

# **Avoiding Detention and Removal for VAWA and U Survivors**

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# Goals



By end of this presentation, participants will better able to:

- Recognize how recent executive actions impact survivors' immigration cases
- Identify and plan actions to avoid survivor removal
- Enhance existing safety planning procedures to help survivors at risk of detention and removal

# Executive Action Impact on Survivors

# Interior Enforcement Executive Order (1/25)

- Revives “Secure Communities” Program
- Encourages cooperation between immigration and federal and state law enforcement
- Calls for taking away some funding from “sanctuary jurisdictions”
- Calls for more immigration agents
- Calls for increased fines & penalties for those “unlawfully present” and those who facilitate their presence

# Changes in Enforcement Priorities

## Changes Based on Existing Immigration Grounds of Removability

- Criminal grounds of inadmissibility and deportability
- Security and related grounds of inadmissibility and deportability
- Suspected fraud or material misrepresentation
- Expedited removal (ie those not admitted or paroled, who cannot show 2 yrs continuous presence)

## Other priorities- Those Removable (for example, for overstay or entry w/o authorization)

- Pending criminal cases and/or prior criminal convictions
- Convicted or charged with ANY criminal offense, or committed any act that constitutes a chargeable offense
- Final orders of removal
- Fraud or misrepresentation in applications before a government agency;
- Public benefits' "abuse"
- Threat to public safety or national security

# Interior Enforcement DHS Memo (2/20)

- Terminates prosecutorial discretion guidance except for DACA/DAPA
  - BUT June 17, 2011 Victim Witness Memo still operational.
- NO prioritization among these different grounds
- Most at risk: in detention or jail, contact with criminal justice system, ordered deported in the past

# On the ground



- Courthouse enforcement
- Chilling effect on survivors reaching out for help
- VAWA and U Applicants or those with deferred action “protected”?

# Hypo: Helen

- Undocumented with 2 children
- First entered the U.S. in 2011 because her son's father was abusing her.
- Immigration officials at the border gave her a piece of paper.
- Learned she had an Immigration Court date but didn't go.
- Met and married Ivan; they had their daughter in 2015.
- Ivan physically abused her.
- She was convicted of shoplifting in 2016 because her husband controlled all the resources in the house and she needed clothes for the baby.





# Safety Planning

# Safety Planning: Immigration Enforcement

## **Update safety plans to include possible encounters with ICE and what to do if that happens**

- Collect important documents (identity, medical and financial information)
- Give client ICE letter, see sample by ICWC
- Survivors should know their and their children's "alien registration number" or A#
- Encourage getting advice of attorney before traveling outside US.
- Share "Know Your Rights Materials" and make aware the risks of contact with criminal legal system

# Where is the risk?



- ICE Enforcement in Public/Courthouse

- ICE Enforcement at Home/Shelters/Schools

Other systems: DMV/DOT; benefits; where does your client go for services or help?

- Examine Internal Policies and Procedures

Make sure your DV/SA allies are prepared

# Planning for arrest/detention

- **What will you/she do if. . .**
  - Her children are alone at home or daycare?
  - She did not pick up her last paycheck?
  - The perpetrator has her passport and access to her money?
  - Doesn't have money to pay bond (criminal or immigration)?
  - Who has custody/guardianship of children?
  - What medical concerns, trauma issues will be triggered?
  - What else?

# What to do if Detained by ICE

- Same rights against self-incrimination. Ask to speak to an attorney instead of answering questions.
- Contact attorney/legal services as soon as possible
- Do NOT Sign Anything until you've had opportunity to consult with attorney
- Determine eligibility for release on bond
- Have a plan in place for your family if detained

# Safety Planning: Case Preparation



- Accelerate getting applications filed
  - Any risks?
  
- Identify possible flags for removal
  - Fix with waivers in application?
  - Other ways to head off removal?
  
- Track & document equities as you go

# IDENTIFYING AND ADDRESSING REMOVAL PROBLEMS



# Prior removals



- Client may not recall nature of removal
- How do you find out?



# Removal History and Inadmissibility

- Turnbacks vs. Expedited Removal
- 212(a)(9)(A) and 212(a)(9)(C)
- *In absentia* orders and 212(a)(6)(B)

# Reinstatement: 241(a)(5)

- 1) Reentered the United States illegally
  - 2) after having been removed or having departed voluntarily, under an order of removal
- Prior order of removal is reinstated
  - Not eligible and may not apply for any relief under this Act (**not literally true**)
  - Shall be removed under the prior order at any time after the reentry

# Overcoming reinstatement

- What inadmissibility ground overcomes elements of reinstatement?
  - ▣ Standard for VAWA v. U?
  - Public interest v. nexus between entries/exits and abuse

# Procedure for fixing: VAWA

- VAWA self-petitioning/adjustment
  - 601 and I-212 with 485 in envelope to VSC
  - Once filed, hotline request to let you know when transferred
  - Cc us, we bring in HQ
  - They chat with local DD if necessary

# For U applicants

- AAO confirms
  - (d)(14) waiver for 212(a)(9)(C) cures it
- Make sure you ask for (9)(A) waiver too
  - No explicit I-212 requirement so covers your bases

# Fixing Final Orders

Expedited removals?

Us = automatic but does the system register this?

VAWAs

waiver for (9)(A)?

exceptions in (9)(A)?

I-212?

Motions to Reopen for 240 orders

Remember special VAWA motions

# Fixing in absentia orders

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For Us, 212(a)(6)(B) waiver?

For VAWAs (and maybe Us)

exceptions to 240(b)(5)?

notice

VAWA motion?

# Stays of Removal

*If your client is at direct risk of removal, you need to address it immediately*

- Bag and Baggage Orders
- Reinstated Orders of Removal
- Outstanding Orders of Removal (unexecuted)



# Practice Pointers on Stays of Removal

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What you have to show

How is this like what you already do?

What else do you need to do?

Practice a "pocket" stay

# We got DA or an approved U visa or VAWA self-petition, now what?

- When to File Motion to Reopen & Terminate OR Recalendar & Terminate?

# Criminal History Issues

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- Determine if raise inadmissibility or good moral character (for VAWA) concerns
- “Bad behavior” toward discretion
- Post-conviction relief?

# Framing Arguments

- VAWA
  - Nexus to abuse?
  
- U visa
  - (d)(14) National and Public Interest
  
- For both
  - “3 Rs”--Responsibility, Remorse, Rehabilitation
  - Balancing of Equities
  - “Good neighbor” approach

The slide features a decorative header with two horizontal bars. The left bar is orange and the right bar is green. The text 'Applicants in Detention or in Proceedings' is written in white on the green bar.

# Applicants in Detention or in Proceedings

# Tasks for Us in Detention

- FOIA all prior removals and applications
- Prepare waiver and supports
- Seek ICE initiation of PF decision and expedite
- Seek release of client through parole and federal court options
  - Has this changed?

# If ICE refuses stay?



Sergio is a U visa applicant currently under an order of supervision. He has an removal order from 2011. You file a stay of removal which was denied, how do you proceed?

# Work with local ICE and LEOs

- Collaborate with effective messengers
  - Whose opinion does ICE/LEO care about or have to care about?
- To discuss:
- Law enforcement NOT referring survivors to ICE
- ICE NOT issuing detainers for victims or witnesses
- ICE and LEOs
  - referring victims to local CBOS, DV/SA programs, agencies with expertise in helping survivors apply for status
  - allowing survivors to contact your agency or the 1-800 hotline
- Ensure ICE understands 8 USC 1367
  - Information from perpetrator not sole basis; monetary sanctions for violating



# Emerging Strategies



- Mandamus
- Using 8 USC 1367
- Congressional advocacy
- Community engagement

# Discussion & Questions



- What other issues are you seeing in detention, removal, reinstatement or voluntary departure?
- Share your novel arguments with us please
- Questions on strategy?
- Individual case questions? (if time)

# Resources

- Working with Survivors ASISTA page:

- [http://www.asistahelp.org/en/access\\_the\\_clearinghouse/working\\_with\\_survivors\\_at\\_risk\\_of\\_removal/](http://www.asistahelp.org/en/access_the_clearinghouse/working_with_survivors_at_risk_of_removal/)

- Questions?

- [questions@asistahelp.org](mailto:questions@asistahelp.org)

- Create log-in for TA!

- [https://asista.z2systems.com/np/clients/asista/setLogin.jsp?secureId=prCoi6MdQc21Cbw6b9FpoNjAlGy52CwQk7dSJczZztLlqahfxcC-3na2cw14d49uQQ6iycDB\\_0o&](https://asista.z2systems.com/np/clients/asista/setLogin.jsp?secureId=prCoi6MdQc21Cbw6b9FpoNjAlGy52CwQk7dSJczZztLlqahfxcC-3na2cw14d49uQQ6iycDB_0o&)