

**Legal Momentum and  
Organización en California de Líderes Campesinas, Inc.**

**Advocacy to Improve Services  
for Battered Migrant and Immigrant  
Women Living in Rural Communities**

**A Manual**

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# Introduction

This manual aims to enhance the ability of farm worker women who are survivors of domestic violence to become leaders against domestic violence in their communities. Trained survivors are effective advocates who can educate others about domestic violence and can provide advocacy to ensure that battered farm worker women can access the broad range of legal and social services available to help battered women. This advocacy and support is needed to ensure that police, courts, shelters, public benefits, immigration and health care systems do not fail farm worker battered women who are legally entitled to help. Most employees working in these systems are unaware of the special legal protections available to battered immigrant women and farm worker women.

Although women emigrate to the U.S. for the same reasons as do men, their experience differs significantly from that of their male counterparts. Women are likely to confront particular barriers rooted in the intersection of gender with race, immigration status and culture. These barriers often trap them in abusive relationships and hinder their ability or willingness to escape their batterer by leaving home. These problems are exacerbated for migrant farm worker women who are often isolated in rural communities with little or no access to legal and other services.

The mission of Organización en California de Líderes Campesinas, Inc. - hereafter Líderes Campesinas (or Líderes) - is to develop leadership among farm worker women so that they can serve as agents of political, social and economic change in the farm worker community. Founded in the Coachella Valley by a group of activists, Líderes Campesinas is the only statewide farm worker women's organization in the nation. Líderes' Domestic Violence Outreach and Education Project undertakes grassroots organizing in migrant farm worker communities to educate migrant farm worker women about domestic violence. The project seeks to create a community-based source of information, support and advocacy through which migrant farm worker battered women and survivors-an extremely vulnerable and exploited population-support, help and take care of one another as they confront abusers and pressure service providers and governmental institutions to respond to their needs. Advocacy from within their community helps battered farm worker women address domestic violence whether or not a woman has decided to leave or stay in a relationship.

Legal Momentum's Immigrant Women Program (IWP) strives to protect and expand the rights of immigrant women and their children. IWP works to enhance the ability of battered immigrant women to end the destructive role domestic violence plays in their lives and to support immigrant women in achieving economic self-sufficiency. Farm workers and women who immigrate to the United States face complex social and legal challenges, which often exacerbate their experience of poverty, invisibility and

isolation. IWP collaborates with state and local organizations providing technical assistance, outreach materials, training and assistance with policy advocacy. Legal Momentum understands that achieving institutional and social reform, in a way that facilitates efforts by battered farm worker and battered immigrant women to access help from systems designed for non-immigrant battered women, requires active and equal exchange between national and local advocacy groups. These relationships provide activists in local communities with the information and assistance they need to force change at the local level, while they provide national advocacy groups the real life stories that motivate and forge national administrative and legislative reforms.

Líderes Campesinas has made great strides toward educating women about domestic violence through community-based, grassroots, woman-to-woman programs. IWP has years of experience training community based advocates and attorneys on battered immigrant women's legal rights. Through this manual, Líderes and Legal Momentum want to take their domestic violence work to the next level by developing a trained core of farm worker women who are survivors of abuse to work at the community level to educate and provide advocacy. This will insure that immigrant victims of domestic violence access legal and social services available.

## Chapter One: California Organization of Lideres Campesinas, Inc.

### Brief History of Lideres Campesinas

A leader is someone who influences other's behavior to effect change: *motivated, animated, persuasive and convincing*. In this case, *Lideres Campesinas* promote the development of women farm workers—the members and future members of the organization—by encouraging intensity, full commitment, and knowledgeable application of their expertise and experience in their jobs. She exercises her influence so that the entire community offers its support as they labor to meet the proposed objectives.

When one speaks of “*Lideres Campesinas*” one thinks of “Culture,” “Transformation,” “Change,” “Revolution,” “Manifestation,” “Willingness,” “Power,”

Because women deserve respect and freedom in the domestic sphere just as in the workplace, women farm workers have been uniting forces to transform, support, and enable other women who are exercising their influence in communities and including the rest of society in the desired change.

In 1991, after having had the experience of working with a regional group in southern California mobilizing women around issues of labor, economic justice, health, and education through coordinated activities in specific locations like Valle de Coachella, it became apparent that there was a need for an integrated state project. Through such a project women farm workers would generate their own solutions, discover their own potential as agents of change, and involve other women farm workers in this transformative action. Every weekend since November 1992, Mily Treviño-Sauceda, with the help of various technical assistants, has been visiting different parts of the State of California. Thousands of miles were traversed, many hours of precious sleep were lost, and many sacrifices were made with the end goal of organizing these groups of women farm workers. This was the beginning of a movement that changed the devaluing of women farm workers, that preserved women farm worker's dignity, and that assured justice for women farm workers and their families.

Through *Lideres Campesinas* we found other women with similar thoughts, needs, and desires to learn. This was made possible, thanks to contacts with key women farm workers identified by the following organizations: labor unions, particularly the Farm Worker's Union, AFL-CIO, community organizations serving farm workers, legal service agencies, health clinics, and parent counseling groups in migrant programs. Consequently the organization included strong women community leaders with experience as agents of social change.

The conditions were optimal to initiate the group. It became the responsibility of the Proyecto de Campesinas to support and coordinate both existing and emerging groups of women as well as to draw on their strength and to encourage women farm workers to create an organized network. Although, “Mujeres Mexicanas” was no longer an active group, its work in the Valle de Coachella had been successful and it had encouraged women farm workers to be open to the idea that the moment had arrived to organize themselves.

*Lideres Campesinas* is a creation of the work of a variety of women unified by their common goals. *Lideres Campesinas* generated its mission statement through common lived experiences based in culture, domestic life, family, work and community. These women are born leaders. They have the gift of uniting and reuniting, rallying support, listening, fearing, teaching rage, being sensible, compassion...all that the same society has guided them to because of their culture and their form of survival/subsistence.

*Lideres Campesinas* is as product of decades of effort put forth to demand and obtain respect for women farm workers’ rights, her values, and her dignity. At its heart, this movement fundamentally challenges the incidence of domestic violence against women farm workers and the lack of justice available to women farm workers.

Supported by several project organizers, the State of California bolstered the network by offering resources and training. This assistance reinforced the unity, independence, and strength of the organization.

In 1995 the group was strong, passionate, and experienced, as well as surviving some battle wounds. Women farm workers were faced with the challenge of transforming these experiences into a web of strong leadership, programs, and a functioning structure. The biggest weakness was the lack of training, thus it was necessary to initiate an extensive training program in each of the main topics selected, upon completion of investigative research. The most common topics of interest were the ending of sexual and domestic violence as well as leadership training for affecting change.

In subsequent years with the support of both social and governmental organizations, women farm workers established annual conferences for farm worker youth and adults. They categorized themselves as a non-profit in 1996-1997.

Women farm workers’ impact on society has been great because of their participation in local and international conferences, and other media forums. Through their activist work, conscientiousness and sensibility, women farm workers have been essential in preventing domestic violence against women farm workers and have been great advocates for survivors of domestic violence. The organization’s mission expanded with the incorporation of a group for indigenous women in 1996, and again in 1998 with the integration of a group of youth consisting presently, of twelve committees.

*Lideres Campesinas* has organized women farm workers in other states including Washington State, Texas, Arizona, and Wisconsin.

## Organizing the Community

**L**ideres Campesinas organized two conferences: “Transformando Vidas en el Nuevo Milenio” (2000) and “Manos Unidas: Tejando la Red y Transformando Vidas” (2002). During these conferences *Lideres Campesinas* has developed seven committees. Those existing committees include: Violencia Familiar which handles issues of both domestic violence and sexual assault; Condiciones Laboral deals with issues of sexual harassment, discrimination, pesticides, etc.; the Programa de Jovenes handles teen pregnancies, dating violence/sexual assault, etc.; Salud de la Mujer does advocacy work regarding HIV/AIDS, breast cancer, etc.; Mujer Indigena works on a combination of all the themes. The Ticerca Edad handles the problems that affect elderly women farm workers. The sixth sub-group incorporates an educational component, El Instituto para Campesinas, which was created to train women farm workers as advocates and professionals.

*Lideres Campesinas* is involved in a variety of community organizing. We plan to begin identifying natural women leaders. We organize exhibitions during which *Lideres Campesinas* presents its work. We mediate dialogue, discussing and giving priority to the problems and needs that demand technical assistance, support, and direct participation by the women themselves. As a result, subsequent meetings are organized in such a way that the working groups are comprised of local women farm workers. Four offices were elected by women farm workers (Representatives, Alternate, Secretary and Treasurer) in addition to the members who are the unifying links ensuring membership participation in the development of the sub-groups and the personal contact with the larger community.

In 1995 *Lideres Campesinas* began to create a theater group as a vehicle to communicate about sensitive issues like domestic violence. The theater productions are presented in a cultural context such that the women farm workers are the actresses, elderly women and youth alike. Women farm workers use terms and vocabulary that are unique to them and are very different from those words used by other Mexican migrants. The theatrical pieces touch on real life experiences of abuse and injustice. At the end of each production there is an open dialogue with the participants. We have found that the participants identify so deeply with the characters that they begin to share the character’s worries and problems. In most cases there is a follow-up with participants to ensure that they are receiving support.

The activism of *Lideres Campesinas* works to ensure that women farm workers receive the support and training in regards to the aforementioned issues by raising consciousness through personal development and in group settings women are able to realize necessary changes. One example of this activism is the educational meetings organized in the neighborhoods and at the farms where migrant families live. We also organize activities through which small groups of farm workers visit recreation parks, health fairs, laundromats, and small family gatherings to distribute pamphlets—designed and created by members—outlining information regarding domestic violence and sexual assault. Other forms of activism are organized vigils, press conferences, and marches to express the importance of raising consciousness to end domestic violence.

The committees use the Educational Meetings as another method of “alliance.” The women farm workers meet in a comfortable space (often their own home or the home of a friend, co-worker, or family member) where they can share their food, time, and ideas. These meetings are both informative and educational. For example, one Educational Meeting, focused on sexual assault, included a dramatic skit followed by an open dialogue in order to foster a sense of safety and confidence within the individual participants as well as among the group. By participating in these meetings, women farm workers can become members of *Lideres* contingent upon their involvement in one of the organizational committees of the program.

*Lideres Campesinas* has obtained a variety of recognitions at the regional and national level. These recognitions have been based on the creative strategies used when working with and for women farm workers. The following are a few examples:

- ❑ 1995, for Bureau of Primary Health Care's Migrant Health Program in recognition of the Project's exemplary achievements and longstanding contributions to migrant health.
- ❑ 1995, Marshall Domestic Peace Prize (for Family Violence Prevention Fund and Marshall Stores)
- ❑ 1996, Honor Roll, California Women's Bureau, Department of Labor
- ❑ 1998, Crime Victim Service Award by Victims of Crimes in the US Dept. of Justice
- ❑ 2000 Central Valley Honoree, by California Latino Civil Rights Network



## **Chapter Two: Rights and Options for Battered Immigrant, Migrant, and Refugee Women, and Women Who Met Their Spouses through International Matchmaking Agencies**

*By Legal Momentum and Organización en California de Lideres Campesinas<sup>1</sup>*

Regardless of your immigration status, you have the right to be safe in your own home.

You have the right to leave anyone or have removed from your home anyone who abuses you and/or your children physically, emotionally, or sexually.

**YOU HAVE THE RIGHT TO MAKE YOUR OWN DECISIONS  
ABOUT YOUR LIFE.**

**NO ONE HAS THE RIGHT TO HURT YOU OR YOUR CHILDREN  
IN ANY WAY!**

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<sup>1</sup> This document has been updated and adapted from one developed jointly by Legal Momentum, Organización en California de Lideres Campesinas, and the Iowa Coalition Against Domestic Violence that was included in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Legal Momentum, Washington, D.C. 2004) and *Legal Momentum and Organización en California de Lideres Campesinas, "Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual"* (Legal Momentum, Washington, D.C. 2002). This training manual was supported by Grant No. 2005-WT-AX-K005 awarded by the Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

## DOES YOUR SPOUSE OR PARTNER?

- Hit, punch, slap, or kick you, your children or your pets?
- Threaten to hurt or kill you?
- Make you have sex when you do not want to?
- Threaten to report you to the Department of Homeland Security (DHS) and have you deported?
- Threaten to take your children away?
- Control where you go and whom you can see, talk to or write to?
- Control your access to money, take your money away from you or make you say how you have spent every penny?
- Stop you from getting a job or learning English?
- Refuse to file immigration papers for you or threaten to withdraw these papers?
- Withhold or destroy your passport and other personal documents?
- Make you feel like a prisoner in your own home?
  
- Make fun of you and insult you in private or in front of others?

If you answered "yes" to any of these questions, you may be a victim of domestic violence.

## What is domestic violence?

Domestic violence is violence that happens between partners or former partners in a relationship. This can mean between husbands and wives, boyfriends and girlfriends, same sex partners, relatives, and parents and their children. Domestic violence can occur at home and/or in other locations. Domestic violence can occur when parties live together, when they are separated, or when they are divorced. Domestic violence occurs in an intimate or family relationship when one person is forced to change his or her behavior in response to threats or abuse from an intimate partner or family member. Domestic violence can be physical, or it can involve threats, isolation of one partner from others, intimidation, harassment, emotional mistreatment, forced sex or making threats about reporting you or your children to immigration officials and/or having you deported.

If you are experiencing domestic violence in your home, you are not alone. Domestic violence is very common and it probably affects many people you know. Although domestic violence is usually hidden, it exists in every community.

Domestic violence often gets worse with time and it does not go away on its own. It is important to remember that domestic violence is not your fault. Your abuser chooses to use domestic violence to

control you. Domestic violence is a crime in the United States. No matter what your abusive partner tells you he can or cannot do to you, if he hurts you or your children, it is wrong. There are things you can do to protect yourself and people who will help you prevent the cycle of violence. Every person can get help to prevent domestic violence, even if they do not have legal permission from the Department of Homeland Security (DHS) to be in the United States. This booklet will explain how you can safely seek help to prevent the violence without a high risk of you being reported to DHS or deported.

This booklet will refer to the abuser as "he." Some women are abused by other women. While not all legal remedies will apply to lesbian relationships, this booklet will still provide some basic information about things you can do to make yourself safe. While most victims of domestic violence are women, men can also be victims of domestic violence. Government statistics published in 1998 and 2001 show that 85% of domestic violence victims are women and 15% are men.<sup>2</sup> Male victims, particularly those abused by women, are eligible for the same legal protections as women, and may qualify for immigration relief. Although this booklet refers to victims of domestic violence as women, men who are victims are also encouraged to speak to an advocate or an attorney.

## **DOMESTIC VIOLENCE IS NOT YOUR FAULT!**

**You are not alone. There are places you can go and things you can do to protect yourself and your children.**

### **MYTHS AND FACTS ABOUT DOMESTIC VIOLENCE**

**MYTH: Domestic violence only occurs in American families.**

**Fact:** Violence occurs in families of every culture, nationality, religion, class, race, and socio-economic background. Believing myths about domestic violence prevents immigrant women from getting the help they need.

**MYTH: Battering is a family matter.**

**Fact:** Domestic violence is a crime regardless of the relationship between the two people. You deserve the same protection and help that any victim of assault, battery, or rape would receive.

**MYTH: I am in the United States without legal permission from DHS; therefore, I cannot get help to prevent or flee domestic violence.**

**Fact:** Any battered immigrant woman, even if she is not living in the United States legally, can get help to prevent or flee domestic violence. She has a legal right to get help from any shelter or other program that helps women who have suffered domestic violence. Community-based charitable programs do not ask

any questions about immigration status and do not report to DHS people who come to them for help. A battered immigrant woman can obtain a protection order from the courts, call the police for help and receive emergency medical assistance. All of these agencies offer help to battered immigrant women without regard to immigration status.

**MYTH: It is easy for battered women to leave their abusers.**

**Fact:** Leaving the abuser is very difficult. Women may have a real fear that they will be killed or severely hurt by their batterer if they leave. They may not be able to support themselves. They may want to keep the family together. They may be afraid of being ostracized from their community, and there may not be culturally sensitive domestic violence resources where they live. All of these things make it difficult for battered women to leave their abusers.

**MYTH: Women are responsible for the violence against them.**

**Fact:** Violence is a learned behavior that abusers use to assert their power and control over others. You are not responsible for your abuser's violent behavior and do not deserve to be treated this way. Even though an argument may be what causes your abuser to become angry, what he does with his anger is his responsibility.

**MYTH: Violence is caused by alcohol or drug abuse.**

**Fact:** There is a high rate of alcohol/drug abuse among men who batter; however, there is no causal relationship between the two problems. Many men who batter do not drink heavily, and many substance abusers do not beat their wives. Batterers may use alcohol or drug abuse as an excuse for their violence instead of taking responsibility for their behavior.

**MYTH: If I leave my abuser, he will get custody of the children and I will not be able to see them.**

**Fact:** Many immigrant women who are undocumented receive legal custody of their children through protection orders and custody orders because judges believe it is safer and healthier for children to live with the parent who is not an abuser. Courts in the United States generally do not give custody of children to parents who are abusers. This is true even when the abuser is a citizen and the mother is an immigrant who does not have legal immigration status in the United States.

## **Help All Battered Immigrant Women Can Receive**

Even if you do not have legal immigration status in the United States, or if your legal status is tied to your abuser's work visa, you can receive all of the following services:

- ❑ Services from shelters and other domestic violence programs;
- ❑ Civil protection orders from a court;
- ❑ Custody and support for children;
- ❑ Police assistance;
- ❑ Emergency medical care;
- ❑ Your abuser can be criminally prosecuted; and
- ❑ Your citizen children can receive public benefits.

## **Police Assistance for Battered Immigrants**

Domestic violence is against the law. If you want to leave, then the police can help you and your children safely get out of the house and often they can also drive you to a safe place. The police may arrest your husband/intimate partner if they think that a crime has been committed. If the police officer does not speak your language, find someone to interpret for you.

Always ask the police to make a report about what happened and get an “incident report number” so that you can get a copy of the report. Ask for and write down the name and badge number of the officer making the report. If your husband/partner is taken into custody, he may be released as quickly as two hours after he is taken into custody. This will give you time to find a safe place to go. The police generally will not turn women reporting domestic violence into the DHS.

In recent years greater resources have been devoted to Department of Homeland Security enforcement of immigration laws. Also, more and more immigrant victims of violence against women who qualify for legal immigration status, including VAWA, U-visas, and T-visas, find themselves being contacted by DHS enforcement officers. This can occur for several reasons. An abuser or crime perpetrator may call DHS to enlist their assistance in having you removed from the United States; this is an attempt to use the U.S. government as a tool of their abuse.

Under federal VAWA confidentiality laws, DHS officials should not rely on information provided by an abuser, a crime perpetrator, or family members of abusers or perpetrators to delay a case the victim has applied for, to arrest or detain a victim, or to otherwise harm victims, including harm through DHS enforcement actions. This is called “VAWA Confidentiality,” and is discussed further below.

Consulting with an expert on immigration and violence against women can help you determine which forms of immigration relief you may qualify for as a victim. Once you determine that you qualify to attain legal immigration status, filing as soon as possible will help protect you from deportation. We strongly recommend pursuing immigration relief immediately.

You should consider carrying copies (not originals) of documentation about your VAWA, T-visa, or U-visa immigration case (prima facie determinations, approvals) with you so that you can show these papers to immigration officials if you are ever stopped. Showing immigration officials evidence that you are a victim of domestic violence can also be helpful in delaying or suspending your removal. You can obtain documentation that you are a victim of domestic violence or sexual assault by obtaining a

protection order (or a stay away order) in any pending criminal case. Copy these important documents and leave a copy with a trusted friend so that they will be accessible when you need them, or if it is not safe to carry the copies with you. Consult with a victim advocate to help you determine whether and how to carry documents safely. Some survivors may be concerned about their safety should their abuser find the papers they received from immigration. Call the National Domestic Violence Hotline 1-800-799-SAFE or the Rape Abuse and Incest Network (RAIN) Hotline at 1-800-656-HOPE for referrals to advocates and attorneys in your community who can assist you.

## **VAWA Confidentiality**

### **What is “VAWA Confidentiality”?**

Congress recognized that abusers of immigrant victims and crime perpetrators of both trafficking and sexual assault often threaten victims with deportation. These abusers and perpetrators also sometimes try to discover, interfere with, or undermine a victim’s VAWA immigration case. To stop abusers and crime perpetrators from convincing DHS officials to take actions against immigrant victims, Congress created VAWA Confidentiality. VAWA Confidentiality offers the following protections to victims. Department of Homeland Security, Department of State, Department of Justice and Department of Labor employees MAY NOT:

- Rely on abuser/family member provided information in any case, without regard to whether the victim is eligible for any immigration relief including deportation, detention, removal, or denial of her immigration case.
- Use or disclose any information contained in or about the existence of any VAWA, T-visa or U-visa immigration case. Family or criminal court officers or judges, as well as law enforcement officers, are also prohibited from use or disclosure.
- Undertake any part of an enforcement action against any immigrant victim at any of the following protected locations:
  - Shelter
  - Rape crisis center
  - Supervised visitation center
  - Family justice center
  - Victim services program or provider
  - Community based organization
  - Courthouse in connection with any protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, or stalking

The immigration judge may dismiss deportation or removal cases involving any of these prohibited activities. The officer committing the VAWA confidentiality violation is subject to disciplinary sanctions and up to a \$5,000 fine for each VAWA confidentiality violation. If you feel your abuser has contacted immigration or law enforcement with information on you, tell your advocate or lawyer immediately. If you do not have a lawyer, obtain a referral to a lawyer by contacting the resources at the end of this booklet.

### **Battered Immigrants Rights to Access Shelter and Domestic Violence Programs**

There are different services that can help you escape the violence in your home, such as: shelters, hospitals, police, legal aid, and other community services. Shelters are usually free and will often have information about other services in your community. A shelter is a safe, secret home where you and your children can stay when you leave an abusive relationship. Shelters provide food, free housing, and counseling, and can help you get legal advice and assistance in obtaining work. The shelter staff may also be able to help you find permanent housing and job training. They may also be able to help you find out if you or your children qualify for public benefits.

You can find a shelter by calling your local domestic violence program or the National Domestic Violence Hotline - (800) 799-SAFE. Shelter services are **FREE**. You do not have to pay money to get these services.

All domestic violence shelters are required to help you, even if you are undocumented. Domestic violence services must be provided without asking any questions about your immigration status. Non-profit charitable organizations that help battered immigrants are not required to ask any questions about a woman's immigration status. You will not be reported to DHS for seeking these services. Shelters and domestic violence programs cannot discriminate against you because of your country of origin, your immigration status, your ethnic background, or your language ability.

Battered women's shelters and other services can offer you help even if you do not choose to stay at the shelter. You can receive help if you choose to stay with friends or family members, and even if you decide not to leave your abuser. Shelters provide counseling, legal assistance; help finding housing, and other needed services for battered women whether or not you stay at the shelter. It is also important to know that there are domestic violence programs that have particular experience helping battered immigrant women. To find these services in your area, see the resources listed at the end of this booklet.

If you leave your home, do everything you can to take your children with you. Also try to take your important papers, such as a driver's license, identification, passports, visas and social security cards for you and your children, birth certificates, any public assistance documents, leases, checkbooks, paycheck stubs, marriage license, medical and police reports, copies of your husband's green card, passport, birth certificate, or social security card, photographs of your injuries and any current court orders. If your abuser is a citizen or lawful permanent resident, then before you leave try to find a safe way to write down his alien registration number ("A" number). This is the number on his green card, naturalization papers or any other immigration papers he may have filed. If he is a citizen, then copy down his passport number or try to get a copy of his passport or birth certificate. If you think you may need to leave in the future, pack these items in a bag so you can find them quickly when you leave or take them to a friend's house. Taking these papers is not always possible, however, if you can bring them- you should.

### **Some Battered Immigrants, Immigrant Victims of Sexual Assault, or Human Trafficking May Qualify to Obtain Legal Immigration Status Without Their Abuser's Help or Knowledge Because of the Abuse**

There are twelve ways you or your child might qualify to obtain legal immigration status without your abuser's knowledge, help, or control. Qualifying for legal immigration status because of domestic violence, and which form of immigration relief you may qualify for, depends on:

1. Who abused you
2. If you are or were married to your abuser
3. If your child has been abused
4. The immigration status and/or citizenship of your abuser
5. If your spouse ever filed immigration papers for you

If you came to the United States on a fiancé visa, then you have a right to receive information about the U.S. citizen spouse or fiancé who brought you here.

If you think you may qualify, seek help from an immigration lawyer or advocate who works with battered immigrant women or a battered women's advocate who has been trained on immigration protections for battered immigrants. These advocates and lawyers can help you determine whether you qualify to attain legal immigration status. You can find such a person in your area by calling the telephone numbers at the end of this booklet.

The immigration options for battered immigrants are:

1. The self-petition under the Violence Against Women Act;
2. The battered spouse waiver;
3. Cancellation of Removal under the Violence Against Women Act (only after you have been placed in deportation proceedings);
4. The crime victims visa, called a U-visa;
5. Gender-based asylum;
6. The trafficking visa, called a T-visa;
7. VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act) of 1997;
8. VAWA HRIFA (Haitian Refugee Immigration Fairness Act) of 1998;
9. VAWA Cuban Adjustment Act of 1966;
10. VAWA Abused Adopted Child Protections;
11. Special Immigrant Juvenile Status (includes special protections under VAWA 2005);
12. International Marriage Broker Regulation Act Protection and access to information.

## **1. Self-petitions Under the Violence Against Women Act (VAWA)**

VAWA creates several ways for women and children to get legal permanent residency. The first is called "self-petitioning". VAWA is available to women and children whose abusive husbands or parents are U.S. citizens or lawful permanent residents. Despite what your husband or someone else may have told you, as an immigrant domestic violence victim, you do not need to rely on your abusive spouse or parent to file papers for you to get legal immigration status. The law has special protections called "VAWA Confidentiality" so that your abusive husband or parent cannot interfere with or undermine your immigration case. You should seek assistance from an attorney or advocate who has expertise working with immigrant victims of domestic violence who can help you determine if you qualify and can help you prepare and file your case with the Department of Homeland Security. Many organizations are now able, under changes in law, to provide you with help in your domestic violence, sexual assault, or VAWA case, regardless of your status.

If you are, or were, married and your husband has abused you or your child, you may qualify for help under the Violence Against Women Act (VAWA). Unmarried children under the age of 21 who are being abused by a parent who is a U.S. citizen or a lawful permanent resident are also eligible for VAWA.

**Special Note -**



Children battered or subjected to extreme cruelty, including sexual abuse and incest, while they are under 21 years of age, must file for VAWA immigration relief based on this abuse before they turn 25 years old.

If your citizen or lawful permanent resident spouse has abused your child, you may also qualify for VAWA, even if you have not been abused yourself. VAWA is also available to parents of adult U.S. citizens who have been abused by their adult U.S. citizen son or daughter. If you do not know your abusive husband or parent's immigration status, contact an immigration attorney who may be able to help you find out.

IF YOU ARE:

1. Married to a U.S. citizen or a lawful permanent resident; or
2. Were divorced less than two years ago from a U.S. citizen or lawful permanent resident spouse; or
3. The child of a U.S. citizen or lawful permanent resident; or
4. The parent of an adult U.S. citizen son or daughter

AND

5. You are living in the United States; or
6. You are living abroad, and
  - a. You were abused in the United States; or
  - b. Your abusive spouse or parent is either an employee of the U.S. government or a member of the U.S. armed forces;

AND

7. You or your child were physically or sexually abused or you suffered extreme cruelty from your husband or parent

You may be able to get a "green card" (permanent residence in the United States) without your abuser's help or knowledge, through the Violence Against Women Act (VAWA).

If your husband or parent has never filed for your "green card," if he filed for your green card and then withdrew the application, or if he has filed but you fear he may not continue to help you get your "green card", you may be able to apply for a **VAWA SELF-PETITION**.

Abusers who are not citizens of the United States may be deported if convicted of domestic violence or violation of a protection order. If your husband or parent was deported within the last two years, you may still self-petition under VAWA if you can show that his deportation was related to an incident of abuse. See the Flow Chart on eligibility at the end of this booklet.

## 2. Battered Spouse Waiver

Some battered immigrant women are married to abusive spouses who did file immigration papers for them. If your U.S. citizen spouse filed immigration papers for you and you were married for less than two years on the date you went with your spouse to your interview with DHS, what you received from DHS is called "conditional temporary residency." This conditional residency lasts only for two years. At the end

of that two-year period you and your spouse are required to file joint petition requesting that you be granted lawful permanent residency.

If your husband will not help you in filing the petition to move from your conditional status to legal permanent residency, you can ask for a **BATTERED SPOUSE WAIVER** to keep your lawful immigration status. You qualify for a battered spouse waiver if:

1. You have a conditional “green card” that lasts for two years;
2. You or your child have been battered or subjected to extreme cruelty by the citizen spouse;  
**AND**
3. You can prove that your marriage was valid.

You can file for a battered spouse waiver at any time. You do not need to wait two years. Your batterer will not be able to find out that you filed the battered spouse waiver, and you can file even if you are still living with your abuser, or if your abuser divorced you. Contact an immigration attorney or a nonprofit agency that helps people with immigration for information about the Battered Spouse Waiver.

### **3. VAWA Cancellation of Removal – Defense Against Deportation for Battered Immigrants**

Sometimes battered immigrants who qualify for VAWA immigration relief are reported to DHS by their abusers or are picked up by DHS at their place of employment. These battered immigrants can obtain legal residency through "cancellation of removal" (formerly suspension of deportation). This method is only available to you if you are in, or can be placed into, deportation/removal proceedings. To qualify:

1. You must have lived continuously in the United States for more than three years;
2. You must be in the United States illegally;
3. You or your child must have been battered or suffered extreme cruelty;
4. The person who harmed you or your child by battering or extreme cruelty must have been:
  - a. Your current or former spouse who is a U.S. citizen or lawful permanent resident;
  - b. Your citizen or lawful permanent resident parent or step parent if you are under the age of 21; or
  - c. The citizen or lawful permanent resident other parent of your abused child;
5. You must have been abused in the United States; **AND**
6. You must prove that your deportation would cause extreme hardship to yourself or your child.

If you qualify, then the court may waive your deportation/removal and grant you legal permanent residency. If you are granted cancellation of removal, then any children of yours under the age of 21 whether living with you in the United States or living outside of the United States can receive humanitarian parole. Humanitarian parole gives them legal permission to live with you in the United States while you file applications for your children to receive legal immigration status.

**Note: If you lose your VAWA cancellation of removal case, you can be deported. If you are a battered immigrant and you end up in deportation proceedings before an immigration judge, call the numbers at the back of this booklet to obtain the help of an immigration attorney who is knowledgeable about the legal relief available to battered immigrants.**

#### **4. Crime Victim U-visas**

In October of 2000 Congress created a new immigration remedy, the crime victim visa (U-visa), which may be able to help you if you do not qualify for either the VAWA self-petition or the Battered Spouse Waiver. The U-visa offers access to legal immigration status to immigrants of domestic violence, rape, sexual assault, being held hostage and some other criminal activity. The U-visa remains valid for four years. Both U-visa applicants who have provided sufficient evidence to present a valid case and approved U-visa applicants can receive legal work authorization. The grant of the U-visa leads to closure of any removal case pending against you. In order to assure that any pending or prior removal case is dismissed, it is very important that victims with removal orders or cases pending against them seek the assistance of an immigration attorney experienced in working with victims of violence against women.

At the end of three years, you may be able to obtain legal permanent resident status if you can prove humanitarian need to remain in the United States, that remaining in the United States is necessary to promote family unity, or that it is in the public interest for you to remain in the United States. For example, a battered immigrant who receives a U-visa will likely be able to show humanitarian need in cases in which the abuser was deported to the same country that the victim comes from.

This new visa will be especially helpful if you are abused by:

- Your boyfriend or girlfriend; or
- Your spouse, parent, or child who is not a citizen or lawful permanent resident.

The U-visa will also be helpful when your abuser is an employer, a stranger, or a family member other than a spouse, parent, or child. Your relationship to the abuser does not matter. The immigration or diplomatic status of the abuser also does not matter.

To qualify for a U-visa, you must prove:

1. Substantial physical or emotional abuse from criminal activity;
2. That you possess information about the criminal activity;
3. That the criminal activity occurred in the United States or otherwise violates U.S. law; and
4. That you have obtained a certification from a government official stating that you:
  - a. Have been; or
  - b. Are likely to be; or
  - c. Are being helpful to an investigation or prosecution of criminal activity; and
5. The certification must be made within 6 months of filing for a U-visa by a:

- a. Police officer
- b. Prosecutor
- c. Judge
- d. DHS official
- e. Equal Employment Opportunity Commission official
- f. Department of Labor official
- g. State child or elder abuse investigator; or
- h. Any other state or federal government employee with responsibility for detection, investigation, prosecution, conviction or sentencing with regard to criminal activity.

You must have been the victim of one of the following general categories of criminal activity. These include:

<ul style="list-style-type: none"><li>• Rape,</li><li>• Torture,</li><li>• Trafficking in persons,</li><li>• Incest,</li><li>• Domestic violence,</li><li>• Sexual assault,</li><li>• Abusive sexual contact,</li><li>• Prostitution,</li><li>• Sexual exploitation,</li><li>• Female genital mutilation,</li><li>• Being held hostage,</li><li>• Peonage,</li><li>• Involuntary servitude,</li><li>• Slave trade,</li></ul>	<ul style="list-style-type: none"><li>• Kidnapping,</li><li>• Abduction,</li><li>• Unlawful criminal restraint,</li><li>• False imprisonment,</li><li>• Blackmail,</li><li>• Extortion,</li><li>• Manslaughter,</li><li>• Murder,</li><li>• Felonious assault,</li><li>• Witness tampering,</li><li>• Obstruction of justice,</li><li>• Perjury,</li><li>• Attempt, conspiracy or solicitation to commit any of these crimes.</li></ul>
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There are a wide variety of state criminal statutes in which criminal activity listed above may have different names under state law. If the nature and elements of the crime are similar to a crime listed above, the victim can be eligible for U-visa protection. The criminal activity that qualifies for U-visa protection may occur during or in addition to the commission of another crime. If police or prosecutors choose to investigate or prosecute only the other non-U-visa listed crime, the victim of the U-visa listed crime can still qualify for a U-visa. For example the police may investigate embezzlement or a drug offense and the perpetrator may also be abusing his wife. The wife can obtain certification as to domestic abuse and attain a U-visa.

To receive a U-visa, you must be willing to cooperate in the investigation or prosecution of the criminal activity. Usually this will require you to make a police report and to be willing to speak with prosecutors. However, you can apply for the U-visa as soon as you can get the needed certification and gather the proof of the substantial physical or emotional abuse you have suffered. Substantial physical or emotional abuse is defined as injury or harm to the victim's physical person or impairment of the emotional or psychological soundness of the victim. DHS decides this on a case-by-case basis using the following factors:

- Nature of the injury inflicted or suffered;
- Severity of the perpetrator's conduct;
- The severity of the harm suffered;
- The duration of the infliction of harm;
- Permanent or serious harm to victim's
  - Appearance,
  - Health,
  - Physical or mental soundness

You can receive the U-visa even if the criminal case has not yet been filed, if prosecutors decide not to file the criminal case, if a case is filed and you are not needed as a witness, if the abuser cannot be prosecuted because he is a diplomat, if the abuser eludes arrest, or if the abuser is not ultimately convicted of the crime.

Your children can also receive U-visas if they qualify independently as a victim of criminal activity or if they are your children under immigration law, meaning they are under the age of 21 and unmarried. Other family members can also receive a version of the U-visa that is dependent on your main U-visa application.

- If you are under the age of 21 your parents, spouse, unmarried children under the age of 21, and unmarried siblings under the age of 18 can receive a U-visa based on your U-visa case.
- If you are over the age of 21 your spouse and unmarried children under the age of 21 can receive a U-visa based on your U-visa.
- U-visa recipients may petition for qualifying derivative applicants residing outside of the United States.

## **5. Gender-Based Asylum**

In some cases battered immigrants may also qualify for a form of relief called gender-based asylum. This will be the most difficult form of relief to obtain, and you must seek the assistance of an immigration lawyer with expertise in gender-based asylum.

To qualify for asylum in the U.S., an applicant must establish that s/he is a refugee.<sup>2</sup> To be classified as a refugee, an applicant must demonstrate that she has a well-founded future fear of suffering, harm in her home country that rises to the level of persecution. An applicant must establish that the persecution was or will be on account of Race, Religion, Nationality, Membership in a Particular Social Group, or Political Opinion. Additionally, an applicant must establish that the persecution she suffered was committed by a foreign government, or, that the government of her home country is or was unwilling or unable to protect her from the harm of a non-governmental actor. As a general rule, an individual must apply for asylum within one year of her entry into the United States.

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<sup>2</sup> See INA § 101(a)(42); 8 U.S.C. § 1101(a)(42)(defining the term “refugee”); Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified at various sections of 8, 22 U.S.C.); United Nations Protocol Relating to the Status of Refugees, art. I § 2, opened for signature Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

Some battered immigrants who will qualify for gender-based asylum may also qualify for a U-visa if the domestic violence was committed against them in the United States. An example would include domestic violence victims who are abused in the United States by someone who comes from the same country as they do. This is particularly true if the abuser is convicted of domestic violence, a deportable offense. Gender-based asylum cases are difficult immigration cases and require assistance of a skilled immigration lawyer. If you are an immigrant victim of domestic violence, sexual assault, trafficking, child abuse, elder abuse or other U-visa crime you should consult with an immigration attorney to determine which form of immigration relief to pursue.

## **6. Trafficking Victims (T-visas)**

If you came to the U.S and were coerced, forced, or deceived into a job that you could not leave, you may be a victim of trafficking. As a victim of trafficking, you may be eligible for the T-visa, which provides at least four years of immigration relief. For purposes of T-visa eligibility, trafficking is defined as:

“Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not 18 years of age; or the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.”

In order to qualify for the T-visa, you must satisfy the following four conditions:

- ❑ You must be or have been a victim of a severe form of trafficking in persons; and
- ❑ You must be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a Port of Entry, on account of such trafficking; and
- ❑ You must have complied and/or show willingness to assist with any reasonable request for assistance in the investigation or prosecution of acts of trafficking- or- you must be under the age of 18;
  - If your physical or psychological trauma makes it difficult to cooperate with law enforcement you may be eligible for a waiver of this requirement.
- ❑ You must demonstrate that you would suffer extreme hardship involving unusual and severe harm upon removal

As a T-visa recipient, you can obtain legal work authorization and are granted the same access to public benefits as refugees. After three years of continuous physical presence in the United States, the T-visa recipient can apply for adjustment of status and become a lawful permanent resident. As a T-visa recipient you can also protect your family members living abroad by applying for them to receive T-visas as well; they do not have to show extreme hardship. Family members eligible to derive benefits through a T-visa include parents and siblings of a T-visa recipient who is under the age of 18 years. Adult T-visa recipients may bring their spouse or children to the U.S.

## **7. VAWA NACARA (Nicaraguan Adjustment and Central American Relief Act of 1997)**

If you are Nicaraguan or Cuban and your abusive spouse or parent is Nicaraguan or Cuban, you may qualify for VAWA NACARA. This allows Nicaraguan or Cuban battered spouses and children who have been subjected to extreme cruelty by Nicaraguan or Cuban abusers to self-petition. VAWA NACARA helps victims who are unable to attain lawful permanent residency due to their abuser's failure to file for lawful permanent residency. The battered spouse or child must have been physically present in the United States on the date the application was filed (which must have been before April 1, 2000).

If your abuser is an El Salvadoran, Guatemalan or Eastern European spouse or parent, you may also qualify for VAWA NACARA. VAWA NACARA self-petitioning offers protection from deportation and access to lawful permanent residency for abused immigrants who were the spouses and children of El Salvadoran, Guatemalan and Eastern European abusers at the time the abusive spouse or parent filed for or received suspension of deportation, cancellation of removal, asylum, or temporary protected status under NACARA 203. VAWA NACARA Section 203 also allows battered spouses, children, and children of the battered spouse temporary protection from removal even if the spouse is no longer married to the abuser, as long as they were married at the time that the immigrant, or spouse, or child, filed an application to suspend or to cancel the removal.

## **8. VAWA HRIFA (Haitian Refugee Immigration Fairness Act of 1998)**

If you are Haitian and your abuser is Haitian you may qualify for VAWA HRIFA immigration relief. HRIFA provides that Haitians (natives, citizens, and nationals) can adjust their status to become lawful permanent residents as long as their applications were filed before April 1, 2000 and the general requirements for lawful permanent residency are met. Spouses, children under 21 years, and unmarried sons and daughters of an eligible immigrant can also receive lawful permanent residency under HRIFA- if they are Haitian and in the United States on the date the application is filed. HRIFA allows applicants to prove continuous presence even when they were absent from the United States for a time period of up to 180 days. (See “continuous presence”). Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Haitian, even if the abusive Haitian spouse or parent never applied for lawful permanent residency under HRIFA.

## **9. VAWA CUBAN ADJUSTMENT (Cuban Adjustment Act of 1966)**

If your abusive spouse or parent is Cuban, you may qualify for VAWA Cuban Adjustment. The Cuban Adjustment Act (CAA) allows for Cubans (both natives and Cuban citizens) to file and change their immigration status to lawful permanent residents as long as they were inspected and admitted or paroled into the United States after January 1, 1959. They must have been physically present in the U.S. for at least one year, and the general requirements for lawful permanent residency must be met. Spouses and children are also eligible to receive lawful permanent residency through the Cuban Adjustment Act, regardless of their citizenship and/or place of birth, provided that they are residing with their spouse or parent Cuban Adjustment Applicant in the United States. Special relief is available under VAWA for spouses and children who were battered or subject to extreme cruelty by an eligible Cuban, even if he

never applied for lawful permanent residency under the Cuban Adjustment Act. VAWA CAA self-petitioners are not required to show that they are currently residing with the spouse or parent in the United States.

## **10. VAWA Abused Adopted Child Protections**

VAWA protections for abused adopted children removes requirements that place abused adoptive children under the control of abusive adoptive parents. It allows adopted children to obtain permanent residency even if they have not been in the legal custody of their adoptive parent for at least two years. They are additionally exempted from the residency requirement. To qualify for this abused adopted child relief, the child must have been battered or subjected to extreme cruelty by the adoptive parent or by a family member of the adoptive parent.

## **11. Special Immigrant Juvenile Status**

If you are under 21 years old and are in the United States and have been abused, neglected or abandoned you may qualify to attain lawful permanent residency as a Special Immigrant Juvenile. In order to qualify for Special Immigrant Juvenile status you must have been declared dependent on a juvenile court in the United States or a court must have committed you to the custody of a state agency or department, you must have been deemed eligible for long-term foster care due to abuse, neglect or abandonment, the court must have determined it is not in your best interest to be returned to your country of origin.

When a child has been battered, abused, neglected, or abandoned, a special VAWA provision bars state and federal government officials from requiring the child to communicate with the child's abuser or family member of the abuser at any stage of the Special Immigrant Juvenile Status application process.

## **12. Special Issues for Women Who Met Their Spouses through International Matchmaking Agencies (International Marriage Broker Regulation Act (IMBRA) of 2005)**

Women who met their US citizen or Legal Permanent Resident spouses through an arranged marriage or an international matchmaking agency can legally access protection orders, police assistance, shelter and domestic violence services without regard to how they met their abusive spouse, fiancé or boyfriend. Consult an immigration attorney if you met your spouse or came to the US through an international matchmaking agency. Women who met their U.S. citizen spouses or fiancés through international matchmaking agencies have the same rights as any other immigrant woman to attain legal permanent residency through their marriage. If you met your spouse through an international matchmaking agency and you are abused, you can access VAWA immigration protections. Immigrant fiancés and spouses also have the right to information on the criminal history and domestic violence protection orders issued against your U.S. citizen fiancé or spouse.

If your fiancé or spouse is a U.S. citizen whom you met through an international matchmaking agency,



through an arranged marriage, or if you entered the United States on a fiancé visa, there are special immigration rules that you need to know about. If you were brought to the United States on a fiancé visa, to qualify for legal immigration status you must:

- ❑ Marry the fiancé who brought you to the United States; **AND**
- ❑ You must marry your fiancé within 90 days of entering the United States on a fiancé visa.

If you fail to comply with either of these requirements, then you will not qualify for either the battered spouse waiver or to file a VAWA self-petition. If you entered the United States on a fiancé visa and your fiancé did not marry you, you married another citizen, lawful permanent resident, work visa holder or someone else who is abusing you, or if your fiancé married you after the 90 day period had passed, you must seek help from an immigration attorney who will help you learn what immigration benefits (including the U-visa) may be open to you as a battered immigrant.

### **Collecting Evidence For Your VAWA Petition, Battered Spouse Waiver or U-visa Case: Collecting “Any Credible Evidence”**

If you qualify to file for one of the forms of VAWA immigration relief described above, you will need to work with an advocate or an advocate and an attorney to help you collect the evidence you will need to prove your violence against women related immigration case. DHS and the immigration courts can look at many forms of proof. Examples include:

- your written statement (affidavit/testimony),
- statements from friends, family members, victim advocates or shelter workers,
- copies of your protection order,
- medical records,
- pictures of your injuries,
- police reports,
- trial transcripts,
- court documents,
- news articles, or

There is not one particular piece of paper that you must have in order to prove your case. If you testify in immigration court, you can request that the court provide an interpreter for you. If you are contemplating leaving the home you share with your abuser and you think you may qualify for VAWA or other immigration relief discussed here, see the safety planning section of this booklet for a complete list of items you should take with you when you leave.

## **YOU HAVE THE RIGHT TO CONSULT WITH AN IMMIGRATION ATTORNEY ABOUT IMMIGRATION OPTIONS THAT ARE AVAILABLE TO YOU.**

If you do not understand what your immigration status is, call an immigration attorney. Your conversation with the lawyer will be confidential. Lawyers are generally required to not disclose information provided by a client to them to any person without the client's permission. To find a lawyer who knows about U.S. domestic violence laws, contact the nearest domestic violence shelter or legal services office, or call one of the organizations listed in the referral section of this booklet. Those organizations can help you find advocates and/or a lawyer who can help you for free or at a low cost. If you do not qualify for free or low cost legal services, these programs are the best resources to help you locate a family and/or immigration lawyer who has expertise in the special laws that help domestic violence victims, including immigrant victims.

It is important to ask any attorney you consider working with whether they have experience working on immigration cases for battered immigrants. Most of the lawyers who have this experience work for legal aid, faith-based, or community-based organizations. For immigrant victims who can afford to pay an attorney, it is recommended that they contact one of the resources listed at the end of this manual to receive a referral to an immigration lawyer who is trained in working on domestic violence, sexual assault, or trafficking cases. Many immigration lawyers have not received this training.

### **Family Law Protections for Battered Immigrants**

#### ***Call an immigration lawyer before you get a divorce.***

If you are an undocumented battered immigrant and your spouse files a divorce case against you, or if you are considering seeking divorce, contact an immigration lawyer before getting a divorce. Divorce may cut you off from access to legal immigration status.

If your abuser is your U.S. citizen or lawful permanent resident spouse or former spouse, you may qualify for VAWA self-petitioning or VAWA cancellation of removal. Divorced women must file their VAWA self-petitions within two years of divorce and they must show that domestic violence occurred prior to divorce. Divorced battered immigrants who have been in the United States for longer than three years can qualify for VAWA cancellation of removal.

If you are getting divorced or separating from your husband, you should keep important papers and items that you may need for your immigration case in a safe place. This would include photographs from your wedding and family occasions that you will need to show DHS that your marriage was real and that you did not get married only to get immigration papers. See the safety planning section of this booklet for a complete list of items you should store in a safe place or take with you when you leave.

## PROTECTION ORDERS

### What is a protection order?

A protection order is a document written up by the court that can help protect you and your children from future abuse by your spouse, partner, or family member. The other terms that can be used to refer to this type of court order are:

- Civil Protection/Protective/Restraining) order
- CPO or PPO
- Restraining order

### What are the requirements to obtain a protection order?

You must prove that you are a victim of domestic or dating violence, AND

You must also have a relationship to your abuser through –

- Marriage (e.g. husband, former husband, mother-in-law, father-in-law, child/stepfather relationship);
- Blood lines (e.g. your natural mother, father, siblings, cousins, aunts and uncles);
- Adoption;
- Having a child in common;
- Living together;
- A current or former dating relationship.

You can get a protection order based on assault (including pushing, hitting, shoving, slapping, kicking, pulling hair, and choking, whether or not there are visible injuries), sexual assault, rape, stalking, harassment, parental kidnapping, or terrorist-type threatening. You may file for a protection order where you currently live, where the abuser lives, or where the violence took place. There is no specified time after an incident of domestic violence within which you must file for a protection order. A local domestic violence advocate or attorney in your state can help you find out about specific procedures for filing for protection orders in your state.

You have the right to get a Protection Order **even if you are undocumented**. You do not have to answer questions about your immigration status to get a protection order or have it enforced.

### How Protection Orders Can Help Battered Immigrants.

If you are a victim of domestic violence, you can obtain a protection or restraining order from your local court that will protect you from ongoing violence, abuse, threats, or harassment from your spouse, boyfriend, or any family member.

Filing for and receiving a protection order will not result in your abuser's deportation. Once you obtain a protection order, and if your abuser violates the order, you will need to decide if you want to act to enforce the protection order. If your abuser is a non-citizen, a conviction or violation of certain provisions of the protection order (those designed to offer you and your children protection from

violence) could lead to your abuser's deportation. Protection orders can help prevent violence against you even if you do not choose to have your abuser convicted of violating the protection order. At the time you obtain a protection order you do not have to decide whether you will choose to have it enforced by the courts.

## **What can I ask for in a protection order?**

In most states, you can request:

- ❑ That the abuser does not harass, threaten, molest, assault, or physically abuse you or your children.
- ❑ That the abuser participates in and completes a certified domestic violence and/or substance abuse program.
- ❑ That the abuser stays away from your person, home, your workplace, your car, your children, your children's school, and other places that you frequent.
- ❑ That the abuser does not contact you or your children personally, in writing, by telephone, or through third parties.
- ❑ That the abuser vacate your home and that the local police be present while the abuser gathers his personal belongings and turns over to you all sets of keys in his possession. If you choose to stay in your home, then your abuser can be ordered to stay away from you and the home you shared with your abuser even if he owns the home or if the rental agreement with the landlord is in the abuser's name.
- ❑ That the police accompany you to retrieve your belongings if you wish to leave your home and go to a shelter or stay with family or friends. The abuser can be ordered to stay away from the location where you choose to stay.
- ❑ That the abuser turns over all weapons in his possession to the police.
- ❑ That the abuser returns your personal property, any joint property, and property awarded to you by the court.
- ❑ That you receive temporary custody of any children you have in common with your abuser even if he has legal immigration status and you do not. This custody lasts for as long as your protection order. You will need to file a separate case in the family courts in most state to receive a permanent child custody order.
- ❑ That you receive child support and health coverage for yourself and your children while the protection order is in effect.
- ❑ That the abuser turns over your children's passports to you.
- ❑ That the abuser turns over your passport to you.

- ❑ That the abuser receives visitation rights with the children under circumstances that will not endanger you or the children. This can include exchange through a third party, so that there is no contact between you and your abuser. It can also include a set visitation schedule that the abuser cannot change.
- ❑ That the abuser pays for medical expenses and property damage costs that result from the violence.
- ❑ That the police help you enforce your protection order and patrol your neighborhood more closely.
- ❑ That your abuser turns over documents and information that you may need. This includes, but is not limited to, documents you need to support obtaining a green card (legal permanent residency status) without your abuser's knowledge or help. These documents can be used to support your VAWA self-petition, your U-visa case, or to support any other immigration case you may have or that your abuser may have filed for you.

### **How will a protection order help me if I qualify for domestic violence immigration relief including relief under the Violence Against Women Act (VAWA)?**

If you apply for VAWA, U-visa, or other domestic violence related immigration relief, a protection order will help prove that you were abused. To assist you with your VAWA or other immigration case, request in your protection order that:

- ❑ The abuser not withdraw any immigration applications filed on your behalf.
- ❑ The abuser not take any action to undermine your immigration case and not contact any government agency, consulate or embassy about you without seeking permission from the protection order judge.
- ❑ The abuser turn over your work permit, ID card, bankcard, birth certificate, marriage certificate, passport, and any other documents that would be important for your immigration case. He can be ordered to pay to have these documents replaced if he has destroyed, lost, thrown away, or stolen them, or if he tells the judge he does not have them.
- ❑ The abuser give you copies of his documents for your immigration or child support case, such as copies of his passport, ID card, income tax returns, copies of bills, his birth certificate, his alien registration card (green card), and work permit and that he be ordered to turn over to the court and to you his social security number, passport number and/or "A" number.
- ❑ The abuser pays your immigration case fees.
- ❑ The abuser fill out a "Freedom of Information Act" (FOIA) request to release information contained in any immigration case he may have filed, particularly any family based visa petitions he filed for you or for your children.

If you have questions about your immigration status, consult an immigration attorney immediately. You can locate an immigration attorney or advocate with experience working with immigrant victims by contacting one of the agencies listed at the end of this booklet for a referral.

## **How can a protection order help if my abuser has threatened to kidnap our children?**

Parental kidnapping is the basis for receiving a protection order in many states. If you fear that your children could be kidnapped and taken away from your community or taken out of the U.S., you can request certain provisions in your protection order, such as:

- ❑ the abuser not remove your children from the county where you reside without a court order;
- ❑ if international child kidnapping is a possibility, ask that the abuser be ordered not to remove the children from the United States;
- ❑ you, your abuser, and the judge sign a statement preventing the embassy of your abuser's home country from issuing visas allowing your children to travel to that country without a court order.
- ❑ If the abuser has your children's passports, request that he return those to you or to the court. Send a letter and a copy of your protection order to the U.S. Passport Office to inform them that you or the court have the children's passports and that no new passports should be issued for the children.

## **Do I have to leave my abuser in order to file for a protection order?**

**No.** You can have a protection order against someone while living together. This order can simply require your abuser to prevent his violent behavior and/or attend a batterer's counseling program. This helps protect you and your children against further abuse. If the abuser hurts you again, then you can call the police and have your order enforced.

## **How do I obtain a protection order?**

You can obtain a protection order by yourself or with the assistance of a battered women's advocate or domestic violence attorney. If you do not speak English comfortably, or if you speak some English, but are more comfortable speaking about what has happened to you in your native language, then you should seek help from a local domestic violence program and ask them to help you find an interpreter who can help with your case. Do not use as an interpreter anyone who may be biased toward you or your abuser or afraid of your abuser.

To apply for a protection order on your own, go to your local courthouse and fill out a petition for a protection order. In this petition, describe the full history of violence against you. Start with the most recent incidents and then list the full history. Provide as many details about each incident of violence or abuse as possible, including the time, date, and location where the violence took place. Abuse that qualifies for a protection order includes: hits, slaps, punches, pulling hair, scratches, kicks, choking, other forms of assault with or without weapons, being held hostage, threats to harm, threats to kill, forced sexual relations, other forms of violence, and attempts to do any of these things.

After you have filed the necessary paperwork, a hearing before a judge will be scheduled and a copy of the protection order petition will be delivered to your abuser. If you need immediate protection, you will be able to see the judge the same day and receive a temporary protection order. This temporary order lasts between two weeks and one month. After you receive a temporary protection order, the court will send a copy of that temporary order to your abuser along with a notice of your court date for the hearing on your full protection order. In most states a police officer or sheriff will deliver these court papers. In other states, you must arrange for someone to deliver the papers to the abuser. In some states the temporary order becomes final unless you, or your abuser, request a hearing. However, in most states, for your protection order to be final and to last for a period of one year or longer, you must return to the court for a hearing to get your final protection order.

Both you and your abuser will be required to attend the full protection order hearing. It is very important that you do not go to this hearing by yourself. Ask a battered women's advocate and a friend to accompany you and help with court procedures. You do not have to speak with or sit with the abuser at the courthouse. During the hearing for the full protection order, you will have the opportunity to tell the judge about the history of abuse and threats against you and/or your children. Explain how this has affected you and your children. Testify about what you have written in your petition and bring witnesses to court with you who saw the abuse or your injuries. You may also use torn clothing, photographs of injuries, destroyed property, medical reports, and police reports to prove that you have been abused.

In the U.S. legal system, your spoken testimony has value and is a formal legally accepted form of evidence. A woman's testimony is as valuable as a man's. The judge cannot be bribed by your abuser to rule against you. If you need an interpreter, ask the court to provide one for you. Once you receive your protection order, both you and your abuser will receive copies. If you are afraid of the abuser following you when you leave the courthouse, ask the judge to have your abuser wait in the courtroom for thirty minutes before he can leave. This will give you an opportunity to leave the courthouse without being followed. You can have the court give you multiple copies of your protection order. Keep a copy with you at all times. Keep another copy at your work and at your home. Give a copy of the order to your children's schools and day care providers so they are on notice that they are not to turn the children over to the abuser.

### **Do I need a lawyer to obtain a protection order?**

**No.** In most states, you can obtain a protection order without hiring an attorney. However, if your abuser plans to fight for custody of your children or has filed for a protection order against you, contact an attorney immediately. If you are undocumented and your abuser obtains an attorney, you should not go to court by yourself. Many lawyers associated with domestic violence programs will represent you for free if you cannot afford to pay legal fees. Ask your local domestic violence shelter or program to locate a lawyer or legal advocate to help you with your case.

### **What if I decide to leave the county or state where I got my protection order?**

Through the Full Faith and Credit laws in the Violence Against Women Act, police officers are required to recognize and enforce your valid out-of-state protection order. When you move, get a certified copy of your protection order from the courthouse and staple the full faith and credit provisions to the back.

When you arrive at your new location, call the local domestic violence program to find out how to enforce your order in your new state.

### **Once I have a protection order, can I change parts of it or withdraw it?**

**Yes.** At any time while you have a valid protection order, you may file a motion to modify or change this order. This can happen if you need to change your visitation schedule, if you decide to leave your batterer, or if you want to reunite with your batterer. If you choose to return to your abuser after you have received a protection order, then you can still keep your protection order. If you resume living with your abuser, this does not invalidate your protection order. If you do this, in some states, you will be required to return to court to have your protection order modified to order that your abuser continue to prevent his violence, threats and harassment and order him to attend a batterer treatment program.

### **How effective are protection orders?**

Studies have shown that a majority of cases, having a protection order prevents physical violence and helps victims regain a sense of well-being.<sup>3</sup>

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<sup>3</sup> National Institute of Justice Research Preview, Civil Protection Orders: Victims' Views on Effectiveness, FS 00019 (January 1998) (<http://www.ncjrs.gov/pdffiles/fs000191.pdf>).



## **LEGAL INFORMATION FOR BATTERED IMMIGRANT WOMEN WITH CHILDREN**

Domestic violence is very harmful to children. Children may be intentionally or accidentally hurt when your abuser is violent toward you. They may be hurt when household items are thrown or weapons are used. Even if the children are not physically hurt, witnessing or hearing domestic violence happening to you can psychologically harm them. If you are being abused, there is a good chance that your children are in danger of being abused themselves. This booklet will help you understand how domestic violence affects your children. It will also offer suggestions as to how you can help them by getting help from the courts.

### **Did You Know:**

About 3.3 million children witness violence towards their mothers each year. In general, 70% of men who abuse their female partners also abuse their children. More than 50% of child kidnappings result from domestic violence. Boys who witness violence are ten times more likely to abuse their future female partners.

### **How Are Children Affected by Domestic Violence?**

The following behavioral and cognitive problems have been observed in children who come from violent homes:

#### **OVERACHIEVING.**

The child may believe that nothing s/he does is good enough. The child always redoes things, is never happy with the results, and gets involved in too many activities to avoid thinking about family problems.

#### **ACTING OUT.**

The child always does things to be noticed, such as hitting, yelling, biting, pushing, name-calling, and destroying toys. The child may lack impulse control.

#### **ROLE REVERSAL.**

The child takes on adult responsibilities, always worries that the parent is being abused, tries to solve family problems and tells the parent not to do certain things so that the parent won't get hit. The child may feel guilty about not being able to protect the abused parent or may be angry with the abused parent for not protecting him/her.

#### **CONTROLLING.**

The child tries to get his/her way by bullying, never sharing, making threats, making others afraid and using violence to resolve conflicts.

#### **UNDERACHIEVING.**

The child acts helpless, won't do anything by him/herself, has low self-esteem, thinks s/he is not valued or loved and is afraid to be alone. The child may start to do badly in school and be unable to complete his/her homework because of the violence. The child may develop learning disabilities and may have lower verbal and quantitative skills, delayed motor skills, and speech difficulties.

**WITHDRAWING.**

The child often does not want to participate, isolates him/herself from family, friends, or school, gives up easily, and cannot express his/her true feelings.

**REGRESSING.**

The child acts younger than he/she is by thumb sucking, wetting and soiling, bed-wetting, and nail biting.

**ESCAPING.**

The child uses unhealthy ways to get away from family problems by using drugs and alcohol, running away, becoming suicidal, joining gangs, and engaging in criminal behavior.

Overall, the child may experience aggression, shame, anxiety, grief, confusion, fear, depression, nightmares, and post-traumatic stress disorder (PTSD). S/he may have physical problems such as ulcers, eating disorders, insomnia, diarrhea, and headaches. Ultimately, children who grow up in violent homes learn that it is okay to use violence to show their frustration, anger, and needs.

If you suspect that your child is suffering from the effects of domestic violence or child abuse, or if you need the assistance of a family law attorney, contact your local shelter or domestic violence program. Special advocates are available to work with your children and assist you with family law matters. Your children's school may also have psychological services that can help your children.

The immigration section and VAWA flow chart in this booklet will help you and your advocate determine what types immigration relief you or your child are eligible to receive related to victimization. It is important to note that immigrant women whose children are battered or subjected to extreme cruelty can qualify for VAWA self-petitioning (when they are married to the child's abuser). An immigrant mother or stepmother of a child abuse victim can qualify for VAWA Cancellation of Removal (when the child's abuser is the child's other parent who is a US citizen or lawful permanent resident even, when the immigrant mother is not herself a victim or is not married to the abuser.).

## **HOW TO HELP YOUR CHILDREN THROUGH THE U.S. LEGAL SYSTEM: YOUR CHILDREN MIGHT QUALIFY FOR IMMIGRATION RELIEF**

If your children have been abused, they may qualify to file for immigration relief through VAWA or through a U-visa. If you have been abused, although your children have not been abused, your children may be able to receive immigration relief because of your immigration relief. If you qualify to file a VAWA self-petition you may include any of your children who are undocumented in your VAWA self-petition. When your application is approved, both you and your children will receive an agreement that DHS will not deport you (called deferred action status) and your children will receive their green cards at the same time you do. If you qualify for VAWA suspension or cancellation, your children will be allowed to stay with you in the United States through parole, while you file papers for them to receive their lawful permanent residency. If you qualify for a battered spouse waiver, your children will switch from conditional residents to lawful permanent residents along with you. Finally, if you qualify for a U-visa, then your children should be able to get U-visas along with you. Mothers and stepmothers of adopted children can also qualify as VAWA self-petitioners, for VAWA cancellation of removal, and as U- and T-visa applicants.

### **Obtain a Protection Order**

Getting a protection order helps prevent further violence against you and your children. It is also the fastest way to obtain temporary custody of your children. When you do leave the relationship, ask for custody and child support in your protection order. Visitation can be ordered at set times and exchange of children can be arranged without contact between you and your abuser. If there is a no-contact order in your protection order, have someone else help you safely communicate with your abuser about the children. This could be an advocate, a friend, a family member or your attorney. Even if you choose not to leave your abuser, you may get a protection order that says that he cannot abuse you or your children.

If you go to a shelter or safe place before filing for a protection order, take your children with you. This will make it easier for you to get custody of the children and will protect them from being kidnapped by the abuser. If your abuser has threatened that if you try to leave him he will get custody of the children and you will not see them again, or if he has threatened to kidnap the children or remove them from the United States, you should tell your advocate, attorney, and/or the judge about these threats. You should ask the protection order judge to order your abuser not to remove the children from your community or from the country (see the discussion in the protection order section about other relief you can ask for that will help prevent this kidnapping). If the children are removed from the country it is often very hard to get them back. This is true even when they are kidnapped to a country with which United States has agreed to cooperate in the return of kidnapped children. If you believe your abuser may kidnap the children, you should contact a local domestic violence program and seek their help finding a domestic violence lawyer who will help you with your protection order case.

When you plan to leave your abuser, do not tell your children things that may put them in danger. Teach your children to use 911 so that they can get help if you or they are injured or if the abuser violates the protection order.

### **YOU ARE ENTITLED TO CUSTODY AND CHILD SUPPORT REGARDLESS OF YOUR IMMIGRATION**

## STATUS.

### File for Permanent Custody of Your Children

A protection order can only give you custody of your children while the order is in effect. To have permanent custody of your children, you will need to file a family court case asking the court to give you full legal custody of your children.

If you think that your abuser is going to seek custody, oppose your custody request, or come to the court with his own lawyer, find a family law attorney who has experience with domestic violence cases to help you with your custody case. Any time your abuser comes to court in a custody or protection order case with a lawyer, you should ask the court for time to find your own lawyer. You should not agree to or sign anything before you get a domestic violence lawyer to help you. You can find a family law attorney by calling your local domestic violence program or by calling your local legal aid office.

Even if you can afford to pay something for a lawyer, you should contact your local domestic violence program to ask for a referral to a domestic violence lawyer. These are lawyers with the best experience working on domestic violence cases. They will also be more likely to take cases charging domestic violence reduced fees on a sliding scale or may seek to collect payment for their fees from your abuser.

During any family court hearing, the judge should not ask you about your immigration status. If your abuser makes an issue of your immigration status, seek the assistance of an attorney with custody and immigration experience immediately. If the lawyer you find does not have experience working with battered immigrants and/or domestic violence victims, your attorney should contact Legal Momentum for assistance at 202-326-0040.

In a custody case, the judge will consider the best interests of the children. The judge will look at the criminal and drug abuse histories of both parents. In most states, judges must also take into account whether there has been domestic violence, which person was violent or abusive, and how the abuse affected the children. In most cases, courts do not award custody to abusers. You can seek legal custody of your children even if you are undocumented. The judge should not allow your abuser to raise the issue of your immigration status in the custody case.

### Advocate for a Safe Visitation Schedule

In protection order and custody cases, judges usually grant visitation rights to the abuser unless there are a lot of reasons not to. Be prepared to tell the judge if you think that you or your children will be in danger during child visitations with the abuser.

Tell the judge if the abuser drinks in front of the children, has driven drunk, has physically or sexually assaulted the children, has been emotionally abusive towards the children, has used excessive or inappropriate discipline, or has threatened to kidnap the children. Tell the judge if the children have been acting out or having problems as a result of the violence.

If the safety of the children cannot be guaranteed, the judge can order supervised visitation. Supervised

visitation is when the abuser can only visit with the children when someone, like a friend, relative, or counselor, is with the children and the abuser during the visitation session.

If your abuser has unsupervised visitation with the children, the court order must clearly state how the children are to be exchanged and the exact dates and times of visitation. Try to exchange the children in a way that prevents you from coming into contact with the abuser. If you are worried that the abuser will not return the children or you do not want the abuser to know where your home or the children's school are located, a trusted friend or family member could exchange the children or you can drop off and pick up the children at the local police station. Police officers can serve as witnesses if needed.

If your abuser fails to attend visitation sessions, ask that visitation be suspended. If you are worried that the abuser is neglecting your children during visitation, get help from a lawyer. If your abuser does not return the children after visitation is over, **call the police immediately** and report that the children have been kidnapped.

## **Request Child Support**

If you have physical custody of your children, or if you receive full or joint custody of your children, your abuser must pay you child support. You can receive temporary child support through your protection order, and you can also file for a permanent child support case. The abuser usually has to pay support until the children reach age 18 or 21. The amount of support that you receive will usually depend on your earnings, the earnings of the abuser, the number of children that he supports, your child care costs, who has custody, or, if you share custody, who has the children for the most time. The abuser may also be ordered to pay for health insurance for the children.

If you receive a child support order, particularly in domestic violence cases, it is best to ask that the child support be taken directly from your abuser's paycheck and paid to the court. The court will forward the payments to you. If your abuser is self-employed or is being paid in cash, he should be ordered to pay child support payments to the court and not directly to you. In this way the court will have proof that he did or did not make the court ordered payments. If your abuser tries to quit his job so that he can avoid paying child support, the court can order him to find a job. If your abuser fails to make timely child support payments, or if he is ordered to find a job and does not, your state child support office may press charges against him. He can be ordered to go to jail until he starts paying and/or pays past due child support.

## **PUBLIC BENEFITS ACCESS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN**

### **Eligibility For Documented And Undocumented Immigrants**

#### **Benefits Available to All Immigrants**

The 1996 Welfare Reform Act authorized the U.S. Attorney General to designate particular programs that are open to all persons without regard to immigration status. To be exempt from immigration restrictions, the programs designated by the U.S. Attorney General must be in-kind services, provided at the community level, necessary to protect life or safety, and not based on the individual's income or resources. These benefits may be particularly useful if you are a domestic violence victim who does not qualify for VAWA or other immigration relief:

<ul style="list-style-type: none"><li>• Crisis counseling and intervention programs;</li><li>• Services and assistance relating to child protection;</li><li>• Adult protective services;</li><li>• Violence and abuse prevention;</li><li>• Victims of domestic violence or other criminal activity;</li><li>• Treatment of mental illness or substance abuse;</li><li>• Short-term shelter of housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children. This includes emergency shelter and transitional housing for up to two years.</li></ul>	<ul style="list-style-type: none"><li>▪ Programs to help individuals during periods of adverse weather conditions;</li><li>▪ Soup kitchens;</li><li>▪ Community food banks;</li><li>▪ Senior nutrition programs and other nutritional programs for persons requiring special assistance;</li><li>▪ Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life and safety;</li><li>▪ Activities, designed to protect the life and safety of workers, children and youths or community residents; and</li><li>▪ Any other programs, services, or assistance necessary for the protection of life or safety.</li></ul>
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#### **State Funded Benefits**

In addition to the benefits immigrant victims can receive under federal laws, some states have decided to provide access for some state funded benefits programs to some groups of immigrants. State funded supplemental benefits programs can include:

- Medical Assistance
- Food Stamps
- Temporary Aid to Needy Families (TANF) financial assistance.
- State Child Health Insurance Programs.

For a state-by-state overview of whether your state offers supplemental state funded benefits to immigrants and to see what programs are available in your state go to [www.NILC.org](http://www.NILC.org).

Access to state or federally funded health care can be particularly important for immigrant victims of violence against women, such as domestic violence, sexual assault, and trafficking.

Often, victims lack of access to post assault and abuse-related health care because few advocates, attorneys, social workers, or health care providers have the information they need regarding state and federally subsidized health care immigrant victims are legally authorized to receive. For State-By-State charts on access to post rape and post assault health care, pre natal care, forensic examinations, and emergency Medicaid that immigrant victims are eligible to receive go to [www.legalmomentum.org](http://www.legalmomentum.org) and the Health Care Chapter of Legal Momentum's manual: Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault.

## **Benefits Only “Qualified Immigrants” Can Access**

Although the law denies public benefits to many immigrants, some immigrants, including some battered immigrants, may still be able to receive certain public benefits as "qualified immigrants." Battered women may require some form of public assistance in order to help them survive economically after they leave their abusers. Some battered immigrants may be able to receive some public benefits if they have a VAWA immigration case or a family-based visa case filed with DHS and can prove a “substantial connection” between the abuse and the need for public assistance. If, after reading the information in this booklet, you think that you or your children may qualify for public benefits, we strongly recommend you contact a battered women’s advocate or legal services attorney who can help you determine whether or not you or your children qualify.

When applying for public benefits, the benefits agency should only check on the immigration status of the person applying. U.S. citizen, lawful permanent resident, and “qualified immigrant” children may receive certain public benefits even when their parents cannot. If you are a battered immigrant who cannot become a "qualified immigrant", you should not go to apply for benefits without a battered women’s advocate or legal services worker accompanying you.

If you are asked questions about your immigration status when you are only applying for benefits for your children, you should tell the public benefits agency that you “are not applying for public benefits for yourself.” This will prevent the benefits worker from obtaining information and turning it over to DHS. Additionally, many benefits workers are not knowledgeable about battered immigrant’s ability to legally access welfare assistance for undocumented battered immigrants with VAWA and family based visa cases pending before DHS. Going to apply for benefits with the assistance of a social worker, lawyer or advocate will help ensure they will take your application and not wrongly turn you away.

## Who Are “Qualified Immigrants” Eligible for Public Benefits?

- ❑ Lawful permanent residents (including conditional permanent residents);
- ❑ Refugees;
- ❑ Asylees;
- ❑ Persons granted withholding of deportation
- ❑ Persons granted cancellation of removal;
- ❑ Cuban/Haitian entrants;
- ❑ Veterans;
- ❑ Persons granted conditional entry;
- ❑ Amerasians;
- ❑ Persons paroled into the United States for a year or more;
- ❑ Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or family-based petitions before DHS; and
- ❑ Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident parent, with pending or approved VAWA cases or family-based petitions before DHS.

## Benefits Qualified Immigrants Can Receive

If you are a “qualified immigrant”, your eligibility for certain federal public benefits depends on the date you first entered the United States and what benefits you are seeking. Some benefits are very restricted and will not be available even though you may be a “qualified immigrant.”

Immigrants who are or become “qualified immigrants” and who entered the U.S. before August 22, 1996 are generally eligible for the same federal means-tested public benefits, federal public benefits, and federally funded social services available to U.S. citizens, *except for SSI and Food Stamps*.

Immigrants who become “qualified immigrants” and who entered the United States *on or after August 22, 1996* are barred from receiving federal means-tested benefits during the first five years after they obtain qualified immigrant status. They may, during this five-year period, receive federal public benefits that are not deemed to be “federal means-tested public benefits.”

A few immigrant groups qualify for an **exemption** from the **five-year bar** if you are a/an: refugee, person granted asylum, Amerasian, Cuban and Haitian entrant, veteran and immigrant on active military duty, immigrant granted cancellation of removal (stops the deportation process), and/or an immigrant without sponsors.

### Federal Public benefits that qualified immigrants can receive:

<ul style="list-style-type: none"> <li>❑ Temporary Assistance for Needy Families (TANF) (unless you entered after August 22, 1996 and are subject to the five year bar)</li> </ul>	<ul style="list-style-type: none"> <li>❑ Independent Living Programs</li> <li>❑ Job Opportunities for Low Income Individuals (JOLI)</li> <li>❑ Low-Income Home Energy</li> </ul>
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<ul style="list-style-type: none"> <li>❑ Medicaid and Medicare (unless you entered after August 22, 1996 and are subject to the five year bar)</li> <li>❑ Food Stamps (all qualified immigrant children can receive food stamps however, qualified immigrant adults must be in qualified status for 5 years).</li> <li>❑ Social Security Disability Insurance</li> <li>❑ Administration on Developmental Disabilities (ADD) (direct services only)</li> <li>❑ Child Care and Development Fund</li> </ul>	<p>Assistance Program (LIHEAP)</p> <ul style="list-style-type: none"> <li>❑ Postsecondary Education Loans and Grants</li> <li>❑ Public Housing</li> <li>❑ Refugee Assistance Programs</li> <li>❑ Section 8 Subsidized Housing</li> <li>❑ State Children’s Health Insurance Program (CHIP)</li> <li>❑ Title IV Foster Care and Adoption Assistance Payments (if parents are “qualified immigrants”)</li> <li>❑ Title XX Social Services Block Grant Funds</li> </ul>
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Access to Supplemental Security Income (SSI) is severely restricted by complex program eligibility requirements in addition to a 5-year bar imposed on immigrants. Few immigrant victims will qualify for benefits through SSI.

Receiving public benefits will not prevent a VAWA self-petitioner from obtaining lawful permanent resident status. In determining whether a battered immigrant should be considered likely to become a public charge and - be denied lawful permanent residency, DHS may not consider public benefits the victim has received for herself or her children that were connected to the surviving, overcoming, or fleeing the abuse. In making public charge decisions DHS, can only consider cash benefits or institutionalization for long-term care. Also, public charge is a forward-looking determination, so dependence in the past is not an automatic disqualification as long as you can show that you will not be dependent in the future.

### **How Battered Immigrants Become Qualified Immigrants**

“Qualified Immigrants” are legally entitled to access a greater range of publicly funded benefits than non-qualified immigrants. Both documented and undocumented battered immigrants are "qualified immigrants" if they meet the following requirements:

The immigrant or the immigrant's child has been abused by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse or parent's family member living in the same household. (The other immigrant spouse or parent cannot have actively participated in the abuse.)

**AND**

The battered immigrant has an approved family-based petition or Violence Against Women Act (VAWA) self-petition;

**OR** after a petition has been filed, DHS gives the battered immigrant permission to receive public benefits (this is called a prima facie determination);

**OR** the battered immigrant has been granted cancellation of removal by an immigration judge (the deportation process has been stopped and the woman has been given a green card);

**OR** an immigration judge has decided in an ongoing VAWA cancellation case that the battered immigrant can receive public benefits (also known as a prima facie determination);

**AND**

The battered immigrant or child no longer lives with the abuser. (Note that the benefits agency must decide if the battered immigrant is eligible for benefits before she leaves the abuser.)

**AND**

There is a "substantial connection" between the abuse and the need for the public benefit. The following are considered appropriate conditions for establishing this connection:

- ❑ To help the victim of abuse be able to support herself economically without help from the abuser
- ❑ To escape the abuser and/or the abuser's community.
- ❑ To ensure the safety of the woman and her children.
- ❑ To make up for the loss of financial support due to the separation.
- ❑ To make up for the loss of a job or income because of the abuse, for safety reasons or because of time spent in domestic violence legal proceedings.
- ❑ To make up for the loss of a place to live as a result of the abuse
- ❑ To help the victim take care of the children when fear of the abuser interferes with her ability to care for her children.
- ❑ To meet nutritional needs resulting from the abuse or separation.
- ❑ To provide the victim with medical care or mental health care, or because she has become disabled
- ❑ To provide for medical care during a pregnancy that resulted from the abuse.
- ❑ To replace medical coverage or health care services were lost because of the separation from the abuser.

## **Exemptions From Deeming Requirements For Battered Immigrants**

When an immigrant's family member sponsors her to receive lawful permanent residency in the United States, the sponsoring family member must sign and file an affidavit of support with the DHS. This affidavit states that the sponsor is willing to be financially responsible for that immigrant. When a sponsored immigrant applies for public benefits, deeming rules require that the benefits agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of her sponsor. It is often the case that these rules render the vast majority of immigrants with sponsor affidavits ineligible to receive public benefits. Previously, battered immigrants who were sponsored by their abusive spouses were often denied public benefits because it was assumed that they had full access to their spouse's income. Some battered immigrants can now be excused from "deeming" requirements for 12 months if there is a connection between the abuse and the need for the

benefit. Extensions of the 12-month time period are available to battered immigrants with protection orders or other formal finding of abuse. Immigrants excused from deeming include:

- ❑ VAWA self-petitioners
- ❑ VAWA cancellation of removal or suspension of deportation applicants
- ❑ Battered immigrants whose spouses or parents filed family based visas for them
- ❑ Immigrants who obtained green cards through a family-based visa petition and who were battered before and/or after obtaining lawful permanent resident status.

In addition to victims of domestic violence, the following individuals are also exempt from deeming requirements:

- ❑ Those who have become U.S. citizens
- ❑ Persons with 40 quarters of work history (which is equivalent to about 10 years of work)
- ❑ Spouses or children of U.S. citizens or lawful permanent residents with 40 quarters of work history. (These quarters do not count after divorce).
- ❑ Immigrants facing hunger or homelessness
- ❑ Immigrants whose sponsor is dead
- ❑ Refugees
- ❑ Persons granted asylum (i.e. – asylees)

## **BATTERED IMMIGRANT ACCESS TO MEDICAID AND TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)**

Medicaid provides access to health care services for people in need. Temporary Assistance for Needy Families (TANF) is a program that provides cash payments, vouchers, social services and other types of assistance to disadvantaged families. Although the law denies public benefits to many immigrants, states have the option to give these benefits to some needy immigrant families. Immigrant women and children who are abused by their U.S. citizen or lawful permanent resident spouses or parents can apply for these benefits if they have an immigration petition filed with, or approved by, the DHS. This is true with most public benefits. Battered immigrants must also show that there is a “substantial connection” between the abuse and the need for Medicaid and/or TANF.

### **You Must be a “Qualified Immigrant” To Receive Medicaid and TANF**

Generally, only “qualified immigrants” can receive Medicaid and TANF. The qualifications for a battered immigrant to be eligible for Medicaid and TANF are the same as for other public benefits. However, an immigrant, including a battered immigrant, who entered the United States after August 22, 1996, will be unable to receive TANF and Medicaid for five years. Immigrants who are exempt from the five-year bar are eligible for these benefits see exemptions above. For state-by-state charts of immigrant victim eligibility for Medicaid and/or Victims of Crime Act Funded prenatal and/or post assault health care go to: [www.legalmomentum.org](http://www.legalmomentum.org).

### **Some State TANF Programs Provide Cash Assistance To Qualified Immigrants Who Are Subject to the Federal 5-Year Bar:**

Twenty states have created substitute TANF programs that provide benefits during the five-year bar to “qualified immigrants” including qualified battered immigrants. These states are: California, Connecticut, Hawaii, Illinois, Indiana, Iowa (only offers to abused immigrants), Maine, Maryland, Minnesota, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming. For the most up-to-date list of states offering financial assistance to immigrants visit: [www.NILC.org](http://www.NILC.org)

### **Emergency Medicaid Is Open To Both Documented and Undocumented Immigrants**

Emergency Medicaid is available to all immigrants. Immigrants who are not legally in the U.S. AND those who entered the U.S. after 8/22/96 (who are barred for five years from receiving TANF and Medicaid), can receive emergency Medicaid. All immigrants are immediately eligible for Emergency Medicaid. Emergency Medicaid covers labor and delivery, as well as treatment for medical conditions "with acute symptoms that could place the patient's health in serious jeopardy, result in impairment of bodily functions, or cause dysfunction of any bodily organ or part." For a chart of the types of health care services immigrants and immigrant victims can access through emergency Medicaid go to: [www.legalmomentum.org](http://www.legalmomentum.org).

## **Family Violence Option Helps Protect Battered Women Receiving TANF**

The Family Violence Option (FVO) included in the Welfare Act of 1996 permits states to grant "good cause waivers" for certain TANF program requirements, including mandatory work requirements and time limits. Under the FVO, states are required to identify victims of violence, conduct individual assessments, and develop temporary safety and service plans in order to protect battered immigrants from: "...immediate dangers, stabilize their living situations and explore avenues for overcoming dependency." Family violence option waivers are temporary, but the actual length is defined in federal law so that they can last "so long as necessary." Thirty-five states and the District of Columbia have adopted the Family Violence Option: Alabama, Alaska, Arizona, California, , Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.<sup>4</sup> Each state determines which Federal requirements are waived. Most other states have an alternative policy in place for domestic violence victims. Check with battered women's advocates in your area to see what benefits FVO offers battered women in your state. If you are an immigrant victim of domestic violence eligible for TANF you will also be eligible for your state's FVO.

## **TANF Immigrant Status Reporting Requirements**

Four times a year, states have to report people who are applying for TANF benefits whom the state knows do not have legal immigration status to DHS. The Attorney General of the United States has instructed state welfare agencies that they may request information on immigration status only about the person who is actually applying for TANF benefits. You can apply for benefits for your children who qualify and you are not required to apply for additional benefits for yourself. When applying only for qualifying children if the state TANF worker asks you questions about your own immigration status you should tell them you will not answer this question because "you are not seeking benefits for yourself."

The laws regarding access to public benefits for immigrant victims of domestic violence are complicated. Many workers at local public benefits agencies are unfamiliar with these laws and can turn away immigrant victims who qualify for benefits without allowing them to apply. It is therefore strongly recommended that immigrant victims of domestic violence locate an advocate to assist them in applying for benefits for themselves or for their children. Before applying for benefits, seek advice from a trained advocate or attorney to determine what, if any, public benefits you or your children may qualify. This advocate should accompany you when you go to apply for benefits. Having the advocate with you will help you in two ways. First, the advocate can talk to the public benefits provider and make sure that they allow you to file the public benefits application. Second, should there be problems, the advocate can help you document how you were treated by the public benefits agency, including the names of people who handled your case.

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<sup>4</sup> Wilkins, Andrea. "Domestic Violence and Welfare Reform", National Conference of State Legislatures (<http://www.ncsl.org/statefed/welfare/famvioopt.htm>) (2008).

## **FOOD STAMPS ACCESS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN**

The 1996 welfare reform law eliminated food stamps access for most non-citizens as of August 22, 1996. Subsequent laws have restored Food Stamps access for a small number of qualified immigrants. Like access to TANF and Medicaid, immigrants who entered after 1996 must be “qualified” immigrants for 5 years before accessing Food Stamps.

### **Immigrants Who Currently Qualify for Food Stamps**

- ❑ Refugees - eligibility limited to seven years from date of entry.
- ❑ Asylees - eligibility limited to seven years from the date asylum was granted.
- ❑ Amerasians - eligibility limited to seven years from date of admission as an Amerasian.
- ❑ Cuban/Haitian Entrants - eligibility limited to seven years from the date status was granted.
- ❑ Veterans, including spouses and dependents.
- ❑ Immigrants on active military duty including spouses and dependents.
- ❑ Immigrants granted withholding of deportation/removal - eligibility limited to seven years from the date withholding was granted
- ❑ Immigrants who have worked 40 qualifying quarters or can be credited with 40 quarters of a spouse or parent.
- ❑ Elderly immigrants born before August 22, 1931 who were lawfully residing in the US on August 22, 1996.
- ❑ Immigrants who are now less than 18 years of age who were lawfully residing in the US on August 22, 1996.
- ❑ Blind and disabled immigrants who are receiving benefits or assistance for their condition and who were lawfully residing in the US on August 22, 1996.
- ❑ American Indians born in Canada who possess at least 50 percent of American Indian race to whom the provisions of section 289 of the INA apply or are members of an Indian tribe as defined in section 4(e) of the Indian Self-determination and Education Assistance Act.
- ❑ Hmong or Highland Laotian tribe members who assisted the US military during the Vietnam era and who are lawfully residing in the U.S.

### **40 Quarters of Work Qualification**

A qualifying quarter measures how much someone earns during the year. One may earn up to four quarters of credit per year. It is not necessary that you actually work during the four calendar quarters. Instead, qualifying quarters count entirely on the money earned and this figure is adjusted annually for inflation. In 2005, the amount of a qualifying quarter was \$920.00. Battered immigrants children may count work quarters of their U.S. citizen, lawful permanent resident, or “qualified immigrant” parents or spouses (as long as the battered immigrant wife is married to her abuser when applying for Food Stamps). If, after qualification, they are divorced and the battered immigrant does not have 40 quarters of her own work, she will be able to continue receiving benefits only until re-certification. Battered immigrants who are divorced from their abusers will lose Food Stamps at re-certification when they must reapply for this benefit.

The best way for battered immigrants to qualify for food stamp eligibility is to demonstrate that she has

worked 40 qualifying quarters or to use the qualifying quarters of a spouse or parent. However, under the Food Stamp Reauthorization Act, qualified immigrants will be eligible for food stamp benefits if they have been in “qualified immigrant status” for five years.

## **Food Stamp Reauthorization Act**

On May 13, 2002 President Bush signed into law the Food Stamp Reauthorization Act.<sup>5</sup> This law restores Food Stamp benefits to approximately 400,000 qualified immigrants. The Food Stamp Reauthorization Act restores eligibility to three groups of immigrants:

- ❑ Qualified immigrant children under 18, regardless of date of entry.
- ❑ Qualified immigrants receiving a disability benefit, regardless of date of entry.
  - Qualified immigrants who entered the U.S. after August 22, 1996 are not eligible to receive SSI; however qualified immigrants who receive disability-related Medicaid or other disability benefits for their condition would be able to receive food stamps.
- ❑ Qualified immigrants living in the United States for five years under qualified immigrant status.

## **Recertification**

Persons receiving food stamps must attend re-certification interviews with their welfare worker every three, six, or twelve months. At these interviews, the applicant must prove that she is still eligible to receive food stamps. Applicants are usually required to bring proof of residency, household details, and financial information to their re-certification interview.

## **State Food Stamps Program**

States can choose to provide state-funded food stamps to immigrants made ineligible by the welfare reform law. Only seven states have chosen to provide food assistance to immigrants with state funds: California, Connecticut, Maine, Minnesota, Nebraska, New York, Washington, and Wisconsin. Some states have restored the benefits for all immigrants who meet all the requirements for eligibility for Food Stamps, except that they are immigrants with a specific immigration status. Other states have chosen to provide food assistance for specified categories of immigrants (children, elderly, or disabled) or provide benefits to immigrants at a lower benefit level. If you live in one of these states, seek assistance from an advocate or social worker to find out if you qualify.

**All documented and undocumented immigrants qualify for emergency food assistance from food banks and charitable organization.**

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<sup>5</sup> See Farm Security and Rural Investment Act of 2002, (“Food Stamp Reauthorization Act”), Title IV, Pub. L. No. 107-171 (2002).

## **YOUR RIGHTS AS AN IMMIGRANT AND A VICTIM OF DOMESTIC VIOLENCE AT YOUR PLACE OF EMPLOYMENT**

*This section has been adapted from materials developed by the Employment Rights for Survivors of Abuse project of Legal Momentum; the U.S. Equal Employment Opportunities Commission; and from "Rights Begin at Home: Protecting Yourself and a Domestic Worker" by the Asian American Legal Defense and Education Fund and the National Employment Law Project.*

Federal and state labor laws protect both documented and undocumented immigrant workers. The laws give immigrant workers some protection regardless of their immigration status, even if undocumented workers may not necessarily benefit from the full extent of workers remedies available. Generally, both documented and undocumented workers are protected under wage and hour laws, are protected against abuse, harassment, and discrimination in the workplace. If you file a complaint with the Equal Employment Opportunity Commission, a claim for unpaid wages, for worker's compensation, or any other employment related problem, it is not necessary to answer questions about your immigration status in order for your complaint to be processed. However, because laws and practices differ from state to state, it is important to consult with an attorney or advocate familiar with employment laws and practices in your area to help you evaluate how they should best enforce your employment rights. The advocate at your local domestic violence program can assist you in locating experts in your community who can help you.

In addition to your rights in the work place, as an immigrant, it is important that you know that domestic violence affects various aspects of your life, including your workplace environment. You have the right to feel safe at your place of employment, and there are legal remedies available if your abuser injures you at work. As a domestic violence survivor, you also have the right to attend court proceedings regarding your domestic violence case.

### **Can I recover money damages from my employer if my abuser injures me at work?**

Your employer is not legally responsible for every injury that happens at work. However, in some cases, you may be able to recover money damages from your employer when the abuser injures you on the job. If you are considering seeking damages against your employer for abuse on the job, you should seek the advice of an attorney or advocate in your area who can help you evaluate the best and safest way for you to enforce your employment rights, particularly if you do not have permanent legal immigration status.

### **What if my abuser is my coworker or supervisor?**

When a coworker or supervisor injures you, your employer may be liable for its negligence in hiring the abuser in the first place, for continuing to employ the abuser after it became aware of a problem, or for failing to adequately supervise the abuser. Under certain circumstances, you may have a claim for:

- Negligent hiring
- Negligent retention (continuing to employ)
- Negligent supervision; and/or
- Negligence (such as failure to warn or protect)



In addition, you may have additional claims if the person who injured you is a supervisor or high-level employee. Your employer may be legally responsible for his conduct. If your injuries are covered by your state's Worker's Compensation system, your relief will probably be limited to Worker's Compensation. Depending on the facts of your situation, you may also have a claim for sexual assault or sexual harassment. If you are an undocumented immigrant or if you do not have permanent legal immigration status, and you are a victim of assault, sexual assault, being held hostage or certain other violent crimes committed against you by a coworker or supervisor, and you are willing to report the crime to law enforcement or the Equal Employment Opportunity Commission, you may qualify to receive legal immigration status in the form of a crime victim visa. If you were brought to the U.S by means of fraud, coercion or deceit and were forced to perform sexual acts and/or were forced to work under conditions of bondage, peonage or slavery, you may be eligible for the T-visa.

## **Protections Offered Immigrant Victims By the U.S. Equal Employment Opportunity Commission**

Federal employment discrimination laws protect all employees in the United States, including those who do not have work authorization. It is unlawful for an employer to discriminate against you because of your immigration status. It is also unlawful for your employer to report or threaten to report your status to the DHS if you oppose unlawful discrimination or participate in a proceeding under the anti-discrimination laws. If you are undocumented and your employer retaliates against you, you may be entitled to some compensatory and/or punitive damages without regard to your immigration status.

Undocumented workers are also potentially entitled to some of the same remedies available to all other workers for violations of the laws enforced by the EEOC except for limited situations, including instances where the award would conflict with the purposes of immigration laws. These basic remedies can include reinstatement if you were unlawfully terminated, reinstatement if you were discriminatorily denied a job, back pay and other appropriate injunctive relief, damages, and attorneys' fees.

Federal laws also protect immigrants from sexual harassment at the workplace. If your employer sexual harasses or abuses you at work, you can take legal action against him/her.

### **What should I know about sex discrimination laws?**

Your employer may be violating anti-discrimination laws if he or she permits domestic abuse or sexual harassment to occur in the workplace, or if he or she treats abused women differently than male employees. Your company's sex discrimination and sexual harassment policy (if it has one) may be a basis for you to ask your employer to stop discriminating against you, or to take steps to reduce or prevent sexual harassment by the abuser.

## Do I have any other legal claims if I have been fired or forced to quit because of domestic violence?

You may have a claim for wrongful discharge. Most employees are employees at will. This means they can be fired for any reason. There are some exceptions to this rule. One exception is that an employer cannot fire a person for a discriminatory reason.

Another exception is that in most states an employer cannot fire a worker for a reason that violates public policy. What this means is different in each state, but “against public policy” means generally things that hurt all people in that state if they are allowed to happen. For example, in some states an employer cannot fire someone because she attended jury duty or because she filed a claim for workers compensation. If an employer fires someone for a reason that violates public policy, the employee may have a claim for money damages, which is called a wrongful discharge or wrongful termination claim.

Many advocates believe that it is against public policy to fire an employee because she is a survivor of domestic violence. Since the law in this area is changing and varies from state to state, it is important that you consult with a lawyer to discuss bringing this type of claim.

Finally, if you were fired because you missed time from work to testify in a court proceeding related to the domestic violence, you may have additional claims.

## Can I take time from work to testify in criminal court without being fired?

Many states have enacted laws that permit crime victims, including domestic violence victims to take time off from work to testify in **criminal court** without being fired from their jobs. Some states grant time off for a witness to testify as well. If your employer terminates you because you took time off from work to testify against the abuser in a criminal court, you may have other causes of action under which to sue your employer, such as wrongful discharge.

As of January 2001, the following thirty-two states have laws that make it illegal for an employer to fire or otherwise discriminate against a crime victim for taking time off to testify in criminal court: **Alaska, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee (applies to state employees only), Utah, Wisconsin, and Wyoming** as well as the **Virgin Islands**. **The level of protection extended to the employee varies by state.** Some of these states also allow a domestic violence victim to take time off from work to meet with an attorney to prepare for trial. Other states do not make it illegal for an employer to fire a crime victim for taking time off to testify, but do require that the prosecuting attorney work with the victim to negotiate with the employer for time off to testify.

If you work in one of the states listed above and your employer threatens to fire you or discriminates against you for testifying in criminal court, you may want to notify the prosecuting attorney or judge and ask for assistance. If your employer either threatens to fire you or does fire you for taking time from work to testify in criminal proceedings against the abuser, some of these states allow you to sue your employer so that a court could award you money damages (like lost pay or benefits). Some states could require the employer to rehire you, or could hold the employer in contempt of court for violating the

law. Please contact **Legal Momentum** or a local legal aid organization if an employer fires you for exercising your rights under these laws.

Other states provide more limited protections for victims of crime who need to take time from work to participate in criminal proceedings. Some states encourage employers to cooperate with employees who were victimized by crime, but do not require your employer to permit you to take time from work to testify. These states include **Florida, Illinois, Kentucky, Louisiana, Nebraska, New Jersey, New Mexico, North Dakota, Oklahoma, Texas, Washington, and West Virginia**. In these states, your employer still may be able to legally terminate you if you take time off to testify.

Domestic violence victims who work in a state that is not listed here have no job-protected time off to testify in a criminal proceeding at the time of publication of this booklet. However, if your employer terminates you because you took time off from work to testify against the abuser in a criminal court, you may have other causes of action under which to sue your employer, such as wrongful discharge.

### **Can I take time from work to go to court to get a civil protection order without being fired?**

Most states don't have laws preventing employers from firing domestic violence survivors who take time from work to obtain a protective order in civil court. However, a few state and municipal laws provide some protection for domestic violence survivors who take time from work to obtain a civil restraining order or other civil assistance.

### **Can I collect Workers' Compensation for injuries caused by my abuser at work?**

Yes, in some cases. Workers' Compensation is an insurance system that pays for the medical, hospital, and rehabilitation expenses and for a portion of the lost wages of workers who are injured on the job. State law sets the amount of money an injured worker receives. Workers' Compensation is a "no-fault" system. This means that the employee does not have to prove that the employer was at fault in order to get benefits. Workers' Compensation is available in every state. Each state requires certain types of employers to participate in the system and has its own rules concerning who is eligible for benefits. Generally, when you can file for workers compensation, it will not be necessary for you to answer questions about your immigration status. However, if you are undocumented or otherwise working without legal authorization, you should consult a local expert on employment issues and immigration to seek assistance in verifying that you can safely apply under local procedures and practices.

If you are eligible for Workers' Compensation benefits for a particular injury, then Workers' Compensation may be your only remedy for that injury. This means generally that you would not be able to bring other legal claims against your employer for the same injury.

## **When are injuries at work covered by Compensation?**

The law is different in each state. Here are some general principles about what injuries and employees are covered:

- ❑ You will be covered only if your type of employer and your type of job is specifically included in your state's Workers' Compensation system. Federal employees are covered by the federal Worker's Compensation system.
- ❑ Your injury must **"arise out of employment"**. This means the injury must be linked to your job. In some states, assaults by coworkers or non-employees are covered. In other states, such assaults are not.
- ❑ Your injury must occur **"in the course of employment"**. This usually means the injury must happen while you were performing your job or while you were on your employer's property during working hours (eating lunch in the cafeteria, for example).
- ❑ Your injury must be an **"accident"**. Intentional injuries inflicted by your employer are not accidents. However, intentional injuries inflicted by a coworker or a non-employee may count as "accidents" in some states.

## **How do I apply for Worker's Compensation?**

- ❑ Contact your local Worker's Compensation board or an attorney in your state for information on how to apply and about the specific laws in your state.
- ❑ Make sure to ask about deadlines. Most states have a time period during which you must inform your employer about your injury and file your claim.
- ❑ Be sure to tell your employer about your injury within the deadlines.
- ❑ File a claim on time with your state's Worker's Compensation board or the appropriate organization.
- ❑ Remember to ask about how to appeal in case your claim is denied at first.

## **HOW TO PROTECT YOURSELF AND YOUR CHILDREN FROM DOMESTIC VIOLENCE**

### **SAFETY PLANNING FOR IMMIGRANT AND REFUGEE WOMEN**

Safety planning is an important first step for all battered women. It should be done by anyone who has suffered abuse, whether or not you are currently planning to or have already separated from your abuser. Safety planning will help protect and empower you against future threats of imminent domestic violence toward you and/or your children. Safety planning will help you prepare now so that if you do decide to leave your abuser in the future, you will have gathered the information you will need to pursue any future legal actions you may need to take, including: protection orders, immigration cases and family court matters. Safety planning is also important for women who are not now deciding to separate from their abusers. Women who choose to try to stay with their abusers can use safety planning to provide them with more options in case they decide to leave quickly to flee escalating violence in the future.

The time when you decide to leave your abuser can be the most dangerous for you and your children, because violence often escalates when the abuser feels that he is losing control over the family. If and/or when you choose to separate from your abuser, you should know that you have options.

1. You can obtain a protection order that removes your abuser from the family home; or
2. You can leave the home you share with your abuser taking the children with you.

You should be aware that you can take legal and other steps towards ending the abuse, whether or not you have legal immigration status in the United States.

Further, there are provisions under the Violence Against Women Act (VAWA), that allow many victims of domestic violence, sexual assault, trafficking and many other crimes to file for legal immigration status without their husband's, abuser's, abusive employer's, or trafficker's assistance, knowledge or cooperation. VAWA has special protections for victims of domestic violence, trafficking, and other crimes, to prevent disclosure and use of information in your VAWA case and prevents the use of such abuser-provided information in removal proceedings. These provisions are designed to ensure that your abuser cannot use the immigration system against you. It is illegal for the government to provide your abuser any information about whether you have filed a case, the status of your case or give him any information that you have provided in your case. Immigrant victims of domestic violence, sexual assault, trafficking, and many other crimes that result in substantial physical or emotional harm to the victim, whose abusers are boyfriends, spouses, or even strangers who are not citizens or legal residents, may be eligible for a U-visa.

## **EMERGENCY MEASURES**

- ❑ Contact a local domestic violence hotline to find out about laws, shelters, and resources available.
- ❑ Create a plan for a safe exit from your home. Practice your safety escape plan with your children.
- ❑ Plan the safest time to get away.
- ❑ Have an easily accessible place to keep car keys, purse/wallet, identity cards for you and your children and any other essential items.
- ❑ Tell someone what is happening to you. If possible, tell your neighbors about the abuse and tell them to call the police if they hear any suspicious noises coming from your home. You can also arrange a signal with neighbors to let them know you are in danger and need police help— for example flashing lights or a code word.
- ❑ Know where you can go for help. Arrange a place where you and your children can stay temporarily, such as with close friends, neighbors, relatives, or at an emergency shelter. If you are considering staying at a battered women’s shelter you should know the following:
  - You should get the telephone number of the shelter.
  - Both documented and undocumented battered immigrants are legally entitled to access emergency and short-term shelter programs.
  - Emergency and short-term shelters and transitional housing programs cannot ask you any questions about your immigration status
  - If you do not speak English, ask the shelter to provide you with a translator. If you cannot communicate this to the shelter workers, have a trusted friend, family member or co-worker help you communicate with the shelter.
  - If you will be staying at a shelter tell them about any special foods you eat and ask them to allow you to cook foods that are familiar to you and your children. Discuss with them the kind of sleeping arrangements, religious needs, or a need for an interpreter. Make sure you can take your children to the shelter with you. If you cannot bring your children, ask the shelter to help you find a safe place you can go with your children.
- ❑ In a safe but accessible place, store a suitcase with important survival items you may need for you your children, including: clothes for you and your children, money, and important documents that you might need to prove the abuse you have suffered, to take care of your children, to obtain a protection order or prosecute your abuser, to obtain custody and child support, and for your immigration case.
- ❑ If you could not escape during a recent incident of violence, or if the violence appears to be escalating and you and/or your children are in imminent danger, you should know that you can have your abuser removed from the family home through a temporary protection order which can also require that your abuser not reenter the home, turn over to the police any keys he has to residence and not contact you in any way.

- ❑ If you foresee an outbreak of violence, try to move away from weapons and out of the kitchen where knives or heavy objects could be used as weapons. Move to a low-risk place near an exit to the outside. Avoid bathrooms, kitchens and garages.
- ❑ Use your judgment and intuition. You have to do what you can to protect yourself and your children until you are out of danger.
- ❑ Call the police if you are in danger or need help.
- ❑ The police will help you if you are a victim of domestic violence or any other crime, even if you are undocumented. The police should not ask you any questions about your immigration status. If they do, then you are not required to answer. Tell them you want to speak to a lawyer.
- ❑ If you are injured, go to the hospital emergency room or your doctor and report what happened. Before you tell them what happened, ask them whether the information you give them is confidential. If so, tell them what happened and ask that they document your visit and your injuries. If they are required to report domestic violence to the police, they must tell you this when you ask and you can decide if you want the police informed. If they must report to the police, and you do not want them to, do not tell them what happened; just ask them to document your injuries. If your abuser insists on taking you to the hospital, then try to ask that you be interviewed in private, if you think it is safe to do so.
- ❑ If you encounter Department of Homeland Security officials, tell them you are a victim of domestic violence, sexual assault or trafficking and show them copies of any immigration papers you have. We encourage you, if it is safe to do so, to carry with you any paper approving your immigration cases or granting you what they call a “prima facie” determination about your immigration application.
- ❑ If DHS officials stop you, it is also important to tell them you want to call an attorney. As soon as you begin working with an advocate or an attorney ask them for their phone numbers so that you can call your attorney or advocate if DHS officials stop you.
- ❑ If you encounter DHS officials at any of the following locations, find an advocate or attorney to help you tell DHS that their contact with you at this location violates VAWA confidentiality. Also obtain the name and contact information including telephone numbers for any persons who witness DHS contact with you at these “VAWA confidentiality” protected locations.
  - A shelter;
  - Rape crisis center
  - Supervised visitation center
  - Family justice center
  - Victim services program or provider
  - Community based organization
  - Courthouse in connection with any protection order case, child custody case, civil or criminal case involving or related to domestic violence, sexual assault, trafficking, stalking.

VAWA confidentiality is a federal law that protects immigrant victims against government release of information regarding their victimization. It also bars government officials from relying on information provided by an abuser to deny a victim her immigration benefits or to attempt to remove her from the United States.

## **SAFETY FOR THE CHILDREN**

- ❑ Plan with your children and identify a safe place for them if another domestic violence incident should occur – a room with a safe lock or a neighbor’s house where they can go for help. Reassure them that their job is to stay safe, not to protect you.
- ❑ Teach your children how to dial 911 in an emergency and where to go if the abuser becomes violent.
- ❑ Plan ahead so that if it is necessary to flee, you will be able to flee with your children. In an emergency escape, you must take your children with you if at all possible. No matter what your abuser has told you about U.S. custody laws, the courts do not like to give custody to abusers, even if he is a citizen and you are not. Further, if you leave your children with your abuser, you are leaving him with a very effective tool he can use to control your life and your children’s lives.
- ❑ Inform school personnel about who is allowed to pick the children up from school.
- ❑ Provide childcare workers and staff at your children’s school with a copy of your protection order and a list of the only people who may see or pick up your children from their care.
- ❑ In case your abuser abducts your children, create a plan for what your children can do to safely try to prevent this. Teach your children how to call the police and that calling the police is for their safety and the right thing to do. Teach them how to make a collect call to you or a trusted friend, minister or family member if they are kidnapped. Teach them how to call for help if they are abducted from a public place.
- ❑ If you are stopped by DHS and you are the sole caretaker of your children, tell DHS this immediately. Then ask to not be detained so that you can care for your children while DHS processes any case they choose to bring against you. DHS may allow sole caretaker parents and breastfeeding mothers to continue caring for their children until their case is decided. If you are stopped by DHS it is important that you contact an immigration attorney immediately. You must tell the immigration attorney about your history of domestic violence, sexual assault, trafficking, or other criminal victimization.



## **SAFETY AT HOME AFTER YOU SEPARATE FROM YOUR ABUSER**

- ❑ Once the abuser is removed from your house, have all the locks changed. If possible, install locks or bars on the windows, a security system, and door wedges. Install rope ladders if you live on an upper story. Install smoke detectors and fire extinguishers. The abuser can be ordered to pay these costs in a protection order.
- ❑ Inform neighbors, close friends, family and co-workers that you are about to separate or have separated from your abuser. Ask that they tell you if they see your abuser around your house, workplace, or car.
- ❑ If you rent, ask your landlord if you can move to another unit or building that the landlord controls. Have the name on the lease changed to your name. Request that the building management notify building employees that your abuser is barred from the building and give them a copy of the protection order for their records. Inform them that they can call the police if they see your abuser in or near the building.
- ❑ If you will be moving out of a residence you share with your abuser, you should try to do this when the abuser is at work or is otherwise not at home.
- ❑ Once you are living on your own, the phone company can give you an unlisted number. If you and your partner owe a large past due phone bill, you will have difficulty getting a new phone number on your own. If you get a domestic violence lawyer they can negotiate with the phone company a payment plan that will allow you to get reconnected as soon as possible. Local charities, churches, and victims of crime assistance programs may be able to help you in paying off these phone bills so that you have a phone at home that you can use to call 911 for police assistance.
- ❑ If you are living at a hidden location, have your mail sent to a post office box address so that your abuser cannot locate you. You can also have your mail sent to the home of a trusted friend, family member, or your lawyer. Give the post office a copy of your protection order and inform them that they are not to provide any information about your forwarding address to your abuser.
- ❑ You may want to consider changing your name to protect yourself.

## **SAFETY AT WORK**

- ❑ Consider telling your employer about the abuse in case you need to take time off to meet an advocate, if you need time off for court proceedings related to the domestic violence, or want to vary your working hours.
- ❑ Inform your employer, supervisor and/or security personnel at your workplace that you are about to separate, or have just separated, from your partner and to block phone calls or his entrance to your workplace.

- ❑ Arrange to have someone screen your calls at work.
- ❑ Advise other employees of suspected danger from your abuser. You should particularly inform receptionists and employees with offices near stairwells, large windows and entry doors to the building. Show them a picture of your abuser and ask them to call security and tell you if they see him in, around, or approaching the building.
- ❑ Get a protection order that requires that your abuser stay away from you and not contact you at your workplace. Give a copy of this order to your employer so that they can see you are taking steps to protect yourself and them from the abuser.
- ❑ Keep a copy of your protection order at work in case of emergency.
- ❑ If you work for an employer with multiple locations, ask to be relocated (where possible) if there is a great probability of danger.

## **ECONOMIC ASSISTANCE**

- ❑ Keep cash on hand for emergencies and open your own bank account. This will increase your independence and so that you have access to money if you decide to leave your abuser.
- ❑ Keep change for phone calls.
- ❑ To keep your phone calls confidential you will either have to use coins, a phone card you pay for in advance in cash or you might ask a friend to use their telephone credit card for a limited time.
- ❑ Economic assistance can help you and your children support yourselves apart from your batterer. Assistance may be available from governmental and non-governmental sources.
  - For rent, mortgage and utility bills: Seek emergency funds from local churches, community groups or the Red Cross. These sources can help for a month or two but will not provide monthly ongoing help. For long term assistance, consider getting a roommate, living with a family member, obtaining an order as part of your protection order and/or divorce requiring your abuser to pay rent, spousal support and/or child support.
  - For food: You and your children qualify to receive food from local food banks no matter what your immigration status is. Your citizen children qualify for food stamps and you can file for food stamps on their behalf. You and your children may qualify for child nutrition programs or welfare cash payments including TANF (Temporary Aid to Needy Families). See discussion below on benefits to see if you qualify.
  - Money to change locks, move, and make repairs needed for security: These funds can sometimes be obtained from the Red Cross. If not, your abuser can be ordered to pay these costs in your protection order.

- Money to pay medical bills: You may be eligible to have your local crime victims' compensation program pay your medical costs. You can also have your abuser pay these costs as part of your protection order or through his health insurance plan.
- ❑ Consider asking for child support, reimbursement for repairs, and payment of certain medical expenses or rent expenses in your civil protection order.
- ❑ Consider applying for long-term economic relief such as child support from your abuser.
- ❑ Consider applying for any public benefits your child qualifies for, or that you may qualify for as a battered immigrant once you have filed your Violence Against Women Act (VAWA) immigration case.

## **GENERAL SAFETY TIPS**

- ❑ Take photographs of any injuries you sustain during the abuse. Also take photographs of torn clothing, broken property, and furniture in disarray. Take these photos when it is safe to do so. Leave copies of the photographs and the negatives in a safe place outside of your home and away from your abuser.
- ❑ Keep evidence of the abuse (ripped clothes, photos of injuries and bruises, etc.) even if you are not now considering separating from your abuser. Should you ever decide to take any legal action to protect yourself and your children, to obtain custody, support, welfare or immigration benefits, you will need this evidence.
- ❑ Always keep a copy of your protection order and referral list with you (if safe to do so).
- ❑ Alter your routines so that your abuser cannot find you. Change the times and the routes that you use to go to and return from work, the times and places you go grocery shopping, the times you pick up and drop off the children from day care, and the dates and times you have any other regular appointments.
- ❑ Keep a detailed record of your interactions with the abuser, such as telephone calls, e-mails, or letters. This information may help you to prepare for court. Keep a record of all of his actions that violate your protection order. Get a telephone answering machine and answer all calls through the machine. This can help you tape calls that document ongoing harassment. Keep all letters that your abuser sends you.

## **LEGAL STEPS**

Contact the local domestic violence hotline, shelter or legal services program for help. They can inform you of your legal rights and help you access legal relief. They can also help to find interpreters to assist you. To find an advocate or attorney in your community who can help you call the National Domestic Violence Hotline 1-800-799-SAFE or the Rape, Abuse and Incest Network Hotline at 1-800-656-HOPE for referrals. Once you have an advocate or attorney helping you, show them this booklet and ask them to contact the expert resources listed at the end of this booklet. The experts listed provide technical assistance to advocates, attorneys and other professionals working with immigrant victims. They DO NOT provide legal representation to victims.

## **CIVIL PROTECTION ORDERS**

- ❑ You can obtain a protection order whether or not you currently plan to separate from your abuser.
- ❑ Both documented and undocumented battered immigrants can obtain protection orders.
- ❑ Protection orders can help prevent your abuser's violence against you and/or your children.
- ❑ Getting a protection order against your abuser will not affect his immigration status or lead to his deportation.
- ❑ However, since violation of a protection order is a crime, if your abuser is convicted of violating the order of protection, it could lead to his deportation. For this reason, protection orders can work well to prevent violence when the abuser is a non-citizen.
- ❑ You can file for a civil protection order to remove your abuser from your home, to protect you and your children if you move out, and to prevent future violence if you continue living with your abuser.
- ❑ For a complete discussion of the relief you can get through a protection order, including custody, support and stay away provisions see the protection order section of this booklet.
- ❑ Once you receive a protection order, keep a copy of the order with you at all times. Keep extra copies in a safe location with a friend or family member in case your copy is stolen, lost or destroyed.
- ❑ Give a copy of your protection order to:
  - Friends and family members you visit often,
  - Your employer,
  - Your children's schools or day care centers,
  - Your clergy member,
  - Persons whose homes you may stay in when you escape from danger, and

- The police department in the communities in which you live, work, visit friends or family members, and where your children go to school.
- ❑ You can enforce your protection order by calling the police when the order has been violated. The prosecutor will then ask you to testify in the criminal case. You can also have a domestic violence lawyer help you enforce the order by bringing a contempt case before a judge.
- ❑ Do not initiate contact or communicate with your batterer if he is under a court order to stay away from and not contact you. Some judges and police may be less willing to enforce a protection order if you have been willingly communicating with your abuser. If you reunite with your abuser, know that the provisions of your protection order that require no abuse are still in effect. See the protection order section below regarding modifying the order.
- ❑ If you fear continued harassment, you can ask your local police department to place your home on the special attention list. This means that the police in your neighborhood may keep in contact with you to ensure that you are not having any further problems with your abuser. You can ask that the court order the police to pay special attention to your house as part of a protection order.

## **IMMIGRATION OPTIONS**

- ❑ If you qualify to get legal immigration status because of the domestic violence you have suffered, you do not have to separate from your abuser in order to file your immigration case.
- ❑ The procedures for Violence Against Women Act immigration cases, battered spouse waivers and crime victim visa cases (U-visas) all allow you to file the immigration case confidentially without your abuser's knowledge or cooperation. You may file for legal immigration status for yourself and for any undocumented children you may have.
- ❑ In each of these types of cases it is illegal for the government to provide your abuser any information about whether you have filed a case, the status of your case or give him any information that you have provided in your case. VAWA has special protections for victims of domestic violence, trafficking, and other crimes, to prevent disclosure and use of information in your VAWA case and prevents the use of such abuser-provided information in removal proceedings. These provisions are designed to ensure that your abuser cannot use the immigration system against you. For example, VAWA protections prevent your abuser from using DHS to get information about the existence of your VAWA self-petition, interfering with or undermining your immigration case, or encouraging immigration enforcement officers to pursue removal actions against you. It also prevents DHS from making arrests of immigrants at locations where victims seek help including community-based organizations, shelters, rape crisis centers, and courthouses.
- ❑ If are relying on your spouse for legal immigration status, seeking help to prevent domestic violence may also help you obtain legal immigration status without your husband's help, knowledge or consent.

- ❑ You should start gathering the information you may need to prove your domestic violence related immigration case whether or not you have decided to leave your abuser. You should consider filing your immigration case even if you do not plan to leave your abuser, because obtaining legal immigration status will increase your options for self-sufficiency. For a complete list of the evidence you will need to collect for your immigration cases and for other family law cases review the checklist below carefully.

## **CRIMINAL CASES**

- ❑ U.S. laws protect all domestic violence victims without regard to immigration status.
- ❑ Police are not supposed to ask any questions about your immigration status when you call for help.
- ❑ Call the police for help if you are being abused (911).
- ❑ In the United States, it is a crime to hit, kick, punch, threaten, or injure a family member, even if it occurs in the home.
- ❑ Abusers can be prosecuted for their crimes against family members, even if that family member does not have legal status in the United States.
- ❑ Cooperating in the criminal prosecution of your abuser may increase your chances of obtaining legal immigration status in the United States, a legal immigration status that is your own and not connected to your abuser in any way. Cooperating in the criminal prosecution of your abuser should not lead to your deportation.
- ❑ Check with a local domestic violence or immigration program about police and DHS practices in your area.

## **CHECKLIST OF WHAT YOU NEED TO TAKE WITH YOU WHEN YOU LEAVE YOUR ABUSER**

- photo identification for yourself and your children
- passports for yourself and your children
- children's birth certificates
- your birth certificate
- your children's social security cards
- your social security card, if you have one
- green cards (alien registration card), for you and your children if you and/or they have one
- money for phone calls, transportation, and expenses
- credit cards, checkbooks, bank books, ATM cards
- work permits for you and your older children
- welfare identification for you and your children
- keys to the house, office and car and any ownership documents
- drivers license and registration
- necessary medicines, medical records, and insurance papers for yourself and your children
- children's school and vaccination records
- small saleable objects
- clothing for you and the children
- all court documents
- telephone/address books, including information on victim service providers
- children's favorite toys, books and blankets
- your sentimental and irreplaceable items, such as photographs, jewelry, special gifts from your family

### **TO PROVE THE ABUSE AND THE EFFECT IT HAS HAD ON YOU AND YOUR CHILDREN**

- copies of police reports
- copies of medical records
- hospital records documenting abuse (even if you did not tell anyone the cause of the abuse)
- copies of current and former protection orders (civil, criminal, temporary, emergency)
- photographs of your injuries
- torn clothing or destroyed property
- your diary
- names of shelters you have stayed at
- names, addresses and telephone numbers of doctors, nurses, counselors, mental health professionals and social workers whom you or your children have spoken with or received treatment from
- names, addresses, and telephone numbers of people who: saw your bruises, heard you scream, witnessed any incident of the abuse, you told about the abuse, you have stayed with for refuge, or can describe the effect that the abuse has had on you and your children
- names, addresses, and telephone numbers of police officers, prosecutors, judges or other government officials who know about the domestic violence you experienced

### **TO OBTAIN CHILD SUPPORT**

- your husband's or the father of your child's social security number

- a copy of your husband/father of your child's most recent pay stub
- the name, address, phone and fax number of your husband/father of your child's employer
- a copy of your husband/father of your child's tax returns for the past three years
- proof of who is your child's father (children's birth certificates, acknowledgement of paternity, or other proof)

## **FOR BATTERED IMMIGRANT WOMEN WHO MAY QUALIFY FOR A VIOLENCE AGAINST WOMEN ACT FORM OF RELIEF OR OTHER IMMIGRATION RELIEF:**

- work permits, green cards, visa applications, and other immigration papers for you and your children
- copies of any documents filed with DHS
- marriage license and certificate for current marriage
- divorce papers from your previous marriage(s) or your spouse's previous marriage(s)
- birth certificates, adoption certificates, acknowledgement of paternity records for your children
- passports and I-94s (record of entry into US) for you and your children, if you have one
- identification (social security, driver's license, welfare identification)
- copies of your spouse's birth certificate, social security card, green card, or certificate of naturalization
- if your spouse was born abroad and is now a citizen or has legal permission from DHS to live and work in the United States, write down and take with you his "A" number, the number on his green card, work visa, or naturalization certificate
- court papers filed and court orders related to you, your husband/partner, and your children
- photographs of wedding, wedding invitations, love letters from spouse
- family photographs from vacations, birthdays, family events, and trips you have taken
- personal property or real property deeds, leases, and rental agreements in both of your names
- papers that show that you lived with your husband in the US (such as copies of the lease agreement, real property deed, utility bills, rent receipts, mortgage payment book, letters addressed to the two of you, letters addressed to you, and other letters or magazines addressed to your abuser at the same address during the same time period)
- names, addresses, and telephone numbers of persons who knew you as a couple, knew that you and your husband lived together, or who saw any of your injuries on any of the incidents of violence
- copies of documents related to joint checking or savings accounts
- joint tax returns listing you as a dependant
- identification with a photograph listing you with your married name
- life and health insurance policies covering you, your spouse, and your children
- letter from employer stating that you or your spouse listed the other as an emergency contact
- letter from employer stating that you or your spouse listed the other spouse as an emergency contact

## **Congratulations!**

**By reading this booklet, you have just taken the first step toward creating a safe home for yourself and your children. The next step is to seek the assistance of organizations from the following list of resources, or to make your own list of resources in the important phone numbers area.**



## **IMPORTANT PHONE NUMBERS:**

Police:

Hotline:

Friends:

Shelter:

## **FOR HELP CALL:**

For help locating a battered women's advocate who has experience working with battered women's advocates in your area or for help finding an immigration lawyer call:

### **National Domestic Violence Hotline**

1-800-799-SAFE (7233)

1-800-787-3224 (ITY)

Interpreters are available in many languages.

Calls cost nothing. Call anytime.

### **Police - 911**

Call the police if you think you or your children are in danger. If the police ask about your immigration status or where you were born, you do not have to answer.

### **Medical Emergency - 911**

The emergency room in any public hospital must give you emergency medical care, even if you are undocumented or do not have insurance.

## **YOUR LOCAL DOMESTIC VIOLENCE PROGRAM:**

## **YOUR LOCAL LEGAL SERVICES AGENCY:**

## **The National Network on Behalf of Battered Immigrants Provides Technical Assistance to Professionals Working With Battered Immigrants**

Attorneys, advocates, health care workers, social services providers, and government employees working with immigrant victims are encouraged to contact the following organizations to receive expert technical assistance to help provide up-to-date and culturally competent assistance to immigrant victims of violence against women. The numbers listed below DO NOT provide direct assistance, advocacy, legal representation or legal advice to victims.

### **The Immigrant Women Program of Legal Momentum**

Phone: (202) 326-0040

Fax: (202) 589-0511

E-mail: [iwp@legalmomentum.org](mailto:iwp@legalmomentum.org)

### **ASISTA**

[www.asistaonline.org](http://www.asistaonline.org)

### **The Family Violence Prevention Fund**

Phone: (415) 252-8900 x 16

Fax: (415) 252-8991

E-mail: [leni@endabuse.org](mailto:leni@endabuse.org)

These organizations do not provide representation or direct assistance to individual immigrant victims of domestic violence. They can refer you to help in your local community. Once you are working with a battered women's advocate, social worker or attorney, they can call these experts for technical assistance on how they can better help you.

### **This booklet developed jointly by:**

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## Chapter Three: LISTS OF DOCUMENTS FOR BATTERED IMMIGRANTS

### Evidence List

#### IMMIGRANT VICTIMS APPLYING FOR VAWA SELF-PETITIONING<sup>6</sup>

***This is a comprehensive list. In most cases, these documents are not mandatory. However, the more documentation available, the easier it will be for a VAWA self-petitioner to be successful in her application.***

#### 1. Proof of applicant's identity and immigration status

Exists	Brought In	
_____	_____	Birth Certificate of applicant and her children
_____	_____	Copies of passport and I-94 card on behalf of applicant and her children
_____	_____	Other documents received from or sent to the Immigration and Naturalization Service

#### 2. Evidence of spouse's/parent's/over 21 year old citizen child's immigration status

Exists	Brought In	
_____	_____	Birth Certificate (if spouse/parent/over 21 year old child was born in the United States)
_____	_____	Naturalization Certificate
_____	_____	Lawful Permanent Resident Card (i.e.- "Green Card")

<sup>6</sup> This document has been updated and adapted from one developed jointly by Legal Momentum, Organization en California de Lideres Campesinas, and the Iowa Coalition Against Domestic Violence that was included in Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants (Legal Momentum, Washington, D.C. 2004) and Legal Momentum and Organizacion en California de Lideres Campesinas, "Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual" (Legal Momentum, Washington, D.C. 2002).

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_____	_____	Copies of spouse/parent/over 21 year old citizen child's U.S. passport
_____	_____	US State Department Form FS-240 reporting the birth of
_____	_____	a U.S. Citizen outside of the U.S.
_____	_____	I-551 Stamp in Spouse/parent's passport showing
_____	_____	evidence of lawful permanent residence
_____	_____	Declaration for U.S. Consulate official certifying that spouse/parent/over
_____	_____	21 U.S. citizen child is a U.S. Citizen and possesses a valid US passport

### 3. Evidence of the marital relationship<sup>7</sup>

Exists	Brought In	
_____	_____	Marriage Certificate.

### 4. Termination of previous marriages

Exists	Brought In	
_____	_____	Divorce decree/ Final order of divorce
_____	_____	Annulment decree
_____	_____	Death certificate of deceased abusive spouse

### 5. Proof of good faith marriage

Exists	Brought In	
_____	_____	Marriage Certificate
_____	_____	Affidavit from the official who conducted the wedding ceremony
_____	_____	Birth Certificates of children born or the marriage
_____	_____	Affidavit from the applicant recounting the story of the
_____	_____	engagement and wedding ceremony, include stories about the
_____	_____	home and experiences the two shared
_____	_____	Photographs of the wedding, vacations and other experiences the
_____	_____	two shared before and after the wedding
_____	_____	Correspondence including love letters
_____	_____	Cards or letters from the abusive spouse to the applicant's family
_____	_____	Names, addresses, telephone numbers of people that knew the applicant
_____	_____	and the abusive spouse as a couple
_____	_____	Letters from the applicant's employer or health care provider
_____	_____	asserting that the applicant changed her name after the wedding _____
_____	_____	Forms of identification (driver's license) indicating the change in
_____	_____	applicant's surname after the wedding
_____	_____	Police, court, medical, school or any other documents that provide
_____	_____	information reflecting that the applicant and the abuser are or have
_____	_____	been a married couple and the time period they resided together.

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<sup>7</sup> Needed for abused spouses and for abused step-children (evidence of marriage between non-abusive immigrant parent and abusive citizen step-parent).

- |       |       |  |
|-------|-------|--|
| _____ | _____ | Signed affidavits from landlords, neighbors, friends, attesting to the fact that the parties reside or resided together.           |
| _____ | _____ | Insurance policy statements including names of parties and children covered type of coverage (auto, health, life insurance).       |
| _____ | _____ | Copies of jointly filed tax forms during the marriage  |
| _____ | _____ | Bank statements with both the applicant's and the abusive spouse's names   |
| _____ | _____ | Copies of the housing lease with both the applicant's and the abusive spouse's names   |
| _____ | _____ | Mail addressed to both individuals as a couple   |
| _____ | _____ | Proof of vacations taken together (copies of plane tickets showing they traveled together and sat together, photographs, receipts) |
| _____ | _____ | Receipts or payments from large jointly purchased items (cars, house, household appliances, etc.)                                  |
| _____ | _____ | Copies of joint membership applications (gym, pool, other organizations)   |
| _____ | _____ | Automobile registration for jointly owned vehicles   |
| _____ | _____ | Statements from friends, neighbors or family members, etc.   |
| _____ | _____ | Copies of utility bills—gas, telephone, electricity, water, etc.   |
| _____ | _____ | Academic bills or records naming the applicant and abusive spouse as the children's parents  |
| _____ | _____ | Children's medical bills naming the applicant and the abusive spouse as the parents  |

**6. If abusive spouse has died within the last two years, the following is required:**

- |       |       |                   |
|-------|-------|-------------------|
| _____ | _____ | Death Certificate |
|-------|-------|-------------------|

**7. If the applicant has divorced her abusive spouse within the last two years, the following is required:**

- | Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Final Declaration of Divorce demonstrating the date of final divorce                             |
| _____  | _____      | Copies of the relevant law that the criminal activity has violated                               |
| _____  | _____      | Copies of any arrest warrants  |
| _____  | _____      | Copies of any complaint reports  |
| _____  | _____      | Copies of any police reports   |
| _____  | _____      | Copies of any domestic violence incident report  |
| _____  | _____      | Affidavit of the pertinent law enforcement officer regarding the nature of the criminal activity |

**8. If the abusive spouse is engaged in a bigamous relationship, the following is required:**

Exists	Brought In	
_____	_____	Marriage Certificate
_____	_____	Copies of the application for the marriage license
_____	_____	Photographs of the wedding ceremony
_____	_____	Affidavit signed by the witnesses present at the wedding ceremony
_____	_____	Affidavit signed by the self-petitioner indicating why she believed that she was legally married to the abuser and that to the best of her knowledge the wedding was legal

**9. Proof of parent/child relationship**

Exists	Brought In	
<b>For a natural born child</b>		
_____	_____	Child's birth certificate
_____	_____	Other document establishing that the child is under 21 years of age and listing the parents' names
_____	_____	The parents' marriage certificate
<b>For a child born out of wedlock</b>		
_____	_____	If the child was born out of wedlock, documents showing legitimation (legal acknowledgment or other evidence or proof that the country where the child was born does not distinguish between children born in and out of wedlock) <sup>8</sup>
<b>For an adopted child</b>		
_____	_____	An adoption decree
_____	_____	Affidavit of adoption and evidence of the abuser's legal custody
<b>For step-children</b>		
_____	_____	The marriage certificate of the natural parent and the stepparent
_____	_____	If either the child's natural parent or step-parent were previously married, evidence that prior marriage or marriages have been terminated
_____	_____	child's birth certificate proving the child's relationship with his/her natural parent;

**Children included in the self petition:**

- child's birth certificate, listing the names of the child's parents along with an English translation, where applicable;
- if the self-petitioner is the child's father:
  - Marriage license or certificate documenting the child's parents were married;
  - Evidence of the child's legitimation; or
  - Evidence of a bona fide parent-child relationship (pictures, letters).

<sup>8</sup> These requirements will vary depending on the laws of the country where the child was born. See generally, INA § 101(b)(1)(C), 8 U.S.C. § 1101(b)(1)(C); *Matter of Martinez*, 21 I & N Dec. 1035, 1038 (1997); *Matter of Cabrera*, 21 I & N Dec. 589 (BIA 1996); *Matter of Obando*, 16 I & N Dec. 278 (BIA 1977).

**10. Proof of residence with abusive spouse/former spouse/parent/over 21 year old citizen child**

Exists	Brought In	
_____	_____	Birth certificates of children born both in the United States and/or in other countries
_____	_____	Family photographs with family members together
_____	_____	Cards or letters mailed to the petitioner at the residence shared with the abuser (including cancelled postmarks)
_____	_____	Cards or letters mailed to the abuser at the residence shared with the Petitioner (including cancelled postmarks).
_____	_____	Testimony or statements from family friends, landlords, neighbors who knew the family when they lived together. Include names, telephone numbers, and addresses of people that knew the couple
_____	_____	Copies of tax forms
_____	_____	U.S. legal documents with both of the names of the petitioner and the abuser
_____	_____	Documents that indicate the names of the abuser and self-petitioner: employment, school registration, or children's school records
_____	_____	Mail including both the names of the self-petitioner and abuser
_____	_____	Mail separately addressed to the petitioner and the abuser, received on the same day and to the same address
_____	_____	Mortgage payments, rental contracts, receipts from rent payment and related documents
_____	_____	Utility bills
_____	_____	Medical documents or medical bills
_____	_____	Car insurance, health or life insurance that include both names
_____	_____	Credit card bills
_____	_____	Bank statements
_____	_____	Rental agreements, property deeds, or lease agreements indicating jointly owned property
_____	_____	Any correspondence in both names (magazines, newsletters)

**10. Proof of battering or extreme cruelty**

Exists	Brought In	
_____	_____	Personal Statement—Using the wheel of power and control describe specific examples in each section if possible. You must prove that you are a victim of violence. Most importantly there need be proof that the abuser took advantage of your legal

		status in order to isolate, abuse, control, and assert power over the petitioner. The statement is an opportunity to establish your credibility and sincerity. The statement should explain why you need assistance and should gain the sympathy of the reader
_____	_____	Police reports and documented police visits to the residence
_____	_____	Copies of phones bills indicating phone calls made by the petitioner
_____	_____	Official protection order or restraining orders obtained in any U.S. state
_____	_____	Letters of support from priests, teachers, or friends from work
_____	_____	Medical reports or psychological examinations
_____	_____	Statements from witnesses of the abuse or people who knew or learned of any form of abusive behavior. (children, neighbors, family members, friends, etc.)
_____	_____	Photographs of the inflicted wounds taken by the petitioner or any other person (lawyer, social worker, or police officer).
_____	_____	The abusive spouse/parent/over 21 year old citizen child's criminal record documenting criminal conviction for aggression, property destruction or other acts of domestic violence
_____	_____	Records from shelters or affidavits stating the date when petitioner entered the shelter and an account of the events that lead to seeking the refuge
_____	_____	Damaged items or photographs of damaged items (clothes, telephones, etc.)
_____	_____	Any document, report or affidavit signed by a police officer, judge, social worker or service provider
_____	_____	Court orders regarding custody, visitation rights or child care
_____	_____	Criminal court records for fiscal citations or indictment for domestic violence
_____	_____	Medical records for treatment sought due to domestic violence, records of previously existing medical conditions

**11. Good moral character**

Exists	Brought In	
_____	_____	Statement of self-petitioner
_____	_____	Local or state police clearance records from the past three years of every city the petitioner has lived in for more than six months.
_____	_____	Fingerprints (may be used as an alternative to the above; should be taken at an official DHS location).

The following additional forms of evidence may also submitted. However, this is in addition to the evidence listed above.



- |       |       |  |
|-------|-------|--|
| _____ | _____ | Statements from friends, family members, Church members or religious leaders, employer, etc. affirming that the applicant is a good person, mother, friend, employee, etc. |
| _____ | _____ | A letter from the applicant's instructor if she is taking English lessons; include any awards or certificates received.  |
| _____ | _____ | Documents from teachers at the applicant's children's school, affirming that you are a good mother and if you volunteer your time at the school.                           |

**12. Dependent Children To Be Included in the Victims VAWA Self-Petition**

- |       |       |   |
|-------|-------|---|
| _____ | _____ | Birth certificates of the petitioner's children who are not U.S. citizens or lawful permanent residents |
|-------|-------|---|

**13. If you live outside of the United States**

- | Exists | Brought In |   |
|--------|------------|---|
| _____  | _____      | Documents stating the name and the address of the employer of the abusive husband/father/parent |
| _____  | _____      | Pay stubs of the abuser   |
| _____  | _____      | Proof of employment   |
| _____  | _____      | Copy of the abuser's Military I.D.  |
| _____  | _____      | Copy of the abuser's U.S. Government I.D.   |
| _____  | _____      | Copies of military orders   |

## Evidence List

### FOR IMMIGRANT VICTIMS APPLYING FOR THE CRIME VICTIM VISA (U VISA)<sup>9</sup>

***This is a comprehensive list. In most cases, these documents are not mandatory. However, the more documentation available, the easier it will be for a VAWA self-petitioner to be successful in her application.***

Under the Victims of Trafficking and Violence Protection Act of 2000 (“VTVPA”), battered noncitizens and other crime victims may be eligible for a new nonimmigrant visa, the U Visa. This form of relief, if granted, gives the applicant immediate legal status as a nonimmigrant and possible lawful permanent residence in the long-term. The following is a list of the requirements that must be met by an applicant, and some suggestions of evidence that may be offered to meet each requirement. Currently, no federal regulations exist for the U Visa. A 2001 interim guidance directed at the Immigration and Naturalization Service (“INS”), however, instructs immigration authorities to broadly interpret the requirements for the U Visa in order to protect possible “U” victims. Additionally, the Department of Homeland Security (DHS) is required to consider “any credible evidence” in its adjudication of an applicant’s case. The suggested evidentiary documents in this memo are meant to be guidelines, and not exhaustive descriptions of the types of evidence that may be offered to support an application under the U Visa.

#### **A. Who is eligible to apply for a U Visa?**

Certain battered noncitizens and other noncitizen crime victims who have suffered substantial physical or mental abuse flowing from criminal activity and who are cooperating with government officials investigating or prosecuting such criminal activity.

#### **B. What are qualifying criminal activities?**

- Rape
- Torture
- Trafficking
- Incest
- Domestic Violence
- Sexual Assault
- Abusive Sexual Contact
- Prostitution
- Sexual Exploitation
- Female Genital Mutilation
- Being Held Hostage
- Peonage
- Involuntary Servitude
- Slave Trade

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<sup>9</sup> This document has been updated and adapted from one developed jointly by Legal Momentum, Organization en California de Lideres Campesinas, and the Iowa Coalition Against Domestic Violence that was included in *Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants* (Legal Momentum, Washington, D.C. 2004) and *Legal Momentum and Organizacion en California de Lideres Campesinas, “Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual”* (Legal Momentum, Washington, D.C. 2002).

- Kidnapping
- Abduction
- Unlawful Criminal Restraint
- False Imprisonment
- Blackmail
- Extortion
- Manslaughter
- Murder
- Felonious Assault
- Witness Tampering
- Obstruction of Justice
- Perjury
- Attempt, Conspiracy, or Solicitation to Commit Any of the Above-Mentioned Crimes
- Other state or federal crimes the nature and elements of which are substantially similar

**C. What are the requirements that an applicant needs to prove in a U Visa application?**

An individual applying for a U Visa must establish the following requirements:

**1. Applicant is a victim of listed criminal activity:**

Exists	Brought In	
_____	_____	Trial transcripts or rulings from criminal case
_____	_____	Trial transcripts or rulings from protection order case
_____	_____	Trial transcripts or rulings from other court or administrative law proceedings
_____	_____	Court documents
_____	_____	News articles
_____	_____	Police reports
_____	_____	Affidavits of victim
_____	_____	Affidavits of witnesses to crime or injuries
_____	_____	Medical records
_____	_____	Ambulance reports
_____	_____	State statute defining crime
_____	_____	Certification from state, federal or local government official

**2. Nature of the abuse physical or mental abuse suffered by the victim:**

Exists	Brought In	
_____	_____	Reports or affidavits from police
_____	_____	Reports or affidavits from judges or other court officials
_____	_____	Reports or affidavits from medical personnel
_____	_____	Reports or affidavits from school officials
_____	_____	Reports or affidavits from clergy
_____	_____	Reports or affidavits from victim advocates, rape crisis center, shelter,

_____	_____	social workers or social services agency personnel
_____	_____	Bond orders
_____	_____	Other court orders or administrative agency orders (e.g. stay away orders, findings documenting facts of criminal activity)
_____	_____	Photographs of injury, crime scene
_____	_____	Medical records from U.S. based provider documenting the diagnosis and treatment of physical injuries
_____	_____	Copies of any ambulance call reports
_____	_____	Records of any 911 calls
_____	_____	Records from a health care provider documenting diagnosis and treatment of mental abuse
_____	_____	Affidavit of applicant detailing the substantial physical abuse and injury and mental abuse and injury suffered as a result of the crime (both what the perpetrator did and how the victim was affected)
_____	_____	Copies of any protection order issued for the applicant or her/his children
_____	_____	Copies of any domestic violence incident report
_____	_____	Affidavits from neighbors, landlords, friends, or family attesting to the criminal activity or having witnessed injuries that resulted from the criminal activity that occurred in the U.S.
_____	_____	Affidavits from police officers or prosecutors detailing the violence that the applicant has endured
_____	_____	Affidavits from victim advocates, shelter workers, battered women's advocates, counselors or mental health professionals detailing the physical and mental abuse that the applicant has endured

**3. Possession of information concerning the criminal activity alleged**

Exists	Brought In	
_____	_____	Affidavit of applicant detailing the applicant's knowledge of the criminal activity
_____	_____	Affidavits from police officers and prosecutors detailing the applicant's knowledge of the criminal activity
_____	_____	Any documents that may show applicant's knowledge of the criminal activity
_____	_____	Copies of any police reports
_____	_____	Copies of any statements that the applicant has made to a law enforcement agency
_____	_____	Copies of any complaint reports
_____	_____	Copies of any evidence that was obtained as a result of the applicant's help
_____	_____	Copies of any documents that the applicant has given

_____	_____	to a law enforcement agency
_____	_____	Transcripts of testimony that the applicant has given to a law enforcement agency
_____	_____	Any incriminating photographs that applicant may have
_____	_____	Affidavits from witnesses that may place the applicant at the scene of the criminal activity or attest to the applicant's knowledge of the criminal activity

**4. Crime victim has been helpful, is helpful, or is likely to be helpful to a Federal, State, or local investigation or prosecution**

Exists	Brought In	
_____	_____	Affidavit of applicant detailing the applicant's helpfulness with the investigation or prosecution
_____	_____	Affidavit of a law enforcement official, prosecutor, judge, INS official, or other federal or state authorities that the applicant has been helpful, is helpful, or is likely to be helpful to the investigation or prosecution
_____	_____	Certificate from a law enforcement official, prosecutor, judge, INS official, or other federal or state authorities that the applicant has been helpful, is helpful, or is likely to be helpful to the investigation or prosecution
_____	_____	Copies of any police reports
_____	_____	Copies of any complaint reports
_____	_____	Copies of any statements that the applicant has made to a law enforcement agency
_____	_____	Copies of any evidence that was obtained as a result of the applicant's help
_____	_____	Copies of any documents that the applicant has given to a law enforcement agency
_____	_____	Transcripts of testimony that the applicant has given to a law enforcement agency
_____	_____	Affidavits of witnesses that applicant has been helpful, is helpful, or is likely to be helpful to a Federal, State, or local investigation or prosecution
_____	_____	Brief description by the applicant's advocate regarding applicant's activities in assisting the investigation or prosecution

**5. Certification from a law enforcement official, prosecutor, judge, INS official, or other federal or state authorities**

Exists            Brought In

\_\_\_\_\_    \_\_\_\_\_            Certificate from a law enforcement official, prosecutor, judge, INS official, or other federal or state authorities

**6. Criminal activity violated the laws of the United States or occurred in the United States or its territories**

Exists            Brought In

\_\_\_\_\_    \_\_\_\_\_            Certificate from a law enforcement official, prosecutor, judge, INS official, or other federal or state authorities that the criminal activity violated the laws of the United States or occurred in the United States or its territories

\_\_\_\_\_    \_\_\_\_\_            Copies of the relevant law that the criminal activity has violated

\_\_\_\_\_    \_\_\_\_\_            Copies of any arrest warrants

\_\_\_\_\_    \_\_\_\_\_            Copies of any complaint reports

\_\_\_\_\_    \_\_\_\_\_            Copies of any police reports

\_\_\_\_\_    \_\_\_\_\_            Copies of any domestic violence incident report

\_\_\_\_\_    \_\_\_\_\_            Affidavit of the pertinent law enforcement officer regarding the nature of the criminal activity

## Evidence List

### IMMIGRANT VICTIMS APPLYING FOR VAWA CANCELLATION OF REMOVAL<sup>10</sup>

***This is not a comprehensive list. In most cases, these documents are not mandatory. However, the more documentation available, the easier it will be for a VAWA cancellation applicant to be successful in her application.***

#### 1. Proof of applicant's identity and immigration status

Exists	Brought In	
_____	_____	Birth Certificate of applicant and her children
_____	_____	Copies of passport and I-94 card on behalf of applicant and her children
_____	_____	Other documents received from or sent to the Immigration and Naturalization Service

#### 2. Evidence of spouse's/parent's immigration status

Exists	Brought In	
_____	_____	Birth Certificate (if spouse/parent was born in the United States)
_____	_____	Naturalization Certificate
_____	_____	Lawful Permanent Resident Card (i.e.- "Green Card")
_____	_____	Copies of spouse/parent's U.S. passport
_____	_____	US State Department Form FS-240 reporting the birth of a U.S. Citizen outside of the U.S.
_____	_____	I-551 Stamp in Spouse/parent's passport showing evidence of lawful permanent residence
_____	_____	Declaration for U.S. Consulate official certifying that spouse/parent is a U.S. Citizen and possesses a valid US passport

#### 3. Evidence of the marital relationship<sup>11</sup>

Exists	Brought In	
_____	_____	Marriage Certificate.

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<sup>10</sup> This document has been updated and adapted from one developed jointly by Legal Momentum, Organization en California de Lideres Campesinas, and the Iowa Coalition Against Domestic Violence that was included in Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants (Legal Momentum, Washington, D.C. 2004) and Legal Momentum and Organizacion en California de Lideres Campesinas, "Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual" (Legal Momentum, Washington, D.C. 2002).

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<sup>11</sup> Needed for abused spouses and for abused step-children (evidence of marriage between non-abusive immigrant parent and abusive citizen step-parent).

#### 4. Termination of previous marriages

Exists	Brought In	
_____	_____	Divorce decree/ Final order of divorce
_____	_____	Annulment decree
_____	_____	Death certificate of deceased abusive spouse

#### 5. Proof of good faith marriage

Exists	Brought In	
_____	_____	Marriage Certificate
_____	_____	Affidavit from the official who conducted the wedding ceremony
_____	_____	Birth Certificates of children born or the marriage
_____	_____	Affidavit from the applicant recounting the story of the engagement and wedding ceremony, include stories about the home and experiences the two shared
_____	_____	Photographs of the wedding, vacations and other experiences the two shared before and after the wedding
_____	_____	Correspondence including love letters
_____	_____	Cards or letters from the abusive spouse to the applicant's family
_____	_____	Names, addresses, telephone numbers of people that knew the applicant and the abusive spouse as a couple
_____	_____	Letters from the applicant's employer or health care provider asserting that the applicant changed her name after the wedding
_____	_____	Forms of identification (driver's license) indicating the change in applicant's surname after the wedding
_____	_____	Police, court, medical, school or any other documents that provide information reflecting that the applicant and the abuser are or have been a married couple and the time period they resided together.
_____	_____	Signed affidavits from landlords, neighbors, friends, attesting to the fact that the parties reside or resided together.
_____	_____	Insurance policy statements including names of parties and children covered type of coverage (auto, health, life insurance).
_____	_____	Copies of jointly filed tax forms during the marriage
_____	_____	Bank statements with both the applicant's and the abusive spouse's names
_____	_____	Copies of the housing lease with both the applicant's and the abusive spouse's names
_____	_____	Mail addressed to both individuals as a couple
_____	_____	Proof of vacations taken together (copies of plane tickets showing they traveled together and sat together, photographs, receipts)
_____	_____	Receipts or payments from large jointly purchased items (cars, house, household appliances, etc.)
_____	_____	Copies of joint membership applications (gym, pool, other



- \_\_\_\_\_ organizations)
- \_\_\_\_\_ Automobile registration for jointly owned vehicles
- \_\_\_\_\_ Statements from friends, neighbors or family members, etc.
- \_\_\_\_\_ Copies of utility bills—gas, telephone, electricity, water, etc.
- \_\_\_\_\_ Academic bills or records naming the applicant and abusive spouse as the children’s parents
- \_\_\_\_\_ Children’s medical bills naming the applicant and the abusive spouse as the parents

**6. If abusive spouse has died within the last two years, the following is required:**

- \_\_\_\_\_ Death Certificate

**7. If the applicant has divorced her abusive spouse within the last two years, the following is required:**

- | Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Final Declaration of Divorce demonstrating the date of final divorce                             |
| _____  | _____      | Copies of the relevant law that the criminal activity has violated                               |
| _____  | _____      | Copies of any arrest warrants  |
| _____  | _____      | Copies of any complaint reports  |
| _____  | _____      | Copies of any police reports   |
| _____  | _____      | Copies of any domestic violence incident report  |
| _____  | _____      | Affidavit of the pertinent law enforcement officer regarding the nature of the criminal activity |

**8. If the abusive spouse is engaged in a bigamous relationship, the following is required:**

- | Exists | Brought In |  |
|--------|------------|--|
| _____  | _____      | Marriage Certificate   |
| _____  | _____      | Copies of the application for the marriage license   |
| _____  | _____      | Photographs of the wedding ceremony  |
| _____  | _____      | Affidavit signed by the witnesses present at the wedding ceremony  |
| _____  | _____      | Affidavit signed by the self-petitioner indicating why she believed that she was legally married to the abuser and that to the best of her knowledge the wedding was legal |

## 9. Proof of parent child relationship

## 10. Proof of residence with abusive spouse/former spouse

Exists	Brought In	
_____	_____	Birth certificates of children born both in the United States and/or in other countries
_____	_____	Family photographs with family members together
_____	_____	Cards or letters mailed to the petitioner at the residence shared with the abuser (including cancelled postmarks)
_____	_____	Cards or letters mailed to the abuser at the residence shared with the Petitioner (including cancelled postmarks).
_____	_____	Testimony or statements from family friends, landlords, neighbors who knew the family when they lived together. Include names, telephone numbers, and addresses of people that knew the couple
_____	_____	Copies of tax forms
_____	_____	U.S. legal documents with both of the names of the petitioner and the abuser
_____	_____	Documents that indicate the names of the abuser and self-petitioner: employment, school registration, or children's school records
_____	_____	Mail including both the names of the self-petitioner and abuser
_____	_____	Mail separately addressed to the petitioner and the abuser, received on the same day and to the same address
_____	_____	Mortgage payments, rental contracts, receipts from rent payment and related documents
_____	_____	Utility bills
_____	_____	Medical documents or medical bills
_____	_____	Car insurance, health or life insurance that include both names
_____	_____	Credit card bills
_____	_____	Bank statements
_____	_____	Rental agreements, property deeds, or lease agreements indicating jointly owned property
_____	_____	Any correspondence in both names (magazines, newsletters)

## 11. Proof of battering or extreme cruelty

Exists	Brought In	
_____	_____	Personal Statement—Using the wheel of power and control describe specific examples in each section if possible. You must prove that you are a victim of violence. Most importantly there need be proof that the abuser took advantage of your legal

_____	_____	status in order to isolate, abuse, control, and assert power over the petitioner. The statement is an opportunity to establish your credibility and sincerity. The statement should explain why you need assistance and should gain the sympathy of the reader
_____	_____	Police reports and documented police visits to the residence
_____	_____	Copies of phones bills indicating phone calls made by the petitioner
_____	_____	Official protection order or restraining orders obtained in any U.S. state
_____	_____	Letters of support from priests, teachers, or friends from work
_____	_____	Medical reports or psychological examinations
_____	_____	Statements from witnesses of the abuse or people who knew or learned of any form of abusive behavior. (children, neighbors, family members, friends, etc.)
_____	_____	Photographs of the inflicted wounds taken by the petitioner or any other person (lawyer, social worker, or police officer).
_____	_____	The abusive spouse/parent/over 21 year old citizen child's criminal record documenting criminal conviction for aggression, property destruction or other acts of domestic violence
_____	_____	Records from shelters or affidavits stating the date when petitioner entered the shelter and an account of the events that lead to seeking the refuge
_____	_____	Damaged items or photographs of damaged items (clothes, telephones, etc.)
_____	_____	Any document, report or affidavit signed by a police officer, judge, social worker or service provider
_____	_____	Court orders regarding custody, visitation rights or child care
_____	_____	Criminal court records for fiscal citations or indictment for domestic violence
_____	_____	Medical records for treatment sought due to domestic violence, records of previously existing medical condition

**12. Good moral character**

Exists	Brought In	
_____	_____	Statement of self-petitioner
_____	_____	Local or state police clearance records from the past three years of every city the petitioner has lived in for more than six months.
_____	_____	Fingerprints (may be used as an alternative to the above; should be taken at an official DHS location).

The following additional forms of evidence may also be submitted. However, this is in addition to the evidence listed above.

- \_\_\_\_\_      \_\_\_\_\_      Statements from friends, family members, Church members or religious leaders, employer, etc. affirming that the applicant is a good person, mother, friend, employee, etc.
- \_\_\_\_\_      \_\_\_\_\_      A letter from the applicant's instructor if she is taking English lessons; include any awards or certificates received.
- \_\_\_\_\_      \_\_\_\_\_      Documents from teachers at the applicant's children's school, affirming that you are a good mother and if you volunteer your time at the school.

**13. Dependent Children To Be Included in the Victims VAWA Self-Petition**

- \_\_\_\_\_      \_\_\_\_\_      Birth certificates of the petitioner's children who are not U.S. citizens or lawful permanent residents

**14. EXTREME HARDSHIP<sup>12</sup>**

Below is a list of factors to establish extreme hardship, but this is by no means an exhaustive list.

**TRADITIONAL FACTORS OF EXTREME HARDSHIP**

**DOCUMENTS TO PROVE HER CONNECTION TO THE UNITED STATES**

Exists	Brought In	
_____	_____	Documentation or Information about Her Age (this may include a copy of her birth certificate, an affidavit of birth, or another official document containing her date of birth)
_____	_____	Documentation or Information Establishing the Length of Time She Has Resided in the United States (for example a stamped passport, an expired visa, tax returns, employment stubs, mortgage or leases, etc.) <sup>13</sup>

<sup>12</sup> Extreme hardship is a balancing test, balancing the hardship that would result to the battered immigrant if she were to be deported against DHS' interest in deporting her because of an immigration violation. The immigration judge determines if the hardship to the immigrant is so *extreme*, she should not be deported to her home county, but instead be able to obtain lawful permanent residence to remain in the United States.

The battered immigrant has the burden to give enough evidence to prove she would face extreme hardship if deported to her home country. However if the battered immigrant victim is also a NACARA applicant, the presumption is that extreme hardship is established and DHS must prove otherwise. See 8 C.F.R 240.64(d). The battered immigrant may present 'any credible evidence,' which includes both primary and secondary documents and affidavits. This standard recognizes the fact that it is difficult for her to obtain primary documents because her abuser may have hid or destroyed them as part of the abuse he perpetrated against her. However, more weight will be given to primary documents. Any assertions should be supported by documentation or affidavits. Each case is evaluated on an individual basis after a review of all the evidence and circumstances particular to her case. A factor does not have to be unique to a particular person. One factor alone may not be determinative of extreme hardship, but in conjunction with other factors it may be established. For instance, extreme hardship is 'more than mere economic deprivation.' Please also note, although establishing battery or subjection to extreme cruelty is required for a VAWA self-petition, it is not dispositive of a finding of extreme hardship. However establishing battery or subjection to extreme cruelty is typically strong evidence supporting extreme hardship.

<sup>13</sup> If she entered the United States at an early age, residence during her critical 'formal years' may be important.

_____	_____	Documentation or Information about Her Relatives Who Lawfully Reside in the United States (except for her children do not include family members who are undocumented) <sup>14</sup>
_____	_____	Documentation or Information about Her and Her Children's Support System in the United States
_____	_____	Documentation or Information about the Necessity of Family Support for Survivors of Domestic Violence
_____	_____	Documentation or Information about Family Unification as a Primary Goal of Immigration Law
_____	_____	Documentation or Information about Participation in Community, Civic, or Religious Organizations
_____	_____	Documentation or Information about Honorable Military Service
_____	_____	Affidavits from Friends, Family, Neighbors, Co-Workers, or Community Members About Her Character and Connection to Community
_____	_____	Documents or Information about Her Having Helped, Helping, or that She Will be Helpful in the Future to Any Investigation or Prosecution of Her Abuser
_____	_____	Documentation or Information about Ownership or Investment in Any United States Businesses

**DOCUMENTS TO ESTABLISH ANY ADVERSE EFFECTS OF UPON HER WHICH WOULD RESULT IF SHE WERE DEPORTATED TO HER HOME COUNTRY**

Exists	Brought In	
_____	_____	Documentation or Information on the Economic and Political Conditions in Her Home Country <sup>15</sup> (this should include information about widespread abuse of women and children, domestic violence, poverty, civil war, or other human rights abuses)
_____	_____	Documentation or Information about Her Ability to Secure Adequate Employment in Her Home Country (this should include her age, education, skills, availability of employment for which she is qualified, her lack of language skills in her native language, disabilities affecting employment and if her status as a woman or divorcee precludes her from employment)
_____	_____	Documentation or Information About Any Educational Opportunities and/or Irreparable Harm to Her Caused by Disruption in Education
_____	_____	Documentation or Information about Any of Her Achievements or Participation in Activities
_____	_____	Documentation about the Stress for Domestic Violence Survivors to Leave Behind

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<sup>14</sup> If she has United States citizen children, this alone will not constitute extreme hardship. See Matter of Kim, 15 I & N Dec. 88 (BIA 1974).

<sup>15</sup> Good sources of this information might include: Department of State Country Reports on Human Rights Practices, CIA World Factbook, Human Rights Documentation Exchange, research centers associated with Universities, periodicals, or Non-Governmental Organizations documenting abuses.

_____	_____	Family, Friends, Community, and the Familiar in the United States
_____	_____	Documentation or Information on Her Absence of Connection to Her Home Country
_____	_____	Documentation or Information about Any Adverse Psychological Impact Deportation Will Have Upon Her

**DOCUMENTS TO ESTABLISH HER INABILITY IMMIGRATE TO THE UNITED STATES IN ANOTHER WAY**

Exists	Brought In	
_____	_____	Documentation or Information about Her Immigration History <sup>16</sup>

**DOCUMENTS TO PROVE ADVERSE AFFECT ON HER CHILDREN IF SHE IS DEPORTED TO HER HOME COUNTRY (THE CHILD REMAINS IN THE UNITED STATES)**

Exists	Brought In	
_____	_____	Name and Age of Each of Her Children
_____	_____	Documentation or Information About the Immigration Status of Her Children
_____	_____	Documentation or Information About Each of Her Children's Length of Residence in the United States
_____	_____	Documentation or Information about Whether She Will Be Able to Maintain a Relationship with Her Child if She is Deported
_____	_____	Documentation or Information about the Child's Age and Length of Residence in the United States and Lack of Language Skills in the Language of Her Home Country
_____	_____	Documentation or Information about Trauma, Both Physical and Mental the Child Has Suffered
_____	_____	Documentation or Information about the Trauma the Child Would Suffer if Her/His Mother is Deported to Her Home Country
_____	_____	Custody Order or Documentation of Pending Proceedings (include information about the likelihood the children will be in the sole custody of the abuser or put in foster care)
_____	_____	Documentation or Information of Her Role as the Primary Caretaker
_____	_____	Documentation or Information about the Each of the Children's Health Problems
_____	_____	Documentation or Information about Family Unification as a Goal of Immigration Law

**DOCUMENTS TO PROVE ADVERSE AFFECT ON HER CHILDREN IF THEY ARE DEPORTED OR JOIN HER IN HER HOME COUNTRY**

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<sup>16</sup> If there is another way for her to get remain in the United States, the immigration judge will not find she has established extreme hardship. See Matter of Anderson, 16 I & N 596 (BIA 1978).

_____	_____	Name and Age of Each of Her Children
_____	_____	Documentation or Information About the Immigration Status of Her Children
_____	_____	Documentation or Information About Each of Her Children’s Length of Residence in the United States
_____	_____	Documentation or Information about Her Children’s Ability to Speak the Native Language and Adjust to the Culture of Her Home Country
_____	_____	If the Children Were Born to Different Racial or Ethnic Groups Documentation or Information Explaining How This Would Impact Their Assimilation or Effect Their Treatment in Her Home Country
_____	_____	Documentation or Information About Any Educational Opportunities and/or Irreparable Harm Caused by Disruption in Education
_____	_____	Documentation or Information about Each of Her Children’s Achievements or Participation in Activities
_____	_____	Documentation or Information about the Each of the Children’s Health Problems
_____	_____	Documentation or Information about Unavailability, Inaccessibility, Or Inadequacy of Medical Facilities in Her Home Country to Treat Her Children’s Health Problems
_____	_____	Documentation or Information about Any Adverse Psychological Impact Deportation Will Have Upon Each of Her Children

**VAWA FACTORS OF EXTREME HARDSHIP**

**DOCUMENTS TO PROVE NATURE AND EXTENT OF PHYSICAL AND PSYCHOLOGICAL ABUSE**

Exists	Brought In	
_____	_____	Sworn Declaration Documenting Abuse in Detail <sup>17</sup>
_____	_____	Medical Records (for treatment of both physical injuries and psychological trauma to her or her children)
_____	_____	Hospital Records Documenting abuse (even if she did not tell anyone at the hospital that her partner caused the abuse or even if she denied the injury was a result of domestic violence)
_____	_____	Police Reports or Call Logs (the police may not have filed a report if she did not press charges)
_____	_____	Transcripts from 911 Calls
_____	_____	Photographs of Any Injuries (include her face in each photo or get an overall photo of her body and up close shots of individual injuries)
_____	_____	Torn Clothing or Destroyed Property, or Photographs of These Items

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<sup>17</sup> This is the most important piece of evidence. This evidence must be consistent with all will the evidence presented.

_____	_____	Domestic Violence Shelter Records (if no records exist, affidavits from shelter workers)
_____	_____	Immigration Petitions Filed by the Abuser, but Not Completed
_____	_____	Approved VAWA Self-Petition
_____	_____	Convictions (limited to those that demonstrate the abuser’s propensity towards domestic abuse)
_____	_____	Certified Copies of Protection Orders, or Proof of Pending Protection Orders
_____	_____	Victim Impact Statement Read During Criminal Sentencing
_____	_____	Documentation or Information about the Abuser’s History of Mental Illnesses or Threats of Suicide
_____	_____	Documentation or Information about the Abuser’s History of Substance and Alcohol Abuse
_____	_____	Information about the Abuser’s Access to Weapons
_____	_____	Affidavits of Witnesses to Abuse (anyone who saw or heard the battery or assault, assisted her in fleeing, or even if near the incident evidence of an excited utterance may be admissible)
_____	_____	Affidavits of Family, Friends, Neighbors, Clergy, Community Members Attesting to the Impact of the Abuse on Her or Her Children or Other Family Members
_____	_____	School Records (may document injuries or affect of abuse on her or her children)
_____	_____	Affidavits or Reports from Police, Judges, Medical Personnel, School Officials, or Social Services about the Abuse
_____	_____	Documentation or Information on the Inability of the Victim to Obtain Help (this may include social isolation, language barriers, lack of access to home/transportation/money, evidence police do not respond to DV calls in her home country, her lack of familiarity or misconception about the law, dual arrest policy)
_____	_____	Studies and Reports on the Characteristics of Abusers (including the power/control wheel)

**DOCUMENTS TO PROVE IMPACT OF LOSS OF ACCESS TO THE UNITED STATES COURTS AND CRIMINAL JUSTICE SYSTEM**

This includes but is not limited to the victim’s ability to obtain and enforce orders of protection, participate in criminal investigations, and prosecution of court orders regarding child support, maintenance, child custody, and visitation.

Exists	Brought In	
_____	_____	Copies of Family and Criminal Laws in Her Home Country (laws demonstrating they do not offer adequate protection or



- \_\_\_\_\_      \_\_\_\_\_      orders from the United States are not enforceable)<sup>18</sup>
- \_\_\_\_\_      \_\_\_\_\_      Documentation or Information that Comparable Assistance Available To Her from United States Courts is Not Available in Her Home Country (United States Courts may order maintenance, child Support, counseling for the abuser, right to/use and possession of family home, police assistance, custody with stipulations, or grant protection orders)
- \_\_\_\_\_      \_\_\_\_\_      Pending Proceedings in the United States<sup>19</sup> (both criminal and civil)
- \_\_\_\_\_      \_\_\_\_\_      Immigration Status of Abused (likelihood he will be deported back to her home country)
- \_\_\_\_\_      \_\_\_\_\_      Proof of Necessity to Remain in the United States to Aid in an Ongoing Investigation (affidavits from police and/or prosecution)
- \_\_\_\_\_      \_\_\_\_\_      Proof of Existing, Prior, or Pending Orders Which Would Lose Effect in Her Home Country (may include protection orders, child support, maintenance, or alimony)
- \_\_\_\_\_      \_\_\_\_\_      Documentation or Information about Violence Against Women in Her Home Country (this should include both the country's inaction to protect women from their abusers and the prevalence of violence against women particularly domestic violence)
- \_\_\_\_\_      \_\_\_\_\_      Documentation or Information about Parental Rights in Her Home Country
- \_\_\_\_\_      \_\_\_\_\_      Documentation or Information Children Will Be Unable to Accompany Her to Home Country and Will Be Left in the Care of the Abuser or Foster Care<sup>20</sup>
- \_\_\_\_\_      \_\_\_\_\_      Affidavits from Persons from Her Home Country Attesting to the Lack of Enforcement of Certain Family or Criminal Laws
- \_\_\_\_\_      \_\_\_\_\_      Documentation or Information about the Abuser's Custody or Potential to Gain Custody; Thereby, Depriving Her of Access to Her Children
- \_\_\_\_\_      \_\_\_\_\_      Documentation or Information Demonstrating Her Efforts to Seek Help from the Justice System (if the victim did not seek help or was unsuccessful in seeking help, her own affidavit or an affidavit from another person about her fears of the abuser or unfamiliarity of the law or inability to access the law, etc.)

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<sup>18</sup> You can get certified copies of foreign law from the Library of Congress at (202) 707-5065. Another source for foreign law is findlaw.com.

<sup>19</sup> Experts note child custody disputes are compelling hardship factors. A grant of custody is meaningless if the parent, and not the child, is deported and an abusive parent remaining in the United States would be free to open the custody decision without challenge.

<sup>20</sup> Courts have held the rights of a United States citizen child are not violated when his or her parent is deported, even if the deported parent is the child's primary caretaker. See Martha R. Mahoney, Legal Images of Battered Women, 90 Mich. L. Rev. 1, 39-40 (1991).

**DOCUMENTS TO PROVE EXISTENCE OF LAWS AND SOCIAL PRACTICES OR ATTITUDES IN HER HOME COUNTRY THAT PUNISH HER OR HER CHILDREN BECAUSE THEY ARE SURVIVORS OF DOMESTIC VIOLENCE AND HAVE TAKEN STEPS TO LEAVE AN ABUSIVE HOUSEHOLD**

Exists	Brought In	
_____	_____	Copies of Laws in Her Home Country Which Punish Domestic Violence Survivors or Single Women or Mothers in Her Home Country (this may include laws effectively preventing her from gainful employment, owning property, getting or enforcing a support order, having custody of her children, or remarriage)
_____	_____	Documents or Information of Practices or Customs Which Punish Her or Her Children
_____	_____	Documentation or Information on Cultural Attitudes About Domestic Violence, Marriage, and Families in Her Home Country
_____	_____	Affidavits from Domestic Violence Survivors in Her Home Country Attesting to the Treatment of Survivors

**DOCUMENTS TO PROVE ABUSER’S ABILITY TO TRAVEL TO HER HOME COUNTRY AND INABILITY OR UNWILLINGNESS OF THE AUTHORITIES OF HER COUNTRY TO PROTECT HER OR HER CHILDREN:**

Exists	Brought In	
_____	_____	Documentation or Information about Abuser’s Immigration Status in the United States and Abroad (this should include whether the abuser is also a citizen in her same home country)
_____	_____	Copies of Abuser’s Foreign Travel Documents
_____	_____	Documentation or Information about Abuser’s Application for a Passport or Visa
_____	_____	Abuser’s Financial Information (this information should include abuser’s access to funds for travel)
_____	_____	Documentation or Information about Abuser’s Connections to or Position in Her Home Country (for example if her husband is a diplomat or military leader the system may protect him)
_____	_____	Documentation or Information about Abuser’s Ability to Locate Her or Her Children in Her Home Country (this may include abuser’s ability to speak the native language, existence and level of contact between abuser and residents of her home country, and abuser’s status in her home country)
_____	_____	Documentation or Information about Abuser’s Stalking Behavior or Monitoring of Her or Her Children
_____	_____	Affidavits From Her or Her Family Member’s About the Abuser’s Threats

\_\_\_\_\_                      \_\_\_\_\_                      Documentation or Information about Abuser Traveling to Her Home Country to Continue Perpetrating the Abuse

**DOCUMENTS TO PROVE THE LIKELIHOOD THE ABUSER’S FAMILY, FRIENDS, OR OTHERS ACTING ON HIS BEHALF IN HER HOME COUNTRY WOULD PHYSICALLY OR PSYCHOLOGICALLY HARM HER OR HER CHILDREN**

Exists	Brought In	
_____	_____	Documentation or Information of Social or Cultural Practices <sup>21</sup>
_____	_____	Documentation or Information Abuser Has Family or Friends in Her Home Country and Description of Abuser’s Level of Contact With Each Person (include in particular if the abuser’s family or friends live in the same area as her support network and she is unable to avoid them)
_____	_____	Documentation or Information about Abuser’s Manipulation of Third Parties to Perpetrate his Abuse, Harass, or Monitor Her or Her Children
_____	_____	Affidavits Documenting Threats or Acts of Violence, Harassment, or Monitoring Perpetrated by the Abuser’s Family, Friends or Other Third Party’s Acting on His Behalf

**DOCUMENTS TO PROVE HER AND/OR HER CHILDREN’S NEEDS FOR SOCIAL, MEDICAL, MENTAL HEALTH OR OTHER SUPPORTIVE SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE THAT ARE EITHER UNAVAILABLE, INADEQUATE OR NOT REASONABLY ACCESSIBLE IN HER HOME COUNTRY**

Exists	Brought In	
_____	_____	Documentation or Information of Lack of Unavailability, Inaccessibility, or Inadequacy of Services in Home Country (may include affidavits from service providers, experts, advocates, university professors, or persons residing in her home county who have knowledge of the services)
_____	_____	Documentation or Information about Services Her or Her Child is Currently Utilizing (this should include information about any trust relationships that have developed with service providers)
_____	_____	Documentation or Information of the Existence of Child in the House During the Abuse
_____	_____	Psychological Evaluations of Her or Her Child Who Was Either Abused or Witness to the Abuse (evidence can include affects of abuse, such as behavioral problems, lowered grades, depression, or other health problems, etc.)
_____	_____	Medical Reports (for treatment of both physical injuries and psychological trauma to her or her children)
_____	_____	Hospital Records Documenting abuse (even if she did not tell)

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<sup>21</sup> Good sources for this information are the Department of State Country Reports on Human Rights published annually and the Central Intelligence Agency World Factbook updated every other week online.

anyone at the hospital that her partner caused the abuse or even if she denied the injury was a result of domestic violence)

\_\_\_\_\_

Studies and Reports about Effect of Domestic Violence on Victims and/or Witnesses of Abuse

\_\_\_\_\_

Affidavits about Impact of Domestic Violence on Her or Her Children

## 15. 3 YEARS CONTINUOUS PHYSICAL PRESENCE<sup>22</sup>

The following is a comprehensive list of evidence to establish continuous, physical presence in the United States.

### DOCUMENTS ESTABLISH CONTINUOUS PHYSICAL PRESENCE IN THE UNITED STATES

Exists	Brought In	
_____	_____	Her Own Declaration Attesting to 3 Years Continuous Physical Presence in the United States (include a list of all her residences for the past 3 years)
_____	_____	Copy of All Income Tax Returns Filed Either by Her or Jointly Her Spouse (if tax returns were not filed she will have to file back taxes)
_____	_____	Copies of Lease Agreements, Rental Receipts or Mortgage Payments (if her name is not on any of these documents provide information establishing she resided with her spouse or another person at these times) <sup>23</sup>
_____	_____	Any Mail Addressed to Her at her Residence
_____	_____	Utility Bills in Her Name or Same Address as Her Residence
_____	_____	Employment Records (this may include W-2's, paystubs, or

<sup>22</sup> The battered immigrant victim must establish 3 years continuous, physical presence in the United States as one of the requirements for being granted cancellation of removal. Continuous, physical presence is defined as not leaving the United States for either "more than 90 days at one time," or "more than 180 days total" in the past 3 years. See INA 240A(b)(2)(B), 8 U.S.C. §1229b(b)(2)(B). Brief periods of absence from the United States for less than 90 days, or 180 days total do not interrupt continuous, physical presence. Any absence from the United States, which is "brief, casual, and innocent, not meaningfully interruptive of physical presence," will not stop the accumulation of continuous, physical presence. The term "brief" is not clearly defined as any fixed term, so it would be evaluated based on her individual circumstances. The purpose for the trip would be particularly important. See *Rosenberg v. Fleuti*, 74 U.S. 449 (1963). If a battered immigrant victim must flee the United States in order to flee the abuse, her absence does *not* interrupt her continuous, physical presence in the United States. If the battered immigrant victim is absent from the United States because of the abuse, the clock on accruing continuous, physical presence stops and will resume when she returns to the United States. Even if her absence is over 180 days total, it will not interrupt her continuous, physical presence so long as the absence is connected to the abuse. INA 240A(b)(2)(B), 8 U.S.C. §1229b. "Illegal entry or re-entry does not necessarily render a departure meaningfully interruptive." See *Catholic Social Services v. Meese*, 85 F. Supp. 1149, (E.D. Cal. 1988). If she has entered the United States illegally and fled because of the abuse it will not meaningfully interrupt continuous, physical presence. However, a person who leaves the United States in violation of the law, for example to avoid arrest, is not absent for an innocent reason and this will stop the accumulation of continuous, physical presence. The 3 years continuous, physical presence must be accrued by the beginning of removal proceedings. A battered immigrant may continue to accrue continuous physical presence after she is issued her Notice to Appear up until the day her removal proceedings begin. See INA §240A(b)(2)(A)(ii), 8 U.S.C. §1229b(b)(2)(A)(ii).

<sup>23</sup> Please note she is not required to have co-habitated with the abuser during the 3 years.

- \_\_\_\_\_ affidavits from employers or co-workers)<sup>24</sup>
- \_\_\_\_\_ Copies of Bank Statements
- \_\_\_\_\_ Copies of Credit Card Statements
- \_\_\_\_\_ Insurance Policies
- \_\_\_\_\_ Birth Records of Children Born in the United States
- \_\_\_\_\_ Copy of Driver's License, if Lawfully Obtained
- \_\_\_\_\_ Medical Records (should include her address)
- \_\_\_\_\_ Court Records (including protective, custody, or support orders  
with her address)
- \_\_\_\_\_ School Records
- \_\_\_\_\_ Affidavits from Landlords, Neighbors, Friends, Family, or Shelter  
Workers Who Can Attest to Her Continuous Physical Presence  
in the United States
- \_\_\_\_\_ Immigration and Travel Documents
- \_\_\_\_\_ Documentation or Information about Her or Her Children's Abuse<sup>25</sup>

**15.**

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<sup>24</sup> You must account for any periods of unemployment so there are no gaps in the timeline. For example, if she stayed at home to raise her children indicate this.

<sup>25</sup> This documentation about the abuse is very important if she had to flee the United States for any length of time, which would interrupt her continuous, physical presence in order to protect herself or her children from the abuser.

## Evidence List

### FOR BATTERED IMMIGRANT WOMEN SEEKING PROTECTION ORDERS<sup>26</sup>

***This is a comprehensive list. In most cases, these documents are not mandatory. However, the more documentation available, the easier it will be for a VAWA self-petitioner to be successful in her application.***

This list is designed to provide advocates working with battered immigrants with a tool that will help them work more effectively with immigrant battered women preparing to seek protection orders. It can be used to help women who will be seeking protection orders “pro se” accompanied by an advocate and it can also be used as a tool for advocates helping women who will be represented by attorneys. It is highly recommended that advocates accompany battered immigrant women to the courts when they seek a protection order. Advocates should carefully write down any problems she encounters. By working with this check list advocates can help improve the success battered women will have in obtaining protection orders and ensuring that the protection orders they receive contain all of the remedies that they need. Protection orders that contain more complete remedies and creative remedies needed in specific cases will have a better chance at helping reduce the level of violence the victim has been experiencing and helping deter ongoing violence.

Many battered immigrants can receive protection orders with the assistance of advocates and will not need to be represented by attorneys. However, there are some instances in which it is highly recommended that the advocate help the battered immigrant find an attorney to represent her. Even when an attorney is involved in the case, the advocates will also need to continue helping the battered immigrant or migrant victim. The advocate can help assure that the attorney handles the case in a culturally competent manner. The advocate will also have established a closer trust based on the previous relationship with the battered woman and may be able to help with interpretation issues. The following are examples of when it is advisable that a battered immigrant have the assistance of an advocate and an attorney when she seeks a protection order:

- When the abuser arrives in court at the protection order hearing with an attorney. The advocate should help the battered immigrant ask for a brief continuance to locate an attorney who can assist her.
- When there have been threats of parental kidnapping.
- When the battered immigrant has been arrested along with her abuser in a dual arrest.
- When the abuser of a battered immigrant seeks a protection order against an immigrant victim.
- When the battered immigrant reports that it is likely that the abuser will fight her for custody of the children.
- When the abuser attempts to raise the immigration status of the victim as a factor in the protection order or custody case.

In using this list advocates should use the left column to check off when they have requested that the immigrant victim bring them a particular piece of evidence and the right column to check off that they have received the documentation. Some of the listed documentation the battered immigrant woman will be able to

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<sup>26</sup> This document has been updated and adapted from one developed jointly by Legal Momentum, Organization en California de Lideres Campesinas, and the Iowa Coalition Against Domestic Violence that was included in Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants (Legal Momentum, Washington, D.C. 2004) and Legal Momentum and Organizacion en California de Lideres Campesinas, “Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual” (Legal Momentum, Washington, D.C. 2002).

obtain herself. There will be other items that the advocate will need to assist her in obtaining. It is very important that the advocate do safety planning with the immigrant victim to assess the safety issues involved with the victim attempting to obtain any of the items listed below on her own.

Finally, in order to prepare to obtain a protection order, the advocate should help the battered immigrant document the complete history of abuse in the relationship. It is best if this includes all incidents of physical and sexual abuse, threats, harassment and emotional abuse. It would also be useful for the purpose of helping the immigrant victim determine what remedies she will need to document the history of power and control in the relationship. Collecting this information from the victim will help her prepare for her protection order case and will also help her prepare for an immigration case she may have based on domestic violence.

The advocates should help the victim write up a chronology of the abuse in the relationship. You can use this chronology to help the victim prepare her petition for a protection order. For the protection order case the victim should list in her petition the date and place of each violent incident and each threat. She should include a description of the actual violent or threatening events that took place on that day and should not include in her petition other details about the event except the violence itself, except to mention whether the children witnessed the abuse and how it affected them and to note if the police arrived and whether she or the children needed medical attention. This is very different from an immigration case in which you will need to include the whole story of what happened including what they may have been fighting about and other details.

Many victims will recall more and more incidents as time goes on and as they develop a better relationship with the advocate. For this reason it is very important that at the end of the protection order petition the battered immigrant include a statement such as: "In addition to the specific incidents discussed above, the violence began in 1998 and has continued on at least a monthly basis since that time including, at least monthly incidents in which I was pushed, hit and scratched by the respondent." This will provide the court an overview of the level and frequency violence in the relationship and will help ensure that if she remembers another important incident that she does not include in her initial petition she can testify about it in court.

The following is a list of documents that will help the battered immigrant prove that she is entitled to receive a protection order with the remedies that she needs. These will be in addition to, not instead of, the history of abuse listed in her petition and her testimony about the abuse at the protection order hearing.

## **DOCUMENTS TO PROVE ABUSE**

Exists	Brought In	
_____	_____	Police reports
_____	_____	Transcript from 911 calls
_____	_____	Medical records
_____	_____	Hospital records documenting the abuse (even if she did not tell anyone at the hospital that her partner caused the abuse and even if she denied that the cause was domestic violence)
_____	_____	Photographs of any injuries
_____	_____	Torn clothing or destroyed property or photographs of these
_____	_____	A diary
_____	_____	Names of shelters where you have stayed
_____	_____	Names, addresses and telephone numbers of doctors, nurses, counselors, mental health professionals and social workers whom you or your children have spoken with or received treatment from in relation to the domestic violence.

_____	_____	Names, addresses and telephone numbers of people who: saw your bruises, heard you scream, witnessed any incident of the abuse, you told about the abuse, witnessed your abuser's threats against you, your children or your family members or you have stayed with for refuge.
_____	_____	Names, addresses and telephone numbers of police officers, prosecutors, judges or other government officials who know about the domestic violence you experienced.
_____	_____	Information about the abuser's access to weapons.
_____	_____	Documentation or information about your abuser's history of mental illness, threats of suicide or criminal record

## **TO OBTAIN CUSTODY OF YOUR CHILDREN AND PROVE THE EFFECT THAT THE ABUSE HAS HAD ON YOUR CHILDREN**

Exists	Brought In	
_____	_____	Names, addresses and telephone numbers of people who can describe the effect that the abuse has had on you and your children.
_____	_____	Medical records documenting injuries to or affects of the abuse on your children
_____	_____	Hospital records documenting abuse of your children
_____	_____	Your children's medical and dental records including comments about who has been responsible for the children's medical care.
_____	_____	Your children's school records
_____	_____	Your children's passports and your children's immigration papers, if any.
_____	_____	Names, addresses and telephone numbers of teachers and counselors at your children's school who can describe how the children's school performance may have been affected by the domestic violence
_____	_____	Names, addresses and telephone numbers of doctors, nurses, counselors, mental health professionals, clergy and social workers whom you or your children have spoken with or received treatment from in relation to the domestic violence against your children or the effect that the domestic violence against you has had on the children.
_____	_____	Names, addresses and telephone numbers of persons who can who can describe your role as primary caretaker of your children and who can describe what, if any role, your abuser has played in the children's lives, including how he treats the children when they are in his care.
_____	_____	Information about the abuser's drug and alcohol use.
_____	_____	Names, addresses and telephone numbers of persons who would be willing to help supervise visitation or assist with pick up and drop off of the children so that there can be visitation without contact between you and your abuser.
_____	_____	The children's birth certificates
_____	_____	Court documents or other documents in which the father of the children acknowledges paternity



## TO HAVE THE ABUSER REMOVED FROM THE FAMILY HOME

Exists	Brought In	
_____	_____	A copy of the lease or mortgage (the abuser can be removed even if the house is in his name)
_____	_____	Documentation of the cost of the rent, mortgage, and utilities for the home (so that the abuser can be ordered to pay a portion of these costs or so that the victim can plan how she will make these payments without him, e.g. finding someone to move in with her and share some of these expenses).
_____	_____	An answer to the question if asked by the judge where the abuser will go.
_____	_____	A safety plan helping the victim determine whether it is safer for her to remain in the home removing the abuser with a protection order or whether she and the children need to move to an undisclosed location.

## TO OBTAIN A STAY AWAY ORDER

Exists	Brought In	
_____	_____	A list of places that the abuser is already familiar with that you or your children go to that the abuser should be ordered to stay away from (including your home, the homes of your family and friends, your place of employment, your children's schools, your day care provider, your church, your hairdresser)
_____	_____	A list of problems that you anticipate your abuser may state to the court when asked to stay away from these places

## TO BE GRANTED CONTROL OR USE OF PERSONAL AND JOINT PROPERTY

### For victims remaining in the home:

Exists	Brought In	
_____	_____	A list of personal items of the abuser that he can take from the home

### For victims who will be leaving the home:

Exists	Brought In	
_____	_____	A complete list of items that she wants the court to allow her to take from the home including her clothing, family photographs, items of importance to her from her home country, medical records, documentation of abuse,

of the marriage, and any documents that she may need for her immigration case. (See immigration case check lists)

\_\_\_\_\_

A complete list of items belonging to the children including clothing, toys, school and medical records that she wants the court to allow her to take from the home.

\_\_\_\_\_

A list of important items that she will need to pursue her employment or care for the children.

**For all victims whether or not they stay in the home or leave**

Exists      Brought In

\_\_\_\_\_

\_\_\_\_\_

A copy of the title to any jointly owned car

\_\_\_\_\_

\_\_\_\_\_

Documentation from her employer that she needs the car to work

\_\_\_\_\_

\_\_\_\_\_

A list describing any weapons that the abuser may have including their location to the best of her knowledge

\_\_\_\_\_

\_\_\_\_\_

Documentation of ownership of her property or jointly owned property that the parties might have ongoing disputes over

\_\_\_\_\_

\_\_\_\_\_

A list of property items that she is concerned will lead to ongoing disputes or contact with the abuser if the court does not decide who shall have use and control over the property.

\_\_\_\_\_

\_\_\_\_\_

Copies of statements from joint bank accounts and credit cards that the abuser would need to be ordered not to take or convert to his sole property

\_\_\_\_\_

\_\_\_\_\_

A list of property items that she is concerned that the abuser will sell, damage or destroy.

**TO OBTAIN MONETARY RELIEF AS PART OF THE PROTECTION ORDER INCLUDING CHILD SUPPORT**

Exists      Brought In

\_\_\_\_\_

\_\_\_\_\_

Your husband's or the father of your child's social security number

\_\_\_\_\_

\_\_\_\_\_

Your husband's or the father of your child's "A" number from his immigration case

\_\_\_\_\_

\_\_\_\_\_

A copy of your husband's or the father of your child's most recent pay stub from his employer

\_\_\_\_\_

\_\_\_\_\_

The name, address, phone and fax number of your husband/father of your child's employer

\_\_\_\_\_

\_\_\_\_\_

A copy of your husband/father of your child's tax returns for the past three years

\_\_\_\_\_

\_\_\_\_\_

Information about how long your husband/father of your child has worked for his current employer and past employers

\_\_\_\_\_

\_\_\_\_\_

Proof of who is your child's father (child's birth certificate,

- \_\_\_\_\_      \_\_\_\_\_      acknowledgement of paternity or other proof)
- \_\_\_\_\_      \_\_\_\_\_      Copies of records proving what assets (bank accounts, stocks, bonds, property), if any, your husband/father of your children owns
- \_\_\_\_\_      \_\_\_\_\_      Copies of documentation proving that your husband/father of your children has placed you and/or your children on his health insurance policy
- \_\_\_\_\_      \_\_\_\_\_      Documentation of your monthly expenses to support you and your children (you can use your local court's financial statement form to collect this information)
- \_\_\_\_\_      \_\_\_\_\_      Copies of medical, dental, counseling bills for you or your children related to the domestic violence
- \_\_\_\_\_      \_\_\_\_\_      Copies of bills for changing your locks at your home and repairing damages to your house, car or other property caused by your abuser. This may include costs of replacing items that were destroyed by your abuser.
- \_\_\_\_\_      \_\_\_\_\_      A list of any costs you might have to spend to replace identification cards, immigration documentation, passports or other documentation belonging to yourself or your children that your husband/partner may have destroyed, hidden, or refused to turn over
- \_\_\_\_\_      \_\_\_\_\_      Documentation of costs you will incur in INS fees and other charges you will have to pay for you and your children to obtain legal immigration status through an immigration benefit you and/or you children qualify to receive.

## Evidence List

### FOR BATTERED IMMIGRANT WOMEN SEEKING PUBLIC BENEFITS<sup>27</sup>

***This is a comprehensive list. In most cases, these documents are not mandatory. However, the more documentation available, the easier it will be for a VAWA self-petitioner to be successful in her application.***

This list is designed to provide advocates working with battered immigrants with a tool that will help them work more effectively with battered immigrants preparing to apply for public benefits such as TANF, Food Stamps, Medicaid, and SSI. This checklist should be utilized as a guide to determine whether a battered immigrant is eligible to receive cash benefits. This checklist is not an exhausted list of documentation needed to prove eligibility requirements. Advocates are strongly encouraged to accompany their clients to the benefits agency to insure their clients are not denied these benefits by caseworkers who do not fully understand the process and eligibility requirements involved. Advocates should not be deterred from applying for a benefit if the applicant meets the requirements set forth below. It is important to apply for the benefit, receive a determination, and if the determination is unfavorable, appeal the decision. By working with this checklist, advocates can help improve the success battered women will have in obtaining public benefits.

#### 1. IMMIGRATION DOCUMENTS PROVING QUALIFIED IMMIGRANT STATUS

Documented and undocumented battered immigrants are "qualified immigrants" if they prove the following:

Exists	Brought In	
_____	_____	VAWA Prima Facie Determination – i.e. Receipt Notice evidencing the filing of a VAWA Self-petition; OR
_____	_____	Approved VAWA self-petition; OR
_____	_____	Approved family-based petition; OR
_____	_____	Documents proving the battered immigrant has been granted cancellation of removal by an immigration judge (the deportation process has been stopped and the woman has been given a green card).

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<sup>27</sup> This document has been updated and adapted from one developed jointly by Legal Momentum, Organization en California de Lideres Campesinas, and the Iowa Coalition Against Domestic Violence that was included in Breaking Barriers: A Complete Guide to Legal Rights and Resources for Battered Immigrants (Legal Momentum, Washington, D.C. 2004) and Legal Momentum and Organizacion en California de Lideres Campesinas, "Advocacy To Improve Service For Battered Migrant and Immigrant Women Living In Rural Communities: A Manual" (Legal Momentum, Washington, D.C. 2002).

**2. DOCUMENTS PROVING ENTRY INTO THE UNITED STATES PRIOR TO AUGUST 22, 1996**

Exists	Brought In	
_____	_____	Asylum application filed prior to 8/22/96; OR
_____	_____	Notice to Appear evidencing date of entry prior to 8/22/1996; OR
_____	_____	Order to Show Cause evidencing date of entry prior to 8/22/1996; OR
_____	_____	I-94 card with entry stamp prior to 8/22/1996; OR
_____	_____	Passport evidencing entry stamp prior to 8/22/1996; OR
_____	_____	Approved work authorization (approved prior to 8/22/96); OR
_____	_____	Documentation proving physical presence (copy of lease of new home, utility bills, letter from battered women's shelter, monthly bank statement, etc., demonstrating continuous physical presence in the United States from 8/22/1996 to the present).

**3. DOCUMENTS TO PROVE ABUSE**

The immigrant or the immigrant's child has been abused by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse's or parent's family member living in the same household.

Exists	Brought In	
_____	_____	Protective Order
_____	_____	Police reports
_____	_____	Transcript from 911 calls
_____	_____	Medical records
_____	_____	Hospital records documenting the abuse (even if she did not tell anyone at the hospital that her partner caused the abuse and even if she denied that the cause was domestic violence)
_____	_____	Photographs of any injuries
_____	_____	Torn clothing or destroyed property or photographs of these
_____	_____	Affidavit from shelter workers
_____	_____	Affidavit from doctors, nurses, counselors, mental health professionals or social workers whom you or your children have spoken with or received treatment from in relations to the domestic violence.
_____	_____	Affidavit from neighbors, friends, or family who witnessed the abuse: witnessed any incident of the abuse, saw your bruises, heard you scream, witnessed your abuser's threats against you, your children or your family members.

#### 4. EVIDENCE THAT VICTIM IS NO LONGER RESIDING WITH THE ABUSER

The battered immigrant or child must no longer live with the abuser. (Note that the benefits agency may decide that the battered immigrant is ineligible for benefits *if she is still living with the abuser.*)

Exists	Brought In	
_____	_____	Copy of lease agreement of new home
_____	_____	Letter from battered women's shelter, friend, family member evidencing place of residence.
_____	_____	Utility bills (i.e. Electric, Gas bills) evidencing new address
_____	_____	Monthly bank statement evidencing new address

#### 5. EVIDENCE OF SUBSTANTIAL CONNECTION BETWEEN ABUSE AND NEED FOR PUBLIC BENEFITS

The battered immigrant or child must prove there is a "substantial connection" between the abuse and the need for the public benefit. To establish this connection, the applicant will need to assert that she has been a victim of abuse and that she is in need of public benefits in order:

- To help the victim of abuse be able to support herself economically without help from the abuser and/or the abuser's community.
- To ensure the safety of the woman and her children.
- To make up for the loss of financial support due to the separation.
- To make up for the loss of a job or income because of the abuse or because of time spent in domestic violence legal proceedings.
- To make up for the loss of a place to live as a result of the abuse.
- To help the victim take care of the children when fear of the abuser interferes with child care.
- To meet nutritional needs resulting from the abuse or separation.
- To provide for medical care during a pregnancy that resulted from the abuse.
- To replace medical coverage or health care services that were lost because of the separation from the abuser.

## 6. EXEMPTION FROM DEEMING REQUIREMENTS

In order for any person to qualify to receive public benefits, the state benefits granting agency must determine whether the applicant is "income eligible" to receive the benefit. If a person obtained lawful permanent resident status through a family member, an affidavit of support is required. This affidavit states that the sponsor is willing to be financially responsible for that immigrant. Therefore when seeking public benefits, the benefits granting agency assumes, for the purposes of determining income eligibility, that the immigrant has full access to the income and assets of her sponsor. The following groups of battered immigrants are exempt for 12 months from meeting the deeming requirements:

Exists	Brought In	
_____	_____	VAWA self-petitioners (with prima facie determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
_____	_____	VAWA cancellation of removal or suspension of deportation applicants (with prima facie determinations, approved self-petitions, or those who have received lawful permanent residency under VAWA);
_____	_____	Battered immigrants with approved I-130 petitions filed for them by their spouses or parents;
_____	_____	Children whose battered immigrant parent qualifies for benefits due to VAWA or an approved family-based visa petition;
_____	_____	Lawful permanent residents and any dependent children who obtained their status through a family-based visa petition and were battered before and/or after obtaining lawful permanent residency;
		and
_____	_____	Certain indigent immigrants who the benefits provider determines to be unable to obtain food and shelter in the absence of assistance.

## Evidence List

### FOR BATTERED IMMIGRANT WOMEN SEEKING SOCIAL SECURITY NUMBERS

This list is designed to provide advocates working with battered immigrants with a tool that will help them work more effectively in obtaining social security numbers. Battered immigrants who receive a prime facie determination may be eligible to receive cash assistance. Many federal and state benefits agencies require a social security number in order to issue the cash benefit. Therefore, battered immigrants who do not have an INS issued work authorization will need to apply for a non-work social security number. Advocates are strongly encouraged to accompany their clients to the Social Security Administration to ensure that their clients are not denied non-work SSNs by caseworkers who do not fully understand the process and eligibility requirements involved in issuing non-working SSNs.

#### I. NON-WORKING SOCIAL SECURITY NUMBER

To obtain a non-work social security number, the applicant must be able to prove the following:

##### A. DOCUMENTS TO PROVE AGE

Exists	Brought In	
_____	_____	Birth certificate
_____	_____	Religious record showing age or date of birth
_____	_____	Hospital records of birth
_____	_____	Passport

##### B. TO PROVE IDENTITY

Exists	Brought In	
_____	_____	Driver's license
_____	_____	Identity card
_____	_____	School record
_____	_____	Medical record
_____	_____	Marriage records
_____	_____	Passport
_____	_____	Immigration and Naturalization Service document

##### C. PROOF OF LEGAL REQUIREMENT

_____	_____	Letter from benefits agency stating client is eligible to receive the benefits but is required to obtain a non-work social security number in order to receive these benefits.
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## 2. WORK AUTHORIZED SOCIAL SECURITY NUMBER

To receive a work eligible social security number the immigrant must show that she has been authorized to work in the United States by the Immigration and Naturalization service. If the client does not have proof of work authorized immigration status, she may be eligible for a non-work social security number. The applicant must prove the following to receive a social security number:

### A. DOCUMENTS TO PROVE AGE

Exists	Brought In	
_____	_____	Birth certificate
_____	_____	Religious record showing age or date of birth
_____	_____	Hospital records or birth
_____	_____	Passport

### B. DOCUMENTS TO PROVE IDENTITY

Exists	Brought In	
_____	_____	Driver's license
_____	_____	Identity card
_____	_____	School record
_____	_____	Medical record
_____	_____	Marriage records
_____	_____	Passport
_____	_____	Immigration and Naturalization Service document

### C. DOCUMENTS PROVING WORK AUTHORIZED IMMIGRATION STATUS

Exists	Brought In	
_____	_____	Proof of lawful permanent resident or conditional resident status
_____	_____	Evidence that client was granted refugee status
_____	_____	Evidence that client was granted asylum status
_____	_____	Copy of valid INS work authorization card
_____	_____	Copy of non-immigrants visa which authorizes client to work
_____	_____	Evidence that client was granted temporary protective status
_____	_____	Non immigrant student seeking on campus employment, part time off campus employment or curricular practical training

### 3. OBTAINING A SOCIAL SECURITY NUMBER FOR A CHILD

If a child is a United States Citizen, the Social Security Administration must issue a social security number to that child regardless of whether the parents are documented immigrants. The applicant must be able to prove the following:

#### A. PROOF OF U.S. CITIZENSHIP STATUS

Exists	Brought In	
_____	_____	Birth certificate
_____	_____	Hospital records of birth
_____	_____	Passport

#### B. PROOF OF IDENTITY (FOR CHILDREN OVER AGE 7)

Exists	Brought In	
_____	_____	Driver's license
_____	_____	Identity card
_____	_____	School record
_____	_____	Medical record
_____	_____	Passport
_____	_____	Immigration and Naturalization Service document
_____	_____	Other similar document serving to identify the individual

## **Chapter Four:**

# **ADVOCACY TO IMPROVE SERVICES TO MIGRANT AND IMMIGRANT BATTERED WOMEN LIVING IN RURAL COMMUNITIES**

This section of the manual will provide outlines for grassroots strategies that can be used by advocates working in local rural communities to initiate campaigns to address problems in the legal and social services systems that bar migrant and immigrant victims of domestic violence from access to critical lifesaving services that are, as a matter of law, to be available to help all domestic violence victims. The two problems this chapter will address are:

1. Problems with the police response to calls from migrant and immigrant domestic violence victims.
2. Problems undocumented immigrant victims have accessing shelters and other domestic violence services.

Generally the approach to advocacy to address each of these and other problems migrant and immigrant victims may encounter when seeking help from the formal legal, social services and health care systems is a four step approach. First, advocates will need to assess and document the problem. Second, advocates should identify others in the community who can work as allies with migrant and immigrant women's advocates in seeking the systemic reforms needed. This should include both other professionals in the community and where possible allies within the problem agency who wish to help officially or unofficially in remedying the problem. Third, advocates and allies should request a meeting and participate in a series of meetings with representatives from the problem agency to craft and implement a plan that will help solve the problem that has been identified. Fourth, advocates should monitor ongoing implementation efforts and document both improvements and ongoing problems. This may require advocates and other professionals offering assistance to immigrant and migrant victims seeking services from agencies and documenting victims' experiences so that continuing problems and future problems can be remedied.

A similar approach to that discussed in this chapter can be used to address a variety of problems faced by immigrant victims seeking help from the justice, health care or social services systems. Although this chapter will focus on only two examples of advocacy, similar strategies could be developed to address additional problems that may include:

- ❑ Lack of interpreter services in the courts, police or social services program;
- ❑ Judges who turn immigrant victims away when they seek protection orders;
- ❑ Court officials who are unwilling to help immigrant victims or explain the process by which the courts can offer them protection;
- ❑ Immigrant victims who are turned away from public benefits when they and/or their children legally qualify for benefits; or

- Improving cultural understanding and sensitivity to the needs of immigrant victims and the legal rights of both documented and undocumented immigrant and migrant victims by professionals who should be helping battered immigrants and migrants.

Ideally, this process will lead to development of a collaboration and building of trust relationships between professionals working for the police, shelters and the courts. Advocates for immigrant and migrant victims should seek to become actively involved in coordinated community responses to domestic violence that exist or may be developed. Advocates should participate in these coalitions as representatives of the immigrant and migrant communities in which they live and work and serve a critical function of ensuring that the work of these teams will offer effective assistance to all battered women including those who are migrants, immigrants and non-English speakers. Where such coordinated community responses do not yet exist, advocates should be aware that the work they will do to improve services for immigrant victims could serve as a basis for the development of a coordinated community response team that could assist all battered women in the community.

## **1. POLICE RESPONSE**

One of the primary problems that migrant and immigrant victims of domestic violence experience in many rural communities is lack of police response or appropriate police response to calls for help from domestic violence victims. Problems range from the police never responding at all, never arriving at the home from which the victim called for help, to police arriving but speaking only to the abuser and never speaking to the victim. Many programs working with immigrant domestic violence victims have had significant success in working with their local police departments to improve police response to immigrant victims of domestic violence. Additionally, recent changes in immigration laws have significantly improved options of attaining legal immigration status for immigrant victims of domestic violence and sexual assault, particularly those who report domestic violence or other crimes to police and who are willing to cooperate in the prosecution of their abusers or perpetrators. Thus, there are new opportunities through outreach to and education of police to gain improved assistance in cases of immigrant victims.

### **Assessing the Problem:**

Document the problems that migrant and immigrant women in the community have when they seek help from the police by undertaking the following activities:

- Interviewing women who have had problems and writing down their stories. For each call to the police for help or for each time she went to the police station in which she had a problem, write them down. In writing their stories it is important to obtain the following information:
  - Time, date and location from which the call was made;
  - Why the police were called and by whom;
  - Describe exactly what happened the day the police were called including a summary of the history of violence, physical, sexual and emotional abuse in the relationship;

- Any visible physical injuries or impairment of movement from internal injuries on the victim or the children;
  - Were the children harmed or did they witness or hear any of the abuse. It is important to describe how they were affected;
  - Whether the abuser had any visible physical injuries. If so where and a description of whether and how he sustained these (the battered woman trying to defend herself or he sustained the injury because of how he was hitting her);
  - Visible evidence of violence at the home (destroyed property, torn clothing, turned over furniture, children very upset);
  - The names of any witnesses to the incident including children, family members, friends, neighbors;
  - Name and badge number, if she has it of the officer who responded to the call if any officer came;
  - Whether the police responded to the call and how long it took for them to arrive;
  - The effect that any delay in arriving or that the police did not arrive had on the migrant or immigrant woman and her children (did the violence increase, were there additional injuries caused after the call, did the children become more upset or did the violence shift to the children);
  - What did the police do when they arrived at the place of the call?
  - With whom did they speak? In what language? How did they communicate with a non-English speaking victim? How did they communicate with the abuser?
  - How did the response of the police in this case affect the victim? Did she feel more endangered? Would the response she received from the police lead her to be willing to call the police again if she or her children are abused in the future? If not, why not?
  - What response would she have preferred? What was she expecting when she called and what response would have been better in her opinion?
  - If there was physical evidence of the abuse at the scene of the crime, was the abuser arrested?
  - What additional information did the police provide her abuser in terms of legal rights, protection orders, shelter, domestic violence or hospital services available to her?
- Organizing the stories to prepare for advocacy. If you have been able to gather several stories from women in your community, you should arrange them into a booklet by type of problem. This booklet can be used to help you both gather support from allied organizations and to present to the police so that they can better understand exactly what happened, the affect on the victim and identify how the problem can be corrected.
- Collecting data from migrant and immigrant women in the community to document how wide spread the problems are. Documentation can be gathered in a variety of ways. Advocates could interview group members. They could survey women in the community who attend a particular health clinic; who send their children to a particular school or attend particular community events where a booth providing information and conducting the survey could be set up. Gathering data through surveys will collect less information in each case than can be collected through stories.

- Generally gathering data through a survey should not be used instead of writing up personal stories of women. Data can help demonstrate how big the problem is (one officer or department wide). However, the stories will be the most effective tool in getting police and other professionals to want to work with you to solve the problem because the stories can demonstrate the harm that is being caused to the women and children in your community and how changes in policies and practices can improve victim safety. Data could be collected on:<sup>28</sup>
  - Number of calls made to the police
  - Response time or lack of response
  - How often the police communicated with the victim when they arrived
  - How often the police spoke Spanish
  - Whom the police used as interpreters
  - Evidence of abuse at the home that the police could see
  - What was the police response
  - Was the abuser arrested
  
- Combining stories and data can sometimes be the most effective approach. For example if women in the community identify three problems with the police response (the police do not come, they come and only speak to the abuser in English, and they come see evidence but do not arrest the abuser), then you could collect data documenting how often these problems are occurring and gather one or two good stories to illustrate each problem.

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<sup>28</sup> Sample interview questions on police response to calls for help from immigrant battered women are available from the Immigrant Women Program of Legal Momentum. (202) 326-0040.

## **Identifying and Building Relationships With Allies:**

Once advocates for migrant and immigrant women have documented the problem they want to work to resolve, the next step is determining whether there are others in the community who are willing to help you advocate for changes with the police. Building alliances with others in the community has many benefits. It provides advocates an important opportunity to educate professionals who come in contact with immigrant victims about the special needs and special legal rights of migrant and immigrant victims of domestic violence. Often allied professionals are not fully educated about application of our laws to help immigrant victims, and do not offer the full range of assistance they could to immigrant victims because of misunderstandings about the law, immigrant culture or because of language barriers. Involving other professionals in the community in your advocacy efforts will also increase the effectiveness of any strategy you undertake because other professionals who work with battered immigrants will be invested in assuring effective policy reforms. Finally, contacting allied groups working on domestic violence issues in your community can provide an opportunity for advocates to become involved in representing migrant and immigrant community issues and perspectives on coordinated community response teams operating in the advocate's community. To identify potential allies advocates should:

- ❑ Identify, contact and ask to meet with domestic violence organizations working in your community and your state domestic violence coalition. To find programs working in your area call the domestic violence and/or sexual assault coalitions working in your state who can provide you with organizations that should be serving domestic violence or sexual assault victims in your community.
- ❑ Explore with battered women's advocates working in your area whether the police treatment migrant women are receiving in the community is the same or different from the problems all battered women encounter. You will want to learn about efforts, if any, they have undertaken to improve police response in domestic violence cases. If they have already been working on this issue they should be able to help you identify allies both within and outside of the police department with whom you should consult about strategy.
- ❑ Identify other professionals who encounter battered women and migrant and immigrant women who could join your efforts to meet with the police. These persons might include health professionals, counselors, therapists, teachers, clergy, social workers, prosecutors, judges, lawyers or others.
- ❑ Work with battered women's advocates and other professionals to determine whether there are individual officers in your community who care about and are good on domestic violence cases or in their interaction with the migrant or immigrant community, who can help you formally or informally develop the best strategy for approaching the police department seeking reforms.
- ❑ These officers may be able to provide you information about whom they believe will be the best person to approach and what information that person will need for the initial meeting to be most successful. Some friendly officers may be willing to meet with you and your allies to develop a strategy. However, many more may be more willing to provide you with the information you need off the record and work from the inside on your behalf without having

any formal meetings or official relationship. Domestic violence advocates should be able to help you identify some of these people and provide you advice on how best to work with them. It is very important that if an officer provides you information off-the-record, that their trust be protected or you may undermine the ability of that friendly officer to be helpful in the future on other battered women's issues.

- ❑ Once you have identified allies, set up a meeting with them to discuss strategy on approaching the police about the problems you have identified. Distribute the stories and data you have collected to all persons who will be attending in advance of the meeting. At this meeting as the strategy is developed, advocates for immigrant and migrant women may need to ensure that they maintain a key leadership role in the group. While allied groups may have more experience working with the police and other justice system officials, immigrant and migrant women's advocates bring with them the key community and cultural competency expertise and must play a leadership role in the advocacy strategies although they can share leadership of meetings and strategy sessions equally with other allies.

## **Developing Solutions:**

Once allies have been identified, the next step is to set up a meeting to begin the process of working with the police to develop workable solutions to the problem. To accomplish this, advocates should:

- ❑ Join together with allies to request a meeting with the police chief, sheriff or the person who has been identified as the best person to approach about the problem that has been identified.
- ❑ The request for the meeting should be in writing and should include the stories you have collected as an attachment. It is very important that the tone of the letter not be adversarial. It should state that you wish a meeting to discuss particular problems with police response to domestic violence calls placed by immigrant and migrant women and that you seek their advice and help about how to address the problem. The letter should clearly state that the advocates and allies requesting the meeting want to work together with the police to craft a solution that will work well for both victims and the police.
- ❑ At the meeting that should lead to a series of meetings with the police that should be attended by advocates for immigrant and migrant women and collaborating allied professionals you should:
  - Outline the problem for the police, emphasizing the human impact on women and children of the problem;
  - Work with police and allies to try to identify what may be the source or sources of each problem. This could include:
    - No interpreters available and no plans for how police should secure assistance of appropriate interpreters;
    - Need for police officer training aimed as dispelling myths about battered immigrants' right to assistance from the legal system;



- Lack of information and training that police are there to help all victims without regard to the victim's immigration status and on undocumented battered immigrants rights;
  - Need for training on VAWA and U visas;
  - Need for training generally on domestic violence issues;
  - Particular officer indifference to the needs of battered, migrant or immigrant women and children.
- ❑ Discuss with police officials the goals of the immigration relief open to immigrant victims and how problem policies undermine victim's ability to obtain immigration relief created by Congress for immigrant victims under the Violence Against Women Act.
  - ❑ Discuss how police, advocates and allies can work together to craft and implement solutions to the identified problems. Potential solutions may include:
    - Working with the police to identify a pool of trained interpreters who can be paid to assist police on domestic violence calls and investigations.
    - Conducting a domestic violence training for police on domestic violence and battered immigrants' legal rights in criminal, family law, benefits and immigration matters.
    - Offering to provide police with access to experts on Violence Against Women Act immigration cases including the new crime victims visas (U-visas). These experts who may be in other parts of the state or country can provide information on laws, strategies and immigrant women's rights on an as needed basis to police.<sup>29</sup>
    - Asking that a liaison officer be designated to work with migrant and immigrant women's advocates as policies designed to implement changes are put in place in the community.
    - Having Spanish-speaking officers with special training on domestic violence and immigrant victims assigned to respond to domestic violence calls.

## **Monitoring Change:**

Once advocates and allies have met with the police and developed a plan to reform police practices to be more responsive to the needs of immigrant victims, advocates will need to develop an approach to monitoring implementation of the plan to ensure that the needed improvements take place. Advocates should:

- ❑ Meet on a monthly basis with a member of the police force who has been designated to work with advocates on the plan, so that police and advocates can update each other on successes and problems in implementing the plan. This will provide an opportunity for police to seek the advice of advocates on how they might best address unanticipated problems that arise from the police perspective with the plan. It will also provide advocates with a forum to update police on ongoing problems.
- ❑ Develop together with the police a commendation/complaint form. This bilingual form in English and Spanish can be used by migrant and immigrant women in the community to inform

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<sup>29</sup> See contact information on experts who offer this service in the first chapter of this manual.

police officials about how officers handle domestic violence calls. The form should ask victims who called for help to tell the police about cases in which they felt that the police response was very good as well as inform police of ongoing problems. In many communities, commendations that draw the attention of supervisors to officers, giving them recognition for a job well done, are the most effective tools in reforming the response of all officers. The forms should also be used to identify for police ongoing violations of new policies to those department officials who can take steps to correct these problems and be made aware of problems with individual officers. This will help superior officers identify when additional training may be needed.

- Advocates should continue to collect stories that document immigrant women’s experiences with the police as part of advocates’ work in monitoring police implementation of the policy reforms agreed to by the police. Collecting stories and documenting them are essential to assessing how the policy reforms have helped immigrant and migrant victims of domestic violence. These success stories can be used to encourage ongoing cooperation between advocates and the police. It is also important to document ongoing problems that migrant and immigrant women experience with the police so that implementation problems can be addressed. In collecting stories on successful police interventions and implementation problems advocates should seek answers to many of the same questions described above in the section on “Assessing the Problem.”

## **2. ACCESS TO SHELTER AND DOMESTIC VIOLENCE SERVICES**

A second important problem that immigrant and migrant women encounter in both rural and urban communities is the inability to access services that offer protection to all battered women include domestic violence shelters and other services offered by domestic violence organizations. It is important for advocates for battered women, migrants and immigrants to know that immigrants who are victims of domestic violence, child abuse, sexual assault and other violent crimes must be able to access victim services in the same manner as all other crime victims. As a matter of federal law battered immigrants cannot be legally turned away from shelters or other domestic violence services based on their immigration status, lack of legal immigration status or their inability to speak English. Programs that discriminate against immigrant or migrant victims could lose their government funding. In many instances advocates seeking to stop domestic violence programs from turning away immigrant victims have been successful in changing these practices by educating shelter advocates, staff and boards about immigrant victims, including undocumented immigrant victims legal rights to access shelters and domestic violence services

Advocates should undertake strategies similar to those discussed in detail above for advocacy with the police to secure reforms in domestic violence service programs that will ensure that battered migrant and immigrant women can access shelters and domestic violence services. The advocacy strategy below provides an outline for advocates of how they can secure better access for immigrant victims to domestic violence services. This outline will not be provided in as much detail as the outline for police advocacy above. Since the four-part strategy is similar the following outline will highlight how the strategy can be effectively amended to devise solutions to difficulties in accessing shelter and domestic violence services.

### **Assessing the Problem:**

In many instances collecting stories of one or two immigrant victims turned away from shelter or services may be sufficient documentation to collect before approaching a domestic violence program about this problem as the problem often arises because of shelter staff and advocates who do not have sufficient information about immigrant victims' legal rights. When these advocates work in communities with biases against immigrants, they can be influenced in their practices by those in the community who would seek to encourage discrimination against immigrants. In most instances problems of shelter access can be remedied by educating both the shelter staff as well as the board on immigrant victim's legal rights.

When these problems exist advocates should document the problems that migrant and immigrant women in the community have when they seek help from domestic violence shelters, homeless shelters and other domestic violence programs by:

- ❑ Interviewing women who have had problems accessing domestic violence services and writing down their stories. It is useful to include:
  - Time, date and location of the program from which the victim sought services;
  - A description of what happened and what the victim was told when she sought services;

- How and why she came to seek domestic violence services including a summary of the history of violence, physical, sexual and emotional in the relationship;
  - Any visible physical injuries or impairment of movement from internal injuries on the victim or the children;
  - Description of the children she had with her, their ages and genders and whether the children were harmed by experiencing or witnessing the abuse;
  - The names of any persons who helped her or referred her for assistance from the local shelter or domestic violence program;
  - With whom did the victim speak at the shelter? In what language? How did the domestic violence program communicate with a non-English speaking victim?
  - How did the response of the domestic violence program affect the victim? What did she do after being turned away from the shelter? Were she or her children re-injured?
- In cases in which a battered migrant or immigrant woman has been turned away from a domestic violence program and was told that it was because she did not have legal immigration documentation or citizenship or because she was Spanish speaking, collecting stories and approaching the program directly with the stories and information about their legal obligations should be sufficient to correct the problem.
- However, there will be cases in which immigrant and migrant victims turned away from services are provided with other reasons. They may be told that the shelter is full. This may be true and the shelter may be telling this to all who seek their services, not just to immigrants and migrants. Many domestic violence programs do not have sufficient resources to serve all who need their help. However, in some communities only immigrants or migrants seeking services are turned away. To document this problem, advocates will need to collect data on how often immigrant women are turned away. Data should be collected using the same approach discussed above for addressing problems with the police.

## **Identifying and Building Relationships With Allies and Developing Solutions:**

Generally, advocates for battered immigrant and migrant women should be able to approach shelters and other domestic violence service providers directly to raise problems immigrant victims are having with shelter and domestic violence service program access. In approaching battered women's advocacy organizations advocates for battered migrants and immigrants should seek a meeting to discuss building a relationship that will help the domestic violence and the immigrant women's program work together to better serve migrant and immigrant victims of domestic violence. These meetings should have two purposes. First, to remedy the immediate shelter access problem and second, to begin to build a collaborative relationship that will enable both organizations to better serve battered immigrants and migrants.

Advocates for immigrant and migrant women should bring to the written copies of the stories they have collected, copies of the U.S. Attorney General Order and other training materials regarding services necessary to protect life and safety that must, as a matter of law, be provided to all persons without regard to immigration status.<sup>30</sup> At the meeting advocates should educate the shelter director or domestic

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<sup>30</sup> These materials can be obtained from the Immigrant Women Program of Legal Momentum.

violence program director about the legal requirements of offering services equally to all victims and the potential implications for federal and state funding of the program if immigrants continue to be turned away from services. The rest of the meeting and future meetings should be set up to:

- ❑ Address concerns the domestic violence program staff and/or board may have about immigrant victims legal rights.
- ❑ Offer training on cultural competency in serving immigrant victims and on the special legal rights of battered immigrants.
- ❑ Develop collaborative solutions to problems the shelter may raise that they see as posing barriers to the domestic violence program offering the full range of domestic violence services to immigrant victims.

### **Monitoring Change:**

Once the domestic violence program agrees to a plan for opening up access to its services to battered immigrant and migrant women, advocates should monitor implementation of that plan in the same manner discussed above for monitoring changes in police practices.