

Why Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of U.S. Citizen and Lawful Permanent Resident Children (DAPA) is Critical in Promoting Immigrant Crime Victim Cooperation with the Criminal Justice System

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February 9, 2015

1. Protection from Deportation Encourages and Promotes Cooperation With Law Enforcement By Immigrant Crime Victims

A critical feature of DACA/DAPA is that it provides undocumented immigrants with temporary protection from deportation. Immigrants who receive protection from deportation are more able to come forward and report crimes and provide tips to law enforcement that enhance the success of detection, investigation and prosecution of crimes in communities across the country. This result has been demonstrated among immigrant victims of domestic violence, sexual assault, human trafficking, child abuse, elder abuse, and other crimes who apply for Violence Against Women Act (VAWA) self-petitions and U or T visas.

A national survey³ found that, despite the fact that many immigrant victims of family violence continue living with their abusers and continue experiencing ongoing abuse while their VAWA and U visa applications were pending, immigrant victims of domestic violence continued making police reports on new incidents of abuse in addition to cooperating with law enforcement in criminal investigations and prosecutions at high rates. This pattern was found among both U visa applicants whose U visas come with an ongoing cooperation requirement and among VAWA self-petitioners whose immigration case does not come with any law enforcement cooperation requirement.

- U Visa Applicants:
 - 63.4% lived with their abusers for 6-18 months;⁴
 - While living with abusers, 68% reported threats, attempts, or incidents of physical abuse and 24.3% reported threats, attempts, or incidents of sexual assault;⁵
 - 97.4% experienced abuse on a monthly basis;⁶ despite this
 - **73.1% cooperated with law enforcement while their applications were pending;**⁷
 - **25.2% continued to file police reports once their cases were approved;**⁸ and
 - Among victims applying for and granted U visas over the course of their case from filing through application for lawful permanent residency, 70% provide ongoing cooperation in the investigation, prosecution, conviction and sentencing stages of the criminal case and 29.5% remain willing to cooperate, but were not asked by law enforcement for further cooperation.⁹

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⁴ *Id.* at 22

⁵ *Id.* at 24

⁶ *Id.* at 24

⁷ *Id.* at 32

⁸ *Id.* at 32

⁹ LESLYE ORLOFF, LEVI WOLBERG, AND BENISH ANVER, U-VISA VICTIMS AND LAWFUL PERMANENT RESIDENCY 5 (September 6, 2012) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/public-benefits/education-financial-aid/U-Visas-and-Lawful-Permanent-Residency.pdf/view>

- VAWA Self- Petitioners:
 - 3.1% continued to live their abusers;¹⁰
 - 56.5% reported threats, attempts, or incidents of physical abuse;¹¹
 - 55.8% experienced abuse on a monthly basis;¹² and despite this:
 - **36.2% filed police reports while their applications were pending, even though they were not required to do so for their VAWA self-petition.**¹³

The data strongly indicates that, once the fear of deportation is removed and perpetrators can no longer use the threat of deportation to coerce their victims' silence, significant numbers of immigrant victims of domestic violence are increasingly willing to cooperate with law enforcement.

2. Law Enforcement's Perspective on the Impact of Protection from Deportation for Immigrant Crime Victims¹⁴

The following statements from a law enforcement official and a State Attorney General illustrate how the removal of fear of deportation empowers them to effectively fight crime and bring violent criminals to justice in their jurisdictions.

In June of 2011, I was part of a U-visa training session and heard about this case. A gang officer from the Washington, D.C. metro area worked with a woman who was a victim of domestic violence and sexual assault. Because they assisted the victim with the U-visa process and had established a level of trust, the woman came back and reported that a contract had been put out on the investigating officer and his partner. She was helpful in alerting them about the death threat. This was a legitimate gang threat against his life that would have perhaps gone unreported, and might have ended in his and his partner's death. This level of cooperation and trust between law enforcement and an undocumented victim certainly paid off.

- Chief Pete Helein (Ret.), Appleton Police Department (Appleton, Wisconsin)¹⁵

For many of these women, immigration status is one more weapon that abusers use to intimidate them. Abusers often threaten. 'You can't call the police. They'll just deport you.' Under the existing law, our response is clear: 'He's wrong. You're safe.'

- Attorney General Mark Shurtleff (Utah)¹⁶

3. How U.S. Citizen and Lawful Permanent Resident Children Benefit When Their Immigrant Mothers Receive Protection

Research among battered immigrant women has found that the following factors significantly contribute to a battered immigrant woman's willingness to call the police for help.¹⁷ The two factors most strongly correlated with calling police for help were:

¹⁰ Szabo, et al., Work Authorization Report at 22, available at: <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>.

¹¹ *Id.* at 23.

¹² *Id.* at 24.

¹³ *Id.* at 31.

¹⁴ For more statements from law enforcement officials around the country about how protection from deportation encourages cooperation and reporting of crimes by undocumented immigrants, see attached report: NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT, THE IMPORTANCE OF THE U VISA AS A CRIME FIGHTING TOOL FOR LAW ENFORCEMENT OFFICIALS- VIEWS FROM AROUND THE COUNTRY (December 3, 2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/research-reports-and-data/Importance-U-visa-Crime-Fighting-Tool.pdf>

¹⁵ *Id.* at 3 (This statement was made during a national teleconference about the U visa hosted by the National Immigrant Women's Advocacy Project on August 27, 2012 and has been independently verified).

¹⁶ *Id.* at 2 (quoting Mark Shurtleff and Doug Gansler, Opinion: Weakening Violence Against Women Act betrays immigrant victims, POLITICO (Sept. 11, 2012, 9:20 PM), <http://www.politico.com/news/stories/0912/81048.html>)

¹⁷ Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton and Giselle Aguilar-Hass, *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7(4) International Journal of Police Science and Management 230, 236 (2005) available at

- Battered immigrant women who had a stable immigration status were twice as likely to call police for help (43.1 %) than abused undocumented women (18.8 %);¹⁸ and
- When the children were exposed to the domestic violence (both by witnessing abuse and beginning to experience it themselves) immigrant battered women called police for help (63.5% vs. 37.8%).¹⁹

Other significant factors included:

- Abused immigrant women living in the U.S. for three or more years were also twice as likely to call police for help, than more recent immigrants (32.8% vs. 16.4%);²⁰
- Talking to more than one person about the domestic violence was a prerequisite to calling police for help for all of the battered immigrant women in the survey.²¹ The vast majority spoke to other women – female friends 49%, mothers 30.1%, sisters 22.5%, and another battered woman 10.4% -- about the violence before calling police.²²

These research findings highlight benefits of the DACA and DAPA for immigrant crime victims and their children. When immigrant women who have been in the U.S. for longer periods of time and gain a stable immigration status that removes the fear of deportation, this strengthens the woman-to-woman informal support networks in immigrant communities that motivate women in immigrant communities to seek call police when they are victimized. DACA and DAPA will strengthen community policing, improve community safety, and help more immigrant women come forward sooner to protect their children and themselves from domestic violence.

When abused immigrant mothers seek help and are able to turn to the justice system for help and attain immigration relief that includes protection from deportation, the rate at which their children experience a co-occurrence of child abuse drops precipitously.²³ The national co-occurrence rate for domestic violence and child abuse is approximately 40%.²⁴ When battered immigrant women seek help, the child abuse rate drops to 23%, but for battered immigrant women without access to help, including protection from deportation, the likelihood that the perpetrator abusing the mother will also start abusing the children rises to 77%.²⁵

Witnessing domestic violence in a household affects a child's development and well-being in a variety of ways causing post-traumatic stress, depression, fear, anxiety, sleep disturbances, agitation, learning problems, reduced social competency, and problems in school.²⁶ The effects on children of separation caused by deportation of a protective care giving parent are similar: Eating and sleep disorders, fear, crying, anxiety, withdrawal, clinginess, anger and aggressiveness, behavioral problems, and declining school performance.²⁷

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/u-visa-crime-fighting-tool-and-protection-for-immigrant-crime-victims/Ammar-Orloff-Police-Response-2005.pdf/view>

¹⁸ *Id.* at 236

¹⁹ *Id.* at 237

²⁰ *Id.* at 236

²¹ *Id.* at 237

²² Mary Ann Dutton, Leslye Orloff, & Giselle Aguilar-Hass, *Characteristics of Help-Seeking Behaviors, Resources, and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications*, 7 GEO. J. OF POVERTY L. & POL'Y 30–49 (2000), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/Characteristics%20of%20Help-Seeking%20Immigrant%20Battered%20WomenOVW%2010.23.01.pdf/view>

²³ Nawal Ammar, Leslye Orloff, Giselle Hass and Mary Ann Dutton, *Children of Battered Immigrant Women: An Assessment of the Cumulative Effects of Violence, Access to Services and Immigrant Status*, International Family Violence Conference, 45 San Diego, CA 2004 September 19-25, 2004, available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/Co-occurrence%20of%20Domestic%20Violence%20and%20Child%20209.20.2004.pdf/view>

²⁴ *Id.*

²⁵ *Id.*

²⁶ Joy D. Osofsky, *Prevalence of Children's Exposure to Domestic Violence and Child Maltreatment: Implications for Prevention and Intervention*, 6 Clinical Child and Family Psychology Review 261, 264, 266 (Sept. 2003), available at: <http://link.springer.com/article/10.1023%2FA%3A1024958332093>

²⁷ Ajay Chaudry, Randy Capps, Juan Manuel Pedroza, Rosa Maria Castañeda, Robert Santos, Molly M. Scott, *Facing Our Future Children in the Aftermath of Immigration Enforcement*, Urban Institute 41-53 (Feb. 2010), available at: http://www.urban.org/uploadedpdf/412020_FacingOurFuture_final.pdf

DACA/DAPA's protection from deportation will provide immigrant children and parents of U.S. citizens and lawful permanent resident children with the safety and security they need to encourage them to come forward, report and seek help in stopping intimate partner violence, child abuse, and a myriad of other violent crimes occurring in families and in our communities and will enhance law enforcement's ability to hold violent perpetrators accountable.

4. Who DACA/DAPA Impacts: Foreign Born Population of the United States

Foreign Born Population Demographics of the United States as of 2013:²⁸

- 13.1% of persons living in the United States were foreign born
- Over half (51.2%) of the foreign born population is female
- 46.7% are naturalized citizens
- 32.6% are lawful permanent residents²⁹
- 21.7% have temporary legal immigration status or are undocumented³⁰
- **Over 1/5th (21.9%) of citizen children and almost 1/4th (24.9%) of all children under the age of 18 have one or more foreign born parents³¹**

Congressional Budget Office Estimates³²:

- Immigrant children DACA will protect:
 - 2 million undocumented immigrants are eligible to receive DACA
 - Under the current law, in 2017, about 600,000 people will be covered under DACA
 - Under the expansion of DACA, an additional 150,000 will receive protection

5. Immigrant Women and Children's Vulnerability to Domestic Violence, Sexual Assault and Human Trafficking

- 49.8% of immigrant women in the U.S. suffer domestic violence during their lifetime.³³
- The likelihood of abuse rises to 59.5% among foreign born spouses of U.S. citizens.³⁴
- High school aged immigrant girls are twice as likely as their non-immigrant peers to have suffered sexual assault by the time they reached high school.³⁵
- Immigrant girls are also at increased risk for recurring sexual assault.³⁶
- NIJ funded research found that 65% of battered immigrant women reported that their abuser had used some form of immigration related abuse including threats of deportation against them.³⁷

²⁸ The data in this section was obtained from the Migration Policy Institute, unless otherwise indicated. See MIGRATION POLICY INSTITUTE DEMOGRAPHICS FOR THE UNITED STATES, <http://www.migrationpolicy.org/data/state-profiles/state/demographics/US>

²⁹ U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates (Foreign born population 40,824,533) and Nancy Rytina, U.S. Department of Homeland Security, Estimates of Legal Permanent Resident Population 2012 (July 2013)(Lawful permanent resident population 13,300,000)

³⁰ MIGRATION POLICY INSTITUTE DEMOGRAPHICS FOR THE UNITED STATES, <http://www.migrationpolicy.org/data/state-profiles/state/demographics/US>; U.S. Census Bureau, 2012 American Community Survey 1-Year Estimates; Nancy Rytina, U.S. Department of Homeland Security, Estimates of Legal Permanent Resident Population 2012 (July 2013)

³¹ MIGRATION POLICY INSTITUTE DEMOGRAPHICS FOR THE UNITED STATES, <http://www.migrationpolicy.org/data/state-profiles/state/demographics/US>

³² Letter from the Congressional Budget Office to Senator Thad Cochran, Chairman, U.S. Senate Committee on Appropriations, *Budgetary Effects of Immigration-Related Provisions of the House-Passed Version of H.R. 240, An Act Making Appropriations for the Department of Homeland Security* (Jan. 29, 2015), available at: <https://www.cbo.gov/sites/default/files/cbofiles/attachments/hr240.pdf>

³³ Mary Ann Dutton, Leslye E. Orloff, & Giselle Hass, *Characteristics of Help-seeking Behaviors, Resources and Service Needs of Battered Immigrant Latinas: Legal and Policy Implications* 7 GEO. J. POVERTY L. & POL'Y 245 (2000), available at: http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/2013-trainings/nov-2013-researcher-practitioner-collaboration/CULTCOMP_Georgetown-Imm-Victim-Helpseeking2000.pdf/view

³⁴ GISELLE AGUILAR HASS, NAWAL AMMAR, AND LESLYE ORLOFF, BATTERED IMMIGRANTS AND U.S. CITIZEN SPOUSES 2 (April 24, 2006) available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/2013-trainings/nov-2013-researcher-practitioner-collaboration/BB_RSRCH_ImmVictims_Battered_Imm.pdf/view

³⁵ Decker, M., Raj, A. and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13 Violence Against Women 498, 503 (2007), available at: <http://vaw.sagepub.com/content/13/5/498.long>

³⁶ *Id.*

- Immigrant victims of domestic violence, sexual assault and human trafficking with pending VAWA or U visa applications are turned in to immigration enforcement agents by their abuser or by their abuser's family members at high rates:³⁸
 - 38.3% of VAWA Self-petitioners; and
 - 26.7% of U visa applicants.

Immigration status related threats and abuse, including threats to turn the victim in to Department of Homeland Security enforcement officers, are commonly used by perpetrators to keep immigrant victims of domestic violence, sexual assault, and human trafficking from leaving the abuser, reporting crime victimization, and cooperating with prosecutors. Threats of deportation coupled with threats that they will never see their children again are very effective tools perpetrators use to silence victims.³⁹

Expanding DACA and creating a path to protection from deportation for parents of citizen and lawful permanent resident children will offer significant protection for foreign born women and children immigrant victims that are particularly vulnerable to crimes including domestic violence, sexual assault, stalking, dating violence, human trafficking, elder abuse and child abuse. DACA and DAPA will rob crime perpetrators of a potent tool they use to avoid prosecution and conviction – the ability to have the victim deported. The protection from deportation offered by DACA and DAPA will encourage immigrant parents and children, including those who have been in the shadows suffering violence, to come forward and cooperate with law enforcement and prosecutors. This will contribute to more successful criminal investigations and prosecutions and safer communities for all.

6. Impact of DACA/DAPA on Immigrant Crime Victims Who Cannot Apply for Violence Against Women Act (VAWA) Self-Petition, U or T Visas

Some immigrant victims of domestic violence, sexual assault, human trafficking, child abuse, elder abuse, and other crimes may not be able to seek protection from deportation through VAWA self-petitions, U or T visas because they do not meet the requirements of the application. Examples include:

- Immigrant victim of domestic violence is not married to her U.S. citizen or Lawful Permanent Resident abuser and, therefore, cannot apply for a VAWA self-petition;
- Immigrant child abuse victim has been abused by their step-father's brother and would not qualify for a VAWA self-petition;
- Immigrant rape victim tries to report the rape and police arriving at the scene do not obtain interpreters and fail to take a police report so the victim is unable to obtain certification for her U visa case;
- Teenage immigrant child sexual abuse victim, together with her immigrant parent, reports the sexual abuse to law enforcement and cooperate in the criminal investigation, but since the local police department will not certify U visas they cannot receive U visa protection; and
- Battered immigrant married to a lawful permanent resident, who has been beaten and choked until she almost lost consciousness, found a way to break the chokehold by defending herself and called the police for help. When police arrived they did not identify her language or obtain an interpreter, instead they spoke to the perpetrator in English, who showed them a scratch on his arm from when she broke away. The police report that was taken was of the perpetrator's story of what occurred describes the victim as the perpetrator of the crime, so the victim cannot get a U visa certification.

³⁷ GISELLE AGUILAR HASS, NAWAL AMMAR, & LESLYE ORLOFF, BATTERED IMMIGRANTS AND U.S. CITIZEN SPOUSES 3 (April 24, 2006) available at: http://niwaplibrary.wcl.american.edu/reference/additionalmaterials/research-reports-and-data/research-USVAIW/copy_of_BB_RSRCH_ImmVictims_Battered_Imm.pdf/view

³⁸ Szabo, et al., Work Authorization Report at 27 available at <http://niwap.org/reports/Early-Access-to-Work-Authorization.pdf>.

³⁹ For case stories illustrating how threats of deportation and fear of being separated from children are used to isolate and control victims and avoid being held accountable for the crimes perpetrators commit against immigrant victims go to <http://niwaplibrary.wcl.american.edu/reference/additionalmaterials/research-reports-and-data/immigrant-victims-stories>

I have experienced the frustrations of not being able to hold violent criminals accountable for their actions due to their victims' fear of deportation if they come forward and report crimes. This realization was magnified as I travelled the country over the past 15 years training law enforcement in the investigation of domestic violence and sexual assault. Countless officers related similar stories of frustration with investigating crimes involving immigrant victims.

- Officer Michael LaRiviere, Salem Police Department (Salem, MA)⁴⁰

▪ **Immigrant Victims Eligible For, But Cannot File for U Visas**

- U visa certification must be obtained and submitted to DHS with a crime victim's U visa application; without a certification, the victim's U visa case filing will be rejected and not adjudicated.
- DACA/DAPA can provide an option for protection from deportation for immigrant crime victims who live in jurisdictions where they cannot obtain U visa certifications and, therefore, they cannot obtain U visas.
- DACA/DAPA will offer protection to such victims so that they can come forward report crimes, and participate in criminal justice system investigations and prosecutions and can obtain protection orders.

▪ **Immigrant Victims That Are Not Eligible for T Visas Based on State Trafficking Laws**

- The Trafficking Victims Protection Act of 2000 created the T visa and the federal immigration law definition of "severe forms of trafficking" required to be granted a T visa includes proof of "force, fraud, or coercion."
- In an effort to create state laws that criminalize a broader range of human trafficking, many state trafficking statutes have been designed to not require proof of "force, fraud or coercion" to secure a human trafficking conviction under state law.
- As a result, there are a group of immigrant human trafficking victims who are cooperating in state criminal investigations and prosecutions of human traffickers under state criminal trafficking statutes who will not qualify for T visas or continued presence under immigration laws.
- Examples of states trafficking statutes that do not include the phrase "force, fraud, or coercion" are:

- | | |
|--------------|------------------|
| ▪ Arizona | ▪ Montana |
| ▪ California | ▪ Nevada |
| ▪ Colorado | ▪ New Jersey |
| ▪ Florida | ▪ New York |
| ▪ Georgia | ▪ North Carolina |
| ▪ Illinois | ▪ Ohio |
| ▪ Maine | ▪ Virginia |
| ▪ Missouri | ▪ Wisconsin |

7. How DACA/DAPA Helps Traumatized Immigrant Crime Victims Come Forward

Traumatized immigrant victims of domestic violence, sexual assault, human trafficking, child abuse, elder abuse, and other crimes are, in addition to fear of deportation, sometimes unable to cooperate with law enforcement and/or are unable to complete affidavit for their crime victim related immigration case because the trauma of recounting the trauma of the violence is too painful. All applicants for VAWA self-petitions, U and T visas must submit with their application an affidavit that provides a detailed account of the crimes that they suffered. For some victims,

⁴⁰ *Statement in Support of T and U Nonimmigrant Visas* (Nov. 3, 2011), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/tools/police-prosecutors/how-the-u-visa-helps-law-enforcement-statements-from-the-field/Officer-Michael-LaRiviere-Statement.pdf>

they are unable to recount stories of their abuse because they cannot relive and be re-traumatized by recalling and recounting the details of the victimization. Reporting rates of sexual assault are particularly low because of trauma, shame, and fear of the repercussions should family or community members learn that they have been raped.

DACA and DAPA help these particularly vulnerable immigrant victims come out of the shadows without requiring them to recount their stories, triggering trauma, and without the risk of suffering being ostracized by their community, family, or cultural support systems because of the type of violence they suffered or because they have reported the abuse.

- DACA/DAPA helps immigrant victims by:
 - Removing the fear of deportation;
 - Providing strength and stability through economic independence by receiving work authorization; and
 - Allowing victims to apply for a form of protection from deportation that does not require them to complete an affidavit causing them to relive their trauma.
- Stability is a key factor
 - When undocumented immigrant victims come out of the shadows and obtain help from advocates and attorneys, 81% are willing to seek civil protection orders against their abusers and 96% found them helpful.⁴¹
 - Protection orders are generally not effective in stopping immigration related abuse. 68.3% of protection order violations involved ongoing immigration related abuse and threats of deportation.⁴²
 - Immigrant women who obtain protection orders are willing to call police to enforce them when violence occurs in the future.⁴³
 - For battered immigrant women the protection from deportation offered by DACA and DAPA will increase victims' stability enabling them to take affirmative steps sooner to free themselves and their children from violent homes by seeking protection orders, custody orders, calling police for help, making police reports and cooperating in the criminal investigations and prosecutions of their perpetrators.

⁴¹ Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton and Giselle A. Hass, *Battered Immigrant Women in the United States and Protection Orders: An Exploratory Research*, 37 CRIM. JUST. REV. 337 (Aug. 1, 2012), available at: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/research-US-VAIW/AmmaretalCPO.pdf/view>

⁴² *Id.*

⁴³ Nawal H. Ammar, Leslye E. Orloff, Mary Ann Dutton and Giselle Aguilar-Hass, *Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA*, 7(4) International Journal of Police Science And Management 242 (2005) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/research-reports-and-data/u-visa-crime-fighting-tool-and-protection-for-immigrant-crime-victims/Ammar-Orloff-Police-Response-2005.pdf/view>