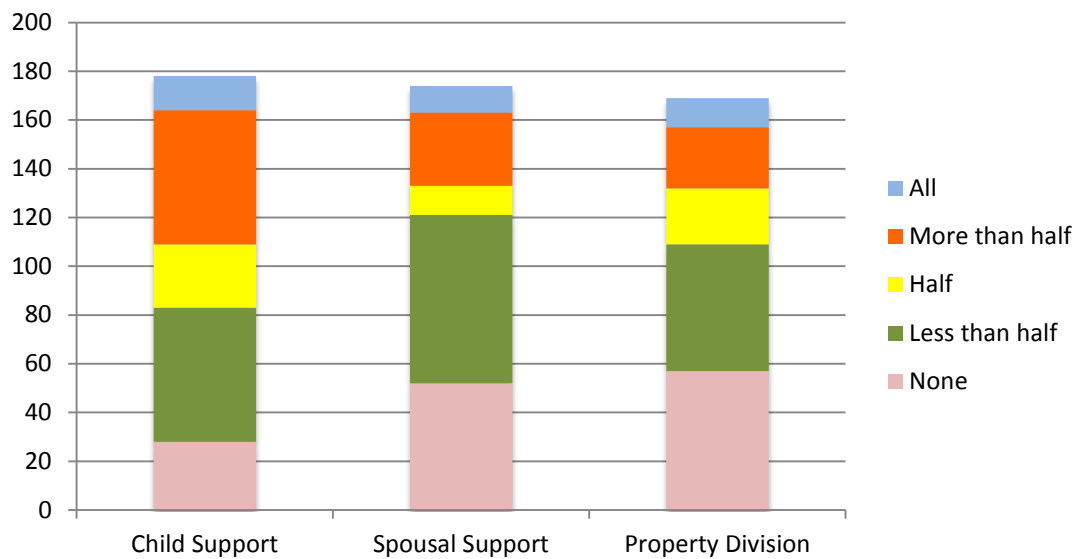


- 30.5% - Responded that half or more than half of their immigrant clients needed or had received help obtaining spousal support.
- 35.5%% - Responded that half or more than half of their immigrant clients needed or had received help in obtaining fair property division.

### Protection Order and Custody Assistance Needed



### Economic Family Law Service Needed

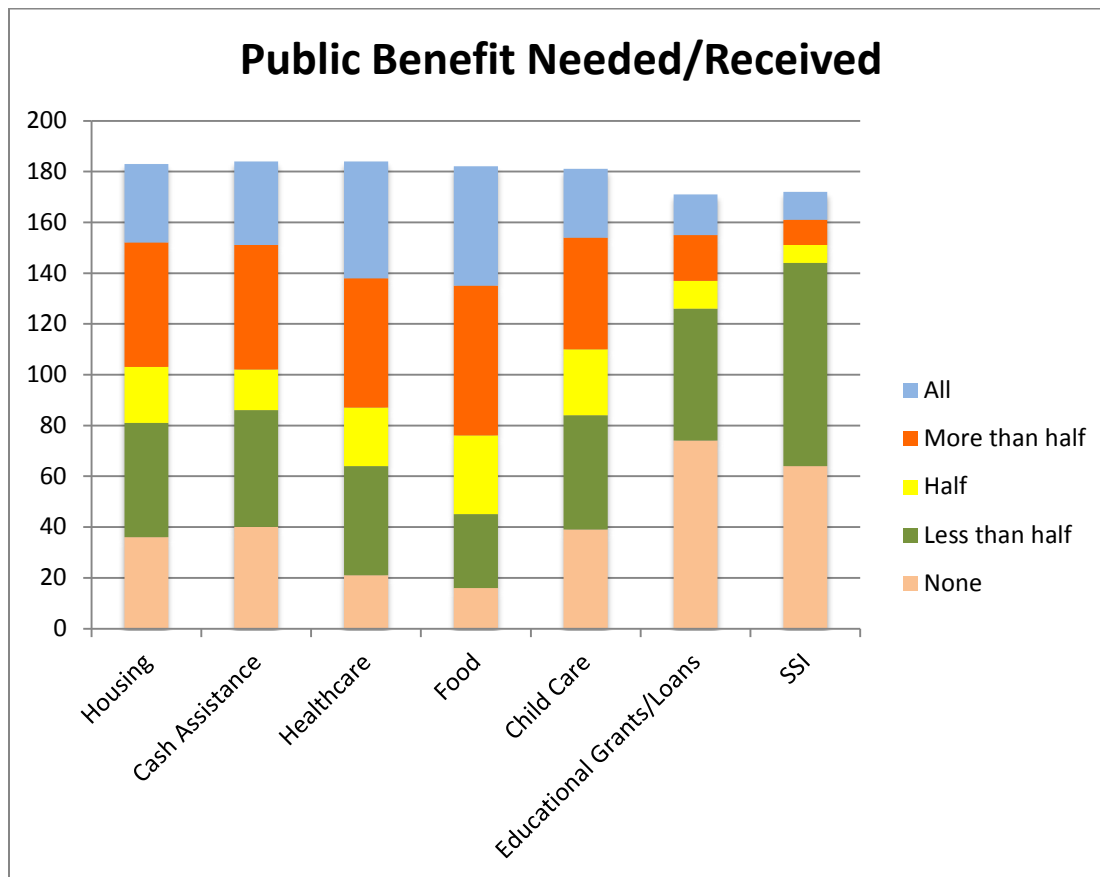


This research found that 13.8% of programs participating in this survey stated that that **all** of their immigrant victim clients during the 4 year time period allotted needed help obtaining or had obtained a Temporary Protection Order. 11.1% of advocates stated that **all** of their immigrant victims needed or had received help in obtaining Emergency Protection Orders.

With regard to immigrant client's needs for public benefits, this research found that immigrant clients programs worked with needed help to obtain or had obtained public benefits assistance over the past four years. This included help accessing Housing, Cash Assistance, Health Care, Food, Child Care, Educational Grants and/or Loans, or SSI . The proportion of programs reporting that half or more than half of their immigrant clients reported needing assistance accessing public benefits for themselves or for their children were:

- Housing 55.7%
- Cash Assistance 53.3%
- Health Care 65.2%
- Nutrition Assistance 75.3%
- Child Care 53.6%
- Educational Grants/Loans 26.3%
- SSI 16.3%

The details of immigrant victim needs with regard to public benefits can be fully summarized as follows:



With regard to immigration related legal assistance, the survey asked programs a series of questions regarding the types of immigration related issues programs immigrant victim clients needed assistance with between January 2009 through November 2012. Programs reported that half or more than half of their immigrant clients and/or their client’s children needed assistance accessing immigration relief under the following programs:

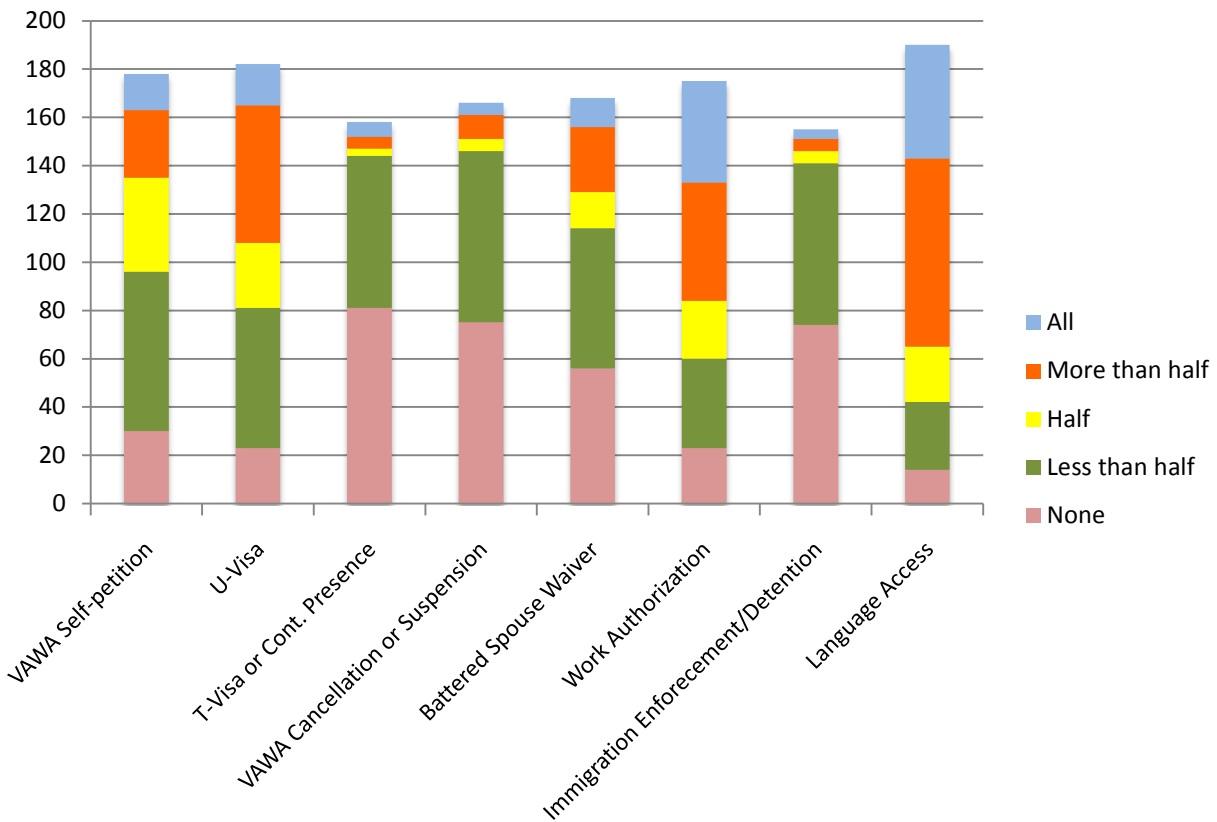
- VAWA self-petitions 46.1%
- U visas 55.5%
- T visas or continued presence 8.9%
- VAWA cancellation/suspension 12.0%

- Battered Spouse Waivers 32.1%

In addition to assistance in obtaining immigration relief programs reported that half or more than half of their abused immigrant clients and their children needed assistance in the following matters:

- Language access to gov't and social services 77.9%
- Access to work authorization 65.7%
- Immigration Enforcement related help 9.0%

### Immigration Legal Assistance Needed/Received



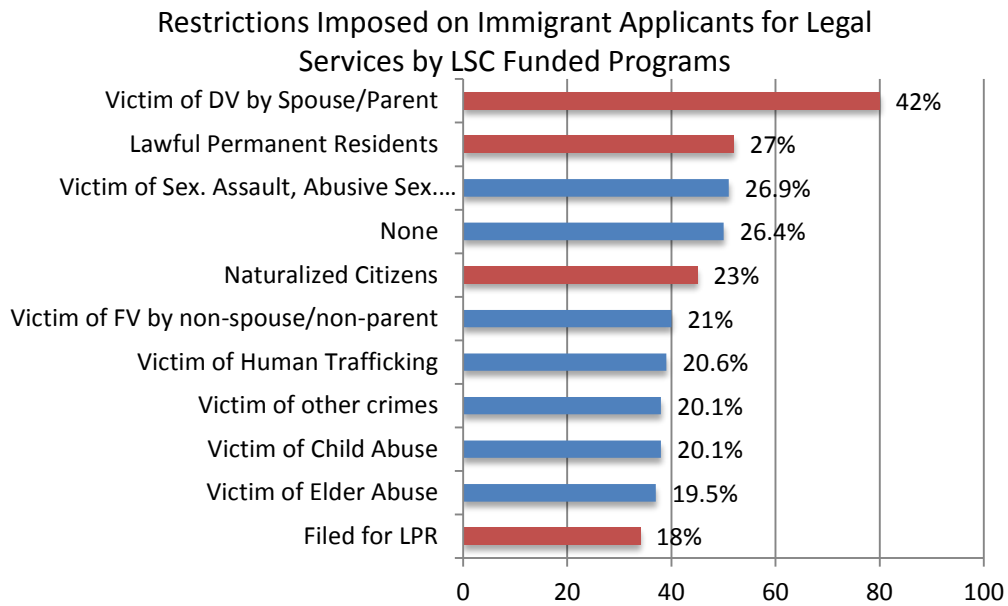
In the next section of the survey we explored the extent to which LSC funded programs in the responding organizations state took cases of immigrant crime victims. Programs responded as follows:

- LSC programs accept cases of immigrant crime victims 53.3%
- Do not accept cases of immigrant crimes victims 20.6%
- Not sure if the LSC program accepts cases of immigrant victims 26.1%

These findings confirm that there are a significant number of programs turning away immigrant crime victims that qualify for representation as immigrant crime victims. These responses also raise concern about the extent to which LSC programs that may be accepting cases of immigrant crime victims are communicating with the victim advocacy organizations in their community about the availability of legal assistance provided by LSC funded programs for immigrant survivors. To address this issue LSC might consider including in the regulation or issuing guidance to ensure that programs do outreach to advertise the legal services they provide to victim services programs working with immigrant victims of domestic violence, sexual assault, and human trafficking. We also strongly recommend that LSC programs be required to include domestic violence programs, rape crisis centers and programs offering services to victims of sexual assault and human trafficking on the list of organizations with which the LSC program routinely consults to determine legal services needs and priorities for the community and the LSC funded program.

The survey also included questions pertaining which categories of immigrant crime victims the LSC funded program accepts. The following graph reveals the types of cases accepted. The red bars indicate types of cases, which were accepted under the old law and are

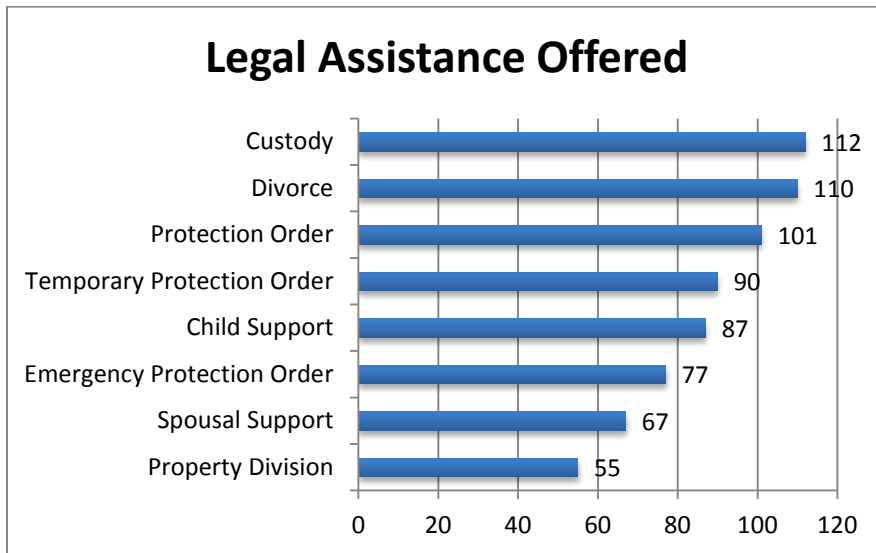
still acceptable. The blue bars, on the other hand, indicate the types of cases acceptable under the new law. “None” means no restrictions imposed in cases of immigrant crime victims and the LSC funded programs accepts cases of immigrant crime victims consistent with VAWA 2006.



As the graph shows, three of the top five results were the types of cases accepted under the old rule, while five of the bottom six results are acceptable under VAWA 2006 and the Trafficking Victims Protection Act.

Finally to better understand how the LSC funded programs that were the subject of this research could meet the needs of immigrant survivor crime victims, explored the types of legal assistance the LSC funded programs offers to persons receiving services from that agency. .As described in detail above, over half of the immigrant crime victims that survey participants worked with needed assistance in the following types of family court cases: emergency/temporary and full protection orders, custody and child support. The following table

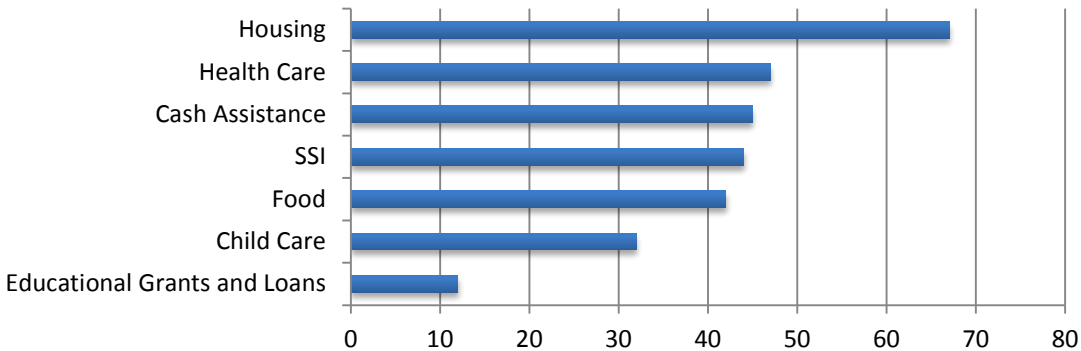
reflects that LSC organizations have significant family law expertise that could meet the needs of immigrant crime victims.



Over 60% of immigrant crime victims need assistance with obtaining nutritional assistance (SNAP/Food Stamps) and health care and over 50% need legal assistance to help them obtain housing, cash assistance and child care. Access to public benefits for immigrant crime survivors is closely tied to a victims immigration relief options.<sup>21</sup> The LSC funded programs reported on in the survey have significant public benefits expertise that would be very helpful to immigrant crime victims.

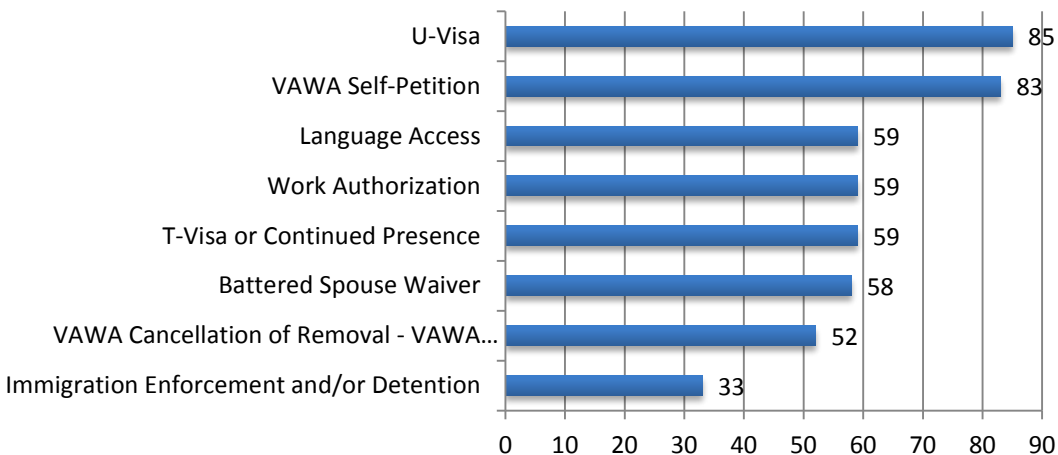
<sup>21</sup> See, Jordan Tacher and Leslye E. Orloff, Trafficking Victim Benefits Eligibility Process, April 13, 2013 available at <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/Trafficking-Victims-Benefits-Eligibility-Process.pdf/view> ; Jordan Tacher and Leslye Orloff, U visa Victim Benefits Eligibility Process, April 17, 2013 available at <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/U-Visa-Victim-Benefits-Eligibility-Process.pdf/view> ; Jordan Tacher and Leslye E. Orloff, VAWA Self-Petitioner Benefits Eligibility Process, April 17, 2013 available at <http://niwaplibrary.wcl.american.edu/public-benefits/memos-and-tools-for-advocates/VAWA-Benefits-Eligibility-Process.pdf/view>

## Public Benefits Offered



Under VAWA 2006 as well as prior law based on the Kennedy Amendment, LSC funded programs can offer a wide array of legal assistance related to crime victimization. This can include help with family law and public benefits matters in addition or separate from assistance in filing for immigration relief. The survey found that the over 50% of LSC programs that accept cases of immigrant crime victims provide legal representation to crime survivors in the following immigration and language access matters:

## Immigration Services Offered





## V. Recommendations

LSC funded programs include some of the nation's leading providers of legal assistance to immigrant victims in VAWA, T and U visa immigration cases. Revising the current regulation to clarify crime victim eligibility could encourage many more LSC funded programs to undertake this important work. This is particularly important for immigrant crime victims because many LSC funded programs are the only legal services option for immigrant crime victims in many states.

The research reported here confirms reports that NIWAP and others have learned from national training and technical assistance efforts that many LSC funded programs 7 years after the issuance of Program Letter 06-2 and VAWA 2006 remain unsure about which, if any, immigrant crime victims they can represent. NIWAP recommends that LSC regulations be amended as swiftly as possible to confirm that following the passage of VAWA 2006, LSC grantees can use LSC funding or any other source of funding the program might have to offer legal representation on matters related to the abuse or crime victimization without regard to the immigrant crime victim's immigration status. We also recommend that LSC grantee organization's intake procedures be changed to screen for victimization first and only screen for immigration status in cases of applicants who are not crime victims. Other recommendations include requiring that LSC funded programs have outreach plans that include organizations offering assistance to victims of domestic violence, sexual assault, stalking, dating violence and human trafficking. Such organizations need to also be invited to participate in the priority setting

community consultation process.<sup>22</sup> Additionally, the LSC should publish the inter-lineated VAWA statute improve program's understanding of the current statute, its requirements and its legislative history. A draft of the interlineated statute is included in this report as Appendix A.

### **A. Recommendation: Intake Procedures Should Focus on Victimization and Not Immigration Status**

Currently, LSC regulation requires service providers to verify the immigration status of the immigrant victim that is seeking assistance.<sup>23</sup> The regulation also includes a list of documents that are acceptable to verify immigration status and ranges from a Memorandum of Creation of Record of Lawful Permanent Residence with an approval stamp (I-551 or I-151 or I-191), a passport bearing immigrant visa or stamp that indicates admission for lawful permanent residence, to a marriage certificate with proof of spouse's citizenship.<sup>24</sup> Examples of acceptable documents are categorized based on eight different alien categories: Lawful Permanent Resident; Alien who is married to U.S. citizen, or parent of U.S. citizen or unmarried child under 21 of U.S. citizen, and has filed an application for adjustment of status to permanent residency; refugee; asylee; granted withholding or deferral of deportation or removal; conditional entrant; H-2A agricultural worker; and special agricultural worker temporary resident. This regulation forces the intake process to focus primarily on the immigration status of the immigrant victim that is seeking services that VAWA 2006 guarantee. Although the 2006 Program Letter 06-2 attempted to rectify this problem updating the regulations would be extremely helpful for immigrant crime victims..

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<sup>22</sup> LSC programs seeking to identify programs with expertise serving immigrant crime victims in their state, county, and/or city find local organizations listed in the National Directory of Programs Serving Immigrant Victims which was developed and is sustained by NIWAP with funding from the Office on Violence Against Women. The Directory is available at <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

<sup>23</sup> 45 C.F.R. § 1626.6 (verification of citizenship) & § 1626.7 (verification of eligible alien status).

<sup>24</sup> See Appendix to Part 1626- Alien Eligibility for Representation by LSC Programs 456, available at: <http://www.gpo.gov/fdsys/pkg/CFR-2012-title45-vol4/pdf/CFR-2012-title45-vol4-part1626.pdf>

The revised regulation should include language that shifts the focus of intake procedures to first focus on determining whether the applicant for legal services is a crime victim. In order to be effective and efficient, service providers should have a screening process that verifies victimization, i.e., battery and extreme cruelty, sexual assault, human trafficking or other criminal activities listed in the U visa. This intake process should adopt the “any credible evidence standard” that is used by DHS, DOJ and HHS in cases of immigrant crime victims protected by VAWA and the Trafficking Victims Protection Act.<sup>25</sup> LSC programs should avoid requiring particular documents to prove abuse and for applicants who prove abuse or crime victimization the program should not require collection or review of the victim’s immigration documentation, if any.

It is also important for programs to be able to identify the kinds of documentation that immigrant crime victims will most likely have if they have begun the process of applying for immigration relief. This will assist programs in identifying and providing legal services to immigrant crime victims who may have begun their immigration case pro se or with the assistance of pro bono for the victim’s immigration case. A crime victim who has already begun the process of applying for immigration benefits is also eligible for legal representation by an LSC funded program in related matters can include family law and public benefits representation. Another reason it is important for LSC funded programs to be able to identify the types of immigration documentation an immigrant survivor may include helping immigrant survivors who:

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<sup>2525</sup> For a complete legislative history of the VAWA any credible evidence standards see, Leslye E. Orloff, Kathryn Isom and Edmundo Saballos, *Mandatory U-Visa Certification Unnecessarily Undermines The Purpose Of The Violence Against Women Act’s Immigration Protections And Its “Any Credible Evidence” Rules—*

*A Call For Consistency*, Georgetown Journal of Gender and the Law, Vol. XI 619 (2010).

- May have filed an immigration case with the assistance of an unqualified immigration lawyer without expertise on immigrant crime victims legal rights
- Who received “immigration assistance” from a Notario;
- Who can no longer sustain the costs of a private immigration attorney
- I victim whose perpetrator is a spouse, child or parent or another family member who has filed an immigration case on the victim’s behalf that is pending or approved by DHS; or
- Is a qualified immigrant eligible to receive public benefits.

Attachment D provides a chart tracking the various immigration and benefits statuses a crime victim may have annotated to identify the types of DHS documents victims who have begun the immigration and benefits process may be able to submit. It is important to note that several of the listed statuses include points in time after filing of an immigration cases in which an immigrant would not be eligible for LSC funded legal assistance unless the applicant for legal assistance is an immigrant crime victim.

**Identifying Battery or Extreme Cruelty.** The federal definition of a victim of family violence is “battered or subject to extreme cruelty.”<sup>26</sup> Battery or extreme cruelty should be defined by

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<sup>26</sup> 8 C.F.R. § 204.2(c)(1)(vi)

For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

LSC consistently with the manner in which this term has been defined by other federal agencies interpreting the Violence Against Women Act (e.g. DHS, HHS, Social Security Administration).

An individual has been subjected to “battery” or “extreme cruelty” if they are a victim of:

- physical acts that resulted in, or threatened to result in, physical injury to the individual<sup>27</sup>;
- sexual abuse;<sup>28</sup>
- sexual activity involving a dependent child,
- being forced as the caretaker relative or a dependent child to engage in nonconsensual sexual acts or activities;
- threats of, or attempts at, physical or sexual abuse;
- mental abuse<sup>29</sup>; or
- neglect or deprivation of medical care.<sup>30</sup>

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*See also* Family Violence Option, State by State Summary, by Legal Momentum to see which states have adopted the Federal definition of extreme cruelty.

<sup>27</sup> *See* VAWA self-petitioning regulations 8 CFR 204.2 (c)(2)(vi); 8 CFR 216.5 (e) (3) (i). *See also* U visa regulations 72 Fed. Reg. No. 179, 53014, 53016, 53017, 53018 (September 17, 2007). 22 CFR 41.12. Under U visa regulations DHS in evaluating battering or extreme cruelty considers both the harm to the victim and the abuse inflicted by the perpetrator. DHS also takes into consideration pre-existing physical injuries or conditions that may have been aggravated by the abuse. Under both the U visa and the self-petitioning regulations DHS considers a series of abusive acts taken together may constitute substantial physical or mental abuse although none of the acts alone would rise to that level.

<sup>28</sup> *See* 8 CFR 204.2 (c)(1)(vi). The qualifying abuse must rise to the level of "battery or extreme cruelty." The statutory definition of these terms includes sexual abuse, sexual exploitation, rape, molestation, forced prostitution, and incest (if the victim is a minor).

<sup>29</sup> Extreme cruelty includes “being the victim of any act or a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. *See* VAWA self-petitioning regulations: 8 CFR 204.2 (c)(2)(vi); 8 CFR 216.5 (e) (3) (i). *See also* U visa regulations 72 Fed. Reg. No. 179, 53014, 53015, 53016, 53018 (September 17, 2007). 22 CFR 214.14(a)(8) and (b)(1). (Under the U-visa regulations, DHS defines “mental abuse” as “injury or harm to or impairment of the emotional or psychological soundness of the victim.” This encompasses a wide range of mental harm. USCIS considers both the severity of the injury suffered by the victim and the severity of the abuse inflicted by the perpetrator in its evaluation. Extreme cruelty can include the following conduct; intimidation and degradation, economic and employment-related abuse, social Isolation, sexual abuse, immigration-related abuse; possessiveness and harassment.

- Harassment<sup>31</sup>
- Damage to property<sup>32</sup>
- Stalking<sup>33</sup>

In addition to federal agency interpretation, there are examples of other forms of conduct by an abuser that family law courts have found amount to or contribute to findings of extreme cruelty:

- Adultery with a minor<sup>34</sup>
- Neglecting spouse's need for medical attention<sup>35</sup>
- Spouse's attempted rape of babysitter and publicity stemming from the resulting trial.<sup>36</sup>
- Accusations of adultery<sup>37</sup>
- Objections to procurement of proper medical treatment<sup>38</sup>
- Indifference towards spouse<sup>39</sup>

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<sup>30</sup> 1996 Welfare Reform legislation contained special protections for battered women. The two special provisions designed to help battered women were the "hardship" exception to the 60-month limit on assistance under TANF and the Family Violence Option that allows states to offer TANF to battered women for longer than the 5 year maximum benefit. Under the Family Violence Option states can grant good cause waivers to battered TANF recipients allowing them to opt out of time limits and welfare to work requirements. *See Sec. 408(a)(7)(C)(iii)*.

<sup>31</sup> Domestic violence can include harassment, or "acts that, in and of themselves, may not initially appear violent but that a part of an overall pattern of violence." 8 CFR 204.2 (c)(2)(vi); 8 CFR 216.5 (e) (3) (i). Such acts can include: following the victim; threatening the victim; calling the victim names; preventing the victim from leaving the room or from calling the police; interfering with the victim's living; making unwanted telephone calls to the victim; moving within two blocks of the victim's house; loitering in front of the battered women's shelter where the victim is staying; or contacting the petitioners employer. *See Klein, Catherine F. and Leslye E. Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, Hofstra Law Review, Summer 1993 vol. 21.*

<sup>32</sup> *See Klein, Catherine F. and Leslye E. Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, Hofstra Law Review, Summer 1993 vol. 21.*

<sup>33</sup> *See Klein, Catherine F. and Leslye E. Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, Hofstra Law Review, Summer 1993 vol. 21.*

<sup>34</sup> Marko v. Marko, 2012 SD 54 (2012).

<sup>35</sup> De Cloedt v. De Cloedt, 24 Idaho 277 (1913).

<sup>36</sup> Fleming v. Fleming, 95 Cal. 430 (1892).

<sup>37</sup> Bierie v. Bierie, 348 Mich. 440 (1957); Keenan v. Keenan 361 Mich. 123 (1960); Robertson v. Robertson, 73 Okla. 299 (1918), McFall v. McFall, 58 Cal. App. 2d 208 (1943), Andrews v. Andrews, 120 Cal. 184 (1898), Carpenter v. Carpenter, 30 Kan. 712 (1883), Friedman v. Friedman, 37 N.J. Super. 52 (1955).

<sup>38</sup> Keenan v. Keenan 361 Mich. 123 (1960).

- Using children as a tool toward other parent<sup>40</sup>
- Unreasonably critical of spouse's child or children<sup>41</sup>
- Being penurious within the marriage and family but a lavish spender outside the marriage and family.<sup>42</sup>
- Telling others about accusations/ accusing others of partner's infidelity<sup>43</sup>
- Notifying the media accusing spouse of adultery<sup>44</sup>

### Proving Battery or Extreme Cruelty or Crime Victimization – Any Credible Evidence

**Standard.** Verifying battery or extreme cruelty or crime victimization should be conducted using the “any credible evidence”<sup>45</sup> standard prescribed by Congress to all VAWA adjudicators. Using this standard will promote consistent adjudications with the manner in which DHS adjudicates matters.<sup>46</sup> This standard requires a legal services provider to accept *any* evidence provided, including affidavits from the applicant<sup>47</sup> or others to demonstrate battery or extreme

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<sup>39</sup> *Ormachea v. Ormachea*, 67 Nev. 273 (1950); *Keenan v. Keenan* 361 Mich. 123 (1960); *Robertson v. Robertson*, 73 Okla. 299 (1918).

<sup>40</sup> *Waldbaum v. Waldbaum*, 171 Neb. 625 (1961), *Marko v. Marko*, 2012 SD 54 (2012).

<sup>41</sup> *De Burgh v. De Burgh*, 39 Cal. 2d 858 (1952).

<sup>42</sup> *De Burgh v. De Burgh*, 39 Cal. 2d 858 (1952).

<sup>43</sup> *McFall v. McFall*, 58 Cal. App. 2d 208 (1943), *Carpenter v. Carpenter*, 30 Kan. 712 (1883).

<sup>44</sup> *Carpenter v. Carpenter*, 30 Kan. 712 (1883).

<sup>45</sup> See 8 C.F.R. 204.2(c)(2)(i), (iii), (v),(vi), (vii), 8 C.F.R. § 244.9 (a).

<sup>46</sup> See 8 C.F.R. 204.2(c)(2)(i), (iii), (v),(vi), (vii), 8 C.F.R. § 244.9 (a).

<sup>47</sup> A victim's story, told in her own words, is one of the primary methods of proving battery or extreme cruelty. Both the Department of Homeland Security (DHS) and Health and Human Services (HHS) often considers a victim's credible story as sufficient proof of abuse. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 63 Fed. Reg. 61344, 61369 (November 17, 1997).

cruelty or crime victimization.<sup>48</sup> The Interim Guidance issued by the Attorney General governing benefits adjudications in cases of immigrant victims instructs that:

an applicant may submit his or her own affidavit, under penalty of perjury (it does not have to be notarized), describing the circumstances of the abuse, and the benefit provider has the discretion to conclude that the affidavit is credible, and, by itself or in conjunction with other evidence, provides relevant evidence of sufficient weight to demonstrate battery or extreme cruelty.<sup>49</sup>

The Interim guidance further explains that:

The benefit provider should bear in mind that, due to the nature of the control and fear dynamics inherent in domestic violence, some applicants will lack the best evidence to support their allegations (*e.g.*, a civil protection order or a police report). Thus, the benefit provider will need to be flexible in working with the applicant as he or she attempts to assemble adequate documentation. In determining the existence of battery or cruelty, it is important that the benefit provider understand both the experience of intimate violence and the applicant's cultural context. The dynamics of domestic violence may have inhibited the applicant from seeking public or professional responses to the abuse prior to applying for benefits needed to enable the applicant to leave the abuser. For many cultural groups, going to outsiders for help is viewed as disloyalty to the community and an embarrassment to the family. In some cultures, for example, women have been conditioned to accept the authority and control of their husbands. Thus, there may be little independent documentary evidence of the abuse; the benefit provider should be sensitive to the needs and situation of the abused applicant when reviewing allegations and evidence of abuse.<sup>50</sup>

The legal services provider should be required by regulations to accept any evidence and allow the immigrant applicant to prove eligibility as a crime victim through a credible statement in an interview with the LSC program which may or may not be supplemented by other

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<sup>48</sup> See 8 C.F.R. 204.2(c)(2)(i), (iii), (v),(vi), (vii), 8 C.F.R. § 244.9 (a).

<sup>49</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 63 Fed. Reg. 61344, 61370 (November 17, 1997).

<sup>50</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 63 Fed. Reg. 61344, 61370 (November 17, 1997).



evidence. The LSC funded program will have the discretion under this any credible evidence standard to assign more or less weight to individual pieces of evidence.<sup>51</sup> This approach allows victims to safely meet each proof requirement in their application allowing them to use evidence safely accessible to them. Some victims may have police reports or medical records while others may be so isolated that the only evidence they have access to is their own affidavit and perhaps affidavits of others who may have seen their injuries or witnessed extreme cruelty, or crime victimization<sup>52</sup>

A legal services provider should not require police reports or orders of protection to verify the existence of battery or extreme cruelty, but can accept such evidence if submitted by the victim.<sup>53</sup> Written verification or documentation of the abuse from third parties, such as domestic violence advocates or social service agencies eyewitnesses may also serve evidence of battery or extreme cruelty.

The following is a non-exclusive list of ways an applicant could establish battery or extreme cruelty. Note that the list is for illustrative purposes only given that a broad range of evidence can serve as proof of battery or extreme cruelty. An applicant is not required to use any

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<sup>51</sup> See INA 204 (a) (1) (J).

<sup>52</sup> INA Section 204(a)(1)(J) the VAWA credible evidence standard was created as part of VAWA 1994 to assure that immigrant victims of domestic violence to allow battered alien who files an application for relief under VAWA or the battered spouse waiver protections to “support that application with any credible evidence.” See Report 103-395 Judiciary Committee House of Representatives 103d Congress 1<sup>st</sup> Session November 20, 1993 page 38. As a result DHS in examining evidence in VAWA and U visa cases permits due consideration to be given to the difficulties some victims experience in acquiring documentation, particularly documentation that cannot be obtained without the abuser’s knowledge or consent.

<sup>53</sup> This approach has also been adopted by state protection order statutes, which do not require as a matter of law evidence of domestic violence beyond the victim’s testimony about the facts of the abuse. Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801,1045, 1046 (1993). *State statutes e.g.* Ariz. Rev. Stat. §13-3602; Del. Code Ann. tit. 10 §1043, §1045 §1041; Fla. Stat. Ann. §741.30; Ga. Code Ann. §19-13-4, §19-13-3; 750 ILCS 60/214, 60/201; Me. Rev. Stat. tit. 19-A §4007, §4005; Mich. Comp. Laws Ann. §600.2950; N.Y. Fam. Ct. Act §842, 812; Tex. Fam. Code §85.021, 82.002.

of the examples below, so that an alternative form of evidence is acceptable as long as it demonstrates battery or extreme cruelty.<sup>54</sup> We recommend that applicant cite and document all applicable factors in their applications, since the presence or absence of any one factor is not determinative. Adjudicators should weigh all relevant factors presented and consider the in light of the totality of the circumstances.<sup>55</sup> The evidence must be evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case.<sup>56</sup> Evidence of battery or extreme cruelty may include, but is not limited to:<sup>57</sup>

- A victim’s statement, testimony, or affidavit outlining the facts of the violence or cruelty in each incident. The statement may include dates when each incident occurred (it does not need to include specific dates), discussion of the applicant’s fears and injuries, and/or the effect that each abusive incident has had on the applicant and her/his family and children;<sup>58</sup>

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<sup>54</sup> The definition of “battery and extreme cruelty” includes: being the victim of any act of a threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation incest (if the victim is a minor) or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under this rule. Acts or threatened acts that, in and of themselves, may not initially appear violent may be part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi) (2004).

<sup>55</sup> DHS and DOJ’s Executive Office of Immigration Review (EOIR) both use this standard in cases of battered immigrants. See 64 FR 27856 (5/21/99) [adding §1240.58] EOIR regulations use this standard for measuring “extreme hardship.” See also the DHS U-visa regulations 8 CFR 214.14 (b)(1) require that decisions are made as “case-by-case determinations.” The U-visa rule sets out a number of factors that DHS will use to consider deciding whether physical or mental abuse occurred. Factors considered in U-visa cases include: the nature of the injury inflicted or suffered; the severity of the perpetrator’s conduct; the severity of the harm suffered; the duration of the infliction of the harm; and the extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim. DHS makes it clear that “[n]o single factor is a prerequisite...” and “a series of abusive acts taken together may constitute ... physical or mental abuse although none of the acts alone would rise to that level.” See U visa regulations 72 Fed. Reg. No. 179, 53014, 53018 (September 17, 2007). 22 CFR 214.14 (b)(1).

<sup>56</sup> Id.

<sup>57</sup> Much of this list is derived from evidence routinely accepted by INS and state protection order courts in domestic violence cases. 8 C.F.R. § 204.2(C)(1). NOTE: Any of these types of information could be sufficient. Multiple types of evidence are NOT required.

<sup>58</sup> Breaking Barriers Manual, Chapter on Self-petitioning, page 17.

- Reports, statements, or affidavits from: police; judges; other court officials; medical personnel; school officials; psychologists and psychiatrists; clergy; social workers; any witness; or other social service agency personnel;<sup>59</sup>
- Documentation establishing a pattern of abuse and violence.<sup>60</sup>
- Statements of workers from a domestic violence shelter or other domestic violence programs attesting to the time the victim spent in the shelter or participating in the domestic violence program that they believe the applicant is a victim and facts they know of regarding the victim's case;<sup>61</sup>
- Medical records;
- Photographs of the visibly injured self-petitioner supported by affidavits;<sup>62</sup>
- Temporary or Permanent restraining or civil protection orders;<sup>63</sup>
- Other legal document showing legal steps taken to end the abuse.<sup>64</sup>
- Evidence that the victim sought safe haven in a battered women's shelter or

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<sup>59</sup> <http://www.ssa.gov/pubs/10093.html>. When applying for a new social security number, one needs to submit, 1) a statement explaining why you need a new number, and 2) evidence documenting harassment or abuse. Evidence from third parties such as police, medical facilities or doctors, and describes the nature and extent of harassment, abuse or life endangerment is helpful. Other evidence may include court restraining orders and letters from shelters, family members, friends, counselors or others who have knowledge of the domestic violence or abuse.

<sup>60</sup> 8 C.F.R. § 204.2(e)(2)(iv).

<sup>61</sup> Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 63 Fed. Reg. 61344, 61369-70 (November 17, 1997). ("Evidence of battery or extreme cruelty (and in the case of a petition on behalf of a child, evidence that the applicant did not actively participate in the abuse) includes, but is not limited to, reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, and other social service agency personnel; legal documentation, such as an order of protection against the abuser or an order convicting the abuser of

committing an act of domestic violence that chronicles the existence of abuse; evidence that indicates that the applicant sought safe-haven in a battered women's shelter or similar refuge because of the battery against the applicant or his or her child; or photographs of the visibly injured applicant, child, or (in the case of an alien child) parent supported by affidavits. An applicant may also submit sworn affidavits from family members, friends or other third parties who have personal knowledge of the battery or cruelty.")

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> Id.

similar refuge;<sup>65</sup>

- Police reports or records of telephone calls or visits to the victim’s address. This may include; telephone calls to the police registering a complaint, a log of police runs made to the residence, copies of all tapes, reports written by officers responding to a call or other reports taken by police of violations including those not taken at the scene of the crime.
- Criminal court records if a batterer was arrested or convicted of any act of domestic violence or destruction of property relating to the victim;
- Evidence of property damage;
- Diagnostic reports from mental health professionals (Post-Traumatic Stress Disorder is NOT required);<sup>66</sup> or
- Any other form of credible evidence about the history of abuser, battery, extreme cruelty, domestic violence or sexual assault.

Incorporating the use of the “any credible evidence” standard into the LSC regulation allows legal service providers to move from an immigration status focus to a victimization focus that, in turn, would encourage immigrant victims to feel secure enough to seek crucial legal assistance. Incorporating a victimization-based screening process focuses on and satisfies the goals of VAWA to provide much needed assistance to victims of abuse.

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<sup>65</sup> Id.

<sup>66</sup> VAWA 1994, Title IV of the Violent Crime Control and Law Enforcement Act of 1994; Pub. L. 103-322, Stat. 1902-1955 (September 13, 1994). .” See Report 103-395 Judiciary Committee House of Representatives 103d Congress 1<sup>st</sup> Session November 20, 1993 page 38. (VAWA 1994 ended the practice of immigration officials requiring evidence from licensed mental health professionals and in doing so stated that this practice “focuses the inquiry on the effect of the cruelty on the victim rather than on the violent behavior of the abuser, and it may be discriminatory against non-English-speaking individuals who have limited access to bilingual mental health professionals.”)

## **B. The Amended Regulation Should Reflect the VAWA 2006 Amendments and LSC's Program Letter 06-2**

The LSC should amend its current regulation to reflect the mandate of the VAWA 2006 Amendments and its own Program Letter 06-2, which expanded the class of immigrant victims that were eligible to receive legal assistance. The amended regulation is necessary because there is no consistency in the application of the VAWA 2006 Amendments, which is now the law that governs access to legal services to immigrant victims. Currently, there is confusion in the field regarding eligibility and the only way to alleviate this problem and ensure that the law is correctly applied is to amend the LSC regulation to reflect the current state of the law.

## **C. LSC Should Publish the Inter-Lineated Statute**

LSC should also publish the inter-lineated statute to show its progress in expanding the class of immigrant victims that are eligible to receive legal assistance. Part of the confusion about this law exists because there is nowhere to look it up in a codebook. Therefore, we strongly suggest the LSC publish it. If the law is published, people will have an easy way to understand the requirements of the law.

## **APPENDIX A**

### **BUDGET BILL**

Below is the original 1996 Budget Bill with the changes from the 1997 Budget Bill.

1997 changes are **bolded**; with ~~deletions~~.

2006 changes are *italicized* and underlined; with ~~deletions~~.

(11) that provides legal assistance for or on behalf of any alien, unless the alien is present in the United States and is--

55 (A) an alien lawfully admitted for permanent residence as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

(B) an alien who--

(i) is married to a United States citizen or is a parent or an unmarried child under the age of 21 years of such a citizen; and

(ii) has filed an application to adjust the status of the alien to the status of a lawful permanent resident under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), which application has not been rejected;

(C) an alien who[se]—

**(i) has been battered or subjected to extreme cruelty *or a victim of sexual assault or trafficking* in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty; or, *or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or***

**(ii) child, *without the active participation of the alien,* has been battered or subjected to extreme cruelty *or a victim of sexual assault or trafficking* in the United States by a spouse or parent of the alien ~~(without the active participation of the alien in the battery or extreme cruelty)~~, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, *or qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)).***

**(iii) nothing in subsection (a)(11) of such section 504 shall be construed to prohibit a recipient from using funds derived from a source other than the Corporation to provide providing related legal assistance to (C)(i) and(ii).**

**(iv) Definitions. For purposes of subsection (a)(11)(C)(i) and(ii)--**

**(a) The term "battered or subjected to extreme cruelty" has the meaning given such term under regulations issued pursuant to subtitle G of the Violence Against Women Act of 1994 (Public Law 103-322; 108 Stat. 1953).**

**(b) The term "related legal assistance" means legal assistance directly related to the prevention of, or obtaining of relief from, the battery or cruelty ~~described in such subsection~~, *sexual assault or trafficking, or the crimes listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(iii).***

**(D)** an alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) (relating to refugee admission) or who has been granted asylum by the Attorney General under such Act;

**(E)** an alien who is lawfully present in the United States as a result of withholding of deportation by the Attorney General pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h));

**(F)** an alien to whom section 305 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 note) applies, but only to the extent that the legal assistance provided is the legal assistance described in such section; or

**(G)** an alien who is lawfully present in the United States as a result of being granted conditional entry to the United States before April 1, 1980, pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)), as in effect on March 31, 1980, because of persecution or fear of persecution on account of race, religion, or political calamity;

## APPENDIX B

### STORIES OF IMMIGRANT VICTIMS

Below are some stories of immigrant victims who, under the 1996 regulation on LSC immigrant eligibility, do not qualify for legal assistance. The stories have been organized categorically, and demonstrate the many types of situations of abuse that the old regulation does not take into account.

#### ABUSIVE BOYFRIENDS

a) **Chicago, Illinois** - After coming to the United States, Sara met and fell in love with her boyfriend Samuel. They were dating for many years, lived together and over the course of the relationship they had three children together. Throughout the relationship, Samuel routinely physically, sexually and psychologically abused Sara. Samuel would often drink heavily and was particularly abusive when intoxicated. Sara called the police for protection on numerous occasions, but had difficulty communicating with them and when the police arrived Samuel was never arrested. Sara did learn about protection orders and eventually obtained a protection order against Samuel. Samuel ignored the protection order and after the protection order was issued, Samuel's abuse of Sara escalated significantly. The abuse became more severe. Samuel beat Sara on numerous occasions, threatening her if she took more steps to stop his abuse. During one of the more severe incidents, Samuel threatened to kill Sara. As part of a subsequent assault, Samuel held a knife to Sara's stomach, dragged her by the hair, and then raped her.

The worst assault by Samuel on Sara left Sara unconscious in their apartment following a severe beating. Samuel knocked out Sara's front teeth, dragged her and beat her repeatedly. Following this incident Samuel fled from the house. When the police arrived they found Sara lying on the floor unconscious. The police arranged to have Sara admitted to the hospital. Sara



had bruises and burns on her arms, back, knees and legs, and was in a coma. Sara spent many days in the Intensive Care Unit of the hospital. She came out of the coma and is still going through a long, physically and emotionally painful recovery. Sara is cooperating with police who are currently pursuing several criminal charges against Samuel. Although Sara was able to find legal help to file her immigration case for a U Visa as a cooperating witness in Samuel's criminal prosecution, she could not receive help from an LSC funded legal services program because her abuser, Samuel, was not her husband. Sara has been granted interim relief by immigration authorities in her U visa case. However, the legal needs of Sara and her three U.S. citizen children extend beyond immigration relief. Sara needs legal assistance to help her obtain legal custody of her children, receive child support, and to help her enforce her protection order. Sara is still looking for legal representation. Because Sara and Samuel never married, she is ineligible to receive LSC-funded assistance, leaving her with few options, if any, to obtain legal representation in her much needed family law case.

b) **Chicago, Illinois** - Yesenia came to the United States from Mexico along with her mother. When she was 13 years old, living in the United States in her mother's home and attending school, she met and started dating Carlos. Yesenia and Carlos' relationship quickly became sexually and physically abusive. Yesenia's mother did not approve of their relationship, so she kicked Yesenia out of her house. With nowhere to go, facing living homeless on the street, Yesenia moved in with Carlos. Once they began living together, Carlos forbade Yesenia from ever leaving the house. He forced Yesenia to stop attending classes at school. Yesenia became isolated from her family and friends. Her only support came from Carlos. Carlos' sexual abuse of Yesenia escalated. Often Yesenia would try to fight off Carlos' advances, but that only made

Carlos angrier. As part of his abuse, Carlos worked to undermine Yesenia's self-esteem. He repeatedly told Yesenia that if she was not with him, no one would have her and she would have no one.

One day following a particularly brutal beating, when Yesenia was 17 years old, she finally found the courage to call the police for help. In that incident Carlos repeatedly struck her on her face and head. He hit her and slapped her so hard that Carlos split Yesenia's lip. The police arrived and immediately arrested Carlos. He was charged with Aggravated Criminal Sexual Assault and Sexual Abuse. Yesenia sought legal assistance to obtain a protection order against Carlos and to file for immigration relief as a crime victim witness under the U visa immigration protections. The LSC funded lawyers were forced due to restrictions to turn her away. Despite not being able to access legal representation from an LSC funded program, Yesenia was able to obtain an order of protection, prohibiting her boyfriend Carlos from coming near her or contacting her at any location including her school and home. Yesenia is back living with her mother, and she found a non-LSC funded program to assist her in filing for interim relief pursuant to the U Visa and was approved. Yesenia is back in school and is working with her U visa employment authorization. Yesenia is very lucky to receive legal assistance with her U visa because she is ineligible to receive LSC-funded assistance because she is undocumented and was abused by her boyfriend. There are many more immigrant victims who are turned away because of the LSC restrictions. The wait lists at non-LSC funded immigration programs are often months long.

c) **Albuquerque, New Mexico** - Ana is an immigrant from Mexico. Ana and her abusive boyfriend, Raul, had been together for fifteen years. They had two children together, Lisa and

Richard. Raul has subjected Ana to horrific physical and emotional abuse throughout their relationship. One of Raul's first beatings was when Ana was pregnant with their daughter, Lisa. Raul punched Ana in the face and kicked her in her back. The beating was so severe that Ana was afraid that she might suffer a miscarriage. On another occasion Raul came home very drunk and severely beat Ana, splitting her lip and leaving her nose black and blue. This was one of the worst beatings. Following this beating, Ana fled the house with the help of a neighbor, taking both children, Lisa and Richard, with her. She went to the police station to file a police report. The police took her to the hospital and took x-rays. The doctor said that Raul had broken her nose. The police said they would look for him to arrest him. Raul went into hiding to evade arrest. Raul was an alcoholic and a drug abuser. He would drink a six-pack of beer everyday and use cocaine.

Raul was very jealous and controlling. He frequently wrongly accused Ana of having relationships with other men. On one occasion, he accused her of sleeping with his brother and hit Ana on her head. Raul also accused her of having an affair with her boss. When Ana denied it, Raul tried to force her to have sex with him. Ana tried numerous times to leave Raul. In order to prevent Ana from leaving, he frequently took her and her children's passports and car. On one of the last occasions of abuse between them, Raul grabbed Ana by her hair and threw her against the trunk of the car. She called the police but he got away before they could get to him. Ana finally gathered the courage to leave Raul. Ana's leaving, however, did not stop Raul's violence towards her. Raul has stalked her, broken into her house and stolen her TV, clothes and some money. Since Ana and Raul were never married, Ana did not qualify to receive help from a legal services funded agency although she needed help in obtaining a restraining order to protect

herself and her children from Raul's ongoing abuse. She also needed legal assistance in filing for a crime victim visa (U visa) immigration case and in winning permanent legal custody of the children. With legal assistance from another agency, Ana was able to obtain a protection order and recently had her U visa interim relief application granted. Without access to LSC funded attorneys Ana will not be able to obtain the representation she needs to win custody and child support in a contested family law case against Raul. There are very few lawyers who will take Ana's case. She cannot afford a private attorney. Further, the only family lawyers in her community with expertise helping battered women are LSC funded attorneys.

d) **Albuquerque, New Mexico** - Marta has been in a relationship with Javier for 2 years during which time he has been increasingly violent. Marta and Javier never married, but Javier is the father of their 1 ½ year old son, Jose. Marta is an undocumented immigrant from Mexico. Javier's assaults against Marta were so frequent and severe that Marta's family intervened to protect her against Javier's assaults. Recently, her family tried to intervene in a dispute between Marta and Javier. Javier turned his attack on Marta's father and assaulted Marta's father so brutally that Javier killed him. Javier was arrested for the murder of Martha's father but was soon let out on bond while awaiting trial. Marta and her family have been devastated and are terrified of Javier's retaliation because he does not want them to testify against him in the murder trial.

Marta could not receive help from the LSC funded legal services program to obtain a protection order against Javier, since she was an undocumented immigrant and was never married to Javier. Marta had to file for an order of protection on her own. Javier appeared at the protection order hearing with a lawyer. Marta does not make enough money to be able to hire a lawyer. Despite the temporary order of protection that the court issued against him, Javier

constantly contacted Marta before the hearing. Marta felt helpless and intimidated by the process. In the end not having a lawyer to help her led Marta to cave into Javier's harassment and treats and she dropped her order of protection case. Marta, her child, and her family remain terrified. They need to be able to access help from an LSC funded lawyer to be able to obtain protection against Javier, without this help Marta's safety cannot be assured.

### **ABUSIVE HUSBANDS**

a) **Brooklyn, New York** - Eva is from Turkey. Eva was married to Tom with whom she had a child. Tom repeatedly abused Eva during their marriage. Eva and Tom were recently divorced. Despite the divorce the violence has continued. Contact between Eva and Tom is ongoing because they have a child together. There have been numerous incidents of violence including one occasion in which Tom grabbed Eva, pushed her, and slapped her twice in the face so hard that he injured her chin and caused her lip to bleed. Although Eva tried to call the police for help Tom physically stopped her from calling them. Eva is willing to cooperate with law enforcement against Tom and thus qualifies to file for a U visa. She also qualifies for a protection order and to receive an award of legal custody of their child. She cannot receive help from lawyers working at an LSC funded program because she is not married to her abuser Tom.

b) **Brooklyn, New York** - Jenny is an immigrant from Japan. She met her ex-husband, Mark, while studying in New York. Their courtship lasted over six years, with Mark proposing to Jenny in 2000. It was after they were married that Mark became abusive. Mark started pressuring Jenny into doing sexual acts that she was very uncomfortable with. Jenny would often protest, but when she did Mark turned violent. On one occasion, Mark pulled a knife on Jenny after she refused to have sex. It was not long after when Mark began raping Jenny on a regular basis. In

addition to the sexual abuse, Mark constantly berated and verbally abused Jenny. After almost two years of abuse, Jenny eventually became severely depressed and withdrawn. Jenny contemplated leaving Mark. Sensing that Jenny may leave, Mark began threatening to deport Jenny. Jenny did not know about the laws in this country and believed that he had that power. Jenny eventually sought assistance with the New York Asian Women's Center, a domestic violence agency providing counseling and support services to Asian women in New York City. If Jenny were to turn for help to a Legal Services Corporation program she would be turned away because her abuser is no longer her husband. Jenny should be able to access LSC funded lawyers to help her in the protection order and VAWA immigration case she qualifies to file. She is currently living in a new location and slowly rebuilding her life.

#### **CHILD-ABUSE**

a) **Albuquerque, New Mexico** - Ines is an immigrant from Mexico. Ines had spent more than ten years in a relationship with the father of her children, Pedro. The abuse started with a slap and soon afterwards escalated. Pedro's abuse was extremely dangerous and caused numerous injuries to Ines. The abuse included an incident in which Pedro fired one gunshot at the ceiling and another near Ines' head. Pedro shot at Ines' head when their two-year-old son was nearby. She would often go to work with black eyes. Pedro would throw furniture and break things when he was high on cocaine. On one occasion he tried to strangle Ines, telling her that the only way she would leave there would be if she were dead. Paul would frequently break Ines' cell phones so that she could not call for help. Other violent incidents included Pedro hitting her with a belt and threatening to throw acid on her face. Over time his abuse expanded beyond Ines to include abuse of their children, including slapping their son. Pedro threatened to set her house on fire in

her home country, Mexico. Pedro eventually did burn Ines' house down in Mexico. Thankfully, Ines found a way to escape from Pedro with their children. With help from a non-LSC funded program, Ines received her employment authorization card through the U visa interim relief process as a cooperating witness in Pedro's criminal prosecution. However, Ines now needs to obtain a protection order against Pedro and full custody of their children. The LSC funded program cannot help Ines because she was never married to Pedro.

b) **Arlington County, Virginia** - Julia and her 12-year old daughter, Andrea, are immigrants from Mexico. After arriving in the United States with Andrea, Julia met Pablo and began a relationship with him. Pablo is not Andrea's father. Pablo and Julia dated for several years. Over the years of her relationship with Pablo, Julia experienced an escalating pattern of abuse perpetrated against her by Pablo. Pablo often beat Julia, slapping and punching her on an almost daily basis. Julia had tried many times to break off the relationship, but Pablo stalked her and always came back. He never wanted Julia to be away from him. One night, Pablo followed Julia to her workplace and kidnapped her while at work. Pablo took Julia to a secluded area of town and severely beat her by slamming her head repeatedly into the ground, causing injuries to her head and face. When Julia finally made it home, Andrea immediately called the police for help. Julia was sent from her rural neighborhood via helicopter to the Shock Trauma Unit in a metropolitan city. Pablo was arrested and sentenced to one month in jail. When he was released from jail, Pablo was furious and determined to take revenge on Andrea for calling the police when she saw the extent of her mother's injuries. Pablo knew where Andrea went to school. Pablo laid in wait for Andrea on her normal route home from school. He kidnapped Andrea and raped her. Andrea became pregnant because of the rape.

Despite the horrors of the crimes committed against them by Pablo and the fact that they are cooperating witnesses in two separate criminal prosecutions against Pablo, neither Julia nor Andrea can receive legal representation by LSC funded lawyers in their cases against Pablo. Julia cannot receive assistance because Pablo was not her husband. Andrea does not qualify for representation because she is a sexual assault victim, although Pablo could seek custody and visitation with the child born of the rape.

Both Julia and Andrea cooperated with the prosecutor and police. Each of them separately qualifies for a crime victim U visa because they each were victims of crimes perpetrated by Pablo. Julia and Andrea were able to find non-LSC funded lawyers to help them file their U visa immigration cases from one of the few non-LSC funded legal services programs in Virginia. However, Julia and Andrea are still in desperate need of representation in family court to obtain protection orders against Pablo and to assure that Pablo never receives custody of the child born of the rape. Immigrant victims, like Julia and Andrea, need access to the expertise of Legal Services lawyers to assist them in these important cases.

## **ELDER ABUSE**

a) **Arlington County, Virginia** - Carmen is an elderly woman who moved to Northern Virginia from Bolivia. She is actively involved in her church. Carmen was on her way to church when a stranger approached her, dragged her into the woods along Route 50 in Virginia and brutally raped her. Carmen's injuries from the rape were so severe that she required three days hospitalization. Carmen continues to recuperate from both the physical and emotional consequences of the unspeakable sexual violence she endured. Her recovery is slow, painful and very difficult. Carmen has been so terrorized by the brutal rape that she still cannot bring herself



to leave the safety of her home alone. The police continue to investigate the incident, but to date they have not been able to locate Carmen's rapist. Carmen continues to cooperate with the police providing information crucial to the rape investigation and apprehension of the rape perpetrator. An LSC funded organization in Virginia could not represent Carmen in her U visa immigration case, because she was a victim of stranger rape and not domestic violence perpetrated by her spouse. Victims like Carmen need to be able to access LSC funded lawyers who can both help her obtain her crime victim visa under VAWA and also support her in the criminal investigation of her rapist.

## **SEXUAL ASSAULT**

a) **New York City, New York** - Vera is an immigrant from the Philippines. She came to live with her aunt and her aunt's husband, Paolo. Vera feared Paolo. He often made her feel uncomfortable. Sometimes he would make comments about her body and her appearance. One weekend, Vera's aunt left on a business trip, leaving Vera alone with Paolo. Paolo raped and stabbed Vera repeatedly, including stabbing her in the eye. He left her for dead. Despite the odds, Vera survived the attack, and is now blind in one eye. She has mental and physical health care needs as a result of the rape and the physical assault she sustained. Vera is receiving counseling and services from a sexual assault program. Paolo is being prosecuted for his rape and assault of Vera and Vera is willing to cooperate in the prosecution. Vera qualifies for a U visa as a rape victim, but cannot receive assistance from an LSC funded program because the perpetrator of the rape was her aunt's husband not her own husband. The LSC funded program in her community cannot represent her in either her U visa case or any case she needs to bring to keep her uncle from harming her again in the future.

b) **Omaha, Nebraska** - Grace is an eighteen-year-old young girl who has resided with her father in the United States for three year. She came from Mexico with the hopes of helping her family find a better life. In 2003, she left her mother and siblings in Mexico and went to live with her biological father, Pepe, in Utah. In 2004 her father sexually assaulted Grace and raped her for a period of four months. As a result of the multiple rapes by her father Grace got pregnant and now has given birth to a six-month-old daughter. Grace's father fled to Nebraska with Grace and was ultimately reported to police authorities in Nebraska. Upon learning that the police were looking for him with a warrant for his arrest, Pepe, fled Nebraska and law enforcement authorities in neither Nebraska nor Utah have been able to locate him. The prosecution in the rape case therefore remains open until Pepe can be located and captured. Neither Grace, nor her family, knows anything about Pepe's whereabouts.

Grace faces continued harm due to the rape. Her family in Mexico blames her for Pepe's fate; they have isolated her and cut her off. Pepe's financial support to the family in Mexico has stopped. Her family blames Grace fully for the devastating effects of the rape on her. Her mental health and the trauma she sustained being raped and sexually assaulted by her father over a period of months cause her continuing emotional and physical pain and leave her facing burdens and frustrations of having no safe home to return to in Mexico and struggling with the burdens and frustrations of being a teenage mom trying to survive and support herself and her child in the United States. Grace wants to be able to finish high school and to have an opportunity to remain in the U.S. where she can hopefully cooperate someday in Pepe's prosecution and be protected by the U.S. legal system against his retaliation.

Grace has a number of legal needs. She wants to file for U visa immigration protection as a victim of incest and multiple rapes. She also qualifies to obtain a protection order against Pepe and to obtain a child support order against him. Grace is being helped by advocates at the YWCA in Omaha since May of 2004 and has been assisted with case management, counseling, and referrals to community services. Grace needs to apply for a U-visa but the YWCA cannot handle her legal needs. There are three non-LSC funded programs that could handle her domestic violence and immigration legal matters. Only one of these programs has an experienced immigration attorney. There are a number of private immigration attorneys in Omaha, yet not one client of the YWCA has ever been able to afford their services.

Last year the YWCA provided services and assistance to more than two hundred immigrant women many of whom were victims of violence against women – domestic violence and sexual assault in particular. About 70% of these women would not be eligible nor could they afford a private attorney in their immigration and civil cases. If LSC-funded programs could change their eligibility requirements many more immigrant victims in need would be able to obtain services from qualified LSC professional attorneys that could help them access the family court and immigration law relief they need to survive abuse and become self-sufficient and that they are legally entitled to receive.<sup>67</sup>

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<sup>67</sup>Abby Sun, Eileen Lohmann, and Leslye Orloff, Collecting Stories to Illustrate the Need for Proposed Reforms to Aid Immigrant Victims.