



NCCADV Overview of Survivor Safety & Immigration Policy

Brief History of Survivor Safety & Immigration Policy

Until recently, immigrant survivors of domestic violence were able to seek protection of law enforcement and court systems with relatively little fear of being targeted for immigration enforcement action as a result of utilizing those systems within the role of victim/witness. This was due in part to a number of protections and policies put in place. These included:

- Existing Immigration and Customs Enforcement (ICE) guidance regarding prosecutorial discretion for victims of domestic violence and sexual assault
- Department of Homeland Security (DHS) has limited the authority of its officers to engage in enforcement actions at sensitive locations. While these memos do not list domestic violence shelters/housing and rape crisis centers as “sensitive locations,” a 2007 memo encouraged ICE officers to use prosecutorial discretion when encountering victims of domestic violence and sexual assault, and discouraged officers from making arrests at domestic violence shelters, rape treatment centers, and other sensitive locations enumerated in INA § 239(e).
- VAWA 2005 created special enforcement provisions codified in INA § 239(e), which provide that ICE is prohibited from engaging in enforcement actions at locations like domestic violence shelters, victim service providers, family justice centers and courthouses (if the victim is there for a victim related matter) if the information regarding the location is provided by an abuser
- The existence of the ability to apply for U and T Visas and as a VAWA self-petitioner under the VAWA. Further, those on the U or T visa waitlist and those approved as VAWA self-petitioners were granted deferred action and thereby typically safe from deportation/detention while awaiting processing.
- On August 26, 2014, the Board of Immigration Appeals (the nation’s highest immigration tribunal) issued a precedential decision, Matter of A-R-C-G-, recognizing domestic violence as a basis for asylum
- The discontinuation of the Secure Communities program in November of 2014.

While advocates could never guarantee that an immigrant survivor who was accessing formal systems for the purpose of protecting themselves or their family from a violent partner might not become a target of immigration officials, these policies provided some assurances that the government prioritized the safety and human dignity of immigrant survivors over their removal/deportation.

Recent Developments Impacting Survivor Safety & Immigration Policy

Under the new Trump Administration, there has been a clear change in the approach to immigration policy and enforcement actions which has and will impact survivor safety. This includes, but is not limited to:

- Issuance of the Interior Enforcement Executive Order, January 25, 2017:
 - Revived Secure Communities Program resulting in:
 - More active information sharing and communication between local law enforcement (LE) & Immigration & Customs Enforcement (ICE)
 - Contracts with local law enforcement through 287g program which essentially deputizes local law enforcement to act as federal immigration agents
 - Calls to take away funding from “sanctuary” jurisdictions- those which don’t turn over folks from local LE to ICE
 - Calls for more immigration agents
 - More penalties for those in the country unlawfully and those who facilitate their presence
 - Note: We do not yet know whether it will implicate DV/SA programs who are helping immigrant survivors. Without and until further guidance from ICE clarifying, particularly since other federal laws say that programs should be serving victims regardless of immigration status, programs should absolutely continue to support and serve immigrant survivors regardless of their immigration status.
 - Changes in new enforcement priorities (now encompasses pretty much everyone and no prioritization within these categories):
 - Have no immigration status at all
 - Have criminal convictions (of any level of seriousness, including misdemeanors and traffic violations)
 - Have prior/current deportation orders
 - Have pending criminal charges
 - Have committed acts which could constitute chargeable criminal offense
 - Suspected of fraud or material misrepresentation to obtain a visa or other document or entry to U.S.
 - Believed to “pose a threat to public safety or national security”
 - Terminates all prosecutorial discretion guidance and memos except for those related to Deferred Action Childhood Arrivals
 - Includes the ones related to VAWA and U Visa cases related to victim/witnesses. Implies that all of them are now rescinded and they have to be resolved on case by case basis.

- Eliminates Privacy Act protections for anyone who is not a Legal Permanent Resident (LPR) or United States Citizen
 - There will be a comment period. Privacy Act different from VAWA confidentiality. Again, programs should absolutely continue to support and serve immigrant survivors regardless of their immigration status.
- Issuance of Border Enforcement Executive Order & DHS Memo, January 25, 2017:
 - Increase number of immigration and border patrol agents
 - Expanded expedited removal
- Detention of domestic violence victim in El Paso, TX, on February 9, 2017, in court while she was seeking a protection order. Read NCCADV's statement [here](#).
- Reported increased number of "immigration raids" across the country.

Unanswered Questions Impacting Survivor Safety & Immigration Policy

- Possible future Executive Orders
 - Department of Justice has informed the 9th circuit that the President is working on issuing a new Executive Order after the 9th Circuit issued temporary restraining order on the President's travel ban. It is expected to be issued next week.
 - Potential expansion of definition of "public charge."
- Guidance interpreting memos and regulations outlining the executive orders as to specifics such as:
 - Whether the rescinding of the prosecutorial discretion was meant to encompass victims/witnesses
 - Whether DV programs will be considered as "assisting in facilitating their presence."

Protections Still in Place for Immigrant Survivors

- Statutory provisions under VAWA such as:
 - The VAWA 2005 provisions prohibiting ICE from engaging in enforcement actions at locations like domestic violence shelters, victim service providers, family justice centers and courthouses (if the victim is there for a victim related matter).
 - The presence of deferred action under VAWA, U Visa and T Visa. However, it is possible that the administration may de-prioritize the processing of cases involving victims, increase scrutiny of applicants and their evidence, and make the processing of these cases more burdensome altogether.
 - Other pathways to legal status for which survivors may be eligible for under immigration laws. It is essential to be partnering with immigration attorneys so that clients can determine as quickly as possible if they might be eligible.

Advocate's Role in Serving Immigrant Survivors:

While domestic violence programs have always opened their doors to all survivors, advocates understand that all forms of oppression intersect and can compound. When policies are implemented which further oppress marginalized populations, particularly those who are already at risk for heightened levels of violence, domestic violence service providers have an obligation to be sure we are equally heightening our level of advocacy to meet the increased level of danger. Immigrant survivors are at exceptional risk right now by both their abusive partners as well as by government officials of being driven into the shadows. Therefore it is vital that programs educate their entire staff about the realities of the dangers immigrant survivors are facing and what programs can do to better assist them during this time. Here are a few critical steps that all programs should be taking:

Working with Immigrant Survivors

- Do **NOT** ask a survivor's immigration status- Be conscious of the fact that immigrants are even more fearful than ever of who they can trust. You can provide all of this information without asking someone's status.
- Stress that your services are available regardless of survivors' status. Do **NOT** document in clients' files a survivor's immigration status, criminal charges, prior deportation orders, etc.
- ***Imperative*** that advocates inform immigrant survivors of the increased risks of engaging with formal systems such as reporting crimes to law enforcement and/or filing actions in civil court (DVPOs, custody, etc.) when deciding whether or not to utilize those systems to attempt to enhance their safety.
 - ***Remember though that this is still a personal decision for each survivor and that advocates should not be giving advice/directives on whether or not to utilize the court system. You should still be conducting empowerment based advocacy!***
- Explain that the current administration appears to be prioritizing enforcement actions against immigrants who:
 - Have no immigration status at all
 - Have criminal convictions (of any level of seriousness, including misdemeanors and traffic violations)
 - Have prior/current deportation orders
 - Have pending criminal charges
 - Have committed acts which could constitute chargeable criminal offense
 - Suspected of fraud or material misrepresentation to obtain a visa or other document or entry to U.S.
 - Believed to "pose a threat to public safety or national security"
 - But that there is no prioritization within these groups.
- Conduct enhanced safety planning with immigrant survivors to include steps such as:
 - Explain risks of engaging with formal legal systems (see above)

- Create emergency contact sheets with information for family members in U.S. and home country.
- Collect important documents for self and children (identity, medical, financial, criminal records if applicable, physical presence documents, passport and/or consulate documents) and inform trusted family/friends about where those documents will be stored.
- Advise them to always carry some sort of identification but not to have on their person a foreign ID, birth certificate, or other form of ID that could establish them as a foreign national.
- Help them think through what information is public on their social media pages and how to remove any information about their birthplace, immigration status, or current location. This includes turning off geographic tracking on their phones and location “tagging” abilities on social media platforms.
- Carry name and phone number of an immigration attorney specializing in removal defense at all times. Be prepared to call that attorney as soon as possible upon being detained. Give that name and number to a trusted friend or family member who may also be able to communicate with the attorney if the client is detained.
- Provide immigrant survivors with the contact information for the closest consulate office for their home country.
- If they have one, survivors should know their and their children’s “alien registration number” or “A#”
- Making a plan for their children should they, as parents, be deported or detained or if they choose to voluntarily leave the United States as a result of recent policy and environmental changes
- Survivors should obtain advice of an immigration attorney before traveling outside of the U.S.
- Share “Know Your Rights” materials related to interactions with ICE and/or law enforcement with survivors
- Refer immigrant survivors to local immigration attorneys who can assist with advising them on engaging with formal systems, pathways to legal status, etc. and to local family law attorneys who can assist with custody concerns.
- Refer immigrant survivors to informal systems for support and safety in the community such as agencies that work with immigrant populations, faith-based organizations, consulates, and other community-based organizations that can offer assistance and support.
- Ensure that your agency is providing meaningful language access. If you need information about NCCADV’s language line program, please contact Saira Estrada at sestrada@nccadv.org.
- Translate critical agency documents/flyers into primary language(s) of immigrant population in your community
- Educate yourself with information beyond these quick guides. There are many resources linked below and attached.
- Do NOT spread fear – always validate the truth of ICE presence in the community before sharing that information with clients.

Protect Immigrant Survivor's Confidentiality

As is the case with all clients, you must remember that your files may eventually be subject to disclosure at a later court proceeding. Therefore do not ever include in a client's files information as to the client's immigration status, criminal history, country of origin, etc.

In addition, it is critical that just as programs should do with local law enforcement, that they protect clients and client information from ICE officials. In responding to ICE Agents, just as with local law enforcement:

- Do **NOT** give information to ICE Agents about clients without a court order signed by a judge or written informed consent from clients.
- Do **NOT** open the door for ICE Agents unless they have a **search warrant signed by a judge**. You do **NOT** have to grant them access. If they have a search warrant that is only signed by an immigration official, you do **NOT** have to grant them access. If they have an arrest warrant, but not a search warrant, you do **NOT** have to grant them access.
- DO be polite and simply say, as you always do, that you can neither confirm nor deny whether you are serving that person due to Federal confidentiality requirements and that you cannot grant them entry without a search warrant.
- DO share Know Your Rights materials with survivors before there are any reports of ICE presence in the community.

Advocate's Role in Systems Advocacy:

It is as critical now as ever for advocates to understand that they have a larger role than just working with clients one at a time. We have a responsibility to try to shape and impact the larger system within which immigrant survivors are living and having to try to navigate. To that end, advocates at local DV agencies should:

- Establish new and enhance existing relationships with community-based organizations serving immigrant persons in your community.
- Identify immigration attorneys in your community and establish a referral system for your clients.
- Brainstorm additional informal/alternative systems of support and safety for immigrant survivors to engage with in your local community and build relationships with those identified.
- Reach out to each local law enforcement agency, court system, and local government to identify what their policy and practices are with regards to immigration enforcement.
- Work to ensure that your partners and the community are aware your services are available to survivors regardless of their immigration status
- Establish or build on relationship with local ICE agent(s) in your community and explore if they are open to being educated about impact of policies on DV victims. Learn how the local office will be interpreting the federal enforcement orders.
- Proactively address and debunk the myth that immigrants commit more crimes than the general population.

- Educate the public that limiting victim and witness trust in law enforcement undermines public safety and elevate a human rights framework why access to safety and justice is vital for ALL victims
- Address issues of access to courts, language access and safety within your coordinated community response teams
- Meet with Law Enforcement to discuss and improve U Visa certification protocols

Additional Resources

- “Compiled Resources on Immigration Executive Action”
 - Comprehensive list of resources
- Know Your Rights booklets and flyers in English and Spanish regarding ICE Raids
- Chart re: VAWA confidentiality related to immigration cases and enforcement actions
- Interactive infographic re: screening immigrant survivors for potential forms of relief:
<http://library.niwap.org/wp-content/uploads/DHS-Protections1.6-links-121516.pdf>
- ACLU Example of warrant signed by Judge (which WOULD allow entry of ICE)
- ACLU Example of warrant signed by ICE (which would NOT allow entry)
- Family preparedness plan (English & Spanish)
- USCIS memo re: work authorization