

Foreign Nationals: Developing a Transnational Response for Victims of Violence

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Violet Barton, MPA
Executive Director

Safequest Solano

Foreign Nationals: Developing a Transnational Response

- ⦿ How the laws of Mexico and the United States allow the development of a transnational response for victims of violence.
- ⦿ Case studies will be presented to show the supporting legal framework allowing a unique bicultural approach to assisting violence victims while overcoming institutional, cultural, and language barriers.

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Objective 1: Participants will be able to identify five barriers common to foreign and immigrant victims seeking assistance for violent crime.

Objective 2: Participants will be able to identify three components of VAWA and newly enacted Mexican legislation and how the laws complement each other

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- ◎ **Objective 3**: Though analysis of several case studies, participants will explore ways to develop international partnerships and strategies to best support foreign survivors of domestic violence and other crimes, and how to extend these critical support systems to the most vulnerable migrant communities.

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I. Mexico's International and National Legal framework on DV:

Convention on the Elimination on all Forms of Discrimination Against Women. CEDAW

Inter-American Convention on the Prevention, Punishment, and Eradication on Violence against Women. BELEM DO PARA.

Law for the General Access of Women to a Life Free of Violence.

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The General Law of Mexico 2007 and VAWA 1994, 2000, 2005

A. The intent of the laws

1. To allow federal government to intervene and end patterns of violence against women
2. Allow creation of centers to provide legal, psychological and social assistance to victims.
3. Allow coordination between federal and local municipalities to promote a life free from crime for women

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- Article 24 of Law for the General Access of Women to a Life Free of Violence and Article 30th or its Regulations establishes

* Clear proceedings and requirements for local, national or international community and Non Profit Organizations, that focus in defending human rights, to access the mechanisms provided by this Mexican Federal law:

Declaration of gender violence alert (government authorities actions on specific territory)

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Implementation of New Law in Mexico

1. About the National system on Prevention, treatment Punishment and Sanction against women violence.

2. Gender perspectives

1. Types of Violence / Modalities

(Successes- DV shelters- staffed with MDs, social workers)

Obstacles- Overcoming past beliefs

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Update on implementation

1. VAWA- still have US LEAs who do not know what this is
1. General Law of Mexico- number of states with implementation (31 Estados y 1 Distrito Federal)
(In Mexico there is a Federally enacted law, but several States have created local laws)

U-Visa- An Important LE Tool

- ***Who is eligible for a U-visa?***
- To be eligible for a U-visa, immigrant victims must meet four statutory requirements and they must include a certification from a certifying official or agency that they have been, are being, or are likely to be helpful in the detection, investigation, or prosecution of a qualifying criminal activity.

U-Visa- An Important LE Tool

- The law requires that a person who is eligible for a U-visa must
- (1) have suffered substantial physical or mental abuse as a result of having been a victim of a listed criminal activity

U-Visa- An Important LE Tool

- (2) possess information concerning such criminal activity;
- (3) have been helpful, be helpful, or be likely to be helpful in the investigation or prosecution of a crime; and
- (4) have been the victim of a criminal activity that occurred in the United States or violated the laws of the United States.

VAWA Statutory Authority

- New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014;53,015 (Sept. 17, 2007) (citing Battered Immigrant Women Protection Act (BIWPA) § 1513(a)(2)(A)).
- Congress created the U-visa because it was important for U.S. humanitarian interests to enhance safety of crime victims and encourage cooperation with the justice system

VAWA U-Visa Certification

- The U-visa certification must affirm the immigrant victim's past, present, or future helpfulness in the detection, investigation, or prosecution of certain qualifying criminal activity.
- **Law enforcement officials who sign certifications do not confer any immigration status upon the victim, but rather enable the victim to meet one of the eligibility**

VAWA Certification

- requirements in the victim's application to U.S. Citizenship and Immigration Services of the Department of Homeland Security (DHS).

Qualifying Criminal Activity

- Abduction
- Abusive sexual contact
- Blackmail
- Domestic violence
- Extortion
- False imprisonment
- Felonious assault
- Unlawful criminal restraint
- Female genital mutilation
- Witness tampering
- Being held hostage
- Incest
- Involuntary servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of justice
- Peonage
- Rape
- Sexual assault
- Sexual exploitation
- Slave trade
- Torture
- Trafficking
- Perjury
- Prostitution
- Other related crimes

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II. Barriers to reporting Domestic Violence and Violent Crimes on Foreign Victims

A. Language-Difficulty

- 1.Limited English Proficiency
- 2.Monolingual

B. Cultural Beliefs

- 1.DV seen as a private matter
- 2.Gender roles

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C. Bureaucratic/Institutional

1. Level of proof required- previously, in Mexico, needed two witnesses
2. But in US, there is still lack of knowledge of VAWA, U-VISA, T-VISA by police

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D. Immigration Status

1. Lack of knowledge how to access resources
2. Lack of assistance if undocumented
3. Lack of healthcare/ health insurance
4. Threat of deportation
5. Threats to take children & Child Abduction
6. Threat to report to authorities

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III. New Assistance Available through Partnership with the Consulate

A. Consular Functions Legal Framework

Vienna Convention on Consular Relations. 1963

Art. 5

(d) issue documentation;

(f) safeguarding Mexican nationals rights and interest;

(g) safeguarding children rights;

(l) arrange proper legal representation.

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U.S. – Mexico Consular Convention, 1942

Article VI

Consular officers may, within their respective consular districts, address the authorities, National, State, Provincial or Municipal, for the purpose of protecting their nationals

- a) Right to interview and communicate with their nationals;
- b) Inquire into any incidents which have occurred affecting their nationals;
- c) To assist their nationals before or relations with authorities

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III. New Assistance Available through Partnership with the Consulate

A. Consular Actions

1. Border Alerts
2. Protective Passports
3. Dual nationality
4. Assistance with obtaining destroyed/stolen documents
5. Obtaining birth certificates/ marriage certificates/Criminal complaint

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6. Financial Assistance

- * For survivor & children
- * Interpreters of Indigenous dialects
- * Translations

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Legal Assistance

Immigration Law

- * VAWA
- * U-Visa
- * T-Visa
- * Passport parole
- * Humanitarian Parole

Family Law

- * Legal Custody
- * Child Support
- * Child Abduction
- * Divorce

Criminal Law

- * Consulting Attorney
- * Compensation to crime victim.

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IV. Case studies

A. Example # 1 immigrant woman, married to American citizen.

- A 23 years old, Mexican woman, was raped, brutally beaten, and strangle by her husband, a U.S. citizen. The incident occurred two days after their first son was born
- The aggressor threatened to kill her and their son. Also, threatened to report to immigration authorities about her undocumented presence.
- The Solano County authorities refused to take the police report, due to her immigration status and communication problems.
- The aggressor started the divorce proceeding and requested legal and physical custody of his son.
- The survivor was housed in SAFE Quest shelter.

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Consular Actions:

Provided emergency legal representation in family and immigration cases (September 2009).

- ⦿ The family lawyer hired by the Consulate, investigated the offender's criminal record and found two pending arrest warrants in California and Nevada, for conspiracy, selling drugs and gang membership.
- ⦿ The family lawyer did her representation for divorce and child custody proceeding.
- ⦿ The immigration lawyer started her status regularization proceeding under "VAWA".

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- ⦿ Provided monetary support for clothes, food, medicines and other necessities to the mother and her son.
- ⦿ Provided an emergency passport.
- ⦿ Assisted with the child 's birth registration, to fully establish his Mexican nationality.

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SAFE Quest Actions:

- ⦿ They provided shelter for the victim and her son.
- ⦿ They provided individual and group counseling for the victim.

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Successful outcomes:

- ⦿ The mother got the divorce and the full legal and physical custody of her son.
- ⦿ The mother got her legal residency on August 19, 2010.
- ⦿ She is an empowered woman.
- ⦿ The aggressor is in jail.

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B.Example # 2 immigrant woman, married to resident alien.

- ⦿ A 47 years old, Mexican woman, was victimized by her husband, a resident alien, during almost 20 years.
- ⦿ The aggressor abused sexually their two daughters.
- ⦿ The aggressor threatened to report to immigration authorities her undocumented presence.
- ⦿ The survivor was housed in SafeQuest Solano shelter.

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Consular Actions:

- ⦿ Provided emergency legal representation in immigration cases.
- ⦿ The immigration lawyer started her status regularization proceeding under "VAWA".
- ⦿ Provided monetary support for clothes, food, and other necessities to the mother and her minor son (15 years old).
- ⦿ Provided an emergency passport.

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SafeQuest Actions:

- ① They provided shelter for the victim.
- ① They provided psychological assistance and group counseling for the victim and family.

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Successful outcomes:

- ⦿ The woman and her daughters are on the process to get her legal residency.
- ⦿ She is an empowered woman.
- ⦿ The aggressor is in jail.

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C. Examples # 3 Family victim of drive-by shooting.

- ⊙ On Jun 5, 2009, the house of a Mexican family (Father, 7 months pregnant mother and 4 minors), was shot by a gang members by mistake.
- ⊙ 3 years old, Mexican-American girl, was hurt while she was sleeping at her bed. One bullet remained in her spine after the surgery.

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Consular Actions:

- ⦿ Provided them with immigration legal representation for the U visa proceeding.
- ⦿ Obtained a humanitarian parole for the father. This so he could return to the USA and testified in the trial against gang members.
- ⦿ Provided monetary support for clothes, food, medicines and other necessities.
- ⦿ Provided emergency passport for the two adults.

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Safe Quest Actions:

- ① Assisted this family by moving them to another house.
- ① Organized two fundraising events with the Fairfield Police Department and Harley Davison Club for the girl.
- ① Provided counseling and psychological assistance.

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Successful Outcomes:

- ⦿ Girl's rehabilitation is in process.
- ⦿ The two adults are in U visa proceeding.
- ⦿ Two gang members are in jail

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Recommendations

Providers

1. Police
 2. Courts
 3. Hospital
 4. Social service agencies
 5. Government Agencies /NGO's
- A. Have interpreters with DV/ victim advocacy training available
 - B. Cultural Competency
 - C. Diversity Training
 - D. Community Outreach

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Community Outreach

1. Meeting victims/ survivors where they are
2. Meeting with foreign governments/consulates/embassies

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