

**Protections for Immigrant Children and Mixed Status Families: A Practical Guide For Eligibility, Screening, and Referrals**

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**Dynamics of Mixed Status and Immigrant Families**

- As legal service providers many of the families that we come in contact with come from mixed status families.
  - Mom is undocumented, Dad is a Legal Permanent Resident, Older daughter is undocumented, and younger siblings are US citizens
- Fear of disclosing immigration status deters many immigrant families from seeking healthcare, public services (including police protection), or other benefits for their USC children or relatives.
- When one or more members of the family are undocumented, the entire family often lives in fear of apprehension or separation
- Lack of status can make individuals more vulnerable to abuse and exploitation and less likely to report their situation to authorities

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**Creating a Safe Space and Confidentiality**

- If someone discloses to you their legal status thank them for sharing such a personal detail about their lives with you
- Remind them about confidentiality: that you will not share their immigration status with anyone without their consent
- Using undocumented vs. illegal, even if the client describes themselves as an 'illegal immigrant'
- Remind them that the laws exists to protect everyone regardless of immigration status
- Ask them about any worries or questions they might have about themselves or their parents/siblings
- Offer to help them connect with an immigration legal service provider or other social service provider

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### Special Immigrant Juvenile Status (SIJS)

- Allows child to immediately seek **legal permanent residence** ("green card") and eventually citizenship
- **Free:** No immigration fee for SIJS application, and generous fee waiver for other filing fees
- **Requirement: Predicate Court Order**
  - Must declare that the child is a dependent of the court and legally place him/her with a state agency, private agency, or private person
    - Foster care placement
    - Kinship Guardianship proceedings
    - Juvenile court proceedings
    - Declaratory Judgments
    - Emancipation proceedings
    - Sole custody orders

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### Special Immigrant Juvenile Status (SIJS)

- **Predicate order must also declare:**
  - It is not in the child's best interests to return to his/her home country (or the country they last lived in) and
  - That the child cannot be reunited with a parent because of ANY of the following:
    - Abuse,
    - Abandonment,
    - Neglect, or
    - Similar reason under state law (ex. death of parent = constructive abandonment)
- Common scenarios: child living with aunt/grandmother/older sibling because parents were deported, deceased, or unable to care for child
- "Juvenile/Child" - Unmarried and under 21 for immigration purposes, but generally under 18 in NM since that is the age of emancipation

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### U Visa Overview & Benefits

- U nonimmigrant status was created by the Victims of Trafficking and Violence Prevention Act of 2000 (TVPRA) and is codified at 8 USC § 1101(a)(15)(U).
- Valid for 4 years and includes **work permit** (= Social Security card, travel through checkpoints and throughout US)
- Can apply for **legal permanent residence** ("green card") after 3 years of U Visa status and continued residence in the U.S.
- Status of abuser is irrelevant
- Can be based on crimes that were reported years ago, and does not require prosecution or conviction on the case
- **Free:** No immigration fee for U visa application, and generous fee waiver for other filing fees

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### U Visa Eligibility

- You may be eligible for a U nonimmigrant visa if:
- You are the victim of **qualifying criminal activity**
- You have **suffered** substantial physical or mental abuse as a result of having been a victim of criminal activity
- You have information about the criminal activity (were/are/likely to be **helpful**)
- The **crime occurred in the United States** or violated U.S. laws
- Common Qualifying Crimes:
  - Sexual Assault /Abusive Sexual Contact /Sexual Exploitation/Rape
  - Domestic Violence
  - Stalking
  - Abduction / Kidnapping




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### U Visa – Who Else Qualifies?

- Certain family members may be included as **derivatives**
  - For minor victim: parents, children, and siblings under 18
  - For adult victim: children and spouse
- **Indirect victims**
  - If the direct victim is a US Citizen child, undocumented parents may qualify as indirect victims
  - USC child victim must be under 21 years of age and incompetent, incapacitated, or deceased
  - Indirect victim is listed as victim on certification form
  - Must still meet other requirements: helpfulness or cooperation with law enforcement, harm suffered




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### U Visa - Certification

- 8 CFR 214.14(a)(3) **Certifying official means:**
  - (i) The head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency; *or*
  - (ii) A Federal, State, or local **judge**.
- Agencies include:
  - **Law enforcement** (police, sheriff, some feds)
  - **Prosecutors** (DA's office, US Attorney's Office)
  - **Dept of Labor**
  - **CVFD**




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## Defining Domestic Violence



- A pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.
- Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person.
- This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.
- Source: OVV, <http://www.justice.gov/ovv/domestic-violence>

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## VAWA Overview



- VAWA (Violence Against Women Act) – reauthorized in 2000, 2005, 2013
- VAWA process mimics family-based system of immigration
- General Requirements for VAWA self-petitioner:
  - Married to abusive U.S. Citizen or LPR (Permanent Resident)
  - Married in good faith
  - Person of good moral character
  - Shared residence (in or outside US)
  - Suffered physical, emotional, verbal, and/or sexual abuse (“battery or extreme cruelty”)
  - Men can be self-petitioners too!

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## VAWA – Not just for Spouses



- Children under 21 are automatically included in a parent’s VAWA Application as derivatives
- Abused children of U.S. Citizens and LPRs can apply directly, independently of mom or dad’s application (child usually must apply before turning 21)
- Abused parents of U.S. Citizens, including adoptive parents and step-parents
- Spouses can still apply within two years of death or divorce of abuser

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### VAWA – Other Benefits

- **No police report necessary** (but will need a victim declaration)
- Can apply for **lawful permanent residence** (“green card”) in certain situations
- **Free:** No immigration fee for VAWA self-petition, and generous fee waiver for other filing fees
- With VAWA approval
  - **Work permit** = travel through checkpoints and throughout US, get Social Security card
  - May also qualify for certain types of **public assistance or benefits**

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### Scenarios

- Jose is a 16-year-old boy from Honduras. Jose and his mother suffered terrible abuse at the hands of his father. His mother fled to the U.S. to escape the abuse and left Jose in care of his grandparents. Jose came to the U.S. to reunite with his mother and to get away from the continued harassment and threats of his father.
- Tania is a 13-year-old girl from Mexico who recently reunited with her aunt in the U.S. Her father was killed five years ago during a shoot out. Afterward, her mother turned to alcohol, and would go days without returning home. Tania had to beg on the street in order to buy food and was forced to abandon school after the 5th grade.

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- A female immigrant farm worker picks pecans all day. The hours are long and it's hot, but that's not a problem for her. She's worked hard all her life. Her boss is friendly...too friendly. That IS a problem. He rapes her repeatedly in the fields. Her boss warns that if she says anything, she will be deported.
- An undocumented child discloses to his teacher that lately he has not been able to sleep because there a lot of problems at home. He is referred to the counselor and she is able to find out that dad hits mom constantly and the children often witness it.

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## Referrals

- Never tell a client that he/she qualifies for legal relief even if you believe they have SIJS, U Visa or VAWA red flags
- Wait until an immigration lawyer or paralegal meets with them and go over their immigration history and determine whether or not they qualify
- Invite them to be advocates and proactive about their legal situation, some attorneys/ agencies are booked for months in advance the child may be about to age-out of special protections
- Notario vs. Lawyer
  - Notaries do not require legal expertise in the immigrant community and often fill out immigration paperwork incorrectly or do not screen clients properly, others commit fraud

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## Immigration Legal Service Providers in NM



- **Northern NM**
  - [Catholic Charities of Albuquerque - \(Albuquerque and Santa Fe Offices\)](#)
  - Contact: (505) 424-9789, <https://www.ccsafnm.org>
  - Contact: (505) 247-0442, <https://www.ccsafnm.org>
- **New Mexico Immigrant Law Center**
  - Contact: (505) 247-1023, <http://nmilc.org>
- **Southern NM**
  - Catholic Charities of Las Cruces, Inc. - Legal Services Program
  - Contact: Lauren Armstrong (575) 527-0500 x 111  
[la@catholiccharitiesdlc.org](mailto:la@catholiccharitiesdlc.org)

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## Any questions?




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